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Earth Jurisprudence A Pathfinder

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EARTH JURISPRUDENCE: A PATHFINDER

Glen-Peter Ahlers, Sr.*

I. WHAT IS A PATHFINDER?

“Path·find·er: one that discovers a way; *especially*: one that explores untraversed regions to mark out a new route.”¹

Untraversed. What better word to initiate a sharing of information about our (heretofore) little traveled, if not completely unexplored, topic, Earth Jurisprudence? Untraversed. The word evokes an untrampled Mother Earth, or at least one far more gently trod upon. Our topic is also untraversed because we embark on a road less travelled.

A successful pathfinder not only finds the way, but also leaves markers so that others may follow. As we blaze our research path to Earth Jurisprudence, our goal is to choose markers that will help shape and define the path, and thus steer those who follow to information about Earth Jurisprudence. A pathfinder is more than mere bibliography. Bibliographies pick and gather today’s fruit from today’s information trees, while research pathfinders provide the path itself. To illustrate, any second year law student can find cases dealing with an assigned topic and produce a list (bibliography) of them. However, tomorrow’s case could never appear simply because it hasn’t been written. If instead, our student identifies several representative cases, explains why she chose those cases, and explains how she found them (in other words, provides her research path), then we could follow that path tomorrow to find tomorrow’s cases, next week to find next week’s cases, next month to find next month’s cases, next year to follow next year’s cases, and so on. What might we want to know about her work?

What indexes did she use to find the cases? If she used topic and key numbers, which proved most useful? Which proved disappointing? If law review articles identified cases, how did she find the law review articles? What indexes did she use? Did she use HeinOnline? Loislaw? Westlaw? Lexis? In what databases or libraries did she search? What terms did she use successfully? What search terms didn’t work?

A pathfinder is a research tool that points the way to information resources on a given topic by exploring research paths to the information. When a pathfinder is used to explore legal information,

* Glen-Peter Ahlers is Associate Dean for Information Services at Barry University’s Dwayne O. Andreas School of Law. I must thank my law faculty colleagues for their daily support, Dean Leticia M. Diaz for her collegial advice and financial support, and the law library reference triad of Ann Pascoe, Patricia Brown, and Louis Rosen for their expertise, their can-do attitudes, and their ever-present smiles.

1. Merriam-Webster’s Collegiate Dictionary 851 (10th ed. 1999).

it does not exhaustively identify every pertinent statute, regulation, appellate case, or law journal article. Rather, the pathfinder illuminates appropriate sources of information and punctuates the search process by selectively providing appropriate examples of what is found, such as model statutes, important legislation . . . major cases . . . [and] statutes, court cases, regulations, newsletters, journals, books, web pages, associations and human experts.²

This pathfinder, mirroring the author's language limitations, deals exclusively with English language materials.

II. WHAT IS EARTH JURISPRUDENCE?

Before we leave in search of our path, we must know where we wish to go. What exactly is Earth Jurisprudence?

Most legal systems promote the interest of the human community while giving no real protection to other species, or to the planet itself. They reflect and perpetuate a view of the Earth as simply a collection of 'resources' or objects which human beings are entitled to exploit for their exclusive benefit.

So what if there were another jurisprudence based upon the concept that the planet and all species have rights? And they have those rights by virtue of their existence as members of a single Earth community?³

Based on a recognition of, and respect for, the rights of nature, this emerging field includes, among others, environmental law, rights of indigenous people, international human rights, business law, and jurisprudence. Earth Jurisprudence promotes healthy ecosystems and explores the role of humans as integral members of a comprehensive Earth community. It seeks creation of legal norms and dispute resolution that foster mutual human-Earth relationships and invites a fundamental rethinking of the basis of law.⁴

We have a tall order to fill: our path to information on Earth Jurisprudence requires us to unearth paths to business law, environmental law, jurisprudence, international human rights, and the rights of indigenous people. Along the way, we need to identify applicable federal, state, and international legislation, case law, and administrative rules and regulations. Then we'll identify appropriate books, law reviews, and law review articles on the subject, as well as associations actively participating in the field. Finally, we'll discover some of the experts around the

2. Glen-Peter Ahlers, Sr., *Notaries Public: A Pathfinder*, 32 J. MARSHALL L. REV. 1065, 1067 (1999).

3. Earth Jurisprudence, <http://www.earthjurisprudence.org/> (last visited Nov. 15, 2008).

4. Center for Earth Jurisprudence, <http://www.earthjuris.org/home.htm> (last visited Nov. 15, 2008) [hereinafter CEJ WEB]. The Center for Earth Jurisprudence is the premier web presence for Earth Jurisprudence.

world who champion the cause, including the authors of the articles in this volume. As promised, the path we clear today will remain useful to others who follow us tomorrow, in search of tomorrow's statutes, cases, rulings, books, and articles. Let's begin by identifying our search terms and then let's search the web.

