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Road to Stockholm+50 (2022) and Beyond

Getting it Right: Advances of Human Rights and the Environment from Stockholm 1972 to Stockholm 2022†

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Abstract. The 1972 UN Stockholm Conference on the Human Environment (UNCHE) was ahead of its time in asserting that "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". Fifty years later, at Stockholm+50, the human rights approach to environment protection has been significantly consolidated in international law and governance. The article describes and reflects on these developments from the 1972 Stockholm Conference to the 2022 Stockholm Meeting. The consolidation of the human rights approach to environment protection results from normative advances at regional and global scales, further world summits on environment and sustainable development, international treaty-making to protect the environment and human rights, international policy documents and declarations, and remarkable jurisprudential developments. In parallel, fundamental rights relating to the environment have also been recognised in numerous national constitutions and laws. While the human rights approach is not a panacea to resolve all environmental concerns, and to ascertain due concerns for non-human species and interests that are not directly linked to human well-being, it is a key to ensure that no one is left behind in the pursuit for sustainable development and prosperity.

Keywords: Human rights, fundamental rights, environment, stockholm conference, stockholm+50, participatory rights, rio conference, principle 10, sustainable development goals

1. The 1972 Stockholm Conference – Ahead of its Time

In hindsight, 50 years later, the *1972 Stockholm Conference – the UN Conference on the Human Environment* – was surprisingly silent and backward on some issues, and surprisingly bold and progressive on other issues.[1] An example of the former is that none of the serious concerns for the human environment raised in 1972 (for instance future exhaustion of non-renewable resources, the exceeded capacity of the environment, serious or

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1 *Report of the United Nations Conference on the Human Environment, Stockholm 5-16 June 1972*, UN Doc. A/CON.48/14/Rev.1.; available at: Report of the United Nations Conference on the Human Environment - A/CONF.48/14/Rev.1 (un-documents.net) (accessed on 28 March 2022)

irreversible damage on ecosystems, hazards to human health, human malnutrition, pre-disaster planning, pest and diseases, water resources, energy, pollution of broad international significance, including climate risks, toxic and dangerous substances, and food contamination) was defined or addressed as a *security* issue. This would change, and the subsequent UN environmental summits would expand the concept of security significantly.[2]

An example of the latter, where the Stockholm Conference was ahead of its time, is the *notion of a fundamental and basic human right in relation to the environment*. In 2022, it is apparent that the bold message in the outcomes of the Stockholm Conference does not really reflect what was accepted by states at the time. This would also change, but it would take longer time and it would not be a straight route.

In 1972, there was not yet any international human rights regime where the link between human rights and the environment was made explicit in the treaty text, nor was there any jurisprudence developed by international human right bodies, whether courts or commissions. This is not so surprising, given that the very concept of the *environment*, as we know it today, hardly existed before the 1950s and 60s, when the first human rights instruments were adopted. Despite the lack of explicit references to the environment, it is not difficult to link some of the human rights recognised in international law before the Stockholm Conference, such as the right to life, adequate standard of living and health, and also the right to fair trial, to environmental matters. Which is indeed what has happened.

The UN Declaration on the Human Environment ("Stockholm Declaration") is not very elaborate on the human rights dimension, but the language is powerful, when setting out in Principle 1 that:

> "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".[3]

It also asserts in the preamble that:

> "Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of *basic human rights* – even the right to life itself."[4]

In the latter quote, the Stockholm Declaration refers to the environment as an essential prerequisite for the enjoyment of human rights. Hence, a natural and cultural environment of some quality is instrumental rather than an element of a right in itself. In Principle 1, however, an environment of some quality, that permits a life of dignity and well-being, is an integrated part of the fundamental right to freedom, equality and adequate conditions of life rather than a means to ensure these rights. At this stage, no distinction is made between a substantive and a procedural dimension of the human right related to the environment, which would later be developed. Still, the Stockholm Declaration is not that far from how the human right to an environment of some quality is perceived about 50 years later in a global context.

More exactly, about 49 years later, in the run-up for the 2022 Stockholm Meeting – "*Stockholm+50: a Healthy Planet for the Prosperity of All – Our Responsibility, Our Opportunity*", the United Nations Human Rights Council (HRC) would recognise:

> "the right to a safe, clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights."[5]

So, here we are, 50 years after the 1972, Stockholm Conference, with a provision which in many ways resembles the Stockholm Declaration, although the points and clarifications in the HRC resolution, not least in its preamble, reveal that the issue has developed and expanded e.g., with regard to the scope of application.

How did we get here? In this contribution to *The Road to Stockholm+50 (2022) and Beyond* I describe and reflect on the road ahead for human rights and the environment in the fragmentary normative landscape of international law and governance, from Stockholm 1972 to Stockholm 2022. This journey of 50 years includes

2 J. Ebbesson, "Social-ecological Security and International Law in the Anthropocene", in J. Ebbesson et al (eds.), *International Law and Changing Perceptions of Security – Liber Amicorum Said Mahmoudi* (2014), p. 71.

3 *Stockholm Declaration*, principle 1 (emphasis added); *Report of the United Nations Conference on the Human Environment, Stockholm 5-16 June 1972*, see n.1.

4 *Ibid*, preamble, para 1 (emphasis added), see n.1.

