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The Legitimacy of the Earth Charter
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The Earth Charter was launched by the Earth Charter Commission in 2000, and the influence of the document as an ethical framework for a sustainable way of life in the 21st century continues to grow. There are at least four interrelated factors that give the Earth Charter its legitimacy and authority as a declaration of guiding ethical principles:

- the long history of the idea that eventually led to the creation of the Earth Charter in the 1990s;
- the nature and scope of the consultation and drafting process that generated the Earth Charter;
- the solid grounding of the Earth Charter in international law; and
- the recognition, endorsement, and use of the Earth Charter by a large number of international, national, and local organizations, including some state and local governments.

Following consideration of these four factors, this essay concludes with some reflections on the status of the Earth Charter as a soft law document.

I. History of the Earth Charter Idea

The idea of creating a document like the Earth Charter has a long history, stretching back almost sixty years. The larger context for this story is the international effort that began after World War II to identify the shared values and to create the

international law and institutions needed to promote cooperation, human development, and peace among all peoples and nations. The drafting of the Charter of the United Nations and the Universal Declaration of Human Rights created the foundation for this ongoing endeavor.

The history of the proposal to create an Earth Charter begins in 1948 with the founding of IUCN, the International Union for the Conservation of Nature, which was initially called the International Union for the Protection of Nature. At the Fontainebleau Conference that formally constituted IUCN, the proposal was made to draft a World Convention for the Protection of Nature. Four years later in 1952, an IUCN General Assembly recast the project as “a World Charter inspired by the Universal Declaration of the Rights of Man.” Over the following two decades IUCN had other priorities, and the drafting of a world charter for the protection of nature remained an unrealized goal.¹

However, in 1961 the World Wildlife Fund (WWF) was created with the active support of IUCN, and at the founding a World Wildlife Charter was drafted and adopted. The Charter includes a call “to prevent any further extermination of wildlife,” “to encourage children to develop a love and understanding of wildlife,” and “to make certain that all . . . recognize their responsibility to wildlife.” IUCN proposed to secure United Nations endorsement for the World Wildlife Charter.²

After the UN Stockholm Conference on the Human Environment (1972), which put environmental protection on the UN agenda together with human rights, socio-economic development and peace, the time was right for IUCN to return to the idea of creating a world charter for the protection of nature. Consequently, in the mid 1970s IUCN and the Environmental Law Center in Bonn set about drafting the document that

came to be known as the World Charter for Nature. Following intergovernmental negotiations, it was adopted by the UN General Assembly in 1982. The World Charter for Nature is a landmark document in international environmental law. It is the first international law document to recognize respect for nature as the foundational principle of environmental ethics and the conservation of nature and to acknowledge that all life forms should be given moral consideration regardless of whatever value they may have for people.³ During the same period when IUCN was working on the World Charter for Nature, IUCN was also designing in collaboration with the United Nations Environment Programme (UNEP) and WWF the World Conservation Strategy, which was issued in 1980. The two documents complement each other. The World Conservation Strategy reflects an effort to integrate the concerns and goals of conservation and development. It supports the new concept of sustainable development and calls for “a new ethic, embracing plants and animals as well as people” that includes respect for “the needs and aspirations of future generations.”⁴

Governments seemed to quickly forget the World Charter for Nature. Part of the difficulty was that it had been drafted before the concept of sustainable development was fully conceptualized and promoted by the World Commission on Environment and Development chaired by Gro Harlem Brundtland. In its report, *Our Common Future* (1987), the Commission emphasized that achieving sustainable development requires a new ethical consciousness involving a heightened sense of intergenerational responsibility and a commitment to address issues of poverty and economic inequity as well as environmental degradation. The Brundtland Commission report reflects a growing realization that humanity’s environmental, economic, and social challenges are

interrelated and require inclusive, integrated problem-solving, an idea that would influence the eventual construction of the Earth Charter.

Reflecting a major theme in the World Charter for Nature, *Our Common Future* recognizes in one brief passage that humanity has “moral obligations to other living beings,” but the report does not explicitly reference the World Charter for Nature.⁵ In addition, it calls for creation of a “Universal Declaration...on Environmental Protection and Sustainable Development” in the form of a “new charter” that would “consolidate and extend relevant legal principles.” This charter “should prescribe new norms for state and interstate behavior needed to maintain livelihoods and life on our planet.” The Commission also expressed the hope that the new charter would eventually be expanded into an international convention.⁶ By describing the proposed new charter as a Universal Declaration, the Brundtland Commission indicates that they have in mind a document that would address fundamental challenges facing all peoples and complement the Universal Declaration of Human Rights.

