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Mélanne Andromecca Civic American University

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DISCOVERING AND ENFORCING A HUMAN RIGHT TO ENVIRONMENTAL PROTECTION

MÉLANNE ANDROMECCA CIVIC*

I. INTRODUCTION

Nearly three decades have passed since the United Nations General Assembly formally affirmed an interconnection between human rights and environmental protection.¹ Still, the United Nations has not officially recognized an environmental human right, either as a distinct right or as one found within the penumbra of other recognized human rights. This article will investigate the contours of a human right to the environment and examine the possibility of "discovering" an environmental human right within existing United Nations conventions and declarations. This article also will argue the importance and timely imperative of recognizing an environmental human right by demonstrating the appropriate and valuable tools that the United Nations human rights enforcement regime may add to the enforcement of international environmental protection. Finally, it will evaluate the potential for effectiveness that the human rights regime holds for environmental protection as well as other possibilities of protection and avenues for individual recourse for environmental human rights violations within the United Nations system.

^{*} LL.M. International and Comparative Law, Georgetown University Law Center; J.D. Urban Morgan Institute for Human Rights, University of Cincinnati College of Law; B.A. Vassar College. This author is an adjunct professor at American University and was an associate to the U.S. delegation to the United Nations World Conference on Human Rights. The opinions represented in this article are solely those of the author. Special thanks to Ambassador J. Kenneth Black and Mr. Tim Wirth.

¹ "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being The natural resources of the earth ... must be safeguarded for the benefit of present and future generations. ..." DECLARATION OF THE UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT, at princs. 1 and 2, U.N. Doc A/CONF.48/14/Rev.1, U.N. Sales No. E. 73.II.A. 14 (1973) [hereinafter, STOCKHOLM DECLARATION].

II. CONCEPTUAL FOUNDATION OF AN ENVIRONMENTAL HUMAN RIGHT

The recognition of an environmental human right would be a significant step toward international influence² over environmental harms arising under otherwise domestic environmental jurisdiction. The inherent conflict between the need for international environmental protection and the resulting infringement on State sovereignty traditionally has been the greatest roadblock to the creation of environmental protection agreements and their effective enforcement, as well as the execution of other means of environmental regulation.³ Under international law and United Nations principles, a nation has plenary control over the development of its economic and social systems,⁴ and over the manner and degree of exploitation of all natural resources within its borders.⁵ Principle 21 of the Stockholm Declaration states this rule of State sovereignty in relation to development: "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign

Treaties and customary international law are capable of reaching certain international environmental protection concerns including:

(1) The regulation of resources shared by more than one nation, the harm to which within one state would directly affect the rights of another state or states, e.g., rivers bordered by two or more nations, such as the Danube.

(2) The regulation of ephemeral resources such as the global atmosphere and climate, which, by definition, can pass over from one nation to another, e.g., the greenhouse warming effect caused by chlorofluorocarbons.

Developments in the Law: International Environmental Law, The Creation of International Environmental Agreements, 104 HARV. L. REV. 1521, 1534-36 (1992).

(3) The protection of resources which fall under no nation's sovereign control, resources typically referred to as the "common heritage of mankind" or the "true commons," e.g., the oceans beyond the immediate territory of coastal states; the territory of Antarctica.

Id. (citing Francioni, Antarctica and the Common Heritage of Mankind, in INTERNATIONAL LAW FOR ANTARCTICA 101, 101-117 (F.Francioni & T.Scovazzi eds. 1987)).

(4) The protection of resources which, although they may exist entirely within a state's boundaries, their destruction would adversely affect all members of the global community, e.g., the Brazilian rainforests.

⁴ Charter of Economic Rights and Duties of States, G.A. Res. 3281, U.N. GAOR, 29th Sess., at 50, U.N. Doc. A/9631 (1974).

² Human rights obligations supported by official agreements are an effective means of enforcement. See LUNG-CHU CHEN, AN INTRODUCTION TO CONTEMPORARY INTERNATIONAL LAW, 271-273 (1989).

³ See TIMOTHY O'RIORDAN, ENVIRONMENTALISM 294 (1981). See also W. PAUL GORMLEY, HUMAN RIGHTS AND ENVIRONMENT: THE NEED FOR INTERNATIONAL COOPERATION 34-40 (1976); Timothy P. Terrell & Bernard L. McNamee, *Transovereignty: Separating Human Rights from Traditional Sovereignty and the Implications for the Ethics of International Law Practice*, 17 FORDHAM INT'L L.J. 459 (1994).

⁵ STOCKHOLM DECLARATION, supra note 1, princ. 21, at 1420.

right to exploit their own resources pursuant to their own environmental policies."⁶ A human right to environment could be applied most needfully and appropriately in situations where resources existing entirely within a State's boundaries are being threatened or destroyed and where such harms rise to the level of international concern or have the effect of causing substantial injury to the citizens of that State. The right would begin from the premise that the effects of environmental harms, even where the specific injury takes place entirely within a nation's borders, transcend state boundaries insofar as they generally affect the entire international community of humankind, and that the solutions, therefore, require a unified effort as well as a modification of traditional state sovereignty dogma.⁷ As articulated by the international community in the Hague Declaration, "[b]ecause the problem [of environmental harm] is planet-wide in scope, solutions can only be devised on a global level."⁸

Furthermore, a human right to the environment could provide a human rights exception under an appropriate protocol for an individual claim of environmental abuse. International law does not provide a distinct individual cause of action for citizens harmed by actions caused by their own government, including environmental harms, unless domestic laws specifically allow for such a cause of action or by way of a limited number of international human rights exceptions.

A. The Specific Contours of a Human Right to Environment

Environmental protection within the United Nations regime is interrelated with human rights in three principal ways.⁹ First, the

⁶ Id.

⁷ P. Sands, *The Environment, Community and International Law*, 30 HARV. INT'L L.J. 393, n.1 (citing Declaration of the Hague, March 11, 1989, The Registrar of the International Court of Justice).

⁸ Id.

⁹ See generally, Janusz Symonides, The Human Right to a Clean, Balanced and Protected Environment, INT'L J. LEGAL INFO. 24 (1991); Jennifer A. Downs, A Healthy and Ecologically balanced Environment: An Argument for a Third Generation Right, 3 DUKE J. COMP. & INT'L L. 351 (1993); Kerry Kennedy Cuomo, Human Rights and the Environment: Common Ground, 18 YALE J. INT'L L. 227 (1993); James A. Nash, The Case for Biotic Rights, 18 YALE J. INT'L L. 235 (1993); Holmes Rolston, III, Rights and Responsibilities on the Home Planet, 18 YALE J. INT'L L. 251 (1993); James W. Nickel, The Human Right to a Safe Environment: Philosophical Perspectives on Its Scope and Justification, 18 YALE J. INT'L L. 281 (1993); James R. Katt, Protecting Ecological Integrity: An Urgent Societal Goal, 18 YALE J. INT'L L. 297 (1993); and Michael J. Kane, Promoting Political Rights to Protect the Environment, 18 YALE J. INT'L L. 389 (1993).

existence of environmental harms impede the full expression and even compromise the partial expression of other human rights, including the rights to life, health, economic well-being and cultural integrity of present and future generations. Second, environmental degradation exacerbates the effects of, and itself is exacerbated by, other human rights violations including racism and prejudices against the impoverished and other disenfranchised groups. Third, environmental destruction itself may rise to the level of a human rights violation where it undermines the very foundation of a human being's opportunity to live in surroundings that satisfactorily support human life.