The following lexicon is a primer of terms useful for finding information regarding Earth Jurisprudence. The list is illustrative and alphabetical, but not exhaustive:

air pollution	environmental ethics
animal rights	environmental policies
animal welfare-law and legislation	environmental protection
bodily trespass ⁵	environmental quality
chemical pollution	environmental responsibility
chemical spills	environmental risk assessment
clean air	environmental sensitivity
clean water	global warming
clear air	indigenous peoples
clear water	natural resources
climate change	offenses against the environment
earth jurisprudence (EJ)	polar caps
ecology	pollution prevention
endangered species	protected species
environment	toxic wastes
environmental engineering	wild law

We begin our search for information resources on the Internet for several reasons: first, because the topic is relatively new and print resources will take time to appear, to be indexed, and to be cataloged and made useful to researchers; second, because much of the work underway on the subject is available online and a handful of web portals already contain a sufficient amount of information to bring anyone up to speed; third, because the Earth-friendly slice of the topic begs us to use electronic resources instead of trees; and finally, the editor is also interested in saving trees by limiting print pages. Therefore, I will restrict the number of printed pages to keep within our theme and to save a tree or two.

There are several "must" stops along the information highway. The first is the Center for Earth Jurisprudence (CEJ) webpage, the premier Internet presence for

5. "Campaigners argue that every day, unknown to us, chemicals are passing, unbidden into our bodies – and they have framed the debate as being as much about human rights as environmental protection. It was in this context that the term 'bodily trespass' was born. The idea of trespass is particularly powerful – highlighting that consumers do not give permission, nor have control of their exposure to chemicals in their body. The idea that we should be able to control what goes into our bodies is hard to oppose." Matt Loose, SustainAbility, Issue Brief #16, Chemicals: Bodily Trespass and the Toxics Debate in the EU (Sept. 2005), http://www.sustainability.com/downloads_public/insight_issuebriefs/IB16_chemicals.pdf.

EJ.⁶ This web portal provides a wealth of information organized by tabs. Under a tab labeled *Viewpoints*, information is further organized under tabs labeled *Overview*, *Cosmology*, *Sense of Place*, and *World Religions & Ecology*. The site organizes and recommends organizations, books & articles, video files, audio files, and online teaching tools. Student-written articles appear in the Earth Jurisprudence Student Series. A calendar of events contains information on nature hikes as well as upcoming national and international conferences.

The CEJ web page also provides access to two important documents that help frame the field. One is The Earth Charter, a “widely recognized, global consensus statement on ethics and values for a sustainable future.”⁷ The second is United Nations’ World Charter for Nature.

The Earth Charter evolved over ten years and is formally endorsed by over 2,500 organizations, including UNESCO and the World Conservation Union.⁸ It has been called “the most extensive global consultation process ever associated with an international declaration”⁹ From its preamble:

We stand at a critical moment in Earth’s history, a time when humanity must choose its future. As the world becomes increasingly interdependent and fragile, the future at once holds great peril and great promise. To move forward we must recognize that in the midst of a magnificent diversity of cultures and life forms we are one human family and one Earth community with a common destiny. We must join together to bring forth a sustainable global society founded on respect for nature, universal human rights, economic justice, and a culture of peace. Towards this end, it is imperative that we, the peoples of Earth, declare our responsibility to one another, to the greater community of life, and to future generations.

Earth, Our Home

Humanity is part of a vast evolving universe. Earth, our home, is alive with a unique community of life. The forces of nature make existence a demanding and uncertain adventure, but Earth has provided the conditions essential to life’s evolution. The resilience of the community of life and the well-being of humanity depend upon preserving a healthy biosphere with all its ecological systems, a rich variety of plants and animals, fertile soils, pure waters, and clean air. The global environment with its finite resources is a

6. CEJ WEB, *supra* note 4. CEJ is a collaborative initiative co-sponsored by Barry and St. Thomas Universities in Miami, Florida. Its address is Center for Earth Jurisprudence, St. Thomas University School of Law, 16401 NW 37th Avenue, Miami Gardens, FL 33054. Phone: 305 623-2389. Fax: 305 623-2390.

7. Earth Charter in Action, About the Earth Charter, http://earthchartinaction.org/about_charter.html.

8. *Id.*

9. *Id.*

common concern of all peoples. The protection of Earth's vitality, diversity, and beauty is a sacred trust.

The Global Situation

The dominant patterns of production and consumption are causing environmental devastation, the depletion of resources, and a massive extinction of species. Communities are being undermined. The benefits of development are not shared equitably and the gap between rich and poor is widening. Injustice, poverty, ignorance, and violent conflict are widespread and the cause of great suffering. An unprecedented rise in human population has overburdened ecological and social systems. The foundations of global security are threatened. These trends are perilous—but not inevitable.

The Challenges Ahead

The choice is ours: form a global partnership to care for Earth and one another or risk the destruction of ourselves and the diversity of life. 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. The emergence of a global civil society is creating new opportunities to build a democratic and humane world. Our environmental, economic, political, social, and spiritual challenges are interconnected, and together we can forge inclusive solutions.

Universal Responsibility

To realize these aspirations, we must decide to live with a sense of universal responsibility, identifying ourselves with the whole Earth community as well as our local communities. We are at once citizens of different nations and of one world in which the local and global are linked. Everyone shares responsibility for the present and future well-being of the human family and the larger living world. The spirit of human solidarity and kinship with all life is strengthened when we live with reverence for the mystery of being, gratitude for the gift of life, and humility regarding the human place in nature.

We urgently need a shared vision of basic values to provide an ethical foundation for the emerging world community. Therefore, together in hope we affirm the following interdependent principles for a sustainable way of life as a common standard by which the

conduct of all individuals, organizations, businesses, governments, and transnational institutions is to be guided and assessed.¹⁰

The Charter identifies sixteen principles divided among four categories. The categories are respect and care for the community of life; ecological integrity; social and economic justice; and democracy, nonviolence, and peace.

