

CLIMATE CHANGE AND HUMAN RIGHTS: PERSPECTIVES OF ENVIRONMENTAL AND INDIGENOUS RIGHTS

*BRIDGET LEWIS**

I. INTRODUCTION

Climate change is an issue that confronts us everywhere we turn. It is one of the greatest challenges facing mankind and has the potential to impact on almost all aspects of our lives. The challenge of climate change is made more difficult by the fact that its causes are so central to the values, and the economies, of Western society, and because the appropriate responses to climate change will require cooperation from all nations, especially developed nations. From an environmental perspective, it is challenging because of the complexity of the science involved, the complex relationships of cause and effect, and the time frame over which both problem and solution will be played out. At the same time, climate change is a significant issue for human rights because it has the potential to affect the lives of so many people, and because it raises a significant issue of justice: that it is wealthy countries that are most responsible for the problem, while poor states will suffer most.

The most recent report of the Intergovernmental Panel on Climate Change (IPCC) illustrates that the impact of climate change is already being observed in the form of changes in sea levels, temperatures and precipitation.¹ It is expected that these changes will lead to decreased soil fertility, loss of species, floods and droughts, and other extreme weather events.² On a human level, these effects are expected to cause displacement, loss of livelihood and income, spread of disease and other health implications.³ It is indigenous groups who have been the first to feel the impact of these changes. While this paper looks in most detail at an example from the Northern Hemisphere, we are already beginning to see the effects of climate change in Australia and the South Pacific region. Rising sea levels, increased severity and frequency of storms, and changes to ocean temperatures and salinity are already affecting small-island developing states in the South Pacific.⁴ Similar effects are being observed in the Torres Strait, with significant consequences for the Indigenous communities who live there.⁵

This paper highlights the benefits of recognising climate change as a human rights issue, rather than merely as an economic or environmental issue. It will give an overview of the principles of human rights law which relate to the environment and to indigenous peoples. By demonstrating how climate change can impact on environmental and indigenous rights, which are already guaranteed under international human rights law, it will show the possible ways that climate change can be positioned within that legal framework. The paper will also present a case study of the experiences of Inuit peoples, which illustrates how climate change impacts upon human rights, and how human rights law can be used to help address the problem.

* Bridget Lewis is an Associate Lecturer at QUT Law School.

1 Lenny Bernstein et al (eds), *Climate Change 2007: Synthesis Report of the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC): Summary for Policymakers* (2007) 1-2.

2 Ibid 1-2, 10-12, 20

3 Ibid 10-12.

4 Robert Aisi, 'Facing Extinction: Climate Change and the Threat to Pacific Island Countries' (2007) Winter (90) *Reform* 65, 65-66.

5 Donna Green, 'How Might Climate Change Affect Island Culture in the Torres Strait?' (Marine and Atmospheric Research Paper 011, CSIRO, November 2006).

II. THE BENEFITS OF CONSTRUCTING CLIMATE CHANGE AS A HUMAN RIGHTS ISSUE

To date, climate change has been addressed primarily as a problem of science, diplomacy or economics. We are only just beginning to see the topic being tackled seriously as an issue of human rights. While there has been increasing academic focus on the status and content of environmental and indigenous rights (discussed in more detail below), the particular question of whether climate change can be addressed as a human rights issue has only recently drawn attention.⁶

The benefits that human rights law offers us as a framework within which to formulate our responses to climate change, and the inevitable impact of climate change on human rights, make it a necessary discipline to engage when searching for solutions.

One of the benefits of constructing climate change as a human rights issue is that we can bring it within the framework of existing human rights obligations. Generally speaking, under international law, governments are under a duty to respect, promote and protect human rights. While the obligations of states and the mechanisms of enforcement vary,⁷ if we can find a way to bring climate change within the scope of human rights law in some manner, governments can be placed under at least some obligation to take steps to address the problem and failure to do so could be seen as a breach of their human rights obligations. The normative framework provided by human rights law can therefore serve as a basis for setting priorities and developing and evaluating policy. Criticism from the international community for a state's failure to address climate change could be supported by the force of international law, and we may be able to establish a legal basis for holding states responsible for damage to the environment caused by inadequate regulation of greenhouse gas emissions.⁸

