
Right to a Healthy Environment: The Moon and Legal Personhood

By Jane Andrews & Jonathan Lim

APA Reference

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The transposition of human rights conventions surrounding the right to a healthy environment, to the Moon and other celestial bodies, underscores the foundational importance of accountability and transparency in protecting the environment and promoting sustainable development - both on earth and across the final frontier. Herein, humanity's capacity to responsibly respect, protect, and administer "extra-global commons" has direct bearing upon our ongoing stewardship of the planet, and our capacity to meet the needs of the present without compromising the ability of future generations to meet their needs.

In February 2021, the [Australian Earth Laws Alliance](#) published the [Declaration of the Rights of the Moon](#) ("the Declaration"). The Declaration voiced support for treatment of the Moon as a sovereign natural entity in its own right - attributing the Moon with a status analogous to legal personhood. Its drafters sought to pursue a "[rights of nature](#)" approach - whereupon the Moon is recognised as having sovereign rights, separate from the rights of humans to use and exploit the natural resource.

With humanity anticipated to return to the Moon in [2024](#), the Declaration emerged amidst a growing backdrop of intensified debate among space actors on the anticipated exploitation of lunar resources. On 26 October 2021, Airbus, Air Liquide and ispace Europe [launched](#) EURO2MOON, a non-profit organisation that will explore sustainable methods of mining lunar resources.

This contrasts against the ambitions of various states, such as Luxembourg and the US, who have issued domestic legislation to regulate space resource mining over the past decade. Most recently, in 2020 then-President Donald Trump issued an [Executive Order](#) stating that "Americans should have the right to engage in commercial exploration, recovery, and use of resources in outer space". With the promises of "[untold wealth](#)", the intensification of mining activities in space and upon the lunar surface is an inevitability.

This article explores a human-rights based approach to the Moon and its legal personhood. Firstly, it analyses the present nature of the Right to a Healthy Environment (RHE) and its distinction from legal personhood. Second, it considers the approach to the Ecuadorian Constitution and its potential application to the Moon, before assessing the feasibility of designating legal personhood to the Moon. Finally, the article summarises the collective need for greater clarification by the international community on the intersection between space law and environmental law in realising RHE.



The Right to a Healthy Environment

In October 2021, the United Nations Human Rights Council (UNHRC) passed Resolution 48/13 - reinforcing RHE within international law. The [resolution](#) encourages states to build capacities to protect the environment, to share good practices, to adopt policies, and to continue to take this right into account. [Prior reports](#) by the UN Special Rapporteur on this issue noted the interdependent relationship between RHE and human rights - where environmental harms can interfere with the full enjoyment of human rights, and where effective environmental protection is contingent upon the exercise of human rights vital to responsive policymaking.

RHE is not a novel or new concept in international law, noting its recognition and prevalence across numerous regional and domestic jurisdictions over the past several decades. In 2017, the Inter-American Court of Human Rights (IACHR) was requested by Colombia to provide an [Advisory Opinion](#) on RHE, as an intersection of the right to life and the right to personal integrity. The IACHR noted that there is an “undeniable relationship between the protection of the environment and realization of other human rights”. The IACHR further found that every state possesses duties to respect and ensure these rights in this context, including an obligation of prevention, the precautionary principle, the obligation of cooperation, and access to information and justice. RHE thus transcends to a more substantial right, requiring clear action from states. Although the Advisory Opinion was not binding, and may not have substantial legal weight outside of the Americas, its weight as judicial precedent will reinforce wider efforts to legislate and regulate human activity in protecting the environment.

Currently, 101 states have [incorporated](#) RHE within their national legislative instruments. In South Africa RHE drives national legislation and policy under [Section 24](#) of the South African Constitution, providing a two-fold obligation:

- 1) The right to protect the environment so that it does not damage health or wellbeing; and
- 2) To have the environment protected through legislative action.

Through their Constitutional mandate, South Africa has [introduced further measures](#) to provide access to clean water. Factoring in the UN Human Rights Council’s resolution, there exists clear international momentum for the incorporation of environmental protections into human rights jurisprudence.

The Right to Legal Personhood

The right to legal personhood in an environmental context is referred to as “environmental personhood” - asserting that the right to protection and preservation of the environment, as functionally distinct from the right of humans to enjoy the environment. The traditional doctrine [theorised](#) by Professor Christopher D. Stone is that legal personhood for the environment means that the environment gains three legal rights:

- A) To have standing in courts;
- B) To enter into contracts; and
- C) To take legal action - including initiating proceedings.

Similar to a corporation, the environment should possess the right to protect its legal interests through judicial means - facilitated through a “guardian” which acts upon the entity’s behalf to protect it. By conferring standing in courts, the environment has a legal avenue to pursue in the event of damage or harm.

