

Global Compliance Research Project (GCRP), a project of the Ecological Rights Association, which was co-founded in 1991 by Joan Russow and David White.

in 1995

the GCRP was founded,

by Joan Russow

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who wrote**

the "Charter of Obligations" - a 350 page compilation of strong statements reflecting obligations incurred through the Charter of the United Nations, expectations created through General Assembly Resolutions, and Declarations, and commitments made through Conference Action Plans.

Ecological Rights Association: back ground.

□ *Proposal for enshrining Ecological Rights in the Canadian and other Constitutions*□

In 1991 A new group has recently been formed for the purpose of lobbying for the enshrinement of ecological rights in the Canadian Charter of Rights and Freedoms, (and in other national charters or constitutions), for the establishment of an institutional framework to ensure that these ecological rights are protected, for a U.N. Covenant for the protection of Ecological Rights, for the criminalization of acts causing ecological damage, for access to the courts for individuals and community groups wishing to prevent the destruction of their ecological heritage, and for documenting and compiling definitions and descriptions of what would constitute ecological rights.

One of the more controversial proposals in the Federal Government's constitutional package is the proposed enshrining of "property rights" in the Canadian Charter of Rights and Freedoms. The legal system already functions as though property rights were sacred and

inviolable. The main outcome of enshrining property rights in the Charter, would be to further limit the possibility of progress being made towards expanding the application of environmental law.

The purpose of the Charter of Rights and Freedoms is to enable individuals to apply to the courts to seek remedies if they believe that their rights or freedoms, as guaranteed by the Charter, have been infringed or denied. The Charter must protect rights that may not be already protected through common law remedies. Individuals must have “standing” in order to bring a case to court. Standing is usually synonymous with property rights or financial interest, and damages are awarded according to losses of these interests. Although the courts have proceeded to continually address any infringement or denial of property rights, they have failed to address the serious ecological damage that continues to be done by industry and government alike. There is no redress for individuals, and community groups who object to ecological damage on the basis not of economic interest but of community ecological rights. It is only through the Charter that individuals and community groups might be able to have standing and thus be able to launch suits against governments on behalf of the community’s ecological rights.

Many industry supporters will contend that statute law is in place to protect ecological rights. In many cases, statute law may even contribute to the infringement and denial of ecological rights by creating the illusion that ecological rights are being protected when there is no institutional framework in place for protecting these rights. Although the Charter of Rights and Freedoms solely applies to the rights and freedoms of individuals vis-a -vis governments, it provides moral suasion and gives guidance to the courts where there are conflicts among individuals, community groups, industries and non-governmental institutions. Through articulating values, the Charter indicates to individuals, community groups, industries and non-governmental institutions the nature and extent of rights and duties and of moral and civil responsibility.

Significant changes to international law, charters and criminal law have often been initiated and justified when there is a convergence of international, national and local concerns about the rightness and necessity for the changes. This convergence now exists for the protection of ecological rights.

The Ecological Rights Association urges international bodies and national governments to consider the following proposed ecological rights -- the right to a safe environment and the right to an ecological heritage, and the right to not have present activities compromise the needs of future generations. The ‘right to a safe environment’ could lead to

stringent regulations on the introduction of potentially harmful factors or substances into the economic sphere. The onus of proof could then shift from the present situation whereby citizens, consumer advocates and environmental groups have to demonstrate that the introduction of a factor or substance will have deleterious consequences. Instead the manufacturers, industry and governmental institutions would have to demonstrate that the introduction of such factors or substances would not have deleterious consequences.

The 'right to an ecological heritage' could lead to the protection and preservation of ecosystems and biodiversity. The Charter should reflect concern for the protection of this right. International documents such as the Report of the 1972 United Nations Commission on the Environment (Stockholm Conference) established principles related to environmental heritage. At Stockholm, the international community established the principles that human rights exist "in an environment of a quality that permits a life of dignity and well-being and that man bears a solemn responsibility to protect and improve the environment for present and future generations." The Bruntland Commission (United Commission on the Environment, 1987) has reiterated this responsibility by calling for the preservation of 12% of each representative ecosystem.

The Ecological Rights Association will work a) towards enshrining the right to a safe environment and the right to ecological heritage in the Canadian Charter of Rights and Freedoms (and in other National Charters or constitutions); b) towards the establishment of an institutional framework to ensure that these ecological rights are protected c) towards lobbying for the enshrinement of ecological rights in a UN Covenant for the Protection of Ecological Rights d) towards encouraging the Criminal Law reform Commission to proceed on their proposal to have the causing of serious ecological damage deemed to be a crime; e) towards ensuring that individuals and community groups will have some form of recourse through the legal system, such as injunctions, to address the infringement and denial of their ecological rights by industry and institutions; and f) towards compiling and categorizing definitions and descriptions of what would constitute ecological rights

Ecological rights must be enshrined and protected even if economic interests may need to be sacrificed.

