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FOR PEOPLE; FOR PLANET

**THE LONG AND WINDING ROAD TO UNITED
NATIONS RECOGNITION OF THE UNIVERSAL
RIGHT TO A CLEAN, HEALTHY, AND
SUSTAINABLE ENVIRONMENT**

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On Friday 8 October 2021, member states of the United Nations (UN) Human Rights Council (Council) moved to adopt two historic resolutions. With the first of these (Council resolution 48/13¹), presented by Costa Rica, Maldives, Morocco, Slovenia, and Switzerland (the core group on human rights and the environment), the Council recognised a new universal human right: the right to a clean, healthy, and sustainable environment (R2E). The adopted text furthermore invited the General Assembly (GA) to join the Council in recognising this new international human right. That subsequently occurred in the summer of 2022 meaning the right to a clean, healthy, and sustainable environment became only the second new right, and the first stand-alone right, to be fully recognised by the UN since the adoption of the Universal Declaration of Human Right in 1948. With the second resolution (48/14²), tabled by Bahamas, EU, Fiji, Marshall Islands, Panama, Paraguay, and Sudan, the Council decided to establish a new Special Rapporteur on human rights and climate change.

These momentous events, with important implications for international efforts, spearheaded by the UN, to promote and protect the full enjoyment of human rights, and address the three interlinked environmental crises facing the planet – the climate, biodiversity, and pollution crises – mark the end of a journey begun by a Small Island Developing State, the Maldives, in 2008.

This report seeks to tell the story of that journey. It represents an ‘eyewitness account.’ The author was a diplomat at the UN Office in Geneva from 2006 to 2012, and from 2013 has led the Universal Rights Group think tank in Geneva. Through that time, he has been intimately involved with many of the events recounted in this paper. This story is therefore a personal one – and not only for the author, but also for many other individuals, diplomats, civil society representatives and others, who have each made an invaluable contribution to this achievement. This report is dedicated to them.

¹ Human Rights Council res. 48/13, 8 October 2021

² Human Rights Council res. 48/14, 8 October 2021



Photo by David R. Boyd on Twitter.
@SREnvironment

A JOURNEY 50 YEARS IN THE MAKING

Environmental concerns were entirely absent during UN discussions on the Universal Declaration of Human Rights and the negotiation of the two international human rights covenants, because the instruments were negotiated before the advent of the modern environmental movement in the late 1960s. The first significant attempt to change this status quo came almost 50 years ago, when States meeting at the 1972 United Nations Conference on the Environment (the first major UN meeting on the subject) adopted the Stockholm Declaration and Action Plan for the Human Environment (the Stockholm Declaration).³ The Declaration placed environmental issues at the forefront of international concerns and marked the start of a dialogue between developed and developing countries on the link between economic growth, the conservation and protection of the natural environment, and the rights of people around the world. It proclaimed that 'both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself; and, in Principle 1, asserted that '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, and he bears a solemn responsibility to protect and improve the environment for present and future generations.' The Stockholm Declaration catalysed a global movement to better connect human rights and environmental concerns in national constitutions and legislation. Increasingly, that included moves by governments to recognise, at domestic level and in regional treaties, the inalienable right of their people to a healthy environment.

³ <https://www.un.org/en/conferences/environment/stockholm1972>

However, post-Stockholm, progress at the UN lagged far behind these shifts at national- and regional-levels. The first significant attempt to address this imbalance came in the mid-1990s, when a group of States led by Costa Rica, South Africa, and Switzerland tabled a series of resolutions at the UN Commission on Human Rights (the Commission), the predecessor to the Human Rights Council, on 'Human rights and the environment.'⁴ However, from the very start, these States faced considerable opposition from several large UN members (developed and developing countries), with the result that the resolutions were relatively unambitious and were eventually discontinued.

This remained the situation until 2006, when the Commission was replaced by the Council, and a Small Island Developing State (SIDS), the Maldives, took it upon itself to revive international efforts to draw links between human rights and environmental harm. It acted first through a series of resolutions on human rights and climate change and then, from 2011 onwards, through annual resolutions on human rights and the environment. It was the unspoken hope of Marc Limon, the Maldives diplomat who led on these initiatives (and author of this report), that the norm-setting exercise initiated by the texts, important in itself, might also represent a first step towards open and informed intergovernmental reflections on the relative merits of declaring a new universal right to a healthy environment. In pursuing this strategy, the Maldives was confronted by the same alignment of States that had opposed the Costa Rica-led initiative over a decade earlier.

⁴ Human Rights Commission res. 1994/65, 9 March 1994; res. 1995/14, 24 February 1995; res. 1996/13, 11 April 1996.



Ms. Indira Gandhi, former Prime Minister of India, addressing at the UN Conference on Human Environment (Stockholm Conference), 1972.

Photo by UNEP

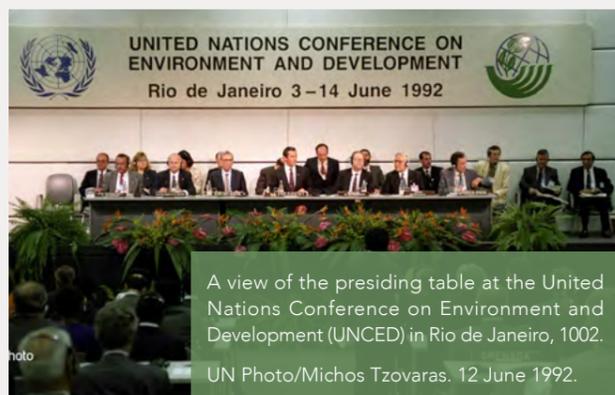


Nukunonu Atoll seaside, one of the regions of the world, vulnerable to the impact of the climate change. 24 October 2007.

Credit: UN/Ariane Rummery.

POLITICAL OPPOSITION TO ENVIRONMENTAL RIGHTS AT THE UNITED NATIONS

Throughout the 1990s and the first decade of the 21st century, the default position of many powerful UN member States (developed and developing) was a de facto belief that the promotion and protection of human rights and the preservation and protection of the environment were, and should remain, two separate areas of UN policy. Drawing links between the two was not only unnecessary; it was, from the viewpoint of many States, deeply unwelcome.



A view of the presiding table at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, 1002.
UN Photo/Michos Tzovaras. 12 June 1992.

Why was this the case? As noted above, many States had adopted a notably progressive position on human rights and the environment at national level, even going so far as to recognise a constitutional right to a healthy environment. Yet at international level, despite some small steps forward such as the Stockholm Declaration and, to a lesser extent, the 1992 Rio Declaration on Environment and Development,⁵ those same States would generally reject the notion that environmental harm had any implications for fundamental rights, or that promoting human rights norms could help protect against environmental damage.

A key reason for this apparent schizophrenia can be understood through reference to attempts by some countries (and resistance thereto on the part of others) from 1994 onwards to move the international human rights community towards a more progressive understanding of the links between human rights and the environment.

5 https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

Building on reports submitted to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities by its Special Rapporteur on human rights and the environment, Fatma Zohra Ksentini,⁶ in 1994 a group of States, led by Costa Rica, South Africa, and Switzerland, began tabling resolutions at the Commission on 'Human rights and the environment.'⁷ These early resolutions were interesting for two principal (interconnected) reasons. First, they were notably unambitious – a result of difficult negotiations between the global North and global South. Second, a reading of the texts gives a strong sense of the latter's determination to 'balance' environmental concerns with a linked (and overriding) determination not to, under any circumstances, put their national socio-economic development at risk. This determination can be most obviously seen in the repeated references, in the texts, to the concept of the 'right to development.'⁸

The tension between an emphasis on development and an emphasis on environmental protection can be clearly seen playing out in the evolution of the various Commission texts on human rights and the environment between 1994 and 1996. For example, resolution 1994/65, while recognising in one operative paragraph that 'environmental damage has potentially negative effects on human rights,' nevertheless, in another paragraph, repeats language from the 1992 Rio Declaration stating that 'the right to development must be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations,' and (in a preambular paragraph) that States have 'in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies.'⁹

Further developing this theme, while acknowledging that 'the promotion of an environmentally healthy world contributes to the protection of the human rights to life and health of everyone,' the resolution nonetheless makes clear that 'in this connection States shall act in accordance with their common but differentiated responsibilities and respective capabilities,' and that, in order to protect the environment, developing countries will need 'access to

6 See, e.g., Fatma Zohra Ksentini, Human Rights and the Environment, UN Doc. E/CN.4/Sub.2/1992/7 and Add.1 (2 July 1992); Human Rights and the Environment, UN Doc. E/CN.4/Sub.2/1993/7 (26 July 1993); Final Report, UN Doc. E/CN.4/Sub.2/1994/9 (6 July 1994).

7 Human Rights Commission res. 1994/65; res. 1995/14; res. 1996/13.

8 Taken from the title of the 1986 Declaration on the Right to Development, UN Doc. A/RES/41/128 (4 December 1986).

9 <https://digitalibrary.un.org/record/184553?ln=en>

and the transfer of environmentally sound technologies [...] on favourable terms,' and 'new and additional financial resources [...] to achieve sustainable development.'

After 1996, the resolutions (which continued to include language such as 'common but differentiated responsibilities' and 'additional financing') were discontinued. The issue of human rights and the environment would be largely absent from the Commission's agenda for the next five years (when the Commission adopted decision 2001/111 calling for an expert seminar on human rights and the environment).¹⁰

Later that year, which was also the year of the World Summit on Sustainable Development, the initiative on human rights and the environment returned in earnest, but with draft resolutions now called: 'Human rights and the environment as part of sustainable development.'¹¹ This was a small but symbolic shift. According to a Costa Rican diplomat involved in the negotiations,¹² the name change was one of a number of concessions extracted from the main sponsors by large developing States. The goal of these countries, in 2002 as in 1994–1996, was to place the mutually dependent goals of promoting human rights and protecting the environment within the wider framework of (sustainable) development.



Two girls from Tacloban City in the Leyte Province of the Philippines stand in front of some of the damage and debris left by Super Typhoon Yolanda/Haiyan.

UN Photo/Evan Schneider. 21 December 2013.

10 Human Rights Commission dec. 2001/111, 25 April 2001.

11 Human Rights Commission res. 2002/75, 25 April 2002; see also Human Rights Commission res. 2003/71, 25 April 2003; res. 2005/60, 20 April 2005.

12 Discussions with the author

HUMAN RIGHTS AND CLIMATE CHANGE

This remained the situation until members of the new Human Rights Council took their seats for the first time in June 2006. By this point, UN-level efforts to clarify and leverage the relationship between human rights and the environment had ground to a halt. As a Costa Rican diplomat involved in the last resolutions of the Commission noted: 'we [the main sponsors of the resolutions] had been tied in so many knots, from so many sides, that the resolutions had become incomprehensible, and the initiative had lost any sense of purpose.'¹³

The key to overcoming the impasse would not be (for the time being) further resolutions on human rights and the environment, but rather a new initiative focused on human rights and climate change. This initiative was significant because it reflected a new determination on the part of small, environmentally vulnerable countries to question and then openly oppose the 'development first' paradigm presented by their larger, more powerful partners in the Global South. For these States, it was unthinkable that the prioritisation of economic growth or development could be used as a justification or excuse to harm the natural environment, especially in a globalised world in which such harm is often transboundary. Similarly, it was unthinkable that the international community could ignore the real and present threat posed by environmental harm (especially linked to climate change) to internationally recognised human rights.

From 2007 onwards, climate change and its relationship with human rights became the issue within which these vulnerable country concerns were distilled and projected. The links between human rights and climate change first began to be drawn, at the intergovernmental level, during the seventh session of the Council in March 2008. Prompted by the Malé Declaration of November 2007,¹⁴ several countries, including the Maldives and Philippines, noted the serious consequences of climate change for the full enjoyment of human rights and called on the Council to address the human rights dimension. Then, in March 2008, the Maldives, together with a core group of States, including Bangladesh, Germany, Ghana, Maldives, Philippines, Switzerland, UK, Uruguay, and Zambia, secured the adoption by consensus of Council resolution 7/23 on 'Human rights and climate change.'¹⁵

Resolution 7/23 was the first UN resolution to state explicitly that climate change poses 'an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights.'¹⁶ The text also asked OHCHR to prepare a study on the nature and extent of those implications. The study was published the following January.¹⁷

A second Council resolution (10/4), adopted in March 2009 and again led by the Maldives, echoed the findings of the OHCHR report and affirmed that 'human rights obligations and commitments have the potential to inform and strengthen international and national policy making in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes.'¹⁸



Climate Change Effects in Island Nation of Kiribati.
Tarawa, Kiribati.

UN Photo/Eskinder Debebe.

¹³ Supra note 12

¹⁴ Malé Declaration on the Human Dimension of Global Climate Change, November 14, 2007, available at www.ciel.org/Publications/Male_Declaration_Nov07.pdf.

¹⁵ Human Rights Council res. 7/23, 28 March 2008.

¹⁶ Ibid., pmbL para. 1.

¹⁷ OHCHR, Report on the Relationship between Climate Change and Human Rights, UN Doc. A/HRC/10/61 (15 January 2009). For a detailed analysis of the report, and the debate at the Council when the report was presented by OHCHR, see Marc Limon, 'Human Rights Obligations and Accountability in the Face of Climate Change,' *Georgia Journal of International and Comparative Law* 38(3) (2010), pp. 543-592.

¹⁸ Human Rights Council res. 10/4, 25 March 2009, pmbL para. 10.

Although the final texts of resolutions 7/23 and 10/4 were more coherent and focused than the earlier Commission resolutions, the negotiations leading up to their adoption were far from straightforward. The Commission may have been replaced by the Council, but the old political fault lines remained firmly in place, especially over the relative emphasis placed on human rights, environmental protection, and socio-economic development, and over the relative emphasis given to individual State responsibility/obligation on the one hand, and the responsibilities of the international community on the other.

During negotiations, large emerging economies (e.g., China, Egypt, India, Iran, Nigeria, Saudi Arabia) insisted on the inclusion of strong and repeated references to the right to development, as well as to the (State-centric rather than individual-centric) principles of common but differentiated responsibilities, respective capabilities, and historic responsibility. Diplomats for these countries demanded that, if such concepts and principles (or, as they often referred to them, 'safeguards') could not be included in the draft resolution, then it should be withdrawn.



Photo of Ahmed Abdi Ibrahim a watchman at the Afwein water dam in Maalimin, Kenya as a part of UN Drought Appeal, By UNEP/Miranda Grant.

Western European States strongly opposed the inclusion of such language, arguing that it risked creating the impression (and precedent) that developing countries could only guarantee the enjoyment of human rights if they were provided with a permissive international environment in which to do so.

In the end, a compromise was reached whereby the core group agreed to include two carefully worded preambular paragraphs on the right to development, but resisted referencing principles such as common but differentiated responsibilities in a human rights text.

Notwithstanding, certain Western States, notably Canada and the US, continued to express concern. These States were especially worried about setting two interconnected precedents: first, that individual harm caused by environmental degradation could be considered a human rights violation; and second, that polluting (or high emitting) countries (i.e., industrialised, or emerging economies) could be held accountable for resulting human harm in a third country, such as Bangladesh, Maldives or the Philippines. Both concerns were underpinned by a fear of eventual potential domestic and international litigation.

