



Various Visions of Environmental Mainstreaming within the UN

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In October last year, the Human Rights Council (HRC) recognised the right to a clean, healthy, and sustainable environment as a human right. There has been no similar progress in other UN bodies. A Security Council (UNSC) resolution on the climate crisis failed two months later on a Russian veto. The next big test for the international community is this year's planned adoption of the Global Pact for the Environment.

Latest Achievements. On 8 October 2021, the HRC adopted Resolution 48/13 "Human right to a clean, healthy and sustainable environment", sponsored by Costa Rica, Maldives, Morocco, Slovenia, and Switzerland, by a majority of 43 votes in favour (including Poland), with four abstentions (China, Japan, India, Russia). The document was supported, among others, by 1,300 NGOs, including Greenpeace and Amnesty International, as well as activists and businesses. Unlike other resolutions that recognise the importance of the environment for human wellbeing, this one explicitly defines a sustainable environment as a human right. Until now, such status has been part of only the African Charter of Human and Peoples' Rights and the Protocol of San Salvador to the American Convention on Human Rights.

In a subsequent resolution, 48/14, adopted despite Russia's opposition and abstentions by China, Eritrea, Japan, and India, the HRC appointed a special rapporteur on the promotion and protection of human rights in the context of climate change. This expert deals, at least in part, with the environment, following in the footsteps of rapporteurs on the implications for human rights of environmentally sound management and disposal of hazardous substances and wastes (1995), on the right of everyone to enjoy the highest attainable levels of physical and mental health (2002), and on human rights and the environment (2012). The expert's mandate is to support the development of the right to a sustainable environment, including by making

recommendations for mainstreaming human rights in climate policy and legislation.

Further Challenges. Environmental issues are also discussed by the General Assembly (GA). Resolution 72/277 "Towards a Global Pact for the Environment" of 2018 called on the Secretary-General (SG) to submit a report identifying potential gaps in international environmental law and proposals to strengthen protection. In Resolution 73/333 of 2019, [sponsored by Finland acting as a proxy of the EU](#), the GA identified specific actions to the international community, including calling on it to intensify the exchange of information on environmental protection. However, these actions have not translated into legislative progress. Inspired by civil society and then proposed at the GA by France and 71 countries (including Poland), the Global Pact for the Environment is still under negotiation. Its aim is to gather the principles of international environmental law, including the right to an ecologically sound environment, in one binding document. It is to be a remedy for the problems of international legal regulation of the environment, addressing fragmentation (there are more than 500 separate acts) and in many cases with a character that is non-binding or difficult to enforce. The Global Pact is to be a universal and timeless act, one not requiring adaptation over the years, and acceptable to all countries. However, the provisions are still too general, which may preclude direct application of the pact and lead to different interpretations by national authorities. The attempt to adopt it by consensus

in 2020 was unsuccessful because of objections by the U.S., Brazil, and Russia, among others. The next try is scheduled for June this year (during the Earth Summit in Stockholm). The reservations of many UN members results from doubts about the consistency of the pact with other international legal acts adopted so far and the reluctance to take on new responsibility for environmental pollution.

Unrealised Initiatives. The impasse on new environment legislation has also appeared in the UNSC. The aim of a project proposed in September last year by Ireland and Niger to link climate change with global security was the first attempt at such environmental legislation in the Security Council's history. It included a goal of amassing information on the security implications of these changes on conflict strategies, peace operations, and UN missions. The resolution would have made climate a permanent element of the work of the Security Council, rather than sporadically and in individual cases, such as work related to conflict in the Sahel or Lake Chad, and in the mandates of individual UN missions or envoys. Although 113 out of 193 UN countries supported the project, on 14 December 2021, Russia vetoed the resolution (India voted against it and China abstained). This was in line with Russia's policy to block the expansion of UNSC activities. Russia indicated that the involvement of the Security Council would politicise the scientific and economic problem (an argument also used by India and China) and divert the Council's attention from the "real sources of conflicts" while giving it an excuse to intervene in almost every corner of the world. India believes that entrusting the Security Council with environmental protection would be a step back in the joint search for a solution by the international community and that the [Conference of the Parties to the United Nations Framework Convention on Climate Change \(COP\)](#) is a better forum for this.

Among the main organs of the United Nations, the least actively involved in environmental protection are the International Court of Justice (ICJ) and the Trusteeship Council. Between 1993 and 2006 at the ICJ there was a special chamber for the environment but its mandate was not renewed due to a lack of cases. The environment has appeared as a side thread to disputes, and states have used other methods of resolving them, including arbitration, such as the Permanent Court of Arbitration operating outside the UN, which has introduced special procedures for cases concerning natural resources and the environment. Another problem is the inability to file complaints with the ICJ by private persons and non-governmental organisations, which would not be changed by the re-establishment of the chamber for the environment. The main way they can access similar protection is through domestic proceedings, and on exhaustion, through appeals to the Human Rights Committee or courts of regional organisations, such as the

European Court of Human Rights (ECHR). As the European Convention on Human Rights, like the EU Charter of Fundamental Rights, does not explicitly mention the right to a sustainable environment, interpretations of other rights, including to life, private and family life, property, and fair trial, can be extended to include the environment. As for the Trusteeship Council, inactive since 1994, the SG has suggested turning it into a forum where states collectively manage the environment and common goods such as the oceans and space. So far, no decision has been made in the UN on this issue, and its introduction is unlikely due to the need to amend the UN Charter.

Conclusions and Perspectives. UN initiatives to mainstream the environment in the context of human rights and security gain broad support from the public and some states, but in the absence of consensus among members of the organisation, in particular Russia and China, they are not always successful. Although states of the EU, Africa, and Latin America recognise the need to protect the environment and human rights, proposals to strengthen the UN structures in this area have been unsuccessful. This difference in approach can be explained by the varying awareness and acceptance of climate change, the degree of exposure or immediate perception of it, and different political priorities. The appointment of subsequent special rapporteurs by the HRC through resolutions that cannot be vetoed, can be read as an attempt to fill this gap and an expression of the UN's commitment to environmental issues. At the same time, these activities raise the HRC's role in this field.

Regional organisations have been more successful than the UN in terms of establishing the right to a suitable environment. They recognised an "overall satisfactory" environment as a human right (e.g., the African Union) before the UN did or protect this right by broadening the interpretation of other human rights when dealing with individual complaints (ECHR established by the Council of Europe). Therefore, for the recognition of the environment as a human right, Resolution 48/13 is rightly described as landmark. However, due to its lack of legal force, it may not translate into strengthening the role of the UN in protecting the right to the environment. States should therefore continue their efforts to adopt binding acts such as the UNSC resolutions and the Global Pact. Resolution 48/13 may also contribute to reinvigorating discussions on the ICJ special chamber and reform of the Trusteeship Council. Supporting such initiatives, as well as pro-environmental activities of regional organisations, is in Poland's interest as it is also threatened by climate change. It is also consistent with the constitutional values of environmental protection, Poland's commitment to work on the Global Pact for the Environment, and the EU's external actions.