

Human Rights and the Environment: A Normative and Institutional Framework in the UN

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ABSTRACT

This paper presents the development of a new human right: the right to a clean, healthy and sustainable environment. This proved to be a challenging endeavour. Although the official catalogue of human rights does not contain this right, legal scholars from the 1970s have urged its inclusion in the wider system. Environmental rights are considered to be as third generation rights, urging states and the international community to act in favour of environmental protection. They are also considered a clear moral obligation, a view shared by global churches. This paper outlines the evolution of this human rights concept from the UN Stockholm Summit in 1972 to the present day, through various summits, conferences, and conventions. One European regional convention that takes environmental rights as its basis is the 1998 Aarhus Convention. Unfortunately, several obstacles hinder the inclusion of these rights in the human rights system due to differences in focus. Nevertheless, this development could continue via soft law documents and judgements, including those of the European Court of Human Rights, and new UN institutions such as the Special Rapporteur on the Right to a Clean, Healthy and Sustainable Environment. After many discussions and published documents by the UN Human Rights Council, the Council itself agreed in 2021 and the UN General Assembly agreed in 2022 that the right to a clean, healthy and sustainable environment should be recognised as a human right, finally putting the topic on the right track.

KEYWORDS

third generation rights, moral obligations, special rapporteurs, right to a clean, healthy and sustainable environment

1. The Potential Location of the Environmental Human Right and Some Selected Major Moral Considerations

Today, one can easily answer the question, how important is the human right concept? To say that it is definitely a promising way to evaluate the value a legal system grants to a certain subject is to examine whether it belongs to the code of human rights. The human rights model is the product of ideas that led to the French Revolution, in which the rights of individuals were taken as guarantees against the actual regime. From

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that point on, people's rights have always been considered proof of the significance of a given regulatory area; this does not necessarily always mean the codification of such rights.

Because the concept of human rights always refers to the value of a certain legal theme at each stage of development, these demands have become human rights that interested humans the most. The best early example is that during the revolutionary years of the 18th century, freedom of property, speech, religion, and the right to elect and be elected, among others, were prerequisites for future political and social development. Subsequently, other rights, such as social and cultural rights or later, the right to live in peace, emerged in the body of human rights during the last centuries.

Based on the historical development of the human rights concept, it is a commonly acknowledged method to make a distinction between three generations of human rights – as it has been known worldwide, following the article of Karel Vasak¹; nevertheless, we should not forget that this, or any other categorisation is relative – or, according to some, might even be counterproductive² – as every clustering and all lines between these groups are variable. Nevertheless, being generally accepted and having their own valuable messages, these groups are easy to manage.

The first generation is characterised by political freedom and rights to property, that is, everything connected to self-determination and the right to development. This group of rights originated in the 18th century, but is still a full member of the code of rights. In the case of first generation rights, the state has always been obliged to stay out of the given problem and refrain from doing something. Thus, the best protection of the rights of liberty and property is the freedom to have anything in private ownership and to be allowed to sell and buy these subjects of property without any restriction. Of course, it is impossible to conceive of this right to its fullest extent and exclude state intervention. In the case of property rights, the sphere of exclusive state property itself limits freedom.

The second generation of human rights became more important when freedom and development had already been secured, at least in part, from the end of the 19th century, and some qualitative guarantees of human life became vital from the perspective of human beings. These guarantees are mostly connected to social security, cultural rights, working conditions, and so on. The protection of the rights of the second generation requires active conduct and active involvement on behalf of the state to safeguard the implementation of these rights. Thus, the right to provide basic education for citizens may only function if it is organised and financed by the state.

The third generation of human rights is based on the recognition that the direct conditions of our survival are in danger, which means, first, the quality of life itself. Thus, the right to 'a healthy and ecologically balanced'³ environment, or the right to live in peace and avoid wars, particularly nuclear or chemical warfare, are the best

1 Vasak, 1977.

2 Juss, 1998.

3 Juss, 1998.

representatives of this concept. State actions are not sufficient to secure these rights; only international cooperation and action may be fruitful. The development of international environmental law is a consequence of understanding the need for international cooperation. These rights are also considered as “solidarity rights” – as Vasak summarised accurately: ‘Since these rights reflect a certain conception of community life, they can only be implemented by the combined efforts of everyone: individuals, states and other bodies, as well as public and private institutions’. One author⁴ argued that because of the rapid development we face, human values are seriously damaged, which clearly means that we must take special care of them. Therefore, the need to protect these rights is present at all levels. Other authors clearly refer to the intense international dimension of these rights, as they were created due to globalisation. It is not surprising why the right to development is also a part of third generation rights.⁵ Nonetheless, many believe that ‘Environmental rights do not fit neatly into any single category or “generation” of human rights’,⁶ – looking at its several constituents, such as participatory or procedural rights.

Currently, due to the overestimation of rights over duties which guarantee the employment of any rights, there is a growing tendency to reinforce duties and obligations. As Pope Benedict XVI wrote,

‘An overemphasis on rights leads to a disregard for duties. Duties set a limit on rights because they point to the anthropological and ethical framework of which rights are a part, in this way ensuring that they do not become licence. Duties thereby reinforce rights and call for their defence and promotion as a task to be undertaken in the service of the common good. Otherwise, if the only basis of human rights is to be found in the deliberations of an assembly of citizens, those rights can be changed at any time, and so the duty to respect and pursue them fades from the common consciousness.’⁷

When drafting a protocol to the European Convention of Human Rights concerning the right to a healthy environment, the rapporteur added:⁸

‘12. At present, we are witnessing what could be called a fourth generation of fundamental rights, or a generation of rights and duties for the society of the future. Society as a whole and each individual in particular must pass on a healthy and viable environment to future generations. That is quite simply the principle of solidarity between generations.’

4 Hajjar Leib, 2011, pp. 53–54.

5 Kondorosi, 2005.

6 Birnie, Boyle and Redgwell, 2009, p. 271.

7 Benedict XVI, 2009, point 43.

8 Mendes Bota, 2009, under the title: 3.5. An additional protocol to the European Convention on Human Rights as a debt owed to future generations.

The above considerations do not necessarily mean that the right to environment can easily find its position within the body of human rights. In the context of the right to environment, the term “environment” is usually supplied with certain attributes. Mostly, it is called the right “to healthy environment” or the right to an “environment worthy of man”, etc. The draft model environmental act of the Council of Europe from 1994⁹ reads, ‘Everyone has a right to an ecologically stable and healthy environment’. As we proceed, the current UN language will come to the fore; until then, it is better to be impartial.

However, before discussing normative and institutional frameworks, a short glimpse into moral considerations may also be vital. Our moral survey is limited to Catholic teaching, which is still leading in Europe. The basis of the social teaching of the church is certainly the *Rerum novarum*,¹⁰ taking care of the well-being of the people, identifying it as a “common good”: ‘The state has a legitimate duty to promote the common good’, and ‘(29) [T]he state must sacredly protect the rights of all people, be they anyone’. This is a clear recognition of human rights more than half a century before the international community expressed a similar recognition in the Universal Declaration of Human Rights. In the same encyclical sense, the protection of creation in the present sense has not been markedly articulated. Here, we should not enter into a comprehensive analysis of the teaching; therefore, we immediately go to the first encyclical of Pope Saint John Paul II, *Redemptor hominis*¹¹:

‘(17) Human rights: “letter” or “spirit”

The Church has always taught the duty to act for the common good and, in so doing, has likewise educated good citizens for each State. Furthermore, she has always taught that the fundamental duty of power is solicitude for the common good of society; this is what gives power its fundamental rights. Precisely in the name of these premises of the objective ethical order, the rights of power can only be understood on the basis of respect for the objective and inviolable rights of man. The common good that authority in the State serves is brought to full realization only when all the citizens are sure of their rights.’

