
The Right to a Healthy Environment and Transnational Corporate Accountability: Bridging Gaps between Global North and Global South Perspectives

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KEYWORDS

corporate accountability, RHE, human rights, Global South approaches

ABSTRACT

The 2022 UN General Assembly's recognition of the right to a clean, healthy, and sustainable environment marked a significant step in advancing environmental protection through human rights mechanisms. States in the Global South have led the way in conceptualising the right to a healthy environment in a holistic and broad manner which has allowed for enhanced efforts at corporate environmental and climate accountability. However, this approach has been largely absent from Global North frameworks, which has focused instead on corporate human rights due diligence and the establishment of normative frameworks which entrench certain neoliberal conceptions about the divide between state and corporate responsibility.

This article explores the potential of the right to a healthy environment to enhance corporate accountability for environmental harm, particularly in the context of the UNGA resolution recognising the right, emerging international climate litigation and the development of mandatory human rights due diligence legislation. Divided into four parts, this article first traces the historical development of the right to a healthy environment, examining its intersection with the business and human rights movement. It argues that a gap exists between the right to a healthy environment and corporate accountability, particularly given the Global South's leadership in interpreting the right in this context. It then analyses the 2022 UN resolution and subsequent UN reports that have further developed this right, highlighting innovative approaches to corporate responsibility. Finally, the article considers future pathways for applying the right to hold non-state actors accountable for environmental harm, offering insights into how this right may influence corporate behaviour through litigation and policy mechanisms.



I. Introduction

The 2022 UN General Assembly (UNGA) recognition of the right to a clean, healthy, and sustainable environment (hereinafter ‘right to a healthy environment’) was widely welcomed by human rights activists as an important step forward in the effort to protect the environment from continued degradation and harm.¹ While a large number of states in the Global South had recognised and interpreted a right to healthy environment, the UNGA resolution recognising the right was an important step forward for full international recognition. International recognition of the right presents a valuable opportunity to consider the future of environmental protection, and what role, if any, human rights can play in this protection. While much of the focus of human rights and environmental obligations has been on state actors, little consideration has been given to how the right to a healthy environment could play a role in enhancing the obligations of non-state actors and in particular businesses. Many transnational corporations possess resources and capacities which far exceed those of developing countries, while at the same time taking advantage of lax enforcement mechanisms or a lack of capacity to exploit the environment within these countries. At the same time, the right to a healthy environment has not typically played much of a role in Global North states when regulating these companies, with the Global North now primarily focusing on the concept of ‘human rights due diligence’ which must be conducted by corporations across their supply chains. Human rights due diligence derives from the principle that businesses must have respect for human rights, as noted in the leading international instrument on businesses and human rights, the (non-binding) UN Guiding Principles on Business and Human Rights. There is as a result a gap between how the Global South has conceptualised corporate accountability in the context of the right to a healthy environment and the approach taken by the Global North to the right to a healthy environment.

This article therefore aims to fulfil two objectives. Firstly, it will analyse the current impact of the right to a healthy environment in the context of the human rights obligations of non-state actors. This will involve both a historical consideration of the role the right to a healthy environment played in business and human rights law and policy prior to formal UN recognition of the right. In particular it will focus on Global South leadership on interpreting the right to a healthy environment in a manner consistent with the need for greater corporate accountability for environmental and climate harm. Secondly, it will consider potential future pathways for the application of the right to a healthy environment to enhance the human rights obligations of non-state actors. This will examine the overall potential effectiveness of the right in the context of emerging international climate litigation and Global North efforts to introduce mandatory human rights due diligence legislation.

The article will be divided into four parts. Section II will consider the history of the right to a healthy environment and its intersection with the broader business and human rights movement. It will be shown that the right developed primarily as a Global South instrument and played little role in the development of business and human rights. It will be argued that this has presented a gap between the right to a healthy environment and business and human rights that should be bridged as part of a wider effort to enhance corporate environmental and climate accountability. Section III will examine the UN resolution that recognised the right to a healthy environment, and subsequent reports from relevant UN bodies and associated Rapporteurs which have offered their interpretation of the right. It will be shown that while the resolution itself did little to address the role of non-state actors in both breaching and ensuring fulfilment of the right, subsequent reports from UN human rights bodies show a sense of innovation which will be critical to enhancing the effectiveness of

¹ UNGA Resolution A/RES/76/300.

the right. Section IV will consider the potential future role of the right to a healthy environment in identifying and holding non-state actors to account for human rights violations. It will question what role the right could play in future litigation, as well as in broader business and human rights legal mechanisms such as the recent development of human rights due diligence legislation.

II. History of the Right to a Healthy Environment and Business and Human Rights

To understand the impact and potential future influence of the UN resolution to a right to a healthy environment, it is important to understand how the right developed and what role it played in the broader business and human rights movement.

A. Global South Interpretation and Jurisprudence on the Right to a Healthy Environment

The right to a healthy environment was conceptualised primarily in parts of the Global South.² While the 1972 Stockholm Declaration (the first UN declaration on environmental protection) did recognise that man has a “solemn responsibility to protect and improve the environment for present and future generations,”³ the Global North played little role in further developing this principle into a concrete right centred around environmental protection.⁴ The Global South on the other hand began to introduce the right to a healthy environment into various constitutions and legal frameworks.⁵ In many of these countries,

the right has been tied to existing Indigenous, local, or collective understandings of the importance of living in balanced harmony with nature. The Philippines, for example, introduced a constitutional “right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature”⁶ while Ecuador established rights of nature grounded in principle of *sumac kawsay*, the indigenous Kichwa concept of living in harmony with others and with nature.⁷ This perspective, also known as *Buen Vivir* or *Vivir Bien*, focuses on constructing a symbiotic relationship between humans and nature, placing an emphasis on the community as a collective, with collective work and mutual aid (through, for instance, looking after children) helping to strengthen bonds.⁸ It also emphasises respect for ancestral knowledge and “an economy based on solidarity and community life, in which harmonious relations with nature are extended to the rest of the community for the common good.”⁹ There are a number of other Indigenous perspectives which embrace a more holistic conception of the relationship between humans and nature. For example, the Haida Indigenous community values *Isda ad diigii isda*, which emphasises the importance of giving and receiving particularly with regard to the natural world.¹⁰ Ojeda writes that “by seeing nature as gifts provided to people, rather than natural resources that can be exploited or ecosystem services that could be commodified, liquidated, or replaced, a conservation ethic is deeply embedded in Haida culture.”¹¹ Similarly, the Zulu / Xhosa / Ndebele / Sesotho / Shona concept of *Ubuntu*

² Gonzalez, Carmen. “The Right to a Healthy Environment and the Global South.” *AJIL Unbound*, vol. 117, 2023, pp. 173-178, at 174-175.

³ Stockholm Declaration (1972), Principle 1.

⁴ Gonzalez (n 2) *supra*; Limon, Marc. “United Nations Recognition of the Universal Right to a Clean, Healthy and Sustainable Environment: An Eyewitness Account.” *Review of European, Comparative, and International Environmental Law*, vol. 31, 2022, p. 15.

⁵ Gonzalez (n 2) *supra*; Kotze, Louis. “Human Rights, the Environment, and the Global South.” *International Environmental Law and the Global South*, edited by Shawkat Alam et al., Cambridge University Press, 2015, pp. 171-195.

⁶ *ibid*; Gonzales, Carmen. “Environmental Justice, Human Rights, and the Global South.” *Santa Clara Journal of International Law*, vol. 13, 2015, pp. 151-195, at 153-155.

⁷ *ibid*.

⁸ Artaraz, Kepa. “Introduction: *Vivir Bien* / *Buen Vivir* and Post-Neoliberal Development Paths in Latin America: Scope, Strategies, and the Realities of Implementation.” *Latin American Perspectives*, vol. 48, 2021, pp. 4-16.

⁹ *ibid*.

¹⁰ Ojeda, Jaime, et al. “Reciprocal Contributions between People and Nature: A Conceptual Intervention.” *BioScience*, vol. 72, 2022, pp. 952-962; Jones, Russ, et al. “Haida Marine Planning: First Nations as a Partner in Marine Conservation.” *Ecology and Society*, vol. 15, 2010, pp. 1-16.