The sixteen principles are:

1. Respect Earth and life in all its diversity.
2. Care for the community of life with understanding, compassion, and love.
3. Build democratic societies that are just, participatory, sustainable, and peaceful.
4. Secure Earth's bounty and beauty for present and future generations.
5. Protect and restore the integrity of Earth's ecological systems, with special concern for biological diversity and the natural processes that sustain life.
6. Prevent harm as the best method of environmental protection, and when knowledge is limited apply a precautionary approach.
7. Adopt patterns of production, consumption, and reproduction that safeguard Earth's regenerative capacities, human rights, and community well-being.
8. Advance the study of ecological sustainability and promote the open exchange and wide application of the knowledge acquired.
9. Eradicate poverty as an ethical, social, and environmental imperative.
10. Ensure that economic activities and institutions at all levels promote human development in an equitable and sustainable manner.

10. Earth Charter in Action, *The Earth Charter*, Preamble, http://www.earthcharterinaction.org/2000/10/the_earth_charter.html (Last visited November 15, 2008).

11. Affirm gender equality and equity as prerequisites to sustainable development, and ensure universal access to education, health care, and economic opportunity.
12. Uphold the right of all, without discrimination, to a natural and social environment supportive of human dignity, bodily health, and spiritual well-being, with special attention to the rights of indigenous peoples and minorities.
13. Strengthen democratic institutions at all levels, and provide transparency and accountability in governance, inclusive participation in decision making, and access to justice.
14. Integrate into formal education and life-long learning the knowledge, values, and skills needed for a sustainable way of life.
15. Treat all living beings with respect and consideration.
16. Promote a culture of tolerance, nonviolence, and peace.¹¹

The U.N. adopted our second global document, the *World Charter for Nature*, seventeen years ago, late last century, way back in 1982.¹²

World Charter for Nature

The General Assembly,

Having considered the report of the Secretary-General on the revised draft World Charter for Nature,

Recalling that, in its resolution 35/7 of 30 October 1980, it expressed its conviction that the benefits which could be obtained from nature depended on the maintenance of natural processes and on the diversity of life forms, and that those benefits were jeopardized by the excessive exploitation and the destruction of natural habitats,

Further recalling that, in the same resolution, it recognized the need for appropriate measures at the national and international le-

11. *Id.*

12. World Charter for Nature, G.A. Res. 37/7, U.N. Document Number. A/RES/37/7 (October 28, 1982), available at <http://www.un.org/documents/ga/res/37/a37r007.htm>.

vels to protect nature and promote international co-operation in that field,

Recalling that, in its resolution 36/6 of 27 October 1981, it again expressed its awareness of the crucial importance attached by the international community to the promotion and development of co-operation aimed at protecting and safeguarding the balance and quality of nature, and invited the Secretary-General to transmit to Member States the text of the revised version of the draft World Charter for Nature contained in the report of the Ad Hoc Group of Experts on the draft World Charter for Nature, as well as any further observations by States, with a view to appropriate consideration by the General Assembly at its thirty-seventh session,

Conscious of the spirit and terms of its resolutions 35/7 and 36/6, in which it solemnly invited Member States, in the exercise of their permanent sovereignty over their natural resources, to conduct their activities in recognition of the supreme importance of protecting natural systems, maintaining the balance and quality of nature and conserving natural resources, in the interests of present and future generations,

Having considered the supplementary report of the Secretary-General,

Expressing its gratitude to the Ad Hoc Group of Experts which, through its work, has assembled the necessary elements for the General Assembly to be able to complete the consideration of, and adopt the revised draft World Charter for Nature at its thirty-seventh session, as it had previously recommended,

Adopts and solemnly proclaims the World Charter for Nature contained in the annex to the present resolution.

ANNEX

World Charter for Nature

The General Assembly,

Reaffirming the fundamental purposes of the United Nations, in particular the maintenance of international peace and security, the development of friendly relations among nations and the achievement of international co-operation in solving international problems of an economic, social, cultural, technical, intellectual, or humanitarian character,

Aware that:

- (a) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients,
- (b) Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation,

Convinced that:

- (a) 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,
- (b) Man can alter nature and exhaust natural resources by his action or its consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources,

Persuaded that:

- (a) Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by man,
- (b) The degradation of natural systems owing to excessive consumption and misuse of natural resources, as well as to failure [sic] to establish an appropriate economic order among peoples and among States, leads to the breakdown of the economic, social and political framework of civilization,
- (c) Competition for scarce resources creates conflicts, whereas the conservation of nature and natural resources contributes to justice and the maintenance of peace and cannot be achieved until mankind learns to live in peace and to forsake war and armaments,

Reaffirming that man must acquire the knowledge to maintain and enhance his 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,

Firmly convinced of the need for appropriate measures, at the national and international, individual and collective, and private and public levels, to protect nature and promote international co-operation in this field,

Adopts, to these ends, the present World Charter for Nature, which proclaims the following principles of conservation by which all human conduct affecting nature is to be guided and judged.

I. GENERAL PRINCIPLES

1. Nature shall be respected and its essential processes shall not be impaired.

2. The genetic viability on the earth shall not be compromised; the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival, and to this end necessary habitats shall be safeguarded.