Twenty years later, in 1999, Pope Saint John Paul II devoted an entire World Day of Peace message to human rights,¹² taking human dignity as a starting point, continuing with the universality and indivisibility of human rights, and subsequently focusing on some of the human rights that have become increasingly important. Among many other elements, in addition to the prohibition of all forms of discrimination, the right

9 Council of Europe, 1994, Art. 3, para. 1. See more details in chapter V.

10 Leo XIII, 1891.

11 John Paul II, 1979.

12 John Paul II, 1999.

to self-fulfilment, solidarity, and peace. Paragraph 10 concerns responsibility for the environment:

‘(10) The promotion of human dignity is linked to the right to a healthy environment, since this right highlight the dynamics of the relationship between the individual and society. A body of international, regional and national norms on the environment is gradually giving legal form to this right. But legislative measures are not sufficient by themselves. . . . The world’s present and future depend on the safeguarding of creation, because of the endless interdependence between human beings and their environment. Placing human well-being at the centre of concern for the environment is actually the surest way of safeguarding creation; this in fact stimulates the responsibility of the individual with regard to natural resources and their judicious use.’

The Compendium of the Social Doctrine of the Church¹³ discusses the issue of human rights as a priority. This takes place in Part IV of Chapter III, according to the premise of which:

‘(152) The movement towards the identification and proclamation of human rights is one of the most significant attempts to respond effectively to the inescapable demands of human dignity’. Later, there is a unified approach to human rights: ‘(154) Human rights are to be defended not only individually but also as a whole: protecting them only partially would imply a kind of failure to recognise them.’ In the Compendium’s specific chapter on the environment, one may read: ‘(468) The juridical content of *“the right to a safe and healthy natural environment”* is gradually taking form, stimulated by the concern shown by public opinion to disciplining the use of created goods according to the demands of the common good and a common desire to punish those who pollute. But juridical measures by themselves are not sufficient. They must be accompanied by a growing sense of responsibility as well as an effective change of mentality and lifestyle.’

Finally, I would like to draw attention to two more Vatican statements, both of which are linked to the seventieth anniversary of the Universal Declaration of Human Rights. In chronological order, the first is Pope Francis’ New Year’s greeting for diplomats accredited to the Holy See.¹⁴ On the occasion of this anniversary, the Pope states, primarily representing the general opinion of the Holy See on human rights, that human rights are essential to the reality of man’s central role, the image of God, and his likeness. He then notes the *changes* in the human rights catalogue, the appearance of “new rights”, including the right to health, or the relationship between the right

13 Pontifical Council for Justice and Peace, 2004.

14 Francis, 2018.

to life and peace. The speech subsequently addresses the duty to care for our land, which includes our obligations when interacting with nature. On the topic of climate change, it then focuses on the rights of future generations.

Of course, it is not only the Catholic Church that focuses on similar problems, namely our special relationship with nature – or the Creation, as it is clearly presented in the Assisi Declarations, with the participation of experts in the leading religions of the world – Buddhism, Christianity, Hinduism, Judaism, and Islam.¹⁵

2. The Right to Environment in International (Mostly UN) Context: A Review

The following words are valid even in 2024:

‘Nevertheless, although UN Charter expressed the UN’s aims and purposes in far wider term than those of the League of Nations, nowhere is there any explicit reference to the aim of protecting, preserving, or conserving the natural environment or promoting sustainable development. This is hardly surprising. There was little awareness in 1945 of any need to protect the environment, except on a limited and ad hoc bases ... the subsequent evolution of the UN’s power to adopt policies or take measures directed on environmental objectives has to be derived from a broader interpretation of the Charter and of the implied powers of the organization.’

Here, the authors refer to Art. 1 and 55 of the Charter.¹⁶ This should be kept in mind when evaluating both the road to environmental policy and environmental human right approach.

2.1. UN Summits

The right to environment as a requirement first appeared in international conferences, primarily the specific UN conferences, among which the first was the United Nations Conference of the Human Environment¹⁷ in 1972. Principle 1 of the Conference – and we may take the numbering as an important message – stated:

‘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. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial

¹⁵ Faith in Conservation, 1986.

¹⁶ Birnie, Boyle and Redgwell, 2009, p. 58.

¹⁷ United Nations, n.d.

and other forms of oppression, and foreign domination stand condemned and must be eliminated’.

This principle covers virtually everything that comes only after Stockholm: a solid right to live under acceptable environmental conditions associated with human dignity and well-being (which should not necessarily mean only material conditions) in a broader sense, the mention of the present and similarly, future generations, and taking it all as an obligation (responsibility) simultaneously. The 1972 declaration proved to be slightly more demanding than the messages of the coming UN environmental conferences. Following the first entrée, moving ahead and becoming more progressive proved to be slightly challenging.

Summarizing the role of Stockholm within environmental human rights, we might agree with the author:

‘The driving force in this direction has been gaining momentum since the 1972 Stockholm Conference on the Human Environment, which proclaimed linkage between human rights and the environment. Since then, a number of questions have been answered, such as the collective dimensions of human rights; the justiciability of economic, social, and cultural rights; the existence of procedural and substantive human rights obligations regarding environmental protection; and the interplay between universality and diversity.’¹⁸

Twenty years later, the Rio Declaration on Environment and Development¹⁹ was far less progressive as instead of reinforcing the human right concept, stating only in Principle No. 1: ‘Human beings are at the centre for sustainable development. They are entitled to a healthy and productive life in harmony with nature’. Dinah Shelton wrote²⁰ that this was due to uncertainty and debates about the proper place for human rights law in the development of international environmental law. Contrarily, there are other positive elements of Rio, such as sustainable development law – Principle 4 – and public participation – Principle 10 as a procedural background to the would-be human right or the precautionary principle – Principle 15.

As a general comment:

‘Since Stockholm a growing number of international texts have included references to environmental rights or a right to an environment of a certain – or uncertain quality. ...Although the 1950 European Convention on Human Rights does not contain a right to environment, case law of the European Commission and Court of Human Rights indicates that environmental deterioration

18 Orellana, 2015, p. 75.

19 United Nations, 1992.

20 Shelton, 1992.

can lead to violations of human rights that are recognized by the Convention, including the right to privacy and family life, and the right to property.²¹

The third UN Summit was held in Johannesburg in 2002, adopting, among others, The Johannesburg Declaration on Sustainable Development, which²² did not mention the environmental human right; instead, the indivisibility of human dignity was highlighted (point 18). The whole declaration balances development and sustainability, with many such elements that could appear in the 2015 SDG.²³

The Rio+20²⁴ summit in 2012 must also be mentioned to close the circle of UN global conferences. “The Future We Want” is again a preparatory document of the future SDG, stating the same as 20 years earlier: ‘6. We recognize that people are at the centre of sustainable development...’ Human rights are certainly recognised in points 8 and 9 without even mentioning the idea of environmental rights.

2.2. Contemporary International Instruments, Conventions

Unfortunately, in the realm of international human rights law, there is no global human rights convention that explicitly adopts the right to environment as a codified basic right. Nevertheless, this right appears to be a condition for the quality of life. Certain regional conventions and judicial practices²⁵ managed to overcome this common model; however, real progress was made in domestic legislation. Most European domestic legislations now accept the right to environment as a basic citizen’s right.

Granting a human right to environment – whatever attribute is used – still represents a great challenge and responsibility to domestic law, and it is a much greater challenge to international human rights law. ‘Under domestic constitutions and international human rights law, obligations are owed to individuals by the State, and the function of rights is to provide a means for such obligations to be enforced.’²⁶ This question requires substantial dedication on behalf of the state/states and right-bearers. As we see below, it is difficult to push through any such new challenge, which also implies a type of system change.

If we want to understand how environmental rights are reflected in international human rights law,²⁷ we may distinguish three groups of international documents: the official codes of human rights – UN or European conventions, covenants – which do not mention environmental issues or the right to environment; non-binding

21 Kiss and Shelton, 1993, p. 43.

22 United Nations, 2002a.

23 United Nations, n.d. b.

24 United Nations, 2012.

25 In Europe the best example is the European Court of Human Rights, having an extensive case-law, see the list of most important cases from April 2024: European Court of Human Rights, 2024.