Furthermore, dealing with climate change as a human rights issue allows us to view the issue through a new lens. While the perspectives of economics, science or diplomacy remain necessary, it is also essential that we focus on the people who are most immediately affected and most in need of support. Not only does this allow us to better address the concerns of the people who will be most directly affected, but it also puts the issue in a context which has more resonance for the wider community. Through human rights, we can hope to achieve a broader community understanding of the human impact of climate change, an objective which may be more difficult to realise if we frame the issues exclusively in scientific or economic terms which may seem remote and difficult to follow. By adopting a human rights approach we can enrich our response to climate change and we can hope to address an inequity that is one of the fundamental challenges of climate change — that it is the most vulnerable who will suffer most when they have contributed the least to the problem.

6 See, eg, Mary Robinson, 'Climate Change and Justice' (Speech delivered at the Barbara Ward Lecture series, London, 11 December 2006); Meinhard Doelle, 'Climate Change and Human Rights: the Role of International Human Rights in Motivating States to Take Climate Change Seriously' (2004) 1 *Macquarie Journal of International and Comparative Law* 179; International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide* (2008).

7 For example, by ratifying the *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (*ICCPR*), states agreed to take necessary steps to give effect to the rights in the covenant. The standard of implementation expected is lower for the *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) (*ICESCR*), which requires that states take steps, individually and with international assistance, and to the extent allowed by their available resources, with a view to achieving progressive realisation of rights in the ICESCR. In addition, both covenants require that states submit periodic reports on the steps they have made towards realisation of human rights, but only the ICCPR allows individuals to make complaints about alleged violations; see *First Optional Protocol to the International Covenant on Civil and Political Rights*, opened for signature 16 December 1966 (entered into force 23 March 1976).

8 Doelle, above n 6, 179; Henry J Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context* (3rd ed, 2008) 1459-1460.

III. POSITIONING CLIMATE CHANGE WITHIN THE FRAMEWORK OF INTERNATIONAL HUMAN RIGHTS LAW

In order to bring climate change within the framework of international human rights law, we need to examine how the issue fits within existing human rights jurisprudence. The two branches of human rights law which this paper examines are the emerging areas of environmental rights and indigenous rights. The two areas are very closely linked, as environmental degradation often impacts on indigenous peoples more acutely than it does other groups, while at the same time indigenous peoples can often make a unique and valuable contribution to environmental management. The special relationship between indigenous peoples and the environment has been recognised at international law, and increasingly as a subject of human rights law. Climate change, as a particular cause of environmental degradation, engages both these areas of human rights law and provides an excellent illustration of how closely the two are interrelated. Examining the experiences of indigenous communities whose lives are already being affected by climate change, such as Torres Strait Islanders or the Inuit peoples of the Arctic region, can illustrate the threat that it poses to their human rights. We can also see some of the ways in which human rights law can be, and has already been, utilised to help address the problem, and consider what might be required to ensure that our responses to the challenge of climate change are consistent with human rights. .

A. Environmental Rights

We can begin with an examination of the development of environmental rights to investigate how this area can be expanded to include climate change. We need to consider whether international human rights law recognises the right to a clean and healthy environment as a separate right or whether environmental protection is viewed only as a necessary precondition to the enjoyment of other human rights.

1. The Link Between the Environment and Human Rights at International Law

It is recognised that environmental factors can be crucial to the enjoyment of human rights.⁹ For example, environmental degradation can cause violations of rights such as the right to health,¹⁰ the right to safe and healthy working conditions,¹¹ the right of peoples to dispose of their natural wealth and resources,¹² to freedom from arbitrary interference with privacy and home, and freedom from arbitrary deprivation of property, and the right to life.¹³ Environmental protection can therefore be seen as a precondition to the enjoyment of these rights. Several international and regional treaties recognise this causal link in their own thematic context. For example, the *Convention on the Rights of the Child* guarantees all children the right to the enjoyment of the highest attainable standard of health. As part of this guarantee, state parties undertake to provide, among other things, clean drinking water, and to take into consideration the impact of environmental pollution.¹⁴

However, increasingly, the link between environment and human rights has been explicitly recognised, if not in binding treaty law, then at least in statements of 'soft law'. In 1972, the United Nations held a Conference on the Human Environment in Stockholm. The outcome of that conference was the *Stockholm Declaration*, a set of 'common

9 Phillippe Sands, *Principles of International Environmental Law* (2nd ed, 2003) 294; Patricia Birnie and Alan Boyle, *International Law and the Environment* (2nd ed, 2002) 255.

