

CLI RECOMMENDATION NO. 13

Adopt Draft UN General Assembly Declarations on The Ecological Rights and Responsibilities of Present and Future Generations; The Right to a Clean, Healthy, Ecologically Balanced, and Sustainable Environment; and the Recognition of the Atmosphere as a Global Commons for Present and Future Generations

A. Draft UN General Assembly Declaration on the Ecological Rights and Responsibilities of Present and Future Generations*

The General Assembly,

Bearing in mind that the fundamental rights of the human family are the foundation of freedom, justice, and peace in the world,

Recognizing that the human family consists of past, present, and future generations linked together, past to present and present to future, in an unending partnership of shared responsibility for one another and for the earth-space environment upon which life on Earth depends;

Concerned, however, that the fate of the human family is increasingly threatened by serious and potentially irreversible damage to the earth's atmosphere, biosphere, hydrosphere, and lithosphere as a consequence of global warming and other manifestations of climate change;

Conscious of the assessment reports of the Intergovernmental Panel on Climate Change (IPCC) which state clearly that climate change and its attendant threats (sea level rises, changed precipitation patterns, heightened extreme-weather frequency and intensity, reduced stream flows due to glacial retreat, species extinctions, increased disease vector ranges) are the consequence largely of human activity at this time in history,

Conscious also that the fundamental rights of the human family to water, food, health, livelihood, habitat, culture, self-determination, and life itself are at major risk if climate change is left unabated and its harms are therefore allowed to grow in breadth and severity, especially for the disenfranchised, the poor, the geophysically vulnerable, and those future members of the human family who, if without representation among the present generations from who they descend, are without capacity to avoid or mitigate the predicted harms,

Mindful of the goals and targets of the 2000 United Nations Millennium Declaration in which the signatory Heads of State and Government resolve to “spare no effort to free all of humanity, and above all our children and grandchildren, from the threat of living on a planet irredeemably spoilt by human activities, and whose resources would no longer be sufficient for their needs,”¹

Recalling that environmental responsibilities on the part of present generations towards future generations have been proclaimed or referred to previously in the 1972 Convention for the Protection of the World Cultural and Natural Heritage, the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, the 1982

* This Draft Declaration was authored by Burns H. Weston, Director of the Climate Legacy Initiative, Katherine L. Moll, Vermont Law School '09, and Suzan M. Pritchett, Esq., J.D. The University of Iowa College of Law '08. Each gratefully acknowledge the helpful insights and suggestions of Carolyn Raffensperger, Director of the Science and Environmental Health Network (SEHN).

¹ G.A. Res. 55/2, ¶ 8, U.N. Doc. A/55/49 (2000), *reprinted in* 3 INTERNATIONAL LAW AND WORLD ORDER: BASIC DOCUMENTS III.U.4 (Burns H. Weston & Jonathan C. Carlson eds., 1994-).

World Charter for Nature, the 1982 Rio Declaration on Environment and Development and its companion Agenda 21: Programme of Action for Sustainable Development, the 1992 United Nations Framework Convention on Climate Change and its 1997 Kyoto Protocol, the 1992 Convention on Biological Diversity, the 1997 UNESCO Declaration on the Responsibilities of the Present Generation Towards Future Generations, the 2002 Johannesburg Declaration on Sustainable Development, and the United Nations General Assembly resolutions relating to “the protection of global climate for present and future generations of mankind” adopted since 1988,²

Convinced that the foregoing and other provisions of international law reflect a growing consensus that future generations have a legal as well as moral right to be treated with ecological respect by present generations,

Stressing that full respect for the human rights of future generations in general and their ecological rights in particular constitute an essential element of humane democratic governance of the whole human family,

Bearing in mind that the fate of future generations of the human family depends greatly on decisions and actions taken today, and that present-day problems, including poverty, technological and material underdevelopment, unemployment, exclusion, and discrimination as well as threats to the environment, must be solved in the interests of both present and future generations,

Asserting the need to affirm an ecological right for present and future generations that can facilitate the human family’s perpetuity and well-being,

Resolved to strengthen at all levels of governance the development of laws that protect the ecological rights of present and future generations,

Solemnly adopts the following Universal Declaration on the Ecological Rights and Responsibilities of Present and Future Generations.

Article 1

1. Present and future generations have an inalienable right to live in a clean, healthy, ecologically balanced, and sustainable environment within, across, and beyond national boundaries. This right is universal, indivisible, and interdependent with other human rights.
2. Ecosystem integrity and quality are the foundations of this right. The right therefore presupposes a life of dignity for all. It includes:
 - a. freedom from activities that cause serious or irreversible damage to the atmosphere, the biosphere, the hydrosphere, or the lithosphere;
 - b. freedom from pollution, the dispersal of dangerous substances and hazardous wastes, and other environmental threats to the rights of present and future generations to water, food, health, livelihood, habitat, culture, and life itself; and
 - c. freedom to belong to a clean, healthy, ecologically balanced, and sustainable community, including its ecological stability and respect for its cultural self-determination.