5 Human Rights Council, Resolution 48/13, *The Human Right to a Safe, Clean, Healthy and Sustainable Environment*, UN Doc A/HRC/RES/48/13, 16 October 2021.

advances at regional and global scales, further world summits on environment and sustainable development, international treaty-making on the protection of the environment and human rights, international policy documents and declarations, and remarkable jurisprudential developments. While not included in this travel companion, the journey also includes important recognitions of fundamental rights related to the environment in numerous national constitutions and laws.[6]

2. From Stockholm to Rio – A Slow Start through Fragments

Neither the 1948 Universal Declaration of Human Rights (UDHR) nor any of the human rights treaties before Stockholm 1972 – the 1966 International Covenant on Civil and Political Rights; 1966 International Covenant on Economic, Social and Cultural Rights; 1950 European Convention on Human Rights; and 1969 American Convention on Human Rights – include any reference to the environment. Contrary to these pre-Stockholm regimes, the first human rights treaty adopted after the Stockholm Conference, the 1981 African Charter on Human and Peoples' Rights, reflects the message of the Stockholm Declaration:

> "All peoples shall have the right to a general satisfactory environment favourable to their development."[7]

Another difference between the African Charter and the earlier human rights instruments is that the former is not limited to human rights of individuals, but also includes collective rights of peoples. This distinction between individual and collective rights was much discussed at that time, but it is today much less of an issue with respect to human rights and the environment. As shown below, without referring to peoples' rights, it is clear from the jurisprudence of the Inter-American Court of Human Rights (and the Commission) that some rights set out in the American Convention also amount to collective rights for indigenous peoples. Yet another example of the collective dimension of participatory rights in environmental matters is reflected in international law of Europe, when bestowing such rights on non-governmental organisations. While the African Charter was pioneering in explicitly linking human rights to the environment, it would take another 20 years until important jurisprudence was to be developed in the African regime.

In the meantime, the rights-based approach to environmental matters was promoted in a few more international instruments before the 1992 UN Conference on Environment and Development ("Rio Conference").[8] First, the 1982 World Charter for Nature would precede the UN Declaration on Environment and Development ("Rio Declaration") in promoting participatory opportunities and access to remedies in relation to the environment.[9] While the World Charter for Nature does not refer to human rights, this procedural dimension of environmental rights would later be acknowledged as a human right. Second, an explicit reference to human rights and the environment was made in the 1986 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights:

> "Everyone shall have the right to live in a healthy environment and to have access to basic public services."[10]

This provision is equally bold as the one in the African Charter, and it has influenced the jurisprudence under the American Convention of Human Rights. The African and American provisions both provide for a right to an environment of a certain quality, thus referring to the substantive dimension of this right, and the World Charter for Nature furthered the notion of participatory rights in environmental matters – thus they do take us further on the road.

At the global scale, between Stockholm and Rio, several rights relating to nature and natural resources, with particular focus on indigenous and tribal peoples, were promoted by the adoption in 1989 of the ILO Convention

6 According to the Human Rights Council Resolution 48/13, *The human right to a clean, healthy and sustainable environment*, previous note, preamble, 17th recital, more than 155 states have recognised "some form of a right to a healthy environment in, inter alia, international agreements or their national constitutions, legislation or policies."

7 *1981, Africa Charter on Human and Peoples' Rights*, Article 24.

8 *Report of the United Nations Conference on Environment and Development*, UN Doc. A/CONF.151/26, 12 August 1992.

9 UNGA resolution 37/7, *World Charter for Nature*, principles 16 and, in particular, 23. UN Doc A/RES/37/7, 28 October 1982.

10 *1986, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights,* Article 11(1), OAS. Official Records; OEA/Ser. A/44 (Treaty Series; no.69) San Salvador, El Salvador, 17 November 1988.

169 on Indigenous and Tribal Peoples. These rights include the right to participate and be consulted, but also the right to land and territories.

Not being a legal or political document adopted by state, the report Our Common Future, by the World Commission on Environment (WCED) and Development, would still influence international environmental governance in general and the preparations for the 1992 Rio Conference in particular. The report makes several references to various human rights, including both civil and political rights and social, economic and cultural rights, proposes expanded participatory rights for the public, including NGOs,[11] and – not least – highlights the need for governments to:

> "fill major gaps in existing national and international law related to the environment, to find ways to *recognize and protect the rights of present and future generations to an environment adequate for their health and well-being*."[12]

In addition to this explicit link between the rights of present and future generations and the environment, it is proposed by the Experts Group on Environmental Law of the WCED as Principle 1 of its legal principles for environmental protection and sustainable development that "All human beings have the fundamental right to an environment adequate for their health and wellbeing."[13]

Apparently, the ideas of environmental rights and opportunities had matured since Stockholm 1972, and the report by the WCED and the other steps mentioned made the international community better prepared on these matters in the run-up to the 1992 Rio Conference compared to the situation 20 years earlier.

3. At the Rio Conference – No Clear Direction

Despite, or maybe because of, more experience with and higher expectation on human rights in environmental contexts than at the 1972 Stockholm Conference, the 1992 Rio Conference did not much further the notion of a human right to a clean, healthy or safe environment. Rather than referring to "human rights" and to "a right to . . . ", the Rio Declaration asserts that:

> "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature"[14]

While it is difficult to estimate whether the language of the Rio Conference actually weakened the support for a human rights approach to the environment,[15] at least the Rio Declaration did not much strengthen the notion of a human right in relation to the environment.[16] On the other hand, without referring to public participation as a human right, Principle 10 of the Rio Declaration became critical for the development of international law on participatory rights in environmental matters, indeed as a human right. It 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

11 World Commission on Environment and Development, *Our Common Future* (1987), p 21

12 Ibid., p. 21 (emphasis added).

13 Ibid, p. 348.

14 *Rio Declaration*, principle 1.

15 Some would say that at least the English version of the text, with the term "entitled to", suggests less support for a human right related to the environment than the Stockholm Declaration, but that is less clear in other languages. In French, Principle 1 of the Stockholm Declaration reads: "*L'homme a un droit fondamental* à la liberté, à l'égalité et à des conditions de vie satisfaisantes, dans un environnement dont la qualité lui permettra de vivre dans la dignité et le bien-être" and Principle 1 of the Rio Declaration reads ; "*Les êtres humains* sont au centre des préoccupations relatives au développement durable. *Ils ont droit* à une vie saine et productive en harmonie avec la nature." (emphases added in both quotes).

