

# The Benchmark Draft of the Earth Charter: International Environmental Law at the Grassroots

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On March 18, 1997, the *Benchmark Draft of the Earth Charter*<sup>1</sup> was approved at the United Nations Conference on Environment and Development (Rio+5 Forum). The Earth Council<sup>2</sup> submitted the *Benchmark Draft* after a lengthy consultative process which included contributions from not only national representatives but nongovernmental organizations (NGOs) and ideas drawn from some forty-six different “peoples’ treaties.”<sup>3</sup> The intent of the *Benchmark Draft*—and the hope of the Earth Council and the draft’s contributors—is that the draft will serve as a universal declaration of the environmental standards required for sustainability.<sup>4</sup>

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1. The *Earth Charter* is a type of global treaty that establishes principles to guide the nations of the world toward environmental conservation and sustainable living. See BOSTON RESEARCH CENTER FOR THE 21ST CENTURY, Newsletter No. 8, Spring 1997, at EC-1.

2. Headquartered in Costa Rica, the “Earth Council” is a nongovernmental organization made up of twenty-one “prominent political, business, scientific, and nongovernmental leaders.” David A. Wirth, *The Rio Declaration on Environment and Development: Two Steps Forward and One Back, or Vice Versa?*, 29 GA. L. REV. 599, 604 n.15 (1995). Nongovernmental organizations (NGOs) represent a vast spectrum of interests and concerns, and have been defined as “private, non-state, voluntary organization[s] engaged in ‘non-profit’ activities.” Kal Raustiala, *The “Participatory Revolution” in International Environmental Law*, 21 HARV. ENVTL. L. REV. 537, 538 n.7 (1997). One of the Earth Council’s goals has been to “produce an Earth Charter which, along with the U.N. Charter on Human Rights, will form the basis for an Ombudsman-type function.” Wirth, *supra*, at 604 n.15 (quoting Earth Council: Inaugural Meeting 11 (1994)).

3. A peoples’ treaty is a document, usually nonbinding, which has been negotiated, drafted and executed by particular types of NGOs. However, peoples’ treaties are the product of NGOs representing groups whose identity is based on an intrinsic human characteristic such as gender, or ethnic or tribal affiliation, or interests which can be described as noncommercial, nontechnical, and utilitarian.

4. Sustainable development has been the central theme of international environmental law since first conceptualized by the World Commission on Environment and Development in 1987. Sustainable development envisions a present generation in which all economic, social, and environmental needs are met and which does not compromise the ability of future generations to meet those same needs. See WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR

The process of drafting a universal declaration for sustainability began after the 1992 United Nations Conference on Environment and Development (1992 Earth Summit) held at Rio de Janeiro, Brazil, in which the international environmental movement for sustainability gained significant momentum. In addition to the recommendations<sup>5</sup> and two conventions<sup>6</sup> which were adopted, the most influential document approved at the 1992 Earth Summit was the *Rio Declaration*.<sup>7</sup> The *Rio Declaration* is a set of principles or goals which national governments are encouraged to adopt as the basis for enacting national legislation. While the Earth Summit and the *Rio Declaration* have been criticized for enunciating goals without delineating specific policy requirements for achieving those goals,<sup>8</sup> they are important because of the recognition given to sustainability as the primary focus of international environmental law.

The importance of the *Rio Declaration* notwithstanding, it was widely recognized in the international environmental community that the *Rio Declaration* was not sufficient as a universal declaration for sustainability. In 1994, the process of drafting the *Earth Charter* began through the cooperative endeavors of former Soviet Union leader Mikhail Gorbachev, now chair of Green Cross International, and Maurice Strong, chair of the Earth Council and Secretary General of the 1992 Earth Summit.<sup>9</sup> The drafting process which led to the working draft presented at the Rio+5 Forum were largely through the efforts of the *Earth Charter*

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COMMON FUTURE 1-5 (1987). The concept of sustainability was adopted as a principle of the *Rio Declaration* which states “[h]uman beings are of the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.” *The Report of the United Nations Conference on Environment and Development*, Agenda Item 9, U.N. Doc. A/Conf. 151/5/Rev.1 (1992) [hereinafter *Rio Declaration*]. Obviously, the term “sustainable development” is open to different definitions and interpretations. However, it has been noted that despite these different definitions, the concept of sustainability “has one great advantage: it mobilizes people in search for solutions [to] . . . environmental problems.” THE ENVIRONMENT: TOWARDS A SUSTAINABLE FUTURE 3 (Dutch Committee for Long-Term Environmental Policy ed., 1994).

5. *Agenda 21* contains 40 recommendations to governments for enacting national legislation supporting sustainability. See *Report of the United Nations Conference on Environment and Development*, Annex 2, Agenda Item 21, U.N. Doc. A/Conf. 151/26/Rev. 1 (1992) [hereinafter *Agenda 21*].

6. See Framework Convention on Global Climate Change, June 5, 1992, 31 I.L.M. 849 (1992); Convention on Biological Diversity, June 5, 1992, 31 I.L.M. 818 (1992).

7. *Rio Declaration*, *supra* note 4.

