



Pázmány Péter Catholic University  
Doctoral School of Law and  
Political Sciences

# **Right to a healthy environment in international law**

*Past milestones, present challenges  
and future opportunities*

Summary of PhD dissertation

Vivien KÖBÖL-BENDA

Supervisor: BÁNDI Gyula, D.Sc., Head of Department

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## Table of Contents

<b>I. Summary of research objectives</b> .....	3
<b>II. Description of the applied research method</b> .....	6
<b>III. Conclusion of the scientific results and future possibilities of its contribution to additional research</b> .....	7
<b>1. Results of the research</b> .....	7
<b>A) Moral background of the human right to a healthy environment</b> .....	7
<b>B) International human rights regime and environmental considerations</b> .....	9
<b>C) The increasing tendency of the human rights-based approach in international environmental law</b> .....	10
<b>D) Evolution of the right to the environment at the regional international law</b> .	11
<b>E) Paradigm shift at the universal international law</b> .....	13
<b>2. Conclusions derived from the research's results</b> .....	14
<b>A) Evolution process and its milestones</b> .....	14
<b>B) Formal aspects of the declaration</b> .....	15
<b>C) Substantial issues</b> .....	16
<b>D) The potential effect of the universal declaration</b> .....	20
<b>3. Further possible contribution to additional research</b> .....	21
<b>IV. List of publications</b> .....	22

## I. Summary of research objectives

The dissertation aimed to introduce a human right included – primarily at the constitutional level – in several states’ national laws. However, recognising the right to a healthy environment as an individual human right in international law shows a way more different picture. The research objective is to examine this latter area, the international law – at the universal and regional level – in light of acknowledging the right to a healthy environment. Furthermore, to identify the possible formal and substantial elements by evaluating the determining moral and legal principles, approaches and the development process achieved so far. The dissertation overview contains the relevant approaches and fundamental principles of international human rights law and international environmental law, simultaneously addressing these fields’ individual but interrelated characteristics.

Orienting the right to the environment in the system of international human rights law is not only logically essential but involves symbolic meaning from the perspective that this can be considered as an answer to the global environmental crisis – in particular, climate change, loss of biodiversity and the various forms of pollution. International environmental law can be highly relevant to identifying and implementing the obligations derived from the right.

In light of these research objectives, I raised the following questions:

- *Why is it necessarily addressing* the right to the environment as an individual human right at the universal international law’s level?
- *How have the substantive and procedural aspects evolved* at the universal and regional levels of international law, considering international human rights law and environmental law?
- From formal and substantial perspectives, *how should* this human right’s universal declaration *happen*?
- In light of the legal development, *what is the potential effect* of addressing the right to the environment at the universal, regional and national levels?

I clarify those crucial issues that establish the framework for the examination. Therefore, **Part I** embraces three topics – to the extent required by the research objectives. First, I reviewed the term ‘*environment*’ definition options, accepting the broad interpretation. After this, I described international human rights law and international environmental law as two areas of international law that are closely linked. Third, I presented the examined documents’ legal nature, the *soft law* characteristics, and the arguments for using soft law.

In **Part II**, I examined moral (primarily religious) views – without the need for a complete analysis – to help determine *the right to environment in a way that includes values*, which also means the moral premise of the dissertation. In this step, I first observed *the relationship between law and morality*, then *the ethical requirements derived from human rights*. After this, I went into describing religious approaches, especially the anthropology of the Bible, identifying the expectations coming from this, the catholic social teaching and other major religions’ – the Jewish, Muslim, Buddhist and Hindu – concepts of the nature expressed among others in the Assisi Declarations of 1986. The other section of this part is the *moral conceptions of international law* that – assessing the potential subjectivity – can limit the states’ sovereignty, prioritising human rights and environmental protection and overstepping the profit-oriented growth idea. I identified the common heritage of humanity, the cultural and national heritage, the common concern of humankind, and inter- and intragenerational equity as essential elements of sustainable development.

**Part III** focused on analysing human rights at the global level from the perspective of the right to the environment. I have examined the following examples of environment-specific interpretations of related human rights: the rights to life, health, an adequate standard of living, property rights, the right to development, the rights of indigenous peoples and groups particularly vulnerable to environmental harm, and procedural rights. In this context, I have taken due account of the UN treaty bodies' complaints mechanisms and the documents, reports and general comments that facilitated the interpretation. In Part III, I mainly examined the legally binding or soft law instruments already adopted. However, I have also considered drafts such as the 1994 'Ksentin Report',<sup>1</sup> which unsuccessfully attempted to declare a right to a healthy environment.

**Part IV** examines *global international environmental law*, primarily from the perspective of the human rights approach. First, I have reviewed the orienting soft law instruments that influenced legal development several times, especially the Stockholm Declaration,<sup>2</sup> the Rio Declaration<sup>3</sup> and the Sustainable Development Goals (SDGs).<sup>4</sup> The latter is being implemented at the time of writing and set out goals and targets for 2015-2030. I then turned to the multilateral environmental agreements, giving examples of human rights considerations in the fight against climate change, biodiversity conservation and waste management.

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<sup>1</sup> Fatma Zohra Ksentini: *Human rights and the environment*. United Nations Economic and Social Council. E/CN.4/Sub.2/1994/9. 6 July 1996.

