

HUMAN RIGHTS ENVIRONMENTAL LAW

and the Earth Charter

"The Boston Research Center for the 21st Century must be congratulated for having sponsored the consultation which resulted in this volume.... This type of [sponsorship] becomes part of the effort to develop moral solidarity among human beings. Without doubt, the volume itself will contribute to an improved understanding of human rights and to the emerging responsibilities of global citizenship."

from the Introduction by Winston Langley

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Contains complete texts of relevant Earth Charter documents and the Draft International Covenant on Environment and Development



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BOSTON RESEARCH CENTER
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HUMAN RIGHTS ENVIRONMENTAL LAW

and the Earth Charter



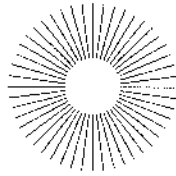
HUMAN RIGHTS, ENVIRONMENTAL LAW, AND THE EARTH CHARTER



Proceedings of a Consultation
“PRACTICAL STEPS TO REALIZING ENVIRONMENTAL JUSTICE:
DRAWING ON 50 YEARS OF HUMAN RIGHTS DEVELOPMENTS”
held on April 20, 1998 at the Boston Research Center

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The Boston Research Center for the 21st Century (BRC) is an international peace institute founded in 1993 by Daisaku Ikeda, a Buddhist peace activist and president of Soka Gakkai International, an association of Buddhist organizations in 128 countries. The BRC brings together scholars and activists in dialogue on common values across cultures and religions, seeking in this way to support an evolving global ethic for a peaceful twenty-first century. Human rights, nonviolence, ecological harmony, and economic justice are focal points of the Center's work.

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Preface

With the publication of *Human Rights, Environmental Law, and the Earth Charter*, the Boston Research Center for the 21st Century completes the third in a series of publications on the Earth Charter. Together with *Women's Views and Buddhist Perspectives*, this volume composes a kit, *Earth Charter Studies*, which offers source material and discussion ideas to scholars and activists interested in the progress of this history-making "people's treaty." Already, the Earth Charter has become a study focus in college courses on international affairs, ethics, religion and ecology, and related subjects. Through study of the Earth Charter, students can observe, analyze, and participate in a civil society process that is taking place on a global scale. Many students have found it particularly inspiring to connect with a real-life and real-time global process that addresses the overwhelming problems they realize their generation will be dealing with in the future.

The consultation contained in this volume was a team effort from start to finish. Unlike the earlier *Women's Views and Buddhist Perspectives*, which presented the opinions of particular constituencies, this consultation convened in dialogue three groups of people who have been working somewhat separately along three related tracks: ethicists drafting the "soft law" Earth Charter; environmental lawyers working on its "hard law" counterpart, the International Covenant on Environment and Development; and activists engaged in the worldwide struggle to enforce human rights. The two-fold objective of this gathering was to provide an opportunity for those working on the Earth Charter and Covenant (1) to confer for the first time in a published discussion about how these two drafting processes relate to each other and (2) to learn useful lessons from the international experience with human rights.

As it turned out, the consultation, named by its co-convenors "Practical Steps to Realize Environmental Justice: Drawing on 50 Years of Human Rights Developments," lived up to its title, thanks to hands-on guidance and advice from Professors Steven Rockefeller and Nicholas Robinson. Since each one takes a lead role in the drafting of the two documents under discussion, they steered us toward a *working* consultation that would consider not just lessons

learned from the human rights experience but also practical questions about specific language on human rights in both drafts.

A note on reference materials: This volume is unique as the first ever to contain a complete draft of both the Earth Charter and the Covenant along with an informed discussion on how these two evolving documents relate to each other.

Without early support and encouragement from the consultation's co-sponsors, Patricia Mische of Global Education Associates and Rick Clugston of the Center for Respect of Life and Environment, this consultation would have struggled mightily to be born. I am grateful to both of them. In turn, the consultation would not have produced its offspring—this volume—had it not been for the careful work of assembling, summarizing, editing, and polishing performed by the topnotch team of Helen Casey, writer/editor; Kali Saposnick, copyeditor; and designer Ralph Buglass. They seamlessly took up where Amy Morgante, publications manager, left off when she took a brief leave from the Center to give birth to a real child. The birth of a child is a timely reminder of the prime reason we hold such consultations.

It is the conviction of the Center's founder, Daisaku Ikeda, who has encouraged our dialogues and publications on Earth ethics, that the work of all those engaged in the construction of these important documents concerning the future of civil society and, indeed, of the planet itself, is among the most important occurring today. My deep thanks to Steven Rockefeller and Nicholas Robinson for their continuing leadership in this work and to all of the participants who are helping to make these documents focused, clear, meaningful, and universally applicable. It is our wish that their work will be rewarded as an artist's effort was rewarded in an oft-told tale that bears retelling here.

An emperor, so it goes, sought out an artist. The emperor desired that the artist produce one exquisite rendering of a flower. Let us suppose that it was an iris. Each year the emperor returned to the artist for the work of art. Each year the emperor left empty-handed. The emperor grew impatient. At length he commanded: Now! The artist took brush in hand and produced an iris, ravishing in its beauty.

There are ways in which each individual engaged in the work of drafting the language of the Earth Charter and the Covenant is an artist. Each is making a commitment of time, patience, and reflection. Each understands that finding the language that best expresses the values the human community holds in common is a kind of evolutionary process. It requires dialogue. Listening. Meditating. Beginning again. Then, one day, both the artist and the canvas are ready. The work is achieved. The contemplative patience and concentration of the artist are rewarded with a work of astonishing clarity.

—*Virginia Straus*
Executive Director

Boston Research Center for the 21st Century

Introduction

A number of international movements since World War II have sought, through the values they espouse, to question and to change the way humans live, move, and develop their being. Three of the most significant of these movements have been those of human rights, the environment, and the Earth Charter. The first is the most widespread and, to some degree, the most developed of the three. The second has been gaining increased worldwide attention, and the third, although the least well-known, has quickly begun to engage sympathetic interest throughout the world. This volume seeks to acquaint readers with the relationship between and among these three movements, the importance of these movements to human well-being and the integrity of nature, and their bearing on how human beings might organize themselves in the future.

The current international emphasis on human rights began in the 1940s, with a focus on the rights of individuals by virtue of their membership in a common family—the human family. So every human being, regardless of gender, religion, ethnicity, nationality, social class, or other status, has three categories of rights: civil and political rights; economic, social, and cultural rights; and what have been called “solidarity rights”—rights to peace, self-determination, and development. States assume the duty to recognize, respect, protect, and promote all these categories of rights, not only within their own borders, but throughout the world.

As the human rights movement of the 1940s and the 1950s developed, it did not expressly touch on issues of the environment. Implicitly, however, the environment was included in its focus. For example, the provisions of the Human Rights Declaration that guarantee one's right to life and to health imply an environment that is life-sustaining and health-supporting. As people became aware of the evidence of human-made harm to many regions of Earth—dangerous levels of pollution in water, air, and living beings; damaging disturbances to the ecological balance of the biosphere; and the destruction or depletion of irreplaceable resources—they began to see the need for explicit commitments which link human rights and the environment.

When the environmental movement gained popularity during the late 1960s, governments were induced to initiate international measures to deal with the environment. The Stockholm Declaration of the United Nations Conference on the Human Environment in 1972 represented an important step in the direction of environmental concerns, especially in its linking of the quality of the natural and human-made environment with human well-being, the enjoyment of human rights, and economic development. However, the Stockholm Declaration also exposed certain major weaknesses in the commitments and thinking of many of the political and other leaders of the day. First, as a declaration, it was not, by itself, binding on states. It was at best "soft law," meaning that it had moral weight only. Second, its focus on development is confined to *economic* development. Third, its environmental emphasis is limited to the *human* environment. And fourth, because of the latter emphasis, the Declaration reinforces the views which have devalued the non-human areas of nature, assigning to them importance only to the extent that they are useful to human beings.

By the end of the 1980s, some of these weaknesses were, supposedly, partially overcome through the World Charter for Nature (WCN), which was adopted by the U.N. General Assembly in 1982, and the 1986 Declaration on the Right to Development (DRD), also adopted by the U.N. General Assembly. The WCN, which was proclaimed "the common standard by which all human conduct affecting nature is to be guided and judged," looks at all of nature, not the human environment only. In the case of the DRD, it expanded the concept of development from its narrow economic focus to include political, social, cultural, and spiritual development. Notwithstanding the achievements of WCN and DRD, issues concerning the environment and development continued to be neglected, in part because of the "soft law" governing the norms with which they were associated, but also because leading Western countries have had strong suspicions about "solidarity rights."

In 1992, at the U.N. Conference on Environment and Development (held in Rio de Janeiro, Brazil), states adopted a body of principles called *Agenda 21*, which was seen as a possible solution to the deteriorating environmental conditions. But that body of principles has had little or no impact on most governments. Meanwhile, hu-

man rights advocates have sought to place issues of the environment within a human rights context, in part to employ the "hard law" and other available institutional resources under the human rights regime to help ensure respect for and enforcement of standards developed to protect the environment. As was the case with the Stockholm Declaration, however, the human rights approach has the weakness of placing humans at the center, when the interdependence of all life communities requires and recommends de-centered emphases.

In part one of this volume, Nicholas A. Robinson, professor of law at Pace University School of Law, gives the reader an outline of some of the problems mentioned above, and provides an example of the efforts on the part of nongovernmental organizations (NGOs), led by the International Union for the Conservation of Nature (IUCN), to elaborate, extend, and explain the norms concerned with environment and development.

Those efforts have resulted in the fashioning of a Draft International Covenant on Environment and Development—an instrument intended to be "hard law," one legally binding on countries. In addition, Professor Robinson furnishes examples, from national and international tribunals, of judicial rulings that have sought to reconcile certain norms governing the integrity of the environment and policies of development. Likewise, he explains some of the relationships between the Draft Covenant and the Earth Charter, with which this introduction will quickly deal, as well as how those relationships can and do strengthen human rights. Finally, he offers encouragement to many who have been frustrated by the failure to make governments take issues of the environment more seriously by pointing to the history of human rights efforts, which began as "soft law" with the 1948 Universal Declaration of Human Rights and then progressively moved into varying areas of "hard law" to hold states legally accountable.

In the case of the Earth Charter, the movement associated with it began in the early 1980s with a number of issues prompting its rise and its increasing acceptance. Among these issues has been the concern, shared with many in the environmental movement, that as important as the human rights movement had been, it had not shown enough interest in life systems that were not human. As

such, the true interdependence of nature was not being properly recognized, and, therefore, appropriate measures to prevent and arrest its impairment were not being pursued with the timeliness and resolution required.

The Earth Charter is concerned with building a culture of respect and reverence for all communities of life through the instrument of a global ethic. As such, it is involved in pursuing the moral solidarity between and among peoples throughout the world—something which those who sought to found the post-1945 world order knew to be *necessary* if human rights, including peace, were to be fully realized.

In this pursuit, the agreement of states is not required (as is the case of the human rights instruments and the Draft Covenant), although their support is welcome. Furthermore, the Earth Charter is more concerned, through its “grassroots-level up” approach, with shaping the moral content of people’s character than with the outward ordering of rules, which “hard law” often represents—rules with which humans, unchanged in character, are *forced* to comply. The Earth Charter movement is, therefore, content to have the principles of the Earth Charter remain as “soft law.” And were its aims to succeed, it could prove to be the most profound support for most of the values both the human rights and the environmental movements have represented. Seen as such, especially when one considers that effective policies to deal with human rights and the environment require the cooperation of governments and individuals in all areas of social life, the Earth Charter is a “perfect complement” to human rights norms and the Draft Covenant.

Steven C. Rockefeller, in his presentation in part one, ably spells out the relationship of the Earth Charter to the Covenant and to human rights, guides the reader through some of the painstaking steps in the evolution of the thus-far agreed-on principles which have come to define that Charter, and details some parallel paths which both the Charter and the Draft Covenant have, on occasions, followed. Equally important, he highlights how the tripartite structure of principles contained in the Charter bear on and are related to values and concepts such as peace, sustainable development, ecological integrity, and intergenerational responsibility.

The book, which is a product of a consultation, is laden with a

rich diversity of other views about the relationship that should exist between and among the human rights, environmental, and Earth Charter movements, and about how human rights can be strengthened. In his essay, Clarence J. Dias, president of the International Center for Law and Development, argues that the removal of certain misconceptions and misunderstandings, reforms of some international institutions, and the maintenance of vigilance against identified international trends can contribute to better support for human rights, including development, and the environment. For example, he contends that one of the ways to contribute to a human rights culture is to remove the misunderstanding, especially prevalent in the West, that the best approach to the promotion of human rights is to focus almost exclusively on the narrow area of civil and political rights, instead of the broader and richer corpus of rights which speak to human wholeness.

An approach which incorporated the richer corpus would be more accepting not only of social, economic, and cultural rights, but also of solidarity rights, including those dealing with the environment and development. And with respect to the human right to development, he argues that one should also strive to remove the misunderstanding that that right is likely to be promoted and fulfilled through free-trade and investment, unsustainable escalating levels of consumption, or economic globalization. He also recommends a reforming of the U.N. to effect an improvement in human rights enforcement, and the fighting of two trends, each of which, if successful, could seriously undermine human rights: the resurgence of patriarchy, seeking to reverse the rights of women, and the politicization of racial and ethnic identities to mask conflicts concerning the sharing of scarce resources.

In his commentary, Stephen Kass, an environmental lawyer and partner in the law firm of Carter, Ledyard & Milburn, registers some concerns about the extent to which efforts to support human rights through, or equate them with, environmental claims could have the effect of diluting the “mandatory nature of civil and political human rights.” His concern centers around the fact that the focus on environmental rights tends to emphasize the economic, social, and cultural category of human rights to the near-exclusion of their civil and political counterparts. And since he believes that

human rights, environmental integrity, and development cannot be successfully addressed unless all areas of human rights are equally emphasized, he expresses skepticism about the focus on environmental rights. Perhaps his most telling comment, however, is his contention that no codification of rights will make any long-term difference unless the values of societies reflect those rights. It is that convergence of societal values and the codified rights, expressed in the human rights instruments and the Draft Covenant on Environment and Development, that the Earth Charter seeks. It follows, therefore, that support for the Earth Charter movement should have the effect of promoting that convergence.

Other discussants or commentators in this volume build, expand on, or illuminate what has already been said. For example, in his presentation, former prime minister of the Netherlands and professor of globalization at the Catholic University Brabant at Tilberg, Ruud Lubbers, argues that human rights can best be strengthened, and environmental integrity and sustainable development most securely assured, if the "global sovereignty of the people" is realized. That sovereignty is possible, he contends, if people begin to understand globalization as a process by which a borderless world is coming into being and the common social, economic, cultural, and moral fate of humans is evolving.

The human rights outlook is of course grounded on the concept of "global sovereignty" because, among other things, it argues that individuals, not states, are the basic units of international life. Further, as earlier indicated, this outlook contends that one has rights not because one is the national of a state, a woman, or a Muslim; or, that one is black, rich, has a defined sexual orientation, belongs to a linguistic group, or enjoys any particular political or cultural status, but on account of the fact that one is a member of the *human family*. To the extent one understands such a membership, that this membership entails rights and obligations, and that these obligations embrace this global family to which one belongs, there exist the beginnings of global sovereignty. And a sovereign people, in solidarity, will not only exert pressures on governments to fulfill their assumed duty to honor and fulfill human rights, but they will come to see more clearly the links between that fulfillment and the factors affecting North and South relations, sustainable develop-

ment, and the global environmental issues—issues which can only be properly dealt with globally. They will also come to see that the Earth, very much like one's house, is part of one's home.

The Draft Covenant, in providing for globally *enforceable* law, should generate or reinforce the sense of global solidarity and sovereignty. That emerging sense of global sovereignty will, in turn, help provide the political and cultural setting for greater democratization (and accountability) and more effective reform and strengthening of global institutions such as the U.N. The Earth Charter, in this context, strengthens both the Draft Covenant and human rights, especially as it attends to the moral and social grassroots of this new sovereignty. And Article 28 of the Universal Declaration of Human Rights, which calls for a social and international order in which "the rights and freedoms set forth in this Declaration can be *fully* realized," provides a forceful, legitimizing source for the further development of the types of global institutions which are consonant with global sovereignty.

Involvement at the grassroots level is particularly significant in grappling with the commentary on Professor Lubbers's presentation. Here Neil Popovic, an international environmental lawyer, expresses deep sympathy for the idea of global sovereignty, because, among other things, it helps one to "get around the barriers that are imposed by (state) sovereignty" and facilitates the shaping and implementing of international or global standards. He is concerned, however, that getting around "the barriers" could be undermined by the "myth of objectivity." That myth holds the view that abstract standards developed by one group (in the form of covenants, declarations, or other instruments of international codification) are universally valid and should find ready acceptance and application throughout the world, regardless of social and cultural differences. To him, treaties, including the Draft Covenant (were it to become law), have values. And if individuals such as women, indigenous peoples, youth, and other vulnerable groups that have been neglected or otherwise disadvantaged by traditional sovereignty are to be supportive of the rights-building process, they must be made full members of global society, that is, their values must be fully present in the societies we seek to construct and the codes that govern those societies.

Noel Brown, an environmental diplomat and chairman of Friends of the United Nations, takes a position in his commentary that agrees with the idea of global sovereignty. He thinks that technology, especially that which sponsors exploration of space and our communications revolution, has become an important help in allowing people to see "Earth as a whole"; and that this "sense of the whole" will increasingly generate greater ethical responsibility and, thereby, offer more forceful and reliable support for human rights and environmental justice. Subsequent parts of this volume cover dialogues on the Earth Charter, the Draft Covenant, and global sovereignty. And they yield a rich mix of ideas.

Dr. Soon-Young Yoon, for example, opined that the expanded consciousness of women as rights-holders empowered them to contribute in very important ways to the values of human rights, and that the Earth Charter (which had refrained from using human rights language) should include human rights language to further the cause of justice and to strengthen the human rights movement. Others deal with the role of the business corporation in disempowering individuals, civil society groups, and even governments, as the latter groups seek to advance the cause of human rights and global moral solidarity. (The disregard for the environment, on the part of this type of corporation, and the need to limit the corporation's influence, in order to better ensure greater respect for human rights and the integrity of the environment, are important parts of these dialogues.) And still other global thinkers focused on the nature of civil society groups, the extent to which these groups can be part of the process of the "mobilization of shame" against persons and institutions that abuse human rights or the environment, and the *fact* of what Dr. Patricia Mische calls the "sovereignty of the Earth," which does not even acknowledge political and cultural borders. In addition, Drs. Elise Boulding and Mary Evelyn Tucker introduced the concepts of "the quality of [human] personhood" and "sustainable living" or "sustainable livelihood" as substitutes for, or complements to, sustainable development. These terms may be useful to civil society groups, as they seek to deal with human rights and increase societal consciousness of "Earth sensibilities" and the health of the ecosystem.

It is at this stage that Stephen P. Marks, director of the United

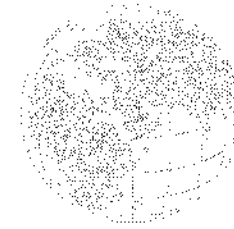
Nations Studies Program at Columbia University, introduces an important note of caution on the actual or potential weaknesses of assigning to civil society groups so much of the responsibility to advance the cause of respect for the environment and human rights, including the right to development. In part, he thinks that business corporations can also sponsor such "civil society" groups. And since businesses have more economic resources than traditional civil society groups, businesses could effectively control the direction and the nature of debates dealing with human rights.

The rest of the volume includes specific recommendations, some conflicting but all insightful and in many instances bold, on how the Earth Charter and the Draft Covenant may be improved. It also contains additional suggestions on how the enforcement of human rights might be augmented.

The Boston Research Center for the 21st Century must be congratulated for having sponsored the consultation which resulted in this volume. Not only do such sponsorships help to give people a sense of wider participation in the shaping of the norms which govern their lives, but they subtly strengthen the seeds of democratic involvement. In the process of that involvement, insights which would otherwise be overlooked become part of a common stock of widely-shared views. Further, this type of involvement becomes part of the effort to develop moral solidarity among human beings.

Without doubt, the volume itself will contribute to an improved understanding of human rights and to the emerging responsibilities of global citizenship.

