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STATEMENT OF THE NEW YORK CITY BAR ASSOCIATION

**SUPPORT FOR THE FORMAL RECOGNITION BY THE UNITED NATIONS OF THE
HUMAN RIGHT TO A HEALTHY ENVIRONMENT**

The New York City Bar Association expresses its support for the work of the current and former United Nations Special Rapporteurs on human rights and the environment which has laid the groundwork for and recommended that the United Nations formally recognize the human right to a safe, clean, healthy and sustainable environment (more simply, the right to a healthy environment)¹, and encourages the Human Rights Council and the United Nations General Assembly to take actions towards formal recognition of this essential human right.

The recognition of this right is imperative in an era where the harrowing effects of human activities on the natural world are increasingly palpable as a result of climate change and air, water and land pollution. Worldwide, air pollution alone causes seven million premature deaths annually, including 600,000 children under the age of five.² In the United States, more than 100,000 people die each year from air pollution related illnesses.³ At least 75% of global food crop types rely on animal pollination, and pollinator loss is placing \$235 to \$577 billion of annual global crop output at risk.⁴ A staggering 40% of the global population lacks access to clean and safe drinking water,⁵ and more than 80% of global wastewater is discharged back into the environment untreated.⁶ Climate and weather-related disasters account for the forced

¹ United Nations, General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/73/188 (19 July 2018), <https://undocs.org/en/A/73/188> (hereinafter Special Rapporteur's 2018 Report) (all websites last visited on August 24, 2020).

² The Office of the High Commissioner for Human Rights, *Air pollution: The silent killer that claims 7 million lives each year* (Mar. 4, 2019), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24248&LangID=E>.

³ Andrew L. Goodkind et al., *Fine-Scale Damage Estimates of Particulate Matter Air Pollution Reveal Opportunities for Location-Specific Mitigation of Emissions*, 116 PNAS 8775 (2019), <https://www.pnas.org/content/116/18/8775>.

⁴ Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services of the IPBES 10-11 (2019), <https://ipbes.net/global-assessment> (hereinafter IPBES 2019 Summary Report).

⁵ IPBES 2019 Summary Report 29.

⁶ IPBES 2019 Summary Report 28.

displacement of an average of 22.5 million people each year.⁷ No one will be spared from the effects of this multidimensional environmental crisis, and the most vulnerable will continue to be hit the hardest. As communities from New York to Alaska to the Marshall Islands find themselves literally underwater from rising seas, extended storm seasons are making cities uninhabitable, loss of biodiversity and entire ecosystems are placing food security at risk, and desertification is exacerbating famine and resource wars, it has become clear that a healthy environment is the *sine qua non* for the exercise of other human rights.

Of pressing concern, the current coronavirus pandemic is greatly exacerbated by environmental conditions. During all infectious disease outbreaks, including this one, the World Health Organization emphasizes that safe water, sanitation, and hygienic conditions are essential to protect human health.⁸ However, 780 million people worldwide do not have access to an improved water source and an estimated 2.5 billion people lack access to improved sanitation (more than 35% of the world's population).⁹ Further, new studies indicate air pollution may increase the severity of COVID-19.¹⁰ Already vulnerable groups, who frequently bear the brunt of environmental injustices and suffer their consequences, are affected the most by the pandemic.

The right to a healthy environment continues to develop at international, regional and national levels, both as an implicit and explicit right along three major paths. Through the process of “greening” human rights, treaty bodies, regional tribunals, special rapporteurs, and other international human rights bodies have elaborated on the fundamental importance of a healthy environment for the full enjoyment of other human rights, such as the rights to life, health, food, water, and sanitation.¹¹ Another critical development is the recognition of the right to a healthy

⁷ Human Rights Council, Annual Report of the UN High Commissioner for Human Rights and Report of the OHCHR and the Secretary-General: The Slow Onset Effects of Climate Change and Human Rights Protection for Cross-Border Migrants, U.N. Doc. A/HRC/37/CRP.4 (2018), https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Documents/A_HRC_37_CRP.4.docx.