16 For a positive account of Principle 1 and human rights, see F. Francioni, "Principle 1: Human Beings and the Environment", in J. Viñuales (ed.) *The Rio Declaration on Environment and Development: A Commentary* (2015), p 93, 98.

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."

Possibly with the exception of Principle 21 of the Stockholm Declaration, there is no specific provision in any of the outcomes of the UN summits on environmental matters since 1972 which has had such an impact on international law as Principle 10 of the Rio Declaration.[17] As we will see, it would influence global and regional treaty-making, jurisprudence of international judicial bodies, and international guidelines of global scope.

Without using the term "right", the Rio Declaration also promotes participation by indigenous people and their communities as well as by women in the achievement of sustainable development.[18] The Rio Declaration would also influence international environmental law by promoting notions of sustainable development, the precautionary principle, environmental impact assessment and participatory rights in environmental matters.

4. After the Rio Conference – Regional Tracks

It wouldn't take long for Principle 10 of the Rio Declaration to spur the development in environmental treaty-making and jurisprudence of human rights bodies. Critical for this development of international law were the geopolitical changes, with the fall of the Berlin Wall and the end of the Cold War period in the end of the 1980s and early 1990s. Until then, it had not been possible to negotiate a legally binding treaty with distinct participatory rights in environmental matters.[19] At the time of the Stockholm Conference, 20 years earlier, the issues to be covered by international treaties after the Rio Conference – including matters such as public participation, transparency, judicial procedure, public administration, secrecy, and the very notion of democracy itself – were perceived as part of states' *domaine réservé* and essential attributes of state sovereignty, rather than subject to international treaty-making.

The first treaty after the Rio Conference promoting participatory rights was the 1993 North-American Agreement on Environmental Cooperation, a side agreement to the North American Free Trade Agreement. The provisions of the agreement pertain to all the three aspects set out in principle 10 of the Rio Declaration, yet the provision on private access to remedies – referred to as "rights" – is more ambitious and detailed than those on access to information and public participation.[20]

Also in 1993, less than a year after the Rio Conference, the ministers of the environment of the UNECE and a representative of the EC Commission called for "the elaboration of proposals by the UN/ECE for legal, regulatory and administrative mechanisms to encourage public participation in environmental decision making".[21] This was followed up in 1995, when the UNECE Guidelines on Access to Information and Public Participation in Environmental Decision-making ("Sofia Guidelines") were adopted and it was agreed to start negotiations of a convention on the topic. These negotiations would lead to the adoption of the 1998 Convention on Access to information, Public Participation in Decision-making and Access so Justice in Environmental Matters, better known as the Aarhus Convention.

As the title of the Aarhus Convention indicates, it provides for minimum rights for members of the public to have access to information, participate in decision-making and have access to justice in environmental matters. While it focuses on participatory and procedural rights, these are neatly linked to the substantive dimension of a human right to the environment. This is done in the preambular recognition, "that adequate protection of the

17 For an account on its impact on international law, see J. Ebbesson, "Principle 10: Public Participation", in Jorge Viñuales (ed.), *The Rio Declaration on Environment and Development: A Commentary* (2015), p 286

18 *Rio Declaration*, principle 20 on the role of women, and principle 22 on indigenous people. See Claire Mahon, "Principle 20: The Role of Women" and Dinah Shelton, "Principle 22: Indigenous People and Sustainable Development", both in Jorge Viñuales (ed.), *The Rio Declaration on Environment and Development: A Commentary* (2015), p 509 and p 541.

19 However, see the Action Plan for the Human Environment adopted at the 1972 Stockholm Conference, above note 1, which recommends, in" Recommendation 7(a), "[t]hat Governments and the Secretary-General provide equal possibilities for everybody, both by training and by ensuring access to relevant means and information, to influence their own environment by themselves".

20 NAAEC, Arts 5-7; the reference to private access to remedies as "rights" is made in Article 6.

21 *The Political Dimension of the Process "Environment for Europe"*, Declaration by the Ministers of the Environment of the region of the United Nations Economic Commission for Europe (UN/ECE) and the Member of the Commission of the European Communities responsible for the Environment, Luzern, 30 April, 1993, para 22(2).

environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself", and also in the objective of the convention:

> "In order to contribute to the protection of *the right of every person* of present and future generations to *live in an environment adequate to his or her health and well-being*, each Party shall guarantee *the rights* of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention."[22]

The Aarhus Convention has had a great impact on the development of participatory rights in the UNECE region, but also inspired developments elsewhere. In addition to meeting the minimum standard for access to information, public participation in decision-making and access to justice,[23] the convention parties are prohibited from discriminating members of the public on the basis of citizenship, nationality or domicile.[24] Given the dangerous situation for environmental and human rights activists in many parts of the world, importantly the convention parties shall also:

> "ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement.".[25]

Once it had entered into force, a critical step for the vitality and effectiveness of the convention itself, but also for the discourse on participatory rights in general, was the establishment of the Aarhus Convention Compliance Committee. The independent and impartial Compliance Committee is mandated to review the performance of the parties on the basis of communications by members of the public and submissions by the parties. While not a court, it acts as a quasi-judicial body. When endorsed by the Meeting of the Parties, the findings and recommendations by the Compliance Committee on the parties' non-compliance provide authoritative guidance on how to interpret and apply the convention.[26]

In parallel to the activities in the UNECE leading to the Aarhus Convention, the European Court of Human Rights set off its jurisprudence on human rights in environmental matters. A few earlier cases had addressed environmental issues, but starting in the mid-1990s, the Court would construe the provisions of the European Convention on Human Rights so as to provide for environmental rights. While its jurisprudence has focused mainly on the procedural dimension (including access to information, public participation in decision-making and access to justice),[27] the Court has also addressed substantive aspects, such as the level of nuisance and pollution.[28] In most cases, its jurisprudence on environmental matters builds on the human right to life, the right to respect for private and family life, and the right to fair trial.[29] In considering whether a party fails to ensure these rights in environmental contexts, the Court examines whether the state exceeds its "margin of appreciation" in balancing relevant interest against the right in question. Today, the jurisprudence on the application of the European Convention on Human Rights in environmental contexts is solid.