—Winston E. Langley
Professor of International Relations and Political Science
University of Massachusetts Boston



Part I
THE EARTH CHARTER
AND THE COVENANT:
“SOFT ” AND “HARD” LAW

THE EARTH CHARTER AND HUMAN RIGHTS

by Steven C. Rockefeller



*STEVEN C. ROCKEFELLER is professor of religion at Middlebury College where he formerly served as dean of the college. He is the author of *John Dewey: Religious Faith and Democratic Humanism* (1991) and co-editor of *Spirit and Nature: Why the Environment is a Religious Issue* (1992). His articles and essays, which often link religion, social democracy, ecology, and global ethics, appear in a number of books and journals. His book, *Principles of Environmental Conservation and Sustainable Development: Summary and Survey* (1996), was prepared for the Earth Charter consultation process, which was organized and directed by the Earth Council in Costa Rica. For the past year, he has been coordinating the Earth Charter drafting process for the Earth Charter Commission and the Earth Council.*

As we approach the millennium, it is clear that the world is in need of fundamental ethical principles governing human relations with nature as well as a new integrated framework for international law and policy in the fields of environmental protection and sustainable development. The Earth Charter and IUCN's (World Conservation Union's) Draft International Covenant on Environment and Development are designed to address these needs.

Efforts to draft these documents have been under way for a decade. Today the Earth Charter Commission and the IUCN Commission on Environmental Law are working in collaboration to ensure that the Earth Charter and the Covenant are effec-

"The Earth Charter initiative is part of the worldwide movement to develop a new global ethics. In an interdependent world, effective policy-making and problem-solving requires partnership and cooperation involving all nations and peoples and all sectors of society."

tively coordinated. The Boston Research Center consultation on human rights, the Earth Charter, and the Covenant provided an excellent opportunity to analyze and discuss how these documents address human rights issues and to consider ways of strengthening them.

In its 1987 report, *Our Common Future*, the United Nations World Commission on Environment and Development called for creation of both a new charter and a new covenant that would set forth fundamental principles of sustainable development. Attempts to create an Earth Charter during the United Nations Conference on Environment and Development, the Rio Earth Summit in 1992, were not successful. However, in 1994, the Earth Council and Green Cross International collaborated in launching a new Earth Charter initiative. Beginning in the late 1980s, the IUCN Commission on Environmental Law began work on the International Covenant on Environment and Development.

A draft of the Covenant was presented at the United Nations in February 1995. At that time some questions were raised among international lawyers as to whether a new charter was really necessary and whether efforts to create an Earth Charter might somehow dilute support for the Covenant. However, at an international Earth Charter workshop in The Hague in May 1995, Parvez Hassan, the chair of the IUCN Commission on Environmental Law, explained that the Earth Charter project and the Covenant complemented each other, and he pledged his support for the new Earth Charter initiative. Sharing this viewpoint, Professor Nick Robinson, who succeeded Parvez Hassan as chair of the Commission on Environmental Law, has established close working relations with the Earth Charter Drafting Committee.

The Earth Charter initiative is part of the worldwide movement to develop a new global ethics. In an interdependent world, effective policy-making and problem-solving requires partnership and cooperation involving all nations and peoples and all sectors of society. Consensus on fundamental ethical values helps to establish common goals and standards. One element of world security in the twenty-first century is the clarification and development of shared ethical values. Of special importance, global ethics provides an essential foundation for international law.

Since World War II there have been significant international efforts to develop certain basic ethical values, beginning with the principle of respect for the dignity of the human person and human rights. Since the United Nations Stockholm Conference on the Human Environment in 1972 the nations of the world and the emerging global civil society have also been slowly but steadily developing a significant consensus on values in the fields of environment and sustainable development. This consensus is supported by the extensive work in ecology and ethics being done today by scientists, philosophers, and religious thinkers. The Earth Charter and Covenant build on these developments. It is the purpose of the Charter to set forth the most fundamental ethical principles for ecological security, sustainable living, and related goals. The Covenant spells out the specific implications of these principles for interstate relations and associated policy and practice.

In March 1997, at the conclusion of the Rio+5 Forum in Rio de Janeiro, the Earth Charter Commission issued the Benchmark Draft Earth Charter. The Commission also called for ongoing international consultations on the Earth Charter in order to improve the text and to involve an increasing number of individuals and groups in the Earth Charter process. The Commission will issue Benchmark Draft II in January 1999. It is anticipated that a final version of the Earth Charter will be issued early in the year 2000.

At some point between 2000 and 2002 (the tenth anniversary of the Rio Earth Summit), the Earth Charter Commission will seek endorsement of the Earth Charter by the United Nations General Assembly. Such action by the United Nations would give the Earth Charter the status of a "soft law" document. However, the Earth Charter is being drafted primarily as a peoples' treaty to be adopted by civil society, and the Commission does not plan to turn over the drafting of the Charter to an intergovernmental process. The goal of the Earth Charter process is adoption of Earth Charter values by NGOs, business organizations, scientists, religious groups, and educational institutions as well as by national councils of sustainable development and governments. The Earth Charter movement endeavors to give support and direction to the growing power and influence of NGOs and civil society, in general, as one way of promoting an ecological and social transformation of society, includ-

ing new forms of responsible and accountable action by corporations and governments.

Human Rights and the Benchmark Draft

The Benchmark Draft (see Appendix) does address a number of human rights issues that are closely related to issues of ecological protection, but it is not organized around human rights as its primary theme. Significantly, the participants in the BRC conference, including a number of human rights lawyers, agreed with this approach. Further, the Benchmark Draft does not cluster in one section the principles that deal explicitly or implicitly with human rights. It is primarily concerned with presenting an integrated vision that recognizes the interdependence of humanity's environmental, economic, and social goals. The Charter is designed to discourage fragmented thinking and to encourage holistic problem-solving. It seeks to emphasize the interrelatedness of the values of ecological protection, sustainable development, peace, and human rights.

The Preamble to the Benchmark Draft does not mention human rights, but many groups and individuals argue that it should. Therefore, the next version of the Preamble, which is being prepared, will affirm faith in fundamental human rights and freedoms and make clear that it is necessary to secure these basic rights and freedoms for a people before they can reasonably be expected to fulfill a complex set of social and ecological responsibilities. The Preamble will also assert that human rights and environmental protection are interdependent.

Even though Benchmark Draft Principle 1 does not explicitly mention human rights, it affirms the basic attitude of respect for life and persons that underlies commitment to human rights. However, it is important to recognize that the Charter is concerned with respect for Earth, all species, and individual creatures as well as human beings. While the Charter puts much emphasis on the rights of people and the responsibilities people have to people, it is also concerned with the responsibilities people have to Earth, other species, and individual creatures. It is not an anthropocentric document in this sense. This is one reason why it is not organized around human rights as the dominant theme. It is concerned with the moral

standing of the whole community of life and all its members, human and non-human. This emphasis of the Earth Charter is the most significant difference between it and the Rio Declaration (1992). The World Charter for Nature (1982) does give expression to a moral concern for species, but the Earth Charter goes further and calls for respect for all individual living beings, not just species.

Benchmark Draft Principle 3, which calls for sustainable living, involves the first explicit mention of human rights. According to this principle, respect for human rights and the safeguarding of Earth's regenerative capacities are the essential defining characteristics of sustainable living. Principle 3 emphasizes that sustainable development respects and promotes the well-being of both people and natural systems. It also addresses concerns about reproduction and population as well as consumption and production.

Benchmark Draft Principle 4 is a call for justice with a specific reference to environmental justice and related human rights. The Stockholm Declaration (1972) was the first international document to articulate a fundamental human right to an environment that supports a person's dignity and well-being (see Principle 1). Since Stockholm, this principle of environmental justice has been included in numerous new state constitutions. However, this critical principle is not found in the World Charter for Nature (1982) and is only partially articulated in the Rio Declaration (1992).

Benchmark Draft Principle 9 addresses the rights of indigenous peoples, whose social and political struggles involve basic issues of ecological protection and environmental justice. Principles 10 and 11 address the rights of women as an issue fundamental to the achievement of sustainability, but rights language is only used in Principle 11. Mention of the right to sexual and reproductive health care is made in the Earth Charter on the grounds that the key to keeping human reproduction in balance with the regenerative capacities of Earth is gender equality, including education and health care for women. The language used in Principle 11 is the consensus language that came out of the United Nations Beijing Conference in 1995.

A number of principles in the Benchmark Draft address issues closely related to human rights law, but human rights language is not used. This includes Benchmark Draft principles 5, 6, 8, 10, and

14. One question discussed at the BRC consultation was whether the Earth Charter should consistently use human rights language whenever values related to human rights, such as access to information and education, are addressed by the Charter. The conclusion was reached that it is not always necessary to do so and that some principles related to human rights can be most effectively stated in the Charter without the mention of human rights. The human rights issues related to such principles can be explained in a commentary on the Earth Charter.

The Earth Charter does not use rights language with reference to non-human species. The concept of the rights of nature has not won broad international acceptance. So the Earth Charter Commission has decided not to use that language in order to avoid an unproductive controversy. The Charter does, however, make the essential point that is at the heart of the idea of the rights of nature, which is that human relations with non-human species and individual living beings involve moral responsibilities. Earth and all living beings have intrinsic value and are worthy of respect and care. People may and must use natural resources and other species in order to survive, but living beings should not be treated as a means only. This is a basic message of the Earth Charter. This message is fundamental to the ecological, ethical, and spiritual transformation of human civilization envisioned by the Charter.

During the Rio+5 Forum in 1997 the Earth Charter Commission considered whether or not to make an explicit reference to the IUCN Draft Covenant. Concerned that the Covenant, which focuses on environment and development issues, may be only one of several legal documents that should be drafted and adopted in order to work out the full implications of the Earth Charter, the Commission decided not to mention the Covenant explicitly, but instead to make a general reference to the need for such a document as a first step. The Commission will, in all likelihood, revisit this issue as the two documents are further developed and refined. The IUCN Commission on Environmental Law will also have to decide how the Covenant should refer to the Earth Charter. It could reference the Earth Charter in its preamble, or it could incorporate some or all of the Earth Charter principles.

Revising the Earth Charter Principles

Over the past year and a half many comments and recommendations regarding the Benchmark Draft have been received from all regions of the world, and in March 1998 the Earth Charter Drafting Committee began the process of revising the Earth Charter principles and preparing Benchmark Draft II. An early version of the draft revised principles was used at the BRC consultation on human rights (see Appendix). It involves the deletion of three principles found in the Benchmark Draft (numbers 12, 16, and 17), the addition of six new principles, and the division of the Charter into three distinct parts. The tripartite structure of this document has been preserved in later versions completed since the BRC consultation. The Drafting Committee has continued to revise and reorganize the principles in light of the ongoing dialogue regarding the document.

Some groups prefer a short Earth Charter with 10 or 12 brief principles, and others expect a more substantial document along the lines of an intergovernmental declaration. In an effort to address these different concerns, the Drafting Committee has divided the Charter into three parts and created a layered document with a total of 21 principles for the twenty-first century. The three parts reflect levels of generality, not a hierarchy of values. All the principles are interrelated and interdependent. Each principle is stated as succinctly as possible in one sentence. Where further elaboration is required, subprinciples are added. In addition, a commentary on the principles, which will be issued with them by the Earth Charter Commission, will provide a more extensive explanation for those who may want it. The three main principles in Part I or the nine (12 in some later drafts) main principles in Parts I and II can be used as a short version of the Charter.

Part I states three general principles that provide the ethical foundation for preserving ecological integrity and building just, peaceful, and sustainable societies. These principles lie at the heart of the new emerging global ethics. All the other principles in the Charter flow from these first three. Principle 2 is a revised version of Benchmark Principle 18. The Drafting Committee received many comments recommending that this principle on global citizenship be moved from the end of the Charter to the beginning. Principle 3

makes the important ethical concept of intergenerational responsibility, which is the core ethical principle in *Our Common Future* (1987), into an independent principle. Part II provides an integrated vision of fundamental environmental, social, and economic values that are essential to caring for Earth. Much of the material in Benchmark Draft Principles 2-7 can be found in Part II, but there is some rewording and reorganization of ideas. Part III sets forth a number of more specific guidelines for the achievement of sustainability, developing the ideas in Benchmark Draft Principles 8-16 and adding some new principles (10, 11, 12, 15, and 19) in order to make the document more substantive from ecological and ethical perspectives. The principles in the Earth Charter do not focus exclusively on the environment because the goal of ecological security is interrelated with social and economic goals. However, all the principles included in the Charter do have an ecological connection.

Given its tripartite structure, one can think of the Earth Charter as a Tree of Life. The first three principles are the roots and the principles in Parts II and III constitute the trunk and the branches. In this view, the Preamble, which outlines the ecological and social context of and basic assumptions underlying the Earth Charter, is the soil. Different groups or local communities can add their own branches or twigs, leaves, and flowers. One advantage of using this imagery in connection with the Earth Charter is that the Tree of Life is a popular symbol in most cultures throughout the world, and the tree is an organic whole that suggests the interconnectedness of all the elements of the Charter.

The treatment of human rights in the revised version of the principles is very similar to that in the Benchmark Draft. A few changes and additions merit comment. A revised and consolidated version of Benchmark Draft Principles 10 and 11 on gender equality and the right to sexual and reproductive health care is found in Principle 16. It has been expanded to include reference to universal access to education. In the new wording human rights language is not used, but the idea of basic human rights is implicit. Responding to recommendations from a variety of groups, a new Principle 19 on racial, ethnic, and religious discrimination has been added on the grounds that this issue is directly related to the achievement of environmental justice. The suggestion has been made that the link

between discrimination and environmental justice should be made explicit.

As mentioned earlier, it is important to keep in mind that the revised version of the Earth Charter principles described above and used at the BRC consultation involves a working paper. In light of the BRC consultation and many other such gatherings, the wording and organization of the principles have undergone further revisions as a final version of Benchmark Draft II is developed. (Copies of the latest version can be obtained from the Boston Research Center.) A distinguished group of participants gathered for the BRC discussion, which was an important moment in an ongoing process of consultation and reflection. I want to thank especially Virginia Straus and her colleagues at BRC for their interest in and support of the Earth Charter process. I also want to express deep appreciation to Nick Robinson and the IUCN Commission on Environmental Law for their support of the Earth Charter project and openness to collaboration with the Earth Charter Commission.

Bella Abzug's death, which occurred shortly before the BRC consultation, is a great loss in the worldwide struggle for social justice, gender equality, and sustainable development. It meant a great deal to all of us associated with the Earth Charter that she supported it so enthusiastically and contributed so effectively to the drafting process. Her wisdom, passionate commitment, and clear strong voice will be deeply missed.

A recovery of ethical vision and commitment and a respect for and development of the rule of law are essential to the future survival and flourishing of humankind. The Earth Charter and IUCN Draft Covenant respond to this need. The ethical principles of the Earth Charter are foundational and necessarily very general. The Covenant develops the practical meaning of these principles for international and national law. Together the Earth Charter and Covenant set forth a vision of shared purpose and hope for the twenty-first century. Human rights is one fundamental interdependent element of this vision.

Remarks of the Co-convenors

THE DRAFT COVENANT ON
ENVIRONMENT AND DEVELOPMENT:
A SUSTAINABLE MODEL FOR
INTERNATIONAL LAWMAKING



by Nicholas A. Robinson

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The Earth Summit in 1992 achieved a richly debated and hard won political consensus: *Agenda 21* set forth a restatement of the worsening environmental trends worldwide, along with a prescription for remedies that nations should adopt. The same nations adopted by consensus the "Rio Declaration on Environment and Development," a statement of principles for sustainable development which had been prepared with very little debate by the Preparatory Committee for the Earth Summit in April, two months before the formal conference convened. Since the time when this United Nations Conference on Environ-

"What must be done to stimulate nations and peoples to see themselves as stewards of Earth? Evidentially, something more is needed than an action plan and a declaration of principles in order to move the bodies politic of the world."

ment and Development (UNCED) adopted *Agenda 21*, the United Nations established a Commission on Sustainable Development which has conducted an annual review of how nations are implementing solutions to reverse the deteriorating environmental conditions. When the review five years after Rio took place, the world's nations demonstrated very little commitment to take the kind of action that they all had agreed was needed when they finally negotiated the words of *Agenda 21* and adopted this action plan by consensus.

What must be done to stimulate nations and peoples to see themselves as stewards of Earth? Evidentially, something more is needed than an action plan and a declaration of principles in order to move the bodies politic of the world. The Earth Summit also took the formal signatures of nations approving the final texts of two treaties that the U.N. had decided to have negotiated in tandem with the preparation of *Agenda 21* and the Rio Declaration: the Convention on Biological Diversity and the U.N. Framework Convention on Climate Change. These two treaties now join other environmental treaties (such as Part XII of the U.N. Convention on the Law of the Sea, or the Ramsar Convention on Wetlands, or the Migratory Species Convention), as a kind of emergent law for managing the world environment. These treaties remain, however, part of a weak patchwork of laws. The treaties negotiated to date cover rather narrow sectors of international behavior, and even though they have modest scope, they have not been ratified or implemented by most of the world's nations.

Perhaps it should not be surprising that international environmental law is still today in its infancy, despite the clear documentation by scientists that most of the world's people do not have potable water; breathe unhealthy air; and confront a loss of natural beauty and wholesome conditions. After all, the Earth Summit did not change the facts that the field of environmental law only emerged in the 1970s, and that most nations still lack a comprehensive system of laws for environmental protection and sustainable use of natural resources. There is little equity in the sharing of natural wealth among the contemporary generation of Earth's people, and most nations evidence little practical concern for the needs of our grandchildren and later future generations.

Nonetheless, measures *can* be taken to stimulate nations to undertake the needed protection of the environment, the public health, and nature. The evidence of this optimistic observation is best drawn from the human rights movement. For decades before the horrors of the Second World War, nations ignored the human rights of individuals in many parts of the world. The preparation of the Universal Declaration of Human Rights, adopted 50 years ago, produced a worldwide statement that defined a standard for morality and basic rights clearly enough for the people of the world to judge when the behavior of governments or individuals was immoral and improper. The Universal Declaration was a carefully negotiated statement of "soft law," a moral call which by itself did not legally oblige changes in how nations behaved. In order to establish a clear duty under international law obliging nations to observe human rights, the nations negotiated the Covenant on Civil and Political Rights and the Covenant on Social and Economic Rights. These two treaties have induced many nations to revise their national laws and systems to better ensure the protection of the human rights of all individuals within their jurisdiction or control. In the years since 1948, systems for human rights commissions, courts of human rights, constitutional guarantees, and many less dramatic legal measures have emerged to reinforce respect for human rights.

This record of human rights advances offers some guidance to those who seek to foster stewardship of Earth's natural systems on which all life depends. Is the immediate wrong to a human being resulting from discrimination, torture, or execution qualitatively worse than the following: lingering wrong done to a person (or to many persons, now or in the future) who dies or is hurt by the ultraviolet solar radiation resulting from erosion of the stratospheric ozone layer and resultant human skin cancers and cataracts, or the bio-accumulation of chemicals dangerous to a person's health, or the extinction of species, or any of the many deaths reported statistically in human mortality and morbidity rates from pollution of Earth's cities?

Much the same logic that established new behavior among nations in the realm of human rights also lies behind the efforts to formulate the Earth Charter and the parallel efforts to develop the Covenant on Environment and Development. The Earth Charter

can be seen as a quest to restate the fundamental moral considerations for care of Earth, only roughly corresponding to the Universal Declaration of Human Rights in its function as a basic "soft law" or policy statement. The Draft Covenant on Environment and Development can be characterized as an attempt to show the specifics of "hard law" treaty obligations that should guide all nations as a framework or umbrella for international environmental law. If laws can help curb immediate abuses of human rights, cannot laws also help arrest the destruction of nature? Dr. Parvez Hassan of Pakistan, the chairman of IUCN's Commission on Environmental Law, who led the development of the Draft Covenant, set forth this process in an address to the American Society of International Law in 1993 (ASIL Proceedings, 513-522). IUCN's Commission on Environmental Law worked closely with the International Council of Environmental Law (ICEL), led by its executive governor Dr. Wolfgang E. Burhenne, over several years to prepare the Draft Covenant.