26 Merrills, 2007, p. 673.

27 A handy summary may be: United Nations, 2020.

international documents – such as the Stockholm Declaration and Action Plan for the Human Environment or Rio Declaration on Environment and Development, mentioned above, and in its principle No. 1; environmental agreements which mention the right to environment, such as the Aarhus Convention,²⁸ which considers the right to environment as the footing. The preamble reads as follows:

‘Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of the present and future generations.’

It goes without saying that the most crucial item in the list of the first group – multilateral treaties – is the Universal Declaration of Human Rights from 1948.²⁹ This Declaration certainly did not mention environmental issues, which did not appear at that time as a potential human rights issue. There were some international agreements and even case law (see Trail Smelter from 1941),³⁰ but these sporadic calamities could not summarise as a huge global and holistic subject matter after World War II, as it is today.

‘The Universal Declaration of Human Rights, 44 adopted alongside the United Nations Charter, began the process of redefining sovereignty to include responsibilities to citizens and inhabitants. As members of the United Nations, states committed themselves to “universal respect for observance of human rights and fundamental freedoms”. The Universal Declaration focuses primarily on the proper limits of state power vis-à-vis individuals, particularly those who are members of marginalized racial, ethnic, or religious minorities. As such, international human rights law deals mainly with how people should be treated by their government and its institutions.’³¹

The Declaration is built on human dignity, as is clear from the first paragraph of the Preamble:

‘Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’, and also from Art. 1. The only probable and remote link in the Declaration with the environment might be Art. 25. Para. 1: ‘Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and

28 United Nations Economic Commission for Europe, 1998.

29 United Nations, 1948.

30 For a pertinent survey see: Prunella, 2014.

31 Bratspies, 2015, p. 39.

medical care and necessary social services, ...' Here, we reiterate our short moral survey, and the way human dignity slowly, but effectively inserted environmental conditions.³² Hence, Weeramantry prioritised the different human rights in an innovative way: 'Protecting the environment is also an essential part of the current doctrine of human rights, as it is a prerequisite for many human rights, such as the right to health and life.'³³

Before discussing the contemporary history of the progress made in connection with the explicit environmental human right, some other agreements should also be studied. Almost 20 years later, the Declaration was completed with two covenants: the International Covenant on Economic, Social, and Cultural Rights³⁴ and International Covenant on Civil and Political Rights.³⁵ We may find some elements in both covenants, which may somehow relate to our subject matter: Economic, Social, and Cultural; 'Art. 7. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

'... (b) Safe and healthy working conditions...;

Art. 12. 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

0...(b) The improvement of all aspects of environmental and industrial hygiene;' Civil and Political 'Art. 6. 1. Every human being has the inherent right to life. ...'

These references are quite remote and mentioning them is not functional; however, for the sake of clarity, they should be discussed. Sometime – decades – later two UN documents appeared in the scene which might really be used, which have existing connections to the greater domain of environmental issues.

The earlier is the Convention on the Rights of the Child,³⁶ which could not avoid having some direct references to environmental issues, as the paramount value of environmental conditions became increasingly visible. Art. 24 reads:

32 '(10) The promotion of human dignity is linked to the right to a healthy environment, since this right highlights the dynamics of the relationship between the individual and society' in: John Paul II, 1979.

33 Separate opinion of Judge Weeramantry in International Court of Justice, 1997.

34 United Nations, 1966a.

35 United Nations, 1966b.

36 United Nations, 1989.

‘2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ...

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; ...

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents; ...’

Another 10 years have passed, and a new UN document is coming to the fore: the UN Declaration on the Rights of Indigenous Peoples.³⁷ The preamble is clear in this respect: the environmental conditions and the rights are connected: ‘Recognizing that respect for indigenous knowledge, cultures, and traditional practices contributes to sustainable and equitable development and proper management of the environment, ...’ In Art. 29 two separate issues are mentioned parallelly: one concerns environmental conditions as such – ‘1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. ...’, while the second is related with a new method of colonialism: ‘2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.’

In our categorisation, this first group focuses on global UN papers, which at the highest level – the so-called human rights’ code – does not contain environmental human rights, but as we can see, emerging examples still exist. Other steps taken by the UN and its different bodies are discussed later. Moreover, there are regional human rights catalogues, which are slightly more advanced in this respect; when talking about the likelihood to have a general human right of this kind, we agree with the author³⁸: ‘Indeed, in a regional context this latter step has already been taken...’ At least in the African Charter on Human and Peoples’ Rights (1981)³⁹ – ‘Article 24: All peoples shall have the right to a general satisfactory environment favourable to their development’ – and in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador” (1988)⁴⁰ –

37 United Nations, 2007.

38 Merrills, 2007, p. 664.

39 Organisation of African Unity, 1981.

40 Organization of American States, 1988.

‘Article 11, Right to a Healthy Environment: 1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment.’

These two human rights documents are explicit in nature and direct in terms of their objectives.

Looking at the second group – policy papers and environmental agreements – of international documents from the outset of environmental human rights, the story is much more complex. The Stockholm Declaration has already been mentioned, and we agree that the Rio UNCED summit did not directly discuss the human rights issue; however, many elements, mostly procedural, such as public participation, were discussed. The other two environmental summits were also mentioned above. There are many such official or semi-official papers which we might discuss, but here, we refer to one example only, the “product” of a specified UN institution, the WHO – European Charter on Environment and Health from 1989.⁴¹ The preamble has a clear message of the interdependency of different human right issues ‘Recognizing the dependence of human health on a wide range of crucial environmental factors, ...’ Since the whole document is devoted to the human right issue, just the beginning, the two sides of the coin – rights and obligations – are mentioned here:

‘1. Every individual is entitled to: an environment conducive to the highest attainable level of health and wellbeing; information and consultation on the state of the environment, and on plans, decisions and activities likely to affect both the environment and health; participation in the decision-making process.

2. Every individual has a responsibility to contribute to the protection of the environment, in the interests of his or her own health and the health of others’.

The third group of international documents is a kind of mixture, where regional agreements or specific environmental agreements are linked, all having the attribute to take into consideration the environmental human rights. Following the procedural aspects underlined in Rio 1991, the best example may be the Aarhus Convention, also a UN convention, under the Economic Commission for Europe.⁴² The self-evaluation of the Aarhus Convention⁴³ is as follows:

‘The Aarhus Convention is a new kind of environmental agreement. It links environmental rights and human rights. It acknowledges that we owe an obligation to future generations. It establishes that sustainable development can be achieved only through the involvement of all stakeholders. It links

41 FPS, 2006.

42 United Nations Economic Commission for Europe, 1998.

43 United Nations Economic Commission for Europe, 2003.

government accountability and environmental protection. It goes to the heart of the relationship between people and governments. The Convention is therefore not only an environmental agreement; it is also a Convention about government accountability, transparency and responsiveness.

Ensuring the rights of access to information, public participation and access to justice can create an ethos in which violation of other more basic human rights, starting with the right to human life itself, becomes less possible or less likely, thereby contributing to the goal of stability and security. The Aarhus Convention represents an important step towards securing these rights.’

The Aarhus Convention proved to be a perfect sample document, which other regions also wished to apply, and in Rio+20 process there were humble efforts to make it global; however, only the Escazú Agreement⁴⁴ has been approved twenty years later. This could receive considerable attention, as it is written in the preface of the same publication: ‘The Regional Agreement is a ground-breaking legal instrument for environmental protection, but it is also a human rights treaty. Its main beneficiaries are the people of our region, particularly the most vulnerable groups and communities’. As the preamble reads:

‘Emphasizing that access rights are interrelated and interdependent, and so each and every one of them should be promoted and implemented in an integrated and balanced manner,
Convinced that access rights contribute to the strengthening of, inter alia, democracy, sustainable development and human rights.’