Following publication of *Our Common Future*, IUCN, UNEP and WWF set about revising and updating their World Conservation Strategy. The second World Conservation Strategy appeared in 1991 in a report entitled *Caring for the Earth: A Strategy for Sustainable Living*.⁷ The authors of *Caring for the Earth* recognize “the need for a world ethic of sustainability” and support the Brundtland Commission’s call for the incorporation of this world ethic in “a Universal Declaration and Convention on Sustainable Development.”⁸ As part of an effort to identify elements of a new world ethic for living sustainably, they based the World Conservation Strategy on nine fundamental ethical principles, the first of which is “Respect and care for the community of life.”⁹ The

ethical vision in *Caring for the Earth* builds on the World Charter for Nature and *Our Common Future* as well as the first World Conservation Strategy and is an important link in the chain of events leading to creation of the Earth Charter.

Convinced of the urgent need for a Universal Declaration or charter along the lines proposed by the Brundtland Commission, Maurice Strong, the secretary general of the 1992 Rio Earth Summit (The United Nations Conference on Environment and Development – UNCED), endeavored to persuade the governments participating in the Summit to draft an Earth Charter. The introduction of the name “Earth” in the title of the proposed new charter reflects the focus of scientists in the 1980s on Earth’s biosphere as one great, self-regulating, ecosystem in which all the parts, including humanity, are interconnected.

During the preparatory process for the Rio Earth Summit, a number of governments and non-governmental organizations submitted proposals for the Earth Charter. However, differences between governments from the North and South and a lack of support from many governments led to abandonment of the project. The Rio Declaration was issued by the Summit in the place of an Earth Charter. It calls for a “global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem,” and its principles provide much sound guidance for the transition to a sustainable future. However, its ethical vision is limited by a failure to recognize the principle of respect for nature and to affirm that all life forms are worthy of moral consideration.

The drafting of the Earth Charter in the years following the Rio Earth Summit fulfilled aspirations that have been nurtured for many decades and built on the ethical

vision and intellectual work of earlier generations. This continuity with the past contributes to the legitimacy and ethical authority of the document today.

II. The Earth Charter Process

A second source of the authority of the Earth Charter is the process that generated the document. Following the Rio Earth Summit, Maurice Strong created the Earth Council to promote the Summit's action agenda and to pursue some of the unfinished business of the Summit, including the drafting of the Earth Charter. With the active support of Jim McNeill, the secretary general of the Brundtland Commission, Ruud Lubbers, the prime minister of the Netherlands, and Queen Beatrix of the Netherlands, Maurice Strong and the Earth Council formed a partnership with Mikhail Gorbachev in his capacity of president of Green Cross International to launch a new Earth Charter initiative in 1994. The Dutch Government provided the initial financial support, but the initiative was organized as a civil society undertaking with a secretariat at the Earth Council, which was based in Costa Rica.

The drafting of the Earth Charter involved the most inclusive, participatory and transparent process ever associated with the creation of an international declaration. If one includes the consultations with governments and NGO's during the preparatory process for the Rio Earth Summit, the Earth Charter process involved a world-wide, cross-cultural dialogue on common goals and shared values that extended over a decade. The goal for the initiative following the Rio Earth Summit was to identify and articulate the consensus on ethical values for a sustainable way of life taking form in the emerging global civil society. Hundreds of organizations and many thousands of individuals from around the world were involved. Experts in international law, science, philosophy,

religion, and ethics and grass roots community leaders all participated. Forty-five national Earth Charter committees were formed and major regional conferences were held in Asia, Africa, Europe, and North and South America. An extensive Earth Charter dialogue took place on the Internet. Over 200 NGO declarations and peoples treaties were carefully studied.

Early in 1997, an Earth Charter Commission with 23 distinguished leaders representing the major regions of the world and diverse cultural perspectives was formed to oversee the actual drafting. The Commission, which was co-chaired by Strong and Gorbachev, gave the Initiative the international leadership and support that it needed to proceed affectively as a global undertaking. An international drafting committee managed the drafting process. The Commission released two official “Benchmark” drafts for public comment in 1997 and 1999. The final text was issued by the Commission in March 2000 following a meeting at the UNESCO headquarters in Paris. The Earth Charter was formally launched several months later at an international gathering at the Peace Palace in The Hague with Queen Beatrix in attendance.

Parvez Hassan, who chaired the IUCN Commission on Environmental Law from 1990-1996, describes the “unshakeable legitimacy” of the Earth Charter as follows.

