

CONTEMPORARY PRACTICE OF THE UNITED STATES RELATING TO INTERNATIONAL LAW

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OCEANS, ENVIRONMENT, AND SCIENCES

The United States Recognizes the Human Right to a Clean, Healthy, and Sustainable Environment

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On July 28, 2022, the United States voted in favor of UN General Assembly Resolution 76/300 “recogniz[ing] the right to a clean, healthy and sustainable environment as a human right.”¹ Just nine and a half months earlier, in October 2021, the United States had opposed the Human Rights Council’s recognition of the same right. Not only was the U.S. vote in the General Assembly a reversal of its consistent stance against the right to a healthy environment, it was also a striking exception to the long-standing resistance of the United States to the recognition of “new” human rights.

The origins of the right to a healthy environment date back to 1972, when the UN Conference on the Environment adopted the Stockholm Declaration. The Declaration 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 it stated, in the first of its principles, that people have a “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.”² Since Stockholm, at least 155 states have recognized the right to a healthy environment at the national or regional level.³ That number includes more than 120 states that are bound by regional treaties that recognize the right; over 100 states that have constitutional protections that acknowledge the right; and above 100 states that have adopted legislation that incorporates the right.⁴

Until fifteen months ago, however, the right’s success nationally and regionally had not been replicated globally. UN environment and sustainable development conferences subsequent to Stockholm did not adopt or elaborate the right. There was a moment, in the early 1990s, when the Sub-Commission on Prevention of Discrimination and Protection of Minorities pursued the topic through the appointment of a Special Rapporteur on Human Rights and the Environment, Fatma Zohra Ksentini. The special rapporteur’s final report, in 1994, proposed a draft declaration stating that: “All persons have the right to a secure, healthy and ecologically sound environment.”⁵ But the Commission on Human Rights did not

¹ GA Res. 76/300, The Human Right to a Clean, Healthy and Sustainable Environment (July 28, 2022), at <https://perma.cc/G78S-RUNW> [hereinafter Resolution 76/300]; UN General Assembly, 97th Plenary Mtg., 76th Sess., at 11, UN Doc. A/76/PV.97 (July 28, 2022), at <https://perma.cc/Z46H-LH2V> [hereinafter Verbatim Record].

² Declaration of the United Nations Conference on the Human Environment (June 16, 1972), in Report of the United Nations Conference on the Human Environment, at 3–4, UN Doc. A/CONF.48/14/Rev. 1 (June 5–16, 1972), at <https://perma.cc/D7NC-CBUT>.

³ See David R. Boyd, *Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment*, in THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT 18 (John H. Knox & Ramin Pejan eds., 2018).

⁴ See *id.*

⁵ Final Report Prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur, Annex 1, at 75, UN Doc. E/CN.4/Sub.2/1994/9 (July 6, 1994).

pursue the matter further with any vigor.⁶ For more than a decade thereafter efforts at the United Nations mostly stalled.⁷

The right to a healthy environment's return to center stage began in 2007 within the broader efforts, then gaining strength, to combat climate change. The government of Maldives convened a conference of small island developing states, and the meeting resulted in the Malé Declaration on the Human Dimension of Global Climate Change—the first international statement to explicitly connect climate change to human rights.⁸ The declaration requested the Human Rights Council “to convene . . . a debate on human rights and climate change.”⁹ In response, the Human Rights Council adopted Resolution 7/23 in 2008, in which it stated, in a first for the United Nations, that climate change poses “an immediate and far-reaching threat to people . . . and has implications for the full enjoyment of human rights.”¹⁰ As requested in that resolution, the United Nations high commissioner for human rights submitted a report to the Council that analyzed “the relationship between climate change and human rights.”¹¹ In response, the Council 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.”¹²

In 2012, the Council appointed John H. Knox as its first independent expert (later, special rapporteur) on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment.¹³ Over the next six years, Knox issued reports mapping human rights obligations relating to the environment, identifying good practices in the use of these obligations, describing the relationship between human rights and climate change, biodiversity, and children's rights, and issuing specific recommendations on implementation of the human rights obligations relating to the environment.¹⁴ In his January 2018 final report, Knox suggested that the “Human Rights Council [should] consider supporting the recognition of the right in a global instrument” and that the General Assembly “could adopt a . . . resolution that recognizes the right to a safe, clean, healthy and sustainable

⁶ See Human Rights and the Environment, Res. 1995/14 (Feb. 24, 1995), Commission on Human Rights: Report on the 51st Session, 30 January–10 March 1995, UN Doc. E/CN.4/1995/176 (1995); Human Rights and the Environment, Res. 1996/13 (Apr. 11, 1996), Commission on Human Rights: Report on the 52d Session, 18 March–26 April 1996, UN Doc. E/CN.4/1996/177 (1996).