<sup>2</sup> Declaration of the United Nations Conference on the Human Environment. In.: Report of the United Nations Conference on the Human Environment. A/CONF.48/14/Rev.1. Stockholm, 5-16 June 1972.; New York, United Nations, 1973. Chapter I. 3–6.

<sup>3</sup> Rio Declaration on Environment and Development. The United Nations Conference on Environment and Development, Having met at Rio de Janeiro from 3 to 14 June 1992. In: Report of the United Nations' Conference on Environment and Development. A/CONF.151/26/Rev.1. (Vol.I.). 3–9.

<sup>4</sup> United Nations General Assembly, *Resolution 70/1. Transforming our world: the 2030 Agenda for Sustainable Development*. Resolution adopted on 25 September 2015. A/RES/70/1. 21 October 2015.

I summarised *the recognition steps taken to address the right to the environment in Part V's regional human rights systems*, followed by examining the regional agreements promoting procedural environmental rights. I have reviewed the right to environment recognition within the Council of Europe, focusing on the European Convention on Human Rights (ECHR)<sup>5</sup> and its case law. Although I analysed mainly the cases related to the violation of the right to life (Article 2 of the ECHR) and the right to respect for private and family life (Article 8), I also took into account cases about the right to a fair trial (Article 6), freedom of expression (Article 10), freedom of assembly and association (Article 11), and protection of property (Article 1 of the First Protocol to the ECHR). Beyond the developed case law of the European Court of Human Rights (ECtHR), I have been working in the – at the time of writing – pending Duarte Agostinho and others case which considers human rights consequences of climate change.

Moreover, I have overviewed the determining documents and practice of the *Inter-American and African human rights regimes*, for which it is a significantly different circumstance – compared to the European system – that the African Charter<sup>6</sup> and the San Salvador Protocol to the American Convention on Human Rights<sup>7</sup> directly recognised the right to a healthy environment. Besides these, I briefly introduce the *Arab Charter*<sup>8</sup> – where the lack of an effective enforcement mechanism occurs as a general problem – and the soft law *Human Rights Declaration of the Association of Southeast Asian Nations*.<sup>9</sup> Finally, I conclude this part by analysing the procedural aspects of the right to a healthy environment,<sup>10</sup> and the related obligations promoted by the United Nations Economic Commission for Europe's 1998 *Aarhus Convention*,<sup>11</sup> particularly emphasising the Aarhus Compliance Committee facilitating the Convention's implementation. I also examine the *Escazú Agreement*<sup>12</sup> involving the Latin-American and Caribbean regions. Considering the mutual influence of universal and regional levels of international law was essential in this part.

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<sup>5</sup> Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols. Signed in Roma, 5 November 1950. *European Treaty Series*5.

<sup>6</sup> Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"). 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

<sup>7</sup> Inter-American Commission on Human Rights: A-52: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights „Protocol of San Salvador”.

<sup>8</sup> League of Arab States, Arab Charter on Human Rights 2004.

<sup>9</sup> ASEAN Human Rights Declaration, 18 November 2012.

<sup>10</sup> These are rights to environmental information, participation in environmental decision-making, and access to justice in environmental matters.

<sup>11</sup> United Nations Economic Commission for Europe, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Adopted in Aarhus, 25 June 1998. United Nations Treaty Series, vol. 2161 (p.447).

<sup>12</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. Escazú, 4 March 2018. *United Nations Treaty Series*, C.N.195.2018 and C.N.196.2018.

The right to a clean, healthy and sustainable environment was first recognised at the global level by the UN Human Rights Council on 8 October 2021 in its resolution 48/13.<sup>13</sup> This was followed by UN General Assembly Resolution 76/300 of 26 July 2022,<sup>14</sup> with nearly identical content. In **Part VI**, *I will assess these two breakthroughs*, including the way that led to the adoption, in particular, the environmentally relevant outcomes of the UN Human Rights Council, the related UN General Assembly resolutions, the 'Global Pact for the Environment initiative and the UN response to it. A cornerstone of this section is the presentation of the work of the Special Rapporteurs and other reports, which contain critical components for defining the content of the right to the environment.

## II. Description of the applied research method

During the examinations, I took into account the two fields of international law, human rights law and environmental law, in an integrated way, which also determined the nature of the methods and sources applied, in line with the interdisciplinary nature of the topic.

As I mentioned above, as a starting point, I considered it necessary to examine the definition of the environment. I first applied the method of grammatical interpretation, using dictionary definitions in Hungarian, English, German and French, complemented – without claiming exhaustiveness – by examples provided by relevant international legal documents and a brief overview of the relevant literature.

A vital element of the thesis methodology is critically evaluating and comparing sources, particularly to assess the interaction between the global and international levels and outline the legal developments in the research area. To categorise the range of sources, I have identified the following groups:

- Primary sources: this group includes binding agreements and other sources of international law, court judgments, relevant results of complaint mechanisms, and non-binding acts that have determined legal development or supported the interpretation of other – typically binding – documents.
- Secondary sources: This category comprises literature, primarily legal works. In addition, I have used literature from other social science fields, as well as reports and background material based on natural science methods, as appropriate to the issue under consideration.