JUNE 2009 PANEL DEBATE

In its resolution 10/4, the Council decided 'to hold a panel discussion on the relationship between climate change and human rights at its eleventh session.'¹⁹ The panel took place three months later, on 15 June 2009.²⁰

During the debate, no delegation argued with the notion that climate change has implications for a wide range of human rights; that already vulnerable 'climate frontline' countries are most at risk (and least able to adapt); and that the human rights impacts do not fall evenly across a given population, but rather disproportionately affect already marginalised or vulnerable groups, such as women and children.²¹

Despite progress in forming a consensus on the broad parameters of the relationship between climate change and human rights, significant differences in emphasis persisted, especially regarding the legal implications of the relationship. While many developing and vulnerable States argued that human rights law creates legal obligations that are applicable to international action on the issue of climate change, developed countries by-and-large continued to insist that climate change and human rights inhabit two separate and very different bodies of law, with no formal connection between the two. For example, during the debate, the US delegation agreed that 'climate change [...] has implications for the full enjoyment of human rights' but at the same time noted that 'there is no direct formal relationship between climate change and human rights as a legal matter.'

These differences in emphasis were amplified in the context of two other key questions posed in OHCHR's report, namely whether climate change impacts constitute a human rights violation, and what human rights obligations exist, at national and international levels, in relation to climate change.

On the first point, a few (though not many) States used the June 2009 panel debate to question the assertion made by OHCHR (in its report) that 'the physical impacts of global warming cannot easily be classified as human rights violations, not least because climate change-related harm often cannot clearly be attributed to acts or omissions of specific States.'²² The strongest opponent of this reading was Pakistan, which argued that it is possible to establish responsibility for climate change and to link

that responsibility to human rights harm: 'We believe it is important and possible to disentangle [the] basics of this causal relationship.' Responsibility for climate change, they went on, can be determined at two levels: developed countries' historical responsibility for climate change, and their failure to comply with international legal obligations.

The main division between States in June 2009 was, however, on the question of the relative weight of national human rights obligations in the context of the climate crisis as opposed to extraterritorial obligations. Again, the fault line between States ran roughly along developed-developing country lines.

For their part, most (but not all) developed countries insisted that while the climate crisis may be international in scope, human rights promotion and protection is the sole purview of national governments vis-à-vis their citizens and others within their jurisdiction. It is therefore up to individual States to promote and protect the human rights of their people in the face of such crises, irrespective of the additional burden placed upon them.



Surrounded by the high tide water a fishing village in the Sundarbans forest area, Bangladesh on April 25, 2021.

IMF Photo/K M Asad. 25 April 2021. Sundarbans, Bangladesh.

¹⁹ Res. 10/4, op. para. 1.

²⁰ For the concept note and a summary of the panel debate, see <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Panel.aspx>.

²¹ This summary of the panel debate, including an analysis of the statements of key States, is taken from Limon, 'Human Rights Obligations and Accountability in the Face of Climate Change.'

²² OHCHR, Climate Change and Human Rights, para. 96.



Bangladesh-Flooding, 2019.

Photo by UN Women/
Mohammad Rakibul Hasan.

On the other hand, the importance of recognising and enforcing extraterritorial human rights obligations in the face of climate change was made, in varying formulations, by almost all developing country delegations that took part in the debate, as well as by some more progressive developed country representations. Most vocal were environmentally vulnerable States. Bangladesh offered the frankest rebuttal of the State-centric assessment offered by industrialised countries:

It is often said that human rights protection is the responsibility of the national authorities - basically downgrading international cooperation. Even in dealing with climate change, which is a global issue, too much emphasis is put on national responsibility [...] Least Developed Countries and Small Island States will be the worst affected by climate change although they have contributed least to global greenhouse gas emissions. It is not only unfair but also unjustified to hold these countries responsible fully for protecting their people.

Other vulnerable States were quick to emphasise that the need to give greater emphasis to extraterritorial obligations should not be seen as commensurate with a reluctance to accept their own human rights obligations. Rather, while accepting the importance of domestic action, they were nonetheless robust in their defence of the idea that to effectively protect human rights in the face of climate change, observance of their international human rights obligations must necessarily be combined with respect, on the part of the international community,

for extraterritorial obligations – most particularly the obligation 'to refrain from taking action which interferes with the enjoyment of human rights in other countries, and to take steps through international cooperation to facilitate the fulfilment of those rights.'²³

For example, the Maldives, speaking on behalf of twelve SIDS, emphasised that while they were committed through domestic policies to address the human rights implications of climate change,

with emission levels continuing to rise and considering the [...] inadequacy of new and additional adaptation funding, the fact is that it will become increasingly difficult for us [acting alone] to fully safeguard the fundamental freedoms and rights of our island populations. This then raises the issue of international cooperation [...] We believe that such cooperation is not only desirable; it is vital and, moreover, is a legal obligation under the core international human rights instruments. Under these agreements there is a clear extraterritorial obligation beholden on State Parties to refrain from acting in such a way as knowingly undermines human rights in other countries [...] There is also an extraterritorial legal obligation to take steps through international assistance to facilitate the fulfilment of human rights in other countries.²⁴

²³ OHCHR, Climate Change and Human Rights.

²⁴ Joint statement by the Maldives, on behalf of 12 SIDS, 15 June 2009.



UNFCCC Conference of Parties (COP21) in Paris, 2015. Adoption of the Paris Agreement.

Photo by UNclimatechange on Flickr.

A FORK IN THE ROAD

After the conclusion of the June 2009 panel, the main sponsors of the Council's two resolutions on human rights and climate change (Bangladesh, Germany, Ghana, Maldives, Philippines, Switzerland, UK, Uruguay, and Zambia) faced two questions.

The first was how to leverage the emerging consensus on the human rights impacts of climate change to feed into and help raise ambition in the UNFCCC climate change negotiations. On this question, the Council had already decided, with resolutions 7/23 and 10/4, to transmit its deliberations and conclusions on the relationship between human rights and climate change to the Conference of Parties (COP) to the UNFCCC. This decision, together with intensive lobbying by the Maldivian and Swiss delegations to the COP, especially in the run up to COP15 in Copenhagen and COP16 in Cancun, and a late intervention at COP16 by Ambassador Luis Alfonso de Alba (the first President of the Human Rights Council and, by the time of COP16, Mexico's Special Envoy on climate change), eventually resulted in the inclusion of human rights language in preambular paragraph 7 and operative paragraph 8 of the Cancun Agreements (decision 1/COP.16).²⁵ The wording used in paragraph 8 would be closely reflected, five years later, in paragraph 10 of the Paris Agreement.²⁶

Acknowledging that [...] Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.

The second question facing the main sponsors of Council resolutions 7/23 and 10/4 was: how to usefully continue their work at the Council to further clarify human rights norms as they pertain to climate change, and do so in a manner that would maintain consensus? This was a not insignificant challenge. There was a real risk, as the main sponsors surveyed the politics of the Council in 2011, that the initiative on human rights and climate change might be seized by one side of the political divide and used as a political tool to attack the other.

Against this background, the Maldives approached Costa Rica and Switzerland, two of the three former main sponsors of the Commission's resolutions on human rights and the environment (Switzerland was also a member of the core group on human rights and climate change), to discuss their interest in restarting that initiative at the Council.

²⁵ UNFCCC, Report on the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010, UN Doc. FCCC/CP/2010/7/Add. 1 (March 15, 2011).

²⁶ https://unfccc.int/sites/default/files/english_paris_agreement.pdf

The thinking of Maldivian diplomats was that further meaningful and consensus-based progress at the Council on human rights and climate change was highly unlikely. Moreover, the initiative had fulfilled its purpose – to generate awareness and understanding about the impacts of global warming on human rights, to show how human rights principles could be leveraged to improve global climate change policy, and to transfer that understanding to the main UN forum for addressing climate change: the UNFCCC COP.

What was needed instead was a norm-clarifying and norm-defining effort at the Council, premised on understanding how human rights principles and commitments might be applied to international and national environmental policy (including climate change policy). In other words, the main sponsors of the new initiative wanted to move beyond general debates between States on the presence and nature of the relationship between human rights and the environment, to a more practical exercise premised on setting out the norms and, ultimately, working with all relevant stakeholders to apply those norms internationally and domestically.

Crucially, such an exercise would be more feasible and achieve better results within the overall context of human rights and the environment, than if the focus were to remain centred on climate change. Yet even in the wider context of environmental policy, further progress would still be difficult if left to inter-State negotiation. Far better would be for the Council to establish an Independent Expert (a type of Special Procedures) mandate to clarify and set down relevant norms in an objective manner and free from political influence.

In this context, in March 2011, at the 16th session of the Council, the Maldives, Costa Rica and Switzerland, together with a wider core group that initially included Germany,²⁷ Morocco, New Zealand,²⁸ Slovenia and Uruguay,²⁹ began consultations on a new draft resolution on human rights and the environment – the first text on the subject for eight years.

²⁷ Germany left the new core group shortly afterwards as the issue was not considered a priority by Berlin. Notwithstanding, Uruguay remained extremely supportive of the initiative, and would play a vital role in securing Human Rights Council recognition of the right to a clean, healthy, and sustainable environment in 2021.

²⁸ New Zealand also left the core group shortly afterwards, when the then Deputy Permanent Representative to the UN in Geneva, Wendy Hinton, ended her term.

²⁹ Uruguay also left the core group shortly afterwards, when the then human rights expert at the Permanent Mission to the UN in Geneva, Pauline Davies, ended her term. Notwithstanding, Uruguay remained extremely supportive of the initiative, and would play a vital role in securing Human Rights Council recognition of the right to a clean, healthy, and sustainable environment in 2021.

The eventual result, Council resolution 16/11,³⁰ represented – again – a fine balancing act between the needs and concerns of large emerging economies and those of large, developed countries. The preamble recalled relevant principles of sustainable development (e.g., common but differentiated responsibilities), but, crucially, it did so by directly citing relevant international instruments (e.g., Principle 7 of the Rio Declaration) rather than by asserting the principles in their own right (in a human rights text); and repeated paragraphs found in Council resolutions 7/23 and 10/4 on the right to development.

Further preambular paragraphs then recalled the broad parameters of the common ground agreed by States in the context of the Council's two resolutions on climate change, the OHCHR report and the 2009 panel debate. The aim of these paragraphs was to define the existing common ground around human rights and climate change/human rights and the environment – to clarify and set down, in an intergovernmental text, the contours of contemporary consensus.

The operative paragraphs then put in place the first step through which the main sponsors would seek to further expand the contours of that common ground. Most importantly, the Council asked OHCHR to prepare an assessment of the current situation vis-à-vis the relationship between human rights and the environment, internationally, regionally, and nationally.³¹ This 'scoping report' was to be presented one year later, at the Council's 19th session (March 2012).

Following the presentation of the report, the core group tabled a new draft resolution welcoming the study, yet recognising, nonetheless, 'that certain aspects of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment require further study and clarification.' With that normative gap in mind, the text (adopted by consensus as resolution 19/10³²) called for the establishment of 'an independent expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.'

³⁰ Council res. 16/11 on 'Human rights and the environment,' 24 March 2011

³¹ https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-34_en.pdf

³² Council res. 19/10 on 'Human rights and the environment,' 22 March 2012



Professor John Knox, former UN Special Rapporteur on human rights and the environment speaking at a side-event 'Environmental Human Rights Defenders: Responding to a Global Crisis' on the margins of the 34th session of the UN Human Rights Council.

As an Independent Expert rather than a Special Rapporteur the new three-year Special Procedures mandate would have a norm-setting focus, with the objective of clarifying 'the human rights obligations, including non-discrimination obligations, relating to the enjoyment of a safe, clean, healthy and sustainable environment.' Later in 2012, the Council appointed John Knox as the first mandate-holder.

It was the unspoken hope of some of the members of the core group that such a norm-clarifying and norm-setting exercise, undertaken in consultation with, and with the consent of all States, would represent a first step towards open and informed intergovernmental reflections on the relative merits of declaring a new universal right to a clean, healthy, and sustainable environment, and would help clarify the scope and content of such a right.

At the conclusion of the first three-year term, the Council decided (in resolution 28/11 of March 2015), on the basis of a text negotiated by Costa Rica on behalf of the core group, to renew the mandate for a further three years – but this time as a Special Rapporteur.³³ This meant the mandate-holder would be expected to expand his focus beyond clarifying norms, to working with States and other

³³ Human Rights Council res. 28/11, 26 March 26, 2015.

stakeholders to see those norms implemented and realised at national level.

Two subsequent resolutions, adopted by the Council in March 2016 (resolution 31/8) and March 2017 (resolution 34/20) respectively, demonstrated how successful the new Special Procedures mandate had been in clarifying and codifying the human rights normative framework as it relates to the environment, and – crucially – of doing so in a manner that maintained the support of, and built confidence among, UN member States.³⁴

Resolution 31/8, an ambitious text (nevertheless, adopted by consensus) drafted and negotiated by Slovenia, set out a long list of human rights norms relating to the environment. This normative content (echoed in resolution 34/20) in-turn helped to inform the content of the Framework Principles on Human Rights and the Environment³⁵ and therefore, by extension, of the potential substantive content of a future universal right to a healthy environment (see below).

In addition, resolutions 31/8 and 34/20 repeatedly used a formulation, first seen in resolution 16/11, designed to provide a potential stepping-stone to such a right: namely 'the promotion and protection of human rights as they relate to the enjoyment of a safe, clean, healthy and sustainable environment.' As noted by observers at the time of the adoption of resolution 16/11, this wording (especially the inclusion of the phrase 'enjoyment of') was designed to enable proponents, at some point in the future, to add the words '[...] the right to [...]' so that the UN would consider 'the enjoyment of [the right to] a safe, clean, healthy and sustainable environment.' Indeed, paragraph 5(a) of resolution 31/8 and paragraph 6(a) of resolution 34/20 give a clear indication that this was the ultimate objective of the main sponsors. They each encouraged States:

To adopt an effective normative framework for the enjoyment of a safe, clean, healthy, and sustainable environment.

³⁴ Human Rights Council res. 31/8, 23 March 2016; Human Rights Council res. 34/20, 24 March 2017.
³⁵ <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx>

SPECIAL RAPPORTEURS MAP THE CONTENT OF THE RIGHT TO A HEALTHY ENVIRONMENT

From 2012, the first Independent Expert/Special Rapporteur on human rights and environment, John Knox, issued a series of reports describing, in detail, how human rights bodies have applied human rights norms to environmental issues, including a 'mapping report' that sought to bring together, and summarise, his key findings.³⁶

Broadly speaking, Knox found that the obligations of States to respect, protect and fulfil a globally recognised human right to a healthy environment have evolved along three paths: the recognition of the right to a healthy environment at the regional and national levels; the application of other human rights, such as the rights to life and health, to environmental issues; and the inclusion of procedural rights in environmental treaties.

