

Symposium Overview

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I. INTRODUCTION

When former Soviet President Mikhail Gorbachev waited nineteen days before issuing a statement about the Chernobyl disaster, he made a decision that condemned tens of thousands of citizens to certain death.¹ Although "merely" a decision not to provide information, it constituted a flagrant violation of the most basic of human rights. An abuse of a somewhat different nature occurred in India when the government developed the Sardar Sarovar dam and irrigation projects. In failing to appraise the environmental impact or resettlement needs that the projects would create, the Indian government ignored the inevitable consequences of displacing thousands of people from their homes.² An assessment for the World Bank later labeled the decision to build the dam a human rights violation.³ As these examples indicate, 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. Recognition of this reality provided the impetus

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¹ See Kerry Kennedy Cuomo, *Human Rights and the Environment: Common Ground, in this issue*, at 227, 228.

² BRADFORD MORSE & THOMAS BERGER, *SARDAR SAROVAR: REPORT OF THE INDEPENDENT REVIEW* xx, xxv (1992).

³ *Id.* at xx.

for the symposium entitled *Earth Rights and Responsibilities: Human Rights and Environmental Protection*.⁴

The complementary nature of human rights protection and environmental protection extends far beyond the isolated examples presented above. Human rights activists continually lend support to environmentalists by championing the right to speak out against environmental hazards.⁵ Similarly, environmentalists offer invaluable assistance to human rights activists by calling for the protection of indigenous peoples whose livelihoods and cultures are threatened by developing projects that destroy their natural resource base. In general, since any serious environmental damage threatens the rights to life, health, work, and development, the objectives of human rights and environmental activists frequently overlap.⁶

Despite the intrinsic inseparability of many human rights and environmental protection goals, the proponents of each cause have historically functioned in separate realms. A combination of limited organizational mandates⁷ and narrow conceptions of human rights⁸ has prevented many human rights organizations from encouraging or embracing the recognition of new substantive human rights pertaining to the environment.⁹ At the same time,

4 The Symposium, held at Yale Law School on April 3-5, 1992, was cosponsored by Yale Law School, the American Association for the Advancement of Science (AAAS), the Natural Resources Defense Council, the Churches' Center for Theology and Public Policy, the Center for International Environmental Law (United States), the Sierra Club Legal Defense Fund, and the Orville H. Schell, Jr. Center for International Human Rights. The papers that follow were selected by the Editorial Board of the *Yale Journal of International Law* to represent some of the basic themes addressed by the panelists.

5 See Cuomo, *supra* note 1, at 228.

6 See Michelle Leighton Schwartz, *International Legal Protection for Victims of Environmental Abuse, in this issue*, at 355, 365; *accord Human Rights and Scientific and Technological Developments: Proposals for a Study of the Problem of the Environment and Its Relation to Human Rights*, U.N. ESCOR, Hum. Rts. Comm'n, Sub-comm'n on Prevention of Discrimination and Protection of Minorities, 42nd Sess., Provisional Agenda Item 13, at 7, 9, U.N. Doc. E/CN.4/Sub.2/1990/12 (1990) (Fatma Zohra Ksentini, Special Rapporteur) [hereinafter *Ksentini*]; *Review of Further Developments in Fields Which the Sub-Commission Has Been Concerned: Human Rights and the Environment*, U.N. ESCOR, Hum. Rts. Comm'n, Sub-comm'n on Prevention of Discrimination and Protection of Minorities, 43rd Sess., Provisional Agenda Item 4, at 15-16, U.N. Doc. E/CN.4/Sub.2/1991/8 (1991) (Fatma Zohra Ksentini, Special Rapporteur).

7 The mandate of Amnesty International, for example, characterizes the organization as a "prisoner-oriented human rights movement, which focuses on gaining the release of prisoners of conscience, advocating fair and prompt trials for all political prisoners, and bringing an end to torture and the death penalty." While allowing Amnesty to take up the cases of nonviolent environmentalists subjected to imprisonment, this statement places more substantive questions about environmental rights beyond its mission. See AMNESTY INT'L, WORK ON BEHALF OF THE ENVIRONMENT AND INDIGENOUS PEOPLES 1 (Mar. 5, 1992) (unpublished manuscript prepared for Nathan Cummings Workshop on Promoting Human Rights and Protecting the Environment, on file with author).