RECOGNITION OF THE URGENCY OF GLOBAL SITUATION

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty hunger, ill health and literacy and the continuing deterioration of the ecosystem on which we depend for our well being (Agenda 21, UNCED)

CONDEMNATION OF OVER-CONSUMPTIVE PATTERNS OF DEVELOPMENT

[one of the most serious problems now facing the planet is that associated with historical patterns of unsustainable consumption and production, leading to environmental degradation, aggravation of poverty and imbalances in the development of countries.] (4.3 Changing consumption patterns, Agenda 21)

We have come to realize that the traditional consumptive patterns of development have contributed to poverty, to the inequitable distribution of resources, to overconsumption, to the violation of human rights and to the potentially irreversible degradation of the ecosystem (ERA Ecological Rights, Alternative Earth Charter)

ACKNOWLEDGMENT OF THE NEED FOR ACTION

We have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately. (ERA Ecological Rights Charter, affirmed by the NGO Earth Charter, Global Forum)

UNDERTAKING OF TRANSFERRING AGREED TO PRINCIPLES TO STATE PRACTICES

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level (UN Resolution 37/7 World Charter of Nature)

UNDERTAKING OF TRANSFERRING AGREED TO PRINCIPLES TO INDIVIDUAL ACTION OR RESPONSIBILITY-OF-INDIVIDUAL ACTION PRINCIPLE

All people must be held responsible for their own pollution and environmental degradation and created wastes.

UNDERTAKING OF INCLUDING ENVIRONMENTAL COSTS AND ECOLOGICAL CONSEQUENCES

Governments,...should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (AGENDA 21, 20.20 e)

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (AGENDA 21, 7.42)

Ecological values are of a class not readily quantified particularly in economic units but must be taken as a given, in that all life is dependent on sustaining the biosphere, the exclusive life-support system

POSITIVE-MANDATE-TO-CONSERVE PRINCIPLE:

Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage ... and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities; (Agenda 21, 11.15 b)

RESPECT FOR ESSENTIAL PROCESSES

Nature shall be respected and its essential processes shall not be impaired (World Charter of Nature)

ACKNOWLEDGMENT OF URGENCY OF CONSERVING AND PRESERVING NATURE

Humans can alter nature and exhaust natural resources by their actions or the consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources and preserving nature (World Charter of nature)

ENSURING THE INHERENT WORTH OF NATURE

Every form of life is unique, warranting respect regardless of its

worth to man, and, to accord other organisms such recognition, man must be

guided by a moral code of action, (World Charter of Nature)

The well-being and flourishing of human and non-human life on Earth have value in themselves (synonyms: intrinsic value, inherent value). These values are independent of the usefulness of the non-human world for human purposes. Richness and diversity of life forms contribute to the realization of these values and are also values in themselves

All species of plant and animal life are equal and thus no one species (including humanity) should be accorded more rights over another. Humanity should not govern nature, the earth's rhythms and processes should govern humanity. Humanity should not impose itself on but empathize with nature.

MORAL IMPERATIVE TOWARDS NATURE

ensuring that every form of life is unique, warranting respect regardless of its worth to man [human], and to accord other organisms such recognition's,

man [human] must be guided by a moral code of action (World Charter of nature) (World Charter of Nature)

RECOGNITION OF INTERCONNECTEDNESS WITH NATURE

Humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (World Charter of Nature).

Humans are a part of Nature not apart from Nature and thus interspecies symbiosis is a universal phenomenon; humans cannot escape natural laws

PRINCIPLE OF COOPERATION WITH AND NON-DOMINATION OVER NATURE

Humanity's role is to understand and work with the rest of nature, not control, manage, dominate or conquer it

RECOGNITION OF DEPENDENCY ON NATURE

All survival ultimately depends on the integrity of ecosystems including its global form, the biosphere

RECOGNITION OF LIMITS TO GROWTH

There are real limits to consumption, population and pollution. Although their precise quantification is uncertain, there are implications of their imminent approach (FK)

ACCEPTANCE OF NEED FOR MORAL CODE OF ACTION IN RESPECT OF NATURE

ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans] , and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature)

ENUNCIATION OF THE PRIMACY OF THE ECOSYSTEM

Ensuring that in all decisions made about the environment that the ecosystem be given primacy

INVOCATION OF THE PRECAUTIONARY PRINCIPLE

where there is a threat of serious or irreversible damage, lack of full scientific certainty should shall not be used as a reason for postponing measures to avoid or minimize such a threat (Convention on Biological Diversity)

ENUNCIATION OF THE PRINCIPLE OF DOUBT

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should shall not proceed (World Charter of Nature)

ENUNCIATION OF THE "CAUTIONARY" PRINCIPLE

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes (ERA)

SHIFT IN THE ONUS OF PROOF

the proponents of an intervention shall demonstrate the safety of the intervention rather than the opponent having to demonstrate the harm of the intervention

