

A Code of Climate Change Ethics: Acceptance of Responsibility and United Action

Fundamental changes are needed in our values, institutions, and ways of living. We must realize that when basic needs have been met, human development is primarily about being more, not having more. We have the knowledge and technology to provide for all and to reduce our impacts on the environment...Our environmental, economic, political, social, and spiritual challenges are interconnected, and together we can forge inclusive solutions.

Earth Charter 2000

Introduction

As climate change is reaching the homes and minds of a generation around the globe through popular media, large awareness strategies and increased variability in our weather patterns, there is a greater recognition that something needs to change. Individuals have begun to think about their impact on the environment and their role in the solution to the current challenges facing our ecosystems and developing nations. In the 1960s, 1970s, 1980s and early 1990s there was a similar trend of awareness and popularity of environmental activism, nevertheless we are no longer able to wait for action at the next round of heightened environmental awareness. Climate change is a problem that demands action now before we pass a tipping point of where no amount of collective action that we as a species and a society take will make a difference.

Individuals and communities are beginning the discussion of rethinking and redirecting our social and economic paths to one that does not interfere with our ecosystems at the level we are currently doing. We cannot end up with the similar results we now face from the industrial revolution and heightened oil consumption, for that reason there needs to be a set of morals and ethics directing this debate- ethics that concerns the interests of the ecosystems, future generations and for all citizens. While this challenge may seem great, we stand on the edge of a future of great peril or great promise, and thus, it is time to challenge our foundational morals and ethics.¹

While there has been significant development in the international law tackling climate change under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, it has yet to produce collective response or result in any significant reduction in greenhouse gas emissions. What is missing is a

¹Earth Council. (2000) *Earth Charter*. Costa Rica, Earth Council.

universal mechanism to insert the ethics that are central to climate change and make each individual a partner in the solution. A code of ethics comprised of global climate change moral standards could fulfil the need for direction to an economic and environmental balance and strengthen the compliance of current climate change legislation that is fair to all nations.

A Code of Climate Change Ethics

As a soft law document, the international community could engage the code of ethics to guide directions of states and individuals through common ethics and values notably absent in the Kyoto Protocol. The code would aspire to be an approachable, conceptual tool to base all development and human activity upon to align effective collective action. Without such a document, collective action on all levels is unlikely and the pattern of wanting other individuals and states to make the sacrifices and commitments above one's self-interest will continue.

The Individual Connection to Climate Change

Attempts to collectively bargain within the international sphere between states has left the status of action under the Kyoto Protocol disjointed and thus, ineffective. There needs to be a shift to connect the individual to responsibility for the climate system until states at the international level can agree and make collective state action. However, there remains a disconnect between individuals and their role with the climate. The connection between climate change and human interference is now conclusive, yet humans do not yet recognize that as they are part of the problem, they must be part of the solution.²

The ethics of individualism or self-liberty, which is foundational in our legal, political and economic freedoms, have directed us to merely see ecological 'goods' as a means to pursue individual happiness.³ This ethical normative order has allowed us to interfere with the ecological systems to a point that threatens the very carrying capacity of Earth. The 1992 Preamble to Agenda 21 provides a perspective of the magnitude of environmental crisis we are facing. Article 1.1 states:

Humanity stands at a defining moment in its history. We are confronted with a perpetuation of disparities between and within

² IPCC *Climate Change 2007* IPCC 4th Assessment Report 2 February 2007 <<http://www.ipcc.ch/>> (8 December 2006).

³ K. Bosselmann, (2004), 'In Search of Global Law: the Significance of the Earth Charter', *Worldviews: Environment, Culture, Religion* 8 62.

nations, a worsening poverty, hunger, ill health and illiteracy, and the continued deterioration of ecosystems on which we depend for our well-being. However, integration of environment and development concerns, and greater attention to them will lead to the fulfilment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future. No nations can achieve this on its own; but together we can in a global partnership for sustainable development.⁴

This statement acknowledges that no one nation or individual can alone tackle climate change- it must be a global community effort. Yet individuals must learn to embrace the understanding that climate change is global and they have a role in the international action that must take place.

Global Ethics

A global ethic, therefore, needs to be developed to direct international action as climate change responsibility is one of global breadth as the causations and consequences are across the world, and greenhouse gases are not limited within sovereign borders or one period of time. Global ethics have been defined and conceptualized by and in the covenants and declarations of the international sphere, such as the United Nations Declaration of Human Rights, UN Conference on Environment and Development Agenda 21, the IUCN Draft International Covenant on Environment and Development and the Earth Charter.⁵

Emergence of Soft Law Documents

Over the last 40 years, new international commitments to human rights, environment and development regulation have emerged in a range of instruments not characterized in traditional categories of 'treaties' or 'customs' or 'general principles' to encompass these ethical statements and principles.⁶ Soft law instruments include declarations, code of conducts, guidelines and declarations of political institutions, objectives of international institutions and resolutions of non-governmental organizations. These principles provide a directive stance for political positions, articulating legal and ethical norms and create the expectation that these ethics and norms will develop in

⁴ United Nations. (1992) Rio Declaration on Environment and Development, UN Doc. A/CONF.151/5/Rev. 1.