In 2018 these three paths converged with the presentation, by the Special Rapporteur, of UN Framework Principles on Human Rights and the Environment.³⁷ These brought together and summarised the human rights obligations of States in relation to the enjoyment of a safe, clean, healthy, and sustainable environment. They also (although this was not said at the time) provided the possible content of a future universal right to a healthy environment.

In March 2018, the Council adopted resolution 37/8 on the basis of a draft presented by the core group, under the leadership of Switzerland. With the resolution, the Council took note 'with appreciation' of the latest report of the Special Rapporteur 'in which he presented his framework principles on human rights and the environment,' and called upon States 'to implement fully their obligations to respect and ensure human rights without distinction of any kind, including in the application of environmental laws and policies.'³⁸

At the same session [37th session], the Council renewed the mandate of the Special Rapporteur for a further three years, and later appointed David Boyd as the new mandate-holder. Before completing his term, Knox had submitted his final report to the UN – on this occasion, to the General

³⁶ See Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment: mapping report. UN Doc. A/HRC/25/53 (30 December 2013).

³⁷ This section draws on the Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment, UN Doc. A/HRC/37/59 (24 January 2018). A list of selected sources for the Framework Principles is available at <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx>.

³⁸ Human Rights Council resolution 37/8 on Human rights and the environment, operative paragraph 3, 22 March 2018



David Boyd, Special Rapporteur on Human Rights and the Environment. March 12, 2019. Nairobi Kenya. Human rights-based approaches to innovation for sustainable development

UNEP/CYRIL VILLEMMAIN

Assembly. But because the new mandate-holder took up his post on 1 August, it was he who presented the report to the GA (autumn 2018). With the report, the outgoing and incoming Special Rapporteurs called on the UN to 'recognize the human right to a safe, clean, healthy and sustainable environment,' and set out their arguments for 'why the time has come for such recognition by the United Nations.'³⁹

Since then, Boyd has issued a range of reports describing how human rights law, and particularly the right to a healthy environment, applies to substantive issues including air pollution, climate change and biodiversity.⁴⁰ He has also published a report describing over 500 good practices in the implementation of the right to a healthy environment from more than 170 States.⁴¹

³⁹ <http://www.srenvironment.org/sites/default/files/Reports/2018/Boyd%20Knox%20UNGA%20report%202018.pdf>

⁴⁰ UN Docs. A/HRC/40/55 (8 January 2019) [air pollution]; A/74/161 (15 July 2019) [climate change]; A/75/161 (15 July 2020) [biodiversity].

⁴¹ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/HRC/43/53 (30 December 2019).



Ms. Michelle Bachelet, former UN High Commissioner for Human Rights, during the annual high-level discussion on human rights mainstreaming. 43rd session of the Human Rights Council, Palais des Nations, Geneva, Switzerland, February 24, 2020.

UN Photo/Pierre Albouy.

FEBRUARY 2020 EXPERT SEMINAR

Building on this significant body of work since 2008, and in order to provide a platform for the final push towards universal recognition of the right to a safe, clean, healthy and sustainable environment (R2E), on 6 February 2020, the core group on human rights and the environment, under the leadership of Slovenia, and with the support of the Universal Rights Group (URG) and the Commonwealth, convened an expert seminar to consider the growing movement towards national-level recognition of R2E around the world, to understand the value of this right for individual rights-holders and for the environment, and to answer one central question: is it time for UN recognition of R2E?

The seminar began with introductory remarks by the Ambassadors of Slovenia and the Maldives, before hearing keynote addresses by the UN High Commissioner for Human Rights, Michelle Bachelet, the Executive Director of UNEP, Inger Andersen, UNICEF's Deputy Director of Programmes, Henriette Ahrens, and the Special Rapporteur on human rights and environment, David Boyd. States and civil society were then able to offer comments and present their positions.⁴²

For her part, the High Commissioner for Human Rights drew attention to the importance of universal recognition of R2E, which, she said, has the potential to 'transform the lives of millions.' She argued that a healthy environment 'is

just as vital to human well-being as shelter, clean water or freedom of expression.' For this reason, 'all people everywhere should have the right to live in a healthy environment and have the ability to hold those who impede that right to account.' Noting that more than 150 countries have already recognised this basic reality through constitutional provisions, laws, and regional agreements, she said that global recognition was the natural and necessary next step to drive more ambitious policies to protect people and planet.

Unfortunately, the onset of the COVID-19 pandemic (which led to a sharp reduction in the number of in person diplomatic meetings at the UN) put paid to the core group's initial plan to use the seminar as a launchpad for a final push for UN recognition in 2020. Instead, the group announced the launch of a process of regional and bilateral consultations to gather the views of States on the possibility of UN recognition. Worryingly, some in the core group began to state (privately and publicly) that the final decision over whether to proceed with recognition, via resolutions at the Council and the GA, would ultimately be dependent on the feedback received – potentially handing a veto to States antagonistic towards R2E. Moreover, over the course of 2020, key individuals in the core group ended their terms in Geneva, while Switzerland was increasingly hesitant about pushing for UN recognition of R2E on the grounds that it had itself not recognised R2E in domestic law.

⁴² <https://www.universal-rights.org/urg-policy-reports/the-time-is-now-the-case-for-universal-recognition-of-the-right-to-a-safe-clean-healthy-and-sustainable-environment/>



Grenada, reefs & erosion.
Fishermen At Grand Anse beach, Grenada.
Photo by Kadir van Lohuizen on UNEP Flickr.

Taken together, the foregoing meant that, by the summer of 2020, there was a clear sense of paralysis amongst the membership of a relatively new core group. The process of regional consultations was progressing slowly due to ongoing COVID restrictions and, predictably, several important UN member States had used that process to express their firm opposition to UN recognition of R2E. Most importantly, at that moment there was no natural leader of the core group (as noted above, since its establishment in 2011, the core group had benefited from strong individual leadership on the part of diplomats from, first, the Maldives, and then Costa Rica, Slovenia, Switzerland and – again – Slovenia).

Perhaps the key event in turning around this situation was the appointment on 1 August 2020, of Catalina Devandas Aguilar (a former UN Special Rapporteur on the rights of persons with disabilities) as Costa Rica's new Permanent Representative to the UN in Geneva. Amongst her responsibilities, Ambassador Devandas was encouraged by her government to secure a Council resolution recognising R2E. Therefore, after Ambassador Devandas had presented her credentials in October, Costa Rica reassumed leadership of the core group.

At around the same time (14 September), and in a move coordinated with Costa Rica, a group consisting of the current and former UN Special Rapporteurs on human rights and the environment, civil society leaders and academics,⁴³ sent a letter to the core group⁴⁴ urging them:

... to seize the historic opportunity now before us and to publicly commit to tabling the necessary resolutions [recognising R2E] before both the Council and the General Assembly by the end of 2021 – in time for the 50th anniversary of the Stockholm Conference on the Human Environment in 2022. This public commitment could be extended, for example, via a joint statement during the present 45th session of the Council [...] and a joint statement during the upcoming meeting of the Third Committee of the General Assembly (75th session).

The letter came on top of a further civil society appeal to the core group (entitled 'The Time Is Now'), signed by over

43 David Boyd, UN Special Rapporteur on human rights and the environment; John Knox, former UN Special Rapporteur on human rights and the environment; Astrid Puentes Riaño, co-Executive Director, Asociación Interamericana para la Defensa del Ambiente (AIDA); Ashfaq Khalfan, Director, Law and Policy, Amnesty International; Matthew McKinnon, Executive Director, Aroha; Dan Magraw, President Emeritus, Center for International Environmental Law (CIEL); Carroll Muffett, President and CEO, Center for International Environmental Law (CIEL); Children's Environmental Rights Initiative (global coalition); Martin Wagner, Managing Attorney, International Program, Earthjustice; Daniel Wilkinson, Acting Director, Environment and Human Rights, Human Rights Watch; Joni Pegram, Director, Project Dryad; Akihiko Morita, Shokei Gakuin University, Japan; Marc Limon, Executive Director, Universal Rights Group (URG).

44 <https://www.universal-rights.org/wp-content/uploads/2020/09/Letter-on-the-right-to-environment-150920-generic.pdf>

1,000 civil society organisations from 100 countries, calling for the Council to recognise 'the right of all to a safe, clean, healthy and sustainable environment [...] without delay.'⁴⁵

Responding to these interventions, on 15 and 24 September 2020, members of the core group delivered two important statements that hinted at a new determination to secure recognition in 2021.

The first was issued by Ambassador Stadler Repnik, the outgoing Ambassador of Slovenia (the outgoing coordinator of the core group), and noted that, over preceding months, the group had 'started a series of informal consultations on a possible global recognition' of the R2E. 'I sincerely believe,' she continued, 'that the time has come to act together and to act now.' She concluded by expressing her expectation that the ongoing process of consultations would result in the consensual recognition of the R2E by UN member States.⁴⁶

This was followed, on 24 September, by a joint statement⁴⁷ delivered at the Council by Costa Rica on behalf of Maldives, Morocco, Slovenia, and Switzerland, reaffirming their belief 'that a safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights [...] Therefore, a possible recognition of the right at a global level could have numerous important implications [for] our and future generations.'⁴⁸



Catalina Devandas Aguilar, United Nations, Special Rapporteur on the Rights of Persons with Disabilities during A Day For All, Event. 3 December 2015. UN Photo / Jean-Marc Ferré

45 https://www.genevaenvironmentnetwork.org/wp-content/uploads/2020/09/TheTimelsNow_Global-Call-for-the-UN-to-Recognize-the-Right-to-a-Healthy-Environment-English.pdf

46 <https://www.childrenenvironment.org/blog/we-must-act-for-children-and-future-generations>

47 https://www.genevaenvironmentnetwork.org/wp-content/uploads/2020/09/StatementCoreGroupHRE_towardsGlobalRecognition.pdf

48 The rather ambiguous wording was due to continued uncertainty in Berne about supporting universal recognition of a right that was not, at the time, recognized by Switzerland. This hesitancy was, however, balanced by a determination amongst some in the Department of Foreign Affairs, that Switzerland, as a founding member of the core group, should be part of such a historic enterprise.



MOMENTUM BUILDS

By January 2021, the balance of views in the core group had once again swung behind (re-) launching a concerted push, led by the group itself, for UN recognition (as opposed to the 'consult-and-see' approach that had gained traction during the first half of 2020). In discussions between members of the core group and other key stakeholders, including David Boyd and John Knox, the current and former UN Special Rapporteurs, opinions were increasingly coalescing around the idea of tabling the necessary draft resolution before the Council at its 48th session in September 2021.

To achieve this goal, key members of the core group, especially Ambassador Devandas, and the above-mentioned 'shadow core group,' informally agreed on a roadmap of steps to build momentum towards the Council's 48th session.

First, on 23 February, URG organised a high-level (online) event (cosponsored by Costa Rica, Maldives, Morocco, Slovenia, OHCHR, UN Special Procedures, UNEP, and UNICEF) to launch a policy report entitled: '#TheTimelsNow: The case for universal recognition of the right to a safe, clean, healthy, and sustainable environment,' authored by David Boyd, John Knox, and Marc Limon,⁴⁹ and featuring

49 <https://www.universal-rights.org/urg-policy-reports/the-time-is-now-the-case-for-universal-recognition-of-the-right-to-a-safe-clean-healthy-and-sustainable-environment/>

a foreword by Rodolfo Solano Quirós, Minister of Foreign Affairs of Costa Rica. This was planned as an occasion for States, senior UN officials, and civil society to reaffirm their support for UN recognition, and as an opportunity for proponents to respond to some of the important questions that had arisen during the regional consultations.

Then, at the 46th session of the Council in March 2021, the core group organised an ambitious joint statement setting out its intentions and began work to secure as many cosponsors as possible – to demonstrate wide political support. The final statement, delivered by the Maldives on behalf of 69 countries, including 17 Council members, asserted that:⁵⁰

According to the Special Rapporteur on human Rights and the environment, the number of States recognising the right to a clean, safe, healthy, and sustainable environment in various forms has grown over the past few years, with more than 155 countries now recognising this right, or elements of the right, in their national legal systems. Despite its various formulations, the right to a safe, clean, healthy, and sustainable environment is becoming universally recognised.

50 Costa Rica, Maldives, Switzerland, Morocco, Slovenia, Guatemala, Panama, Montenegro, Monaco, Albania, Kenya, San Marino, Marshall Islands, Kazakhstan, Liechtenstein, Nepal, Ireland, Bhutan, Uruguay, Peru, Chile, Ecuador, Madagascar, Bahamas, Luxembourg, Greece, Italy, Portugal, Spain, Republic of Korea, Palestine, Austria, Sierra Leone, Cape Verde, Bangladesh, Malaysia, Fiji, Germany, Slovakia, Ukraine, El Salvador, Honduras, Argentina, Malta, Cyprus, Denmark, Iceland, Poland, France, North Macedonia, Georgia, Paraguay, Tunisia, Lithuania, Finland, Romania, Estonia, Latvia, Sweden, Philippines, Barbados, Mexico, Croatia, Mauritius, Belgium, Central African Republic, Niger, Mali, and Vanuatu.

[...] It is our belief that a safe, clean, healthy, and sustainable environment is integral to the full enjoyment of human rights. Therefore, the possible recognition of the right at a global level would have numerous important implications on what we leave to our future generations.

There are increasing calls for a global recognition of such a right from States, UN representatives, experts, and civil society. We are committed to engaging in an open, transparent, and inclusive dialogue with all States and interested stakeholders on a possible international recognition of the right to a safe, clean, healthy, and sustainable environment.

Although this was an important step forwards – the first time the core group had publicly hinted at a determination to push for recognition at the UN – the statement remained, nonetheless, ambiguous on the key question of whether the group would table a draft resolution before the Council in 2021. This ambiguity reflected nervousness, on the part of all members of the group, about their chances of securing sufficient support (linked with this point, at this stage key members were adamant that such an important resolution should be adopted by consensus), as well as, importantly, tension within the group between those (especially Costa Rica and the Maldives) that wanted to go further and faster, and those that were more hesitant.

The stance of Switzerland, an original member of the core group going back to the time of the Commission on Human Rights, was particularly important. On the one hand, some Swiss diplomats were keen that, having led on this initiative for over 25 years, Switzerland should be fully involved in the ‘end game.’ On the other hand, senior Swiss officials were understandably reluctant to press the UN membership as a whole to recognise a right that Switzerland itself had not yet recognised, while there were also concerns amongst some about the legal implications of recognising R2E. The net result of this situation was a de facto strategy of postponing any decision on tabling a draft resolution until a political decision to support – or not – UN recognition had been taken in Berne, and, in the meantime, of ensuring that public statements would clearly indicate the core group’s ‘direction of travel’ but stop short of committing Switzerland to tabling a resolution.