⁷ For a discussion of these and subsequent diplomatic developments within the Commission on Human Rights and the Human Rights Council, see 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 (2022).

⁸ Malé Declaration on the Human Dimension of Global Climate Change (Nov. 14, 2007), at https://www.ciel.org/Publications/Male_Declaration_Nov07.pdf.

⁹ *Id.*, para. 5.

¹⁰ Human Rights and Climate Change, Res. 7/23, in Report of the Human Rights Council on Its Seventh Session, UN Doc. A/HRC/7/78 (July 14, 2008).

¹¹ Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights, UN Doc. A/HRC/10/61 (Jan. 15, 2009).

¹² Human Rights Council, Res. 10/4, Human Rights and Climate Change, UN Doc. A/HRC/RES/10/4 (Mar. 25, 2009). The Council subsequently requested a similar report from the High Commissioner on the relationship between human rights and the environment, and that report was submitted in 2011. See Human Rights and the Environment, UN Doc. A/HRC/RES/16/11 (Mar. 24, 2011); Analytical Study on the Relationship Between Human Rights and the Environment, UN Doc. A/HRC/19/34 (Dec. 16, 2011).

¹³ Human Rights Council, Res. 19/10, Human Rights and the Environment, UN Doc. A/HRC/RES/19/10 (Mar. 22, 2012).

¹⁴ See Annual Thematic Reports – Special Rapporteur on Human Rights and the Environment, at <https://www.ohchr.org/en/special-procedures/sr-environment/annual-thematic-reports>.

environment.”¹⁵ A report later that year, co-authored by Knox and his successor David R. Boyd, presented an extensive argument that the United Nations should formally recognize the “human right to a safe, clean, healthy and sustainable environment, or, more simply, the human right to a healthy environment.”¹⁶ Over the next few years, with the increasing public support for the right from the secretary-general, the high commissioner, UN agencies, and non-governmental organizations,¹⁷ the core group of delegations that had been patiently pushing the Council over the prior decade decided to move forward and carefully drafted and negotiated a resolution recognizing the right to a healthy environment.¹⁸

On October 8, 2021, the Human Rights Council adopted Resolution 48/13 “recogniz[ing] the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights,” with forty-three votes in favor, four abstentions (China, India, Japan, and Russia), and no members voting against.¹⁹ The resolution also “[i]nvite[d] the General Assembly to consider the matter.”²⁰ Five days later, the United States, which was not then a member of the Council, explained its opposition to the right.²¹ Although the United States “recognize[d] that climate change and environmental degradation impact the enjoyment of human rights and affirm that when taking action to address environmental challenges and climate change, States should respect their respective human rights obligations,” the statement nonetheless reiterated the “consistent” U.S. position that “there are no ‘universally-recognized’ human rights related to the environment,” and international law provides no basis for recognizing “a ‘right to a clean, healthy, and sustainable environment,’ either as an independent right or a right derived from existing rights.”²²

On July 28, 2022, less than two months after the Stockholm+50 meeting marking the five decades since the Stockholm Conference,²³ the General Assembly adopted Resolution

¹⁵ Human Rights Council, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, para. 14, UN Doc. A/HRC/37/59 (Jan. 28, 2018).

¹⁶ UN General Assembly, 73rd Sess., para. 37, UN Doc. A/73/188 (July 19, 2018).