Ecuador [was the first state](#) to grant rights to Nature, articulating the right within their constitution - wherein nature has the right to [“exist, flourish and evolve”](#). The constitutionally recognised right has



since been used to [support the rights](#) of watercourses. In the Court of Loja, applicants for the Vilcabamba River presented [a constitutional injunction](#) that road construction destroyed the rights of Nature under Article 71 of the Constitution.

While the case was ultimately successful, the effective [implementation of the right generally](#) has struggled. This demonstrates the capacity of the court to give a loosely interpreted right to “exist, flourish and evolve” to protect the environment.

The Feasibility of Lunar Legal Personhood

Where the Declaration seeks to enshrine [preservation of heritage](#) of the Moon, and prevent it from ecological devastation. It advances that the Moon possesses certain fundamental and inherent rights, which arise from its existence in the universe. This includes:

- a. The right to exist, persist and continue its vital cycles unaltered, unharmed and unpolluted by human beings;
- b. The right to maintain ecological integrity;
- c. The right to be defined as a self-sustaining, intelligent, cohesive, intact lunar ecosystem, beyond current human comprehension;
- d. The right to independently maintain its own life-sustaining relationship with the Earth’s environments and living creatures; and
- e. The right to remain a forever peaceful celestial entity, unmarred by human conflict or warfare.

Despite the unilateral affirmation of these rights, the Declaration is absent of any provisions outlining their practical enforcement or protection within international law. Where Article 38 of the Statute of the International Court of Justice [does not allow](#) declarations and petitions as a source of law to base decisions, the Declaration would be considered ‘soft law’ - meaning that it cannot form the basis of a legal assertion. Additionally, in applying Stone’s articulation of legal personhood, the Declaration is further diminished by its absent provision of the right of the Moon to have legal standing, to enter into contracts, or to protect its legal interests.

However, where environmental protection on the Moon and in outer space is contingent upon equal recognition and respect for human rights values and principles, the Declaration is not without authority and promise. The Declaration's existence reflects the common will of the international community to spur collective action and drive state-based policymaking on environmental issues in outer space. From a grassroots perspective, a groundswell of support for the Declaration from civil society organisations and individual states may result in the rights of the environment being prioritised. This will spur expanded dialogues surrounding the role of human activity in outer space, and how to preserve cultural and environmental heritage.

Operationalizing the Declaration from an aspirational document into strategic legal discourse - within the ambit of international human rights law (IHRL) and international space law (ISL) jurisprudence - is envisioned through the joint advancement of RHE and legal personhood for the Moon. Firstly, the Declaration’s objective to provide the Moon with legal personhood flows from its presentation of a clear set of moral principles drawn from environmental ethics. Where human rights [derive](#) their authority and purpose from common ethical values and moral principles, the declaration provides a firm foundation for the interpretation, interpolation, and advancement of human rights norms and practices - facilitating their potential recognition as elements of international customary law.



Second, per Article III of the 1967 Outer Space Treaty, “States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the moon and other celestial bodies, in accordance with international law.” Accordingly, it is the responsibility of states to lead in the interpretation and enforcement of IHRL values and principles across their activities in outer space. Parallel and initial efforts toward this integration of human rights in space are evident through long standing discourse on Space Ethics, and demonstrated through continuing efforts by the UN Office for Outer Space Affairs (UNOOSA) to promote commonality under its Space4All and [Space4SDGs](#) initiatives.

Third, support for legal personhood for the Moon must thereafter be interlinked and interpreted within the scope of specific IHRL rights. Where RHE has been discussed, the [right to enjoy and benefit from culture](#) may also prove relevant to preserving the lunar environment. This is provided for under Article 15(1)(c) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) - protecting the right of all persons to take part in cultural life and to enjoy the benefits of scientific progress and its applications. The Article’s focus upon protecting the moral and material cultural interests of individuals may prove applicable to the Moon, given its significant [cultural and historical heritage](#) and significance to humanity as a whole.

Summary

In light of the increased human activity in outer space, and ancillary issues including space junk, the international community must resolve upon the protection of human rights. The Declaration provides a starting point to initiate dialogues among humanity’s stakeholders on the crystallization of human rights issues in outer space. Unlike a formal international treaty, a non-binding declaration provides a necessary starting point for states to craft ‘soft law,’ guiding policy and international law jurisprudence through a variety of transparency and confidence building measures.

The concept of human rights and RHE thus provide the necessary means to encourage the greater adoption of environmental protections among major space powers, and agitate for greater inclusion of environmental protections and issues across global human rights dialogues. This will in-turn elevate cooperation in protecting the Moon and outer space from extreme environmental degradation and future geopolitical conflicts.

Operationalising the Declaration through a human rights-based approach thus provides the most effective means for protecting and preserving the lunar environment for future generations. Where the Declaration articulates accelerating momentum within the international community to protect the environment, the dual application of IHRL and ISL harnesses this momentum in furtherance of the right to legal personhood for the Moon.