Some environmental rights advocates¹⁰ generally assert that an environmental right already exists as implicit to the realization of "the inherent dignity,"¹¹ of human beings as well as an integral part of the human rights "foundation of freedom, justice and peace in the world."¹² It is found not only through the International Covenant on Civil and

¹¹ The Universal Declaration of Human Rights, G.A. Res 217A(III), U.N. Doc A/810, 21, 112, 3 GAOR, Resolutions A/810 (1948)[hereinafter Universal Declaration], is the first official consensus of human rights policy of the United Nations, and the Preamble offers one of the best articulations on personal dignity and human rights:

Whereas 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 Whereas ... the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed is the highest aspiration of the common people Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom The General Assembly Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive to secure their universal and effective recognition and observance

Id. at Preamble. The Universal Declaration is considered by the United Nations community to be the pivotal document which establishes the international consensus on recognition of certain inherent and inalienable rights for all human beings.

¹⁰ One such advocate, the Sierra Club Legal Defense Fund [SCLDF], has taken an active role in promoting international environmental protection as a human right. *See* SIERRA CLUB LEGAL DEFENSE FUND, ISSUE PAPER: HUMAN RIGHTS AND THE ENVIRONMENT, PRESENTED TO THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS, GENEVA (Feb. 1994); 1994 DRAFT DECLARATION OF PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT; *Report of Fatma Zohra Ksentini, Special Rapporteur on Environment and Protection of Minorities*, UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, COMMISSION ON HUMAN RIGHTS, SUB-COMMISSION ON PREVENTION OF DISCRIMATION AND PROTECTION OF MINORITIES, U.N. Doc. E/CN.4/Sub.2/1993/9 (6 July 1994).

Political Rights (ICCPR),¹³ and the International Covenant on Economic, Social and Cultural Rights (ICESC),¹⁴ and affirmed through the Stockholm Declaration¹⁵ and most recently, the Rio Declaration,¹⁶ but it also may be construed independently as a "third-generation solidarity right."¹⁷ All that needs be done now, argue such advocates, is flesh out the right from existing legally-binding treaties and morally influential declarations.

Among some traditional human rights advocates, by contrast, a certain amount of skepticism toward a human right to environment

¹⁶ United Nations Conference on Environment and Development, U.N. Doc. A/Conf. 151/5 (1992) [hereinafter Rio Declaration].

¹⁷ Developed countries, including all Western nations, have tended to prioritize the rights according to the generation framework (first generation human rights include civil and political rights; second generation rights include economic, social and cultural rights; while third generation rights encompass a broad range of "group rights") such that first generation rights would be considered inherent; second generation rights would be important but not inherent, and third generation rights would be preferable goals to try to work toward. The wording of the International Covenant on Social, Economic and Cultural Rights reveals this bias regarding implementation: "Each State party to the present Covenant undertakes to take steps ... with a view to achieving progressively the full realization of the rights recognized in the present Covenant. ICESCR, supra note 14 at Art. 2(1) (emphasis added). The Rights of Solidarity: An Attempt at Conceptual Analysis, Working Group of the Standing Committee of International Non-Governmental Organizations having a consultative relationship (categories A and B) with UNESCO, at 1, U.N. Doc. SS-80/CON.806/COL.4; NGO/80/46/DH/11, 1980 at 1 [hereinafter Solidarity Rights]. "The 'new' rights do not supplant rights that have been already formulated; on the contrary, they amplify and complement them." Id. at 2. Among solidarity rights are the rights to economic and social development, national and world peace. Id. at 3-6. Several scholars have argued that environmental integrity exists as a third generation right. See generally Charles Maechling, The Emergent Right to A Decent Environment, 1 HUM, RTS, 59 (1970); and Melissa Thorme, Establishing Environment as a Human Right, 19 DENV, J. INT'L L. & POL'Y 301, 303-05 (1991).

According to the Vienna Declaration from the 1993 World Conference of Human Rights, however, the generational view of human rights is a discarded theory, replaced by the universality view. In relevant part, universality condemns the practice of prioritizing human rights within the international community or within an individual country. Furthermore, universality holds that human rights are inherently universal and that international human rights instruments provide a basic minimum standard of compliance. Vitit Muntarbhorn, The Universality of Standards, notes of course lecture for 24th Study session, July 2-30, 1993, Rene Cassin International Institute of Human Rights. As stated in the Vienna Declaration: "All human rights are universal, indivisible and inter-dependent and inter-related. The international community must treat human rights globally in a fair and equal manner in the same footing, and with the same emphasis." Vienna Declaration, World Conference on Human Rights, Vienna, Austria, June, 1992 at para. 3. Of the 180 nations which attended the World Conference and debated over the drafting Stage of the Vienna Declaration, all participants approved of the final document. See also PAUL SIEGHART, THE LAWFUL RIGHT OF MANKIND, 81-84 (1985).

¹³ International Covenant on Civil and Political Rights [ICCPR], G.A. Res. 2200A, U.N. GAOR, 21st Sess., (1966).

¹⁴ International Covenant on Economic, Social and Cultural Rights [ICESC], G.A. Res. 2200A, U.N. GAOR, 21st Sess., (1966).

¹⁵ Stockholm Declaration, supra note 1.

resists its recognition as a fundamental right.¹⁸ The dominant view among Western or American and European oriented human rights groups appears to be that a human right to the environment, if it is deemed to exist, may be construed as important, but it is not, in and of itself, a fundamental right.¹⁹

Concern within the human rights community appears to focus on the broadening of the concept of human rights that would be necessary to embrace an environmental right and the consequent possibility of undermining the integrity of all human rights through such over-expansion.²⁰ In other words, if protecting and conserving the environment is recognized as a right, then what is to prevent other human aspirations from also claiming the status of a human right, where will this expansion of rights end, and how will the truly fundamental rights maintain their footing?

Certainly, over-expansion of the human rights regime must be guarded against, and all human desires and aspirations need not and should not rise to the level of recognition of a human right. However, such caution should not lead to shutting the door on a valid human right. As Philip Alston argues, preserving the integrity of the human rights regime requires that maintenance of the status quo be balanced against "the need to adopt a dynamic approach that fully reflects changing needs and perspectives and responds to the emergence of new threats to human dignity and well-being."²¹ The next step in our inquiry, thus, is investigating whether environmental degradation and destruction does rise to the level of a human right.

