Linking Global Warming to Inuit Human Rights

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Linking Global Warming to Inuit Human Rights*

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I. GLOBAL WARMING, HUMAN RIGHTS AND THE INUIT

The relationship that humans have with their environment is important for physical, mental and spiritual well being. However, the relationship that the Inuit, indigenous peoples living in the Arctic, have with their environment is essential for the survival and existence of their entire culture. Global warming affects everyone, but those, such as the Inuit, who are most vulnerable to its adverse effects and least able to protect themselves, are most affected. The Inuit culture is uniquely dependent on the harsh Arctic environment in which they live. The Inuit have survived in the Arctic climate of Alaska, Canada, Greenland and Russia over hundreds of years by developing an intricate knowledge and respect

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for their environment and passing that knowledge on by educating their children through the experience of survival.¹

The impact of global warming in the Arctic regions has been much greater than in the rest of the world.² Significant environmental changes have occurred in the Arctic, many of which threaten the Inuit way of life.³ Recently, the Inuit in the Arctic region of Alaska and Canada filed a petition in the Inter-American Commission on Human Rights (Inter-American Commission or Commission) alleging that the United States has violated their human rights based on the nation’s contribution to global warming.⁴

In the past, international human rights bodies such as the Inter-American Commission have been reluctant to interpret environmental claims in the context of human rights.⁵ However, in recent years most major human rights bodies have considered the link between internationally protected human rights and environmental harm. Claims based on environmental degradation are often brought as human rights claims, due to the nature of international tribunals and the limitation of international environmental law.⁶ These human rights claims are most often articulated so as to fit the particular jurisprudence of the human rights body, rather than as an actual reflection of the harm done.⁷ Claims are rarely brought under an actual right to a healthy environment, which is only protected in two

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¹ Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting From Global Warming Caused by Acts and Omissions of the United States, Dec. 7, 2005 (submitted by Sheila Watt-Cloutier on behalf of herself, 62 named Inuit individuals, and all Inuit of the arctic regions of the United States and Canada stating that the land and environment to the Inuit includes “not only the ground underfoot, but the ice, oceans, lakes, tidal zones, islands, and the total environment [hereinafter Inuit Petition].”); Inuit Tapirint Kanatami (ITK), Understanding Inuit Knowledge, at http://www.itk.ca/environment/tek-understanding.php (last visited Jan. 17, 2006).
³ CLIMATE CHANGE 2001: THE SCIENTIFIC BASIS 13 (J.T. Houghton et al. eds., 2001) [hereinafter IPCC CLIMATE CHANGE 2001: THE SCIENTIFIC BASIS]; see also NATIONAL ASSESSMENT SYNTHESIS TEAM, CLIMATE CHANGE IMPACTS ON THE UNITED STATES: THE POTENTIAL CONSEQUENCES OF CLIMATE VARIABILITY AND CHANGE 284 (2001) (predicting the Arctic to warm by as much as 5.8° Celsius by 2100).
⁶ Id. at 124.
binding international human rights documents. Instead, claims are brought under human rights such as the rights to life, health, the use and benefit of land, freedom of residence and movement, culture, and the enjoyment of family life.

Human rights bodies have begun to take a more expansive view of internationally protected rights and have interpreted many of the basic human rights such as the right to life and to health to necessarily encompass a right to a healthy environment. The Inter-American Commission in particular has shown a willingness to expand its interpretation of human rights in the context of indigenous rights. Indigenous peoples receive special protection of their rights in international treaties and state constitutions. Additionally, several proposed drafts of human rights documents deal exclusively with indigenous rights. The way of life and survival of many indigenous people like the Inuit are so closely tied to the environment, that this unique relationship has been recognized throughout the international human rights community.

Under international law, the United States government has violated the Inuit's human rights by failing to take action against climate change. The Inter-American Commission should find that the allegations of human rights violations by the Inuit are justified and rule in their favor. This article first explores the impacts of climate change on the Inuit and each of the Inuit's basic human rights, which are implicated by the environmental

14. Osofsky, supra note 7, at 74 n.3.
changes. Next, the role and responsibility of the United States with respect to climate change is examined. This section discusses the current attitude and actions of the U.S. government, issues of causation and the role of the Inter-American Commission as the appropriate forum in which to pursue the claims. Finally, the article discusses the applicable international law and the protection of the Inuit's human rights within the Inter-American System.

II. CLIMATE CHANGE IMPLICATES THE INUIT'S HUMAN RIGHTS

A. Impacts of Climate Change

Many state and political actors in the United States are failing to seriously address the problem of global warming, many simply claiming that the science surrounding global warming is too uncertain or even denying its existence. However, there is a strong scientific consensus on the existence of global warming and its causes. Although global warming is a naturally occurring phenomenon, studies have shown that human activities are responsible for the recent dramatic increase. The majority of scientists are convinced that greenhouse gases (GHG) such as carbon dioxide (CO$_2$), methane (CH$_4$) and nitrous oxide (N$_2$O), caused by the human activities of burning coal and oil, are the primary causes of global warming, with carbon dioxide as the major culprit. Scientific measurements of GHG in the atmosphere are indicative of the interference of human activity. In 1750, prior to the start of the Industrial Revolution, CO$_2$ concentrations were at 280 parts per million (ppm) as they had been for thousands of years. By 2000 however, CO$_2$ concentrations were measured at 360 ppm and rose to 370-380 ppm by 2004.

