

Nicholas A. Robinson
University Professor for the Environment
Elisabeth Haub School of Law at Pace University
New York
2017

NORMS FOR AN ECOLOGICAL SOCIETY

The United Nations Charter provides a foundation for just relations among sovereign states. It provides for peacekeeping, to avert armed conflict, and for cooperation to advance socio-economic wellbeing. Since embracing the Universal Declaration of Human Rights in 1948, States have strived mightily to advance the rights of human beings. In that same year, a handful of States, non-governmental organizations and scientists launched the International Union for the Conservation of Nature (IUCN) to sustain Earth's natural systems. These three dimensions of world order – governance, human wellbeing, and stewardship of nature - meet today at an inflection point. Either they will converge harmoniously, or each will experience disruption. In the end, the era of weak governance through the UN may pass, as did that of the League of Nations, or of the mercantilist Europe of Colonies, or the ancient empires of China, Mesopotamia, or Rome.

Earth's cornucopia is much diminished. Delegates to the United Nations General Assembly learned this over the three years during which they drafted the UN Sustainable Development Goals (SDGs). In transmitting the SDGs for adoption in 2015, the drafters candidly acknowledged a much:

“Global health threats, more frequent and intense natural disasters ... and related humanitarian crises and forced displacement of people threaten to reverse much of the development process made in recent decades. Natural resource depletion and adverse impacts of environmental degradation, including desertification, drought, land degradation, freshwater scarcity and loss of biodiversity, add to and exacerbate the list of challenges which humanity faces. Climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve sustainable development. Increases in sea level rise, ocean acidification, and other climate change impacts are serious affecting coastal areas and low-lying coastal countries, including many least developed countries and Small Island developing States. The survival of many societies, and of the biological support systems of the planet, is at risk.”¹

The SDGs provide an a universal platform to integrate cooperation among States, inter-governmental agencies, and civil society, with the aim being to eliminate destructive

¹ Paragraph 14, “Transforming Our World: The 2030 Agenda for Sustainable Development.” Contained in A/68/970, “Report of the Open Working Group of the General Assembly on Sustainable Development Goals,” (see also A/68/970 Add. 1), adopted in UNGA Res. A/Res/70/1 (25 September 2015), distributed 21 October 2015, for Agenda Items 15 and 116, 70th Session, UN GA.

practices and establish behavior to sustain human society within Earth's natural systems.² The SDGs are a step forward, even though they reflect an incomplete knowledge of Earth's natural systems, while evidencing an inadequate regard for life on Earth. SDG 14 calls for more careful exploitation of the marine environment, without recognizing that many ocean systems are in danger of collapse. SDG 15 recognized that many terrestrial ecosystems have collapsed and wants to restore them, and avert further degradation. The UN General Assembly recognized the Human Right to Water,³ but does not yet apply the principles of the World Charter for Nature (1982) to demand that States conserve water for all species.

At the Rio Conference on Environment and Development (UNCED) in 1992, States made great progress toward building a sustainable order. They adopted by consensus *Agenda 21* and the Rio Principles. It was beyond their reach to adopt a universal Charter for the Environment. Brendan Mackey criticizes the Earth Summit for not acting upon Maurice Strong's call to draft an Earth Charter.⁴ However, the record of UNCED reveals that there never was any reality that States would adopt an "Earth Charter" in Rio.⁵ Even adopting the Rio Principles was a stretch for most nations. In 1992, few as yet subscribed to these principles. In the succeeding three decades, virtually all would come to accept the Rio Principles. These ethical precepts underpin the success of *Agenda 21*, the Millennium Development Goals, and the new SDGs.

Rio Principle 1 states that "Human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."⁶ States in 1992 were not ready to recognize that this entitlement is founded on the right to the environment. Even in 2012 at the "Rio+20" Summit, Foreign Ministries continued to see the human environment as their primary focus. It fell to civil society to consult globally and frame a text that reflected how humans and nature are one. The Earth Charter's first principle is to "Respect and care for the community of life."⁷

Away from summit meetings, however, values expressed within the Earth Charter were taking hold. Within nations a fundamental shift was underway. 174 national came to recognize the right to the environment in their national constitutions.⁸ The universality of the Earth Charter's principles was acknowledged as for instance in Pope Francis' environmental encyclical "On Care for our Common Home," *Laudato Si*.⁹ UNESCO and

² See <https://sustainabledevelopment.un.org/post2015/transformingourworld> .

³ On 28 July 2010, through Resolution 64/292, the United Nations General Assembly explicitly recognized the human right to water and **sanitation** and acknowledged that clean drinking water and **sanitation** are essential to the realization of all human rights.

⁴ Brendan Mackey, "A Reflection on the Earth Charter Project and its Mission in the Anthropocene," (2017).

⁵ Nicholas A. Robinson, *Agenda 21 and the UNCED Proceedings* (6 volumes, Oceana Publications, 1993). Strong was UNCED's secretary-general, not chair of its deliberations. That task fell to Ambassador Tommy Koh, who ably persuaded States to adopt the Rio Principles.