It is important to understand, that ‘The language used by different instruments is far from being homogeneous’, and

‘Human rights treaties of the past decade are fewer in number than the total of environmental agreements adopted during the same period and most of those that have been concluded have been at the regional level. In general, global treaties have not included specific reference to the environment or to environmental rights. In contrast, even prior to the Rio Conference, regional instruments contained provisions on environmental rights.’⁴⁵

Our final conclusion is:

‘International environmental law is especially soft. The congress of international environmental accords has fallen short of expectations for protecting

44 United Nations Economic Commission for Latin America and the Caribbean, 2018.

45 Shelton, 2002, Background Paper No. 1, Introduction.

environmental rights. Despite the abundance of treaties and conventions, there is no independent international environmental rights treaty.⁴⁶

The climate change negotiations could also benefit from the human rights concept, as it was also mentioned in the UNFCCC Conference of the Parties (COP27) in Sharm el Sheikh:

‘The Conference of the Parties ... Acknowledging that climate change is a common concern of humankind, and that Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to a clean, healthy and sustainable environment, 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...’⁴⁷

3. The Obstacles to Recognising Environmental Human Rights

Human rights have their own historic development path, and this might definitely be identified in the case of the first and second groups of rights, as their conceptual frameworks are much closer to one another. While group three demonstrates a different theoretical basis: less individual, more global, and holistic. Additionally, there are practical reasons which do not support the easy harmonisation: ‘The international protection of human rights and environmental protection represent two of the fundamental values and aims of modern international society. While each subject area has developed in larger parts independently of the other...’⁴⁸ The differences in the virtues have also been identified by the same scholars.

‘Potentially conflicting differences of emphasis still exist, however: the essential concern of human rights law is to protect individuals and groups alive today within a given society, while the purpose of environmental law is to sustain life globally by balancing the needs and capacities of present generations of all species with those of the future. The broad protection of nature at times may conflict with preservation of individual rights.’⁴⁹

46 May and Daly, 2015, p. 21.

47 United Nations Framework Convention on Climate Change, 2022.

48 Kiss and Shelton, 1992, p. 141.

49 Kiss and Shelton, 1992, p. 187.

Many believe that the human right to a – healthy, or any other classifications might be listed in its place – environment represents a different concept with several distinctions from the “traditional” human rights. Some⁵⁰ highlight the differences, as in the above reading, indicating that these traditional rights have their own limits, such as; traditional human rights ultimately protect individuals; consequently, in the case of environmental damage, the damaging effect on individuals should be identified and, in many cases, these direct and substantial individual impacts are difficult to recognise; the interests of individual human beings and the environment do not necessarily correspond with one another, or even contrarily, the full implementation of human rights might easily damage the environment; current human rights mostly protect the current generations, while – as it clearly stems from the concept of sustainable development – the environment must be preserved not only for the current generations but even more for the future generations.

While most third generation or solidarity rights are collective rights and several other existing rights – children and indigenous people, just to refer to those agreements, already mentioned above – have a primarily collective dimension, the difference between human beings as the single right-holder or the environment, being a complex and mostly living organism, might raise serious questions. Currently, although there are several strong moral and legal arguments about the rights of nature⁵¹ – reinforcing the idea of the protection of Creation⁵² – or animal rights,⁵³ many still have serious reservations. Additionally, many other questions might be raised, such as in the case of such collective rights, who stands for representing them?

The major problem – we should think about collective rights, who is the right-holder, and who might represent them – is very similar to the above, but at least one more issue should also be added, namely the vision of the future. Generational equity is difficult to address, the interest of the current generations’ *vis-à-vis* the uncertain future: what are the interests of the future, how long is the future, who may decide? Why should the current generations limit satiating all their needs for an indefinite future? This has been discussed in several studies.⁵⁴

50 Thorton and Beckwith, 2004. p. 365.

51 ‘It is the recognition that our ecosystems – including trees, oceans, animals, mountains – have rights just as human beings have rights. Rights of Nature is about balancing what is good for human beings against what is good for other species, what is good for the planet as a world. It is the holistic recognition that all life, all ecosystems on our planet are deeply intertwined. Rather than treating nature as property under the law, rights of nature acknowledges that nature in all its life forms has the right to exist, persist, maintain and regenerate its vital cycles.

And we – the people – have the legal authority and responsibility to enforce these rights on behalf of ecosystems. The ecosystem itself can be named as the injured party, with its own legal standing rights, in cases alleging rights violations’. See the preface of the Global Alliance for the Rights of Nature, n.d., or one of the basic sources: after the first publication in 1972 Stone, 2010; or about the ethical considerations: Nash, 1989.

52 Bándi, 2021, pp. 227–249.

53 Bekoff and Meaney, 1998.

54 See, for example: Bándi, 2022, p. 55.

What has not been mentioned above is strictly connected to the previous obstacle: economic interests versus non-material interest? Economic values or moral values? One might easily be accomplished, for example, by using the GDP as an indicator, although its real usefulness is a larger question.⁵⁵ However, how can nonmaterial assets be evaluated?

Finally, the same question may be raised again: right and/or duties. Therefore, the direction needs to be identified. Every person knows that the enjoyment of human rights mandates on behalf of the state or international community. However, in the case of environmental human rights, the right-holder and obligated is the same.⁵⁶ An excellent recent example – although not within the UN, but in the European context – is the “*Klimaseniorinnen*” case of the European Court of Human Rights⁵⁷, which among others concludes:

‘545. Accordingly, the State’s obligation under Article 8 is to do its part to ensure such protection. In this context, the State’s primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change. This obligation flows from the causal relationship between climate change and the enjoyment of Convention rights, as noted in paragraphs 435 and 519 above, and the fact that the object and purpose of the Convention, as an instrument for the protection of human rights, requires that its provisions must be interpreted and applied such as to guarantee rights that are practical and effective, not theoretical and illusory.’

The details of the duties of the state are listed under point 550 of the same judgment.

Other scholars partly follow the aforementioned lines and proceed in slightly different ways, providing an even better understanding of the main obstacles.

‘There are many reasons that human rights regimes that are truly international and trans-regional do not necessarily protect environmental rights effectively. The first is that international human rights regimes are not designed to address environmental rights. ... Second, as a practical matter, to be taken seriously in existing human rights regimes, environmental tethered to another recognized right... Third, international human rights regimes, although formally enforceable, ‘suffer ... from weak institutional and compliance mechanisms’.

55 Hungarian National Bank, 2024.

56 As clarified in the Hungarian Fundamental Law, Art. P) ‘(1) Natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations’.

57 European Court of Human Rights, 2024.

... Last, even incorporating human rights conventions by reference does little to advance environmental rights.⁵⁸

Wat has been summarised above does not really facilitate easy decision-making, mostly if it goes beyond mere statements and becomes regulatory or practical reality. In domestic legislation, this might work better, as the verdict is in the hands of a single legislator or government; however, at the international or even global level, reaching a common agreement is much more complicated.

There are diverse potential pathways to encompass environmental interests into the human rights arena. There exist simpler and more difficult options. Twenty-five years ago – and as we shall see next, the outcome of the variations most likely has been settled two years ago – the following possibilities were mentioned by scholars⁵⁹: There are four main approaches to the relationship between human rights and the environment that have emerged, and they primarily complement each other.

‘The first is to utilize or emphasize relevant human rights guarantees in international environmental instruments. This approach selects from among the catalogues of human rights those rights most relevant to the aims of environmental protection...

The second approach recasts or applies existing human rights guarantees and institutions when environmental harm occurs. This approach is unreservedly anthropocentric and supported by indications of the impact of environmental deterioration...

The third possibility is to formulate a new human right to an environment that is not defined in purely anthropocentric terms – an environment that is not only safe for humans, but one is that ecologically balanced and sustainable in the long term....

Finally, a fourth approach questions utilization of human rights language, preferring to address environmental protection as a matter of human responsibilities rather than rights... The concept of nature’s rights has been proposed in a variety of formulations...’