A particularly noteworthy sponsor of the March 2021 joint statement was Germany. As explained earlier in this paper, Germany had been amongst the original members

of the core group on human rights and environment but had left because – at the time – the issue was not considered a priority. However, following years of lobbying by civil society in Geneva allied with internal advocacy by the German Permanent Mission, and also thanks to a shifting political climate in Germany (especially the growing popularity of the Green Party, and a landmark ruling by Germany’s Federal Constitutional Court, in early 2021, which found that certain provisions of the Federal Climate Change Act were incompatible with fundamental rights⁵¹), by February-March 2021 Germany was a strong supporter of UN recognition of R2E. Indeed, at various points during the first half of 2021, there were informal talks between Germany and Costa Rica about the former re-joining the core group or being part of a wider ‘group of friends’ of the initiative, alongside other supportive countries including Fiji, Kenya, Marshall Islands, Mauritius, Mexico, Uruguay (also an original core group member), and perhaps even Egypt. Although these talks did not, in the end, lead to an expansion of the core group, Germany would in-any-case play a critical role in securing the adoption of the Council resolution recognising R2E.

Other important ‘converts’ by March 2021 included Denmark, Finland and Sweden. Previously, each of these countries had – like many Western States (as recounted earlier in this report) – remained unconvinced about the value of connecting the UN’s human rights and environmental agendas (and concerned about the political and legal risks of doing so), and were cautious about recognising a new universal right. A key factor in shifting these positions (as well as the positions of many other UN members over the course of 2020 and 2021) was the influence of individual diplomats in Geneva. The role of diplomats at the UN is often understood as being solely a representative one. In other words, diplomats are there, simply, to present their State’s position before relevant UN bodies and organisations. However, in reality, diplomats also play a critical role in feeding information into domestic decision-making processes, and thereby, in some cases, shifting national policy. As explained in more detail below, once it became apparent that the core group would push for UN recognition of R2E in 2020 or 2021, it gave diplomats from across the UN’s membership important leverage to engage with decision-makers in national capitals and try to persuade them to be ‘on the right side of history.’

By March 2021 it was increasingly clear what being ‘on the right side of history’ meant. The UN’s senior leadership, including the Secretary-General and the High Commis-

sioner for Human Rights, was increasingly forthright in its view that human rights, including the right to a healthy environment, must be placed front and centre in any effective global response to the growing environmental and climate crises.

‘Our war on nature has left the planet broken,’ said UN Secretary-General Antonio Guterres in December 2020, at the launch of a new UNEP report laying out a programme to address the three ‘interwoven’ crises of climate, pollution and biodiversity loss.⁵² The ‘piecemeal’ approaches of the past have not worked, he argued, because they have ignored the multiple links between environmental, development and human rights challenges.⁵³ Instead, as the world recovers and rebuilds from the pandemic, science and policymakers should ‘open a pathway’ that seeks to promote and protect human rights, and achieve the SDGs by 2030 and a carbon neutral world by 2050, ‘while bending the curve on biodiversity loss and curbing pollution and waste [...] Taking that path means innovation and investment only in activities that protect both people and nature. Success will include restored ecosystems and healthier lives as well as a stable climate.’⁵⁴

Recognition of the close inter-relationship between human life, dignity, and rights, and the environmental, biodiversity and climate crises, and a determination to address all these things in an integrated manner, were also central themes in the Secretary-General’s 2020 ‘Call to Action’ on human rights, and his more recent report presenting ‘Our Common Agenda.’ Regarding the former, the ‘Call to Action’ recognises that ‘the climate emergency threatens the rights and dignity not only of millions of people worldwide but also of people not yet born,’ speaks to the importance of empowering environmental human rights defenders (EHRDs), and urges States to protect rights by promoting ‘a safe, clean, healthy and sustainable environment.’⁵⁵ In his report setting out ‘Our Common Agenda,’ the Secretary-General likewise argued that the great challenges facing humankind today, notably the COVID-19 pandemic, a changing climate, biodiversity loss and pollution, widening inequalities, and ‘poverty, discrimination, violence and exclusion,’ which are denying millions of people their basic rights, ‘are interconnected, across borders and all other divides.’ Thus, they can ‘only be addressed by an equally interconnected response.’⁵⁶ One of the Secretary-General’s key proposals in ‘Our Common Agenda’ (under commitment 2 – ‘Protect our planet’) was recognition of the universal right to a healthy environment.



Photo taken at the climate march in London on 21 September, 2014.

By Garry Knight on Flickr.

51 https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html?ljsessionid=BDDC5CCCC30DD7A5791EAC6A0ECA022.1_cid377

52 <https://www.unep.org/resources/making-peace-nature>

53 <https://www.dw.com/en/making-peace-with-nature/a-56615328>

54 <https://public.wmo.int/en/media/news/make-peace-nature-says-new-un-report>

55 https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf

56 <https://www.un.org/en/content/common-agenda-report/summary.shtml>



Photo taken at the climate march in London on 21 September, 2014.

By Garry Knight on Flickr.

Taking their lead from the Secretary-General, in 2020-2021, various UN agencies and programmes began to throw their support behind universal recognition of R2E. This movement across the UN secretariat was led by OHCHR, UNEP, and UNICEF, however, by March 2021, 15 agencies and programmes⁵⁷ had joined together to 'declare that the time for global recognition, implementation, and protection of the human right to a safe, clean, healthy, and sustainable environment is now.'⁵⁸

This was followed in June 2021 by the endorsement of a Joint Commitment by the UN's Executive Committee (the organisation's highest decision-making body, chaired by the Secretary-General). Entitled 'STEP UP! A joint commitment by Heads of United Nations Entities to promote the right of children, youth and future generations to a healthy environment and their meaningful participation in decision-making at all levels, in relation to climate action

and climate justice,'⁵⁹ the paper stated that 'a safe climate is a vital element of the right to a safe, clean, healthy and sustainable environment and is essential to human life and well-being,' and committed the UN to 'step up our action' to promote 'the rights of children, youth and future generations to climate justice and a healthy environment.' To that end, the Executive Committee committed to:

- Support and carry out effective advocacy for global recognition and realisation of young people's and children's inalienable right to a safe, clean, healthy, and sustainable environment, recognising the disproportionate impacts that the climate crisis and environmental harm have on them and future generations, as well as acknowledging their role as key stakeholders and critical agents of change; and
- Increase UN support to member States, at all levels, for legislative and policy frameworks that promote and implement the right to a safe, clean, healthy, and sustainable environment, and for effective access to justice and remedies for environment-related matters.

⁵⁹ <https://www.sparkblue.org/system/files/2021-06/210615%20STEP%20UP%20-%20Joint%20Commitment%20by%20Heads%20of%20UN%20Entities.pdf>

⁵⁷ International Labour Organization (ILO), Joint United Nations Programme on HIV/AIDS (UNAIDS), Office of the High Commissioner for Human Rights (OHCHR), Office of the Secretary-General's Envoy on Youth (OSGEY), UN Special Representative of the Secretary-General on Violence Against Children (SRSG VAC), UN Women, United Nations Development Programme (UNDP), United Nations Economic Commission for Europe (UNECE), United Nations Economic Commission for Latin America and the Caribbean (UNECLAC), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Environment Programme (UNEP), United Nations High Commissioner for Refugees (UNHCR), United Nations International Children's Emergency Fund (UNICEF), United Nations Population Fund (UNFPA), World Health Organization (WHO)

⁵⁸ <https://www.unep.org/news-and-stories/statements/joint-statement-united-nations-entities-right-to-a-healthy-environment>

In addition to the UN secretariat, the campaign for recognition also featured regular and important interventions by representatives of the human rights mechanisms. For example, on World Environment Day 2021 (5 June), a group of more than 50 Special Procedures mandate-holders called on States to take urgent and timely action to recognise and implement the right to a safe, clean, healthy, and sustainable environment.⁶⁰ 'The lives of billions of people on this planet would improve if such a right were adopted, respected, protected and fulfilled,' the UN experts said.

Perhaps the most critical component, however, of the campaign to convince the core group to table a draft resolution before the Council in 2021, and to convince as many States as possible to support that resolution, was provided by civil society. Over the course of 2020 and into 2021, a global civil society campaign involving over 1,100 NGOs from over 80 countries, as well as over 100,000 children, emerged. In an open letter to the then President of the Council, Ambassador Tichy-Fisslberger of Austria, as well all member and observer States of the Council, in September 2020,⁶¹ these civil society organisations, grouped under the umbrella of the 'right to a healthy environment coalition,' urged the body 'to recognise without delay the human right of all to a safe, clean, healthy and sustainable environment [...] In view of the global environmental crisis that currently violates and jeopardises the human rights of billions of people on our planet,' the letter continued, 'global recognition of this right is a matter of utmost urgency.'

Three civil society actors in particular played a key role in mobilising this decisive campaign: CIEL, Franciscans International, and the Children's Environmental Rights Initiative (CERI).⁶²

The involvement of CERI, together with (as mentioned previously) UNICEF, points to a key feature of the global civil society campaign to secure UN recognition of R2E: namely, the central role played by children, young people, and the groups that represent them. As recognised in the UN Executive Committee's June 2021 Joint Commitment, the importance of this role stemmed both from children's particular vulnerability to environmental harm and climate change (more than 1 in 4 children under the age of five – or

⁶⁰ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27130&LangID=E>

⁶¹ <https://healthyenvironmentisaright.org>

⁶² The Children's Environmental Rights Initiative (CERI) is a global civil society coalition conducted under the auspices of the UN Special Rapporteur on human rights and the environment, in collaboration with core partners: OHCHR, Plan International, Project Dryad, Save the Children, Terre des Hommes, UNEP, UNICEF, WWF, YOUNGO.

1.7 million children – lose their lives every year because of avoidable environmental impacts, while millions more suffer disease, disability, and other forms of harm, many of which result in lifelong suffering⁶³), and from their status as 'critical agents of change.'

Perhaps unsurprisingly, these groups were especially effective in their use of social media. For example, they organised global 'Tweetstorms' at key moments along the road to recognition, including during the February 2021 event to launch the '#TheTimelsNow policy report,' and ahead of voting during the Council's 48th session. As an indication of their enthusiasm and influence, the 'Tweetstorm' in February 2021 saw #TheTimelsNow trending in Switzerland and many other parts of the world (in Geneva, it trended at number 1 for over an hour). Likewise, on 9 March 2021, Henrietta H Fore, the Executive Director of UNICEF tweeted 'Children's lives depend on a healthy planet; @UNICEF is calling on the Human Rights Council to urgently recognize the human right to a clean, safe, healthy, and sustainable environment. #TheTimelsNow' to her 104.8k followers.⁶⁴ CERI also delivered an important statement at the 46th session of the Council on behalf of 94 children's rights NGOs from around the world.⁶⁵

Last but not least (and unusually for a campaign focused on events at the Human Rights Council), the campaign for UN recognition of R2E also featured an important intervention by the global business community. In June 2021, a group of 47 business leaders 'who seek to catalyse a movement of business for a better world, one in which both people and nature can thrive' (including representatives of Adidas, Allianz, H&M, Holcim, Safaricom and Unilever), published a statement and circulated it via letters to UN member States. In it, they urged governments to 'unite in support of universal recognition of the human right to a safe, clean, healthy and sustainable environment,' including on the grounds that 'it is fundamental to the functioning of our businesses, our societies and our economies.'⁶⁶ Anecdotal evidence (from diplomats in Geneva) suggests that these letters had a significant impact on the positions of States – especially Western States.

⁶³ <https://www.childrenvironment.org/who-we-are>

⁶⁴ <https://twitter.com/unicefchief/status/1369354962061451267>

⁶⁵ <https://www.childrenvironment.org/blog/hrc46-joint-statement-children-environment>

⁶⁶ <https://bteam.org/our-thinking/news/business-leaders-call-for-universal-recognition-of-the-human-right-to-a-healthy-environment>

POSITIONS OF KEY UN MEMBER STATES

As noted above, the growing certainty, over the course of 2021, that the core group would table a resolution seeking UN recognition of R2E at the Council's 48th session in September, had the important benefit of providing a 'hook' for Geneva-based diplomats to launch consultations with their capitals and try to 'move' relevant ministries, in the words of one Western diplomat, to 'a good place.'⁶⁷ This phrase reflected the difficult situation many developed countries found themselves in over the question of recognising R2E. At the start of 2021, many Western governments remained sceptical about recognising this new right. This was in part because few of them had recognised the right in national law or through relevant regional human rights treaties, like the European Convention on Human Rights. This was compounded by a traditional hesitancy, on the part of Western States, about recognising new rights, especially if they 'looked' or 'felt' like an economic, social, and cultural right, and – perhaps most importantly – by a fear amongst politicians that recognising this right would leave them open to increased environmental or climate litigation. On the other hand, these countries (especially EU member States) had all placed environmental protection and the fight against climate change at the very top of their domestic political agendas. It would therefore be difficult for them to openly oppose a step that would significantly boost this 'green agenda' by empowering individuals to defend their natural environment and combat global warming. What is more, Western diplomats were keenly aware that the vast majority of developing countries strongly supported UN recognition. This was especially so amongst SIDS and LDCs – an increasingly important power bloc at the Council and, on many other issues, important 'swing votes.'

Notwithstanding this hesitancy, and as noted previously, countries such as Germany, encouraged by their permanent missions in Geneva, had already shifted their position by the start of 2021. As 2021 wore on, they were joined by others, including Denmark, Finland, and Sweden. Germany and Denmark (both Council members), in particular, were crucial 'converts,' the former because of its weight and influence at the Council and inside the EU, and the latter because of its traditional alignment, on human rights questions, with the US and the UK (see below).

⁶⁷ Conversation between a Western diplomat and the author.

Other developed countries, however, such as Austria, the Netherlands and Norway remained unmoved as the 48th session approached. Geneva-based diplomats had continued to press their capitals to reconsider their position, using the shifting views of their peers (e.g., Germany and Denmark) to emphasise the reputational damage that would be caused by being 'left behind.' Still other Western States, specifically Anglo-Saxon States (UK, US, Canada, and Australia) plus Japan, remained strongly opposed to recognition of R2E, irrespective of (varying degrees of) lobbying by their Geneva-based diplomats.

Among this group, the UK and the US were especially influential. In both cases, their traditional conservatism and legalism when faced with the question of new universal rights (both had opposed recognition of the right to water and sanitation a decade earlier⁶⁸) was weighed against important political considerations. The UK, for its part, was due to host and preside over the 26th Conference of the Parties to the UNFCCC (COP26) from 31 October to 13 November. It was therefore particularly difficult for the UK Government to be seen, in the media and amongst Small Island proponents of R2E, as hostile to recognition. That said, in the summer of 2021 it still appeared unlikely that such considerations would sway the UK. This point was made clear in the Government's response to a parliamentary question in April 2021. In answer to question 179314 asking 'what is [the Secretary of State for Foreign, Commonwealth and Development Affairs'] policy on the recognition by the UN of the human right to a safe, clean, healthy, and sustainable environment?'⁶⁹ James Duddridge MP, speaking for the Foreign Office, said:

*The UK recognises the serious and unequivocal threat that climate change poses to our planet, and that it can undermine the enjoyment of human rights. However, any recognition of a new legal right must give due regard to the structure of international human rights law so as not to undermine the notion and value of human rights as a whole.*⁷⁰

⁶⁸ Though, interestingly, at the time of the Stockholm Conference, the United States – which vehemently opposed the inclusion of a similar right twenty years later in the Rio Declaration – proposed the inclusion of a specific right to a clean environment in the Stockholm Declaration. Their proposal read: 'Every human being has a right to a healthful and safe environment, including air, water and earth, and to food and other material necessities, all of which should be sufficiently free of contamination and other elements which detract from the health or well-being of man.' This was, however, rejected in favour of what would become Principle 1 of the Declaration. See Dinah Shelton, 'What Happened at Rio to Human Rights?', 3 Y.B. INT'L ENVTL. L. 75, 76-77 (1992).