3. All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitats of rare or endangered species.

4. Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist.

5. Nature shall be secured against degradation caused by warfare or other hostile activities.

II. FUNCTIONS

6. In the decision-making process it shall be recognized that man's needs can be met only by ensuring the proper functioning of natural systems and by respecting the principles set forth in the present Charter.

7. In the planning and implementation of social and economic development activities, due account shall be taken of the fact that the conservation of nature is an integral part of those activities.

8. In formulating long-term plans for economic development, population growth and the improvement of standards of living, due

account shall be taken of the long-term capacity of natural systems to ensure the subsistence and settlement of the populations concerned, recognizing that this capacity may be enhanced through science and technology.

9. The allocation of areas of the earth to various uses shall be planned, and due account shall be taken of the physical constraints, the biological productivity and diversity and the natural beauty of the areas concerned.

10. Natural resources shall not be wasted, but used with a restraint appropriate to the principles set forth in the present Charter, in accordance with the following rules:

(a) Living resources shall not be utilized in excess of their natural capacity for regeneration;

(b) The productivity of soils shall be maintained or enhanced through measures which safeguard their long-term fertility and the process of organic decomposition, and prevent erosion and all other forms of degradation;

(c) Resources, including water, which are not consumed as they are used shall be reused or recycled;

(d) Non-renewable resources which are consumed as they are used shall be exploited with restraint, taking into account their abundance, the rational possibilities of converting them for consumption, and the compatibility of their exploitation with the functioning of natural systems.

11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular:

(a) Activities which are likely to cause irreversible damage to nature shall be avoided;

(b) 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 effects are not fully understood, the activities should not proceed;

(c) Activities which may disturb nature shall be preceded by assessment of their consequences, and environmental impact studies of development projects shall be conducted sufficiently in advance, and if they are to be undertaken, such activities shall be planned and carried out so as to minimize potential adverse effects;

(d) Agriculture, grazing, forestry, and fisheries practices shall be adapted to the natural characteristics and constraints of given areas;

(e) Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations.

12. Discharge of pollutants into natural systems shall be avoided and:

(a) Where this is not feasible, such pollutants shall be treated at the source, using the best practicable means available;

(b) Special precautions shall be taken to prevent discharge of radioactive or toxic wastes.

13. Measures intended to prevent, control or limit natural disasters, infestations, and diseases shall be specifically directed to the causes of these scourges and shall avoid adverse side-effects on nature.

III. IMPLEMENTATION

14. 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.

15. Knowledge of nature shall be broadly disseminated by all possible means, particularly by ecological education as an integral part of general education.

16. All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems, and assessments of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation.

17. Funds, programmes, and administrative structures necessary to achieve the objective of the conservation of nature shall be provided.

18. Constant efforts shall be made to increase knowledge of nature by scientific research and to disseminate such knowledge unimpeded by restrictions of any kind.

19. The status of natural processes, ecosystems, and species shall be closely monitored to enable early detection of degradation or threat, ensure timely intervention, and facilitate the evaluation of conservation policies and methods.

20. Military activities damaging to nature shall be avoided.

21. States and, to the extent they are able, other public authorities, international organizations, individuals, groups and corporations shall:

(a) Co-operate in the task of conserving nature through common activities and other relevant actions, including information exchange and consultations;

(b) Establish standards for products and manufacturing processes that may have adverse effects on nature, as well as agreed methodologies for assessing these effects;

(c) Implement the applicable international legal provisions for the conservation of nature and the protection of the environment;

(d) Ensure that activities within their jurisdictions or control do not cause damage to the natural systems located within other States or in the areas beyond the limits of national jurisdiction;

(e) Safeguard and conserve nature in areas beyond national jurisdiction.

22. Taking fully into account the sovereignty of States over their natural resources, each State shall give effect to the provisions of the present Charter through its competent organs and in cooperation with other States.

23. All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment,

and shall have access to means of redress when their environment has suffered damage or degradation.

24. Each person has a duty to act in accordance with the provisions of the present Charter; acting individually, in association with others or through participation in the political process, each person shall strive to ensure that the objectives and requirements of the present Charter are met.¹³

Additional World documents are identified in a research project funded by the UK Environmental Law Association and the Gaia Foundation, *Where Can We Find Examples of Earth Jurisprudence in Practice?*¹⁴ Six regions around the globe were selected and investigated: European Union, Africa (e.g., South Africa and Ethiopia), India, Australasia (e.g., New Zealand), United States, and South America. While the report is incomplete, the U.S. and South Africa are among the missing regions, it identifies statutes and cases of interest.

1. The Habitats Directive¹⁵

“[A]dopted in 1992 in face of deteriorating natural habitats and an increasing number of seriously threatened wild species throughout Europe, largely caused by development and agricultural intensification. . . . [M]eans by which EC meets its obligations as a signatory of the Berne Convention on the Conservation of European Wildlife and Natural Habitats.”¹⁶

2. India’s Scheduled Tribes law¹⁷

Represents 8% of total population; seeks to provide Tribes with rights over land they have inhabited for centuries; grants rights to protect biodiversity, flora, and fauna; does not provide hunting rights.¹⁸

13. *Id.*

14. Lynda Warren, *Wild Law: Ideas into Action Where Can We Find Examples of Earth Jurisprudence in Practice? (Draft Initial Findings of an International Research Project)*, UK Environmental Law Association 2008, available at <http://www.ukela.org/content/press/38/wild%20law%202008.pdf> [hereinafter cited as UKELA-GAIA].