¹⁷ See, e.g., Report of the UN Secretary-General, Our Common Agenda (Sept. 10, 2021), at <https://www.un.org/en/content/common-agenda-report>; UN Press Release, Joint Statement of United Nations Entities on the Right to Healthy Environment (Mar. 8, 2021), at <https://www.unep.org/news-and-stories/statements/joint-statement-united-nations-entities-right-healthy-environment>; 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 (June 2021), at <https://www.sparkblue.org/system/files/2021-06/210615%20STEP%20UP%20-%20Joint%20Commitment%20by%20Heads%20of%20UN%20Entities.pdf>; UN Press Release, Joint Statement by UN Human Rights Experts for World Environment Day (June 4, 2021), at <https://www.ohchr.org/en/statements/2021/06/joint-statement-un-human-rights-experts-world-environment-day>; THE TIME IS NOW! Global Call for the UN Human Rights Council to Urgently Recognize the Right to a Safe, Clean, Healthy and Sustainable Environment (Sept. 10, 2020), at <https://www.ciel.org/wp-content/uploads/2020/09/Global-Call-for-the-UN-to-Recognize-the-Right-to-a-Healthy-Environment-English.pdf>.

¹⁸ For a detailed discussion, see Limon, *supra* note 7, at 161–69.

¹⁹ Human Rights Council, The Human Right to a Clean, Healthy and Sustainable Environment, Res. 48/13, para. 1, UN Doc A/HRC/RES/48/13 (Oct. 8, 2021).

²⁰ *Id.*, para. 5.

²¹ U.S. Mission Geneva, End-of-Session General Statement of the United States of America (Oct. 13, 2021), at <https://geneva.usmission.gov/2021/10/13/un-human-rights-council-48th-end-of-session-general-statement> [<https://perma.cc/5S6N-QBZW>].

²² *Id.*

²³ Stockholm+50, at <https://www.stockholm50.global>.

76/300 recognizing the human right to a clean, healthy, and sustainable environment by a recorded vote of 161 in favor, zero against, and eight abstentions (Belarus, Cambodia, China, Ethiopia, Iran, Kyrgyzstan, Russia, and Syria).²⁴ Only four operative paragraphs long, the resolution “[n]otes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law.”²⁵ It also affirms that the promotion of the right “requires the full implementation of the multilateral environmental agreements under the principles of international environmental law.”²⁶ Finally, it calls on “States, international organizations, 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.”²⁷

The United States voted in favor of the resolution and subsequently issued an extensive explanation of position.²⁸ The statement first discussed why the United States supported the resolution. It stated that the United States had “long recognized the relationship between human rights and a clean, healthy and sustainable environment and that environmental degradation can negatively affect the enjoyment of human rights.”²⁹ And the statement emphasized that the United States has already sought to “achieve the aims set out in this resolution through domestic laws and policies in accordance with the U.S. Constitution and U.S. law.”³⁰ The statement noted that the resolution “expresses the aspirations of those around the world seeking a clean and healthy environment for all.”³¹ “Taking into account our history and current efforts of environmental protection and our belief that every person should enjoy the benefits of a healthy environment,” the statement explained, “the United States supports the development of a right to a clean, healthy, and sustainable environment in a manner that is consistent with international human rights law and international environmental law.”³²

But the explanation went on to note what the United States considers to be the limits of the General Assembly resolution. The resolution, the explanation of the U.S. position emphasized, “is not legally binding or a statement of current international law.”³³ Indeed, “[i]nternational law has yet to establish a right to a clean, healthy, and sustainable environment as a matter of customary international law, nor does treaty law provide for such a right. As such, there is no legal relationship between a right as recognized under this resolution and existing international law.”³⁴ What is more, the U.S. vote in favor of the resolution “does not [imply that the United States] recognize[s] any change in the current state of conventional

²⁴ Verbatim Record, *supra* note 1, at 10–11.

²⁵ Resolution 76/300, *supra* note 1, para. 2.

²⁶ *Id.*, para. 3.

²⁷ *Id.*, para. 4.

²⁸ See U.S. Mission to the United Nations, Explanation of the Position on the Right to a Clean, Healthy, and Sustainable Environment Solution (July 28, 2022), at <https://perma.cc/KQQ6-7EMA> [hereinafter Explanation of Position]. This document includes a longer explanation of position—“for the record”—than the statement that was delivered in the General Assembly (which can be found in Verbatim Record, *supra* note 1, at 14–15). Quotations are from the “for the record” text.

