UNGA Resolution on the Human Right to a Clean, Healthy and Sustainable Environment

Considerations for Employers

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GUIDANCE

IOE A powerful and balanced voice for business

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Table of contents

Editorial 4

Introduction 5

Legal context 8

- What is the effect, legal or otherwise, of this UNGA Resolution? 8
- Does an international right to a healthy environment exist under international law? 9
- Can this Resolution contribute to the formation of new law? 10
- Can this new right be considered as an “internationally recognized human right” as per the UNGPs? 11
- Which other fundamental human rights could this right be attached to? 12
- States’ obligations with respect to the right to a healthy environment 13

Conclusion 15

Practical considerations for Employers 16

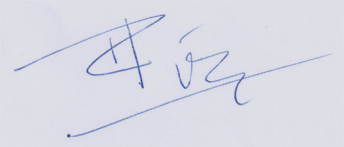
Moving forward 19

Editorial

In 2024, the world is nearing the final phase of reaching the ambitious Sustainable Development Goals (SDGs) targets by 2030. The realisation of the SDGs requires joint commitment and action. While international organisations as well as the private sector, civil society, and academia are important actors in contributing to the SDGs, it will be impossible to achieve the 2030 Agenda unless Member States lead by example in delivering on their duties and commitments. Weak institutions, lack of compliance, and lack of decent jobs jeopardise efforts to achieve the SDGs.

In the course of implementing the SDGs, the nexus between Human Rights – whose Universal Declaration celebrated its 75th anniversary in December 2023 – and the environment has become more prominent in the public debate. Related to this development, the United Nations General Assembly (UNGA), comprising representatives from all 193 Member States, voted in favour of the "Resolution on the Human Right to a Clean, Healthy, and Sustainable Environment" in 2022. This Resolution recognises a clean, healthy, and sustainable environment as a human right and calls on all actors, including businesses, to scale up efforts to realise it. It is important to note that UNGA Resolutions are non-legally binding recommendations. However, they give a political signal that UN Member States attribute increasing importance to a given subject. From a business perspective, this Resolution creates some uncertainties and raises legal and practical questions for practitioners in the field of business and human rights.

This joint publication, from the International Organisation of Employers (IOE) and Konrad Adenauer Foundation (KAS), takes a closer look at the legal context surrounding this Resolution and provides considerations for employers on this non-binding Resolution. By providing an analysis of the Resolution's key points, this paper aims to clarify the practical understanding of the Resolution for Employer and Business Member Organisations (EBMOs) and companies. In particular, contrary to the widespread belief among many stakeholders, the analysis shows that the Resolution, in addition to its non-normative content, does not create any new "stand-alone right", neither does it entail new requirements for business that would fall under their responsibility to respect the UN Guiding Principles on Business and Human Rights (UNGPs). Rather, the Resolution means a more political and aspirational commitment for States.



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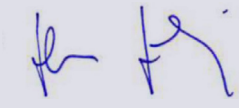

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Introduction

Business and the private sector are considered crucial actors in realising economic growth, employment creation and sustainable development, in particular supporting governments to achieve the 2030 Agenda for Sustainable Development[1]. This effort from the private sector, first called Corporate Social Responsibility (CSR) and now labelled as responsible business conduct (RBC), has, since the adoption in 2011 of the United Nations Guiding Principles on Business and Human Rights (UNGPs), grown significantly in importance. The UNGPs provide the much-needed clarity on the respective role of all actors--in particular, States have as the main duty-bearer under international law through their duty to respect, protect and fulfil human rights as a key precondition for upholding effectively human rights—and business as important actor to respect and advance these. Businesses provide a clear and voluntary framework for action, conscious of the need for action to lead by example while at the same time acknowledging existing challenges and limitations.

Over the past years, corporate social engagement has also been growing towards promoting corporate environmentally responsible practices.[2] In parallel, a few governments from developed countries, including France (2017), Norway (2021) and Germany (2022), have passed mandatory human rights due diligence laws aimed at regulating business conduct, which includes environmental matters in scope.[3] These recent developments have impacted companies, both externally and internally. Significant questions and challenges have arisen for businesses of all types, be they legally in-scope or *de-facto* impacted through the supply chain, both in terms of the realistic possibility of compliance and the actual implementation of these regulations. Among these, a major concern for the private sector has been the potential negative unintended consequences that could be created by these regulations, risking creating a global uneven playing field and promoting a "cut and run" rather than a "stay and behave" approach.