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<sup>13</sup> United Nations Human Rights Council: *The human right to a clean, healthy and sustainable environment*. Resolution adopted by the Human Rights Council on 8 October 2021. A/HRC/RES/48/13.

<sup>14</sup> United Nations General Assembly: *The human right to a clean, healthy and sustainable environment*. Resolution 76/300 adopted by the General Assembly on 28 July 2022. A/RES/76/300.

- Additional sources: I have primarily used available and relevant sources at international law's global and regional levels. However, it has also proved essential to study relevant national and EU legislation, case law and literature in many cases.

After summarizing the results of the critical source evaluation, I have concluded then I have formulated proposals on the form and content of the right to the environment, including, albeit in a limited way due to the nature of this step, future possibilities.

For the legal and other documents examined among the primary sources, I mainly used an official – typically English – language version, completed with an authentic translation if necessary, for example, a published Hungarian version of an international agreement. I have generally processed literature in English, followed by Hungarian, and to a lesser extent in German and French.

### **III. Conclusion of the scientific results and future possibilities of its contribution to additional research**

#### **1. Results of the research**

Based on the above objectives and the application of the corresponding methods, I have summarised the following results.

##### **A) Moral background of the human right to a healthy environment**

In Part II of the dissertation, I found it reasonable to accept morality and law as separate normative systems while underlining their tight relationship. These two systems have in common that they impose behaviours to be followed by different motivations and with distinct means of enforcement while ideally being capable of promoting the realisation of each other's requirements. Moreover, the law itself can express values. In the case of human rights, this is closely connected to human dignity as a central element that the UN human rights system is built to recognise and realise. While there is no internationally agreed definition of human dignity, it is essential to the right to the environment as it can contribute to promoting environmental justice and protecting the environment. Furthermore, because rationality is also linked to human dignity, it can be a basis for the responsibility of human beings.

Human dignity and the human role in creation are standard features of the examined religious concepts affirming that humankind has a special status but cannot be interpreted as having absolute domination over nature. This means a stewardship role, since we, humans, through our rationality, have special duties to protect and preserve the environment and its elements, including the protection of the interests of future generations. At the same time, humankind is

an integral part of the environment. A further welcomed recognition of the religious views examined is that the environment and its elements form a complex network that is interdependent and interrelated and has value in its own right, so not only does its benefits for humankind justify environmental protection and improvement. In this context, Catholic social teaching also emphasises the concept of the common good, which promotes human fulfilment while serving equity within and between generations. The common good also sets limits, not only on the responsibilities of states but also on the responsibilities of society and individuals, and Catholic social teaching has repeatedly and correctly criticised the excessive pursuit of profit-driven economic considerations – the most recent example is the *Laudato si*, the first papal encyclical dedicated entirely to the environment.<sup>15</sup>

The common heritage of humankind can be recognised as one of the international legal concepts carrying moral values. It should be added that this concept serves more than just environmental purposes but highlights the outdated nature of traditional concepts that absolutise state sovereignty. Cultural, natural and mixed heritage serves as another example of this tendency. The mixed cultural heritage reveals the close relationship between natural and human-made elements of the environment. Each of these concepts also provides an essential theoretical background for the protection of the interests of future generations, laying down the minimum requirement that we should inherit the planet at least as we received it.

Recognising climate change, loss of biodiversity and pollution as common concerns of humankind are vital, which can provide moral background for collective actions. Behind this concept are values essential for humanity as a whole, including future generations, to protect and recognise that states have common but different responsibilities in implementing them since the resources available, the contribution to certain negative phenomena and the suffering of the consequences are not equal.

- The role of human dignity is fundamental, from which we can derive the requirement to protect the environment at an appropriate level. The rationality of human dignity also includes the particular responsibility of human beings, which can, therefore, hardly be considered anthropocentric in its own right;
- The examined religious views share a higher level of human responsibility for the creation and the acknowledgement that we are part of the environment as a whole, whose elements have value in their own right;
- International legal concepts that increasingly recognise moral values are crucial for the interests of future generations, for limiting state sovereignty, and for environmental justice within the present generation, both within and between countries. The limitation

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<sup>15</sup> Encyclical Letter *Laudato si* of the Holy Father Francis on Care for Our Common Home, 2015.



of state sovereignty is a relevant factor concerning the obligations of the right to the environment. At the same time, justice is essential to the common but different responsibilities of the states and contributes to promoting the interests of vulnerable groups.

## **B) International human rights regime and environmental considerations**

Until 2021, the global human rights system represented by the United Nations did not even recognise the right to the environment in a soft law form. However, it continued the so-called tendency of 'greening the already recognised human rights', a creative interpretation technique assessing the environmental factors affecting the right in question and the resulting consequences. This is, therefore, not the same as declaring the right to the environment, even indirectly. However, it has nevertheless provided a basis for an integrated treatment of human rights concerning environmental issues. By reviewing this process, it is possible to identify, albeit not exhaustively, those rights and groups of rights closely related to the right to the environment and are, therefore, also relevant for defining its content. The rights I have identified in this context are the following:

