

Welcome to Turning Conscience Into Action, the Earth Charter podcast. Join Mirian Vilela, Earth Charter International Executive Director, in her fascinating conversations with great thinkers, scholars and activists from around the world who are working in the fields of sustainability, ethics, education and social transformation. Our purpose is to generate new insights on how to face current global challenges and inspire informed action.

So hello everyone. Thank you for joining us today for our Earth Charter podcast. And today I have the pleasure of having a conversation with Nicholas Robinson, Nick Robinson.

Thank you so much for joining us today, Nick. It's a pleasure to be here. It's a wonderful opportunity. So let me introduce you to our audience. Nick Robinson is Professor of Law on the environment and a distinguished professor of environmental law emeritus at Pace University in New York. He's the author of several books and numerous articles around environmental law. And he has developed, has been involved in developing environmental law since 1969 when I was born.

So imagine the amount of the years of experience you have. But one of the few interesting things that I thought I should bring here about you is that you were the president of the Commission on Environmental Law of the IUCN for several years. And it was around that time that IUCN adopted the Earth Charter when you were the president of that very important commission. And I didn't know that you edited the proceedings of the 92 earth summit. So that's quite interesting.

That was a big job. We published them in six books, the Travaux preparatoire for Agenda 21 and the Rio Declaration. And of course, my timing was such that when Oceana published it and later Cambridge University Press bought Oceana, it was just as the internet was beginning and so they never digitalized it. So it's the last paper publication that you cannot find online.

That's interesting. Thank you for bringing that up. So let's start by recalling if you could share with us about IUCN Commission on Environmental Law and the important role that Commission played in the drafting process in the consultation of the Earth Charter back in the decade of the 90s.

Well the IUCN, as you know, is established in 1948 as an organization both of governments, states, ministries and non-governmental organizations to promote environmental law. Well, to promote environmental stewardship. But one of their first decisions was to create a commission that would promote environmental law. It has other commissions of experts. These are not from the governments or the members, but they are individuals who serve as experts on topics such as the Species Survival Commission, which has all the experts who prepare the red data book on endangered species, and the World Parks Commission, Protected Areas Commission now, which represents all the national park systems in the world.

And the Commission on Environmental Law since the 1960s began to work on a law for the protection of nature. It wasn't enough to have good policies or a few national laws. It was time to create a whole new field of environmental law. This commission did that.

International environmental law, right?

And also comparative. We worked within countries to build up national laws. So a great deal of capacity building in different countries around the world to show how a law, for instance, on environmental impact statements or impact assessment should be adopted nationally. We worked to support the protection of parks through legal means, not just policy means and so on.

So actually the role of IUCN, the World Conservation Union, is huge in generating an impact on national law, right? Influencing.

And it has a, every four years now, it has a World Congress that meets to adopt policy. And the policy tries to look into the future as to what should the members of IUCN and the world do to advance the protection of the biosphere, the protection of Earth. And it is through that World Congress that the commission began pushing very hard for IUCN to support the framework that the Earth Charter provides and to endorse it.

So I know that in the very early stages of the Earth Charter drafting and consultation process, maybe back in 1994, 1995, there was a sort of meeting to look at the synergies of the work of IUCN, Commission on Environmental Law, and the efforts to develop the international covenant on environmental development. And the Earth Charter, and therefore to collaborate. Can you share with us a little bit of the history of what happened there?

So back in the late 70s and early 80s, IUCN promoted a conservation concept of sustainability, sustainable development. Before that, it was just let's have economic development. But if you exhaust resources, you of course undermine your development. So sustainable development was popularized and IUCN and the early days of the UN Environment Program put out a call for a stewardship of the Earth using the concept of sustainable development. That idea was promoted and taken up by the Brundtland Commission, the World Commission on Environment and Development that the UN had adopted. They endorsed sustainability in the context of future generations and conserving what we have today so that our followers who come after us will have at least as much as we have, and that should be the model.