Beyond questions of effective implementation, these developments have raised at their core important questions linked to the "new nexus" or "new frontier" where human rights and the environment meet, notably the need for legal certainty and clarity on where the environment stands from an international human rights law perspective. Particularly, beyond the significant challenges posed by the proliferation of these new regulations, a major problem related to this new nexus has been the divergence of these regulations from the well-established framework of the UNGPs, which do not include the environment in scope.

In the wake of these developments, on 28 July 2022, the United Nations General Assembly (UNGA) adopted Resolution 76/300, recognising ***"the right to a clean, healthy and sustainable environment as a human right".***[4]

The draft text, originally introduced before the UNGA by Costa Rica,[5] was submitted for a decision by a group of five States – Costa Rica, the Maldives, Morocco, Slovenia, and

[1] UN website, 'Transforming our world: the 2030 Agenda for Sustainable Development'.
[2] UNEP, Business and industry and Monika Klemke-Pitek and Magdalena Majchrzak, 'Energies | Free Full-Text | Pro-Ecological Activities and Shaping the Competitive Advantage of Small and Medium-Sized Enterprises in the Aspect of Sustainable Energy Management' (2022) 15(6) MDPI.
[3] Beyond subject-specific laws regulating business, the first national due diligence law mandating obligations for business including environmental matters has been the 2017 French "Duty of Vigilance Law". The Law requires large companies to develop and publish a due diligence plan that must outline measures the company is taking related to both human rights and environmental risks and adverse impacts.
[4] UNGA Res A/RES/76/300 (28 July 2022) 3/3, op 4.
[5] United Nations Digital Library, *The human right to a clean, healthy and sustainable environment.*

Switzerland – on 27 June 2022 and subsequently co-sponsored by over 100 countries.[6] The UNGA adopted the text with 161 States in favour, none against and eight abstentions (Belarus, Cambodia, China, Ethiopia, Kyrgyzstan, Iran, Russia, Syria).[7] The UNGA Resolution follows a previous resolution adopted by the UN Human Rights Council (HRC) in October 2021 (A/HRC/RES/48/13) and is modelled around a similar language.[8]

The UNGA resolution as adopted:

1. Recognises the right to a clean, healthy, and sustainable environment as a human right.

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 right to a clean, healthy, and sustainable environment requires the full implementation of the multilateral environmental agreement under the principles of international environmental law, and

4. Calls upon States, international organizations, **business enterprises** 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.

The former UN High Commissioner for Human Rights, Michelle Bachelet, affirmed that the right to a healthy environment must serve as a springboard for transformative economic, social, and environmental policies that will protect people and nature.[9] **Therefore, this recognition is more framed as a policy approach than a legalistic tool.**

As such, the new UNGA resolution should be considered in the wider context of recent international, regional and national developments, promoted by several States, international and civil society organisations, surrounding issues related to climate change and just transition, such as regulations on environmental and human rights due diligence, sustainability reporting and the general discussion on "Just transition"[10] of the 2023 International Labour Conference (ILC) of the International Labour Organization (ILO).[11]

The UNGA Resolution calls on non-state actors, international organisations, **business enterprises** 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".[12] 'The way it is framed and the wording used confirms the fact that it goes more in the direction

[6] *UN General Assembly declares access to clean and healthy environment a universal human right*' (UN News, 28 July 2022).
[7] UNGA, Seventy-sixth session, *Official Records* (28 July 2022) 11/19.
[8] HRC, Forty-eighth session, *Resolution adopted by the Human Rights Council on 8 October 2021* (18 October 2021).
[9] '*Bachelet hails landmark recognition that having a healthy environment is a human right*' (UN, 8 October 2021).
[10] According to the International Labour Organization, "a Just Transition means greening the economy in a way that is as fair and inclusive as possible to everyone concerned, creating decent work opportunities and leaving no one behind. A Just Transition involves maximizing the social and economic opportunities of climate action, while minimizing and carefully managing any challenges – including through effective social dialogue among all groups impacted, and respect for fundamental labour principles and rights. ILO, *Frequently Asked Questions on just transition.*
[11] ILO, *Record of Proceedings*, ILC 111th Session (15 June 2023).
[12] UNGA Res *A/RES/76/300* (26 July 2022) 3/3.

of a promotional right with the involvement of different stakeholders, including business. The present report, therefore, aims to present **practical considerations** to help companies and Employer and Business Member Organisations (EBMOs) to better understand this Resolution.

