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Keynote Speech by John Knox, Former U.N. Special Rapporteur for Human Rights and the Environment

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KEYNOTE SPEECH BY JOHN KNOX,[†] FORMER U.N. SPECIAL RAPPORTEUR FOR HUMAN RIGHTS AND THE ENVIRONMENT[‡]

It is really a pleasure to be here at Case Western Reserve University School of Law. I'd like to thank the organizers of this Conference and especially my old friend, Dean Michael Scharf. We worked together at the State Department Legal Adviser's Office thirty years ago.

I also want to acknowledge someone who's no longer with us, although I associate him very strongly with Case Western—so much so that I feel as if I've been seeing his spirit as I walked around campus the last couple of days. That's Henry King, the former Nuremberg prosecutor, who was a professor at the School of Law for many, many years.¹

As you just heard, I was the inaugural U.N. Special Rapporteur for Human Rights and the Environment, and I served in that position for six years.²

The most important thing to know about the relationship between human rights and the environment is that it's an interdependent relationship. On the one hand, you have to have a healthy environment in order to be able to enjoy an entire host of human rights.³ On the other hand, being able to exercise human rights—especially rights such as the right to information, the right to effective remedies, the right to public participation, and the rights of freedom of association and expression—are vital to being able to fight for and have a healthy

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‡ This speech was given at Case Western Reserve University's 2023 Cox International Law Center Conference on September 29, 2023. It was transcribed and edited by Cox Center Fellow Jacqueline Quander.

1. Dennis Hevesi, *Henry T. King Jr., Prosecutor at Nuremberg, Dies at 89*, N.Y. TIMES (May 12, 2009), <https://www.nytimes.com/2009/05/12/us/12king.html> [<https://perma.cc/LQU5-UM86>].
2. *John Knox, Former Special Rapporteur (2012-2018)*, OHCHR, <https://www.ohchr.org/en/special-procedures/sr-environment/john-knox-former-special-rapporteur-2012-2018> [<https://perma.cc/XGH7-CAMV>].
3. *About Human Rights and the Environment*, OHCHR, <https://www.ohchr.org/en/special-procedures/sr-environment/about-human-rights-and-environment> [<https://perma.cc/7HP4-25AA>].

environment.⁴ Ideally, this relationship is like a virtuous circle. We protect human rights in order to help protect the environment. And then a healthy environment helps us enjoy a broader range of human rights.

There are two main pathways that international law and, for that matter, domestic law, have found to capture this relationship. One is to recognize an autonomous human right to a healthy environment.⁵ As we'll see, that has happened in many countries around the world.⁶ But it hasn't happened very quickly at the international level. Instead, the international level has tended to follow the second path, which I've called "greening human rights."⁷ Greening human rights simply means applying other human rights—like the right to health, the right to life, and many others—to environmental issues.⁸

Let's begin by talking about the first path, the recognition of the right to a healthy environment. The traditional way that we have recognized human rights at the international level is through the U.N. General Assembly,⁹ since the very beginning of the United Nations and the adoption of the Universal Declaration of Human Rights in December of 1948.¹⁰ We're coming up on the seventy-fifth anniversary of that milestone.¹¹

The Universal Declaration includes a wide range of human rights, including rights to life, liberty, and security of person, which we recognize as rights in the United States. The Universal Declaration also includes economic, social, and cultural rights, such as rights to social security, health, and education—which in the United States, we might

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4. Yann Aguila, *The Right to a Healthy Environment*, INT'L UNION FOR CONSERVATION OF NATURE & NAT. RES. (Oct. 29, 2021), <https://www.iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment> [perma.cc/ZD4N-ZUAD].
 5. See U.N. Off. of the High Comm'r for Hum. Rts., Information Note on What is the Right to a Healthy Environment?, at 10 (Jan. 2023).
 6. Aguila, *supra* note 4.
 7. John Knox (Special Rapporteur on Hum. Rts. and the Env't), *Rep. on Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, ¶ 13, U.N. Doc. A/73/188 (July 19, 2018).
 8. *Id.*
 9. *Functions and Powers of the General Assembly*, U.N., <https://www.un.org/en/ga/about/background.shtml> [perma.cc/3L67-5JHJ].
 10. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).
 11. This keynote speech was given prior to the seventy-fifth anniversary of the Universal Declaration of Human Rights, which was on December 10, 2023. *The Universal Declaration of Human Rights Turns 75*, U.N., <https://www.un.org/en/observances/human-rights-day> [perma.cc/S5L4-HLKT].

not characterize as rights.¹² But both types of rights are reflected in the Universal Declaration of Human Rights.¹³

What is not included in its list of rights is the environment.¹⁴ Did Eleanor Roosevelt, the chair of the Human Rights Commission that drafted the Declaration,¹⁵ just forget to include it because she was busy and had other things on her mind? That, of course, is not true. The problem is that the right to a healthy environment wasn't really on anybody's mind in 1948. Nor was it on anybody's mind in 1966 when the two Human Rights Covenants codifying the rights in the Universal Declaration—one on Civil and Political Rights,¹⁶ and one on Economic, Social, and Cultural Rights¹⁷—were adopted and opened for ratification as binding treaties.