Of course, that model hasn't worked especially well, and that's where we have then the development of an attempt in IUCN to create a soft, from soft law policy to create some hard law, some treaty law. And IUCN's Commission brought in ethicists, created a unit under Dr. Parvez Hassan, a specialist group on ethics, and they met with diplomats and legal experts to create a draft covenant on environment and development that was launched in 1985 at the UN. That draft covenant had many of the ideas in it that later would find their way into the Earth Charter.

But it was also influencing the call ultimately for a, in 1990, the General Assembly, the call for the Rio summit, the Earth Summit. And at that time, there was tremendous enthusiasm for restating soft law and policy and indeed new treaties. IUCN drafted and worked to get adopted the Convention on Biodiversity. Other states were promoting the Framework Convention on Climate Change. Out of that came also the Convention to Combat Desertification. And these treaties, plus the great instrument, Agenda 21, a blueprint for how to implement sustainability, were all adopted in 1992 in Rio.

What was not adopted was the call for an Earth Charter. And the Declaration was a traditional Declaration, very progressive and good one, on a range of principles, but it wasn't comprehensive. Some governments wanted a very short Earth Charter that would just be a pledge of allegiance to the Earth. The majority view, if you will, was that we need a synthesis of all of the ethical norms that come together into the concept of stewardship for the Earth. Not just sustainability, but respect for life and everything that flows from that.

And so the drafting began of this new instrument, a more comprehensive and elaborate Earth Charter. And luckily, that's where we are today. We have that superb document, which does provide an integration of many, many norms, perhaps a complete integration of the norms.

But during the 90s, the IUCN Commission on Environmental Law offered significant contribution to the drafting of the Earth Charter. And at the same time, you went on years of a process of developing the international covenants on environment and development. How do you think they work together? How complementary they are?

Well, one of the things that when I was chairing the Commission, I worked very closely with Stephen Rockefeller, who was essential to the draftings for the drafting of the Earth Charter and his consultations all over the world. But one of them was, as different principles were articulated, he wanted to make sure they were compatible with international law. And so we had many meetings together in New York. He and I are both in New York, so we didn't have any travel problems. But many, many meetings to go over and document how a text was either consistent with international law or there was a conflict that we needed to address the conflict so that it would be consistent. So at the end of the day, we provided Pro Bono all the legal advice to ensure the integrity of the Earth Charter as being a document that governments could accept because it was not, didn't violate any of their already adopted legal provisions of international law or national law.

We built on existing principles of international environmental law.

And made new ones, but the new ones were not inconsistent with what was already being in place. OK, what role do ethics and values normally play in the development of law and policies? Because some people say, OK, ethics and values are too abstract and don't have any peace, but we need hard law.

So what role does ethics and values play in the development and visioning, law and policies? Are they complementary? Could you share with us some thoughts on this?

Well, law takes perhaps two different forms. There is law, which is very fundamental. It comes out of human nature and our experience, as some people refer to as natural law. It comes out of the experience of the Indigenous peoples over their generations. And this is we call this customary law because it evolves out of practice and agreement to continue to share best practices or norms, values from one generation to the next, often not written down, conveyed orally, which is why we call it customary law. Now, this kind of law is fundamental. And then there's what is called positivist law, which is the law that can be adopted today by whoever makes the laws, a dictator, a president ruling by decree, a parliament adopting laws by consensus. These positivist laws are enforced then by the police.

The two can be combined. You can have an environmental norm, which will then be enforced if people violated by the courts. But the best kind of law is the law that is grounded in these ethical values, because that law persists over generations. And several beyond customary law, a long time ago, society began to develop legal frameworks to guide civilizations as they as they developed. And these ultimately have formed four large bodies of law. One is the civil law, which is the largest body of law around the world. And it emerged out of the Napoleonic code and an attempt to systematize and record the liberal values at that point in Europe, but were meant to be universal values. They include fairness and a sense of codifying how to behave with your neighbors and good neighborliness and so on.