⁵ N. Dower (2004), 'The Earth Charter and Global Ethics' *Worldviews: Environment, Culture, Religion*, 8 15.

⁶ O. Lynch and G. Maggio (1998), 'Human Rights, Environment, and Economic Development: Existing and Emerging Standards in International Law and Global Society', *The Centre for International Environmental Law*.

the future into international legal forums.⁷ ‘Soft law’ is defined by Dupuy as “...either not yet or not only law.”⁸ Although soft law is not possessive of strict enforceability as other ‘hard law’ documents, it can provide significant weight in determining and directing human interactions.⁹

A code of ethics, as a soft law document, can be defined as a written, distinct, formal document that consists of moral standards that helps to guide individual and organizational behaviour.¹⁰ Virtually every code, although quite often legalistic in nature, infers that behaviour must be guided ‘beyond the law’ or addresses the ‘spirit’ in addition to the law.¹¹ In this spirit, the code of climate change ethics would strive to augment current and future climate change hard law and embrace the ethics of climate change. While it does not have the same enforceability or compliance mechanisms included in the Protocol, through a global dissemination of the code, it can create compliance through social and political pressure.

A Global Discussion of Ethics

In addressing a global code of climate change ethics, it is helpful to recognize that there has already been a global discussion of ethics and the environment under the development of the Earth Charter. In leading up to the 1992 Rio Earth Summit, there was a movement to incorporate a charter to provide ethical foundations for other UNCED agreements.¹² However, the ‘Earth Charter’ failed to be adopted within the last days of the Rio Summit.¹³ In recognition of the ethical omission, a parallel NGO Global Forum successfully produced a first draft of the Earth Charter.¹⁴ The charter addresses a holistic approach to guide humanity to a sustainable future by encompassing peace, security, social and ecological justice, human rights and democracy.¹⁵ This original draft then commenced a worldwide consultation and drafting process that involved thousands of individuals and organizations from a

⁷ Ibid.

⁸ P. Dupuy (1991), ‘Soft Law and the International Law of the Environment,’ *Michigan Journal of International Law*, 12 420.

⁹ Ibid.

¹⁰ P. Townley (1992), ‘Business Ethics . . . An Oxymoron?’, *Canadian Business Review*, 35–37.

¹¹ B. White and B. R. Montgomery (1980), ‘Corporate Codes of Conduct’, *California Management Review* 23 2, 80–87.

¹² S. Rockefeller (2002) *The Earth Charter and Johannesburg* in Klaus Bosselmann (2004), ‘In Search of Global Law: the Significance of the Earth Charter’, *Worldviews: Environment, Culture, Religion* 8 62.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ *Earth Charter*. (2000).

plethora of cultural, academic and regional sectors. In 2000, the final draft of the Earth Charter was launched at the Peace Palace in The Hague.¹⁶

The Earth Charter since 2000 has been endorsed by over 2 000 organizations around the world as an integral part of their foundation and has been increasingly adopted into the international community.¹⁷ In the opening address to the Johannesburg Summit in 2002, President Mbeki of South Africa cited the Earth Charter as a significant foundational document, a welcomed expression of “human solidarity”.¹⁸

The Earth Charter’s fundamental ethics can assist the development of a code of climate change ethics by providing some general direction discovered during the global discussions including a sense of global community, the responsibility of the individual to all community members of the global community and to future generations.¹⁹ While many of the principles and ethics under the Earth Charter seem very forward thinking, evident of its adoption is that many people and organizations are willing to embrace these ideas.

Flexibility in the Code of Climate Change Ethics

As ethics and norms are continuously evolving and adapting to prevailing social conceptions, soft law documents would allocate for the flexibility required to progress with the rapid pace of the global economic and social system. The Kyoto Protocol did allocate some flexibility to evolve with scientific and technological innovations under Article 9 as it states, “the Parties of this Protocol shall periodically review this Protocol in the light of the best available scientific information and assessments on climate change and its impacts, as well as relevant technical, social and economic information.”²⁰ Even with this built-in flexibility, the rate of action under the international negotiations of the Protocol may be too lengthy to engage precautionary measures properly as technological, scientific and popular social progression is often abrupt. A global code of ethics, hence, could be the flexible document to regulate and limit the rapid adoption of new technologies and social and economic shifts to ensure that proper considerations of social and climate change impacts are undertaken.

¹⁶P. B. Corcoran, M. Vilela, and A. Roerink, eds. (2005) *The Earth Charter In Action: Toward a Sustainable World*.

¹⁷M. Vilela (2005), ‘Building Consensus on Shared Values’ in *The Earth Charter in Action*.

¹⁸Rockefeller (2002).

¹⁹*Earth Charter* (2000).

²⁰Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997) art. 9, para.1.