⁶⁹ Written parliamentary question [179314], tabled on 12 April 2021.

⁷⁰ Answer to question [179314], submitted on 21 Apr 2021.

The key political considerations for the US were two-fold. First, the US had just re-engaged with the Council under President Joe Biden and, in 2021, was already locked in a geopolitical struggle with China. One key to winning that struggle, at the Council and more broadly, was to win over SIDS (especially Pacific SIDS) and LDCs (especially African LDCs). The US State Department was acutely aware that pushing back against R2E would be both futile (because the US was not a member of the Council and thus did not have voting rights) and damaging to its reputation amongst important Small State democracies. Second, following his election, President Biden had made the concepts of 'environmental justice' and 'climate justice' an important part of his domestic political agenda. President Biden has also repeatedly expressed his support for the right to water and sanitation (notwithstanding earlier US opposition).⁷¹ Indeed, in the summer of 2021, a bill before both houses of Congress for a proposed 'Environmental Justice for All Act 2021' stated that (under 'Findings') 'all people have the right to breathe clean air, drink clean water, live free of dangerous levels of toxic pollution, and share the benefits of a prosperous and vibrant pollution-free economy,' and (under 'Statement of policy') that 'it is the policy of Congress that each Federal agency should [...] recognize the right of all people to clean air, safe and affordable drinking water, protection from climate hazards, and to the sustainable preservation of the ecological integrity and aesthetic, scientific, cultural, and historical values of the natural environment.'⁷² Likewise, in the summer of 2021, a bill was expected to be tabled before the Canadian Parliament that would amend the Canadian Environmental Protection Act, including inter alia to recognise R2E (the amended Act received Royal Assent two years later in June 2023).⁷³

In the early summer of 2021, there was some hope, amongst members of the core group and 'shadow core group,' that these political considerations could lead to a situation whereby the US, even if it could not support UN recognition of R2E, would at least remain quiet during negotiations (i.e., not actively oppose the resolution). In the end (see later), this did not happen. Indeed, the growing realisation inside the core group that the US position would

⁷¹ 'Let me be clear: every American has a right to clean drinking water. The American Jobs Plan will finally make that a reality by replacing 100% of America's lead pipes and service lines,' President Joe Biden, 18 April 2021. <https://twitter.com/potus/status/1383850315363938304?s=11>

⁷² Bill for Environmental Justice for All Act 2021, paragraphs 2(a)(9) and 2(b)(5).

⁷³ Also worthy of historical footnote is that Canadian Prime Minister Brian Mulroney advocated for inclusion of a clearly worded right to a healthy environment in the 1992 Rio Declaration.

be unlikely to shift (mainly, in the end, because John Kerry was concerned that the push for R2E risked derailing efforts to secure an ambitious agreement at COP26), was a key factor in their final decision to table the draft resolution in September 2021 (i.e., before the US was expected to take up a seat on the Council – and thus have voting rights – in January 2022).

In all these instances, the main challenge for diplomats was to convince government lawyers, especially outside the foreign ministry (e.g., in environment ministries and justice ministries), that R2E would not (in the case of the former) undermine international environmental negotiations (e.g., under the UNFCCC) or (in the case of the latter) leave them more vulnerable to national or international litigation.

Outside the Western Group, the main opponent of UN recognition was Russia, backed (often half-heartedly) by its traditional allies at the UN (e.g., China), and those developing countries (notably Brazil and India) that hung to the old fear (as explained earlier in this paper) that efforts to link human rights and the environment/climate would undermine their 'right to development.' Specifically, the concern of these States was that R2E could be used, by Western countries and international civil society, as a pretext to argue against economic projects that harm the environment or climate, on the grounds that such projects would violate people's right to a healthy environment. Notwithstanding these concerns, the position of Russia was significantly weakened by the fact that it had itself recognised the right to a healthy environment in its 1993 Constitution of the Russian Federation [article 42].⁷⁴

⁷⁴ 'Everyone shall have the right to favourable environment, reliable information about its state and for a restitution of damage inflicted on his health and property by ecological transgressions,' Article 42, The Constitution of the Russian Federation, adopted 12 December 1993.



Image: Freepik.com

TO TABLE OR NOT TO TABLE?

On 14 June 2021, the Permanent Mission of Costa Rica began informal consultations with relevant individuals about the possible content of a draft Council resolution recognising R2E. The two key questions considered during the meeting were, first, should the resolution simply recognise the right, or also include first steps to 'operationalise' the right and give it meaning; and second, how strong a steer should the Council give to the General Assembly – i.e., to encourage the UN's main decision-making body to also recognise.

Regarding the first question, Costa Rica and the wider core group were encouraged to present a simple draft, with two essential elements: one operative paragraph through which the Council would explicitly recognise R2E; and one operative paragraph inviting the General Assembly to also consider the matter. On the latter point, this wording was carefully chosen. As a subsidiary body to the GA, the Council could not, it was argued, tell its parent body what to do (i.e., request it to recognise R2E).

Beyond these two core elements of the draft resolution, it was suggested, during the talks, that the preamble should simply recall previous Council resolutions on human rights and the environment, summarise key dimensions of the relationship between the two, note that over 150 States had already recognised R2E at national or regional levels, and acknowledge the wide support for recognition amongst civil society and senior UN officials. Importantly, each of these preambular paragraphs should be based on 'agreed language' from earlier consensus resolutions, and could be 'dropped,' if necessary, during negotiations.

Shortly afterwards, Costa Rica asked John Knox and Marc Limon, working with David Boyd, to prepare a first draft of the resolution. At this point, the draft was purely for Costa Rica's consideration, and did not reflect any decision of the core group to go ahead with tabling. Nonetheless, it was a crucial moment on the journey towards UN recognition of the right to a healthy environment. For the first time, a UN member State had decided to begin the process of drafting the requisite resolution.

On 17 June, a possible text of the draft resolution was shared with Ambassador Devandas.

In parallel, the Permanent Mission of Slovenia was also working on a draft. This reflected a renewed enthusiasm and determination, on the part of Slovenia, to push ahead with recognition. In part this was because Slovenia wanted this to be a legacy of its presidency of the European Council. This was important as it meant that, from 18 June,⁷⁵ a majority of core group members (Costa Rica, Slovenia, and Maldives – which wanted recognition to be a legacy of its presidency of the General Assembly⁷⁶) were in favour of moving ahead with recognition at the Council's 48th session.

Notwithstanding, before taking a final decision on tabling, all members of the core group needed to agree. Around this time, the Moroccan Mission indicated that although Morocco would (for human resource reasons), prefer to delay tabling until 2022, they would not stand in the way should the rest of the core group decide to move ahead in September 2021. Thus, the position of Switzerland became critical.

As noted above, although some Swiss diplomats and officials were keen for Switzerland to be part of this historic undertaking, others were hesitant to press all UN member States to recognise a right that Switzerland itself had not recognised, and linked with this point, were concerned at the possible legal implications of Swiss support for this new universal right. Switzerland had therefore encouraged the rest of the core group to delay, to give it time to resolve these concerns and questions. To do so, in 2020, the Department of Foreign Affairs, Department of Justice, and Department of Environment had requested the Swiss Competence Centre for Human Rights to conduct a study into the possible consequences of UN recognition of R2E for Switzerland. The study was released in February 2021⁷⁷ and found that 'the adoption of a UN resolution on the right to a healthy environment would [...] have few consequences for Switzerland, but it would be a decisive step towards the international protection of human rights if the international community were to reach a consensus on what is or should be derived from human rights.' After receipt of the study, the Departments of Justice and of Environment quickly moved to support continued Swiss leadership on the issue at the UN. Yet it remained unclear whether the Swiss Foreign Minister would agree to follow suit.

⁷⁵ On this date, the Permanent Mission of Slovenia confirmed to Soo-Young Hwang that they were now firmly in favour of tabling a draft resolution in September that year, and Permanent Mission of the Maldives confirmed the same (for their part) to Marc Limon.

⁷⁶ Especially at a time when another Small Island Developing State, Fiji, held the presidency of the Human Rights Council.

⁷⁷ https://www.skmr.ch/cms/upload/pdf/2021/210504_Droit_environnement_sain_ZF_final.pdf

So it was that when the core group met at expert level on 14 July, they were still unable to reach agreement on tabling a resolution in September. Instead, they agreed to convene again at the end of August (just weeks before the start of the Council's 48th session) to reach a final decision. In the meantime, the core group would continue its outreach to other delegations and would (importantly) work to finalise a pre-zero draft resolution. Regarding the latter point, the core group decided to work from the basis of the Costa Rica draft, and integrate elements of the Slovenian draft.

Although no final decision on tabling was taken at the 14 July meeting, members of the core group did use it as a first opportunity to think ahead to what future negotiations might look like. They agreed that all preambular and operative paragraphs were open to broad re-negotiation, except for operative paragraph 1 recognising R2E, and operative paragraph 4 inviting the General Assembly to also consider the matter. That said, even regarding these two paragraphs, some members of the core group did seek clarification over how much 'room for manoeuvre' they had. For example, were all four adjectives used in the current formulation of R2E, i.e., safe, clean, healthy, and sustainable, were essential, or whether any of them could – if necessary – be dropped?

Notwithstanding these discussions, in mid-July it was still unclear whether – or not – the core group would move ahead at the Council's 48th session. This concern only increased when end of August came and went, with the core group still unable to reach a firm decision.

Therefore, on 1 September a group of NGOs⁷⁸ sent an urgent letter to each member of the core group (addressed to ambassadors), urging them, on behalf of 'the 1,176 [civil society] organisations [that] have supported [the] global call [for R2E],' to publicly announce their intention to move forward at the 48th session and to circulate the pre-zero draft of the resolution with all UN member States – '#TheTimelsNow.'

78 Signed by: Kevin Whelan, Representative to the United Nations in Geneva, Amnesty International; Kristen Cordero and Seán McCabe, Secretariat, Children's Environmental Rights Initiative (CERI); Ilaria Paolazzi, Deputy Director, Child Rights Connect; Sébastien Duyck, Human Rights & Climate Campaign Manager, Center for International Environmental Law; Yves Lador, Representative to the United Nations in Geneva, EarthJustice; Ana María Suárez Franco, Permanent representative in Geneva, FIAN International; Sandra Epal-Ratjen, International Advocacy Director & Deputy Executive Director, Franciscans International; John Fisher, Director of UN Advocacy, Human Rights Watch; Liliana Ávila, Senior Attorney, Human Rights and Environmental Program, Interamerican Association for the Environment Defense – AIDA; Alexa LeBlanc, Representative to the United Nations in Geneva, International Federation for Human Rights (FIDH); Jonas Schubert, Child Rights Officer, Terre des Hommes; Marc Limon, Executive Director, Universal Rights Group; Alexandra Goossens-Ishii, Representative to the United Nations in Geneva, Soka Gakkai International.

'Over the past months,' the letter began, 'countries [have] had the opportunity to be heard, to register any concerns and to consult domestically to prepare themselves for the negotiation of a resolution recognizing the right to a safe, clean, healthy and sustainable environment. Real world events related to environmental destruction [...] and recent scientific reports [e.g., Working Group I's contribution to the UNFCCC's Sixth Assessment Report on climate change, which the Secretary-General called a 'code red for humanity'⁷⁹] will make opposition or obstruction during the negotiations very difficult for countries to sustain and justify politically, once it becomes clear that the Human Rights Council is ready to proceed with the recognition of this right. The upcoming session of the Council also serves as an important window of opportunity.'

The letter continued, 'we believe that confirming your firm commitment to negotiate and table a resolution will significantly change the dynamic at the Human Rights Council and will make it much easier to gather support from many of those States who have remained mostly silent in the past.'

Finally, the letter made the important point that it would be difficult for the UK to oppose the resolution if it was tabled in September, considering the country's presidency of COP26 in Glasgow due to start in late October, and that, regarding another important sceptic, the US, '[the] resolution should move now before next year, when it appears that the US [will] return to the Council for at least three years, potentially more.'

Partly as a result of this letter, but also because at some point during August, the Swiss Foreign Minister confirmed his country's support for UN recognition, on 6 September the core group finally began circulating the pre-zero draft resolution to supportive delegations (e.g., Germany, Fiji, Uruguay) and individuals, including the High Commissioner for Human Rights, and then, on 13 September (the first day of the Council's 48th session), to all permanent missions. At the same time, the core group notified the missions that the first open informal consultations (negotiations) on the draft resolution would take place three days later, on 16 September.

79 <https://www.ipcc.ch/report/ar6/wg1/>



Opening of the session by the President of the Human Rights Council, Nazhat Shameem Khan, 48th session of the Human Rights Council, Palais des Nations, 13 September 2021.

UN photo by Violaine Martin

48TH SESSION OF THE HUMAN RIGHTS COUNCIL

The 48th session of the Human Rights Council began on 13 September with a landmark address by the High Commissioner for Human Rights, Michelle Bachelet, on the links between the global environmental and climate crises and the enjoyment of human rights.⁸⁰

'A safe, clean, healthy, and sustainable environment is,' she began, 'the foundation of human life. But today, because of human action – and inhuman inaction – the triple planetary crises of climate change, pollution, and nature loss [are] directly and severely impacting a broad range of rights, including the rights to adequate food, water, education, housing, health, development, and even life itself [...] As these environmental threats intensify, they will constitute the single greatest challenge to human rights in our era.'

80 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27443>

Three day later, the core group convened the first of three open informal consultations on the draft resolution. The meeting was chaired by Shara Duncan Villalobos, the Deputy Permanent Representative of Costa Rica.

From the very start, the UK and the US (backed by Australia, Canada, and Japan), as well as Russia, expressed their strong opposition to the draft as a whole, as well as to its central objective. Others, such as Egypt, focused their criticisms on particular (important) parts of the text. The two principal arguments made against the text were as follows.



Opening of the session by the President of the Human Rights Council, Nazhat Shameem Khan, 48th session of the Human Rights Council, Palais des Nations. 13 September 2021.

