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PANTEION UNIVERSITY OF SOCIAL AND POLITICAL SCIENCES

ΣΧΟΛΗ ΔΙΕΘΝΩΝ ΣΠΟΥΔΩΝ, ΕΠΙΚΟΙΝΩΝΙΑΣ ΚΑΙ ΠΟΛΙΤΙΣΜΟΥ

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ΕΙΔΙΚΕΥΣΗ «ΔΙΚΑΙΟ ΚΑΙ ΠΟΛΙΤΙΚΗ ΓΙΑ ΤΟ ΠΕΡΙΒΑΛΛΟΝ ΚΑΙ ΤΗΝ ΕΝΕΡΓΕΙΑ»

ΔΙΠΛΩΜΑΤΙΚΗ ΕΡΓΑΣΙΑ

The universal right to a healthy environment: a comprehensive and comparative study of its international and regional, legal and political implications and an examination of its role in promoting effective environmental protection

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Table of Contents

Abstract

This thesis investigates the evolution of the right to a clean, healthy and sustainable environment up until its official universal recognition by the United Nations General Assembly in July 2022. This new right symbolizes the interdependent link between human rights and the environment, and their respective areas of international law. However, it has not yet been included in the broad list of fundamental rights recognised globally, although several norms, principles and other substantive and procedural rights which inform the right to a healthy environment can be found in soft and hard law treaties and agreements on the international, regional and national scales. This thesis examines the right's legal and political implications on these levels by assessing its influence in human rights bodies' jurisprudence, so as to argue that a legally-binding universally recognised agreement recognizing the right to a healthy environment as a fundamental human right is necessary for efforts of environmental protection to become more effective. Additionally, it assesses the theoretical concepts used to promote the right's recognition, and determines that a combination of the human rights-based and nature's rights approaches are the ideal means to advance its universal implementation. Ultimately, the thesis recognises the importance of the right to a healthy environment for the protection of the environment and humans alike.

Keywords: Right to a Healthy Environment, International Environmental Law, Soft Law, Hard Law, Human Rights, Substantive Rights, Procedural Rights, Anthropocentrism, Ecocentrism

1. Introduction

In July 2022, the United Nations General Assembly welcomed the recognition that having a "clean, healthy and sustainable environment" is a human right, and built upon the UN Human Rights Council resolution of the previous year, which acknowledged the right and asked signatories "to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices" in order for the right to be ensured[1]. Though non-binding, it is believed that this resolution could be a first but monumental step toward the legal recognition of the right in question, leading to a significant gap in international law between the areas of human rights and the environment to be breached.

Through the passing of this resolution, the consensuses that environmental protection is instrumental to the enjoyment of a number of human rights and that effective environmental protection necessitates the exercise of human rights have been strengthened. These two points of unanimity facilitate the link that has been recognized by UN human rights bodies and environmental treaty bodies between human rights and the environment[2]. It is argued that the 'greening' of human rights (such as the right to life, health, water and property), because of their established dependence on a healthy environment, further reinforces the interconnection of human and environmental rights. A legalized universality of the right to a healthy environment is not only fundamental to global sustainable development[3], but could also be considered unavoidable, if one reviews the process of continuous internationalization of environmental politics in the 20th and 21st centuries[4].

It is important to note that through discussions in international and regional fora, the right to a healthy environment has already taken present form in many national constitutions. Such an example is the Greek National Constitution, Article 24 of which states that the "protection of natural and cultural environment constitutes a governmental obligation and a right of all peoples"[5], and thus has provided the legal basis for the actualization of procedural environmental rights in a local context and for citizens' right to appeal in case they are

[1] United Nations Human Rights Council, Resolution 76/300, *The human right to a clean, healthy and safe environment* A/RES/76/300 (26 July 2022)
[2]Zamfir, Ionel. "A Universal Right to a Healthy Environment ." *European Parliament*, EPRS | European Parliamentary Research Service, Dec. 2021
[3] Lambertini M. and Zurita P. *Towards universal recognition of the right to a healthy environment*, IUCN, 2022. (https://www.iucn.org/crossroads-blog/202204/towards-universal-recognition-right-healthy-environment)
[4] Schreurs M. et al. *The internationalization of environmental protection.* Cambridge University Press, 1997
[5] Greek Constitution art. 24 (1986)

threatened. These resolutions, though a beacon of hope in terms of the future of environmental law and its contribution to the efforts of achieving the Sustainable Development Goals[6], are only a starting point for effective change in the international system.

This thesis aims at examining the connection of human rights and the environment between the respective areas of international law and discussing how the right to a healthy environment is a clear manifestation of this link. As such the following research questions will be answered: *Considering the transformative power that derives from universal recognition, why should the right to a healthy environment be recognized in international law as a human right? And, what would be the most advantageous approach for promoting its recognition in order to guarantee environmental protection?*

To answer these questions, and to present a detailed analysis, this thesis will investigate the development of international environmental law in the past three decades, specifically its implementation of principals and rights informing the right to a healthy environment. Furthermore, an examination of regional applications of tools and mechanisms that find their legal basis on international principles, will allow for a comparative analysis to take place, in order to determine how big of a part this shift in theoretical perspective – regarding the perception of the interrelation between human rights and the environment – has had in terms of concrete application. In order for a critical discourse to take place within this thesis, and to decide whether indeed an anthropocentric approach will be the most prosperous point of view for future environmental law discussions, one needs to consider the opposite end of the spectrum which would be the rights of nature. Considering nature's rights, which are largely based on indigenous populations' view of the planet, as a substantial legal theory, will create an interesting debate within this thesis. It is important to consider different theoretical perspectives when discussing matters as intricate as this one, in order to be able to build a strong argument for the course that international environmental law should take in the future.

[6] United Nations, *Transforming our World: The 2030 Agenda for Sustainable Development*, 20 September 2015, A/RES/70/1

2. The evolution towards universal recognition of the right to a healthy environment

Akin to all areas of international law, fundamental aspects of environmental law have been emerging, developing and improving over the decades through diplomatic conferences and treaties, resulting in the 'modern era' of international environmental law. Such has been the evolution of the right to a 'clean, healthy and sustainable environment', which has been present in significant soft and hard law resolutions and treaties in varying forms, all in its path to gaining universal recognition.

Despite the right being alluded to or mentioned to point out the environment's direct impact on human life, and vice versa, and to reaffirm the principle of sustainable development, it has not always been part of international environmental law procedures, mainly due to the perception that its recognition would be fraught with "difficult questions"[7]. This chapter aims to set the basis for the theoretical and legal background of the right in question, which will play a big part for examining its application and analyzing it critically in later chapters of this thesis. The first section focuses on soft law instruments that have reinforced the right and hard law agreements that have included it, with an aim to showcase that its existence through the past decades naturally culminated to its universal recognition. The second section of the chapter examines the framework of substantive and procedural rights and principles that the right to a healthy environment is linked to and utilizes, in order to better understand its functions and normative implications.

A. Significant soft law instruments that affirmed the right to a healthy environment

Despite absence of a definitive and mandatory legal influence, soft law is vital for international environmental law's development and improvement. Soft law defines legal principles and methods, creates standards of behaviour and international norms, and promotes already existing policies[8]. These instruments, though not legally-binding, have legal relevance because they build foundations for the creation of international law through the initiation of relevant discourse.

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[7] Handl, Günther. "Declaration of the United Nations Conference on the Human Environment Stockholm, 16 June 1972 Rio Declaration on Environment and Development Rio de Janeiro, 14 June 1992." *Audiovisual Library of International Law*, United Nations, 2012, legal.un.org/avl/ha/dunche/dunche.html.

[8] Ahmed, Arif, and Jahid Mustofa. "Role Of Soft Law In Environmental Protection: An Overview." *European Centre for Research Training and Development UK*, vol. 4, no. No.2, Mar. 2016, pp. 1–18.

Soft law is a source and a result of hard law and instruments of both complement each other in shaping international environmental relations between states. Hard law holds more prestige – being more easily enforceable – especially in a regional and national context, as it creates specific rules which are clearly written and can be interpreted by a third party – and penalties if they are broken. However, some scholars argue that is not always preferable to soft law, especially in the context of environmental matters, due to its effective reduction of contracting costs and threats to sovereignty[9]. There are various declarations and documents which have derived from international conferences, and technically soft law represents a 'codification' of fundamental elements of international environmental law[10]. Such soft law instruments will be discussed in this section of the chapter, because it is vital to understand how them mentioning of the right to a healthy environment contributed to its recent declaration as an official human right.

i. Stockholm Declaration on the Human Environment (1972) & Rio Declaration on Environment and Development (1992)

The 1972 Stockholm Declaration and the 1992 Rio Declaration are prime examples of non-legally binding international agreements that provided the international community with foundations to effectively promote environmental protection on a global scale due to their reinforcement of existing and emerging environmental norms, principles and rules. One of those was the norm understood as one's right to have satisfactory living conditions, which can only be granted if our natural environment remains clean and healthy.

Some consider the Stockholm Declaration, which was adopted at the United Nations Conference on the Human Environment in 1972, to have marked the beginning of international environmental law, as it proclaimed the interrelatedness between humans and nature[11]. It represented a "taking stock of the global human impact on the environment", so as to create a common outlook on how to address the challenge of preserving and enhancing it[12]. For this reason, one can mostly find broad environmental policy goals and objectives in the declaration

[9] "When Might Soft Law Be Preferable to Hard Law?" available at: www.clg.portalxm.com/.
[10] Boer, B., and Boyle. "Human Rights and the Environment", 13th Informal ASEM Seminar on Human Rights, Copenhagen, Denmark. 2013
[11] "About the Stockholm Declaration." *Stockholm Declaration*, 7 Dec. 2022, stockholmdeclaration.org/about/.
[12] Handl, Günther. "Declaration of the United Nations Conference on the Human Environment Stockholm, 16 June 1972 Rio Declaration on Environment and Development Rio de Janeiro, 14 June 1992." *Audiovisual Library of International Law*, United Nations, 2012, legal.un.org/avl/ha/dunche/dunche.html.

rather than detailed and clear normative positions[13]; which characterizes the nature of soft law. Nevertheless, it made great strides in exponentially increasing global awareness of environmental issues. The Declaration is also considered to have made the first mention of the right to a healthy environment. Principle 1 of the Stockholm Declaration on the Human Environment reads:

> ***"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 […]"***[14]

Similarly, the Declaration indirectly made a reference to it by marking the start of a dialogue between industrialized and developing countries on the link between economic growth, pollution of the air, water and the ocean, and the well-being of people around the world[15]. This can be seen through Principle 2 and 5 which read accordingly:

> ***"The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate."***[16]

> ***"The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind."***[17]

Through both of the aforementioned Principles, the strong anthropocentric approach of the Stockholm Declaration can be recognized. All three Principles postulate a corresponding instrumentalist approach to the environment[18], which seems to be the driving force of the Declaration, as it reinforces the view of nature having a solely instrumental value. Instrumentalist perspective analyses of people and the environment relations measure the

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[13] Ibid
[14] UN General Assembly, *United Nations Conference on the Human Environment*, 15 December 1972, A/RES/2994
[15] "UN General Assembly Declares Access to Clean and Healthy Environment a Universal Human Right ." *United Nations News*, United Nations, 28 July 2022, news.un.org/en/story/2022/07/1123482.
[16] UN General Assembly, *United Nations Conference on the Human Environment*, 15 December 1972, A/RES/2994
[17] Ibid
[18] See note 12

quality of environments by how capable they are in promoting behavioral and economic efficiency, as well as 'enhanced levels of occupant's comfort, safety and well-being'[19]. Instrumentalism in environmental matters is therefore a deeply anthropocentric perspective and it could be argued that is what characterizes the human right to a healthy environment's theoretical conception. Today, due to scientific advancements in our understanding of other life forms and the need for recognition that they equally deserve the same rights as humans, this anthropocentric focus can look somewhat dated[20].

The 1992 Rio Declaration on Environment and Development was a major milestone for the systematizing and restating of existing normative expectations regarding the environment, as well as creating a basic legal and political framework for discussions on sustainable development. Like Stockholm, it is one of the most important instances where one can see the norms used to build the right to a healthy environment being discussed in a global context; albeit through an instrumentalist lens. Specifically, Principle 1 of the Rio Declaration reads:

"Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."[21]

Even though there is a certain level of allusion to such a right, it is believed by some that both the Stockholm and Rio Declarations have been mistaken to imply a "human right to the environment", especially because of several rejected proposals for a direct and unambiguous human right for environmental matters which were made during the former's conference[22]. Rio is considered to be even less suggestive of such a right, especially because of Principle 1. Even if some consider this Principle to be ambiguous in terms of whether it affirms the right to a clean and healthy environment, as it doesn't refer or pledge its recognition at the level of international law, it still made a tremendous impact in its theoretical and practical conception.

Firstly, the Rio Declaration, and Principle 1 in particular, has been reaffirmed in several other soft law agreements which dealt with environmental human rights, such as the 2030

[19] Stokols, Daniel. "Instrumental and spiritual views of people-environment relations." *American Psychologist*, vol. 45, no. 5, May 1990, pp. 641–646, https://doi.org/10.1037/0003-066x.45.5.641.
[20] See note 12
[21] UN General Assembly, *Report of the United Nations Conference on Environment and Development*, 12 August 1992, A/CONF.151/26 (Vol.1)
[22] See note 12

Agenda for Sustainable Development[23] and the follow up 2012 Rio+20 Declaration. The latter, even though it didn't make any outright mention of the right to a clean and healthy environment either, increased the emphasis on human rights in environmental contexts for future agreements to come. Those supporting the establishment of such a right argued that there was a need for international human rights protection to include the common interests of society and nature, whereas those opposing claimed that environmental issues had no direct impact on human rights[24]. Even though it faced a lot of opposition, the right to a healthy and clean environment was greatly reinforced by the Rio Declaration, firstly through Principle 1 on a theoretical basis, and secondly through Principle 10 on a procedural or practical basis. Principle 10 reads:

"Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."[25]

As such, the right to a healthy environment became intrinsically connected to the establishment of procedural environmental rights, which have become a core part of international environmental law. Hence, the Rio Declaration essentially answered the question of 'how do we ensure that the right to a healthy environment is respected through tangible ways' even before the global environmental status quo became aware that such a question needed to be posed.

Despite their non-legal character, the Stockholm and Rio Declarations claim remarkable authority in customary international environmental law. It is interesting however that, during the meetings at Stockholm, states consciously rejected making the declarations' principles part of legally-binding agreements, which shows states' tendency to avoid situations where their sovereignty can be threatened and which they cannot retreat from without consequences; hence the overall preference for soft law.

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[23] See note 6

[24] Peters, Birgit. "Clean and Healthy Environment, Right to, International Protection." *Oxford Public International Law*, Jan. 2021, opil.ouplaw.com/display/10.1093/law-epil/9780199231690/law-9780199231690-e2257.

[25] UN General Assembly, *Report of the United Nations Conference on Environment and Development*, 12 August 1992, A/CONF.151/26 (Vol.1)

ii. The 2030 Agenda for Sustainable Development (2015)

The indivisible relationship between sustainable development and human rights has been the subject of ongoing discussion and advocacy and only recently has been recognized as an international environmental law norm by all relevant actors. The 2030 Agenda for Sustainable Development, which was adopted unanimously by all UN Member States in 2015, introduced 17 Goals, aimed at shaping the direction of global and national development policies and bridging the divide between development and human rights[26]. It created a new framework and shared language for guiding global and national development action, in order to address various global challenges. The 2030 Agenda put the principles of equality and non-discrimination at the forefront of its Goals, as it committed to "leave no one behind" and "reach those furthest behind first"[27]. It provided a blueprint for shared prosperity in a sustainable world, though now half-way through the 15-year plan since its inception, progress has been made in several areas but, overall, action is not advancing at the required speed or scale[28].

Even though the 2030 Agenda does not explicitly establish the right to a healthy environment, it was this human-rights direction that ended up being necessary for its universal legal acknowledgement. Examining the 17 Goals, one can easily pinpoint the way in which the 2030 Agenda contributes to the discourse of the relationship between human rights and the environment. The 2030 Agenda's Preamble reads:

"The 17 Sustainable Development Goals and 169 targets […] demonstrate the scale and ambition of this new universal Agenda. […] They seek to realize the human rights of all […]. They are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental."[29]

This aims to show how unequivocally anchored in human rights the 2030 Agenda is. Despite that, at the time of its adoption, the right to a healthy environment had not yet been recognized as a universal human right, and even though the specific SDGs are not framed in terms of human rights, many targets contributed to discourse surrounding it.

[26] "About the 2030 Agenda on Sustainable Development ." *United Nations*, UN Human Rights Office of the High Commissioner, www.ohchr.org/en/sdgs/about-2030-agenda-sustainable-development.
[27] See note 6
[28] "The Sustainable Development Agenda" *United Nations Sustainable Development Goals*, United Nations, www.un.org/sustainabledevelopment/development-agenda/.
[29] See note 6

Firstly, by integrating environmental goals the Agenda emphasized the interconnectedness between environmental health and human well-being. The same interconnectedness is applied among all 17 Goals, as advancements in goals related to clean water, sanitation and sustainable cities for instance, inherently contribute to the fight for a healthier environment, thus supporting the realization of the right in question; the Goals therefore are all mutually reinforcing.

Apart from the actual content and formation of the goals, it is interesting to also examine the type of approach that the 2030 Agenda promotes for their implementation and how it reinforces the developmental human rights narrative. As a soft law agreement, it did not intend to create new rights, rather to reinforce existing ones by emphasizing their importance for achieving sustainable development. In promoting this approach, the 2030 Agenda created a basis for effective progress to be made in this context. It introduced a thorough follow up and review mechanism – the SDG yearly report – in order to encourage countries to participate, assess their progress and share experiences, but ultimately to ensure accountability and that human rights remain protected[30].

On the other hand, the Agenda highlighted the necessity for public awareness[31], which is a vital component of the right to a healthy environment's realization, as well as to gain a better understanding of the implications of unsustainable practices, in order to foster a sense of responsibility toward environmental protection. Similarly, the 2030 Agenda encourages the active participation of civil society in the implementation and monitoring of the SDGs, which is also vital for the establishment of a recognized right to a healthy environment. In particular, environmental NGOs and advocates were also given the ability to use this platform to raise awareness about the right and citizens are able to demand that it is respected, particularly now that it has been universally recognized.