In some of its judgments on participatory rights in environmental matters, the European Court of Human Rights has cited both principle 10 of the Rio Declaration and the Aarhus Convention,[30] and in some of its findings on compliance the Aarhus Convention Compliance Committee has cited the European Court of Human Rights.[31] This interaction between overlapping treaty regimes (to which should also be added the European Union) has been very fruitful in promoting participatory rights in the region. Such interactions have also taken place in other regions as part of the promotion of participatory rights in environmental matters.

22 Aarhus Convention, Article 1 (emphasis added).

23 *Ibid*, Articles 4-9.

24 *Ibid*, Article 3(9).

25 *Ibid*, Article 3(8).

26 For an analytical account, see E. Fasoli and A. McGlone, "The Non-Compliance Mechanism Under the Aarhus Convention as 'Soft' Enforcement of International Environmental Law: Not So Soft After All!", 65 *Netherlands International Law Review* (2018) 27.

27 See e.g., ECtHR, *Guerra et al v. Italy*, 14967/89, 19 February 1998.

28 See e.g., ECtHR, *Lopez Ostra v Spain*, 16798/90, 9 December 1994; and ECtHR, *Fadeyeva v Russia*, 55723/00, 9 June 2005.

29 European Convention on Human Rights, Article 2, 8 and 6, respectively.

30 See e.g., ECtHR *Tatar v Romania*, 67021/01, 27 January 2009; and *Taskin et al v Turkey*, 46117/99, 10 November 2004.

31 See e.g., *ACCC/C/2014/102 (Belarus)* of 18 June 2017; UN Doc. ECE/MP. PP/C.1/2017/19, 24 July 2017.

One such example is the important 2002 finding by the African Commission in what is still the leading case in linking human rights to the environment under the African Charter on Human and Peoples' Rights.[32] In this flagrant case of damage to health and the environment, the Commission held that the party violated not only the provision on the right to a general satisfactory environment, but also provisions on the right to life, the right to health, and the right to the disposal of natural resources and property; thus engaging both the substantive and procedural dimensions of environmental rights. This case was also important by linking the state's responsibility to ensuring human and peoples' rights to harm caused by corporate activities. In its reasoning, the Commission referred to the jurisprudence of the European Court of Human Rights, thus showing the interactions between the different regions. The case would also influence discourse and be quoted in case-law outside Africa. Since then, participatory rights in relation to natural resources and the environment have been further considered both by the African Commission and by the later established African Court on Human and Peoples' Rights, mainly with respect to the right to economic, social and cultural development, but also the right to property as a collective right.[33]

While less known than the African Charter, the 2003 Revised African Convention on the Conservation of Nature and Natural Resources ("African Nature Conservation Convention")[34] adds important support on the journey towards human rights related to the environment. First, it follows the African Charter on Human and Peoples' Rights by asserting the "right for all peoples to a satisfactory environment favourable to their development".[35] Second, it provides for "procedural rights", which capture all the elements of Principle 10 of the Rio Declaration, i.e. dissemination of and access to information, public participation, and access to justice in environmental matters.[36] The provision is less detailed than those of the Aarhus Convention, but it imposes a distinct obligation on the parties to adopt legislation and regulatory measures to these ends. Third, also in line with the principle of non-discrimination set out in the Aarhus Convention, the parties to the African Nature Conservation Convention must ensure equal access to administrative and judicial procedures to any person who is affected by transboundary environmental harm.

Finally, and in the same vein as the Aarhus Convention, the African Nature Conservation Convention also mandates the Conference of the Parties to develop and adopt rules, procedures and institutional mechanisms to promote and enhance compliance with the convention. While this should have been done "as soon as possible", there is no information available on any compliance mechanism under this regime, even though the convention is in force.

From Africa, the journey towards human rights in environmental matters brings us back to the Americas, and the jurisprudence on participatory rights in environmental contexts in the Inter-American Regime on Human Rights. Although the 1986 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights provides for a human right to live in a healthy environment, most of the jurisprudence of the Inter-American Commission and Inter-American Court of Human Rights builds on the

32 African Commission on Human and Peoples' Rights, AComHPR, 155/96, *Social and Economic Rights Action Center (SERAC and Center for Economic and Social Rights (CESR) against Nigeria (Ogoni case)*, 27 May 2002.

33 See e.g., AComHPR,276/03, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya*, 11-25 November 2009; and ACtHPR, 006/2012, *African Commission on Human and Peoples' Rights v Kenya* (Ogiek Case), 26 May 2017.

34 See, African Union; available at: https://au.int/en/treaties/african-convention-conservation-nature-and-natural-resources-revised-version (accessed on 8 February 2022). In addition to the African Charter and the 2003 African Nature Conservation Convention, legal or political measures to promote public participation have been taken in other or related international regimes, eg by the Economic Community of West African States (ECOWAS), Southern Africa Development Community (SADC), East Africa Community (EAC), and African Ministerial Conference of the Environment (AMCEN). For short presentations of these efforts, see e.g. B.O. Ochieng, *Implementing Principle 10 and the Bali Guidelines in Africa* (UNEP Perspectives, Issue No. 16, 2016); and E. Greenspan, *Free, Prior and Informed Consent in Africa: An Emerging Standard for Extractive Industry Projects* (Oxfam America Research Backgrounder Series, 2014).