On the screen is a map showing the parties to the two Covenants. You can see that most countries in the world are parties to both of them.¹⁸ There are two big exceptions: China has signed but not ratified the International Covenant on Civil and Political Rights,¹⁹ and the United States has signed but not ratified the International Covenant on Economic, Social and Cultural Rights.²⁰

The modern environmental movement really took off in the late 1960s.²¹ The first Earth Day was in April 1970,²² only a few years after the Covenants were adopted. Earth Day celebrates the right to a healthy environment,²³ so in a sense, the drafters of the Covenants kind of missed the bus, right? You can picture the human rights movement

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12. ACLU, WHAT YOU SHOULD KNOW ABOUT THE U.S. AND HUMAN RIGHTS 1 (2013).
 13. G.A. Res. 217 (III) A, *supra* note 10, arts. 3, 22, 25–26.
 14. *See id.*
 15. *Drafters of the Declaration*, U.N. <https://www.un.org/en/about-us/udhr/drafters-of-the-declaration> [perma.cc/4VMY-RFGZ].
 16. G.A. Res. 2200 (XXI) A, International Covenant on Civil and Political Rights (Dec. 16, 1966).
 17. G.A. Res. 2200 (XXI) A, International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966).
 18. *U.N. Human Rights Treaty Bodies*, U.N. Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/treaty.aspx?treaty=cescr&lang=en [perma.cc/XP4T-NWVW].
 19. *See id.*
 20. *See id.*
 21. Sarah Pruitt, *How the First Earth Day Was Born from 1960s Counterculture*, HISTORY, <https://www.history.com/news/first-earth-day-1960s-counterculture> [https://perma.cc/U8CF-U45S] (Apr. 21, 2023).
 22. *Id.*
 23. *See Earth Day 2022: Invest in Our Planet*, EARTHDAY.ORG, <https://www.earthday.org/earth-day-2022/> [https://perma.cc/5TJW-3VW8].

going off in that yellow bus, and there's the little right to a healthy environment on the side of the road looking after it.

But there are other buses. Buses don't just come once a millennium. There are a lot of possible buses that can carry the right to a healthy environment—and have carried it. Let's talk about some of them.

National constitutions began to pick up the idea of a right to a healthy environment. Portugal, in 1974,²⁴ is usually recognized as the first country to do so.²⁵ But there are many other examples.²⁶ I could take any four countries that are next to each other in the alphabet, and you would see how closely related the rights that they have expressed in their constitutions are.²⁷

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24. CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [C.R.P.], art. 66. English translation available at <https://dre.pt/constitution-of-the-portuguese-republic>.
 25. David Boyd, (Special Rapporteur on Hum. Rts. and the Env't), *Recognizing the Right to a Healthy Environment*, U.N. Doc. A/73/188, at 4 (Jul. 19, 2018) [hereinafter *Recognizing the Right to a Healthy Environment*].
 26. U.N. Env't Programme, *Environmental Rule of Law: First Global Report*, U.N. Doc. DEL/2227/NA, ¶ 4.5 (Jan. 2019) (recognizing countries enshrined with rights to a healthy environment, including Algeria, Argentina, Armenia, Burkina Faso, Central African Republic, Democratic Republic of the Congo, Indonesia, Iraq, Mexico, Russia, Spain, Ukraine, as having constitutions that protect the right to a healthy environment).
 27. CONSTITUTION OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA, Nov. 1, 2020, art. 20 (“The State shall strive to (1) Guarantee a safe environment to protect individuals and achieve their well-being; (2) Improve biodiversity and the guarantee of ongoing awareness of environmental risks; (3) Make rational use of water, fossil fuels, and other natural resources; (4) Protect the environment's land, sea, and air dimensions and the implementation of all appropriate measures to suppress pollutants”); CONSTITUTION OF THE REPUBLIC OF ANGOLA, Jan. 21, 2010, SR 1/91 art. 39 (recognizing “(1) Everyone has the right to live in a healthy and unpolluted environment and the duty to defend and preserve it; (2) The state shall take requisite measures to protect the environment and species of flora and fauna throughout national territory, maintain the ecological balance, ensure the correct location of economic activities and the rational development and use of all natural resources, within the context of sustainable development, respect for the rights of future generations and the preservation of species; (3) Acts that endanger or damage conservation of the environment shall be punishable by law”); Art. 41, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.). (“All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it. As a first priority, environmental damage shall bring about the obligation to repair it according to law. The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education. The Nation shall regulate the minimum protection

There is some variation in national constitutional language. About two-thirds of the constitutional rights around the world refer explicitly to “a healthy environment or an environment conducive to human health.”²⁸ About one-quarter refer to some form of ecologically-balanced environment.²⁹ There are many alternatives.³⁰ We have Jimmy May with us today, who has literally written the book about the variety and patterns of domestic constitutional rights on environmental issues.³¹ The count varies, and some people have higher or lower numbers, but by my count, slightly over one hundred constitutions at the national level either explicitly include the right to a healthy environment or have been interpreted by their highest court to include the right to a healthy environment.³²

India³³ and Pakistan,³⁴ for example, don’t have an explicit right to a healthy environment. But, for many years, their highest courts have interpreted their constitutional right to life to include it.³⁵ So, in those countries the right effectively has constitutional-level protection.

In the United States, six states have included the right to a healthy environment in their constitutions.³⁶ Beginning in the early 1970s,

standards, and the provinces those necessary to reinforce them, without altering their local jurisdictions”); CONSTITUTION OF THE REPUBLIC OF ARMENIA, June 12, 2015, art.12 (recognizing “(1) The State shall promote the preservation, improvement, and restoration of the environment, the reasonable utilisation of natural resources, guided by the principle of sustainable development and taking into account the responsibility before future generations; (2) Everyone shall be obliged to take care of the preservation of the environment.”).

