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*Guest Columnist*

## Is the U.N. declaration on a ‘human right to a healthy environment’ a meaningless gesture?

There is strong evidence that such “soft law” resolutions positively affect U.N. member-nations policy-making processes.



Smoke and steam rise from a coal processing plant in Hejin in central China's Shanxi Province.  
[ SAM MCNEIL | AP ]

On July 28 the United Nations General Assembly for the first time recognized “the right to a clean, healthy and sustainable environment as a human right.” Among its provisions, the U.N. calls on nations to uphold this human right through “the full implementation of the multilateral environmental agreements” and the adoption of policies which “scale-up efforts to ensure a clean, healthy and sustainable environment for all.”

The U.N. hopes that this resolution will prompt member-nations to include the right to a healthy environment in national constitutions and other legal instruments. Such legal measures could give environmental activists effective ways to challenge ecologically destructive policies. The executive director of the U.N. Environment Program (UNEP), Inger Andersen, stated: “This resolution sends a message that nobody can take nature, clean air and water, or a stable climate away from us — at least, not without a fight.”

This new U.N. resolution, as well as other U.N. recommendations and declarations, are often referred to as “soft law” since they are not legally binding on states. Since the U.N. has no power to force nations to act on these measures critics assert that such efforts are merely rhetorical “feel-good” exercises with limited utility. Some commentators thus undoubtedly label this new resolution a meaningless gesture having zero impact on environmental policy-making.

Are these critics correct? Is the U.N.’s adoption of a human right to a healthy environment a meaningless gesture?

In fact, there is strong evidence that such “soft law” resolutions positively affect U.N. member-nations policy-making processes. In the research for our book “*Human Rights and Public Goods*,” Professor Diana Fuguitt and I uncovered multiple examples of the positive impact of U.N. nonbinding resolutions and declarations on state behavior, in particular in relation to protecting the environment. The combined impact of these “soft law” instruments should not be underestimated. As soft law norms evolve, it becomes increasingly difficult for nations to ignore internationally accepted human rights principles.

Since the 1972 Stockholm Conference on the Human Environment, the U.N. has produced numerous soft law resolutions and declarations on the importance of sustainable development, species preservation, ecosystem protection, biological

diversity and climate change. These “non-binding” instruments have had a direct impact on national legislation and national constitutional provisions. This global environmental standard setting has contributed to at least 44 states adopting clauses related to environmental protection in their national constitutions.

In addition, environmental activists increasingly use law to pressure countries to address critical environmental issues. In the Netherlands, the leading court declared that climate change is a direct threat to human rights and ordered the Dutch government to do more to cut carbon emissions. In Brazil the Supreme Court recently declared that the Paris climate change agreement was a human rights treaty and should supersede national law. In Latin America and the Caribbean indigenous peoples have utilized human rights law to campaign against logging, mining and oil exploration in protected areas.

Unfortunately, these environmental rights defenders face severe repression. The international environmental organization Global Witness reports that a total of 227 environmental activists were killed in 2021, the deadliest year on record. Environmental organizations in civil society depend upon such human rights as the right to associate and freedom of speech to lead successful environmental movements. In countries where civil and political rights are weak, such as China and Russia, ecological damage is often high.

Environmental protection and human rights protection are linked, as both strive to guarantee basic human survival. A human right to a healthy environment embraces claims to sustain life over generations for all individuals and groups.

The new U.N. resolution on the human right to a healthy environment gives the global community another tool to fight for ecological balance. As David Boyd, the U.N. Special Rapporteur for Human Rights and the Environment, stated: “These resolutions may seem abstract, but they are a catalyst for action, and they empower ordinary people to hold their governments accountable in a way that is very powerful.”



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