35 Art. 3(1),

36 Art. 16.

Convention, which does not include any reference to the environment.[37] A key human right in relation to natural resources and the environment in the Americas, which in many cases involves the rights of tribal and indigenous communities, is the right to property, but other rights are also engaged.[38]

The jurisprudence since the early 2000 was confirmed and further developed by the Inter-American Court in its important advisory opinion 2017, where it reads in obligations of states to protect the environment, to regulate activities which may cause significant harm, to supervise and monitor such activities, and to act in keeping with the precautionary principle as parts of the obligation to ensure the rights to life and integrity. When expanding on the right to a healthy environment, the Court holds that the right to a healthy environment set out in the 1986 Protocol "is included among the economic, social and cultural rights protected by … the American Convention".[39] Moreover, the Court derives the right of access to information concerning environmental impacts from the right of freedom of thought and expression; the right to public participation in policies and decision-making that could affect the environment from the right to participate in government; and the right to access to justice with regard to environment protection from the right to judicial protection.[40] In reaching its conclusions, the Inter-American Court refers also to the Aarhus Convention, the European Convention and Court of Human Rights, the African Charter and Commission on Human and Peoples' Rights, the African Nature Conservation Convention, UNEP Guidelines (see below) as well as the Stockholm and Rio Declarations, thus showing how the regional courts and review bodies, in cases on human rights in environmental contexts, take the legal developments elsewhere into account.

In parallel, triggered by events at the global scale, i.e., the outcome of the 2012 UN Conference on Sustainable Development ("Rio+20"),[41] negotiations would start for the negotiations of a regional treaty for Latin America and the Caribbean on participatory rights in environmental matters. These negotiations resulted in the 2018 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latina America and the Caribbean ("Escazú Agreement").[42] Just like the Aarhus Convention, while focusing and setting the standards for participatory rights, this is set in the greater context of human rights in environmental matters. This is revealed both in its preambular references to human rights and in the opening provision on the objective of the Agreement:

> "The objective of the present Agreement is to guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation, 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*."[43]

The Escazú Agreement goes even further than the Aarhus Convention in linking the participatory rights to the general notion of human rights in environmental matters. This is reflected also in the provision on the protection of "human rights defenders in environmental matters", which obliges the parties to:

37 However, the 1986, Protocol is considered by the Inter-American Court of Human Rights in its *Advisory Opinion OC 23/17 of 15 November 2017, requested by the Republic of Colombia*, paras 56-60.

38 See, e.g., IACrtHR, *Case of the Saramaka People v Suriname*, 28 November 2007 (Merits, Reparations and Costs), Series C No. 172; IAComHR, *Maya Indigenous Communities of the Toledo District, Belize*, Report No 40/04, Case 12.053, 12 October 2004; and IACrtHR, *Claude-Reyes and Others v. Chile*, 19 September 2006 (Merits, Reparations and Costs), Series C No. 151.

39 However, the 1986, Protocol is considered by the Inter-American Court of Human Rights in its *Advisory Opinion OC 23/17 of 15 November 2017, requested by the Republic of Colombia*, para 57.

40 Inter-American Court of Human Rights, *Advisory Opinion OC 23/17 of 15 November 2017, requested by the Republic of Colombia*, paras 242-243.

41 See UNGA Resolution 66/288, *The future we want*, para 99: **"**We encourage action at the regional, national, subnational and local levels to promote access to information, public participation and access to justice in environmental matters, as appropriate." UN Doc. A/RES/66/288, 11 September 2012.

42 United Nations, *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latina America and the Caribbean* (United Nations publication LC/PUB.2018/8/-*), Santiago 2018. For a brief account, see S. Stec and J. Jendrośka, "The Escazú Agreement and the Regional Approach to Rio Principle 10: Process, Innovation, and Shortcomings", *Journal of Environmental Law* (2019), 1.

43 Escazú Agreement, Article 1 (emphasis added).

i. Protect, "persons and organizations that promote and defend human rights in environmental matters,"
ii. "recognize, protect and promote all the rights of human rights defenders in environmental matters", and
iii. "prevent, investigate and punish attacks, threats or intimidations of human rights defenders in environmental matters."[44]

Given the region's record in the number of killings of and attacks on environmental defenders in Latin America and the Caribbean, this provision is particularly important for this region. Contrary to the Aarhus Convention, the Escazú Agreement links the procedural and substantive dimensions of the rights related to the environment by obliging the parties to be guided in the implementation of the agreement by a set of principles which are not limited to procedural matters (e.g., the "preventive principle" and "precautionary principle"). Finally, the Escazú Agreement establishes a "Committee to Support Implementation and Compliance" which shall ensure significant participation of the public,[45] reminding of the importance of international review mechanisms available for members of the public.

These cases show comprehensive regional developments of international law on human rights and the environment in Europe, the Americas and Africa. Evidently, the negotiations, adoption and entry into force of the Aarhus Convention would have significant effects also for other regions, and there are interesting cross-references in jurisprudence under other legal regimes. For great parts of Asia and the Pacific, there has not been much regional development of international law and governance on human rights, let alone in relation to the environment.[46] Some steps have been taken by the Association of Southeast Asian Nations (ASEAN), first through the 1995 ASEAN Agreement on the Conservation of Nature and Natural Resources, with its rather vague provisions for access to information and public participation (without any rights-language), which never entered into force; and later in the 2012 ASEAN Human Rights Declaration,[47] which asserts that every person has the right to an adequate standard of living, including "the right to a safe, clean and sustainable environment." Also in a non-legally binding form, the 2004 Arab Charter on Human Rights sets out a right to a safe environment.[48]

Apart from these instruments, for regions and states not included in any of the regional treaties mentioned, the support to human rights in environmental context in international law and governance comes from human rights treaties of global scope as well as from the rather weak provisions on public participation (albeit not defined as "rights") in multilateral environmental agreements of global scope.