Climate Change: Ethical Considerations

Climate change is laden with ethical considerations, who is responsible, who will suffer most, and who will pay for the unmitigated development of greenhouse gas emissions.²¹ The three concentrations of climate change ethics are focused on (i) intragenerational equity- the concern of the poor, (ii) intergenerational equity- the concern for future generations, and (iii) ecological equity.²² These ethical considerations have both an intertemporal, a geographical dimension under climate change, as the delayed climate change effects brings into question the sustainability of future generations and developing countries will suffer the most from the impacts of climate change.

The Kyoto Protocol fell short in adopting these climate change ethics.²³ The mitigation measures under the Protocol did not warrant the discontinuance of the use of fossil fuels, nor did it level the development plain to allow developing countries a more equitable opportunity to progress or protect the climate system from further degradation. Maurice Strong recognizes that within this failure and environmental problems we now fact that ‘new moral values’ are essential to develop a framework for humanity in the face of the ‘international environmental problematique.’²⁴ The inclusion of ethics of ecological integrity, sustainability, and equity under the climate change regime under a code of ethics could resolve the failures of Kyoto and engage more levels of the human society to address climate change.

Development of the Global Community

The international sphere remains persistent over the notion of sovereignty. The state maintains its sovereign rights over the exploitation and development of their natural resources unless it causes harm to another state.²⁵ The UNFCCC acknowledges this right of states “in accordance with the Charter of the UN and the principles of international law, the sovereign right to exploit their own resources.”²⁶

²¹C. Filton (1999), ‘Justice, the Market and Climate Change’ in *Global Ethics and Environment*, edited by N. Low. London: Routledge.

²²W. Achterberg (2001) ‘Environmental Justice and Global Democracy’ in *Governing for the Environment: Global Ethics, Problems and Democracy*, edited by B. Gleeson and N. Low.

²³P.Taylor (2006) ‘The Business of Climate Change: What's Ethics Got To Do With It?’ [Draft Paper].

²⁴M. Strong in A. Gillespie (2000), *International Environmental Law, Policy and Ethics*, p. 129.

²⁵P. Taylor (1998). *An Ecological Approach to International Law*. UK, Routledge.

²⁶UNFCCC (1993) *Framework Convention on Climate Change*, United Nations, New York, Preamble.

In the face of increasing environmental harms, state sovereignty and their rights over natural resources has been argued to infer responsibility. The Brundtland report outlines “rights and reciprocal responsibilities of all states on environmental protection and sustainable development.”²⁷ This relationship of rights and responsibilities was also embedded under Principle 2a of the Earth Charter where it states we must ‘[a]ccept that with the right to own, manage and use natural resources comes the duty to prevent environmental harm and to protect the rights of people.’²⁸ Therefore, with the right to ecological goods within a nation’s sovereign borders, it also translates that that nation is responsible for the protection and existence of those ecological goods and systems within its borders.

The dialogue over both rights and responsibilities over the environment has made for some development in international environmental law that challenges the historical understanding of strict state sovereignty.²⁹ In accomplishing new international and environmental agreements between states, there has been a growth toward non-governmental involvement at negotiations and sometimes, as partners in agreements. As there has been a widening of partners at the international level and some of the documents have already focused on the individual’s role in international agreements, such as the Earth Charter.

Recognition of the Individual in International Law

In the Preamble of the Earth Charter that calls upon individuals, not states, as it states to ‘move forward we must recognize that in the midst of a magnificent diversity of cultures and of life forms, we are one human family and one Earth community with a common destiny.’³⁰ This statement from the Earth Charter emerged after a global discussion and it recognizes that we must have a common goal and a destiny to survive not a patchwork of actions or commitments. While this global discussion of ethics and common destinies brings into the question the complexity of value systems, entitlement patterns, and production of knowledge systems, it must be recognizes that, we are all, collectively, at the mercy of the limitations of the earth’s ecosystems.

To incorporate the individual into the collective action to tackle climate change there remains the need for a ‘cosmopolitan’ shift of policy at both international and local

²⁷ World Commission on Environment and Development. (1987) *Our Common Future*, Oxford, Oxford University Press.

²⁸ Earth Charter (2000).

²⁹ See P. Sand. ‘Sovereignty Bounded: Public Trusteeship for Common Pool Resources?’ *Global Environmental Politics* - Volume 4, Number 1, February 2004, 47-71.

³⁰ Earth Charter (2000).

levels to include all actors in the response to climate change.³¹ Judge Rosalyn Higgins of the ICJ has even gone so far to argue that individuals can be international actors as well as states and that existing international legal structures must be re-evaluated to accommodate this reality. In Higgins opinion:

... [I]nternational law is not only 'rules'; moreover, its norms are not fixed indefinitely and are thus wholly responsive to the needs of the system... [T]he notion of 'subjects' and 'objects' has no credible reality and ...no functional purpose...It is more helpful, and closer to perceived reality, to return to the view of international law as a particular decision-making process. Within that process (which is a dynamic and not a static one) there are a variety of participants, making claims across state lines, with the object of maximizing various values...[I]n this model, there are no 'subjects' and 'objects', but only participants. Individuals are participants, along with states, international organizations...multinational corporations, and indeed non-governmental groups.³²

The Kyoto Protocol and the UNFCCC ascribes the responsibilities and duties of climate change to sovereign states, yet there could be room to expand some of these more general responsibilities to individuals under Higgins argument. The *Reparations* case of the ICJ defined an international person as “capable of possessing international rights and duties.... And [having the] capacity to maintain its rights by bringing international claims.”³³ As the individual can be argued to possess international rights and duties, it can be translated that individuals have the right and the duty to protect the climate system under the UNFCCC.