15. Elizabeth Kolbert, The Climate of Man-III; What can be done?, THE NEW YORKER, May 9, 2005, at 52.
16. Naomi Oreskes, The Scientific Consensus on Climate Change, 306 SCIENCE 1686 (Dec. 3, 2004) (A study of over 900 articles on climate change between 1993 and 2000 revealed that 75% endorsed the view that anthropogenic greenhouse gas emissions are responsible for at least some of the warming of the past 50 years, 25% took no position and no article disputed the fact of anthropogenic warming).
17. Id.
18. IPCC Climate Change 2001: The Scientific Basis, supra note 3, at 13. See id., (Noting that a report by the National Academy of Sciences found that the IPCC's conclusion that most of the observed warming of the past 50 years is likely to have been due to the increase in GHG concentrations accurately reflects the current thinking of the scientific community).
21. Id.
The United States is by far the world’s largest producer of greenhouse gas emissions. The United States, which has nearly 5% of the world’s population, produces over 20% of the world’s global GHG emissions. In recent years, the environmental changes caused by the emission of GHGs have been intensely studied and measured. Average global temperatures have risen 0.6 degrees Celsius (°C) since the late 19th century and are expected to increase between 1.4°C and 5.8°C by the year 2100. The 1990s has been the warmest decade since the 1860s, when formal worldwide temperature records began. 1998 was the warmest year ever recorded, with 2002 and 2003 tied for the second warmest year. Over the last century, sea levels have risen by a half a foot and in its 2001 report the Intergovernmental Panel on Climate Change (IPCC) predicts that sea levels will rise between four inches and three feet over the next century, threatening coastal settlements.

Deadly summer heat waves in Europe, northern migration of toxic algae and tropical fish to the Mediterranean Sea, spread of disease carrying ticks into previously inhospitable parts of Sweden and the Czech Republic, and recurring summer fires in Portugal due to an increasingly hotter and drier Iberian Peninsula, have all been linked to global warming. The Chinese are now predicting that a new Tibet railway may be ruined by the year 2050 by melting permafrost in the Sanjiangyan regions of the Qinhai-Tiber plateau. Due to melting polar ice caps and glaciers and the ensuing rising sea levels, entire pacific island nations may be threatened with extinction within 50 years. Two

25. Id.
26. Id.
27. Id. (The predicted sea level rise does not take into account the contribution of melting ice in Antarctica or Greenland).
29. Global Warming Poses Threat to Tibet Rail Link, Physorg.com, June 24, 2005, http://www.physorg.com/news4705.html (last visited Oct. 1, 2006) (reporting that since the 1960s, the permafrost on the sides of the Qinhai-Tibet highway has retreated by 5.6 miles and has decreased by 13%).
30. Herbert Yuill, President Bush See You in Court Judging by the Cost of Climate Change, THE DOMINION (Reporting that the government of the island nation Tuvalu is planning a case against the United States or Australia at the International Court of Justice
thousand residents of the Kilinailau Islands, 400 miles from Papua New Guinea, are being forced to relocate due to coastal erosion and saltwater intrusion, which interferes with their ability to grow food.\footnote{31}{Elizabeth Kolbert, Comment, Global Warming, THE NEW YORKER, Dec. 12, 2005, at 39.}

The most dramatic effects are occurring in the Arctic regions, the area above the Arctic Circle at 66° 33’N.\footnote{32}{Arctic Council, Impacts of a Warming Arctic: Arctic Climate Impact Assessment, 10 (2004), available at http://www.amap.no/acia [hereinafter ACIA: Warming Arctic] (last visited Oct. 1, 2006) (reporting that the Arctic was experiencing some of the most “rapid and severe climate change on earth”).} Temperature increases between 2°C and 4°C have been reported in northern polar areas with winter temperatures rising by 3.9°C to -5°C in certain Arctic areas in the last 60 years.\footnote{33}{IPCC Climate Change 2001: The Scientific Basis, supra note 3, at 26; ACIA: Warming Arctic, supra note 32, at 22 (concluding that in the past 60 years, winter Arctic temperatures have increased by as much as 3 to 4 degrees Celsius).} Scientists report that global temperatures are expected to rise between 1.4°C and 5.8°C before 2100, with Arctic temperatures rising twice as fast as the rest of the globe.\footnote{34}{IPCC Climate Change 2001: The Scientific Basis, supra note 3, at 13; see also NATIONAL ASSESSMENT SYNTHESIS TEAM, supra note 3, at 284 (predicting the Arctic to warm by as much as 5.8°C Celsius by 2100).}

The environmental changes resulting from global warming have devastating effects on the Inuit, indigenous peoples inhabiting the Arctic regions of northern and western Alaska, northern Canada, Greenland and Chukotka in the eastern Russian Federation. The ability of the Inuit to continue their unique, traditional culture depends on the snow and ice, which determines how the Inuit hunt, fish, travel and maintain homes.\footnote{35}{Kolbert, The Climate of Man-I, supra note 15, at 56-58 (noting that the Inupiat, Inuits of northern Alaska, make distinctions among many different types of ice, including sikuliaq, “young ice,” sari, “pack ice,” and tuvaq, “landlocked ice”).} The Arctic ice cap normally shrinks each summer and expands each winter but dramatic shrinking has recently been observed, with the 2005 summer setting a record low at 20% below the average minimum ice extent measured between 1978 and 2000.\footnote{36}{Andrew C. Revkin, In a Melting Trend, Less Arctic Ice to Go Around, N.Y. TIMES, Sept. 29, 2005, at A1.} Depletion of the sea ice, caused by increasing temperatures, reinforces the warming, as large stretches of dark water open up and the reflective ability of the bright white ice is lost.\footnote{37}{See id. (A scientist at the National Snow and Ice Date Center, which compiles data with NASA, explained, “the change is becoming self sustaining, with the increased open water absorbing solar energy that would be reflected back into space by bright white ice.”).}
Melting sea ice caused by rising temperatures has led to coastal flooding, erosion and changes in the distribution and abundance of seals, walrus, polar bears, and other animals that the Inuit depend on.\textsuperscript{38} Experts predict declines in the polar bear population as a result of the ice depletion leaving the bears less time to hunt, and eventual extinction of the species.\textsuperscript{39} Seals, a species which depends on sea ice to give birth and nurse pups, are also particularly vulnerable to the shrinking ice.\textsuperscript{40} Shifts in the patterns of such animals and decline in their populations threaten the Inuit who rely on these species for subsistence.\textsuperscript{41}