15. Council Directive 92/43/EEC, On the Conservation of Natural Habitats and of Wild Flora and Fauna, 1992 O.J. (L 206), 7, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0043:EN:HTML>.

16. UKELA-GAIA, *supra* note 14, at 8.

17. See UKELA-GAIA, *supra* note 14, at 10, (citing Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, Gazette of India, Extraordinary, Jan. 2, 2007, Law No. 2 of 2007, available at <http://tribal.nic.in/actTA06.pdf>).

18. UKELA-GAIA, *supra* note 14, at 10.

3. *K.M. Chinnappa v. Union of India*¹⁹

Mining lease not renewed due to ecological damage; India's Supreme Court "by endorsing the *World Charter for Nature's* statement that 'mankind is part of nature and life depends on uninterrupted functioning of natural systems' the Supreme Court fully recognised that humans are part of a greater community."²⁰ The Court said that by "destroying nature man is committing matricide."²¹

4. New Zealand's 1980 National Parks Act²²

"explicitly values the Earth for its intrinsic value and seeks a harmonious relationship between humans and the other members of the Earth Community. National Parks can be used by humans but conservation is in [sic] the main given priority."²³

5. Kyoto Protocol²⁴

The Kyoto Protocol is a set of rules designed to lower and stabilize the amount of greenhouse gases released into the atmosphere. Yet the Associated Press reports that gas emissions rose from 2000 to 2006.

BONN, Germany (AP) — Greenhouse gas emissions by 40 industrialized nations that signed the Kyoto Protocol climate treaty have dropped an average of 5 percent below 1990 levels, U.N. officials reported Monday.

The 1997 treaty required the industrialized nations that signed it to collectively reduce emissions of carbon dioxide and other warming gases by about 5 percent below 1990 levels by 2012 — the amount now reached.

But the drop reported Monday was attributed mostly to economic decline in former communist eastern European countries in the 1990s. The United Nations warned that an upward tick for industrial and developing nations between 2000 and 2006 threatens to undo the previous drop.

19. See UKELA-GAIA, *supra* note 14, at 10 (citing *K.M. Chinnappa v. Union of India*, WP 202/1995 (30.10.2002) AIR 2003 SC 724, 2003 (51) BLJR 324, available at www.elaw.org/node/2469 (last visited Nov. 30, 2008)).

20. UKELA-GAIA, *supra* note 14, at 11.

21. *Id.*

22. National Parks Act, 1980, 1980 S.N.Z No. 66, available at <http://www.legislation.govt.nz/act/public/1980/0066/latest/DLM36963.html>.

23. UKELA-GAIA, *supra* note 14, at 17.

24. Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted Dec. 10, 1997, available at <http://unfccc.int/resource/docs/convkp/kpeng.pdf>. Updates of the Kyoto Protocol are provided at <http://indeco.com/kyoto> (last visited Nov. 30, 2008).

Emissions for 40 industrialized nations that joined the treaty collectively rose 2.3 percent during those six years.

That's a worrisome trend, the U.N.'s climate chief said, as the organization prepared to meet in Poznan, Poland next month to agree on a broad framework for replacing the Kyoto treaty. The U.N. hopes to hammer out a new treaty a year later in Copenhagen, Denmark.

'The figures clearly underscore the urgency for the U.N. negotiating process to make good progress in Poznan and move forward quickly in designing a new agreement to respond to the challenge of climate change,' said Yvo de Boer, executive secretary of the U.N.'s Bonn-based climate secretariat.

The Kyoto Protocol was signed by 183 nations but rejected by President George W. Bush over concerns it would harm the economy of the U.S., which has been the world's biggest emitter but is now rivaled by China.

Among industrialized nations, 16 are on target to meet their Kyoto obligations including France, the UK, Greece and Hungary, the U.N. said.

The U.N. report said 20 countries were lagging, including Canada, Germany, Ireland, Italy, Japan, New Zealand, and Spain. Information on other countries was incomplete.

Experts say a new deal should be signed at the 2009 climate conference in Copenhagen so it can be ratified in time to replace the Kyoto Protocol when it expires in 2012.

Discussions at the Dec. 1-12 climate conference in Poznan will be based on a 2007 accord reached in Bali, Indonesia, when the United States, India and China indicated they would participate.

The three nations — among the world's largest polluters — have not taken part in efforts under the Kyoto Protocol. The U.S. refused to ratify the treaty, largely because Bush said it would cost the U.S. economy some 5 million jobs and he believed that rapidly developing economies such as India and China should also have to face climate obligations.

De Boer said he did not expect U.S. President-elect Barack Obama to send a representative to Poznan. But he said he expected the

U.S. delegation would not be dismissed as a “lame duck” group and would “participate fully” in the negotiations.²⁵

6. Selected U.S. Enactments

A. Clean Air Act of 1990, Pub. L. No. 101-549, 104 Stat. 2399 (1990).

Chief federal law aimed at fighting air pollution; follows in the tradition of Air Pollution Control Act of 1955, the Clean Air Act of 1963, the Air Quality Act of 1967, the Clean Air Act Extension of 1970, and additional Clean Air Act Amendments in 1977 and 1990.