⁶ Rio Declaration on Environment and Development - the United Nations www.un.org/documents/ga/conf151/aconf15126-1annex1.htm .

⁷ Principle 1 of the Earth Charter www.earthcharter.org .

⁸ See David R. Boyd, *The Environmental Rights Revolution* (UBC Press 2011).

⁹ http://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si_en.pdf

IUCN each endorsed the Earth Charter, as have many national and subnational governments.

Ignorance remains about these trends in civic ethics. Alarms over Earth's degradation preoccupy the attention of those who might otherwise build reforms to implement environmental norms. Perceptions of distress mask the emergence consensus about environmental values. Governments make decisions by either a pragmatic, blinkered assessment of comparative advantage, or a default to maintaining "business as usual." Nonetheless, the appetite for advancing just reforms grows incrementally. The Paris Climate Agreement in 2015 demonstrates how States remain conflicted. They acknowledge the urgency of action to end greenhouse gas emissions, but their politics are tempered by a reluctance to openly embrace the values of the Earth Charter.

France's Constitutional Council in 2004 recognized a constitutional Charter for the Environment.¹⁰ Building on its national environmental norms, in 2017 France invited all States to adopt a "Global Pact for the Environment." The Pact's principles would become a shared value system, guiding all human activities. France recognizes that societies are already uniting around common environmental norms. It is increasingly likely that States can accept the principles of the Earth Charter through agreeing on a Global Pact. Principle 1 of the proposed Pact states: "Every person has the right to live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfillment."¹¹

This environmental right is grounded upon, indeed depends upon, ecological integrity, or "the community of life." The Pact necessarily defines what constitutes "sustainable" human behavior. It implicitly reaffirms the Rio Principles, just as it reflects the same values as the Earth Charter. All these norms emerge from the same fundamental right to the environment. As Chief Justice Hilario Davide Jr., observed, the right to the environment is inherent in human nature and predates all charters and pacts.¹² Scholars such as Brendan Mackay, Ron Jensen, and Klaus Bosselmann and others have observed how the Earth Charter enables an ecologically just system for global governance.¹³

The growing recognition of globally accepted environmental norms stimulates congruent behavior across all States. In the wake of environmental dislocations, human institutions are learning how to adapt and act effectively to sustain ecological integrity. As they strive to cope, human societies will perceive new dimensions within the right to the environment, such as the principle of resilience.¹⁴ An understanding of rights evolves. How humans observe universal rights is necessarily contextual, depending on the

¹⁰ <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/charter-for-the-environment.103658.html>

¹¹ https://cidce.org/wp-content/uploads/2017/01/scan1_EN.pdf

¹² *Oposa v. Factoran*, G.R. No. 101083 (Supreme Court of the Philippines, 1993) at www.lawphil.net/judjuris/juri1993/jul1993/gr_101083_1993.html

¹³ See K. Bosselmann and J.R. Engel, eds., *The Earth Charter: A Framework for Global Governance* (2010).

¹⁴ The Global Pact states the principle of resilience explicitly, although it is only implicit in concepts of ecological integrity set forth in the Earth Charter, which does not explore resilience. See Nicholas A. Robinson, *The Resilience Principle*, 5 IUCN Acad. Env'tl. L. *eJournal* 19 (2014), at <http://digitalcommons.pace.edu/lawfaculty/953/>.

circumstances in which they are invoked. Such evolution is healthy.¹⁵ Principles, such as resilience, will come gradually to be recognized, naturally.

Given inconsistent attitudes among national leaders, and the collapse of some states due to armed conflict, it can be expected that not all States will embrace the Global Pact. Not everyone is likely to concur about how to restate the Earth Charter's principles fully in the Pact. Debates over amending the Earth Charter or updating the Rio Principles reflect the on-going human quest to agree on the right to the environment. Perceptions of shortcomings do not mean that the search for sound principles is abortive or doomed to fail.

The Anthropocene finds human society forced to evolve enormously in response to changing conditions of life on Earth. What will remain constant is the human instinct for cooperation. The mission of the Earth Charter has been – and will be – to shine a bright light on the pathways of cooperation toward securing resilience in the wake of disruption. The success of the Global Pact may be measured by how closely it comes to reflect the Earth Charter. The normative principles of both posit pathways for sustaining all life on Earth.

In time, human society will learn whether or not it has discovered enough insights to safeguard Earth and all living species.

¹⁵ Brendan Mackay discussed “updating the Earth Charter,” in his essay. Further refinements should be welcomed. New perceptions about rights are inevitable. There has been rather too much debate about formalities of adopting an official text of the Earth Charter, or about who – if anyone- can decide on amendments, or over the place of any other restatement of norms, such as the Global Pact. If environmental harm motivates concern for environmental ethics, then does not the focus need to explore how principles are observed?