¹¹ *ibid*.

emphasises the interconnected nature of the environment and humanity, focusing on communal cooperation to solve problems and the use of the environment in a way that benefits the whole community.¹² Kotze has also noted that many of the conceptions of the right to a healthy environment in the Global South have been formulated according to both customary and cultural conceptions of the environment and the unique environmental conditions that are experienced by particular countries.¹³

This holistic approach to the right to a healthy environment is relevant to considering how the Global South views corporate accountability, in that, what may in the Global North be viewed as ‘just’ environmental harm (that is, still a negative, but negative due solely to physical environmental impacts), environmental harm can also be construed in accordance with how it impacts culture, ethics, and indigenous traditions.¹⁴ The Global South is not a monolith, but, as Gonzales has noted, “one explanation for the Global South’s embrace of the right to a healthy environment is its disproportionate exposure to environmental and human rights abuses from extractive and polluting industries that benefit Northern states, transnational corporations, and national elites.”¹⁵ The interest and innovation shown in the Global South with regard to this right presents a useful foundation through which the Global South can play an effective role in enhancing the wider utility of the right following UNGA recognition.

The potential role of the Global South as a leader in enhancing interpretations of the right to a healthy environment is already reflected in the context of regional and national Global South jurisprudence on the

interplay between the right to a healthy environment and accountability for non-state actors for environmental harms. Given that the Global South often finds itself exploited by Global North transnational corporations,¹⁶ jurisprudence in the Global South has had to reckon with this exploitation, even as the Global North shied away from a broad recognition of the right to a healthy environment.¹⁷ Clear examples of this dynamic jurisprudence can be seen in the work of the African Court of Human and People’s Rights and African Commission on Human and People’s Rights. The African Charter of Human Rights contains a right for all persons to a “general satisfactory environment favourable to their development.”¹⁸ In *Social and Economic Rights Action Center (SERAC) & Anor v the Federal Republic of Nigeria*, the Commission found that the state of Nigeria had violated the right to a satisfactory environment as a result of their failure to protect the Ogoni people from oil pollution.¹⁹ In *SERAP v the Federal Republic of Nigeria*, the Economic Community of West African States (ECOWAS) Court of Justice held that the Nigerian government was responsible for its failure to protect against abuses by oil companies noting that “Nigeria had not seriously and diligently held accountable any of the perpetrators of the many acts of environmental degradation which occurred in the Niger Delta Region.”²⁰ The case further held that “the duty assigned by Article 24 is “both an obligation of attitude and an obligation of result,” and that Article 24 requires the State to adopt legislative or other measures to give effect to the right, and that such measures must be implemented to promote accountability and to ensure adequate reparation for environmental

¹² The concept is found in a variety of African cultures. see Edityeibo, Edwin. “Ubuntu and the Environment.” *The Palgrave Handbook of African Philosophy*, edited by A Afolayan and T Falola, Palgrave Macmillan, 2017; Kyei-Nuamah, David, and Zhengmei Peng. “Ubuntu Philosophy for Ecological Education and Environmental Policy Formulation.” *Journal of Philosophy of Education*, vol. 58, 2024, pp. 540–561.

¹³ Kotze (n 5) *supra*.

¹⁴ *ibid*.

¹⁵ Gonzalez (n 2) *supra*.

¹⁶ Gonzales (n 6) *supra*.

¹⁷ Kotze (n 5) *supra*.

¹⁸ African Charter of Human Rights, Article 24.

¹⁹ *Social and Economic Rights Action Center (SERAC) & Anor v the Federal Republic of Nigeria (SERAC v Nigeria)* [2001] ACHPR 35, African Commission on Human Rights Communication 155/96.

²⁰ *Socio-Economic Rights and Accountability Project (SERAP) v the Federal Republic of Nigeria & Anor*, ECOWAS Court of Justice No. ECW/CCJ/JUD/18/12 (2012).

damage.²¹ This means in effect that the Court viewed the role of the state as being to effectively regulate private corporations to avoid further damage. The right to a satisfactory environment was linked to concepts like accountability to pressure the state to use its powers to curtail harmful corporate activity. This jurisprudence underscores that the activities of states and corporations can be intertwined in such a manner as to render it impossible to protect the right to a healthy environment without considering how this right applies to corporations. As Lugard notes, “this decision underscores the long-held view that the Nigerian government either shields the oil companies from environmental liability because of the economic benefits of their operations, or the regulatory agencies are incapable of summoning effective institutional response necessary to set the pace for sustainable petroleum operations.”²² In other words, the Commission was willing to acknowledge that both states and corporations can form part of the problem with regard to defending corporate interests, but equally that states can be obligated to act in a manner that curtails corporate interests such that the corporations should be obligated to mitigate the impact on the environment.

The Inter-American Court of Human Rights has also been ambitious in its interpretation of the right to a healthy environment, as first recognised by the Court in the landmark case of *Indigenous Communities Members of the Lhaka Honhat Association v Argentina*.²³ In its Advisory Opinion on human rights and the environment, the Court noted that the right to a healthy environment could be interpreted to encompass protection for “components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk

to individuals.” In other words, nature itself was to be protected for its own sake and for the sake of other organisms, and not just with regard to how it related to particular human interests. The Advisory Opinion then made explicit reference to how the right interacts with businesses noting that the Court takes note that, according to the “Guiding Principles on Business and Human Rights, business enterprises should respect and protect human rights, and prevent, mitigate and assume responsibility for the adverse human rights impacts of their activities.” The UN Guiding Principles on Business and Human Rights (2011) will be discussed in further details in Section II.B, but what is important for the moment is the embedding of the non-binding Principles into an enforceable Global South legal framework. This shows an interest in both broadening the conceptions of the right to a healthy environment to be more holistic, and an interest in increasing scrutiny on corporations which may be violating this holistic conception of the right.

In *La Oroya v Peru*, the Inter-American Court used this established connection between the right to a healthy environment and the UNGPs to concretise its heightened obligations on business actors. The Court had to consider whether Peru had violated the right to a healthy environment through its failure to regulate mining companies in the city of La Oroya, leading to serious pollution and health issues for the local population.²⁴ The Court held that Peru had violated the right to a healthy environment due to its failure to adequately regulate the business and protect the population. The Court further stipulated that it requires States to prevent activities within their jurisdiction from causing significant environmental damage, applying this requirement to both public and private entities.²⁵ The jurisprudence of the Court

²¹ *ibid.*

²² 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*, vol. 8, 2021, pp. 402-413.

²³ *Indigenous Communities Members of the Lhaka Honhat Association v Argentina*, Inter-American Court of Human Rights, Series C, no. 400, 6 Feb. 2020.

²⁴ *Caso Habitantes de La Oroya v Peru*, I-ACtHR, Series C, no. 511, 27 Nov. 2023; see Saldana, Jose, “People from La Oroya vs Peru, Inter-American Court of Human Rights: How Effective is International Law to Protect the Environment in Extractive Contexts?” *EJIL Talk*, 11 Apr. 2024.

²⁵ *ibid.*

shows a gradual increase in obligations on businesses, using its capacity to order increased supervision of corporate activities to place indirect obligations on business to comply with domestic environmental law, and exceed compliance with these laws where internationally recognised standards like the UN Guiding Principles on Business and Human Rights may contain even higher obligations. The case is a recent example of how the right to a healthy environment has been interpreted by regional Global South courts in a manner that works within the existing international framework on business and human rights to ensure greater efforts are made to hold businesses accountable, even within the limited state-centric framework of the overall human rights system.

The Philippines Human Rights Commission has been even more innovative in its leadership on the question of the link between climate change, the right to a healthy environment, and the role of non-state actors in perpetuating climate harm. The Commission investigated the impact of major fossil fuel companies on the right to a healthy environment, recognised in Philippine law since the 1990s, in its “Carbon Majors” Inquiry.²⁶ While the Commission can only issue non-binding recommendations, its documents and reports can be used in Philippine domestic courts, allowing for it to shape norms and precedent.²⁷ The Commission noted that climate change has “disrupted” the “rhythm and harmony” of this nature.²⁸ It also determined that it could consider “allegations involving violations of human rights of Filipino people, even when occurring outside Philippine territory” such that it did not matter whether a particular business was or was not domiciled in the Philippines so long as a link could be shown between its emissions and human rights violations in the Philippines.²⁹ The Inquiry

then interpreted the right to a healthy environment as including acts which “diminishes the capacity of the environment to provide life-sustaining services [which] consequently impact human well-being.”³⁰ It used testimony from indigenous peoples to bolster this interpretation, with the testimony noting the impact environmental degradation was having on their capacity to obtain traditional food and medicines.³¹ The Commission therefore entrenched and interlinked the right to a healthy environment with wider cultural and well-being concerns, consistent with a broad interpretation of the right.