The ice depletion is also a problem for individual Inuit hunters, whose established, safe hunting routes over the ice are now disappearing and unpredictable, sometimes leading to hunters perishing by falling through the ice.\textsuperscript{42} Thinning ice changes hunting patterns and routes that have existed and been passed on for generations and disrupts the Inuit cultural tradition of passing on knowledge to subsequent generations.\textsuperscript{43}

Global warming has also led to changes in seasons and increasingly unpredictable weather.\textsuperscript{44} Protective ice layers along the coast, that provide a buffer for storm surges, are now forming much later due to late freezes, and leaving villages vulnerable to coastal flooding, extensive erosion and property damage.\textsuperscript{45} The flooding and erosion created by the depletion of sea ice are so dangerous and destructive that the relocation of entire villages may be the only option for many Inuit.\textsuperscript{46} In Shishmaref, a small Inuit village on an island off the coast of the Seward Peninsula in south central Alaska, houses have had to be relocated and several have fallen into the sea.\textsuperscript{47} Rising sea levels and coastal erosion have also caused the

\begin{itemize}
\item[\textsuperscript{39}] \textit{ACIA: Warming Arctic}, supra note 32, at 58-61 (predicting that massive ice thinning and depletion leaves seals, walrus and polar bears facing extinction by 2070-2090).
\item[\textsuperscript{40}] \textit{Id.}
\item[\textsuperscript{41}] \textit{Id.}
\item[\textsuperscript{42}] Watt-Cloutier, supra note 38, at 11.
\item[\textsuperscript{43}] \textit{Id.}
\item[\textsuperscript{44}] \textit{ACIA: Warming Arctic}, supra note 32, at 96; see Kolbert, \textit{The Climate of Man-I}, supra note 15, at 58.
\item[\textsuperscript{45}] Kolbert, \textit{The Climate of Man-I}, supra note 15, at 56-58.
\item[\textsuperscript{46}] \textit{Id} (noting that the residents of Shishmaref, an Alaskan village on a small island five miles off the coast of the Seward Peninsula, overwhelmingly voted to relocate to mainland Alaska at an estimated cost of at least 180 million dollars).
\item[\textsuperscript{47}] \textit{Id.}
\end{itemize}
village’s water supply, previously a safe distance from the ocean, to be contaminated by seawater and the entire village is predicted to disappear unless relocated. Even if relocated, the change of location, lost knowledge of the terrain and safe hunting routes, and the likely proximity to a larger town would diminish, if not completely destroy their subsistence living.

Thawing permafrost, damage to forest and tundra, insect infestation, and increased fires are also threatening Inuit life, culture, property and their means of subsistence living. Previously stable ground, some of it frozen for tens of thousands of years, is giving way as temperatures rise and the permafrost melts, damaging homes, roads, airports and pipelines. Warmer temperatures have also allowed large spruce bark beetle outbreaks, increasing the susceptibility of forests to fire. Increases in forest fires not only threaten homes and villages but also harm local wildlife depended upon for subsistence.

B. Inuit Human Rights Implicated by Climate Change

In their petition to the Inter-American Commission, the Inuit claim that acts and omissions of the United States have substantially contributed to global warming, leading to the adverse changes in their Arctic environment, and have violated their human rights. The effects of global warming have negatively impacted the Inuit’s environment. Because the Inuit’s way of life is intricately connected with the land and environment, the changes in temperature and precipitation, melting sea ice, thawing permafrost and changes in plant and animal behavior have serious implications for their entire culture and existence.

The dramatic changes in the Arctic environment that have been caused by global warming have seriously impacted the Inuit way of life and have implicated their right to inviolability of the home and right to freedom of residence and movement. Climate changes such as coastal erosion, thawing permafrost and changes in snowfall and ice have made it difficult and sometimes impossible for Inuits to maintain homes, enjoy family and private life and to freely move about in their territory.

49. Id.
50. Kolbert, The Climate of Man-I, supra note 15 (Permafrost is ground that has been frozen for at least two years and may be anywhere from a couple hundred feet deep to thousands of feet deep.).
51. Goldberg & Wagner, supra note 48, at 194.
52. Id. at 195.
53. Inuit Petition, supra note 1 (submitted by Sheila Watt-Cloutier, with support of the Inuit Circumpolar Conference).
erosion is caused by rising sea levels and the melting of protective ice barriers, which normally protect Inuit villages and homes from the surf.\textsuperscript{54} Such conditions have destroyed Inuit homes and threaten to destroy hundreds of villages, such as Shishmarof, disrupting the Inuit right to inviolability of the home and freedom of residence and forcing the people to move.\textsuperscript{55}

Thawing permafrost caused by warmer temperatures has destabilized Inuit buildings and homes and triggered unpredictable mudslides making inhabitation and travel dangerous.\textsuperscript{56} The depletion of snowfall and ice has also made it extremely dangerous for the Inuit to travel, with some hunters actually falling through the thinning ice to their deaths.\textsuperscript{57} Over recent years there has also been a lack of the proper snow required to build igloos, an essential tool for Inuit travel and survival in the Arctic.\textsuperscript{58}

As a result of the Inuit’s unique relationship with the land and resources, which is central to Inuit culture, the effects of global warming on the Inuit people have been devastating and undermines their right to property, including the right to their own means of subsistence. Sea ice is an essential element of the Inuit’s ability to use and enjoy their land. Both the shift in the freezing cycle and the depletion of the sea ice have made the Inuit’s territory not only less valuable but also dangerous.\textsuperscript{59} Sea ice provides protection for Inuit homes and villages, safe travel and hunting routes, and supports an abundance of wildlife, which Inuit people rely on for subsistence.\textsuperscript{60} The instability of the ice makes it difficult, if not impossible for the Inuit to benefit from such use of their land.\textsuperscript{61}

\textsuperscript{54} Kolbert, \textit{The Climate of Man-III}, supra note 15.