So, we continue this journey from Stockholm to Stockholm by examining the steps towards human rights to environment protection at the global scale. As we saw, some regional moves to forward the human right to environment protection were influenced by the developments in global contexts, and also vice-versa. So, what happened at the global scale since 1992?

5. After the Rio Conference – Global Routes

The Escazú Agreement is an example of interactions between global and regional actions and events forwarding the human right to environment protection; in this case the regional treaty negotiations were triggered by the call at the 2012 UNSSD.[49]

One striking difference before and after 1992 is seen in the promotion of public participation in multinational environmental agreements of global scope. As I have highlighted elsewhere, whereas essentially *no* multilateral environmental treaty of global scope adopted before the Rio Conference contained provisions in support of public

44 *Ibid*, Article 9.

45 *Ibid*, Article 18.

46 Ben Boer, "Environmental Law and Human Rights in the Asia-Pacific", in B. Boer (ed.), *Environmental Law Dimensions of Human Rights* (Oxford University Press, 2015), p 135.

47 2012 ASEAN Human Rights Declaration, article 28(f), reprinted in ASEAN Secretariat, *ASEAN Human Rights Declaration and Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration* (2013).

48 2004 Arab Charter on Human Rights, article 38, as translated and published in English in 24 *Boston University International Law Journal* (2006) 147.

49 See n. 41.

participation, just about all such treaties adopted at or since the Rio Conference include provisions promoting public participation, engagement and awareness.[50] Among these treaties are:

a. the 1992 UNFCCC with the 2015 Paris Agreement;
b. the 1992 Convention on Biological Diversity with the 2000 Cartagena on Biosafety, and 2010 Nagoya Protocol on Access to genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization,
c. the 1994 Convention to Combat Desertification;
d. the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade;
e. the 2001 Stockholm Convention on Persistent Organic Pollutants; and
f. the 2013 Minamata Convention on Mercury.

These treaties are less detailed than the regional agreements described above, and they contain no rights-language. Yet, their provisions on the matter are somehow supportive to public participation in environmental matters.[51]

The multilateral environmental agreements of global scope do not refer to human rights (except for the preambular acknowledgement in the Paris Agreement),[52] and the human rights regimes of global scope do not refer to the environment. But just like the regional human rights treaties adopted before the Stockholm Conference, the lack of explicit references to the environment in the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights and 1966 the International Covenant on Economic, Social and Cultural Rights does not prevent them from applying to or providing rights in environmental matters or contexts. On the contrary, the "greening" of established human rights, such the right to freedom of opinion and to seek and impart information, the right to take part in the conduct of public affairs, the right to a fair trial, and the human rights to health and water set out in these frameworks, is an essential part of the acknowledgement of human rights in relation to the environment.[53] This has been carried out in different ways by the UN bodies in charge of human rights, leading to the HRC Resolution 48/13. Before getting there again, some other normative steps of global reach are noteworthy.

The most detailed instrument of global application on public participation in environmental matters, although not in the form of a treaty, are the 2010 UNEP Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters ("Bali Guidelines"). While carefully avoiding any references to "rights", these guidelines, intended to promote the implementation of principle 10 of the Rio Declaration, significantly draw on the provisions of the Aarhus Convention.

At the global scale, participatory rights in environmental matters are also supported by the International Law Commission's 2001 Draft Articles on Prevention of Transboundary Harm from Hazardous Activities. While less detailed than the Bali Guidelines, but with stronger direct legal implication, they assert that states (i) shall "provide the public likely to be affected by an activity within the scope of the present articles with relevant information relating to that activity, the risk involved and the harm which might result and ascertain their views", and (ii) must not discriminate on the basis of nationality or residence or place where the injury might occur in granting access to judicial or other procedures in cases of transboundary harm.[54] Here too, there is no reference to "rights", but these articles cannot be accurately implemented and complied with without somehow providing for corresponding rights for members of the public.

50 J. Ebbesson," Public Participation", in L. Rajamani and J. Peel (eds.) *The Oxford Handbook of International Environmental Law* (2nd ed., 2021), p 351, 358.

51 J. Ebbesson, see n. 17.

52 Paris Agreement, preamble, para 11.

53 See J. Knox," Human Rights", in L. Rajamani and J. Peel (eds.) *The Oxford Handbook of International Environmental Law* (2nd ed., 2021), p 784, 791; and Human Rights Council, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment* (UN Doc. A/HRC/37/59, 14 January 2018).

54 International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law (Prevention of Transboundary Harm from Hazardous Activities), see International Law Commission (ILC), *Report on the Work of Its Fifty-Third Session*, UN Doc A/56/10/suppl.10 (2001), at 366–436 (Draft Articles on Prevention); Articles 13 and 15.

We saw that while the 1972 Stockholm Declaration highlighted the human rights dimension of environment protection, the 1992 Rio Declaration was less straightforward on this matter. This is the case also with the two global summits since then, i.e., the 2002 World Summit on Sustainable Development in Johannesburg and the 2012 UN Conference on Sustainable Development in Rio de Janeiro ("Rio+20"). The outcomes of both summits include numerous references to human rights, and they refer to principle 10 of the 1992 Rio Declaration but none of them confirms or explicitly links human rights to environment protection, substantively or procedurally.[55]

This is the case also with the 2000 UN Millennium Declaration. It includes a section on the protection of the common environment, and its section on human rights, democracy and governance is surprisingly bold in promoting democracy, strengthening the rule of law and strengthening "the respect for all internationally recognized human rights and fundamental freedoms, including the right to development"[56] – yet it provides no direct link between human rights and the environment or between human rights and sustainable development.