Turning to the role and responsibility of corporations, the Commission first laid out general obligations on all corporations to respect human rights, which it viewed as including appropriate due diligence efforts encompassing analysis and mitigation of climate impacts. The carbon majors, who were viewed to have obfuscated the truth behind climate impact and contributed to climate misinformation, were held to a higher standard, being obliged to “desist from all activities that undermine the findings of climate science” and “contribute to a green fund for the implementation of mitigation and adaptation measures.”³² Further, the Commission noted that greater efforts at accountability could be made in the context of the non-state actors, using particularly egregious acts like the obfuscation of climate science as a base for liability, though it did not go into details regarding what the nature of this liability may be. The right to a healthy environment therefore formed part of a broad basis of rights used to both assess the general responsibility of corporations for climate harm and to impose sweeping obligations on those corporations to mitigate and provide

²⁶ Philippines Human Rights Commission, *National Inquiry on Climate Change*, 2022.

²⁷ Climate Law Accelerator, *The Carbon Majors Inquiry*, 2022.

²⁸ Philippines Human Rights Commission (n 26) *supra*.

²⁹ *ibid*; Boom, Keely, et al. “A Mandate to Investigate the Carbon Majors and the Climate Crisis: The Philippines

Commission on Human Rights Investigation.” *Australian Journal of Asian Law*, vol. 53, 2022, pp. 57-72.

³⁰ Philippines Human Rights Commission (n 26) *supra*.

³¹ *ibid*.

³² *ibid*.

remediation for this harm.³³ The findings of the Commission are not enforceable, and indeed, it would be challenging for the Philippines to pursue carbon majors that largely hold power and assets outside of their jurisdiction. Nonetheless, a Global South human rights-led inquiry of this kind is groundbreaking in its effort to hold the carbon majors, primarily Northern companies, to account for the climate chaos wrought upon the region, and demonstrates how the Global South has used the right to a healthy environment to shed light on actions and activities the Global North has undertaken which have had a disproportionate impact on their environment and society.

The cases above largely pertain to the role of states in regulating corporations in the context of the environment and human rights. This is natural given that these courts at present only have direct jurisdiction over states. Nonetheless they demonstrate clear linkages between the right to a healthy environment and an obligation for corporations to act to protect this right, whether through mandated action via regulation or through encouragement of states to hold corporations accountable via remediation measures. Global South courts have demonstrated that they believe the right to a healthy environment cannot be adequately protected unless corporations are placed under some obligation to also respect and protect the right.³⁴ As such, the right to a healthy environment thus far has shown positive signs of avoiding the traditional criticisms of broader human rights law that it is merely a tool for Global North domination and cultural suppression of the Global South.³⁵ These cases and their impacts are undoubtedly restricted by the capacity of the relevant

courts and states to enforce the rulings, but nonetheless, an opportunity was created by this conceptualisation to ensure the Global South could position itself as a figure of itself within the debate regarding the links between human rights and the environment.

B. The Development of Business and Human Rights as a Normative Framework

In contrast, business and human rights as an instrument of law and policy was primarily developed in the Global North, but with a focus on violations arising in the Global South. The anti-apartheid movement, and subsequent highlighting by activists of harm being caused to local indigenous communities by major corporations (particularly the actions of Shell in the Niger Delta region) in the 1990s is usually dated as the beginning of formal discourse on business responsibilities in the context of human rights,³⁶ though a more general focus on potential human rights violations committed by businesses does predate this.³⁷ Despite this typical conception, it has been noted by Wettstein that “more fragmented, contextualized local movements emanating from the Global South itself may have existed much earlier, though of course under different, if any, labels.”³⁸ However, these movements had little influence on the emergence of the first businesses and rights instruments, including the Global Compact, and the first attempts to establish (Draft) Norms on the Responsibilities of Transnational Corporations.

The Global Compact is a set of voluntary corporate commitments established by the UN Secretary General which align principally with the view that corporations should, per the Compact, operate in a way “that, at a minimum, meet fundamental responsibilities

³³ Savaresi, Annalisa. “Using Human Rights Law to Address the Impacts of Climate Change: Early Reflections on the Carbon Majors Inquiry.” *Climate Change Litigation in the Asia Pacific*, edited by Jolene Lin, Cambridge University Press, 2020, pp. 73-93.

³⁴ Cantú, Rivera Humberto. “Business and Human Rights in the Inter-American Systems.” *Teaching Business and Human Rights*, edited by Anthony Ewing, Edward Elgar, 2023, pp. 230-243.

³⁵ Mende, Janne. “Are Human Rights Western—And Why Does It Matter? A Perspective from International Political

Theory.” *Journal of International Political Theory*, vol. 17, 2019, pp. 38-57.

³⁶ Wettstein, Florian. “The History of ‘Business and Human Rights’ and Its Relationship with Corporate Social Responsibility.” *Research Handbook on Business and Human Rights*, edited by Surya Deva and David Birchall, Edward Elgar, 2020, pp. 23-45.

³⁷ Santoro, Michael. “Business and Human Rights in Historical Perspective.” *Journal of Human Rights*, vol. 14, 2015, pp. 155-161.

³⁸ Wettstein (n 36) *supra*.

in the areas of human rights, labour, environment and anti-corruption.”³⁹ From the outset, the Compact draws a distinction between human rights and the environment, with the two being divided into different broader principles with separate recommendations.⁴⁰ This is unsurprising given that the right to a healthy environment had yet to be formally recognised by the UN at the time. However, the Compact has been criticised as putting “a palatable, social-democratic façade on neo-liberal corporatism, while upholding the institutional interests of multinational corporations (MNCs).”⁴¹ This is largely down to the voluntary nature of the Compact coupled with the absence of effective enforcement mechanisms. The (Draft) Norms on the Responsibilities of Transnational Corporations were aimed to be a more ambitious effort to ensure that “transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.”⁴² These Norms noted that transnational companies “and other business enterprises shall carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate, as well as in accordance with relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment as well as human rights”⁴³

and recommended that corporate activities be conducted in a manner that contributed to the wider goal of sustainable development.⁴⁴ While not formally recognising the connection between human rights and the environment, the effort to enact direct obligations on transnational corporations presented a groundbreaking opportunity to hold these corporations accountable for their actions in the Global South.⁴⁵ However, in the face of opposition from the business community and Northern states like the US, the Norms were rejected.⁴⁶ By opposing the adoption of the Norms, efforts to establish an international business and human rights framework become more pragmatic,⁴⁷ which in turn entailed embracing, where possible, a foundation for business and human rights obligations favourable to Northern conceptions of business and human rights⁴⁸ and largely adverse to any direct bridge being established between human rights, businesses, and the environment.

This sense that the Global North has set out the terms through which business and human rights is illustrated through the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs are the leading international instrument on business and human rights, consisting of a set of voluntary guidelines for states and corporations, divided into three pillars: the state responsibility to protect human rights, the corporate responsibility to respect human rights and the obligation on states and corporations to ensure access to remedies for alleged violations of human rights.⁴⁹ The

³⁹ UN Global Compact (2000).

⁴⁰ *ibid* at Principles 1-2 and 7-9.

⁴¹ Schlicht, Gordon Alexander. “Reflecting on the UN Global Compact: What Went Wrong.” *LSE Business Review Blog*, 26 Jul. 2022; see also Knight, Graham, and Jackie Smith. “The Global Compact and Its Critics: Activism, Power Relations, and Corporate Social Responsibility.” *Discipline and Punishment in Global Politics*, edited by Janie Leatherman, Palgrave Macmillan, 2008, pp. 191-214.

⁴² (Draft) Norms on the Responsibilities of Transnational Corporations (2003) A[1].

⁴³ *ibid* at G[14].

⁴⁴ *ibid*.

⁴⁵ Miretski, Pini Pavel, and Sascha-Dominik Bachmann, “Global Business and Human Rights—The UN ‘Norms on

the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’—A Requiem.” *Deakin Law Review*, vol. 17, 2012, pp. 1-37.