10 Guaranteed under the *ICESCR*, opened for signature 16 December 1966, 993 UNTS 3, art 12 (entered into force 3 January 1976).

11 *ICESCR*, opened for signature 16 December 1966, 993 UNTS 3, art 7 (entered into force 3 January 1976).

12 *ICESCR*, opened for signature 16 December 1966, 993 UNTS 3, art 1 (entered into force 3 January 1976) and *ICCPR*, opened for signature 16 December 1966, 999 UNTS 171, art 1 (entered into force 23 March 1976).

13 *ICCPR*, opened for signature 16 December 1966, 999 UNTS 171, art 6 (entered into force 23 March 1976); Sands, above n 9, 294.

14 *Convention on the Rights of the Child*, opened for signature 20 November 1989, UNTS Vol 1577, art 24(2)(c) (entered into force 2 September 1990).

principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment.’¹⁵ That document recognised that the natural environment is essential to man’s wellbeing and to the enjoyment of basic human rights, including the right to life itself.¹⁶

The principles of the *Stockholm Declaration* were affirmed and developed at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992. The *Rio Declaration*, which emerged from that meeting, set out a range of principles aimed at promoting sustainable development and protection of the global environment. While it fell short of mentioning human rights explicitly, it did recognise that ‘[h]uman beings are at the centre of concerns for sustainable development’ and acknowledged that ‘[t]hey are entitled to a healthy and productive life in harmony with nature.’¹⁷

In 1994, the United Nations released its *Draft Declaration on Human Rights and the Environment*, which set out in explicit terms the link between human rights and the environment, and demonstrated that accepted environmental and human rights principles operate together to guarantee to everyone the right to a secure, healthy and ecologically sound environment. The *Draft Declaration* articulates the environmental dimensions of a range of recognised human rights, such as the right to life, the right to health and cultural rights. It also illustrates the duties placed on individuals, governments, transnational corporations and international organisations which correspond to these rights. While the *Draft Declaration* is merely an instrument of ‘soft law’, and therefore has limited binding force, it is an important step in articulating the important links between environmental protection and human rights.¹⁸

The jurisprudence of regional human rights bodies has also increasingly recognised the link between the environment and human rights. In 1997, the Inter-American Commission for Human Rights released the *Ecuador Report*.¹⁹ The report followed a petition by one of the indigenous groups inhabiting the interior of Ecuador. Activities associated with oil development in that area had led to severe contamination of water, soil and air, and the inhabitants claimed that this pollution prevented them from enjoying their rights to life, to health and to physical security. The report formally recognised the connection between the right to life and the right to a healthy environment, and acknowledged that a human rights claim in the inter-American system could be based on environmental harm. In the report, the Commission recommended that the government take steps to remedy current environmental degradation, and to regulate oil development activities in a way which could prevent future contamination.

Several other claims have been brought in the Inter-American Court of Human Rights by communities arguing that their human rights have been negatively affected by environmental degradation, including deforestation, mining and pollution. Many of these cases have been brought on behalf of indigenous communities and they stress the particular link between the environment and indigenous rights.²⁰ Cases have also been brought in the European Court of Human Rights, where claimants have argued that environmental degradation is the cause of human rights violations. For example, it has been successfully claimed that industrial air pollution amounted to a violation of the right to enjoy private and family life.²¹

The approach taken in these cases has been to regard the environment as a precondition of other rights and environmental protection as a tool to promote those rights. What is less

15 *Declaration of the United Nations Conference on the Human Environment*, UN Doc A/CONF.48/14/Rev 1 (Stockholm, 16 June 1972) (*Stockholm Declaration*).

