

CLIMATE CHANGE LAW NETWORK BLOG POST #2 (2022)

UNGA RIGHT TO A HEALTHY ENVIRONMENT

In this short blog post, two members of the IUCN WCEL Climate Change Law Network – [Alexandra Harrington](#) and [José Tietzmann](#) share their thoughts and analysis on the recent [UNGA Resolution](#), establishing the human right to a clean, healthy and sustainable environment.

This blog post is part of a series of other blog posts that aims to map the different conferences, events and panels related to Climate Change Law around the year.



1. REVIEW BY ALEXANDRA HARRINGTON

The July 2022 Decision of the United Nations General Assembly (UNGA) recognizing the right to a clean, healthy and sustainable environment represents a significant moment in the advancement of bridging between environmental and human rights laws and norms. As discussed [elsewhere](#), it offers an opportunity to develop meaningful capacity building between multiple actors and constituencies, including public and private sector actors. At the same time, the framing of the decision references that the right must be translated throughout the system of multilateral environmental agreements under the international legal system.

With the accomplishment of overwhelming international endorsement of the right to a clean, healthy and sustainable environment, there is of course a moment for celebration. This was, after all, the culmination of a significant effort across multiple jurisdictions, public and private actors, and many elements of international organizations. This moment should be followed by one of reflection in terms of how to adapt the text of Decision A/76/L.75 in the context of multilateral environmental agreement implementation and evolution.

The global community currently stands at a pivotal moment for the advancement of multilateral environmental agreements as legal and regulatory tools. As a result of the Covid-19 pandemic and attendant disruptions in travel and meeting practice, the latter months of 2022 will see the convening of the UN Convention on Biological Diversity (CBD) Conference of the Parties (COP) 15, at which State Parties will seek to adapt successors to the Aichi Targets as well as measures responding to the Intergovernmental Panel on Climate Change's recent publications stressing the peril to global diversity, and the UN Framework Convention on Climate Change (UNFCCC) COP 27, at which State Parties will continue to face issues regarding adaptation and mitigation, loss and damage, climate financing, transitions and many other issues. Additionally, in mid-November 2022 the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) COP 19 will again undertake issues relating to trade and species conservation, this time in the face of increased awareness of connections between these issues and public health stemming from the Covid-19 pandemic. Further, in late November 2022, States will come together for the first negotiating round toward a new international agreement on marine plastics.

Thus, in each of these multilateral environmental agreement regimes - and in many similar regimes addressing a variety of more specialized international environmental issues - there is the potential for an essential nexus with the right to a clean, healthy and sustainable environment. Indeed, it could be asserted that each of these agreements and the efforts to evolve their use in practice represents an implicit understanding of the critical role played by a clean, healthy and sustainable environment. Additionally, there is a growing awareness that the multilateral environmental agreement system contains multiple areas of confluence between treaty regime terms and enforcement systems. With this awareness comes an understanding that it will be necessary to craft coordination efforts that create a foundation upon which consistent interpretation of terms, scientific and technical parameters, and shared reference points for law and policy exist. Certainly, this would in no way seek to detract from the vital differences in each of the treaty regimes falling under the rubric of multilateral environmental agreements nor would it obviate the necessity of these regimes continuing their separate existences. What this would do is allow the multilateral environmental agreement system to do is coordinate to craft a universal understanding of the right to a clean, healthy and sustainable environment as a tool of international law and policy from the outset of its formal existence.

When seen in this way, the express articulation of the right to a clean, healthy and sustainable environment as contained in Decision A/76/L.75 provides a place for these concepts in the overarching international law and organizational structure of the UN although it already existed in more siloed multilateral environmental agreements. At the same time, the content and broad base of the right allows, and arguably necessitates, multilateral environmental agreements and associated regulatory and policy practices to incorporate measures promoting a clean, healthy and safe environment into their decision-making processes as well as the ultimate contents of their subsequent rules and policies.

2. REVIEW BY JOSÉ TIETZMANN

Writing about the right to a healthy environment demands a two-sided approach, as both environmental protection and human rights texts have somehow recognized this fundamental right over the last 50 years.

Indeed, the 1972 Stockholm Declaration is certainly a milestone: it was the first to recognize and state that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”.¹

The World Charter for Nature, adopted in 1982 by the UNGA, recognizes the nowadays called “access rights” - access to information, public participation as well as Justice in environmental matters - instrumental rights that are essential for guaranteeing the right to a healthy environment.