Hence, the 2030 Agenda has played a very important part in the historical evolution toward the universal recognition of the right to a clean and healthy environment, as it established a framework of specific goals which reaffirm it, due to them generally confirming the indivisible relationship between sustainable development, the environment and human rights. Thus, it serves as a catalyst for action, despite being non-legally binding, which once again proved to be a benefit, seeing as all UN Member States chose to participate and agreed to the follow up and review mechanism the 2030 Agenda committed to.

[30] ibid
[31] Specifically, through Goals 4 and 16, which focused on education and inclusive societies respectfully.

An additional mention of ensuing agreements is worth including in this section, in order to consider the development of the right to a healthy environment's perceptions in the context of Stockholm and Rio. For instance, the Johannesburg Declaration of 2002, although committing nations to sustainable development, did not include a link between human rights and the environment; it did not refer to human rights as a means for fostering sustainable development – as future soft law instruments did. It only affirmed the indivisibility of human dignity and 'access to such basic requirements as clean water … and the protection of biodiversity'[32]. The sustainable development goals of Johannesburg were summarized by the UN General Assembly[33], which simply referred to the Declaration's overall goal of the protection of 'human rights, including the right to development, the rule of law, [and] gender equality', rather than reaffirming any particular environmental rights.

In a similar vein, the Rio+20 Declaration entitled 'The Future We Want'[34], although important as an affirmation of the original text, it did not make a direct mention to the right to a healthy environment either. However, it did increase the emphasis on environmental matters, as it highlighted the importance of the rights to development, food and an adequate standard of living in environmental contexts, as well as underscoring the rights of nature. Even if there was absence of clear mention of the right to a healthy environment in the aforementioned Declarations, they were still significant in reinforcing the substantive elements that inform it.

iii. Reports of Special Rapporteurs on Human Rights and the Environment

In 2012, through resolution 19/10, the UN Human Rights Council established the mandate for the Independent Expert on human rights and the environment[35], which proved to be a culmination of many actors' efforts for the interconnected relationship between the two to be recognized in a larger scale. The first Independent Expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment appointed was John Knox, whose mandate as Special Rapporteur was extended until 2018. In his last year in this position, Knox published the 'Framework Principles on Human Rights and the

[32] UN General Assembly, *Johannesburg Declaration on Sustainable Development,* 2002, A/CONF.199/20
[33] UN General Assembly, *2005 World Summit Outcome*, 24 October 2005, A/RES/60/1
[34] UN, *The Future We Want,* United Nations Conference on Sustainable Development, 2012, A/RES/66/288
[35] "Special Rapporteur on Human Rights and the Environment ." *United Nations Human Rights Office of the High Commissioner*, United Nations, www.ohchr.org/en/special-procedures/sr-environment.

Environment'[36]. This report was a result of the 2015 UNHRC resolution 28/11 on Human Rights and the Environment which, even though recognized the ongoing need to clarify some aspects of human rights obligations relating to the environment, it was not adopted. Knox was asked to continue to study these obligations in consultation with governments, human rights mechanisms, civil society organizations and other actors. As a result, he presented 16 Framework Principles, in a document based directly on treaties or binding decisions from human rights tribunals, as well as statements of human rights bodies that have the authority to interpret human rights law but not necessarily to issue binding decisions[37].

The Framework Principles were perhaps the most important instrument that contributed to the legal realization of the human right to a healthy environment, as the Special Rapporteur called for the report to be accepted as a reflection of actual or emerging international human rights law, as up until that time it had only been recognized in regional conventions and national constitutions. Treaty bodies, regional tribunals, special rapporteurs and other international human rights bodies had instead applied human rights law to environmental issues by "greening" existing rights, such as the right to life and health. Knox's report created an extensive framework on human rights and the environment, as it showed that environmental harm interferes with the full enjoyment of a wide spectrum of human rights, as well as states' obligations to respect and protect them.

The importance of the report derives from its purpose as a soft law document; as states had been reluctant to recognize a 'new human right' the content of which had been uncertain, it was important to clarify its implications and thus make it easier for states to commit. It offered real advantages, as it raised awareness that human rights norms require protection of the environment. It also highlighted that environmental protection is on the same level as other human interests that are fundamental to human dignity, equality and freedom, and helped to ensure that human rights norms relating to the environment continue to develop in a coherent and integrated manner[38].

The Special Rapporteur had one main driving force in mind when creating this report: that human beings are part of nature and our human rights are intertwined with our environment. The Framework Principles ended up providing integrated and detailed guidance

[36] UN General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, Human Rights Council, 24 January 2018, A/HRC/37/59
[37] Ibid
[38] Ibid

for practical implementation of these obligations and a basis for their further development. They also reinforced several pre-existing key principles, such as equality and non-discrimination, precaution and prevention, and sustainable development. Most importantly, they affirmed, though reframed, the principles of participation and access to information and justice[39]. These principles aimed to guide policymakers, legal professionals and advocates in understanding and addressing the intricate relationship between human rights and the environment[40].

Ultimately, the Framework Principles contributed to the universal recognition of the human right to a healthy environment by offering comprehensive and consolidated principles that explicitly articulated the links between human and environmental rights. The report raised awareness on this issue, promoted the need for international legal guidance and contributed to the normative development needed for the inclusion of this right in international legal instruments. While the Framework Principles did not directly lead to the immediate universal recognition of the right to a healthy environment, due to its soft law nature, it largely contributed to it as it reinforced the language and the legal and moral foundations needed for its recognition as a human right.

With the publication of the 16 Framework Principles on Human Rights and the Environment came the end of John Knox's role as Special Rapporteur, as the position was appointed to David R. Boyd, who holds it to this day. One of his most important works remains the 2019 report titled "Right to a healthy environment: good practices", on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. It aimed at highlighting good practices in regional and national contexts for the recognition and implementation of the right to a healthy environment. Boyd defined 'good practices' broadly so as to include laws, policies, jurisprudence, strategies, programmes, projects and other measures that contribute to reducing adverse impacts to the environment, to improving environmental quality and fulfilling human rights[41].

The report compiled information on good practices by making a call to governments, representatives of international agencies, civil society organizations, academics, students, lawyers and judges. It aimed to show that environmental progress and the protection of human

[39] Ibid
[40] Ibid
[41] UN General Assembly, *Right to a healthy environment: good practices,* Human Rights Council, 30 December 2019, A/HRC/43/53

rights from environmental harm are possible, since so many states enshrine relevant policies in their constitutions and by introducing new laws, provisions, guides, agendas and other means of promoting respect for procedural and substantive rights necessary for the full enjoyment of a healthy environment.

It showcases specific examples of states applying measures to guarantee access to environmental information, public participation and access to justice, such as legislation for affordable access, educational mandates and data reports, as well as specialized environmental courts and tribunals. The report also makes mention of practices enforced by states to ensure adherence to substantive environmental rights (i.e. rights to clean air, a safe climate and access to safe water), such as monitoring mechanisms, regulations, evaluations taxes and pollution fees, as well as sustainable policies, global treaties and reinforcing international environmental law norms and standards.

Ultimately, as previously examined instruments, Boyd's report has a soft law nature as it did not directly recognize a 'new' environmental human right. Its purpose lied in inspiring states to accelerate their efforts to recognize, respect, protect and fulfil the right to a healthy environment. It was created to endorse the adoption of an international resolution to legally recognize such a right and it supported to the use of a human rights-based approach. Thus, its contribution to the ultimate universal recognition of the human right to a healthy environment was fundamental.

Even though, as is visible through the above analysis, the appointment of Special Rapporteurs provided a new focus on human rights and the environment, it is important to note that the mandate of Knox and Boyd was not formulated to identify 'obligations of states pertaining to enjoyment of the right to a healthy environment', per se. Instead, they were called to identify human rights obligations specifically 'relating to' the enjoyment of a 'clean, healthy and sustainable environment' in international law, thus contributing to the groundwork necessary for the official recognition of the right.

iv. The UNHRC (2021) and UNGA (2022) resolutions on the human right to a healthy environment

Up to this point, soft law agreements have been analyzed which either only made a mention of the right to a healthy environment or affirmed norms that influence it. Until very recently, there had not been an official international soft law instrument that explicitly recognized the right in question, especially as a human right. This changed with the UN Human Rights Council's recognition of the right to a healthy environment through a resolution in 2021, which generated very important momentum, despite being non-binding. It received 43 votes in favour, 0 against and 4 abstentions, its text was largely based on existing language previously used for the 'greening' of human rights and it came about as a direct result of the two reports by the Special Rapporteurs[42].

As a UNHCR resolution, it had a very important role in reinforcing the link between human rights and the environment. Specifically, that environmental protection is instrumental to the enjoyment of a number of human rights and that their exercise is vital for effective environmental protection. For this reason, the UNHRC produced positive environmental results, due to raising public awareness and improving accountability and enforcement. That is because it called upon states to adopt policies for the enjoyment of such a right after it reaffirmed several previous agreements (such as Stockholm and Rio), as well as states' existing obligations to respect and protect human rights and actions undertaken to address environmental challenges.

The resolution's most important aspect, however, is the official recognition of the right to a healthy environment as a human right, that is vital for the enjoyment of other rights, and that it has a direct relation to existing rights in international law. More specifically, in order to establish this 'new' right, the Council employed a similar construction to the one utilized when the human rights to water and sanitation were adopted[43]. It drew on the right being "essential for the full enjoyment of all human rights" and "inextricably related to the right to life and the right to the highest attainable standard of physical and mental health, as well as other rights"[44],

[42] See note 36
[43] "The Human Rights to Water and Sanitation in Practice." *UN Economic Commission for Europe*, United Nations, unece.org/fileadmin/DAM/env/water/publications/WH_17_Human_Rights/ECE_MP.WH_17_ENG.pdf.
[44] Ibid

hence following a strictly anthropocentric approach, whereas nature's rights are excluded from the resolution's scope.

Within the resolution's operative clauses, the UNHRC encouraged states to build capacities for environmental protection efforts, in order to fulfil their human rights obligations and commitments, as well as to enhance cooperation with other states. It called on them to continue to share good practices, as well as to continue to take into account human rights obligation relating to the enjoyment of the right to a healthy environment in the implementation and follow up of the Sustainable Development Goals. Lastly, it invited the General Assembly to consider the matter[45].

The adoption of this resolution reflected a value shift. Despite the UNHRC resolution's non-legally binding nature, due to its global acclaim, it provided a strong basis for environmental litigation in regional and national courts and generally was a monumental step toward the universal recognition of the right to a healthy environment, which was solidified by the 2022 UN General Assembly resolution[46].

For the first time its history, the UN recognized the right to a clean, healthy and sustainable environment as a human right, adding it to the vast library of internationally recognized rights. With 161 votes in favour, 0 against and 8 abstentions, and largely based on the UNHRC 2021 resolution's text, the UNGA resolution of July 2022 on the human right to a healthy environment was decades in the making, with several states integrating it to their legislations and constitutions and with the UNHRC elevating its status to that of 'universal recognition'. The UNGA resolution was welcomed by the Secretary General as a "landmark development"[47]. Secretary General Guterres noted that it is bound to help "reduce environmental injustices" and "accelerate the implementation of Member States' environmental and human rights obligations and commitments"[48]. It also received positive feedback by the UNEP Executive Director who said that full implementation of the human right to a healthy environment will "empower […] action on the triple planetary crisis, provide

[45] Ibid
[46] UN General Assembly, *The human right to a clean, healthy, and sustainable environment,* 26 July 2022, A/76/L.75
[47] "Hailing General Assembly Historic Resolution on Healthy, Sustainable Environment, Secretary-General Urges States to Make Text 'a Reality for Everyone, Everywhere' ." *United Nations*, United Nations, 28 July 2022, press.un.org/en/2022/sgsm21386.doc.htm.
[48] Ibid

a more predictable and consistent global regulatory environment for businesses, and protect those who defend nature"[49].

The UNGA utilized a human-rights based approach (HRBA) in the formulation of the 2022 resolution. HRBA is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights[50]. HRBA has been used as methodological approach in the adoption of numerous multilateral environmental agreements, including the 17 SDGs, and it seeks to analyze inequalities that lie within environment and development matters, so as to address discriminatory practices and unjust distributions of power which put obstacles in development progresses[51]. It requires human rights principles[52] to identify states and their institutions as 'duty-bearers' that are accountable for respecting, protecting and fulfilling human rights[53]. The HRBA also identifies individuals as rights-holders and empowers them to fight for their human rights to be respected[54]. UN Special Rapporteur, David Boyd, referred to the rights-based approach as "not only helpful, but even essential to stimulating the many urgent actions needed to achieved the SDS's"[55]

Nevertheless, the resolution received mixed feedback from some states' representatives, who pointed that there remains a lack of common internationally agreed understanding of the content and scope of the right to a healthy environment. For instance, the representative of the Russian Federation noted that States "can only talk about a legally recognized right after such a right is recognized exclusively within international treaties" and Pakistan called the resolution "a political text, not a legal affirmation by the Assembly"[56]. Hence, even with no states voting against the resolution, there was seemingly concern about its results and effectiveness,

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[49] Andersen, Inger. "Statement by Inger Andersen on UN General Assembly Resolution Recognizing the Right to a Healthy Environment." *UN Environment*, 28 July 2022, www.unep.org/news-and-stories/statements/statement-inger-andersen-un-general-assembly-resolution-recognizing.

[50] "Human Rights-Based Approach." *United Nations Sustainable Development Goals*, United Nations, unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach.

[51] Ibid

[52] Including meaningful and inclusive participation and access to decision-making; non-discrimination and equality; accountability and rule of law; and transparency and access to information supported by disaggregated data.

[53] "The Human Rights Based Approach (HRBA)." *EC Public Wiki*, European Commission, wikis.ec.europa.eu/pages/viewpage.action?pageId=50108948.

[54] Ibid

[55] See note 41

[56] "UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment." *SDG Knowledge Hub*, International Institute for Sustainable Development, 3 Aug. 2022, sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/#:~:text=The%20UN%20General%20Assembly%20(UNGA,and%20sustainable%20environment%20for%20all.

specifically about its non-legally binding nature, as its ability to overcome a lack of consensus and vested interests or offer significant development towards tighter environmental accountability and enforcement.

Part of the support for the UNGA resolution came from the Special Rapporteurs on the right to a healthy environment. Current Special Rapporteur David R. Boyd, in an interview ahead of the vote, noted that while not legally binding, UNGA resolutions can serve as 'catalysts for change'[57]. In a report of Special Rapporteur John Knox, shortly after the publication of his 16 Framework Principles, he concluded that recognition of the right by the UN would result in: a clear acknowledgement that it must be universally protected, in its inclusion within more national constitutions and legislation – and as such providing increased accountability for environmental harm, in the creation of additional reporting requirements, and support and advancement of UNEP's Environmental Rights Initiative[58] [59]. A press release from UNEP after its adoption confirmed the Special Rapporteur's prediction by stating that the resolution could prompt countries "to enshrine the right […] in constitutions and regional treaties", which "would allow people to challenge environmentally destructive policies under human rights legislation"[60].

Seeing as the UNGA resolution was adopted only a little over a year ago, it is too early to pinpoint any of its direct results, especially as it is a soft law document. As of yet, predictions can be made for the influence it is bound to have on the international human and environmental rights status quo. Universal recognition by a body as prominent as the General Assembly can lead to the formal recognition of the right by other bodies such as the Council of Europe and by states that have not yet included it in domestic legislation. Additionally, it can provide individuals and civil society organizations with an additional tool with which to challenge governments and businesses for their failures to address or prevent environmental harm[61].

It is also important to note that the kind of language used is integral to international customary environmental law. Its transformation from just a 'vague' right to a healthy

[57] "Why the UN General Assembly Must Back the Right to a Healthy Environment ." *United Nations*, 22 July 2022, news.un.org/en/story/2022/07/1123142.
[58] The UNEP Environmental Rights Initiative assists state and non-state actors to promote, protect and respect environmental right, by bringing environmental protection nearer to the people
[59] UN General Assembly, *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,* Note by the Secretary-General, 19 July 2018, A/73/188
[60] "In Historic Move, UN Declares Healthy Environment a Human Right." *United Nations Environment Programme*, United Nations, 28 July 2022, www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right.
[61] Buse, Kent, and Gruskin S. "The right to a healthy environment: Making it matter." *BMJ*, 14 Dec. 2021, https://doi.org/10.1136/bmj.n3076.

environment – the application of which might not be familiar or as easy to grasp for non-experts – to a *human right* can increase its severity and prestige as a legal norm. All in all, the recognition of the right could also facilitate greater integration and harmonization between international environmental law and human rights law. By 'reconceptualizing' human rights law in accordance with environmental principles – such as those of intergenerational equity, common concern and prevention – a mechanism could be provided for addressing global environmental harm and for introducing a preventive approach to human rights law[62].

Without a doubt the relationship between human rights and the environment, as it has been analyzed in this chapter so far and will be examined further in this thesis, remains crucial for environmental protection and the realization of human rights. The human right to a healthy environment is likely to become the primary framework for understanding this relationship and to be incorporated in future resolutions of the UNHRC and the UNGA, which will assist in advancing its implementation. Henceforth, it is plain to see that despite being non-legally binding, soft law agreements, such as the resolutions analyzed above, are instrumental in facilitating important developments in international environmental law, as they more than often lead to the adoption of hard law.

[62] Cima, Elena. "The right to a healthy environment: Reconceptualizing human rights in the face of climate change." *Review of European, Comparative & International Environmental Law*, vol. 31, no. 1, 17 Jan. 2022, pp. 38–49, https://doi.org/10.1111/reel.12430.

B. The right to a healthy environment in hard law

Despite the significance of soft law and its effectiveness in introducing new concepts and principles to international environmental law, it is largely a result of states' concerns over sovereignty, as they are often reluctant to surrender control over their territory, peoples and affairs to external international authorities. When hard law – or legally-binding agreements – are introduced, even if obliged to adopt implementing legislation they are not recipients of direct enforcement by a specific international body, countries have added reservations to preserve their right to decline to be bound by particular parts of the agreement; the exercise of which power weakens the total effectiveness of many international agreements[63].

Even though international institutions are generally not responsible for directly implementing and enforcing international environmental law, they play an important role for monitoring, information and diplomacy and leave the task of enforcement on member states themselves. This multilayered enforcement system exists because of the significance that hard law carries. It provides enforceability and acts as a mechanism for countries to remain accountable to provisions they are obligated to comply with, as hard law treaties provide clear obligations, which helps establish a common understanding of expectations between actors[64]. Legally-binding treaties also offer a basis for resolving disputes between states, through arbitration mechanisms or adjudication by an international court. Lastly, they facilitate a legal framework for international joint efforts, information sharing and technology transfer, as well as contribute to the development of norms and standards of customary international law.