16 *Stockholm Declaration*, art 1; Sands, above n 12, 294.

17 *Declaration of the United Nations Conference on Environment and Development*, A/CONF 151/26 vol 1, Principle 11 (Rio de Janeiro, 3-14 June 1992) (*Rio Declaration*); Birnie and Boyle, above n 9, 252.

18 Doelle, above n 6, 210.

19 Inter-American Commission for Human Rights, *Report on the Situation in Ecuador*, OEA/Ser.L/V/II.96 Doc 10 rev 1 (24 April 1997).

20 *The Mayagna (Sumo) Awas Tingni Community v Nicaragua*, (2001) Inter-Am. Court HR (Ser C) No 79 (*Tingni Community*); *Yanomami v Brazil* (1985) Inter-American Commission on Human Rights, Case No 7615, Res 12/85.

21 *Lopez-Ostra v Spain* (1995) Eur Court HR 38.

evident in the jurisprudence of these human rights bodies is a willingness to recognise environmental protection as a human rights objective in its own right, independent from other specific human rights goals.

2. *The 'Right to a Healthy Environment'*

Several authors have argued in favour of the recognition of a separate 'right to a healthy environment'. In the lead up to the *Rio Declaration* in 1992, Shelton argued in favour of the recognition of a clearly defined 'right to a safe and healthy environment', not reliant upon other existing human rights.²² This proposed addition to the catalogue of human rights has been supported by Sumudu Atapattu, who argues that recognising a separate right to a healthy environment would allow individuals or communities to bring a claim under existing human rights regimes where a state's activities have led to an unhealthy environment, without having to establish damage to other rights such as the right to health, which may take years to materialise.²³ Steve Turner presents a 'Draft Human Right to a Good Environment'²⁴ and argues that recognising such a right would be a useful practical tool in protecting both human rights and the environment itself, and in ensuring sustainable development.²⁵

The recognition of this independent 'right to a healthy environment' would help address some of the arguments against taking a human rights approach to environmental protection. One of these arguments is that the focus that human rights places on individuals and groups means that environmental protection will only be pursued where doing so will serve some identifiable human benefit; where such a connection cannot be located, environmental protection will slip through the cracks.²⁶ This is a valid concern, especially with regards to climate change, as the very nature of the problem means that we may yet see effects that, at this stage, we cannot foresee, and we may not always be able to identify a particular group who will suffer or the particular rights which are at risk.

Identifying an independent, clearly defined right to a healthy environment helps address this concern as it ensures that the inherent worth of a healthy environment is recognised and protected independently from other rights.²⁷ At the same time, we can point out that taking a human rights approach does not require that other disciplines be abandoned. Environmental, scientific and economic responses ought to be pursued simultaneously to ensure that we maximise our capabilities to deal with the problem, with human rights providing a necessary additional focus. These other fields of endeavour help ensure a comprehensive response.

While none of the major international human rights treaties acknowledge an independent 'right to environment', some of the regional human rights treaties include something similar to a 'right to environment'. For example, the *African Charter of Human and People's Rights*²⁸ provides that people should have a 'general satisfactory environment favourable to their development'.²⁹ The *Protocol of San Salvador to the American Convention on Human Rights*³⁰ grants that individuals have a right 'to live in a healthy environment' and places an obligation on states to 'promote the protection, preservation

22 Dinah Shelton, 'Human Rights, Environmental Rights, and the Right to Environment' (1991) 28 *Stanford Journal of International Law* 121.

23 Sumudu Atapattu, 'The Right to a Healthy Life or the Right to Die Polluted? The Emergence of a Human Right to a Healthy Environment Under International Law' (2002) 16 *Tulane Environmental Law Journal* 65, 111.

24 Steve Turner, 'The Human Right to a Good Environment — The Sword in the Stone' (2004) 4 *Non-State Actors and International Law* 277, 278.