UN photo by Violaine Martin

First (this point was pressed most forcibly by the UK and the US, and supported by Russia), it was argued that new universal rights may only be recognised by the UN if they reflect customary international law or if they are already set out in a legally binding international treaty. Neither of these conditions were met in the case of R2E, they claimed.⁸¹ Building on this position, they argued that a UN resolution ('a political declaration') was not the way to recognise a new right or to give it meaning. Civil society immediately pushed back against these arguments (both in the room and bilaterally afterwards). Regarding the first point, NGO representatives argued that if the right to a healthy environment, which is recognised by over 150 States and included in a majority of regional human rights treaties, cannot be considered as customary international law, then it is difficult to see what could. Regarding the second point, civil society called this a 'circular argument'⁸² – i.e., the notion that the UN cannot recognise a new right unless and until it has been set out in an international treaty yet cannot negotiate a new treaty until the relevant right has been politically recognised. They also argued it was 'historically illiterate – it is simply not how international human rights law has developed since 1945.'⁸³ The legal rights (and corresponding State obligations) set out in the two international human rights covenants were first recognised politically in 1948 via the Universal Declaration of Human Rights (itself proclaimed through a non-binding UN resolution⁸⁴). Intergovernmental negotiations on legally binding treaties were then convened to give those rights meaning (i.e., the scope and content of rights, and the corresponding obligations of the State). More recently, the universal right to safe drinking water and sanitation was likewise recognised through UN resolutions (at the General Assembly and Human Rights Council). On this last point, it is worth noting that both the UK and the US now recognise this right (they opposed recognition in 2010 when the relevant resolutions⁸⁵ were presented⁸⁶), even though it is still not recognised through a UN human rights treaty and even though the argument that it reflects customary international law is a far weaker one than is the case with R2E. Finally, civil society representatives pointed out that if the approach to recognising new rights advocated by the UK and the US (and supported by Russia) had been

pursued from 1945 onwards, then today there would be no international human rights treaties at all, and thus no international human rights law. It would be impossible to imagine, according to NGO speakers, State diplomats and lawyers successfully negotiating and adopting an international human rights convention from scratch, without first receiving political guidance via a declaration or resolution.

The second main argument made against the draft resolution (most notably by Egypt) was that new universal rights should first be recognised by the General Assembly (where all UN member States have a vote) rather than by the Human Rights Council (which has only 47 voting members). In response, the chair pointed to operative paragraph 5c of GA resolution 60/251, through which the General Assembly decided that the Human Rights Council shall be responsible for 'mak[ing] recommendations to the General Assembly for the further development of international law in the field of human rights.' This, together with the fact that the Council is the main human rights body of the UN, where expertise in the area of human rights principally resides, meant, in the core group's opinion, that recognition should first take place in Geneva, and this should then be endorsed by the General Assembly. Furthermore, the chair pointed out that some of the countries now claiming precedence for the General Assembly had claimed the exact opposite in 2010, when a resolution recognising the right to clean drinking water and sanitation had been presented in New York.

Beyond interventions by these opponents, and a similar number of interventions by supporters of the draft (especially Fiji, Germany, Marshall Islands, Mexico, and Uruguay), the negotiations revealed a few surprising (in both a positive and negative sense) shifts in position. Regarding the former (i.e., positive), Austria and the Netherlands had been expected to be two of the most difficult EU members of the Council to convince of the merits of R2E, but in the end the Dutch remained fairly quiet during negotiations, and would end up cosponsoring and voting in favour of the resolution, while Austria's human rights expert was generally very positive and constructive during the open

⁸¹ The UK and the US had made the same argument at the time of the 2010 General Assembly vote on the resolution recognizing the right to safe drinking water and sanitation, noting that there was insufficient legal basis for declaring or recognizing water or sanitation as freestanding human rights, nor was there evidence that these rights existed in customary law.

⁸² Massimo Frigo, International Commission of Jurists, during first open informal consultations.

⁸³ Marc Limon, during bilateral discussions with the UK and US delegations.

⁸⁴ General Assembly resolution 217 A (III), 10 December 1948.

⁸⁵ GA resolution 64/292 on 'The human right to water and sanitation,' 28 July 2010, and Council resolution 15/9 on 'Human rights and access to safe drinking water and sanitation,' 30 September 2010.

⁸⁶ The UK and US were among 41 States to abstain during voting on GA resolution 64/292.

informal consultations (in the end Austria also voted in favour - though it didn't cosponsor). The position of another developed country member of the Council, the Republic of Korea, was uncertain before the start of the 48th session, but in the end, they too became strong supporters of recognition. The most noteworthy countries moving in the other direction (i.e., States that had been expected to be somewhat well-disposed towards the initiative but that ended up complicating negotiations) were Brazil, France, and Japan. Brazil's position, which it repeated during each open informal consultation, was that the universal right to a healthy environment should not in any way undermine Brazil's 'right to develop' nor its right to dispose of its own natural resources (e.g., the Amazon rainforest). France, for its part, argued for the wholesale reformulation of R2E in line with 'accepted wording' from the 1998 Aarhus Convention. Thus, it should be 'the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.'⁸⁷ The core group pushed back against this on the grounds that this is only 'accepted wording' for parties to the Aarhus Convention. After further bilateral discussions with France, it became clear that its real concern was not the overall formulation but the single adjective 'safe.' French diplomats claimed this was because the word 'safe' doesn't have a direct and accurate translation into French, however the real reason was more likely linked to the (at that time) soon-to-be-announced resumption of France's nuclear power programme. The reasons behind Japan's opposition to R2E were less clear.

Other questions posed and proposals made during the informal consultations (or during bilateral talks) included:

- Should it be 'the right to a healthy environment' or 'a right to a healthy environment.'
- What do each of the different adjectives attached to the right (i.e., safe, clean, healthy, sustainable) mean, and why were they chosen?⁸⁸

⁸⁷ Article 1, Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, 25 June 1998

⁸⁸ Although this was not said during the negotiations, the answer to this question is simple. As noted earlier in this paper, when drafting the text that would ultimately become resolution 19/11, through which the Council established the mandate of the Independent Expert on human rights and environment, the Maldives (Marc Limon) had been keen for the official name of the new mandate to closely reflect, and act as a precursor to, the future new universal R2E. Hence, Limon analysed the most common formulations of R2E at national and regional levels, and found the adjectives 'safe,' 'clean' and 'healthy' to be regularly employed. Limon himself added 'sustainable' to reflect the growing global discourse around sustainability. Thus, the new mandate was called the 'independent expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.'

- Is R2E a stand-alone right or is it part of an already recognised right such as the right to an adequate standard of living (as is the case with the right to clean drinking water and sanitation)?⁸⁹
- How does R2E relate to other rights? What is the 'value-added' of R2E beyond that provided by existing universal rights?
- If R2E is already recognised by over 150 UN member States, what is the value-added of UN recognition?
- What would recognition mean for other parts of the UN, including those focused on climate change, the environment, trade, development, and intellectual property rights?
- What next? If the Council does recognise this new universal right, how will the core group seek to give it legal meaning?

After the conclusion of the informal consultations, Costa Rica was tasked, in coordination with the rest of the core group, with preparing a final draft for submission to the Council secretariat. During informal exchanges with the author, the chair of the negotiations offered her assessment of the critical challenges: 'the whole thing depends on finding a balance between the development aspect and the developed countries' position.' By 'development aspect,' she was referring to the exact same concerns (i.e., that the impact of environmental degradation or climate change on human rights should not be used as an argument, by developed countries, to arrest national socio-economic development in poorer States) that had bedevilled negotiations on the Commission's resolutions on human rights and the environment from 1994 onwards, and on the Council's resolutions on human rights and climate change between 2008 and 2009. In 2021, these views were most clearly manifest in Brazil's position during negotiations, but were also shared by India, Russia (even though it is not a developing country) and China (even

⁸⁹ Here the core group were clear that R2E would be a stand-alone right.

though China was also keen to be seen to be sympathetic to an issue of acute importance of SIDS and LDCs). By the 'developed countries' position, she was referring to the legal arguments put forward by the Anglo-Saxon States (referenced above), together with the underlying concerns that large developing countries should not use principles of environmental law such as common but differentiated responsibilities (CBDR) or historic responsibility, to disavow their obligations to promote and protect human rights, and that UN recognition of R2E should not act as a 'green light' for increased climate or environmental litigation (especially if R2E were to have extraterritorial application). These underlying concerns were shared by almost all Western States, especially the Netherlands and Norway (which had been the subject of recent environmental or climate cases). Finally, 'developed countries' concerns' also referred to France's aversion to use of the word 'safe.'

To find a 'balance' between these positions, the core group took on board a number of Brazilian proposals to emphasise that sustainable development includes social (i.e., human rights), environmental and economic dimensions, and that R2E would not diminish States' sovereign right to dispose of their own natural resources in line with international law or to continue their work to eradicate poverty, but refused to include working in CBDR or historic responsibility, or some of the more egregious Brazilian proposals suggesting that economic development could be used as a 'carte blanche' excuse to harm the environment or emit greenhouse gases.

Unsurprisingly, the core group did not bend on any of the legal points put forward by Russia, the UK, and the US. The group also rejected Egypt's proposal to cede the stage to the General Assembly or for the Council resolution to simply recommend that the Assembly recognise right (rather than do so itself).



Photo by Dustan Woodhouse on Unsplash

COUNCIL TAKES ACTION ON DRAFT RESOLUTION HRC/48/L.23/REV.1

On the afternoon of Monday 4 October, at the start of the last full week of the Council's 48th session and just four days before members were due to begin taking action on tabled draft resolutions, the mood inside the core group was increasingly pessimistic. Council members Japan, Russia, and the UK were maintaining their strong opposition to the text. For its part, Russia had informed Slovenia that it would table 'hostile amendments' to water down the text and, depending on the results of the votes on those amendments, would call a vote on the text as a whole and likely vote against (until this moment, the core group had held out the hope that the resolution could be adopted by consensus). By 4 October, it seemed likely that Russia would be supported in this position by China and India. Brazil was also unhappy that only some - not all - of its proposed amendments to the text had been accepted and indicated that it too would table 'hostile amendments' covering these omissions (even though it supported recognition of R2E in principle). Moreover, the core group was growing increasingly concerned at the slow pace of co-sponsorship of the text, especially amongst EU member States. Although some important EU members had already cosponsored, including Germany and Italy, others, including the Netherlands, were finding it difficult to convince capitals. This group even included some States that had signed the joint statement supporting recognition of R2E in March (e.g., Denmark). It became apparent that many EU members were waiting for France to clarify its position, while others (especially northern European countries) were being swayed by the legal arguments of the UK and the US. This unpromising situation led at least one member of the core group to talk of withdrawing the draft resolution and trying again in 2022.

Against this background, from the evening of 4 October, members of the core group and 'shadow core group' launched an intensive lobbying campaign to expand the number of cosponsors and shift wavering Council members from the 'abstain' to 'vote in favour' columns. Each member of the core group undertook to call and message members of their relevant regional group, while members of the 'shadow core group' emailed all SIDS and LDC delegations (with the help of the Permanent Missions of Fiji and Marshall Islands), and sent WhatsApp messages to contacts in EU, Asia, African and Latin American permanent missions. Furthermore, a meeting between Costa Rica and France was scheduled for the middle of the week (this led to a deal being struck to delete 'safe' in return for French support).

Fortunately, this effort paid almost immediate dividends. On the morning of 5 October, Denmark informally expressed its intention to cosponsor. This led other Nordic States to follow suit (except Norway). The Netherlands said it was increasingly confident that it too would be able to cosponsor, and on the afternoon of 5 October, France announced its support. These developments together led to sharp increase in the rate of co-sponsorship amongst Western States. At the same time, Costa Rica and Uruguay were able to secure an increase in support amongst Latin American States, and Fiji and Marshall Islands amongst SIDS and LDCs. The core group also started to receive its first cosponsors from Africa.

So it was that, as the Council President (Ambassador Nazhat Shameem Khan, the Permanent Representative of Fiji) moved to take action on draft resolution HRC/48/L.23/Rev.1 on 'the human right to a clean, healthy and sustainable environment' on 8 October, prospects for adoption looked far better than they had just a few days earlier (there was never any doubt that the text would secure enough support to pass, however, especially for such an important resolution, it was important to have a large number of votes in favour and a large number of cosponsors - at least over 60).

Draft resolution HRC/48/L.23/Rev.1 was presented by Alejandra Costa, Deputy Permanent Representative of Uruguay (because no core group member was then a member of the Council). Before voting on the text as a whole, Council members first had the opportunity to consider amendments to the draft. As noted above, both Brazil and Russia had indicated to the core group, a week previously, that they would put forward 'hostile' amendments. In the end, Brazil had tabled two and Russia ten (these were distributed on 4 October).

Brazil's amendments sought to include two new operative paragraphs: one (more difficult) reaffirming 'the need to respect each State's national sovereignty over their natural resources, in accordance with Principle 21 of the Declaration of the UN Conference on the Human Environment (Stockholm Declaration), 1972, and Principle 2 of the Rio Declaration on Environment and Development, 1992,' and one (more straightforward) affirming that 'the promotion of the human right to a safe, clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law.'

Russia's amendments sought to, *inter alia*:

- Change the title of the resolution from 'the human right to a safe, clean, healthy, and sustainable environment' to 'human rights and a safe, clean, healthy and sustainable environment,' (Brazil's and Russia's amendments were submitted before a deal had been reached with France over the word 'safe').
- Delete recognition of R2E (operative paragraph 1) and replace it with a simple recognition that '*a safe, clean, healthy and sustainable environment is important for the enjoyment of human rights.*'
- Consequently, delete all other references to R2E, in, for example, operative paragraph 3, so that the resolution's objective would be to support 'the enjoyment of a safe, clean, healthy and sustainable environment,' rather than the enjoyment of the right to a clean, healthy and sustainable environment.'
- Delete operative paragraph 4 inviting 'the General Assembly to consider the matter.'
- Water down operative paragraph 2 so that the resolution would only note that 'a safe, clean, healthy and sustainable environment is related to the enjoyment of some human rights.'
- Delete an important preambular paragraph acknowledging that 'more than 1,100 civil society, child, youth and indigenous peoples' organisations,' '15 United Nations entities,' and 'more than 50 UN human rights special procedures mandate-holders,' had asserted that 'the time is now for global recognition.'
- Amend a further preambular paragraph recognising that 'environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy human rights,' to read, simply, that such environmental challenges '*may* constitute serious threats' to those rights.

As noted above, around the 5-6 October, Costa Rica had come to an agreement with France to delete the adjective 'safe,' in exchange for a clear public commitment of French support - which would in turn help to sway other waverers in the EU (especially Austria and the Netherlands).⁹⁰ At around the same time, Costa Rica and Uruguay had spoken to Brazil to come to an arrangement regarding their amendments. In the end, they agreed to add one new preambular paragraph (responding to Brazil's first, more problematic amendment):

Reaffirming the importance of international cooperation, on the basis of mutual respect, in full compliance with the principles and purposes of the Charter, with full respect for the sovereignty of States while taking into account national priorities,

and one new operative paragraph (responding to Brazil's second, less problematic proposal):

3. Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law.

On this basis, Brazil withdrew its amendments and Uruguay, when it presented draft HRC/48/L.23/Rev.1, read out the above as oral revisions.

So it was that on the afternoon of 8 October Russia was called on by the Council President to present its amendments L33 to L42.⁹¹ A seemingly confident Russian delegation presented all ten amendments together. Uruguay, speaking for the core group, rejected the amendments and called for a vote on each. All ten were subsequently rejected (by huge margins) by Council members (including the UK).