The Earth Charter is on course to become one of the most inspirational documents of this century, joining ranks with the Universal Declaration of Human Rights of the past century . . . As an ethical lode star and motivational tool, the Earth Charter succeeds magnificently across many dimensions. By integrating ecological concerns with mankind’s historic quest for social justice, democracy, and peace, it creates a successful environmental ethic which will resonate well

beyond the constituency of environmental activists. Having gone through the most participatory consultation process of any document in history, its call for global responsibility has an unshakeable legitimacy.¹⁰

III. The Earth Charter and International Law

A third source of the Earth Charter's legitimacy is its relation to international law. The document builds on and extends international environmental and sustainable development law and reflects the findings of the seven United Nations summit meetings held during the 1990s on the environment, human rights, population, women, children, social development, and the urban habitat.

Early in the consultation and drafting process, an in-depth study of international law principles relevant to the Earth Charter, *Principles of Environmental Conservation and Sustainable Development: Summary and Survey* (1996), was completed and widely circulated as a resource in the consultation process.¹¹ Soft law documents such as the Stockholm Declaration, World Charter for Nature, Rio Declaration, and Agenda 21 and hard law treaties like the Convention on International Trade in Endangered Species (CITES) and the Biodiversity Convention were carefully analyzed by the drafting committee as principles were formulated. Parvez Hassan and Nick Robinson, who succeeded Parvez Hassan as chair of the IUCN Commission on Environmental Law in 1996, both served as members of the drafting committee, and they organized a special conference on Earth Charter principles with international law experts.¹²

The Brundtland Commission had recommended that the principles in the proposed new charter be expanded to form a new international convention. Even though the Rio Earth Summit failed to draft the Earth Charter, the IUCN Commission on

Environmental Law set about drafting the proposed new hard law convention. It was given the title: IUCN Draft International Covenant on Environment and Development. As stated in the Preamble, the purpose of this Draft International Covenant is to create “an integrated legal framework” for “existing and future international and national policies and laws on environment and development.” The Draft International Covenant contains an especially valuable consolidation and synthesis of all existing international environmental and sustainable development law. The principles in the Draft International Covenant are based upon ten fundamental ethical principles cited at the beginning. The completed document was presented at the United Nations in 1995 and the text has been updated at least twice since then in the light of consultations with governments. However, governments have not yet been prepared to begin formal negotiations on the document. Nevertheless, it stands as a masterful synthesis of international law principles, and it was an invaluable resource and guide for the Earth Charter drafting committee.

Since the Earth Charter is a civil society declaration and not an intergovernmental document, it is not written in the formal style commonly used in international law texts. In addition, it goes beyond existing international law in various ways in an effort to clarify and strengthen principles. However, the principles of the Earth Charter are solidly grounded in international law declarations and treaties. A commentary on the Earth Charter is being prepared that identifies the sources for each principle, and it cites those international law principles on which each builds.¹³ The close connection with international law buttresses the claim that the Earth Charter articulates an emerging world-wide consensus on shared values, and it contributes significantly to the authority of the document as an ethical framework for sustainable living globally.

IV. Endorsement and Use of the Earth Charter

The fourth source of the authority of the Earth Charter is its recognition, endorsement and use by international and national organizations. Over 4,600 organizations have endorsed the Earth Charter, and these organizations, some of which are governmental, represent the interests of hundreds of millions of people. Some examples are the following:

- The Millennium NGO Forum, which included over 1,000 NGOs, meeting in 2000 before the Millennium UN General Assembly session, endorsed the Earth Charter and recommended its adoption by the UN.
- The International Council of Local Environmental Initiatives (ICLEI), a network of over 400 cities and towns from around the world, endorsed the Earth Charter in 2000 at its 10th anniversary World Congress of Local Governments and later incorporated the Earth Charter into its constitution. The following year the US Conference of Mayors endorsed the Earth Charter.¹⁴
- The Russian Association of Indigenous Peoples of the North and the Inuit Circumpolar Conference endorsed the Earth Charter in 2000.
- The International Council for Science, the Science Council of Asia, the African Academy of Sciences, the Third World Academy of Science, the United Nations University in Tokyo, and the World Federation of Engineering Organizations all signed the Ubuntu Declaration on Education and Science and Technology for Sustainable Development in 2002, endorsing the Earth Charter.

- In 2003 the UNESCO General Conference of Member States endorsed the Earth Charter as “an important ethical framework for sustainable development.” UNESCO has also entered into a strategic partnership with Earth Charter International in support of the UN Decade of Education for Sustainable Development.
- In 2004 IUCN endorsed the Earth Charter at its World Conservation Congress in Bangkok as “an ethical guide for IUCN policy.” IUCN’s members include 77 state governments as well as over 800 NGOs and they come from 140 different countries.