25 Ibid 294-295. See also Barry E Hill, Steve Wolfson and Nicholas Targ, 'Human Rights and the Environment: A Synopsis and Some Predictions' (2004) 16 (3) *Georgetown International Environmental Law Review* 359

26 Atapattu, above n 23, 71; Turner, above n 24, 284.

27 Turner, above n 24, 285.

28 *African Charter on Human and Peoples' Rights*, opened for signature 21 June 1981, OAU Doc CAB/LEG/67/3/Rev 5 (entered into force 21 October 1986) (*African Charter*).

29 *African Charter*, art 24.

30 *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, opened for signature 17 November 1988, 28 ILM 156 (entered into force 16 November 1999) (*Protocol of San Salvador*).

and improvement of the environment'.³¹ The right to a clean, healthy environment ought to be incorporated into international human rights law, in acknowledgement not only of the various ways that the environment impacts on other human rights, but of the inherent value of the environment to humanity. Such a right could then be used to protect against the effects of climate change as a particular form of environmental degradation.

B. Indigenous Rights

Over recent decades, indigenous rights have been developing as a distinct group of human rights — a group of what is called third-generation or collective rights.³² We can tap into this branch of human rights law in order to find a place for climate change within the human rights framework. We can also use indigenous communities' experiences of climate change as a valuable case study to examine the benefits of constructing climate change as a human rights issue.

We can find recognition of indigenous human rights in the *International Covenant on Civil and Political Rights* (ICCPR),³³ and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).³⁴ Article 1 of each of the two covenants guarantees peoples the right to self-determination and the right to control their own natural wealth and resources. Article 27 of the ICCPR protects the rights of minorities, including indigenous minorities, to enjoy their own culture, religion and languages.³⁵

Indigenous rights are also acknowledged in the *Rio Declaration*, which recognises the importance of participation by indigenous groups in environmental management. Principle 22 of the *Rio Declaration* requires that states recognise and support indigenous peoples' identity, culture and interests, and enable their effective participation in the achievement of sustainable development.³⁶

The recently adopted *United Nations Declaration on the Rights of Indigenous Peoples*³⁷ also recognises that respect for indigenous cultures and knowledge contributes to sustainable development and proper management of the environment.³⁸ It also guarantees to indigenous communities the right to manage and develop their own territories, and the right to conservation of their environment.³⁹

There is, therefore, an existing framework of human rights law which protects indigenous peoples' rights with respect to their environment. It is both feasible and appropriate that we expand this framework to include indigenous rights with regard to climate change, since indigenous communities have been among the first to feel the effects of climate change.⁴⁰

In Australia, communities in the Torres Strait Islands are already experiencing the effects of climate change, most notably in the form of saltwater inundation caused by rising sea levels, combined with increased frequency and severity of extreme weather events. These events have damaged infrastructure such as airstrips, jetties, sewage plants and waste dumps, and affected potable water supplies and soil fertility. Changes in ocean temperature and salinity have also damaged fish stocks in the region, affecting both

31 *Protocol of San Salvador*, opened for signature 17 November 1988, 28 ILM 156, art 11 (entered into force 16 November 1999).

32 Fergus Mackay, 'The Rights of Indigenous Peoples in International Law' in Lyuba Zarsky (ed) *Human Rights and the Environment: Conflicts and Norms in a Globalizing World* (2002)

33 *ICCPR*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

34 *ICESCR*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

35 See *Ivan Kitok v Sweden*, Human Rights Committee, Communication No 197/1985, UN Doc CCPR/C/33/D/197/1985 (1988); *Bernard Ominayak v Canada*, Human Rights Committee, Communication No 167/1984, UN Doc CCPR/C/38/D/167/1984 (1990); *Mahuika v New Zealand* (2001) 8 IHRR 372; and discussion in Gillian D. Triggs, *International Law: Contemporary Principles and Practices* (2006) 824.

36 See also the *Convention on Biodiversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993), which stresses that indigenous peoples are entitled to contribute to environmental management and sustainable development.

37 *Declaration on Rights of Indigenous Peoples*, UN Doc A/RES/61/295, (13 September 2007).

38 *Ibid.* See preamble.

39 *Ibid.* art 29.