One of these norms, the reinforcement of which legally-binding agreements have largely contributed to, is the right to a healthy environment. By establishing principles necessary to execute this right, hard law has cemented it within international environmental law. In this section, such legally-binding documents will be analyzed, so as to see how they directly or indirectly played a part in the recognition of the right in question as a human right.

[63] Ibid

[64] Abbott, Kenneth W., and Snidal, D. "Hard and soft law in international governance." *International Organization*, vol. 54, no. 3, summer 2000, pp. 421–456, https://doi.org/10.1162/002081800551280.

i. Aarhus Convention (1998)

The Aarhus Convention, formally known as the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, is an international legally-binding treaty adopted in Aarhus, Denmark, in 1998, during a conference organized by the UN Economic Commission for Europe (UNECE)[65]. It was designed in a manner where it embraces governmental accountability, transparency and responsiveness, and it was the first hard law document that recognized the right to a healthy environment[66]. Specifically, one of the preambulatory clauses of the Aarhus Convention reads:

"[…] every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations."[67]

In order to cement this perspective – that humans are responsible for ensuring that their natural environment remains healthy so that they can enjoy it – as part of the actual legally-binding provisions that it designed, the Aarhus Convention became the first international legal instrument that established environmental procedural rights with a goal to reinforce accountability and transparency in environmental matters[68]. Hence, it built on the connection of the broader framework of human rights to the environment, as it reaffirmed that the right to a healthy environment is integral in reassuring that the right to a healthy life is ensured and respected.

The Aarhus Convention, which largely stemmed from principle 10 of the Rio Declaration[69], succeeded in affirming the right to a healthy environment by establishing the three major procedural environmental rights: the right of access to information, the right of access to public participation and the right of access to justice. The Convention identifies its primary objective in Article 1 which states that in order for the protection of the right, referenced in the aforementioned preambulatory clause, each signing party needs to guarantee

[65] UN Economic Commission for Europe, *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters,* Aarhus, Denmark, 25 June 1998
[66] "The Aarhus Convention: An Implementation Guide." *United Nations Economic Commission for Europe*, United Nations, 2014, unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf.
[67] See note 65
[68] See note 66
[69] UN General Assembly, *Report of the United Nations Conference on Environment and Development*, Principle 10, 12 August 1992, A/CONF.151/26 (Vol.1)

respect of these procedural rights[70], seeing as the effective exercise of these rights is a precondition for the realization of a human right to a healthy environment.

Additionally, another contribution made by the Convention in safeguarding the right to a healthy environment was the introduction of a compliance committee, the goal which is to ensure transparency in operations, provide citizens and NGOs with the ability and possibility to submit reports and complaints, and to ensure the personal and operational independence of members. It also committed signatory nations to participation in a 'Meeting of Parties' every 2-3 years, in order to review progress and share information on national actions[71].

By making these inclusions in its clauses, the Convention set minimum standards to be maintained rather than limits for parties, something that former UN Secretary General Kofi Annan described as "the most ambitious venture in environmental democracy"[72]. Many countries that ratified the Convention underscored its importance in shaping international norms relating to environmental decision-making and accountability. The three procedural environmental rights included in the convention are groundbreaking in terms of reinforcing the right to a healthy environment, as they have been applied on a global, regional and local scale; details regarding their utilization to enforce environmental law will be discussed further in section C of this chapter, after an analysis of a few other legally-binding agreements that reinforce the right to a healthy environment.

ii. Paris Agreement (2015)

The Paris Agreement was a landmark international treaty on climate change, adopted in December 2015, during a conference organized by the UN Framework Convention on Climate Change, and it represented global efforts to address the issue by limiting global warming to below 2 degrees Celsius above pre-industrial levels. The Agreement provided a framework for global cooperation and aimed to mobilize concentrated efforts, by focusing on assigning parties with global temperature goals through nationally determined contributions, by emphasizing on the importance of transparency and accountability, by establishing a system of financial support and technology transfer[73]. Most importantly, it became the first binding multilateral

[70] Ibid
[71] Ibid
[72] "What People Are Saying about the Aarhus Convention." *United Nations Economic Commission for Europe*, United Nations, unece.org/fileadmin/DAM/env/pp/documents/statements.pdf.
[73] UN Framework Convention on Climate Change, *Paris Agreement,* Paris, France, 2015

environmental agreement to include an explicit human rights reference. Specifically, in one of its preambulatory clauses, the Paris Agreement reads:

"[…] Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights […]"[74]

Similar to most of the other soft and hard law agreements discussed in this chapter, the Paris Agreement does not explicitly frame the right to a healthy environment in legal terms, but it reaffirms the importance of environment protection and sustainable development; vital components for the right to be assured. Several aspects of the agreement support and contribute to the broader objective of the right to a healthy environment. By including human rights considerations, as it does in its preamble[75], it highlights the importance of promoting and respecting them, a recognition which sets a broader context for the environmental actions taken under the agreement.

Also, very importantly, it is one of the first international agreements that makes a distinct connection between climate justice and human rights[76], as it emphasizes the importance of addressing climate change in a manner fair and equitable – though it is important to note that it did not include human rights in its operative provisions. This perspective aligns with the idea of the right to a healthy environment and underscores the need to protect vulnerable communities which are disproportionately affected by climate change; hence, those whose right to a healthy environment is the most overlooked. The Agreement also recognizes the necessity of enhancing adaptive capacity and building resilience to climate change impacts, an attitude which indirectly supports the right in question by helping communities prepare for and respond to climate-related challenges in ways that protect public health[77].

Generally, the Paris Agreement operated within a broader international context that acknowledges the interdependence of human rights, environmental protection and sustainable development. Its focus on transparency, accountability and the involvement of civil society – similarly to the Aarhus Convention – contributes to a framework where the right to a healthy environment can be better protected and realized. Once more, the right, though indirectly, is reaffirmed by a legally-binding agreement which had major contributions to international

[74] Ibid
[75] Ibid, Preambulatory principles par. 11
[76] Ibid
[77] Ibid

customary environmental law, especially within the context of the climate crisis which, over the last couple of decades, has increasingly escalated the need for such a right to be enforced and respected.

iii. Escazú Agreement (2018)

The Escazú Agreement, or as it is officially known the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, is a landmark multilateral legally-binding instrument which was adopted in 2018 and officially came into force in 2021[78]. It was the first treaty of its kind in the region and its main aim was to promote environmental democracy by ensuring respect toward procedural environmental rights and thus provided a common framework on environmental matters and can be used to safeguard the human rights of vulnerable groups and individuals. These groups include environmental human rights defenders, as the most dangerous countries for them, such as Colombia, Brazil, Mexico, Guatemala and Honduras[79], are in this region, as they face social stigmatization and are often labelled "guerrilleros", "anti-development extremists" or "drug dealers"[80]. Hence, the Escazú Agreement addresses the unique environmental challenges faced by the region and seeks to strengthen democratic processes in the context of environmental governance.

Alike the Aarhus Convention, this treaty is based on principle 10 of the Rio Declaration[81], and as such it reaffirms the right to a healthy environment, by acknowledging the procedural environmental rights contained in those agreements form the procedural elements of such a right. This shows understanding that these procedural rights provide a type of expression to the right of a healthy environment, something which had already been accepted in several Latin American constitutions.

The Escazú Agreement identifies its primary objective in Article 1 of the text, which reads:

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[78] UN, *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean,* Escazú, Costa Rica, 4 March 2018
[79] Wachenje, Benjamin. "Defending Tomorrow." *Global Witness*, 29 July 2020, www.globalwitness.org/en/campaigns/environmental-activists/defending-tomorrow/.
[80] "'We Are Being Killed': Human Rights Defenders Pay with Their Lives in Colombia." *Universal Rights Group*, 29 Apr. 2020, www.universal-rights.org/?p=34997.
[81] See note 21

"The objective of the present Agreement is to guarantee the full and effective implementation in Latin America and the Caribbean of the [procedural] rights […] contributing to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development."[82]

Additionally, Article (1) reads:

"Each Party shall guarantee the right of every person to live in a healthy environment and any other universally-recognized human right related to the present Agreement."[83]

Both these articles demonstrate the commitment of State Parties to protect and promote the work of environmental human rights defenders and also reaffirm the right to a healthy environment. All in all, this agreement was a result of a negotiation process that featured significant participation of civil society representatives and experts in environment law and human rights[84]. It makes sense therefore that it includes measures to create and strengthen capacities and cooperation, as well a call for a Conference of Parties to take place every year after it entered into force[85].

Despite being an essential tool in the continuous realization of the right to a healthy environment as a human right, as well as in seeking "people-centered solutions grounded in nature" as Secretary-General called it[86], the Escazú Agreement received criticism. Some countries, such as Chile, rejected it as "inconvenient", due to it being 'ambiguous' and 'broad' in its terms, it being 'eventually self-enforcing' and having a 'mandatory nature for its regulations that would prevail over internal environmental legislation'[87]. The Chilean Foreign Ministry noted that the concept of 'healthy' can be widely disputed internationally and could conflict with the legal definition of the 'right to live in a pollution-free environment' that is contained in the Chilean Constitution[88], or to other similar concepts in other national constitutions.

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[82] See note 78
[83] See note 78
[84] Sergeeva, Milena. "The Escazu Agreement: How the Idea of a 'Healthy Environment' Became a Stumbling Block." *The Global Climate and Health Alliance*, 13 Oct. 2020, climateandhealthalliance.org/blog/the-escazu-agreement-how-the-idea-of-a-healthy-environment-became-a-stumbling-block/.
[85] See note 78
[86] UN Sustainable Development Group, *Policy brief: COVID-19 and Universal Health Coverage,* October 2020
[87] Ibid
[88] Ibid

Nonetheless, the Escazú Agreement set the stage for a sustainable and resilient recovery from COVID-19 and the "triple crisis" of climate change, biodiversity collapse and pollution of the natural environment[89]. The agreement can 'clear a path' for faster implementation of the 2030 Agenda, by making the rule of law stronger, advocating for participatory democracy, protecting human rights, and avoiding social conflicts amid changes to economic structures[90]. All in all, the treaty commits countries to ensure equality and non-discrimination, as well as to guarantee the human right to a healthy environment while promoting sustainable development.

iv. Towards a Global Pact for the Environment

In May 2018, the UN General Assembly adopted the resolution entitled "Towards a Global Pact for the Environment", which recalled previous multilateral environmental agreements, such as the Rio Declaration, the UN Conference on Sustainable Development outcome document "The future we want" and the 2030 Agenda. According to the resolution, the Assembly decided to establish an ad hoc working group to create a technical and evidence-based report, which would identify and assess possible gaps in international environmental law and environment-related instruments with an aim to strengthen their implementation[91]. Ultimately, the report concluded that the structure of international environmental governance is characterized by fragmentation and a heterogeneous set of relevant actors, which has introduced several important challenges[92]. Quite critical of existing agreements and their outcome, it supposed that there is a general lack of clarity, as well as an important deficit in coordination at the law-making and implementation levels – both in international and national levels, which demands a need for better policy coherence[93]. This is all a result of a lack of a single overarching normative framework that defines the rule and principles of general application in international environmental law. The report proposed that it can be strengthened

[89] "Escazu Agreement Takes Effect, Enshrining Right to Sustainable Development." *SDG Knowledge Hub*, International Institute for Sustainable Development, 26 Apr. 2021, sdg.iisd.org/news/escazu-agreement-takes-effect-enshrining-right-to-sustainable-development/.
[90] Ibid
[91] UN General Assembly, *Towards a Global Pact for the Environment,* 7 May 2018, A/72/L.51
[92] UN General Assembly, *Gaps in international environmental law and environment-related instruments: towards a global pact for the environment,* Report of the Secretary-General, 30 November 2018, A/73/419
[93] Ibid

through the clarifications and reinforcement of its principles and thus the idea was born for a Global Environmental Pact[94].

Even if no treaty of this scale has been adopted yet, it is important to discuss the process that has gone into its creation thus far, so as to examine the influence that the right to a healthy environment has during the process of visualizing and comprising a new legally-binding document. The International Group of Experts for the Pact, which is led by the French think tank Le Club des Juristes, has expressed that due to focus in recent MEAs being mostly on climate discussions, there is a need for a cross-sectoral legal text with an international scope so that action can be taken on all areas related to environmental protection. The group advocates for the right to a healthy environment and the duty to take care of the environment as the main leading principles that frame the rest of the text (and also are expanded on in Articles 1 and 2 of the draft document)[95]. Their aim is to create a draft global project which is legally binding, facilitates coherency and harmonization of international environmental law, and is applicable and easily usable by all[96].

Despite the straightforwardness of the proposed text, the group has faced difficulties in moving forward with the official adoption of the Pact in the General Assembly, as in there have been consistent votes against it by countries which have significant diplomatic strength (such as the United States). That is due to the requirement of consensus for any treaty of this scale to be adopted, which provides such states with a *de facto* power of veto, enabling them to block any initiative that goes beyond the legal *status quo*[97]. The reason behind this constant hesitation to commit to such a Pact is that most states have a preference to limit multilateral efforts and to instead improve the implementation of existing norms through political cooperation[98] – essentially soft law. However, the group supports that a mere political declaration is not strong enough to combat the level of environmental degradation faced today.

The report highlights that the principles of IEL need to be reinforced through creating a 'comprehensive and unifying' international instrument that enshrines all of them. As such, it would also reinforce and recognize the right to a healthy environment, which still remains void of legal force at the international level. Though such an agreement would not have the ability

[94] Ibid
[95] UN, *Preliminary Draft of the Group of Experts: Draft Global Pact for the Environment*
[96] "Towards a Global Pact for the Environment." *Global Pact for the Environment*, globalpactenvironment.org/infographie-en/.
[97] Ruiz, Jose Juste. "The Process towards a Global Pact for the Environment at the United Nations: From Legal Ambition to Political Dilution." Review of European, Comparative & International Environmental Law, vol. 29, no. 3, November 2020, pp. 479-490. HeinOnline.
[98] Ibid

to recognize it as a human right, considering this thesis' research question, there is a transformative power that derives from universal recognition, a Global Pact for the Environment would affirm the right as an inseparable part of the normative structure of IEL. This would be achieved by providing clarity and defining the procedural and substantive principles and elements that comprise the right to a healthy environment, which will be analyzed in the following sections of this chapter.

All in all, as the treaty is still negotiated between states, there is an ever-increasing need to align scientific alert and the rising demands of civil society, which could be achieved if the Global Pact for the Environment clearly expresses legally-binding commitments, including more ambitious plans for environmental protection. This could revitalize the integration between policy and law, so as to create an outline of a normative framework for ecological sustainability in the Anthropocene[99], which would ultimately reaffirm the right to a healthy environment as one of its vital components.

[99] The Anthropocene describes the current situation in which almost every biogeochemical system on the planet is influenced by human activity.

C. 'Virtuous Cycle of Rights' and the Environment

The main normative perspective that has informed this thesis thus far, and also in part answers the research question that encompasses it, is that human rights and the environment are intertwined. That is because the exercise of human rights helps to protect the environment which in turn enables the full enjoyment of human rights. Former UN Special Rapporteur on Human Rights and the Environment, John Knox, described this relationship as a "virtuous circle" whereby "strong compliance with procedural duties produces a healthier environment, which in turn contributes to a higher degree of compliance with substantive rights, such as rights to life, health, property and privacy", and vice versa, as failing to meet procedural obligation can result in environmental degradation, thus creating interference with the full enjoyment of human rights[100].

Knox has spoken on the importance of this relationship numerous times and has expressed that when people affected by proposed policies and activities can freely participate in the environmental decision-making process, their societies are much more likely to have strong environmental protections[101]. A report by UNEP has conceived the interdependent linkages of human rights and environmental rule of law as a "dynamic, virtuous cycle whereby procedural rights coupled with substantive rights and legal duties lead to a healthier environment, which in turn contributes to better realization of substantive rights"[102]. As such, the human right to a healthy environment can only ever be fully realized universally, if all the substantive and procedural rights that inform it are equally respected.

It is without a doubt that understanding of how environmental degradation threatens the enjoyment of all human rights has increased through the decades that international environmental law has grown and developed. This increased understanding – in combination with constant scientific developments and a growing acceptance and respect for their findings – has led to increased legal acknowledgement of the right to a healthy environment in countries that do not recognize it in their national constitutions, as at this point more than 80% of UN Member States do[103]. The UN General Assembly 2022 resolution played an active role in showcasing this understanding on a global scale and reiterating the need to address the

[100] "Environmental Rule of Law, Chapter 4 "Rights'." *United Nations Environment Programme*, United Nations, 24 Jan. 2019, wedocs.unep.org/bitstream/handle/20.500.11822/27381/ERL_ch4.pdf.
[101] Knox, John. "Greening Human Rights." *openDemocracy*, 14 July 2015, www.opendemocracy.net/en/openglobalrights-openpage/greening-human-rights/.
[102] See note 100
[103] Zamfir, Ionel. "A Universal Right to a Healthy Environment ." *European Parliament*, EPRS | European Parliamentary Research Service, Dec. 2021

environment at a societal level, to strengthen mechanisms to guarantee the protection of environmental human rights and their defenders, and all in all to increase support for an enhanced, integrated response to the triple planetary crisis by states and the UN alike[104].

When examining the human rights that encompass the right to a healthy environment, it is important to keep in mind that it is embodied in both individual and collective dimensions. The individual dimension of the right guarantees people with substantive and procedural protections from harms associated with environmental degradation and destruction, ensuring their access to a healthy environment[105]. The collective dimension of the right protects the ability of groups, communities and generation to access healthy, clean and safe environments[106]. Both of these dimensions have been affirmed and adopted by several regional and national courts, such as in South Africa, Costa Rica, Chile, Guatemala and Colombia, catalytically showcasing that violations of the right to a healthy environment directly generate harms that violate other core rights. They have affirmed the high level-importance of the right so as to demonstrate that it can take precedence over competing concerns, such as economic activity and financial gain[107]. One of the benefits of formally recognizing the right to a healthy environment is the reinforcement of its status as a co-equal right, as it's put on par with other rights and concerns; the universal application of which would offer a significant positive development of international customary law.

