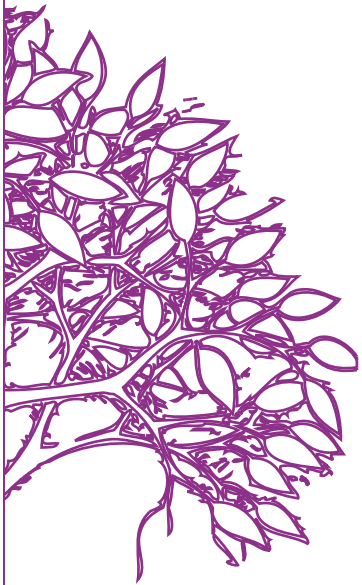




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Regional Unit for Social and Human Sciences
in Asia and the Pacific

Universalism and Ethical Values for the Environment



Ethics and Climate Change in Asia and the Pacific (ECCAP) Project

Working Group 1 Report

Universalism and Ethical Values for the Environment

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SERIES PREFACE

Climate change may be the defining issue of the 21st century, as humankind faces responsibilities for its actions upon the global community. Universalism was one of the most significant social trends of the 20th century, with the birth of the United Nations and a growing series of international legal treaties. How can we address ethical issues of climate change through the lens of universalism? This volume continues the publication series of Asia-Perspectives on Bioethics from the Regional Unit for Social and Human Sciences in Asia and the Pacific (RUSHSAP) at UNESCO Regional Bureau in Bangkok.

The report *Universalism and Ethical Values for the Environment*, is the product of more than two years of consultative workshops and discussions conducted across the region under the Ethics and Climate Change in Asia and the Pacific (ECCAP) project. This volume is the first in a series of working group reports from the ECCAP project. The opinions in the final report are those of the authors, reflecting discussions among dozens of philosophers, engineers, scientists and social scientists from many countries. The report comes at a time when UNESCO is discussing its contributions to the international climate change debates. This volume discusses a variety of world views that we can find to describe human relationships with the environment, and the underlying values in them. It reviews existing international legal instruments discussing some of the ethical values that have been agreed among member states of the United Nations.

Like other volumes in the series there are various policy options that are reviewed and open for discussion among countries. The process of developing the reports has involved consultation with experts, interested persons, and member states through multiple rounds of review. A number of reports will be published in the coming year on further topics, and the network of persons involved spans the globe in many meanings of the word. There are many rich intellectual traditions in Asia and the Pacific, coming from both traditional and modern knowledge systems. We look forward to growing input from a larger circle of persons as the series develops to help build the reservoir of wisdom that policy makers, and citizens, can use to address the challenges of climate change.



Gwang-jo Kim
Director, UNESCO Bangkok

EDITORIAL PREFACE

The project on Ethics of Energy Technologies in Asia and the Pacific (EETAP) was launched in September 2007 by the Regional Unit in Social and Human Sciences in Asia and the Pacific (RUSHSAP) at UNESCO Bangkok, with the aim to encourage science and value-based discussions on environmental ethics to produce substantive cross-cultural and multidisciplinary outputs that will be relevant for long-term policy making. Since 2007 there have been a number of subsequent conferences and working group sessions organized in many different countries.

This report stems from the work of the first working group established under the framework of the Ethics and Energy Technologies in Asia and Pacific project. The project adopted the name Ethics and Climate Change in Asia and the Pacific (ECCAP) in 2009, as it was clear that international attention through UNFCCC and UNESCO was focused on facing climate change. The aim of the ECCAP project is not to formulate universal economic or political plans of how to deal with these issues. Rather, the working groups of the project aim to increase awareness and discussion of the complex ethical dilemmas related to energy, climate change and the environment, and to identify scientific data, and available ethical frameworks of values and principles for policy options that have proven useful in facing the challenges in certain communities and countries. This report examines the existing ethical principles in international texts, and the world views that communities around the globe have.

The projects are ongoing, and the details of this report that extends the Asia-Pacific Perspectives on Bioethics series, can be found in the Executive Summary. The reports were developed by working groups, whose members participate as individuals in the highest standards of intellectual vigor and integrity, integrating engineers, philosophers, policy makers, experts, youth, and persons of many different cultural backgrounds and experiences. The reports are subject to ongoing open peer review, and the principal authors are listed.

There is ongoing discussion of numerous reports on the yahoo group, unesco_eet@yahoogroups.com, that are in various stages of drafting. For all reports, drafts and outlines of others, and specific requests for further case studies and analyses, please examine the working group webpages which list the members, and the overall website, <http://www.unescobkk.org/rushsap/energyethics>. The writers of the report acknowledge the useful comments of persons given during meetings held in Kumamoto, Japan, Bangkok, Thailand, Tehran, Iran, and Kuala Lumpur, Malaysia, in its consultations conducted since the launch conference of the project in 2007, as well as through the Internet and other forms of discussion. We appreciate the comments made by persons, especially including Minakshi Bhardwaj, John Crowley, Konstantin Hrucki, Jennifer Miller, S. Panneerselvam and Kayo Uejima on versions of this document.

The working group will continue to discuss the theme to follow up the topic of this report. The group will also consider how to develop a depository of ethical systems, linked to WG2 theme, in addition to considering human responsibilities towards nature. Further comments are invited along with future contributions for further deliberations of this working group, for development of other reports in the ECCAP project, and in the programmes of reflection on these issues by UNESCO. Feedback and comments on this discussion document is invited to Dr. Darryl Macer, Regional Advisor in Social and Human Sciences in Asia and the Pacific, Regional Unit in Social and Human Sciences in Asia and the Pacific (RUSHSAP) at UNESCO Bangkok, or email rushsap.bgk@unesco.org.



Darryl Macer

Regional Advisor in Social and Human Sciences in Asia and the Pacific

Executive Summary

The report discusses the extent to which universal values can be agreed upon, exemplified by an empirical analysis of values contained implicitly and explicitly in UN treaties and international statements on the environment. The texts examined include the Universal Declaration of Human Rights (UDHR), the Convention Concerning the Protection of the World Cultural and Natural Heritage (WHC), the United Nation's Framework Convention on Climate Change (UNFCCC), The Kyoto Protocol, The Earth Charter, The Rio Declaration on Environment and Development, the Convention on Biological Diversity (CBD), and the Universal Declaration on Bioethics and Human Rights (UDBHR). Some of the ethical values found in the texts include: human rights, sustainability, equity, common but differentiated responsibilities, precaution, participation, vulnerability, state sovereignty, peace and solidarity.

This report also examines whether there are universal environmental values, and how interpretations of the concept of "universalism" affect future policy options for addressing common environmental challenges. This question is central to current discussions on the ethics of climate change and of alternative energy technologies, as well as to environmental ethics. If we can agree upon international values such as principles of environmental ethics, then we can include these principles into economic models in order to develop policy that may better protect these values.

Several views on the human-environment relationship are explored in this report, including anthropocentrism, biocentrism, ecocentrism and cosmocentrism. There are also descriptions of different approaches to human relationships with the environment, such as apathy, apocalyptic, symbiotic and integrationalist approaches. Universalism is a concept most widely derived from monotheistic Abrahamic and Western post-Enlightenment ideologies. Among some Eastern traditions there is resistance to the ideas of divinely revealed universal truths and universal principles based on human reason. For many people in the world, the concept of universal ideas marks a fundamental departure from traditional outlooks. There is need for further reflection on biocentric and ecocentric viewpoints, and on wider cultural perspectives. This does not mean that alleviating adverse human impact on the environment should in any way be delayed. There is broad global agreement that environmental destruction is a crisis for immediate action. However, further reflection on values will assist in conceptualizing environmental values shared by those from all communities of the world, allowing for wider global action by all.

There is also debate over policy options, including how varying world views influence treaty discussions, and the need for a more in-depth debate within and between societies. Also discussed are the possibilities of using alternative worldviews to resolving conflicts between global and national interests. The Amazon Rainforest is one such example in which the economic interests of Brazil are in conflict with the environmental interests of the rest of the world. One of the options suggested is to focus international treaties on harmonised goals, rather than universal values generated from predominant traditions, and to encourage a depository of value systems from different worldviews that will best strengthen commitment to goals within a community, a region or a people.

Several case studies using diverse frameworks for resolving conflicting interests are described, including ownership and rights language (river diversion and tribal homes), and conflicts between national and local interest (religious tradition and sacred trees). More case studies are invited for future work of the working group. A call for further reflection on these issues by UNESCO and other forums is made, to further scholarship of this area and action to mitigate and adapt to the global burden of climate change.

1. Are there Universal Environmental Values?

1.1 Introduction

Environmental values in the different regions of the world are ideally drawn from a diversity of rich philosophical and religious heritages. But to what extent can common ground be found among the various traditions within a United Nations (UN) system that promotes the principle of universal values through dialogue among different civilisations? Is it important or appropriate to seek universal values, or should there be more focus on establishing a framework for pluralist environmental values? Are there common values across cultures that can constitute the foundation for building and promoting a more sustainable economic growth, preserving biodiversity and preventing the environment from deteriorating further?

The Universal Declaration of Human Rights (UDHR) of 1948 set a precedent for subsequent conventions and instruments at the UN. The term “universal” to humankind implies that something applies regardless of race, religion, culture and national origin. There have already been various levels of dialogue related to the content of UN treaties between nation states, between constituencies inside nation states and communities, but it is in practice very difficult to have a dialogue process involving every group in the world in order to arrive at genuinely universal statements.

It is assumed in many spheres that the declarations, conventions and norms adopted by member states of the UN are universally accepted by persons in all countries. However, from statistics and empirical observations across the world there appears to be a lack of general compliance with the inherent ethical principles found in the UN instruments and conventions. A survey of country reports to treaty bodies at the United Nations reveals the number of abuses by states around the world.¹ Lack of adequate enforcement and information² is often blamed and considerable effort is being made to address this through UN led programmes of education on human rights as adopted first in 1995³ and subsequently in 2005⁴.

A comparative critique could be made of the gaps between theory and action in how people observe the norms of their own religion, culture or tradition, as well. However, the gaps between compliance to UN norms and action and compliance to a person’s own belief system appear greater when we compare people’s views between cultures. A number of commentators have noted that many of these belief systems are different to those outside of European traditions that have been predominant in setting the commonly accepted value systems in the UN.

This report examines the UDHR, as well as presents an analysis of the implicit ethical values inside UN texts. It is worth asking whether the environmental crisis is linked to a lack of cross-cultural identification with the ethical values in the treaties. The report analyses this question with regard to UN treaties on environmental protection and climate change and, thus, with a focus on the universality of environmental ethics. The discussion following the analysis considers whether alternative approaches to environmental ethics can have better implications for different policy options.

It is clear that the environment is a universal concern for all of humankind. Our shared needs and goals demand some integrated approach. The tendency has been towards a universal set of ethics, commitments and action plans. However, there must be popular support for universal ethical principles among a worldwide community in order to receive support from, and among, the masses in many developing countries (if those principles are not already found within local tradition). Transforming environmental concerns and goals into practical and effective policies might require dispensing with the very idea that a universal set of ethics and/or a unified approach is required to unite cultures of

1 <http://www.ohchr.org>

2 Specifically brought up as a necessity at the UN World Conference on Human Rights in Vienna 1993.

3 General Assembly Resolutions A/RES/49/184 and A/RES/51/104.

4 General Assembly Resolution A/RES/59/103.

the world when facing global challenges. It might be more effective to accept that different concepts inform different peoples of the world, and thus the language and conceptual basis of policy need to be diverse, based on the principle of plurality rather than universality. It is therefore important to debate the term universalism as it influences international norms and policies.

1.2 Universalism

Although the word “universalism” has various definitions and interpretations it is used in this report in non theological terms as the general understanding of a knowledge, system or law that is assumed to be applicable to all human beings everywhere regardless of their race, gender, nationality, culture or religion. It is used in context of the word ‘Universal’ that appears in UN treaties. The term “universalism” has been problematic throughout the history of anthropology and ethics.⁵ However, it is important to understand the epistemology and intent of universalism from a global perspective and in the context of the United Nations, and note why it has both passionate defenders and opponents.

Universalism essentially has several sources of assumed legitimacy – religious, ideological and political. The first is religious, or divine, revelation. The theory is that because there is one God, his revelation has purpose for all of humanity. The second source of universalism is an ideological position framed as a result of human reason. This includes the fields of epistemology and ethics. In the last two centuries there has been increasing dominance within the public intellectual space by knowledge based on certain structures of reasoning, analysis and inference. This knowledge is even termed “scientific”, or otherwise referred to as a scientific model of rationality. Just as the inferences of natural science, such as physical constants and the law of gravity, are culturally neutral, the universal principles born from human reason are also claimed by some to be culturally neutral.⁶

Finally, the third source of popular universalism is political and economic power. Administrative convenience or hegemonic waves tend to dismiss or suppress other alternative cultural ethics when power is used to impose one set of values. This does not imply that popular movements are the same as ethical universalism, and there has been active discussions of the relationships between globalization and economic power.

In its conventional usage a universal set of codes or principles, which is the basis of the United Nations Charter and subsequent international agreements, suggests that uniformity can be achieved in concepts, ideals and in the adoption of practical action plans via two routes: either unilaterally through a system of rational and dialectic reasoning, or through a process of consultation and dialogue. In reality, however, universalism is not globally accepted. This report discusses two major perspectives on universalism. One is part of the current Western tradition, essentially supportive of universal codes, and the other is part of dominant Eastern traditions, particularly South Asian traditions, that are fundamentally uncomfortable with universalist assumptions in a set of codes, principles or concepts.⁷

Therefore, when we think about energy choices and environmental challenges, and the ethics on science and engineering, we have to ask four important questions for convenience and global action.

Do we need an agreement on common actions to combat environmental degradation?

Is there a set of universal ethics agreeable to the entire human race that can guide such an agreement?

Can a set of universal ethics work across many communities? Should it be in the language of principles?

5 A related term to “universalism” of ethical values is “monism”. A section of the book *Environmental Ethics* edited by Light and Rolston (2003) is devoted to the ongoing debate between the monistic and pluralistic approaches to ethical values. The subject itself is the subject of numerous debates, please refer to the bibliography of this publication.

6 For further philosophical discussions on the concept of universalism, please refer to Kuhse and Singer, 2006.

7 Similar debates occur in other areas of the world, for example, a series of papers on the ethics of global knowledge in the Pacific are published in *International Social Science Journal* 195 (March 2009), pp. 109-164.

If the same set of ethical values and/or principles cannot work, what is an alternative to ethical universalism that can be applied when dealing with global challenges such as environmental degradation and climate change?

In order to arrive at a set of universal ethical values, either (1) an issue needs to be identifiable as of universal importance, for example, human dignity and freedom from torture; or, (2) an end result must be identifiable as universally desirable, such as the right to life; or, (3) the ethic must be an intrinsic part of a universal value system, such as the right to a fair trial as an important component of universal human rights principles in the field of justice. While it may be possible to identify the first two options, it is the last which can be contentious, for instance in identifying what is the concept of and what constitutes a fair trial. The problem of identifying a universal value is particularly contentious in relation to the environment.

1.3 Are There Universal Values that Can be Agreed Upon Across the Cultures of the world?

Reiterating the basic questions dealt with in this report: are there indeed universal values which can be agreed upon across the many cultures of the world, and is there a universal language of making these values acceptable as well as applicable across the many global communities? In addressing these questions, it must be noted that the human being is a product of complex factors, including various cultural and physical environments that have evolved over centuries. We use the definition of values as “the ideals, customs, institutions, etc., of a society toward which the people of the group have an affective regard”⁸. The term “principle” is a subset of values, and a particular expression of a range of ethical values. The term principle could be defined as “an accepted or professed rule of action or conduct”⁹.

Almost all cultures believe that there are some universal human values. However, there is a difference in approach to their realisation and recognition in four of the dominant traditions of the world which we take as examples, i.e. the Abrahamic, post-Enlightenment, Indic and Confucian traditions.¹⁰ In the Abrahamic and post-Enlightenment worldviews, there is a strong belief that universal values can be realized through objective criteria. Contrastingly, the Indic and Confucian systems believe that while universal values exist, they are not achievable, because human beings apply their own subjective experiences and emotions to their knowledge of values. In this report the examples of Western and Indic traditions will be largely used, however, further discussion of other world views is being developed in the ECCAP project for future reports. Therefore, whereas the former ascribes a degree of objectivity as a prerequisite for legitimacy, the latter considers subjectivity as a major influencing factor specific to individuals, groups, cultures, etc. A more detailed analysis follows, and it does not imply that an ideal found in one system is not also found in other systems.¹¹

1.3.1 Abrahamic Traditions

In the Abrahamic traditions (Judaism, Christianity and Islam), the objective aspect of universal concepts and values is attributed to a divine source that transfers knowledge and values to humankind through an agency. For instance, the books that form the main basis of the ‘Old Testament’ are generally accepted by all three Abrahamic religions. They assert that the commandments for human behaviour were given by God to the prophets Moses, Noah, and several others. This makes discussion on their authenticity and universal application dependent on whether a person believes in the claims of those who wrote about the prophets. However, it is in the subsequent revelations and articulations following from the

8 <http://dictionary.reference.com/browse/values>.