40 Green, above n 5, 8.

subsistence and commercial fishing practices. Islanders are also reporting decreases in dugong and sea turtle populations in the Torres Strait, species which have important totemic significance, due to diminishing seagrass beds and damage to turtle nesting beaches.⁴¹ Similar impacts have been reported in other parts of the South Pacific, affecting the economic and social situations of many small island states.⁴²

For these communities, the problems of climate change are very real indeed, and are already requiring adaptation measures to be put in place, including constructing or strengthening sea walls, raising houses and other buildings onto stilts to allow them to withstand future inundations, and even relocating entire townships and villages.⁴³

Not only is it the case that indigenous communities have, in many cases, been the first to feel the effects of climate change, but also, for various reasons, indigenous communities are often more vulnerable to the effects of environmental degradation, making them more at risk of human rights violations.⁴⁴

Across the world, indigenous groups are more likely to rely on the environment for subsistence. This places them at risk of a wider variety of human rights violations, with potentially far greater impact.⁴⁵ The environment also often plays a more significant role in the social and cultural lives of indigenous communities than it does for the rest of the population, so there are often risks to a range of other important social and cultural rights particular to that community.⁴⁶

Further, due to economic constraints, indigenous peoples can have a restricted capacity to adapt to rapid changes in the environment.⁴⁷ Where adaptation would entail relocation, this can have a significant cultural impact, with people forced to move away from traditional country.

IV. THE INUIT CASE

An example of the impact that climate change is having on indigenous peoples, and of the way that human rights can be used to address the problem, comes from the Inuit peoples of North America.

In March 2007, a petition was made to the Inter-American Commission of Human Rights on behalf of the Inuit peoples of North America. The petition sought a declaration from the Commission recognising the relationship between climate change and human rights, and calling on nations, in particular the United States, to take appropriate action to mitigate the impact of climate change.

A. Arguments Presented to the Commission

The Commission heard testimony from representatives of Inuit peoples indicating the ways that climate change is affecting their lives. The Inuit have lived in the Arctic for many thousands of years. They rely on their environment for subsistence hunting and gathering, and depend heavily on being able to travel on the sea ice to reach hunting grounds. The hunt represents a very important cultural and social activity for the Inuit as sharing in the hunt helps strengthen community ties and pass on traditional knowledge from one generation to the next.⁴⁸

The petitioners spoke of the fact that the melting sea ice, caused by rising temperatures, is limiting the Inuit's ability to hunt and travel on the ice. The melting sea ice is also putting greater pressure on ice-dependent animals like seals, walrus and polar bears,

41 Ibid, 4-5.

42 Aisi, above n 4, 66; Emma Brindal 'Justice for Climate Refugees' (2007) 32 (4) *Alternative Law Journal* 240, 241.

43 Green, above n 5, 10.

44 Wolfgang Sachs, 'Environment and Human Rights' (2004) 47(1) *Development* 42, 43.

45 Ibid 43

46 Ibid.

47 Ibid; Bernstein et al, above n 1, 14.

48 Martin Wagner, 'The Right to be Cold: Global Warming and Human Rights' in Marius Smith and Erica Contini (eds) *Human Rights 2007, the Year in Review*, Castan Centre for Human Rights Law, Monash University (2008) 73, 73-75.

which the people rely on for food and other materials, while thawing permafrost is changing the nature of tundra and forest ecosystems. At the same time, coastal communities are being exposed to storms, erosion and rising sea levels, which are forcing some communities to uproot themselves and move further inland.⁴⁹

It was argued before the Commission that these effects amount to violations of rights guaranteed under the *American Declaration of the Rights and Duties of Man*,⁵⁰ and the *American Convention on Human Rights*,⁵¹ the two primary human rights instruments of the Organization of American States (OAS). These documents guarantee a range of human rights, including the right to life, to freedom of residence and movement, the right to the inviolability of the home, the right to the preservation of health and wellbeing, and the right to enjoy the benefits of culture.⁵²

As we've seen, the Inter-American Commission and Court of Human Rights have already recognised in previous cases the impact that environmental damage can have on indigenous peoples, agreeing that such damage could amount to violations of rights protected under the Declaration.⁵³ The Inuit argued that these previous decisions could provide a basis for the Commission to extend its understanding of human rights and acknowledge that climate change is, in fact, a human rights issue.⁵⁴