Mary Evelyn Tucker, Professor of Religion at Bucknell University, supports this shift in individual perceptions, as she sees it integral for adaptation for survival in face of the looming environmental crisis.³⁴ She argues that it must involve ‘a shift in vision and values from a western Enlightenment mentality emphasizing radical individualism to an Earth community mentality of a shared future.’³⁵ While it is essential for individuals to embrace climate change responsibility, climate change will not be resolved with individuals pursuing autonomous action but by individuals

³¹ See D. Held (1996) *Models of Democracy*, Stanford, Stanford University Press, 353-357; J. Thompson (2001), ‘Planetary Citizenship: the Definition and Defence of an Ideal’ in Brendan Gleeson and Nicholas Low (eds.), *Governing for the Environment: Global Problems, Ethics, and Democracy*. New York, St. Martin's Press, 135-38.

³²R. Higgins (1978), ‘Conceptual Thinking about the Individual in International Law,’ *British Journal of International Studies* 4 1.

³³ ICJ, *Reparations for Injuries suffered in the Service of the United Nations Case*, ICJ Advisory Opinion, 11 April 1949, ICJ Rep. 1949 at 174 in Yamin (1999), 271.

³⁴ M. E. Tucker (2005), ‘Humanity is Part of a Vast Evolving Universe’ in *The Earth Charter in Action: Toward a Sustainable World*, eds. P. B. Corcoran, M. Vilela, and A. Roerink, KIT Publishers, Amsterdam, 27.

³⁵ Ibid.

embracing the community of living and collectively regulating the anthropogenic interference with the climate.

This sense of connectivity or global community creates a new temporal sense of ethics and moral to all individuals regardless of state borders. This mindset will assist us to redirect our daily activities from interfering with the climate system at the level we currently are and work collectively.

Future Generation: Completing the Global Community

The actions required to mitigate the impacts of climate change require the current generation to shift consumption levels and energy sources. Thus far, many are resistant in making these changes as they have no connection to their responsibility to future generations. Yet moral obligations of sustainable development further imply that each generation has the duty to:

- (i) conserve the diversity of the natural and cultural resource foundation, so that it does not unduly restrict the options available for future generations; (ii) maintain the quality of the planet so that it is passed on to the next generation in no worse condition as it was when it was received; (iii) to provide all members with equitable access to the legacy of past generations and should conserve this access for future generations.³⁶

The duties put forth by Professor Edith Brown Weiss, above imply a ‘trusteeship’ or ‘stewardship’ of both the ecological and human spheres.³⁷ Each of us has an obligation to current and future generations to provide an earth that is not barren of the beauty we have seen. Weiss argues that this trusteeship imposes non-derogable obligations and should be viewed as *erga omnes* (universal obligation).³⁸ Weiss shifts our rights to development and natural resources to a duty by arguing that each generation is a trustee for the planet with obligations to care for it and a beneficiary with rights to use it.³⁹ Individuals can no longer default responsibilities to future generation as Principle 1 of the Stockholm Declaration expresses this duty by

³⁶ E. Brown Weiss *In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity* (NY: Transnational Publishers, Inc., 1989); E. Brown Weiss (1990), ‘Our Rights and Responsibilities to Future Generations for the Environment’, *The American Journal of International Law* 84, 200.

³⁷ M. Redclift (1992), ‘The Meaning of Sustainable Development’, *Geoforum*, 23, 3, 395-403.

³⁸ Weiss (1990); Also see A. La Viña (1994). ‘The Right to a Sound Environment: The Significance of the Minors Oposa Case’, *Review of European Community and International Environmental Law* 3: 247-252.

³⁹ E. Brown Weiss (1984) ‘The Planetary Trust: Conservation and Intergenerational Equity’, 11 *Ecology Law Quarterly*, 11.

proclaiming, “Man bears a solemn responsibility to protect and improve the environment for present and future generations.”⁴⁰

However, there remain no legally binding international instruments to suggest how to present the interests of the future generations, or if the interests of future generations differ from those of present with concerns of ecological integrity or developing countries. Future generations are limited in representation; therefore, their concerns should be inclusive with the current generation’s interest when addressing climate change. During the development of a code of climate change ethics there would be a need for a discussion on how to represent the interests of future generations and the process to resolve conflicts when the interests of the present generations is in conflict with the interests of future generation. Through ethics and moral directives, such as those provide by Weiss, the code of climate change ethics could place the interests of future generations in the fronts of the minds of individuals and decision-makers.