²⁹ Explanation of Position, *supra* note 28.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

or customary international law.”³⁵ The United States also disagreed with “any suggestion [in the resolution] that multilateral environmental agreements are implemented ‘under the principles of international environmental law’ or have any bearing on any State’s international legal obligations. There is no single set of principles under which multilateral environmental agreements operate, and such agreements are each implemented in accordance with their own provisions and are applicable only to those States that have joined them.”³⁶

U.S. support for Resolution 76/300 is in marked contrast to its usual attitude toward the recognition of new human rights. The United States was alone in its vote against the 1986 resolution recognizing the right to development, a position that it reiterated as recently as 2020.³⁷ It voted against the United Nations Declaration on the Rights of Indigenous Peoples in 2007, although it later reversed its position.³⁸ It abstained on the resolution recognizing the human right to water and sanitation in 2010.³⁹ It is one of six states that have not ratified the Convention on the Elimination of all Forms of Discrimination Against Women, and it is the only state that has not ratified the Convention on the Rights of the Child.⁴⁰

Signatories of the U.S.-Led Artemis Accords Meet in Person for the First Time

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On September 19, 2022, representatives of the twenty-one Artemis Accords signatories met at the International Astronautical Congress in Paris for the agreement’s first in-person meeting¹ since its launch on October 13, 2020.² Drafted by the United States, the

³⁵ *Id.*

³⁶ *Id.*

³⁷ UN General Assembly, 97th Plenary Mtg., 41st Regular Sess., at 64, UN Doc. A/41/PV.97 (Dec. 4, 1986); Third Committee, Summary Record of the 10th Meeting of the 75th General Assembly, at 13–14, UN Doc. A/C.3/75/SR.10 (Nov. 17, 2020).

³⁸ UN General Assembly, 107th Plenary Mtg., 61st Sess., at 19, UN Doc. A/61/PV.107 (Sept. 13, 2007); Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples (Jan. 12, 2011), at <https://2009-2017.state.gov/s/srgia/154553.htm>.

³⁹ UN General Assembly, 108th Plenary Mtg., 64th Sess., at 9, UN Doc. A/64/PV.108 (July 28, 2010).

⁴⁰ Status of Treaties, Convention on the Elimination of All Forms of Discrimination Against Women, at https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en; Status of Treaties, Convention on the Rights of the Child, at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en.

¹ U.S. Dep’t of State Press Release, First Meeting of Artemis Accords Signatories (Sept. 19, 2022), at <https://www.state.gov/first-meeting-of-artemis-accords-signatories> [<https://perma.cc/CYR8-VA85>]. The twenty-one signatories included: Australia, Bahrain, Brazil, Canada, Colombia, France, Israel, Italy, Japan, Luxembourg, Mexico, New Zealand, Poland, the Republic of Korea, Romania, Saudi Arabia, Singapore, Ukraine, the United Arab Emirates, the United Kingdom, and the United States. On December 13, 2022, Nigeria and Rwanda signed the Accords, bringing the total number of signatories to twenty-three. See U.S. Dep’t of State Press Release, Nigeria and Rwanda: First African Nations Sign the Artemis Accords (Dec. 13, 2022), at <https://www.state.gov/nigeria-and-rwanda-first-african-nations-sign-the-artemis-accords> [<https://perma.cc/V4AB-GE8T>].

² See Sean Potter & Cheryl Warner, *NASA, International Partners Advance Cooperation with First Signings of Artemis Accords* (Oct. 13, 2020), at <https://www.nasa.gov/press-release/nasa-international-partners-advance-cooperation-with-first-signings-of-artemis-accords> [<https://perma.cc/ZUA3-27JJ>]; see also NASA Video, *NASA and International Partners Sign Artemis Accords*, YOUTUBE (Oct. 13, 2020), at <https://www.youtube.com/watch?v=PkVxAJpb3Bk>. NASA Administrator Jim Bridenstine announced the Artemis Accords on May 15, 2020, shortly after media outlets reported that the Trump administration was drafting a “pact for moon mining.” See Jeff Foust, *NASA Announces Artemis Accords for International Cooperation in Lunar Exploration*, SPACENEWS (May 15, 2020), at [<https://doi.org/10.1017/ajil.2022.85> Published online by Cambridge University Press](https://spacenews.com/nasa-</p>
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