



Can lawyers and law secure the right to a healthy and safe environment?

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Climate Change is a threat to the enjoyment of your rights!



Insights from the heart of
international politics

International law

Lawyers as 'negotiators' of international law:

- *No mention of human rights in the United Nations Framework Convention on Climate Change in 1992*
- Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligation on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity (*Preamble, Paris Agreement, 2015*)
 - *If so important, why is it in the preamble?*

International law

Lawyers as 'negotiators' of international law:

Lawyers are advisors to diplomats and their Capitals (usually Foreign Affairs Ministries).

UNGA Resolution: In 2023, the UN General Assembly declares access to clean and healthy environment a universal human right.

It exists in relation to international law and affirms that its promotion requires the full implementation of MEAs

Vote Results: 161 in favour; 8 absentions

What is the value of the UNGA Resolution?

Source:
<https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/>

International law

Post UNGA Resolution

1/ CP 27 Decision:

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligation on human rights, **the right to a healthy, safe and sustainable environment**, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity [edits are my own]

What is the value of a COP Decision?

International law

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Domestic law

Turn to the Courts... the international courts.

- With disillusionment with international negotiations, some lawyers are advising countries to turn to international courts.
- There are 3 advisory opinions in progress:
 - i) AO to the ICJ led by Vanuatu
 - ii) AO to ITLOS led by Antigua and Barbuda and Tuvalu
 - iii) AO to Inter-American Court of Human Rights by Chile and Colombia.

Some lawyers are advising that this is not the right avenue.

Lawyers as advisors to diplomats

Why an advisory opinion from the ICJ?

- An opinion of the International Court of Justice would:
- 1. Clarify the rights and obligations of Member States in connection with climate change, thereby facilitating international cooperation in this area;
- 2. Encourage them to reflect their highest possible level of ambition, in keeping with their common but differentiated responsibilities and respective capabilities in light of their different national circumstances, in preparing their nationally-determined contributions under the Paris Agreement and in providing support for climate action;
- 3. Further encourage Member States' to enhance the credibility, accountability and fairness of their short-term contributions and align these with their long-term net zero GHG emissions

BUT – it starts with a resolution by the UNGA?

It never stays international

And now it's domestic...

- **117 cases** seeking to 'enforce climate standards', brought against governments or companies. These cases are challenging sectoral policies, decisions around actions, multiple permits or individual projects, as well as specific aspects of companies' supply chains. **Will the nature of cases change and link more to the Bill of Rights?**
- **E.g.** *Cases in USA, Europe, Pakistan, India.*
- Influencing climate plans and policies nationally – 32 countries included human rights in their nationally determined contribution and 3 in relation to the right to a healthy environment. ***Will there be more countries in the 3rd generation of NDCs?***

<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/08/Global-trends-in-climate-change-litigation-2022-snapshot.pdf>

<https://rwi.lu.se/app/uploads/2018/12/ndcreport2017-rwi-sei.png-compressed.pdf>

Keeping it international

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- Sixth Committee of Legal Experts = The Lawyers Club at the UN.
- The Sixth Committee of Legal Experts advisers, negotiates, drafts – all the things lawyers do – but at the UN and in other multilateral processes, such as Law of the Sea Convention, legally binding agreement on conservation and sustainable use of biodiversity in areas beyond national jurisdiction, or International Seabed Authority

Finally...

- Lawyers work at the international level influencing both international law and politics.
- International law has a role to play to secure the right to a healthy and safe environment.
- International law influences what is happening domestically.
- Lawyers are negotiators, advisers, quasi-litigants, and experts at taking 'calculated risks.'