9 <http://dictionary.reference.com/browse/principle>.

10 The working group welcomes contributions from persons proficient in descriptions of other cultures to this draft report, and this report does not claim that only these two value systems are dominant.

11 Refer to ECCAP Working Group 2, which is developing a framework for construction of a depository of ethical world views, that will facilitate analysis across more cultures.

Old Testament that differences have arisen. The three Abrahamic traditions have fought for centuries to resolve their different interpretations and subsequent additions to these.

We know, for instance, that in Judaism the system of values were handed over to the Jews as the chosen people. However, Christianity holds that values were finally elaborated as well as consolidated through Christ, the son of God for all of humankind. In Islam, it is believed that several errors occurred in subsequent years due to human interpretation, and that the Prophet Mohammed finally resolved these as the last authentic revelation from God. Each religion's 'universal' value has had specific features for the adherents of that religion. Schisms have emerged within the three traditions, leading to different versions of universalistic ethical systems in the religious communities themselves. The varying communities' perceptions of universal codes as well as community divisions have at times led to wars.

1.3.2 Post-Enlightenment Perspective

In post Enlightenment epistemology, the external agency of God as a source of objectivity is replaced by faith in the 'objectivity' of human reason and the ability of humans to discern value systems through a mental framework called rational scientific enquiry. A major part of this perspective is founded on empirical evidence and propositions known as theories, which are open to modification. The difference between revelatory ethics and an ethics based on rationality is the scope in the latter for challenge and change. However, dogmatism plagues both theology and philosophy.¹²

Post-Enlightenment knowledge is seen by some to be the result of de-sacralised dialogue which rejects any specific reference to divine context in its framework. This restricts the possibility of dialogue with Eastern traditions that acknowledge the divine but do not assert it as universal. The post-Enlightenment perspective often asserts that only de-sacralised knowledge has any real value. There is considerable diversity even within these frameworks (e.g. Howell, 2009).

1.3.3 Indic Perspective

Indic tradition acknowledges that there is a set of fundamental universal norms and a universal truth; however, human beings cannot objectively arrive at them either individually or democratically as a community. Therefore, subjectivity and intuition inherently exist in all human knowledge and people perceive it differently¹³. This is one of the most important doctrines of Jainism called Anekantada. This has enabled coexistence of diverse, often contradictory concepts and value systems in South Asian history, even within one tradition, for instance Hinduism¹⁴. From a "modern" perspective, Indic cultural systems would be uncomfortable with a 'universal' set of values arrived at through a consensus of human reason or legitimised through divine revelation. It would, in fact, be fair to say that a pluralistic approach exists in most Eastern civilisations, including the Far East and China. It is understood that human society lives by a diverse set of values and philosophies, and universalism deprives some communities and people of their own value systems. Thus, Eastern traditions believe that universalism is an infringement on a human being's basic right to enjoy one's own value and belief system.¹⁵

Pluralism of this sort poses a problem for a government preferring uniformity, which is economically and politically more easily administered. The coexistence of diverse ethical systems makes arriving at some uniformity an extremely tedious and seemingly impossible task. On the other hand, a neat and well-articulated set of values does not serve well if it does not find empathy within the general population.

12 Dawkins, Richard. 2006. *The God Delusion*. London, Bantam Books, is a long polemic attack on religions and a prescriptive attempt for post Enlightenment doctrine of 'rationality'.

13 '*Ékam sat vipra bahudā vadanti*' Truth is one though the sages know it differently. Rig Veda Book No. 1 Hymn No. 164/verse 46.

14 '*The Upanishads*, the treatise that followed Rig Veda often contradict each other'. *Hindu Scriptures*, pp. xvii, Dominic Goodall, Phoenix Paperback, 2005 London.

15 In his book *Indian Philosophy: Volume 1*, S. Radhakrishnan describes the different schools of thought in Indic philosophy and includes in the introductory chapter a discussion on the roles of subjectivity and objectivity in Indic traditions (pp. 28-29).

1.3.4 Confucianism

Confucianism¹⁶ has two interesting characteristics that set it apart from Abrahamic and Indic traditions. First, it does not dwell on God or other metaphysical theories. This leaves the individual free to believe in any 'spiritual' truth he or she may wish to follow. Confucianism is essentially a set of ethics on relationships between the individual and government, the individual and society, the individual and family and the individual and friends. It describes how concepts such as compassion, honesty, justice, and work fit within these relationships. These sets of values and directions form the essential nature of Chinese society regardless of the 'religion' of the person. In fact, if religion is usually both about a metaphysical theory and human relations, then Confucianism can be said to be a religion which does not concern itself with metaphysical aspects.

Secondly, Confucianism emphasizes harmony among humans and between humans and nature. Confucianism does not proffer divine origins of harmony, but rather a set of values that are derived from reason and a spiritual awareness. Harmony influences the ethics of Confucians towards nature and society. Because it does not claim divine origin, Confucianism does not seek universalistic pretence.

1.3.5 Comparisons

The description of the four perspectives above shows that there are different ways of considering the concept of ethical universalism. The Indic and Eastern traditions suggest that a system of ethical pluralism might be a viable alternative to the current practise of striving for universal ethical values that we can all agree upon. At first glance it seems that the international system, here exemplified by the UN, would be very susceptible to pluralism. This is because an important part of the value system that forms the basis for the UN emphasizes democratic practises and broad participation. The evolution of any set of doctrines or values is arrived at through dialogue and consultation, and the UN facilitates this through discussions among various country representatives and forums for civil society groups and experts.

However, it is essential to ask who exactly participates in these discussions which are often referred to be as on behalf of the entire global community. What mandate do these people hold and what philosophical framework is used for the discussion? What if it is mostly state representatives influenced by the Western post-Enlightenment perspective that participate and decide on a set of values based on objective rationality? Should civil society organizations' voice be equal to those of government officials? How could that function? Many organizations seek ways to enhance participation of different groups in discussions, including the UN.

Foucault, a French philosopher, suggests that any set of 'rational' concepts are in fact loaded with cultural values.¹⁷ He therefore contests a universal rationality or human reason that is above subjectivity. Others have argued that rationality is influenced by a hegemonic paradigm¹⁸ and some question its use as a doctrine.¹⁹

There are some inherent contradictions in the assumption that ethical values can be universal, exemplified here by an ethical discussion on two principles, namely welfare and freedom of expression. As for the former, socialism holds that as the state takes over the meta-organisation of human beings, it is incumbent upon the state to ensure that the vulnerable are cared for with basic provisions, such as shelter, food and decent life opportunities. The capitalist model is, however, critical of this and believes that the welfare state leads to people becoming dependent upon state handouts, which in turn leads to lack of incentives to work, weakening the economy as a result. The capitalist system believes that private philanthropy and minimal state support, if any, should form the basis of any welfare system protecting the vulnerable.

16 Internet Sacred Text Archive, <http://www.sacred-texts.com/cfu/index.htm>, (Accessed on 9 August 2009).

17 Foucault, M. (1969) *L'Archeology du savoir*, Editions Gallimard, translated into English, as *The Archeology of Knowledge*. London, Tavistock Publications Ltd, 1972.

18 Nandy, Ashis. 1998. *Return from Exile*. New Delhi, Oxford University Press, pp. 265.

19 Sen, Amartya. 2002. *Rationality and Freedom*. Harvard, Belknap.

These two positions on the role of the welfare state bring Articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights²⁰ into conflict with regard to interpretations and compliance. Article 9 states that “The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.” Additionally, Article 11 asserts that, “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”

While in general the socialist traditions consider a strong welfare state to be consistent with fulfilling these articles, we can also say that in general the capitalist system sees such a position to be dangerous to sustaining a strong and vibrant economy. It would appear that while the articles are idealistic and communitarian, their universality is immediately brought into contest by compliance and interpretation – two different levels of commitment to the ideological systems.

The second principle concerns the freedom of expression, which is reaffirmed in Article 19.2 of the International Covenant on Civil and Political Rights.²¹ The article asserts that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Freedom of speech is considered a fundamental right in Western secular political systems. Western style legislation protects against the slandering of individuals, and litigation on slander is a common feature in many countries. But slander and offence against religious and cultural sentiments, including icons considered sacred by communities, is considered to be consistent with freedom of expression. The position of many Western NGOs (Article XIX, International Pen), media institutions (Jyllands-Posten, Le Monde)²², politicians and academics (Nigel Warburton, Richard Dawkins) is that the right to offend is a basic human freedom. However, there is also debate in the West about this.

Contrastingly, in some other countries slander against cultural or religious deities, prophets or important texts is prohibited (although “critique” over interpretations of the messages is permissible), while slander against the individual is not considered as important to safeguard against. The Rushdie Affair²³ is a recent example of this, when the supreme spiritual leader of Iran, Ayatollah Khomeini, issued a fatwa on the author of *The Satanic Verses* as a reaction to alleged blasphemy. While much of the West regards Rushdie’s offensive statements as a legitimate freedom of expression, many Islamic countries considered him to have transgressed the boundaries of criticism into the offensive and hence beyond the limits of freedom of expression.

In modern political philosophy, such as in statements on bioethics, the freedom of discussion on ethical issues has been held central to the nature of discourse. This is reflected in Article 19 of the Universal Declaration on the Human Genome and Human Rights²⁴, as well as in the Constitution of the International Association of Bioethics.²⁵ However, although the principle of freedom of expression is widely applied,

20 *International Covenant on Economic, Social and Cultural Rights*, Office for the High Commissioner for Human Rights, entered into force 3 January 1976 <http://www2.ohchr.org/english/law/cescr.htm>

21 The *United Nations International Covenant on Civil and Political Rights*, entered into force 23 March 1976, <http://www2.ohchr.org/english/law/ccpr.htm>

22 See Wikipedia http://en.wikipedia.org/wiki/List_of_newspapers_that_reprinted_Jyllands-Posten%27s_Muhammad_cartoons

23 It was in fact Salman Rushdie’s offensive language used to caricature Prophet Mohammed and his mother that caused more widespread anger than his critique of Islam. http://news.bbc.co.uk/onthisday/hi/dates/stories/december/26/newsid_2542000/2542873.stm (There is extensive debate on this issue, which cannot be referenced in this document.)

24 UNESCO, <http://www.unesco.org/new/en/social-and-human-sciences/themes/bioethics/human-genome-and-human-rights>

25 The constitution of the International Association of Bioethics can be found here: <http://bioethics-international.org/iab-2.0/index.php?show=constitution>

it has been questioned in some cases.²⁶

The discussions of the principles of welfare and freedom of expression reveal that international norms have significant cultural specificities. They remain ideals established by one cultural block of countries, and even among those countries, they are not always interpreted similarly. Perhaps it would therefore be more representative of the plurality of ethical values to include a variety of interpretations, rather than to focus only on so-called “common” elements as a sole framework when drafting international documents that are intended for a global audience. In this sense, Article 12 of the Universal Declaration of Bioethics and Human Rights could reach more people and communities, whatever their values, as it highlights the importance of cultural diversity and pluralism. The following two sections of the report confirm the plurality of values that exist in the world by analysing some of the major perspectives and approaches to the relationship between humans and the environment.

1.4 Views on the Human-Environment Relationship

In sum, the previous section highlighted four different views on the universality of ethical principles and also introduced an alternative approach on how to reach international agreement, namely through ethical pluralism. This section will give an idea of the diversity of ethical perspectives available that are related to one of the most critical issues of today, namely the human-environment relationship.

In conventional environmental language there are at least four broad perspectives that define humans’ understanding of the human-environment relationship: the anthropocentric, biocentric, ecocentric and cosmocentric views (Macer, 1998). These different understandings of human-environment relationships have existed for a long time across different civilisations and cultures,²⁷ and we can still observe people using these different views in their understanding of the world. There are a variety of interpretations and understandings of nature among cultural and religious traditions in the world (Holm and Bowker, 1994).

1.4.1 Anthropocentrism

Anthropocentrism essentially holds that the human being is at the centre of the world view, of all earth, and even the solar system or cosmos. Similarly, some religions and faiths believe that the human being is the purpose of the existence of everything made by God. Anthropocentric approaches maintain that everything non-human in the natural world should be considered ethically in terms of its instrumental value to humans.²⁸ The unfortunate consequence of this world-view for environmental ethics is that everything is at human disposal. It is still possible in anthropocentrism to hold the element of responsibility to ensure continued sustainability, while others promote the idea of custodianship or stewardship.

Anthropocentrism is a strong element within the Abrahamic faiths. Anthropocentrism has also been a central doctrine in Western emphasis on human reason. There is a great deal of confidence placed in human capability and what is called scientific methodology to understand the environment, the nature

26 Malta and Ireland have made reservations to Article 19 of ICCPR and about 19 countries have not even signed the Covenant and therefore are under no obligation to observe the principles of the Article on freedom of expression. Joel Feinberg in 1985 introduced what is known as the “offence principle”, but limiting freedom of expression when it is offensive is also one of the fundamental principles in the *Natyashastra*, the ancient Indian text of Drama, which still influences the approach to arts in rural India.

27 At any time in history in a given culture we may have dominant world views, with some individuals who have ‘rediscovered’ these pre-existing world views of the human–environmental relationships. In this report in due respect and recognition of the many older civilisations that have been pursuing one or all of these variable approaches, the names of modern exponents of these positions in any particular world language are left out. We refer readers to the report of ECCAP WG2 on World Views of Nature for an extensive description and discussion of different world views. <http://www.unescobkk.org/rushsap/energyethics/eetwg2>

28 For example, see Palmer, C. 2003.

of living beings and the entire cosmos as well as the possibility to overcome challenges in managing it all.

Anthropocentrism has been blamed for the boldness with which human beings have populated large tracts of the earth, exploited and used its resources and created environmental disasters such as climate change, desertification, and extinction of some species (White, 1967). Inherent in modern anthropocentric idealism is the belief that human beings can resolve and overcome these adverse climate changes through reason, research and scientific breakthroughs.

1.4.2 Biocentrism

Biocentrism encompasses the perspective of all living organisms. It holds that the human is just one among a multitude of living species and is not more important than others on this earth. This view is also shared by some Indic traditions where the metaphoric figure of 8.4 million different living species²⁹ is often suggested as the cycle through which souls transmigrate. Biocentric philosophical attitudes either tend to believe that human reason is limited so it cannot understand the complexities of nature, or that it induces a sense of interdependency and responsibility between living beings. In some traditions there are elaborate rituals and practices that show respect for other life forms through offering food to animals and worshipping animistic deities.

Modern biocentrism encourages an attitude of humility within the human being and a sense of a shared world with other species. Instead of measuring the value of nature based on its usefulness to humans, biocentrism asserts that nature has an intrinsic value of its own and that humans are part of nature just like other animals and plants. A well-known biocentric philosopher, Arne Næss, coined the terms “shallow-” and “deep ecology” to describe the difference between anthropocentric and biocentric environmental protection. While the former “fights pollution and resource depletion in order to preserve human health and affluence”, the latter “operates out of a deep-seated respect and even veneration for ways and forms of life, and accords them an equal right to live and blossom”.³⁰ According to deep ecology, humans have no right to reduce the richness and diversity of nature except when it is necessary to satisfy vital needs.

Lacking a cultural dimension, however, modern biocentrism has largely remained a theory. In some cases it ignites a cultish following without the strict censure on human behaviour that it would otherwise entail and which was present in many pre-modernised cultures. It is still prevalent among many village people in India, for instance. However, modern biocentric movements give way to personal needs, such as travelling long distances to conferences and holidays, thus compromising commitment and the ethical dimension.

1.4.3 Ecocentrism

Ecocentrism incorporates the perspective of a whole ecosystem. It holds that the ecosphere (inclusive of everything organic and inorganic), rather than individual life forms, is the source of all existence, thus promoting a holistic approach towards the environment, politics, culture and lifestyle. In Japanese religions such as Shinto, nature is accepted as part of the givenness of the world as opposed to a self-conscious view of nature (Holm and Bowker, 1994).

A similar view is found in some Indic traditions, for instance the Meeteis of Manipur state³¹ and is also held by many traditional and indigenous people across the world (Gadgil 1995). These traditional views

29 Vaars Bhai Gurdaas Ji (A Sikh Scripture) ‘Water earth and the nether world are full of eighty-four lacs of species’ (1 lac is 100000).

30 Næss, Arne. 1973. The shallow and the deep, long range ecology movements: a summary. *Inquiry* (Oslo), Vol. 16.

31 Singh, L.J., Singh, N.B. and Gupta, A. Environmental Ethics in the Culture of Meeteis from North East India. Song, S.Y., Koo, Y.M. and Macer, D.R.J. (eds.) *Asian Bioethics in the 21st Century*. Christchurch, N.Z., Eubios Ethics Institute, pp. 320-326.

have been evolved over the course of several millennia and have developed elaborate philosophical concepts in order to sustain themselves. Traditional ecocentric philosophies are intertwined with religious or cultural outlooks, giving a strong faith-based approach. Ecocentrism tends to encourage people to be in awe of the world around them, and it limits human encroachment on the environment. It also upholds that the ecosphere will punish those who have damaged the environment.