1. The right to life;
2. The right to enjoy the best attainable state of physical and mental health;
3. The right to an adequate standard of living and the rights derived from it:
  - right to housing;
  - right to adequate food;
  - the right to water and adequate sanitation;
  - access to the land property;
4. Ownership rights
5. Right to development;
6. Rights of Indigenous peoples;
7. The rights of groups considered to be more vulnerable to environmental harms, for which the following groups of persons are typically identified in a non-exhaustive manner:
  - women and girls;
  - old persons;
  - persons living with disability or illness;
  - children;

- displaces persons;
  - other minorities;
8. Rights related to the procedural aspects of the right to a healthy environment:
- freedom of expression;
  - the right of association and assembly;
  - access to justice;
  - participation rights;
  - procedural guarantees, in particular, the environmental human rights activists' protection;

**C) The increasing tendency of the human rights-based approach in international environmental law**

Besides the concept of 'greening the existing human rights' mentioned in subparagraph B), consideration of human rights aspects has become increasingly widespread in international environmental law. This was at first indirect, usually to protect human health, but over time more and more environmental law documents have explicitly referenced safeguarding human rights.

It is legitimate to presume that Principle 1 of the Stockholm Declaration of 1972, linking the state of the environment and human rights, was a pioneer in this respect. It should be added, however, that although it is soft law in nature, its adoption was surrounded by debates between states, which had led to the rejection of the explicit declaration of the right to the environment. The following UN soft law instruments have yet to go beyond this concept. However, in Principle 10, the Rio Declaration has defined the three procedural pillars without using the term right to the environment.

Human rights aspects have also gradually been introduced into binding international legal documents, such as the 1985 Vienna Convention, which recognises the negative impact of ozone layer changes on human health and the environment without mentioning human rights. The 1992 Framework Convention on Climate Change already recognises the common interest of humanity, including future generations. Furthermore, the Paris Agreement adopted in 2015 explicitly refers to the fact that climate change compromises the enjoyment of many human rights. Consequently, an opening towards the protection of human rights can also be detected within environmental law.

## **D) Evolution of the right to the environment at the regional international law**

The regional development of the right to a healthy environment should be noticed, which can manifest in two ways. The first is its reflection on regional human rights regimes, which have evolved differently.

What makes the *Council of Europe's* system unique is that neither the European Convention on Human Rights (ECHR), its Protocols nor additional related sources of law, such as the revised European Social Charter,<sup>16</sup> include the right to a healthy environment expressly *verbis*. By contrast, the European Court of Human Rights has, through creative legal interpretation, broadened the scope of interpretation of specific articles of the Convention, in particular Article 8, which guarantees the protection of private and family life, and Article 2, which declares the right to life and has thus made it possible to examine the violation of substantive and procedural environmental rights, subject of course to certain limits (e.g. significant damage). In a minority of cases, the European Committee of Social Rights has also acted similarly, expressing the existence of the right to the environment more explicitly.

However, the Parliamentary Assembly has called for years for a direct declaration of the right to a healthy environment. Its Recommendation 1614, adopted on 27 June 2003, proposed that the ECHR include procedural environmental rights by adopting a new protocol. The Parliamentary Assembly then extended this intention to the substantive aspect in Recommendation 1862, adopted on 17 July 2009. Most recently, in Recommendation No 2211, adopted on 29 September 2021, the Assembly raised the issue concerning the ECHR and the revised European Social Charter. In all its replies, the Committee of Ministers has been restrained in its answers<sup>17</sup> to this intention on the basis that the creative interpretation of the law developed by the ECtHR is sufficient, even though Recommendation 1614 was itself taken into account by the ECtHR in the case of *Taşkın and Others v. Turkey*.<sup>18</sup> An argument favouring the need for an explicit declaration could be the urgency of prioritising environmental considerations in the present planetary crisis, which is also the focus of the increasing demands for climate justice. For this reason, the Portuguese youth case,<sup>19</sup> pending at the time of writing, is also intriguing, where the mere admission of an application against 33 countries, which did not exhaust effective domestic remedies and which did not target an identifiable source of emissions, could in itself be a groundbreaking step.

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<sup>16</sup> Council of Europe, European Social Charter (Revised), 3 May 1996, *European Treaty Series*.

<sup>17</sup> Council of Europe Committee of Ministers, Reply to Recommendation 1614. Adopted on 24 January 2004; Council of Europe Committee of Ministers, Joint reply to Recommendations 1883 and 1885. Adopted on 16 June 2010; Council of Europe Committee of Ministers, Reply to Recommendation 2211, adopted on 04 October 2022.

<sup>18</sup> *Taşkın and others v. Turkey*. no. 46117/99, judgment of 10 November 2004.

<sup>19</sup> Request No. 39371/20. Cláudia Duarte Agosthino and others against Portugal and 33 other States submitted 7 September 2020.

In contrast, the *African Charter* declared the right to an environment favourable to development as a human right and a right of peoples, i.e., a collective right. The *American Convention on Human Rights* did not include the right to a healthy environment, like the ECHR and the European Social Charter. However, the *San Salvador Protocol* directly recognised the right to a healthy environment and linked it to the State's obligation to protect, preserve and improve the environment. However, the possibility of directly invoking the right was contested until 2017, when the Inter-American Court of Human Rights confirmed it in an advisory opinion. This advisory opinion's further – and exemplary – merit recognises the environment's intrinsic value. A common feature of the environmental case law of both the African and the Inter-American systems is that it concerns indigenous peoples' issues, in which the environmental dimensions of collective property rights and the right to spiritual-cultural identity are strongly dominant. Of particular interest are cases<sup>20</sup> where the state attempted to justify its actions by environmental considerations that the courts rejected because the way of life of the peoples in question is based on traditions that do not harm the environment.