Following Alston's definition, environmental harms pose a profound threat to human dignity and well-being and can even threaten life itself,²² and thus a protected environment does qualify as one of the

¹⁸ See Theodore Van Boven, Distinguishing Criteria of Human Rights in The International Dimensions of Human Rights (1992).

¹⁹ One notable exception to this dominant view within the human rights community is Timothy E. Wirth, Counselor, Department of State, who supports the recognition of an environmental human right on equal footing with other, more established human rights. *See* Testimony of the Honorable Timothy E. Wirth, Counselor, Department of State, Before the Foreign Relations Committee, United States Senate (April 12, 1994).

²⁰ See generally David M. Beatty, The Last Generation: When Rights Lose their Meaning, HUMAN RIGHTS AND JUDICIAL REVIEW 321(1994).

²¹ Philip Alston, Conjuring Up New Human Rights: A Proposal for Quality Control, 78 AM. J. INT'L L. 607, 609 (1984). For a comprehensive review of the theoretical framework of human rights see J. Roland Pennock, Natural Rights, and Human Rights -- A General View, HUMAN RIGHTS 1 (J. Roland Pennock and John W. Chapman, eds.) (1981).

²² See Kennedy Cuomo, supra note 9, at 228 (discussing the Chernobyl nuclear accident and the decision of former Soviet President Mikhail Gorbachehev not to release news of the environmental dangers until 19 days later, which resulted in the sickness and death of tens of

changing needs and concerns of the human rights regime.²³ As Wilfred Jenks notes,

The pollution of the environment by the multifarious activities of man's increasing numbers now ranks with peace and population among the crucial issues confronting world society. It poses the problem of liability for ultra-hazardous activities involving dangers which are cumulative rather than immediate and arise from a process rather than a disaster.²⁴

Examples of life threatening environmentally-related offenses are plentiful, including instances of information suppression following nuclear²⁵ or industrial²⁶ disasters and murder of human rights activists working against environmental abuses.²⁷ Additional support for the claim of the validity of recognizing an environmental human right points one back to existing human rights documents and the fact that an environmental human right is already implicit in a significant number of recognized human rights.²⁸

Although official United Nations General Assembly recognition of a right to environment is not yet in sight, the process is underway. In 1989, the United Nations Sub-Commission on Prevention

thousands to millions of people worldwide): See also GREENPEACE, THE GREENPEACE BOOK OF THE NUCLEAR AGE: THE HIDDEN HISTORY 286-287 (1990). See generally World Health Organization Global Strategy for Health and Environment Action Plan, U.N. Doc. WHO/EHE/94.4 (1994) (clarifying the connections between a sound environment and human life and health). See also THE WORKING GROUP FOR ENVIRONMENTAL LAW, THE RIGHT TO A HUMANE ENVIRONMENT: PROPOSAL FOR AN ADDITIONAL PROTOCOL TO THE EUROPEAN HUMAN RIGHTS CONVENTION 28 (1973). Although the European Convention is a regional group and not a United Nations Treaty body, its official recognition that harm to the environment presents a substantial threat to human health and life is instructive. *Id.* at 29.

²³ Id.

²⁴ Pollution in Liability For Ultra-Hazardous Activities in International Law, in RECUCIL DES COURS 99, 121 (1966).

²⁵ Kennedy Cuomo, *supra* note 9, at 228.

²⁶ Kane, *supra* note 9, at 398-99.

²⁷ Id. at 394-95. Chico Mendes was a Brazilian union leader who worked to organize indigenous peoples to fight for land reform and to protect their rain forest territory. Mr. Mendes and hundreds of other Brazilians have been killed in conflicts surrounding protection of the rain forest and land reform. Id. at 394. For additional examples of loss of life due to environmental advice work see Id. at 394-95. See also ADRIAN COWELL, THE DECADE OF DESTRUCTION: THE CRUSADE TO SAVE THE AMAZON RAIN FOREST (1990); ANDREW REVKIN, THE BURNING SEASON: THE MURDER OF CHICO MENDES AND THE FIGHT FOR THE AMAZON RAIN FOREST (1990); and Stephan Schwartzman and Osmarino Rodrigues, Democracy in the Rain Forest, CHRIST. SCI. MON., Jan. 18, 1990, at 19.

²⁸ See infra pp. 8-10.

of Discrimination and Protection of Minorities, acting on information supplied to it by several non-governmental organizations²⁹ called for a Special Rapporteur to examine issues surrounding a human right to environment.³⁰ In 1991, Special Rapporteur Madame Fatma Zohra Ksentini submitted a Preliminary Report which analyzed the general relationship between human rights and the environment and also elaborated upon certain procedural questions.³¹ Progress reports prepared by Madame Ksentini in 1992, 1993 and 1994 have investigated the practical implications of a human right to environment.³²

Since the official recognition of a new human right can be a lengthy and complex process, advocates of an environmental human right can and should seek alternative paths for immediate enforcement under the human rights rubric. Among the rights enumerated in the ICCPR³³ and the ICESCR,³⁴ a significant number contain environmental protection implications. In the next section, this article will attempt to extrapolate a human right to environment from these two documents, after which it will explore the immediate enforcement possibilities of such a strategy.

III. DISCOVERING AN ENVIRONMENTAL HUMAN RIGHT AMONG ESTABLISHED HUMAN RIGHTS

The International Bill of Rights describes the generally established human rights principles and norms agreed upon by the United Nations community and consists of three pivotal documents: the Universal Declaration of Human Rights,³⁵ the International Covenant on Civil and Political Rights³⁶ and the International Covenant on

³³ See supra note 13.

²⁹ These organizations include the Sierra Club Legal Defense Fund, Friends of the Earth and the Association of Humanitarian Lawyers. SIERRA CLUB LEGAL DEFENSE FUND, *supra* note 10, at 1.

³⁰ U.N. Doc. E/CN.4/1990/2, Decision 1989/108 at 71. See also Human Rights and Scientific and Technological Development: Proposals for a Study of the Problem of the Environment and its Relations to Human Rights, E/CN.4/Sub.2/1990/12.

³¹ Madame Fatma Zohra Ksentini, Preliminary Report, Human Rights and the Environment, U.N. Doc. E/CN.4/Sub.2/1991/8.

³² See generally Human Rights and the Environment, U.N. Doc. E/CN.4/Sub.2/1992/7; Human Rights and the Environment, E/CN.4/Sub.2/1992/7/Add.1; and Human Rights and the Environment, E/CN.4/Sub.2/1993/7.

³⁴ See supra note 14.

³⁵ See supra note 11.

³⁶ See supra note 13.

Economic, Social and Cultural Rights.³⁷ The Universal Declaration is a non-legally binding document which has acquired, through the exercise of customary law, a degree of legally binding status.³⁸ The ICCPR and ICESCR are treaties which implement as well as expand upon the principles set forth in the Universal Declaration.