The first section develops considerations for employers on the real status of this so-called right in the wider framework of international human rights law and the UNGPs. The second section provides practical guidance for employers to best cope and answer for the impact that this resolution could bring. Finally, the paper elaborates on some key considerations on the way forward for both EBMOs and businesses.

Legal context

What is the effect, legal or otherwise, of this UNGA Resolution?

First, it is important to clarify that resolutions adopted by the UNGA are **non-legally binding recommendations** and, therefore, not legally binding on Member States.[13] In other words, by adopting such instruments, States **are not under a legal obligation** to comply with their provisions and therefore, if they do not do so, technically, they do not violate international law.

UNGA resolutions can be considered as "*guidelines of behaviour, such as those provided by treaties not yet in force, resolutions of the United Nations, or international conferences, that are not binding in themselves but are more than mere statements of political aspiration*". [14]

However, this does not mean that UNGA Resolutions lack relevance altogether. By adopting resolutions, as well as other non-legally binding instruments, States can manifest a desire and a political push to have a certain issue as a priority policy in their agenda. By itself, the UNGA Resolution represents a political signal that the Member States attribute increasing importance to this subject. As such, the Resolution express a solid aspirational objective. The provisions of UNGA Resolutions can also contribute over time to the emergence of legally binding rules of customary law if several conditions are met, which is far from being the case now, as further explained below.

This Resolution brought to the fore the question of whether the right actually exists as a recognised international stand-alone right within the body of international human rights law or whether it is thought to be aspirational and so to be interpreted as instrumental to the realisation of internationally recognised human rights present in binding instruments.

Some governments recognised these challenges and issued "explanations of position" after expressing their vote on the UNGA Resolution. The United States (US), for example, excluded a "*legal relationship between such a right and existing international law*" and further affirmed that *"in voting "YES" on this resolution the United States does not recognize any change in the current state of conventional or customary international law."*[15] Similarly, the United Kingdom (UK) clarified that their *"understanding is that the right to a clean, healthy, and sustainable environment derives from existing international economic and social rights law - as a component of the right to an adequate standard of living, or the right to the enjoyment of the highest attainable standard of physical and mental health. As this resolution states in OP2, this right is "related to other rights and existing international law."*[16]

At the same time, some developing countries stressed that, as a precondition to the right to a safe and healthy environment, developed countries must first fulfil their existing commitments, for example, on emission reductions, and offer support, including assistance to the developing world. It remains to be seen whether this "precondition" will effectively materialise.

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[13] UN, How Decisions are Made at the UN.

[14] Oxford Reference, Soft law.

[15] On this point, the US also expressed its "concerns with operative paragraph 3 of this resolution, which creates confusion about such a right by conflating the contents of multilateral environmental agreements with human rights law and mischaracterizing aspects of the implementation of multilateral environmental agreements." US mission to the UN, 'Explanation of Position on the Right to a Clean, Healthy, and Sustainable Environment Resolution - United States Mission to the United Nations' (28 July 2022).

[16] UK Mission to the UN, 'Explanation of vote on resolution on the right to a clean, healthy and sustainable environment' (28 July 2022).

To properly grasp the UNGA Resolution's potential legal implications, a better understanding of the real status of this so-called right in the wider framework of international human rights law needs to be considered.

Does an international right to a healthy environment exist under international law?

The only processes by which new international law can be created are essentially the conclusion of a treaty or the formation of a rule of customary international law.[17] The former refers to an international agreement governed by international law, generally (but not necessarily) concluded in written forms, between States and/or international organisations.[18] As such, it only binds on the parties thereto.

Customary international law, instead, refers to a general practice (notably by States) accompanied by the belief that it reflects a binding norm and, therefore, undertaken with a sense of legal right or obligation (*opinio juris*).[19] It is, therefore, formed by two elements: first, a general practice by States; second, the opinio juris. Contrary to a treaty, a rule of customary law is binding on all countries, even those which have not contributed to the formation of the rule with their practice. Yet, if a general practice accepted as law cannot be established, the alleged rule of customary international law does not exist.