Neither is there any direct link between human rights and environmental matters in Agenda 2030 and the Sustainable Development Goals (SDGs), adopted by the UN General Assembly in 2015.[57] For sure, Agenda 2030 "is grounded in the Universal Declaration of Human Rights [and] … international human rights treaties," but the SDGs in themselves are not defined in terms of human rights. Nor is there any reflection on, let alone confirmation of, a human right to environment protection. While the SDGs are in many ways ambitious, they define goals rather than entitlements, which in part explains the absence of human rights references in the SDGs. In this regard, it is important to note that Agenda 2030 and the SDGs provide for a new understanding of sustainable development, with a bearing on human rights. In our review of Agenda 2030 and the SDGs, on the basis of thorough studies by colleagues on each SDG and international law, I argue with Ellen Hey that the "people-centred" approach of Agenda 2030, "aiming at transforming our world so that no one will be left behind, normatively expresses *an innovative and bold cosmopolitan understanding of sustainable development*."[58] We continue:

> "This approach suggests that Agenda 2030, and the SDGs, focus on each and every one of the close to 8 billion inhabitants of the planet. It signals that the benchmark for determining the success of a policy initiative or legal regime is the individual. In other words, states and other relevant actors are to act in the interest of all individuals. Accordingly, an individual left behind signals that a policy or legal regime intended to attain a SDG has failed."[59]

So, even though the human rights language is absent in the SDGs, they refer to the situation of each and every one. Moreover, they address matters that are subject to international human rights regimes, and the implementing measures to achieve the SDGs significantly involve human rights law and institutions.[60] And despite the lack of human rights references, the achievement of the SDGs would provide for a safe, clean, healthy and sustainable environment.

At the time of the drafting and adoption of Agenda 2030, the Human Rights Council was also engaged with human rights and environment protection. In 2012, it appointed an independent expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the mandate of which was later extended to a Special rapporteur on human right and the environment. The reports of the special rapporteurs have comprehensively mapped the legal landscape of international law and national laws in support of a human right to a safe, clean, health and sustainable environment. Based on these reports, the 2018, "Framework principles on human rights and the environment" by the Special Rapporteur identify several normative dimensions of

55 See *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002*, UN Doc. A/CONF.199/20; and UNGA Resolution 66/288, *The future we want*, UN Doc. A/RES/66/288, 11 September 2012.

56 UNGA Resolution 55/2, *United Nations Millennium Declaration*, para 24, UN Doc. A/Res/55/2, 18 September 2000.

57 UNGA resolution 70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*, 25 September 2015, UN Doc. A/RES/70/1, 21 October 2015.

58 J. Ebbesson and E. Hey, "Introduction", in J. Ebbesson and E. Hey (eds.), *The Cambridge Handbook on the Sustainable Development Goals and International Law* (Cambridge University Press, forthcoming 2022), emphasis added.

59 *Ibid.*

60 *Ibid.*

such rights. The framework principles summarise "the main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment", including the substantive as well as procedural and participator dimensions, the prohibition of discrimination and the corresponding duties of states to these ends.[61] In doing so, they draw on the international developments at regional and global scales described in this article, but also on the developments in national constitutions, legislation and jurisprudence around the world – the developments that would lead to the 2021 HRC resolution on the right to a clean, healthy safe and sustainable development.

6. The Human Rights Council resolution, the Stockholm 2022 Meeting (Stockholm+50) – and then?

On 8 October 2021, the Human Rights Council adopted its Resolution 48/13 on the human right to a clean, healthy and sustainable environment.[62] After a lengthy preamble, placing the resolution in historical context, the Council:

1. "*Recognizes* the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights;
2. *Notes* that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;
3. *Affirms* that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international law".

For our journey from Stockholm to Stockholm, the resolution is timely, as a possible "influencer" for the 2022, Stockholm Meeting eight months later. So, what does it say and how does it differ from the Stockholm Declaration? What is the normative impact of the resolution – and will the outcome from 2022 Stockholm Meeting add anything to the development of the human right to environment protection?

The recognition of the right to a clean, healthy and sustainable environment as a human right resembles the provisions in the 1981 African Charter ("a general satisfactory environment") and the 1986 Additional Protocol to the American Convention on Human Rights ("a healthy environment"), both adopted even before the Rio Conference. It is not even far from Principle 1 of the Stockholm Declaration ("an environment of a quality that permits a life of dignity and well-being"). In the greater context of recognising a human right to a basic minimum level of environmental quality, these differences of nuances are less important. Most important is the confirmation of the substantive dimension of the human right in environmental contexts, which on our journey to Stockholm+50 has not been recognised in international law to the same extent as the participatory and procedural means. Without asserting any procedural rights, the recognition of the substantive right to an environment of a certain quality also implies such rights to ensure the clean, healthy and sustainable quality of the environment. This is how it is perceived in the preamble of the resolution, where access to information, participation in decision-making access to an effective remedy "is recognised as vital to the protection of a safe, clean, healthy and sustainable environment."

Formally, the resolution is not legally binding, just as the Stockholm and Rio Declarations are not legally binding. Still, not being legally binding does not imply not being legally relevant. So, when can the right be claimed, i.e., in which situations, and how "robust" is it when confronted with other legal claims and arguments in hard cases? It is not rare that international and national courts refer to policy documents, guidelines and other documents of a non-binding nature in support of their reasoning and rulings. We have seen such examples from international courts and commissions also on this journey, with respect to Principle 10 of the Rio Declaration. The resolution can be used by national courts in cases where other interests risk undermining the protection of the environment, whether in relation to health, air pollution, water pollution, biological diversity or climate

61 Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/HRC/37/59, 24 January 2018.