8 Aryeh Neier, Executive Director of Human Rights Watch, equates human rights with freedom of expression. Aryeh Neier, Remarks at Nathan Cummings Workshop on Promoting Human Rights and Protecting the Environment (Mar. 6, 1992). In deference to this position, a report by Human Rights Watch on governmental harassment and persecution of individuals and groups working to protect the environment in various countries scrupulously avoids mention of substantive environmental rights. See HUMAN RIGHTS WATCH & NATURAL RESOURCES DEFENSE COUNCIL, DEFENDING THE EARTH: ABUSES OF HUMAN RIGHTS AND THE ENVIRONMENT vii (1992) [hereinafter *DEFENDING THE EARTH*].

9 This may help explain why only two human rights organizations, the AAAS Science and Human

environmentalists have shown a reluctance to use the language of human rights in achieving their goals. Contemporary environmental philosophy and ethics frequently reject the anthropocentric bias towards the individual, instead choosing to underscore the intrinsic value of nature and to develop ethical rationales for protecting the environment from being despoiled by humans.¹⁰ Accordingly, they have often focused on the rights of nature rather than on human environmental rights.¹¹ The *Earth Rights and Responsibilities* symposium sought to explore ways of bringing the two groups together in the advancement of their complementary goals.

Part II below provides an overview of the symposium and of the papers selected for publication in this issue. Part III provides a synthesis of the conference by discussing alternative human rights approaches to environmental protection.

II. THE SYMPOSIUM AND SELECTED PAPERS

Panelists and participants at the symposium had two main objectives: first, to gain a better understanding of the interdependence of efforts to protect human rights and to foster environmental responsibility; and second, to develop strategies for the definition and exercise of environmental rights. Contributors comprised a truly interdisciplinary group of academics, practitioners, policymakers, and grass roots activists, with wide-ranging perspectives and priorities.¹²

A. Rights of Nature and the Human Right to a Healthy Environment

The first roundtable explored the philosophical foundations of a right to a healthy and sustainable environment. Participants examined such issues as the foundation of an environmental right; the linkages and potential conflicts between environmental and conventional human rights; and the difficulties in applying rights language to the physical world. The papers from this roundtable reflect the diversity of views that the participants offered.

In *The Case for Biotic Rights*, James Nash, Director of the Churches' Center for Theology and Public Policy, defines *prima facie* biotic rights as morally justified claims against humankind on behalf of non-human organisms.

Rights Program and the Orville H. Schell, Jr. Center for International Human Rights, sponsored the symposium.

¹⁰ See, e.g., HOLMES ROLSTON, III, *ENVIRONMENTAL ETHICS: DUTIES AND VALUES IN THE NATURAL WORLD* (1988).

¹¹ See, e.g., Christopher D. Stone, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

¹² See JACQUELINE C. HAMILTON & AMY CROMPTON, *EARTH RIGHTS AND RESPONSIBILITIES: HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION — CONFERENCE REPORT* (1993).

Introducing a bill of biotic rights, he argues for the rights of non-human species to compete for existence, live in healthy habitats, reproduce and evolve under natural conditions, and share in the allocation of natural resources. He concludes that, although competing human interests may at times override *prima facie* biotic rights, human beings are bound by moral limits in their actions toward other species.

Holmes Rolston, III, Professor of Philosophy at Colorado State University, takes issue with Nash in *Rights and Responsibilities on the Home Planet*. Rolston maintains that nature has intrinsic value, but that the concept of rights cannot be extrapolated to the natural world. He urges a "biocentric" worldview — an Earth ethic — based not only on the rights of human beings, but also on their responsibilities toward the Earth. And in *The Human Right to a Safe Environment: Philosophical Perspectives on Its Scope and Justification*, James Nickel, Professor of Philosophy at the University of Colorado, presents a four-pronged test for determining whether the establishment of a right is justified. First, the proposed rightholders must have a very strong claim to a right's protection or benefit. Proponents must then show that only a right, rather than a weaker social norm, can adequately satisfy that claim. Next, proponents must establish that the compliance and implementation burdens may be legitimately imposed on third parties. Finally, the proposed right's benefits must outweigh the institutional and economic costs of compliance and implementation. Nickel concludes that a narrowly defined right to a safe environment meets these criteria.

B. *Standards and Indicators*

The second roundtable examined the indicators essential for establishing environmental standards. The discussion centered on two major issues: the tools needed to implement norms embodied in an environmental charter, and the value choices and economic assumptions that underlie various standards. Although participants agreed on the inadequacy of current indicators, they also conceded that reformulating them to be more ecologically sensitive will prove difficult.