Organs of international organisations in themselves, hence including the UNGA, do not (subject to some special exceptions)[20] have the capacity to create binding international law.[21] However, resolutions of bodies like the UNGA can contribute to the creation of international law in other ways. First, they can serve as the first step for the conclusion of future treaties.[22] Furthermore, resolutions of international organisations may provide evidence of the existence of a rule of customary law or contribute to its development.[23] Finally, a provision in a resolution adopted by an international organisation "may reflect a rule of customary international law if it is established that the provision corresponds to a general practice that is accepted as law".[24]

Determining whether a given UNGA resolution declares or contributes to the formation of a rule of customary international law requires a careful examination of the process through which the resolution was adopted as well as its wider context.

Evidence of general state practice on a stand-alone right to a healthy environment

As to the existence of a general state practice recognising a right to a healthy environment, it bears highlighting that already many constitutions refer to the environment as a right or as a goal or objective which deserves protection. However, there are many States that have not incorporated such a free-standing right into their constitutions (among many, the US, UK, China, Japan, Canada and Australia).

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[17] U Art 38 (1), Statute of the International Court of Justice.
[18] UN, Vienna Convention on the Law of Treaties (1986) Treaty Series, 1155, 331.
[19] UN, Report of the International Law Commission, 70th session (2018) ch 5, conclusion 9, 120.
[20] For example, resolutions of the Security Council.
[21] UN, Report of the International Law Commission, 70th session (2018) ch 5, conclusion 12(1), 147.
[22] This is for example the case of the Declaration of Human Rights, per se a non-binding instrument, which prompted the adoption of two binding human rights treaties, i.e., the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights.
[23] UN, Report of the International Law Commission, 70th session (2018) ch 5, conclusion 12(2), 147.
[24] UN, Report of the International Law Commission, 70th session (2018) ch 5, conclusion 12(3), 147.

Beyond the so-called right itself, what has been recognised by **courts and tribunals** within many of the world's domestic legal systems is the positive relationship between human rights and environmental protection. But even though there is some case law on the content of the right to a healthy environment, only a limited number of the judgments have referred to the right itself so far. Based on the above, there is, therefore, no **sufficient evidence** to establish the existence of general state practice on a stand-alone right to a healthy environment at the international level.

Evidence of an *opinio juris*

Regarding the ***opinio juris*** *(as mentioned on page 8)*, the question is whether there are indicators in the Resolution itself that substantiate the belief of a right to a healthy environment reflecting a biding norm.

Some scholars[25] argue that these legal trends at the regional and national levels, when coupled with political statements at the international level dating back as far as the 1972 Stockholm Declaration, could provide sufficient evidence of *state practice and opinio juris* to suggest that the right to a healthy environment is already part of general customary international law.

Yet, this view is challenged by other international scholars who have consistently objected to it by referring to the fact that the Universal Declaration of Human Rights and associated international covenants do not refer to the right[26]. In addition, the declarations and objections from major countries such as the US and the UK, as well as the abstention of Russia and China at the UNGA, militate against the finding that the right has crystallised into a general rule of customary international law. Furthermore, a number of tates' representatives in the UNGA deny that the resolution contains either a legally binding or customary international law rule. Pakistan, for example, described the resolution as a political text. The UK stated that "there is no international consensus on the legal basis of the human right to a clean, healthy and sustainable environment and [it does not] not consider that is has yet emerged as a customary right". The US expressed the view that the resolution reflected "moral and political aspirations but not customary international law".[27]

Based on the above elements, it is far from consistent to confirm the existence of the two necessary elements constitutive of customary law. As explained above, if a general practice accepted as law cannot be established, the alleged rule of customary international law does not exist. **As such, it cannot be considered that a "right to a healthy environment" exists in international customary law.**

Can this Resolution contribute to the formation of new law?

Regarding the wider context in which the UNGA resolution positions itself, it should be noted that this specific resolution has both typical and atypical features compared to other UNGA resolutions that have played a role in the process of creating international law.