⁴⁶ *ibid*.

⁴⁷ Wettstein (n 36) *supra*; Karp, David Jason. “Business and Human Rights in a Changing World Order: Beyond the Ethics of Disembedded Liberalism.” *Business and Human Rights Journal*, vol. 8, 2023, pp. 135-150.

⁴⁸ Karp (n 47) *supra* at 135-150; Hamm, Brigitte. “The Struggle for Legitimacy in Business and Human Rights Regulation—A Consideration of the Processes Leading to the UN Guiding Principles and an International Treaty.” *Human Rights Review*, vol. 23, 2022, pp. 103-125.

⁴⁹ UN Guiding Principles on Business and Human Rights (2011).

UNGPs were drafted through a multi-stakeholder process and received significant support from prominent Northern states.⁵⁰ On the one hand, this process did provide opportunities for members of the Global South to critique what would eventually become the UNGPs. On the other hand, it has been pointed out by Deva that “the advice of all stakeholders, including NGOs, was sought and valued, but only within the framework set by the SRSG. ... the core of the Ruggie project was not open for change and ... hardly changed despite extensive consultations.”⁵¹ In other words, the UNGP process gave legitimacy to the three pillars but did not necessarily take full account of Global South concerns, nor indeed did it take particular account of the conceptualisation of environmental harm and the right to a healthy environment seen in Global South countries.⁵² This is further evidenced through the fact that the UNGPs does not make direct reference to any form of right to a healthy environment, instead noting that “processes for assessing human rights impacts can be incorporated within other processes such as risk assessments or environmental and social impact assessments.”⁵³ The lack of environmental obligations imposed on corporations by the UNGPs highlights a more traditional perspective to human rights, better understood by the Global North. Indeed the UNGPs further state “the responsibility of business enterprises to respect human rights refers to internationally recognized human rights—understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.”⁵⁴ The examples given focus primarily on social and employment related rights rather than the more holistic conceptions of human rights and

rights obligations seen when the Global South has considered the right to a healthy environment.

Thus, the UNGPs, while largely a welcome development and one that can be built upon in the context of the UN recognition of the right to a healthy environment, had from the outset too close an association with the neoliberal world order to ensure the Global South’s aspirations for effective corporate accountability were put into practice. As Karp has noted “the sharp separation of the ‘state duty to protect’ from the ‘corporate responsibility to respect’ replicates the same divisions between the political and the economic, between the public and the private, between states and markets, which have characterized neoliberal world order since the 1980s. Instead of two interpenetrating spheres, states and corporate actors are modelled by the UNGPs as existing in separate and distinct fields in terms of their obligations.”⁵⁵ While the Global South has made use of the UNGPs to attempt to impose more ambitious obligations, as outlined in Section II.A, it is doing so within the limitations of the overall model that enforces a demarcation between state and corporate responsibilities not necessarily conducive to fully effective corporate accountability.

C. Gaps between These Theories

What can be seen from the history discussed above is that Global South courts have shown interest and ability to interpret the right to a healthy environment in a manner aimed at curtailing corporate environmental harm through direct punitive measures or indirect pressure being placed on states to increase their regulation of corporate activity.⁵⁶ Business and human rights on the other hand has primarily focused on establishing general voluntary obligations based on supply chain

⁵⁰ Hamm (n 48) *supra*.

⁵¹ Deva, Surya. “Treating Human Rights Lightly: A Critique of the Consensus Rhetoric and the Language Employed by the Guiding Principles.” *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?*, edited by S Deva and D Bilchitz, Cambridge University Press, 2013, pp. 78-104, 85; Hamm (n 48) *supra*.

⁵² *ibid*.

⁵³ UNGPs (n 49) *supra* at 21.

⁵⁴ *ibid* at 14.

⁵⁵ Karp (n 47) *supra* at pp. 142-143.

⁵⁶ Gonzalez (n 2) *supra*; Sathiyabama, S. “A Climate Warrior for the Global South.” *Volkerechtblog*, 22 Mar. 2023.

due diligence,⁵⁷ which are now slowly shifting toward a mandatory approach in major economic regions like the EU. The right to a healthy environment developed organically and dynamically across the Global South taking into account unique cultural contexts, and establishing a base foundation for holding Northern companies accountable for the disruption of this right. Business and human rights on the other hand has developed in accordance with neoliberal norms, and primarily focused on traditional individualistic conceptions of human rights. The Global South has for the most part wielded the more positive aspects of this framework (that is, the fact that the UNGPs have become a globally accepted standard) to heighten obligations on corporations, but it lacks the capacity to ensure these corporations follow through on their recommendations. At the same time, the Global North has avoided heavy enforcement in the manner the Global South has outlined through the weak enforcement mechanisms associated with the current business and human rights framework. The Global North has also yet to fully integrate the right to a healthy environment within this framework, creating further gaps between Global South and Global North conceptions of what it means to hold corporations accountable for environmental harm.

There is as such an initial gap between the potential shown by the human right to a healthy environment in Global South jurisprudence and the current conceptualisation of the role of business in the wider human rights framework. The question is therefore whether the UN recognition of the right to a healthy environment is (i) cognisant of this gap and (ii) has played a role in bridging this gap through its recognition and subsequent interpretations.

III. UN Recognition of the Right to a Healthy Environment

⁵⁷ Bonnitcha, Jonathan, and Robert McCorquodale. "The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights." *European Journal of International Law*, vol. 28, 2017, pp. 899-919.

A. The UNGA Resolution on the Right to a Healthy Environment

The right to a clean, healthy, and sustainable environment recognised by the UN General Assembly is an important step forward in demonstrating the case for using human rights to hold corporations accountable for environmental and climate harm. The resolution recognising the right was passed in 2022, following a similar resolution issued by the UN Human Rights Council in 2021. The latter resolution recognised the right to a clean, healthy, and sustainable environment, and noted this right was also related to other rights in accordance with international law. It then invited the UNGA to further consider the Resolution, leading in turn to full consideration of the right by the UNGA. While the UNGA Resolution passed overwhelmingly (161 votes in favour, eight abstentions), examining the content of the Resolution is relevant to determining what approach was taken to interpreting the right, and what relevance UNGA recognition will be to businesses.

Firstly, there are a number of references to the role of businesses in protecting the right to a healthy environment. The UN General Assembly Resolution which recognised the right explicitly states "recalling the Guiding Principles on Business and Human Rights which underscore the responsibility of all business enterprises to respect human rights"⁵⁸ and "calls upon states, international organizations, *business enterprises* [emphasis added] and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all."⁵⁹ In other words, the resolution recognising the right creates an explicit link between the recognition of this right and the role of business organisations in ensuring its implementation. The right is also tied to the

⁵⁸ UNGA Resolution A/RES/76/300.

⁵⁹ *ibid.*

UNGPs insofar as it demonstrates an awareness of the current consensus on the role of business to respect human rights. This is positive as it advances the case that the right to a healthy environment should be seen as an “internally recognised right” and therefore falls within the scope of rights considered to be within the remit of the UNGPs.

Secondly, environmental harm appears to be conceived of in a ‘traditional’—that is, Northern—manner. The Resolution notes that “environmental degradation, climate change, biodiversity loss, desertification and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights.”⁶⁰ This would link harm associated with violating the right to a healthy environment to physical harm, or harm to the climate, though the latter remains relatively undefined outside of a reference in the Resolution to the obligates states have under existing climate agreements, the most prominent example being the Paris Agreement to limit global temperatures below 1.5°C.⁶¹ Reference to sustainable development does open a more holistic conception of harm, and further clarification of what actions would violate the right to a healthy environment may arise, particularly as the effects of climate change worsen and raise broader questions about the role of international law. For example, there may be wider consideration of whether the right to a healthy environment would encompass a right to a stable climate or whether the latter should be conceived of as a separate right.⁶² Nonetheless, this conception is useful from a business and human rights perspective in framing what harm businesses may need to address when considering their own obligation to respect the right.