B. Water Quality Act of 1987, Pub. L. No. 100-4, 109 Stat. 727 (1987).

Chief federal law aimed at keeping water supplies safe.

C. Endangered Species Act of 1973, 16 U.S.C. § 1531, 7 U.S.C. § 136, 87 Stat. 884 (1973).

One of the more well known environmental laws enacted during the 1970s, the Endangered Species Act is meant to protect animals either identified by the Fish and Wildlife Service, or the National Oceanic and Atmospheric Administration (NOAA oversees the National Marine Fisheries Service) as needing protection. Citizens may also sue to have one or the other agency conduct a scientific study to get a species listed.

D. Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87 (1977).

The U.S. Office of Surface Mining, Reclamation and Enforcement, a Bureau within the U.S. Department of Interior, provides a terrific, in-depth web page containing the legislative history of Pub. L. No. 95-87.²⁶ I reprinted samples of it here to show the wealth of material that can be mined from governmental sources.

Congressional Reports

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, H.R. REP. NO. 95-493; S. REP. NO. 95-337; 123 CONG. REC. H6938; 95TH CONG. 1ST SESS.; H.R. 2 (July 12, 1977) (Conf. Rep.).

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, COMM. ON ENERGY AND NATURAL RESOURCES; UNITED STATES S., S. REP. NO. 95-128; 95TH CONG. 1ST SESS.; S. 7 (May 10, 1977) (Legis. Day May 9) (Conf. Rep.).

25. Verena Schmitt-Roschmann, *UN Says Greenhouse Gas Emissions Rose in 2000-06* (AP Nov. 17, 2008), available at http://www.newsvine.com/_news/2008/11/17/2121553-un-says-greenhouse-gas-emissions-rose-in-2000-06 (last visited Dec. 17, 2008).

26. Surface Mining Law Legislative History Index, <http://www.osmre.gov/congress/leghistory/LegHistory.shtm> (last visited Feb. 26, 2009).

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, PROVIDING FOR THE COOPERATION BETWEEN THE SECRETARY OF THE INTERIOR AND THE STATES WITH RESPECT TO THE REGULATION OF SURFACE COAL MINING OPERATIONS, AND THE ACQUISITION AND RECLAMATION OF ABANDONED MINES, AND FOR OTHER PURPOSES, INTERIOR AND INSULAR AFFAIRS; UNITED STATES H.R., H. R. REP. NO. 95-218; 95TH CONG. 1ST SESS.; H.R. 2., (Apr. 22, 1977) (Conf. Rep.).

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1976, INTERIOR AND INSULAR AFFAIRS; UNITED STATES H.R., H.R. REP. NO. 94-1445; 94TH CONG. 2ND SESS.; H.R. 113950, (Aug. 31, 1976) (Conf. Rep.).

Committee Prints

STATE SURFACE MINING LAWS: A SURVEY, A COMPARISON WITH THE PROPOSED FED. LEGIS., AND BACKGROUND INFORMATION, COMM. ON ENERGY AND NATURAL RESOURCES UNITED STATES S., 95TH CONG., 1ST SESS., JUNE 1977, PUBLICATION NO. 95-25 (Comm. Print 1977).

COAL SURFACE MINING AND RECLAMATION AN ENVIRONMENTAL AND ECONOMIC ASSESSMENT OF ALTERNATIVES, COMM. ON INTERIOR AND INSULAR AFFAIRS UNITED STATES S., 93RD CONG., 1ST SESS., MAR. 1973, SERIAL NO. 93-8 (92-43) (Comm. Print 1973).

THE ISSUES RELATED TO SURFACE MINING A SUMMARY REVIEW, WITH SELECTED READINGS, COMM. ON INTERIOR AND INSULAR AFFAIRS UNITED STATES S., 92ND CONG., 1ST SESS., DEC. 1971, SERIAL NO. 92-10, (Comm. Print 1971).

LEGIS. PROPOSALS CONCERNING SURFACE MINING OF COAL A HISTORY OF LEGIS. PROPOSALS AND AN ANALYSIS OF PENDING MEASURES, COMM. ON INTERIOR AND INSULAR AFFAIRS UNITED STATES S., 92ND CONG., 1ST SESS. SEPT. 1, 1971, MEMORANDUM OF THE CHAIRMAN (Comm. Print 1971).

Bills

Conf. Comm., H.R. 2, 95th Cong. (1st Sess. 1977) (as reported by H.R. Rep. No. 95-493, July 12, 1977).

Conf. Comm., H.R. 2, 95th Cong. (1st Sess. 1977) (as reported by H.R. Rep. No. 95-493, July 2, 1977).

Conf. Comm., H.R. 2; Titles I, II, III, and IV; S. 7 Titles I, II, III, V, VI, and IX, 95th Cong. (1st Sess. June 20, 1977).

S. 7, 95th Cong.; 123 CONG. REC. S7996 (1st Sess. May 19, 1977).

S. 7, 95th Cong.; 123 CONG. REC. S7867 (1st Sess. May 18, 1977).

S. 7, 95th Cong. (1st Sess. May 17, 1977).

Comm. on Interior and Insular Affairs, S. 7, 95th Cong. (1st Sess. May 10, 1977).

Hearings

Surface Mining Control and Reclamation Act of 1977: Hearing on S. 7 Before the Subcomm. on Public Lands and Resources of the S. Comm. on Energy and Natural Resources, 95th Cong. (1977).