In *Protecting Ecological Integrity: An Urgent Societal Goal*, James Karr, Director of the Institute for Environmental Studies at University of Washington, contends that designing an ecologically sustainable future requires a rational approach to the definition and measurement of societal health which takes into account the integrity of the Earth's life-support systems. Karr concludes that a new ethic is necessary to incorporate ecological assessment mechanisms into society's decision-making processes.

J. Andy Smith, Director of Social and Ethical Responsibility in Investments, argues for a corporate ethic in *The CERES Principles: A Voluntary*

Code for Corporate Environmental Responsibility. A unique approach to environmental standards, the CERES Principles enable corporations to make a public commitment to act responsibly toward the environment and enable the public to better monitor the environmental performance of corporations.

C. National Due Process

The third roundtable explored the legal and policy bases for individual and community rights to prevent harm, to gain access to information, and to participate in decisions that affect human health and the environment. Discussants assessed these rights in three countries: Brazil, Hungary, and the United States. While the panel agreed that the United States has the most comprehensive legislative basis for public participation in environmental policy-making, Dinah Bear, General Counsel for the President's Council on Environmental Quality, underscored the challenges in achieving environmental equity in the United States. In other parts of the world, the challenges are even greater. Andras Sajo, Chief Counsel to Hungarian President Arpad Concz, pointed out that legislative or constitutional provisions for procedural rights, which Communist governments tended to ignore, are faring no better under democratic control. Sajo observed that authorities in the former Eastern Bloc countries believe that public participation will only interfere with their decision-making. Participants concluded with recommendations for improving the effectiveness of procedural guarantees. The papers selected from this roundtable focus on the impact of environmental damage on disadvantaged communities and on the creation of due process norms to mitigate such damage.

Robert Bullard, Professor of Sociology at the University of California at Riverside, discusses the lack of substantive and procedural environmental equity in the United States. In *Race and Environmental Justice in the United States*, he contends that current government practices in siting municipal and hazardous waste disposal facilities disproportionately burden low-income and minority groups, and that legislative initiatives are necessary to assure the integration of equity concerns into environmental regulations. Bullard concludes, however, that the best hope for reform lies in the as-yet nascent grassroots movement for environmental justice.

Samara Swanston, Assistant Regional Counsel for the Environmental Protection Agency, suggests an agenda for reform in *Legal Strategies for Achieving Environmental Equity*. First, communities subject to higher risks of environmental harm should be identified by various characteristics, such as age, race, health status, and cumulative pollution load. This information should then be used to target regulatory reform and public education; to

pursue judicial relief under environmental quality review statutes; and to exert pressure on local governments to change zoning laws.

Indian Rights and the Environment, by Armstrong Wiggins, Director of the Central and South America Program of the Indian Law Resources Center, reminds activists of the crucial need to work *with* indigenous peoples in their efforts to protect the environment. Wiggins urges environmentalists and government planners in the Americas to discard widely-held myths about Indians and to appreciate the relationship that Indians have with their land. Finally, he argues for the development of legal guarantees of Indian rights at both national and international levels.

D. *International Due Process*

The fourth roundtable examined procedural rights on the international level, particularly in institutions such as the World Bank, the International Monetary Fund, and the General Agreement on Tariffs and Trade. International institutions regularly finance projects that dramatically affect the environment and people worldwide. However, non-state actors have little or no opportunity to participate in decisions about such projects. Roundtable participants explored the avenues for public participation in international environmental policy-making, as well as potential means of recourse for victims of environmental disasters or ill-conceived development projects.

Dinah Shelton, Professor of Law at Santa Clara University, discussed international human rights procedures that can be used to promote and protect environmental rights. She acknowledged, however, that such procedures are largely remedial in nature and therefore cannot be applied to prevent harm. Moreover, since human rights by definition center on human beings, they cannot protect other species. David Wirth, Assistant Professor of Law at Washington and Lee University, proposed another procedural approach: a private attorney general mechanism at the international level to encourage citizen enforcement of international environmental standards. Lalanath DeSilva extended the analysis of non-state actors by describing how non-governmental organizations successfully pressured the World Bank to undertake an environmental impact assessment before financing a major forestry project in Sri Lanka. The World Bank has significantly scaled back the original plan as a result of the assessment.

In *International Legal Protection for Victims of Environmental Abuse*, Michelle Leighton Schwartz, Program Director at the Natural Heritage Institute, argues for the development of human rights doctrines to protect environmental victims, particularly those fleeing from environmental disasters. She recommends the expansion of substantive human rights and improvement of access to information to assist environmental victims.