Further, recognition of the right by the UNGA does little to identify what specific conception of the right to a healthy environment is envisioned by the international community and what specific obligations are associated with protecting and respecting this specific conception.⁶³ Indeed, this was noted by several states during the debate prior to the adoption of the resolution, with some noting that there was a lack of a common internationally agreed understanding on the content and scope of the right.⁶⁴ The UK and Poland voted in favour of the right but noted that further discussion was required as to its meaning, and that it remained to be determining what the full scope of this right would be.⁶⁵ Given this was a UNGA Resolution, rather than a right recognised through an amendment of, or creation of a human rights treaty, the Resolution itself remains non-binding. Thus, even though the right could arguably be considered to be “internationally recognised” (a term which is not defined by the UNGPs, though a “core list” of these rights references the leading human rights treaties, for instance, the International Bill of Human Rights, coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work)⁶⁶ there is no definitive conclusion that the right would fall within the scope of rights considered by the UNGPs, or, if it does—which it likely does given the reference in the Resolution to the UNGPs—what conception of the right should businesses seek to abide by.

The lack of definition leaves open two primary possibilities in the context of the obligations of businesses. The first possibility is that relevant human rights bodies, including the UN human rights bodies, human rights courts, and those seeking to introduce relevant business and human rights legislation, may

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² Diaz-Cruce, Eliana. “Human Rights at the Climate Crossroads: Analysis of the Interconnection between Human Rights, Right to Climate, and Intensification of Extreme Climate Events.” *Laws*, vol. 13, 2024, pp. 1-23.

⁶³ “With 161 Votes in Favour, 8 Abstentions, General Assembly Adopts Landmark Resolution Recognizing

Clean, Healthy, Sustainable Environment as Human Right.” *UN Press*, 28 Jul. 2022; Tang, Ke, and Otto Spikjers. “The Human Right to a Clean, Healthy and Sustainable Environment.” *Chinese Journal of Environmental Law*, vol. 6, 2022, pp. 87-107.

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ UNGPs (n 49) *supra*.

look to comparative examples of how similar institutions have conceptualised the right to a healthy environment. This presents an opportunity for the Global South to assume a leadership position in defining the right to a healthy environment and recommending specific obligations that are associated with the right.⁶⁷ This would mean that the prior jurisprudence of the Global South, including the corporate obligations outlined by the Philippines Human Rights Commission and the bold statements made by regional human rights courts on the obligations of states to supervise corporate activity could become influential in laying out the norms and expectations with regard to business compliance with the right. Were this approach to be taken, Global South interpretations of the right to a healthy environment could become universalised, which would in turn impose higher obligations on businesses.

The second possibility is that the lack of a definition means that the Global North may seek to water down its provisions, or tie it closely to more familiar procedural rights, such as the right to access to information in the context of environmental decision-making.⁶⁸ Were this approach to be taken, businesses may not find they need to increase their obligations beyond existing environmental due diligence efforts, nor will it be clear how major environmental crises like climate change may play a role in enhancing the wider human rights due diligence obligations proposed by regulators. Alternatively, the environment could continue to be seen as being a critical aspect for the enjoyment of wider human rights, but not necessarily an independent right associated with culture and wellbeing,⁶⁹ even if rights-based language is being used in the discourse.⁷⁰ This could in turn exacerbate the existing gaps in the conceptualisations of

business and human rights, with the Global North continuing to lay out the norms, and thus there being little practical effect on efforts to hold businesses accountable for environmental harm. Recognition of the right will therefore remain symbolic and do little to shift the criticisms of international human rights law being seen as a Northern instrument.

It should also be noted that, when considering these approaches, there remain significant challenges with enforcing rights obligations, and the corporate sector is unlikely to react well to attempts to enforce rights obligations regardless of whichever approach is taken. The question of enforcement is not so much a concern with regard to interpreting the right to a healthy environment but a more general question of how to increase enforcement capacity within the international system and the regional human rights bodies.⁷¹ While full consideration of the enforceability of human rights against non-state actors is beyond the scope of this article, it is important to bear in mind that future interpretations of the right to a healthy environment will be occurring in this enforcement vacuum.⁷² Nonetheless, as will be shown below, there are new and emerging opportunities to integrate human rights considerations within the broader climate strategic litigation movement, as well as increased interest within the UN human rights system in examining how the intersection of corporate accountability and climate and environmental harm may be understood within the general intersection of human rights and the environment. As a starting point for understanding which of the above approaches may be the one currently taken, it is useful to examine what subsequent UN bodies and Rapporteurs have stated about the right to a healthy environment in the context of business.

⁶⁷ Gonzalez (n 2) *supra*.

⁶⁸ *see* Peters, Birgit. "Unpacking the Diversity of Procedural Environmental Rights: The European Convention on Human Rights and the Aarhus Convention." *Journal of Environmental Law*, vol. 30, 2018, pp. 1-27.

⁶⁹ Chalbi, Azadeh. "A New Theoretical Model of the Right to Environment and its Practical Advantages." *Human Rights Law Review*, vol. 23, 2023, pp. 1-19.

⁷⁰ *ibid*; Tang and Spikjers (n 63) *supra*.

⁷¹ Venn, Alice. "Rendering International Human Rights Law Fit for Purpose on Climate Change." *Human Rights Law Review*, vol. 23, 2023, pp. 1-25.

⁷² *ibid*.

B. Subsequent UN Interpretations and Reports on the Right to a Healthy Environment and Non-State Actors

The two primary UN bodies relevant in examining how the right to a healthy environment has been interpreted are the UN Working Group on Business and Human Rights, which is tasked with promoting, disseminating and helping to implement the UNGPs, and the Special Rapporteur on Human Rights and the Environment, who is tasked with examining human rights obligations in relation to the environment.

The UN Working Group on Business and Human Rights has published a number of reports since the UNGA recognition of the right to a healthy environment, but these reports have largely avoided any attempt to avoid or clarify the nature and scope of the right. In one report, the Working Group noted that “the responsibility to respect human rights refers to internationally recognized human rights, which include civil, cultural, economic, political and social rights, as well as collective rights. Rights holders are all those who have these rights, including groups such as Indigenous Peoples.”⁷³ This largely reiterates the language seen within the UNGPs, but, with the positive exception of the explicit reference to Indigenous Peoples, does little to address how the right to a healthy environment should be considered in the context of the UNGPs. In another report, the Working Group recommended that corporations operating in the extractive sector “include mandatory human rights, environmental and climate change due diligence provisions”⁷⁴ noting that “a just transition should not only focus on achieving

environmental sustainability as quickly as possible but also prioritize human rights, ensuring that no one is left behind.”⁷⁵ This maintains a broadly siloed approach to environmental concerns and human rights issues, which does not necessarily reflect the more interconnected approach advocated for by the UNGA Resolution—that is, that protection of the environment should be in and of itself a component of wider human rights, and by extension, that environmental sustainability could not be achieved without protection of human rights regardless.⁷⁶ Clarifying the relationship between the UNGPs and the right to a healthy environment would be an ambitious next step for the Working Group in reducing the siloes between environmental and human rights due diligence. In doing so it can take inspiration from Global South jurisprudence in considering obligations that would arise from this relationship, though it remains to be seen whether to what extent this approach will be reflected in practice.

The Special Rapporteur on Human Rights and the Environment has taken greater steps to outline the full scope and application of the right to a healthy environment to businesses. In one report, the Rapporteur outlined in detail how specific actions associated with investor-state dispute settlement (ISDS) may affect the right to a healthy environment.⁷⁷ This is important in that ISDS has often been criticised by the Global South as a tool for Northern based investors to hamper regulation and ‘lock in’ unfair terms of business designed to benefit private Northern interest.⁷⁸ The Rapporteur identified that many ISDS projects violate the right to a

⁷³ UN Working Group on Business and Human Rights. “Investors, Environmental, Social and Governance Approaches and Human Rights.” UN Doc A/HRC/56/55, 2024, [48].

⁷⁴ UN Working Group on Business and Human Rights. “Extractive Sector, Just Transition and Human Rights.” UN Doc A/78/155, 2023, [68].

⁷⁵ *ibid* at [66].

⁷⁶ *see* UN Special Rapporteur on Human Rights and the Environment. “Expert Seminar on the Responsibility of Business Enterprises to Respect the Human Right to a Clean, Healthy and Sustainable Environment.” UN Doc A/HRC/55/41, 2024.

⁷⁷ UN Special Rapporteur on Human Rights and the Environment. “Paying Polluters: The Catastrophic Consequences of Investor-State Dispute Settlement for Climate and Environment Action and Human Rights.” UN Doc A/78/168, 2023.