² See e.g., G.A. Res. 43/53, U.N. Doc. A/RES/43/53 (Dec. 6, 1988), *reprinted in* 28 I.L.M. 1326 (1989); G.A. Res. 44/207, U.N. Doc. A/RES/44/207 (Dec. 22, 1989); G.A. Res. 45/121, U.N. Doc. A/RES/45/121 (Dec. 21, 1990); G.A. Res. 46/169, U.N. Doc. A/RES/46/169 (Dec. 19, 1991); G.A. Res. 47/195, U.N. Doc. A/47/49 (Dec. 22, 1992); G.A. Res. 49/120, U.N. Doc. A/RES/49/120 (Dec. 19, 1994); G.A. Res. 50/115, U.N. Doc. A/RES/50/115 (Feb. 16, 1996); G.A. Res. 51/184, U.N. Doc. A/51/49 (Vol. I) (Feb. 3, 1997); G.A. Res. 52/199, U.N. Doc. A/52/692 (Dec. 18, 1997); G.A. Res. 54/222, U.N. Doc. A/RES/54/222 (Feb. 8, 2000).

3. The right of present and future generations to live in a clean, healthy, ecologically balanced, and sustainable environment recognizes that future generations are entitled to diversity of resources comparable to that enjoyed by previous generations, to a quality of the planet comparable or better than that enjoyed by previous generations, and to equitable rights of access to these environmental legacies from past generations.³

Article 2

1. Present generations have the duty to promote and protect the right of future generations to live in a clean, healthy, ecologically balanced, and sustainable environment. At a minimum, it is their duty to pass on to all who succeed them an environment unimpaired by any degradation or depletion that compromises the ability of future generations to secure their rights and needs.
2. This duty requires that all members of present generations, individually or in association with others, shall not unduly restrict the ecological options available to future generations in solving their problems and satisfying their needs, shall maintain if not improve the quality of planet Earth so that it is passed on to future generations in no worse condition than received from previous generations, and shall conserve for future generations equitable rights of access to the environmental legacies of past generations.⁴
3. The duty requires also that all members of present generations, individually or in association with others, spare no effort to prevent pollution, the dispersal of dangerous substances and hazardous wastes, and other environmental threats to the rights of future as well as present generations to water, food, health, livelihood, habitat, culture, and life itself.

Article 3

In fulfillment of the duty to promote and protect the right of future generations to live in a clean, healthy, ecologically balanced, and sustainable environment, local municipalities, national bodies, intergovernmental organizations, ecological commons communities, and other juridically competent representatives of present generations shall:

1. adopt administrative, legislative, judicial, and other measures necessary to implement effectively the right defined in this Universal Declaration;
2. take precautionary measures to anticipate, prevent, or mitigate serious or irreversible damage to the environment, and to this end not use lack of full scientific certainty as a reason to postpone such measures; and
3. cooperate with other States, competent intergovernmental organizations, and appropriate members of civil society in respect of areas beyond national jurisdiction.

³ This provision is inspired by EDITH BROWN WEISS, *IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY* 34-45 (1988)

⁴ *Id.*

Article 4

When facing the difficult challenge of allocating limited resources between present and future generations, it shall be accepted principle that acts of the present generation shall not impinge upon the fundamental human rights and needs of the poorest or otherwise most vulnerable individual and group members of future generations, including their ecological rights. Likewise, the fundamental human rights and needs of the poor and otherwise vulnerable among present generations, including their ecological rights, shall not be sacrificed for the benefit of future generations.

Article 5

Present generations shall strive to save succeeding generations from the scourge of war and its ecological consequences. In so doing, they shall take steps towards peace, security, and respect for human rights, fundamental freedoms, and the rule of law. The burden of ecological and other damage from armed conflicts shall not be borne by future generations.

Article 6

In fulfillment of this Universal Declaration, the United Nations and all regional organizations shall use their good offices to establish an Office of Legal Guardian for Future Generations charged with responsibility to safeguard the ecological rights and interests of future generations. The Office of Legal Guardian shall be headed by a jurist of high moral character and recognized competence in human rights law and policy, environmental law and science, and guardianship or functionally equivalent administration. It also shall be granted legal standing before the Human Rights Council and all other relevant intergovernmental bodies, both treaty and non-treaty, on all matters pertinent to the right of future generations to a clean, healthy, ecologically balanced, and sustainable environment.