Typically, the international recognition of a right by way of a UNGA resolution **precedes** the development of obligations under human rights law at the international level, i.e., treaty-making. This pattern emerged, for instance, following UNGA resolutions recognising new third-

[25] For instance, César Rodríguez-Garavito, 'A Human Right to a Healthy Environment? Moral, Legal, and Empirical Considerations' in John H. Knox and Ramin Pejan (eds), The Human Right to a Healthy Environment (CUP 2018).
[26] Birgit Peters, Clean and Healthy Environment, Right to, International Protection (OPIL 2021).
[27] US Mission to the UN, 'Explanation of Position on the Right to a Clean, Healthy, and Sustainable Environment Resolution - United States Mission to the United Nations' (28 July 2022).

generation human rights at the international level, including the rights to development and water and sanitation. By recognising a right to a healthy environment, the UNGA resolution might trigger this law-making process at the international level. However, this process has not taken place and is unlikely to take place in the near future due to the lack of clear consensus among Member States, as mentioned above.

Can this new right be considered as an *"internationally recognized human right"* as per the UNGPs?

According to Principle 12 of the UNGPs, *"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."*

Although there is a preambular reference to the UNGPs in the UNGA Resolution, coupled with direct reference to business enterprises in Paragraph 4 of the Resolution, the wording of the Resolution does not univocally suggest concrete requirements for business. Neither is it expected that business respect the right to a healthy environment in accordance with Principle 12 of the UNGPs since the wording used is "scale-up efforts".

Following extensive legal research, **there is no evidence** that the UNGA Resolution created a "new internationally recognized human right". In addition, several observations can be made regarding the meaning of "internationally recognized human rights" in Principle 12 of the UNGPs:

- The list of core instruments enshrining "internationally recognized human rights" includes only those that address "first generation"[28] and "second generation"[29] rights in addition to the five fundamental rights embedded in the ILO Fundamental Principles and Rights at Work (FPRW)[30]. Instruments that address so-called "third generation"[31] rights, such as the right to development or the right to water and sanitation, **are not included**. However, depending on circumstances, business enterprises may need to consider additional standards either to comply with national regulations or on a voluntary basis. For example, the list of additional instruments mentioned in the UNGP commentary includes some third-generation rights, such as those pertaining to children or indigenous populations.

[28] These are the generation of civil and political rights enshrined in the International Covenant on Civil and Political Rights.
[29] These are the economic, social, and cultural rights enshrined in the International Covenant on Economic, Social, and Cultural Rights.
[30] As per the commentary of the UNGP 12: *"An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural 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."* Note that since 2022, there are now **five FPRW** with the inclusion of Occupational safety and health (OSH) and so now 11 fundamental instruments.
[31] Also known as solidarity human rights, these are rights that go beyond the framework of individual rights to focus on collective notions.

- The list of examples was not intended to be exhaustive, given that Principle 12 states that "internationally recognized human rights" should be understood "at a minimum" to include those expressed in the listed instruments. However, it is worth outlining that the reference to "minimum" in UNGP 12 provides the **minimum baseline and benchmark** for business for which they have a responsibility to respect, but this does not limit them to consider additional relevant standards depending on specific circumstances either due to national regulations or on a voluntary basis.

In conclusion, the right to a healthy environment **can with difficulty be deemed an internationally recognised human right for which the UNGPs apply.** The non-binding nature of the Resolution, coupled with the fact that the right cannot be considered as part of international customary law, supports this conclusion. In addition, it is also worth noting the legal inconsistency of the wording used in the only preambular point where business is referred to. Indeed, the reference to *"ensure"* for business is not legally correct. Business has no authority to "ensure" any right; this is a prerogative of States only as main duty bearers under international law and recipients of national sovereignty and associated powers.

Moreover, the **lack of clarity** on the scope, content and limitations of such right – which is merely enunciated in the Resolution but not developed – represents a major obstacle to its direct applicability in practice, and more specifically in the context of the UNGPs. Companies need to be clear as to the exact scope of the human rights they ought to consider when carrying out due diligence. A right that is too broadly or unclearly defined would, in fact, create important challenges for transposition into national law and might lead to unreasonable and unrealistic obligations for the business sector, ultimately missing the intended result. For this reason, the UNGPs provided a clear, authoritative list of internationally recognised and agreed human rights by all actors, to which the right to a healthy environment does not belong.

Which other fundamental human rights could this right be attached to?