Modern ecocentrism, like modern biocentrism, generally tends to construct its theory on human reason as an argument, calling for voluntary action on the part of human society to recognise it and act on it. The Gaia theory (Lovelock, 1989), however, ascribes an element of will to the ecosphere, which is considered organic. It asserts that the ecosphere hits back to re-establish its eco-balance which may have been damaged through actions of humans. The Gaia theory is in some way a derivative of some indigenous belief systems that have extremely detailed rituals and practices of revering nature with the belief that if they abuse it, it will hit back. Lovelock, a scientist, gave these ideas a modern conceptual basis with a style of scientific language. There are also some recent initiatives to develop these approaches.³²

1.4.4 Cosmocentrism

Cosmocentrism, as the word suggests, asserts that Earth is just a part of one solar system among many solar systems, and ultimately just another part of the entire cosmos. These solar systems go through cycles, collapsing and new ones forming elsewhere. Cosmocentrism is found in some Indic traditions, modern science, and in Russian philosophy. The Sikh belief system also incorporates it,³³ and it is the essential metaphysical belief of the Vedanta school of Hinduism as well. Cosmocentric attitudes towards the environment vary from a resignation that the end of the earth will come anyway to a more reverential approach to the limits of human reason.

1.5 Approaches to Human Relationships with the Environment

The different views described above have given rise to different approaches to understanding the relationship between humans and the environment. These approaches can be broadly categorized into apathetic, apocalyptic, symbiotic and integrationist relationships.

1.5.1 Apathetic

Most people seem ignorant of the concern now being expressed about the environment and our climate. Many people have done little to change their lifestyle, even though they may acknowledge the environmental crisis. They travel long distances in wasteful, inefficient cars (Higurashi and Macer, 1999) and prefer to have easy access to imported food from across the world despite the high energy costs in operating the global food system. Furthermore, governments have a varied approach to tax systems, and there is little levy being applied to encourage people to change their consumption and usage patterns. Even where there is an environment tax or premium, most people can afford to pay the tax, and others still seem to find it difficult to live without comfortable luxuries. This issue will be discussed more in detail when we consider policy options.

There is a seemingly lethargic reaction to the urgent necessity of preventing environmental disasters. Some problems appear so overwhelming that it may be simply not worth doing anything to reverse course. On the other hand, there is also a considerable section of society that recognizes the severity of the problem and understands that it requires governmental action and resources. This recognition leads to a sense of optimism that change will occur as a result of changes in governance. However, politicians

32 For example "The Biosphere Ethics Initiative: Building global solidarity for the future of life", of the International Union for the Conservation of Nature (IUCN) , Commission on Environmental Law; see http://www.uicn.fr/IMG/pdf/BEL_evolving_Biosphere_Ethic_23fe2010.pdf.

33 Sri Guru Granth Sahib (the Sikh scripture) 'There are nether worlds beneath nether worlds, and hundreds of thousands of heavenly worlds above.' Jap p. 5.

and lobby groups with vested interests tend to challenge environmental concerns by asserting that the earth is capable of absorbing the changes as it has done in the past. These theories give comfort to some people who do not want to be disturbed by current concerns, and to governments that do not want to lose the support of industrial lobbies in sectors that may be economically affected by new policies.³⁴ Another source of apathy towards environmental issues is one commonly found among some evangelistic groups (Plymouth Brethrens and some other Protestant sects), who believe that the 'Rapture' will occur soon as a result of all environmental disasters, and that the "good Christians" will withstand changes to join God.

1.5.2 Apocalyptic

The term "Apocalypse" is defined as "a prophetic revelation, especially concerning a cataclysm in which the forces of good permanently triumph over the forces of evil."³⁵ This reaction that typically underlies efforts utilizing universalistic environmental language and norms, is an apocalyptic view which emphasises the dire result of ignoring a responsible and urgent approach to tackling environmental damage and depletion. It is an anthropocentric position. This view has a great deal of resonance and finds empathy in Christian and post-modern Western societies. It has often used the language of 'eternal damnation', 'end of the world', 'repent now', and calls for people to start 'living the path'. Whereas Christian theology and Abrahamic traditions put the human at the centre of God's plan for the existence of the entire cosmos, modernity puts almost a total belief in the power of the human mind to conquer all. However, there is a growing group of modern thinkers, scientists and policy makers who are pessimistic and feel that human reason may not find a solution in time. Policy makers and scientists feel that the race to solution may not be won and that disasters may arrive before the 'solution' that human ingenuity can invent. Still, others refuse to admit that human reason could be incapable of addressing or conquering nature to avert disasters.

The apocalyptic approach emphasises that human behaviour is to be blamed for causing the current environmental crisis and that the world is coming to an end (which has similarities with the emphasis on religious vices and end of world in Christianity). For example, it blames human greed (sin), lack of preparedness (sloth), waste (gluttony), over-production and accumulation of unnecessary materials (lust) and indifference (pride), for having led the human race to this precipice. The apocalyptic message of impending doom and human guilt works effectively in Westernised cultures, because the concept of fear plays a great part in influencing lifestyles.

As a result, the overarching approach of the environmental campaigns in the West is that the world is near its end because of human environmental abuse and human beings need to act with sacrifices as redemption for the 'sin' of bringing it to this stage. This approach is consistent with the Abrahamic apocalyptic concept. This is also apparent in some of the international documents on environmental protection. For instance, the language of the preamble of the Earth Charter "We stand at a critical moment in Earth's history, a time when humanity must choose its future," can be identified with rhetorical religious language intended to generate guilt and taking responsibility for a sinful life, which can be redeemed through appropriate change of attitude and action. The response to this scenario also has religious overtones: "We must join together to bring forth a sustainable global society founded on respect for nature, universal human rights, economic justice and a culture of peace." The action needed is also stipulated in moral terms and anthropocentric language: "Towards this end, 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." While promoting more environmentally responsible behaviour, this sentence does not explicitly implore one's duty or relationship to the environment itself. It is also important to question whether this language and approach to the human-environment relationship are universally applicable to other cultures in the world.

34 The Stern report in the UK however suggested that overall economic damages caused by delayed responses to mitigate climate change will be greater than damages that could occur by enacting policies to reduce climate change.

35 <http://dictionary.reference.com/browse/Apocalypse>.

1.5.3 Symbiotic

The third approach is one of a symbiotic relationship with the environment. This is a radically different approach than the two previous ones as it contains no reference to fear or impending doom. It essentially extends the idea that human beings are dependent upon the environment and vice versa. It assumes that the one cannot survive without the other, at least based on the conventional relationships. The biocentric and ecocentric world views tend to promote a symbiotic concept of human relationship with nature.³⁶

The symbiotic approach is found in some Indic and East Asian traditions and many other traditional cultures, such as those of Native Americans and Africans. Sometimes this relationship is stressed through religious and cultural practices. Some communities in India, for instance, will have ritual reverence for certain animals and feed them, or hold certain plants as special or divine and treat them with some ritualistic practices.

Furthermore, in some traditional Hindu belief the rivers are considered to be the arteries of God and the wind as His breath. Many plants are given names of gods and revered. Even animals are ascribed gods. As a result of a symbiotic relationship with nature, respect for nature and animals becomes an inherent part of the value system, and environmental protection is a natural part of everyday life.

1.5.4 Integrationist

Finally, the fourth approach to be included is that of an integrationist relationship with the environment. For instance, many Indic belief systems³⁷ hold that the environment is far too big, powerful and intricate for the human mind to conquer. They believe that the human being is an integral part of the entire cosmos but not the essential part. This humbles the human approach to the environment, because it does not encourage an attempt to conquer or violate nature but rather to co-exist with the environment.

A practical example is the Sikhs who keep their hair unshorn as a respect for the natural evolution of human beings. By not violating the natural form, the concept is to induce a deeper respect and reverence for nature. An important theme of the Sikh belief is to find one's role and relevance within the wider but ever-evolving cosmos. Traditionally, societies' approach took responsibility of an integrated world seriously. Practices such as the unshorn hair of the Sikhs, or the planting of certain trees in some Hindu sects consolidated the integral approach. These, and other similar concepts, are based on two additional themes. First, that the human species is just one among millions and does not have any inherent right over the environment. Second, by virtue of their conscience, human beings are in a privileged position to understand the wider cosmological reality. Therefore, they have the chance to be both responsible for their actions as well as to reach God.

Some other Indic traditions³⁸ also encompass an integrationist approach to nature. They remove the focus from human beings to the wider cosmos, which is considered eternal but ever-changing. They hold that humans are simply another creature within a very complex and inter-related cosmos. Fear of an apocalypse does not impress most adherents of these belief systems because they believe that the world comes to an end only for another one to evolve, thus creating a continuous cycle. Thus, the natural cycle may reach its end through various means, for example due to the climate change resulting from human behaviour as part of its 'karma'. Interestingly, Hindus believe that the current cosmological age is the age of Kaliyug, the period of evil, and it will end to give way to Satyug, the age of bliss and truth. Hence, the end of the world is in fact an opportunity for a better start in the universe.

The modern version of environmental, cosmological philosophy is also an integrationist one. It is assumed that human beings are not essential but simply one species in the entire cosmological reality.

36 *Declaration on Nature: The Hindu Viewpoint*: [http://www.adishakti.org/pdf_files/declaration_on_nature_\(karansingh.com\).pdf](http://www.adishakti.org/pdf_files/declaration_on_nature_(karansingh.com).pdf).

37 The Sikh belief system, Advaita Vedanta and some branches of Vaishnavism.

38 A wide variety of Indian traditions, such as the Hare Krishna branch of Vaishnavism, the Achintya Bheda Abheda, and some of the tribal communities with strong elements of Hinduism, such as the Kadugollas, Yattappa.

Consequently, the evolution of the human species is integrated within the larger cosmos. Cosmologists, therefore, tend to take an anti-anthropomorphic position, and have started to be more active in recent UN discussions.

1.6 Discussion

Sections 1.4 and 1.5 have dealt with some of the most common views on and approaches to the relationship between humans and the environment. Some assumptions can be articulated based on the above paragraphs. Firstly, the anthropocentric viewpoint of the human role in nature seems to be prevalent in societies in which Abrahamic traditions and post-Enlightenment philosophies are dominant. This background also seems to entail a predominance of either an apathetic or apocalyptic approach to the issue of environmental protection. Secondly, Eastern societies, exemplified here through the Indic and Confucian traditions, appear to have a closer connection to the biocentric, ecocentric and cosmocentric perspectives on the human-environment relationship. Common for all three is that the role of humans is reduced to constituting merely a part of a much larger system, which promotes either a symbiotic or integrationist practical approach to our relationship with the environment. Thirdly, because of the various combinations of traditions, perspectives and approaches that exist in the world, it is likely that humans will base their efforts to protect the environment on quite different sets of values and principles.

The question, then, is whether these different values and principles are represented in the international treaties and declarations that are meant to be guiding all states of the world, and, by extension, the global population, in their efforts to protect the environment. This brings the discussion back to the universality of ethical principles, i.e. is there a set of common environmental principles that all cultures can relate to? If, in fact, parts of the world population are alienated by the current values, concepts and language included in the international documents, this could have a negative effect on their implementation and enforcement.

The next chapter of the report contains an analysis of the ethical principles that can be found in the most central international documents on environmental protection we have today. While attempting to clarify whether these documents, in fact, represent the various ethical points of view described in this chapter, the report will also try to answer the main question posed in the introduction: is it important or appropriate to seek universal values, or should there be more focus on establishing a framework for pluralist environmental values?

2. Ethical Principles in International Treaties Related to Environmental Protection

2.1 Introduction

The previous chapter highlighted the need to consider the universality and applicability of the ethical principles that make up the foundation of international treaties on environmental protection. In this regard, the present chapter will take a closer look at seven environment documents, six of which originate from the United Nations (UN) system and one that is considered to be widely adopted by civil society. Also included is an analysis of the ethical principles of the Universal Declaration of Human Rights (UDHR), since the majority of international documents still refer back to this Declaration, including those that deal with environmental protection.

The strong focus on UN documents in this analysis is justified by two factors: firstly, the UN is the international organization with the highest number of member states in the world today and its treaties are usually ratified by a large part of these states. Secondly, the UN is arguably the preferred forum for discussion and action on issues that are considered to have a global scope. This is why most international treaties on environmental protection and the issue of climate change have been adopted within the UN system.

One of the earliest global meetings on environment convened under the auspices of the UN was in 1972 at the Conference on the Human Environment in Stockholm, Sweden. The same year also saw the adoption of the UNESCO Convention Concerning the Protection of the World's Cultural and Natural Heritage. In 1983 the UN established the World Commission on Environment and Development which four years later produced the report *"Our Common Future"*, the first UN document to clearly articulate the concept of sustainable development as an alternative to development simply based on economic growth.³⁹ The ethical principles that formed the basis for *"Our Common Future"* would later constitute the ethical foundation for most subsequent UN reports on environmental protection. These ethical principles included sustainable development, equity and participation, and will be discussed more thoroughly later in this chapter.

After considering the implications of the report *Our Common Future* and future discussions, the UN General Assembly by Resolution A/RES/43/196 called for the second UN Conference on Environment and Development, also known as "The Earth Summit," to be held in Rio de Janeiro in 1992. The conference included broad participation by civil society organizations and helped raise awareness on issues such as pollution, climate change, loss of biodiversity and resource depletion. It also produced a number of subsequent treaties on environmental protection: the UN Framework Convention on Climate Change (UNFCCC, adopted at the conference), the Convention on Biological Diversity (CBD, also adopted at the conference), and the Convention to Combat Desertification (UNCCD, initiated during the Conference to establish the Intergovernmental Negotiating Committee to prepare the Draft text for UNCCD); as well as the Rio Declaration on Environment and Development (adopted at the conference), the Earth Charter (1994) and eventually the adoption of the Kyoto Protocol (1998).

Finally, the analysis will include one more document, namely the Universal Declaration on Bioethics and Human Rights (UDBHR) from 2005. This document is of a later date and offers some new and interesting perspectives on ethical values that should be included in a discussion on ethics and universalism. In sum, all these documents are founded on major ethical frameworks, and an evolution of concepts is exposed in the chronological analysis presented in this chapter. After summarizing the major findings, there will be a discussion on the universality of the principles included in the treaties.

The ECCAP project will continue to examine ethical principles related to ethics and climate change, and environmental ethics. There will also be consideration of these principles by the World Commission on the Ethics of Science and Technology (COMEST) in their work mandated by UNESCO's General Conference

39 Resolution A/RES/42/187 of 1987 welcomed the report, also called as *the Brundtland Report*.

to examine the possibilities of a future International Declaration on Ethics and Climate Change.⁴⁰

2.2 The Universal Declaration of Human Rights - UDHR (1948)

The Universal Declaration of Human Rights (UDHR) is a suitable document to use as a starting point for a discussion on the universalism of ethical values.⁴¹ It is a global, constitutional document outlining human rights for humanity, adopting and preserving a “common standard of achievement for all peoples and all nations”. Prepared by the Commission on Human Rights, it was adopted by the United Nations General Assembly in December 1948, with 48 member states voting in favour and 8 against, and has been adopted by many more countries since. The UDHR is an outcome of World War II and was thus created within a historical context in which the state had become extremely powerful in the lives of people. The high levels of torture and lack of human dignity and respect for fellow human beings encouraged a number of remarkable people to take steps. Their intention was to achieve a commitment from every state to observe a minimum standard of human rights, in peace and in conflict, so that the atrocities of World War I and II would never happen again.

Among the UN texts the UDHR can be said to have a higher degree of international consensus, but its universality can be contested as there are a significant number of states that have created their own version⁴² with substantially conflicting positions with UDHR and still some other states that do not implement the UDHR or subsequent related conventions. The dominant powers that crafted the UDHR were those that had won World War II. Therefore, many colonised countries remained unrepresented during its drafting. The few decolonised countries that were represented at the 1948 adoption were

40 Following intensive debate and dialogue in October 2009, the 35th Ordinary Session of the General Conference of UNESCO adopted the following Resolution, which will launch a process that could lead to the development of a declaration of ethical principles in relation to climate change:

The General Conference,

Recalling 29 C/Resolution 13, paragraph 2.C(d), 30 C/Resolution 20, 31 C/Resolution 21.1(a) and 32 C/Resolution 26, calling upon UNESCO to promote ethical reflection associated to the advancements of science and technology, with the advice of the World Commission on the Ethics of Scientific Knowledge and Technology (COMEST),

Having taken note of 169 EX/Decision 3.6.1,

Considering the UNESCO Strategy for Action on Climate Change, as approved by the Executive Board at its 180th session (180 EX/16 Rev.),

Taking note of the request by the Executive Board, at its 181st session (181 EX/Decision 15), that the Director-General enhance the Plan of Action on Climate Change, in particular through focus on the social and ethical implications thereof,

Taking note of the recommendation made by COMEST at its Sixth Ordinary Session (16-19 June 2009), “In view of the nature and extent of the scientific, social and human challenges of global climate change, which necessitate adoption of policies at the global level to address the pressing needs of the most vulnerable in the face of major uncertainties and the exigencies of international cooperation, it is urgent to determine universal ethical principles to guide responses to such challenges. COMEST therefore recommends that UNESCO should develop an ethical framework of principles in relation to climate change”;

Considering that the ethical principles in relation to climate change may be the subject of a declaration and that further study of this issue is necessary,

1. *Requests* the Director-General, following consultations with Member States and other stakeholders, including relevant United Nations’ agencies, further study on the matter by COMEST and the UNESCO Secretariat, to submit to the Executive Board at its 185th session, a report on the desirability of preparing a draft declaration of ethical principles in relation to climate change and to prepare, if found appropriate by the Executive Board, a draft declaration of ethical principles in relation to climate change, taking into account the conclusions reached at the 15th Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC COP-15) to be held in Copenhagen in December 2009, and to submit the outcome to the General Conference at its 36th session provided that the cost of the study can be covered by reallocation within the approved programme and budget for MP III and extrabudgetary funding.