Another is the common law, which emerged out of the practices in England and the development of the role of judges, the role of courts to ensure fairness and so on, the rules that came out of the great charters of Magna Carta in 1215 and the Forest Charter in 1217. And these were applied by the courts and wherever the colonial system spread the British tradition, the common law took hold. Later in the late 1800s, socialist law beginning in the mid 1800s and then later became a third huge body of law. And it was very predominant in the Soviet Union and in the states of the Soviet Union. And it was based on, although they took the form of civil law based on socialist norms. So ethics and norms were central to socialist law, and that is still the case in the People's Republic of China. It's still the case in Cuba and some other governments.

And then finally, we have the older body of law, which is theocratic. The most theocratic law we have today is Islamic law. And in the Islamic republics, there are in often situations no constitutions, because the Holy Quran is the constitution and Sharia law elaborates it. So there Islamic law provides an ethical religious foundation for the duty each person has, for instance, to protect nature. And you cannot corrupt nature. You are the steward of nature in Islam for your generation, and you cannot exhaust it for the next. So some of these ideas that we have in religion creep creep into environmental ethics and environmental norms rather rapidly. The same exists in certain states that have either

Buddhist framework or a Christian framework, still as their governing document and certainly Judaic law in Israel.

We can say that values and ethics normally drive new environmental or new laws, not just environmental laws, right? Yeah, the force behind the development of laws. Yeah, the ethics in these situations are the glue, if you will, that holds everything together. Right, interesting. What are your thoughts on the contributions or the relevance of the Earth Charter to current times? Because there are a lot of instruments, a lot of international environmental law developed over the last 30 to 40 years. And what is then the difference that the Earth Charter brings was the relevance of its two current times?

Well, the Earth Charter is completely relevant today because it is ahead of its time in the sense that it has very systematically thought through how to integrate the norms of these five great legal systems in a compatible way. And yes, it's found and bits of it are found in different treaties and international or regional agreements. But this last year, we had the most extraordinary development. The UN General Assembly on July 28th of 2022 adopted the human right to the environment, resolution 76 slash 300. And it was adopted through some brilliant diplomatic work of Costa Rica, both at the Human Rights Commission in Geneva and then in the General Assembly in New York. So when it came up for a vote, there were 161 states in favor and only eight abstentions. It was a unanimously adopted resolution.

And it has the provision that everyone has the right to a clean, healthy and sustainable environment. Well, what do those words mean? We have to elaborate those words. And so if we take the elaboration of the Earth Charter, all of these words can fit together. And we've fought through how they work together.

So the human right to the environment is a fundamental right. And the Earth Charter explains how you can implement the human right to the environment. It makes it completely relevant. And it should guide the development of new national laws to recognize the human right to the environment. We have a tremendous body of what's called environmental justice issues around the world so that people are not discriminated against when the environment is being protected. You have to have fairness to people and nature. And of course, that's in the Earth Charter, in the social and economic provisions of the Earth Charter.

So I think it's quite relevant. And it's going to become even more relevant because the young people of the South Pacific, largely motivating their governments in the small island states of the Pacific, have succeeded in asking the General Assembly to request an advisory opinion of the International Court of Justice in The Hague about what are the duties of states today with respect to climate change. And of course, if you try to elaborate those duties in practical ways, you come back to all the issues that are in the Earth Charter.

As we are around coming to a time that we need to make more, more and more visible the duties and responsibilities of the well-being in a healthy environment for current and future generations, right? So let's talk a little bit about soft law, hard law. If you could clarify to us what is a soft law instrument and how does that relate to a hard law instrument? And if you think the Earth Charter can be used as a soft law instrument or if it can be called a soft law, someone, Dr. Fabriz from Venezuela did her PhD some years ago with an argument about the Earth Charter as a sweet generous instrument. Can you share with us what would be your reflections on this? What soft law with regards to hard law and where is the Earth Charter in that?

Well, in international law, there are a series of sources of law. One of them are the treaties and the written agreements between governments. Another are the general principles of law that governments acknowledge exist. So when we talk about the human right to the environment, it existed before the General Assembly adopted the resolution 76/300. The resolution appears to be a soft law instrument because it's just a policy declaration. General Assembly recognizes that there is a right to the environment. But if you go back to the beginnings of that recognition of that right, mostly in religions, the right predates any written agreement, predates any declaration of policy. And when Justice Hilario, Davidi, Jr., and the Supreme Court of the Philippines issued the decision in *oposa versus facturon* back in the 90s, he said, this right to life predates all modern societies.