A by now visibly shaken Russian delegation then called a vote on the unamended text. However, in a partial climb-down, it indicated that it would abstain during the vote (it had been expected to vote against).

⁹⁰ 'Safe' was always the least compelling of the four adjectives used, and would make little difference, it was felt, to the impact of UN recognition of R2E.

⁹¹ <https://www.unhcr.org/en/news-media/meeting-summary/2021/10/midday-human-rights-council-adopts-four-resolutions-right>

The ensuing vote saw draft resolution HRC/48/L.23/Rev.1 on 'The human right to a clean, healthy and sustainable environment' adopted with 43 Council members in favour, 0 against, and 4 abstentions (Russia, India, China, and Japan) – causing the face of the President to break into a broad smile and a rare round of applause in the Council chamber.

The two big surprises during voting were Japan's steadfast opposition to recognition of R2E and, in a more positive sense, the UK's votes against all Russian amendments (including those that had sought to stop the Council from recognising the universal right to a clean, healthy, and sustainable environment), and its final vote in favour of the resolution as a whole (the UK had been expected to abstain at best). This late shift in the UK position was mainly thanks (as had also been the case over preceding months with other Western countries) to behind-the-scenes internal lobbying by the human rights team at the UK Permanent Mission. They had been helped, in that regard, by the fact that the UK was due to host COP26 in Glasgow. The UK Mission made clear to colleagues in London the reputational damage that would accrue (especially amongst SIDS and LDCs) should the UK publicly oppose recognition of R2E. The Mission was also able to use a Reuters article published on 5 October and entitled 'Clean environment could become UN human right. Not so fast, say US, Britain,' which sought to conflate the positions (and motivations) of the UK and Russia, as additional leverage.⁹² In it, Marc Limon was quoted as saying: 'At national level, this right has been shown to empower people, particularly those most vulnerable to environmental damage or climate change, to drive change and hold governments to account [...] This might explain why some governments like the US, Russia and UK don't like it.'

⁹² <https://www.reuters.com/business/environment/clean-environment-could-become-un-human-right-not-so-fast-say-us-britain-2021-10-05/>

Resolution 48/13⁹³ was eventually cosponsored by 78 UN member States, including Norway (which had eventually taken the decision, at the very highest levels of government, to support the resolution).

With resolution 48/13, the Human Rights Council:

1. *Recognize[d] the right to a safe, clean, healthy, and sustainable environment as a human right that is important for the enjoyment of human rights.*

The text also 'invite[d] the General Assembly to consider the matter.'

At the same time, through a separate resolution (HR-C/48/14⁹⁴), the Council decided to strengthen its focus on the human rights impacts of climate change by establishing a Special Rapporteur mandate dedicated to that issue.

In a statement after adoption,⁹⁵ the High Commissioner for Human Rights, Michelle Bachelet, warmly welcomed the Council vote. 'Having long called for such a step,' she said, she was 'gratified that the Council had moved to clearly recognise environmental degradation and climate change as interconnected human rights crises.' Notwithstanding, she warned the Council against dwelling on this historic achievement: 'member States must now take bold action to give prompt and real effect to the right to a healthy environment.' Resolution 48/13 should 'serve as a springboard to push for transformative economic, social and environmental policies that will protect people and nature.'

⁹³ Supra note 1 (<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf?OpenElement>)

⁹⁴ Supra note 2 (<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F48%2F14&Language=E&DeviceType=Desktop>)

⁹⁵ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27635&LangID=E>



Photo by Maritza Chan on Twitter.
@MaritzaChanV

THE END OF THE BEGINNING: GENERAL ASSEMBLY RECOGNITION OF THE RIGHT TO A CLEAN, HEALTHY, AND SUSTAINABLE ENVIRONMENT

The recognition of the right to a clean, healthy, and sustainable environment by the Human Rights Council through its (voted) resolution 48/13, and the Council's invitation to the General Assembly to consider the matter, set the ball rolling towards full UN recognition of this universal right through a resolution to be adopted by all UN member States.

Though the Council's recognition of the right was undoubtedly a historic achievement, abstentions by India, Russia, China and Japan and vocal opposition, especially during information consultations on the draft text, from the likes of the US (which was not a member of the Council at the time) and the UK (which was, and voted in favour, yet expressed significant doubts about the value and enforceability of the right), raised questions about how the General Assembly would respond. Would it move to adopt a resolution and, if so, how would key countries (including those that were not members of the Council but were members of the General Assembly) vote?

In truth, there was never much doubt that, should the core group on human rights and the environment (Costa Rica, Maldives, Morocco, Slovenia, and Switzerland) move to table a draft text in New York, UN member States would vote overwhelmingly in favour of recognising the right. There were, nevertheless, several important issues to consider. One was that the vast majority of discussions about the relationship between human rights and environment at the UN over the past decade had taken place in Geneva, and not in New York. Delegates at UN headquarters were therefore relatively unaware of the key issues and questions at stake. A second concern was the vote count. For recognition of a universal right to have real political weight and effect, it would require the overwhelming support of UN member States. A third question was what form General Assembly recognition should take? Should it be a simple resolution endorsing Council resolution 48/13, or a second substantive text?

With these points in mind, over the course of the nine months between the Council's adoption of resolution 48/13 and eventual adoption by the General Assembly, there was a sustained effort by various stakeholders, including a series of consultations led by the core group in New York, current and former Special Rapporteurs, and civil society organisations, to raise awareness around key debates, resolutions, reports and decisions at the Human Rights Council, and on how delegations in New York should proceed.



Expert Seminar speakers, moderators and panellists outside of NYU's Furman Hall.

One such initiative was an expert seminar organised by the Universal Rights Group, the United Nations Environmental Programme (UNEP), and the Special Rapporteur on human rights and the environment, in partnership with New York University, on 12 April 2022.⁹⁶ The meeting aimed to facilitate awareness about R2E at UN headquarters, including ahead of potential recognition of the right by the General Assembly. As well as recalling developments in Geneva, the seminar considered important legal questions, the implications of potential General Assembly recognition, and the benefits it might entail for rights-holders, including environmental human rights defenders, and for the natural environment.

⁹⁶ <https://www.universal-rights.org/blog/thetimeisnow-un-recognition-of-the-right-to-a-clean-healthy-and-sustainable-environment-past-developments-and-future-prospects/>



United Nations General Assembly Hall, Photo by Basil D. Soufi on Flickr.



2022 Glion Human Rights Dialogue (Glion VIII) organised by Switzerland and Liechtenstein, with the support of the Universal Rights Group, and in partnership with the Permanent Missions of Fiji, the Marshall Islands, Mexico, and Thailand, on 16-17 May 2022



This was followed by the 2022 Glion Human Rights Dialogue (Glion VIII), organised by Switzerland and Liechtenstein, with the support of the Universal Rights Group, and in partnership with the Permanent Missions of Fiji, the Marshall Islands, Mexico, and Thailand, on 16-17 May 2022. The title of Glion VIII was 'The right to a clean, healthy, and sustainable environment: what does it mean for States, for rights-holders and for nature?'⁹⁷ The retreat, held in Chardonne, Switzerland, saw the participation of more than 60 representatives of States, international organisations, civil society organisations and other experts. The informal Chatham House discussion focused on issues such as the scope, content and meaning of the right, intersections with existing human rights guarantees and creation of new legal obligations, implications of the right where it is already recognised at national or regional levels, and implications of the recognition of the right for various relevant stakeholder groups.

Although Glion VIII took place after the Council's recognition of the right to a healthy environment, a key focus was to generate improved understanding about the scope, content, and legal and practical implications of the right amongst States, in particular by answering questions and concerns that had not been addressed sufficiently during the negotiation of resolution 48/13. The organisers' objective in this sense was to widen and deepen consensus, rather than to agree next steps. The importance of this had been revealed three months earlier (March 2022), when a group of States at a Special Session of the UN

Environment Assembly,⁹⁸ convened to commemorate the 50th anniversary of the establishment of the UNEP, blocked the inclusion of an explicit reference to the right to a clean, healthy, and sustainable environment in the UNEP@50 Political Declaration. The Declaration did though take note of Human Rights Council resolution 48/13 and recognised that 'a clean, healthy and sustainable environment is important for the enjoyment of human rights.'⁹⁹ In the context of residual opposition to UN recognition of the right, it was notable that legal representatives from the US State Department took an active part in the Glion VIII retreat.

Two weeks later, on 2-3 June 2022, the General Assembly convened a high-level meeting entitled 'Stockholm+50: a healthy planet for the prosperity of all-our responsibility, our opportunity,'¹⁰⁰ to mark the 50th anniversary of the 1972 UN Conference on the Human Environment.¹⁰¹ Ahead of the Stockholm+50, a group of UN Special Rapporteurs urged States to put the right to a healthy environment at the centre of discussions and outcomes.¹⁰²

⁹⁷ See Report <https://www.universal-rights.org/wp-content/uploads/2022/09/Glion-VIII-report-2.pdf>

⁹⁸ <https://www.unep.org/events/unep-event/unep-50>

⁹⁹ <https://wedocs.unep.org/bitstream/handle/20.500.11822/39995/UNEP.EA.SS.1.4%20-%20POLITICAL%20DECLARATION-English.pdf?sequence=1&isAllowed=y>

¹⁰⁰ <https://www.stockholm50.global/>

¹⁰¹ <https://www.un.org/en/conferences/environment/stockholm1972>

¹⁰² <https://www.ohchr.org/en/press-releases/2022/05/environment-millions-lives-stake-amid-unprecedented-challenges-un-experts>



UN Secretary General Antonio Guterres at Stockholm+50 Opening Plenary, Photo by UNEP/Duncan Moore on Flickr

In his opening statement at the high-level meeting, the UN Secretary-General Antonio Guterres urged States to embrace the right to a clean, healthy and sustainable environment 'for all people, everywhere - especially poor communities, women and girls, indigenous peoples, young people and the generations to come.'¹⁰³ The Stockholm+50 conference concluded with the adoption of a ten-point agenda setting out key recommendations including a recommendation to 'recognize and implement the right to a clean, healthy and sustainable environment.'¹⁰⁴



Abdulla Shahid, Minister for Foreign Affairs of Maldives addresses the 52nd Regular Session of the Human Rights Council, Geneva. UN Photo / Violaine Martin

Throughout this time, it remained unclear whether and when the core group in New York would move ahead with recognition of R2E at the General Assembly. For its part, the Maldives, which had led on international efforts to

¹⁰³ <https://www.un.org/sg/en/content/sg/statement/2022-06-02/secretary-generals-remarks-stockholm50-international-meeting-delivered>

¹⁰⁴ <https://www.stockholm50.global/resources/stockholm50-recommendations-and-actions-renewal-and-trust>; <https://wedocs.unep.org/bitstream/handle/20.500.11822/40110/Key%20Messages%20and%20Recommendations%20-%20Formatted.pdf?sequence=1&isAllowed=y>

draw linkages between human rights, climate change, and the environment since the Male' Declaration in 2007, was pushing strongly for recognition to take place before the end of the 76th session of the General Assembly in September, in large part because the Foreign Minister of the Maldives, Abdulla Shahid, was President of the Assembly's 76th session (bringing a potentially poetic end to a 15 year process).

As the 76th session drew on, calls for General Assembly recognition grew louder. UN experts including the Special Rapporteurs on human rights and the environment, the human rights to safe drinking water and sanitation, the rights of indigenous peoples, the right to food, the promotion and protection of human rights in the context of climate change, and the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, urged the Assembly to recognise that living in a clean, healthy and sustainable environment is a fundamental human right.¹⁰⁵ According to their statement, a General Assembly resolution recognising the right would catalyse urgent and accelerated action to achieve environmental justice, address the climate crisis, protect and restore nature, and end toxic pollution. They stressed that the lives of billions of people on the planet would improve if such a right were recognised, respected, protected and fulfilled.¹⁰⁶

¹⁰⁵ <https://www.ohchr.org/en/press-releases/2022/07/un-general-assembly-must-affirm-right-healthy-environment-un-experts>

¹⁰⁶ Ibid.



UNEP Executive Director Ms. Inger Andersen at Stockholm+50 Opening Plenary, Photo by UNEP/Duncan Moore on Flickr

This was followed by a call for action by the UNEP Executive Director Inger Anderson who urged the General Assembly to back the right to a healthy environment¹⁰⁷ in light of the triple planetary crises threatening present and future generations and undermining almost every other recognised right. She urged member States to adopt the resolution and 'get to work implementing it, so we can place a healthy environment at the centre of human well-being and the enjoyment of all human rights.'¹⁰⁸ She argued that the Council's recognition of the right was already having positive impacts, by boosting the implementation of environmental and human rights laws and commitments, providing better protection to environmental defenders, and triggering accelerated environmental action. She also underscored that while recognition by the Council was important, recognition by the Assembly, to which all UN member States belong, would accord universal recognition. This would accelerate action amongst those States that already recognise the right nationally, and might encourage those that do not to incorporate the right into their constitutional and legal frameworks.

Building on this argument, the Special Rapporteur on human rights and the environment, David Boyd, pointed to the impacts of General Assembly recognition of the right to water and sanitation in 2010,¹⁰⁹ which, he said, had acted as 'a catalyst for a cascade of positive changes that have improved the lives of millions of people,' including changes in constitutions and empowering ordinary people to hold governments accountable.¹¹⁰ According to him, the right to a healthy environment would be a powerful tool for individuals and groups to hold governments accountable in the face of the triple planetary crises.¹¹¹ Moreover, the Special Rapporteur noted that 'early dividends' from the Council's recognition were already visible, in the form of the right's incorporation into legal systems, and the use of the right at the grassroots level to demand stronger climate action, cleaner air, and improved biodiversity and ecosystem protection.

GENERAL ASSEMBLY ADOPTS RESOLUTION 76/300

On 28 July 2022, Costa Rica introduced, on behalf of the core group, draft resolution A/76/L.75 entitled 'The human right to a clean, healthy and sustainable environment,' co-sponsored by more than a 100 States.¹¹²

Noting that calls for recognition of the right at the international level had grown stronger over recent years, coupled with the triple environmental crises facing the planet, the representative of Costa Rica highlighted the urgent need for the international community to respond. She argued that universal recognition would catalyse transformative change across societies, and would allow the UN to support member States more coherently and effectively in fulfilling their human rights obligations related to the environment and scaling up efforts to guarantee a clean, healthy, and sustainable environment for all.

Prior to the text's adoption, several delegates took the floor to underscore that the resolution, if adopted, would represent a political declaration rather than a legal recognition of the right to a clean, healthy, and sustainable environment. Linked with this point, they noted that there is no common internationally agreed understanding as to the content and scope of the right. For example, Pakistan said the resolution is a political text, and not a legal affirmation by the Assembly, while the Russian Federation argued that it would only be possible to talk about legal recognition following inter-State negotiations over a legally binding international treaty (which would address questions of scope and content).

