

# International Environmental Law, Policy, and Ethics

Second Edition

ALEXANDER GILLESPIE

Preview with Copyrighted Material  
[www.oxfordjournals.org/](http://www.oxfordjournals.org/)

OXFORD  
UNIVERSITY PRESS

# OXFORD

UNIVERSITY PRESS

Great Clarendon Street, Oxford, OX2 6DP,  
United Kingdom

Oxford University Press is a department of the University of Oxford.  
It furthers the University's objective of excellence in research, scholarship,  
and education by publishing worldwide. Oxford is a registered trade mark of  
Oxford University Press in the UK and in certain other countries

© Alexander Gillespie 2014

The moral rights of the author have been asserted

First Edition published in 1997

Second Edition published in 2014

Impression: 1

All rights reserved. No part of this publication may be reproduced, stored in  
a retrieval system, or transmitted, in any form or by any means, without the  
prior permission in writing of Oxford University Press, or as expressly permitted  
by law, by licence, or under terms agreed with the appropriate reprographics  
rights organization. Enquiries concerning reproduction outside the scope of the  
above should be sent to the Rights Department, Oxford University Press, at the  
address above

You must not circulate this work in any other form  
and you must impose this same condition on any acquirer

Crown copyright material is reproduced under Class Licence  
Number C01P0000148 with the permission of OPSI  
and the Queen's Printer for Scotland

Published in the United States of America by Oxford University Press  
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data  
Data available

Library of Congress Control Number: 2014938494

ISBN 978-0-19-871345-6

Printed and bound by  
CPI Group (UK) Ltd, Croydon, CR0 4YY

Links to third party websites are provided by Oxford in good faith and  
for information only. Oxford disclaims any responsibility for the materials  
contained in any third party website referenced in this work.

# I

## Introduction

We must spare no effort to free all of humanity, and above all our children and grandchildren, from the threat of living on a planet irredeemably spoiled by human activities, and whose resources would no longer be sufficient for their needs. . . . We resolve therefore to adopt in all our environmental actions a new ethic of conservation and stewardship . . .<sup>1</sup>

The above quote from *The Millennium Declaration* of the United Nations General Assembly came at the end of the twentieth century, by which point, terms like ‘ozone hole’, ‘climate change’, ‘biodiversity loss’, ‘deforestation’, ‘population growth’, ‘hazardous waste’, and ‘chemical pollution’ had become a universal currency. By 2014, the response to these issues has been 50 years’ environmental activism, a dizzying amount of laws at the domestic, regional, and international levels, and the agreement that, at the political level, ‘sustainable development’ is the answer to all of the problems.<sup>2</sup> However, while the broad agreement has been reached that sustainable development is the political answer (although there remains a world of difference about how to implement this), there is much less certainty about what the ethical basis of the response to the environmental situation should be. It is this question—about what is the most suitable ethical basis for dealing with environmental problems of an international magnitude—that is the focus of this book.

This focus on the ethical component of international environmental law is coming of age. This has happened as debates about the ethical values which are utilized in this area have moved from the journals of philosophy in the 1970s to the international levels in 1990s when calls went out from the global decision makers for ‘a new mode of civic conduct . . . man . . . must learn to love his world. . .’;<sup>3</sup> ‘a paradigm shift in values’;<sup>4</sup> and the formation of new ‘global ethics’.<sup>5</sup> From

<sup>1</sup> *The Millennium Declaration*, UNGA/Res/55/2, paras 21 and 23.

<sup>2</sup> Hawken, P. (2007) *Blessed Unrest: How the Largest Movement in the World Came into Being and Why No One Saw It Coming* (Viking, New York).

<sup>3</sup> Boutros-Ghali, Boutros (1992) ‘Text of closing UNCED statements’ in *Report of the United Nations Conference on Environment and Development*, UN Doc.A/CONF.151.26, 66.

<sup>4</sup> This quote is from Elizabeth Dowdeswell, then Director of UNEP, in her speech at the ‘Symposium on Values for a Sustainable Future’, 2 June 1994: UNEP Speech 1994/10. Note also UNEP/N.J. Brown (1994) *Ethics and Agenda 21: Moral Implications of a Global Consensus* (United Nations, New York).

<sup>5</sup> Commission on Global Governance (1995) *Our Global Neighbourhood* (Oxford University Press, Oxford) 47. See also International Commission on Peace and Food (1994) *Uncommon Opportunities: An Agenda for Peace and Equitable Development* (Zed, London) 177, 180.

this basis, the United Nations could, as noted above, call for ‘a new ethic of conservation and stewardship’.

This book is about the new ethics—and the old ones. In both instances, it is about the way the ethics have evolved, where they exist in international law and policy, and what their limitations are. This book is not about the formation of new documents such as the *Earth Charter* (a collection of principles, which are already found in many other areas),<sup>6</sup> that do not have any standing in the international setting. Rather, this book seeks to work with what ethical arguments already exist in law and policy.

The majority of the arguments in this book are anthropocentric. Anthropocentrism is the belief that humanity is at the centre of existence. This belief, built up and reinforced over thousands of years of scholarship, is predicated on the idea that humanity is fundamentally different to the rest of the natural world, of which we are rational, and it, isolated and valueless, has been provided as an instrument for our benefit. This intellectual mindset has been largely incorporated into international environmental law and policy, from which attempts to justify the protection of the environment have been built.<sup>7</sup> There are six different arguments within this anthropocentric framework. These are direct self interest, economics, religion, aesthetics, culture, and future generations. Each one of these arguments has one chapter in this book. However, as this work hopes to show, each of these six anthropocentric justifications, although powerful in some settings, is limited to how far, and how much, it can achieve. Many of them are either contradictory, limited in scope, or plainly indefensible as a part.