Reverse-onus principle recommended by the Canadian Minister of Environment, Sheila Copps (1994)

ENVIRONMENTAL ASSESSMENT REVIEW

Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on Biological diversity with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures (Article 14, 1A, Convention on Biological Diversity)

ASSERTION OF THE AVOIDANCE OF ACTIVITIES

Activities which are likely to cause irreversible damage to nature shall be avoided (World Charter of Nature)

AFFIRMATION OF INTERGENERATIONAL EQUITY

Reaffirming that man [humans] must acquire the knowledge to maintain and enhance their ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations [human and non-human generations (TB)] (World Charter of Nature)

COMMITMENT TO NON-TRANSFERENCE OF HARMFUL SUBSTANCES AND ACTIVITIES

States should [Shall] *effectively cooperate to discourage or prevent* the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health (Rio Declaration)

AFFIRMATION OF POSITIVE-DUTY-TO PROTECT-INDIGENOUS-LANDS PRINCIPLE.

recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate (Agenda 21, 16.3. ii)

ELIMINATION OF WEAPONS OF MASS DESTRUCTION

Man [Humans] and their environment must be spared the effects of nuclear weapons and all other means of mass destruction . States must strive to reach prompt agreement in the relevant international organs on the elimination and complete destruction of such weapons (Principle 26 UNCHE)

1992bCurrent projects of the Ecological Rights Association

to call for the moving beyond the enshrining of the "sovereign right to exploit resources" which has been enshrined in

In world Charter of Nature " Taking fully into account the sovereignty of States over their natural resources..

move beyond to international governance.

1. submitted a proposal for and Charter protecting Ecological Rights to the Constitutional Committee. • will be sending letters to Newspapers across Canada and to premiers lobbying for the entrenchment of ecological rights in the Charter of Rights and Freedoms,•

will initiate research into determining the nature of of an institutional framework that would have to be in place to ensure that these ecological rights are protected

2. has filed a complaint with the B.C. Ombudsman about the Ministry of Forest's non-compliance with sections 59 and 60 of the B.C. Forest Act; the complaint is currently being

investigated • is soliciting information about violations of the Forest Act from groups concerned with Forestry.

3. has drafted a UN Covenant for the Protection of Ecological Rights; This proposal was circulated at the Prep Com in New York, and at the Summit and Global Forum in Rio. One of our members had input into the final draft of NGO alternative "Earth Charter" that was prepared at the Global Forum. by preparing and proposing a UN Charter to Address Potential Environmental Irreversibility for the summary recommendations of the Royal Society Conference on the Global Environment(1991); This proposal became part of a proposed alternative Earth Charter for UNCED. • by comparing a series of proposals for Earth Charters for the conference "Path to Brazil," 1992 • submitting a proposal for an alternative Earth Charter to the the Director of the UNEP, and to some of the delegates in the New York Prep com; the head of the European Delegation, the head of the G77 group, the Canadian Delegation and to other interested delegates (1992)

• assisted in the final drafting of the NGO's alternative Earth Charter in Rio and presented the principles of the Alternative Earth Charter at a Press Conference (this presentation involved distinguishing the principles in the Earth Charter from those in the Rio Declaration (1992) by compiling a stronger Earth Charter by drawing on the strongest principles of the NGO Earth Charter, The Rio Declarations, Susuki's Charter of Interdependence, and the Ecological Rights Charter• by circulating this Charter to various levels of Government and to NGOs

4. Has prepared a content analysis of Agenda 21, Rio Declaration • Biodiversity Convention, for the following purposes (1)making available to different community issue-oriented organizations statements that could be used to further environmental change. (2) preparing educational material based on the principles enunciated in the documents

5. will be presenting a brief to the Criminal Law Reform Commission on the criminalization of acts causing ecological damage

6.[will be working closely with the Native Community to ensure a fair settlement of native land claims] is working on "Lamentations" of the 500 years of discrimination against the Native

Community.

8. will attempt to apply for a permanent injunction against logging of unfragmented old growth forests. • will call for the Canadian Government to request International community to have several old growth areas declared to be International Natural Heritage sites under the Unesco Convention for the Protection of the World Cultural and natural Heritage (1972).

9. will be requesting individuals and community groups to attempt to define, describe, evoke ...what they believe to constitute ecological rights, and cluster and compile these to serve as a basis for the request to enshrine these rights.

10. is preparing a paper on the necessity of ensuring that GATT regulations do not compromise the protection of ecological rights.

at press conference of CORE; 1992; at public meeting of Old Growth Strategy;(1992) to Compensation Committee (1992) to Environmental Assessment Review (1992); to the Water Board Hearing into logging in the watershed. (1992).

by collaborating with the Environmental Educators Committee of the BCTF on the formulation of criteria for judging the appropriateness of issue-related educational materials in the classroom.

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Posted by Joan Russow

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