Article 7

Everyone in every generation is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including the international status of the territory in which a person lives, be it independent, trust, non-self-governing, or under any other limitation of full sovereignty.

Article 8

Local municipalities, national bodies, intergovernmental and nongovernmental organizations, public and private business enterprises, and individuals shall spare no effort in promoting, in particular through legislation and in general through education, training, and information, respect for the provisions set forth in this Declaration, and encourage by all appropriate means their full recognition and effective application.

B. Draft UNGA Declaration on the Right to Live in a Clean, Healthy, Ecologically Balanced, and Sustainable Environment*

The General Assembly,

Guided by the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Vienna Declaration and Program of Action of the World Conference of Human Rights, and other expressions of international human rights law,

Guided also by the Stockholm Declaration of the United Nations Conference on the Human Environment, the World Charter for Nature, the Rio Declaration on Environment and Development, Agenda 21: Programme of Action for Sustainable Development, United Nations Framework Convention on Climate Change and the Kyoto Protocol thereto, the Convention on Biological Diversity, United Nations General Assembly Resolution 41/128 (Declaration on the Right to Development), the Johannesburg Declaration on Sustainable Development, and other expressions of international environmental law,

Guided further by Protocol Additional I to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts, the Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques, United Nations General Assembly Resolution 47/37 (on Protection of the Environment in Times of Armed Conflict), and other expressions of international humanitarian law,

Mindful of the goals and targets of the United Nations Millennium Declaration in which the signatory Heads of State and Government resolve to “spare no effort to free all of humanity, and above all our children and grandchildren, from the threat of living on a planet irredeemably spoiled by human activities, and whose resources would no longer be sufficient for their needs,”¹

Mindful also of the extensive work, reports, and resolutions adopted by the United Nations Commission on Human Rights/Human Rights Council and human rights treaty bodies on issues relevant to environmental protection and sustainable development,²

Recalling United Nations General Assembly resolutions relating to “the protection of global climate for present and future generations of mankind” adopted since 1988,³ and of United Nations General Assembly Resolution 45/94 on the “need to ensure a healthy environment for the well-being of individuals,”⁴ *Recalling also* United Nations General

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¹ G.A. Res. 55/2, ¶ 8, U.N. Doc. A/55/49 (2000), *reprinted in* 3 INTERNATIONAL LAW AND WORLD ORDER: BASIC DOCUMENTS III.U.4 (Burns H. Weston & Jonathan C. Carlson eds., 1994–) [hereinafter “Weston & Carlson”].

² See, e.g., the website of the Office of the High Commissioner for Human Rights at <http://www2.ohchr.org/english/issues/environment>.

³ See e.g., G.A. Res. 43/53, U.N. Doc. A/RES/43/53 (Dec. 6, 1988), *reprinted in* 28 I.L.M. 1326 (1989); G.A. Res. 44/207, U.N. Doc. A/RES/44/207 (Dec. 22, 1989); G.A. Res. 45/121, U.N. Doc. A/RES/45/121 (Dec. 21, 1990); G.A. Res. 46/169, U.N. Doc. A/RES/46/169 (Dec. 19, 1991); G.A. Res. 47/195, U.N. Doc. A/47/49 (Dec. 22, 1992); G.A. Res. 49/120, U.N. Doc. A/RES/49/120 (Dec. 19, 1994); G.A. Res. 50/115, U.N. Doc. A/RES/50/115 (Feb. 16, 1996); G.A. Res. 51/184, U.N. Doc. A/51/49 (Vol. I) (Feb. 3, 1997); G.A. Res. 52/199, U.N. Doc. A/52/692 (Dec. 18, 1997); G.A. Res. 54/222, U.N. Doc. A/RES/54/222 (Feb. 8, 2000).

⁴ G.A. Res. 45/94, U.N. Doc. A/RES/45/94 (Dec. 14, 1990), *reprinted in* 5 Weston & Carlson V.B.14).

Assembly resolutions 44/206 (on possible adverse effects of sea-level rise on islands and coastal areas, particularly low-lying coastal areas) and 44/172 (Plan of Action to Combat Desertification),

Recognizing that a clean, healthy, ecologically balanced, and sustainable environment is necessary for the present and future well-being of humankind and other life forms, and therefore also for the enjoyment of such basic rights as the right to water, food, health, livelihood, habitat, culture, self-determination, and life itself,

Noting, however, the scientific assessments of the Intergovernmental Panel on Climate Change (IPCC) concluding that the anthropogenic emission of greenhouse gases is largely responsible for climate changes—e.g., sea level rises, changed precipitation patterns, heightened extreme-weather frequency and intensity, reduced stream flows due to glacial retreat, species extinctions, and increased disease vector ranges—which disrupt the functioning of natural systems and thereby compromise the integrity of the planet Earth and the promise of a clean, healthy, ecologically balanced, and sustainable environment,