The right to the environment has also been addressed in the *Arab Charter* and the *Association of Southeast Asian Nations (ASEAN) Human Rights Declaration*. In both cases, on what I believe to be incorrect conceptual grounds, as part of the right to an adequate standard of living, which could even be interpreted as a rejection of the right to the environment as an individual human right while imposing a strictly anthropocentric conception. It should also be added that no human rights protection mechanism to enforce this right has been established in any of the documents.

Two regional agreements should also be mentioned that protect the procedural aspect of the right to a healthy environment necessary to realise substantive rights. Principle 10 of the Rio Declaration, motivated the European agreement referred to above, the Aarhus Convention, which set out the pillars of access to environmental information, participation in decision-making and access to justice. The impact of the Convention is enhanced by the existence of the Aarhus Compliance Committee, which also examines complaints and provides the interpretation of the Convention. The Escazú Agreement, a similar instrument in the Latin American and Caribbean region, was adopted 20 years after the signature of the Aarhus Convention and therefore built on it by more expressly emphasising the substantive meaning of the right to the environment and by paying greater attention to the protection of the vulnerable groups' interests and the protection of human rights defenders working on environmental issues.

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<sup>20</sup> E.g. African Court on Human and Peoples' Rights, African Commission on Human and Peoples' Right v. Republic of Kenya. Application No. 006/2012. Judgment, 26 May 2017.

## **E) Paradigm shift at the universal international law**

The year 2021 represents a milestone in the international development of the right to the environment. It was first directly recognised as an independent human right at the global level, albeit non-binding, by UN Human Rights Council Resolution 48/13. This was soon confirmed by UN General Assembly Resolution 76/300 of 2022.

Adopting these resolutions is also a prominent example of the Human Rights Council's role in promoting rights, with several resolutions addressing the link between human rights and environmental pollution, climate change and biodiversity loss, often from the perspective of protecting a vulnerable group.<sup>21</sup> In doing so, the Council has often responded to various initiatives from civil society. For example, the Malé Declaration on the Human Dimension of Global Climate Change<sup>22</sup> urged recognition of and action against the human rights violations of climate change, particularly affecting certain countries. The small island states that signed the Declaration also called on the Human Rights Council to address the issue. In its Resolution 7/23, adopted on 28 March 2008, the Council reaffirmed this context, stressing the necessity of a global response and identifying the next steps for action.

In addition to the Human Rights Council, the UN General Assembly has also addressed the environmental degradation's negative impact on human rights and even reflected on the 'Global Pact for the Environment'<sup>23</sup> initiative to declare a right to the environment. The following resolution 72/277, adopted on 10 May 2018, requested a report from the UN Secretary-General, who, in his follow-up work,<sup>24</sup> explicitly addressed the right to the environment among the defining principles of environmental law, highlighting its widespread recognition at the national level.

Reaching the two UN resolutions, the Special Rapporteurs played a key role, elaborating on various aspects of the relationship between the environment and human rights. The work of John H. Knox, *Guidelines on Human Rights and the Environment*,<sup>25</sup> should be highlighted, as it explicitly considered the declaration of the right to the environment by the Human Rights Council in the light of national and regional experiences. This was complemented excellently

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<sup>21</sup> E.g. United Nations Human Rights Council, *Resolution 38/4 on Human rights and climate change*. 5 July 2018. A/HRC/RES/38/4.; United Nations Human Rights Council, *Resolution 45/30 on Rights of the child: realizing the rights of the child through a healthy environment*. 7 October 2020. A/HRC/RES/45/30. United Nations Human Rights Council, *Resolution 46/7. on Human rights and the environment*. 23 March 2021. A/HRC/RES/46/7.

<sup>22</sup> Male' Declaration on the Human Dimension of Global Climate Change. Adopted 14 November 2007, Male'.

<sup>23</sup> World Commission on Environmental Law: Global Pact for the Environment – June 2017.

<https://www.iucn.org/commissions/world-commission-environmental-law/events-wcel/past-events/global-pact-environment-june-2017>

<sup>24</sup> United Nations Secretary-General: *Gaps in international environmental law and environment-related instruments: towards a global pact for the environment*. 30 November 2018. A/73/419\*.

<sup>25</sup> John H. Knox: *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*. 24 January 2018. A/HRC/37/59.

by David R. Boyd's 2019 report, which collected good national practices to promote the right to the environment and documented the domestic legal recognitions, concluding that 110 national constitutions include a right to the environment.

In light of the above, Resolution 48/13 was a paradigm shift in developing the right to a healthy environment. Paragraph 1 states that the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights. Paragraph 2 added its relationship with other human rights, and Paragraph 3 linked the right to international environmental law as a factor in promoting related obligations. General Assembly resolution 76/300 did not make any major changes. However, it did remove the wording in paragraph 1, which implied that recognition of the right to the environment was necessary to protect other human rights. On the one hand, this also means that the right to the environment is worthy of protection in its own right, independently of the enjoyment of other human rights. However, it does not express that this is associated with recognising the intrinsic value of the environment; therefore, it may be against the effective implementation coming from the organic relationship's importance with other human rights.