To many people, such anthropocentric justifications are shallow, and ‘deeper’ ethical thinking is required. The deeper ethical thinking is non-anthropocentric, whereby the justifications for environmental protection are not directly related to the interests of humanity. These non-anthropocentric views are based around the interests of other sentient beings (animals), the importance of all individuals which are alive, endangered species, or, finally, the views that suggest that the ecosystem as a whole should be the focus of ethical thinking in all environmental matters. In all four of these non-anthropocentric justifications, the environment, or aspects within it, is protected for its own intrinsic (or inherent) value.<sup>8</sup> However, as with the anthropocentric arguments, many of the non-anthropocentric arguments are

<sup>6</sup> For the debates on the Earth Charter, see Ruiz, J. (2010) ‘Dangers Facing the Earth Charter’ *Journal of Education for Sustainable Development* 4(2): 181; Attfield, R. (2007) ‘Beyond the Earth Charter: Taking Possible People Seriously’ *Environmental Ethics* 29(4): 359; Bosselmann, K. (2004) ‘In Search of Global Law: The Significance of the Earth Charter’ *World Views: Global Religions, Culture and Ecology* 8(1): 62; McCloskey, D. (2003) ‘The Earth Charter: A Reply’ *Eastern Economic Journal* 29(3): 473; Taylor, P. (1999) ‘The Earth Charter’ *New Zealand Journal of Environmental Law* 3: 193.

<sup>7</sup> Rolston, H. (2011) ‘The Future of Environmental Ethics’ *Royal Institute of Philosophy Supplement* 68(Oct): 1; Kortenkamp, K. (2001) ‘Ecocentrism and Anthropocentrism: Moral Reasoning About Ecological Commons Dilemmas’ *Journal of Environmental Psychology* 21(3): 261.

<sup>8</sup> Eckersley, R. (1992) *Environmentalism and Political Theory: Towards an Ecocentric Approach* (UCL Press, London) 54; Naess, A. (1973) ‘The Shallow and the Deep, Long Range Ecology Movement’ *Inquiry* 16: 95.

also not only impossible to reconcile with each other, but are also either limited in scope or plainly indefensible when taken to the full extent of their logic.<sup>9</sup>

The end result is that there are ten different arguments for why the environment should be protected. While sometimes a few of the arguments can safely overlap and complement each other, more often than not they cannot be reconciled. Both within their anthropocentric or non-anthropocentric brackets, and between the brackets, the arguments are rarely complimentary, and they will often clash if the goal is to build a single salient moral theory through which to filter all ethical problems involving the environment. This is a particularly difficult problem for those who want one ethical theory—a single philosophical touchstone—by which to answer all of the problems at hand.<sup>10</sup>

I spent four years of my life searching for that touchstone, and at the end of the journey I had more questions than when I began. While I hope that other scholars will continue this search, I am now more of the opinion that it is necessary to adopt a type of moral pluralism when thinking about ethical matters and the environment. I believe that this is important because of the diversity of the problems, the amount of work that is required to be done, and the time limits before us. In my experience, to achieve conservation, it has been necessary to utilize each of these justifications, anthropocentric and non-anthropocentric, like separate tools. Each tool can fix something. No single tool can fix everything. Sometimes, the wrong tool makes the problem worse. In this new edition of *International Environmental Law, Policy and Ethics*, the hope is not that the reader will become disillusioned with any of the particular arguments, but rather, to understand what its limits are, but still to apply any argument (but knowing its limits) where positive environmental benefits can be achieved. As such, this edition is much more pragmatic than the first. It is no longer sufficient to try to understand environmental problems of an international dimension in terms of philosophical paradigms. It is necessary to work directly towards solving the problems. There is much to be done.

<sup>9</sup> Hargrove, E. (1992) 'Weak Anthropocentric Intrinsic Value' *The Monist* 75(2): 183; Fox, W. (1990) *Towards a Transpersonal Ecology: Developing New Foundations for Environmentalism* (Shambhala, Boston); Devall, B. (1990) *Simple in Means, Rich in Ends: Practicing Deep Ecology* (Green Print, Surrey) 3–38; Hargrove, E. (1992) (ed) *The Animal Rights and Environmental Ethics Debate: The Environmental Perspective* (Sunny, New York) xvii–xviii.

<sup>10</sup> Peterson, K. (2011) 'Bringing Values Down to Earth' *Appraisal* 8(4): 3; Attfeld, R. (2011) 'Beyond Anthropocentrism' *Royal Institute of Philosophy Supplement* 69: 29; Carter, A. (2011) 'Towards a Multidimensional Environmentalist Ethic' *Environmental Values* 20(3): 347; Sterba, J.P. (1995) 'From Biocentric Individualism to Biocentric Pluralism' *Environmental Ethics* 17: 191, 204–5; Sterba, J. (1994) 'Reconciling Anthropocentric and Nonanthropocentric Environmental Ethics' *Environmental Values* 3(3): 229; Wenz, P. (1993) 'Minimal, Moderate and Extreme Pluralism' *Environmental Ethics* 15: 61, 66–8, 70, 72, 74; Johnson, L. (1991) *A Morally Deep World: An Essay on Moral Significance and Environmental Ethics* (Cambridge University Press, Cambridge) 236–8; Callicott, J.B. (1990) 'What's Wrong With Moral Pluralism' *Environmental Ethics* 12: 32; Stone, C. (1988) 'Moral Pluralism and the Course of Environmental Ethics' *Environmental Ethics* 10: 147, 149.