Before taking a closer look at the application of the right to a healthy environment at the regional and national levels, it is vital to further understand what the substantive and procedural rights that encompass it mean for its realization in practical terms; keeping in mind that they use similar means – individually vindicable environmental rights – to accomplish the same ends: environmental protection. In order to answer the research question, one needs to examine their effectiveness in doing so, as well as how the legal universal recognition of the right to a healthy environment would reinforce it.

[104] UNHRC, et al. "What Is the Right to a Healthy Environment? Information Note." *United Nations Development Programme*, United Nations, www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf.

[105] "Unpacking the Right to a Healthy Environment: How National and Regional Laws and Jurisprudence Clarify the Scope and Content of the Universal Right." *Center for Human Rights & Global Justice*, 20 June 2023, chrgj.org/.

[106] ibid

[107] Ibid

i. Substantive rights

Substantive elements of the environment are what is typically thought of as environmental rights, those which guarantee the right to a quality environment. While their specific components can vary across legal systems and international agreements, they are generally comprised of civil and political rights (i.e. life, freedom of association and from discrimination), economic and social (i.e. health, food, adequate standard of living), cultural (i.e. access to religious sites) and collective rights affected by environmental degradation (i.e. indigenous peoples)[108]. Overall, a component of the right to a healthy environment is substantive when it provides a guarantee of a baseline material outcome. These guarantees can have both negative and positive dimensions, seeing as the right to a healthy environment can deny States and other actors from certain actions which are predicted to degrade the environment, whilst also calling them to take affirmative actions to preserve and protect environmental quality, to avoid resulting harms. An application of such substantive content is in the Colombian legal system, which has defined it as the realization of the right to a healthy environment entailing states taking measures, such as conserving areas of special ecological importance, promoting environmental education and imposing legal sanctions to demand the reparation of environmental damages[109].

Portugal was the first state to include the protection of environmental rights to its national constitution in 1976. Article 66 states that "Everyone shall possess the right to a healthy and ecologically balanced human living environment and the duty to defend it" and it continues with "charging the state" with eight specific ways to fulfil this obligation[110]. Additionally, the Greek constitution has enshrined the right to a healthy environment since 2001, in Article 24, stating that "the protection of the natural and cultural environment constitutes a duty of the State and a right of every person"[111]. In turn, Colombia's constitution is more representative of current constitutions, as it states in article 79 that "Every person has the right to enjoy a healthy environment"[112], apart from affirming the state's commitment to taking measures to ensure this. Taking these constitutional implementations into account, one could therefore conclude that the right to a healthy environment itself is of substantive nature, because it guarantees a

[108] https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what
[109] See note 105
[110] https://www.constituteproject.org/constitution/Portugal_2005
[111] https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf
[112] https://www.corteconstitucional.gov.co/english/Constitucio%CC%81n%20en%20Ingle%CC%81s.pdf

quality environment, thus it can have a material outcome. A healthy and clean environment offers the resources necessary to create housing for example and to build livelihoods, within which other substantive rights can be fulfilled. All in all, substantive rights not garnering as much focus in legal instruments, jurisprudence and in doctrine as procedural rights[113] (seen in section ii). Being a vital component of the right to a healthy environment, substantive rights have been met with resistance as there has been political caution in legally affirming the right in question, with some States arguing that the concept cannot be given content and that standards cannot be developed so as to enforce it[114]. Nonetheless, in order to ensure environmental protection, there is increasing understanding of the substantive obligations encompassing all levels of the triple planetary crisis required from states, such as the protection and conservation of ecosystems and biodiversity, of the climate system and its integrity, against toxic pollution of water, air and land, and the duty to regulate and ensuring compliance with international law standards and commitments[115].

ii. Procedural rights

Procedural rights are critical elements of environmental rule of law because they provide the means for achieving environmental goals and laws, by prescribing formal steps to do so. There are several procedural rights which deal with environmental matters, such as freedom of peaceful assembly, free expression, freedom of association, free prior and informed consent, mandatory environmental impact assessments and effective legal remedies. This thesis, however, will focus on the three procedural rights established in Article 10 of the Rio Declaration and reaffirmed in the Aarhus Convention and the Escazú Agreement: access to information, access to public participation and access to justice.

In contrast to substantial environmental rights, procedural rights guarantee adherence to certain processes, not particular outcomes of these processes, and adhering to them, improves decision-making and increases the likelihood of outcomes that are better for the people and the environment. An important element of the 'virtuous circle' of rights, compliance to them in

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[113] Shelton, Dinah L. "Developing substantive environmental rights." *Journal of Human Rights and the Environment*, vol. 1, no. 1, Mar. 2010, pp. 89–120, https://doi.org/10.4337/jhre.2010.01.05.

[114] See note 62

[115] See note 105

combination with substantive compliance, they lead to higher environmental protection, thus ensuring the right to a healthy environment. Without procedural rights, legal recourse for environmental rights can be impaired, if not denied completely and, in a constitutional context, if environmental law is weak, procedural rights can provide a basis for action.

Professor Knox has pointed out that without procedural rights, environmental degradation will continue and substantive rights will be harmed[116]. Constitutional or human rights law could supply procedural or substantive rights that allow peoples to address environmental harms when customary environmental laws are not sufficient. Taking this into account, this thesis argues that the two need to be combined through a legally-binding recognition of the right to a healthy environment in order to guarantee environmental protection and respect for environmental rights so that there can be a stronger foundation for implementation. That is because rights and environmental rule share an interdependence that supports progress toward greater human dignity and environmental sustainability. Supporters of procedural rights have held a view that a fully informed public benefitting from the three main ones could ensure a high level of environmental protection, which however cannot always have assured results[117]. In order to make an adequate assessment of this argument, particularly in the context of their regional and national implementation, a short examination of the three main procedural rights will follow.

Access to environmental information, affirmed in articles 4 and 5 of the Aarhus Convention[118] and article 5 of the Escazú Agreement[119], ascertains that anyone can ask for any environmental info possessed by any governmental agency or any private body that serves a public function. Guaranteed access to information strengthens transparency and accountability in environmental governance and is a prerequisite for citizens' substantive participation in environmental related decisions and their access to justice.

Environmental information is defined as any information that relates to: 1. the state of environmental elements (water, air, land), 2. factors such as substances, energy, noise, radiation or waste, 3. measures including policies, legislation, plans and programmes, which affect or may affect the environment or aforementioned factors, 4. reports on the application of environmental information, 5. cost-benefit analyses, and 6. Information on the state of human

[116] See note 100
[117] See note 113
[118] See note 65
[119] See note 78

health and safety. As previously mentioned, any concerned member of the public can make a request for information, as there is no requirement for vested interest in order to be granted access to it. However, relevant public authorities have the ability to refuse access in the event that disclosure of information could affect the confidential nature of public authority procedures, or of commercial or industrial information, or of personal data. Additionally, access can be denied if international relations, public security, national defense, the operation of justice, the right to fair trial or intellectual property rights could potentially be obstructed.

As access to environmental information is vital for the reassurance of the right to a healthy environment – among other substantive rights – States, which have instilled the procedural rights in their constitution, are obliged to provide an administrative review process to resolve access issues expeditiously and inexpensively, so as to establish a positive obligation for public authorities to disseminate environmental information.

Access to public participation, enshrined in Article 6 of the Aarhus Convention[120] and Article 7 of the Escazú Agreement[121], helps ensure governments make the best decisions possible for environmental matters by incorporating diverse and affected voices. This procedural right concerns procedures of approval for projects or activities which are expected to have significant effects on the environment and are often subject to environmental impact assessments. The Aarhus Convention having developed the details necessary for the practical implementation of the right, defined 'public' in two ways. Participation of the 'public' refers to every natural or legal person (or associations of persons) in accordance with national legislation and practice. Whereas 'public concerned' refers to any natural or legal person who is or will be affected by the planned project or activity, or has any interest in its outcome, as well as NGOs whose statutory purpose is to protect the environment and meet the requirements of current legislation. The latter definition is reserved for citizens who have enhanced procedural rights in the context of approval processes for projects and activities with significant environmental impacts. It should be noted that the Escazú Agreement does not include such distinctions.

In order for public participation to be truly ensured, it should take place at a fairly early stage of a project when all perspectives can be considered. Additionally, reasonable timeframes should be provided for its various phases so as to ensure the sharing of adequate information with the involved public[122]. The Aarhus Convention also stated that States must try to involve

[120] See note 65
[121] See note 78
[122] Your Right to a Healthy Environment document

the public in the executive phase of law-making, so the right's true purpose lies in providing individuals with the opportunity to express their concerns and opinions and in obligating public authorities to take due account of them in their final decisions, which must be promptly and publicly available[123]. As a procedural right, access to public participation includes obligations that safeguard substantive rights, such as freedom of expression and association against threats, harassment and violence, which is particularly important for environmental activists[124].

Despite the detailed definition of the right in the two previously mentioned treaties, there is no universal definition of public participation, in some sections of environmental law, such as climate change, which can be attributed to its fluid character that changes according to context and the specific needs of the stakeholders involved[125]. Nevertheless, it remains a core component of the right to a healthy environment, affirmed in several courts and legislations and its importance is constantly refined as it can help prevent civil discourse, build trust and collaboration and promote social justice.

Access to justice and effective remedy, enshrined in Article 9 of the Aarhus Convention[126] and Article 8 of the Escazú Agreement[127], provides citizens with the ability to make claims to relevant courts if their right to a healthy environment (or the other two procedural rights) is violated. In the majority of national constitutions which include the right, it is directly linked to the enshrining of the right to judicial protection, the right to a fair trial and effective legal aid, as well as various regional human rights conventions, analyzed in the next chapter. Access to justice mainly concerns citizens' ability to access national courts for violations of environmental legislation and it offers extremely limited possibilities for access at the supranational level, and as such access to regional human rights courts is virtually the only viable option. This thesis argues that a form of access to justice (as well as the other procedural rights) needs to be included in an international and all regional contexts, so as to provide a uniform character to legal proceedings and make accessing courts more available and comfortable for citizens.

As defined by the Aarhus Convention, access to environmental justice can be applied in three types of cases: 1. total or partial denial or incorrect handling of the relevant request for

[123] ibid
[124] See note 121
[125] Ruppel, Oliver C., and Larissa Jane Houston. "The human right to public participation in environmental decision-making: Some legal reflections." *Environmental Policy and Law*, vol. 53, no. 2–3, 2023, pp. 125–138, https://doi.org/10.3233/epl-239001.
[126] See note 65
[127] See note 78

access to environment information, 2. violation of the right to participate and the possibility of offending the relevant acts or omissions for the approval of projects or activities subject to the participation process for reasons of substantive and procedural legality and 3. violation of environmental legislation – which can lead to a public lawsuit[128]. Generally, members of the public can sue if the law has been violated or if the authority has failed to follow proper procedure and the Convention states that there must have access to a review process that is fair, equitable, timely and free or inexpensive. All in all, access to justice is both a process and a goal, it is of critical importance for citizens wanting to benefit from other procedural and substantive rights, both at the national and international level[129] and it remains a core component of the right to a healthy environment.

Henceforth, this analysis shows that procedural rights are easier to enforce than substantive rights, as they are triggered by environmental impact. Thus, the analytic framework entailed in enforcing procedural rights is narrow and more objectively bounded than the demands of substantive rights. Both of their divergent structures indicate that they perform distinct functions in the development of constitutional and customary law. Across several literature, they are credited with strengthening implementation of international environmental obligations, democratic legitimacy and acceptance and quality of environmental decisions, as well as respect of environmental law nationally and internationally. Ultimately, the promotion of procedural and participatory rights can be an effective means of securing environmental protection, and consequently the right to a healthy environment, and it should be done in a universal scale. A quote by Handl strengthens this argument stating that: "Internationally guaranteed, specific environmental rights of individuals […] can be understood as a refinement of established political and civil human rights or as novel human rights … [They] represent the pivot in a trilateral relationship of individual/human rights, democracy and environmental protection. As such they warrant our unreserved endorsement as internationally protected rights: their normative reach is well-defined, their claim to potential universal validity believable"[130].

[128] See note 65
[129] Brocca, Luca. "Access to Justice in Environmental Matters." *Just Access*, 31 Mar. 2023, just-access.de/access-to-justice-in-environmental-matters/.
[130] Handl, 'Human Rights and Protection of the Environment: A Mildly "Revisionist" View', in Cancado Trindade (ed.), Human Rights, Sustainable Development and the Environment (San Jose, 1992), 117 at 139-40

D. The normative development of the right to a healthy environment and principles that inform its implementation

As argued in the previous sections, this thesis supports the normative consolidation of the right to a healthy environment as other environmental rights, under universal recognition. The UN General Assembly 2022 Resolution previously examined states that "the promotion of the human right to a healthy environment and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law". In order to ascertain that the framework supporting the right aligns with those of existing norms under international environmental law, one has to look at the principles informing its implementation. International principles recognized within hard law treaties are directly enforceable by national or international bodies and courts, whereas under soft law principles influence individual nations to respect certain norms or incorporate them into national law. Within discourse on the right to a healthy environment, however, due to its lack of universal recognition, soft law documents – such as the 16 Framework Principles have arisen establishing new principles surrounding it, as well as ones based on existing international norms[131].

The reason for this normative development of the right is that cross-cutting principles provide it with conceptual clarity and shape its implementation across jurisdictions. Courts and legislatures around the world have applied them in specific contexts and particular problems in order to ensure that state and non-state action is consistent with the right to a healthy environment and to guide their decision-making. It is vital to fully assess the way that the right to a healthy environment interlinks with international environmental law so as to support the argument that a framework which could support its universal recognitions already exists. As such, in this section, there will be a short examination of the existing international principles that inform the normative development of the right to a healthy environment, so as to be able to analyze their application in following chapters.

Firstly, the precautionary principle states that uncertainty about the exact implications and outcomes of a particular action or process does not justify failing to implement measures to combat associated environmental destruction and degradation, in the case of serious and/or irreversible harm. To put it in other words, even when faced with scientific uncertainty, public

[131] See note 36

authorities should still take measures to address potential environmental threats. The precautionary principle is one of the most widely cited principles of international environmental law and it guides the implementation process of the right to a healthy environment. Several regional and national courts have employed it, in order to adjudicate the validity of government action with environmental impacts, which often results in the challenged action being required to stop or that certain remedies be issued to alleviate environmental harm[132].

Secondly, the prevention principle, as enshrined in Principle 2 of the Rio Declaration requires States to 'ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction'[133]. It is a guiding norm for environmental governance and legislation. Hence, States and other actors must take meaningful steps to avoid permanent environmental harm before it occurs, to avoid a permanent infringement of the right to a healthy environment[134].

Thirdly, the principle of non-regression protects against backsliding on environmental management and the implementation of the right to a healthy environment, as it generally states that governments cannot reduce existing levels of environmental protection unless absolutely necessary, in order to protect another fundamental right. In cases where such reductions are necessary, it must always be in proportion to the goal achieved. In order to determine whether they are necessary, there are objective criteria (a range of which are defined as mandatory by international norms) which prescribe the necessity of environmental protection, especially in cases such as destruction of non-renewable resources where the damage is irreparable[135]. The enforcement of the right to a healthy environment requires the State (as long as it is necessary) to not regress from a degree of protection already achieved, unless conditions allow restrictions of specific fundamental rights[136].

Furthermore, the polluter pays principle states that actors that pollute environmental elements bear the responsibility to remedy harms to humans and the environment generated by this pollution. Many courts around the world have identified this principle as a norm that should guide decisions and methods of enforcing the right to a healthy environment. Seeing as each

[132] See note 105
[133] See note 21
[134] See note 105
[135] ibid
[136] ibid

individual and society are deserving of the right to a healthy environment, they must be paid or compensated if they are forcibly stripped off it.

Lastly, the principle of sustainable development provides that States should pursue measures that allow present generations to meet their needs without compromising the ability of future generations to do the same. Due to its three pillars, the perspective of sustainable development seeks to balance the scheme of the social market economy with the right to live in a balanced and adequate environment. The principle of sustainable development recognizes the need for economic development to ensure fundamental rights, including the right to a healthy environment, are realized while protecting the conditions necessary to support future generations and their rights[137]. Seeing as sustainable development is a core component of the right to a healthy environment, officials responsible for the latter have a responsibility to promote the former by integrating it in planning, implementation and evaluation of decisions. Recognized in the UN General Assembly 2022 Resolution 76/300, the principle of sustainable development adds normative value for the universality of environmental human rights. The Resolution recognized "the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people"[138].

It is also worth mentioning, whilst discussing sustainable development, that there is an intense legal debate on whether it constitutes a legal principle, a concept or a mere political objective. Where the soft law instruments and hard law agreements implement sustainable development as a general principle or concept to abide by – such as the Brundtland Report[139] or the 17 SDGs[140], other official texts view it as a legal principle which they interpret as being informed by the principles of the sustainable use of natural resources, the principle of inter-generational equity, the principle of intra-generational equity and the integration principle[141]. As a political objective it is often found in regional doctrines, such as the EU, which established it in several articles of the Treaty of the European Union generally in order promote economic and social progress and as something to contribute to (Articles 3.3, 3.5)[142], or to describe the

[137] ibid
[138] See note 61
[139] UN General Assembly, *Report of the World Commission on Environment and Development: Our Common Future*, 4 August 1987, A/42/247
[140] United Nations, *Transforming our World: The 2030 Agenda for Sustainable Development*, 20 September 2015, A/RES/70/1
[141] M.Montini, Sustainable Development within the Climate Change Regime, in H.C. Bugge & C. Voigt, Sustainable Development in International and National Law, Europa Law Publishing, 2008
[142] Consolidated Version of the Treaty on European Union [2008] OJ C115/13

sustainable use of natural resources and to establish sustainable management of global natural resources as objectives for the EU as a whole (Articles 21.2.f, 191.2)[143].

Overall, human beings are central to sustainable development and if the status quo included the view of environmental decisions as directly implicating human rights, a bigger sense of urgency might occur, seeing as, even though sustainable development is about balancing concerns regarding all three of its pillars, human rights are more absolute[144]. Hence, it is evident that a direct link drawn between human rights and the environment through the legally-binding universal recognition of the right to a healthy environment could have positive effects on the accomplishment of sustainable development and particularly the SDGs.

[143] Ibid

[144] Bratspies, Rebecca. "Do We Need A Human Right to a Healthy Environment?" *SANTA CLARA JOURNAL OF INTERNATIONAL LAW*, vol. 31, 2015, pp. 31–69. *13*.