\textsuperscript{55} U.S. General Accounting Office, Flooding and Erosion in Alaska Native Villages, GAO-04-142, at 8 (2003) [hereinafter GAO Report]; Yereth Rosen, Alaska Natives Say Warming Trend Imperils Villages, Reuters, July 1, 2004 (reporting that the GAO has found that 184 of 213 Alaska Native villages face flooding and erosion problems with serious problems in 20 villages); \textit{see also} Mank, supra note 23, at 5.


\textsuperscript{57} Watt-Cloutier, \textit{Climate Change and Human Rights}, supra note 38, at 10.

\textsuperscript{58} \textit{ARTIC COUNCIL, ARCTIC CLIMATE IMPACT ASSESSMENT 668} (Cambridge University Press 2004), \textit{available at} \url{http://www.amap.no/acia}.

\textsuperscript{59} \textit{Id.} at 44 (early sea ice has decreased by approximately 8\% in the last 30 years and summer sea ice has decreased between 15 and 20\%).

\textsuperscript{60} \textit{Id.; see also} Steven Lee Myers, \textit{Old Ways of Life Are Fading as the Arctic Thaws}, \textit{N.Y. TIMES}, Oct. 20, 2005.

\textsuperscript{61} Inuit Petition, \textit{supra} note 1.
Thawing permafrost also prevents the Inuit from exercising their right to use and enjoy their property. The slumping, sinking ground destroys their structures and makes it difficult to use the land for building or travel.\textsuperscript{62} Permafrost traditionally has served as both a method to store food and a support for water resources.\textsuperscript{63} Its thawing makes food storage impractical and allows drainage, causing water resources and wetlands to dry up.\textsuperscript{64} Scientists predict that the thawing will continue into the north, further diminishing the Inuit’s ability to use and enjoy their property.\textsuperscript{65}

In addition to interfering with the Inuit’s right to property, the effects of global warming also disrupt the Inuit subsistence methods. Inuit people rely on hunting for food, clothing and fuel and have passed on their tradition and knowledge to subsequent generations for hundreds of years.\textsuperscript{66} The Inuit have learned to incorporate modern technology such as snow machines and guns into their methods of subsistence but their survival depends on their traditional knowledge of the environment and wildlife.\textsuperscript{67} Animals such as polar bears, seals, whales, walruses, and caribou have become less available to Inuit hunters.\textsuperscript{68} Polar bears, seals, and walruses are dependant on the ice and are experiencing a decline in population due to the sea ice’s depletion. Unstable, thinning and disappearing sea ice as well as a lack of sufficient snowfall also prevents Inuit hunters from reaching the animals.\textsuperscript{69} Whaling in particular has become increasingly dangerous over the years because of the thinning ice and has yielded much less meat for the Inuit.\textsuperscript{70}

The effects of global warming not only impair the Inuit’s ability to travel over the land and ice but also disrupt the migration of caribou, which no longer have safe, solid ice to cross over. Such interruption in the freezing of the ice has caused many caribou to change migration patterns, taking them away from Inuit hunters.\textsuperscript{71} Changes in the freezing

\textsuperscript{62.} \textit{Id.}
\textsuperscript{63.} \textit{Id.}
\textsuperscript{64.} \textit{Id.}
\textsuperscript{65.} \textit{ACIA: Warming Arctic, supra note 32.}
\textsuperscript{66.} Watt-Cloutier, \textit{supra} note 38 ("\textit{[h]unting lies at the core of Inuit culture, teaching such key values as courage, patience, tenacity, and boldness under pressure—qualities that are required for both the modern and the traditional world in which the Inuit live.}").
\textsuperscript{67.} \textit{Inuit Petition, supra note 1; ACIA: Warming Arctic, supra note 32.}
\textsuperscript{69.} \textit{Inuit Petition, supra note 1.}
\textsuperscript{70.} \textit{Id.} at 40 (Inuit Roy Nageak of Barrow, Alaska, in his interview for the Petition, stated that, "[y]ou need at least six feet of solid ice to bring up a whale. When it's like three, four feet, especially if somebody got a bigger whale, it's going to keep breaking up.").
\textsuperscript{71.} \textit{Id.; ACIA Report, supra note 32.}
and snow conditions also make vegetation less available to reindeer and caribou, and has likely led to a decline in their population.\textsuperscript{72}

A combination of the effects of global warming seriously threatens Inuit culture, which relies on traditional knowledge to survive in a harsh and unforgiving climate. The destruction of the Inuit’s environment necessarily leads to the destruction of their culture, which is intricately connected with and inseparable from the environment. Climate changes in the Arctic have made the Inuit’s traditional subsistence methods more difficult and less useful and may lead to the loss of their traditional knowledge and way of life. The predictability of weather, snow fall and sea ice, which are essential to the Inuit’s way of life are beginning to fail as the climate changes so dramatically.