## **2. Conclusions derived from the research's results**

### **A) Evolution process and its milestones**

Based on the legal documents examined above, it can be seen that the current state of international development of the right to the environment has progressed through several phases, which can be divided into the following four stages:

- **1945-1972:** Following the adoption of the UN Charter, the international human rights system began to develop based on the recognition of human dignity, but environmental issues still needed to be addressed.
- **1972-2006:** The Stockholm Summit and the adopted Declaration opened the door to a new perspective on human rights and the environment. This paved the way for recognising the right to the environment at the national – often constitutional – level. The development of regional human rights law during this period was not insignificant. Notably, the ECHR, adopted in 1950, and the American Convention on Human Rights, signed in 1969, did not mention the environment. Still, the African Charter of 1981 and the San Salvador Protocol of 1988 already included the right to the environment. At the level of global international law, however, the green interpretation of rights already stated has become increasingly dominant.

- **2006-2021:** With the Human Rights Council, a more focused legal development activity began, with a more extensive consideration of the relationship between the environment and human rights, initially in more specific areas. Then, the need to declare a new environmental human right became more apparent. The merits of the special rapporteur's work described above should be highlighted in this context.
- **2021-:** I propose that adopting Resolution 48/13 marks the beginning of a new era in which the right to a clean, healthy and sustainable environment is recognised as an individual human right at the global level of international law.

## **B) Formal aspects of the declaration**

As the global declaration of the right to the environment has not been and is not expected to be soon, legally binding, at least until the end of this thesis writing, the formal aspects are primarily determined by the soft law nature of the resolutions. There were several advantages to opting for the soft law solution:

- During the negotiation before adopting Resolution 48/13, several states – the UK, the USA, Australia, Canada, Japan, China and Russia – had refrained from directly addressing the right to the environment. This situation demonstrates that a global declaration in an inherently non-binding form is also significant to states. On the other hand, the research of Part I on the international soft law also confirms that this form *makes it easier to reach a compromise between states*, which in this case was reflected in the fact that there were no actual votes against it at the end of the negotiations, but was adopted with three abstentions - Russia, China and India.
- *It is typical for the international human rights system and environmental law to apply soft law*, as illustrated by recognising the right to water or landmark documents such as the Stockholm or Rio Declaration.
- This form *facilitates faster adoption*, which has become increasingly important given the growing environmental crisis of our times, allowing a quick response to rapid changes, including extreme phenomena or even in the knowledge base and the technologies used.
- *Flexibility* also adjusts to future environmental, social and other circumstances, which cannot yet be determined and are crucial to protect future generations' interests. It also fits in with existing regional and national legal solutions, offering an incentive to address potential shortcomings, provided sufficient receptivity exists.

- *Environmental challenges have reached a global dimension*, where it is impossible to identify with certainty who is responsible. In reality, the impacts are not proportional to the contribution of any one country. This situation calls for practical international cooperation at all levels concerned, where soft law can be of assistance, in this case in particular when combined with the implementation of the Sustainable Development Goals, which the resolution recalls in its introduction.

### **C) Substantial issues**

*What kind of environment is required by the right?*

The definition of the environment examined in Part I is relevant to the subject of the right. In this respect, I share the view that a narrow conception of the environment and an exhaustive list of the environmental elements and factors involved should be avoided since there are many areas which could be excluded without any practical justification, such as the relationship between the human-made and natural environment or the environmental aspects of occupational safety. The use of lists should be preserved if it is apparent that they are not exhaustive.

The other issue in this respect is using qualifiers, where I also prefer a broad interpretation. However, using qualifiers helps clarify the content; the right to the environment as a term itself – without qualifiers – should be accepted, especially as different regional and national terminology has been used. When we talk about a *healthy environment*, we are referring to the health of the environment as a whole, which goes far beyond the contribution of the environment to human health. The actual conditions under which this requirement can be met are primarily based on the findings of the natural sciences, which must also form the basis for regulation. In some respects, a *healthy environment includes ecological balance*, which is closely linked to the preservation of biodiversity and the health of ecosystems. The problems of pollution and waste production highlight the importance of a *clean environment*, but the *aesthetic enjoyment of the environment* is also relevant. The many forms of pollution, the climate crisis, natural disasters and armed conflicts underline the demand for a *safe environment*. A *sustainable environment* can reconcile environmental, economic and social interests while protecting the interests of future generations.

These factors also contribute to a person's physical and mental health as long as the *requirement of accessibility* accompanies them. This may include, in addition to accessibility in the physical sense, additional elements such as inclusiveness and non-discrimination, which require a proactive attitude by states to remove barriers and other obstacles. This issue can also be understood in economic terms for certain environmental services and, even in informational terms, closely linked to procedural environmental rights.