Equity and Developing Countries and Citizens under Climate Change Law

Equity and fairness have been a major objective in the development of international climate law yet due to the ambiguity and inability to rectify this ambiguity, it was essentially left out of the Protocol. Although the definition of equity remains ambiguous in international law, the International Court of Justice (ICJ) as has explained the nature of equity in international law in the 1982 Continental Shelf case (Tusnai/Libya):

Equity as a legal concept is a direct emanation of the idea of justice. The Court whose task is by definition to administer justice is bound to apply it.⁴¹

The court explains that the application of equity in an international legal context differs from the application in some national legal systems where equity is in contrast with the rigid rules of law, which would have to be weakened to pursue justice.⁴² Therefore, within the climate law regime and the code of climate change ethics there is more room for interpretation of equity and the morals behind the concept. The court in its 1969 Continental Shelf cases (Germany/Denmark/Sweden) Judgement placed the notion as

⁴⁰ Stockholm Declaration United Nations Conference on the Human Environment (1972), Principle 1.

⁴¹ International Court of Justice *Case Concerning the Continental Shelf (Tunisia/Libya Arab Jamahiriya)* [24 February 1982], ICJ Rep. 1982, at 60 para. 71. in F. Yamin (1999). ‘Equity, Entitlements and Property Rights under the Kyoto Protocol: the Shape of ‘Things’ to Come.’ *Review of European Community and International Environmental Law* 8, no, 3, 265-266.

⁴² Ibid.

not a question of applying equity simply as a matter of abstract justice, but applying a rule of law which itself requires the application of equitable principles, in accordance with the ideas that have always underlain the development of the legal regime.⁴³

The Kyoto Protocol did not apply equity the overarching principle of law. Entitlements, procedural equity and distributional justice, although central to the climate negotiations, have been weakened by the omission of ethics of fairness to all generations, to developing nations and to the greater Earth community. The code of climate change ethics could augment the Protocol by including and making equity a central principle.

Divergent Impacts and Responsibilities from Climate Change

Consequential equity of climate change- the fairness of those affected versus those creating the strain on the climate change-links to the principle of ‘polluter pays’ under Kyoto. Consequential equity considerations are stated in UNFCCC under Article 3, “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.”⁴⁴ While the principle of ‘polluters pays’ or differentiated commitments are well-established both in national and international law, extensive debate remains how to balance this with global action under the climate regime.⁴⁵

The differentiated commitments of the Protocol has instigated a divide between powerful players, such as the United States, and developing countries. The US retains its argument not to commit to significant greenhouse gas reductions until all major emitters, notably India and China sign on. In a US Senate Resolution, it indicated its objections by stating that “whereas the Convention intended to address climate change on a global basis, identifies...the remaining 129 countries, including China, Mexico, India, Brazil and South Korea, as ‘Developing Country Parties’...the Berlin Mandate specifically exempts all for Developing Countries Parties... [and] is inconsistent with the need for global action on climate change and is environmentally

⁴³ International Court of Justice, *North Sea Continental Shelf Cases* [20 February 1969] ICJ Rep. 1969 in *ibid*.

⁴⁴ UNFCCC, art. 3.

⁴⁵ K. A Baumert et al. (2002) eds. *Building on Kyoto Protocol: Options for Protecting the Climate*, World Resource Institute, 19; Rio Declaration on Environment and Development (1992), Principle 16, “[n]ational authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.”

flawed.”⁴⁶ While there currently are signs that the US position is shifting, it stills remains uncertain if the US will make significant international commitments without the same from newly developed countries.

The argument for differentiated commitments under the Protocol and during discussion of climate change commitments post-2012 is not just concerning the ‘polluter pays principle’ but also on the understanding that poverty is seen as a major factor in further degradation of ecological integrity. While responsibility of greenhouse gases emissions and capacity levels differ across the world, the code of climate change ethics would instil a sense of responsibility for all citizens and might invoke developing countries to take efforts based on global commitment without establishing equal legal commitments to developed countries.

Balancing Impacts and Development

Intragenerational equity, polluter pays principle and consequential equity all link to the discovery by the IPCC climate scientists that the worse impacts -rise in sea level, increased frequency of severe weather events, and increased risk of drought and food destabilization- will disproportionately threaten developing regions.⁴⁷ The causation of increased greenhouse gases is from the developed world that has enjoyed unmitigated allowance freely to dump emissions into the atmosphere. The dilemma facing developing regions is that concerns of development must be levelled with concerns of climate change.

The argument remains that states have the right to developed as stated in the United Nations General Assembly 1986 Declaration on the Right to Development espouses that “development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from.”⁴⁸ Therein lays the heightened necessity to find a way to allow current generations to reach a certain level of development while balancing the concerns of ecological integrity and future generations. It remains unfair to stunt the developing countries ability to achieve some level of wellbeing relative to those enjoyed by the developed

⁴⁶ United States Senate Byrd-Hagel Resolution S.RES. 98, 25 July 1997 [Report No. 105-54].