28. *See What Are Your Environmental Rights?*, U.N. ENVIRONMENT PROGRAMME, <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what> [<https://perma.cc/4Y3J-9XQX>].
29. U.N. Independent Expert on Hum. Rts., et al., *Human Rights and the Environment: Regional Consultation on the Relationship Between Human Rights Obligations and Environmental Protection, with a Focus on Constitutional Environmental Rights*, ¶ 11 (Jan. 23–24, 2014).
30. *Id.* (“[A]lternative formulations include rights to a clean, safe, favourable or wholesome environment”).
31. *See, e.g.*, JAMES R. MAY, *GLOBAL ENVIRONMENTAL CONSTITUTIONALISM* (2015).
32. David R. Boyd, *The Implicit Constitutional Right to Live in a Healthy Environment*, 20 REV. EUR. CMTY. & INT’L ENV’T L. 171, 172 (2011).
33. *Id.* at 172–73; *see* India Const.
34. Boyd, *supra* note 32, at 172, 176; *see* PAKISTAN CONST.
35. Boyd, *supra* note 32, at 176.
36. John C. Dernbach, *The Environmental Rights Provisions of U.S. State Constitutions: A Comparative Analysis*, in ENVIRONMENTAL LAW BEFORE THE COURTS (forthcoming).

Pennsylvania was one of the very first states to add it.³⁷ Several others followed suit. After a period of reduced interest, there has been an upswelling of support again in recent years.³⁸ Only two years ago, New York added the right to its state constitution.³⁹

Some of these states have never really had any cases interpreting it.⁴⁰ Others accept the right as a basis for a cause of action.⁴¹ Just three weeks ago, a Montana district court issued a decision on climate change that got quite a bit of attention; that case was based on the Montana State Constitution's right to a healthy environment.⁴²

At the regional level, too, the right to a healthy environment is quite popular. Almost every region of the world has some human rights treaty or environmental treaty that includes a reference to or formally recognizes the right to a healthy environment.⁴³ Here, the pathbreaker was the African Charter on Human and Peoples' Rights in 1981,⁴⁴ followed by the San Salvador Protocol in Latin America and the Caribbean,⁴⁵ the Aarhus Convention in Europe,⁴⁶ the Arab Charter,⁴⁷

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37. Lily Jones, *Nothing More Fundamental*, PEC (Apr. 30, 2021), <https://pecpa.org/news/pennsylvania-legacies-143/> [https://perma.cc/B7LQ-U73X]; PA. CONST. art. 1, § 27.
38. Dernbach, *supra* note 36, at 3.
39. *Id.* at 2; N.Y. CONST., art. 1, § 19.
40. See Emily Pontecorvo, *New York's New Constitutional Right to a Clean Environment Faces First Judicial Test*, GRIST (Feb. 15, 2023), <https://grist.org/regulation/new-york-environmental-rights-green-amendment-first-court-test/> [https://perma.cc/P7WG-Q5DX]; see also Martha F. Davis, *The Greening of State Constitutions*, STATE CT. REP. (Aug. 14, 2023), <https://statecourtreport.org/our-work/analysis-opinion/greening-state-constitutions> [https://perma.cc/WZY4-R3YQ].
41. Dernbach, *supra* note 36, at 23.
42. *Held v. Montana*, No. CDV-2020-307, 97, 101–102 (Mont. Jud. Dist. Ct. Aug. 14, 2023).
43. Aguila, *supra* note 4.
44. U.N. Off. of the High Comm'r for Hum. Rts., *What is the Right to a Healthy Environment?* 8 (2023) [hereinafter *What is the Right to a Healthy Environment*]; Org. of African Unity [OAU] Charter art. 24.
45. *What Is the Right to a Healthy Environment*, *supra* note 44, at 8; Org. of Am. States, *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights*, art. 11 (Nov. 17, 1988).
46. *What is the Right to a Healthy Environment*, *supra* note 44, at 8; *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, June 25, 1998, 2161 U.N.T.S 447.
47. *What is the Right to a Healthy Environment*, *supra* note 44, at 8; League of Arab States [LAS], *Arab Charter on Human Rights*, art. 38 (May 22, 2004).

and the ASEAN Declaration.⁴⁸ This is quite a long list of agreements. If you add together the countries that have accepted the right in their national law with the countries that have accepted it in regional treaties, it brings us to over 150 countries out of the 190 that make up the world community.⁴⁹

There are some very large countries—large physically, by population, and in terms of their economic and political clout—that have not accepted the right to a healthy environment through any of these mechanisms. The United States may be the most obvious one,⁵⁰ especially since we're here talking in the United States. But other countries that have not recognized the right include China,⁵¹ Japan,⁵² the United Kingdom,⁵³ and Australia.⁵⁴ These are not insignificant countries internationally. And so that helps to explain why, when we shift back to the global level, the United Nations level, efforts to recognize the right were met with a lot of resistance over the years.

The right came very close to formal recognition in 1972, at the first international environmental conference in Stockholm,⁵⁵ when the international community adopted the Stockholm Declaration.⁵⁶

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48. What is the Right to a Healthy Environment, *supra* note 44, at 8; Ass'n of Southeast Asian Nations [ASEAN], ASEAN Human Rights Declaration, § 28(f) (Nov. 19, 2012).
 49. Assistant Secretary General Brands Kehris, Right to Healthy Environment (Apr. 12, 2022), <https://www.ohchr.org/en/statements-and-speeches/2022/04/right-healthy-environment> [<https://perma.cc/87J6-2DHV>].
 50. Press Release, General Assembly, With 161 Votes in Favour, 8 Abstentions, General Assembly Adopts Landmark Resolution Recognizing Clean, Healthy, Sustainable Environment as Human Right, U.N. Press Release GA/12437 (July 28, 2022) [hereinafter U.N. Press Release GA/12437].
 51. *See id.*
 52. *See id.*
 53. *See id.*
 54. Soo Kyung Jung, *The Right to a Healthy Environment and its Realisation in Australia*, UNIV. OF N.S.W., AUSTL. HUMAN RIGHTS INST., <https://www.humanrights.unsw.edu.au/students/blogs/right-healthy-environment-realisation-australia> [<https://perma.cc/ZRT3-6KAF>].
 55. *United Nations Conference on the Human Environment, 5–16 June 1972, Stockholm*, U.N., <https://www.un.org/en/conferences/environment/stockholm1972> [<https://perma.cc/D3L7-JZ4Z>].
 56. Conference on the Human Environment, *Report of the United Nations Conference on the Human Environment*, at 4, U.N. Doc. A/CONF.48/14 (June 5–16, 1972).