E. Persecution and Intimidation of Environmental Advocates

Panelists in this roundtable discussed the plight of environmental activists like Brazil's Chico Mendez and Kenya's Wangari Maathai who have suffered death, injury, or arrest because of their work.¹³ According to the panelists, environmental activists are persecuted for various reasons, but most often because they threaten commercial interests supported by local elites or the state. Antonio Lavine, an international affairs officer of Friends of the Earth, noted that activism on environmental issues cannot be separated from long-standing socio-economic problems associated with state or elite violence against the poor. Participants underscored the ever-present challenge of securing and protecting environmental advocates' rights to obtain information, organize, and protest.

Michael J. Kane, Senior Advisor at the State Department's Coordination Center for the U.N. Conference on Environment and Development (UNCED), provides his perspectives on the common ground between the international protection of human rights and of the environment in *Promoting Political Rights to Protect the Environment*. He discusses the intimate relationship between environmental abuses and political oppression and suggests several international institutions capable of simultaneously improving the protection of both human rights and the environment.

F. Rights of Indigenous Peoples

Although no specific roundtable was devoted to the issue of indigenous peoples, numerous participants at the symposium stressed the human rights and environmental implications of development projects that displace indigenous peoples. In his keynote address, Oren Lyons (Chief Jo Ag Quis Ho), Associate Professor at the State University of New York, eloquently presented the view of Native Americans and other indigenous peoples that human beings, as part of the "web of life," are meant to coexist with nature, not to conquer, subdue, and despoil it. Biologist and investigative reporter Oannes Arthur Pritzker, a member of the Wabanski nation, argued that environmental justice compelled support of indigenous peoples' legal, political, and grassroots efforts to protect their livelihoods, their hunting, fishing, and gathering rights, their sacred land and water, and their sovereignty and self-determination. Supporting Pritzker, Armstrong Wiggins underscored the importance of Indian land rights for their survival as peoples with distinct cultures and traditions.

¹³ See generally DEFENDING THE EARTH, *supra* note 8 (containing case studies of human rights abuses related to environmental activism).

G. Strategies for Change and Implementation

Achieving fundamental change in any system requires effective action on multiple levels. The challenge of the final plenary session was to formulate strategies for implementing the various recommendations presented at the conference. Panelists discussed the use of grassroots organizations, litigation, national human rights commissions, and advocacy through the United Nations. Members of the audience also emphasized the importance of educational initiatives to effect change.

Peter Sand, Principal Legal Advisor for the UNCED, reviewed the draft statement of principles for encouraging environmentally responsible development, observing that some of the principles, if adopted and publicized, could become the basis of rights. Mary Mushinsky, Co-chair of the Connecticut General Assembly's Environment Committee, attempted to give content to the phrase, "Think globally, act locally." She suggested that individual state action can help mobilize public support and set standards for stricter environmental laws at the national level. Overall, panelists identified a variety of ways to translate concerns about the planet and human survival into action. Their recommendations suggest that achieving fundamental change will require the efforts of leading international institutions and local grass roots organizations working together to educate the public and change policy at all levels.

III. ALTERNATIVE HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION

Presentations at the conference suggested several ways to protect the environment using mechanisms developed by the human rights community. First, environmental rights advocates may invoke established civil and political rights to protect environmental victims and advocates. Second, they may reinterpret provisions in human rights instruments so as to incorporate standards of environmental quality in the monitoring of recognized human rights. Third, they may champion a new substantive right or a series of rights to a healthy, safe, or sustainable environment. Finally, environmental activists may seek to develop an enforceable environmental right at the national level. Since each approach has strengths and limitations, the environmental and human rights movements may be best served by simultaneously pursuing multiple strategies.

A. Invoking Political Rights

Since the mid-1970s, environmentalists in many countries have sought to establish the right to information and public participation in environmental

policy-making, as well as the right to effective means of redress for environmental harm.¹⁴ Although these rights seem to extend logically from the civil and political rights of free speech, political participation, and informed consent, states have only recently begun to recognize them. As Michelle Leighton Schwartz points out, rights to information and participation would not only provide individuals and communities with greater access to data on environmental impacts, but would also democratize environmental decision-making.¹⁵ Such rights would also protect environmental activists against harassment and arbitrary arrests.

Although this approach holds much promise because of its reliance on long-established rights, it is limited. Political rights do not address substantive issues of environmental quality or environmental equity. Given the urgent nature of environmental harms occurring today, enforcing political rights represents only a second-best solution.