Noting also that such consequences of climate change, particularly as they grow in breadth and severity, place human rights to water, food, health, livelihood, habitat, culture, self-determination, and life itself increasingly at risk for present and future generations,

Reaffirming United Nations General Assembly Resolution 43/53 which proclaims climate change to be a “common concern of mankind, since climate is an essential condition which sustains life on earth,”

Reaffirming also that States, while entitled as an intrinsic condition of their sovereignty to explore, develop, and dispose of their natural wealth and resources according to their own environmental and developmental policies, are nonetheless obligated under international law to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or to areas beyond the limits of their national jurisdiction,

Convinced that ultimately a clean, healthy, ecologically balanced, and sustainable environment will strengthen friendly relations among States and contribute to world peace and security,

Taking note of regional agreements that explicitly and implicitly proclaim the right to a clean, healthy, ecologically balanced, and sustainable environment in whole or in part⁵ and that guarantee access to information, public decision-making, and access to justice in environmental matters,⁶

Solemnly adopts the following Universal Declaration on the Right to Live in a Clean, Healthy, Ecologically Balanced, and Sustainable Environment as a standard of achievement to be pursued in a spirit of partnership and mutual respect and upon which all human conduct affecting the environment may be guided and judged.

⁵ See e.g., African [Banjul] Charter on Human and Peoples' Rights, June 27, 1981, O.A.U. Doc. CAB/LEG/67/13 rev. 5, *reprinted in* 21 I.L.M. 58 (1982) and 3 Weston & Carlson III.B.1.; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Sep. 13, 2000, O.A.U. Doc. CAB/LEG/66.6; African Convention on the Conservation of Nature and Natural Resources, June 16, 1969, O.A.U. Doc. CAB/LEG/24.1; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (“Protocol of San Salvador”), Nov. 17, 1988, O.A.S.T.S. 69, *reprinted in* 28 I.L.M. 156 (1989) and 3 Weston & Carlson III.B.25; OAS G.A. Res. 1926 on Human Rights and the Environment, June 10, 2003, Doc. No. AG/RES 1926(XXXIII-o/03).

⁶ Convention on Access to Information, Public Decision-Making and Access to Justice in Environmental Matters Access to Information (the Aarhus Convention), June 25, 1998, 2161 U.N.T.S. 447, *reprinted in* 38 I.L.M. 517 (1999) and 5 Weston & Carlson V.B.18.

Article 1

1. Everyone has an inalienable right, individually or in association with others, to live in a clean, healthy, ecologically balanced, and sustainable environment within, across, and beyond national boundaries. This right is universal, indivisible, and interdependent with other human rights.
2. Ecosystem integrity and quality are the foundations of this right. The right therefore presupposes a life of dignity for all. It includes:
 - a. freedom from activities that cause serious or irreversible damage to the atmosphere, the biosphere, the hydrosphere, or the lithosphere;
 - b. freedom from pollution, the dispersal of dangerous substances and hazardous wastes, and other environmental threats to the rights of present and future generations to water, food, health, livelihood, habitat, culture, and life itself; and
 - c. freedom to belong to a clean, healthy, ecologically balanced, and sustainable community, including its ecological stability and respect for its cultural self-determination.
3. The right to live in a clean, healthy, ecologically balanced, and sustainable environment extends to future as well as present generations. It recognizes that future generations are entitled to diversity of resources comparable to that enjoyed by previous generations, to a quality of the planet comparable or better than that enjoyed by previous generations, and to equitable rights of access to these environmental legacies from past generations.⁷

Article 2

1. Everyone has the duty, individually or in association with others, to promote and protect the right of present and future generations to live in a clean, healthy, ecologically balanced, and sustainable environment. At a minimum, it is everyone's duty to pass on to all who succeed them an environment unimpaired by any degradation or depletion that compromises the ability of future generations to secure their rights and needs.
2. This duty requires that all persons shall not unduly restrict the ecological options available to future generations in solving their problems and satisfying their needs, shall maintain if not improve the quality of planet Earth so that it is passed on to future generations in no worse condition than received from previous generations, and shall conserve for future generations equitable rights of access to the environmental legacies of past generations.⁸
3. The duty requires also that everyone, individually or in association with others, spare no effort to prevent pollution, the dispersal of dangerous substances and hazardous wastes, and other environmental threats to the rights of present and future generations to water, food, health, livelihood, habitat, culture, and life itself.