⁸ World Health Organization, Water, Sanitation, Hygiene, and Waste Management for the COVID-19 Virus Interim Guidance, WHO Ref No. WHO/2019-nCoV/IPC_WASH/2020.2 (Mar. 19, 2020), <https://www.who.int/publications/i/item/water-sanitation-hygiene-and-waste-management-for-the-covid-19-virus-interim-guidance>.

⁹ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Global Water, Sanitation, & Hygiene, *Global WASH Fast Facts*, https://www.cdc.gov/healthywater/global/wash_statistics.html (last updated Apr. 11, 2016).

¹⁰ Lisa Friedman, New Research Links Air Pollution to Higher Coronavirus Death Rates, N.Y. Times, Apr. 7, 2020, <https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html> (last updated Apr. 17, 2020).

¹¹ Special Rapporteur's 2018 Report, para 13. For example, the Convention on the Rights of the Child states that, in the course of pursuing the right of the child to the enjoyment of the highest attainable standard of health, Parties must take appropriate measures to provide nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution. Art. 24, para. 2 (c). The Committee on Economic, Social and Cultural Rights has interpreted the International Covenant on Economic, Social and Cultural Rights to include the need to ensure “adequate supply of safe and potable water and basic sanitation; [and] the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.” Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 15. Decisions by the African Commission on Human and Peoples' Rights, the European Court of Human Rights, and the Inter-American Commission and Court of Human Rights have found environmental harm can violate human rights. Special Rapporteur's 2018 Report, para 35.

environment at the national and regional levels.¹² Last but not least, the inclusion of procedural rights in environmental treaties is used to advance the rights to public participation in environmental decision-making, and access to environmental information and justice.¹³ The time has come for the United Nations to acknowledge and amplify existing global efforts, and to explicitly advance the right to a healthy environment. A United Nations General Assembly resolution would advance this important notion that each and every human being has the right to live in an environment that creates a foundation for a dignified and fulfilling life.

Environmental degradation is a human rights issue. Recognition by the United Nations of the human right to a healthy environment will have a measurable impact on everything from curbing emissions to preserving ecosystems to protecting human health.

ABOUT THE ASSOCIATION

The New York City Bar Association (the “City Bar” or the “Association”) is an independent, non-governmental organization with more than 25,000 members including lawyers, judges, law professors, law students and government officials from the United States and over 50 countries. Founded in 1870, the Association has a long history of dedication to promoting the rule of law, reform of the law and access to justice in support of a fair society. The International Environmental Law Committee monitors, reports on, and responds to legal developments in the field of International Environmental Law. The African Affairs Committee investigates and reports on legal and policy developments in Africa. The Inter-American Affairs Committee provides a forum for members of the Association interested in investigating, engaging in and contributing to legal, political, economic and social issues affecting international affairs in the Western Hemisphere. The International Human Rights Committee focuses on strengthening the rule of law across the globe and promoting adherence to international human rights law, and has a long history of promotion of human rights standards both inside and outside of the United States. The United Nations Committee monitors developments at the United Nations and related agencies, advocates for the promotion of the rule of law within the United Nations, and aids committees in addressing

¹² The right to a healthy environment is constitutionally protected by 110 States. 126 States have ratified regional treaties that explicitly include the right to a healthy environment (e.g., the African Charter on Human and Peoples’ Rights and the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)) and 101 States have incorporated the right into national legislation (serving as a unifying principle in legislation, regulations and policies of Argentina, Brazil, Colombia, Costa Rica, France, the Philippines, Portugal and South Africa). United Nations, General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Right to a healthy environment: good practices*, A/HRC/43/53 (30 December 2019), paras 10 - 12, <https://undocs.org/en/A/HRC/43/53> (hereinafter Special Rapporteur’s Good Practices 2019 Report).