The ICCPR, as its name suggests, addresses traditional political rights. Some of these rights can be said to implicate an environmental human right. Most notably, Article Six, paragraph one, the right to life, often is cited as the ultimate right which, by necessity, encompasses a right to environment.³⁹ The relevant paragraph states, "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.³⁴⁰ When read in context,⁴¹ the right to life referred to appears to address only procedural due process rights, the absence of which would arbitrarily deny a person of his or her life. However, the right to life provided for in the ICCPR and the Universal Declaration⁴² has come to encompass, through custom

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death shall be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that noting in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the prevention and Punishment of the Crime of Genocide.

 Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

 Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Id. at Art. 6.

42 See supra note 11.

³⁷ See supra note 14.

³⁸ THOMAS BUERGENTHAL, INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL 25 (1988).

³⁹ Supra note 13, at Art. 6.

⁴⁰ Id. at Art. 6(1).

⁴¹ Article six states in full:

and usage, the broader, substantive aspects of a right to life.⁴³ A strong argument can be made that a right to environment is presumed within a right to life for two reasons. First, certainly no person can experience the right to life in an environment that is incapable of sustaining or which insufficiently supports life. The right to life would be rendered meaningless under such circumstances. Second, the right to life is directly violated where, in the most egregious cases involving environmental abuses, persons are physically injured or even killed.⁴⁴

Other rights in the ICCPR may encompass a right to environment. One example is Article 27: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture. ... "45 Mary Simon of the Inuuit Circumpolar Conference, an indigenous people's nongovernmental organization representing the Inuuit tribe, maintains that a right to a clean and healthy environment is inexorably linked with community rights and cites as proof instances where indigenous peoples are compelled to assimilate due to destruction of the native environment. Such assimilation compromises the native population's distinct cultural identity.⁴⁶ "In view of [the] profound relationship with and continuing dependence upon the land and its resources, the distinct identity and culture of Inuuit cannot be separated from the Arctic environment.... It is the natural Arctic environment that shapes Inuuit spirituality, our linguistic and artistic expression, and our way of life."47 More extreme examples of environmental harms can lead to the actual destruction of entire indigenous communities. Special Rapporteur, Mr. B. Whitaker, notes in the 1985 Sub-Commission Report on Genocide⁴⁸ that "ecocide"49 is one distinct form of genocide.

Another example of an ICCPR right which strongly implicates an environmental human right is Article one, paragraph two -- the right of all peoples not to be deprived of the use of their natural resources or

⁴³ See Audrey R. Chapman, Earth Rights and Responsibilities: Human Rights and Environmental Protection, 18 YALE J. INT'L L. 215, 216 (1993).

⁴⁴ See Kane, supra note 9, at 395.

⁴⁵ Supra note 13, at Art. 27.

⁴⁶ Mary Simon, *The Integration and Interdependence of Culture and the Environment, in* HUMAN RIGHTS IN THE TWENTY-FIRST CENTURY 521 (Kathleen E. Mahoney and Paul Mahoney, eds., 1991).

⁴⁷ Id. at 527. See also SIERRA CLUB LEGAL DEFENSE FUND, supra note 10, at 9-12.

⁴⁸ U.N. Doc. E/CN.4/Sub.2/1985/6.

⁴⁹ The destruction of communities through environmental "alteration" or destruction, including nuclear and chemical toxins, serious pollution, acid rain or other habitat destruction. *Id.* at paras. 32-33.

of the means of subsistence⁵⁰ -- a right which is equivalently established in Article one, paragraph two of the ICESCR.⁵¹ This right of selfdetermination is violated where a government makes a decision to exploit its natural resources for purposes of short-term profit in a manner that is not environmentally sustainable.⁵² Michael J. Kane of the United States Environmental Protection Agency notes:

National governments make decisions that control the use of their natural resources. But many nations have squandered their natural heritage by making decisions for short-term gain that lead inevitably to long-term loss. Forests that once protected downstream floodplains are cut; arid lands are over grazed and abandoned; and mining pollutes ground water supplies.⁵³

Where environmentally irresponsible exploitation of natural resources takes place, the land is often rendered incapable of supporting human communities and populations can be displaced.⁵⁴ The displacement of persons due to human-induced environmental degradation violates their

The clash between the need to conserve resources and to preserve existing human life -- or even to restore depressed areas -- must, regrettably, compete with the requirements of development. It is essential that this "head on clash" not be minimized, because of the interest of the world community in both 'protection' and 'development.'

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⁵³ Kane, *supra* note 9, at 18-19 (*citing* JEFFREY LEONARD, ET AL., ENVIRONMENT AND THE POOR: DEVELOPMENT STRATEGIES FOR A COMMON AGENDA (1989)).

⁵⁴ Persons displaced by man-made environmental abuse or by natural environmental disasters are referred to as "environmental refugees." Although not considered refuges in the traditional sense of the term which provides refugee status for reasons of political persecution only, a recent United Nations Environment Program (UNEP) report suggests an addendum definition of refugee in order to provide environmental refugees with certain special refugee protections. UNEP would redefine refugee to include individuals who "have been temporarily displaced because of natural hazards or industrial accidents; individuals who have been permanently displaced by large projects, such as dams, that have required resettlement; and individuals and groups who are forced to migrate because their natural resources are no longer able to meet their basic needs." Kane, *supra* note 9, at 403-04 and n.83-85.

⁵⁰ See supra, note 13, at Art. 1 ("All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.").

⁵¹ See supra note 14.

⁵² See GORMLEY, supra note 3, at 8.

Id.

right to self-determination as it would violate a human right to environment.

A close examination of the ICESCR,⁵⁵ like the ICCPR,⁵⁶ reveals a number of rights which reveal an underlying right to environment. One example is Article one, paragraph two, shared with the ICCPR and discussed above. Another is Article 11 which recognizes 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 condition."⁵⁷ Clearly, a sustaining environment is the very foundation of providing for adequate food and for the continuous improvement of living conditions. A polluted or debased environment can neither properly support the growth of food nor sustain other conditions essential to life.

Closely related in principle to Article 11 of the ICESCR is ICESCR Article 12, the right "of everyone to the enjoyment of the highest attainable standard of physical and mental health."⁵⁸ In fact, Article 12 actually lists "the improvement of all aspects of environmental . . . hygiene"⁵⁹ as an integral element of this right. The World Health Organization's report on its Global Strategy for Health and Environment⁶⁰ emphasizes the interrelationship between health and the environment: "[P]ollution, as well as [the] general deterioration of environmental condition can cause health problems, ranging from communicable diseases and malnutrition, to chronic respiratory diseases and mental illnesses."⁶¹

Finally, Article Seven, which provides for the right "of everyone to the enjoyment of just and favourable conditions of work" explicitly recognizes that "just and favourable" requires "healthy working conditions."⁶² As discussed above, a clean environment is essential to providing for healthy conditions, in general, and healthy working conditions, in particular. Therefore a clean environment may accurately be said to be an integral element of the right to just and favourable conditions of work.