41 The UDHR (1948) can be found online here: <http://www.un.org/en/documents/udhr/>

42 The Cairo Declaration of Human Rights in Islam adopted 5th August 1990 in Cairo by member States of the Organisation of Islamic Conference which has 52 members states of UN as its membership.

led by heads of state who had been strongly influenced by Western civilisation, and who had been educated in Western universities.

The thirty articles of the declaration are summarized in a footnote below.⁴³ The document was drafted in “official” language, which continues to be considered the language of rationality and modern civilisation. Representatives from non-European countries did not want to be viewed as ‘primitive’ and consequently willingly accepted the language and concepts used in texts such as the UDHR. However, the moral power of the content and ideals of the UDHR makes it the most authoritative UN text to this day although some countries such as Iran have dismissed it as a document based on secularised Judeo-Christian values (Cairo, 1990). South and South East Asian countries have also expressed concern over UDHR’s emphasis on individual rights over collective rights and they defend their position as ‘cultural relativism’.⁴⁴ China states ‘harmony’ as the essential emphasis of its culture and hence subtly critiques the primacy of individual human rights⁴⁵ which is the basis of UDHR.

It is worth looking at the opening lines of the preamble to examine the basic assumptions behind them: “... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” To have rights is to assume that people need to be protected from abuse by excessive power. This dynamic relationship between the individual and those who hold power derives itself from absolutist power and the need to guard against it. This idea can be considered to have been inherited from the long European history of absolute monarchs and absolutist churches and encapsulated in Hobbes’ *Leviathan*. In this tradition, it was the state’s prerogative to regulate every aspect of the individual’s life, i.e. to adopt violence and to control the freedom of any person within its territory.⁴⁶ The idea of protecting ‘individuals’ from this immense power by a set of rights is not only logical but the one way of restraining the modern state’s power.

South Asian cultures have adopted this political structure just recently, mostly in the twentieth century. Traditionally, the monarch’s power was subject to his Dharma.⁴⁷ The Dharma of the King was to be just, to provide for the citizens and to protect them. In theory, the relationship of every individual in society was based on the concept of duty. Thus, an individual had obligations as part of his/her dharma but did not have rights. The traditional Indian civilisation stresses duties rather than rights.⁴⁸ The difference is subtle but important. Under the theory of Dharma, an individual is free and autonomous except in the areas of obligations and duties. These are guided by written and unwritten codes within the culture.

43 Article 1) All humans are born free and equal in dignity and rights; 2) entitlement to rights without distinctions of race, colour, sex, language, religion, politics, nationality, property, birth or other status; 3) right to life, liberty and security of person; 4) prohibition of slavery and servitude; 5) prohibition of torture and inhuman treatment; 6) right of recognition before the law; 7) equality before the law; 8) right to an effective legal remedy; 9) prohibition of arbitrary arrest, detention and exile; 10) right to an impartial tribunal hearing; 11) presumed innocence until proven guilty; 12) protection against arbitrary interference with privacy, family, home, correspondence, honour or reputation; 13) freedom of national and international movement; 14) right to foreign asylum from political persecution; 15) right to a nationality; 16) right to consenting marriage and protection of the family unit; 17) right to own property; 18) right to freedom of thought and conscience, choice of religion and freedom to teach, practice and worship; 19) right to freedom of opinion and expression and right to seek, receive and impart information through any media; 20) right to freedom of peaceful assembly and association; 21) access to government, public service and genuine elections expressing the will of the people; 22) right to social security; 23) right to work, free choice of employment, equal pay for equal work and trade union membership; 24) right to rest and leisure; 25) standards of living adequate for health, well-being, security and child protection; 26) free elementary education and access to higher education on the basis of merit; 27) right to participate in the arts, science and cultural life, with protection of author interests; 28) right to an international social order able to realize these rights and freedoms; 29) everyone has duties to their community and is subject to laws which respect general welfare and the rights and freedoms of others; and, 30) discouraging any act aimed at the destruction of these rights and freedoms.

44 Haynes, Jeffrey. 2002. *Politics in the Developing World*. London, Blackwell Publishing.

45 Xu Xianming, President China University of Political Science and Law speaking at 3rd China sponsored symposium on Human Rights Beijing, 2005.

46 Hobbes, Thomas. 1653. *The Leviathan*. London, Penguin Classics.

47 Dharmasutras, 1999. *the Law Codes of Ancient India*, translation by Patrick Olivelle. Oxford, Oxford University Press.

48 Baird, Roberts. 2005. *Religion and Law in Independent India*. New Delhi, Manohar Publishers. First chapter Religion and Law in India: Adjusting to the Sacred as Secular, p. 10.

The individual who breaks duties is punished depending on the breach. Those who are in breach of duties do not have rights, but those who have to judge them and punish them have duties to respect their dignity. Obligations concern almost every aspect of life. Traditionally then, the monarch had an obligation to rule, to ensure that there was peace in his Kingdom and so on. Furthermore, the monarch had an obligation to treat criminals with some basic degree of respect.

Today, the paradigm of a powerful state granting rights to the individual as protection against its own power is well understood by the elite in many developing countries. However, the masses in countries that are still living under structured paternalism as a social hierarchy, or countries in which the state is weak without the power to influence the social-cultural behaviour of people cannot easily empathise with exercising rights or respecting rights. This may have been one of the major factors in the widespread abuse of human rights in some countries. Those who hold great power without the restrictions posed by a moral code's obligations tend to abuse power by ignoring the idea that individuals can have rights against their power. The dynamic between absolute power and human rights is becoming part of modern culture, but the dysfunction between the two continues to manifest itself in the abuse of power.

Islamic civilization has generally promoted a slightly different relationship dynamic between individuals and society. Islam means to submit to the will of God. Historically, a monarch's power and in fact that of the state is superseded by God. Therefore, people submit to God and not to the monarch. Thus, the power of the monarch was always limited by the guidelines given in the Koran and interpreted by the clergy. However, it did not always work in this way: the monarch with his excessive power often corrupted the clergy to interpret the rules to his benefit. Nevertheless, the Umma, or masses, were often uncomfortable with the integration of the Emperor into religious codes. Rebellions followed to stop the monarch from going too far. The abstract arbitrator of the monarch's power was the moral and social codes derived from the Koran rather than a secular language of power and rights. The modern state has created a greater dysfunction in this traditional relationship. By secularising the language of law and moral codes, the moral constraint imposed by religious interpretations has failed to check the powers of powerful rulers and led to breakdown of traditional sanction.

The UDHR therefore is born of a specific paradigm in which a desacralised language is used to conceptualize all law and moral code. The UDHR is considered to be one of the basic documents of the UN, and its values and principles are frequently referred to in other treaties in every sphere of UN consideration. The language and the underlying concepts upon which the UDHR is constructed are not shared by all cultures across the world, even though the UDHR's intentions to overcome abuses of human beings are universal in ethical systems. There should therefore be a critical awareness of the language of the UDHR and how its principles are applied in environmental treaties.

2.3 Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)

The Convention Concerning the Protection of the World Cultural and Natural Heritage⁴⁹ was enacted by UNESCO in 1972 and states in the preamble that "...parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole". The Convention thus introduces the concept of a 'common heritage of humankind' into environmental law. Theoretically, this concept offers a tool that enables a global approach to the protection of nature and the environment across state borders. Originally formed in public international law, it, in fact, also refers to those areas out of the jurisdiction of any state. It is frequently found in treaties that deal with the atmosphere, outer space or, in general, "common space areas"⁵⁰ in order to delineate state sovereignty with regard to these areas. Interestingly in certain cases, obligations that are considered to be in the common interests of the international community, have qualified within public international

49 Official text of the Convention in eight languages: <http://whc.unesco.org/en/conventiontext>.

50 Toyner, Christopher C. 1986. *Legal implications of the Concept of the Common Heritage of Mankind. The International and Comparative Law Quarterly*, Vol. 35, No. 1, pp.190-199. <http://www.jstor.org/stable/759101> .

law as “*erga omnes*”⁵¹. As the Latin equivalent of “towards everyone/all”, the term “*erga omnes*” specifies obligations owed to the international community as a whole.

Common heritage emerges from earlier international documents that used the term common property, including the Hague Convention 1954. In his book on international environmental law, Anthony Damato includes a useful explanation of the concept of common heritage of humankind: “*Important, too, are the legal implications of “heritage” as presented in a common heritage of humankind regime. Clearly, the concept of “heritage” conveys the proposition that common areas should be regarded as inheritances transmitted down to heirs, or as estates which by birthright are passed down from ancestors to present and future generations. A common heritage of humankind regime would therefore designate that region as an international patrimony, much the same as a piece of property or estate inherited by one generation from its predecessor. Thus, a common heritage of humankind regime would insist that all activities in or around the international area should respect the interests of future generations, especially in making decisions that affect whether, when and how the region’s resources are to be used, exploited, developed and distributed.*”⁵²

The idea of a ‘common heritage of humankind’ has been further promoted in relation to the utilization of shared resources, which “takes root in the concern that the resources of certain areas beyond national sovereignty or jurisdiction should not be exploited solely by those few states whose commercial enterprises are able to do so, but rather constitute the common heritage of humankind” (Toynor, 1986). This introduces the claim of equal access to and benefit from the use of common or shared resources. This notion has been acknowledged as normative in nature and has been referred to in several specific international treaties including the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (as commonly called the “The Moon Treaty” from 1967)⁵³, the Agreement on Governing the Activities of State on the Moon and Other Celestial Bodies (1979)⁵⁴, and the UN Convention on the Law of the Sea (UNCLOS 1982). In the case of UNCLOS, the notion of “common heritage of humankind”⁵⁵ has been an object of considerable debate in the international arena for decades, ever since the legal effects of the use of ocean floor resources was first recognized. It took fifteen years of negotiations to define this concept after the Republic of Malta had proposed in 1967 that the ‘common heritage of humankind’ should be applied to the international seabed resources.⁵⁶ These examples consider application of the concept to access to and utilization of resources.

51 Obligations *erga omnes* designate the *scope of application* of the relevant law, and the procedural consequences that follow from this. A norm which is creative of obligations *erga omnes* is owed to the “international community as a whole” and all States - irrespective of their particular interest in the matter - are entitled to invoke State responsibility in case of breach. See Fragmentation of international law: difficulties arising from the diversification and expansion of international law. Report of the Study Group of the International Law Commission, Fifty-eight Session. Geneva, 1 May - 9 June and 3 July - 11 August 2006. A/CN.4/L.682 p. 193 http://untreaty.un.org/ilc/documentation/english/a_cn4_l682_add1.pdf.

52 Damato, A and Kirsten Engel (1995), pp. 29-30.

53 Paragraph 1-2, Article 1: of The Moon Treaty: “... The exploration and use of outer space, including the Moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind”. “Outer space, including the Moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies”. Article 11: “... the Moon and its natural resources are common heritage of mankind...”. <http://www.unoosa.org/pdf/publications/STSPACE11E.pdf>.

54 Article 11: “... the Moon and its natural resources are common heritage of mankind...”, Article 1.1: “The provisions of this Agreement relating to the Moon shall also apply to other celestial bodies within the solar system, other than the Earth...”, Article 4.1: “The exploration and use of the Moon shall be the province of all mankind and shall be carried out for the benefit and in the interests of all countries...” <http://www.unoosa.org/pdf/publications/STSPACE11E.pdf>.

55 Preamble of UNCLOS “...area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of states” (http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm).

56 Summary record of the 2622nd meeting of UN International Law Commission A/CN.4/SR.2622 <http://www.un.org/law/ilc>. See also “The common heritage of mankind: an adequate regime for managing the deep seabed?” Melbourne Journal of International Law, 2003, Edition 2 <http://www.austlii.edu.au/au/journals/MelbJIL/2003/2.html>. See also the speech of Malta’s Ambassador to the UN at the General Assembly, 1 November 1967. http://www.un.org/Depts/los/convention_agreements/texts/pardo_ga1967.pdf.

Importantly, the Convention Concerning the Protection of the World Cultural and Natural Heritage with its wider definition of 'common heritage of humankind' offers some hope of conserving environmental sites that have a significant value for future generations, such as the Atlantic Forest of South America. Initially covering vast areas along the coastline of Brazil as well as inland areas in Paraguay and Argentina, the forest has, over the years, been reduced to 7% of its original size.⁵⁷ It was added to the list of natural World Heritage Sites in 1999 and conservation work has protected the remaining areas.⁵⁸

Stating that "deterioration or disappearance of *any* item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage"⁵⁹, the Convention does recognize environmental values in a broad sense. The Convention asserts that the international community has an interest in the protection of natural and cultural heritage sites, as their "deterioration or disappearance... would constitute a harmful impoverishment of the heritage of all the nations of the world."⁶⁰ The Convention stresses the global scope in relation to the significance of values it aims to protect, which are important to all people of the world.

However, consistent with the broad principles of the UN system, the universal importance of a site needs to be considered in light of the sovereign rights of the state in which it is situated. This makes the convention rhetorical in its claim to protect sites that are important enough to be classified as 'common heritage of humankind'; in reality the ambition of the Convention depends on the prerogatives of state sovereignty.

In the current global mosaic of multilateral environmental agreements (MEAs), the World Heritage Convention (WHC) does not stand alone as a conservation instrument. Similar to the World Heritage Convention, the Convention on Biological Diversity (CBD) from 1992 and the Ramsar Convention on Wetlands from 1971, cover both species and ecosystems through the protected areas system. However, there are differences in the character and quality of items of natural heritage that the Convention considers valuable to protect. Another distinct feature of the Convention is that cultural and natural values are embodied into a single instrument, thus, it recognizes the intimate and evolving relationship between nature and people.⁶¹

However, there are two issues that may have an effect on the universal application of the 'common heritage of humankind.' First, the identification and nomination of natural (and cultural) heritage sites on the list of World Heritage has been directly linked with state sovereignty. According to Article 4 "each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State." Paragraph 152 of the Operational guidelines of the World Heritage Convention also states that "a State Party may withdraw a nomination it has submitted at any time prior to the Committee session at which it is scheduled to be examined."⁶² Therefore, the application of the 'common heritage of humankind' to environmentally important sites and places of great biodiversity is limited in scope and applicable only to those countries that have ratified the Convention.⁶³ The state party to the Convention may even take certain unilateral 'initiatives' which could negatively affect a natural heritage site situated on its territory.

57 The Nature Conservancy: The Atlantic Forest <http://www.nature.org/wherework/southamerica/brazil/work/art5080.html>.

58 Sites that are inscribed on the list of World Natural Heritage are listed on UNESCO World Heritage List: <http://whc.unesco.org/en/list/892>.

59 The Preamble of the World Heritage Convention.

60 Second recital of The Preamble of the Convention.

61 Russel E. Train (Chairman Emeritus of WWF, USA) is one of the initiators to incorporate cultural and natural heritage into the single regulation. Keynote presentation "World Heritage: a vision for the future" at the international congress on the occasion of 30 years anniversary of World Heritage Convention, November 2002, Venice, Italy. UNESCO publication "World Heritage 2002: shared legacy common responsibility" pp. 36-38. <http://whc.unesco.org/uploads/activities/documents/activity-563-2.pdf>.

62 *Operational Guidelines for the Implementation of the World Heritage Convention* <http://whc.unesco.org/archive/opguide08-en.pdf>.

63 As of 30 November 2007, 186 countries ratified the Convention <http://whc.unesco.org/pg.cfm?cid=246>.

If so, the obligation that is owed to the international community as a whole is breached, and the third party, (state party to the Convention) entitled to invoke the protection of its interest and values under sovereignty, does so regardless of the concerns of the international community as a whole. There is no clear provision in the World Heritage Convention to protect the site from the sovereign interests of the state, and so far the only legal consequence is the removal from the list of the World Heritage Sites,⁶⁴ if no space is provided for consultation.⁶⁵

Paragraph 3 of Article 11 states that “the inclusion of a property in the World Heritage List requires the consent of the State concerned,” which is another limitation of the universal application of the ‘common heritage of humankind’. Under this convention, the ‘common heritage of humankind’ cannot legally be applied for example to Antarctica, although the area may contain outstanding universal value particularly for the future of climate change and environmental protection – the main criteria of inscription on the list of World Heritage.