Soon afterwards, resolution 76/300 was adopted by recorded vote, with 161 in favour, none against, and eight abstentions.¹¹³ The member States that abstained were China, Russia, Syria, Iran, Belarus, Ethiopia, Cambodia, and Kyrgyzstan. Subsequently, one abstaining State, Kyrgyzstan, and two States that did not vote, Saint Kitts and Nevis and Seychelles, informed the secretariat that they had intended to vote in favour (which would have given a final vote of 164 in favour, none against, and seven abstentions).¹¹⁴

Interestingly, India and Japan, which had abstained during voting on Council resolution 48/13, joined those voting in favour at the General Assembly, though India disassociated itself from the relevant provision recognising R2E. Critically, the US, following long and drawn-out discussions in

Washington, and presumably with one eye on the fact that recognition was popular among key American partners (including in the context of its geopolitical struggle with China) such as Small Island Developing States, voted in favour. This was a historic first for the US – the first 'new' right it had supported recognition of at the UN in over 50 years.¹¹⁵

With resolution 76/300, the General Assembly:

1. Recognize[d] the right to a clean, healthy, and sustainable environment as a human right.
2. Note[d] that this right is related to other rights and existing international law.
3. Affirm[ed] that the promotion of this right requires the full implementation of the multi-lateral environmental agreements under the principles of international environmental law.
4. Call[ed] upon States, international organisations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building, and continue to share good practices in order to scale up efforts to ensure a clean, healthy, and sustainable environment for all.

Notwithstanding the overwhelming vote in favour of adoption of resolution 76/300, a number of supporting States nonetheless gave explanations of votes after the vote to add important caveats.

Some, including Poland, Norway, and New Zealand, concurred with Pakistan's earlier comment that the resolution is a political declaration and not an international legal affirmation of the right to a clean, healthy, and sustainable environment. Building on this point, India clarified that 'General Assembly resolutions do not, in themselves, create binding obligations,' and that recognition of a new human right can only happen within the framework of a treaty or convention where States parties explicitly commit to such a new human right and undertake corresponding obligations.

¹⁰⁷ <https://www.unep.org/news-and-stories/opinion/un-general-assembly-must-back-right-healthy-environment>

¹⁰⁸ Ibid.

¹⁰⁹ <https://www.unwater.org/news/10th-anniversary-unga-resolution-human-rights-water-and-sanitation#:~:text=In%202010%2C%20the%20UN%20General,Life%20and%20all%20human%20rights%E2%80%9D>

¹¹⁰ <https://news.un.org/en/story/2022/07/1123142>

¹¹¹ Ibid.

¹¹² See <https://digitallibrary.un.org/record/3983329?ln=en>

¹¹³ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F76%2F300&Language=E&DeviceType=Desktop&LangRequested=False>

¹¹⁴ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/442/19/PDF/N2244219.pdf?OpenElement>

¹¹⁵ See The United States Recognizes the Human Right to a Clean, Healthy, and Sustainable Environment, 117 AJIL 129 (2023) <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/united-states-recognizes-the-human-right-to-a-clean-healthy-and-sustainable-environment/D17FF5A61A13DC56F70D5673DC7F1209>

Likewise, the US, in its explanation of vote and in a detailed position released subsequently,¹¹⁶ made clear that ‘the right to a clean, healthy, and sustainable environment has not yet been established as a matter of customary international law; treaty law does not provide for such a right; and there is no legal relationship between such a right and existing international law.’ The UK also stated that the right to a healthy environment had not yet emerged as customary international law, and a universal right can only be said to be properly recognised following intergovernmental negotiations over a new treaty – i.e., ‘the usual formation of international human rights law.’ New Zealand likewise described such a process of political recognition of a human rights at the General Assembly as an ‘anomaly’ and not a substitute for the usual and proper development of international law.

Speaking along similar lines (i.e., that to have real meaning, the recognition of a universal right must be through intergovernmental treaty negotiations), Japan, amongst others, explained that such negotiations are essential to clarify the scope and content of the right, as well as its relationship with other human rights. India, for example, stated that there is no agreed definition of the terms ‘clean,’ ‘healthy,’ and ‘sustainable,’ used in the name of this ‘new’ right.

A number of States took this point further by pointing out that for a right to have meaning, it is vital that the corresponding legal obligations of States are properly clarified, and that States accept those obligations by, for example, ratifying the relevant treaty. The UK, for example, stated that recognition of the right without a common understanding of its scope and content, or of the corresponding obligations of States, creates ambiguity in the sense that individuals do not know what they can legitimately claim from the State and the State does not have a clear idea of the protection it is obliged to afford to the individual.

Importantly, the US and Canada joined the UK in expressing their willingness to participate in intergovernmental negotiations to clarify these questions.

The foregoing are clearly important points of debate, as they go to the heart of how the UN recognises ‘new’ universal human rights. In that regard, while it is true that for a universal right to have real legal meaning, it is necessary to clarify the scope and content of that right,

¹¹⁶ <https://usun.usmission.gov/explanation-of-position-on-the-right-to-a-clean-healthy-and-sustainable-environment-resolution/>

and the corresponding obligations of States, it is clearly a stretch to argue that States could – or ever would – jump straight into intergovernmental negotiations over a new human rights instrument without the preliminary step of political recognition through a UN resolution. It is also historically illiterate when one remembers that nearly every right protected under the international human rights instruments was first declared politically through the Universal Declaration of Human Rights.

Some States also expressed disappointment over what they saw as important omissions from the final text. For instance, Norway, New Zealand, Japan, the US, the UK, and the EU (in its capacity as an observer) highlighted the lack of reference to environmental human rights defenders and the role played by them. Other States, mainly developing countries, highlighted the non-inclusion of internationally agreed principles of international environmental law such as common but differentiated responsibilities (e.g., China, Brazil, Pakistan, and Syria) and the historic responsibility of developed countries (e.g., Nicaragua).

Speaking shortly after adoption, UN Secretary-General Antonio Guterres welcomed General Assembly resolution 76/300 as a ‘historic’ and ‘landmark development,’ which demonstrates that member States can come together in the collective fight against the triple planetary crises of climate change, biodiversity loss and pollution.¹¹⁷

He also noted that the resolution would help reduce environmental injustices, close protection gaps, and empower people, especially those in vulnerable situations, including environmental human rights defenders, children, youth, women, and indigenous peoples. Importantly, he predicted that UN recognition of the right to a clean, healthy, and sustainable environment would help States accelerate the implementation of their environmental and human rights obligations and commitments.

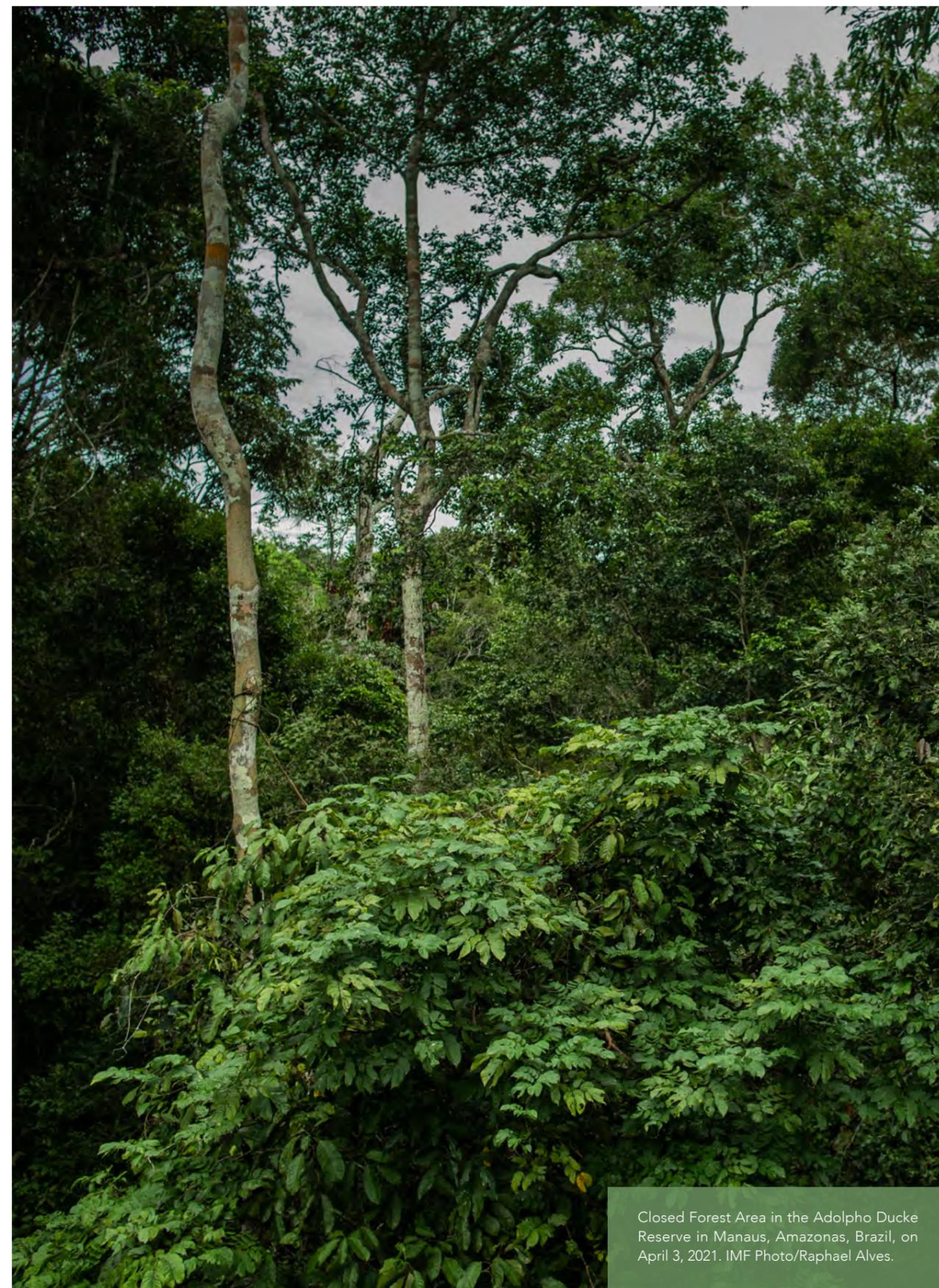
Notwithstanding, he warned that the adoption of the twin Council and General Assembly resolutions was ‘only the beginning’ and urged States to continue working ‘to make the right to a clean, healthy and sustainable environment a reality for everyone, everywhere.’¹¹⁸

Likewise, UNEP Executive Director Inger Andersen described the resolution’s adoption as ‘a victory for people and planet’ and highlighted the need to ‘build on this victory and implement the right.’¹¹⁹

¹¹⁷ <https://press.un.org/en/2022/sgsm21386.doc.htm>

¹¹⁸ Ibid.

¹¹⁹ <https://www.unep.org/news-and-stories/statements/statement-inger-andersen-un-general-assembly-resolution-recognizing>; Also see <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right>



Closed Forest Area in the Adolpho Ducke Reserve in Manaus, Amazonas, Brazil, on April 3, 2021. IMF Photo/Raphael Alves.



CONCLUSIONS – THE ‘NORMATIVE CASCADE’

A key benefit of General Assembly and Human Rights Council recognition of the right to a clean, healthy, and sustainable environment was, and remains, its potential to inspire other parts of the UN system, regional human rights systems, and nation States – even those previously sceptical about the right. This ability to inspire – if not force (General Assembly and Human Rights Council resolutions are not legally binding) – other parts of the international system to change course or take significant steps forward, is an important – and often overlooked – strength of the United Nations and its resolutions.

An early sign, at international level, of the ‘normative cascade’ initiated by UN recognition came at the 27th Conference of Parties to the UN Framework Convention on Climate Change (COP27) in Sharm el-Sheikh, Egypt, in November 2022.¹²⁰ Although mention of this newly recognised universal right was abruptly removed from the negotiating text the day before the conclusion of the Conference, after pressure from supportive States, UN leaders, and civil society, it was re-added at the last minute. As a result, the final outcome document of COP27, the Sharm el-Sheikh Implementation Plan,¹²¹ includes an explicit reference to the right to a clean, healthy, and sustainable environment as one of the human rights that should be considered when taking action to address climate change.

¹²⁰ <https://unfccc.int/cop27>

¹²¹ https://unfccc.int/sites/default/files/resource/cop27_auv_2_cover%20decision.pdf



There is similar anecdotal evidence that UN recognition of R2E inspired and/or guided change at regional level. For example, in September 2022, the Council of Europe’s Committee of Ministers, in its ‘Recommendation on Human Rights and the Protection of the Environment,’¹²² included proposals that its member States: consider recognising the right to a clean, healthy and sustainable environment at the national-level, ‘as a human right that is important for the enjoyment of human rights and is related to other rights and existing international law;’ and consider drawing up additional protocols to the European Convention on Human Rights and the European Social Charter to formally introduce the right to a clean, healthy and sustainable environment into those instruments, ‘based on terminology as used by the UN.’ The Recommendation also included proposed text for such additional protocols. This followed relevant recommendations issued by the Council of Europe’s Parliamentary Assembly in September 2021, especially that the European human rights system should embrace this ‘new-generation human right.’¹²³

Most recently, in May 2023, member States of the Council of Europe came together at the Reykjavik Summit in Iceland.¹²⁴ The Summit concluded with the adoption of the Reykjavik Declaration¹²⁵ setting out members’ commitment to strengthen the Council of Europe in the field of human rights, democracy and the rule of law, and to develop tools to tackle emerging challenges in the areas of technology and the environment.

¹²² https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a83df1

¹²³ <https://pace.coe.int/en/files/29499/html>; <https://pace.coe.int/en/files/29501/html>; Also see <https://pace.coe.int/en/files/29501/html>

¹²⁴ <https://www.coe.int/en/web/portal/fourth-council-of-europe-summit>

¹²⁵ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680ab364c#_ftn1

The Appendix on the environment outlines the Council of Europe’s approach towards environmental protection and affirms that human rights and environment are intertwined and that the right to a clean, healthy, and sustainable environment is integral to the full enjoyment of human rights by present and future generations. It then sets out commitments to strengthen the work of the Council of Europe on human rights aspects of the environment, based on recognition of the right to a clean, healthy, and sustainable environment, and calls on member States that have not yet done so to actively consider recognising the right at national level, and to ‘conclude as soon as possible the Council of Europe’s ongoing work [...] on the consideration of the need for and feasibility of a new instrument or instruments in the field of human rights and the environment’ – though it falls short of making a solid commitment to elaborate a new additional protocol to the European Convention on Human Rights.¹²⁶

Finally, this ‘normative cascade’ has also been seen at national level, including in countries that until recently opposed the right to a clean, healthy, and sustainable environment at the UN. For example, in Canada, amendments to the Environmental Protection Act 1999, passed earlier by the Senate and the House of Commons, received Royal Assent on 13 June 2023. With the passage of the amendment, the Act recognises, for the first time, the right to a clean, healthy, and sustainable environment of every individual and the corresponding duty of the State to protect it.

¹²⁶ See <https://www.universal-rights.org/blog/the-council-of-europe-and-the-right-to-a-clean-healthy-and-sustainable-environment/>





FOR PEOPLE; FOR PLANET

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RECOGNITION OF THE UNIVERSAL RIGHT TO A CLEAN,
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 working together to protect universal human rights



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