Traditional knowledge, which is passed on through oral tradition and experience, is becoming difficult to teach to the younger Inuit.\textsuperscript{73} Without sufficient snowfall, young Inuit are unable to learn to build igloos, which are superior tools to tents, and used for travel and emergency situations, like being stranded in a storm.\textsuperscript{74} The knowledge of safe hunting routes over sea ice and the location of snow drifts for navigation are being lost as global warming so dramatically alters the environment. Eventually, this dramatic change will make such knowledge obsolete.\textsuperscript{75} Shorter hunting periods, caused by the ice freezing later and thawing earlier, leaves much less time for young Inuit hunters to learn the skills they need to practice subsistence.\textsuperscript{76} The Inuit also face the loss of their language as certain environmental conditions for which the Inuit have words no longer occur.\textsuperscript{77}

Global warming has disrupted the Inuit’s right to health, of which a healthy environment is an integral part. Like all humans and other living creatures, Inuit health is connected to the environment but the Inuit’s unique relationship with the Arctic environment makes this connection much closer than it is for others. The Arctic climate changes have

\begin{itemize}
\item \textsuperscript{72} Inuit Petition, \textit{supra} note 53; \textit{ACIA Report}, \textit{supra} note 32.
\item \textsuperscript{73} Inuit Petition, \textit{supra} note 53.
\item \textsuperscript{74} \textit{Id.}
\item \textsuperscript{75} \textit{Id.} at 39.
\item \textsuperscript{76} \textit{Id.} at 4 n.3; see Watt-Cloutier, \textit{supra} note 38, at 10.
\item \textsuperscript{77} Steven Lee Myers, \textit{Old Ways of Life Are Fading as the Arctic Thaws}, N.Y. \textit{TIMES}, Oct. 20, 2005, at A12 (stating that the Inuit word for the month of June, qiqsuqaqtuq, signifies a specific snow condition, a “strong crust at night,” usually occurring in that month. The condition no longer occurs in June however, and an Inuit hunter recently appealed for a new word).
\end{itemize}
resulted in poorer physical and mental health for the Inuit as a result of less reliable and poorer quality food and shelter, dangerous travel conditions, contamination of water supplies, and changes in plants, insects and diseases.\textsuperscript{78} The thawing permafrost has caused the traditional ice cellars to be less effective at storing food, causing it to spoil and increasing the risk of illness.\textsuperscript{79} Permafrost, which normally blocks the drainage of water, has thawed to the point where wetlands and lakes are drying up, diminishing the Inuit’s sources of drinking water.\textsuperscript{80} The quantity and quality of berries, plants and animals is less reliable, sometimes forcing Inuit to buy store bought food, which is expensive and much less nutritious.\textsuperscript{81}

By failing to take significant action to combat global warming, the United States is threatening the Inuit’s basic human right to life. The diminishing snowfall and sea ice, changing, unpredictable weather patterns, thawing permafrost, decline in animal and plant populations, and loss of traditional knowledge has already led to many untimely Inuit deaths and continues to make life for the indigenous communities an increasingly difficult struggle.

The right to life has long been interpreted to encompass more than just a right to not be arbitrarily killed by another human being. It is beyond dispute that climate changes in the Arctic have resulted and continue to result in the deaths of many Inuit. The adverse effects of global warming on Inuit life and existence, as observed and documented by the Inuit themselves as well as scientists and journalists, are severe and amount to justification for their petition to the Inter-American Commission. Although the practice of linking human rights and the environment has emerged in international law, there has been no formal recognition by any national or international body that global warming implicates human rights or that states have obligations to protect human rights against violations due to global warming.

\textsuperscript{78} ACIA: Warming Arctic, supra note 32, at 121; Inuit Petition, supra note 53, at 61-64.


\textsuperscript{80} ACIA: Warming Arctic, supra note 32, at 91.

\textsuperscript{81} Inuit Petition, supra note 1, at 62.
III. THE RESPONSIBILITY OF THE UNITED STATES

A. U.S. Response to Global Warming

Despite evidence and awareness of devastating effects, and its major role in contributing to those effects, the United States government has failed to take any significant action to prevent or lessen the impacts of global warming. In 2001, the United States withdrew from the Kyoto Protocol, which requires developed countries to reduce green house gas (GHG) emissions 5-8% below 1990 levels by 2008-2012. The United States is one of only two developed nations in the world that is not a signature of Kyoto. U.S. withdrawal from the treaty was a major blow to the international effort to combat global warming, and despite Russia’s subsequent ratification of Kyoto, the lack of U.S. participation prevents progress toward reducing GHG emissions. Although compliance with Kyoto is merely the first step and not enough on its own to prevent dangerous levels of CO2, without U.S. participation, further, more aggressive measures are out of reach.

As an alternative to mandatory GHG emission targets, the U.S. government favors reducing GHG intensity, a ratio of GHG emissions based on the economy. Though the Bush Administration has announced its intention to reduce GHG intensity by 18% over the next 10 years, this will in fact result in an overall increase in GHG emissions by 12%. Besides opposing any mandatory GHG emission targets, the United States has no federal statute which explicitly requires the reduction in GHGs by federal agencies or in private industry. A lawsuit brought by twelve U.S. states, several cities and environmental groups against the Environmental

83. Andrew Revkin, U.S., Under Fire, Eases Its Stance in Climate Talks, N.Y. TIMES, Dec. 10, 2005 at A6 (Australia has also refused to sign on to the Kyoto Protocol).
85. Id.
Protection Agency (EPA), which sought to have the EPA regulate GHG emissions of new motor vehicles under the Clean Air Act, was dismissed by the U.S. Court of Appeals for the DC Circuit.\textsuperscript{89}