The main elements proved to be similar to the above example in other scholar’s works.⁶⁰

Nonetheless, summing up the views, evaluations, and studies in the field, there is a very relevant summary of the conceptual problem:

‘However, what are human rights for? The most convincing justification, it is submitted, is that human rights are intended to ensure the basis conditions

58 May and Daly, 2015, pp. 26–27.

59 Kiss and Shelton, 1992, pp. 142–144.

60 Anderson, 1996.

needed for right-holders to pursue their various goals. Originally developed as a way of recognizing the unique value of every individual, human rights have now been extended to collectives where they fulfil a similar function in promoting the autonomy of ethnic and religious minorities, indigenous peoples, and other groups.... For present purposes, however, the significant point is that a persuasive rationale for human rights is that they enable us to address the realization of individual and group autonomy, which would be difficult, if not impossible, to achieve in other ways, thereby giving them a special place in legal and moral argument.⁶¹

4. The Development of the UN Approach Around the Environmental Human Right Concept

4.1. Different Soft Law Documents

In the mid-80s, the question, ‘how can the code of human rights be extended?’ already came to the scene. In 1986, the UN General Assembly adopted a resolution, paragraph 4, which adopted guidelines indicating that new human rights instruments should: be consistent with the existing body of international human rights law; be of fundamental character and derive from the inherent dignity and worth of the human person; be sufficiently precise to give rise to identifiable and practicable rights and obligations; provide, where appropriate, realistic and effective implementation machinery, including reporting systems; attract broad international support.

These requirements may also be valid in the case of environmental human rights laws. However, at the beginning, no binding legal instruments were adopted, and frankly, this is still the case.

Around – a little bit earlier and a little bit later – the 1992 UNCED Conference in Rio, the first important documents were presented to the public. As it is written in the part on history of the Earth Charter, an informal but important document:⁶²

‘In 1987 The World Commission on Environment and Development (known as “the Brundtland Commission”) launched Our Common Future Report with a call for a “new charter” to set “new norms” to guide the transition to sustainable development. Following that, discussion about an Earth Charter took place in the process leading to the Earth Summit in Rio de Janeiro in 1992, but the time for such a declaration was not right. The Rio Declaration became the statement of the achievable consensus at that time. In 1994, Maurice Strong (Secretary-General of the Rio Earth Summit) and Mikhail Gorbachev, working through organizations they each founded (Earth Council and Green

61 Merrills, 2007, p. 666.

62 Earth Charter Initiative, 2000.

Cross International, respectively), launched an initiative (with the support from the Dutch Government) to develop an Earth Charter as a civil society initiative. The initial drafting and consultation process drew on hundreds of international documents. An independent Earth Charter Commission was formed in 1997 to oversee the development of the text, analyze the outcomes of a world-wide consultation process and to come to an agreement on a global consensus document.⁷

The Charter was finally launched as a project in 2000 and Art. 12. concerns rights: 'Uphold the right of all, without discrimination, to a natural and social environment supportive of human dignity, bodily health, and spiritual well-being, with special attention paid to the rights of indigenous peoples and minorities.' The whole Charter is a wonderful set of declarations and may also be considered a wish-list.

The UN process towards the environmental human rights issue began with the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, which in its 1989 session, added the topic of human rights and the environment to its agenda, appointing a Special Rapporteur who presented reports between 1991 and 1994. The most renowned from our point of view is the "Ksentini" report from 1994⁶³. Providing a complete survey of the problem, which, besides the presentation of the right to a satisfactory environment, emphasises that the right to environment is essential for the enjoyment of other human rights, such as life or health, while vulnerable groups, such as minorities, also receive special attention. There are several recommendations in the report, such as:

'258. The "human rights" component of the right to a satisfactory environment lends itself, however, to immediate implementation by various bodies, under existing mechanisms for following up regional and international human rights instruments. The practice being developed within those bodies is decisive and should bring into sharper focus the content of the right to a satisfactory environment, the ways and means of implementing it, and the related procedural aspects.

259. The Special Rapporteur recommends that the various human rights bodies should examine, in the various fields of concern to them, the environmental dimension of the human rights under their responsibility....'

'Based on a private endeavour a number of environmental law experts and human rights specialist convened in Geneva in spring 1994 in order to draft principles on human rights and the environment. The group assembled at the invitation of an American private association, the Sierra Club Legal Defence Fund. The draft declaration circulated among governments and experts.' The paper gives the following introduction on itself: 'The Draft Declaration is the first international instrument that comprehensively addresses the linkage

63 United Nations Commission on Human Rights, 1994.

between human rights and the environment. As this is a realistic view on the importance of the drafting process, we may take it as a useful example for educational purposes and introduce the main components of the draft declaration with explanations.⁶⁴

In the annex, the report listed the core principles, which began with (Part. I) the following requirements or statements:

- ‘1. Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.
2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.
3. All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment.
4. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.’

These basic elements have been expanded to several similar components of environmental rights, such as the right to the protection and preservation of the air, soil, water, sea-ice, flora, and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems (Part II.6) or other major items of the holistic approach to environmental protection; as well as procedural rights such as access to information, and finally the duties: Part IV. 21. ‘All persons, individually and in association with others, have a duty to protect and preserve the environment.’ Unfortunately, there is not enough room to analyse this fundamental document in detail, but it might be clear from these examples that the complex system around environmental human rights could have already been developed thirty years ago.

The list of constituents of the draft principles is a mixture of general ideas regarding environment and sustainable development. Some elements refer directly to the interests of developing countries and their protection of the rights of poor people and minorities. The right not to be evicted from homes and land, coupled with the demand for restitution, compensation, and/or appropriate and sufficient accommodation or land, is relevant in countries where the legal system is not really characterised by the rule of law concept. The same applies for the special article on indigenous people. Additionally, the entire list is a genuine summary of the relevant elements of the right to environment.

What happened later? A very short summary by Shelton:

64 United Nations Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, 1994.

‘The Human Rights Commission decided to request a report of the Secretary General on the issues raised by the report and Draft Principles, based on the comments of states, intergovernmental and non-governmental organizations. The Secretary-General submitted reports in 1997 and 1998. At its 1998 session, the Commission decided to appoint a review committee to submit a revised version of the Draft Declaration.’

More recently, in Res. 2001/65, the U.N. Human Rights Commission affirmed that ‘a democratic and equitable international order requires, inter alia, the realization of... [t]he right of every person and all peoples to a healthy environment. The Commission’s resolutions on toxic and dangerous wastes similarly refer consistently to the human rights to life, health and a sound environment for every individual and affirm that illicit traffic in and dumping of toxic and dangerous products and wastes is a serious threat to these rights’.⁶⁵

The development of the environmental legal order proved to be a principal issue in the four global conferences mentioned above. The general legal issues, awareness-raising, system-oriented approach, training of the people, officials, or even judges were and still are in the hands of the UN Environmental Programme (UNEP),⁶⁶ but the human right to environment is connected to the Commission of Human Rights and its High Commissioner, and – as they come to the fore – the Special Rapporteurs. Moreover, one should not forget that many other subcommittees might play a role in this process, and knowing the fundamental position of environmental rights should be taken as a precondition of all other human rights. As we do not go into the details of UNEP activities, it is vital to mention the Environmental Rights Initiative, which began in 2018.⁶⁷ According to their summary:

‘We achieve the above Rights-based Approach through the following work areas: promote access to information on environmental rights; help governments fulfil environmental rights, assist business to move beyond a compliance culture; give a bigger voice to environmental defenders; provide legal and technical support.’

After the Ksentini report, nothing extraordinary occurred. ‘The response of the UN Human Rights Commission and of states generally was not favourable to this approach, and the proposal made no further progress’.⁶⁸ What is more surprising is that, in the same book the authors mention, that ‘Many scholars have also argued that the elaboration of an international rights to a decent environment is undesirable and unnecessary...’

65 Shelton, 2006, p. 169.

66 See as the current source: United Nations Environment Programme, 2025.

67 United Nations Environment Programme, n.d.

68 Birnie, Boyle and Redgwell, 2009, p. 279.

In the subsequent years, experts demonstrated a positive attitude towards the environmental human right issue. In a joint UNEP (United Nations Environmental Programme)-OHCHR (Office of the High Commissioner for Human Rights) seminar,⁶⁹ referring to earlier meetings, it was summarised: ‘3. These sets of national and international developments indicate the close connection between the protection of human rights and environmental protection, in the context of sustainable development. They reflect the growing interrelationship between approaches to ensuring human rights and environment protection, as well as the synergies that have developed between these previously distinct fields.’ The meeting did not go too far, as they simply agreed: ‘18. The experts recognized that normative links between the human rights and environmental fields need to be reinforced, beyond existing guarantees provided in national and international instruments and practices.’