The very first principle of the Declaration includes human rights-sounding language.⁵⁷

Unfortunately for those of us who support the idea of a human right to a healthy environment, that's as close as the United Nations got for another fifty years.⁵⁸

There were efforts by groups and individuals to encourage the United Nations to think about this in the run-up to the 1992 Conference on Environment and Development,⁵⁹ held in Rio de Janeiro. The famous Brundtland Commission,⁶⁰ which popularized the idea of sustainable development, also suggested legal principles that included the right to a healthy environment, or, in its words, a fundamental right to an environment adequate for health and wellbeing.⁶¹

I've always thought that 'adequate' does not seem very inspiring! "Let's have an adequate environment." Really, is that the best we can hope for? In any event, that proposal did not make it into the Rio Declaration. Instead, it includes this language: "Human beings are entitled to a healthy and productive life, in harmony with nature."⁶² I've never been sure about this, and I can't say for sure that this is what happened, but doesn't "entitle to" sound like an amendment that somebody made to a draft that included the word "right to?"

Someone may have said, "Well, we can't have that! What kind of sounds the same, but doesn't give the same kind of connotation as "right to"?" And I wonder if that is how the Rio Declaration ended up with "entitled to." It sounds nice, but it doesn't carry the same weight as saying that we have a right to something.⁶³

On the human rights side, the Human Rights Commission, the same one that Eleanor Roosevelt chaired back in the early days of the United Nations, used to have a subcommission composed of independent

57. *Id.* Principle 1 ("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.").

58. See U.N. Press Release GA/12437, *supra* note 50.

59. See *United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992*, U.N., <https://www.un.org/en/conferences/environment/rio1992> [<https://perma.cc/ESX2-83AX>] (last visited Feb. 25, 2024).

60. World Commission on Environment and Development, *Our Common Future, From One Earth to One World*, U.N. Doc A/42/427 (Aug. 4, 1987).

61. See *id.* ¶ 97.

62. United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development*, ¶ 1, U.N. Doc. A/Conf.151/26/Rev.1 (Vol. 1) (Aug. 12, 1992).

63. See Aguila, *supra* note 4.

experts.⁶⁴ In the early 1990s, they asked one of their members, Fatma Zohra Ksentini,⁶⁵ to study human rights and the environment. In 1994, she produced a draft declaration that included the right to a healthy environment.⁶⁶ It was presented to the governments on the Human Rights Commission, which rejected it.⁶⁷

Ironically, in that same period when I worked with Dean Scharf at the State Department, I actually had responsibility for this issue. Within the Office of the Legal Adviser, I had the file on Human Rights and the Environment. That file really only needed one page in it: the United States does not recognize the right to a healthy environment. The United States, joined by others, killed this proposal in the Human Rights Commission,⁶⁸ and that's where the issue rested for nearly twenty years at the United Nations.⁶⁹

In 2006, the Human Rights Commission was replaced by another intergovernmental body called the Human Rights Council.⁷⁰ In 2012, a coalition of countries led by the Maldives, which were particularly concerned about the effect of climate change on their human rights,⁷¹ spearheaded an initiative to get the Council to revisit this issue by appointing a new mandate holder to study the relationship between human rights and the environment.⁷² The Human Rights Council sometimes appoints experts, usually called Special Rapporteurs, to

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64. Fatma Zohra Ksentini (Special Rapporteur), *Draft Principles on Human Rights and the Environment*, U.N. Doc. E/C.4/Sub.2/1994/9, Annex I (July 6, 1994) [hereinafter *Draft Principles*].
 65. *Draft Principles on Human Rights and the Environment, E/C.4/Sub.2/1994/9, Annex I (1994)*, UNIV. OF MINN. HUMAN RIGHTS LIBRARY, <http://hrlibrary.umn.edu/instree/1994-dec.htm> [<https://perma.cc/7YPP-V4YM>].
 66. *Draft Principles*, *supra* note 64, Annex 1.
 67. John H. Knox (Special Rapporteur), *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, ¶ 16, U.N. Doc. A/HRC/22/43 (Dec. 24, 2012).
 68. John H. Knox, *Constructing the Human Right to a Healthy Environment*, 16, ANN. REV. L. & SOC. SCI. 79, 88 (2020).
 69. U.N. Press Release GA/12437, *supra* note 50.
 70. *Welcome to the Human Rights Council*, OHCHR, <https://www.ohchr.org/en/hr-bodies/hrc/about-council> [<https://perma.cc/RN8U-2XPY>].
 71. ABDULLA SHAHID, SUBMISSION OF THE MALDIVES TO THE OFF. OF THE U.N. COMM'R FOR HUM. RTS., 4–5 (2008).
 72. *United Nations Human Rights Council Establishes Independent Expert on Human Rights and the Environment*, CTR. INT'L ENV'T L. (Mar. 23, 2012), <https://www.ciel.org/news/united-nations-human-rights-council-establishes-independent-expert-on-human-rights-and-the-environment/> [<https://perma.cc/8DSV-JDUN>].