B. Reinterpreting Provisions in Existing Instruments

Most major human rights instruments predate the current awareness of environmental concerns, and therefore, do not contain much explicit environmental content. Provisions in several covenants, however, may be reinterpreted to require the attainment of certain environmental standards. To this end, oversight bodies could identify the rights asserted in a relevant covenant that may be violated by environmental abuses and then develop quantitative standards and indicators to evaluate a party's performance.

For example, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights guarantee "the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources,"¹⁶ and prohibit states from depriving a people

14 Sierra Club Legal Defense Fund, *Human Rights and the Environment: The Legal Basis for a Human Right to the Environment*, Report to the U.N. Subcomm'n on the Prevention of Discrimination and the Protection of Minorities 45 (1992) (unpublished manuscript, on file with author) [hereinafter *Sierra Club*].

15 See generally Schwartz, *supra* note 6, at 371; see also *Sierra Club*, *supra* note 14, at 45. The Emergency Planning and Community Right-to-Know Act was one of the first significant moves away from a regulatory agency approach and toward a citizens' rights approach in the environmental field. Emergency Planning and Community Right-to-Know Act of 1986, Pub. L. No. 99-499, § 327, 100 Stat. 1757 (codified as amended in scattered sections beginning at 42 U.S.C. § 11001). By requiring companies to publicly disclose emissions of certain toxic chemicals, it has helped reduce toxic emission and use. Spurred by the success of the Right-to-Know Act, environmentalists, in collaboration with labor organizations, are seeking to develop rights to inspect plant facilities with community representatives and safety experts, to refuse unsafe work, and to work for improved safety and health programs through joint committees with management. Paul Orum & Clair MacLean, *Labor*, WORKING NOTES ON COMMUNITY RIGHT-TO-KNOW (OMB Watch & Working Group on Community Right-to-Know, Washington, D.C.), June-July 1992, at 3.

16 *International Covenant on Civil and Political Rights*, G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, at art. 47, U.N. Doc. A/6316 (1966) [hereinafter *Political Covenant*]; *International*

"of its own means of subsistence."¹⁷ This right could be interpreted to prohibit state activity that would degrade the natural environment to such an extent that peoples within the state could no longer provide for themselves.¹⁸ Indicators measuring environmental degradation could be developed to determine the extent to which states have deprived peoples of their resource bases. Degradation beyond a certain threshold would be considered to violate a community's right to utilize their natural wealth and resources.

Other provisions that may be tapped include the Economic Covenant's requirement that states address the "improvement of all aspects of environmental and industrial hygiene,"¹⁹ as well as the Economic Covenant's guarantees to the rights to work, to the enjoyment of just and favorable conditions of work, and to an adequate standard of living.²⁰ The Convention on the Rights of the Child also holds some promise: it requires states to consider risks of environmental pollution in combating disease and malnutrition, and to ensure public access to education on hygiene and environmental sanitation.²¹

The development of standards and indicators to protect the environment is a complex task on which work is just beginning. Many states do not regularly collect the types of data needed to evaluate environmental quality in this way. Human rights experts on U.N. oversight bodies rarely have the quantitative skills for assessing environmental conditions in relationship to human rights. These technical hurdles can be overcome, however, with the commitment of states and human rights bodies to reinterpret provisions in existing instruments to protect the environment.

C. *Developing a Substantive Environmental Right*

Promoting a new substantive environmental right offers the most comprehensive approach. However, the definition, content, and objectives of such a right must first be determined. The aspirational language of the Stockholm Declaration provides some guidance: "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."²² Current proposed

Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, at art. 25, U.N. Doc. A/6316 [hereinafter *Economic Covenant*].

¹⁷ *Political Covenant*, *supra* note 16, art. 1(2); *Economic Covenant*, *supra* note 16, art. 1(2).

¹⁸ Sierra Club, *supra* note 14, at 4-5.

¹⁹ *Economic Covenant*, *supra* note 16, art. 12(2)(b).

²⁰ *Id.* arts. 6(2), 7(b) & 11.

²¹ *Convention on the Rights of the Child*, G.A. Res. 44/25, U.N. GAOR, 44th Sess., arts. 24 & 29, U.N. Doc. A/RES/44/25 (1989).

²² REPORT OF THE UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT, at 4, U.N. Doc. A/Conf.48/14/Rev.1, U.N. Sales No. E.73.II.A.14 (1973).

formulations vary, calling for rights to a safe, healthy, sustainable, or clean environment.