Though government encouragement of voluntary private sector reductions of GHG is significant, a report by the Energy Information Administration predicts that even if most of the voluntary reduction measures are adopted, by 2025, U.S. CO\textsubscript{2} emissions will be 63% higher than 1990 levels.\textsuperscript{90} Despite U.S. acknowledgement that GHG emissions produced by humans are the most likely source of global warming, and that current policies will increase total U.S. emissions by 43% between 2000 and 2020, the Bush Administration indicates no intention of abandoning its opposition to mandatory GHG emissions limits until more conclusive research on global warming is produced.\textsuperscript{91} Not only has the United States government continued refusing to set emissions targets, but they have also declared opposition to even informal discussions which mention emission targets.\textsuperscript{92}

\textbf{B. Holding the United States Responsible}

While it is clear that global warming exists, and that the effects of global warming have significant adverse impacts on the Inuit, the extent to which the United States is responsible is less certain. Although by far the largest producer of GHGs, the United States is not alone in its contribution to emissions. It is uncertain to what extent the United States is able to reduce emissions, and to what extent any action taken will slow adverse impacts on the environment. The U.S. government continues to declare that any mandatory emissions targets will devastate the U.S. economy.\textsuperscript{93} However, the Inuit Petition does not call for drastic measures, which would allegedly lead to the collapse of development.

\textsuperscript{89} Massachusetts v. EPA, 415 F.3d 50 (D.C. Cir. 2005) (cert. granted by United States Supreme Court, June 26, 2006) (The court reasoned that even if the EPA had authority to regulate GHGs under the Clean Air Act, EPA had properly exercised its discretion in refusing to regulate GHGs given the scientific uncertainty in understanding climate change and GHG effects on the climate).


\textsuperscript{91} Mank, \textit{supra} note 20, at 5.


and industry. In fact, some Inuit, such as those in the town of Nunavut in Canada, depend on revenue from coal and oil, the burning of which produces GHGs. While there is no doubt that the U.S. economy depends on the burning of fossil fuels, the goal must be to work toward a balance between the impacts of GHGs on the environment and the need for the burning of GHGs in the economy.

As human rights bodies have tended toward a broader interpretation of human rights and willingness to expand the definition of human rights protections to include the environment, the burdens and sufficiency of evidence to support alleged violations may change. For example, in a case involving the harm from nuclear radiation in test sites in the South Pacific, the U.N. Committee held that the claimants did not qualify as victims of a right to life violation. The U.N. Committee, concerned with the remoteness of harm, rejected claimants’ contention that the nuclear testing increased the likelihood of a catastrophic accident as lacking in scientific certainty.

An emerging principle in international law, the Precautionary Principle, which seeks to anticipate and avoid environmental damage particularly when human rights are involved, may play a role in a global warming human rights petition. The most widely accepted declaration of the principle is found in the 1992 Rio declaration, “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” Though scientific uncertainty is a reason often cited by the U.S. government for its failure to seriously address global warming, such uncertainty will not likely be an obstacle for the

94. Inuit Petition, supra note 1, at 118.
95. Steven Lee Myers et al., Old Ways of Life Are Fading as the Arctic Thaws, N.Y. TIMES, Oct. 20, 2005, at A14.
96. Bordes and Temeharo v. France, Communication No. 645/1995, CCPR/C/57/D/645/1995 (July 30, 1996). The petition concerned harm resulting from nuclear testing sites in the South Pacific. Though the claimants attempted to put the burden of proof on the government to show the tests did not endanger the life and health of those living in the South Pacific, the Committee held that claimants had not sufficiently substantiated their claims.
97. Id.
98. Taillant, supra note 5, at 134.
100. Kolbert, Climate of Man-I, supra note 15, at 71.
Inuit before the Inter-American Commission due to the structure of their petition, which presents evidence of concrete injuries which have already occurred and are ongoing, as well as imminent future harm rather than a remote possibility of harm.

Although there are many scientific uncertainties surrounding global warming, there is a strong consensus that global warming, caused largely in part by human activity, is causing significant changes in the world’s climate. The Inuit should not find burdens of proof and causation an insurmountable obstacle. The Inter-American Commission’s approach to interpreting human rights violations has focused on omissions of states rather than affirmative acts. The Inuit petition focuses on the failure of the United States to participate in international efforts to combat global warming. Furthermore, the Inter-American Commission requires low standards of proof, with the burden resting on the state rather than the claimant. Article 39 of the Commission Statute (formerly Article 42) presumes the facts in the petition are true until the state presents evidence to the contrary.

C. A Global Warming Petition in the Inter-American Commission on Human Rights

The Inter-American Human Rights System was created by the Organization of American States (OAS) in order to protect human rights in the Americas. The Inter-American Commission commenced functioning in 1960 under a statute, which provided the Commission with jurisdiction over all 35 independent countries of the Americas who are OAS member states. Protected human rights within the Inter-American system are derived mainly from the American Declaration of the Rights and Duties of Man (American Declaration) and the American Convention on Human Rights. The Proposed American Declaration on

101. Taillant, supra note 5, at 133-34.
102. Inuit Petition, supra note 1.
103. Taillant, supra note 5, at 133.
106. Id.; see also Inter-Am. Ct. H.R., Advisory Opinion OC-10/89, Interpretation of the American Declaration within the competence of the court, 11 HUM. RTS. L.J. (1990) (interpreting the American Declaration on the Rights and Duties of Man, originally adopted as non-binding, as an authoritative interpretation of the references to human rights in the OAS Charter. The American Convention provides more detailed definitions of human rights and may be used to elaborate on and interpret rights in the Declaration).
the Rights of Indigenous Peoples\(^\text{107}\) and the Protocol on Economic, Social and Cultural Rights (San Salvador Protocol)\(^\text{108}\) also contribute to the understanding of human rights within the system. The American Convention on Human Rights (Convention) enables the Inter-American Court of Human Rights (Court) to exercise jurisdiction over parties to the Convention, while states that have not ratified the Convention, like the United States, are subject to the obligations of the American Declaration and Convention only under jurisdiction of the Commission.\(^\text{109}\)