Secondly, there are issues related to the operational implementation of the WHC that may also have an effect on universal application of ‘common heritage of humankind’. Let us consider these detailed institutional mechanisms as an example of what could be agreed upon in the future for further protection of the environment. According to paragraph 1 of Article 11 of the Convention and paragraphs 62-63 of the Operational Guideline, countries shall prepare and submit a tentative list of those properties situated on its territory, which each state party considers suitable for inscription on the World Heritage List. No nomination can be considered unless the nominated site has already been included on the state party’s tentative list. On the other hand, the preparation of a nomination dossier and its further submission, which will be followed by the evaluation and finally inscription - if the submitted site meets the World Heritage criteria, is a long lasting process. In the case of the Uvs Lake Basin (Mongolia/Russian Federation, 2003) this process lasted for 7 years, between its nomination and inscription on the World Heritage List. Similarly, the Orkhon Valley Cultural Landscape (Mongolia, 2004) took 8 years, and the Sichuan Giant Panda Sanctuary (China, 2006), a landmark case, took 20 years.

Meanwhile, some 1465 sites from 166 countries⁶⁶ were included on the Tentative List as potential World Heritage sites. Since there is no special status for the Tentative List, these potential World Heritage Sites may lose their values and their special significance, such as their biodiversity or environmental importance, by the time of nomination and inscription thereof. For example, the Tentative List of Mongolia was approved at the level of Ministry but was hardly considered in the course of planning the country’s development strategy in setting aside funds for protecting the sites on the list.

During the nomination, a comparative study and analysis with similar sites is also required, since the World Heritage Sites represent only those of global significance. Therefore, besides the technical expertise in certain fields, another prerequisite to fulfil the requirements of the Convention is open access to the broad range of scientific data and survey/research reports on specific subjects, especially those that relate to similar sites around the globe. This may not be affordable for developing countries, like in case of Mongolia, when it was requested to provide the comprehensive comparative analysis of the Khuvsgul Lake and its Watershed nomination with lakes of similar origin, type, characteristic and geographical location, including lakes in Africa (Victoria, Malawi, Tanganyika), North America (Ontario) and Eurasia (Baikal, Issyk Kul).

64 The World Heritage Committee at its 31st Session at Christchurch, New Zealand, took the unprecedented decision of removing a site from UNESCO’s World Heritage List. The Arabian Oryx Sanctuary (Oman) became the first site to be deleted since UNESCO’s 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage entered into force. The World Heritage Committee deleted the property because of Oman’s decision to reduce the size of the protected area by 90%, in contravention of the Operational Guidelines of the Convention. This was seen by the Committee as destroying the outstanding universal value of the site which was inscribed in 1994. <http://whc.unesco.org/en/news/362>.

65 In case of Dresden (Germany), after the years of UNESCO’s consultation with the city authority, the World Heritage Committee has decided that in the event that the construction of the bridge across Elbe was not stopped, the property would be deleted from the World Heritage List in 2009.

66 Among 186 states parties to the Convention, 166 have submitted a Tentative List.

In summary, the Convention Concerning the Protection of the World Cultural and Natural Heritage offers an opportunity to protect and preserve natural sites of environmental importance and biodiversity for future generations by promoting them as sites of common heritage of humankind. However, the process is cumbersome and lengthy. It further puts the initiative and financial burden of achieving the status upon the state. Moreover, the state can withdraw under sovereign rights if its interests conflict with it being declared as a World Heritage site.

2.4 United Nations Framework Convention on Climate Change - UNFCCC (1992)

It was the initiative of the Republic of Malta, like in case of UNCLOS, to table a proposal "Conservation of climate as part of the common heritage of mankind" as an item of the 43rd Session of UN General Assembly and it was proposed that climate is "the common heritage". During that Session a Resolution A/RES/43/53 was adopted under the same item and it recognized that climate change is a common concern of humankind, but the original idea of common heritage was not supported, since climate is an essential condition which sustains life on earth. If the full implications of recognition of climate as common heritage is made, including its *erga omnes* character as well as equal access to and benefit sharing from it, there could be further problems over the use of natural resources. Notwithstanding, "common concern" provides to the international community moral duty for collaborative action.

We can consider the emergence of the concept of common resources in related documents to add to the discussions in Section 2.3, for example, in the statement from an international meeting of legal and policy experts on protection of atmosphere held in Ottawa in 1989, the atmosphere is defined as "common resource of vital interest of mankind". As Susskind et al. write: "the common-heritage-of-mankind principle, [is] now widely recognized as an appropriate regulatory mechanism for the protection of global 'life-support systems' such as the ozone layer and the climate system"⁶⁷. Perhaps the broadest way of thinking about CHM is that it is "the natural resources and vital life-support services that belong to all mankind rather than to any one country" (Porter and Brown, 1996, p. 13). That such resources could in some way be considered jointly owned by all humanity is not a new idea. The English philosopher John Stuart Mill suggested that "the Earth itself, its forests and water above and below the surface. These are the inheritance of the human race" (quoted in Cairncross, 1992, p. 6).

The objective of the UNFCCC, which was adopted at the Earth Summit in Rio de Janeiro in June 1992, is to achieve "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."⁶⁸ The Preamble of the Convention clearly suggests that human activities have added to the force of climate change due to an increasing amount of greenhouse gas emissions, and that this is likely to have adverse effects on natural ecosystems and humankind. All developed country Parties to the Convention commit themselves to taking steps to reduce their emissions and to measure and report progress to the Convention Secretariat. However, no specific reduction targets or goals are mentioned in the text, typical to framework conventions. Article 3 of the Convention contains a set of ethical principles, which are to be of guidance to the member states in achieving the objectives of the convention. As mentioned earlier, these were to a large degree drawn from 'Our Common Future' from 1987 and include:

Equity: "The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities" (Art.3, Par.1).

Common but differentiated responsibilities (and capabilities): "acknowledging that... climate change calls for the widest possible cooperation by all countries..., in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions" (Preamble) and "the

67 Lawrence Susskind, William Moomaw, Kevin Gallagher, "Transboundary environmental negotiation: new approaches to cooperation", quoted by Imber, 1996, p. 139.

68 UNFCCC Article 2.

developed country Parties should take the lead in combating climate change and the adverse effects thereof” (Art.3, Par.1).

Vulnerability: *“the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, ..., should be given full consideration”* (Art.3, Par.2).

Precaution: *“the Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects”* (Art.3, Par.3).

Sustainable development: *“Parties have a right to, and should, promote sustainable development”* (Art.3, Par.4).

There are two main reasons why it is debatable whether the ethical principles of the Convention can be promoted as universal. The first reason is that the ethical principles are all focused on the protection of human welfare in the face of climate change, while not bringing to attention the inherent rights of animals and plants, or ecosystems as a whole, to be protected as well. For instance, the principle of *equity* is closely linked to the concept of social justice, which again forms the basis for the concept of environmental justice. The latter can be understood as a universal right of all people to a clean and safe environment and to the use of natural resources, without regard to race, ethnicity or social-economic background.⁶⁹ Furthermore, the idea behind the principle of *common but differentiated responsibilities* is that all humankind has a common responsibility to protect the environment, which we are all equally dependent upon to survive, but that different states have different levels of responsibilities according to their capabilities and level of historic contributions to greenhouse gas emissions. Thus, developing countries are still entitled to give priority to economic growth and social development over abating climate change. The principles of *vulnerability* and *precaution* are also included to ensure that the actions of states in regard to climate change do not cause harm to people who might not be able to protect themselves but does not extend to other living beings. Also the economic and social rights and needs of future generations are taken into consideration by the principle of *sustainable development* over consideration for other species.

The language of the Convention thus emphasises the role and importance of humans as custodians and asserts that the environment should be protected primarily for the benefit of future generations, rather than acknowledging the intrinsic value of nature and promoting a respectful relationship with the environment. For those who adhere to symbiotic or integrationist lifestyles the latter option would perhaps be easier to relate to. In fact, the very notion that humans should have the ability to ‘save the planet’ from climate change might be an unfamiliar perspective to people who have an ecocentric or cosmocentric view of humans role in the larger surroundings.

The second reason why universalism might not have been achieved in the UNFCCC is the state centric nature of its language. In addition to this set of five ethical principles under Article 3, the Preamble also includes a significant sixth principle, namely that of state sovereignty: *“states have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies”*. Besides reaffirming the rather anthropocentric perspective of the Convention, this paragraph also provides states with an exit clause to exercise self-interest above the interests of the global community.

Due to the fact that the UN system is an inter-state one, and that UN treaties are based on the inter-state negotiations, the UNFCCC can be said to lack reference to global civil society. Instead it leaves it up to the states to engage their populations in the issue of climate change. For example, the Preamble of the Convention states that: *“acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions”*. Thus, the UNFCCC does not set about asking the people of the world to take notice, to change their behavior or to push their governments to adopt policies consistent with their concerns. Its only relevance to civil society is that those aware and informed of the UN language and

69 IUCN report (2007) p. xiii.

conventions can lobby their own governments as well as the 'international community of states' to do at least this if not more. But the majority of the world's people who are neither aware of this document nor can empathize with it, are passively ignorant of its success or failure. Gradually there is growing awareness of UNFCCC related events, such as the 2009 Copenhagen Summit.

In summary, the UNFCCC has relevance as an international document drafted by states based on prevalent liberal, secular ethical systems. It is the closest we have today to a global effort to mitigate climate change, which arguably can be asserted as a universal goal shared by all people in the world although the approach and the particularities of the effort may not be universally shared by all.

2.5 The Rio Declaration on Environment and Development (1992)

One of the main outcomes of the Earth Summit in Rio, in addition to the UNFCCC and the gathering of persons from many nations and cultures together, was the Rio Declaration on Environment and Development. The Declaration consists of a set of twenty-seven principles that define the rights and responsibilities of states in future international agreements on sustainable development and environmental protection. The main principles include:

Human rights: "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature" (Principle 1).

Sustainability: "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations" (Principle 3).

Equity: "All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world" (Principle 5).

Common but differentiated responsibilities: "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command" (Principle 7).

Precaution: "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation" (Principle 15).

Participation: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level" (Principle 10). "Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainability" (Principle 20). "Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development (Principle 22).

Vulnerability: "The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority" (Principle 6). "The environment and natural resources of people under oppression, domination and occupation shall be protected" (Principle 23).

Peace: "Peace, development and environmental protection are interdependent and indivisible" (Principle 25).

The dominant principles of the Declaration on Environment and Development have much in common with those found in the UNFCCC above, arguably because both documents are inspired by the 'Our

Common Future' report from 1987. As a result, this document is also anthropocentric in its language, which might interfere with its ability to be recognized universally. In fact, the opening principle of the Declaration announces that human beings are at the center of concern for sustainable development, without mentioning the optional role of human beings as an endogenous part of nature. Also, while confirming our rights to protection and equity, the document does not mention that we have a duty to protect and respect our environment. Thus it lacks a balanced approach to creating a set of universal ethical values related to environmental protection.

Similar to the previous documents in this analysis, the Rio Declaration includes the principle on state sovereignty. Principle 2 of the document asserts that *"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction"*. The Rio Declaration interestingly puts a qualification upon state sovereignty by imposing a responsibility upon the state; while it is free to exploit resources within its sovereignty, it should not adversely affect or damage the environment of other states or areas beyond its national jurisdiction. This offers a more robust restriction upon state sovereignty in favor of preventing climate change and damage to the environment or biodiversity, then the principle which was also seen in international customary law.

2.6 Convention on Biological Diversity (1992)

The Convention on Biological Diversity (CBD) was another major convention in the field of environment affairs achieved at the Rio Conference in 1992.⁷⁰ The structure of the Convention with its extensive preamble is a format that seems to have become a norm in United Nation's system for treaties between state members. Its emphasis is on commitments and actions by states, whom it is addressed to, rather than being a universal convention addressed to all people of the world. A summary of the twelve principles follows below:

Principle 1: The objectives of management of land, water and living resources are a matter of societal choices. Different sectors of society view ecosystems in terms of their own economic, cultural and society needs. Indigenous peoples and other local communities living on the land are important stakeholders and their rights and interests should be recognized. Both cultural and biological diversity are central components of the ecosystem approach, and management should take this into account. Societal choices should be expressed as clearly as possible. Ecosystems should be managed for their intrinsic values and for the tangible or intangible benefits for humans, in a fair and equitable way.

Principle 2: Management should be decentralized to the lowest appropriate level. Decentralized systems may lead to greater efficiency, effectiveness and equity. Management should involve all stakeholders and balance local interests with the wider public interest. The closer management is to the ecosystem, the greater the responsibility, ownership, accountability, participation, and use of local knowledge.

Principle 3: Ecosystem managers should consider the effects (actual or potential) of their activities on adjacent and other ecosystems. Management interventions in ecosystems often have unknown or unpredictable effects on other ecosystems; therefore, possible impacts need careful consideration and analysis. This may require new arrangements or ways of organization for institutions involved in decision-making to make, if necessary, appropriate compromises.

Principle 4: Recognizing potential gains from management, there is usually a need to understand and manage the ecosystem in an economic context. Any such ecosystem management programme should: a) Reduce those market distortions that adversely affect biological diversity; b) Align incentives to promote biodiversity conservation and sustainable use; c) Internalize costs and benefits in the given ecosystem to the extent feasible. The greatest threat to biological diversity lies in its replacement by alternative systems of land use. This often arises through market distortions, which undervalue natural

70 The full text of the Convention can be found here: <http://www.cbd.int/convention/convention.shtml>.

systems and populations and provide perverse incentives and subsidies to favor the conversion of land to less diverse systems. Often those who benefit from conservation do not pay the costs associated with conservation and, similarly, those who generate environmental costs (e.g. pollution) escape responsibility. Alignment of incentives allows those who control the resource to benefit and ensures that those who generate environmental costs will pay.

Principle 5: Conservation of ecosystem structure and functioning, in order to maintain ecosystem services, should be a priority target of the ecosystem approach. Ecosystem functioning and resilience depends on a dynamic relationship within species, among species and between species and their abiotic environment, as well as the physical and chemical interactions within the environment. The conservation and, where appropriate, restoration of these interactions and processes is of greater significance for the long-term maintenance of biological diversity than simply protection of species.

Principle 6: Ecosystems must be managed within the limits of their functioning. In considering the likelihood or ease of attaining the management objectives, attention should be given to the environmental conditions that limit natural productivity, ecosystem structure, functioning and diversity. The limits to ecosystem functioning may be affected to different degrees by temporary, unpredictable or artificially maintained conditions and, accordingly, management should be appropriately cautious.

Principle 7: The ecosystem approach should be undertaken at the appropriate spatial and temporal scales. The approach should be bound by spatial and temporal scales that are appropriate to the objectives. Boundaries for management will be defined operationally by users, managers, scientists and indigenous and local peoples. Connectivity between areas should be promoted where necessary. The ecosystem approach is based upon the hierarchical nature of biological diversity characterized by the interaction and integration of genes, species and ecosystems.

Principle 8: Recognizing the varying temporal scales and lag-effects that characterize ecosystem processes, objectives for ecosystem management should be set for the long term. Ecosystem processes are characterized by varying temporal scales and lag-effects. This inherently conflicts with the tendency of humans to favour short-term gains and immediate benefits over future ones.

Principle 9: Management must recognize that change is inevitable. Ecosystems change, including species composition and population abundance. Hence, management should adapt to the changes. Apart from their inherent dynamics of change, ecosystems are beset by a complex of uncertainties and potential "surprises" in the human, biological and environmental realms. Traditional disturbance regimes may be important for ecosystem structure and functioning, and may need to be maintained or restored. The ecosystem approach must utilize adaptive management in order to anticipate and cater for such changes and events and should be cautious in making any decision that may foreclose options, but, at the same time, consider mitigating actions to cope with long-term changes such as climate change.

Principle 10: The ecosystem approach should seek the appropriate balance between, and integration of, conservation and use of biological diversity. Biological diversity is critical both for its intrinsic value and because of the key role it plays in providing the ecosystem and other services upon which we all ultimately depend. There has been a tendency in the past to manage components of biological diversity either as protected or non-protected. There is a need for a shift to more flexible situations, where conservation and use are seen in context and the full range of measures is applied in a continuum from strictly protected to human-made ecosystems

Principle 11: The ecosystem approach should consider all forms of relevant information, including scientific and indigenous and local knowledge, innovations and practices. Information from all sources is critical to arriving at effective ecosystem management strategies. A much better knowledge of ecosystem functions and the impact of human use is desirable. All relevant information from any concerned area should be shared with all stakeholders and actors, taking into account, inter alia, any decision to be taken under Article 8(j) of the Convention on Biological Diversity. Assumptions behind proposed management decisions should be made explicit and checked against available knowledge and views of stakeholders.

Principle 12: The ecosystem approach should involve all relevant sectors of society and scientific disciplines. Most problems of biological-diversity management are complex, with many interactions, side-effects and implications, and therefore should involve the necessary expertise and stakeholders at the local, national, regional and international level, as appropriate.