⁷ This provision is inspired by EDITH BROWN WEISS, *IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY* 34–45 (1988)

⁸ *Id.*

Article 3

The promotion and protection of a clean, healthy, ecologically balanced, and sustainable environment is the duty also of States. In fulfillment of this duty, all States, alone and in cooperation with other States, local municipalities, national bodies, intergovernmental organizations, ecological commons communities, and other juridically competent representatives, shall:

1. adopt administrative, legislative, judicial, and other measures necessary to implement effectively the right defined in this Universal Declaration;
2. take precautionary measures to anticipate, prevent, or mitigate serious or irreversible damage to the environment, and to this end not use lack of full scientific certainty as a reason to postpone such measures; and
3. cooperate with other States, competent intergovernmental organizations, and appropriate members of civil society in respect of areas beyond national jurisdiction.

Article 4

States shall strive to save future as well as present generations from the scourge of war and its ecological consequences. In so doing, they shall take steps towards peace, security, and respect for human rights, fundamental freedoms, and the rule of law. The burden of ecological and other damage from armed conflicts shall not be borne by future generations.

Article 5

1. The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the right to a clean, healthy, ecologically balanced, and sustainable environment through the mobilization of financial cooperation, technical assistance, and other ways and means of promoting and protecting this right.
2. The General Assembly, in accordance with Article 22 of the Charter of the United Nations, shall establish and actively support a subsidiary organ empowered to refer cases to the International Court of Justice for compulsory advisory opinions on all matters pertinent to the right to a clean, healthy, ecologically balanced, and sustainable environment.⁹
3. In fulfillment of this Universal Declaration, the United Nations shall use its good offices to establish an Environmental Trusteeship Council charged with responsibility to safeguard the Earth's ecosystems and to promote and protect the right to a clean, healthy, ecologically balanced, and sustainable environment for present and future generations. This Council shall be granted legal standing before the Human Rights Council and all other relevant UN bodies, both treaty and non-treaty, on all matters pertinent to the right to a clean, healthy, ecologically balanced, and sustainable environment.

⁹ This provision is inspired by Professor Andrew L. Strauss, author of CLI Recommendation No. 16 in this Appendix B.

Article 6

Local municipalities, ecological commons communities, national bodies, and intergovernmental organizations, shall undertake environmental impact assessments relative to proposed activities within their jurisdiction that implicate the right to a clean, ecologically balanced, and sustainable environment. They must consider these assessments when appraising such proposed activities and choose the alternative that has the least negative impact on the right to a clean, ecologically balanced, and sustainable environment.

Article 7

All individuals, alone or in association with others, are entitled both to information on all policies and actions that may affect the right to a clean, healthy, ecologically balanced, and sustainable environment and to information that may affect effective public participation in decision-making relative to such policies and actions. All such information shall be timely, clear, understandable, and available without undue financial burden. Effective access to administrative, legislative, and judicial proceedings, including redress and remedy, shall be provided.

Article 8

Everyone in every generation is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including the international status of the territory in which a person lives, be it independent, trust, non-self-governing, or under any other limitation of full sovereignty.

Article 9

Local municipalities, national bodies, intergovernmental and nongovernmental organizations, ecological commons communities, public and private business enterprises, and individuals shall spare no effort in promoting, through education, training, and information as well as through administrative, legislative, and judicial action, respect for the provisions set forth in this Declaration, and encourage by all appropriate means their full recognition and effective application.

C. Draft UN General Assembly Declaration on the Recognition of the Atmosphere as a Global Commons*

The General Assembly,

Recalling that Principle 21 of the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment¹ and Principle 2 of the 1992 Rio Declaration of the United Nations Conference on Environment and Development² establish the responsibility of States “to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,”

Recalling also that international agreements—the 1982 UN Convention on the Law of the Sea,³ the 1959 Antarctic Treaty,⁴ and the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies⁵—have established the deep sea-bed, Antarctica, and outer space as in the “interest of all mankind” or the “common heritage,” and accordingly have committed States Parties to their protection from degradation and depletion, from exploitation of non-renewable and limited resources, and from claims of individual ownership or State sovereignty so as to advance sustainability and equity in access both within and across generations,

Recognizing that the Earth’s atmosphere (“the Atmosphere”) is a global resource upon which life in all its known forms depends and is thus even more deserving of protection from degradation and depletion than are already established global commons such as the sea-bed, Antarctica, and outer space,

Taking into account the assessment reports of the Intergovernmental Panel on Climate Change (IPCC)⁶ which state clearly that increasing industrial and other human activity, particularly fossil fuel combustion, contributes to the accumulation of greenhouse gases (GHGs) in the Atmosphere which, in turn, alters the Atmosphere’s chemical balance, accelerates global warming, and consequently results in global climate change—endangering the life forms the Atmosphere supports and therefore posing present, imminent, and long-term threats to the biosphere, including but not limited to sea level rises, changed precipitation patterns, heightened extreme-weather frequency and intensity, reduced stream flows due to glacial retreat, species extinctions, and increased disease vector ranges,

Concerned that the personal and societal well-being of present and future generations is increasingly threatened by serious and potentially irreversible damage to the Atmosphere as global warming worsens and other manifestations of climate change remain largely unabated;

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¹ Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/Conf.48/14/Rev. 1 (1973); 11 I.L.M. 1416 (1972).