The Inter-American system is a forum where individuals may bring claims of human rights violations against member states of the OAS. Although actions may not be brought against corporations, who are often the perpetrators of environmental harm, actions may be brought against states for failure to take necessary preventive measures to assure respect for human rights.\(^\text{110}\) The Commission requires that victims of the human rights violations be specifically identified and does not provide redress for collective rights.\(^\text{111}\) Besides identifying a state who has committed a human rights violation and specific victims, petitioners must also demonstrate that all state and domestic remedies have been exhausted.\(^\text{112}\) If petitioners are able to show that state remedies do not provide adequate due process, effective access to state remedies have been denied or that there has been undue delay of state remedies, the exhaustion requirement need not be fulfilled.\(^\text{113}\)

In the case of a claim against the United States for injury related to global warming, a domestic remedy is not likely to be an option. The sovereign immunity of the federal government usually forces plaintiffs

\(^{107}\) Inter-Am. C.H.R., Third Report on the Human Rights Situation in Colombia, Report No. 3/99, OEA/Ser.L./V/II.102, doc. 7 rev. 1, ch. X at para. 9 (The draft Inter-American Declaration of the Rights of Indigenous Peoples was approved by the IACHR on Feb. 26, 1997 at its 133rd session, 95th regular session. The IACHR has stated that the Proposed Declaration should be understood to provide guiding principles for Inter-American progress in the area of indigenous rights).

\(^{108}\) Protocol of San Salvador, supra note 8 (Adopted by the OAS General Assembly in 1988 and entered into force in 1998, the Protocol has been ratified by 12 countries, not including the United States and is considered an addendum to the American Convention).

\(^{109}\) Inter-Am. Ct. H.R. Rules of Procedure, art. 27.

\(^{110}\) Taillant, supra note 5, at 131.

\(^{111}\) Id. at 53 (Arguments for recognition of rights exercised by a community have been submitted to the Commission but the success of such as argument is yet to be determined).

\(^{112}\) Statute of the Inter-Am. C.H.R., art. 20(c).

\(^{113}\) Inter-Am. Ct. H.R., Rules of Procedure, art. 31.
to bring claims against agencies or officials of the government but the U.S. government itself cannot normally be sued.\footnote{114} Under the Federal Tort Claims Act, the U.S. waives its sovereign immunity where a private person would face liability; however, the U.S. remains immune from suit for acts or omissions that are the result of discretionary functions.\footnote{115} The regulation and reduction of GHG emissions is most likely to be considered a discretionary function.

Attempts to hold the U.S. government or others accountable for injury resulting from global warming have failed to reach the merits so far in U.S. courts.\footnote{116} However, a recent decision by a federal district judge granting standing to environmental groups and four U.S. cities to sue the federal government, challenging the government’s failure to assess impacts of its action on global warming, may pave the way for future climate change litigation in U.S. courts.\footnote{117} The results of climate change litigation in other countries, finding a governmental duty to consider the impact of global warming on humans and the environment, may also influence the U.S. courts as well as international tribunals.\footnote{118}

\footnote{114} Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821) (stating that the “universally received opinion is that no suit can be commenced or prosecuted against the United States”).

\footnote{115} Federal Tort Claims Act, 28 U.S.C. § 1346(b), § 2680(a); see also FDIC v. Meyer, 510 U.S. 471 (1994) (holding that the United States government is not subject to suit for Constitutional violations under the Federal Tort Claims Act).

\footnote{116} See Massachusetts v. EPA, 415 F.3d at 72-73, 82; Connecticut v. Am. Elec. Power Co, Inc., 406 F. Supp. 2d 265 (S.D.N.Y. 2005) (dismissing a suit filed by the State of Connecticut and others against a power company, which called for an abatement of the “public nuisance” of global warming, as a non-justiciable political question). Narrow interpretation of Alien Tort Claims Act has foreclosed any climate litigation under the statute.

\footnote{117} Friends of the Earth, Inc. v. Watson, 2005 WL 2035596, 35 Envtl. L. Rep. 20,179 (N.D. Cal. 2005), available at http://www.elr.info/litigation/vol35/35.20179.pdf (This is the first time that a federal court has held that standing exists for a lawsuit which alleges injury from global warming. Friends of the Earth, Greenpeace, and four cities allege that the Export-Import Bank and the Overseas Private Investment Corporation have illegally provided $32 billion dollars in financing and insurance for oil fields, pipelines and coal-fired power plants over the last 10 years without first evaluating the project’s global warming and environmental impact on the United States as required under the National Environmental Policy Act (NEPA) see also Verwaltungsgericht [VG] [Administrative Trial Court] 2004, BUND v. German Fed. Ministry of Econ. & Labour, available at http://www.climatelaw.org/media/german.suit (last visited Oct. 1, 2006) (a similar suit which was filed in the Administrative Court in Berlin) [hereinafter BUND case].).

\footnote{118} In a suit filed by Australia, a major emitter of GHGs, and a non-party to Kyoto, a federal court ruled against the Australian government for failure to consider the effects of GHG emissions from mines on the environment. See also BUND case, supra note 118 (suit by NGOs against German government sought disclosure of government support for secret export credit for fossil fuel projects).
IV. INUIT HUMAN RIGHTS ARE PROTECTED BY INTERNATIONAL LAW

Within the Inter-American System of Human Rights, innovative interpretation and approaches have led to the linking of human rights and the environment in recent years and provides an advantageous forum for a global warming petition. The Inuit Circumpolar Conference (ICC), an organization representing the 155,000 Inuit of Alaska, Canada, Greenland and Russia, filed a human rights claim on December 7, 2005 against the United States with the Commission for the nation’s contribution to global warming and failure to take serious action despite its increasing destruction of Inuit existence. The ICC alleges that the destruction of their homes, villages, and way of subsistence living violates the Inuit’s human rights protected by international law and treaties within the Inter-American System.