As noted above, the UNGA Resolution does not identify the nature or define the scope of the right to a healthy environment. Representatives of certain States that voted in favour of the Resolution, indeed, stated that the Resolution does not provide for **any common understanding of what the right to a healthy environment entails and that, therefore, the so-called right is devoid of legally definable content.**

The Resolution does note that the right "is related to other rights and existing international law"[32], reinforcing its aspirational objective. These rights are, however, not referred directly to, adding further legal unclarity to the Resolution. UN treaty bodies, regional tribunals, special rapporteurs and other human rights mechanisms have identified that environmental harm can interfere with the enjoyment of existing fundamental human rights. Such bodies have concluded that **States have obligations** under human rights law to protect individuals against environmental harm. The approach adopted has been to mainstream environmental protection in the application of other internationally recognised human rights, such as the right to life and health as well as environmental issues. Other national courts have followed the same logic by applying national legislation.

[32] UNGA Res A/RES/76/300 (28 July 2022) 3/3, op 2.

Through an examination of the major sources of international law in line with Article 38 of the Statute of the International Court of Justice (ICJ),[33] together with decisions of national and international courts, national legislation as well as the practice of international organisations, one may conclude that the right to a healthy environment could be considered as a **composite of existing civil and political rights** and economic, social and cultural rights.

- As such and as explained above, the right itself does not exist under international human rights law. However, the aspirational idea it carries can be considered linked to other existing rights. These rights may extend to the right to life, health, private and family life, food, and water, as well as the right to an adequate standard of living.

In this regard, it is relevant to note that several States have recently been sued on the basis that national legislation on the environment violated existing fundamental rights. In March 2021, for instance, the German Federal Constitutional Court held that "the provisions of the Federal Climate Change Act of 12 December 2019 governing national climate targets and the annual emission amounts allowed until 2030 are incompatible with fundamental rights insofar as they lack sufficient specifications for further emission reductions from 2031 onwards." In particular, it held that "these future obligations to reduce emissions have an impact on practically every type of freedom because virtually all aspects of human life still involve the emission of greenhouse gases and are thus potentially threatened by drastic restrictions after 2030" and concluded that "the legislator should have taken precautionary steps to mitigate these major burdens in order to safeguard the freedom guaranteed by fundamental rights" (emphases added).[34] The claim relied on constitutional duties of protection arising from the German Basic Law, as well as on a fundamental right to a future in accordance with human dignity and a fundamental right to an ecological minimum standard of living, also derived from provisions of the Basic Law.[35]

Similarly, a recent case arose in the US, where a climate lawsuit has been filed arguing that the US federal state is failing to protect children's constitutional rights, including the right to a healthy and clean environment, by supporting an energy system driven by fossil fuels.[36] It remains to be seen whether companies could also be brought to court under a similar lawsuit.

At any rate, **a wrong approach on the meaning of this UN resolution can lead to extremely broad interpretations which should be avoided.** The aspirational idea and political signal of the UNGA Resolution and the so-called right to a healthy environment shows nevertheless that environmental harm has become an important topic for Member States.

States' obligations with respect to the right to a healthy environment

As seen in the previous section, the UNGA Resolution by its non-binding nature does not create any obligations, nor does it provide sufficient legal clarity or certainty. Consequently, existing **States' obligations** with respect to the right to a healthy environment can derive from national Constitutions that include this right or other existing regional treaties that include it.

[33] Art 38 (1), Statute of the International Court of Justice.
[34] 'Press - Constitutional complaints against the Federal Climate Change Act partially successful' (Bundesverfassungsgericht, 29 April 2021).
[35] Ib.
[36] Isabella Kaminski, 'Why 2023 will be a watershed year for climate litigation' (The Guardian, 4 January 2023); Columbia Law School and Arnold & Porter, U.S. Climate Change Litigation; and Global Climate Change Litigation.

Notably, at the regional level, States' obligations to protect the right to a healthy environment already exist in the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (Aarhus Convention) and the regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).[37]

On the **substantive obligations**, these regional instruments involve the State's duty to adopt and implement legal frameworks capable of protecting against environmental harm that may infringe on internationally recognised human rights, and these laws should regulate private actors as well as government agencies.

On the **procedural side**, the States' obligations include assessing environmental impacts, making environmental information publicly available, and facilitating public participation in environmental decision-making, including protecting the rights of freedom of expression and association.