3. Application of environmental law at the regional level

Having examined the basis that forms the components of the human right to a healthy environment and the path that led to its conception and realization internationally, it is important to deepen the analysis of this thesis by examining how it is applied on the regional level. By examining jurisdictions and court cases that reference it, as well as how perspectives on the right differentiate – but still interlink – between different regions, the argument for a universal recognition of the human right to a healthy environment can be strengthened. That is because, in order to so, it is necessary to pinpoint practical means used for its incorporation in regional environmental law, which could ultimately be vital for informing its international implementation. As this thesis has previously assessed, hard law treaties that indirectly legally recognized the right by focusing on its procedural components – the Aarhus Convention and the Escazú Agreement – is evidence for an already existing framework that lays out its practical components. Noting that these treaties are particularly prestigious due to receiving international recognition (as they were adopted with the support of UN organizations) and have informed global perspectives for the right's adoption.

As it has been supported by organizations which advocate for the universal recognition of the human right to a healthy environment, the establishment of consistent global environmental human rights standards is necessary at the local, national, regional and international levels, in order to truly achieve several aspects of environmental democracy[145] (such as the facilitation of interventions at the appropriate level in cases of harm or violation of rights). Where several existing regional human rights instruments and courts support and utilize elements that inform the human right to a healthy environment, through dynamic interpretation of classic existing human rights, it is important to remember that when designing future environmental policy initiatives at both the regional and international levels should uphold it, in order to also increase sustainable development efforts.

In this chapter of the thesis follows an analysis of how high-level regional courts and associations have included the human right to a healthy environment in the status quo of their jurisdictions.

[145] See note 104

A. European Union

Regional conventions, legislations, treaties and courts have long guaranteed the right to a clean and healthy environment, directly or indirectly, often in a human rights context, and the European Union is no exception. EU environmental law enshrines several previously discussed principles and rights which inform the right in question. Two of its most important treaties, core components of its constitutional basis, that include provisions for such principles and rights, are the Treaty of the Functioning of the European Union (TFEU) and the Treaty on the European Union (TEU), both established in their current formats after the Lisbon Treaty in 2007. Both the treaties include principles which inform the right to a healthy environment, and it is important to consider them as part of the argument for its universal recognition. As discussed in previous sections, principles stand in the background of rules and influence their interpretation and application and in particular environmental principles provide a long-lasting guidance for environmental regulation and the practice of administrative implementation and judicial adjudication[146]. Hence, it is evident why their inclusion is necessitated in the TFEU and TEU.

In particular, one of the main environmental principles enshrined in the EU constitutional treaties is that of sustainable development. Specifically, components that relate to its three pillars are mentioned in the TEU Preamble Recital (9) and Articles 3(3), 3(5) and 21(2)[147]. What is curious however is that, even though the TFEU mentions sustainable development in Article 11 ("Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development"), it does not include it in Article 191(2), where it lists other environmental principles which also inform the right to a healthy environment; the principles of prevention, precaution and 'polluter pays'[148].

Core constitutional instruments and institutions of the EU have provided good attempts to develop substantive and participatory rights, albeit without mention of a right to a healthy environment. Similarly, the EU's human rights charters and conventions do not recognize such a right either, although parts of them have been interpreted as reinforcing its components. For instance, Article 37 of the EU Charter of Fundamental Rights (2000) reads:

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[146] Bándi, Gyula. "Principles of EU Environmental Law, Including the Objective of Sustainable Development." *Research Handbook on EU Environmental Law*, Edward Elgar Publishing Limited, Cheltenham, UK, 2020.
[147] See note 142
[148] Consolidated Version of the Treaty on the Functioning of the European Union [2012] C326/01

"A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured, in accordance with the principle of sustainable development."[149]

The Charter is a fundamental component of EU human rights legislation; however, it does not recognize a right to a healthy environment, rather through the aforementioned article, it merely refers to the guarantee of a 'high level of environmental protection'. It is commonly interpreted that this provision does not provide any further protection beyond what the EU pledges in Article 191 TFEU[150]. Despite structural limits implied by its nature, Article 37 of the Charter could partly contribute to a complete integration between environmental duties and human rights via the establishment of the right to a healthy environment, both at the EU and international levels, as it is full of promise due to being strongly worded and a part of a charter of rights. However, it is a highly contextualized provision that is inherently compromised as a legal 'right'[151], because it is heavily based on the principle of sustainable development, and because – even though included in a Charter of rights – it does not hold such a quality; it could more appropriately be interpreted as a principle. More specifically, seeing as Article 37 is the only one mentioning environmental protection, the Charter falls short of including any environmental rights that have been recognized under the European Convention of Human Rights and other international human rights treaties (especially procedural rights)[152].

Due to its nature, Article 37 does not only apply to measures adopted in the area of environmental policy, rather to all Union policies, internal and external[153]. However, one could hypothesize that Article 37 is a clear manifestation of the lack of consensus that exists amongst Member States – specifically on establishing a commonly understood substantive human right to a healthy environment – equally showcased in the Aarhus Convention[154]. This hesitation to commit materializes in the fact that substantive rights related to a healthy environment have been increasingly protected through interpretation, under the European Convention on Human

[149] European Union. "Charter of Fundamental Rights of the European Union" Official Journal of the European Union C83, vol.53 European Union, 2010, p.380
[150] See note 148
[151] Scotford, Eloise. "Environmental Rights and Principles in the EU Context: Investigating Article 37 of the Charter of Fundamental Rights." *UCL Discovery* , Hart Publishing, 23 Aug. 2018, discovery.ucl.ac.uk/id/eprint/10047282/.
[152] Morgera, Elisa, and Gracia Marin-Duran. "Commentary to Article 37 – Environmental Protection of the EU Charter of Fundamental Rights." *SSRN*, 24 May 2021, papers.ssrn.com/sol3/papers.cfm?abstract_id=3850154.
[153] Ibid
[154] Ibid

Rights and other international human rights treaties. In the previously discussed UN Framework Principles on Human Rights and the Environment, former Special Rapporteur John Knox noted that 'not all States have formally accepted the international norms upon which a coherent interpretation is based' and that they should consider the Framework Principles 'best principles that they should adopt as quickly as possible'[155]. Seeing as Article 37 does not align with those international 'best practices', the environmental rights recognized under international agreements which the Union or its Member States are parties to, could be 'restricted or adversely affected' by the Charter's interpretation[156]. Ultimately, Article 37 represents a normative progression in EU law, as it shapes interpretive practice and informs the development of the EU legal doctrine, in a manner under which the right to a healthy environment could potentially reach recognition as a human right, however it does not expand the ground for such definitions to exist by the Charter itself.

A significant factor for the evolution of the human right to a healthy environment on the European level has been the fact that the EU has acceded to the Aarhus Convention which, in accordance with article 216 TFEU[157] constitutes part of the EU legal order and it is characterized as a mixed agreement, as both the Union and its members are legal parties. So as to guarantee the inclusion of the provisions set out by the Convention, the EU moved forward with adopting certain directives and regulations, the aim of which was to provide measures and guidelines for the practical implementation of the procedural environmental rights. For instance, one such regulation is Regulation (EC) No. 1367/2006 on the Application of the Provisions of the Aarhus Convention to Community Institutions and Bodies ('Aarhus Regulation')[158]. This regulation requires EU institutions and bodies to give citizens access to environmental information, participation in decision-making and justice on environmental issues. More specifically, its key points include for the provision of easily accessible environmental information databases, public participation at the preparatory stage of European Commission plans or programmes, and the ability for the public or NGOs to make a request for internal review to the EU institution or body that adopted an administrative act, or in the case of omission contravenes environmental law. Regulation 2021/1767 amended the Aarhus Regulation (Regulation 1367/2006), seeing as the Aarhus Convention Compliance Committee found that the EU did not fully comply with the Convention regarding the right to 'access to

[155] See note 36
[156] See note 152
[157] See note 148
[158] European Union. Regulation (EC) No. 1367/2006 of the European Parliament and of the Council [2006]

administrative or judicial procedures to challenge acts and omissions by… public authorities which contravene provisions of its national law relating to the environment'[159]. Related directives include Directive 2003/4/EC on Public Access to Environmental Information[160] and 2003/35/EC on Public Participation[161].

The right of access to participation and decision-making in general (and specifically to environmental matters) is also enshrined in TEU Article 11 which states that EU institutions shall give citizens and representative associations the opportunity to make known and publicly their views in all areas of Union action, including the environmental one, while also stating in a later section of the article that the Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent[162].

[159] European Union. Regulation (EC) No. 2021/1767 of the European Parliament and of the Council amending Regulation (EC) No. 1367/2006 [2021]
[160] European Union. Directive 2003/4/EC of the European Parliament and of the Council [2003]
[161] European Union. Directive 2003/35/EC of the European Parliament and of the Council [2003]
[162] See note 142

B. Council of Europe

Apart from the Union and its institutions, the Council of Europe remains one of the most important organizations in upholding and developing human rights, including those relating to the environment, the European Court of Human Rights (ECtHR) and the European Convention on Human Rights (ECHR) being the fundamental component of the Council's human rights jurisprudence. Even though the ECHR's contents are used in case law and are vital components of the European human rights framework, the Convention itself does not establish a right to a healthy environment. Instead, the fundamental rights it enshrines are more often not interpreted in cases relating to environmental matters, so that it can contribute to rulings for violations of such rights[163].

Before discussing the ECtHR's recognition of aspects of the right to a healthy environment through utilizing articles of the ECHR in its case law, it is important to mention the impact of the European Social Charter (ESC) on the Council's jurisdiction on environmental human rights. Specifically, the European Committee on Social Rights (ECSR) has interpreted Article 11 of ESC (the right to protection of health) as including the right to a healthy environment, in cases such as *International Federation for Human Rights v. Greece*[164]. Considering the specific obligations of States to safeguard this right, the Committee established that State 'measures required under Article 11 should be designed, in the light of current knowledge, to remove the causes of ill-health resulting from environmental threats such as pollution'[165], as in the *Marangopoulos Foundation for Human Rights v. Greece* case[166].

Generally, the ECSR has found that specific State obligations could derive from the jurisprudence of the ECHR, specifically Articles 2 (right to life), 3 (prohibition of torture) and 8 (right to respect for private and family life)[167]. This conclusion followed from the intrinsic link between the ESC and the ECHR, both of which were formulated to protect the value of human dignity in European human rights law. The ECtHR has recognized many elements of the right to a healthy environment's substantive and procedural obligations (such as the right to life, access to information and access to a fair trial), as well as principles informing it,

[163] "Environment and the European Convention on Human Rights ." *European Court of Human Rights*, Oct. 2023, www.echr.coe.int/documents/d/echr/FS_Environment_ENG.
[164] *International Federation of Human rights (Hellenic League of Human Rights) v. Greece (2011) ECSR*
[165] "The Right to Protection of Health." *Social Rights*, Council of Europe, www.coe.int/en/web/european-social-charter/article-11.
[166] *Marangopoulos Foundation for Human Rights (MFHR) v Greece (2005) ECSR*
[167] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950

particularly in the aforementioned ECHR articles applying them on cases related to environmental matters. Such cases include *Öneryildiz v. Turkey*[168], which found a violation of Article 2, due to a lack of appropriate steps taken to avoid accidental deaths, calling to the State's substantive obligations, and lack of adequate protection by law to safeguard the right to life, calling to its procedural obligations[169]. Additionally, the ruling for *Apanasewicz v. Poland*[170] stated that there was a violation of Article 6§1 right of access to a court (which falls under the scope of the procedural right of access to justice), due to lack of diligence of authorities and the insufficient use by the latter of the coercive methods available, causing the applicant to not have effective judicial protection, as well as a violation of Article 8 right to respect for private and family life. Lastly, in the case of *Guerra and Others v. Italy*[171] the Court found a violation of Article 8, as the Italian State had not fulfilled its obligation to secure the applicants' right to respect for their private and family life, as the applicants had waited until the production of fertilizers had ceased in 1994, for essential information that would have enabled them to assess the risks of continuing to live in the town, had they been provided it earlier[172].

Regarding the right's substantive obligations, the ECHR has held that States should prosecute and punish polluters who have caused environmental damage (polluter pays principle), and that they should be cautious when dealing with new technology that could possibly have harmful risks (precautionary principle). The latter appears to be a beneficial approach in construing long-term responsibility as, on the European level, it is a legally binding

[168] The case involved the applicant's house, that was built without authorization on a land surrounding a rubbish tip, which along with more than ten houses in the area became engulfed by refuse erupting from the pile of waste due to a methane explosion, leading to the loss of nine relatives of the applicant. The applicant complained that no measures had been taken to prevent the explosion despite an expert report alerting the authorities to the need to act preventively.

[169] *Öneryıldız v Turkey [GC] ECHR 2004-XII 79*

[170] In 1989, the owner of a plot of land, adjacent to that of the applicant, built a concrete works without permission, which became immediately operational and gradually enlarged. A year later the applicant brought proceedings to stop environmental harm which she had allegedly sustained (including pollution, various health problems, inedible harvest, etc.). In 2001, a civil court ordered the closure of the factory, but despite the two sets of enforcement proceedings (civil and administrative), the factory still had not closed at the time of the judgement of the ECtHR in 2011. The applicant complained in particular of a failure to enforce the 2001 judgement, ordering the factory's proprietor to close it.

[171] The applicants all lived within a kilometre away from a chemical fertilizers factory, which had caused many accidents due to malfunctioning with the most serious one in 1976, which cause 150 people to be admitted to the hospital with acute arsenic poisoning. The applicants alleged that the lack of practical measures (to reduce pollution levels and major-accident hazards of the factory) had infringed their right to respect for their lives and physical integrity. They also complained that the relevant authorities' failure to inform the public about the hazards and the procedures to be followed in the event of a major accident had infringed their right to freedom of information.

[172] *Guerra and others v. Italy (1998) ECHR*

norm[173]. In relation to the right's procedural obligations, the ECtHR emphasized that States may be obliged to enact relevant environmental legislation, and that they must assess environmental impacts of projects concerning the environment.

Despite case law of the ECtHR having addressed such aspects of the right to a healthy environment, the Court has continuously emphasized that the ECHR does not in itself guarantee it. Thus far, the Court has relied upon the idea that other rights contained in the convention can be undermined by environmental harms and therefore the scope of those rights is enough to address human rights violation emerging from such harm[174], as in the Court's opinion environmental harm is not itself a cause for complaint and it must be linked to some sort of impact on humans. Pirjatanniemi considers this remarkable, seeing as there is a growing tendency to first adopt laws that protect the environment and second formulate constitutional guarantees for environmental values[175]. The Court's perspective greatly overlooks the greater potential for human rights protection that the independent recognition of the right to a healthy environment under the Council could lead to legal coherence and certainty, climate litigation and a rights-based framework that accounts for modern challenges[176]. Nevertheless, the Court has developed its case law in a way that, if an individual is directly or seriously affected by noise or other types of pollution, an issue may arise under the Convention, and it has underlined that, due to the environmental damage having a tremendous influence on the well-being of individuals, issues relating to it fall under its jurisdiction.

The ECHR seems to have problems in providing tools for long-term responsibility, as because it still does not include the right, there have been several proposals for its inclusion, such as a recommendation in 2009 by the Parliamentary Assembly of the Council of Europe which pertained to drafting an additional protocol to the ECHR concerning the right to a healthy environment[177]. The Committee of Ministers denied the recommendation, stating that, even though the ECHR "does not expressly recognize a right to the protection of the environment, the convention system already indirectly contributes to [its] protection […] through existing

[173] Pirjatanniemi, Elina. "Greening Human Rights Law." *Human Rights and Sustainability: Moral Responsibilities for the Future*, edited by Gerhard Bos and Marcus Düwell, Routledge, London, 2018.
[174] Ordóñez Vahí, Amalia. "The Council of Europe and the Right to a Clean, Healthy, and Sustainable Environment." *Universal Rights Group*, 21 June 2023, www.universal-rights.org/the-council-of-europe-and-the-right-to-a-clean-healthy-and-sustainable-environment/.
[175] See note 173
[176] Ibid.
[177] European Union Parliamentary Assembly. Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment, Recommendation 1885 (2009)

convention rights and their interpretation in the evolving case law of the [ECHR]"[178], which has been the position of the Council thus far. However, following the General Assembly Resolution of 2022, the Council adopted a "Recommendation on human rights and the protection of the environment" a few months later so as to actively make the 46 Member States consider recognizing the right to a healthy environment as a human right in their own constitutions[179]. The recommendation highlighted the importance of protecting the rights of the most vulnerable to environmental damage, of governments efficiently cooperating with human rights defenders, civil society, indigenous peoples and other stakeholders, and companies operating in accordance with their responsibilities regarding environmental human rights. It also called for Member States to ensure respect for the general principles of international environmental law and the procedural environmental rights.

The 2022 recommendation also influenced the adoption of the Reykjavík Declaration in June 2023, which expressed the Council's commitment to strengthen the organization in matters relating to human rights, democracy and the rule of law so as to develop tools to deal with emerging technological and environmental challenges[180]. The Declaration recognized that 'a clean, healthy and sustainable environment is integral to the full enjoyment of human rights by present and future generations'[181], although solely did so in its appendix, therefore falling short of delivering a solid commitment to legally recognize the right. Keeping in mind that the Council of Europe is primarily a human rights organization, it is now in a unique position to accelerate the realization of the newly universally recognized right to a healthy environment by integrating it into the legal framework of the ECHR, allowing it to be called upon in future case law. To date, there has not been such a progression, despite all 46 Member States voting in favour of the General Assembly resolution, which is evidence that the European context (including the EU and the Council) stands in contrast with other regional frameworks, which will be analyzed in the next sections of this chapter.

C. Association of South East Asian Nations

[178] Committee of Ministers. Reply to Recommendation (2010) on Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment, Recommendation 1885 (2009)
[179] Council of Europe. Recommendation CM/REC(2022)20 of the Committee of Ministers to member States on human rights and the protection of the environment (2022)
[180] See note 175
[181] Council of Europe. Committee of Ministers, Reykjavík Declaration (2023)

South East Asian nations have also taken important steps towards interlinking human and environmental rights, as well as sustainability, using their legislative systems and institutions, by setting a framework for ASEAN to strengthen its current approaches as a regional body, through its existing human rights instruments and regional agreements. However, to this day there is no such agreement that clearly encompasses this connection, although efforts are being made toward such an achievement, which might seem challenging due to the region's current state of related legislation, though it is not an impossible feat for ASEAN as an organization[182].