IUCN, the International Union for the Conservation of Nature and Natural Resources, had begun to build international law for the environment in 1948 at the very moment when IUCN was founded in France, at the initiative of the Republic of France, UNESCO, and the Swiss League for the Protection of Nature (an NGO). IUCN established its Commission on Environmental Law in 1962, and the Commission's members, many of whom are diplomats, have developed study texts of a number of model treaties that in turn became international law (e.g., the Convention on the International Trade in Endangered Species and the Convention on Biological Diversity). In collaboration with ICEL, IUCN's Commission on Environmental Law began an international process to draft a comprehensive treaty, designed as a framework agreement to link all the existing agreements and fill in the gaps in the basic principles and duties of caring for Earth as part of the lead-up to the Earth Summit. IUCN's effort built, in part, on the World Charter for Nature, which the U.N. General Assembly had adopted in 1984 and which IUCN had drafted initially, and on the earlier Stockholm Declaration on the Human Environment of 1972.

A draft text of the Covenant was presented to and debated by the UNCED Preparatory Committee in Geneva in 1991. IUCN revised the draft in light of the preparations for the Rio Earth Sum-

mit and the adoption of *Agenda 21* and the Rio Declaration on Environment and Development. IUCN then delivered the text to the U.N. Congress on Public International Law convened in the U.N. General Assembly Hall on 13-17 March 1995; at that Congress, Professor Edith Brown Weiss, a member of this IUCN Commission on Environmental Law and president of the American Society of International Law, addressed the Congress and called upon the world's international law scholars and professionals to closely study the Covenant.

IUCN is now in the process of revising further the 1995 study draft in light of the many responses submitted to IUCN from scholars, diplomats, lawyers, and officers of NGOs around the world, including consultations such as this one convened by the Boston Research Center for the 21st Century. The Covenant has been included in scholarly studies about how to strengthen international environmental stewardship and how to build new systems of governance for sustainable development. Parts of it have been used in negotiations of new legal agreements even though the comprehensive text is not yet finalized.

The duty of nations to conduct their affairs in sustainable ways has become a norm governing State conduct. This has recently been articulated as an element of international law by the International Court of Justice in *The Hague*. The decision in *Hungary v. Slovakia (the Gabčíkovo-Nagymaros Project)*, in paragraph 140, states:

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind—for present and future generations—of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed [and] set forth in a number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.

The IUCN's Draft Covenant today might best be renamed the Covenant for Sustaining Earth. It is a restatement and elaboration

of this fundamental norm of sustainability recognized by the International Court of Justice in this decision. Since these are new standards for conduct, if the diplomats of States are to accept them it is important that these norms be stated with clarity and with a cautious yet comprehensive understanding of the other rules of international law that the Draft Covenant elaborates and connects.

The IUCN Draft Covenant perhaps today can best be understood as a legal draftsman's very careful restatement of the same moral principles that the Earth Charter presents as a synthesis of the opinions of people around the world. What the Earth Council's Commission for the Earth Charter has sought to do with the repeated reiterations of the Charter's series of revised benchmark drafts, is to capture the essence of a common norm for sustaining Earth as the home of the human species and all of life. The Commission is putting forward the Earth Charter to stimulate people, much as the Universal Declaration of Human Rights did in 1948. These sorts of moral prescriptions for guiding individual conduct can—and must—also be recast as legal duties of nations. Since the nations are the gatherings of the peoples in their regions, if the people can understand and agree on their individual stewardship duties, the hope is that the political will may be mustered for the bodies politic in each nation to feel obliged to obey the international law on environmental sustainability.

There is increasing evidence that basic duties of stewardship are recognized by national legal systems as binding, active norms. The Supreme Courts of India, Bangladesh, Pakistan, Nepal, and the Philippines have all found that there is a fundamental right to a sound environment as a part of their nations' constitutions. The decision, in a case brought by children to protect the remnant original forests of the Philippines, *Oposa v. Factoran*, for instance, ruled as follows:

This case, however, has a special and novel element. Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the "rhythm and harmony of nature."

In this case, the following clarification occurred:

Nature means the created world in its entirety. Such rhythm and harmony indispensably include, *inter alia*, the judicious disposition, utilization, management, renewal and conservation of the country's forests, mineral, land, waters, fisheries, wildlife, offshore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.

The ruling continued:

While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies [in the Constitution of the Philippines] and not under the Bill of Rights, it does not follow that it is less important than any other of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation—aptly and fittingly stressed by the petitioners—the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of mankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generations, but also for those to come—generations which stand to inherit nothing but parched earth incapable of sustaining life.

If this fundamental cluster of human "Earth" rights is to be understood, these interests must be explicated and stated clearly. They must find expression as norms of behavior in solemn declarations and in national statutes and international agreements. Only then will the norms become operational.

The IUCN Draft Covenant is an effort to elaborate and explain these norms and extend their acceptance, as a matter of treaty law, to all those nations that would eventually negotiate and ratify the Covenant. After all, not all nations have mature and independent judiciaries capable of such rulings, and even among those nations which do, there are some judges who do not yet understand these fundamental environmental rights and duties; for instance, the U.S. Supreme Court has been reluctant to recognize, much less expand, any concept of environmental rights in U.S. constitutional law. IUCN accepts that it will be necessary to use the means of international treaty law if the norms of sustainable conduct being reflected in the Earth Charter are to become a part of the law of nations.

What are the fundamental provisions of the Covenant, and how do they reflect the Earth Charter? At the outset, it should be acknowledged that both the Earth Charter and the Covenant are works-in-progress. While these two documents are not being prepared by the same organizations, the Earth Council (as an NGO created after the Rio Earth Summit) and the IUCN (as a hybrid international organization comprising both States, their governmental agencies, and NGOs) are working toward the same objective: to establish the normative standard for sustainable conduct. It is proper for such norms to be embodied in both "soft law" policy statements like the Charter, and "hard law" treaties like the Covenant, and until States finally act to accept the drafts, it is entirely acceptable for each to vary in its draft texts and to evolve at different paces. Any comparison of the two documents, therefore, must be revised from time to time, since the texts are developing actively.

Moreover, both texts are building on the experiences which various States are having with the implementation of *Agenda 21* and with observing the Rio Declaration. Additional treaties have been prepared since 1992, and the duties articulated in these agreements need to be reflected in the Covenant. The deliberations held under the auspices of the Earth Council and the thinking of scholars, philosophers, theologians, and NGO leaders alike have advanced since 1992 when the Rio Declaration was hammered out by diplomats. Thus, the statement of legal obligations in the Draft Covenant needs to be revisited and will be revised.

With these caveats, one can read and compare the Benchmark

Draft Earth Charter with the Draft IUCN Covenant on Environment and Development. The Covenant's Preamble sets out the assumptions for the treaty by "recognizing the unity of the biosphere, a unique and indivisible ecosystem, and the interdependence of all its components." It is "aware that the respect for human rights and fundamental freedoms contributes to sustainable development." The preamble also recites that *Agenda 21* recognized that sustainable development needs "an integrated legal framework to provide individuals, States, and other entities with ecological and ethical guidance." These same concepts motivate the Charter, although the text of the Charter does not so explicitly articulate the assumptions that undergird its statements.

The Covenant restates fundamental principles in Part II. It is of great significance that the first principle of the Covenant ("Respect for all life forms. Nature as a whole warrants respect; every form of life is unique and is to be safeguarded independent of its value to humanity") and the first principle of the Charter ("Respect Earth and all life, recognizing the diversity, interdependence, and intrinsic value of all beings") are essentially the same. As a first principle for stewardship, the respect for life is one drawn from all religions and many philosophical insights (e.g., Albert Schweitzer's "reverence for life"). The Charter sets forth as its second principle Care for Earth ("embracing our common responsibility to cooperate in promoting the well-being of all peoples and the larger community of life"). This concept is analogous to the "common but differentiated responsibilities" in the Covenant's Preamble, which for purposes of legal drafting the Covenant states as the overall Objective of the Covenant ("The objective of this Covenant is to achieve environmental conservation and sustainable development by establishing integrated rights and obligations") and in the Covenant's second principle ("The global environment is a common concern of humanity").

Intergenerational equity is the third core principle of the Charter ("Give to future generations a world living in peace with a healthy environment"), while it appears as the fifth principle of the Covenant ("Intergenerational Equity. The freedom of action of each generation in regard to the environment is qualified by the needs of future generations").

From these most basic norms, the Charter then has a second section of derivative norms and a final section of corollaries or guidelines derived from applying those norms to a set of basic issues about sustainability. This is not unlike the structure of the World Charter for Nature. The Covenant includes a number of the second level norms of the Charter in its "Fundamental Principles" without differentiating them. Of course, the entire Covenant is then an elaboration of legal duties derived from these norms in the context of natural resources (Part IV), processes and activities (Part V), and global issues of human behavior (Part VI). This is followed by the consequences of such duties in terms of how they are implemented (Part VIII), and the responsibility and liability for not implementing them (Part IX), together with the clear means required for application and compliance (Part X).

Here, too, there is a substantial congruence of concept—if not the same presentation and hierarchy—between the balance of the Charter principles and the Covenant. For instance, the duty to prevent harm (a clear duty of international law generally between States) is broadly stated in the Charter as Principle 4 ("Protect and restore the integrity and beauty of Earth's ecological systems") and Principle 5 ("Prevent harm to the environment as the first and best method of ecological protection"), and in the Covenant as Article 6 ("Protection of the environment is best achieved by preventing harm rather than by attempting to remedy or compensate for such harm"). The element of sustainability that requires avoiding excessive consumption and coping with demographics appears as Principle 6 in the Charter ("Live sustainably, adopting modes of consumption, production, and reproduction that respect human rights and safeguard the regenerative capacities of Earth") and as Article 10 of the Covenant ("The elimination of unsustainable patterns of production and consumption and the promotion of appropriate demographic policies are necessary to enhance the quality of life for all humanity and reduce disparities in standards of living"). This latter norm was crucial to the consensus of Rio and appears as two chapters of *Agenda 21*.

While parallels between the Earth Charter and Draft Covenant can readily be found, there are also differences that should be noted. The Precautionary Principle in the Covenant is concisely drafted in

Article 7 ("Lack of scientific certainty is no reason to postpone action to avoid potentially significant or irreversible harm to the environment"). In the Charter the Principle of Prevention appears as a more elaborated statement in Principle 5 ("even when scientific information is incomplete or inconclusive, stop activities that involve a risk of irreversible or serious harm"). The Charter calls to ensure a life with dignity, bodily health, and spiritual well-being (Principle 7), while the Covenant calls for the eradication of poverty through a global partnership (Article 9). The Covenant recognizes the right to develop, which the Charter does not address. Most of the Charter's guidelines for conduct in Part III are included in the specific obligations of the Covenant, although the Covenant includes a number of duties not addressed in the Charter. These differences are to be expected since the Charter is short, inspirational, and of wide applicability, while the Covenant must be detailed and clearly guide the conduct of nations. Nations will be particularly sensitive to having precisely defined duties since their breach for violation of any of these duties could result in their liability.

The Covenant also proposes an innovative and an important new set of norms in Article 12, which sets up international rules governing the conduct of individual persons. Most treaties do not directly address or set up behavioral norms for individual people. But then sustaining Earth is a qualitatively different task than most treaties must address.

Ultimately, it can be expected that when States eventually do send diplomats to refine and adjust the statements of the Charter, or to renegotiate the Covenant, there will be many an expedient revision to these documents. In the main, however, these documents have each identified the issues that must be addressed in any soft law or hard law instrument. They have served the study purpose equivalent to that accomplished by those who first defined the scope of human rights in a series of drafts and proposals. It may be that the right to a sound environment is a fundamental human right, but even if it is ultimately deemed to be a part of the norm of sustainability of Earth's living systems, its articulation now is of inestimable worth to Earth and its future generations.

If there is an overarching goal for the years of work that lie behind shaping the IUCN Covenant on Environment and Develop-

ment, it is the same vision shared by the drafters of the Earth Charter. If the nations' diplomats gathered at Rio de Janeiro were constrained politically not to expand upon the Rio Declaration on Environment and Development, they had no such constraint about expressing some very strong moral concerns in the Preamble to *Agenda 21*. The text of *Agenda 21* is perhaps the world's lengthiest "soft law" instrument ever adopted by the United Nations system; each word and paragraph was debated for the two years leading up to the U.N. Conference in 1992, and that makes these shared concerns of the first paragraph all the more weighty:

1.1 Humanity stands at a defining moment in its history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continued deterioration of the ecosystems on which we depend for our well-being. However, integration of environment and development concerns, and greater attention to them will lead to the fulfillment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future. No nation can achieve this on its own; but together we can—in a global partnership for sustainable development.

There are those who doubt the need for the Earth Charter and the Covenant. Some fear that devoting attention to elaborating a new kind of human Earth rights will dilute or weaken the efforts to establish support for the older campaigns about observing human rights or the even older efforts to build humanitarian law. More than a few fear that these new rights will dislocate existing legal rights to exploit oil, mineral, timber, or fish and other natural resources; these economic interests lobby to continue today's wealth extraction from nature, with little to no concern for future interests (which are not here to defend themselves). Moneyed interests lobby foreign ministries and politicians who, in turn, discourage efforts to frame new norms for a sustainable future. Civil society, nongovernmental organizations, and those who see the short-sightedness of discouraging work on the Covenant need to challenge these narrow perspectives.

More fair-minded thinking cannot help but ask the question, "What about tomorrow?" There will be a new legal framework for sustaining our natural systems on this Earth. Whether or not the IUCN Draft Covenant becomes a part of that architecture, or serves

as a model and a goad to show the nations that such a framework legal system *is* possible and superior to today's chaotic and degrading conditions, matters little. The most important role of the Draft Covenant today is to inspire cooperation in lawmaking around the world to ensure the sustainable future. There is a vision and there is a way forward.

MISCONCEPTIONS AND MISUNDERSTANDINGS

by Clarence J. Dias



CLARENCE J. DIAS is president of the International Center for Law in Development, a Third World NGO concerned with human rights in the development process. He is consultant to the United Nations Development Program on the implementation of its policy, "Integrating Human Rights with Sustainable Human Development." For the past three years, Mr. Dias has been the U.N. expert from the Office of the High Commissioner on Human Rights to the Annual Asia-Pacific Intergovernmental Workshop on Regional Human Rights Arrangements. Mr. Dias has published extensively, including Industrial Hazards in a Transnational World and The International Context of Rural Poverty in the Third World.

I'm struck by a phrase which I heard from a Latin American colleague of mine, "assassins of conversations." I think this "assassination" occurs increasingly in the U.N. Human Rights Commission in Geneva. It occurs in conversations about environment and development as well.

We need a breakthrough in two areas: (1) institutional reform within the United Nations and (2) the way governments decide to enter into meaningful dialogue. Further, I think there is a challenge for the non-aligned movement to redefine itself in terms of what it *can* become aligned about.

It's important to understand misunderstandings between those who speak a human rights language and those who express concern for the environment. Because of some of the faction-building that is taking

"Development as a human right is underscoring again that development is not just about having more, but it is also importantly about being more..."

place when these debates and these dialogues occur, whether in the intergovernmental system or in the nongovernmental system, time has become a scarce and nonrenewable resource—especially quality time in terms of time spent in really understanding where one can build a common endeavor.

Let me try very quickly to attempt to break through some of the misconceptions and misunderstandings that people working in the field of human rights have about people working in the field of environment and vice versa. I do this from the perspective of someone working at the grassroots level in the countries in Asia.

First, in most developing parts of the world we criticize a rights approach that is too individualistic, that pretends that collective rights will not coexist along with individual rights; a rights approach that equates human rights with a narrow range of civil and political rights and ignores a whole set of other holistic rights which are contained in every one of the U.N. human rights documents; an approach to rights which involves vindication of rights through an adversarial win-lose process—which is not the way most of our cultures in Asia are organized.

This approach to human rights is essentially an approach that comes out of a particular historical period of Western-dominated human rights activism, which does not take into account a whole other set of human rights activism which emphasizes human rights as universal. People may not have seen a U.N. document, but they understand the concept of human rights.

Similarly, the misunderstanding regarding environmentalism has been essentially that the environmentalists are so busy protecting the environment *from* people that they ignore the potential of protecting the environment *for* people and the real task of protecting people through protecting *both* human rights and environment together.

Human rights are necessary to correct inhuman wrongs. Human rights are necessary in order to keep human life human. Human rights are necessary in order to ensure that most precious of all rights, the right to be and remain human.

If we think of human rights in that kind of a sense, we are coming very close to the concept of stewardship which is really enshrined in environmental thinking. We are all trustees. We are certainly not about each one for himself and the devil take the hindmost.

The most recent addition in the field of human rights is the human right to development, reaffirmed by consensus at a variety of U.N. global conferences. Development as a human right is underscoring again that development is not just about *having* more, but it is also importantly about *being* more—a concept which I think brings us very close to the concept of sustainability. Paradoxically, we are learning that “less” today might well be “more” tomorrow in terms of guarding our common future.

Core human rights duties have evolved—the duty to respect, the duty to protect, the duty to promote, and the duty to fulfill. In addition, the concept of vulnerable people whose rights need special protection has been enlarged by the concept of the fragility of ecosystems.

To protect human rights, there have been charter-based human rights mechanisms and treaty-based human rights mechanisms. I think that similar environmental rights mechanisms will be necessary in addition to some of the treaty-based environmental mechanisms that we have now.

Certain types of activities have evolved over the past 50 years. First, there has been standard-setting in the international instruments of the sort that the Covenant represents. In addition, indigenous peoples' rights are being defined. Second, we see the promotion of awareness of the standards through human rights education and environmental education. Third, we are monitoring violations by eco-vandals and eco-criminals. Fourth, we have developed the monitoring tools that are needed in order to do this—measures for evaluation and for management. Fifth, we are using enforcement methods like sanctioning. And sixth, we are providing remediation to set right inhuman wrongs.

There is a paradox that at the international level we have the maximum of international human rights standard-setting but virtually no enforcement. At the national level, we have all the enforcement mechanisms we need but very few human rights standards, especially in countries which refuse to sign or ratify instruments.

In the environmental field, this imbalance need not be there. We do have a lot of environmental standards in national law. We do have environmental enforcement mechanisms but these are not adequately utilized.

Let me end by calling attention to three trends which indicate that, though we are on the verge of a new millennium, we are also in the middle of a regression, especially when it comes to certain core values. We are experiencing the globalization of the economy and a so-called paradigm shift from development-through-aid to development-through-trade-and-investment. This is an oxymoron if ever there was one. Development-through-trade-and-investment may be many things but it's *not* development. It's fundamentally an unsustainable activity because it can only be sustained by ever-escalating levels of consumption. It creates a race for consumption which will end up by ending the human race. Worse, economic globalization is in the hands of powerful new actors—multinational corporations who have managed to rewrite international law so there are virtually no international standards applied to them.

We are having the globalization of *unsustainability* and the globalization of lawlessness in this search for a new international law of trade and investment, which is supplanting 50 years of important work in the international human rights field.

Secondly, we are witnessing a resurgence of patriarchy. Because of the kinds of roles that women are playing and their effective advocacy to influence the distribution of wealth and power, we see attempts once again to take back what women demanded in Vienna and Beijing. This is not just a women's issue—this is an issue that calls for solidarity from all of us to protect this planet, its resources, its creatures, and its people.

Finally, we have the trend of the growing politicization of racial identity, ethnic identity, and the interpretation of serious conflicts over scarce resources as so-called ethnic conflicts.

In conclusion, I'm very glad that one of the new principles in the version of the Charter we have before us is confronting this whole question of ethnic identity and culture—not only as the cause of the next Bosnia-type conflict, but also as an important positive source that makes and keeps us human.

Commentary

THE CONCERNS OF A FRIENDLY SKEPTIC

by Stephen L. Kass



STEPHEN L. KASS is a partner in the law firm of Carter, Ledyard & Milburn, New York, where he directs the firm's Environmental Practice Group. Since 1981, he has been a member of the Board of Directors of Human Rights Watch and currently serves as chair of both its Policy Committee and Americas Advisory

Committee (formerly Americas Watch). Proficient in Spanish, he is a member of the Council on Foreign Relations and has served on its Study Groups on Latin America; Cuba; Energy and Environment; and Economic Integration in North America. His numerous writing projects include Financing Urban Development in Mexico City (1967) and the "Environmental Law" column in New York Law Journal, which he inherited from Professor Robinson in 1986.