¹³ Special Rapporteur’s 2018 Report, para 34. See also, for example, United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Rio Declaration on Environment and Development*, Principle 10, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), Annex I (Aug. 12, 1992), [https://undocs.org/en/A/CONF.151/26/Rev.1\(vol.I\)](https://undocs.org/en/A/CONF.151/26/Rev.1(vol.I)); United Nations Framework Convention on Climate Change art. 6(a), May 9, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC], <https://unfccc.int/resource/docs/convkp/conveng.pdf>; U.N. Environment Programme, Convention on Persistent Organic Pollutants, arts. 7(2), 10(1), 40 I.L.M. 532 (2001), <http://www.pops.int/TheConvention/Overview/TextoftheConvention/tabid/2232/Default.aspx>; Minamata Convention on Mercury, art. 18(1), *adopted* Oct. 10, 2013, T.I.A.S. No. 17-816. (2013), <https://treaties.un.org/doc/Treaties/2013/10/20131010%2011-16%20AM/CTC-XXVII-17.pdf>.

United Nations-related issues. And the Business and Human Rights Working Group was established to examine the intersection between business practices and human rights.

HISTORICAL DEVELOPMENT OF THE HUMAN RIGHT TO THE ENVIRONMENT

At the international level, the concept of a human right to a healthy environment did not begin to take hold until well after the adoption of the International Bill of Rights: the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights. This is attributed to lack of awareness at the time of adoption of these central human rights documents of the scale of environmental challenges facing humanity.¹⁴ The modern environmental movement that brought to light environmental concerns from the perspective of environmental quality and ecology, as opposed to efficient development and use of material resources, began to take shape later. Indeed, Rachel Carson, the American marine biologist and writer who helped initiate the ecology movement with her 1962 book *Silent Spring*, has been credited as the first advocate for a human right to a healthy environment, urging the United States to adopt the right soon before she died of cancer in the early 1960s.¹⁵

The first formal international recognition of links between human rights and a healthy environment originated from the Stockholm Declaration adopted at the United Nations Conference on the Human Environment in 1972. Principle 1 of this declaration states: “Man has a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.” The United Nations General Assembly reaffirmed this approach in 1990 further stating that “a better and healthier environment can contribute to the full enjoyment of rights by all” and recognizing that “all individuals are entitled to live in an environment adequate for their health and well-being.”¹⁶ Since the Stockholm Declaration, the right to a healthy environment has gained a broad legal and public recognition at the national and regional levels. Portugal and Spain became the first two countries to formally include the right in their constitutions, in 1976 and 1978 respectively. Today, more than 80 percent of Member States of the United Nations (156 out of 193) legally recognize the right to a safe, clean, healthy and sustainable environment.¹⁷

In 2012, the Human Rights Council appointed the first Independent Expert (and, in 2015, the first Special Rapporteur) under a mandate to examine human rights obligations related to the enjoyment of a healthy environment, and to identify and promote best practices on the use of human rights obligations and commitments to inform, support and strengthen environmental policymaking. The initial holder of the mandate, John H. Knox, developed a series of reports that emphasized the interdependency of human rights and the environment; mapped the human rights obligations relating to the environment in more detail; identified good practices in the use of these

¹⁴ Special Rapporteur’s 2018 Report, para 37.

¹⁵ David Boyd, *The Environmental Rights Revolution* 12-13 (2012).

¹⁶ General Assembly resolution 45/94, *Need to ensure a healthy environment for the well-being of all individuals*, A/RES/45/94 (14 December 1990), <https://undocs.org/en/A/RES/45/94>.