Despite the ASEAN region already recognizing elements of the right to a healthy environment by participating in global agreements that reinforce them (such as the Paris Agreement)[183], current regional environmental protection standards have not been adequately successful in dealing with emerging cross-border environmental threats, such as increasing soil and river pollution, land-use patterns and land degradation. One of the reasons for this shortcoming has been ASEAN's traditional treatment of human rights and environmental law as two separate areas of law, especially seeing as the development of such environmental standards predates the adoption of its core human rights instruments[184].

One of the ASEAN legal instruments that does recognize the substantive elements of the right to a healthy environment as being part of human rights law is the ASEAN Charter, which encompasses the common principles shared among its Member States[185]. The Charter's preamble states that one of its aims is "to ensure sustainable development for the benefit of present and future generations and to place the well-being, livelihood and welfare of the peoples at the centre of the ASEAN community building process"[186]. Although it is a very general statement and it doesn't contribute much to the establishment of the right in the region. However, the most important instrument is the ASEAN Human Rights Declaration (AHRD), recognizes substantive and procedural elements of the right to a healthy environment and the right itself as necessary for the full enjoyment of the right to development and an adequate standard of living, specifically in Article 28[187]. Though despite the significance of its inclusion,

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[182] Umar, Ahmad Rizky M. "Constructing ASEAN Environmental Governance." *Raoul Wallenberg Institute*, Oct. 2017, rwi.lu.se/app/uploads/2020/09/ahmad-rizky_updatepaper-rwi-2020.pdf.
[183] See note 163
[184] Ituarte-Lima, Claudia, et al. "Prosperous and Green in the Anthropocene: The Right to a Healthy Environment in SouthEast Asia." *Raoul Wallenberg Institute*, Sept. 2020, rwi.lu.se/wp-content/uploads/2020/11/Prosperous-and-green-in-the-Anthropocene-Report.pdf.
[185] See note 163
[186] Association of Southeast Asian Nations (ASEAN), Charter of the Association of Southeast Asian Nations, 20 November 2007
[187] Association of Southeast Asian Nations (ASEAN), ASEAN Human Rights Declaration, 18 November 2012

the Article can be seen as vaguely phrased, as it does not clarify what the right entails[188]. This lack of clarity has led to legal difficulties in understanding how this provision can be implemented and has undermined its practical usefulness in adopting human rights based environmental laws and policies with a regional scope[189].

Like the AHRD and the Charter, ASEAN has other 'blueprint' documents that set out ASEAN's policy objectives as a political-security, economic and socio-cultural community[190], all of which show that understanding of the links between humans and the environment's well-being has progressed in the region. The ASEAN Political-Security Community (APSC) Blueprint stipulates that human rights are a core part of ASEAN as a rules-based community and some of its objectives include their promotion and protection by strengthening education, encouraging Member States to ratify and adhere to core international human rights treaties, engage with the UN and other bodies to ensure compliance[191]. The ASEAN Economic Community (AEC) Blueprint aims to integrate and contribute to a cohesive regional economy, and – despite not referencing human rights or the right to a healthy environment – contains some provisions for environmental protection, such as the use of clean and renewable energy[192]. The ASEAN Socio-Cultural Community (ASCC) Blueprint is the most progressive of the three in linking human rights and the environment, as it includes measures for six strategic priorities[193] which are meant to lift the quality of life through cooperative, people-oriented and environmentally friendly activities, whilst also promoting sustainable development[194].

As aforementioned, ASEAN had adopted two environmental agreements, before the adoption of the AHRD – the Agreements on the Conservation of Nature and Natural Resources (1985)[195] and on Transboundary Haze Pollution (2002)[196] – which enshrine principles and participatory rights that inform the right to a healthy environment, specifically the prevention

[188] See note 185
[189] Ibid
[190] Ibid
[191] Association of Southeast Asian Nations (ASEAN), ASEAN Political-Security Community Blueprint, June 2009
[192] Association of Southeast Asian Nations (ASEAN), ASEAN Economic Community Blueprint, January 2008
[193] The substantive rights of food, clean air, safe drinking water and adequate sanitation, safe climate, non-toxic environments and biodiversity.
[194] Association of Southeast Asian Nations (ASEAN), ASEAN Socio-Cultural Community Blueprint, January 2008
[195] Association of Southeast Asian Nations (ASEAN), ASEAN Agreement on the Conservation of Nature and Natural Resources, 9 July 1985
[196] Association of Southeast Asian Nations (ASEAN), ASEAN Agreement on Transboundary Haze Pollution, 10 June 2002

and no harm principle, and the rights to information and participation. Unfortunately, only the latter has been entered into force, showing the minimal regional consensus on environmental matters. Additionally, the aforementioned components of the right in the context of these agreements are limited to conservation measures and they do not have human rights dimensions.

ASEAN does not have a regional judicial and enforcement body that can provide effective remedy and redress to victims of human rights violations in countries where domestic remedies are unavailable. The ASEAN Intergovernmental Commission on Human Rights (AICHR) is the region's dominant human rights body and it could help promote understanding and recognition of the right to a healthy environment in all its dimensions, which could be achieved by expanding its mandate beyond promoting human rights awareness to developing the right to a healthy environment at the regional level[197].

In order to make such progressions in its regional governance, and perhaps designing an agreement that facilitates the connection of environment and human rights, ASEAN has the opportunity to learn from others such as the Aarhus Convention and the Escazú Agreement. A standalone regional review mechanism on the right to a healthy environment could be set up in order to assure compliance[198]. This review mechanism would engage with both state and non-state actors to fulfil their environment obligations, protect vulnerable groups (including environmental human rights defenders) and make the right in question a reality[199]. Another path would be expanding the role and mandate of the AICHR, to carry out this function under the leadership of independent experts.

Efforts are already being made toward creating such an agreement, such as the establishment of the ASEAN Environmental Rights Working Group with their first meeting in August 2023 where the goals of the group were set on developing a comprehensive framework in line with the international norms and standards on the right to a healthy environment[200]. It also discussed a proposed set of elements for the design of the regional instruments, relating to the substantive elements of the right[201]. However, a common counterargument for the full implementation of environmental rights as human rights in the region is that most ASEAN

[197] "Current Status of Environmental Human Rights in the ASEAN Region." *Enviliacne ASIA*, enviliance.com/regions/others/asean-human-rights.
[198] See note 185
[199] Ibid
[200] "The 1st ASEAN Environmental Rights Working Group Meeting." *You Are Being Redirected...*, 22 Aug. 2023, asean.org/the-1st-asean-environmental-rights-working-group-meeting/.
[201] Ibid

states are considered ‘developing’ countries, even if most of the region’s development results in environmental degradation, claiming to that they don’t have the capacity to makes such developments, especially taking into account that some states face more hindrances in the right’s implementations. Seeing as regionally, citizens of Member States are directly affected by environmental problems, such as pollution and loss of biodiversity, it makes sense that such an agreement would be necessary. Realizing this need, the ASEAN organization has created a Five-Year Work Plan of the AICHR for 2021-2025, including environmental rights-related activities, such as improving capacity building for relevant stakeholders and progressing the regional framework for human rights-based environmental impact assessments[202].

[202] See note 198

D. The American Convention on Human Rights and the jurisprudence of the Inter-American Court of Human Rights

Up until recently, within the Inter-American regional human rights system, environmental standards have primarily existed in the context of the rights of indigenous peoples. For the majority of their jurisprudence, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (IACtHR) have placed focus on the rights to property and to life, with the specific aim of protecting indigenous populations' culture and way of life, through assuring their active participation in decision-making, in benefit sharing and in the implementation of environmental and social impact assessments[203]. However, in recent years there have been efforts to evolve the jurisprudence so that it applies to environmental standards beyond the indigenous context and the abovementioned rights, with the most important development being the establishment of the right to a healthy environment as an autonomous right under Article 11 of the American Convention on Human Rights (ACHR), through the San Salvador Protocol of 1988[204]. This transformed the IACtHR's engagement with environmental issues, as now applicants were able to bring claims to the Court based on alleged violations of the right. The two instances where the Court has achieved this evolvement is the Advisory Opinion OC-23/17 of 2017 and the judgement of the *Lhaka Honhat Association v. Argentina* case in 2020. Mardikian calls these advances in the establishment of the right under ACHR a 'judicial innovation', as it set a more ambitious approach in future environment and climate cases in the Inter-American human rights system[205].

The Advisory Opinion was issued as a response to a request by Colombia, due to concerns about human right implications of a trans-oceanic canal in Nicaragua and the implications on the populations of the Colombian island of San Andrés[206]. The IACtHR addressed Colombia's concerns by recognizing that full enjoyment of human rights is connected to environmental protection and that the right to a healthy environment is instrumental to it. It also advised that – as the right to a healthy environment is recognized in Article 11 of the San Salvador

[203] Mardikian, Lisa. "The right to a healthy environment before the Inter-American court of human rights." *International and Comparative Law Quarterly*, vol. 72, no. 4, 27 Oct. 2023, pp. 945–975, https://doi.org/10.1017/s0020589323000416.
[204] Inter-American Court of Human Rights, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", Adopted at San Salvador, 17 November 1988
[205] See note 204
[206] Inter-American Court of Human Rights, Advisory Opinion OC-23/17 on the Environment and Human Rights, 15 November 2017

Protocol[207] - there should be serious considerations for its inclusion in Article 26 of the ACHR[208] which recognizes economic, social and cultural rights. Additionally, the Court clarified that the term 'jurisdiction' in the ACHR is broader than the territory of a State, in regard to environmental issues that have a cross-border impact, therefore an applicant can bring a claim forward even if they are outside of the State's border. It also elaborated that States' obligations include cooperating in good faith with each other, and upholding the principles of prevention and precaution, as well as the procedural environmental rights. All in all, the Advisory Opinion carries major importance as it gave applicants the ability to directly claim violations of their right to a healthy environment, providing a more direct route, instead of other fundamental rights that are affected by environmental harm[209]. It also largely influenced global discussions on the universal recognition of the right to a healthy environment.

The *Lhaka Honhat (Our Land) Association v. Argentina* in 2020 was the first contentious case where the IACtHR applied the right to a healthy environment and found that there are violations against it. The applicants constituted of indigenous community members of the Association on behalf of 132 communities, who sued the state of Argentina for violating their right to communal property by failing to provide legal security to their territory and allowing Creole settlers to reside on their lands, as well as for failing to protect the right to a healthy environment and other fundamental rights[210]. Within the context of the case, the IACtHR stated that Article 21 of the ACHR involves indigenous peoples right to their communal property, thus in order to provide a legal title that they can enforce against the government and third parties, the State must give this legal certainty. Also, the IACtHR stated that current regulations to guarantee the community property right were inadequate and thus violating Article 21, which also occurred by the omittance of consulting the indigenous communities in the decision-making process and not providing them with judicial guarantees[211]. The outcomes of this case were significant for the establishment of the right to a healthy environment in the IACtHR's jurisprudence, seeing as it clarifies state obligations regarding Article 26 of ACHR so as to further protect indigenous people's rights. It also emphasized that States in the Inter-American region must take measures to avoid infringements of indigenous rights and, by ordering for the

[207] Article 11 Right to a Healthy Environment: 1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment.
[208] Inter-American Court of Human Rights, American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32), 22 November 1969
[209] See note 207
[210] *Indigenous Community Members of the Lhaka Honhat (Our Land) Association v. Argentina (2020) IACtHR*
[211] Ibid

removal of the settlers, it clarified that indigenous lands are vital to their cultural survival, thus reaffirming the right to a healthy environment.

Both of the abovementioned instances have formed a turning point in the extent of the IACtHR's jurisprudence, and led to the right to a healthy environment being established as directly justiciable under the ACHR[212]. Despite this major achievement, there were of course some challenges with the Court's approach, specifically regarding the clear definition of the right to a healthy environment's components and individual and collective dimensions. Additionally, it was challenging to verbalize the link between the right and the IACtHR's progressive approach to the right to property, as well as in regard to the reparations ordered in the *Lhaka Honhat* case, as they were not substantively different from those found in other cases where States' environmental obligations had been determined under the scope of political and civil rights, which draws a question on how practically relevant the new right would be, at the least at the Court's current state of jurisprudence[213]. Naturally, establishing a new right is a difficult task requiring a high degree of justification, through a close examination of the legal basis used, but of course there are some criticisms regarding the Court's approach. As it would extend the playing field for the ongoing evolution of new rights, there is a concern that this strategy could lead to legal uncertainty, regarding obligations of ACHR States[214]. In establishing this right, the main challenge would be creating its contextual dimensions in a way which cannot be effectively realized under other human rights. This would be a major normative influence from the Court, even outside the Inter-American scope, as a conceptualization like that could be useful for other judicial institutions (i.e. ECHR), as well as domestic courts, the constitutions of which do not enshrine environmental rights[215].

All in all, the right to a healthy environment could offer a solid basis for creating new substantive and procedural obligations for environmental protection in the region. What is notable however – and which has not been the case in any of the regional cases or international treaties previously discussed – is the right to a healthy environment does not only oblige States parties to the ACHR to protect citizens' lives and health but also the environment for the sake of all the planet's organisms, rather than viewing it as a tool for human development. A direct influence by the Earth rights approach, which is largely held by indigenous populations,

[212] See note 204
[213] Ibid
[214] Ibid
[215] Ibid

showcasing their unique relationship to nature; in other words, the rights of nature are viewed as individual legal personalities with an individual claim to protection[216].

E. African Charter on Human Rights (Banjul Charter)

In contrast to the previously discussed regional instruments, the African Charter on Human Rights, which came into force in 1981 – or as otherwise known the Banjul Charter – is the only treaty to recognize in some capacity the right to a healthy environment on the international level. In particular, there are two articles that encompass elements of the right; Article 24 which states that "all peoples shall have the right to a general satisfactory environment favourable to their development" and Article 21(1) which recognizes the rights of the region's people to "freely dispose of their wealth and natural resources" [217]. It is evident that, again in contrast to other instruments, these rights are formulated as collective, instead of individual and the term 'peoples' is not clearly defined. The African Commission on Human and Peoples' Rights handled the task of interpreting it broadly as inclusive of a 'collective of individuals', giving citizens the ability to invoke the rights guaranteed in those articles if they have suffered 'collectively from the deprivation of [them]'[218].

The Charter's significance as a regional instrument is critical as it mainstreams the provision and realization of civil, political, socio-economic, cultural and solidarity rights, which is consistent with the general African value system, based on the historical foundation of *ubuntu*[219]. Africa as a regional is largely encompassed by communitarian values, which are reflected in the way it constitutes environmental protection as a legally binding right[220]. In the context of the Charter, Article 24 establishes the right which is substantive in character – as it ensures the protection and conservation of the environment – but anthropocentric in nature – because it's for the benefit of man[221]. This approach is notable in its contrast to the previously

[216] See note 24
[217] Organization of African Unity, African [Banjul] Charter on Human and People's Rights, 27 June 1981
[218] Ebeku, Kaniye SA. "The right to a satisfactory environment and the African Commission." *African Human Rights Law Journal*, vol. 3, 2003, pp. 149–166.
[219] *Ubuntu* is a South African proverb which literally means "a person is a person through people", and has gained notoriety on the continent because it embodies African solidarity.
[220] Kwadzo Dzah, Godwin Eli. "Marginalising Africa: The 'new' Human Right to a Clean, Healthy and Sustainable Environment in International Law." *Third World Approaches to International Law Review*, 17 Aug. 2023, twailr.com/marginalising-africa-the-new-human-right-to-a-clean-healthy-and-sustainable-environment-in-international-law/.
[221] Lugard, Sunday Bontur. "The human right to a satisfactory environment and the role of the African Court on Human and Peoples' Rights." *KAS African Law Study Library - Librairie Africaine d'Etudes Juridiques*, vol. 8, no. 3, 2021, pp. 402–413, https://doi.org/10.5771/2363-6262-2021-3-402.

analyzed Inter-American system, which has a large influence from the rights of nature approach.

In the Charter, the right to a healthy environment is linked to development, however the definition of a 'general satisfactory environment' is unclear. There have been some indications to its meaning, such as a series of guidelines for the submission of periodic reports under Article 62[222], drawn up by the Commission in 1989. They noted that Article 24's 'main purpose' is to ensure environmental protection and to keep it favourable for development[223]. Churchill supports that the Commission might have adopted a "somewhat narrow, and largely anthropocentric, view" of a 'satisfactory environment', due to the lack of inclusion of matters such as biodiversity conservation and climate change[224]. He argues that, because the Charter is written in a "vague and laconic way", it raises questions regarding the right's meaning. Although, the right remains integral to Africa's efforts to redress colonial injustices, as it has 'potential for ensuring accountability for violation of the right to a healthy environment through prosecution at the regional level'[225]

Nevertheless – though limited – the case law produced by the Commission and the African Court on Human and People' Rights has helped in clarifying it. The most significant such case is *Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria*[226], brought to the Commission on a recommendatory basis, which interpreted Article 24 in conjunction with Article 16 (the right to health), ruling that the Ogoni had suffered violations of both of the rights entailed in the Articles, due to the government's failure to prevent pollution and ecological degradation[227]. It also claimed that Nigeria's failure, to monitor oil activities and to involve the local communities, violated Article 21, which also

[222] "Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter."
[223] Churchill, Robin. "Environmental Rights in Existing Human Rights Treaties." *Human Rights Approaches to Environmental Protection*, edited by Alan E. Boyle and Michael R. Anderson, Oxford University Press, Oxford, 2003.
[224] Ibid
[225] See note 221
[226] In 1996, the two NGOs brought forward a complaint about the abuse of human rights and the degradation of the Niger Delta environment by oil operations undertaken by Nigerian-based multi-national oil companies (such as Shell). They alleged that the military government of Nigeria was guilty of violations of the right to health, the right to dispose of wealth and natural resources, the right to a clean environment and family rights, due to its condoning and facilitating the operations of oil corporations in Ogoniland. The Ogoni people alleged that the oil consortium's exploitation of oil reserves in their land resulted in contamination of water, soil and air and in short- and long-term health impacts.
[227] *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria (2002) ACHPR*

conceptually affirms the right to a healthy environment's procedural components, even if they are not included in the Charter.