I am one of Nick Robinson's skeptical friends who has some concerns about the Charter and the Covenant. Actually, I represent three of Nick's skeptical friends since I have worked in the environmental field, in the human rights field, and in the development field—each for quite some time.

There is no one in this room who isn't appalled by the growing gap between the rich and poor in the world—and even in the United States. We all have got to be concerned with the question: Is the environment going to be used internationally (as it has sometimes been used domestically) to preserve privileged positions and to prevent increased standards of living for those who haven't had a fair shot?

"By equating human rights with environmental claims, which are much closer to social and economic rights, we could begin to dilute some of the mandatory nature of civil and political human rights."

As one who has worked very hard in helping to develop the Human Rights Watch over the last 15 years, I would like to share some of the concerns about diluting what have been regarded as categorical requirements concerning civil and political rights. The principal concern is that, by equating human rights with environmental claims, which are much closer to social and economic rights, we could begin to dilute some of the mandatory nature of civil and political human rights.

As an environmentalist, I am also concerned because the human rights movement is sliding backwards despite the tremendous number of people who support it. We've had two major genocides in the last few years (three, if we include Cambodia), and the world has stood by. So I am not sure that I want the developing support for the environment, which cuts across many different political groups, always to be equated with human rights interests—which aren't always doing so well in many arenas.

On the other hand, I have come to recognize some things which all of you have long since recognized. *We're never going to make progress on any of these three fronts as long as the others are ignored.* The environment is never going to be preserved if there are tremendous disparities in wealth and in the ability of people to live. People will not be able to protect the environment if they've got to destroy those hillsides to grow a little bit of food. Further, people will accept hazardous waste (unprotected shipments) if that's the only way they can get jobs. Conversely, we will never be able to deal effectively with human rights unless we address some of the issues of sustainable development because the pressure for economic growth is going to be so great that governments will be able to override established human rights by claiming economic benefits.

I don't think we can begin to address any of these issues—poverty, human rights, and the environment—unless we address them all. As a lawyer, I am also skeptical about unenforceable pronouncements. We make them all the time; we hear them even more often. So I am filled with admiration for what Nick and his colleagues have been doing for this period of time to develop an *enforceable* Covenant, which seems to me to be in an exceptionally advanced state of development.

But I also remember what Learned Hand said about the Consti-

tion of the United States: It's nice to have constitutional rights that the Supreme Court interprets and enforces, but that doesn't really make a lot of long-term difference if those rights don't reflect the values of the society at large. We only have to look at the conflict in the World Trade Organization two weeks ago (when Malaysia, India, and Thailand successfully challenged the U.S. efforts to preserve sea turtles) to see the variety of environmental and economic interests that are involved in the global community.

In the human rights field, we often have to think about three different kinds of rights: economic and social rights, which are widely recognized around the world but not so widely recognized in the United States; civil and political rights (which Human Rights Watch has focused on); and, within civil and political rights, those that can be abrogated (limited or suspended) and those that cannot (the latter including those due process rights necessary to assure the security of the person).

It may well be that, as we think about the reconciliation of various environmental claims and the enactment of a binding treaty, we can identify certain kinds of environmental rights that must always be honored. For example, the obligation to conduct meaningful environmental impact assessments is widely recognized. There should also be rights to relevant governmental information. Failure to provide such information and to do meaningful impact assessment created havoc in Eastern Europe and the former Soviet Union. There are a number of other environmental rights that can be placed in that category.

There may also be some environmental rights that ought to be mandatory but can essentially be overridden or superseded by certain compelling conditions, such as a threat to a nation's security. There may also be a third type of environmental right. In some way the Draft Covenant begins to break them down (without using these terms) by identifying those environmental rights that are important but have to be balanced against other claims within a society.

We need the right kind of international enforcement mechanisms to distinguish among, and to enforce, these new environmental rights. That's going to be very tricky. I take some comfort in the nascent Commission on Environmental Cooperation (CEC),

established under an environmental side agreement to NAFTA because the CEC is beginning to provide a supranational opportunity to review local enforcement mechanisms. It's a very small first step, but that's where marathons begin.

Commentary

ESTABLISHING THE MORAL CONNECTIONS AND RESTORING THE BALANCE BETWEEN THE NATURAL WORLD AND HUMAN SOCIETY

by Noel L. Brown



NOELL BROWN is an environmental diplomat and the chairman of Friends of the United Nations. He is the former director of the United Nations Environment Program (UNEP) and for the past 20 years represented UNEP in all international conferences and negotiations on environmental and development issues and international law. Dr. Brown has been an innovator in promoting leadership and excellence in the environmental field. He is a founding member of the Aspen Global Changes Institute, the Earth Summit Foundation, the International Council for Local Environment Initiatives, and Indigenous Development International. He has also consulted and lectured extensively around the world.

Telecommunications experts like to remind us that ours is a "connected" world and that we live in a world of connections that is expanding at every level of society. To some, this seems little more than another clever marketing slogan. Yet, at a more profound level, there are implications affecting every aspect of human relationships.

We have been transformed from being merely "ecosystem's creatures," as all other life forms have remained, to "ecosystem's shapers" (or mis-shapers), as our own species may rightfully claim. In effect we have become a force with nature and one of the principal sources of Earth change. We now have the capacity to impair the functioning

"We alone among Earth's species have the capacity to inflict universal and sustainable harm and to significantly alter the shape of the human future in ways that we may not fully understand, let alone manage."

of natural systems, as the ozone-depletion problem will attest, with consequences that are likely to be felt by several generations. We alone among Earth's species have the capacity to inflict universal and sustainable harm and to significantly alter the shape of the human future in ways that we may not fully understand, let alone manage.

Our changed status on Earth presents us with new and unprecedented challenges and responsibilities in advancing the human story. But there is a paradox here, which could engender a more positive outlook and more hopeful human future. The very technologies that threaten the stability of the planet open the possibility of making us *more not less* ethically responsible. Space technology made it possible for our generation to see Earth as a whole, opening a new chapter in the human story. This new and unique "sense of the whole" is increasingly generating a corresponding responsibility to manage our operations in such a way that the parts may operate in the service of the whole, the way nature does, and to consciously acknowledge that we are indeed part of a "living whole."

Technology also gives us the capacity to make long-term forecasts and to assess the consequences of our actions before the actions occur. With this ability to anticipate the future comes a corresponding responsibility for that future through informed ethical choices. And even if this does not move us to become more morally responsible, it will at least give us the ability to act more "prudently," and prudence, after all, is the virtue of consequence. Thinking "consequentially" is increasingly becoming a major element in the global environmental debate and is clearly the basis of the "precautionary" principle: If you don't know, or cannot manage the consequences, proceed with caution. The uncertainties surrounding the climate debate provide ample illustration of the need for a policy of prudence and the application of the precautionary principle.

Finally, just as space technology gave us a "sense of the whole," communications technology enables us to sense the "other" globally. From Tiananmen Square to Red Square, from Chechnya to Rwanda, from Bosnia to Liberia, the media not only makes witnesses of us all but neighbors in a shared global neighborhood as well.

It should not be surprising, therefore, that a search for the necessary "moral connections" is beginning to surface as more and more groups are attempting to define or at least redefine our moral rela-

tionship to the natural world and to each other in the new universal order. The various initiatives by environmental and human rights groups provide a clear and interesting example of this search to find the common ground and to discover the common language that would accurately reflect our changing relationship to nature and to each other.

It is from this perspective of moral connections, then, that I believe the dialogue on environmental justice should be considered. Despite the differences in approaches among us, the central reality of our time has been the transformation of our species and our ability to destabilize natural systems, deprive large numbers of people of the opportunities to share in the bounties of nature, and to deny future generations their rightful patrimony. We are dealing with ethics and equity.

The imbalances we see can only be redressed through the application of sound moral principles and connections. This is an open moment in history and perhaps an open moment for Earth. It is the time for new opportunities and new definitions. It could also be a time for new visions and values. This is also a time when the issue of equity has begun to emerge as a major political claim and when sustainability has become a guiding principle for the global development revolution. This was clearly in evidence at the Earth Summit and the many international conferences convened thereafter to fashion the new human agenda for the twenty-first century.

The present dialogue on environmental justice between the Earth Charter Commission and the IUCN Commission drafting the International Covenant on Environment and Development will no doubt contribute to enhancing public understanding of the rights of human beings as inhabitants of a fragile planet.

The Environment for Europe Conference was held in Aarhus, Denmark, last June, where the Public Participation Convention was signed. That convention acknowledged that all citizens have the right to access environmental information, participate in policy formulation, and have access to legal redress if their needs are not met. We hope that this convention will establish a precedent for the universal application of these rights.

Through our dialogue here today many new opportunities can be created for articulating the legal premises for environmental jus-

tice and for articulating the right connections as well as for more fully engaging large segments of civil society in the processes of dialogue and implementation.

We have grounds for encouragement and perhaps even optimism in the words of the late Rene Dubos: "We cannot escape from the past, but neither can we avoid inventing the future. With our knowledge and sense of responsibility for the welfare of humankind and Earth, we can create new environments that are ecologically sound, aesthetically satisfying, economically rewarding, and favorable to the continued growth of civilization."

Dialogue

THE EARTH CHARTER AND THE COVENANT

Two significant sets of actors that have contributed new blood and new thinking and new momentum for social movements are women and youth," Clarence Dias observed, as he responded to Karen Nardella's question about the resurgence of patriarchy. "Both in different ways are being disempowered or co-opted," the president of the International Center for Law in Development continued.

"What concerns me is seeing the attempt at disempowering key partners." Mr. Dias expressed alarm at the view that women have to stay out of certain kinds of social activity, a view that he sees being championed by fundamentalist religious traditions.

When he was asked about transnational corporations, the author-activist was emphatic: as key actors, transnational corporations should be held to the same standards of accountability that sovereign states and governments used to be held to.

"With respect to economic globalization," Noel Brown interjected, "and the emergence of very, very powerful new actors who are not accountable, we're now talking about the loss of economic sovereignty by many governments. This is likely to change the equation very dramatically."

"It's a more complex issue," Stephen Kass suggested. "Corporations are increasingly widely owned. There are fewer and fewer of them but there are people from all over the world owning them. I believe we have to think that through. One approach is the analogy to the NGOs and their relationships to states and international organizations."

"One of the useful things in the Draft Covenant," the environmental attorney continued, "is that there's a role for NGOs who recently, by the way, were kept out of the World Trade Organization debate. The comparable thing for multinational corporations

"The World Bank has done some tremendous work in re-conceptualizing capital to include not just economic capital but social capital as well."

would be increasing the rights of shareholders—and even other NGOs—to review the operations of management and to hold them accountable in some transparent fashion for their environmental practices, for their human rights behavior and, finally, to require meaningful accounting for the external costs of corporate operations in natural resources.”

Professor Winston Langley observed that “the history of corporate law and the legal personality of the corporation have evolved over the years. I think we could easily suggest that at the point of incorporation, at the point at which an entity seeks to be recognized as a legal personality, part of the Charter that gives the corporation its standing should have something to do with the protection of the integrity of the environment so that that becomes part of a corporate responsibility.”

“There is a conflict of interest,” Dr. Marks reminded participants. “The interest of shareholders is in return on investment. Public functions require that the states or the international community impose duties on them. Their accountability is toward their shareholders for certain things but to other entities for the fundamental obligations that we’re talking about at this conference.”

Environmental lawyer Johannah Bernstein suggested that “somehow we need to start measuring the bottom line in a very different way. We need to recognize that in corporate practices we have to look at the full range of transaction costs. I think the World Bank has done some tremendous work in reconceptualizing capital to include not just economic capital but social capital as well. We need to redefine our concept of wealth—and that includes the way we actually measure GNP.”

“We have the people as shareholders,” environmental diplomat Noei Brown observed, “and we also have the people as moral actors. These need not be in conflict, particularly with the Covenant and Charter which not only set standards but also help provide the moral argument.”

Dr. Brown shared an illustration: “Recently, I saw a rather interesting development where the sweatshop workers in Asia and Latin America, through some group in the United States, came to meet with universities who hold large portfolios in different sweatshop activities. These people are now claiming rights to decent wages.

They see where the levers of power are. This is the same type of activity that was used during apartheid in South Africa. By empowering the people, we provide them with not only principles and premises but also a different kind of energy.”



Part II
GLOBAL SOVEREIGNTY

THE GLOBAL SOVEREIGNTY OF THE PEOPLE

by Raud Lubbers



RUDOLPHUS (RUUD) LUBBERS is honorary minister of state of the Kingdom of the Netherlands and professor of globalization at the Catholic University Brabant at Tilburg. He served as prime minister of the Netherlands from 1982-94, after entering politics as minister for economic affairs from 1973-77 and serving as parliamentary leader of the Christian Democratic Appeal from 1978-1982. During the month of April 1998, Dr. Lubbers was a visiting scholar at Harvard University's John F. Kennedy School of Government. His numerous civic and governmental appointments include membership in the Earth Council and Earth Charter Commission.

I would like to address the question of the relationship between human rights, development, and the environment and environmental rights. Originally, environmental concerns were very much about damage to citizens. In a sense, environmental concerns developed in circles. First there were local concerns; then there were continental concerns; then there were global concerns.

One has the impression that—especially in the largest democracy of the world, the United States of America—environmental concerns function only to the extent that people can be sensitized to become aware of health problems. Maybe that's the reason that climate change has not really become an important topic yet.

Since the Rio Conference on Environment and Development, we have seen new

"We need a change in the concept of governance that extends beyond nation-states. We need a new form of civil society."

elements enter the discussion: respect for all nature in its biodiversity; the introduction of the precautionary principle; and also the recognition that cultural diversity is something positive and creative.

Rio itself was based on the concept of sustainable development as defined in *Our Common Future* a number of years ago. This concept of sustainable development itself has developed. We do not talk any more about *weak* sustainable development and *hard* sustainable development—*weak*, the capacity to regenerate to the extent that we can offer future generations the same level of wealth as our generation, and *hard*, which takes into account the biodiversity nature itself offers.

We speak today about the need for *social* sustainability; that is, the eradication of poverty; of levels of equity in terms of participation and income.

We talk about the need for *community* sustainability. To realize sustainable development, the inclusion of the people in the communities is an essential precondition. This is very much related to the principle of subsidiarity.

Now I want to make a few remarks about practical instruments to promote sustainable development. The problem today is, following the end of colonization, how to practice self-reliance. We have created the instrument of official development assistance and other forms of development assistance. The 0.7 percent Gross National Product benchmark for official development assistance, though not really practiced by many countries, is still very relevant.

In Rio, the global environmental facility as a new instrument was added to transfer income. The newest instrument is that of “best practices.” What does this mean? It means that companies are obliged, when making investments in a particular country, to utilize state-of-the-art technology in that particular country. This is beginning to be a topic globally: Can we oblige transnational corporations, when they go for new investments wherever in the world, to build their investments there with the technology they practice in a matured economy in their home-base country? Can we practice the principle of best practices now globally?

This is a sort of mirror-principle of what companies themselves claim. It's called in the world of trade negotiations, “national treatment.” National treatment is illustrated in this way. When I go to

Kazakhstan as a French firm, I deserve to be treated as a Kazak firm. It's a fundamental principle in trade today. It's considered key by OECD in their endeavor to achieve a multilateral trade agreement and it is integrated already in a number of bilateral treaties. Now the mirror of that is that we also obligate companies to come with their best technology to the countries where they go with new investment. That's what we mean by best practices.

Earlier, there was an interesting exchange of opinions about what we can do with these powerful transnational companies. Do we have to promote the position of the shareholders? “No,” said some. That is not enough to do because shareholders are only after efficiency and profits. We need to raise awareness about other important issues as well. To a certain degree, this is already happening today.

This brings me to the new concept of governance. What I see is something very interesting developing in connection with globalization. Globalization, which is leading to a more borderless world, has some fundamental consequences. One of the consequences is a weakening of the nation-state in its role of safeguarding the quality of life.

Most of the people in the matured economies and democracies have grown up with the idea that the market is for efficiency and because of that we have competition and creativity and progress. And then, next to these blessings of the market, we have democracy and the world of law to safeguard our values systems.

In this era of globalization, of a more borderless world, it's difficult to expand that system to a global one. Why? Partly, of course, because of the enormous differences in stages of development, in political priorities, and in cultural background. Also, because democracy itself is always linked to a specific territory—democracy is a system where the ultimate voice is with the people of that territory. The people can send their government packing. A democracy is a system of checks and balances.

It is not possible for governments to safeguard the quality of life where the quality of life is no longer a national question but has become a global question. Therefore, we need a change in the concept of governance that extends beyond nation-states.

We need a new form of civil society. We need people who say, “It's nice that we have this economic system and that we have

transnational corporations. They are efficient. They bring us a lot. It's good that we have our democracies and our governments. But these two are not enough."

George Bush, the president of the United States at the end of the Cold War, claimed that we are entering a new world order based on the marketplace. He was not totally wrong but his analysis was not complete enough. He underestimated the role of civil society.

People are stressing their own identity and their distinct roles. They want decisions to be made locally. There's a strong revival of individualism. This is something interesting. Individualism is about "I"; it is about "me." But at the very same time we see "we"-movements. Both tendencies, the "I" and the "we," will become stronger.

We have begun to put pressure not only on governments, as in the past, but also on companies directly. Increasingly, these companies are creating mission statements to internalize societal values. Why? Because they don't want their own staff to become demotivated by being criticized in the media. They are worried about criticism from NGOs that will have an impact on their investments. They are also concerned about receiving penalties based on soft law.

What I am pointing out is that we have a new situation today where we have not only the governments based on law and regulations but also the civil society putting pressure on systems and applying the force of soft law.

Why do I use the phrase, "Sovereignty of the peoples"? Historically, under the feudal system, the king or the count safeguarded the citizens, and in return, he collected taxes. He decided about rights. The nation-state system evolved. With the French Revolution, sovereignty shifted from the king to the people. We developed constitutional democracy. Now, once again, we have a new situation.

Now we need to recognize that people around the globe are interdependent. This is very much related to what Daisaku Ikeda said in his 1995 address, "Peace and Human Security: A Buddhist Perspective for the Twenty-First Century," when he spoke about human sovereignty. Human sovereignty, in my opinion, is about the organization of the people realizing power themselves.

I want to draw your attention to some dark clouds in relation to the famous North-South conflict. It's very difficult to start the pro-

cess to talk about responsibility if you are not first given the rights, not only in theory but also in practice. This is a very serious problem.

There is some confusion about the relation between law and justice. We use law to achieve justice. We need a new constitution for the global community. My thesis is just the opposite of Francis Fukuyama's. The history of mankind as world history has just begun. So let us lay the foundation for the sovereignty of the peoples all over the globe for generations to come.

Now, with respect to the link between the issue of the sovereignty of the people and our consultation on the Earth Charter and the Covenant, I see something important in process. We are clarifying the complementary roles of the Earth Charter and the Covenant. The Charter is not phrased in legal terms. Although it is perceived as a "soft law" document, soft law documents, too, can be very powerful. This Charter will help to empower not only governments but also civil society, including nongovernmental organizations. The Covenant, which is written in legal terms, is meant to become "hard law." The combination of a statement of fundamental principles—with which we can all concur—and a statement that addresses obligations and consequences provides us a powerful tool that will ultimately help us safeguard the sovereignty of the people.

Finally, there is in this process of globalization a spiritual foundation. People ask themselves: How do we define spirituality? Spirituality is about many things. It's about the awareness that we are created as part of humanity and nature but at the same time we are entrusted with the mission to fulfill history. Fulfilling history is about the special talent of listening to our ancestors, of possessing awe for nature, and of caring for future generations. It's about listening and celebrating. At the same time, it's also about looking to the future. It's about giving shape and substance to truth and dignity in a world that is increasingly driven by science and technology. Spirituality is, fundamentally, about the mystery to have been created and at the same time to be entrusted with creation.

THE MYTH OF OBJECTIVITY

by Neil A.F. Popovic



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I'm going to talk a little about how incorporating the human rights concept into environmental protection and promoting both the Draft Covenant and the Earth Charter should advance the notions of global sovereignty of the people that we just heard about. I'm also going to raise a few questions about things we should perhaps be concerned about.