⁴⁷ Intergovernmental Panel on Climate Change (1995), *Second Assessment: A Report of the Intergovernmental Panel on Climate Change*, Geneva, Switzerland.

⁴⁸ UNGA Res 41/281 Declaration of the Right to Development of 4 December 1986, para. 2.

countries.⁴⁹ The question is how to make future progress sustainable as the earth is already reached many of its limits.

This ethics of intragenerational equity has also been expressed in Principle 3 of the Declaration on the Human Environment, “right to development must be fulfilled so as to equitably meet developmental and environmental needs of future and present generations.”⁵⁰ Therefore, statements of intragenerational equity like Principle 3 must be included in the code of climate change ethics, as we cannot negate the development of those less fortunate now while protecting the environment or future generations. The challenge of both climate change negotiation and the code is and will continue to be, is how to balance the interests of developing countries, future generations and the environment.

Rectifying Sustainable Development within the Climate Change Regime

The Brundtland report was an attempt of a more holistic approach to balance development and environment concerns. The Report declares that “[h]umanity has the ability to make development sustainable” and acknowledges that the concept of sustainable development implies limits as there remains thresholds both for the continuance of humanity and the greater ecological functionality.⁵¹ “There are thresholds that cannot be crossed without endangering the basic integrity of the system. Today we are close to many of these thresholds; we must be ever mindful of the risk of endangering the survival of life on Earth.”⁵² The UNFCCC transformed this moral obligation into legal language of rights and obligations: “The Parties have a right to, and should, promote sustainable development.”⁵³

Addressing climate change on any significant level will have to be paired with a critical analysis and adjustment of our current economic systems. What is needed in accompanying this shifting in individual responsibility of climate change as Maurice Strong espouses, is a more fundamental reorientation:

“Economic change is imperative, indeed critical. But, in the final analysis, economic factors, like other aspects of human behaviour, are deeply rooted in the human, cultural, spiritual, social and ethical values which are the fundamental sources of motivation of the behaviour of people and nations. Technocratic measures can

⁴⁹See C. Redgewell (1991), ‘Intergenerational Equity and Global Warming’ in *International Law and Global Climate Change*, edited by R. Churchill and D. Freestone. London: Graham & Trotman.

⁵⁰ UN Declaration of the Human Environment, Stockholm 1972, art. 3.

⁵¹ *Our Common Future*, p.8.

⁵² *Ibid.*

⁵³ UNFCCC (1993) Art.3, para. 4.

facilitate but not motivate solutions to basic issues... The practical solutions we devise, the concrete measures we propose will be of little effect if they are not accompanied by a deep and profound stirring of the human spirit.”⁵⁴

The concept of sustainable development was an attempt to transform cultural and economic understandings of development, yet it has failed to engage any substantial shift in our current economic and societal systems as there still needs to be an engagement of all value system.⁵⁵ While the notion of sustainable development’s origin is in the ethics of intragenerational equity, intergenerational equity and ecological integrity, it is not something that individuals or states have been able to comprehend or embrace in any specific way.

Larry Rasmussen found the current understanding of sustainable development inadequate and thus, put forth a concept of ‘sustainable community’.⁵⁶ Rasmussen contends to “reverse [the] ordering of economy and ecology.”⁵⁷ Societal transformation, then, as argued by Rasmussen is “not how to alter environments so as to serve the economy and yet be sustained but how to alter economics to serve comprehensive environments ordered around healthy communities.”⁵⁸ Societal transformation, however, needs to begin at the level of ethics and morality. At the heart of this transformation is our current economic and legal instruments that need to be supplemented to provide the flexibility and objectives find the practical solutions for change.

This concept of realigning economic direction is nothing new in the environmental debate but not much has happened since the Brundtland report to shift to just and sustainable development. Without the ethics at the individual level to push industries and countries to conduct fair and sustainable practises we will continue to see harm inflicted on countries, individuals and ecosystems. The code could be the tool that translates the ethics and sustainable development to the individual level.

Intrinsic Value of the Global Environment

⁵⁴ M. Strong in remarks delivered at the Preparatory Committee at the Earth Summit, quoted in P. Hassan (2005), ‘Earth Charter: Ethical Lodestar and Moral Force’ in *The Earth Charter in Action Toward a Sustainable World* Amsterdam, KIT Publishers, 30.

⁵⁵ The Brundtland report defines sustainable development in a general sense as ‘meeting the needs of the present without compromising the ability of future generations to meet their own needs.’ *Our Common Future*, 1987, 8; Klaus Bosslemann (2002) ‘The Concept of Sustainable Development’, *Environmental Law for a Sustainable Society*, eds. K. Bosslemann and D. Grinlinton. Auckland, NZCEL, 81-96.

⁵⁶ L. L. Rasmussen (1996) *Earth Community Earth Ethics* (Maryknoll, N.Y.: Orbis), 15 in D. Sturm (1999), ‘Identity and Otherness: Summons to a New Axial Age: Perspective on the Earth Charter Movement’, Harvard University Centre for the Environment.