² United Nations General Assembly, *Report of the United Nations Conference on Environment and Development*, Annex 1, A/CONF.151/26 (Vol. I) (Aug. 12, 1992). *See also* accompanying Agenda 21: Programme of Action for Sustainable Development, *Report of the UN Conference on the Environment and Development at Rio de Janeiro*, June 3-14, 1992, U.N. Doc. A/CONF.151/26 (Vols I-III) (1992).

³ United Nations Convention on the Law of the Sea, Dec. 19, 1982, 1833 U.N.T.S. 397.

⁴ The *Antarctic Treaty*, Dec. 1, 1959, 12 U.S.T. 794, 402 U.N.T.S. 71.

⁵ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Oct. 10, 1967, 610 U.N.T.S. 205.

⁶ *See, e.g.*, Intergovernmental Panel on Climate Change, Fourth Assessment Report: Climate Change 2007, available at <http://www.ipcc.ch/ipccreports/assessments-reports.htm>.

Mindful of United Nations General Assembly Resolution 43/53 of 1988—declaring climate change to be “a common concern of mankind, since climate is an essential condition which sustains life on earth”;⁷

Mindful also of the goals and targets of the 2000 United Nations Millennium Declaration in which the signatory Heads of State and Government resolved to “spare no effort to free all of humanity, and above all our children and grandchildren, from the ‘threat of living on a planet irredeemably spoilt by human activities,’ and whose resources would no longer be sufficient for their needs,”⁸

Recalling that the responsibility of States to protect and preserve the healthy quality of the Atmosphere has been proclaimed or referenced in the 1972 Convention for the Protection of the World Cultural and Natural Heritage,⁹ the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment,¹⁰ the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques,¹¹ the 1992 United Nations Framework Convention on Climate Change¹² and its 1997 Kyoto Protocol,¹³ the 1992 Convention on Biological Diversity,¹⁴ the 1997 UNESCO Declaration on the Responsibilities of the Present Generation Towards Future Generations,¹⁵ the 2002 Johannesburg Declaration on Sustainable Development,¹⁶ and the United Nations General Assembly resolutions relating to “the protection of global climate for present and future generations of mankind” adopted since 1988,¹⁷

Persuaded that the fate of the human family, present and future, depends on current policies, decisions, and actions to curb the emission of GHGs and other pollutants into the Atmosphere so as to mitigate the harmful impacts of climate change;

Mindful that the Atmosphere envelops the Earth without regard to any of the attributes of territorial sovereignty while simultaneously exerting great—even definitive—influence on the ecologies of all earthly territories;

⁷ G.A. Res. 43/53, ¶ 1, U.N. Doc. A/RES/43/53 (Dec. 6, 1988).

⁸ 8 United Nations Millennium Declaration, G.A. Res. 55/2, U.N. Doc. A/Res/55/2 (Sept. 18, 2000).

⁹ Convention for the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37, 1037 U.N.T.S. 151, reprinted in 11 I.L.M. 1367 (1972).

¹⁰ *Supra*, note 1.

¹¹ Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Technique, May 18, 1977, 31 U.S.T. 333, 1108 U.N.T.S. 152.

¹² United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107, reprinted in 31 I.L.M. 849 (1992).

¹³ Kyoto Protocol to the United Nations Framework Convention on Climate Change, U.N. Doc. FCCC/CP/1997/L.7/Add.1 (Dec. 10, 1997), U.N. Doc. FCCC/CP/1997/7/Add.2 (Dec. 11, 1998), reprinted in 37 I.L.M. 32 (1998), available at <http://unfccc.int/resource/docs/convkp/kpeng.pdf>.

¹⁴ Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79, reprinted in 37 I.L.M. 32 (1998), available at <http://www.cbd.int/>.

¹⁵ UNESCO General Conference, 29th Sess, *UNESCO Declaration on the Responsibilities of the Present Generation Towards Future Generations*, Nov. 12, 1997, available at <http://unesdoc.unesco.org/images/0011/001102/110220e.pdf#page=75>.

