

## INTRODUCTION TO SYMPOSIUM ON UN RECOGNITION OF THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT

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In July 2022, the United Nations General Assembly adopted a resolution recognizing the human right to a clean, healthy, and sustainable environment.<sup>1</sup> Its proponents hope that the resolution will catalyze further action, but many of the states voting for it expressed the view that it has no legal effect in itself. Will UN recognition of this right nevertheless change international law? If so, how? This symposium brings together the perspectives of six distinguished scholars on this question. Philip Alston and Carmen Gonzalez examine how recognition may change our understanding of human rights law; Hélène Tigroudja and Maria Antonia Tigre analyze its impact on the burgeoning environmental jurisprudence of the UN human rights treaty bodies and the Inter-American Court of Human Rights; Rosemary Mwanza explores how the right may affect parallel efforts to codify the crime of ecocide; and Louis Kotzé concludes by arguing that the right still falls short of the transformational shift necessary to recognize and protect the rights of nature and of future generations. Before describing their contributions in more detail, this introduction reviews the background of the resolution and describes its main provisions.

### *The Long and Winding Road to Global Recognition*

To future generations, the most surprising thing about UN recognition of the right to a healthy environment may be that it took so long to achieve. In 1972, at the first UN environmental conference in Stockholm, the links between human rights and the environment already seemed obvious. The first principle of the Stockholm Declaration states: “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.”<sup>2</sup> However, later UN environmental declarations did not include this language, or even refer to human rights.<sup>3</sup> In 1994, the UN Human Rights Commission refused to adopt draft principles on human rights and the environment that included “the right to a secure, healthy and ecologically sound environment.”<sup>4</sup>

In contrast, the right has been embraced at the regional and national levels. It is found in many regional instruments, beginning with the African Charter on Human and Peoples’ Rights in 1981 and the San Salvador Protocol to the American Convention on Human Rights in 1988. About one hundred states include the right in their national constitutions, and courts in a dozen others have derived it from other rights.<sup>5</sup> Indeed, it is the most popular new constitutional right in the last fifty years.<sup>6</sup>

At the United Nations, the Human Rights Council began to pay increasing attention to the relationship between human rights and the environment after it replaced the Human Rights Commission in 2006. In 2012, the Council

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<sup>1</sup> [GA Res. 76/300](#) (July 28, 2022).

<sup>2</sup> [Declaration of the United Nations Conference on the Human Environment](#), at 4, UN Doc. Conf. 48/14/Rev. 1 (June 16, 1972).

<sup>3</sup> See Dinah Shelton, *What Happened in Rio to Human Rights?*, 3 Y.B. INT’L ENVTL. L. 75 (1993).

<sup>4</sup> [UN Doc. E/CN.4/Sub.2/1994/9](#).

<sup>5</sup> David R. Boyd, *Catalyst for Change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment*, in [THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT](#) 17 (John H. Knox & Ramin Pejan eds., 2018).

<sup>6</sup> David S. Law & Mila Versteeg, [The Evolution and Ideology of Global Constitutionalism](#), 99 CAL. L. REV. 1163, 1201 (2011).

appointed an independent expert to a three-year term to clarify the human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment.<sup>7</sup> The resolution creating the mandate did not refer to the right to a healthy environment, but some of its sponsors, especially Maldives and Costa Rica, saw the mandate as a step toward eventual recognition.<sup>8</sup> They modeled the resolution on the 2008 Council resolution creating a mandate on water and sanitation,<sup>9</sup> which led to UN recognition of the human rights to water and sanitation in 2010.<sup>10</sup>

I had the honor of being appointed as the first independent expert on human rights and the environment. Drawing on the examples of Catarina de Albuquerque on water and sanitation, and of John Ruggie on business and human rights, I began by mapping what international human rights bodies had already said about environmental issues. In my reports, I described how, even in the absence of a global right to a healthy environment, human rights bodies had “greened” other rights, including rights to life and health, by holding that states have obligations to protect their enjoyment from environmental harm.<sup>11</sup> In 2015, the Council changed my title to special rapporteur and asked me to promote the realization of the obligations related to the enjoyment of a safe, clean, healthy, and sustainable environment—an indication that the Council believed that the obligations were clear enough to be implemented and monitored.<sup>12</sup>

In 2018, in my final report to the Council, I presented Framework Principles on Human Rights and the Environment summarizing these obligations.<sup>13</sup> They include procedural obligations such as respecting and protecting the rights of information, public participation, and access to remedies in environmental matters; substantive obligations to establish and enforce non-regressive environmental standards that take into account the best available science and relevant international norms; and obligations of non-discrimination and of protection of those who are especially at risk from environmental degradation. In the report, I also urged the Council for the first time to consider recognizing the right to a healthy environment.