Thus, a strong argument can be made that an environmental human right is a necessary and essential element of several

61 Id. at 3.

⁵⁵ See ICESCR, supra note 14.

⁵⁶ See ICCPR, supra note 13.

⁵⁷ ICESCR, supra note 14, at Art. 11(1).

⁵⁸ Id. at Art. 12(1).

⁵⁹ Id. at Art. 12(2)(b).

⁶⁰ See WORLD HEALTH ORGANIZATION, supra note 22.

⁶² ICESCR, supra note 14, at Art. 7(b).

internationally-established human rights as enumerated in the legally binding ICCPR and ICESCR treaties, because the full realization of these specified rights require a clean, healthy and sustaining environment. This fact provides an immediately accessible avenue for the enforcement of an emerging environmental human right.

This article now will examine the practical applications of enforcement of a human right to environment through the ICCPR, the ICESCR and other treaties through the treaty bodies of the United Nations organization, other United Nations Organs, Programs and Specialized and Autonomous Agencies.

IV. PROCEDURAL ENFORCEMENT OF A HUMAN RIGHT TO ENVIRONMENT: UTILIZING EXISTING UNITED NATIONS ENFORCEMENT MECHANISMS

Strictly speaking, human rights abuses are processed by the General Assembly through the Committee on Human Rights and by the Economic and Social Council (ECOSOC) through the Human Rights Commission. Broadly speaking, human rights is the concern of all of the United Nations treaty bodies, the various bodies of ECOSOC, the related United Nations Organs and Programmes, as well as the United Nations Autonomous Agencies.⁶³

This section of the article will outline the various treaty bodies and other United Nations Organizations and Programmes that might participate in the enforcement of a human right to environment.

A. Enforcement of a Right to Environment Through the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights

The ICCPR and ICESCR are distinguished not only by the types of rights they protect but also by the manner and degree of enforcement expected by the state party and by the types of remedies afforded to individuals under each Covenant. The ICCPR requires that each state party must respect and ensure the rights set forth in the

⁶³ For a comprehensive outline of the treaty bodies, agencies and organizations of the United Nations see generally, UNITED NATIONS ORGANIZATION, EVERYONE'S UNITED NATIONS (1994).

Covenant.⁶⁴ The ICCPR also prohibits any derogation⁶⁵ from specific enumerated rights,⁶⁶ and imposes upon state parties the duty to provide a judicial remedy to individuals whose rights have been violated.⁶⁷ The ICCPR additionally provides that state parties to the First Optional Protocol⁶⁸ expressly recognize the jurisdiction of the United Nations Human Rights Committee to receive and consider communications

from individuals concerning rights violations under the ICCPR.⁶⁹ By contrast, the ICESCR merely calls upon state parties to "take steps . . . to the maximum of [their] available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means "⁷⁰ No strict requirement of enforcement or time line for the full realization of the rights is contemplated by the Covenant. And, most significantly, as regards its limited potential as an enforcement device for an environmental human right where the right is derived from existing ICESCR rights, no adjudicatory remedy is provided for rights violations, and no Optional Protocol allows for the independent review of individual communications.

This article next will examine in some depth the specific enforcement mechanisms that would be available for an environmental human right through each of these two treaties. Three principal devices exist for enforcing rights provided by the ICCPR. First, Article 41⁷¹ provides for state parties to communicate concerns via the Human Rights Committee regarding violations committed by another state party if and only if both state parties have explicitly assented to the terms of

Id.

65 Id. at Art. 4.

66 Id. at Arts. 6-8.

67 Id. at Art. 2.

⁶⁸ First Optional Protocol to the Covenant on Civil and Political Rights, 999 U.N.T.S. 302 (Dec. 19, 1966); adopted by G.A. Res. 2100, GAOR, 21st Sess., Supp. No. 16, at 59, U.N. Doc A/6316 (1977).

69 Id, at Art. 1.

⁷⁰ See ICESCR, supra note 14, at Art. 2.

⁷¹ ICCPR, supra note 13, at Art. 41.

⁶⁴ See ICCPR, supra note 13, at Art. 2:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

this Article.⁷² Second, the ICCPR First Optional Protocol establishes a mechanism for the Human Rights Committee to receive and process individual communications⁷³ alleging violations by states that have explicitly assented to the First Optional Protocol.⁷⁴ Third, the Economic and Social Council 1503 procedure⁷⁵ establishes an enforcement mechanism for rights provided for in the ICCPR, the ICESCR and the Universal Declaration.

The Optional Protocol, in conjunction with the Human Rights Committee is a promising forum for the enforcement of an environment human right for two reasons. First, individuals, third parties and groups of individuals are able directly to bring allegations of violations to the attention of the Committee. Non-governmental organizations may also submit communications as interested parties. It is less than an ideal enforcement mechanism, however, because the Optional Protocol may only be used against other state parties to the Protocol.⁷⁶ Furthermore, delays of several years between submission of a complaint and the release of the Committee's views are common.⁷⁷

The Committee on Human Rights reviews all relevant evidence of an allegation, decides by majority vote or consensus whether or not a violation has been committed and what, if any, recommendation to make. Lewis-Anthony, *supra*, at 47. It publishes its views for the public communiqués at the end of each session and in its Annual Report to the General Assembly. *Id.* at 48-49. Recommendations of the Human Rights Committee may only be implemented by the General Assembly. Hurst Hannum, *Implementing Human Rights: An Overview of Strategies and Procedures, in* GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 19, 29 (H. Hannum, ed., 1992).

⁷⁴ Optional Protocol, supra note 68.

⁷⁵ ECOSOC Res. 1503 (XLVIII), 48 U.N. ESCOR Supp. No. 1A, at 8, U.N. Doc. E/4832/DD.I/1 (1970).

⁷⁶ The United States, for example, is not a party to the Optional Protocol.

⁷⁷ Hannum, supra note 73, at 28.

⁷² Id. As of 1990, no state-to-state complaints had yet been made. AMNESTY INTERNATIONAL, SUMMARY OF SELECTED INTERNATIONAL PROCEDURES AND BODIES DEALING WITH HUMAN RIGHTS MATTERS 4, 26 (1989).

⁷³ See Optional Protocol, supra note 68, at Art. 1. The Human Rights Committee consists of 18 members, each of whom is a professional expert in a relevant field, serving in their personal capacity, rather than as government representatives. The Committee may receive communications from the individual who is directly affected by the violation or from third parties who can establish a sufficient link to the individual claiming the violation. Groups of petitioners may participate in bringing a complaint, as long as each petitioner can demonstrate that he or she has been adversely affected by the state party. See Sian Lewis-Anthony, *Treaty-Based Procedures for Making Human Rights Complaints Within the United Nations System, in* GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE (Hurst Hannum, ed., 1992). See also AMNESTY INTERNATIONAL, *supra* note 72, at 26. The alleged facts of the complaint must show that at the relevant period of time, the petitioners actually are past or current victims or are in imminent risk of having their rights violated. See Lewis-Anthony supra. Complainants must first exhaust all available domestic remedies, Optional Protocol, supra note 68, at Art. 2, and may not simultaneously submit their complaint to any other internationally-established review bodies. Id. at 5(2)(a).