The notion of "global sovereignty of the people," it seems to me, is quite well suited to these kinds of instruments because they open up ways to get around the barriers that are imposed by sovereignty. That's one of the great values of having international standards. But it also raises the issues: Whose standards are they? How are those standards arrived at?

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I think we have to start by debunking the myth of objectivity—that any one of us can speak on anyone else's behalf and that we are somehow well suited (even given the amazing breadth of our experiences) to try to come up with some kind of instrument that's going to speak to the concerns of the people most affected.

The people who are most adversely affected by the kinds of things we're trying to deal with are the ones who tend to have the weakest voice in decision-making and in political systems. So I think we need to start from the premise that we all come with our biases, and let's hope that those biases include concerns for others beyond our little realm.

This is a dialogue, not just among ourselves but among the people whom, in theory, we're trying to help. There is a serious danger of having a paternalistic attitude and I'm sure, working with a primarily white male national environmental organization, I suffer from many of these biases. But I at least try to recognize that I'm suffering from these biases.

That said, we can use human rights language and human rights concepts to try to break down some of the barriers that are imposed by sovereignty. We can use human rights as a way to get between a government and its people. That's one of its great values.

We have human rights treaties that speak primarily in terms of governments' obligations to recognize and set up mechanisms and procedures to protect human rights. But there are also global mechanisms. We can go to the U.N. Commission on Human Rights or other less formal mechanisms, recognizing that they also have their limitations. Individuals and nongovernmental organizations can also speak to the international community about violations and problems that they face involving destruction of the environment, problems that impact their human rights.

And it doesn't matter, as we've heard, whether or not a particular standard is codified in some supposedly hard law instrument. There's a place to talk about the standard and explain why, even if it isn't codified, it's something that the international community needs to take heed of.

So we come back to the notion of human rights as not deriving from some sovereign power but deriving from the fact that we're all human beings. This is in contrast to civil rights which are, in many

cases, given or not at the option of some sovereign entity.

There are lots of groups that the traditional notions of sovereignty leave out—indigenous peoples, youth, women—vulnerable groups in the context of environmental destruction. Their interests and voices can be impeded by sovereign structures. So human rights mandates can perhaps provide a way to give them an extra boost, to give them a way to speak not just to their government but to the international community.

I want to say a little about transnational corporations. They are perhaps the biggest challenge here in terms of their destructive potential. The challenge for all of us is to try to change the dialogue and come up with some standards that make it in transnationals' own best interest to protect the environment and to protect human rights.

At the same time, we must find ways to try to promote the implementation and enforcement of internationally recognized human rights standards, both directly and indirectly applicable to transnational corporations. Governments in which various multinational entities are incorporated have a responsibility to make sure that transnationals behave as good corporate citizens, whether they're acting at home or abroad. They must not be allowed to conduct activities that violate people's human rights. In addition, transnational corporations should be held directly responsible for complying with international human rights and environmental standards.

SOUNDING A CAUTIONARY NOTE

by Stephen P. Marks



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We are entering a new era in world history, not the end of history, but a critical moment where we're moving in the direction of global sovereignty. The term "global sovereignty" is treated by one of the authors of the Earth Charter, Richard Falk, in his book on global civil society. In it he discusses and attempts to analyze the ways in which civil society functions nationally and transnationally to modify the relations between states.

Observers of developments in international law will acknowledge that the two areas where that vague concept, global sovereignty, has real meaning are in the environment and human rights, where people's organizations have clearly influenced the evolution of international law. We need to

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incorporate into the language of international law—and the procedures of international law—environmental standards in ways that build upon the experience of the human rights movement.

While I am a strong proponent of civil society, I would nevertheless caution against one of the dangers of relying on people's organizations to take charge. One of the dangers is that of real power falling into the hands of the wrong people who are exercising new modes of decision-making in the international community.

The danger to which I am referring is that, if and when real power is in the hands of non-state actors, the corporate community will organize its own institutes and research centers and seek to occupy leadership roles in civil society movements. This phenomenon has already begun in the environmental field.

These entities will use the same techniques that have been built up in the environmental and the human rights fields. They will have highly qualified people with good degrees from good universities who won't appear to be working for the profit sector. However, behind them will be the profit sector. The aims and purposes of the profit sector are not so much the betterment of the human community as the betterment of the profit and loss statements of the corporations in whose interests it is to exploit the natural resources of the world.

The purpose of this cautionary note is not to say that the human rights movement and the environmental movement should not continue to be people's movements. It's simply to draw attention to the possibility of manipulation of that process by other forces disguised in the same form as the civil society organizations that are familiar to us.

The second point I would like to make relates to the territoriality principle: States are sovereign within their territory. What we mean by state sovereignty is the exercise of the power to legislate, to adjudicate, and to enforce. It is in those three modes of jurisdiction that we should look towards the empowerment of civil society to build upon—not to replace, but to build upon—nation-state structures and to shift the focus from norms and procedures that do not favor environmental protection to those that favor it.

We need to focus on where and how civil society organizations can engage in a process that is the functional equivalent of adjudication

in the environmental realm. We're not going to get a court with power to adjudicate very soon and we're not going to have international police forces. But there are functional equivalents of them that have worked in the human rights field in a way that is perhaps more advanced than in the environmental fields.

With respect to the importance of soft law and the difference between law and justice: There are paper laws that may, in fact, be unjust but I'm not convinced that the judge's proper role is to go beyond the law to find and practice justice. The more substantive outcomes are to be achieved by means of the legislative function in the democratic process.

The most satisfactory current trend to meet the human rights and environmental goals that we have in mind is the functioning of constitutional democracies within states. This provides the opportunity for increased roles of civil society in global structures.

Since Rio, the United Nations Development Program has initiated a new policy to integrate human rights and sustainable human development. This new policy is an extremely important step that was slow in coming.

What the 1986 Declaration on the Right to Development says, essentially, is that development is a process that must occur with the realization of human rights and that the violation of human rights, including civil and political rights, constitutes an obstacle to development. Understanding this will help a great deal in the role that human rights can play at this stage to establish a new normative framework for environmental protection.

We have three texts to reflect upon today: an Earth Charter, a Draft Covenant, and a proposed draft set of principles for the Earth Charter. From the human rights point of view, the most satisfactory of the three is the draft set of principles. It builds upon the language of existing human rights standards, incorporates acceptable concepts of environmental protection, and draws upon constitutional law and international treaty law. I think the human rights community is ready to move quickly to adopt such a draft set of principles.

The Earth Charter is a mode of discourse that is ethical, drawing upon a range of spiritual and religious concerns. It attempts to articulate value systems across cultures.

The Covenant, on the other hand, is an attempt to draft in more binding legal language the principles that appear in the proposed set of Earth Charter principles. My concluding point relates to one of the practices that has proved successful in the last 50 years of human rights experience, namely the norm-setting process that moves from study to declaration to binding instrument. This is a tried and true method that has been applied in the areas of torture, women's rights, children's rights, and racial discrimination.

We have completed the study phase in the environmental field. The next stage, from the human rights perspective, is the adoption of a Declaration. And the third stage is that of the binding international instrument with mechanisms for monitoring, control, adjudication, and enforcement.

The current range of international environmental treaties illustrates this process. However, focused on achieving a certain level of environmental protection, these treaties do not include mandates on the rights of individuals and groups. The principal task that lies ahead is to articulate the Earth Charter and the Covenant so that they mesh in ways that allow one to build upon the other, that enable a normative framework within which the protection of the human right to an ecological and healthy environment is protected internationally. I think that, with these documents, we can look forward to some real progress in the next decade.

Dialogue

GLOBAL SOVEREIGNTY

The international women's movement, anthropologist Soon-Young Yoon suggested, adds an important perspective to the issue of the sovereignty of the people. This movement "has expanded consciousness, fundamentally changed values, shifted national laws, and moved the U.N."

"The sovereignty of Earth does not recognize national sovereignty as we've come to know and define it."

"When the concept of women's rights as human rights came to the fore," the *Earth Times* columnist continued, "one of the things that it did was to change the language from victimhood to citizenship. An entire group of people had felt dispossessed. For them, the stewardship language really seemed quite alien. In order to step into stewardship, one must first step into citizenship. Rights language provides that identity, which is extremely important. I think it is essential that rights language be in the Charter."

Concerning the way in which human rights meshes with the issues of environment and the ecological future, Dr. Yoon discussed the precedent set by the women's movement in shifting concepts: "Originally, human rights for women was about political rights, asylum, and freedom of speech. It evolved into a different concept because we shifted it. We turned it into an ethical principle of governance that also applies to personal behavior at home. Domestic violence became a human rights issue."

"I think the same thing is possible in discussions of the environment: shifting concepts. Of great interest here is the universality concept and the indivisibility concept. It's extremely important that we maintain the universality concept in the Charter."

President of Global Education Associates Patricia Mische interjected, "I would like to add to this discussion the question of the sovereignty of Earth because I think this introduces new kinds of laws or ways of thinking about sovereignty. The sovereignty of Earth does not recognize national sovereignty as we've come to know and define it. It really has to do with a whole ecological paradigm for

looking at interrelations, interdependencies, and the indivisibility of the sovereignty of Earth.”

“In the human rights field,” attorney Stephen Kass observed, “the way in which we have been successful has been to investigate facts, report on them, articulate standards, and embarrass nations into changing their conduct because of those facts and because of the application of established principles. In the environmental field, it is harder to do this.”

“Further,” Mr. Kass continued, “we must distinguish between corporate conduct which we may or may not like but which is acceptable and has certain efficiencies and that corporate conduct which is wholly unacceptable.”

Dr. Marks, director of the U.N. Studies Program at Columbia University, offered a reminder: “We have to be cautious about who the partners will be when we want to be genuinely democratic because civil society may include the private sector. We have to know on what principles we’re operating. If we’re operating on democratic principles, we include the private sector. And if we include the private sector, to the extent that the output is going to have some clout, I predict that this sector will be much more effective in influencing the process than the NGOs that we all work for and are all committed to.”

Neil Popovic, director of Earthjustice Legal Defense Fund’s United Nations Program, elaborated on the subject of transnational corporations, “It seems to me the point is not whether or not they get to participate. They will participate. They already have the means to participate effectively. They have the material resources and the human resources. What the human rights picture can add here is to give a boost to those who don’t have an equal voice or the means to get to Rio or Geneva or wherever else it may be that the discussion and standard setting and formulation of legal norms is going on.”

“Touching on the value of embarrassing human rights violators,” Mr. Popovic continued, “I am reminded of a phrase that a human rights professor of mine, Frank Newman, used: the *mobilization of shame*. That’s a very valuable concept. This is something that civil society can do.”



Part III
DISCUSSIONS ON
THE EARTH CHARTER
AND THE COVENANT

THE EARTH CHARTER

Conference participants in the Earth Charter group tackled questions of implementation, interpretation, and strategy in a two-part small group session: *How should human rights be treated in the Charter? What guidelines should be established for the use of human rights language in the Charter? How might environmental rights be included in the implementation of existing agreements on international human rights?*

"The concepts that are in the Earth Charter, the Draft Covenant, and the new draft principles that Steven Rockefeller introduced today," Neil Popovic recommended, "need to be part of the treaty-making process, the treaty-implementation process, and the treaty-enforcement process in the so-called hard law instruments of international environmental law. They also need to be used in developing international human rights instruments and enforcement mechanisms."

"There are two ways to promote environmental due process," attorney Popovic suggested. "On the one hand, we're pushing for formal recognition of the notion that there is something that we call the right to a healthy environment while at the same time focusing on the environmental dimension of already recognized human rights. I'd like to propose that we start including illustrative examples in the drafting process."

In addition, he continued, "We should keep in mind the many different roles of human rights and the ways in which they can be used to advance the environmental values, ethical values, and other values that we're trying to promote in an instrument like this. Certainly, one aspect is hard law. But another important aspect is the empowerment of peoples so that they come to recognize what human rights they have and what human rights they should be fighting for."

"We need in the Preamble a reference to the universality of human rights, and we need a practical statement about the interrelatedness of protecting the environment and human rights."

"We have to build public support for whatever we do if we expect to have success," Stephen Mills, human rights and environment campaign director for the Sierra Club's International Program in Washington, D.C., reminded his colleagues.

Providing clarification, Professor Steven Rockefeller addressed the topic of Earth Charter publication plans. "The current plan is for the Earth Charter to be released in a booklet that would have a short introduction, probably by the Earth Charter Commission. Then there would be the Preamble and the Principles of the Earth Charter. The text of the Charter will be followed by a 20- or 30-page commentary. There is also an intention to publish as a complementary volume an analysis of the Earth Charter that identifies goals and measures for each principle so that people can see what these principles mean in a concrete way and can employ measures for evaluating implementation."

"The Charter must operate at a level of abstraction that is cross-cultural," anthropologist Soon-Young Yoon insisted. With respect to rights language and whether it should be included in the Preamble, she suggested that "to some people, rights language is very much associated with Western legal systems. The language carries a lot of cultural baggage with it."

"We reaffirm our faith in the dignity and worth of the human person and in fundamental human rights as set forth in the Universal Declaration of Human Rights," Steven Rockefeller suggested, reading proposed language for the Earth Charter's Preamble (see Appendix).

"If," Dr. Yoon responded, "the human rights language can, in fact, strengthen stewardship language, then perhaps it does belong."

"What's the nature of a preamble," Professor John Grim wondered aloud, "and why would we want one? Perhaps the Preamble provides the state of mind of the drafters of the document, the situation with which this Charter came to be, namely, that humanity stands at a defining moment."

Professor Elise Boulding raised the question of how we conceptualize society. "In our earlier discussions," she said, "civil society was made equivalent to NGOs. This is a very serious mistake. Households are the basic unit of civil society. It's in the household that people learn their first skills at understanding the society they live

in. We must never forget this: this is where the basis for participation at other levels occurs. When we are speaking of those for whom the Charter exists, I think it makes a difference if we say something about the worth of human persons in their diverse communities—something that will be inclusive."

Correlating poverty and the language in the Charter, Neil Popovic recalled a discussion at the Earth Summit when someone made the point that "we need to have a short, concise Earth Charter that every child can hang on his or her wall," to which the delegate from Ghana replied, "Not every child from every country has a wall."

"In many developing countries," Mr. Popovic continued, "environmental rights are seen as a luxury. Populations that are impoverished simply do not see the protection of the environment and of ecosystems as a priority."

"I'm not sure that it's the job of the Earth Charter to define those relationships between human rights and environmental rights," Soon-Young Yoon observed.

Taking the opposite point of view, BRC executive director Virginia Straus countered that "I like that it's included in the Preamble. This is another piece of the global ethic. I would, however," she suggested, "like to see a more poetic, inspiring description of the linkage between human rights and the environment—maybe something about the 'right to be fully human,' a phrase Clarence used in this morning's plenary session. That second sentence could be improved by establishing more of an organic link between human rights and the environment."

Addressing the charge of anthropocentrism that may be leveled against an Earth Charter that is allied with the Human Rights Declaration, Clarence Dias, president of the International Center for Law in Development, suggested, "The Universal Declaration of Human Rights, contrary to much popular misconception, enshrines both the individual and collective rights. It's important that human rights language be in the Preamble precisely because of the interactive relationship between nature and humanity. It's going to be inevitable that any document produced by men and women is going to be an anthropocentric document. Let's not get hung up on that."

"I think it's very important," Soon-Young Yoon added, "that the Earth Charter put the phrase *the community of life at the center of*

development into the Charter. It represents a shift in consciousness and can do so much for economic development.”

“The meaning we need to embed in the document,” John Grim extrapolated, “is a very serious encounter of the reader with the issues that we’re discussing right now: What does it mean to be fully human?”

“One of the things that makes the Earth Charter unique is that it puts forth an integrated vision that hasn’t been communicated before,” BRC publications manager Amy Morgante emphasized. “That might be an important aspect of the Preamble along with the spiritual and cosmological vision. We need to communicate an awareness that all of these values are interdependent.”

Participants differed widely in their views about whether the reference to the Golden Rule in the Preamble should be couched in positive or in negative terms, “Do unto others...” or “Do not do unto others...” Some, including Clarence Dias, raised the question of whether a specific reference to the Golden Rule was necessary at all.

“We need in the Preamble,” Mr. Dias stressed, “a reference to the universality of human rights, and we need a practical statement about the interrelatedness of protecting the environment and human rights.”

During the discussion, questions about the nature and role of a preamble persisted. “Does it,” Neil Popovic asked, “set the outer limits of what the body of the document is going to talk about? Does it provide historical perspective? Does it satisfy the various interests of the stakeholders who are involved in the drafting process? Are the principles and concepts that are set forth in the Preamble of greater or lesser significance than the principles that are laid out in a number of the paragraphs? Are they supposed to be an interpretive guide to the principles that are enumerated later on?”

Steven Rockefeller’s view is that “the Preamble sets forth the assumptions upon which the principles are based.”

As the first part of the small group discussion drew to a close, there was consensus that removing the reference to the Universal Declaration in the first sentence would remove a great many potential problems and that care be taken, in Neil Popovic’s words, “to tell both sides of the story of human rights: that rights are dependent upon the health of natural systems and also that the health of

natural systems is dependent upon human rights.” In addition, there was consensus that reference to the Golden Rule could be dropped.

In the second part of the Charter small group session, Johannah Bernstein raised the questions: How can the Charter become as influential as the International Declaration of Human Rights? and What are the key impediments to sustainable development?

“Governments, policy makers, and civil society organizations,” the Canadian attorney began, “still do not have a clear vision of what a sustainable society looks like. Sustainable development is still perceived as a very vague, ambiguous concept. It is still seen as subordinate to what is seen as the primary policy goal—and that is economic growth, competitiveness, and job creation. We need to show in concrete, measurable terms the way that sustainable development can be a boost to long-term competitiveness and part of any economic modernization strategy.”

“To integrate the vision behind the Earth Charter within the government and civil society,” Ms. Bernstein continued, several things are necessary. We need to provide:

- a set of principles and a body of common law jurisprudence that will guide decision makers in the adjudication of environmental disputes;
- a conceptual framework for national sustainability strategies that recognizes a sustainable society as one that is just, equitable, participatory, open, and that recognizes and protects the carrying capacity of the Earth;
- a set of sustainability principles that underlies foreign policy making; and
- a corporate code of conduct.

Professor John Grim responded, “The challenge requires of us a profound integration of the head and the heart and a fresh vision of who we are and how we wish to live.” He explained that the challenge we face is spiritual and ethical as well as scientific and technical and he suggested that what we have is “a new story or narrative which is embedded in this Charter.”

“We need to recognize,” he continued, “that power and authority, once they have been recognized as embedded in such a narrative as this, do not negate the power and authority of other documents.” Further, he suggested, “The meaning of this document is

not embedded in the final language. The real meaning lies in the engagement of the individual who returns to his community and struggles to implement this vision.”

Recalling a lecture by economist Neva Goodwin, Virginia Straus repeated Dr. Goodwin’s thesis that economic growth is an intermediate goal, that the ultimate goal that most people share is human well-being. “It would be good to have some kind of philosophical statement like that in the Preamble,” the BRC executive director suggested, “to connect these concrete principles to a larger vision.”

Perhaps we should be using the term, “sustainable living,” instead of “sustainable development,” Dr. Elise Boulding suggested. “I think we have to reconceptualize development entirely and to terminate the use of the word ‘growth.’ We have to be very careful about using growth language unless we are talking about growth in the quality of personhood or relationship or the quality of culture.”

Professor John Cobb, a Christian theologian and author with Herman Daly of *The Common Good* (1987), has proposed new language for Principle 8 in the draft revised Earth Charter principles, Steven Rockefeller responded, which addresses some of the concerns being expressed. He recommends a principle that says this: “Subordinate economic goals and the means of attaining them to the overarching end of the flourishing of Earth and all of the communities, especially the human ones, of which it is constituted.”

“I think this is the most useful discussion we’ve had all day,” Stephen Mills, Sierra Club representative to the U.N. suggested. “It’s clear to me now that what’s holding us up is this whole sustainable development versus economic development argument. I think it’s incumbent upon us to show that the two are not mutually exclusive.”