It is a human instinct to want to respect life and to have the right to life. But when we say the right to the environment, it's really talking about the right to life and the right of all species to have a life that is full of integrity and well being. Now, these fundamental principles get translated into treaties when governments agree to say in the preamble of the treaty, they say, well, recognizing people have these rights. Now, here's how we're going to implement them for, say, biodiversity. Or here's how we're going to implement them for the framework convention on climate change. Or here's how we're going to implement them for the convention on the international trade in endangered species, which bans the trade in endangered species.

So the hard law are rules that states agree to. And then they must adopt these hard law principles in the national law. Once it's adopted in the national law, then the national courts and the national police forces, the park rangers, the forest rangers enforce the law. So it's a cascading, if you will, of obligations and duties that flow from first the fundamental principle and then the policy declaration of that principle, and then the turning it into hard rules.

The thing I love about the Earth Charter is that it has already given us the more specific norms that should become the hard rules. So when it says, for instance, that this is a result of the adoption of human right to the environment, it says in principle six that the burden of proof on those who say their action is not going to be harmed, they should have the burden to show that they're not harming the environment. But once the

declaration of human rights made it clear that states have a duty under as a fundamental human right not to harm the environment, that shifted the burden of proof.

So whenever you or I or any of our listeners say I'm being poisoned, I'm being polluted, then it's the obligation of the government or the private enterprise who's ever doing it to show that they are not poisoning you. You don't have to prove it. You have a human right to be, have this biological integrity, clean and healthy environment. So we've seen just in this one decision a part of the recommendations, if you will, or the policies, the norms in the Earth Charter actually implemented. Now the next step is governments and courts will have to apply it. So it doesn't happen automatically. We have to then argue that it needs to be put into into of course an effect.

So we can say that the Earth Charter is a soft law instrument.

It has the form in some places of a soft law instrument. So when UNESCO or IUCN endorsed the Earth Charter, for them it's binding and they said we're going to use it. But it's a recommendation or a policy for everyone else. However, insofar as the Earth Charter reflects fundamental principles, if you look at the different treaties that have adopted many of those principles, it's already in place.

So I think the problem is many people say a soft law is just policy and until you make it hard law it's not binding and therefore you can ignore it. I disagree with that. The soft law is just a form by which countries or governments, international organizations choose to make a statement about what's in that soft law instrument. But if you were to say I am passing a resolution that says you know I'm against murder and murder should be a crime, murder is a crime. The fact that there's a norm in religion that says thou shalt not kill, that's not based on the policy declaration. That precedes the policy declaration. It's the basis for the policy declaration.

You mentioned about IUCN, the World Conservation Union, adopting a resolution on the Earth Charter. So that was back in 2004 when IUCN adopted the resolution on the Earth Charter. What does that mean for IUCN, for the Earth Charter, for the members of IUCN?

Well, it's now the policy that IUCN should conduct its affairs with reference to the principles in the Earth Charter. So it's binding for IUCN as internal policy. Now someone has to then use it for that purpose. And so in the case of some of the commissions of IUCN like the law commission or the cease, they're arguing that certain decisions that IUCN takes should be guided by the Earth Charter. For the members and for everyone outside of IUCN, it is a recommendation that these are very important principles that you should study and follow, but it's not binding on them to follow it. Great.

Okay, so you worked together with many other members of the IUCN Commission on Environmental Law back in the 90s on the International Covenant on Environment and Development. Can you share with our audience what is that, what's the purpose of that, ways that add in, what's the relationship between that and the Earth Charter?