Although the ICESCR contains no explicit reference to remedies and has no optional protocol providing for the receipt of individuals' communications, the rights provided for in the ICESCR, as well those of the ICCPR and the Universal Declaration, may be enforced through the Economic and Social Council 1503 procedure in "situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights."⁷⁸ Communications are received by the Centre for Human Rights, reviewed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and then considered by the Commission on Human Rights.

While the 1503 procedure is a valuable tool within its mandate, it neither addresses individual communications nor state-to-state complaints unless the violation in question is part of a pattern of gross and consistent violations.⁷⁹ Furthermore, the 1503 procedure does not provide individual remedies and neither the public nor any interested parties are ever informed of what action, if any, has or will be taken by the Commission on Human Rights. For purposes of the enforcement of an environmental human right, therefore, it is not particularly useful because of two factors. First, much disagreement among the scientific and the human rights communities exists as to what would qualify as a gross environmental violation.⁸⁰ Would it require a life threatening situation and must the life threat be actual or impending, not merely likely to take place? Second, by the time that an environmental abuse has risen to the level of a consistent and gross pattern of violation, the harm often will be utterly irreversible.

The ICESCR contains no enforcement mechanism, however, Articles 16 and 17 provide a monitoring mechanism for the implementation of ICESCR rights.⁸¹ The Committee on Economic, Social and Cultural Rights receives reports from state parties in a five year cycle and meets once annually to review such reports and open the floor for the expression of concerns. The Committee may discuss, and in fact has discussed, human rights issues relating directly to the environment with government representatives.⁸² The Committee on

⁷⁸ See supra note 75.

⁷⁹ Id.

⁸⁰ See GORMLEY, supra note 3, at 32-38. See generally Kane, supra note 9.

⁸¹ See ICESCR, supra note 14, at Arts. 16-17.

⁸² U.N. Doc. E/CN.4/Sub. 2/1992/7/Add.1 (1992) at 27. During its Fourth Session, the Committee on Economic, Social and Cultural Rights inquired of the Mexican representative what measures were being adopted in order to improve health and reduce pollution. *Id.* (citing Committee on Economic, Social and Cultural Rights, Report on the 4th Session (15 January-2 February 1990), Official Records of the Economic and Social Council, 1990, Supplement No. 3,

Economic, Social and Cultural Rights has no enforcement power, but it does have procedures in place to review follow-up activities by the member states. Standard procedure is for the State to provide information in its next periodic report, typically after a five-year interim, on what action has been taken.⁸³ Where the problem is particularly pressing, the Committee may request a follow-up report after six months or request additional information after only one to three months so that the Committee can review the issue again at its next session.⁸⁴ Where the Committee determines that the country under review is inadequately cooperating and that further information is required, the Committee will ask the state party to permit a mission of one or two Committee representatives to conduct an in-country investigation.⁸⁵

The strategy and sole authority of the Committee is to improve the rights situation through discussion and hopefully through obtaining cooperation with the state party. The reports, missions, and information-gathering procedures exist for the purpose of maintaining a dialogue between the Committee and the state under investigation.⁸⁶ The strategy and sole authority of the Committee is to improve the rights situation through discussion and hopefully through obtaining cooperation with the state party. The limited mandate of the Committee

⁸³ Report on the Seventh Session, *supra* note 82, at para. 36.

⁸⁵ Id. at paragraph 37.

paras. 108 and 110).

During the Fifth Session, ecological and environmental concerns in Ecuador and the Dominican Republic were addressed by the Committee. Official Records of the Economic and Social Council, 1990, Supp. No. 3 (26 Nov-14 Dec 1990), paras. 108 and 110.

The Committee requested during its Sixth Session that the Panamanian representative provide an update on the measures Panama had taken to overcome problems associated with urban development and industrialization as per Article 12 of the ICESCR. Panama responded that it had no heavy industry and therefore industrial pollution was not a serious problem. Official Records of the Economic and Social Council, 1992, Supp. No. 3 (25 Nov-13 Dec 1991), paras. 123-25.

During the Seventh Session, Norway was asked to provide information on how it reconciled its pro-environmental and pro-whaling positions. Committee on Economic, Social and Cultural Rights, Report on the Seventh Session, E/C.12/1992/2, para. 97 [hereinafter Report on the Seventh Session]. In response, Norway asserted the right of States to exploit their natural resources consistent with local law and added that where a species was threatened with extinction it would be protected. *Id.* at paragraph 102.

During the Ninth Session, the Committee specially addressed the topic of recognizing a right to health, as an individual and a community right. Committee on Economic, Social and Cultural Rights, Report on the Eighth and Ninth Sessions, E/C.12/1993/19, paras. 289-336. It made recommendations regarding non-discrimination in the providing of health services, and discussed the "minimum core content" of the right. *Id.* A clean environment was eluded to as an important factor of the right to health. *Id.* at para. 315.

^{₿4} Id.

⁸⁶ Id.

on Economic, Social and Cultural Rights frequently means limited practical effect in enforcing rights which, to begin with, under the wording of the ICESCR itself,⁸⁷ carry with them limited enforcement obligations. Furthermore, the considerable time lag that is built into the five-year periodic report standard follow-up procedure means that, except for particularly egregious cases, rights violations concerns may remain in virtual limbo for five to ten years or more.

B. Enforcement and Monitoring a Human Right to the Environment through other Economic and Social Council Bodies

As stated above, ECOSOC is involved on several levels with the enforcement of human rights. First, the Commission on Human Rights, in conjunction with the Sub-Commission on Prevention of Discrimination and Protection of Minorities, operates through the 1503 procedure to address gross patterns of violations of all rights protected under the International Bill of Rights. Second, the ECOSOC Committee on Economic, Social and Cultural Rights has in place a monitoring and follow-up procedure that promotes dialogue between the Committee and member states thought to be in violation of ICESCR rights. The right to environment, since it arguably may be subsumed under specific articles in both the ICCPR and the ICESCR, could also be protected under these procedures.

Additionally, other ECOSOC bodies are involved either directly or indirectly in monitoring environmental issues and may contribute to the enforcement of an environmental human right. Most notably, since 1992, three new organs have been created within ECOSOC that integrate environmental sustainability within their mandates: The Committee on New and Renewable Sources of Energy for Development; the Commission on Science and Technology for Development; and the Commission on Sustainable Development.

In their first session in 1994, The Committee on New and Renewable Sources of Energy for Development⁸⁸ called on member States to adopt sustainable energy policies⁸⁹ and to include environmental considerations in their planning, research and development:⁹⁰

⁸⁷ See ICESCR, supra note 14.