B. The Possible Outcome

The Commission has yet to issue its report in response to the Inuit petition. In 2004, Meinhard Doelle predicted that a case such as this could be brought within the inter-American human rights regime. He argued that, based on previous decisions of the Inter-American Court of Human Rights, it is likely the inter-American regime would recognise the link between climate change and human rights, and the potential for climate change to impact negatively upon human rights.⁵⁵ Previous decisions of the Inter-American Court have upheld claims for future harm, as well as present harm, so it is likely that the Commission will recognise that climate change poses a threat to the rights of both present and future generations.⁵⁶ The Inuit peoples are hopeful that the Commission will recommend that the United States government take steps to cut greenhouse gas emissions in order to protect the Arctic environment and Inuit culture.⁵⁷

While a report or a recommendation from the Commission wouldn't be binding, it would be a very important step in recognising climate change as a human rights issue and in articulating the link between climate change and human rights violations. It would be an acknowledgement that climate change is not simply a matter for future concern, but that it is already having very real and immediate effects on human rights, particularly on the rights of indigenous peoples. It would also serve as a crucial step towards having states recognise that their human rights obligations require that they take action now to mitigate both present and future impacts, and that failure to do so may result in similar claims being

49 Sheila Watt-Cloutier, Testimony presented at Inter-American Commission of Human Rights, 1 March, 2007.

http://www.earthjustice.org/library/legal_docs/testimony-before-iachr-on-global-warming-human-rights-by-sheila-watt-cloutier.pdf at 2 December, 2008.

50 Reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V/11. 82 doc.6 rev.1 at 17 (1992).

51 *American Convention on Human Rights*, opened for signature 22 November, 1969, OAS Treaty Series No 36, UNTS 123 (entered into force 18 July 1978).

52 Richard Wagner, testimony presented at the Inter-American Commission on Human Rights, 1 March 2007.

http://www.earthjustice.org/library/legal_docs/testimony-before-iachr-on-global-warming-human-rights-by-martin-wagner.pdf at 2 December, 2008. Donald Goldberg, testimony presented at the Inter-American Commission on Human Rights, 1 March 2007.

<http://www.earthjustice.org/library/legal_docs/testimony-before-iachr-on-global-warming-human-rights-by-donald-goldberg.pdf> at 2 December, 2008. For a general discussion of the rights guaranteed under the inter-American human rights system which may be affected by climate change, see Doelle, above n 6, 198-199.

53 Doelle, above n 6, 212.

54 Doelle, above n. 6, 205.

55 Ibid 212;

56 *Tingni Community*, Inter-Am. Court HR (Ser C) No 79; Doelle, above n 6, 202.

57 Wagner, above n 52, 86.

brought in various human rights organisations around the world, with significant prospects of success.

V. CONCLUSION

This paper has discussed some possible ways to view climate change as a human rights issue, by demonstrating the links between climate change and both indigenous and environmental rights. It has demonstrated some of the benefits that may be gained from addressing climate change as a human rights issue. The discussion would not be complete, however, without considering what is required of us to ensure our responses to climate change are consistent with human rights.

A human rights approach to climate change requires that at all times we consider the impact that will be felt by the people who are most directly affected. This entails considering not only the impact of climate change itself, but also the impact of our responses. In striving to mitigate or prevent the problems caused by climate change, we must ensure that we are not creating or exacerbating other problems.

Further, our responses to climate change must be non-discriminatory, transparent and inclusive. We must be open to consultation with all stakeholders, especially indigenous communities, to ensure that their interests are properly represented, and to avail ourselves of the wealth of traditional knowledge and experience that indigenous communities can contribute. We must recognise that many indigenous communities have already lived through, and successfully adapted to, previous incidents of environmental change, and our responses to the current challenges of climate change can benefit from their contributions. By tackling the problem of climate change in a way which includes indigenous peoples, we can hope to address the disproportionate impact that climate change has on those who are already the most vulnerable.