This Convention differs from the other documents adopted at the Rio Summit in a few ways, although the international discussions on all these instruments discussed in Chapter 2 of this report are related. For instance, the CBD confirms the intrinsic value of biodiversity and ecosystems both in the Preamble and throughout the document. This means that all species and the environment should be respected and preserved in accordance with their own rights, not just because of their value to humans. The CBD also emphasises the dependence of humans on functioning ecosystems and our need to protect them for the benefit of future generations, but the language it uses is arguably less anthropocentric and contains more elements of biocentrism, and even ecocentrism. In fact, the strong focus of the CBD on the role of functioning ecosystems as a key factor in maintaining or restoring biological diversity is in itself rather ecocentric; instead of appointing the human as the custodian of other species, the human is considered an integral part of a larger and inherently complex system of biotic and abiotic elements, and the survival of this system is dependent on the dynamic relationship between all its separate parts. In this way, the CBD contains a perspective on the relationship between humans and the environment and its values that might be more universally accepted by the variety of world views across the world.⁷¹

Furthermore, although addressed intentionally to states, the CBD still retains a focus on the need to include non-state actors in the process of preserving biodiversity. On the one hand, it recognizes the vulnerable position of indigenous people and local communities living within endangered ecosystems and confirms their right to participation and representation. On the other hand, it also recognizes the value of local traditions and indigenous knowledge and the need to make use of these resources to achieve the goals of the convention. This document therefore seems more acceptable for a variety of views and perspectives on nature, which increases its ability to be recognized as a universal document on environmental protection.

Naturally, the implementation of these provisions and intentions is as always dependent upon the will and interests of the state parties to the Convention. Still, the CBD is an important addition to other international environmental treaties and stands as an example of a slightly more universal approach to the human-nature relationship.

2.7 The Earth Charter (1994)

In 1987, in the report *Our Common Future* mentioned above, The World Commission on Environment and Development emphasized the need for a universal declaration on sustainable development. In response, the Earth Charter was drafted for the Earth Summit in Rio de Janeiro in 1992. Although it received much support from global civil society, it did not achieve the needed consensus by UN member states to become the main declaration on sustainable development at the conference. This honor was instead bestowed upon the text in the Rio Declaration discussed in section 2.5 above. In 1994 the Earth Charter was restarted as a civil society initiative and has since received an increasing amount of recognition from individuals, organizations and states as a “global consensus statement on the principles of which sustainable development is to be achieved”.⁷² Five main principles can be found in the Earth Charter:

Respect for nature: *“The protection of Earth’s vitality, diversity, and beauty is a sacred trust”* (Preamble, Par.2). *“Recognize that all beings are interdependent and every form of life has value regardless of its worth to human beings”* (Art.1, Par.1). *“Prevent harm as the best method of environmental protection and, when knowledge is limited, apply a precautionary approach”* (Art.2, Par.6).

Universal human rights and democracy: *“Ensure that communities at all levels guarantee human rights and fundamental freedoms and provide everyone with an opportunity to realize his or her full potential”* (Art.1, Par.3a).

71 Refer to ECCAP WG2 on ethical worldviews of nature.

72 The Earth Charter Initiative: <http://www.earthcharterinaction.org/content/pages/Read-the-Charter.html>.

Social and economic justice: *"Promote social and economic justice, enabling all to achieve a secure and meaningful livelihood that is ecologically responsible"* (Art.1, Par.3b). *"Ensure that economic activities and institutions at all levels promote human development in an equitable and sustainable manner"* (Art.3, Par.1). *"Affirm gender equality and equity as prerequisites to sustainable development and ensure universal access to education, health care and economic opportunity"* (Art.3, Par.11). *"Uphold the right of all, without discrimination, to a natural and social environment supportive of human dignity, bodily health, and spiritual well-being, with special attention to the rights of indigenous people and minorities"* (Art.3, Par.12).

Culture of peace: *"Treat all living beings with respect and consideration"* (Art.4, Par. 15). *"Promote a culture of tolerance, nonviolence and peace"* (Art.4, Par.16). *"Recognize that peace is the wholeness created by right relationships with oneself, other persons, other cultures, other life, Earth and the larger whole of which all are a part"* (Art.4, Par.16b).

Shared responsibility: *"To realize these aspirations, we must decide to live with a sense of universal responsibility, identifying ourselves with the whole Earth community as well as our local communities ... Everyone shares responsibility for the present and the future well-being of the human family and the larger living world"* (Preamble, Par.5).

It is relevant at this stage to look at this attempt towards a universal code to bring together and bind countries, people and industry to take responsibility for the environmental damage and the need to take action. The Earth Charter is a document proudly displayed by many NGOs, and in many international conferences, however it has not been accepted in detail by many countries as critics claim it fails to appreciate their own conflicting needs.

Its utility is acknowledged however, in words of a UNESCO General Conference resolution of 2003, which reads that *the General Conference resolves to: "1. Recognize the Earth Charter as an important ethical framework for sustainable development, and acknowledge its ethical principles, its objectives and its contents, as an expression that coincides with the vision that UNESCO has with regard to their new Medium-Term Strategy for 2002-2007; 2. Affirm our intention, as Member States, to utilize the Earth Charter as an educational instrument, particularly in the framework of the United Nations Decade for Education for Sustainable Development; 3. Invite the UNESCO General Conference to analyse with the UNESCO Director-General how to reinforce, in a practical way, the vision and principles of the Earth Charter in UNESCO programmes."*

The Charter is also intellectually interesting in its presumption of universality as well as hegemony. The Charter language is mostly written in an Abrahamic and apocalyptic tone, with some acknowledgment of ecocentric views and assumes that the world shares the Abrahamic hermeneutic concepts as incontestable facts. For instance, the Preamble which has all the ingredients of a sermon such as 'critical consequence of sinning', 'moment of choice', 'eternal damnation', 'end of the world', and calls for people to start 'living the path', 'join the community' 'see the light' and seek 'redemption.' It reads, *"We stand at a critical moment in Earth's history, a time when humanity must choose its future. As the world becomes increasingly interdependent and fragile, the future at once holds great peril and great promise. To move forward we must recognize that in the midst of a magnificent diversity of cultures and life forms we are one human family and one Earth community with a common destiny. We must join together to bring forth a sustainable global society founded on respect for nature, universal human rights, economic justice, and a culture of peace. Towards this end, 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."*

The Charter may be consistent most with a Abrahamic view, but thorough analysis is needed to see whether it is consistent with the views and concepts of other civilisations such as Chinese, Indic, Islam, Buddhism, African tribes, and Native Americans. The document does however contain biocentric values, e.g. *"recognize that all beings are interdependent and every form of life has value regardless of its worth to human beings"* (Art.1, Par.1). It is also the least state centric of the documents discussed in this chapter of the report.

2.8 The Kyoto Protocol (1997)

Even after the implementation of the UNFCCC in 1994, climate change was still treated more as a hypothetical phenomenon, but it was agreed to specify the commitments of the developed nations based on state-of-the-art scientific knowledge during the first meeting of the Conference of the Parties (COP), scheduled in 1995, Berlin. The Berlin Mandate was adopted at the COP to identify specific targets and obligations through quantified emission limitations and reduction commitments. Important progress was however made with the adoption of the Kyoto Protocol to the UNFCCC in 1997. To support the objectives of the UNFCCC, the Protocol sets binding targets for reduction of GHG emissions to 5% below 1990 levels in 37 industrialized countries and the European Community in the period between 2005 and 2012. It is generally seen as a first step towards a global emission reduction regime, although a number of countries do not have quantitative commitments to reduce commitments.

After the Kyoto Protocol came into force in 2005, the issue of climate change has received increasing attention, not only from governments and the UN, but also from media, business and civil society organizations. However, negotiations about the terms for a new protocol have not been completed, and have been the subject of intense debate under UNFCCC, including at the Copenhagen Summit in 2009. It is therefore timely to assess the strengths and weaknesses of the current Protocol and its ability to help states overcome their collective action problems on the climate change issue.

Since the purpose of the Kyoto Protocol is in pursuit of the ultimate objective of the Convention as stated in Article 2, and guided by Article 3 of the Convention, the Protocol is based on the rather anthropocentric principles of equity, common but differentiated responsibilities, vulnerability, precaution and sustainable development. It contains the same strong emphasis on state sovereignty as well. The universality of these principles was discussed in section 2.4, and the same conclusions apply here.

The Kyoto agreement is a highly technical and practical treaty in comparison with the other documents analysed here, and should perhaps be seen as an agreement on sets of goals rather than a document setting out ethical commitments. However, it is reasonable to question whether the ethical principles of the UNFCCC are sufficient to ensure global compliance with the Kyoto Protocol sometime in the future. The goal is to reduce the amount of CO₂ in the atmosphere but the strong focus on the right to continued economic development and an equitable share of resources contradicts this goal. There is considerable debate on the utility of the Kyoto Protocol however.

The problem with anthropocentrism is that it only has room for environmental protection in its most limited form, often as short-term efforts to limit environmental damage after it is already done. This is because until now humans cannot act coherently as one world, and neither has a thorough method to take into account the interests of future generations been devised. Rather, there are several diverging interests across regions and across time and there is - as of today - no way to satisfy all these needs while at the same time protecting our environment and our natural resources. One solution could be to shift the focus of environmental ethics from the interests of humans to the interests of nature. A biocentric perspective on climate change would simply assert that the whole world has to work together to find a CO₂ neutral alternative to our current development model, simply because we have no right to cause harm through damages and extinction to other species. In short, a biocentric principle that confirms the intrinsic value of nature would be an essential addition to the set of ethical principles in the follow-up to the Kyoto Protocol.

The ethical and philosophical commitment to such a biocentric principle should be left to the civilisations and communities to devise. For instance, 'modernistic' communities may prefer 'rational' discourse to justify this commitment while many other communities may draw on religious and traditional justifications to comply with the principle.

2.9 The Universal Declaration on Bioethics and Human Rights - UDBHR (2005)

The UDBHR is a 2005 UNESCO declaration on bioethics and human rights that describes bioethical principles and developments in relation to the basic principles of human rights.⁷³ It is one of the recent documents to be adopted by the UN and has incorporated some of the critique and alternative worldviews. However, despite its attempt to be inclusive it is not sufficiently clear in respect to guidance of policy related to environmental ethics.

The document is in consonance with general United Nations tendency in stating its agenda clearly at the beginning: *“Resolving that it is necessary and timely for the international community to state universal principles that will provide a foundation for humanity’s response to the ever-increasing dilemmas and controversies that science and technology present for humankind and for the environment”*. While acknowledging cultural diversity elsewhere in the text, the UDBHR states in the Preamble an intention to establish a universal set of principles. However, the UDBHR also promotes the importance of protecting cultural diversity, which is not merely anthropological outward expressions and etiquette, but sometimes also contains deep and contradictory philosophical and ethical aspects.

The tension becomes evident as the declaration makes a shift from most of the other UN documents that are included in this analysis and that incorporate largely anthropocentric perspectives on the human-environment relationship. The sentence, *“Aware that human beings are an integral part of the biosphere, with an important role in protecting one another and other forms of life, in particular animals,”* brings the UDBHR closer to ecocentric thinking than most previous texts. The human is considered a part of the biosphere just like other organisms, although the human is still given a special role as a protector. Unfortunately, the statement does not define whether the duty of ‘protection’ is being imposed on the human person as a custodian (Abrahamic view) or as a virtue of reverence (Indic view). The statement is in any case quite close to the traditional Indic worldview.

The inclusion of biocentric principles in this document as well as in the Convention on Biological Diversity mentioned above could indicate that the UN is gradually incorporating alternative perspectives on ethical principles into its deliberations and treaties. This pace seems to be determined by knowledge of alternative worldviews being taken on board by the ‘West’ rather than an inherent understanding within the United Nations that alternative worldviews may already have successful strategies for biodiversity. It is still not clear, however, if the UN wishes to adopt an approach to environmental ethics based on plurality or if it is trying to incorporate various perspectives into a single universal set of ethical principles.

Another source of tension within the UDBHR is found in the section on Principles. Under Article 3 on ‘human dignity and human rights’, two provisions are listed, namely; “1) Human dignity, human rights and fundamental freedoms are to be fully respected” and “2) The interests and welfare of the individual should have priority over the sole interest of science or society”. The protection of individual rights is further reinforced in Article 28.

This paragraph asserts a hierarchy of cultural preferences within the UN conventions. The secular modern concept of individual human rights is fundamental and continues to be a priority above all others. Decades of critique have promoted review and acknowledgement of other concepts of human relations, commitments and focus of power, such as dharma (Indian), harmony (Chinese) and submission (Islam) but these remain secondary to the basic principle of individual rights. The UDBHR, therefore, attempts to express preference for the Indic concept of the human as an integral part of the ecosphere instead of the Abrahamic position of custodian, and then proceeds to support the right of communities such as indigenous people and their way of life but then undermines this plurality by creating a hierarchy for secular individual rights as universally superior to all others.

While hierarchy is understandable in the context of the hegemonic paradigm that has influenced and motivated some of the most far reaching ideas at the United Nations, their failure at the ground

73 For the full text of the Declaration see: <http://unesdoc.unesco.org/images/0014/001461/146180E.pdf> .

level in much of the world leaves them relevant to one section of the world community at best or utopian in fact. The fissure between what the UN and Western humanitarian movements consider to be absolutist and best rights are not necessarily appreciated as such or accepted by large sections of the world as explained above (in discussion on UDHR). This makes the UN ineffective in many parts and the conventions 'universal' only in rhetoric rather than reality. There were discussions in the UNESCO hearings on the drafting of the UDBHR of a future instrument on environmental ethics, in which we could envisage a move away from the human rights centred texts that dominate UN instruments.

In indigenous communities and in some major civilisations, such as the traditional Chinese and Indian ones, the emphasis and the principle of fundamental rights is neither accorded to the individual nor to society (collective), rather the emphasis and the hierarchy is given to the balance between individual and society in a subtle set of duties, responsibilities and protections. The integral network of Dharmas in Indic traditions, or filial responsibilities in Chinese culture, remains unarticulated and underemphasised at the United Nations. By creating a hierarchy of cultural norm within its treaties has the effect of making UN conventions difficult to implement in vast populations around the world, because many people think differently. Promotion of values in UN treaties is seen as cultural colonisation by some communities, thus questioning the United Nation's claim to be a world body for all people.

The following paragraph of UDBHR could be considered as the underlying basis of a future international instrument: *"Protection of the environment, the biosphere and biodiversity: Due regard is to be given to the interconnection between human beings and other forms of life, to the importance of appropriate access and utilization of biological and genetic resources, to respect for traditional knowledge and to the role of human beings in the protection of the environment, the biosphere and biodiversity."*

Thus the stage is set for further elaboration of an international instrument on environmental ethics when the world community is ready for it.

3. Policy Options

3.1 Implications of Different Worldviews for Treaty Discussions

The environment, climate change, biodiversity and sustainability are grave issues. They cannot be left to politics, philosophical preferences, ideological campaigns or hopes. There has to be a realistic and holistic approach to addressing these global and imminent issues that might be the most serious ever faced by human beings.

Most of the twentieth century has seen post-Enlightenment Western science and secularism becoming the basis of modern pedagogy. In the field of humanities, politics and human relations, it assumes human rationality based on derivatives from Kantian logic and Christian humanism. Its hegemonic tendencies are rooted in traditional Abrahamic notions of universality. By default or intention, this has become the dominant hegemonic language and conceptual basis of knowledge across the world, particularly in national and international institutions.

This language is also the basis of conventions and treaties at the United Nations. Since the Universal Declaration of Human Rights, there has been some criticism from scholars that the UDHR was based on Western individual rights without the real consent of many countries. As a result, international legal instruments have gradually become sensitive to wider consultation with state members and even engage civil society organisations in the formation of a revised 'universal' convention. The Earth Summit in Rio, which brought together 172 governments, 2400 non-governmental organizations and several thousand individuals acting as consultants, is a good example in this regard.

There is a belief within the UN that this wider consultation and input qualifies the resulting conventions to be 'universal' since almost all member states are actively engaged in forming a future convention. There are, however, two principal assumptions in this dynamic. Firstly, the governments of almost all states are structured along similar concepts of the modern state system and engage in similar conceptual bases of governance despite adhering to different ideologies such as democracy, authoritarianism, or theocracy. However, Western hegemony has meant that most states accept the norms that define human rights, civil rights and development rights as ideals. Moreover, the training of most elite bureaucrats is also along similar lines. Therefore, the assumption of international universality is based on a minority of people sharing a similar conceptual language.

Secondly, the UN still remains an inter-state organisation including civil society as a part of its decision-making process less formally. The universality is founded on the assumption that all people are 'represented' through their state representatives. We need to consider these structures, and the policies that result in them, when we ask what type of global community has agreed to the declarations, conventions, treaties and agreements that are arrived at as a result of multilateral discussions. In reality though, large sections of civil society are neither engaged actively with their state representatives nor have a voice within the United Nations system. In addition, the state representatives do not really consult their populations or bring alternative worldviews onto the discussion, because they tend to safeguard the interests of their states in the discussions rather than actively engage in a critique of the accepted norms. Moreover, many probably think that their populations may not empathise with the operative concepts at the United Nations, which are largely based on 'Enlightenment' philosophies.