^{B8} E/C.13/1994/8.

⁸⁹ Id. at 2.

⁹⁰ Id.

The basic and ultimate objective is to reduce adverse effects on the atmosphere from the energy sector by promoting policies or programmes... to increase the contribution of environmentally sound and cost-effective energy systems, particularly new and renewable ones, through less polluting and more efficient energy production, transmission, distribution and use.⁹¹

The Commission on Science and Technology for Development (CSTD) provides scientific and technical advice to ECOSOC to advance environmentally-sound and sustainable development. In its first session, the Commission noted the application of science and technology to environmental protection and advised the inclusion of and development of early warning systems so as to avoid irreversible environmental damage.⁹² The CSTD accepts information and reports from governments and non-governmental organizations in its capacity as an advisory body.

The Commission on Sustainable Development [CSD] is mandated to promote, monitor and review states parties' progress in implementing the principles of Agenda 21, the Program of Action of the 1992 Conference on the Environment and Development [UNCED].⁹³ The Commission receives its information from member governments, including periodic communications and reports, as well as from nongovernmental organizations.⁹⁴

Agenda 21 is concerned principally with integrating environmental and developmental goals in all relevant activities throughout the United Nations system and within states parties' domestic legislation.⁹⁵ Toward this end, the Commission engages in: (a) promoting dialogue between the various United Nations organizations, non-governmental organizations and others in both private and government sectors;⁹⁶ (b) making recommendations on "capacity-building programmes, information networks, task forces and

⁹¹ Id. at 10.

⁹² Commission on Science and Technology, E/CN.16/1993/12.

⁹³ The conference was held on June 3-14, 1992, in Rio de Janiero, Brazil.

 ⁹⁴ Outline of a Multi-Year Thematic Programme of Work for the Commission, Commission on Sustainable Development, E/CH.17/1993/2 (interpreting G.A. Res. 47/191, para.
3) [hereinafter Thematic Programme]. See also Report of the Commission on Sustainable Development on Its First Session, E/CN.17/1993/3/Add.1.

⁹⁵ See generally, Thematic Programme, supra note 94.

[%] Id.

other mechanisms for regional and subregional levels integration of environmental and developmental goals;⁹⁹⁷ and (c) submitting reports to the General Assembly, through the Economic and Social Council on recommended means of implementing the integrated environmental and developmental goals.⁹⁸

Two qualities of the CSD make it particularly appropriate for promoting and supporting a human right to environment. First, since the General Assembly regularly reviews the reports and recommendation of the CSD, it gives the CSD considerable potential as a strong and steady influence on environmentally-specific General Assembly decisions. Second, the CSD welcomes communications and reports from non-governmental organizations, which means that citizen groups around the world have access to the CSD and thereby, indirectly, to the General Assembly. However, Professor Alexandre Kiss notes that some decisions of the CSD indicate that its priorities are leaning more and more toward economic development and subordinating environmental concerns.⁹⁹ This trend would seriously undermine the CSD's role in implementing the principles of Agenda 21 and in promoting a human right to environment.

C. Implementation Possibilities of an Environmental Human Right through Related United Nations Organs, Programs and Autonomous Agencies

In 1974, the United Nations General Assembly created the United Nations Environment Program (UNEP) in order to serve as a "co-ordinating body to lead and direct environmental initiatives at the international level and to co-ordinate and stimulate action, serving as a catalyst rather than as an executing agency."¹⁰⁰ UNEP, in conjunction with other United Nations Organs, Programs, as well as Autonomous

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ ALEXANDRE KISS & DINAH SHELTON, INTERNATIONAL ENVIRONMENTAL LAW 44 (1991). But see UNCED Follow-up Lacking in Areas Not Solely Environmental, U.N. Official Says, INT'L ENV. RPTR. (1993) (explaining that the Under-Secretary General for Policy Coordination and Sustainable Development and the Executive Director of UNEP each went on record as saying the follow-up to UNCED has strongly favored environmental concerns).

¹⁰⁰ UNITED NATIONS, EVERYONE'S UNITED NATIONS 168 (1979). UNEP provides regular reports to the General Assembly through ECOSOC, but is not part of the ECOSOC hierarchy of specialized agencies. *Id.*

Agencies,¹⁰¹ operates to advance environmental protection and conservation. None of these organizations, except for the International Labor Organization, have in place a mechanism for receiving communications from individuals regarding rights violations. Still, these varied organizations serve an important role in the monitoring and implementation of rights and have significant influence in the establishment and regulation of international norms.¹⁰²

Research, information exchange, and the establishment and supervision of international norms are the primary ways in which the United Nations organizations and autonomous agencies advance human rights. First, the organizations conduct research either under their own auspices or in cooperation with member states.¹⁰³ They often call upon scientific, legal, and other experts to study and make recommendations on specific concerns included within the organizations' mandate. Second, the organizations frequently operate as clearinghouses of information and research to the member states and to other intergovernmental and non-governmental organizations.¹⁰⁴ Finally, U.N. organizations and autonomous agencies typically issue reports and offer recommendations on international standard setting that may be adopted by a diplomatic conference of member States.¹⁰⁵ As follow-up to their standard-setting suggestions, the organizations monitor and conduct research on any improvements or lack thereof in the area of specific concern.¹⁰⁶ Thus, individually, and as a group, these organizations could advance an environmental human right by maintaining a sustained watch on the activities of member states and by offering expert suggestions for improvement.

This article will focus next on two Autonomous Agencies: The World Health Organization and the International Labor Organization, both of which, as a result of their broad recognition by the international community and their specific mandates offer significant potential for

¹⁰¹ Most relevant for purposes of the enforcement of an environmental human right are the following Organs and Programmes: the United Nations Children's Fund; the United Nations Development Programme; the United Nations World Food Programme; the World Food Council; the United Nations Environment Programme; and the United Nations Population Fund, and the following Specialized Agencies and other Autonomous Bodies: the Food and Agricultural Organization; the International Atomic Energy Agency; the International Fund for Agricultural Development; the International Labour Organization; the World Health Organization; and the United Nations Educational, Scientific and Cultural Organization.

¹⁰² KISS & SHELTON, supra note 99, at 56-57.

¹⁰³ Id. at 56.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ Id. at 57.

the monitoring and enforcement of an environmental human right.