¹⁷ Special Rapporteur’s Good Practices 2019 Report, para 13.

obligations, including, specifically, in the areas of climate change and human rights, biodiversity and human rights, and children's rights and the environment; and provided recommendations on the implementation of the human rights obligations relating to the environment.¹⁸ This work concluded with the development of 16 framework principles that set out basic obligations of the States under human rights law as they relate to the enjoyment of a healthy environment.¹⁹

In 2018, Knox and his successor David R. Boyd (appointed in 2018) presented their joint Special Rapporteur's report to the General Assembly in October 2018, and formally recommended that the United Nations recognize the human right to a healthy environment.²⁰ Importantly, the report emphasized that, as demonstrated by the Special Rapporteur's work, "the human right to a healthy environment is not an empty vessel waiting to be filled; on the contrary, its content has already been exhaustively discussed, debated, defined and clarified over the past 45 years."²¹

Special Rapporteur Boyd is gathering a coalition of supportive States with the goal of calling on the Human Rights Council and the United Nations General Assembly to pass formal resolutions recognizing the human right to a healthy environment in the fall of 2020. In parallel, he continues his work on developing the substantive elements of the right which include: clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems.²²

ADOPTION OF THE RESOLUTION RECOGNIZING THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT WOULD HAVE TANGIBLE BENEFITS

A. Establishing a unified international foundation for the environmental rule of law

There has never been a more appropriate time for the United Nations to recognize the human right to a healthy environment. The past several years have demonstrated that the current

¹⁸ United Nations, General Assembly, *Reports of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox: Preliminary report*, A/HRC/22/43 (24 December 2012), <https://undocs.org/A/HRC/22/43>; *Mapping report*, A/HRC/25/53 (30 December 2013), <https://undocs.org/A/HRC/25/53>; *Compilation of good practices*, A/HRC/28/61(3 February 2015), <https://undocs.org/A/HRC/28/61>; *Climate change report*, A/HRC/31/52 (1 February 2016), <https://undocs.org/A/HRC/31/52>; *Biodiversity report*, A/HRC/34/49 (19 January 2017), <https://undocs.org/A/HRC/34/49>; *Children's rights and environment report*, A/HRC/37/58 (24 January 2018), <https://undocs.org/A/HRC/37/58>; *Implementation report*, A/HRC/31/53 (28 December 2015), <https://undocs.org/A/HRC/31/53>.

¹⁹ United Nations, General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/HRC/37/59 (24 January 2018), <https://undocs.org/A/HRC/37/59>.

²⁰ Special Rapporteur's 2018 Report, para 37.

²¹ Special Rapporteur's 2018 Report, para 38.

²² United Nations, General Assembly, *Reports of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Right to clean air*, A/HRC/40/55 (8 January 2019), <https://undocs.org/A/HRC/40/55>; *A safe climate: human rights and climate change*, A/74/161 (15 July 2019), <https://undocs.org/en/A/74/161>; *Special Rapporteur's Good Practices 2019 Report*, <https://undocs.org/en/A/HRC/43/53>.

existing patchwork of environmental laws, regulations, and treaties is insufficient to adequately slow climate change or mitigate its most disastrous consequences.²³ More is needed, on the local, national and international level. While recognition of a human right to a healthy environment is no panacea, it would create a necessary foundation for the further development of legal, political, and ethical frameworks for the protection of the environment and related human rights. This is not merely speculative. Indeed, the positive impacts resulting from the United Nations' adoption of other human rights, such as the rights to water and sanitation,²⁴ as well as the effects of different nation states adopting the right to a healthy environment in their national constitutions, are evident.²⁵

B. Delivering a strong impetus for the national enactment of the human right to a healthy environment and further development of existing environmental frameworks

While itself good practice that would complement and reinforce existing regional and national norms and jurisprudence, the broader effects of the United Nations recognizing a human right to a healthy environment would be myriad.²⁶ The international recognition will serve as a strong impetus to countries that have yet to enact the right in their national laws. Further, as the Special Rapporteur's findings show,²⁷ when the right has been adopted on the national level, it has been followed by strengthened environmental laws, policies and regulations, which focused not only on substantive elements of environmental rights, but also on the procedural elements thereof, including the public's access to environmental information, the democratization of environmental decision-making, and environmental justice initiatives. Legislatures have also subsequently screened other new laws and regulations to ensure they do not infringe on the right to a healthy