However, the idea of taking steps in the direction of a substantive right in the near future proved to be realistic:

‘18. (c) With regard to substantive rights, further steps need to be taken: ... (iv) To support the growing recognition of a right to a secure, healthy and ecologically sound environment, either as a constitutionally guaranteed entitlement/right or as a guiding principle of national and international law’;

In addition, the combined efforts of UNEP and OHCHR stayed on the agenda, while strengthening the institutional mechanisms and conditions, among others, in the preparation for the Johannesburg summit.

Nevertheless, after some years of hesitation, the idea could turn into reality,⁷⁰ and a little less than a decade later, the Commission on Human Rights could come up with a relatively new concept,⁷¹ not mentioning some other minor steps, as there were many scholarly works, other reports, and papers in this direction. The Resolution of 2003 could go back to 1972 and to the Ksentini report and others, mentioning the fact, that ‘... environmental damage can have potentially negative effects on the enjoyment of some human rights...’ This document did not literally accept the existence of such a human right; unfortunately, point 4 may not be taken as such a message

(‘4. Reaffirms that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms and calls upon States to take all necessary measures to protect the legitimate exercise of everyone’s human rights when promoting environmental protection and sustainable development’),

69 United Nations, 2002b.

70 See expert meetings, with preparatory papers, such as: Shelton, 2002.

71 United Nations Commission on Human Rights, 2003, chap. XVII.

the Commission could not disregard the fact that while they were arguing about the necessity of such a declaration, a reference to the right to water was emerging (see point 8) in the meantime.

Later, the OHCHR came back⁷² to the same issue, with a slightly different attitude, slightly stronger words, widening the horizon, looking at the positive aspect of environmental protection, and slowly moving on the right track:

‘Taking note that respect for human rights can contribute to sustainable development, including its environmental component,
Considering that environmental damage, including that caused by natural circumstances or disasters, can have potentially negative effects on the enjoyment of human rights and on a healthy life and a healthy environment,
Considering also that protection of the environment and sustainable development can also contribute to human well-being and potentially to the enjoyment of human rights.’

The right to a decent/healthy/etc. environment was still not mentioned, although again, we could move a little forward: ‘3. Calls upon States to take all necessary measures to protect the legitimate exercise of everyone’s human rights when promoting environmental protection and sustainable development...’

Many other papers are worth discussing, but here we introduce only a special innovative line of human rights discussions, turning away from the traditional concept of international community and human rights and/or governments and human rights towards a broader vision, turning towards business as such. The Business and Human Rights project⁷³ provides a clear relationship in its preamble: ‘Stressing that the obligation and the primary responsibility to promote and protect human rights and fundamental freedoms lie with the State, emphasizing that transnational corporations and other business enterprises have a responsibility to respect human rights.’ This first resolution proved to be the official initiation of a large project, establishing working group and forum, and adopting Guiding Principles on Business and Human Rights.⁷⁴ This new framework shall contain existing human rights and human rights principles; therefore, environmental human rights definitely form a part of it.

4.2. Institutions and Special Rapporteurs

The real position of the UNEP in the advancement of environmental human rights has already been mentioned, as – pursuing the UN institutional structure and the responsibility of the different institutions – the main player proved to be the Office of the High Commissioner of Human Rights (OHCHR). There is no use and room to analyse all the expert meetings and papers of this organisation, but it is adequate to mention

72 United Nations Commission on Human Rights, 2005, chap. XVII.

73 United Nations Human Rights Council, 2011.

74 United Nations, 2011.

the role of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities as a splendid example. Human rights institutions can create a system of special rapporteurs,⁷⁵ some of whom have a crucial mandate regarding environmental issues.

A short summary of the activities of the most relevant rapporteurs, in order of their year of establishment: Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes⁷⁶ since 1995, which has a very close correlation with human rights. A recent example is a report of the Rapporteur, describing:

‘1. Lack of accountability is aggravating the increasing toxification of our planet and the resulting infringements of human rights such as the rights to life, health and a clean, healthy and sustainable environment. Individuals and groups exposed to hazardous substances and wastes (hereinafter, such substances and wastes are also referred to as “toxics”¹) suffer from reproductive injustices, neurological impairments, and several types of cancer, among other serious health conditions. However, impunity is the norm, rather than the exception, for polluters and for Governments that enable toxic pollution.’⁷⁷

Special Rapporteur on indigenous peoples since 2001,⁷⁸ connecting indigenous peoples’ existence to their genuine environmental conditions. One thematic annual report that focused on climate change issues affecting indigenous people⁷⁹ among others concludes:

‘119. In order to prove their commitment to honour their human rights obligations, States must acknowledge the implications of climate change on human rights in the context of climate change mitigation and adaptation law and policies. As noted by the Intergovernmental Panel on Climate Change,

75 According to the United Nations Office of the High Commissioner for Human Rights, 2025a: ‘The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. They are non-paid and elected for 3-year mandates that can be reconducted for another three years. As of November 2023, there are 46 thematic and 14 country mandates.’

76 The mandate on hazardous substances and wastes was first established in 1995 by the United Nations Commission on Human Rights (Commission Resolution 1995/81). The mandate has been renewed most recently in 2023 through resolution A/HRC/RES/54/10. See: United Nations Human Rights Council, 2023a. The current office is the Special Rapporteur on toxics and human rights.

77 Orellana, 2025.

78 In 2001, the Commission on Human Rights decided to appoint a Special Rapporteur on the rights of indigenous peoples, as part of the system of thematic Special Procedures. The Special Rapporteur’s mandate was renewed by the Commission on Human Rights in 2004, and by the Human Rights Council in 2007. It was most recently renewed in 2022 in resolution 51/16. United Nations Office of the High Commissioner for Human Rights, 2025b.

79 United Nations Human Rights Council, 2017.

indigenous traditional knowledge systems and practice are a major resource for adapting to climate change and will contribute to making such measures more effective.’

It goes without saying that the role of the Special Rapporteur on the human rights to safe drinking water and sanitation has a very close relationship with the environmental rights since the establishment of the institution in 2008.⁸⁰ As climate change has a huge impact on these issues, our examples come from a recent thematic report:⁸¹ ‘3. Previously, discussions about climate change have repeatedly taken place without reference to human rights. Although it is often taken as a purely physical phenomenon, climate change cannot be discussed without acknowledging its wide-ranging social and economic impacts.’ In 2008, the Human Rights Council (HRC) expressed concerns that climate change ‘poses an immediate and far-reaching threat to people and communities around the world’ (resolution 7/23). In a following resolution in March 2009 (resolution 10/4), the HRC noted that the impacts of climate change on human rights ‘will be felt most acutely by those segments of the population who are already in a vulnerable situation’. Referring to basic human rights documents, the report underlines

‘9. The human right to safe drinking water was recognized by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living,’ and later, ‘10. Climate change affects the enjoyment of the human rights to safe drinking water and sanitation and as part of States’ obligation to respect, protect and fulfill those rights, States are required to take steps to assess, mitigate and adapt to the impact of climate change on human rights to water and sanitation’.

80 The mandate was formalised in Human Rights Council resolution 7/22 in 2008, and most recently renewed in Human Rights Council resolution 51/19. United Nations Office of the High Commissioner for Human Rights, n.d. a.

81 United Nations, 2022.

The activities of the Special Rapporteur on the human right to a clean, healthy, and sustainable environment is the most relevant for our research. It was established in 2012.⁸² The activities of this rapporteur are discussed in detail below.