¹⁶ World Summit on Sustainable Development, Aug. 26–Sept. 4, 2002, *Johannesburg Declaration on Sustainable Development*, U.N. Doc. A/CONF.199/20 (Sept. 4, 2002).

¹⁷ See, e.g., G.A. Res. 43/53, U.N. Doc. A/RES/43/53 (Dec. 6, 1988), reprinted in 28 I.L.M. 1326 (1989); G.A. Res. 44/207, U.N. Doc. A/RES/44/207 (Dec. 22, 1989); G.A. Res. 45/121, U.N. Doc. A/RES/45/121 (Dec. 21, 1990); G.A. Res. 46/169, U.N. Doc. A/RES/46/169 (Dec. 19, 1991); G.A. Res. 47/195, U.N. Doc. A/47/49 (Dec. 22, 1992); G.A. Res. 49/120, U.N. Doc. A/RES/49/120 (Dec. 19, 1994); G.A. Res. 50/115, U.N. Doc. A/RES/50/115 (Feb. 16, 1996); G.A. Res. 51/184, U.N. Doc. A/51/49 (Vol. I) (Feb. 3, 1997); G.A. Res. 52/199, U.N. Doc. A/52/692 (Dec. 18, 1997); G.A. Res. 54/222, U.N. Doc. A/RES/54/222 (Feb. 8, 2000).

Convinced that the Atmosphere must therefore be understood and governed holistically according to a comprehensive management regime unencumbered by delimitations of national sovereignty and based on intergovernmental cooperation at all levels for the benefit of all humankind;

Recognizing that effective governance of the Atmosphere necessarily involves both societal as well as state management and governance in which all members of the global public proactively participate and partner with state actors in the design, implementation, and monitoring of the most ecologically protective management strategies for the Atmosphere, in holding states (or governments) accountable for the improper administration of said management strategies, and in establishing civil society organizations to promote self-regulation and mutual supervision with the aim of protecting the Atmosphere;

Resolved to strengthen, at all levels of social governance, the development of laws to induce respect for the healthful integrity and stability of the Atmosphere, to deter activities that threaten such integrity and stability, and to impose legal liabilities for behaviors that violate these goal values;

Emphasizing that the preservation of the integrity and stability of the Atmosphere, as part of the Global Commons, is or should be itself a fundamental human right, and that advancing climate justice requires broad-based international participation in environmental decision-making;

Asserting that, for the foregoing reasons, it is necessary as well as appropriate that the Atmosphere, the heritage of all beings, be officially designated a global commons, requiring protection and trusteeship under national and international laws pursuant to which legal liabilities and responsibilities can and should be assigned;

Solemnly proclaims the following Declaration on the Establishment of the Atmosphere as a Global Commons and as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1 (General Principle)

The Atmosphere is a Global Commons, beyond the jurisdiction and ownership of any State, belonging wholly and indivisibly to all of humanity, both present and future. As such, and for the benefit of present and future generations, it shall be governed according to the following principles and guidelines, beginning with this General Principle.

Article 2 (Rights)

1. A life-sustaining, community-nourishing, and dignity-enhancing Atmospheric Commons is a fundamental human right of present and future generations.
2. All Commoners (the public or a defined community) have equal rights of access to, and use of, the Atmosphere without discrimination. Such rights shall not be alienated or diminished except for the purpose of protecting the Atmosphere for the benefit of present and future generations.
3. The structure and condition of the Atmospheric Commons necessary for humans and other living beings to be fully biological and communal creatures shall reside within the domain of the Atmospheric Commons.
4. Ecological commons communities and future generations (via guardians or other surrogates) have a right to representation in national and international decisions affecting the structure and condition of the Atmosphere.
5. Future generations shall not inherit a financial debt in respect of the Atmosphere without a corresponding commons assets.

Article 3 (Responsibilities)

1. It is the duty of each generation to pass the Atmosphere on to future generations unimpaired by any degradation or depletion that compromises the ability of future generations to secure their rights and needs.
2. The Atmospheric Commons belongs not to the State but to the Commoners, both present and future, and it is the duty of the Commoners to help facilitate the health, safety, and ecological balance of the Atmosphere that they share.
3. It is the responsibility of the State, alone and in combination with other States and multilateral institutions, to serve as trustee of the Atmospheric Commons on behalf of all the Commoners and, in this capacity, to work separately and together to prevent the Atmosphere's degradation or depletion, employing the precautionary principle as a useful guide for protecting and preserving the Atmosphere for present and future generations.
4. As trustees of the Atmospheric Commons, States may create new institutions and mechanisms as well as authorize responsible parties (public or private) to manage the Atmospheric Commons and resources therein. All actions taken by the State and its designees must be transparent and accountable to the Commoners, present and future.
5. As trustees of the Atmospheric Commons, it is the responsibility of States to ensure that activities within their jurisdiction are carried out in conformity with the present principles and guidelines. To this end, and for the same reason, they bear national and international responsibility for national activities negatively affecting the Atmosphere whether conducted by governmental or non-governmental parties.
6. The market, commerce, and private property owners shall not externalize damage or costs into the Atmospheric Commons, such as emitting harmful GHGs and other pollutants or reducing global air quality in the Atmospheric Commons. If the Atmospheric Commons are damaged, the polluter, not the Commoners, pays.
7. Persons (natural or juridical, public or private) responsible for damage or loss to the Atmospheric Commons shall reimburse the Commons or compensate the Commoners for such damages or losses, either financially or by specific performance of equivalent value.