So the attempt in drafting the Covenant on Environment Development and also a commentary, a very detailed legal commentary on each part of the Covenant was to implement in hard law, to demonstrate what hard law could look like if we implemented all of the provisions of sustainable development. When in 2015 the General Assembly adopted the Sustainable Development Goals, they're not as comprehensive as either the Earth Charter or the Covenant on Environment Development. They're a progressive step toward that, but in 2030 we're probably not going to attain all the Sustainable Development Goals. So we'll be asking the question, why did we fall short and what more should we do?

The government of France at the request of a group of legal jurists, the Clube du Juriste in Paris, had proposed a development of a pactt on the environment because they saw how weak the Paris Agreement and the climate change agreements were in stopping the destruction of the atmosphere. And so governments were not ready to adopt that. There was a huge debate in the General Assembly and the UN Environment Assembly and there was a retreat from codifying the principles into a pactt. The pactt however still, and these principles still get referred to and supported as a soft law recommendation. And that's what the Covenant on Environment Development is. It's a soft law recommendation and they're looking for ways in which governments will implement them in treaties and it's happening.

A number of regional treaties have adopted parts of it, but the most fundamental shift was when the human right to the environment was proclaimed because the nice thing about this is that every other human right depends upon the human right for the environment. It is the foundation for the entire system of human rights.

For a clean environment. Human right for a clean environment. Well, the reason it was not included in 1948 when the Universal Declaration of Human Rights was drafted was that no one thought we could destroy the biosphere then. There were some scientists and environmentalists did, early conservationists, but the political realm, the governments thought the earth would always be here. It would care for us. We have a cornucopia of great resources and we'll always get what we want from the planet. And gradually they've come to realize that that's a false perception and that we are putting ourselves, our children, and other species of flora and fauna at risk. We're disrupting the home that we all live in. We need to have better practices.

So those who develop all of us who develop the Earth Charter, collectively, we're trying to create that framework in which we can step into a holistic approach to managing ourselves and nature.

You just mentioned about the global pact for environment as an initiative from the French government. There were some efforts developed there. Can you share where is it now? Where that it's at processes and what's next?



A series of resolutions were adopted by the General Assembly requiring further study of whether we need the pact and what the pact should look like. And ultimately there was a meeting in Nairobi, two meetings in Nairobi. There was then a series of debates in the General Assembly. And so the General Assembly, the majority of governments, have agreed that it's something that can be studied, but it will not move forward as a proposal for adoption. However, the ideas in the pact, the draft pact, are still alive, just like the ideas in the draft Covenant on Environment and Development.

And if you compare those principles to the principles in the Earth Charter, you'll find that they are largely congruent. The Earth Charter basically reflects what governments were trying to do and IUCN was trying to do and the Club du Joris was advancing. So it wasn't and it was very educational. There was a tremendous debate, lots of back and forth around the world about this. But we need to have this more holistic approach and it has to be something which is adopted by common consensus really. The one thing that was so extraordinary about the development of the Earth Charter was the consultation process in which people all over the world, every region would have meetings to debate the Earth Charter.

What should it say? How does it mean? So it was tested out in all of the regions. It was tested out in all of the religions. The reason it's compatible with all the world's religions is that religious leaders were consulted in the drafting of the Earth Charter. So the Earth Charter has a huge consensus behind it and reflects the customary respect for nature which is part of human nature.

So over the past 30 or 40 years, a lot of things happened around international environmental law, environmental treaties, there's an evolving process there. Now we have people talking about earth laws. Could you share with us what should we aspire to in that field and what do you think are the drivers or roadblocks to move on to the next stage of that?

I think around the world today there's a great anxiety about what we have done to nature and we didn't mean to do it. It's just happening. So when the boreal forest across all of North America is burning, the boreal forest across Siberia is burning and no one can put the fires out.

And because the fire goes into the tundra and there isn't enough snow falling and rain to put it out of the tundra, the fires that are burning this year will burn again next year because they never were extinguished. And this then has a big effect on migratory species. It has a big effect on the resident habitats and animals and plants.