⁵⁷ Rasmussen (1996).

⁵⁸ Ibid.

A prominent omission under Kyoto and current climate change legislation was an understanding of the conflict and the solution to the ecological conflict between humans and nature under climate change. In the face of climate change and other environmental concerns that will threaten the carrying capacity of the planet, the notion of intrinsic value of the ecosystem has emerged. In shifting beyond an anthropocentric view of ethics, there is a movement to dispel the predominant idea of humans as the centre of Earth's existence and to an understanding that all life is mutually dependent.⁵⁹

The 1980 World Conservation Strategy in Chapter 18 states,

Ultimately, the behaviour of entire societies towards the biosphere must be transformed if the achievement of conservation objectives is to be assured. A new ethic, embracing plants and animals as well as people, is required from human societies to live in harmony with the natural world on which they depend for survival and well-being. The long-term task for environmental education is to foster or reinforce attitudes compatible with this new ethic.⁶⁰

As one set of ethics and values have directed us to interfere and harm our ecosystems, a different set of ethics and values must be set to direct us towards restoring the earth's ecosystem and our role in the biosphere. In aligning traditional legal instruments with this new 'ecoethic'⁶¹, conceptions of justice and equity would need to be aligned under international law to provide procedural and consequential equity to ecosystems. It would also promote the interests of the ecosystem as a separate and equal partner at the discussion table and in the global community.

Klaus Bosselmann argues that transforming the morality of justice under law into a conceptualization of 'ecological justice' connects to the understanding of justice of the relationship between humans and the rest of the natural world, which delineates from the prevalent concept of environmental justice- the justice of distribution of the environment among people.⁶² Low and Gleeson further encourage this move as they argue that limiting morality to human species is no longer justifiable with the growing

⁵⁹ Gillespie (2000), 1.

⁶⁰ International Union for Conservation of Nature and Natural Resources (IUCN), United Nations Environment Programme (UNEP) and the World Wide Fund for Nature (WWF), World Conservation Strategy (1980), Ch. 18.

⁶¹ A. Miller (1991), 'Perspectives on Environmental Change in *GAIA Connections: An Introduction to Ecology, Ecoethics and Economics*, Rowman & Littlefield, 265-283.

⁶² K. Bosselmann (2006), 'Ecological Justice and Law' in *Environmental Law for Sustainability: A Critical Reader* (eds) B. Richardson and S. Wood, Oxford, Hart Publishing, 129.

understanding of the interconnectedness of the ecological systems, inclusive of the human organization.⁶³

Seeing the environment as an equal partner at the negotiation table is essential but like future generations, representation of the interest of the environment is difficult to determine.⁶⁴ The interest of the environment should be inclusive with our own as we and future generations of humans are limited within the confines of the ecosystems.

The Kyoto Protocol was unsuccessful at meeting ecological equity, as its emissions targets were too lenient to mitigate the human interference with the climate.⁶⁵ Additionally, the Kyoto mechanisms emission trading and the net approach, which accredits countries through emissions absorbed by trees or carbon sequestration, negates concerns of both the climate and other ecological systems.⁶⁶ From this, it should be acknowledged that the debate could no longer surround what is easiest for humans and our economies to do to address climate change but what needs to be done to save the world's climate system.

Balancing Flexibility with Precaution in Climate Change Law

In commencing new negotiations to address climate change beyond 2012, the ratification and implementation of a policy that allows industries and individual flexibility to discover practical solutions to mitigate current and future interference with the climate is required. In providing this freedom to industry and science, states must take care to observe developments in a measured manner under the precautionary approach.

⁶³ B. Gleeson and N. Low (1998), *Society and Nature* in K. Bosselmann (2006), 137-138.

⁶⁴ D. Schlosbers. (2003) 'The Justice of Environmental Justice: Reconciling Equity, Recognition and Participation in a Political Movement'. *Moral and Political Reasoning in Environmental Practice*, edited by A. Light and A. De-Shalit. Boston: Massachusetts Institute of Technology.

⁶⁵ D. Victor *The Collapse of the Kyoto Protocol and the Struggle to Slow Global Warming*. Princeton, Princeton University Press.

⁶⁶ J. Byrne, Y.-D. Wang, et al. (2000). 'Ecological Justice in the Greenhouse'. *Sixth Session of the UNFCCC Conference of the Parties*. The Hague, Netherlands, Centre for Energy and Environmental Policy, 8-9; Tariq Banuri and Erika Spanger-Siegfried. (2000). 'Equity and the CDM: Equity, Additionality, Supplementary' in *Ethics, Equity and International Negotiations on Climate Change* eds. L. Pinguelli-Rosa and M. Munasinghe. Cheltenham, UK, Edward Elgar Publishing.