In the fields of human rights, politics, education and economics, the actual effectiveness of conventions and treaties depends on how countries uphold them. Efforts are made, by a number of civil society organizations, that countries will ratify and adopt international instruments eventually through education, information and campaigns. However, human rights violations are endemic, internal wars are frequent, economic disparities are phenomenal, child labour is rampant and women's rights have yet to be realised in many countries.

Although there are reporting mechanisms within the UN system, they are sometimes ineffective in making much difference on the ground as state members can either employ diplomats to diffuse criticism, circumvent accusations or, in some cases, simply ignore findings. Some countries will not

submit to institutions such as international courts, reporting mechanisms or binding agreements because they do not believe in compromising their sovereignty to supranational institutions.

The results of this irregular adoption and ineffectiveness of international norms does not endanger all of humanity nor even large sections of it. In fact, despite all the abuses and violations of norms, the world continues to grow in relative prosperity. But climate change, danger to biodiversity and environmental destruction are reaching irreversible levels and endanger all of humanity. It is generally inferred that the effects of reduced access to resources, such as water, food, energy and land will lead to epidemics, hunger, heat exhaustion, mass migration, social unrest and even war.⁷⁴ Eventually, climate change could affect every region and threaten human survival. The dangers of climate change and environmental damage cannot be left to the degree of arbitrariness and partial prevention as seen in other international conventions. Humanity and the ecosphere can survive human rights abuses but it may not be able to survive irreversible climate change. It can overcome internal conflicts, but wars for survival could mean death on a massive scale for many species.

Climate change and threats to biodiversity cannot be dealt with simply by ideological principles, and utopian conventions claiming universal application. There needs to be evidence-based policy assessment to seek how to most effectively achieve these ideals, and we welcome that there are some signs of this in the United Nations structures. It cannot be subject to disruption by sovereign rights taking precedence over the survival of humanity and future generations. Biodiversity is recognised by traditional systems and, more recently, science to be intimately integrated with human survival. The environment is dependent on biodiversity and mitigating climate change is dependent on changing human consumption as well as attitudes and behaviour in general. This necessitates joint efforts by state parties, civil society organizations, and industry as well as ordinary people and their communities.

As discussed in this report, regardless of the institutional system of states, human society is very diverse and it responds to very different paradigms and pedagogical systems. An apocalyptic message may work for one community but it may have little effect on another one. Duties rather than rights inspire some communities around the world whereas religious practices rather than secularised scientific facts convince some people to commit to preserving biodiversity. There is considerable difference between a language of rights, a language of intending apocalypse and a language of Dharmic duties, spiritual practices or cultural norms. Thus, it is perhaps futile to try and construct 'universal' conventions as a patchwork of different paradigms. Such a patchwork fails to be efficiently applied or observed. Careful analysis reveals that any convention, regardless of the various groups it tries to incorporate, will eventually have a hierarchy of privilege which is influenced by the hegemonic paradigm that drafted the convention.

If the international community desires a workable and effective policy plan on addressing the environment and preserving biodiversity, it should perhaps move away from 'universal' conventions and "one fit for all" principles and ideals. At least in the field of biodiversity and environment, United Nations institutions need to attempt to work with a plurality of ethical systems. Some of these may contradict each other, others may complement each other. However, the contradictions are likely to be conceptual rather than practical. Perhaps it would be more effective to establish goals rather than ideals and rhetorical principles.

Following that, the United Nations should set up a depository of different ethical systems and practical plans to achieve these goals. For example, if a culture is based primarily on the concept of spiritual and natural duties, it should be encouraged to draft its particular law and register it with the UN. This would have the effect of showing respect for their particular cultural system without patronising it or judging it against modern rationalism. As a result it would commit such communities to preserve the future of human and other species through passion and zeal. This approach should be paralleled by collective action agreed by the collective body of states.

74 The Fourth Assessment Report (2007) by the Intergovernmental Panel on Climate Change includes a report on "Impacts, Adaption and Vulnerability" which analyses the long-term effects of climate change on our environment as well as on social, political and economic structures. The full text can be found here: <http://www.ipcc.ch/ipccreports/ar4-wg2.htm>. Increased wars between States and people will become even greater as people will try and move to land where survival is possible.

In sum, the UN should assess whether the approach described in this report as “universalism” is the most effective for future environmental ethics declarations or international legal instruments on environmental protection, given the real plurality of the world both in its physical attributes and its imaginative constructions such as cultures, religions, rationalism and world-views. The need to preserve biodiversity and reverse climate change needs a non-evangelical, less political, and realistic approach. The member countries of the UN may therefore take the option to move from the single approach of ethical universalism to a more practical approach of formulating goals that have a better chance of achieving pluralistic endorsement of approaches to achieve common goals.

3.2 Goal-based International Instruments

How are goals different from values or ethics? There are quite a few definitions of the word “ethics” and “values” and both are often used in different contexts. Broadly speaking, ethics articulate concepts that point towards what is right and wrong. There are different categories such as meta-ethics, normative ethics and applied ethics. These various divisions seem to be mainly an attempt to rationalise and trace the origins of ethics in secular studies. In many non-secular traditions, the sources and the concepts related to ethics are quite evident. In Islam, for instance, ethics are sourced to the Koran and the Hadith. In Hindu traditions, any one of the Dharmashastras would be considered a source of ethics, although the Vedas would again be the ultimate source that are used in the Dharmashastras. In the Sikh tradition, the Guru Granth Sahib is the source of concepts and consequently ethics. Culture and ethics are therefore closely interrelated. It would not be an exaggeration to suggest that cultures express themselves through the set of ethics they promote.

The concept of “values” is also defined in various ways. There are, for instance, ethical values, moral values, personal values etc. Values are generally subjective, i.e. they are particular to a community, a group, an individual or a professional organisation.

Both ethics and values, used as separate words or together, have a subjective or particular context which is related to culture and community. Consequently, the prospect of a genuinely universal set of ethics is a considerable proposition. There are a few aspects that make this difficult both in principle and in practice. Firstly, to promote the idea that a universal ethic exists common to all cultures and all peoples, is in a way to dismiss the subjective aspects of cultures and communities. Such differences between communities include languages, traditions, arts, rituals, habits, and customs. As seen in the discussions of the Universal Declaration on Bioethics and Human Rights (UDBHR), some of the cultural diversity of the world would be lost in the process of developing a universal set of ethical norms, and thus the initial draft title of the instrument deleted the term “norms” at an early stage. In addition, the end result of the discussions, the UDBHR, is a framework for dialogue on shared issues, which allows cultural variation in writing the details into national policy frameworks. Cultures have considerable philosophical differences which influence the conduct of the members of that community, and it would perhaps be better to promote these differences than to try to even them out.

Secondly, a universal ethic is likely to be a derivative of one culture or a few closely related cultures. In the UN, this generally tends to be secular or secularised cultures. As argued earlier, the current predominant ethical perspective used in UN documents is not really universal except that it is formed from the dominant or hegemonic culture. Such an ethic is unlikely to arouse much enthusiasm around the world except in regions where its cultural roots are strong.

It might therefore be more effective to agree on a set of goals. Goals are not entirely value or cultural neutral but have a wider reach across cultures and peoples. Goals are a tangible and achievable set of broad targets. For instance, the Millennium Development Goals eight achievable targets that the UN set for itself and for humanity by the year 2015. These reflect the achievable end results of most of the ethical values in the major conventions and the work of some of the leading UN bodies, particularly in the development field. The listed goals are not weighed with value laden paragraphs, ethical concepts or moral judgements. They are simple goals that most of the world can agree on regardless of cultural and philosophical differences. Similarly, a set of goals can be agreed by states as desired practical end results. For instance, a hypothetical goal to cut carbon emissions by 50% within ten years is a goal

that does not really carry cultural or religious justifications particular to one region or one people. As mentioned in the previous chapter, the Kyoto Protocol is a highly technical and practical environmental treaty that describes specific goals and the means to achieve them. However, it also clearly refers to the ethical principles of the UNFCCC as a basis for its provisions, which might reduce the universality of the document.

Environmental goals can be guided by scientific data. For example, in the field of environment the following five goals might be targets for agreements between states and peoples:

1. To reduce carbon emissions by x% by year 20XX
2. To reverse decline of biodiversity to its 1990 level by year 20XX
3. To ensure that x% of domestic energy consumption is from sustainable sources by year 20XX
4. To ensure that x% of all manufactured goods are biodegradable by year 20XX
5. To ensure that pollution in river waters is reduced by x% by 20XX

The justifications and the explanations for the need to achieve these goals can be left to different civilisations, cultures and peoples to elucidate through concepts best suited to that community. For example, an apocalyptic approach to the human-environment relationship that incorporates the concept of custodianship of the earth, biodiversity and the rights of future generations may best make sense to and inspire the Western world and those with Abrahamic traditions. A language of duties and responsibilities as part of one's dharma, as well as the concepts of respect, reverence and oneness with nature, may best inspire people of South Asia to meet these targets. A language of harmony with nature may interest the Chinese population to accept these targets as a cultural part of their lives.

3.3 Depository of Ethical Systems

The inclusion of a plurality of ethical concepts justifying and committing to meet common goals would imply that the efforts made by different individuals and communities to reach these goals would be culturally specific. As mentioned in the previous section, countries and peoples could be invited to create their codes of ethics that would best inspire their populations to meet the targets and deposit these in a common depository at the United Nations. Also, within a region, several countries may share similar ethical values and codes (such as Islamic countries in Middle East or European countries), which opens for the possibility of creating a common convention for the various countries in the region. The European Union has already formulated a regional approach to environmental protection and climate change, and it is likely that other regional bodies such as the Arab League, the African Union and ASEAN will develop their commitments into more formal structures.

This, however, raises the issue of cultural diversity within regions and within states. Several distinct cultural and religious groups within one region or country may have different orientations and ethical outlooks. For example, India, a country with a diversity of cultures, offers this challenge. It is possible that the Indian Muslims may share values with the international Islamic community, while Hindus in the country have an approach whose significance may largely be just within India. However, India already has a separate personal code for its various communities, thus there is no reason why a multiple ethical code in the field of environment could not work as effectively to maintain its distinctive diversity.

A depository could enable dialogue across the different civilisations and cultures and it may even be possible to share some of the ethical codes across all the civilisations and cultures. Furthermore, it could be an effective common set of codes arrived at from the bottom up, i.e. by dialogue between peoples rather than just nation states. By encouraging wider debate and participation across civil society and states, global environmental issues can be tackled by the world community through its diverse ways of commitment.

It might also be possible to have an international legal instrument concentrating on goals agreed to by member states and at the same time have a depository of different laws on justifications, approaches and ethical frameworks by different cultures and peoples with their own distinctive features. This would enable a common set of goals between member states while allowing for diversity of dialogues between different cultural communities to meet the same goals.

3.4 The Charter of the United Nations

An important question is whether the alternative approach of adopting a diversity of conventions on ethical approaches to environmental protection would undermine or be contrary to the United Nation's rationale. Would it, for instance, need a different institution to be able to promote and incorporate plurality into its own approaches to global issues? It would appear that a plurality of conventions of ethics in a single field would, in fact, be consistent with the Charter of the United Nations although it may be a considerable departure from practice so far.⁷⁵ The Charter does not stipulate or even indicate that there have to be universal conventions particularly in the field of ethics and values. It makes broad statements on human rights prior to the UDHR. Rather, the charter enables considerable flexibility of operation and can, in fact, be said to encourage a plurality of positions as well as involvement of civil society.

For instance, the Preamble of the UN Charter opens with "We the Peoples of the United Nations", and in this way acknowledges 'Peoples' as opposed to 'People'. In other words, it accepts that the world contains a plurality of communities, nations, and cultures that may have very diverse outlooks, beliefs and worldviews. By this word and sentence it recognises the plurality of peoples across the world, coming together to reach a common goal. Moreover, by directing its attention towards 'Peoples' rather than nations or states, the Charter acknowledges civil society as a source of existence and endorsement. The Charter then progresses to recognize the Nation State as the representative unit of the People/s through which membership will be accorded to People/s, and through which the UN and the Peoples will interact.

Furthermore, the Preamble describes that one of the aims of the UN is 'to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained'. Thus, while the Charter promotes respect for treaties, it does not dictate that treaties should be universal or that they should be based on a common set of ethical principles applicable to all the Peoples of the world. In fact, if read together the two quotes from the Preamble could be considered to be encouraging treaties between Peoples through their member states. Thus, treaties can focus on goals rather than values or ethical principles.

Chapter 1 of the Charter, on "Purposes and Principles", further reinforces an argument for a plurality of approaches to ethical values within the UN. Firstly, Article 1 lists that one of the purposes of the UN is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace". This article stresses self-determination of 'peoples', thereby establishing the principle that each people not only are entitled to its own values but that its distinctive features need to be respected. Again this promotes plurality. Following this, the Article states that the UN should "be a centre for harmonizing the actions of nations in the attainment of these common ends". This puts into context the differences between the original intentions of the Charter and what has been practice. The Charter talks of 'harmonising' the 'actions' of nations. It does not talk of 'universalising' the 'values' of the nations. Actions are practical implementations rather than ethical values. Hence, a focus on goals would be consistent with the Charter as setting the end results for actions.

In Chapter VIII on 'Regional Arrangements', the Charter states in Article 52 that "nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations". The charter therefore encourages regional variations and arrangements. The Article refers to Human Security which can include human security in the field of environment as well. Regional arrangements can mean policies of implementation as well as conventions of ethics that would inspire people to take action.

75 The full text of the Charter of the United Nations (1945) can be found here: <http://www.un.org/en/documents/charter>.

Article 56 emphasises that all members should engage in both “joint and separate action” which implies that there is room for separate action which could include separate statements on ethics. By virtue of its Charter, the UN is thus not undermined by taking a more pluralistic approach to conventions on ethics. In fact, its purpose and effectiveness is strengthened by acknowledging and promoting the diverse nature of the real world as opposed to seeking a utopian universal set of values. Its stress on harmonisation enables both common goals as well as a diversity of ethical systems to achieve those goals.

This approach may be a departure from practices hitherto within the UN system. As mentioned above, however, recent treaties such as the Kyoto Protocol and to some extent the Convention on Biological Diversity have to some extent concentrated on actions and goals rather than ideals and ethics. Naturally, any institution long used to a certain practice is prone to adopt a conservative stance and would resist any radical departure from custom. However, it is essential to remember that plurality is neither against the very essence of the United Nations nor the mandates and intentions of any of its agencies.

3.5 The Need for Wider Debate Inside and Between Societies

There is an interesting dichotomy in the dynamics of environmental concerns and action plans that are adopted. As a generalisation, environmental concern in Western countries is being addressed from bottom to top. It is civil society informed through the media and activist organisations that is campaigning for their governments to take responsibilities and enact policies to protect the environment as well as to ensure sustainable development. On the other hand, in most developing countries, the concern is generally top-down. It is the governments that initiate environment and sustainable development policies, often as a result of commitments made at the international level rather than as a result of a mass and powerful lobby from the civil society. Without both approaches policies are not robust and may not be enforced nor implemented. Exceptions include countries such as India where a small educated band of often middle class activists are very actively involved through the legal mechanisms and media to lobby their governments to take action. Of course the degree of participation and form of democracy present in a country will affect the relative importance of bottom-up and top-down approaches to social structure and policy implementation.

In the discussions of this report in the ECCAP working group both on-line and in meetings held in Iran, Japan and Thailand, a number of people agreed with the idea of a depository of different sets of values systems on the environment and a diverse set of practices and programmes to strengthen people's responsibilities to maintain a healthy and sustainable environment. Some persons felt that a universal set of ethics can be reached through scientific and rational discourse, although it would be fair to say that the idea of diversity finds greater currency among working group members. A clinching argument is the ineffectiveness of many current universal norms across countries. It is generally felt that the environment is too serious an issue to allow experimentation with ‘universalism’ or most ideologically to universalism. If it is found that a diverse and multiple system of ethical worldviews works better, then that approach should be adopted. It may even influence a wider debate on other universal norms and their efficacy or lack thereof.

On a practical level, it is useful to examine and explore how universalism can be a limiting aspect in addressing different situations and how taking alternative perspectives can be beneficial. There are possible implications for political governance, preservation of biodiversity and protection of the environment.

3.6 Analysis of Alternative Mechanisms for Governance

Despite the failures of state control mechanisms in some spheres of political life in the twentieth century, the issue of reduction of climate change and biodiversity loss cannot simply be left to free market mechanisms. Whereas carbon credits are a reasonable idea, they fail to impress upon the parties the looming danger if they can buy their way out. Collective action would mean setting up a collective

fund to compensate countries such as Brazil and Indonesia who lose out on short-term benefits⁷⁶ for not cutting down their forests.