investigate and issue reports on different human rights or different vulnerable groups, or different threats to human rights.⁷³

Usually, the standards to be applied by these experts are pretty clear. For example, the Special Rapporteur on Torture seeks to promote compliance with the Convention against Torture.⁷⁴ Similarly, there's a working group on arbitrary disappearances,⁷⁵ and again, the law in that area is relatively clear. But sometimes, the Human Rights Council appoints someone to clarify an area of human rights when the international community is not exactly sure what the obligations are.⁷⁶ The Council doesn't call the expert a Special Rapporteur at first; rather, they usually start by appointing an Independent Expert.⁷⁷

So when the Council decided in 2012 to create a new mandate on human rights and the environment, it appointed someone to clarify the field. Largely because I had done work for the Maldives over the preceding years on this issue, the Maldives supported my candidacy for the position.⁷⁸ The Human Rights Council appointed me in 2012 to be the first Independent Expert,⁷⁹ and asked me to study human rights obligations related to the environment, and to identify, promote, and exchange views on best practices.⁸⁰

In other words, this mandate did not request me to investigate and report on violations. For my first couple of years, I basically tried to map what human rights bodies had been saying about environmental issues. I held consultations all over the world, and I also launched what

73. *UN Charter-Based Institutions Including Special Procedures*, U.N. SUSTAINABLE DEV. GRP., <https://unsdg.un.org/2030-agenda/strengthening-international-human-rights/un-special-procedures> [<https://perma.cc/6FD3-5RCF>].

74. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 20, Dec. 10, 1984, 1465 U.N.T.S. 85.

75. *Working Group on Arbitrary Detention*, OHCHR, <https://www.ohchr.org/en/special-procedures/wg-arbitrary-detention> [<https://perma.cc/EC4S-G3FC>].

76. See, e.g., *Background Information*, OHCHR, <https://www.ohchr.org/en/hr-bodies/chr/background> [<https://perma.cc/2ZQ6-HGV5>].

77. See, e.g., *id.*

78. *Maldives at the Human Rights Council*, REPUBLIC OF MALDIVES: MINISTRY OF FOREIGN AFF. (Mar. 11, 2013), <https://mail.foreign.gov.mv/index.php/en/media-center/news/maldives-at-the-human-rights-council> [<https://perma.cc/6RGH-MBEY>].

79. *Special Rapporteur on Human Rights and the Environment*, OHCHR, <https://www.ohchr.org/en/special-procedures/sr-environment> [<https://perma.cc/9REU-DX9P>].

80. Human Rights Council Res. 19/10, U.N. Doc. A/HRC/RES/19/10, (Apr. 19, 2012) at 2.

I called a “mapping project.”⁸¹ Assisted by many pro bono attorneys, academics, and law students, I issued fourteen reports.⁸² Each of them described what some human rights body, or some other source of international law, had said about the environment.⁸³

From our research, we found a remarkable degree of uniformity. It turns out that the process of greening human rights, despite the fact that it started from so many different sources and involved so many human rights bodies, was arriving at a set of coherent norms.

The human rights bodies were identifying the same kinds of procedural obligations, including obligations you might think of as environmental democracy to provide information, to provide for public participation, and so forth.⁸⁴ But they were also saying that there were substantive obligations of states. In order to protect existing human rights, states had obligations to protect the environment.⁸⁵ Yes, states had some discretion.⁸⁶ Everyone doesn’t expect Ghana and Germany to have exactly the same substantive environmental standards. But there are limits on that discretion.⁸⁷ A state can’t strike unreasonable balances between environmental protection and its other social goals. Finally, human rights law sets out obligations on States with respect to non-discrimination, and protection of people in vulnerable situations, and these obligations very much apply in the environmental context.⁸⁸

The Human Rights Council renewed my mandate in 2015 for another and final three-year term.⁸⁹ At that time, my title was changed to Special Rapporteur. This was not a promotion for me personally! But in a real sense, it was a promotion for the mandate. It meant that the governments on the Human Rights Council acknowledged that the human rights norms relating to the environment were now clear enough

81. *Mapping Report*, OHCHR, <https://www.ohchr.org/en/special-procedures/sr-environment/mapping-report> [<https://perma.cc/NMC7-KC6H>].

82. *Id.*

83. *Id.*

84. John H. Knox (Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment), *Mapping Report*, ¶¶ 27–29, U.N. Doc. A/HRC/25/53 (Dec. 30, 2013).

85. *Id.* ¶ 29.

86. *Id.* ¶ 53.

87. *Id.* ¶¶ 53–54.

88. *Id.* ¶¶ 69–77.

89. *Special Rapporteur on Human Rights and the Environment*, *supra* note 79.

that they could now ask someone to go and monitor them.⁹⁰ That's what the resolution in 2015 asked me to do.⁹¹

In 2018, I summarized the relevant human rights norms in what I called Framework Principles on Human Rights and the Environment.⁹² I presented the Framework Principles in March 2018 in my final report to the Human Rights Council. I also called on the Council to finally recognize the right to a healthy environment. I said, in effect, the human rights obligations relating to the environment are clear, and States in many ways are already complying with them. But we would still benefit from U.N. recognition of the right to a healthy environment. That would provide an overarching right that would integrate the entire field of human rights and the environment.

My successor, Professor David Boyd, and I jointly wrote a report to the General Assembly a few months later that made a more detailed argument that the United Nations should recognize the human right to a healthy environment.⁹³ David made recognition one of his top priorities for the next several years.⁹⁴ I continued to work with him in an effort to convince the members of the United Nations to recognize the right.⁹⁵

What form could recognition take? Legally, there were several different possibilities.