The most recent component of the group of special rapporteurs is the Special Rapporteur on the promotion and protection of human rights in the context of climate change.⁸³ The scene-setting report⁸⁴ of the current rapporteur addressed some basic questions related to her current and future activities:

‘75. The present report has mapped a significant amount of guidance on human rights issues and applicable international human rights law obligations in relation to climate change mitigation, including the use of technology and carbon credits, adaptation, just transition, finance, and loss and damage. ... 76. The Special Rapporteur stresses the importance of intersectionality for the promotion and protection of human rights in the context of climate change and sets out a number of relevant recommendations from special rapporteurs and treaty bodies.’

4.3. Special Rapporteur on the Human Right to a Clean, Healthy, and Sustainable Environment

When establishing⁸⁵ the position of a new special rapporteur in the field of human rights and the environment the HRC referred in the preamble to several previous UN documents in the field of environment from Stockholm onwards, particularly including resolution 16/11 of 24 March 2011 on human rights and the environment, and using a much more comprehensive term, than the title of the resolution: ‘2. Decides to appoint, for a period of three years, an independent expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, whose tasks will be’ (only a short summary below of the most relevant questions): to study, the enjoyment of a safe, clean, healthy, and sustainable

82 The Human Rights Council established the mandate for the Independent Expert on human rights and the environment in 2012 (resolution 19/10). Mr. John Knox was appointed the first Independent Expert on human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment for a three-year term. His mandate was further extended in March 2015 as a Special Rapporteur for another three years (resolution 28/11). In March 2018, the Human Rights Council further extended the mandate (resolution 37/8) and appointed Mr. David. R. Boyd as the Special Rapporteur for three years. In March 2021 the Human Rights Council extended the mandate for another three years (resolution 46/7). The mandate was extended again on 3 April 2024, and the title changed to Special Rapporteur on the human right to a clean, healthy, and sustainable environment (A/HRC/RES/55/2). United Nations Office of the High Commissioner for Human Rights, n.d. b.

83 The mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change established by the UN Human Rights Council at its 48th session in October 2021 (RES/48/14). United Nations Office of the High Commissioner for Human Rights, n.d. c.

84 United Nations, 2024.

85 United Nations Human Rights Council, 2012a.

environment; to identify, promote, and exchange views on best practices; to make recommendations; to work in close coordination with different organs, even with academia; to report.

Later, this resolution was reinforced and slightly modified in some cases; the latest being in April 2024,⁸⁶ while in the meantime, the duties widened, adding visits to other countries, broadening partnerships, or dealing with vulnerable groups.

Following the founding resolution, the newly appointed rapporteur introduced the first report – ‘The first report of the Independent Expert is intended to place the mandate in a historical context, present some of the outstanding issues relevant to the relationship between human rights and the environment and describe the current and planned programme of activities’; at the end of 2012,⁸⁷ summing up the road of environmental right to 2012, underlining that in the 80s and early 90s: ‘9. In short, environmental concerns have moved from the periphery to the centre of human efforts to pursue economic and social development’. The report also summarised other human rights which are vulnerable to environmental degradation, expressing: ‘19. In a real sense, all human rights are vulnerable to environmental degradation in that the full enjoyment of all human rights depends on a supportive environment. However, some human rights are more susceptible...’ Later, the report turned to human rights which are vital for environmental policymaking, such as public participatory rights. Many issues have been raised under human rights obligations and best practices, ranging from vulnerable groups to private actors. At the end of the report, it becomes clear that the first years should be devoted to framing the whole issue:

‘58. In the last two decades, the relationship of human rights and the environment has received much attention. Some fundamental aspects of that relationship are now firmly established, but many issues are still not well understood. Clarification of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment is necessary in order for States and others to better understand what those obligations require and ensure that they are fully met, at every level from the local to the global.’

The compilation of “good practices” continued afterwards, adding national or international examples and cases year-by-year,⁸⁸ followed by the resolutions of the Human Rights Council⁸⁹ to acknowledge the work done by the Rapporteur and urging states and other institutions for cooperation. Some years later, when solid foundations were available, the Special Rapporteur issued a report on the merits of the case, sixteen

86 The latest is A/HRC/RES/55/2 Resolution adopted by the Human Rights Council on 3 April 2024 55/2. United Nations Human Rights Council, 2024.

87 United Nations Human Rights Council, 2012b.

88 Such as: United Nations, 2015.

89 Such as: United Nations Human Rights Council, 2018.

principles of human rights and the environment,⁹⁰ summarising what had been achieved in five years. As the report underlines:

‘8. The 16 framework principles set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Each framework principle has a commentary that elaborates on it and further clarifies its meaning. The framework principles and commentary do not create new obligations. Rather, they reflect the application of existing human rights obligations in the environmental context...’

Another important message is:

‘3. The framework principles are not exhaustive: many national and international norms are relevant to human rights and environmental protection, and nothing in the framework principles should be interpreted as limiting or undermining standards that provide higher levels of protection under national or international law.’

While the content of the report is not innovative, the first two principles are essential, providing the basis for the coming years:

‘Framework principle 1: States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights. Framework principle 2: States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.’

It is also stressed that: ‘Human rights and environmental protection are interdependent...’ In the subsequent principles, we could learn about the prohibition of discrimination, different pillars of public participation, education, environmental impact assessment, standard setting and proper enforcement, cooperation, vulnerable groups, and indigenous people.

The most significant report of the rapporteur – which might be taken as a starting point of the further process leading to approval – is the one in July 2018:⁹¹

‘53. The relationship between human rights and the environment has evolved rapidly over the past five decades, and even more so over the past five years. The greening of well-established human rights, including the rights to life, health, food, water, housing, culture, development, property and home and private life, has contributed to improvements in the health and well-being of people across the world. However, work remains to be done to further clarify

90 United Nations Human Rights Council, 2018b.

91 United Nations General Assembly, 2018.

and, more importantly, implement and fulfil the human rights obligations relating to a safe, clean, healthy and sustainable environment. Of paramount importance in this regard is the legal recognition of the right to a healthy environment at the global level, so that this fundamental human right can be enjoyed by all persons in all States, rather than in the subset of countries where it is currently recognized. The global recognition of this right would fill a glaring gap in the architecture of international human rights.

54. There can be no doubt that the right to a healthy environment is a moral right, essential to the health, well-being and dignity of all human beings. However, to ensure that this right is respected, protected and fulfilled, it requires legal protection. ... Recognition of the right to a healthy environment by the United Nations would not only make this right universal in application but would also serve as a catalyst for the implementation of stronger measures to effectively respect, protect, fulfil and promote this right.’

5. The Resolutions of the UN Human Rights Council and UN General Assembly

Pursuing the procedure introduced above under the authority of the High Commissioner for Human Rights, on 8 October 2021, the UN Human Rights Council adopted the 48/13 Resolution,⁹² recognising that the right to a clean, healthy, and sustainable environment is a human right. Examining the previous progress made in this respect, this proved to be the most reasonable step. The Resolution is not legally binding, but its near-unanimous adoption shows a consensus on the formulation, content, and

92 United Nations Human Rights Council, 2021a.

importance of this human right.⁹³ The Resolution is a clear follow-up to the previous documents, beginning with the denomination and design of tasks of the Special Rapporteur, followed by reports and subsequent Council resolutions. The Resolution in its preamble – among others – emphasised the critical role of this new right: ‘contribute to and promote human well-being and the enjoyment of human rights’ and also contrarily: ‘that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights’. The conclusion is clear: ‘Acknowledging the importance of a safe, clean, healthy, and sustainable environment as critical to the enjoyment of all human rights.’

All these have been summarised in the resolution itself, namely, that the Human Rights Council and 15 other UN entities agree with the following:

- ‘1. Recognizes the right to a safe, clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights;
2. Notes that the right to a safe, clean, healthy and sustainable environment is related to other rights that are in accordance with existing international law.’

The ball is now in the court of the General Assembly: ‘4. Invites the General Assembly to consider the matter.’