The Council appointed David Boyd, of the University of British Columbia, as the next special rapporteur. Over the next three years, he became the leading champion of recognition, making the case with passion and precision in reports and countless meetings around the world. Among states, the effort was led by the core group that had supported the mandate: Costa Rica, Maldives, Morocco, Slovenia, and Switzerland. More than 1,300 civil society organizations advocated in favor of recognition.<sup>14</sup> Even more remarkably, in 2021 the heads of fifteen UN agencies abandoned their usual neutrality on such issues to join the campaign.<sup>15</sup>

In October 2021, the Council finally recognized the right to a clean, healthy, and sustainable environment as a human right.<sup>16</sup> Of the forty-seven members of the Council, none voted against the resolution and only four abstained: China, India, Japan, and Russia. However, in light of the political weight of those states and the

<sup>7</sup> [Hum. Rts. Council Res. 19/10](#) (Mar. 22, 2012).

<sup>8</sup> Marc Limon, *United Nations Recognition of the Universal Right to a Clean, Healthy and Sustainable Environment: An Eyewitness Account*, 31 REV. EUR. COMP. & INT’L ENVTL. L. 155, 161 (2022).

<sup>9</sup> [Hum. Rts. Council Res. 7/22](#) (Mar. 28, 2008).

<sup>10</sup> [GA Res. 64/292](#) (July 28, 2010).

<sup>11</sup> The mapping reports are available [here](#).

<sup>12</sup> [Hum. Rts. Council Res. 28/11](#) (Mar. 26, 2015).

<sup>13</sup> [UN Doc. A/HRC/37/59](#), Annex (Jan. 24, 2018).

<sup>14</sup> The petition is available [here](#).

<sup>15</sup> Their statement is available [here](#). Marc Limon, the executive director of Universal Rights Group and a former diplomat for Maldives, also played a crucial role in building support in Geneva.

<sup>16</sup> [Hum. Rts. Council Res. 48/13](#) (Oct. 8, 2021). The word “safe,” which had been included in every resolution on the mandate, was dropped from the resolution because France opposed the term.

opposition of the United States (which was not a Council member at the time and so could not vote), the core group pursued General Assembly approval with caution. Over the next nine months, in close consultation with other interested states, the current and former special rapporteurs, and civil society organizations, the five main co-sponsors carefully prepared the ground.

Their efforts were successful. On July 28, 2022, Costa Rica introduced Resolution 76/300 on behalf of more than one hundred cosponsors. Almost fifty years to the day after adoption of the Stockholm Declaration, the UN General Assembly endorsed the right by a vote of 161–0. Only eight states abstained, including China and Russia.<sup>17</sup> India, Japan, and the United States joined the majority.<sup>18</sup> For the United States, it was the first “new” human right it had supported at the United Nations in over fifty years.<sup>19</sup> The level of support—over 95 percent of the voting members, with no negative votes—was significantly higher than the most similar precedents: the 2010 resolution recognizing the rights of water and sanitation (122–0, with forty-one abstentions), and the 1986 resolution recognizing the right to development (146–1, with eight abstentions and a negative vote from the United States).

### *The Content of Resolution 76/300*

The language of Resolution 76/300 is straightforward. Its most important provision is its first operative paragraph, which states simply, “*The General Assembly . . . Recognizes the right to a clean, healthy and sustainable environment as a human right.*” As Philip Alston discusses in his essay, a number of states said in their explanations of vote that this provision does not change international law.<sup>20</sup> Many states instead spoke of the potential political effect of the right. Costa Rica underlined the hope of the core group that recognition “will catalyze transformative changes in our societies,” the need for which was echoed by many other speakers. For example, the European Union, speaking for its members, said that the right was already enshrined in many instruments but more needed to be done to translate it into action, and that the resolution “lays the ground for such action.”<sup>21</sup>

The second operative paragraph of the resolution notes that the right “is related to other rights and existing international law.” Earlier drafts had prompted debate over whether the resolution should refer specifically to rights important to environmental human rights jurisprudence. However, it was difficult if not impossible to decide which rights merited inclusion. In addition, the drafters wanted to indicate that the right is autonomous—that is, that it is not merely derivative from other rights. As Alston explains, in the latter case the scope of the right to a healthy environment might be “genetically constrained” by the scope of the rights from which it was derived.