Some suggested a protocol to an existing treaty.⁹⁶ Others proposed an entirely new treaty. Around the same time, the French Government proposed the Global Pact for the Environment, the first article of which was recognition of the right to a healthy environment.⁹⁷

90. See Human Rights Council Res. 28/11, U.N. Doc. A/HRC/RES/28/11, at 1–2 (Apr. 7, 2015).

91. *Id.* at 2–4.

92. Human Rights Council Res. 37/59, U.N. Doc. A/HRC/37/59, at 1 (Jan. 24, 2018).

93. *Right to a Healthy and Sustainable Environment Reports*, OHCHR, <https://www.ohchr.org/en/special-procedures/sr-environment/right-healthy-and-sustainable-environment-report> [https://perma.cc/C4K9-JSJU]; John H. Knox (Special Rapporteur on Human Rights and the Environment), *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, U.N. Doc. A/73/188 (July 19, 2018).

94. See, e.g., *Why the UN General Assembly Must Back the Right to a Healthy Environment*, U.N. (July 22, 2022), <https://news.un.org/en/story/2022/07/1123142> [https://perma.cc/FG8B-5J6R].

95. DAVID BOYD ET AL., #THETIMEISNOW: THE CASE FOR UNIVERSAL RECOGNITION OF THE RIGHT TO A SAFE, CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT 25 (2021).

96. *Recognizing the Right to a Healthy Environment*, *supra* note 25, at 3.

97. Emmanuel Macron, President of the French Republic, Speech at the Summit on the Global Pact for the Environment (Sept. 19, 2017), <https://>

But David and I agreed pretty quickly that we would push for a General Assembly resolution. The obvious reason for that is we had already waited nearly fifty years for recognition of this principle.⁹⁸ We didn't want to wait another ten or twenty years, which we thought it might take if we pushed for a new treaty. Those are just kind of famously difficult to get.⁹⁹ And there was significant precedent for the General Assembly to adopt resolutions as the first way that they recognize human rights.¹⁰⁰ So, that's what we went for.

Then COVID-19 got in the way, and it slowed this process down.¹⁰¹ But there was an effort to start a new campaign in 2021, and many states and organizations joined it.¹⁰² Among governments, the core group of governments that had always supported the mandate took the lead, but they were joined by a campaign that eventually included over 1,300 civil society organizations (CSOs) from all around the world.¹⁰³

In addition, and very unusually, fifteen U.N. agencies – including not only the High Commissioner for Human Rights, who you might expect would be supportive of something like this, but also the head of U.N. Environment Programme (UNEP), the head of the United Nations

www.diplomatie.gouv.fr/en/french-foreign-policy/france-and-the-united-nations/news-and-events/united-nations-general-assembly/unga-s-72nd-session/article/speech-by-m-emmanuel-macron-president-of-the-republic-summit-on-the-global-pact [<https://perma.cc/5LBU-ATJ3>]; GLOBAL PACT FOR THE ENV'T, TOWARD A GLOBAL PACT FOR THE ENVIRONMENT art. 1 (2017).

98. Joint Statement by UN Human Rights Experts for World Environment Day, Recognition of the Right to a Healthy Environment Key to Address the Environmental Crisis and Protect Human Rights (June 5, 2021), <https://ohchr.org/en/statements/2021/06/joint-statement-un-human-rights-experts-world-environment-day> [<https://perma.cc/3VA2-PGY3>].
99. See *International Agreements*, U.S. DEP'T HEALTH & HUM. SERVICES, <https://www.phe.gov/s3/law/Pages/International.aspx> [<https://perma.cc/XS6A-4CJT>].
100. See Joel E. Correia, *The UN Just Declared a New Human Right*, WORLD ECON. F. (Aug. 9, 2022), <https://www.weforum.org/agenda/2022/08/the-un-just-declared-a-universal-human-right-to-a-healthy-sustainable-environment-here-s-where-resolutions-like-this-can-lead/> [<https://perma.cc/BR7G-WZHC>].
101. See Isa Mirza, *COVID-19 and Global Human Rights: Shifting Priorities for Governments, Civil Society, and Companies*, JD SUPRA (April 20, 2020), <https://www.jdsupra.com/legalnews/covid-19-and-global-human-rights-93783/> [<https://perma.cc/7LMM-VRR3>].
102. *Campaign for the Right to a Healthy Environment, Including Amnesty International, Wins Prestigious Human Rights Prize*, AMNESTY INT'L (July 20, 2023), <https://amnesty.org/en/latest/news/2023/07/campaign-for-the-right-to-a-healthy-environment-including-amnesty-international-wins-prestigious-human-rights-prize/> [<https://perma.cc/FKX9-B4DX>] [hereinafter AMNESTY INT'L].
103. AMNESTY INT'L, *supra* note 102.

Development Programme (UNDP), the head of UNICEF and many others – all came together in a joint statement and agreed that “the time has come to finally recognize this right.”¹⁰⁴

Now, this raises the question: how does the General Assembly decide when to recognize a right? In 1986, the General Assembly had adopted guidelines for new human rights instruments,¹⁰⁵ and David and I developed talking points about why this right met all of these requirements.¹⁰⁶ But I had a lot of conversations with governments over this, and I can’t remember anybody ever actually bringing up this resolution. Instead, the issue of recognition really came down to one question: does the proposed right have broad international support? Is this something that countries are willing to support at the United Nations?