The World Health Organization [WHO], established in 1948, enjoys considerable clout within the international community, with the largest membership of any United Nations Organization.¹⁰⁷ For the most part, it is not hampered by the politicization of issues that affects many other international and intra-governmental organizations; as one WHO representative explained, "Everyone wants health."¹⁰⁸

The WHO Constitution¹⁰⁹ states in its preamble that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being. ... "110 Several functions of WHO relate either directly or indirectly to environmental protection, including the eradication of epidemic and endemic diseases,¹¹¹ and the improvement of nutrition, sanitation, working conditions and other aspects of environmental hygiene.¹¹² WHO monitors progress in the areas of health, collects and disseminates information, conducts research and makes recommendations.¹¹³ It also publishes manuals and guides, provides technical assistance and sets up educational programs in field locations.¹¹⁴ WHO, thus, reaches and influences not only the decisions of policy-makers on both the international and domestic level, but also reaches citizens at the grass roots level. Certain critical aspects of an environmental human right easily could be made an explicit part of the WHO mandate. The rights to health and environment are natural and mutually reinforcing allies.

The International Labor Organization [ILO] is the oldest existing intra-governmental organization, established in 1919 under the Treaty of Versailles. ILO works to "improve working and living conditions through the adoption of international labour conventions and recommendations, setting minimum standards in such fields as . . . conditions of employment."¹¹⁵ ILO supervises international agreements

(1991).

¹⁰⁷ See Ministry of Foreign Affairs and Trade, United Nations Handbook 154

¹⁰⁸ Telephone interview with public affairs representative, Washington, D.C. Regional Office of the World Health Organization, (August 18, 1994).

^{109 62} Stat. 2679, T.I.A.S. 1808, 14 U.N.T.S. 185 (1946).

¹¹⁰ Id. at Preamble.

¹¹¹ Id. at Art. 2(g).

¹¹² Id. at Art. 2(i).

¹¹³ See e.g., The World Health Organization Global Strategy for Health and Environment Action Plan, *supra* note 22.

¹¹⁴ KISS & SHELTON, supra note 99, at 66.

¹¹⁵Constitution of the International Labour Organization, 62 Stat. 3485, T.I.A.S. 1868, 15 U.N.T.S. 35, Preamble (1946). *See also* The Declaration of Philadelphia, Annex to the Constitution of the International Labour Organization on the Aims and Purposes of the Organization (May 10, 1944).

concerning labor and employment, including labor-related human rights.¹¹⁶ It carries out a number of programs under its Conventions that have a direct bearing on environmental issues including the Protection of Workers Against Occupational Hazards in the Working Environment Due to Air Pollution, Noise and Vibration;¹¹⁷ the Safety and Health in Construction Convention;¹¹⁸ and the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries.¹¹⁹ In 1993. the ILO held an Education and Environment symposium and noted the importance of improving "environmental auditing" among workers and trade unions.120

The ILO has considerable potential for participating in monitoring and enforcing an environmental human right, not only because its mandate encompasses certain aspects of an environmental right, but also because the ILO operates an independent human rights enforcement mechanism.¹²¹ Although no cases exist which directly involves the review of environmental issues, the potential for such review does exist.¹²² One limitation, however is the fact that individuals may not bring complaints directly to the ILO, but rather must operate through ILO members, including government representatives, workers' associations and employers' associations.¹²³

V. CONCLUSION

Recognizing a human right to environment carries with it the possibility of significantly improving, or at a minimum, expanding the enforceability of certain international and domestic environmental

¹¹⁶ Lee Swepston, Human Rights Complaint Procedures of the International Labour Organization, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 99 (H. Hannum, ed., 1992).

¹¹⁷ ILO Convention No. 148, adopted 20 June 1977, in INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS 1967-1981 (1982).

¹¹⁸ ILO Convention No. 17 (June 1988).

¹¹⁹ See ILO Convention 169, 28 I.L.M. 1382 (1989) (especially arts. 4, 7 and 15).

¹²⁰ Eco-auditing refers to "a plan by the local management of an enterprise or unit of public service to conserve resources, reduce pollution or to save energy" INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS, ECO-AUDITING (1994).

¹²¹ The ILO operates two types of human rights enforcement procedures which hear and review allegations that a state has failed to observe an ILO convention to which it is a party and which differ insofar as who has access to what procedure (i.e., parties, individuals, industrial organizations or State parties: (1) "representations" pursuant to article 24; and (2) "complaints" pursuant to article 26 of the ILO Constitution. Swepston, supra note 116, at 102-09,

¹²² See generally David A. Waugh, The ILO and Human Rights, 5 COMP. LAB. L. 186 (1982) (discussing the ILO's potential for addressing broader issues of human rights). 123 Id.

regulations. In addition, a human right to environment will fill in gaps in enforcement that exist where environmental harms rise to the level of an international concern, but sovereignty issues otherwise would obstruct reparative action.

Where an environmental human right exists, violations of such a right may be combated within the existing international human rights protection regime. From the above discussion it can be seen that the United Nations human rights regime can play a significant role in the creation of international norms and the enforcement of environmental protection standards on the international, domestic and grassroots levels. The United Nations General Assembly and its treaty bodies, the Economic and Social Council and related Organs and Programs as well as the Specialized and Autonomous Agencies individually and as a group, thus would provide a valuable resource for the advancement of international environmental concerns, and for the general protection against an environmental human right violation.

More specific levels of protection, and protection for abuses by a nation against its own citizens, however, are not as effectively addressed within the United Nations human rights protection scheme. absent an additional optional protocol. The First Optional Protocol¹²⁴ accepts communications by individuals, but its jurisdiction extends only to those States that have explicitly assented to the Protocol's terms. The United Nations Commission for Human Rights 1503 procedure indirectly protects individuals against human rights violations in situations where the abuse reveals a consistent pattern of gross violations.¹²⁵ The United Nations Organs, Programs and Autonomous Agencies serve a supervisory and authoritative role in international standard-setting and human rights monitoring, but have no coercive power short of the influence resulting from their status as international experts. More effectively, violations against individuals are reached by the broader human rights protection regime beyond the United Nations, which consists of international non-governmental organizations.¹²⁶ Non-governmental organizations, such as the Sierra Club Legal Defense Fund, the Natural Resources Defense Council, Friends of the Earth, and

¹²⁴ See supra note 75.

¹²⁵ Id.

¹²⁶ One example is Amnesty International. See generally, A. Dan Tarlock, Environmental Law: The Role of Non-Governmental Organizations in the Development of International Environmental Law, 68 CHI.-KENT. L. REV. 61 (1992); David Reed, The Global Environment Facility and Non-Governmental Organizations, 9 AM. U.J. INT'L L. & POL'Y 191 (1993).

many others, have played a significant role in recent years in advancing the cause of environmental protection through consciousness-raising activities and educational campaigns, as well as through petitioning governments and bringing lawsuits against government and big business violators.

The imperative of recognizing an environmental human right and expanding enforcement opportunities is clear. As stated by Audrey R. Chapman of the American Association for the Advancement of Science, "We live in an era in which humankind's control over the environment is of such magnitude that the sharp distinction between human rights and environmental protection has ceased to exist."¹²⁷ The recognition of an environmental human right is therefore one very natural step forward (in both the figurative and literal sense) in protecting the earth's resources, our own health and safety, as well as our personal sense of dignity.

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¹²⁷ Chapman, supra note 43, at 215.