8. See Sir Geoffrey Palmer, *What Went Wrong at Rio?*, 70 WASH. U. L.Q. 1005, 1016-18 (1992). While the author notes that “the Rio Declaration contains a set of mission statements which would be of substantial benefit if adopted around the world” the author also avers that at the 1992 Earth Summit, “the legal and policy ambiguities raised by the issue of sustainable development were not adequately discussed, much less resolved.” *Id.* at 1017.

9. For an excellent history of the *Benchmark Draft*, see Steven C. Rockefeller, *The Earth Charter Process*, EARTH ETHICS 3-8 (Winter/Spring 1997).

Management Committee of the Earth Council. The Committee has made every effort to make the drafting process, including the *Benchmark Draft*, universal through a consultation with NGOs and other grassroots organizations as well as individuals.<sup>10</sup> The initial drafting process led to a working draft which was prepared by the Earth Council in January 1997 at the Pocantico Conference Center of the Rockefeller Brothers Fund outside New York City.<sup>11</sup>

The *Benchmark Draft* is based upon revised text of the working draft. The *Benchmark Draft* is divided into two sections: the preamble and the enumerated principles. The preamble reads like a prayer and is intended to identify “the urgent need for a change of course and the critical choice that humanity faces.”<sup>12</sup> The principles are brief statements, each of which is meant “to stand on its own . . . . Explanations of a principle, or elaborations on the theme of a principle, will go in a commentary on the Charter but not in the Charter itself.”<sup>13</sup>

The principle criticism of the *Benchmark Draft* is that it is soft law, like the *Rio Declaration*, and therefore does not contain the enforcement mechanisms required to achieve a policy of sustainability. It has been noted that “[n]ations usually prefer soft law documents; they like to agree to high-sounding resolutions of principle that do not actually require them to do anything very specific later.”<sup>14</sup> While this is all too true, the *Benchmark Draft* is remarkable for the contributions of NGOs and other grassroots organizations. Although governments may adopt principles of soft law and later delay or simply not attempt to draft, or enforce, the required legislation, it is hoped that a document which comes from such a grassroots movement will be able to sustain the momentum which will transcend political partisanship. The demonstrated success of NGOs at the international level should offer proof that grassroots organizations can achieve political power. This political power has been especially effective with respect to sustainability and environmental concerns.<sup>15</sup>

Other criticisms of the *Benchmark Draft* include that it is a document of the developed countries in the Northern Hemisphere which

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10. The major groups which have contributed in the *Earth Charter* consultation process include the Global Educations Associates, the Center for Respect of Life and Environment, the Indigenous Peoples Network and the Advisory Group on the Religions. See Rockefeller, *supra* note 9, at 6-7. Anyone may contribute to the dialogue on the *Earth Charter* through the Earth Council's website, <<http://ecouncil.ac.cr>>. See *id.* at 5.

11. See *id.*

12. *Id.* at 5-7.

13. *Id.* at 5.

14. Palmer, *supra* note 8, at 1016.

15. See, e.g., Patricia Waak, *Shaping a Sustainable Planet: The Role of Nongovernmental Organizations*, 6 COLO. J. INT'L ENVTL. L. & POL'Y 345 (1995).

is being imposed upon the developing countries of the Southern Hemisphere and that it contains romantic notions of "new age" spirituality which are not sufficiently scientifically based.<sup>16</sup> With respect to the North-South concerns, the *Benchmark Draft* has included contributions from many groups and nations based in the Southern Hemisphere. It is a grassroots document which does not favor Northern industrial interests. However, it should also be noted that with respect to the *Rio Declaration*, although the document has the appearance of including the goals of the countries of the Southern Hemisphere, concerns have been raised that the Northern Countries were successful in achieving their agenda.<sup>17</sup> The Earth Council's consultation process, however, included representatives from all segments of those involved, which provided for the universality of the document. No other international environmental document has been the product of such an exhaustive consultative process.

With respect to the criticisms about the spiritual content of the document, the attempt to render the document universal necessitates that it reflect the common concerns of humanity. These criticisms would be warranted if the document were religious to the exclusion of certain peoples. It does not contain any religious ideology, but attempts to include only the most basic universal concepts.

The consultative process of the *Benchmark Draft* will continue by the Earth Council through March of 1998. The final draft is expected to be released in June 1998. After worldwide advocacy of the final draft, it will be presented for adoption by the United Nations General Assembly in 2000. The adoption of the *Earth Charter* will be an auspicious way to begin in the next century.

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16. See Richard M. Clungston, BOSTON RESEARCH CENTER FOR THE 21ST CENTURY, Newsletter No. 8, Spring 1997, at EC-3.

17. See Dr. Ramee Khooshie Lal Panjabi, *From Stockholm to Rio: A Comparison of the Declaratory Principles of International Environmental Law*, 21 DENV. J. INT'L L. & POL. 215, 275 (1993).

## APPENDIX

THE EARTH CHARTER BENCHMARK DRAFT<sup>18</sup>

18 March 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 definite 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 the 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, biological 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 a risk of irreversible or serious damage to the environment, precautionary action must be taken to prevent harm.

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18. The Earth Charter Benchmark Draft is printed below as it appears in the BOSTON RESEARCH CENTER FOR THE 21ST CENTURY, Newsletter No. 8, Spring 1997, at EC-1, EC-4.

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 nonviolence, 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 the 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 a right to retain their spirituality, knowledge, lands, territories and resources.
10. Affirm that gender equity 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, bio-regional 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 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.