⁷⁸ A full critique of ISDS is beyond the scope of this article. For further information, *see* Alvaraez, Jose. “ISDS Reform: The Long View.” *ICSID Review*, vol. 36, 2021, pp. 253-277; Wegmann, Vera. “The Unsustainable Political Economy of Investor-State Dispute Settlement Mechanisms.” *Review of Administrative Sciences*, vol. 7, 2021, pp. 480-496.

healthy environment, that the denial of public participation in ISDS proceedings was a violation of the right to a healthy environment, and that oftentimes ISDS tribunals unfairly dismissed rights-based arguments during ISDS proceedings.⁷⁹ The Rapporteur defined the right to a clean, healthy and sustainable environment as including “clean air, safe and sufficient water, healthy and sustainably produced food, non-toxic environments, healthy biodiversity and ecosystems and a safe climate.”⁸⁰ An expansive interpretation of the right like the one offered by the Rapporteur has the potential to tie in with wider Global South conceptions of the right. For example, the reference to “sustainably produced food” could be used to incorporate Indigenous conceptions and practices in food production into wider considerations of how businesses may play a role in the Northern-led exploitative global food system.⁸¹ More generally, the labelling of the current existing structure of ISDS as being on-the-whole a violation of human rights shows that the right to a healthy environment can be used to target structural economic practices which have disproportionately benefited Northern transnational corporations.⁸² A structural approach of this kind to applying the right to a healthy environment could open up further opportunities for corporations to face scrutiny for their role in the Northern-dominated economic system which has caused a multitude of environmental crises.

In another report, the Rapporteur considered the nexus between state and business obligations with regard to the right to a healthy environment.⁸³ Of particular interest is the broad interpretation of what the Rapporteur deems the “procedural elements”

of the right to a healthy environment,⁸⁴ with the Rapporteur noting that “greenwashing, deceit, denial, fraud, sabotaging science, aggressive lobbying, massive political donations, corruption, manipulating public opinion, revolving-door hiring practices, regulatory capture”⁸⁵ had all undermined these procedural elements. This expansive approach to what could be considered as harmful to the right to a healthy environment opens further opportunities for the right to healthy environment to be applied to an extensive number of current business practices. It is broadly similar to the approach taken by the Philippines Human Rights Commission in the Carbon Majors Inquiry, in that the Commission also identified damaging business practices like climate science obfuscation and denial as having contributed to human rights violations.⁸⁶ Questions remain however as to whether this broad interpretation of what may undermine the right to a healthy environment can be translated into effective strategies for corporate accountability. In particular, the fact that the overall recommendations of the report depend largely on the state creating and enforcing heightened obligations, rather than the onus being on businesses themselves to advance protection of the right, is a reiteration of the status quo set out by the UNGPs.

Additionally, the Rapporteur tied the right to a healthy environment to the emerging scientific concept of planetary boundaries—planetary limits identified by scientists, of which at least six-of-nine have currently been breached⁸⁷—stating that “human rights obligations of States and businesses must be re-evaluated” in light of the breaches of these

⁷⁹ UN Special Rapporteur on Human Rights and the Environment (n 77) *supra*.

⁸⁰ *ibid* at [54].

⁸¹ Keenan, Liam, et al. “Hungry for Power: Financialization and the Concentration of Corporate Control in the Global Food System.” *Geoforum*, vol. 147, 2023, pp. 1-11.

⁸² *see* Cima, Elena. “The Right to a Healthy Environment: Reconceptualizing Human Rights in the Face of Climate Change.” *Review of European, Comparative and*

International Environmental Law, vol. 31, 2022, pp. 38-49.

⁸³ UN Special Rapporteur on Human Rights and the Environment. “Business, Planetary Boundaries, and the Right to a Clean, Healthy and Sustainable Environment.” UN Doc A/HRC/55/43, 2024.

⁸⁴ *ibid* at [27].

⁸⁵ *ibid*.

⁸⁶ Savaresi (n 33) *supra*.

⁸⁷ Rockstrom, Johan, et al. “A Safe Operating Space for Humanity.” *Nature*, vol. 461, 2009, pp. 472-475.

boundaries.⁸⁸ The Rapporteur further considered the opportunities available to pursue new models of economics, including a human rights based economy.⁸⁹ This referred to an economy which would “guarantee the material, social and environmental conditions necessary for all people to live with dignity on a flourishing planet” by prioritising investment in economic, social, cultural and environmental rights.⁹⁰ This framing and consideration of human rights is important for two reasons. Firstly, the reference to planetary boundaries could encourage consideration of the wider scholarship planetary boundary scientists have conducted outlining the need for equity and distributive justice.⁹¹ This could in turn involve a larger role for businesses in restricting their activities likely to compromise on these boundaries, and a reconsideration of relevant operational targets to ensure business aligns with the equitable approach needed to protect planetary boundaries. The right to a healthy environment would, under this approach, be protected through emphasis on a planetary boundary framework within new economic paradigms, and businesses would in turn face consequences where they do not embrace these paradigms. At the same time, however, the planetary boundary framework has not enjoyed much support from the Global South, many of whom see it as a means of restricting economic development the Global North has historically benefited from without similar constraints.⁹² Tying the right too closely to planetary boundaries may risk perceptions of the right becoming associated with the Global North, even if more progressive framings of boundaries could eventually be embraced by the Global South.⁹³ Nonetheless, the efforts of the Rapporteur to move beyond traditional Northern conceptions of business and human rights toward a more holistic

conceptualisation of the framework shows an openness to new perspectives, which could be useful in allowing the Global South to play a greater role in laying out the contours of the right to a healthy environment and business obligations.

Therefore, the UNGA resolution recognising the right and associated UN interpretations and reports have yet to fully embrace the potential of the right to be a Global South-led tool to enhance efforts at corporate environmental and climate accountability. At the same time, the ill-defined nature of the right in the resolution, and the subsequent efforts of the UN bodies, shows some signs of progress toward interpretations of the right to a healthy environment. These expansive interpretations can be built upon by leaders in the Global South to potentially encourage (i) higher degrees of scrutiny and obligations on states to supervise corporate activity, with particular attention to paid to the greater capacity of Northern states to engage in this supervisions, and (ii) obligations imposed on large transnational corporations, which could significantly impact on exploitative practices, or at the very least the identification of these practices as being human rights obligations, which could in turn pressure Northern states to act to rein in some of the worst elements of these businesses. Opportunities to chart a path forward for the right to a healthy environment which could build upon the more progressive elements of UN bodies have now arisen in the near-term with the arrival of major climate litigation cases before leading international courts, and the attempts by major Northern powers to enact human rights due diligence legislation.

IV. Future Applications of the Right to a Healthy Environment to Business

⁸⁸ UN Special Rapporteur on Human Rights and the Environment (n 83) *supra*.

⁸⁹ *ibid*.

⁹⁰ *ibid*.

⁹¹ Rockstrom, Johan. “Safe and Just Earth System Boundaries.” *Nature*, vol. 619, 2023, pp. 102-111.

⁹² Biermann, Frank, and Rakhyn Kim. “The Boundaries of the Planetary Boundary Framework: A Critical Appraisal of Approaches to Define a ‘Safe Operating

Space’ for Humanity.” *Annual Review of Environment and Resources*, vol. 45, 2020, pp. 497-521; Sultana, Farhana. “Whose Growth in Whose Planetary Boundaries? Decolonising Planetary Justice in the Anthropocene.” *Environmental Governance and Policy*, vol. 33, 2023, pp. 615-630.

⁹³ *ibid*.

Thus far, with the exception of the cases outlined in Section II, the right to a healthy environment has not played a major role in the wider developments of international efforts to hold non-state actors accountable for environmental damage. However, important opportunities to integrate the right into wider business and human rights obligations have been presented by the swathe of international climate law cases currently before the International Court of Justice and regional human rights courts. At the same time, the EU has finalised its Corporate Sustainability Due Diligence Directive, which is likely to be one of the most significant pieces of human rights due diligence legislation promulgated by the Global North for quite some time.

A. The Right to a Healthy Environment and International Climate Litigation

There are a number of pending major international climate litigation cases which have the potential to clarify the linkages between the right to a healthy environment and non-state actors. The most relevant of these cases are the Inter-American Court of Human Rights Advisory Opinion on Human Rights and the Climate Emergency, and the International Court of Justice Advisory Opinion on States Responsibilities in Respect of Climate Change.