²³ For example, even if the promises of the Paris Climate Agreement were fulfilled, the world could still face a catastrophic three-degree temperature rise over pre-industrial levels. "UN emissions report: World on course for more than 3-degree spike, even if climate commitments are met," *UN News*, Nov. 26, 2019, <https://news.un.org/en/story/2019/11/1052171>. Yet of the 184 countries to make climate pledges under the Paris Agreement, only 20% have taken sufficient actions. See Information for Climate Action, <https://feu-us.org/>.

²⁴ The General Assembly's recognition of the right to water has led to increased recognition of the right in international soft law. See Gonzalo Aguilar Cavallo, *The Human Right to Water and Sanitation: From Political Commitments to Customary Rule?*, 5 *Pace Int'l L. Rev. Online Companion* 136 (2012), <https://digitalcommons.pace.edu/pilronline/30/>. Ten years after the UN General Assembly adopted resolution 64/292 recognizing a human right to water and sanitation, the resolution has been referenced in legislative attempts to improve public drinking water quality (see La. Stat. Ann. § 40:1290.1); cited by national courts (see *Matsipane Mosehlhanyane v. Att'y Gen.*, Appeal No. CACLB-074-10 (Ct. App. Jan. 27, 2011) (Bots.)); and relied upon by innumerable activists, academics, and policy makers seeking to improve access to clean drinking water.

²⁵ See Boyd, "The Constitutional Right to a Healthy Environment," *Environment: Science and Policy for Sustainable Development*, (July 13, 2012).

²⁶ Special Rapporteur's 2018 Report, para 28-35.

²⁷ "At least 80 States enacted stronger environmental laws in direct response to the incorporation of the right to a healthy environment into their national constitutions. In States including Argentina, Brazil, Colombia, Costa Rica, France, Portugal, South Africa and Spain, the right to a healthy environment is one of the fundamental principles shaping, strengthening and unifying the entire body of environmental law. In India, Nepal and Uganda, the right to a healthy environment has been used to fill legislative or regulatory gaps related to air pollution, plastic pollution and forest conservation." See Special Rapporteur's 2018 Report, para 40.

environment. Further, recognition of the right will lead to improved implementation of environmental laws and regulations, and better enforcement outcomes.

These positive consequences contribute to improved environmental quality, increased international cooperation, and faster progress towards emission targets. The recognition of the human right to a healthy environment creates a sturdy floor for environmental protection, supporting stronger environmental laws and preventing rollbacks to existing protections. In the United States, where the right to a healthy environment is not recognized on the federal level, the importance of this floor has been laid bare by the rollback of environmental regulations occurring with alarming speed in recent years.²⁸ Despite undisputed recognition that poor environmental conditions have serious consequences on human health, these rollbacks continue to devalue the environment while we experience the negative impacts that existing environmental conditions are having on the current COVID-19 public health crisis.²⁹

C. Increasing public awareness and involvement in environmental issues

The benefits of the United Nations recognizing the right would not be confined to the realms of legislation and enforcement. Recognition of the right to a healthy environment serves to raise public awareness about environmental issues, increasing environmental education, and public involvement. This will lead to increased accountability for those who attempt to flout or weaken environmental protections, and also serve to give greater visibility to environmental injustices. Emphasizing that the right to a healthy environment is an inalienable human right also gives increased credibility and validation to all of the individuals and communities seeking to preserve vulnerable ecosystems and protect the health of their communities. This is particularly important for those environmental defenders on the front lines, who have been targeted with alarming levels of violence and criminalization--it has been estimated that over three are murdered per week.³⁰ Adopting the right to a healthy environment would also be a formal recognition of the interconnection between environmental laws and human health. The COVID-19 pandemic has demonstrated the horrendous health consequences of long-term exposure to airborne pollutants, as well as the enormous economic consequences that can follow.