Article 4 (Governance and Enforcement)

1. All human activities taking place either within or outside the jurisdiction or control of a State and giving rise to a significantly adverse consequence affecting the Atmosphere—such as GHG-emitting activities—shall be subject to international as well as national oversight and governance.
 - a. Such oversight and governance requires the broad participation not only of States acting as trustees of the Atmospheric Commons, but, as well, the establishment and assistance of an Atmospheric Commons Council within the Framework of the United Nations, empowered to investigate and resolve grievances among and between States relative to the use of the Atmosphere, taking due account of characteristic regional climate features, varying degrees of technological capability among States, and the economic capacity of developing countries and their developmental needs. Said Council shall supplement, not supplant, the institutions and mechanisms established pursuant to the Kyoto Protocol.

- b. Such oversight and governance requires also the broad participation of commons communities and civil society generally in national and international non-governmental organizations, engaging their diverse outlooks and capacities to increase the plurality and popularization of environmental discourse, to influence ecologically rational decision-making at all levels, and to innovate ecologically protective management strategies for the Atmosphere, borne of deliberate desire and circumstance to consolidate human wisdom as well as experience to safeguard the Atmospheric commons to which they share inalienable rights and like interests. Ecological commons communities and their representatives shall have standing equal to governments in petitioning the Atmospheric Commons Council and in other ways making their views known to pertinent United Nations and other intergovernmental offices and bodies.
2. Within and between States, problems affecting the Atmospheric Commons shall be resolved as much as possible by agreement between the concerned parties or by third-party decision-makers chosen by the concerned parties according to the highest standards of impartiality, expertise, and professionalism. If such problems cannot be resolved in this manner, or if they entail activity that threatens the integrity and stability of the Atmosphere, they shall be subject to an international regime for prevention and remediation. Upon failure to adequately prevent or remedy the harm—and in a manner that is consistent with the principles and guidelines set forth herein—then, in keeping with the principles *erga omnes* and *action popularis* well established in national and international law, one or more States, acting in their capacity as trustees of the Atmospheric Commons, may bring a grievance to the Atmospheric Commons Council or an action in the International Court of Justice or such other tribunal as may be established or authorized jurisdiction to safeguard the Atmosphere on behalf of the international community.
 3. To facilitate the enforcement of national and international laws intended to safeguard the Atmosphere, and, in their capacity as trustees of the Atmospheric Commons, States shall afford equal access, on a non-discriminatory basis, to their courts and administrative procedures by individuals and groups aggrieved by activities under their jurisdiction or control and affecting the Atmosphere adversely. They also shall adhere to the highest standards of accountability and transparency, particularly in respect of any activity that endangers the integrity or stability of the Atmosphere.
 4. In their capacity as trustees of the Atmospheric Commons, States shall act in accordance with applicable international law—including the Charter of the United Nations and the 1970 Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations¹⁸—in the interest of maintaining international peace and security and of promoting international co-operation and mutual understanding in the protection and preservation of the Atmosphere for the benefit of present and future generations.

¹⁸ G.A. Res 2625, U.N. GAOR, 25th Sess, Supp. No. 28, at 121, U.N. Doc. A/8028 (1971).

Article 5

The full implementation of the principles and guidelines set forth in this Declaration calls for concerted action on the part of governments, the United Nations and the specialized agencies, and other interested international and national parties, both governmental and non-governmental.

Article 6

Member States shall (a) promote international co-operation in scientific research and exchange scientific, technical, socio-economic, commercial and other information relevant to the protection of the Atmospheric Commons; and (b) encourage and facilitate the exchange and dissemination of such information so as to stimulate climate change discourse and educate the global public of their rights and responsibilities in and to the Atmospheric Commons.

Article 7

The Secretary-General shall follow the progress made in the implementation of the present Declaration and submit periodic reports thereon to the General Assembly, the first such report to be submitted not later than at its next annual session.