A major effort was made by Earth Charter Commissioners, the Earth Charter Secretariat and many Earth Charter supporters to secure recognition of the document in 2002 at the World Summit on Sustainable Development (WSSD) in Johannesburg, South Africa. Maurice Strong presented a copy of the Earth Charter to South Africa’s President, Thabo Mbeki, at a formal ceremony prior to the Summit, and President Mbeki cited the Earth Charter in his opening address at the Summit. Up until the last day of the Summit the draft of the Johannesburg Declaration on Sustainable Development contained an explicit reference to the Earth Charter, but in the course of the final round of intergovernmental negotiations the reference was deleted.¹⁵ Nevertheless, the Johannesburg Declaration does state in paragraph six:

. . . we declare, through the Plan of Implementation of the World Summit on Sustainable Development and the present Declaration, our responsibility to one another, to the greater community of life and to our children.

These words are almost identical to the conclusion of the first paragraph in the Earth Charter Preamble, which summarizes the Earth Charter's three-fold inclusive ethical vision. The Preamble states: "...it is imperative that we, the peoples of Earth, declare our responsibility to one another, to the greater community of life and to future generations."

As noted earlier, this ethical vision is not something utterly novel. It has been taking form in the minds of men and women around the world during the concluding decades of the 20th century as environmental ethics has become a serious philosophical and theological discipline and the concept of sustainable development has emerged as a new big organizing idea. For example, in the Foreword to a publication introducing IUCN's 1980 World Conservation Strategy, Indira Gandhi writes:

Our ancients believed in the unity of all living things, and even of life and non-life. We must rediscover this sense of identity with and responsibility for fellow humans, other species and future generations.¹⁶

Indira Gandhi understood the pressing need for the inclusive vision that was elaborated in the Earth Charter twenty years later and that is affirmed by the WSSD in the Johannesburg Declaration.

The endorsements and recognition that the Earth Charter has received together with its use today by a number of state ministries of education and environment and by many civil society organizations, including schools, universities and religious communities, all add to the growing authority of the Earth Charter as an ethical framework for building a just, sustainable and peaceful world.

V. The Earth Charter as a Soft Law Document

It is instructive to conclude with some reflections on the status of the Earth Charter as a soft law document. Soft law documents like the Universal Declaration of Human Rights, the World Charter for Nature, and Agenda 21 are considered to be morally, but not legally, binding on those nations that endorse them. However, there has been a general tendency for the principles in soft law documents to be incorporated over time in hard law in the form of conventions and covenants. The classic example is the evolution of human rights law. When nations ratify a convention or covenant, they are obligated to incorporate its principles in their national legal system.

The most direct way for a declaration to gain soft law status in the international community is for the United Nations General Assembly to adopt a resolution endorsing or recognizing the document. Recognition of the Earth Charter by the UN has always been a goal of the Earth Charter Commission and fundamental to its strategy for implementation of the Earth Charter principles. One might call it the international law implementation strategy. Since the UN has never formally adopted or endorsed a document that it did not write, the Earth Charter Initiative has focused on securing recognition and not formal adoption by the UN.

If recognition of the Earth Charter as a soft law document is secured, it would greatly increase the possibility that its principles would eventually become binding legal obligations through incorporation in a hard law treaty. The Earth Charter envisions this possibility in its concluding section “The Way Forward,” which calls for “the implementation of Earth Charter principles with an international legally binding instrument on environment and development.” It has been the hope of the IUCN

Commission on Environmental Law and of many Earth Charter supporters that recognition of the Earth Charter by the UN would encourage formal intergovernmental negotiations on the IUCN Draft International Covenant on Environment and Development to begin.

Nick Robinson, who heads the IUCN Academy of Environmental Law and teaches environmental and sustainable development law at the Pace University and Yale University Law Schools, explains that “the Earth Charter’s endorsement by UNESCO and IUCN begins to accord it soft law status,” because in both cases these endorsements “reflect the first step that states have taken to accept the norms in the Earth Charter.”¹⁷ Robinson adds that some of the norms in the Earth Charter have already been accorded a soft law status through adoption by the United Nations of declarations like the World Charter for Nature. These norms are simply reaffirmed or elaborated in the Earth Charter. A prime example is the principle of respect for nature, which is the first principle in the World Charter for Nature and which is reaffirmed in the Earth Charter and later reaffirmed by the UN General Assembly in its Millennium Declaration. Robinson also points out that a document can acquire soft law status when a number of legal scholars and other authorities accept it as having this standing in law review articles and books. In this regard, some legal scholars like Robinson now teach the Earth Charter as soft law.¹⁸