As a result, the Commission ordered for attacks on the Ogoni people to cease, for investigation and prosecution of those responsible, for the victims to be compensated and for the preparation of environmental and social impact assessments. Because the Commission's decisions were not binding, there is currently no evidence that oil-related environmental degradation has seized, however several other subregional courts, such as the Economic Community of West African States' Community Court, have examined the case and found Nigeria guilty of Article 24 violations. This case is particularly significant, as it laid the groundwork doe subsequent innovative human rights discourse, and it showcased the viability of the Court and its accompanying institutions as effective tools for the realization of the right to a satisfactory environment.

Another particularly important case is *African Commission on Human and Peoples Rights v. Republic of Kenya*[228]. After receiving communication by the applicants, the Commission referred the case to the Court on the basis of evidence of serious or massive human rights violations. After years of deliberation, in 2017 the Court issued a judgement upholding the land-related rights of the Ogiek people and finding violations of almost all of the rights claimed, including the rights to development and disposal of wealth[229]. This case is of significance because it was the first time that the Court issued a verdict in a case involving indigenous people, and all the while recognizing that they have a leading role as guardians of local ecosystems and in conserving and protecting land and natural resources.

Even though not many cases have come before the Court on issues directly involving the Article 24 right, it has potential for addressing environmental rights violations affecting minority communities (such as indigenous populations). Despite unclear definitions of what a 'satisfactory environment' entails, the capacity of the region's legal framework, in enforcing a right that calls for it, is major.

[228] In October 2009, the Kenyan Forestry Service issued an eviction notice forcing the Ogiek (a forest-dwelling community), one of Kenya's most marginalised ethnic groups, to leave the Mau Forest within 30 days. A month late, the Ogiek People's Development Program, joined by the Centre for Minority Rights Group International, sent a communication to the Commission arguing that the eviction violated several provisions of the Charter (including Article 14 right to property, Article 2 freedom from discrimination, Article 4 right to life, Article 8 freedom of religion, Articles 17(2) and (3) right to culture, Articled 21 right to dispose of wealth and natural resources, Article 22 right to development and Article 1 which obliges all states to uphold the rights guaranteed by the Charter).

[229] *African Commission on Human and Peoples' Rights v. Republic of Kenya (2017) ACtHPR*

4. Critical and conceptual analysis

Through the past two chapters, this thesis has examined the practical development and application of the human right to a healthy environment itself in international, regional and domestic contexts, as well as elements that inform it. With the previously discussed analyses in mind, the final chapter of this thesis aims at conducting a critical and conceptual analysis of how the right to a healthy environment is brought into fruition, specifically examining the theory surrounding the growing internationalization of environmental rights, the effects, benefits and challenges of their constitutionalization, and the elements, benefits and shortcomings of rights-based approaches. The aim of this chapter is to make an attempt at recommending what next steps need to be taken after the universal recognition of the right to a healthy environment by the UN and to finally answer the research questions.

A. Theorizing the growing internationalization of environmental rights and governance

Having examined multilateral declarations, agreements and regional human rights instruments, it is fair to say that environmental human rights law has developed extensively over the past three decades, - despite the absence of a right to a healthy environment in the Universal Declaration of Human Rights or any other global human rights treaty. There are three significant ways in which this area of law has developed that this thesis has showcased: through the widespread adoption of environmental rights in the vast majority of national constitutions and exceptionally in regional treaties (Banjul Charter, Escazu Agreement), through the 'greening' of human rights (such as the rights to life and health) by applying them on environmental matters, and through the inclusion of procedural rights in multilateral environmental instruments.

In order to understand the evolution of the right to a healthy environment as component of international environmental law one can use the legal structure by what has been called the 'Age of Rights'[230] and conceptualize it as a pyramid, the highest places of which are given to the instruments that have the broadest geographic scope. The first two levels are occupied by the Universal Declaration and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. In the next level are other UN treaties and declaration, with regional agreements below it and national constitutional rights in the broad base. Using

[230] Henkin, Louis. *The Age of Rights*. Columbia Univ. Press, 2002.

this pyramid theory, Knox argues that, even though in principle new rights may enter at any level of this pyramid and spread vertically or horizontally, in practice it has been unusual for a new right to migrate upward from national to international level[231]. He then questions where the right to a healthy environment sits in the pyramid. Through the previously mentioned paths of development of environmental human rights norms, it can be argued that they are contributing in establishing a new right to a healthy environment, which now sits in the third level as, even though not legally-binding, it has officially been recognized in a General Assembly resolution[232].

Despite the 2022 UNGA Resolution adding significant prestige to the notion of a right to a healthy environment, it is certain that without bold provisions and an innovative approach, it will only remain as a symbolic gesture and not a significant step in the international human rights law evolution[233]. Such was also the concern for the 2021 UNHRC Resolution which – despite its significance because of the body's role in recognizing new human rights[234] and its normative effect with a potential to catalyze international law[235] - it is still not legally-binding. However, because of its orientating role, Perusso predicted that it could contribute to the invention of international custom and influence the regional human rights systems (such as that established by the European Council) to formally recognize the right to a healthy environment, and guide judges' and decision-makers' interpretation of relevant existing law[236]. This interpretation seems to be based on previous internationalization processes of other human rights, and it shows that environmental rights cannot be the exception, especially because of highly affected they are by cross-border issues.

Seeing as the right to a healthy environment, or elements that inform it, have been part of international environmental law for three decades, a question arises as to why it has not been legally recognized by any human rights bodies thus far. According to Boyle, an example of what has interfered with such a development are the definitional problems, which he argues are inherent in any attempt to postulate environmental rights in qualitative terms[237], which in this

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[231] Knox, John H. "Constructing the human right to a healthy environment." *Annual Review of Law and Social Science*, vol. 16, no. 1, Oct. 2020, pp. 79–95, https://doi.org/10.1146/annurev-lawsocsci-031720-074856.
[232] Ibid
[233] Dr. Köböl-Benda, Vivien. "The current status of the right to the environment at the Global International Law." *Opolskie Studia Administracyjno-Prawne*, vol. 20, no. 1, 29 June 2022, pp. 117–143, https://doi.org/10.25167/osap.4770.
[234] Ibid
[235] Ibid
[236] Ibid
[237] Brown Etareri Umukoro, and Oghenerukevwe Ituru, 'Conceptual Challenges to the Recognition and Enforcement of the Right to Clean, Safe, and Healthy Environment' (2022) 02 (02) Journal of Environmental Law & Policy 1-28 https://doi.org/10.33002/jel02.02.01

case refers to the term 'healthy'. He ascertains that what constitutes a healthy environment might be incapable of substantive definition or even prove to be meaningless and effective, resulting in undermining the whole notion of human rights. Boyle notes however that the strongest argument in favour of qualitative environment rights is that other human rights are dependent on adequate environmental quality and cannot be realized without government action to protect the environment[238]. In terms of defining – or rather identifying the meaning of – what constitutes an acceptable environment, Boyle argues that it is important to ensure the right processes for doing so at both the internal and international level, instead of defining a 'vision of its substantive outcome'[239]. That is because the internationalization of the domestic environment becomes more extensive through policies of sustainable development and the role of human rights law in democratizing national decision-making processes. Nevertheless, Boyle argues that the extent of this internationalization of the domestic environment should not be exaggerated, as national legal systems will continue to vary greatly in the degree to which they give priority to environmental protection[240]; thus, he presents an argument which is neither for nor against the global establishment of the right to a healthy environment.

On the other hand, Alston supports that the conception of human rights is changing at present day, and that the right to a healthy environment is contributing to its evolution[241], as he argues it is bound to make a major contribution to the overall human rights regime by undermining the longstanding strategy on the part of many states (such as the USA) of keeping human rights separate from other areas of law. He argues that the process of norm generation has been significantly democratized during the past three decades, seeing as a diverse range of actors now serve as 'norm entrepreneurs' and some of them, especially treaty bodies have been highly active in the creation of environmental rights. Instead of following the previously mentioned quire rigid strategy, such processes have been overtaken by a more flexible route of identifying expansive normative implications flowing from established rights[242].

Following this argument, Alston also enquires as to whether the right to a healthy environment is a completely new right or whether it derives from other established ones. Environmental human rights supporters maintain that the discourse surrounding the right to a

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[238] Merrills, J.G. "Environmental Protection and Human Rights: Conceptual Aspects" *Human Rights Approaches to Environmental Protection*, edited by Alan E. Boyle and Michael R. Anderson, Oxford University Press, Oxford, 2003.
[239] Ibid
[240] Ibid
[241] Alston, Philip. "The right to a healthy environment: Beyond Twentieth Century conceptions of rights." *AJIL Unbound*, vol. 117, 2023, pp. 167–172, https://doi.org/10.1017/aju.2023.30.
[242] Ibid

healthy environment takes human rights law into a new territory and presents important opportunities for further developments both of the right itself and components of the overall system[243]. To some the question of intrinsic value of the environment still remains unanswered in the context of human rights, however it is arguable that the relationship between human rights and environmental protection has not evolved by accident, because they have clear common objectives[244]. As such, human rights have developed into a common language of ethical discourse, which means that a human rights approach to environmental matters can rely on a fairly coherent and well-developed set of norms, as Pirjatanniemi suggests[245].

In terms of answering the question of whether it is a new or derived right, having examined the continuously emerging jurisprudence which recognizes its components, one could attest that we are witnessing the birth of a new right, as well as taking into consideration what a 'new right' is defined as. Alston references a definition which states that new rights are those "that, when first conceived, are not expressly recognized in any human rights treaty and are not in any other way recognized as rights in a legal sense"[246], which – as we have seen in the previous chapters – rings true for the legal standing of the right to a healthy environment.

Traditionally, as Alston reminds us, diplomatic negotiations have been viewed as the means of developing new standards which might or might not have involved 'new rights', but this has not been the case with the right to a healthy environment. As observed in previous chapters, it has evolved through much more scattered means, over a longer period of time, as well as with a much bigger set of actors who made major contributions at each stage of the process[247]. It is undeniable that because of its history, the fact that the right to a healthy environment has achieved formal recognition by one of the significant bodies of global politics is a momentous event in international human rights and environmental law. As such, it makes sense to anticipate that its recognition will have important implications for its future normative development, interpretation and application.

[243] Ibid
[244] See note 173
[245] Ibid
[246] See note 241
[247] Ibid

B. The effects of constitutionalization of the right to a healthy environment

Throughout this thesis, focus has been placed on the international and regional implications of the implementation of the right to a healthy environment and its components within human rights law. Having realized the immense importance of international law which is a vital contributor to the establishment of norms and which offers a court of last resort for human rights violations, it is necessary to recognize that most of the action to protect and fulfill human rights occurs at the national level. Generally, the process of human rights constitutionalizing for a healthy environment is viewed as a 'political and systemic, massive legal movement'[248] and that "it embodies the recognition that the environment is a proper subject for protection in constitutional texts and for vindication by constitutional courts worldwide"[249]. As such one can argue that a country's constitution is the highest and strongest law domestically, as it also protects human rights, sets state obligations and restricts the powers of government. On the latter matter Kotzé comments that "there is undoubtedly something inherently constitutional about human rights law in that it functions to limit what governments can do to persons within their jurisdictions"[250]. Taking all this into account, in order to be able to answer the research question as to why international recognition of the right is necessary, in this section an analysis will take place in regard to the benefits and challenges offered by its constitutionalization in national governments.

Current Special Rapporteur on Human Rights and the Environment, David R. Boyd, published an investigative report in 2013, entitled the 'Effectiveness of Constitutional Environmental Rights'[251], investigating the benefits and challenges posed by the constitutionalization of environmental rights and in particular the right to a healthy environment. As such, he posed the following questions: "is the constitutional right to live in a healthy environment a 'paper tiger' with few practical consequences? Or is this right a powerful catalyst for accelerating progress towards a sustainable future?". Within his research, Boyd found that (as of 2013) 182 of the 193 UN Member States recognize the right through their constitution, environmental legislation, court decisions or ratification of an international

[248] Aspan, Z, and A Yunus. "The right to a good and healthy environment: Revitalizing green constitution." *IOP Conference Series: Earth and Environmental Science*, vol. 343, no. 1, 2019, p. 012067, https://doi.org/10.1088/1755-1315/343/1/012067.
[249] May and Daly, mentioned by Kotzé in Grear 2015
[250] Kotzé in Grear 2015
[251] Boyd, David R. *The Effectiveness of Constitutional Environmental Rights*, 26 Apr. 2013.

agreement, examples of such states having been referenced in previous chapters of this thesis, such as Portugal and Kenya[252].

Through his research, Boyd demonstrated that the positive effects of the constitutionalization of the right to a healthy environment overtake the challenges caused by it, as its incorporation leads to two important legal outcomes: stronger environmental laws and court decisions defending the right from violations. These outcomes can be seen in some nations where laws have been amended to specifically focus on environmental rights (including the procedural ones) and where the right to a healthy environment has become a unifying principle permeating environmental law and policy as a whole[253]. The example of Argentina is brought forward, which reformed its constitution in 1994, so as to include the right to a healthy environment, an act which "triggered the need for a new generation of environmental legislation"[254].

Additionally, the constitutionalization of the right to a healthy environment also contributes in ensuring advance screening of new laws and regulations to ensure that they are consistent with the government's duty to respect, protect and fulfill the right, as well as in closing gaps in environmental law[255]. Constitutionalization also provides a legal advantage in potentially preventing rollbacks of environmental laws and policies, seeing as they represent a baseline which is allowed to be improved but not weakened[256], and goes in line with the principle of 'non regression'. Moreover, Boyd found that recognition of the right to a healthy environment in national constitutions can facilitate increased implementation and enforcement of environmental laws, as – based on the right – communities and NGOs in several countries have supplemented the enforcement efforts of the state and drawn attention to violations; a case of which is presented in Brazil where reports can be made to the independent Ministerio Publico, which conducts investigations, civil actions and prosecutions.

The constitutionalization of the right to a healthy environment does not only positively affect the state of national legal systems, but also ensures that procedural environmental rights of citizens are respected. In many states which recognize the right in question, attendance in administrative processes and courthouses is more available to citizens, who are also more

[252] Ibid
[253] Ibid
[254] J.R. Walsh, "Argentina's Constitution and General Environmental Law as the Framework for Comprehensive Land Use Regulation," in N.J. Chalifour, P. Kameri-Mbote, L.H. Lye, and J.R. Nolon, eds., *Land Use Law for Sustainable Development,* (Cambridge: Cambridge University Press, 2007, 503-25 at 505).
[255] See note 252
[256] L. Lavrysen, "Presentation of Aarhus-Related Cases of the Belgian Constitutional Court," *Environmental Law Network International Review* 2007/2: 5-8.

readily provided with relevant environmental information, even if they are not part of the public concerned. Equally, procedural innovations in several states have increased citizens' ability to seek judicial protection of their constitutional rights, including the right to a healthy environment, which can be found in many Latin American nations. Furthermore, constitutionalization has led to increased accountability for public and private actors, with court rulings showing that governments have three main duties, in relation to the right to a healthy environment: to respect it by not infringing it through state action, to protect it from infringement by third parties and actively try to fulfill it[257]. Ultimately, Boyd has found that the constitutionalization of the right to a healthy environment promotes environmental justice, provides a level playing field with competing social and economic rights, and brings forth the need for the education of judges, enforcement agencies, prosecutors and other actors relevant to the implementation and enforcement of environmental laws relating to the right in question[258].

Nevertheless, Boyd clarifies in his report that even though legislative developments are significant, when considering the effect of constitutional environmental rights, we need to investigate whether they contribute to a better environmental protection and state. Even though such evidence is limited, he argues it is generally positively, as nations with environmental provisions in their constitutions have smaller ecological footprints, have faster emissions reductions and are more likely to ratify international environmental agreements[259]. Despite such substantive and procedural benefits provided to citizens of countries which have constitutionalized the right to a healthy environment, there are still critiques against it. Firstly, that there are countries where constitutional environmental rights and responsibilities have not had a significant impact, in particular due to the absence of rule of law, widespread poverty, civil wars, or authoritarian governments, which are all potential obstacles in the realization of the human right to a healthy environment. Secondly, Boyd notes that 'excessive judicial activism can undermine democracy by shifting power from elected politicians to unelected judges' – something which is however rare[260].

The main obstacle to full constitutionalization of the right to a healthy environment, however, is that still dozens of countries have not incorporated environmental rights into their constitutions, which claim that is either due to extreme difficulties in amending them, or that

[257] See note 251
[258] Ibid
[259] Ibid
[260] Ibid

the right is implicit in other constitutional rights, deeming it not necessary to be incorporated itself. An example of such a nation is the United States, as mentioned in previous chapters of the thesis, it has been continuously adamant in not including the right in their constitution. Another main obstacle for the non-inclusion of the right to a healthy environment in at least 20 nations, according to Boyd, is that their constitutions do not include explicit environmental rights at all, and that supreme or constitutional courts have ruled that right to life includes an implicit right to a healthy environment[261]. May and Daly's study showed that countries are more likely to implement a new constitutional environment right if they have already recognized multiple other economic, social and cultural rights in their constitutions[262]. This indicates that the right to a healthy environment – having been adopted by the majority of nations – has climbed to the level of 'statist' rights, however has not yet gained genericity, because there still exists the view that the constitutionalization of environmental protection – through means such as this right – remains largely symbolic within regulatory matters because constitutional provisions are usually weakly enforced and weakly specified[263]. Nevertheless, due to the fact that environmental rights have been adjudicated countless times by several national courts stands as strong evidence that a new human right to a healthy environment would not be too vague to practically implement, as some scholars have argued.

Ultimately, evidence shows that constitutional protection of environmental rights can be powerful and transformative in achieving ecological sustainability, considering that the adoption of substantive political and socio-economic human rights, bearing on environmental interests, predominantly occurs at a domestic constitutional level, suggests that constitutions are almost always the legal avenue to implement and establish human rights[264]. In general, constitutionalism is a concept which people might be more inclined to understand intuitively and to accept, as Kotzé argues. All in all, constitutionalism of environmental rights is massively effective in the process of their universal recognition, as it is largely transformative in its ability to create 'new beginnings' for greater environmental care, even if it does not have immediate or definite results[265], seeing as it contributes massively to the creation of an 'overarching framework for directing environmental policy'[266].