If an environmental right is to be more than a rhetorical slogan, its advocates must address a series of difficult conceptual issues,²³ including the definition of a healthy and balanced environment to provide a yardstick against which infringements can be measured, the relationship between the right to the environment and other human rights, the position ecological rights occupy within the hierarchy of human rights, whether ecological rights are derogable, the nature of such rights and whether they apply immediately or must be implemented gradually, and whether environmental rights protect only humankind or all elements of the biosphere.²⁴

As Dinah Shelton has noted, establishing a substantive environmental right presents several problems.²⁵ First, in contrast with recognized human rights, which apply solely to members of current generations, environmental rights also imply significant, constant duties toward persons not yet born.²⁶ However, it would require a legal revolution for international law to grant rights to members of future generations. Second, existing human rights instruments obligate each signatory state to respect and ensure guaranteed rights "to all individuals within its territory and subject to its jurisdiction."²⁷ Yet, an environmental disaster need not approach the magnitude of Chernobyl for populations outside the culpable state's borders to be harmed. Because of the transnational nature of environmental harms, an environmental right would require a hitherto unacknowledged responsibility of states to persons and communities beyond their territorial borders.

Daunting political obstacles also stand in the way of the development of a substantive environmental right. Because of the strong assumption in the legal community that human rights can only be vested in individuals, so-called "third generation"²⁸ solidarity or community rights, such as an environmental right, face difficulties in gaining recognition.²⁹ Some human rights advocates

23 See Philip Alston, *Out of the Abyss: The Challenges Confronting the New U.N. Committee on Economic, Social and Cultural Rights*, 9 HUM. RTS. Q. 332 (1987) (discussing conceptual problems hampering implementation of International Covenant on Economic, Social, and Cultural Rights).

24 Ksentini, *supra* note 6, at 21.

25 Dinah Shelton, *Human Rights, Environmental Rights, and the Right to Environment*, 28 STAN. J. INT'L L. 103, 121-22, 133-34 (1991).

26 See generally EDITH BROWN WEISS, IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY 2 (1989) (proposing doctrine of intergenerational equity under which each generation is obligated to conserve natural and cultural resource base for future generations); UNICEF & UNEP, STATE OF THE ENVIRONMENT 1990: CHILDREN AND THE ENVIRONMENT 4 (1990).

27 See, e.g., *Political Covenant*, *supra* note 16, art. 2.

28 Civil and political rights are considered "first generation" rights, rights that define a sphere of personal liberties into which the government cannot intrude. Social and economic rights are considered "second generation" rights, rights that require governmental action. See Shelton, *supra* note 25, at 122-25.

29 For a discussion of some of the obstacles confronting "third generation" rights, see JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE 143-60 (1989) and Marlies

question whether the already overloaded international human rights regime can cope with yet another major covenant. Others fear that the recognition of additional rights would devalue existing human rights.³⁰

D. Using National Constitutional Provisions

The constitutions of more than fifty countries contain references to an environmental right.³¹ Although these provisions are now generally treated as statements of intent or national goals, environmental advocates may be able to use them to establish justiciable environmental rights enforceable in national tribunals. Under this approach, states receptive to such an effort could serve as models for others. Working toward environmental rights on such a piecemeal basis bypasses some of the political and legal problems associated with the others outlined above. Nevertheless, environmental standards and safeguards for implementing those rights would still have to be developed at the national level. Furthermore, environmental rights guaranteed by national constitutions would lack the status and standing accorded to international human rights and may complicate efforts to develop international standards.

IV. CONCLUSION

The Earth Rights and Responsibilities symposium sought to initiate a dialogue between the environmental and human rights communities. The papers in this volume attest to the symposium's success in identifying issues and potential strategies. The challenge for environmentalists and human rights activists remains to formulate a coherent action agenda for the advancement of their mutual objectives. A careful assessment of the strengths and limitations of the four approaches presented at the symposium and outlined above may help in the framing of that agenda.

Galenkamp, *Collective Rights: Much Ado About No*, 3 NETH. Q. HUM. RTS. 291 (1991).

³⁰ Phillip Alston, *Conjuring Up New Human Rights: A Proposal for Quality Control*, 78 AM. J. INT'L L. 607, 621 (1984); see also James Nickel, *The Human Right to a Safe Environment: Philosophical Perspectives on its Scope and Justification*, in this issue, at 281, 281 & n.3.

³¹ WEISS, *supra* note 26, at 297-327; see also Schwartz, *supra* note 6, at 374 n.101 (listing countries).