We have the same problem with the oceans. We now have huge heat waves under the oceans, the so-called blobs of heat, and they get so hot they kill all of the marine life as they move around just like the heat waves in the city will kill older people and children and young infants who don't have protection from the extreme heat. And then we have the floods and then we have the droughts and we are disrupting the natural systems of

the planet and it's not happening in somebody else's backyard. It's happening everywhere. So we're all at risk and this is motivating a tremendous interest in what are we going to do about it. This is why we have the declaration of the UN on the right to the environment.

This is why we have a request for the International Court of Justice to tell the governments what they should be doing about the climate. And at the end of the day, we need the Earth Charter. The Earth Charter provides us with that framework. So I think we can't just say to people, oh, it's so bad what's happening to the planet. We can say what's happening to the planet is terrible, but here's the pathway forward.

Here's the way for us to not let this continue. Here's a way for us to move the Sustainable Development Goals into practice, not just preaching. And this will mean change. And the change is not all bad. The change can help us to live better with each other and live better with nature.

Well, thank you so much. We are coming to the last question of our conversation today. And it's going to be around ecological civilization. A number of people are talking about ecological civilization or civilizations, in the fact that we need to move towards building or contributing to the building of an ecological civilization. How do you define ecological civilization? And what are the key ingredients or elements you think needs to be in place for an ecological civilization?

Well, if you remember, when I was talking about the five systems of law, one of them is socialist law. And the socialist law involves in China today, what people remember as Marxist, Leninist, and then Maoist law as a way of creating a society that will help all people beyond industrialization. And the pollution of the industrialization era needs to be ended.

And in the socialist regime, this means also ending the capitalist approach to these things. Well, so in China, they saw young people, members of the Communist Party, academics, teachers. They saw that the period after Lenin, Marxism, Maoism hasn't stopped pollution. The pollution has gotten worse in China. So the ideologues began to say, what is the next state of societal development beyond industrial pollution? And they came up with the idea of ecological civilization, that we must replace the corruption of nature, the dispoilation of nature by pollution, the over extraction of minerals and water and plants like trees. We must replace this practice with one that supports in the first place ecological integrity.

So you won't have people unless you have ecological integrity, you won't have their economy if they don't continue to produce good, healthy things, ecological integrity. And the next thing out of ecological civilization is you have to have health. People have to be, you have to eat enough good food and they have to not breathe polluted air, have not have contaminated water. And so that provision, healthiness, has to be a part of this and it's health for both people and the planet. So it's the two combined. And then the question becomes, well, how shall we implement it? How shall we make ecological

civilization an important dominant policy in our society? And this is the debate China is having now. I will be having this debate with a number of scholars in the next few weeks. We've been having it for some time.

I went to a conference in Hainan just on ecological civilization. I published a couple of papers on it. And my last contribution was to say, look, ecological civilization has to happen tomorrow. If you wait too much longer, we will have too much destruction. So we have to learn how to make an abrupt change and abrupt end to pollution, and not a gradual end. So one of the problems of socialism is people thought it could happen over generations and gradually we'd get there. Well, we're now at a different time at a different place. And the big test for ecological civilization is how can it be put into effect at once or within a very short period of time?

Very well. Well, so we envision ecological civilization. For that, we need to ensure healthy people, to ensure healthy people. We need to ensure a healthy environment and ecological integrity. But envision this as a holistic or integrated approach to health and the human nature relationship, right?

Yes. And a number of places people aren't content to say this is your right, your birthright. They're arguing that there should be recognized in international law the crime of ecocide, so that if you take away that right to people, and to nature, you have created a new crime, like a crime against humanity, or a new crime, war crime, and so on. It's a crime against what people in nature need together.

Several countries have adopted ecocide in their constitutions, but they haven't implemented it yet. Now the question is, will we see out of the UN tribunal in the court in Rome, the International Criminal Court, will we see the beginning of a crime of ecocide in international law? And will we see the crime of ecocide appear in national law, so that we begin to create literally hard law to stop the destruction of our civilization?

Well, we came to an end for our conversation today, Professor Robinson, Nick, thank you so much for not only for this wonderful conversation, but also the decades of hard work, how much you have influenced in this field of international environmental law. Thank you so much.