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[261] Ibid
[262] J.R. May and E. Daly, *Global Environmental Constitutionalism* (Cambridge University Press Kindle Edition 2015) 168/11268.
[263] Grear, Anna, and Louis J. Kotzé. *Research Handbook on Human Rights and the Environment*. Edward Elgar Publishing, 2015.
[264] Ibid
[265] ibid
[266] J.R. May and E. Daly, *Global Environmental Constitutionalism* (Cambridge University)

C. Elements, benefits and shortcomings of rights-based approaches

Throughout the entirety of this thesis, efforts have been made to answer the main research question of why the right to a healthy environment should be recognized in international law as a human right. Within this section of the final chapter, an analysis will take place in order to be able to identify which theoretical approach is the most suitable to promote its recognition, so as to ensure effective environmental protection, therefore answering the secondary research question. Multiple mentions have been made of the human rights-based approach (HRBA) throughout this thesis, as it has clearly informed the evolution of the right to a healthy environment within the global legal status quo, resulting in both of the UNHRC and UNGA resolutions formally recognizing it.

However, questions have been raised by scholars, as to why should environmental matters be approached through human rights at all. Even though the three approaches of developing environmental human rights identified by Knox (the widespread adoption of environmental rights in regional treaties and national constitutions, the 'greening' of human rights and the inclusion of procedural rights in multilateral environmental instruments)[267] are the paths taken in establishing the right to a healthy environment thus far, this thesis argues that there could be other potential theoretical approaches of ensuring environmental protection, so that this human right is protected.

There is no doubt of the tendency for environmentalists and human rights activists to work together toward common goals[268], particularly due to the common understanding that humans and the environment are inter-related and inter-linked and, as such, recognition of the rights of one leads to recognition of the other's[269]. However, there seems to be a clear degree of discourse among these groups, as environmentalists tend to distrust the priority which human rights activists are likely to accord to human beings over other species and the environment as a whole, as well as that they suspect there is a structural contradiction between fulfilling existing rights and effective protection of limited environmental resources[270]. On the other hand, human rights activists have criticized the environmental movement for disregarding immediate human

[267] See note 232
[268] Anderson M. "Human Rights Approached to Environmental Protection: An Overview" *Human Rights Approaches to Environmental Protection*, edited by Alan E. Boyle and Michael R. Anderson, Oxford University Press, Oxford, 2003.
[269] Ghosh, Shelley, Right to Environment and Right of Environment- A Critique (May 20, 2012). http://dx.doi.org/10.2139/ssrn.2062997
[270] See note 268

needs in order to protect the environment[271]. As Anderson argues, the lack of clarity between human rights and environmental protection materializes in two ways[272]. Firstly, environmental protection can be viewed as a means to the end of fulfilling human rights standards, as the creation of a reliable and effective system with this goal could help ensure intergenerational and intragenerational equity. Secondly, the legal protection of human rights is an effective means to achieve conservation and environmental protection, and as such the full realization of a broad spectrum of rights would lead to a context where claims for environmental protections would be more respected. Anderson also argues that this view of the interconnection of human rights and the environment provides for the need to adopt an inalienable human right to a healthy environment, as well as legal means to enforce it. If this was conceptualized, he argues that the law's focus would shift from the impact of the environment on other human rights to the quality of the environment itself.

Nonetheless, this shift would still lead to environmental matters being viewed through an anthropocentric lens, as the right to a healthy environment is often considered to be solely a human right, and thus the environment is only to be seen in terms of human benefit; ensuring environmental protection only to ensure human survival. Many environmentalists have argued that such a strict anthropocentric perspective holds that only human beings are morally valuable – as they possess the property of rationalism – and that it is only for their benefit that the environment needs to be protected[273]. But, how can we evaluate this anthropocentric perspective of rights-based approaches?

As observed in previous chapters, international environmental law and human rights law are intertwined in the sense that together they tackle challenges that have to be often resolved simultaneously so as to ensure human survival. Within this context, the right to a healthy environment has emerged as both a substantive and constitutional right in several instances, as correlations have been drawn between it and other rights, such as the right to life. Even though it has received much criticism for being anthropocentric, proponents of the right to a healthy environment deem the HRBA a critical tool for empowering those impacted by environmental activities and enhancing accountability for decision-makers, so as to identify and strengthen the relationship between 'duty bearers' and 'rights holders'[274]. As it encompasses all human rights related to the environment, the HRBA's benefits have been identified by the UNDP as

[271] Ibid
[272] Ibid
[273] See note 270
[274] See note 104

the establishment of consistent global environment human rights standards, so as to facilitate appropriate interventions at each level, strengthened State capacities to meet their human rights and environmental obligations, enhanced accountability by enabling citizens to uphold their rights and hold stakeholders accountable, as well as more effective, legitimate and sustainable outcomes of international environmental law[275]. The HRBA is also believed to enhance equitable sharing of both benefits and negative impacts, burdens and risks, as well as engagement with groups which are disproportionately impacted by environmental degradation[276]. Additionally, the HRBA is claimed to provide a more integrated approach to environmental issues, as analyzing such issues through the human rights lens allows for a better understanding of how law, norms, traditional practices and institutional actions affect them in positive or negative ways, and can lead to more focused strategic interventions, so as to address the structural causes of environmental problems[277].

This approach, as beneficial as it seems, has received significant criticism. Some argue the environmental human rights in reality do not have much to do with environmental protection for the sake of it, but rather to benefit human well-being. Ecological rights (or the rights of nature), on the other hand, challenge the anthropocentric view of the environment being a commodity of human interest. The ecocentric approach requires human beings to give moral considerations to every living being and ecosystem, as it views human needs inevitably being in conflict with environmental well-being[278]. The distinction between the two kinds of rights is identified by Mushkat, who argues that discord between the proponents of each type "stems from intellectual tension, real or apparent, between the anthropocentric and ecocentric philosophical perspectives, as the former conceives the environment, implicitly or explicitly, as a mere good which serves to satisfy human needs and possess no intrinsic value in itself [and the latter] posits that the environment is a condition of all life on earth"[279]. Anderson argues that a "human right for environmental protection, no matter how ambitious in its protective objectives, is still a human right" and that "when the right to life is expanded to include those aspects of environmental protection which are necessary to preserve and foster human well-

[275] Ibid
[276] Ibid
[277] "Human Rights Based Approach and Climate Change, Environment And ..." *Sida*, May 2023, cdn.sida.se/app/uploads/2023/06/26122432/10205933_Sida_TN_HRBA_Climate_Change_webb.pdf.
[278] See note 270
[279] See note 237

being, components of the natural environment are clearly being treated as instrumental means to a distinctly human end"[280].

Such perspectives indicate a very strict view of the anthropocentricism encompassing environmental human rights. Redgwell argues that, even though international environmental law as a whole has been criticized as having a sole anthropocentric focus, there is still something to be said about the, increasingly accounted for, intrinsic value of the environment within contemporary law[281], evidence of which are the numerous examples of environmental treaties for the conservation of species and habitats adopted internationally. As more and more treaties became concerned with the quality of environmental existence, rather than existence in itself, Redgwell notes that a conceptual shift became evident, from the sole reason for environmental protection being conservation, to 'ecological consciousness'[282]. As a consequence, increasing recognition of the intrinsic value of the environment and its components has been observed. Redgwell argues that, because of this consequence, there has been a rise of 'indirect instrumentalism'[283], however there are still concerns that enhanced environmental awareness manifested in concern for ecosystem and species protection, which might still be a product of the perception that the existence (or well-being) of humans is threatened or diminished through environmental destruction, rather than concern for the environment in itself[284].

This is where ecocentrism comes in, as it encompasses a holistic view of the natural world, and supports a "fundamental shift in consciousness from human domination of nature to a perception of human and non-human life as of equal intrinsic value"[285]. This ecocentric approach enshrines elements of the 'deep ecology movement' which emphasizes a 'deeper, more spiritual approach to nature'[286], which can be identified in several indigenous populations' relationship with the natural environment. A more modern version of this approach, which still derives from indigenous worldviews conceptualizing humans and the nonhuman environment as inseparable, is applied by the 'Rights of Nature' movement, which calls for the extension of rights and legal personhood to nature, to non-human and even non-

[280] Anderson in HR approaches to env protection ,ch1
[281] Redgwell in HR approaches to env protection, ch4
[282] ibid
[283] 'Indirect instrumentalism', though still encompasses the environment as a tool for human progress and survival, does not perceive human beings to be apart from or superior to the natural world.
[284] Redgwell in HR approaches to env protection, ch4
[285] ibid
[286] ibid

living human natural entities[287]. The proponents of this movement support that, even though revolutionary, giving nature the status of legal personhood has proven to be challenging, due to the deeply entrenched nature of anthropocentrism globally and due to economic motivations continuing to override environmental concerns[288]. Even though, as we've examined in previous chapters, most soft and hard law treaties concerning the environment have been led by anthropocentric perspectives, there have been attempts to bring ecocentric approaches to a global level, through documents such as The Earth Charter, the Universal Declaration of the Rights of Mother Earth and The Future We Want[289]. Moreover, despite the challenges of turning nature from a legal object to a legal subject, such changes have manifested in a number of countries, such as Colombia where both the Amazon Forest and the Atrato River have gained rights through court decisions[290] and New Zealand where some sites of particular importance for the Māori people, such as the Whanganui River have been granted with legal personhood[291].

Taking all this into consideration, how can we determine which approach is more effective for environmental protection? Boyle poses the pivotal question of "should we transcend the anthropocentric [view] in favour of the ecocentric"[292]. Undoubtedly, there is inevitable anthropocentrism within human activity, which means that it is impossible to separate human interests from environmental protection, and which meets the criticism that the right to a healthy environment does not take into consideration the rights of nature. Redgwell argues that, in order to ensure that non-human values are taken into account in the exercise of human activity is through procedural rights which, even though possess a level of anthropocentricity, are 'capable of embodying the pragmatic incorporation of the interests of non-humans into the legal process'[293]. She concludes that anthropocentric criticisms of a HRBA to the environment will be harder to meet if a substantive right to a healthy environment is officially recognized, although much depends on its substance and the 'environment's'

[287] Sundström, Edda. "The 'Rights of Nature' Movement: Potential for an Ecocentric Reorientation of Environmental Law?" *CYIS*, CYIS, 30 Nov. 2021, www.cyis.org/post/the-rights-of-nature-movement-potential-for-an-ecocentric-reorientation-of-environmental-law.
[288] Ibid
[289] Ibid
[290] Bryner, Nicholas. "Colombian Supreme Court Recognizes Rights of the Amazon River Ecosystem." *IUCN*, 27 June 2022, www.iucn.org/news/world-commission-environmental-law/201804/colombian-supreme-court-recognizes-rights-amazon-river-ecosystem.
[291] Aguila, Yann. "The Right to a Healthy Environment." *IUCN*, 28 June 2022, www.iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment.
[292] See note 237
[293] Redgwell C. "Life, The Universe and Everything: A Critique of Anthropocentric Rights" *Human Rights Approaches to Environmental Protection*, edited by Alan E. Boyle and Michael R. Anderson, Oxford University Press, Oxford, 2003.

interpretive scope[294]. That is because such a right's recognition is bound to have a positive spill-over effect on the non-human components of the environment as well, an effect which is inevitable even without the official recognition of the rights of nature, as it is impossible to separate human interest from environmental protection. As such, because of the increasing awareness of the interconnectedness of human beings and the environment (including its intrinsic value), it is unlikely that the recognition of a human right to a healthy environment will mean a denial of non-human rights[295]. Ultimately, combining rights-based approaches might be the ideal option in order to encompass the well-being of all components of the natural environment – living or not – without contributing to it an instrumentalist value, which would be bound to raise concerns of anthropocentrism.

[294] Ibid
[295] Ibid

5. Conclusions: How do we move forward?

The path toward universal recognition of the human right to a healthy environment has truly been a tumultuous one, being one of the groundbreaking representations of the link between international human rights and environmental law, as well as a potential means to ease fragmentation between various branches of international law, and specifically by integrating the fields of international environmental and human rights law[296]. With its official recognition at the international level, through the UN General Assembly resolution of 2022, there is hope that the stage is now set for its advancement at the domestic level in jurisdictions where it has not been given outright recognition[297]. This thesis has examined the overall development of the right to a healthy environment in international, regional and national contexts, and has sought to answer the questions of why this right should be recognized as a human right within international law and which approach in doing so is more ideal so as to ensure effective environmental protection.

Seeing as its recognition is still very recent, one can only make predictions regarding its direct influence on international environmental law, as well as the level of effective environmental protection it could result in. Such predictions are based on existing constitutional and regional recognitions, of what this monumental recognition could add to the existing body of international and domestic environmental human rights law. Former UN Special Rapporteur John Knox, posits that due to its rapid growth might lead it to become part of the list of generic fundamental rights, as it can lead to the equalization of commitment levels to the right[298]. He explains that this development can lead to the right to a healthy environment introducing a formal legal basis on which citizens can depend on, if their environmental rights are not sufficiently protected, and hence contributing to the existing body of detailed states' obligations to protect citizens from environmental harm[299].

Having examined the overall influence of soft law, one can recognize that the right being recognized through a UN resolution – even though not legally-binding – is quite significant, because such decisions can affect human right law by providing evidence of emerging customary norms and creating a template for later – possibly legally-binding – treaties. This resolution in particular, Knox explains, could have several potential effects on

[296] See note 233
[297] See note 237
[298] See note 232
[299] Ibid

environmental protection efforts. Specifically, he argues that it would develop the language of human rights by confirming that the global language of rights applies to environmental issues; although it seems that such a language is difficult to attain, its globalization is definitely significant, because translating human or environmental interests into rights expresses a shared, collective sense of its importance, which could result in "energiz[ing] movements and coalitions advocating for their rights"[300]. This would have significant impacts on those most vulnerable to environmental harm, who are often marginalized and disempowered, as their well-being would be more equally considered by recognizing that their environmental rights are on the same level with other fundamental rights considered vital for human dignity, equality and freedom.

Moreover, Knox argues that recognition of the right to a healthy environment could fill gaps in international environmental law, by using human rights norms, as it would bring attention to one of its shortcomings: its focus on transboundary environmental harm, whereas human rights law tends to focus on internal state obligations[301]. Although it might seem unlikely that recognition of a new right would lead to the creation of new and effective national laws for environmental protection, it could provide a significant basis for a global agreement. Furthermore, this recognition of this right could strengthen international enforcement legal bases, despite its non-legally binding nature, as it might encourage more claimants to bring forth claims on environmental matters to international tribunals[302]. Lastly regarding effects on environmental performance, recognition of the right to a healthy environment could improve it at the national level, as it could lead to more of them either introducing or reenforcing procedural environmental rights, so as to provide individuals and communities with remedies which they would not have access to otherwise.

Since it enforces the linkage between human rights and the environment, Knox predicted that the recognition of the right to a healthy environment would also have potential effects on human rights. One example is its contribution in confirming the extraterritorial scope of human rights law, in the context – as abovementioned – which environmental claims could test the willingness of international bodies to expand their jurisdiction in a transboundary manner, as a large level of environmental harm crosses borders and as such remedies are determined by international environmental law[303]. Additionally, as human rights law has

[300] Ibid
[301] Ibid
[302] Ibid
[303] Ibid

generally tended to avoid identifying rights of future generations, the recognition of the right to a healthy environment could urge human rights bodies to consider claims based on long term environmental harm (such as the effects of climate change), which would further clarify intergenerational rights. Last but not least, Knox argues that a continuously developing understanding of human dependence on biodiversity, which the recognition of the right to a healthy environment reinforces, would minimize the gap between anthropocentric and ecocentric approaches to environment protection[304].

Clearly, because of the everchanging nature of the global legal status quo, no one can be certain about the results of such a monumental development, however this thesis has proven that international environmental law considers human rights and vice versa. At this point, following the UN General Assembly Resolution, there are already processes of obtaining advisory opinions from states, growing climate change litigation at the national level and treaty bodies are becoming increasingly aware of the need to consider the environmental factor within their extensive interpretive functions; hence, the process of the realization of the right to a healthy environment is bound to take place in several contexts[305]. Naturally, there are concerns that these processes could lead to further fragmentation, but this thesis argues that it is more likely that they will involve constructive, although complex, interactions among relevant actors[306]. Undoubtedly, recognition of the right on its own will not have any significant effect, so such processes are necessary, in order to potentially lead to a legally binding multilateral agreement confirming it as a fundamental right.

As found through this thesis, a legalized universality of the right to a healthy environment is not only necessary to global environmental protection and sustainable development, but it could also be considered unavoidable, if one reviews the process of continuous internationalization of environmental rights in the 20th and 21st centuries. It included a comprehensive analysis of the development of international environmental law in the past three decades, as well as an examination of regional application of tools and mechanisms that oftentimes find their legal basis on international instruments. So, a comparative analysis took place in order to determines how big a role the right to a healthy environment plays in each region. In order to be able to answer the research questions, the last chapter included an analysis of the theoretical and rights-based approaches influencing the right

[304] Ibid
[305] See note 241
[306] Ibid

and its components, as well as a general look upon its continuous internationalization and constitutionalization.

Thus, *considering the transformative power that derives from universal recognition, why should the right to a healthy environment be recognized in international law as a human right?* As we've seen, the answers vary; because of the several benefits it would offer for environmental protection efforts and its potential to close gaps between international human rights and environmental law. By potentially giving birth to a new generation of rights, it could provide countries and their citizens with the opportunity to appeal to international courts if their right to a healthy environment is violated. Despite the challenges faced by international human rights bodies, which lead to the assumption that a legal realization will not take place in the near future, the GA resolution is still an outstanding event in international environmental law history, although itself is not enough for real progress to be made.

And, *what would be the most advantageous approach for promoting the right's recognition in order to guarantee environmental protection?* Having studied the practical and theoretical approaches taken thus far for the realization of the right to a healthy environment, it is reasonable to argue that greening existing human rights is not the same as its explicit declaration. The former approach can be viewed as anthropocentric and could lead to the environment being of dependent status, without respecting its independent value as a set of elements that deserve protection for their own sake, rather than the potential limitation of benefits to humans. This thesis suggests that the anthropocentric approach should be combined with the ecocentric, in a way that the two are complementary, so as to guide the creation of a high level, legally binding, globally accepted international declaration to be a point of reference for matters involving both environmental and human rights law-making and implementation. Protecting and improving environmental protection, and developing and implementing environmental law could promote several human rights linked to the right to a healthy environment, and vice versa. Thus, a combination of the two approaches is ideal, as it would recognize the inherent value of both legal areas.

Ultimately, the environment's own value needs to be realized within this proposed agreement, which would have to include bold and innovative provisions so as to avoid remaining symbolic, as well as to promote the protection of future generations and those most vulnerable to environmental degradation. Such a development is bound to result in effective change and contribute to efficient environmental protection.

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