In the area of social justice, Steven Rockefeller suggested that “if we’re going to have an integrated vision for the future that is just and promotes peace, we need to address the issue of racial discrimination.” Clarence Dias reminded people that the term “discrimination” has to encompass the growing practice in poorer countries of having harms—like pollution dumps—imposed on them because they are a minority community. Some conflicts, he indicated, “are labeled ethnic or religious conflicts when they’re really conflicts over how resources are being allocated in a particular society. It’s an exacerbated question of inclusion-exclusion.”

Virginia Straus reiterated Esmeralda Brown’s concerns, voiced at a September 1997 women’s consultation on the Charter held at the Boston Research Center, that “to have an Earth Charter that does not address racism and ethnic discrimination would make such a charter less than fully relevant to a large number of peoples in the world. A charter that does not utilize the word *inclusiveness* as a criterion in terms of governance and does not enunciate the sanctity of self-determination without outside interference, manipulation, extortion, and intimidation, in the eyes of many of the peoples of the world would be a deficient charter.”

With respect to the goal of articulating an *integrated vision of peace, justice, environmental protection, and social and economic development that is sustainable*, conferees were united in their view that proposed draft Principle 15, which addresses protecting the environment from the harmful effects of military activities, should include the words “eliminate weapons of mass destruction, promote disarmament, and secure the environment against irreversible or long-term damage.” There was some discussion about whether the elimination of land mines should be explicitly mentioned.

Some of those present felt that the Benchmark Draft had dealt more effectively with the issue of education—with lifelong learning that provides people with the knowledge, values, and practical skills they need to build sustainable communities—than the new version does and that this omission must be corrected.

Pat Mische cautioned that the concept of a living community—not solely a human community—must be integral to the Earth Charter. “It will be important to signal in the Preamble,” she added, “that there’s a relationship between environmental degradation and the conflict in war. It’s not just that military activities affect the environment but also that environmental degradation contributes to civil strife, conflict, and war. This puts the environmental issue into the peace and security realm for people who think the only real global issue we need to deal with is peace and security.”

“The thing that I most like about the Charter,” Neil Popovic said, “is that it’s a non-legal instrument. That’s what differentiates it from the draft Declaration of Principles on Human Rights and the Environment, which has been consciously written with an eye

toward moving it through some U.N.-type process so that it can then have a role as a legal instrument. I also like seeing the Charter recognize the spiritual elements and importance of preserving nature and what that means to our spiritual existence.”

Report and Recommendations

THE COVENANT

The two-part small group discussion on the International Covenant focused on the questions of how human rights should be treated in the Covenant; how environmental rights ought to be included; and how environmental rights can be implemented and observed, particularly in developing countries.

“Both the Draft International Covenant and the Earth Charter,” Professor Winston Langley began, “should be centrally focused on human rights.” However, when we have language that refers to *peace, development, protection of the environment, human rights, and fundamental freedom as interdependent*, he suggested, “the language itself seems to be implying that development and peace are not human rights.” He went on to say that he understands that the Covenant, like the Charter, aims to be about more than human rights but that the ambiguous language issues must be resolved.

In addition, he recommended: “The Draft Covenant could be improved by including in the Preamble some of the historical antecedents which shaped and inspired the idea and text of the Covenant.” Included here would be reference to the Stockholm Declaration and the World Charter for Nature, “to indicate the intellectual and moral journey and the gradual awakening of human beings in relationship to the environment and other life forms but also because these documents are supposed to be generating political support.”

“A covenant,” Dr. Langley continued, “bespeaks a special pledge, almost a sacred pledge. It seems to me that both the social and the international order are, at least in part, derived from an ecological order. If we want to make this document as foundational as I think it ought to be, there should be something in it that would indicate that every human being is entitled to an ecological order that makes it possible for the realization of all the human rights we may want to think of.”

“The environment should not be permitted to be used as an instrument of war nor should one seek to manipulate the environment to deprive other people of their sustenance.”

"I think it useful not to treat these environmental treaties as identical to the human rights documents. It is preferable," attorney Stephen Kass added, "to treat this document as a parallel document which is bound to the existing human rights framework but amplifies it. It is important to distinguish between those rights which are, in some sense, goals and aspirations, those which we expect peoples and nations to comply with, and those which they must *under all circumstances* comply with, including those things that they cannot do with or to the environment, even in times of war."

The chair of the Human Rights Watch continued, "The effort to flood the Persian Gulf during the war with Iraq is an example or, thereafter, the effort to destroy the culture of certain people living in southern Iraq by flooding out the marshlands in which they had lived. Those should be prohibited activities. The environment should not be permitted to be used as an instrument of war nor should one seek to manipulate the environment to deprive other people of their sustenance."

Former Prime Minister of the Netherlands Ruud Lubbers, referring to the Foreword of the Covenant, read: *The Charter of the United Nations governs relations between states. The Universal Declaration of Human Rights pertains to relations between the state and the individual. The time has come to devise a covenant regulating relations between humankind and nature.* "What exactly," he asked, "does that mean? Are we protecting nature from humankind?"

"Yes," answered environmental diplomat Noel Brown, "and with good reason. One of the things that we need to appreciate is that the technological civilization has transformed the relationship to the natural world. In the past we were 'ecosystem's creatures'; we lived directly dependent on nature's blessing. Now we have become the principal source of Earth change. Not only this but, in addition, we now have the capacity to inflict universal and inter-generational harm on the natural world. This change is what is now calling for a different set of standards."

"There is another point," environmental attorney Stephen Kass suggested, "which is the difference between deep ecology and the ecological movement. When the concern is the damage that humans do to the environment that can affect other humans, that is 'shallow ecology.' 'Deep ecology' refers to the rights that belong to

nature regardless of whether humans of this generation or any future generation are affected—biodiversity, for example."

Dr. Richard Clugston posed a fundamental question: "Is this Covenant trying to *be everything*? Should it try to be everything or should it deal only with what is missing in state-to-state or state-to-individual relationships?"

"I read this as a shorthand for something else," Stephen Kass responded. "If you say to everybody around the world, *you owe some duties to other human beings in the next valley and on the next continent*, people will say, *Okay*, but they won't really believe it. If you say to everybody in the world, *you also owe something to nature*, everyone knows that. I think this is a shorthand way of saying that we are all dependent on nature."

Professor Mary Evelyn Tucker suggested that "what we've been groping with is the fact that fundamentally the human is a subsystem of the Earth's system and that unless we begin with that kind of a premise, we're still going to be stuck in an intermediate process. I would suggest that we have here a revolution of *Earth sensibilities* or *Earth rights* that is beyond the notion of human rights per se."

"We must bear in mind," Dr. Langley reminded his colleagues, "that within the subsystem we are discussing, there is a certain level of consciousness about this totality we are referring to. From that special consciousness arise special responsibilities that may very well go along with the rights we speak of. We are within a subsystem and yet we occupy a peculiar position in relationship to all the other life forms."

Pointing toward a fundamental question, Stephen Kass asked: "Do you think the fact that we make a covenant with other life forms means that sometimes human beings can't prefer themselves over an adverse impact to the species?"

"We simply don't have the framework and I don't think we have the knowledge we need," Noel Brown said, referring to major projects we undertake that have substantial ecological impact.

"We should do the best we can to be informed and to permit everybody to participate," Stephen Kass urged. "I think that if the government of Bangladesh believes it can save two hundred thousand lives a year by building some containment against flooding, they ought to be allowed to do so. If the government of Nicaragua believes that it can reduce infant mortality by eliminating malaria

through using DDT, it ought to be allowed to do so, provided that it is a fully informed decision and doesn't adversely affect the global commons or another state."

Dr. Stephen Marks offered a cautionary note: "For the success of this Covenant, we have to do what the draft Declaration of Principles on Human Rights and the Environment does—namely, be sure that there's nothing in here that would make a human rights specialist, diplomat, government official, or NGO feel uncomfortable because the wording doesn't build upon the experience we have in human rights."

"Trying to get a handle on sustainable development in a single document that is relevant and workable is a nearly impossible task," Noel Brown admitted. "Trying to relate it to the various conventions and covenants on human rights is also quite monumental. But there may be a way out."

"One of the things we have been doing in the U.N. when we're dealing with complex subjects is to employ framework conventions. These are statements of intent that make it possible to frame the issues, to define the scope and give the dimensions of the problem. Then we start working with the protocols and become more specific. We find the points of intersection in various provisions from which we can demarcate specific duties or obligations."

"I have two specific suggestions," Stephen Kass offered: "With respect to the civil and political covenant, I would broaden the concept of freedom of speech, which is well established, to include the right to information, particularly information relating to major threats to the ecosystems, among other things. And I would somehow include environmental impact assessments."

Ruud Lubbers urged that a single document be developed rather than a separate Charter and Covenant. "I agree," Stephen Marks added, "about the need to integrate these documents." Still, he contended, you can draw from what has been developed here "to enrich the interpretation and implementation of existing agreements."

Director of EarthRights International, Katharine Redford, asked how we can make transnational and multinational corporations more accountable under the Charter and the Covenant. She alluded to the fact that, for the first time, a United States Federal Court has declared jurisdiction over a transnational corporation for human

rights abroad where 14 Burmese plaintiffs are alleging that they have been harmed by a gas pipeline. "Is it possible," she asked, "to put in language that would impose obligations on the state to police their companies or to create stronger laws with regard to human rights and the environment? In my opinion, transnationals are supplanting governments in many ways in terms of who's really controlling the world order."

Ms. Redford spoke of companies in Burma contracting with the dictatorship to provide security for their pipeline. "It was foreseeable," she explained, "that by using this army, which is one of the most brutal violators of human rights in the world, that human rights abuses would occur."

"I'm not sure," Noel Brown, former director of the U.N. Environment Program, ventured, "we are at the point yet of implementing environmental rights when we have not fully defined them. Further, we have a situation where values are in collision. In developing countries, development rights take precedence over environmental rights."

"The primary victim of the debt burden," he elaborated, "in some regions is the environment. Then there is a question of poverty being an enemy of environmental rights. What can be done? I think we need to define these rights clearly and make them known. I'm not entirely sure that we have a clear way of disseminating this information to the people. I would also work with the power holders about environmental rights. I think this document could be a good starting point."

"It seems to me," Mary Evelyn Tucker interjected, "that what you're trying to draw out is this: What are the principles around which these things can be litigated? It seems to me that something of the integrity of nature, of the health of ecosystems, and of sustainable livelihood, has to be primary."

"I'd like to talk a little more broadly about strategies to encourage the courts to treat environmental issues as human rights issues," Stephen Marks began:

- First, compile texts of applicable legislation with commentaries and examples designed for judges. If and when this covenant is binding in a given country, then the Covenant would be the basic reference point.

- Second, train judges and potential litigators.
- Third, develop a litigation strategy for NGOs.
- Fourth, develop human rights education that involves all sectors of society, specifically including environmental groups, women's groups, labor groups, youth groups, and the disabled.

Commenting on the significance of the issues raised during the day's consultation, Professor Robinson made the following observations: "Environmental rights and duties have emerged as a set of fundamental values in the twilight of the twentieth century. Yet, as reflected in the group discussion and the presentations on the drafts of the Earth Charter and the International Covenant, these values will become as central in the twenty-first century as human rights has become in the twentieth. Acceptance and implementation of environmental rights and duties will not be easily achieved. The world marketplace has not placed a commercial value on trade in the 'commons' or the needs of future generations or the ecosystems that sustained life on Earth. The role of the Charter and Covenant ultimately is to compensate for such market failure, and to build a social construct that allows human society to respect its place among all life, now and forever."



Discussants

Discussants

JOHANNAH BERNSTEIN is an environmental lawyer who has worked as the United Nations and European coordinator for the Earth Council since 1996, assisting in the design of Rio+5 and spearheading the European input into that process. During the Rio years, Ms. Bernstein directed a national coalition of Canadian NGOs and helped establish the daily NGO strategy sessions that became a veritable institution of their own during the Rio process. After Rio, Ms. Bernstein assisted in the establishment of EarthAction, a citizens' global advocacy network on environment, development, and peace issues. She served as EarthAction's European coordinator for four years before establishing its U.N. office in New York.

ELISE BOULDING has taught at the University of Colorado and is professor emerita of sociology at Dartmouth College. She is a sociologist, author, and activist, and has published dozens of transnational and comparative studies on conflict and peace, development, women in society, and the future. She was nominated for the Nobel Peace Prize in 1990 and was one of the founders of the International Peace Research Association. Professor Boulding has contributed to forming networks among peace research groups and is currently writing a book on the culture of peace.

RICHARD M. CLUGSTON is executive director of the Center for Respect of Life and Environment, and publisher and editor of *Earth Ethics*, an award-winning quarterly journal. He has consulted with state agencies, business groups, and various colleges and school systems on educational improvement. Dr. Clugston has taught and published in the areas of strategic planning, educational reform, and ecology and sustainability. His recent publications include "Environment, Development and Moral Values" in *Ethics and Development: On Making Moral Choices in Development Cooperation*, ed. Hamelink, and "Transforming Higher Education to Care for Creation" in *Creation as Beloved by God*, ed. Peterson and Conroy.

ROBERT EPPSTEINER is vice president of the Boston Research Center for the 21st Century. He is also the representative to the United Nations and director of academic affairs for Soka Gakkai International-USA, a lay Buddhist organization dedicated to promoting peace, culture, and education. Mr. Eppsteiner has been active in peace, human rights, and environmental issues for 30 years.

ROBERT J. GOLDSTEIN is director of Environmental Programs and adjunct professor of law at Pace University School of Law where he teaches administrative law and environmental law courses. He is creator of the Pace Global Environmental Law Network, which promotes the use of the Internet for the furtherance of environmental law. Professor Goldstein also created the Pace Virtual Environmental Law Library as a senior fellow at the Law School and advocates for its use in the protection of human rights. His thesis, *Green Wood in the Bundle of Sticks: Fitting Environmental Ethics and Ecology into Real Property Law*, was published by the Boston College Environmental Affairs Law Review.

JOHN GRIM is associate professor of religion at Bucknell University where he teaches classes in world religions, Native American religions, and indigenous religions. He is co-directing, with his wife Mary Evelyn Tucker, a series of 12 conferences on Religions of the World and Ecology at Harvard's Center for the Study of World Religions. He is president of the American Teilhard Association. During the last 20 years, Professor Grim has taught widely on global indigenous traditions and has conducted numerous field studies among native peoples in the Pacific region and Asia. He has published *The Shaman* (1982) and co-edited *Worldviews and Ecology* (1994) and *Indigenous Religions and Ecology* (forthcoming).

WINSTON E. LANGLEY is professor of international relations and political science at University of Massachusetts Boston and is vice president of the United Nations Association of Greater Boston. He has written extensively on U.N. operations and structure, especially as they relate to the economic, social, and legal rights of citizens of developing countries. Professor Langley's books include *Human Rights: The Major Global Instruments* (1992) and *Women's Rights in International Documents: A Source Book with Commentary* (1991).

STEPHEN L. MILLS is the human rights and environment campaign director for the Sierra Club's International Program in Washington, D.C. Mr. Mills leads the Sierra Club's international outreach efforts to build relationships with and empower nongovernmental organizations worldwide. As a Sierra Club representative to the United Nations, he attended the United Nations Conference on Human Rights in Vienna, Austria; the International Conference on Population and Development in Cairo, Egypt; and the First Conference of the Parties to the U.N. Convention on Biological Diversity held in the Bahamas. In 1995 Mr. Mills was recognized by the United Nations Association for his "outstanding contributions to human rights."

PATRICIA M. MISCHE is president of Global Education Associates, a network of activists in more than 90 countries which collaborates in research and educational programs on global issues and alternative world orders. Among Dr. Mische's many published works is *Toward a Human World Order: Beyond the National Security Straitjacket* (co-authored with Gerald Mische, 1977). In 1988, Dr. Mische initiated the first citizens' treaty on global ecological security, *The Earth Covenant*, and is currently working with others for an Earth Charter to complement the U.N. Charter.

AMY MORGANTE is publications manager at the Boston Research Center for the 21st Century (BRC). She produces the Center's newsletter three times a year and is editor or co-editor of *Buddhist Perspectives on the Earth Charter*, *Women's Views on the Earth Charter*, and *A People's Response to Our Global Neighborhood*. Prior to joining the BRC, she was a management ethics consulting associate with a firm that serves Fortune 500 companies.

KAREN NARDELLA is program manager at the Boston Research Center for the 21st Century (BRC) and the coordinator of the BRC consultation on the Earth Charter and the Covenant. Trained as a journalist, her professional experience is in media, advertising, and special events planning. Before joining the BRC in March 1995, Ms. Nardella was a media buyer for Marshalls Inc.

KATHARINE J. REDFORD is co-founder and director of EarthRights International (ERI), a nongovernmental organization which combines the power of law and the power of people in defense of human rights and the environment. Ms. Redford is an attorney with expertise in human rights and indigenous rights, particularly in Southeast Asia. She is a member of the Massachusetts State Bar and an attorney of record in the landmark lawsuit *John Doe I et. al. v. Unocal Corp. et. al.* Ms. Redford is a member of the Oilwatch International Steering Committee. She was the primary author of *Total Denial*, a highly critical report about the human rights and environmental effects of the Yadana gas pipeline project in Burma and Thailand.

SAGE RUSSELL is an attorney and a senior program associate with the Science and Human Rights Program of the American Association for the Advancement of Science (AAAS) where she coordinates projects in economic, social, and cultural rights which encompass environmental issues. Her interest in international human rights and development issues dates back 20 years to her service as a Peace Corps volunteer in Togo, West

Africa. Ms. Russell also worked for six years at the international headquarters of a nonprofit, nonsectarian, grassroots international development organization focused on the needs of families and communities.

VIRGINIA STRAUS has served as executive director of the Boston Research Center for the 21st Century (BRC) since its founding in 1993. Ms. Straus is a public policy specialist who formerly directed and helped to found the Boston-based Pioneer Institute, a think tank publishing scholarly studies on state and local policy issues. During the 1970s, she served in the U.S. government as a financial analyst in the Treasury Department and, later, as an urban policy aide in the Carter White House.

MARY EVELYN TUCKER is associate professor of religion at Bucknell University where she teaches courses in world religions, Asian religions, and religion and ecology. She is currently co-directing, with her husband John Grim, a series of 12 conferences on world religions and ecology at Harvard's Center for the Study of World Religions. She is also a committee member of the United Nations Environmental Programme for the Environmental Sabbath and vice president of the American Teilhard Association. She has published *Moral and Spiritual Cultivation in Japanese Neo-Confucianism* (1989) and is co-editor of *Worldviews and Ecology* (1994), *Buddhism and Ecology* (1997), and *Confucianism and Ecology* (1998).

SOON-YOUNG YOON is an activist/anthropologist. She is currently a research associate at the Department of Anthropology, Graduate Center, City University of New York and a columnist for the *Earth Times* newspaper. In 1995, she was one of the organizers of the NGO Forum on Women at the Beijing Women's Conference. She has worked as regional advisor on social science and health issues for various U.N. agencies, including UNICEF and the World Health Organization. Her academic work includes research and teaching as a Fulbright scholar at Ewha Woman's University in Korea where she helped to establish a women's studies program.



Appendix

THE EARTH CHARTER BENCHMARK DRAFT

Approved at Rio+5 – March 18, 1997

Earth is our home and home to all living beings. Earth itself is alive. We are part of an evolving universe. Human beings are members of an interdependent community of life with a magnificent diversity of life forms and cultures. We are humbled before the beauty of Earth and share a reverence for life and the sources of our being. We give thanks for the heritage that we have received from past generations and embrace our responsibilities to present and future generations.

The Earth Community stands at a defining moment. The biosphere is governed by laws that we ignore at our own peril. Human beings have acquired the ability to radically alter the environment and evolutionary processes. Lack of foresight and misuse of knowledge and power threaten the fabric of life and the foundations of local and global security. There is great violence, poverty, and suffering in our world. A fundamental change of course is needed.

The choice is before us: to care for Earth or to participate in the destruction of ourselves and the diversity of life. We must reinvent industrial-technological civilization, finding new ways to balance self and community, having and being, diversity and unity, short-term and long-term, using and nurturing.