What happened next, might be considered as the expected step forward, but the evaluation is still correct:

‘On 28 July 2022, the GA adopted a landmark resolution recognizing the human right to a healthy environment. ... an unprecedented decision, adopted with unparalleled support (161 votes in favor, no votes against, and eight abstentions). The GA resolution sends a powerful message that there is widespread, worldwide support for this right – which is already recognized

93 As the story might be important, here is a summary, signed by Aguila, 2021; ‘In September 2020, a Core Group of States on Human Rights and the Environment (Costa Rica, Morocco, Slovenia, Switzerland and the Maldives) started informal discussions on the possible international recognition of the right to a safe, clean, healthy and sustainable environment. In March 2021, 69 States, among which figured previously reluctant States such as Germany, endorsed a statement unequivocally calling for the recognition of this right.

The Core Group’s initiative gathered thundering support. More than a thousand NGOs rallied behind their clarion call, including renowned organizations such Birdlife International, Greenpeace, and Amnesty International, or specialized organizations like the Center for International Environmental Law and the Global Pact Coalition. Fifteen UN Agencies also issued a letter endorsing the right’s recognition. This prodigious mobilization owes much to the tremendous leadership of UN Special Rapporteur on Human Rights and Environment David R. Boyd and his predecessor John Knox.

On October 8, 2021, and after a year of sustained advocacy, the Human Rights Council adopted Resolution 48/13 by a vote of 43 in favor, none against, and 4 abstentions (China, India, Japan, Russia). In spite of these abstentions and the absence of the United States from the Council, the adoption of this resolution reveals near-unanimous support from the international community for the right to a healthy environment’.

in 156 countries at the national and regional levels.... The GA resolution on the right to a healthy environment was the result of States' commitment on environmental issues, many years of advocacy and collaboration by national human rights institutions, civil society organizations, Indigenous Peoples, children and young people, and business actors, among others, and supported by UN entities....⁹⁴

The final HRC and the GA resolution (76/300)⁹⁵ is slightly limited if compared with the mandate of the special rapporteur and to the draft resolution,⁹⁶ as “safe” as a qualifying component is missing; the current adopted language refers to a human right to a ‘clean, healthy and sustainable’ environment. “Safe” might refer either to the importance of peaceful cooperation in connection with the environmental interests or might cover the different areas of environmental safety, but a link to developing countries could have been pointed out; nevertheless at the final stage of discussions, it has been removed from the final wording. However, the term “safe” is present in many internal references: safe drinking water, safe climate, safe food, and so on.

How it has finally been formulated as GA resolution:

- ‘1. Recognizes the right to a clean, healthy and sustainable environment as a human right;
2. Notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;
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;
4. Calls upon 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.’

Soon after the approval of the resolution, the special rapporteur clearly justified the real need for such a human right:⁹⁷

‘6. The biggest problem is not the Sustainable Development Goals themselves, but the way they are perceived and portrayed by States as merely aspirational, when in fact the Goals are built on a robust foundation of legally binding and

94 United Nations, 2023.

95 United Nations General Assembly, 2022.

96 United Nations Human Rights Council, 2021b.

97 United Nations General Assembly, 2022.

enforceable human rights law and international environmental law. The Goals cannot magically transform legally binding obligations into unenforceable political pledges. The absence of explicit human rights standards in the Goals and targets has negatively impacted both the international human rights agenda and the sustainable development agenda.’

As Inger Andersen, Executive Director, UNEP summarised the content of the right:

‘While there is not a universally agreed definition of the right to a healthy environment, the right is generally understood to include substantive and procedural elements. The substantive elements include clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems. The procedural elements include access to information, the right to participate in decision-making, and access to justice and effective remedies, including the secure exercise of these rights free from reprisals and retaliation.’⁹⁸

This work has not been completed by the abovementioned resolutions; endeavours at different levels are more numerous than before. One good example is the resolution

98 United Nations Development Programme, United Nations Environment Programme and Office of the United Nations High Commissioner for Human Rights, 2023.

of the UN Human Rights Council in 2023, listing the obligations of states;⁹⁹ the OHCHR in 2024 published useful guidance,¹⁰⁰ providing an accurate summary of national and international tendencies and, among others, a survey of cases and laws.

6. Conclusions

Human pressure on the environment which one might have witnessed at least since the beginning of the industrial revolution some decades ago has resulted in continuing danger and damage, equally degrading environmental values as well as human interests and values. Soon after the adoption of the Universal Declaration of Human Rights, the erosion of all these values became clearly visible and worrying, substantially changing the characteristic content of human dignity, which is recognised as the basis of other human rights. Human dignity, similar to most human rights, may not prevail in a degraded environment. It is widely acknowledged that human rights communicate a special message, substantial human values, and are closely related to morals. Consequently, if a human value or interest approaches the level of human

99 United Nations Human Rights Council, 2023b. These obligations include:

- a) To respect, protect, and fulfil human rights, including in all actions undertaken to address environmental challenges;
- b) To adopt and implement strong laws ensuring, among other things, the rights to participation, to access to information and to justice, including to an effective remedy, in environmental matters;
- c) To facilitate public awareness and participation in environmental decision-making, including of civil society, women, children, youth, Indigenous Peoples, peasants, older persons, persons with disabilities and others who depend directly on biodiversity and ecosystem services, by protecting all human rights, including the rights to freedom of expression and to freedom of peaceful assembly and association;
- d) To implement fully their obligations to respect, protect, and fulfil human rights without discrimination of any kind, including in the application of environmental laws and policies;
- e) To promote a safe and enabling environment in which individuals, civil society organizations, including environmental human rights defenders and those working on human rights and environmental issues can operate free from threats, hindrance, and insecurity;
- f) To provide for effective remedies for human rights violations and abuses, including those relating to the enjoyment of the human right to a clean, healthy, and sustainable environment, in accordance with their international obligations;
- g) To establish, maintain and strengthen effective legal and institutional frameworks to regulate the activities of public and private actors in order to prevent, reduce, and remedy harm to biodiversity and ecosystems, taking into account human rights obligations and commitments relating to the enjoyment of a clean, healthy, and sustainable environment;
- h) To take into account human rights obligations and commitments relating to the enjoyment of a clean, healthy, and sustainable environment in the implementation of and follow-up to the Sustainable Development Goals, bearing in mind the integrated and multisectoral nature of the latter;
- i) To increase funding and support for, and collaboration with, grass-roots women's organizations working on environmental and human rights issues, and for the implementation of gender action plans under multilateral environmental agreements.

100 United Nations Office of the High Commissioner for Human Rights, 2024.

rights, this is a positive evaluation and clear point of reference. Thus, there is a strong expectation for the existence of an environmentally rooted human right.

However, while most of the states have some reference to a right to a mostly “healthy” environment,¹⁰¹ the road to an internationally recognised human right is much more complicated. The Universal Declaration has not changed since 1948, similar to the European Convention of Human Rights since 1950, while policy papers and declarations such as several regional human rights agreements or other specialised conventions recognise such a right. In the last thirty-four years several messages and recommendations came from scholars, institutions, and even religious organisations and churches to respond to needs, and to manifest sustainable development interests in a human rights reaction, but the speed of UN bodies to introduce such a substantial change is not too fast. Even the emerging international judicial practice demonstrates the necessity of a new right, and consequently, something had to be done: the slow-moving UN organs needed to come closer to a conclusion.¹⁰²

The resolutions of the Human Rights Council in 2021 and as a follow-up to the General Assembly in 2022 now directly accepts the *raison d’être* of the right to a clean, healthy, and sustainable environment. The direct need to extend the Universal Declaration in this direction is no longer a question; it is definitely a historic move. Still, this resolution is not binding under international law; some treaty instruments would be necessary for its fullest implementation or for the practice of international law to embed this right into customary law. Nevertheless, we are on the right track, and the way forward undeniably leads in the required direction.

101 Even the first Hungarina environmental act – Act II. of 1976 – was one of them and since 1989 it is a constitutional right.

102 One may find a perfect survey of this process in the judgment of the Case of *Verein Klimaseni-orinnen Schweiz and Others v. Switzerland*; European Court of Human Rights, 2024.

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