There, it really helped, of course, that so many countries had already accepted it domestically or in regional agreements, but it also hurt that some powerful important countries had not.¹⁰⁷

We made arguments that adding this right to the existing body of human rights and environmental law would be very valuable. First, we argued that recognizing the right to a healthy environment as a human right helps to elevate the importance of environmental protection and puts it on the same level as other rights, including rights that we’ve long considered necessary to human freedom and equality and dignity.¹⁰⁸ Recognition of the right foregrounds the human beings and communities who are most affected and marginalized by environmental harm. This is the focus of the movement in the United States called the

104. Joint Statement of United Nations Entities on the Right to Healthy Environment (Mar. 8, 2021), <https://www.unep.org/news-and-stories/statements/joint-statement-united-nations-entities-right-healthy-environment> [<https://perma.cc/Y64W-C72G>].

105. G.A. Res. 41/120, ¶¶ 1–5 (Dec. 4, 1986).

106. See Statement by David R. Boyd, Special Rapporteur on Human Rights and the Environment at the 73rd Session of the General Assembly (Oct. 25, 2018), <https://www.ohchr.org/en/statements/2018/10/statement-david-r-boyd-special-rapporteur-human-rights-and-environment-73rd> [<https://perma.cc/94UL-KYZ6>].

107. Brands Kehris, Assistant Secretary-General for Human Rights, Right to Healthy Environment (Apr. 12, 2022), <https://www.ohchr.org/en/statements-and-speeches/2022/04/right-healthy-environment> [<https://perma.cc/GW2H-7NLP>]; see Isabella Kaminski, *Moves to Crystallise Right to a Healthy Environment Spark Tension at UN*, CLIMATE HOME NEWS (Apr. 4, 2023, 7:14 PM), <https://www.climatechangenews.com/2023/04/04/moves-to-crystallise-right-to-a-healthy-environment-spark-tension-at-un/> [<https://perma.cc/49N5-DFUX>].

108. See Knox, *Constructing the Human Right to a Healthy Environment*, *supra* note 68, at 86–87.

Environmental Justice Movement,¹⁰⁹ which is very much in line with the international effort to try to recognize the right.

Second, we argued that recognition of the right helps to integrate human rights law on the environment.¹¹⁰ It takes me five or ten minutes, at least, to explain the process I've called greening human rights. If I tell somebody we think we have the human right to a healthy environment, that resonates with people immediately. Recognition also helps to show that environmental harm itself can violate human rights without having to connect all the dots to show exactly how it interferes with the right to life or health. Just the fact that we are so dependent on the environment means that, when we harm the environment, we're harming one of our human rights.

Third, recognition of the right provides a basis for further action. At the international level there are mechanisms that focus on promoting compliance with internationally recognized human rights.¹¹¹ At the domestic level, recognizing the right to a healthy environment in constitutions has led to stronger environmental performance.¹¹² Recognition at the international level would help push countries that had already adopted the right to take it more seriously, and push countries that had not yet recognized it domestically to consider doing so.

The bottom line is that the universe aligned so that these advocacy efforts succeeded. In the fall of 2021, the Human Rights Council adopted, for the first time, a resolution recognizing the right to a healthy environment, and it also invited the General Assembly to consider the matter.¹¹³ The resolution at the Council was introduced by the Costa Rican Ambassador, and it was adopted by a close-to-unanimous vote: no negative votes and four abstentions.¹¹⁴ But the abstentions were from some powerful countries: China, India, Japan, and Russia.¹¹⁵

109. Renee Skelton et al., *The Environmental Justice Movement*, NAT'L RES. DEF. COUNCIL (Aug. 22, 2023), <https://nrdc.org/stories/environmental-justice-movement> [<https://perma.cc/62WZ-XFYA>].

110. Knox, *Constructing the Human Right to a Healthy Environment*, *supra* note 68, at 87.

111. *Id.* at 90.

112. DAVID R. BOYD, *THE EFFECTIVENESS OF CONSTITUTIONAL ENVIRONMENTAL RIGHTS* 7 (2013).

113. Human Rights Council 48/13, U.N. Doc. A/HRC/RES/48/13 (Oct. 18, 2021) [hereinafter U.N. Doc. A/HRC/RES/48/13]; *The Right to a Healthy Environment: 6 Things You Need to Know*, U.N. (Oct. 15, 2021), <https://news.un.org/en/story/2021/10/1103082> [<https://perma.cc/J65Z-9UZH>].

114. U.N. Doc. A/HRC/RES/48/13, *supra* note 113, at 3.

115. *Id.*

The only reason the United States did not abstain or even vote against the resolution was that, at the time, the United States was not a member of the Human Rights Council. It had withdrawn under the Trump Administration.¹¹⁶ However, the United States representatives spoke very strongly against the right.¹¹⁷

That suggested some hurdles that we would have to overcome going into the General Assembly in 2022. Led again by that same core group of governments, we had many meetings with different governments. The hundreds of civil society organizations also ramped up pressure on States to support the resolution. The result was that on June 28, 2022, a little over a year ago, the General Assembly adopted a resolution recognizing the right to a clean, healthy, and sustainable environment as a human right.¹¹⁸ This resolution was adopted by a vote of 161 to zero.¹¹⁹ Only eight countries – including China and Russia – abstained.

One of the most important things that changed to make this near-consensus agreement possible was the position of the United States.¹²⁰

Why did the United States government change its mind? I think that one of the things that had the most effect was the fact that high-ranking officials in the U.S. government, all the way up to President Biden, had gotten in the habit of referring to people as having the right to clean air and clean water.¹²¹ For example, John Kerry, in an interview during this period, said that everyone has the right to live in a sustainable planet.¹²² In other words, these officials were already using human rights language to express the importance of protecting the

116. See Marc Limon, *The End of the Beginning: General Assembly Recognition of the Right to a Clean, Healthy, and Sustainable Environment*, UNIVERSAL RTS. GRP. (Feb. 2, 2024), <https://www.universal-rights.org/the-end-of-the-beginning-general-assembly-recognition-of-the-right-to-a-clean-healthy-and-sustainable-environment/> [https://perma.cc/2AKZ-BY5Y].