In the midst of all our diversity, we are one humanity and one Earth family with a shared destiny. The challenges before us require an inclusive ethical vision. Partnerships must be forged and cooperation fostered at local, bioregional, national, and international levels. In solidarity with one another and the community of life, we the peoples of the world commit ourselves to action guided by the following interrelated principles:

- 1. Respect Earth and all life. Earth, each life form, and all living beings possess intrinsic value and warrant respect independently of their utilitarian value to humanity.*
- 2. Care for Earth, protecting and restoring the diversity, integrity, and beauty of the planet's ecosystems. Where there is risk of irreversible or serious damage to the environment, precautionary action must be taken to prevent harm.*

3. *Live sustainably, promoting and adopting modes of consumption, production, and reproduction that respect and safeguard human rights and the regenerative capacities of Earth.*
4. *Establish justice and defend without discrimination the right of all people to life, liberty, and security of person within an environment adequate for health and spiritual well-being. People have a right to potable water, clean air, uncontaminated soil, and food security.*
5. *Share equitably the benefits of natural resource use and a healthy environment among the nations, between rich and poor, between males and females, between present and future generations, and internalize all environmental, social, and economic costs.*
6. *Promote social development and financial systems that create and maintain sustainable livelihoods, eradicate poverty, and strengthen local communities.*
7. *Practice non-violence, recognizing that peace is the wholeness created by harmonious and balanced relationships with oneself, other persons, other life forms, and Earth.*
8. *Strengthen processes that empower people to participate effectively in decision-making, and ensure transparency and accountability in governance and administration in all sectors of society.*
9. *Reaffirm that Indigenous and Tribal Peoples have a vital role in the care and protection of Mother Earth. They have the right to retain their spirituality, knowledge, lands, territories, and resources.*
10. *Affirm that gender equality is a prerequisite for sustainable development.*
11. *Secure the right to sexual and reproductive health, with special concern for women and girls.*
12. *Promote the participation of youth as accountable agents of change for local, bioregional, and global sustainability.*
13. *Advance and put to use scientific and other types of knowledge and technologies that promote sustainable living and protect the environment.*
14. *Ensure that people throughout their lives have opportunities to acquire the knowledge, values, and practical skills needed to build sustainable communities.*
15. *Treat all creatures with compassion and protect them from cruelty and wanton destruction.*

16. *Do not do to the environment of others what you do not want done to your environment.*
17. *Protect and restore places of outstanding ecological, cultural, aesthetic, spiritual, and scientific significance.*
18. *Cultivate and act with a sense of shared responsibility for the well-being of the Earth Community. Every person, institution, and government has a duty to advance the indivisible goals of justice for all, sustainability, world peace, and respect and care for the larger community of life.*

Embracing the values in this Charter, we can grow into a family of cultures that allows the potential of all persons to unfold in harmony with the Earth Community. We must preserve a strong faith in the possibilities of the human spirit and a deep sense of belonging to the universe. Our best actions will embody the integration of knowledge with compassion.

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In order to develop and implement the principles in this Charter, the nations of the world should adopt as a first step an international convention that provides an integrated legal framework for lasting and future environmental and sustainable development law and policy.

PROPOSALS FOR EARTH CHARTER PRINCIPLES

(Discussed at the April 20, 1998 consultation at the Boston Research Center)

Unofficial Document

I. GENERAL PRINCIPLES

1. *Respect Earth and all life, recognizing the diversity, interdependence, and intrinsic value of all beings.* (B1)*
2. *Care for Earth, embracing our common responsibility to cooperate in promoting the well-being of all peoples and the larger community of life.* (B18)
3. *Give to future generations a world living in peace with a healthy environment.* (New)

II. FUNDAMENTAL GUIDELINES

4. *Protect and restore the integrity and beauty of Earth's ecological systems.* (B2)
5. *Prevent harm to the environment as the first and best method of ecological protection; and even when scientific information is incomplete or inconclusive, stop activities that involve a risk of irreversible or serious harm.* (New + B2b)
6. *Live sustainably, adopting modes of consumption, production, and reproduction that respect human rights and safeguard the regenerative capacities of Earth.* (B3)
7. *Establish justice, and defend without discrimination the right of all persons to an environment adequate for their dignity, bodily health, and spiritual well-being.*
8. *Promote social and economic development that eradicates poverty, strengthens local communities, and improves the quality of life.* (B6)
9. *Practice non-violence and be an instrument of peace.* (B7)

*The letters and numbers at the end of each principle identify the corresponding Benchmark Draft principles or new principles (New). Lower case (a) and (b) indicate the first and second part of a principle, respectively.

Appendix

III. AREAS OF SPECIAL CONCERN

10. *Conserve the biodiversity of land and sea, including the range of genetic stocks within each species and the variety of ecosystems.* (New)
11. *Act with restraint and efficiency when using resources and promote sustainable resource use:*
 - a) *Reduce resource use, reuse, and recycle;*
 - b) *Substitute renewable for non-renewable resources; and*
 - c) *Do not extract renewable resources in ways that exceed the regenerative capacity of ecological systems.* (New)
12. *Do not introduce into the environment wastes and chemical substances that exceed the assimilation capacity of ecological systems, and do not allow concentrations of substances that endanger human ecological health.* (New)
13. *Advance and put to use knowledge and technologies that promote sustainable living and environmental protection.* (B13)
14. *Establish market prices and economic indicators that reflect the full environmental and social costs of human activities.* (B5b)
15. *Secure the environment against irreversible or long-term damage caused by military activities.* (New)
16. *Ensure, on the basis of equality of men and women, universal access to education and health care, including sexual and reproductive health care.* (B10,11)
17. *Join in caring for Earth by pursuing lifelong learning, seeking relevant information, and participating in decision making.* (B8a,14)
18. *Work to ensure access to information and openness, truthfulness, and accountability in governance and administration.* (B8b)
19. *End racial, ethnic, and religious discrimination; recognize the ignored; and protect the vulnerable.* (New)
20. *Reaffirm the right of indigenous peoples to their spirituality, knowledge, territories, lands, and resources.* (B9)
21. *Treat all creatures with compassion and protect them from cruelty and wanton destruction.* (B15)

Note: Benchmark #5a, #12, #16, #17 have been deleted in this version of the Earth Charter. Benchmark #10 and #11, and #8a and #14, have been combined and reworded. Six new principles have been added. The total has been increased from 18 to 21.

PROPOSED LANGUAGE RELATING TO HUMAN RIGHTS FOR THE EARTH CHARTER PREAMBLE

Unofficial Document

Humanity stands at a defining moment. The choice before us is clear: to care for Earth or to participate in the destruction of ourselves and the diversity of life. The creative opportunities as well as the dangers are great. Fundamental changes are necessary. The challenge we face is spiritual and ethical as well as scientific and technical. It requires of us a profound integration of the head and the heart and a fresh vision of who we are and how we wish to live.

Before the awesome mystery and wonder of Earth and the surrounding universe, let us remember to walk with humility, reverence for the sources of our being, and thankfulness for the gift of life and the heritage we have received.

We reaffirm our faith in the dignity and worth of the human person and in fundamental human rights as set forth in the Universal Declaration of Human Rights. It is clear that the social order and the realization of human rights is dependent upon the health of natural systems. We acknowledge that rights and freedoms, knowledge and power, bring with them responsibilities and constraints. We reaffirm the ancient moral teaching: Do not do to others what you do not want done to you.

DRAFT INTERNATIONAL COVENANT ON ENVIRONMENT AND DEVELOPMENT

PREAMBLE

The Parties to this Covenant:

Recognizing the unity of the biosphere, a unique and indivisible ecosystem, and the interdependence of all its components;

Conscious that humanity is a part of nature and that all life depends on the functioning of natural systems which ensure the supply of energy and nutrients;

Convinced that living in harmony with nature is a prerequisite for sustainable development, because civilization is rooted in nature, which shapes human culture and inspires artistic and scientific achievement;

Sharing the belief that humanity stands at a decisive point in history, which calls for a global partnership to achieve sustainable development;

Mindful of the increasing degradation of the global environment and deterioration and depletion of natural resources, owing to excessive consumption, rising population pressures, pollution, poverty, and armed conflict;

Recognizing the need to integrate environmental and developmental policies and laws in order to fulfill basic human needs, improve the quality of life, and ensure a more secure future for all;

Aware that the respect for human rights and fundamental freedoms contributes to sustainable development;

Conscious that the right to development must be fulfilled so as to meet the developmental and environmental needs of present and future generations in a sustainable and equitable manner;

Recognizing that intergenerational and intragenerational responsibility, as well as solidarity and cooperation among the peoples of the Earth, are necessary to overcome the obstacles to sustainable development;

Acknowledging that addressing the particular situation and needs of developing countries, especially those of the least developed and of the most environmentally vulnerable, is a high priority, and that developed countries bear a special responsibility in the pursuit of sustainable development;

Affirming the essential duty of all to respect and preserve the environment,

Considering that the existing and future international and national policies and laws on environment and development need an integrated legal framework to provide individuals, States, and other entities with ecological and ethical guidance, as recommended by the United Nations Conference on Environment and Development assembled in Rio de Janeiro in June 1992; AGREE as follows:

I. OBJECTIVE

Article 1 – Objective

The objective of this Covenant is to achieve environmental conservation and sustainable development by establishing integrated rights and obligations.

II. FUNDAMENTAL PRINCIPLES

In their actions to achieve the objective of this Covenant and to implement its provisions, the Parties shall be guided, *inter alia*, by the following fundamental principles:

Article 2 – Respect for All Life Forms

Nature as a whole warrants respect; every form of life is unique and is to be safeguarded independent of its value to humanity.

Article 3 – Common Concern of Humanity

The global environment is a common concern of humanity.

Article 4 – Interdependent Values

Peace, development, environmental protection and respect for human rights and fundamental freedoms are interdependent.

Article 5 – Intergenerational Equity

The freedom of action of each generation in regard to the environment is qualified by the needs of future generations.

Article 6 – Prevention

Protection of the environment is best achieved by preventing environmental harm rather than by attempting to remedy or compensate for such harm.

Article 7 – Precaution

Lack of scientific certainty is no reason to postpone action to avoid potentially significant or irreversible harm to the environment.

Article 8 – Right to Development

110 The exercise of the right to development entails the obligation to meet the developmental and environmental needs of humanity in a sustainable and equitable manner.

Article 9 – Eradication of Poverty

The eradication of poverty, an indispensable requirement for sustainable development, necessitates a global partnership.

Article 10 – Consumption Patterns and Demographic Policies

The elimination of unsustainable patterns of production and consumption and the promotion of appropriate demographic policies are necessary to enhance the quality of life for all humanity and reduce disparities in standards of living.

III. GENERAL OBLIGATIONS

Article 11 – States

1. States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to utilize their resources to meet their environmental and sustainable developmental needs, and the obligations:

- (a) to protect and preserve the environment within the limits of their national jurisdiction; and
- (b) to ensure that activities within their jurisdiction or control do not cause potential or actual harm to the environment of other States or of areas beyond the limits of national jurisdiction.

2. States have, in accordance with the Charter of the United Nations and principles of international law, the right to protect the environment under their jurisdiction from significant harm caused by activities outside their national jurisdiction. If such harm has occurred, they are entitled to appropriate remedies.

3. Parties shall endeavor to avoid wasteful use of natural resources and, in particular, shall take measures to ensure the sustainable use of renewable resources.

4. Parties shall cooperate, in the implementation of this Covenant, in good faith with each other and with competent international organizations, and shall provide nongovernmental organizations and indigenous peoples with the appropriate opportunities to participate in decision-making processes.

5. Parties who are members of international organizations undertake to pursue within such organizations policies that are consistent with the provisions of this Covenant.

6. Parties shall apply the principle that the costs of preventing, controlling and reducing potential or actual harm to the environment are to be borne by the originator.

Article 12 – Persons

1. Parties undertake to achieve progressively the full realization of the right of everyone to an environment and a level of development adequate for their health, well-being and dignity.
2. All persons have a duty to protect and preserve the environment.
3. All persons, without being required to prove an interest, have the right to seek, receive, and disseminate information on activities or measures adversely affecting or likely to affect the environment and the right to participate in relevant decision-making processes.
4. All persons have the right to effective access to judicial and administrative proceedings, including for redress and remedy, in enforcing their rights under this Covenant.
5. Parties shall respect and ensure the rights and the fulfillment of the duties recognized in this Article and shall devote special attention to the satisfaction of basic human needs, in particular the provision of potable water.
6. Parties shall develop or improve mechanisms to facilitate the involvement of indigenous peoples and local communities in environmental decision-making at all levels and shall take measures to enable them to pursue sustainable traditional practices.

Article 13 – Integrating Environment and Development

1. Parties shall pursue sustainable development policies aimed at the eradication of poverty, the general improvement of economic, social and cultural conditions, the conservation of biological diversity, and the maintenance of essential ecological processes and life-support systems.
2. Parties shall ensure that environmental conservation is treated as an integral part of the planning and implementation of activities at all stages and at all levels, giving full and equal consideration to environmental, economic, social and cultural factors. To this end, Parties shall:
 - (a) conduct regular national reviews of environmental and developmental policies and plans;
 - (b) enact effective laws and regulations which use, where appropriate, economic instruments; and
 - (c) establish or strengthen institutional structures and procedures to fully integrate environmental and developmental issues in all spheres of decision-making.

Article 14 – Transfer or Transformation of Environmental Harm

Parties shall not transfer, directly or indirectly, harm or hazards from one area to another or transform one type of environmental harm into another.

Article 15 – Prevention of and Response to Emergencies

1. Each Party shall, without delay and by the most expeditious means available, notify potentially affected States and competent international organizations of any emergency originating within its jurisdiction or control, or of which it has knowledge, that may cause harm to the environment.
2. A Party within whose jurisdiction or control an emergency originates shall immediately take all practicable measures necessitated by the circumstances, in cooperation with potentially affected States, and where appropriate, competent international organizations, to prevent, mitigate and eliminate harmful effects of the emergency.
3. Parties shall develop joint contingency plans for responding to emergencies, in cooperation, where appropriate, with other States and competent international organizations.

**IV. OBLIGATIONS RELATING TO
NATURAL SYSTEMS AND RESOURCES**

Article 16 – Stratospheric Ozone

Parties shall take all appropriate measures to prevent the depletion of stratospheric ozone. To that end, Parties shall restrict human activities which modify or are likely to modify the stratospheric ozone layer in ways that adversely affect human health and the environment.

Article 17 – Global Climate

Parties shall take all appropriate measures to achieve the stabilization of concentrations of greenhouse gases in the atmosphere at a level that prevents dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production, essential ecological processes, and biological diversity are not threatened, and to enable economic development to proceed in a sustainable manner.

Article 18 – Soil

Parties shall ensure the conservation and where necessary the regeneration of soils for all living systems by taking effective measures to prevent soil erosion, to combat desertification, to safeguard the processes of organic decomposition and to promote the continuing fertility of soils.

Article 19 – Water

Parties shall take all appropriate measures to maintain and restore the quality of water, including atmospheric, marine, ground and surface fresh water, to meet basic human needs and as an essential component of aquatic sys-

tems. They shall, in particular, establish standards to safeguard the supply and quality of sources of drinking water and to maintain the capacity of aquatic systems to support life.

Article 20 – Natural Systems

1. Parties shall take appropriate measures to conserve and, where necessary and possible, restore natural systems which support life on Earth in all its diversity, including biological diversity, and to maintain and restore the ecological functions of these systems as an essential basis for sustainable development, including *inter alia*:

- (a) forests as climate regulators and as natural means to control erosion and floods;
- (b) freshwater wetlands and floodplains as recharge areas for groundwaters, floodwater buffers, filters and oxidizing areas for contaminants;
- (c) marine ecosystems, in particular coastal ecosystems including barrier islands, estuaries, mangroves, sea grass beds, coral reefs and mudflats as natural defenses against coastal erosion and essential habitats for the support of fisheries.

2. Parties shall, within their jurisdiction, manage natural systems as single ecological units. In particular they shall:

- (a) manage aquatic systems as entire units covering the full extent of the catchment area, and
- (b) manage coastal systems as entire units covering both aquatic and terrestrial components.

Article 21 – Biological Diversity

1. Parties shall take all appropriate measures to conserve biological diversity, including species diversity, genetic diversity within species, and ecosystem diversity, especially through *in situ* conservation. To this end, Parties shall:

- (a) integrate conservation of biological diversity into their physical planning systems,
- (b) establish a system of protected areas, where appropriate, with buffer zones and interconnected corridors, and
- (c) prohibit the taking or destruction of endangered species, protect their habitats, and develop recovery plans for such species.

2. States shall regulate or manage biological resources with a view to ensuring their conservation, sustainable use, and where necessary and possible, restoration. To this end, Parties shall:

- (a) develop and implement conservation and management plans for harvested biological resources;

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- (b) prevent a decrease in the size of harvested populations below the level necessary to ensure stable recruitment;
- (c) safeguard and restore habitats essential to the continued existence of the species or populations concerned;
- (d) preserve and restore ecological relationships between harvested and dependent or associated species or populations; and
- (e) prevent or minimize incidental taking of non-target species and prohibit indiscriminate means of taking.

Article 22 – Cultural and Natural Heritage

Parties shall take all appropriate measures to conserve or rehabilitate cultural and natural monuments, and areas, including Antarctica, of outstanding scientific, cultural, spiritual, or aesthetic significance and to prevent all deliberate measures and acts which might harm or threaten such monuments or areas.

V. OBLIGATIONS RELATING TO PROCESSES AND ACTIVITIES

Article 23 – Prevention of Harm

Parties shall identify and evaluate substances, technologies, processes and categories of activities which have or are likely to have significant adverse effects on the environment. They shall systematically survey, regulate or manage them with a view to preventing any significant environmental harm.

Article 24 – Pollution

Parties shall take, individually or jointly as appropriate, all measures that are necessary to prevent, reduce, and control pollution of any part of the environment, in particular from radioactive, toxic, and other hazardous substances. For this purpose, they shall use the best practicable means at their disposal and shall endeavor to harmonize their policies.

Article 25 – Waste

1. Parties shall ensure that the generation of waste be reduced to a minimum and that waste be disposed of in an environmentally sound manner, to the fullest extent possible in the source Party.

2. Parties shall prohibit the transboundary movement of radioactive, toxic, or other hazardous waste where there has been no prior informed consent of the transit and receiving States and to or through States where such transboundary movement has been prohibited. Under no circumstances shall there be any export of such waste where the exporting Party has reason to believe that it will not be managed or disposed of in an environmentally sound manner. If a transboundary movement cannot be completed in compliance with these requirements, the exporting Party shall

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ensure that such waste is taken back if alternative environmentally sound arrangements cannot be made.

Article 26 – Introduction of Alien or Modified Organisms

1. Parties shall prohibit the intentional introduction into the environment of alien or modified organisms which are likely to have adverse effects on other organisms or the environment. They shall also take the appropriate measures to prevent accidental introduction or escape of such organisms.
2. Parties shall regulate and manage the risks associated with the development, use and release of modified organisms resulting from biotechnologies which are likely to have adverse effects on other organisms or the environment.
3. Parties shall take all appropriate measures to control and, to the extent possible, eradicate introduced alien or modified organisms when such organisms have or are likely to have a significant adverse effect on other organisms or the environment.

VI. OBLIGATIONS RELATING TO GLOBAL ISSUES

Article 27 – Demographic Policies

Parties shall develop or strengthen demographic policies in order to achieve sustainable development. To this end, Parties shall:

- (a) conduct studies to estimate the size of the human population their environment is capable of supporting and develop programs relating to population growth at corresponding levels;
- (b) cooperate to alleviate the stress on natural support systems caused by major population flows;
- (c) cooperate as requested to provide a necessary infrastructure on a priority basis for areas with rapid population growth; and
- (d) provide to their populations full information on the options concerning family planning.

Article 28 – Consumption Patterns

Parties shall seek to develop strategies to reduce or eliminate unsustainable patterns of consumption. Such strategies shall be designed, in particular, to meet the basic needs of the poor and to reduce use of nonrenewable resources in the production process. To this end, Parties shall:

- (a) collect and disseminate information on consumption patterns and develop or improve methodologies for analysis;
- (b) ensure that all raw materials and energy are used as efficiently as possible in all products and processes;
- (c) require recycling of used materials to the fullest extent possible;

- (d) promote product designs that increase reuse and recycling and as far as possible eliminate waste; and
- (e) facilitate the role and participation of consumer organizations in promoting more sustainable consumption patterns.