### *Potential subjects of the right*

In this respect, the primary observation is that the right to the environment includes *freedoms* and *entitlements*. The former implies the free enjoyment of a peaceful, safe, inclusive, and even aesthetic environment, free from interference. On the obligation side, this requires the presence of the State and everyone else. Concerning entitlements, we must refrain from making a taxing list, which aligns with my opinion on the environmental and quality indicators. In this light, several rights, even individual human rights, can be derived from the right to the environment, such as the right to healthy ecosystems, a safe climate, clean air, an environment free of pollutants, and adequate food. In addition, although it has increasingly been recognised as an individual human right, the right to safe, accessible, affordable water and sanitation can be derived from the right to the environment. The means of enforcing these *substantive rights* are *procedural*, such as the right to environmental information, participation in environmental decision-making and access to justice in environmental matters

The subjects of the right are primarily *human beings, as individuals and as members of society as a whole*, but this requires a broad interpretation in many respects. On the one hand, following the requirements of intergenerational equity, which is also an element of sustainable development, it is *necessary to consider the protection of future generations' interests*. In this light, the planet must be passed on at least in the same condition as we received it, with access to resources, adequate quality and existing options. On the other hand, *particular priority should be given to the protection of various groups which, for objective reasons, are considered vulnerable*, in line with the principle of intragenerational equity, requiring the State to take additional measures. Yet again, this is an open category since the circumstances and changes in these conditions significantly impact this particular group of persons. The documents examined so far have focused on women, girls, children, elderly persons, disabled persons, and displaced persons, increasingly for environmental or climatic reasons. Still, the issue of linguistic minorities may also be relevant from the point of view of procedural rights. In this context, it is essential to recognise the objective causes of vulnerability – biological, economic, social or other – and to emphasise the benefits of involving certain groups, such as the role of women in environmental management or the use of indigenous knowledge, with appropriate consent, to protect biodiversity.

In this respect, the question of anthropocentricity cannot be avoided because although we have defined the subjects in a collective sense, it was essentially human. Consequently, at first sight, the right to the environment is indeed human-centred, but this can be counterbalanced by accepting the concept, also developed by the religions under examination, *that human beings are not above the environment and its elements*, but are part of it, and even have a special responsibility to protect it. Moreover, the environment and its components have value in their

own right, by their very existence, and not only through the benefits they provide to human beings. It is not unprecedented that this concept has been translated into legal form, as it has appeared in the Constitution of Ecuador and the 2017 advisory opinion of the Inter-American Court of Human Rights.

It appears that it is essential to pay particular attention to the subjective aspects since the possible specific requirements – together with the circumstances raised by the environment as a subject, as detailed above – determine the content of the obligations, not vice versa. This consideration does not exclude the possibility of a limitation, provided that it is legitimately undertaken in the public interest to the extent necessary and proportionate to the objective pursued. At the same time, recognising the right to the environment as an individual human right may also lead to the prioritisation of environmental considerations among competing interests in some cases.

#### *Aspects of the obligations*

The freedom of the right to the environment also implies abstention from unjustified interference by the State; thus, this can be considered a *negative obligation* of the State. However, it also applies to all other actors – other individuals, groups of individuals, and legal persons – and presupposes a *positive obligation* on the part of the State to implement it. The latter does not end there but requires further action steps. In this context, the immediate requirement is to eliminate discrimination, which can be achieved by identifying groups with special needs and protecting and empowering their rights. In this context, States are required to protect, preserve and develop the environment, draw up appropriate legislation and implement it effectively by building up an adequate institutional framework. The State's obligations are, in my view, predominantly immediate, given the close link between the right to the environment and the right to life, and are complemented – and in this sense included in the category of 'third generation' rights – by the need for strong international cooperation between States.

Environmental law plays a prominent role in implementing these obligations, highlighting the need for greater integration between *the international human rights regime and environmental law*. This is why I consider it appropriate that Resolution 48/13 has directly linked the right to the environment to the rules of international environmental law.

As before, the scope of the obligations must be interpreted as broadly as possible, however, because although the *primary duties are those of the States*, the responsibilities of other actors must also be recognised. Hence moral concepts should be considered, which acknowledge that *human beings* have primary responsibility, whether as *individuals or as group members*. Rights to information, education, awareness-raising, participation in decision-making and even conscious consumer behaviour play a key role in the other actors' involvement. Responsibility

applies to the State and natural persons and their groups, and *legal persons* may also have obligations. In the case of economic operators, incredibly influential multinational companies, it may be necessary to emphasise the obligations' active nature, implement environmental legislation, even voluntarily, and prioritise human rights and ecological aspects in corporate governance. To create the conditions for the enhanced international cooperation required by law, to coordinate and compensate for the excessive influence of individual States or even multinational companies, *global and regional international organisations* and sui generis entities such as the *European Union* should also be included among the obligated parties.

On these grounds, I have summarised the minimal identifiable content in the table below, understanding that for each element, I consider an inclusive interpretation acceptable; thus, these factors are incomplete. In this sense, I have mainly mentioned those linked to the States among the active obligations since the States are the primary subject. Therefore, these obligations can be identified most clearly. This does not exclude my view that the scope of obligations extends beyond the States.