Some states, mainly ones that had not previously recognized the right, said that the content of the right is unclear.<sup>22</sup> It is hard to imagine how a resolution could spell out exactly what a right means, and in any event other instruments, including the Universal Declaration of Human Rights itself, have not done so. Nevertheless, the right is not an empty vessel waiting to be filled; it and the relationship of human rights and

<sup>17</sup> One abstaining state (Kyrgyzstan) and two states that did not vote (Saint Kitts and Nevis and Seychelles) later informed the UN Secretariat that they had intended to vote in favor. [UN Doc. A/76/PV.97](#), at 11. Therefore, the final vote should have been 164–0, with seven abstentions.

<sup>18</sup> However, India disassociated itself from the paragraph of the resolution recognizing the right.

<sup>19</sup> See [Contemporary Practice of the United States](#), 117 AJIL 129 (2023).

<sup>20</sup> See [UN Doc. A/76/PV.97](#), *supra* note 17 (e.g., statements of Russia, Pakistan, United Kingdom, Japan, New Zealand, Norway, United States, India, Egypt, and Poland).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* (e.g., statements of the United Kingdom, Canada, Japan, United States, and China).

the environment generally have already been the subject of extensive examination by national courts and international bodies, including through documents such as the Framework Principles, which the resolution noted in a preambular paragraph.

In its third operative paragraph, the resolution affirms that the right “requires the full implementation of the multilateral environmental agreements under the principles of international environmental law.” This language was proposed by Brazil and opposed by the United States, which disliked “conflating the contents of multilateral environmental agreements with human rights law.”<sup>23</sup>

Finally, the fourth operative paragraph calls upon states, international organizations, business enterprises and other relevant stakeholders “to scale up efforts to ensure a clean, healthy and sustainable environment for all.” The drafters considered including more detailed suggestions, but decided to maintain a tight focus on recognition of the right, with the aim of achieving the highest possible level of support.

### *The Effect of UN Recognition*

What effect will UN recognition have? In their contributions, Philip Alston of New York University and Carmen Gonzalez of Loyola University Chicago School of Law argue that recognition should change how we think about human rights law. In Alston’s view, recognition shows that “human rights have moved beyond the impoverished conceptions of rights that dominated the second part of the last century,” because the right to a healthy environment does not fit in either of the Cold War-era bifurcated categories of rights.<sup>24</sup> He stresses that the path to recognition demonstrates that new norms are developing in more complex and flexible ways than traditional accounts contemplate, with norm entrepreneurs like treaty bodies and special rapporteurs playing an increasingly important role and “states sometimes struggling to keep up.”

In her contribution, Gonzalez examines the right in light of the criticisms of international human rights law “as a project and product of the Global North.”<sup>25</sup> Critical scholars have argued that the mainstream view in human rights discourse privileges the role of Northern institutions and erases contributions from the Global South and subaltern social movements, as well as legitimating the invocation of human rights to justify Northern interventions in the South. Gonzalez writes that recognition of the right to a healthy environment is especially relevant to this debate, because the right has deep roots in the Global South and has been fiercely resisted in the Global North. Its meaning has already been elaborated by Southern tribunals, which have infused it with communitarian values and rejected anthropocentric interpretations. She concludes by saying that the right “demonstrates that the Global South is not a passive imitator and recipient of international law but an important epistemic site of production of international legal knowledge.”

