

Otherness, Justice  
and *Jus Gentium*:  
the legally  
binding value of  
Earth Charter for  
the protection of  
human rights

Ricardo Libel Waldman  
10th Annual Colloquium  
of the IUCN Academy of  
Environmental Law  
University of Maryland  
Law School

Introduction

1 Defining *jus gentium*

2 Buber's dialogical principle

3 Justice and meetings

4 Earth Charter as *jus gentium*

Conclusion

# 1 Defining *jus gentium*

- *Jus gentium* is a form of law which is derived from human reasoning on the requirements of natural law,
- Natural law on its turn is formed by principles that rule the functioning of nature including human social nature.

# 1 Defining *jus gentium*

- There are some goods which are valued in any culture, if considered by themselves. Those are: life, truth and community.
- From this natural law, human prudence reflecting on historical experience can derive *jus gentium* principles and rules, especially in terms of international environmental law.

# 1 Defining *jus gentium*

- The methodology used to formulate this solution in a manner acceptable to all is dialectics (Aristotle). Dialectics does not produce universally valid results, regardless of who speaks, but assumes the acceptability of its results based on assumptions accepted by interlocutors.

# 1 Defining *jus gentium*

- So if the people of the earth agree, as they do, that nature should be better taken care of, there is no need that the Governments accept formally all principles and rules required for doing so.

# 1 Defining *jus gentium*

- This is not just a theoretical argument but is confirmed by important decisions on the international level, surprisingly at WTO's Dispute Settlement Body (DSC):
  - Shrimp/Turtle
  - EC-Biotech

# 1 Defining *jus gentium*

- Now, this findings of the DSC can indicate that there is space for the kind of argument here developed, at least if a connection between *jus gentium* concepts and international positive law.
- What would be the content of environmental *jus gentium*?



## 2 Buber's dialogical principle

- The basis for legal and moral experience is the meeting, the encounter, and the consequent responsibility for protecting those that are encountered.
- This what Buber's dialogical principle takes us to conclude.

## 2 Buber's dialogical principle

- Principle-words:
- Me-Thou
- Me-This

## 2 Buber's dialogical principle

- Me-Thou: describes the relation between a human being and another entity which human being recognizes as an absolute, as an existence that is not available for human knowledge or domination, and exactly because of this, an existence for which the human being is responsible.
- Me-This: describes a relationship of domination between human being and the entity to which relates. This is a thing that human being can come to know and to dominate.

## 2 Buber's dialogical principle

- Me-This:describes a relationship of domination between human being and the entity to which relates. This is a thing that human being can come to know and to dominate.
- Buber said men can relate to the world in a Me-This fashion but they cannot have only this kind of relation to the world

## 2 Buber's dialogical principle

- There are three ways of meeting between Me and Thou, according to Buber:
- a) humans and non-human nature:
- b) humans and humans:
- c) humans and the Eternal:

## 3 Justice and meetings

- Turning from moral philosophy to legal philosophy, those meetings are the basis for the three forms of Justice mentioned in Earth Charter according to Bosselmann, respectively: a) interspecies justice, b) intra-generational justice and c) intergenerational justice.

## 3 Justice and meetings

- Interspecies justice respects to protecting all species, not only ours to the extent that they are absolutes and should be treated as such. We should find ways to relate to them, that preserves the integrity of ecosystems and can be the basis for the other kinds of justices.

# 3 Justice and meetings

- Intra-generational justice respects to giving human beings living to day what they entitled to so as the common good is attained. Common good is understood as what is required for all human beings to flourish, to develop as human beings.



# 3 Justice and meetings

- Intergenerational justice respects to sustaining indefinitely those conditions so as to protect mankind as we know, what in it turn includes the broader scheme were non-human beings are included as well as human.

## 3 Justice and meetings

- If the meeting between humans is the deepest because they use language in dialogue, then language is a privileged *locus* for the meeting. Dialectics should be used to determine the specific content of those duties.

## 4 Earth Charter as *jus gentium*

- A Pact of international environmental law should use language and dialogue to promote a real meeting. A meeting when people can dialogue to find the solution of a problem common to all that are offering alternatives.

## 4 Earth Charter as *jus gentium*

- Thus, in terms of international law, it is understood that the real meeting between peoples only occurs with a Pact that present assumptions acceptable by all interlocutors.

## 4 Earth Charter as *jus gentium*

- These premises must be content commitments with the interests of North and South, but by connecting them to justice and human rights (to health, work, housing, civil liberties, and of course a healthy environment).

## 4 Earth Charter as *jus gentium*

- If these assumptions are acceptable, the findings of the argument, which will be duties of justice are also acceptable.

## 4 Earth Charter as *jus gentium*

- The Earth Charter establishing the duty of "5. Protect and restore the integrity of the Earth's ecological systems, with special concern for biological diversity and the natural processes that support the life" and

## 4 Earth Charter as *jus gentium*

- "9. Eradicating poverty as an ethical imperative, social and environmental ", seems to embrace the assumptions necessary to produce the accession of all those involved (BOSSERMANN).



## 4 Earth Charter as *jus gentium*

- In this sense, a Pact such as the Earth Charter, for its content, can be considered *jus gentium*, a form of law which derives its validity from human reason in dialectical debate, and therefore does not depend on a formal agreement between all those who are specifically affected by it.

# Conclusion

- Earth Charters principles should be respected by all actors in International Environmental Law because it is *jus gentium* a form of law grounded on its own rationality as accepted in dialectical debate based on premises generally accepted in terms of protecting life and environment.