As was noted in Section II, the Inter-American Court has taken significant steps toward interpreting the right to a healthy environment in a manner conducive to both heightened obligations on states to supervise corporate activity, and increased pressure being placed on businesses to at a minimum align with the UNGPs even where domestic laws may not bet at this standard. In its current Advisory Opinion on Human Rights and the Climate Emergency, the Inter-American Court has an opportunity to enhance these obligations and issue an Advisory Opinion explicitly focused on corporate

accountability.⁹⁴ Many submissions to the Court used examples of business activities which were damaging the environment, and thus the right to a healthy environment as evidence of the scale of the human rights violations caused by the climate emergency.⁹⁵ This bolstered the broader human rights narrative at play during the proceedings by allowing for this right to be both viewed independently as having been violated, and tied to wider economic, social and cultural rights, all of which could be interpreted as having been violated by state and non-state actors through climate-related activities.

Several NGOs including the Center for International Environmental Law, Greenpeace International, the Union of Concerned Scientists (UCS), the Open Society Justice Initiative (OSJI), and the New York University School of Law's Climate Law Accelerator (CLX, have called on the Court to prioritise corporate accountability in their final Opinion. As noted in their joint Amicus Brief to the Court, "rights violations resulting from business enterprises' conduct (i.e. acts and omissions) contributing to climate change cannot be sufficiently addressed or prevented through an exclusively state-centered application of international law."⁹⁶ They recommend that businesses be obliged to reduce greenhouse gas emissions, introduce just transition plans and "remediate and compensate for past and ongoing climate change-related harm (loss and damage) and adaptation costs."⁹⁷ These recommended obligations would move beyond the due diligence paradigm, and use human rights law as a means of imposing direct obligations on corporations to engage in proactive climate mitigation efforts, as well as retrospectively provide reparations for the existing harm done to Latin America and the Caribbean by their harmful climate actions. What is interesting, however, is that these extensive obligations are still grounded in the UNGP

⁹⁴ *Request for an Advisory Opinion on the Climate Emergency and Human Rights*, I-ActHR, 2023; CIEL et al. "Inter-American Court of Human Rights Advisory Opinion on the Climate Emergency and Human Rights Corporate Accountability in the Climate Crisis Amicus Brief." *Center for International Environmental Law*, 2023.

⁹⁵ Tigre, Maria Antonia. "Advisory Opinion on Climate Change: Summary of Written Observations Submitted to the Inter-American Court of Human Rights (Part 1)." *Sabin Center for Climate Change Law*, 2024.

⁹⁶ CIEL et al. (n 94) *supra*.

⁹⁷ *ibid*.

concept that businesses have an independent obligation to respect human rights.⁹⁸ This shows that as interpretation of rights evolves to address the climate emergency, there is an opportunity to construct a Global North concept of “respect” for human rights in a manner more aligned with the sweeping measures imposed on businesses seen in the human rights jurisprudence of the Global South. The right to a healthy environment can therefore help to justify such an interpretation due to its assistance in demonstrating the linkages between human rights violations and the activities of businesses. The argument presented in the submission further ties human rights to concepts of remediation and accountability in a manner that would be of great help to climate justice activists and to businesses trying to understand their human rights obligations. While the Amicus Brief may not be taken into account by the Court in its final Opinion, it is helpful in showing that members of civil society can also interpret the right to a healthy environment and associated rights like the right to life to have implications for corporations that move beyond a limited perception of the right.

The ICJ Advisory Opinion is the first time the world’s leading international court will consider the responsibilities of states with respect to addressing climate change.⁹⁹ Given the inherently state-centric nature of the question, and the broader state-centric nature of the ICJ, it is unlikely this forum will do much to address the potential interactions between the right to a healthy environment and non-state actors. More broadly, the ICJ will need to consider itself with the vast and often fragmented nature of international law when considering the existence of responsibilities,¹⁰⁰ and so it is unlikely to devote significant attention to the right to a

healthy environment in particular, as opposed to a more generalised interpretation and / or recognition of the linkages between international human rights law and climate change.

Nonetheless, there are particular measures the ICJ could consider in the context of the right to a healthy environment and non-state actors. Firstly, it can confirm and outline the extent to which states are responsible for the actions of their corporations with regard to transboundary harm caused by corporate emissions. This does not necessarily entail any particular recognition of the impact on the right to a healthy environment, but it may help clarify state’s climate due diligence obligations—states are considering their climate impacts and adopting relevant laws and policies accordingly—which in turn could involve a higher degree of supervision over corporate activity.¹⁰¹ Secondly, the ICJ could help to clarify the legal status of the right to a healthy environment. This could be achieved through embracing its role as a norm-setter with regard to international law.¹⁰² Thus, it could advise or suggest that recognition of the right by the UNGA reflects an international understanding that the right is part of the intentional human rights law fabric even if it has not been outlined in a specific treaty. This clarification could form part of a broader effort to weave together various aspects of international law that may have implications for climate change in order to ensure states have a clear understanding of how their obligations derive from or intersect with these aspects of international law.¹⁰³ It is unlikely that the ICJ can fully explain the nature and scope of a right to a healthy environment given its absence from international treaties, but clarification of this kind would elevate the position of the right and consolidate existing

⁹⁸ *ibid.*

⁹⁹ *Obligations of States in Respect of Climate Change*, Advisory Opinion, ICJ Rep 2022-2023 (August 1) p. 78.

¹⁰⁰ Tigre, Maria Antonia. “It Is (Finally) Time for an Advisory Opinion on Climate Change: Challenges and Opportunities on a Trio of Initiatives.” *Charleston Law Review*, vol. 17, 2024, pp. 623-723.

¹⁰¹ Voigt, Christina. “The Power of the Paris Agreement in International Climate Litigation.” *Review of European*,

Comparative and International Environmental Law, vol. 32, 2023, pp. 246-48.

¹⁰² Tigre (n 100) *supra*; Simma, Bruno. “Human Rights Before the International Court of Justice: Community Interest Coming to Life?” *The Development of International Law by the International Court of Justice*, edited by Christian Tams and James Sloan, Oxford University Press, 2013.

¹⁰³ *ibid.*

efforts at international recognition. Finally, the ICJ can emphasise the importance of current and emerging legal concepts of critical interest to the Global South, including the principle of common but differentiated responsibilities with regard to climate mitigation, recognition that reductions in greenhouse gas emissions should be equitable and reflect historical and current injustices, and the need for a just transition when pursuing necessary global energy shifts.¹⁰⁴ This would help to frame climate change as an equity issue, where the burden of reducing emissions and providing financing for mitigation and adaptation measures should fall primarily on the Global North. Framing of this kind opens the door for further Global South perspectives on climate change, which in turn could lead down a pathway toward the application of the right to a healthy environment to particular instances of corporate misbehaviour.

More generally, strategic litigation like the pursuit of these advisory opinions can use the right to a healthy environment to bolster and draw attention to particular examples of corporate conduct. This does not necessarily entail a full application of international human rights law, but could involve drawing the right to a healthy environment into wider efforts to use mechanisms like tort law and private litigation to hold corporations accountable. For example, *Milieudefensie v Royal Dutch Shell* was a tort-law based challenge to Shell's climate-harming activities, but involved consideration of human rights law to ground its conception of the duty of care.¹⁰⁵ The plaintiffs used human rights obligations under the European Convention on Human Rights to shape what it argued should be the duty of care owed by Shell with regard to its impact on the climate and subsequent obligations to reduce its greenhouse gas emissions. International recognition of the right to a healthy environment may open up further

opportunities to take similar approaches.¹⁰⁶ We have already seen such an approach with cases like *La Oroya* and the Carbon Majors Inquiry. International recognition of the right could offer environmental, climate, and human rights activists a valid platform through which to engage in further litigation efforts. What will be important for future applications of the right within strategic litigation will be (i) whether activists adopt and expand upon existing Global South jurisprudence, (ii) whether such jurisprudence could ever be utilised or influence a Global North court with greater enforcement capacity, and (iii) whether use of the right, in whatever manner in which it is conceptualised ensures corporations face relevant and substantive consequences based upon the use of this right. International recognition of the right cannot answer these questions but it also helps bring this framing into the wider discussion around the linkages between strategic human rights litigation and corporate environmental and climate impacts.