²⁸ As of May 2020, “more than 60 environmental rules and regulations [have been] officially reversed, revoked or otherwise rolled back,” with 34 additional rollbacks in progress. The rollbacks include everything from weakening limits on carbon dioxide emission to many other rules governing clean air, water and toxic chemicals. See, e.g., Nadja Popovich, Livia Albeck-Ripka, and Kendra Pierre-Louis, “The Trump Administration Is Reversing 100 Environmental Rules. Here’s the Full List,” *NY Times* (May 20, 2020), <https://www.nytimes.com/interactive/2020/climate/trump-environment-rollbacks.html> (last updated July 15, 2020). For an updated Regulatory Rollback Tracker, see Regulatory Rollback Tracker, <https://eelp.law.harvard.edu/regulatory-rollback-tracker/>.

²⁹ Damian Carrington, “Is air pollution making the coronavirus pandemic even more deadly?” *Guardian* (May 4, 2020), <https://www.theguardian.com/world/2020/may/04/is-air-pollution-making-the-coronavirus-pandemic-even-more-deadly>; Lisa Friedman, “Coronavirus Doesn’t Slow Trump’s Regulatory Rollbacks,” *NY Times* (March 25, 2020), <https://www.nytimes.com/2020/03/25/climate/coronavirus-environmental-regulations-trump.html>.

³⁰ See Global Witness, *Enemies of the State?*, July 2019, <https://www.globalwitness.org/en/campaigns/environmental-activists/enemies-state/>.

D. Linking Business and Human Rights framework to environmental impacts

The international recognition of the right to a healthy environment will create a strong basis for this right to be protected and respected within the framework of the United Nations Guiding Principles on Business and Human Rights.³¹ This should lead to better protections and remedies against harmful environmental impacts caused by businesses, particularly as environmental exploitation is frequently at its worst in states where the rule of law is weakest.

E. Articulating the importance of the right to a healthy environment for achieving the Sustainable Development Goals

As an internationally recognized human right, the importance of the right to a healthy environment will be elevated and more easily articulated and advanced in other international forums. This articulation will also contribute to the discussion around the United Nation's 2030 Agenda for Sustainable Development and facilitate the realization of the Sustainable Development Goals.

UN RECOGNITION OF THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT IS IMPORTANT FOR THE SUPPORT AND ADVANCEMENT OF ENVIRONMENTAL PROTECTION AT THE FEDERAL LEVEL, IN NEW YORK STATE AND NEW YORK CITY

The United States has human rights obligations relating to the enjoyment of a healthy environment, as set forth in Special Rapporteur Knox's framework principles, despite the lack of recognition of the right to a healthy environment at the federal level. However, these obligations remain purely declaratory against the backdrop of the "pre-ecological" nature of the United States Constitution, which makes no provisions for environmental concerns,³² lack of support from the courts in advancing environmental rights,³³ and the absence of an enforcement framework at the international level. Federal statutes, regulations, and the Environmental Protection Agency have not proven to be reliable legal guarantors for environmental protection, as evidenced by the aforementioned environmental rollbacks. In this context, developing a robust international framework is important in advancing the enforcement of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Formal legal recognition of the human right to a healthy environment by the United Nations would form a basis for such a framework.

³¹ United Nations Guiding Principles on Business and Human Rights, HR/PUB/11/04 (2011), https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

³² See Jonathan Z. Cannon, *Environment in the Balance*, 2015, at 29 ("The U.S. Constitution ... is pre-ecological. It makes no provisions for environmental rights or authorities... The Constitution's failure to expressly address environmental concerns may be a function of its age, but it makes the United States an outlier internationally.")