117. *Id.*

118. U.N. Doc. A/HRC/RES/48/13, *supra* note 113.

119. U.N. Press Release GA/12437, *supra* note 50.

120. Edward Heartney, Couns. for Econ. and Soc. Aff., Explanation of Position on the Right to a Clean, Healthy, and Sustainable Environment Resolution (July 28, 2022), <https://usun.usmission.gov/explanation-of-position-on-the-right-to-a-clean-healthy-and-sustainable-environment-resolution/> [https://perma.cc/69E4-6LEB].

121. Press Release, Fact Sheet: President Biden Signs Executive Order to Revitalize Our Nation's Commitment to Environmental Justice for All (Apr. 21, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/21/fact-sheet-president-biden-signs-executive-order-to-revitalize-our-nations-commitment-to-environmental-justice-for-all/> [https://perma.cc/ZE3R-ZFBP].

122. BBC News, *John Kerry—US Special Envoy for Climate*, BBC (Dec. 8, 2021, 19:30), <https://www.bbc.co.uk/programmes/m0012dx7>.

environment. It became very difficult for them to justify why they were unwilling to use human rights language at the United Nations when they were using human rights language to domestic audiences.

As that divergence or cognitive dissonance was brought more and more to the attention of higher ranking people in the U.S. government, it became harder to hold that line. A lot of the opposition to this shift came from people within our old employer at the Office of the Legal Adviser of the U.S. State Department, which has traditionally been opposed to recognizing any new human rights because of a concern that someday, somewhere, a U.S. court might cite a General Assembly resolution to make the U.S. government do something it doesn't want to do. That has yet to happen in the history of the United States, so that argument eventually failed. As a result, the United States was able to join the overwhelming majority in adopting the resolution.¹²³

This was a pretty great moment, I would say, for people who have been advocating for this for a long time. It came fifty years, almost to the day, after the Stockholm Declaration.¹²⁴

But you might ask, what's next? What difference does recognition of the right to a healthy environment really make?

I don't want to oversell the difference it will make in the United States. As I said, U.S. courts are not interested in citing General Assembly resolutions. The United States has put up huge barriers to international human rights law having any effect in the United States, in all kinds of ways.¹²⁵

However, there's a world out there beyond the United States, and there, this recognition may contribute to change in a number of ways. First, having this recognition, and having it by such an overwhelming vote, helps to push U.N. agencies to take environmental concerns into their mandates to a degree that they might not have been doing before.

Second, recognition helps to further climate and environmental litigation based on rights all around the world. I could spend a whole other hour just on what's happening in climate litigation alone. There are cases pending before courts, at every level, from the International Court of Justice,¹²⁶ down to domestic courts around the world.¹²⁷ In at

123. U.N. Doc. A/HRC/RES/48/13, *supra* note 113.

124. *See generally* Jacob Katz Cogan, *Contemporary Practice of the United States Relating to International Law*, 117 AM. J. INT'L L. 128, 129 (2023).

125. Anya Wahal, *On International Treaties, the U.S. Refuses to Play Ball*, COUNCIL ON FOREIGN RELATIONS (Jan. 7, 2022, 5:08 PM EST), <https://www.cfr.org/blog/international-treaties-united-states-refuses-play-ball> [<https://perma.cc/KB3T-4WS7>].

126. *Pending Cases*, INT'L CT. OF JUST., <https://www.icj-cij.org/pending-cases> [<https://perma.cc/WE58-MXQC>].

127. Press Release, Beth Van Schaack, Ambassador-at-Large for Global Criminal Justice, Digital Press Briefing with Dr. Beth Van Schaack (Feb. 2, 2024), <https://www.state.gov/digital-press-briefing-with-dr-beth-van>

least some of those cases, this recognition may help to convince the courts to issue stronger decisions.

Third, it will push states, including those in the Council of Europe that oversees the European Convention on Human Rights, to consider adding it to their national constitutions or their regional agreements if they have not done so.

Fourth, as a practical matter, it creates greater attention to the threats facing environmental human rights defenders. Traditionally, they have not always even been considered human rights defenders, even though they are among the most at-risk of all defenders: on average, four environmental defenders a week are killed somewhere in the world.¹²⁸

Finally, I know that some of you are interested in the rights of nature. This resolution doesn't refer to those rights. However, recognition of rights of nature is increasingly popular at the domestic level in many different countries.¹²⁹ I don't believe the United Nations is going to be taking the lead on recognizing rights of nature anytime soon. But rights of nature may be following a similar path to the right to a healthy environment, which had to see support grow for years at the national and regional levels before finally being recognized by the United Nations.

In conclusion, it is worth taking a moment to celebrate the fact that the international community has finally recognized that everyone, everywhere, has the right to live in a clean, healthy, and sustainable environment. Of course, there is still a long a way to go to make that recognition a reality. But I hope you are as inspired as I am by the many people around the world who are working very hard – often at great personal risk – to achieve just that.

Thank you again for the opportunity to speak with you today!

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128. John Knox, *It's Time We All Recognize the Human Right to a Healthy Environment*, UNIVERSAL RTS. GRP. (June 5, 2018), <https://www.universal-rights.org/its-time-we-all-recognise-the-human-right-to-a-healthy-environment/> [https://perma.cc/8K33-2R77].

129. See, e.g., Guillaume Chappron et al., *A Rights Revolution for Nature*, SCIENCE, <https://www.science.org/doi/10.1126/science.aav5601> [https://perma.cc/96NU-QLWX].