Affirming the access rights, the 1988 Aarhus Convention and the 2018 Escazú Agreement are of utmost importance for the right to a healthy environment, which is recognized in the preamble of Aarhus² and taken as a fact by article 1 of the Escazú Agreement.³

In the field of human rights protection, the International Covenant on Economical, Social and Cultural Rights, adopted in New York in 1966, had already established the connection between a healthy environment and the enjoyment of the right to the “highest attainable standard of physical and mental health”.⁴

Other human rights treaties have also affirmed the right to a healthy environment, like the 1981 African Charter on Human and Peoples’ Rights, or the 1988 Protocol of San Salvador. The first guarantees, for all peoples, “the right to a general satisfactory environment favourable to their development”,⁵ as the latter affirms that “Everyone shall have the right to live in a healthy environment and to have access to basic public services”.⁶

In its Advisory Opinion held in November 2017, the Inter-American Human Rights Court recognizes the universal value held by the right to a healthy environment, both for present and future generations, as well as the impacts that environmental degradation has on the effectiveness of various human

¹ The full text of the first principle of the 1972 Stockholm Declaration goes as follows: “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 and other forms of oppression and foreign domination stand condemned and must be eliminated.”

² “[...] 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 present and future generations”.

³ As the text indicates the guarantee of the access rights for the protection of the “right of every person of present and future generations to live in a healthy environment and to sustainable development”.

⁴ As stated in article 12, 2, “b” of the Covenant.

⁵ Article 24, Banjul Charter: “All peoples shall have the right to a general satisfactory environment favourable to their development.”

⁶ Article 11.1 of the Protocol, which demands from States the promotion of the “protection, preservation, and improvement of the environment”, in 11.2.

rights.⁷ The same Opinion, affirms that States have positive obligations that arise from the right to a healthy environment.

The UN Human Rights Council (UNHRC) has also brought its contribution to the theme, when affirming the elements that bind together human rights and environmental protection or, more specifically, how climate change affects human rights.

The same UN body has recently recognized the human right to a clean, healthy and sustainable environment, by Resolution 48/13, adopted on October 8th, 2021.⁸

It is through this Resolution that the Council called upon the UN General Assembly, who has endorsed the UNHRC position by adopting, on August 1st 2022, Resolution 76/300, concerning “The human right to a clean, healthy and sustainable environment”.⁹

The GA Resolution has practically the same text as the one that came from the Human Rights Council,¹⁰ which may lead to questions about its purposes, the answers being presented below.

The adoption of this resolution by the UNGA marks another step towards the consolidation of environmental law and, specifically, the very right to the environment.

Indeed, a broader view allows us to perceive the great importance of the movements towards the reinforcement of UN environmental institutions, that have been made since the 2012 Sustainable Development Summit.

Recognizing this right in the world agora that is the UN General Assembly represents also a great contribution to an effort that is still underway, that is the adoption of a Global Pact for the Environment.

A right to a healthy environment is another stone that reinforces the States' multilateral commitments in order to tackle global issues, like climate change, biodiversity loss, environmental displacements, plastic and atmospheric pollution, as well as the rise of pandemics, due to environmental degradation.

Multilateralism, too, is a message that arises from the recognition of this right towards, on the one hand, the progressive isolation of certain States vis-à-vis the World Order, with the arising or

⁷ As stated in paragraph 59: “The human right to a healthy environment has been understood as a right that has both individual and also collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations. That said, the right to a healthy environment also has an individual dimension insofar as its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life. Environmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind.”

⁸ Document A/HRC/RES/48/13.

⁹ Document A/RES/76/300, dated from August 1st, 2022.

¹⁰ The core of the Resolution states as follows: “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.”

persistence of major conflicts, like the Syrian conflict, the Ukrainian war or China territorial ambitions over Taiwan.

The right to a healthy environment helps in countering the reluctance of other countries regarding environmental protection, expressed by their actions or by not signing or even withdrawing from international environmental commitments.

In this way, even if Resolution 76/300 is not what we could call innovation in the international order, it is certainly a great step for mankind, as it reinforces our common responsibility toward guaranteeing a healthy planet for the prosperity of all, as stated in the recent Stockholm+50 final declaration, late June.

For further information on the Resolution see <https://digitallibrary.un.org/record/3982508?ln=en>