Reclamation Practices and Environmental Problems of Surface Mining: Hearing on H.R. 2 Before the Subcomm. on Energy and the Environment of the H. Comm. on Interior and Insular Affairs, 95th Cong. (1977).

Surface Mining Veto Justification Briefing: Hearing on H.R. 25 Before the Subcomm. on Energy and the Environment and the Subcomm. on Mines and Mining of the H. Comm. on Interior and Insular Affairs, 94th Cong. (1975).

Veto of the Surface Mining Control and Reclamation Act of 1975, H.R. Doc. No. 94-160 (1975).

Proposing Legislation to Provide for Cooperation Between the Secretary of the Interior and the States with Respect to the Regulation of Surface Coal Mining Operations, H.R. Doc. No. 94-44 (1975).

Coal Surface Mining and Reclamation: Hearing Before the Subcomm. on Minerals, Materials, and Fuels of the S. Comm. on Interior and Insular Affairs, 93rd Cong. (1973).

Regulation of Surface Mining: Hearing on H.R. 3, H.R. 181, H.R. 726, H.R. 1000, H.R. 1411, H.R. 1603, H.R. 2380, H.R. 2425, H.R. 2861, H.R. 3518, H.R. 4863, H.R. 5651, H.R. 5988, H.R. 6603, and H.R. 6709 Before the Subcomm. on the Environment and the Subcomm. on Mines and Mining of the H. Comm. on Interior and Insular Affairs, 93rd Cong. (1973).

Regulation of Surface Mining Operations Part 2: Hearing on S. 425 and S. 923 Before the S. Comm. on Interior and Insular Affairs, 93rd Cong. (1973).

E. Outer Continental Shelf Leasing Act of 1978: Pub. L. 95-372

Other useful websites include the UK Environmental Law Organization's page,²⁷ the Gaia Foundation's page,²⁸ the Environmental Law Foundation's page,²⁹ and SustainAbility.³⁰

1. Environmental Law Foundation (ELF)

Founded in 1992, the ELF is the national UK charity that helps people use the law to protect and improve their local environment and quality of life.³¹ The ELF also provides free guidance and continuing support through a network of specialist lawyers and consultants across the UK.³²

ELF also provides education and training, promotes lectures, conferences and seminars, produces publications, and encourages policy development. Above all, we provide a voice for communities and individuals.³³

27. United Kingdom Environmental Law Association, <http://www.ukela.org> (last visited Nov. 30, 2008).

28. The Gaia Foundation, <http://www.gaiafoundation.org/> (last visited Nov. 30, 2008).

29. Environmental Law Foundation, <http://www.elflaw.org/> (last visited Nov. 30, 2008).

30. SustainAbility, <http://www.sustainability.com/aboutsustainability/> (last visited Nov. 30, 2008).

31. Environmental Law Foundation, <http://www.elflaw.org/> (last visited Nov. 30, 2008).

32. *Id.*

33. *Id.*

2. Gaia Foundation (Gaia)

Committed to cultural and biological diversity and a living Earth democracy.³⁴ “[W]orks at all levels; from the grassroots with peasant farmers and indigenous communities, through to the regional and international level with policy-makers and governments.”³⁵ [The Gaia] website includes news, events, and documents on a range of biodiversity-related issues.³⁶

3. SustainAbility:

is a values-driven strategy consultancy and think-tank, combining business acumen with in-depth knowledge of the global sustainability agenda. We work with business, advocacy organisations and others to deepen understanding of the risks and opportunities posed by sustainable development.

For over two decades, we have worked with clients to inspire and support innovation and provide solutions to deliver future value. Rules of Engagement guide all projects, and our Faculty of experts provide guidance and orientation.

Our team is diverse and works globally, with expertise in the sustainable development agendas of the emerging economies, particularly Brazil, China, India and South Africa. Our offices are in London, Zurich and Washington.

Our Vision is a just and sustainable world for present and future generations, and the Values of equity, diversity, impact and change underpin all we do.³⁷

4. UK Environmental Law Organization

Membership organization involved in the practice, study, and formulation of environmental law across the UK and EU; works to improve understanding and awareness of environmental law, and to make the law work for a better environment.³⁸ Members include lawyers and non-lawyers from private, public, and voluntary sectors.³⁹

34. The Gaia Foundation, About Us, <http://www.gaiafoundation.org/about/about.php> (last visited Nov. 30, 2008).

35. *Id.*

36. *Id.*

37. About SustainAbility, <http://www.sustainability.com/aboutsustainability/> (last visited Nov. 30, 2008).

38. UK Environmental Law Organization, <http://www.ukela.org/> (last visited Nov. 30, 2008).

39. *Id.*

III. PRINTED SOURCES

Books

Countless tomes on topic may be found online at any law library's catalog, or for purchase at online book sellers such as Amazon.com⁴⁰ or Barnes & Noble.⁴¹ The terms listed above will yield countless hours of good reading. Here are some titles that may bear special scrutiny.