B. The Right to a Healthy Environment and Human Rights Due Diligence

Finally, there is the question of how the right to a healthy environment could interact with the efforts of the EU, and other major Northern powers such as France and Germany to introduce human rights due diligence legislation. While this article is critical of a strict emphasis on due diligence as the only means through which corporate accountability should be conceptualised, it nonetheless remains the primary mechanism through which business and human rights obligations are being concretised into hard law. Therefore, it is worth briefly exploring this potential intersection to provide a holistic overview of the scope of the right.

Human rights due diligence is, for the moment, largely narrowly defined with regard to the extent and scope of human rights obligations that may derive from any relevant

¹⁰⁴ Tigre (n 100) *supra*.

¹⁰⁵ *Milieudefensie v Royal Dutch Shell plc* ECLI:NL:RBDHA:2021:5339.

¹⁰⁶ Spijkers, Otto. "Friends of the Earth Netherlands (Milieudefensie) v Royal Dutch Shell." *Chinese Journal of Environmental Law*, vol. 5, 2021, pp. 237-256.

due diligence legislation. For example, the EU Corporate Sustainability Due Diligence Directive, the most prominent piece of human rights due diligence legislation, notes that “the prohibition of causing any measurable environmental degradation, such as harmful soil change, water or air pollution, harmful emissions, excessive water consumption, degradation of land, or other impact on natural resources, such as deforestation” are all considered within the scope of human rights due diligence insofar as the above activities conflict with the existing interpretation of the Article 6(1) of the International Covenant on Civil and Political Rights, the right to life, as well as Articles 11 (right of adequate standard of living) and 12 (enjoyment of the highest attainable standard of physical and mental health) of the International Covenant on Economic, Social and Cultural Rights.¹⁰⁷ This approach relies on a ‘greening’ of pre-recognised human rights rather than consideration of an independent right to a healthy environment. As Bueno et al. have noted “while the Annex [outlining the scope of human rights and environmental obligations encompassed by the Directive] at first glance appears relatively comprehensive, the decision to list only certain human rights and international human rights instruments (without the Universal Declaration of Human Rights) departs from the UNGPs.”¹⁰⁸ A departure of this kind from the UNGPs, which is already a narrow base for corporate human rights obligations is disappointing. However, it does not preclude the role that the right to a healthy environment statements and jurisprudence may play in determining whether businesses have conducted appropriate due diligence with regard to their environmental impacts. This is because recognition of the right by UNGA is likely to play a role in how other rights and rights bodies understand the linkages between

existing rights and the right to a healthy environment. As such, while it may not directly play a role in due diligence obligations as presently envisioned, jurisprudence and interpretations of the right may shape how businesses understand these obligations in practice. The Global South can also use the introduction of due diligence laws with a flexible scope to pressure the Global North to reign in the excesses of their companies,¹⁰⁹ on the basis that due diligence has not been adequately conducted unless the right to a healthy environment and associated obligations have not been taken into account. This may not be of direct relevance to how Global North regulatory bodies police due diligence, but it could help to shape their overall regulatory perceptions and understandings of how human rights due diligence intersects with the right to a healthy environment.

Recognition of the right to a healthy environment also leaves open the possibility of exploring approaches like the ‘climate due diligence’ approach advocated by Maachi and others.¹¹⁰ Maachi has posited that “precisely because climate, environmental and human rights challenges are fundamentally interrelated, a holistic approach to human rights due diligence is needed, one in which the standard of conduct is interpreted in the light of environmental law, climate law, as well as international human rights law.”¹¹¹ As a result she argued that “it should be made explicit that climate due diligence constitutes an inherent dimension of the standard of conduct required under the new legislation, and that its constitutive components reflect the structure of human rights due diligence articulated in the UNGPs.”¹¹² The right to a healthy environment would bolster the case for such an approach because it explicitly ties harm to the environment to the international

¹⁰⁷ Directive 2024/1760 of the European Parliament and Council, Annex.

¹⁰⁸ Bueno, Nicholas, et al. “The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise.” *Business and Human Rights Journal*, 2024.

¹⁰⁹ “Engagement, Remedy & Justice: Priorities for the Corporate Sustainability Due Diligence Directive from

Workers in the Global South.” *Business and Human Rights Resource Centre*, 2024.

¹¹⁰ Maachi, Chiara. “The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of ‘Climate Due Diligence’.” *Business and Human Rights Journal*, vol. 6, 2021, pp. 93-119.

¹¹¹ *ibid.*

¹¹² *ibid.*

human rights law framework, while also having clear linkages to climate change. Interpreting human rights due diligence in this manner would ensure that corporations do not just adopt a ‘tick box’ approach to rights outlined in international instruments,¹¹³ but must consider their environmental and climate impacts as a core aspect of these wider human rights obligations. From a Global South perspective, a holistic approach of this kind would allow further advocacy grounded in the right to a healthy environment, and create better linkages between Global South efforts at corporate accountability and the Global North’s efforts to enforce human rights due diligence.¹¹⁴ This could in turn influence the eventual consolidation of human rights due diligence into a broader and interconnected concept with clear accountability implications for harm that either breaches the right to a healthy environment or harms the environment such that it impugns on the rights conceptualised under current due diligence mechanisms.

The right to a healthy environment could therefore be useful in shaping the emerging concept of climate due diligence. While this does not mean the Global South can influence how the Global North may interpret the right in a due diligence context, it could at the very least help to bridge gaps between human rights due diligence, environmental due diligence and the emergence of climate due diligence. How this will operate in practice will best be illustrated through the efforts of EU based regulators to adopt and enforce the Corporate Sustainability Due Diligence Directive.

V. Conclusion

In conclusion, the UNGA recognition of the right to a healthy environment is a valuable opportunity to take the fight for environmental and climate justice to Global North transnational corporations. The Global South has shown that it is willing to use and

interpret the right to impose sweeping obligations on corporations, or at the very least increase the obligations on states to supervise and regulate activity. However, that does not mean that these obligations or this holistic approach to the right to a healthy environment will be translated and embraced by the Global North. The business and human rights movement has largely shied away from shifting to a more holistic approach to corporate human rights obligations, favouring a largely neoliberal ‘respect and due diligence’ approach. There is, as such, a gap between how the right to a healthy environment is understood and applied to corporations in Global South jurisdictions, and how corporate accountability is considered in the context of the UNGPs.

The UNGA resolution recognising the right to a healthy environment, while still underdeveloped, offers a critical opportunity for the Global South to lead in advancing corporate environmental accountability. Expansive interpretations by UN bodies and Rapporteurs since the UNGA resolution have advocated for greater scrutiny on corporate activity, though it is unclear as of yet whether this advocacy can be translated into more concrete and expansive business obligations. Nonetheless, the resolution can influence global law and policy, and with appropriate understanding of Global South linkages of the right with corporate activity, could become an effective means of pushing the business and human rights movement toward greater efforts at environmental and climate accountability.

The emergence of international climate litigation, and the efforts to introduce human rights due diligence legislation open up further paths to expand upon and clarify the scope and application of the right to a healthy environment to businesses. International recognition of the right to a healthy environment is important for shifting the

¹¹³ McCorquodale, Robert, and Justine Nola. “The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses.” *Netherlands International Law Review*, vol. 68, 2021, pp. 455–478.

¹¹⁴ Martínez, Julián Gutiérrez. “On the Path to Corporate Accountability: The Global South and the New European Due Diligence Law” *Dejusticia*, 13 Aug. 2024.

norms within these movements, and for allowing the Global South a rights-based platform through which they can pressure Global North courts and regulators to take greater action against their companies.

Moving the right forward in the manner advocated for in this article will meet a number of hurdles. Business and human rights paradigms will need to shift, and a broad conception of corporate climate and environmental harm will be required to effect any sort of change in Northern human rights jurisprudence. The Global South has been a leader on the development of the right to a healthy environment, and deserves to have its interpretations of the right taken forward when taking the next steps following the UNGA resolution. The next 'wave' of climate and human rights law and policy provides an opportunity to take these steps, but the Global North must move beyond its present aversion to an ambitious interpretation of the right to a healthy environment should it ever be

considered an effective actor in the context of corporate human rights obligations.