62 Human Rights Council, Resolution 48/13, *The Human Right to a Safe, Clean, Healthy and Sustainable Environment*, UN Doc A/HRC/RES/48/13, 16 October 2021.

change. The numerous climate change lawsuits around the world show that human rights have been frequently, and quite successfully, invoked as the basis for legal claims.[63]

The resolution can also be used by international human rights courts and other review bodies when construing existing provisions on human rights. But not only bodies in human rights regimes should take it into account. Given the increasing attention to business and human rights, and reference to the Guiding Principles on Business and Human Rights in the resolution itself, it should also be relevant in cases on corporate responsibility, and in disputes involving corporate actions and interests. If, for instance, measures taken by a state to protect the environment are challenged by an investor before an investor-state tribunal under an investment treaty, the confirmation of a right to a clean, healthy and sustainable environment should be relevant in assessing the fairness and rightfulness of the measures taken. The confirmation if the right to a clean, healthy and sustainable environment by the HRC may also trigger further regional treaties, or perhaps even a global legal framework on the matter.

What then about *Stockholm+50 and beyond*? For sure, one could have hoped for a broader and more ambitious mandate for the 2022 Stockholm Meeting than decided by the United Nations General Assembly.[64] It will not lead to any policy document or declaration anywhere near the 1972 Stockholm or 1992 Rio Declarations, let alone legally binding document, and human rights and the environment are not explicitly on the agenda. Even if the 2022 Stockholm Meeting would not entail any bold assertion on human rights and the environment,[65] this does not prevent the issue from being raised or discussed at the meeting. In addition to generally spark and inspire actions and normative developments, the 2022 Stockholm Meeting may also further the rationale of our journey – the human rights approach to environment protection – in more subtle ways.

If taken seriously, the full title of the Meeting, *Stockholm+50: a healthy planet for the prosperity of all – our responsibility our opportunity*, confirms the increasing attention to the situation "of all" in international governance for sustainable development, which is also apparent in Agenda 2030 and the Sustainable Development Goals. As argued above, focusing on the situation of each and every individual, not only of generations or states, reflects a *cosmopolitan* approach to sustainable development – thus also triggering concerns for the rights of each and every individual. In the context of the 2022 Stockholm Meeting, this involves the healthy planet for all, and how to achieve that.[66] And the road described for human rights and the environment, provides one important entry to address it.

This can be done in different ways at Stockholm+50; at the plenary session, in the policy dialogues and at side events and associated events. At the plenary session, states may highlight the topic and possibly confirm the Human Rights Council resolution, and the policy dialogues provide apposite entries to address human rights and the environment; either when "reflecting on the urgent need for action to achieve a healthy planet and prosperity for all" or when "accelerating the implementation of the environmental dimension of sustainable development in the context of the decade of action and delivery for sustainable development".[67] In this regard, it is noteworthy that the Human Rights Council resolution was adopted in this very "decade of action and delivery".

63 See e.g., J. Setzer and C. Higham, *Global trends in climate change litigation: 2021 snapshot* (London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science, 2021).

64 See UNGA Resolution 75/280, International meeting entitled" Stockholm+50: a healthy planet for the prosperity of all – our responsibility, our opportunity", UN Doc A/RES/75/280, 25 May 2021; and UNGA Resolution 75/326, Modalities for the international meeting entitled" Stockholm+50: a healthy planet for the prosperity of all – our responsibility, our opportunity", UN Doc A/RES/75/326, 18 September 2021.

65 The expected outcome document of the 2022 Stockholm Meeting is a "summary of discussions", a report with procedural decisions of the international meeting and an account of the proceedings, work of the meeting and actions taken, and a summary of the leadership dialogues. See UNGA Resolution 75/280, International meeting entitled" Stockholm+50: a healthy planet for the prosperity of all – our responsibility, our opportunity", para 5, UN Doc A/RES/75/280, 25 May 2021; and UNGA Resolution 75/326, Modalities for the international meeting entitled" Stockholm+50: a healthy planet for the prosperity of all – our responsibility, our opportunity", Annex II, paras 18-20, UN Doc A/RES/75/326, 18 September 2021.

66 This is the argument made by J. Ebbesson and E. Hey, "Introduction", above note 58.

67 See UNGA Resolution 75/326, Modalities for the international meeting entitled" Stockholm+50: a healthy planet for the prosperity of all – our responsibility, our opportunity", para 11(a), UN Doc A/RES/75/326, 18 September 2021.

7. Conclusion

Whether the 2022 Stockholm Meeting will finally deliver anything of significance for future law and governance on environmental and developmental matters is too early to say; it always takes a while to adequately examine the outcomes of UN summits. The 2022 Stockholm+50 Meeting should of course push states to implement their international commitments in general. It should also stress the need for further action to achieve the Sustainable Development Goals.

Our journey shows that the human rights approach to environment protection has been significantly consolidated in international law and governance since the 1972 Stockholm Conference. Yet, much remains on the road ahead for a broader and more profound confirmation of the right to a clean, healthy and sustainable development. While the human rights approach is not a panacea to resolve all environmental concerns, and to ascertain due concerns for non-human species and interests that are not directly linked to human well-being, it is key to ensure that *no one is left behind* in the pursuit for prosperity and sustainable development.

It would be a missed opportunity if the 2022 Stockholm Meeting did not also serve to confirm the ambitions of the 1972 Stockholm Conference in this respect and the achievements since then, and to inspire further actions and developments for human rights in environmental contexts on the *Road to Stockholm+50 (2022) and beyond*.