Beyond these regional treaties, most recently, States' obligations to protect from adverse effects of climate change were recognised at regional level by the European Court of Human Rights of the Council of Europe[38]. In the case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the Court found that the European Convention on Human Rights encompasses a right to effective protection by the State authorities from the serious adverse effects of climate change on lives, health, well-being, and quality of life. The Court found that the Swiss Confederation had failed to comply with its duties ("positive obligations") under the Convention concerning climate change. Switzerland's failure to act on climate change was therefore recognised as a human rights violation of the right to respect for private and family life of the Convention (Article 8) and that there had been a violation of the right to access to the court.

[37] OSCE, The Aarhus Convention; and UN, Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (2018).
[38] ECHR, Grand Chamber rulings in the climate change cases - ECHR - ECHR / CEDH (coe.int) (2024)

Conclusion

The recognition of the right to a clean, healthy, and sustainable environment through the non-binding UNGA Resolution **does not create new international legal obligations**. It rather gives a political signal that the Member States attribute increasing importance to this subject, including reaffirming and strengthening States' existing obligations under international human rights and environmental law, as well as encouraging States and non-state actors to support this effort.

Beyond this important aspirational approach, this right does not fall under the common international human rights law, and so does not enjoy the status of "internationally recognized human right" and cannot fall under the framework of the UNGPs. Consequently, the decision to take into account and apply the right to a healthy environment when companies are discharging their responsibilities under this set of principles must be taken cautiously by companies.

Overall, **much uncertainty** could remain if business and the business community are not clear about the right approach to this resolution. Given the greater relevance of environmental areas for businesses, it seems important for companies to provide some practical considerations for business.

Practical considerations for Employers

While the UNGA Resolution is not legally binding on States, it is nevertheless important to note that the Resolution gives a political signal that Member States attribute increasing importance to this subject. This has significant implications for **business enterprises.**

With businesses now operating in domestic and global supply chains and the public increasingly vigilant, this Resolution, if wrongly interpreted, can create uncertainties for business.

How can companies and EBMOs best prepare for this Resolution?

The key word here is "**prepare**." It is unlikely that any universal agreement as to what the right means will emerge. Companies need to start now to better understand their national context vis-à-vis this Resolution and what that means to their business. In this regard, national EBMOs can support this effort to help their members. If a company is operating in multiple jurisdictions, it needs to be looking at each one to ensure it can build a complete picture.

As explained in the previous section, there is some recognition to a safe environment in some national jurisdictions and regional chapters. In such contexts, companies are normally **already aware** of the requirements linked to complying with the right.

The **impact** that this Resolution might create in the realm of due diligence requirements, as well as on sustainability disclosure in the event it is referred to in possible future binding instruments such as the binding treaty on business and human rights[39] depends on a proper interpretation of this resolution. At the EU level, the Corporate Sustainability Reporting Directive (CSRD) will require disclosure of elements linked to environmental matters. Other standards, such as those produced by the International Financial Reporting Standards (IFRS) and other national disclosure regulations, also require disclosure of certain elements linked to the idea behind this aspirational Resolution, such as general sustainability and climate-specific risks and opportunities, including Governance, or the processes controls and procedures used to monitor and manage those risks and opportunities.[40]

Against this backdrop, EBMOs will need to carefully monitor future possible developments at the national level related to this right. Should a government further act on a possible regulation linked to this right, EBMOs will need to advocate and engage to ascertain their intentions and ensure that they are part of any developments. At the same time, all businesses, regardless of size, should keep open lines of communication through their national EBMO to ensure that the sharing of learnings is accelerated, and problems are jointly discussed and overcome.

Companies may face various stakeholders raising questions about their actions in attempting to implement what is requested from them in the Resolution. Since this Resolution does not create any obligations, due to the definitional and legal issues discussed above, in the context of their "social license", companies might voluntarily begin to consider how these aspirational rights fit into their existing management and due diligence processes and showcase it.

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[39] During the 9th session of the binding treaty negotiation led by the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, few states suggested to include a reference to the right to a healthy environment. Separately, the EU also stated that it would like to have certain environmental matters as part of the scope of the future treaty.

[40] IFRS, IFRS Sustainability Standards Navigator.

Given the wider environmental discussions and the many international, regional, and indeed national developments, this new right will not be settled quickly. How it may be applied and interpreted remains open at this point of analysis.