³³ *Id.*, at 28, 29. ("Although [the U.S.] Constitution lacks any provision specifically for the environment, several generic constitutional doctrines have figured importantly in the Court's environmental cases, mostly to the detriment of environmentalist claims. These include standing, federalism and protection of private property against governmental takings. The Court has used these doctrines to limit the scope of federal environmental protections and to condition access to the federal courts by citizens seeking to vindicate those protections.")

Further, the impact of the United Nations' adoption of a human right to a healthy environment will be felt in New York State and New York City. In 2019, the New York State legislature passed the Green Amendment (S.2072/A.2064), a proposed amendment to the New York State Constitution that would guarantee that "each person shall have the right to clean air and water, and a healthful environment." In order for the State Constitution to be amended, the legislation must be passed again in the 2021 legislative session, and then pass a statewide voter referendum. Recognition of the right by the United Nations General Assembly will further strengthen the basis for inclusion of the human right to a healthy environment in the New York State Constitution.³⁴ This, in turn, would have all of the benefits enumerated above.

New York City, for its part, has already committed to the principles of international agreements, and in pledging to do its part to keep global temperatures from rising more than 1.5 degrees Celsius in line with the Paris Agreement, the City has highlighted the Agreement's human rights imperatives.³⁵ In June 2019, the City Council passed a resolution declaring a climate emergency and calling for an immediate emergency mobilization to restore a safe climate, which recognized, among other things, that "[p]eople around the world have a fundamental human right to clean, healthy and adequate air, water, land, food, education, healthcare, and shelter."³⁶ Recognition of the right by the United Nations General Assembly would further bolster the City's position, and contribute to increased awareness of the right within New York City's communities and businesses.

CONCLUSION

This statement supports the Special Rapporteur's recommendation to recognize the human right to a healthy environment and emphasizes that the international recognition of the human right to a healthy environment will create a unified foundation at the international level for advancing the environmental rule of law and environmental justice globally, regionally and nationally. The New York City Bar Association further calls for:

³⁴ While such a constitutional amendment may be the subject of public debate at the state and local levels, there is already support for the proposed amendment to the New York State Constitution within the legal community. *See* New York State Bar Association Environmental and Energy Law Section, Report and Recommendations Concerning Environmental Aspects of the New York State Constitution, 38 Pace L. Rev. 182 (2017),

<https://digitalcommons.pace.edu/plr/vol38/iss1/10> (recommending that Article I of the New York State Constitution be amended to include a "right to a clean and healthful environment."). *But cf.* Report of the New York City Bar Association Task Force on the New York State Constitutional Convention, June 14, 2017, https://s3.amazonaws.com/documents.nycbar.org/files/2017129-ConstitutionalConventionTF_FINAL_6.14.17.pdf (in considering the question of whether to support a constitutional convention, the Task Force asserted that such amendment "would have the effect of transferring much decision-making power over environmental matters from the legislative and executive branches to the judiciary, and would empower judges to make decisions about the appropriate levels of pollution and other forms of environmental degradation").

³⁵ 1.5C: Aligning New York City with the Paris Climate Agreement, published pursuant to Executive Order 26 of 2017, https://www1.nyc.gov/assets/sustainability/downloads/pdf/publications/1point5-AligningNYCwithParisAgrmt-02282018_web.pdf.

³⁶ N.Y.C. Council Res. No. 0864-2019 (2019), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3940953&GUID=506493D1-9DF1-4289-8893-4AF892557355&Options=ID%7cText%7c&Search=>.

- the Human Rights Council and United Nations General Assembly to adopt, before the end of 2020, resolutions recognizing the human right to a healthy environment;
- the United States Permanent Representative to the United Nations to work towards enabling the United Nations General Assembly to adopt a resolution recognizing the human right to a healthy environment; and
- the American Bar Association and other state bar associations to (i) express their support for the recognition by the United Nations General Assembly of the human right to a healthy environment and (ii) urge their legislatures to consider Green amendments to states constitutions that would guarantee each person the right to clean air and water and a healthful environment.

New York City Bar Association
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Inter-American Affairs Committee
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