<b>The minimum content of the right to the environment</b>		
<i>Term of environment and its qualifiers</i>	<i>Potential subjects of the right</i>	<i>Aspects of the obligations</i>
A broad and non-restrictive interpretation of the environment's definition and the guiding nature of qualitative indicators (e.g. healthy, safe, sustainable, inclusive, clean, etc.)	<p><u>Subjects:</u></p> <ul style="list-style-type: none"> <li>• A broad interpretation of human beings → safeguarding the interests of future generations and prioritising the protection of – objectively – vulnerable groups of the present.</li> <li>• the rejection of an excessively anthropocentric approach requires the recognition of the intrinsic value of the environment</li> </ul>	<p><u>Obligated parties:</u></p> <ul style="list-style-type: none"> <li>• primarily the States;</li> <li>• individuals and groups of persons, legal entities (in particular economic operators) and international organisations should also be included;</li> </ul>

	<p><u>Content in this light:</u></p> <ul style="list-style-type: none"> <li>• <i>freedoms:</i> the free enjoyment of a right without interference by the state or third parties;</li> <li>• <i>entitlements:</i> e.g. the right to a safe climate, clean air, adequate water, sanitation, food, etc.</li> </ul>	<p><u>Nature of the obligations:</u></p> <ul style="list-style-type: none"> <li>• <i>passive:</i> refraining from interfering with the enjoyment of the freedoms deriving from the right (applies to all obligated actors)</li> <li>• <i>active:</i> primarily, but not exclusively, positive action by States, protection of the free enjoyment of the right, development of the regulatory-institutional framework necessary to promote it, provision of remedies, international coordination, elimination of discrimination</li> </ul>
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#### **D) The potential effect of the universal declaration**

At the time of writing, the global declaration of the right to the environment as an individual and universal human right is so recent that, at this point, the potential impact can best be outlined in terms of the experience of declaring related rights, which may vary from level to level.

*At the universal level of international law,* I can imagine that other rights, primarily those identified above as ‘related rights’, could justify an even more environment-specific interpretation. It also helps to promote environmental agreements, to take more significant account of human rights factors, and to contribute to a better appreciation of the human and environmental aspects by UN bodies, in particular human rights treaty bodies.

*At the regional level of international law,* the impact is likely to vary from region to region; thus, in Europe, it may contribute to the pursuit of the aspiration that the right to the environment should be included in the ECHR and/or the European Social Charter through an additional protocol. It could broaden effective enforcement beyond indigenous peoples' cases in the African and inter-American systems. The international confirmation of a new human right could also positively impact regional legal developments in general, which would be welcome in the case of the Arab Charter and the ASEAN Declaration on Human Rights.

*At the national level*, the impact may vary depending on whether the State has already recognised the right or has yet to explicitly or implicitly declare it. In the case of the former, it may facilitate the implementation of the relevant legislation and enhance the interpretation and application in a way that prioritises environmental concerns. The most beneficial effect, however, would be – irrespective of the assessment of reality – to provide a motivating force for those states that have not yet recognised the right to a healthy environment.

### **3. Further possible contribution to additional research**

The results of this thesis are relevant for further research in various aspects. One of the most significant of these is the potential for *further development* in monitoring the actual implementation of the effect on legal development that can be envisaged at the *global, regional and national levels* described above. A separate area for the study could be *the European Union's response* to the universal declaration of the right to the environment. It could also be a *guideline for the international legal foundation of national legal research*, even on a comparative basis. The thesis may *contribute to the analysis of other international legal areas* beyond issues of rights closely related to the right to the environment, which may be relevant to the sovereignty of states or the human rights and environmental responsibilities of corporations. But it may also help assess the implementation of specific key instruments, particularly the SDGs and the Paris Agreement. In writing this thesis, I have paid particular attention to *ethical approaches, religious doctrines and the question of soft law*; therefore, these results can also serve as a reference for a deeper analysis.

#### IV. List of publications

1. Vivien, BENDA: The Environmental Impact Assessment as a ‘Requirement Under General International Law’ and Its Potential Correlations: A környezeti hatásvizsgálat elve mint a nemzetközi jog új általános princípiuma, valamint annak lehetséges összefüggései. *Külügyi és Külgazdasági Intézet Tanulmányok. KKI Studies*, 8. Paper: 1, 13. p. (2018). 3–15.
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3. BENDA Vivien: Az élhető városok és egyéb települések megteremtésének jogi kérdései Magyarországon az ENSZ fenntartható fejlődési célok tükrében. *Iustum Aequum Salutare*, 2018/4. 157–181.
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9. BENDA Vivien: A sic utere tuo elv megjelenése a nemzetközi környezetjogban. *Jog és Állam*, 30. szám, 2020. 41–48.
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11. Vivien, BENDA: Towards Sustainable and Inclusive Cities: Discrimination Against Vulnerable and Marginalized Groups: A Review of a Hidden Barrier to Sustainable Urbanization. In: Adriano BISELLO–Judith BORSVOOM-VAN BEURDEN–Daniele VETTORATO–Håvard HAARSTAD (eds.): *Smart and Sustainable Planning for Cities and Regions: Result of SSPCR 2019.* Cham, Springer Nature Switzerland, 2021. 469–478.
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15. Vivien, KÖBÖL-BENDA: The current status of the right to the environment at the global international law. *Opolskie Studia Administracyjno-Prawne*, Vol 20. No. 1. (2022) 117–144.
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*Under publication*

20. KÖBÖL-BENDA Vivien: A környezethez való jog egyes fenntarthatósági kérdései –  
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