International environmental legislation is one of the most rapidly developing bodies in public international law, with no other areas of law having such an extensive number of treaties and agreements⁷⁷ generated within less than four decades. 1972, the year of The UN Conference on Human Environment held in Stockholm, is regarded as a milestone event in the “foundation of modern environmentalism”... and the resulting Stockholm Declaration on the Human Environment and Principles “constituted the first body of ‘soft law’ in international environmental affairs”⁷⁸, including the resolution that endorsed the concept of World Heritage.

According to the United Nations Environmental Programme (UNEP) report on the status of Multilateral Environmental Agreements (MEAs),⁷⁹ there are over 500 international treaties and other agreements related to the environment, of which over 320 are regional. Nearly sixty percent date from 1972 the year of the Stockholm Conference to the present. With regard to the scope of the MEAs, the largest cluster relates to the marine environment, the second important but smaller cluster falls under the ‘biodiversity cluster’⁸⁰ which again is followed by the energy and nuclear related cluster. Unlike the pre-1972 period, two new important clusters of MEAs emerge: the chemicals and hazardous wastes conventions that are primarily of a global nature, and the atmosphere-related conventions.⁸¹ Instruments adopted before 1972 were mainly focused on the utilization of natural resources and were restricted in scope, while post-1972 MEAs have emerged with concern over depletion of natural resources and transboundary environmental pollution. Therefore, protection of environment or sustainable use of natural resources by means of collective efforts via scientific cooperation, provision of technical assistance, capacity building or development related issues are common among priorities across MEAs.

From a legal perspective, MEAs are employed with a variety of sophisticated techniques and regulatory mechanisms. Some are self-contained or framework regimes, some have non-compliance mechanisms and there are different ways to express reservations to international normative instruments. These are responses to emerging environmental problems which are local by origin but their adverse effects are global, or to provide ad hoc reaction to the constantly changing circumstances (new environmental threats, advance of scientific knowledge or public awareness).

Various options are being developed that could be the basis for wider policy, for example, compensation programmes for countries that retain biodiversity areas, such as Brazil, have been based on market economics, a system of economics that has been promoted by the UN and international financial institutions up until the recent collapse of financial markets. Programmes have also been designed for individuals to buy areas of the forest, or for forest industry to pay for itself. Also there needs to be further consideration of punitive measures that can compensate for the growing demands of the populations in different countries.

76 Studies reveal that under longer term analysis economics would argue for protection of biodiversity, as a generator of wealth and prosperity.

77 In a generic sense, treaties and agreements must contain the following elements: first of all, it has to be a binding instrument, which means that the contracting parties intended to create legal rights and duties. Secondly, the instrument must be concluded by states or international organizations with treaty-making power. Thirdly, it has to be governed by international law. Finally the engagement has to be done in a writing form (The 1986 Vienna Convention on Laws and Treaties).

78 *Integrating Environment and Development: 1972-2002* <http://www.unep.org/GEO/geo3/pdfs/Chapter1.pdf>.

79 MEA refers to those international instruments that do meet the definition of treaty in a generic sense.

80 Other global conventions under the biodiversity cluster include: Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention, 1971), Convention on International Trade in Endangered Species of Fauna and Flora (CITES, 1973), Convention on the Conservation of Migratory Species of Wild Animals (CMS, 1979), Convention on Biological Diversity (CBD, 1992).

81 UNEP Meeting of the Open-Ended Intergovernmental Group of Ministers or Their Representatives on International Environmental Governance, *International Environmental Governance: Multilateral Environmental Agreements (MEAs)*, UNEP/IGM/1/INF/3 (18 April 2001) http://www.unep.org/IEG/Meetings_docs/New_York_Meeting1/NY_18Apr01.asp.

The international legal instruments are less effective in practice if the fundamental emphasis is on rights, i.e. sovereign rights, right to decent life, right to development, and so on, because many persons do not understand these concepts. The emphasis on duties remains weak in Western legal traditions, and hence, these concepts also in UN conventions.

A balanced system would have placed equitable strength on both the system of rights and duties. Duties and responsibilities are the traditional conceptual framework of law in Indian Dharmic traditions. Duties take precedence over rights. If emphasis on duties was placed upon the world community through another convention, it could be exercised in financial terms by imposing upon the world community a form of tax that would pay for clean air and preservation of diversity. This would compensate countries where rain forests remain and which the world community wishes to preserve. The sovereign right to development could be preserved but compensated by imposing duties upon others to pay for non-exercise of that right.

The UN and regional bodies need to explore various mechanisms, so that evidence and data can be compiled to ensure that effective means are found to combat environmental challenges. At the moment common funds and partnerships towards environmental programmes do not engage in a wholesale trade-off between sovereign rights and universal beneficence. Other models should be explored and encouraged, with thorough examination of the consequences for peoples, cultures, and the environment.

4. Conclusions

The report has examined the current ethical values implicit in UN instruments and in common discussions of environmental ethics that are central to the use of energy and the human impacts made on the environment. There is a call for the plurality of human relationships with the environment to be recognized in international discussions of environment policy and consensus. In fact, the plural traditions found around the world can all contribute intellectually and practically to the preservation of the environment, as could existing international instruments if they were more widely accepted by people across the world.

There is a strong argument for the United Nations to focus and concentrate on common goals established through analysis of empirical data, and agreed between member states as a process of harmonisation of actions in a new international instrument. Goals specifically in the field of environment, biodiversity and climate change can complement the Millennium Development Goals. Such goals may lead to greater compliance among people of the world than a focus on values and principles.

There is a further rationale to encourage development of a diversity of ethical systems from different people,⁸² that will inspire them and encourage them to meet agreed goals. To make this a viable proposition, a depository of ethical systems would allow easier access to the thinking of persons who follow different worldviews.

There are possibilities of finding common values among the different ethical systems and even universally agreed ethics. However, this possibility needs to be explored by encouraging different communities to articulate their ethical value systems and embarking on a dialogue. If common ethical systems cannot be found, the diverse systems should be encouraged to pursue compliance among their communities concurrently. There is an important role for UNESCO and other international forums in clarification of the variety of values people hold around the world.

At the same time there is wide agreement among persons around the world on common goals to combat climate change, so the timing may be appropriate for development of an international legal instrument on ethics and climate change. This report suggests that the implementation of such an instrument may be more effective if it can focus on goals rather than solely on principles. There are a number of implications for the way that an international instrument on ethics may be implemented which requires ongoing study and dialogue.

82 Peoples including civilizations and cultural communities.

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6. Case Studies of Using Different Frameworks to Resolve Conflicting Interests

6.1 Case Study: Ownership and Limitations of Rights – River Diversion and Tribal Homes

by Jasdev Rai

Diverting a river to make a new route may be both supported and opposed for different reasons. There may be objection on aesthetic or religious grounds as some people may consider the river sacred (e.g. the sacred Ganges) or the site of ancestral lands. Nature worshippers may take the view that any interference with nature is unethical in principle. Other nature lovers may be concerned with the fauna and flora that may be affected by digging a new route or drying up an existing one. It may be that diverting the river could affect the lifestyles of some tribes even if they are not uprooted, such as the marsh people in Iraq or the tribes living in the Amazon jungle around the river. Digging a new canal or river route could mean dislocating entire villages or tribes from their natural habitat.

On the other hand it may be that the river regularly floods and diversion could avert this. It may be that many people see benefits in diverting the river as it could bring water to an otherwise dry land and lead to better agricultural livelihoods, thus benefiting thousands of people. It could mean that an entire town could benefit from water supply as a result of the diversion and development of a dam.

An action has several consequences, both damaging and beneficial. A number of concerns have to be balanced in a policy statement. Therefore, a statement defining an ethical outlook may suit one group of people but could be seen as highly undesirable to another group. The action of diverting the river relates to conflicting 'universal' ethics in the various UN instruments.

In the Convention on Biodiversity (CBD, 1992), three different statements have a direct relevance to this. The preamble stresses the need to preserve biological diversity and ecosystems in their natural habitat. *"Noting further that the fundamental requirement for the conservation of biological diversity is the in-situ conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings"*. This would mean the State should not ideally divert the river even if it thinks it can reproduce the habitat around the new course of the river.

Further, the convention protects the dependence of indigenous people on biological resources: *"Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources..."*

However, these commitments are overridden by the paragraph: *"Recognizing that economic and social development and poverty eradication are the first and overriding priorities of developing countries."*

Effectively the State can compromise its duty to preserve the ecosystems dependent on the current course of the river in favour of development needs and thus divert the course of the river. The three different statements of the Preamble can be summed up in one as: 'Any distortion in the natural route of a river must take into account ecological factors, the rights of settled tribes, religious observations and must not lead to deprivation of current dependents on that water supply, but must also benefit the maximum number of people, aid development and self-sufficiency in food.'

Other conventions also have the same contradicting prerogatives. Taking into account all these factors would lead to a paralysis of action. NGOs working on behalf of settled tribes can bring legal action as has been done in India on some occasions on the basis of the right of that tribe to their lifestyle. Yet not doing anything could mean a State is failing to provide water to its population or is unable to feed its population due to scarcity of agricultural land. Diverting water supply could mean opening up new agriculture possibilities and the nation state becoming self-sufficient in food and no longer at the mercy of international supplies or markets. Governments can force through decisions on ground of majority opinion or need as has been done in most cases in the past.

The directive principles of some Governments and some articles in international conventions compel Governments to respect the right of everyone to a decent standard of life which means a reasonable diet, shelter and clothing. This surely means that the government has to look at possibilities of using natural resources and technology with maximum benefit to meet these needs.

We have three competing ethical statements in this universal convention, that need to be balanced. The right of every person to expect a decent life and the duty of the State to provide basic necessities, the obligation of any developmental project to preserve ecosystems, and the rights of settled tribes to their lifestyles. However there are other ways of balancing this complex set of contradictory obligations. Rivers have never had a single flow path through ages. They have shifted their route and banks over years. Tribes who are dependent on the river for various reasons have moved their locations with the change in river systems. Consequently they must have ethical, conceptual frameworks in their cultures which enable them to move from one location to another and settle afresh.

If the tribe is encouraged to articulate its ethical norms it may have a conceptual language entirely different than used in international norms, for instance, they may have the following:

- natural or other forces move the banks of the river away from the tribe;
- the elders of the tribe must provide easier access to food for the tribe;
- Sacred ancestral places have to be dispirited by custom and the spirits invited to new settlement.

Consequently, the possibility of a move is not altogether an anathema to the tribe as is generally argued by NGOs objecting on the ground of 'rights'. The tribe uses the language of 'duties' rather than rights. Therefore if two different sets of ethical norms are used, the end result may be:

- (a) The river can be diverted;
- (b) The tribe can relocate if its lifestyle can be preserved in another place.

It is when only the language of rights is used that the scope of addressing and negotiating the needs of two different groups is limited. The language of rights interpreted through universal conventions eventually leads to an imbalance, where one set of rights becomes subservient to others. Thus the right of the indigenous people to their natural habitat would be usurped by the rights of millions others to development. But by using the language of rights in the relationship of the State with the majority while permitting the language of 'duties' in accommodating the special sensitivities of a tribe can offer wider choices to deal with the central issue of diverting the river. In other words, the language used in drafting a series of ethical norms would have to be different for these two groups. One set is where the State has obligations and people have rights. The negotiation is between obligations and rights. The second set is where the State has to assume limited sovereignty and has responsibility to respect the benign sovereignty of a settled tribe and its ethical norms. In this relationship the State has to negotiate as if it is negotiating between itself as a tribe and the affected tribe as the other. Alternatively it could be as if the State is negotiating between itself and an autonomous region within its territory. The negotiation, where the State puts its obligations to the wider community under a system of rights on the table and the tribe resorts to its practical ethical systems to enable a move to a new habitat for the benefit of millions others, can resolve the conflict that is inherent in one set of universal norms or convention.

Therefore, a depository of ethical norms has to be of the two different conceptual systems. At the international level, the depository also needs to be of two different systems to ensure compliance by the State to the outlook of the tribes.

The other conflict that still exists within the exercise of diverting a river is the religious dimension. The Ganges is considered sacred by the Hindus. Diverting its course could be considered highly offensive to religious sentiments in some areas. Using the normal language of rights would mean that the majority Hindu population could not only mount substantive legal challenges but also considerable political opposition to any plans to divert the river. A court will have to decide on the balance of right to religious practice against the State's obligations to fulfil other rights. A hierarchy of rights is established and one or the other party becomes a loser when a universal convention is the sole basis of decision.

Yet there is in most religions and traditions an equally strong duty upon the individual to provide for others, to share and to pray to God to be benevolent to all the human race. Most major religions also ask God to give humans the energy and the wisdom to meet these altruistic desires. And almost all religions have appropriate prayers when taking steps that may uproot a religious place, a shrine, a sacred spot, etc.

Therefore, there is a scope of flexibility within the ethical framework of religion and the possibility of enabling this through a different language. But when ethics are defined in the current state-citizen relation the scope is subverted by the language of rights. If a parallel ethical charter is also formed by a religion, then it is possible that desired results can be achieved with ease through negotiation and congruence of two different systems of rights and obligations.

6.2 Case Study: Conflicts between National and Local Interest, e.g. Religious Tradition and Sacred Trees

by Jasdev Rai

In the Thar desert of India there is a community of people called Bishnoi. They are followers of a fifteenth century holyman called Guru Jambeswar Ji who gave them 21 principles. The Bishnoi have faithfully kept at least 2, one is don't cut green trees and the second is don't kill animals as every life is sacred. Over the centuries the Bishnoi can claim to have had a number of martyrs to protecting the trees in their desert region. When Kings or others have tried to cut the trees, the Bishnoi have tied themselves to the trees. Some have been killed in this commitment but the Bishnois have successfully protected their trees and wildlife. As late as 1998, a famous Indian film star was jailed for a few days for killing a black deer. The Bishnoi witness refused to withdraw his account despite threats and inducements.

The Bishnoi are driven by their Dharma and are one of the most fiercely committed eco-tribes in India. Their Guru told them that the trees were important for their survival as a community and if the trees are cut, great misfortune would visit them. Making this astute observation part of their religion has protected the diversity and ecosystems of the region. The Indian Ministry of Environment and Forests protects their religious practice of saving both the trees and the wildlife.

Whereas the Indian government protects their practices as part of freedom of religion and marking the area a reservation, there is no doubt that it is their sense of 'Dharma' which has influenced State authorities over the centuries to defer decisions in their favour. Even Kings in the past have given way to them despite their absolute sovereignty over the region.

The system of ethics that has worked here is not the rationally argued apocalyptic language of UN conventions but a mystical religious observance. This is also found in many tribes across the Allavari mountain range and a few other forests in India where trees are considered sacred. There are over 25,000 sacred groves with their own ecosystems, trees and waterholes that have been protected through centuries because they are considered sacred by the tribes who live near them. They are called by various names by different tribes. They also have different trees and animals. Some have had small temples built in them. Some are on top of hills and others sacred practices protect simply one kind of tree. The neem tree is protected and treated as a sacred tree by many communities in India.

However, while these sacred ecosites have survived for centuries because local tribes have not only refrained from cutting them down for their own use, such as firewood, building homes, etc, but protected them as sacred, these sites have suffered from modern development projects. The Aravallis mountain range has been flattened in some places, the sacred groves have been destroyed to make way for building blocks, shops and industrial sites.

The tribes who hold these places sacred did not have the same zeal as the Bishnois. As a result local Government in the provinces gave licences for developers to go ahead with their projects. However, the national Government under the Ministry of Environment and Forests and further through a Supreme

Court of India decision has set up a commission to reverse these building projects. The Supreme Court has ordered demolition of many sites. The provincial (State) government has however challenged the decision by trying to get concession for some of the built sites not to be demolished as the building plans have advanced too far. Moreover developers are ignoring Supreme Court decision.

This incident exposes the weakness of modern constitutional systems that tend to give greater emphasis to rights than duties. The Dharma of the tribes has been marginalised and ignored in favour of the right to development. Here national and regional interests have varied. No dialogue took place between the modernisers and the tribes, whose religion is often treated as primitive superstition. Ironically it is the 'primitive superstition', which has intuitively predicted the dangers of destroying ecosystems more than so-called modern rational people.

In pre-colonial India, the system of law was based on principles of Dharma, or duties and not rights. But twentieth century India has adopted the modern secular concept of rights as the basis of its constitutional framework. Duties or Dharma are subservient to fundamental rights. This has led to confusion and tension between cultural and religious practices that go back several thousand years particularly in the field of ecological preservation, and the modern set of positive rights including right to development. The hierarchy of the legal system has influenced policies at state level and in the minds of urbanised populations.

The national government, having woken up to climate change issues, is now fast trying to reverse developments and give support to traditional cultural traditions and to protect the environment. But it is too late in some cases.

The conflict of two different paradigms in the sacred groves of India gives weight to the argument that one universal system of norms leads to contradictory pressures in the field and arbitrary policies, which lead to patchwork of environmental protection. A better practice would be to give equal respect to both paradigms and find a way to encourage interactive dialogue between the different conceptual systems to both protect the environment and promote development.



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