The following elements aim to provide a **framework** to better understand how companies can link the aspirational idea behind this so-called right with their existing risk assessment and due diligence processes on matters linked to the environment.

Collaborate internally

By its aspirational nature, this Resolution shows the fact that business is expected to contribute to the protection of the environment. As such, there is a growing need for companies to break silos among different internal departments and teams. Human rights, sustainability, procurement or even compliance teams should have a continuous dialogue with environment specialists to ensure a holistic approach is developed so that the company's governance is fit for purpose to address upcoming changes.

Identify the elements which could be far-reaching

This Resolution has the potential to incentives businesses to continue working towards more sustainable activities and operations. This holds particularly true when considering the further positive impact supply chains can play as an entry point for diffusing good practices and for raising awareness in this regard.

Review existing national or international government commitments

Companies also need to consider environmental commitments their governments have already entered into, such as the Paris Climate Accord, as the Resolution requests Governments to enhance implementation efforts around the realisation of the climate goals. This will inevitably bring into play business expectations and even regulatory requirements for them to support and augment government action, as we are seeing now regarding energy conservation efforts in many European countries. Legal challenges have already been brought up, and some non-governmental interests are seeking to attribute blame to individual companies for climate-related damages or for damages to livelihoods and culture.

Similarly, a review of applicable national law, in particular for countries that have this right included in the constitution or ratified regional conventions that do recognise it, should be undertaken to assess the potential impact of the Resolution vis-à-vis existing rights and obligations.

Business should not sit back and wait. Governments may or may not move on the commitments expressed in the Resolution, but customers, consumers, civil society, and communities could use this so-called "right" as the avenue to engage with or protest against company activities or inaction. Adopting a **proactive attitude** for business will be beneficial regardless of the State's (in)action.

Capitalise on your "Know & Show" to promote how companies are contributing to a healthy and safe environment

Companies have been grappling with environmental and health impact issues for decades. As such, this aspirational Resolution has not created per se something specially new beyond the political push for government to act further. For decades, companies have gained a lot of experience and learnings they can share on what they are doing well through responsible practices to contribute to the protection of the environment. Companies should continue to showcase their best practices to show the private sector's commitment to doing the right thing.

Follow and engage in any potential development through EMBOs

Faced with increasing regulatory changes that will likely lead to a compliance-driven approach, business must unite and act jointly so that their interests and views are heard and considered in all relevant fora. IOE, with its unique position and convening power, will continue to defend the interests and voice of business at the national level via its EBMOs and at the international level in the UN system.

Moving forward

Whilst this so-called right does not exist in international human rights law, increased focus on environmental matters is here to stay, and so is public scrutiny of companies' actions. From here, the implications of the Resolution will be experienced differently for business depending on the context.

It will be important for employers to assess key government positions, to join the discussion of how to reach a widely shared understanding of respective and differentiated responsibilities in practice and to ensure that business realities and limitations are taken into account.

Going forward, and to monitor the future developments of potential impacts of this Resolution, **EBMOs** may wish to consider the following points:

- **Inform** members of the Resolution and raise awareness about the existence of this Resolution and any future related developments to minimise potential negative unintended consequences.

- Through consultation with members, **develop** a joint understanding of what this Resolution could entail at the national level and its possible implications for business, particularly in countries where the right is included in the national Constitution. A joint business position that includes the private sector viewpoint and realities on the implications of this Resolution could be shaped to be shared with the government.

- **Engage** with the government to ascertain their intentions vis-à-vis any possible implementation of the Resolution and ask them to be included throughout meaningful consultation. Share your learnings and positions with them so that the voice of the private sector is heard, and its interests considered.

- **Team up** with other local and regional employers' groups and the IOE to build a common understanding as to the content of the Resolution and so-called "new right" and, wherever possible, consistency within the business community as to its implications and related expectations.

On their side, **businesses** may wish to consider the following points:

- Be aware of the proper nature of this Resolution in order to prevent it from being misused for potential claims.

- Continue to **showcase** the company's good practices in matters linked to the environment and how these benefit all internationally recognised human rights, the people and the planet.

- Be attentive to the unintended impact of this Resolution when related to other recognised human rights already covered by the existing due diligence requirements.

- **Engage** with their EBMOs and other business groups in which they may participate to build a common understanding of the future impacts of this Resolution and explore possible areas for collaboration.

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