While "Google"-type searching on the web does not require subject headings, American law school libraries today still use Library of Congress Subject Headings, which is how we keep all the books on a given topic in the same area of the library. The neat thing about electronic library catalogs is that the library user can now easily learn what subject headings librarians use to ~~hide~~, er, shelve the books. Useful library subject headings include:

- Climatic Changes—History
- Climatic Changes—Social Aspects
- Deep ecology—Philosophy
- Environmental degradation -- Moral and ethical aspects
- Environmental education
- Environmental ethics
- Environmental law
- Environmental policy
- Environmental protection -- Moral and ethical aspects
- Environmental responsibility
- Environmental sciences -- Philosophy
- Environmental sciences -- Religious aspects
- Environmentalists -- Interviews
- Human ecology – Philosophy
- Human ecology -- Religious aspects
- Nature -- Religious aspects
- Nature conservation -- Moral and ethical aspects
- Philosophy of nature
- Social scientists -- Interviews

International Standard Book Numbers (ISBNs) are included to facilitate purchasing; they are like the fingerprint of a book and may be used to order the book from any vendor in the world.

1. FUGITIVE FAITH: CONVERSATIONS ON SPIRITUAL, ENVIRONMENTAL, AND COMMUNITY RENEWAL (Benjamin Webb ed., 1998) (ISBN: 1570751706, 9781570751707).

40. Amazon.com, <http://www.amazon.com/> (last visited Dec. 15, 2008).

41. Barnes & Noble, <http://www.barnesandnoble.com/index.asp> (last visited Dec. 15, 2008).

2. THOMAS BERRY, *EVENING THOUGHTS: REFLECTING ON EARTH AS SACRED COMMUNITY* (Mary Evelyn Tucker ed., 2006) (ISBN: 1578051304, 9781578051304).

3. THOMAS BERRY, *THE DREAM OF THE EARTH* (1988) (ISBN: 0871567377, 9780871567376).

4. THOMAS BERRY, *THE GREAT WORK: OUR WAY INTO THE FUTURE* (1999) (ISBN: 0609605259, 9780609605257).

5. RACHEL CARSON, *SILENT SPRING*. (1st ed. 1962) (this is the book that many feel started the greening of America) (ISBN: 0618249060).

6. Thomas Berry, *Foreword* to CORMAC CULLINAN, *WILD LAW: A MANIFESTO FOR EARTH JUSTICE* (2nd ed. 2003) (ISBN: 1903998352, 9781903998359).

7. PAUL KEITH CONKIN, *THE STATE OF THE EARTH: ENVIRONMENTAL CHALLENGES ON THE ROAD TO 2100* (2007) (ISBN: 0813124115, 9780813124117).

8. JOSEPH F. C. DiMENTO & PAMELA M. DOUGHMAN, *CLIMATE CHANGE: WHAT IT MEANS FOR US, OUR CHILDREN, AND OUR GRANDCHILDREN* (2007) (American and Comparative Environmental Policy) (ISBN: 026204241X, 9780262042413).

9. RODERICK NASH, *THE RIGHTS OF NATURE: A HISTORY OF ENVIRONMENTAL ETHICS* (1989) (ISBN: 0299118401, 9780299118402).

10. CHRISTOPHER D. STONE, *SHOULD TREES HAVE STANDING?: AND OTHER ESSAYS ON LAW, MORALS, AND THE ENVIRONMENT* (3rd ed. 1996) (ISBN: 0379213818, 9780379213812).

11. BRIAN SWIMME & THOMAS BERRY, *THE UNIVERSE STORY: FROM THE PRIMORDIAL FLARING FORTH TO THE ECOZOIC ERA* (1992) (ISBN: 0062508350, 9780062508355).

Law Review Articles

Among the more popular tools for conducting law review research today are HeinOnline, Lexis, and Westlaw. Using the terms above, and searching in the law library database or file will quickly yield too many law review articles to read. A few, however, that should not be missed are provided below:

1. Cormac Cullinan, *Justice For All*, RESURGENCE MAGAZINE, Sept/Oct 2002.

2. Elizabeth DeCoux, *In The Valley of the Dry Bones 1: Reuniting the Word 'Standing' with its Meaning in Animal Cases*, 29 WM. & MARY ENVTL. L. & POL'Y REV. 681 (2005).

3. Judith E. Koons, *Earth Jurisprudence: The Moral Value of Nature*, 25 PACE ENVTL. L. REV. 263 (2008).

4. Lauren Magnotti, *Pawing Open the Courthouse Door: Why Animals' Interests Should Matter When Courts Grant Standing*, 80 ST. JOHN'S L. REV. 455 (2006).

5. Melissa O'Connor, *A Failure to Protect: After 13 Years Environmental Justice Never Materializes*, 35 S.U. L. REV. 119 (2007).

6. Joanna Wymyslo, *Standing For Endangered Species: Justiciability Beyond Humanity*, 15 U. BALT. J. ENVTL. L. 45 (2007).

In addition to the specific articles noted above, researchers should be aware of these selected law reviews that focus on environmental law:

Asia Pacific Journal of Environmental Law
 Buffalo Environmental Law Journal
 Colorado Journal of International Environmental Law and Policy
 Ecology Law Quarterly
 Environmental & Energy Law & Policy Journal
 Georgetown International Environmental Law Review
 Harvard Environmental Law Review
 Journal of Natural Resources & Environmental Law
 Missouri Environmental Law and Policy Review
 Pace Environmental Law Review
 Penn State Environmental Law Review
 Southeastern Environmental Law Journal
 UCLA Journal of Environmental Law & Policy

People to Know

Names that keep popping up during research are names to keep in mind. These people are active in the field and are well connected to others active in the field.

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