Chapter 4

Property: Faustian Pact or New Covenant with Earth?

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1. Calls for a new Earth covenant

Over the course of the past several decades, calls for a new ‘Earth covenant’ or its equivalent, have come from many quarters.1 They have been made by United Nations leader Shridath Ramphal, who speaks of the need for a “new global compact”;2 by political scientist David Held, who speaks of the need for a new “global covenant”;3 by liberation theologian Leonardo Boff, who speaks of a “new covenant with Earth”;4 and by scientist Ursula Goodenough, who calls for a “covenant with the Mystery” of nature.5

These calls are often associated with appeals to endorse the Earth Charter, formally launched in The Hague in 2000 by the Earth Council in cooperation with Green Cross International and UNESCO, and widely considered the most comprehensive statement to date of the ethics for a just, participatory, sustainable world community.6 Elise Boulding writes in Cultures of Peace:

The process of getting the support of peoples from around the world for the Earth Charter – for a covenant with Gaia – brings together developments at every level in a common commitment to the socioeconomic and ecological dimensions of a peace culture for the 21st century.7

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2 Shridath Ramphal, Our Country, the Planet: Forging a Partnership for Survival (Washington, DC: Island Press, 1992), 212.
4 Leonardo Boff, Cry of the Earth, Cry of the Poor (Maryknoll, NY: Orbis Books, 1997), 114.
Unfortunately, these calls lack substantive discussion of the meaning of ‘covenant’ and the difference it might make in advancing the cause of just and sustainable forms of governance and law for the world community. If, as these calls imply, a new covenant with Earth is what is at stake in our relationships to one another and the planet – the hinge on which the history of the 21st century will swing – we need to understand why this is so far better than we do.

Let me pause for a moment and offer a thumbnail introduction to the Earth Charter. In 1987, the United Nations World Commission on Environment and Development called for a new charter that would set forth fundamental moral principles for sustainable development comparable to what the *Universal Declaration of Human Rights* had achieved in the field of human rights.

There was much hope that such a charter might emerge out of the 1992 Rio de Janeiro Earth Summit, but the summit failed in this endeavor; the Earth Council kept the idea alive, however, and beginning at ‘Rio+5,’ a General Assembly session in 1997 to assess the outcomes of the Earth Summit, an international consultative and drafting process was set in motion, which led to the text we now have before us.

It is hoped that the Earth Charter may someday be endorsed by the United Nations; but at this point it is considered a ‘people’s treaty’ and enjoys thousands of endorsements from nongovernmental organizations (NGOs) as well as several significant government endorsements. Interwoven into its text are numerous principles drawn from both soft and hard international law, including the *Universal Declaration of Human Rights*.

Parallel to the drafting of the Earth Charter, and in close communication with it, the International Union for the Conservation of Nature (IUCN) Commission on Environmental Law drafted an international hard law treaty for consideration by the United Nations. It was both a summary and an extension of all existing international environmental law, based on strong ethical principles, and titled *Draft International Covenant on Environment and Development*. If adopted, it would have international treaty status comparable to the international covenants on human rights. So, we have two closely linked documents in play: one a proposal for new international ‘soft law,’ the other a proposal for new international ‘hard law,’ both with potential to influence the content of future international treaty regimes. Either or both of these documents may be considered a response to the call for a “new covenant with Gaia.”

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9 The term ‘soft law’ is commonly understood to mean a nonbinding written instrument setting out international principles, such as a declaration, and ‘hard law’ to mean a politically binding written instrument of international law, such as a treaty.