How might UN recognition affect the already rich jurisprudence on environmental human rights law? Hélène Tigroudja of Aix-Marseille University and New York University describes the “green turn” in the practice of the Human Rights Committee (of which she is a member) and other treaty bodies.<sup>26</sup> Through General Comments, oversight of country reports, and decisions in individual cases, treaty bodies have begun to connect the rights they oversee to environmental protection, although they have met with resistance from states as well as some members of the treaty bodies themselves. Tigroudja stresses that the treaty bodies have not derived a right to a healthy environment from the rights within their purview, and concludes that its recognition by the General Assembly will

<sup>23</sup> *Id.* (statement of United States).

<sup>24</sup> Philip Alston, *The Right to a Healthy Environment: Beyond Twentieth Century Conceptions of Rights*, 117 AJIL UNBOUND 167 (2023).

<sup>25</sup> Carmen G. Gonzalez, *The Right to a Healthy Environment and the Global South*, 117 AJIL UNBOUND 173 (2023).

<sup>26</sup> Hélène Tigroudja, *From the “Green Turn” to the Recognition of an Autonomous Right to a Healthy Environment: Achievements and Challenges in the Practice of UN Treaty Bodies*, 117 AJIL UNBOUND 179 (2023).

probably have only a limited impact on their work. She suggests that they may be influenced more by forthcoming opinions from the International Court of Justice and other international tribunals, including the Inter-American Court of Human Rights.

Maria Antonia Tigre of the Sabin Center for Climate Change Law at Columbia Law School explores the progressive jurisprudence of the Inter-American Court in this field, especially its pathbreaking advisory opinion on human rights and the environment in 2017.<sup>27</sup> Tigre argues that UN recognition will support even more rapid development of this case law and accelerate adoption and effective enforcement of the right nationally. Six countries in the region recognized the right for the first time at the Council or General Assembly. She writes that recognition helps to clarify that environmental defenders, who are particularly at risk in Latin America, are human rights defenders entitled to protection by states. Finally, she predicts that the resolution will encourage the Inter-American Court to take a bold stance in its pending advisory opinion on climate change, “appropriately responding to the needs of the global planetary crisis we are facing.”

Other legal innovations have also been proposed in response to that crisis. Rosemary Mwanza of Stockholm University Law School examines one in particular: the effort to define and prohibit ecocide. She explores ways that UN recognition of the right to a healthy environment may catalyze codification of ecocide as a crime.<sup>28</sup> She argues that the rhetorical dimension of the right—its communicative value—can help to build support for codifying ecocide by drawing attention to particularly grave instances of environmental harm and by exposing the gap between existing laws and the ideal of a clean, healthy, and sustainable environment. She also explains that ecocide may be considered as an aspect of the implementation of the right by offering, among other things, a legal avenue through which grave violations of the right may be punished, thus fostering remedy and accountability.

Finally, one might ask whether even the aspirational aspects of the right fall short of what is needed. In the last essay, Louis Kotzé of North-West University and the University of Lincoln examines the potential effect of recognition of the right on what he calls “hidden subjects” of the law: nature and future generations.<sup>29</sup> He argues that the UN action may contribute less to the protection of their rights than one might expect. The resolution’s language does not explicitly support recognizing the rights of future generations, and it remains resolutely anthropocentric, hardly referring to nature at all. Kotzé concludes that, while symbolically important, UN recognition of a right already acknowledged by most of the countries in the world does not offer the transformational change necessary to respond to the planetary environmental crises.

### *Conclusion*

The field of human rights and the environment will continue to expand as advocates and scholars use rights-based approaches to reinvigorate environmental law and policy. In the face of enormous environmental and social challenges, the recognition of our shared human right to a healthy environment offers cautious hope that we will find a sustainable path away from environmental self-destruction.

<sup>27</sup> Maria Antonia Tigre, *United Nations Recognition of the Right to a Healthy Environment: What Is the Added Value for Latin America and the Caribbean?*, 117 AJIL UNBOUND 184 (2023); see *The Environment and Human Rights, Advisory Opinion OC-23/17*, Inter-Am. Ct. H.R. (ser. A) No. 23 (Nov. 15, 2017).

<sup>28</sup> Rosemary Mwanza, *The Right to a Healthy Environment as a Catalyst for the Codification of the Crime of Ecocide*, 117 AJIL UNBOUND 189 (2023).

<sup>29</sup> Louis J. Kotzé, *The Right to a Healthy Environment and Law’s Hidden Subjects*, 117 AJIL UNBOUND 194 (2023).