Klaus Bosselmann, a co-founder of the Green Party in Germany and currently director of the New Zealand Center for Environmental Law at the University of Auckland, argues that “the Earth Charter qualifies as a founding document for global law” or transnational as opposed to international law. He explains that if the Earth

Charter were to be recognized “as global civil society’s first and foremost founding document,” this would establish its soft law status.¹⁹

International law is only one way to achieve implementation of Earth Charter principles. Furthermore, the hopes that many leaders of the environmental and sustainable development movement have had regarding the capacity of international law agreements to generate major change have not been fulfilled. Ensuring compliance and instituting enforcement regimens has been a very difficult challenge. There are, of course, other routes to achieving implementation that involve working directly with governments, businesses and civil society organizations. Education is of fundamental importance. In addition, the more businesses, governments and NGOs endorse and use the Earth Charter, the greater is its claim to be an authoritative ethical framework for sustainable living and to warrant recognition by the United Nations.

Shared values and global ethics have become essential to humanity’s survival and the flourishing of civilization in our interdependent world. The history, consultation and drafting process, foundation in international law, and endorsement and use of the Earth Charter all contribute to its legitimacy as a global ethical framework for building a just, sustainable and peaceful world. Its ethical authority and standing as a soft law instrument continue to evolve. There is a growing recognition that the Earth Charter complements the Universal Declaration of Human Rights, providing, for example, a broader, integrated ethical framework that clarifies the interrelationship between human rights and human responsibilities and between human rights and sustainable development.

¹ Martin Holdgate, *The Green Web: A Union for World Conservation* (London: Earthscan Publications Ltd., 1999), pp. 36, 41, and 148.

² *Ibid.* pp. 83-84, 148.

³ The Preamble of the World Charter for Nature asserts: “Every form of life is unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognition, man must be guided by a moral code of action.” The First Principle of the World Charter for Nature states: “Nature shall be respected and its essential processes shall not be impaired.”

⁴ *World Conservation Strategy: Living Resource Conservation for Sustainable Development*, prepared by the International Union for the Conservation of Nature and Natural Resources (IUCN), the United Nations Environment Programme (UNEP) and the World Wildlife Fund (WWF), 1980. See also *The Green Web*, pp. 149-155.

⁵ *Our Common Future*, Report of the World Commission on Environment and Development (New York: Oxford University Press, 1987), p. 57.

⁶ *Ibid.*, pp. 332-333.

⁷ IUCN, UNEP, WWF (Gland, Switzerland, 1991).

⁸ Robert Prescott-Allen, “Caring for the World,” in Steven C. Rockefeller and John Elder, eds., *Spirit and Nature: Why the Environment is a Religious Issue* (Boston: Beacon Press, 1992), pp. 136-137. Robert Prescott-Allen was the chief drafter of *Caring for the Earth*. He presented the second World Conservation Strategy in an address “Caring for the World” at a symposium on “Spirit and Nature” held at Middlebury College in the United States in 1991 and that address is the source of the cited essay.

⁹ *Caring for the Earth*, pp. 8-10, 14. In connection with preparing the Second World Conservation Strategy, IUCN created an Ethics Working Group chaired by Professor J. Ronald Engel to design the ethic for sustainable living presented in *Caring for the Earth*.

¹⁰ Peter Blaze Corcoran, Mirian Vilela, and Alide Roerink, eds., *The Earth Charter in Action: Toward a Sustainable World* (Amsterdam: KIT Publishers, 2005), pp. 29-30.

¹¹ The *Summary and Survey* was prepared for the Earth Council and Earth Charter Secretariat by Professor Steven C. Rockefeller. The findings of the *Summary and Survey* are based on a study of thirty-six declarations and treaties and a number of related international reports and studies.

¹² Prepared for the Earth Charter Project by Steven C. Rockefeller.

¹³ Steven C. Rockefeller and Johannah Bernstein are preparing the Commentary on the Earth Charter.

¹⁴ ICLEI has adopted a new title for its organization: ICLEI-Local Governments for Sustainability.

¹⁵ Following the Summit, a UN official reported to Maurice Strong that it was the US delegation that forced deletion of the reference to the Earth Charter in the Johannesburg Declaration.

¹⁶ *An Introduction to the World Conservation Strategy* prepared for IUCN by its Commission on Education, p. 3.

¹⁷ Letter Nick Robinson to Steven C. Rockefeller, 1 February 2007. SCR private papers.

¹⁸ Ibid. Robinson also notes that if two or more states were to adopt the Earth Charter as a basic set of principles governing their relations and were to adopt legislation implementing these principles domestically, this would begin to move the Earth Charter beyond soft law to hard law status.

¹⁹ *The Earth Charter in Action*, p. 171-173.