The precautionary approach remains a significant principle in the UNFCCC.⁶⁷ The precautionary principle alters the evidentiary threshold by elevating the threat of serious or irreversible harm above scientific certainty. As such, it requires states and institutions to prove and be transparent about the development meeting sustainable measures. As the principle allows for a full or partial reversal of the burden of proof it takes into account both the ecological and long-term effects.⁶⁸

Although the precautionary principle is well established under international law, without further guidance of ethics of equity and fairness, it opens the principle to ambiguous or misguided application. The precautionary principle unaccompanied by an overarching ethical guide does not provide any guarantee that the long-term or ecological considerations will take precedent or be equal to economic considerations. For this reason, the code of climate change ethics can guide the precautionary principle to insert ethics of intragenerational, intergenerational and ecological integrity to ensure that all aspects are considered before action is taken.

The Writing of the Code of Climate Change Ethics

As discussed above, the inclusions of concepts of ecological integrity, sustainability and justice under such a code would require a substantial altering of individual (particularly those in industrialized states) perceptions of human interaction with Earth's ecosystems. The code of climate change ethics could take on such a challenge and include those moral standards, and operationalize them into principles and suggested behaviour. This can make abstract ethics and moral approachable and comprehensive for all individuals and can translate in different cultures and regions.

Normative adoption, the principle objective of the code, will not occur overnight but requires the codification and embracement of the norms over a substantial period.⁶⁹ While climate change requires rapid and effective action taken now, the adoption of the ethics under the code will ensure continuous action on climate change and that we will not direct ourselves to interfere with the climate system at the same level. While

⁶⁷ The Convention states, "the Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures."

⁶⁸ See D. Freestone (1991) 'The Precautionary Principle' in *International Law and Global Climate Change*, R. Churchill and D. Freestone (eds), London: Graham & Trotman ; P. Taylor (2001) 'Heads in the sand as the tide rises: environmental ethics and the law on climate change', *UCLA Journal of Environmental Law & Policy*, 19, 247-272.

⁶⁹ M. Finnemore and K. Sikkink (1998), 'International Norm Dynamics and Political Change', *International Organization* 52.

this may take some time, there is hope of a rapid adoption of these norms, as their dissemination could align with the swift emergence of international legal instruments in addressing climate change and the current popularity of the topic.

Education of the code and its inherent principles will be integral to its effectiveness and enforceability. The strength of the Earth Charter as a guide for the code of climate change ethics, not only in its worldwide adoption of the ethics, but in its ability as a conceptual and educational tool for individuals, organizations and governments to embrace as a fundamental ethical foundation for all human action. UNESCO in October 2003 recognized the Earth Charter as an important ethical framework for sustainable development and affirmed member states' intention 'to utilize the Earth Charter as an educational instrument, particularly for Sustainable Development.'⁷⁰ The code of climate change ethics would also strive to be an additional educational tool to assist in the comprehension of new notions of ecological integrity and sustainability under the climate change regime.⁷¹

Code Enforcement

A code of climate change ethics, as mentioned, does not strive to become a hard law document. It would also not aspire to replace the Convention or the Protocol or future climate change legislation under climate change regulation but become an integral equivalent in international climate regulation. The question arises then in the enforceability of the principles and values that it espouses. Similar to the UN Declaration of Human Rights the code would impose these principles through moral persuasions at both the state and individual level.⁷² Besides the international acceptance of the code, national ratification of these moral standards could be enforceable inherent within future national climate law.

Overall, the code would provide a mechanism to insert the moral standards necessary to complement the traditional legal mechanism of the UNFCCC and the Kyoto Protocol. Adoption of the code would not only provide greater legitimacy and obligations to the Protocol and future commitments but would enhance economic and legal mechanism utilized in international negotiations. It would act as a guide for both states and individuals to shift conceptions of the anthropogenic interference with the climate towards an understanding of the ecological integrity and ensure that future innovation aligns with these climate principles.

⁷⁰ Vilela (2005), 17; UNESCO Res. (2003) Para. 31 art. 1.

⁷¹ UNESCO Res. (2003) Para. 31 art. 1.

⁷² See A. Sens and P. Stoett (2002), *Global Politics: Origins, Currents, Directions*, Ontario, Nelson Thomson Learning, 127.

Conclusions: A Global Code to save a Global Community

The climate regime is once again at the table to discuss recommitments and the resolving of loopholes and omissions in the international climate regulation since 1997. Despite some progress in the implementation of carbon markets and projects under the Kyoto mechanisms, it is clear that something is missing in international climate law to engage ethics and individuals. The legalistic and economic instruments employed under Kyoto failed to inspire any real shift in individual and state perception of the pertinent and immediate need to reduce our reliance on energy consumption and our interference with the climate system.

As the Earth is still ‘stands at a defining moment in its history,’ we must look beyond our practical instruments to engage all individuals in a global community. The adoption of a code of climate change ethics that places responsibility for the climate with all individuals and embraces the ethics of future generations, intragenerational equity and ecological integrity is necessary to make effective and efficient collective action.⁷³ Then and only then, will we direct ourselves away from interfering with the climate system.

⁷³ United Nations (1992) Earth Summit 1992: The United Nations Conference on Environment and Development Agenda 21. U.N. Doc. A/Conf.151/26, Vol. I-IV.