Article 29 – Eradication of Poverty

Parties, with the assistance of and in cooperation with other States and international organizations as appropriate, shall seek to take measures which will, directly or indirectly, contribute to the eradication of poverty, including measures to:

- (a) enable all individuals to achieve sustainable livelihoods;
- (b) promote food security and, where appropriate, food self-sufficiency in the context of sustainable agriculture;
- (c) rehabilitate degraded resources, to the extent practicable, and promote sustainable use of resources for basic human needs;
- (d) provide potable water and sanitation; and
- (e) provide education.

Article 30 – Trade and Environment

1. Parties shall cooperate to establish and maintain an international economic system that equitably meets the developmental and environmental needs of present and future generations. To this end, Parties shall endeavor to ensure that:

- (a) trade does not lead to the wasteful use of natural resources nor interfere with their conservation or sustainable use;
- (b) trade measures addressing transboundary or global environmental problems are based, as far as possible, on international consensus;
- (c) trade measures for environmental purposes do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade;
- (d) unilateral trade measures by importing Parties in response to activities which are harmful or potentially harmful to the environment outside the jurisdiction of such Parties are avoided as far as possible or occur only after consultation with affected States and are implemented in a transparent manner; and
- (e) prices of commodities and raw materials reflect the full direct and indirect social and environmental costs of their extraction, production, transport, marketing, and, where appropriate, ultimate disposal.

2. As regards biological resources, products and derivatives, Parties shall endeavor to ensure that:

- (a) trade is based on management plans for the sustainable harvesting of such resources and does not endanger any species or ecosystem; and

(b) Parties, whose biological resources cannot be exported due to prohibitions imposed by a multilateral environmental agreement, shall receive appropriate compensation for losses suffered due to noncompliance by any other party to that agreement.

Article 31 – Economic Activities of Foreign Origin

1. Parties shall require, from all economic entities and in regard to activities of foreign origin conducted within their jurisdiction, information on:
 - (a) potential or actual harm to the environment resulting from their activities;
 - (b) the relevant environmental legal requirements and standards applicable in the State of origin;
 - (c) the techniques in use in the State of origin to comply with such requirements and standards; and
 - (d) reasonably available data and information concerning the state-of-the-art techniques to prevent environmental harm.
2. The State of origin shall, upon request of the host Party:
 - (a) provide it with all relevant information on applicable environmental requirements and standards within the limits of its jurisdiction; and
 - (b) enter into consultations with the host Party to enable the host Party to take appropriate measures regarding such activities.
3. The Party of origin shall ensure that, in the absence of equally strict or higher environmental standards in the host Party or express agreement by the host Party to the contrary, it shall cause its nationals to apply the relevant standards of the State of origin.

Article 32 – Military and Hostile Activities

1. Parties shall protect the environment during periods of armed conflict. In particular, Parties shall:
 - (a) observe, outside areas of armed conflict, all international environmental rules by which they are bound in times of peace;
 - (b) take care to protect the environment against avoidable harm in areas of armed conflict;
 - (c) not employ or threaten to employ methods or means of warfare which are intended or may be expected to cause widespread, long-term, or severe harm to the environment and ensure that such means and methods of warfare are not developed, produced, tested, or transferred; and
 - (d) not use the destruction or modification of the environment as a means of warfare or reprisal.
2. Parties shall cooperate to further develop and implement rules and measures to protect the environment during international armed conflict

and establish rules and measures to protect the environment during non-international armed conflict.

3. All Parties involved in armed conflicts shall take the necessary measures to protect natural and cultural sites of special interest, in particular sites designated for protection under applicable international treaties, as well as potentially dangerous installations, from being subject to attack as a result of armed conflict, insurgency, terrorism, or sabotage. Military personnel shall be instructed as to the existence and location of such sites and installations.
4. Parties shall take measures to ensure that persons are held responsible for the deliberate and intentional use of means or methods of warfare which cause widespread, long-term, or severe harm to the environment.
5. Parties shall ensure that military personnel, aircraft, vessels and other equipment and installations are not exempted in times of peace from rules, standards, and measures for environmental protection.

VII. TRANSBOUNDARY ISSUES

Article 33 – Transboundary Environmental Effects

Parties shall take appropriate measures to prevent transboundary environmental harm. When a proposed activity may generate such harm, Parties shall:

- (a) ensure that an environmental impact assessment is undertaken, as provided in Article 37;
- (b) give prior and timely notification, along with relevant information, to potentially affected States, and consult in good faith with those States at an early stage; and
- (c) grant potentially affected persons in other States access to, as well as due process in, administrative and judicial proceedings, without discrimination on the basis of residence or nationality.

Article 34 – Transboundary Natural Resources

Parties shall cooperate in the conservation, management and restoration of natural resources which occur in areas under the jurisdiction of more than one State, or fully or partly in areas beyond the limits of national jurisdiction. To this end:

- (a) Parties sharing the same natural system shall manage that system as a single ecological unit notwithstanding national boundaries. They shall cooperate on the basis of equity and reciprocity, in particular through bilateral and multilateral agreements, in order to develop harmonized policies and strategies covering the entire system and the ecosystems it contains. With regard to aquatic systems, such agreements shall cover

the entire catchment area, including the adjoining marine environment.

(b) Parties sharing the same species or population, whether migratory or not, shall treat such species or population as a single biological unit. They shall cooperate, in particular through bilateral and multilateral agreements, in order to maintain the species or population concerned in a favorable conservation status. In the case of a harvested species or population, all the range Parties of that species or population shall cooperate in the development and implementation of a joint management plan to ensure the sustainable use of that resource and the equitable sharing of the benefits deriving from that use.

VIII. IMPLEMENTATION AND COOPERATION

Article 35 – National Action Plans

Parties shall establish action plans, with targets and timetables, and update them as necessary, to meet the objectives of this Covenant.

Article 36 – Physical Planning

1. Parties shall establish and implement integrated physical planning systems, including provisions for infrastructure and town and country planning, with a view to integrating conservation of the environment, including biological diversity, into social and economic development.

2. In such planning, Parties shall take into account natural systems, in particular drainage basins, coastal areas and their adjacent waters, and any other areas constituting identifiable ecological units.

3. Parties shall take into account the natural characteristics and ecological constraints of areas when allocating them for agricultural, grazing, forestry, or other use.

Article 37 – Environmental Impact Assessment

1. Parties shall establish or strengthen environmental impact assessment procedures to ensure that all activities which are likely to have a significant adverse effect on the environment are evaluated before approval.

2. The assessment shall include evaluation of:

- (a) cumulative, long-term, indirect, long-distance, and transboundary effects,
- (b) the possible alternative actions, including not conducting the proposed activity, and
- (c) measures to avert or minimize the potential adverse effects.

3. Parties shall designate appropriate national authorities to ensure that environmental impact assessments are effective and conducted under procedures accessible to concerned States, international organizations, per-

sons and nongovernmental organizations. Parties shall also ensure that the authority deciding on approval takes into consideration all observations made during the environmental impact assessment process and makes its final decision public.

4. Parties shall conduct periodic reviews both to determine whether activities approved by them are carried out in compliance with the conditions set out in the approval and to evaluate the effectiveness of the prescribed mitigation measures. The results of such reviews shall be made public.

5. Parties shall take appropriate measures to ensure that before they adopt policies, programs, and plans that are likely to have a significant adverse effect on the environment, the environmental consequences of such actions are duly taken into account.

Article 38 – Environmental Standards and Controls

1. Parties shall cooperate to formulate, develop, and strengthen international rules, standards and recommended practices on issues of common concern for the protection and preservation of the environment and sustainable use of natural resources, taking into account the need for flexible means of implementation based on their respective capabilities.

2. Parties shall adopt, strengthen and implement specific national standards, including emission, quality, product, and process standards, designed to prevent or abate harm to the environment or to restore or enhance environmental quality.

Article 39 – Monitoring of Environmental Quality

1. Parties shall conduct scientific research and establish, strengthen, and implement scientific monitoring programs for the collection of environmental data and information to determine, *inter alia*:

- (a) the condition of all components of the environment, including changes in the status of natural resources; and
- (b) the effects, especially the cumulative or synergistic effects, of particular substances, activities, or combinations thereof on the environment.

2. To this end and as appropriate, Parties shall cooperate with each other and with competent international organizations.

Article 40 – Scientific and Technical Cooperation

1. Parties shall promote scientific and technical cooperation in the field of environmental conservation and sustainable use of natural resources, in particular with developing countries. In promoting such cooperation, special attention should be given to the development and strengthening of

national capacities, through the development of human resources, legislation and institutions.

2. Parties shall:

(a) cooperate to establish comparable or standardized research techniques, harmonize international methods to measure environmental parameters, promoting widespread and effective participation of all States in establishing such international methodologies;

(b) exchange, on a regular basis, appropriate scientific, technical and legal data, information and experience, in particular concerning the status of biological resources; and

(c) inform each other on their environmental conservation measures and endeavor to coordinate such measures.

Article 41 – Development and Transfer Of Technology

Parties shall encourage and strengthen cooperation for the development and use, as well as access to and transfer of, environmentally sound technologies on mutually agreed terms, with a view to accelerating the transition to sustainable development, in particular by establishing joint research programs and joint ventures.

Article 42 – Sharing Benefits of Biotechnology

Parties shall provide for the fair and equitable sharing of benefits arising out of biotechnologies based upon genetic resources with States, providing access to such genetic resources on mutually agreed terms.

Article 43 – Information and Knowledge

1. Parties shall facilitate the exchange of publicly available information relevant to the conservation and sustainable use of natural resources, taking into account the special needs of developing countries.

2. Parties shall require that access to indigenous knowledge be subject to the prior informed consent of the concerned communities and to specific regulations recognizing their rights to, and the appropriate economic value of, such knowledge.

Article 44 – Education, Training and Public Awareness

1. Parties shall disseminate environmental knowledge by providing to their public and, in particular, to indigenous peoples and local communities, information, educational materials, and opportunities for environmental training and education.

2. Parties shall cooperate with each other, and where appropriate with competent international and national organizations, to promote environmental education, training, capacity-building, and public awareness.

Article 45 – National Financial Resources

1. Parties undertake to provide, in accordance with their capabilities, financial support and incentives for those national activities aimed at achieving the objectives of this Covenant.

2. Parties shall pursue innovative ways of generating new public and private financial resources for sustainable development, including the use of economic instruments, regulatory fees and taxes, and reallocation of resources at present committed to military purposes.

Article 46 – International Financial Resources

1. Parties shall cooperate in establishing, maintaining, and strengthening ways and means of providing new and additional financial resources, particularly to developing countries for:

(a) environmentally sound development programs and projects;

(b) measures directed towards solving major environmental problems of global concern, and for the implementation measures of this Covenant where it would entail special or abnormal burdens, owing, in particular, to the lack of sufficient financial resources, expertise or technical capacity; and

(c) making available, under favorable conditions, the transfer of environmentally sound technologies.

2. Parties, taking into account their respective capabilities and specific national and regional developmental priorities, objectives and circumstances, shall endeavor to augment their aid programs to reach the United Nations General Assembly target of 0.7% of Gross National Product for Official Development Assistance or such other agreed figure as may be established.

3. Parties shall consider ways and means of providing relief to debtor developing countries, including by way of cancellations, rescheduling or conversion of debts to investments, provided that such relief is limited to enable the debtor developing countries to further their sustainable development.

4. Parties providing financial resources shall conduct an environmental impact assessment, in cooperation with the recipient State, for the activities to be carried out with the resources provided.

IX. RESPONSIBILITY AND LIABILITY

Article 47 – State Responsibility

Each State Party is responsible under international law for the breach of its obligations under this Covenant or of other rules of international law concerning the environment.

Article 48 – State Liability

Each State Party is liable for significant harm to the environment of other States or of areas beyond the limits of national jurisdiction, as well as for injury to persons resulting therefrom, caused by acts or omissions of its organs or by activities under its jurisdiction or control.

Article 49 – Cessation, Restitution and Compensation

1. Each State Party shall cease activities causing significant harm to the environment and shall, as far as practicable, reestablish the situation that would have existed if the harm had not occurred. Where that is not possible, the State Party of the origin of the harm shall provide compensation or other remedy for the harm. In particular, Parties shall cooperate to develop and improve means to remedy the harm, including measures for rehabilitation, restoration or reinstatement of habitats of particular conservation concern.

2. Where a State Party suffers such harm caused in part by its own negligence or that of persons under its jurisdiction or control, the extent of any redress or the level of any compensation due may be reduced to the extent that the harm is caused by negligence of that Party or persons under its jurisdiction or control.

Article 50 – Consequences of Failure to Prevent Harm

Each State Party may be held responsible for significant harm to the environment resulting from its failure to carry out the obligations of prevention contained in this Covenant, in respect to its activities or those of its nationals.

Article 51 – Exemptions

The State Party of origin of the harm shall not be responsible or liable if the harm:

- (a) is directly due to an act of armed conflict or a hostile activity where the requirements under Article 32 of this Covenant are met, except an armed conflict initiated by the State Party of origin in violation of international law;
- (b) is directly due to a natural phenomenon of an exceptional and inevitable character; or
- (c) is caused wholly by an act or omission of a third party.

Article 52 – Civil Remedies

1. Parties shall ensure the availability of effective civil remedies that provide for cessation of harmful activities as well as for compensation to victims of environmental harm irrespective of the nationality or the domicile of the victims.

2. Parties that do not provide such remedies shall ensure that compensation is paid for the damage caused by their acts or omissions or by activities of persons under their jurisdiction or control.

3. In cases of significant environmental harm, if an effective remedy is not provided in accordance with paragraph 1, the State Party of nationality of the victim shall espouse the victim's claim by presenting it to the State Party of origin of the harm. The State Party of origin shall not require the exhaustion of local remedies as a precondition for presentation of such claim.

Article 53 – Recourse under Domestic Law and Nondiscrimination

1. Each State Party of origin shall ensure that any person in another State Party who is adversely affected by transboundary environmental harm has the right of access to administrative and judicial procedures equal to that afforded nationals or residents of the State Party of origin in cases of domestic environmental harm.

2. Each State Party shall ensure that adversely affected persons have a right of recourse for violations of environmental regulations by that Party or any person or entity associated with that Party.

Article 54 – Immunity from Jurisdiction

Parties may not claim sovereign immunity in respect of proceedings instituted under this Covenant.

Article 55 – Environmental Harm in Areas Beyond National Jurisdiction

The provisions of Articles 47 to 54 may be invoked by any affected person for harm to the environment of areas beyond national jurisdiction.

X. APPLICATION AND COMPLIANCE

Article 56 – Other Treaties

Parties shall endeavor to become and remain party to treaties relating to the subject matter of this Covenant and shall implement them.

Article 57 – More Stringent Measures

1. The provisions of this Covenant shall not affect the right of Parties individually or jointly to adopt and implement more stringent measures than those required under this Covenant.

2. The provisions of this Covenant shall not prejudice any stricter obligation which Parties have entered into or may enter into under existing or future treaties.

Article 58 – Areas beyond the Limits of National Jurisdiction

In areas beyond the limits of national jurisdiction, Parties shall observe the provisions of the present Covenant to the full extent of their competence.

Article 59 – Relations with Non-Parties

Parties shall be bound by the provisions of this Covenant in their relations with non-Parties.

Article 60 – Reporting

1. Parties undertake to submit periodic reports on the measures they have adopted, progress made, and difficulties encountered in implementing their obligations under this Covenant.
2. All reports shall be submitted to the Secretary-General of the United Nations who shall transmit them to the U.N. Economic and Social Council for consideration and recommendation.

Article 61 – Compliance and Dispute Avoidance

In the framework of environmental treaties to which they are party or by other means, Parties shall maintain or promote the establishment of procedures and institutional mechanisms to assist and encourage States to comply fully with their obligations and to avoid environmental disputes. Such procedures and mechanisms should improve and strengthen reporting requirements, and be simple, transparent, and non-confrontational.

Article 62 – Settlement of Disputes

1. Parties shall settle disputes concerning the interpretation or application of this Covenant by peaceful means, such as by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or by any other peaceful means of their own choice.
2. If parties to a dispute do not reach agreement on a solution or on a dispute settlement arrangement within one year following the notification by one party to another that a dispute exists, the dispute shall, at the request of one of the parties, be submitted to either an arbitral tribunal, including the Permanent Court of Arbitration, or to judicial settlement, including by the International Court of Justice and the International Tribunal for the Law of the Sea as appropriate.

Article 63 – Review Conference

After the entry into force of this Covenant, the Depositary shall convene every five years a conference of Parties to it in order to review its implementation. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State or regional economic integration organization not party to this Covenant may be represented at the Review Conference as observers.

The International Union for Conservation of Nature and Natural Resources and the International Council of Scientific Unions may also be

represented as observers. Any nongovernmental organization accredited to the UN Economic and Social Council and qualified in matters covered by this Covenant may be represented at a session of the Review Conference as an observer in accordance with the rules of procedure the Review Conference may adopt.

XI. FINAL CLAUSES

Article 64 – Amendment

1. Any Party may propose amendments to this Covenant. The text of any such proposed amendment shall be submitted to the Depositary who shall transmit it, within six months, to all the Parties.
2. At the request of one-third of the Parties, the Depositary shall call a special conference to consider the proposed amendment. The Parties shall make every effort to reach agreement on any proposed amendment by consensus. If all efforts at reaching a consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a two-thirds majority vote of the Parties to this Covenant who are present and voting at the special conference. The adopted amendment shall be communicated by the Depositary, who shall circulate it to all Parties for ratification, acceptance or approval. For purposes of this Article “present and voting” means Parties present and casting an affirmative or negative vote.
3. Instruments of ratification, acceptance or approval in respect of an amendment shall be deposited with the Depositary. An amendment shall enter into force for those States accepting it on the ninetieth day after the date of receipt by the Depositary of an instrument of ratification, acceptance or approval by at least two-thirds of the Parties. An amendment shall enter into force for any other Party on the ninetieth day following the date on which that Party deposits its instrument of ratification, acceptance or approval of the said amendment with the Depositary.

Article 65 – Signature

1. This Covenant shall be open for signature at _____ by all States and any regional economic integration organization from _____ until _____.
2. For purposes of this Covenant, “regional economic integration organization” means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Covenant and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

Article 66 – Ratification, Acceptance or Approval

1. This Covenant shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance, or approval, shall be deposited with the Depositary.
2. Any regional economic integration organization which becomes party to this Covenant without any of its member States being party shall be bound by all the obligations under this Covenant. In the case of such organizations, one or more of whose member States is party to this Covenant, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Covenant. In such cases, the organization and the member States shall not be entitled to exercise rights under this Covenant concurrently.
3. In their instruments of ratification, acceptance or approval, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Covenant. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.

Article 67 – Accession

1. This Covenant shall be open for accession by States and by regional economic integration organizations from the date on which this Covenant is closed for signature. The instruments of accession shall be deposited with the Depositary.
2. In their instruments of accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Covenant. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.

Article 68 – Entry into Force

1. This Covenant shall enter into force on the ninetieth day after the deposit of the twenty-first instrument of ratification, acceptance, approval, or accession.
2. For each State or regional economic integration organization that ratifies, accepts, or approves, this Covenant or accedes thereto after the deposit of the twenty-first instrument of ratification, acceptance, approval, or accession, this Covenant shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval, or accession.
3. For the purposes of paragraph 1 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 69 – Reservations

No reservations may be made to this Covenant.

Article 70 – Withdrawals

1. At any time after two years from the date on which this Covenant has entered into force for a Party, that Party may withdraw from this Covenant by giving written notification to the Depositary.
2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

Article 71 – Depositary

1. The [Secretary-General of the United Nations or _____] shall be the Depositary of this Covenant.
2. In addition to its functions, the Depositary shall:
 - (a) establish a schedule for the submission, consideration, and dissemination of the periodic reports submitted under Article 60;
 - (b) report to all Parties, as well as to competent international organizations, on issues of a general nature that have arisen with respect to the implementation of this Covenant; and
 - (c) convene necessary conferences of Parties in accordance with this Covenant.

Article 72 – Authentic Texts

The original of this Covenant, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Covenant.