The human rights petition by the Inuit was filed on behalf of all Inuit people living in Alaska and Canada, whose protection is a positive obligation of the United States under the United States Constitution, international treaties and principles of international law. Global warming is not limited to national borders, and its effects are as pronounced in the Arctic regions of Canada, Greenland and Russia as they are in Alaska. The Commission has given a broad interpretation to the concept of jurisdiction, recognizing that a state’s obligations do not always end at its borders. In Saldaño v. Argentina, the Commission held that a state party to the American Convention “may be responsible under certain circumstances for the acts and omissions of its agents which produce effects or are undertaken outside that state’s own territory.”

119. Taillant, supra note 5, at 119.
120. Gertz, supra note 68.
121. Watt-Cloutier, supra note 38.
122. Goldberg & Wagner, supra note 49. The authors note that article 1 of the American Convention suggests that a nation has a human rights obligation only to individuals subject to its jurisdiction, and while the text of the American Declaration does not suggest a similar limitation, the Commission has suggested one in Coard v. United States, Report No. 109/99, Case 10.951, Sept. 29, 1999.
123. “The American States have on repeated occasions recognized that the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality.” American Declaration on the Rights and Duties of Man (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser./L./V.I.4 rev. 7 (Feb. 2, 2000) [hereinafter American Declaration].

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Commission has further stated that the government has the burden of proving that a particular group of individuals falls outside the relevant jurisdiction.125

Other international courts and authorities have also recognized that states may have an obligation to protect the rights of individuals outside its jurisdiction. In its advisory opinion on the legality of the threat or use of nuclear weapons, the International Court of Justice (ICJ) stated that, "the existence of the general obligation of states to ensure that activities within their jurisdiction and control respect the environment of other states or of areas beyond national control is now part of the corpus of international law relating to the environment."126 In a case alleging injury from global warming, all territories and individuals could potentially fall under a State's human rights obligations under such principles, particularly when the state is one of only a few major contributors to the harm.

Internationally protected human rights under which states have positive obligations implicating environmental concerns include the right to life,127 right to inviolability of the home,128 right to private and family life,129 right to property,130 right to freedom of residence and movement,131 right to

125. Ferrer-Mazorra v. United States, Case 9903, Inter-Am. C.H.R., Report No. 51/01, OEA/Ser.L/V/II.111, doc. 20 rev. ¶ 180 (2001), available at http://www.cidh.org (the Commission stated that the State must "prove the existence of a provision or permissible reservation explicitly limiting or excluding the application of some or all of the provisions of the instrument to a particular class of individuals").
130. Universal Declaration, supra note 127, art. 17; American Declaration, supra note 123, art. XXIII; American Convention, supra note 127, art. 21; U.N. Comm. on the Elimination of Race Discrimination [hereinafter CERD], General Recommendation No. 23, art. 5 (Aug. 18, 1997), available at http://www.unhchr.ch ("The Committee especially
the benefits of culture, right to a healthy environment, and indigenous rights. Other human rights such as the right of peoples to their own means of subsistence, right to freely dispose of natural resources and economic, social and cultural rights also have support in international law. Almost all human rights bodies have examined the connection between internationally protected rights and environmental harm. Within the Inter-American System, the Commission looks to the American Declaration when dealing with a state not a party to the American Convention but draws upon the Convention as well as general principles of international human rights law to elaborate on the rights provided in the Declaration.

The right to life, which appears in all major international treaties and conventions, appears in Article I of the American Declaration and provides, “Every human being has the right to life, liberty and the security of his person.” The Commission recognizes the link between the right to life and the environment, “the realization of the right to life, and to physical integrity is necessarily related to and in some ways dependant upon one’s physical environment,” and has found that where
environmental harm constitutes a “persistent threat to human life and health,” the rights to life, physical security and integrity are implicated.\textsuperscript{141}

Violations of the right to life have been found where environmental degradation has led to the deaths of indigenous people dependant on their environment. In \textit{Yanomami v. Brazil}, the Commission held that the Brazilian government violated the Yanomami right to life, liberty and personal security under Article 1 of the Declaration, as well as other rights, when it authorized construction of a highway and resource exploitation through Yanomami territory.\textsuperscript{142} A massive influx of miners and prospectors spread disease, resulting in many Yanomami deaths, the construction of the highway forced the abandonment of communities and means of subsistence, and contact with outsiders caused cultural dislocation.\textsuperscript{143} The Commission’s basis for finding the violations was that the Brazilian government failed to take measures that would have avoided or alleviated the impact on the Yanomami.\textsuperscript{144}

Other international human rights bodies have linked environmental harm with the right to life. The United Nations Human Rights Committee (UN Committee) found that storage of radioactive waste near the homes of a group of Canadian citizens was a prima facie right to life violation under Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) but held the petition inadmissible based on the failure to exhaust state remedies.\textsuperscript{145}

The right to private and family life and inviolability of the home, while most often invoked in the European System of Human Rights, is protected by the American Declaration and all other major human rights instruments.\textsuperscript{146} The European Court has led the way in linking the

\textsuperscript{141.} Report on Ecuador, \textit{supra} note 133, at 88.
\textsuperscript{143.} \textit{Id.}
\textsuperscript{144.} Case No. 7612, \textit{supra} note 142; see \textsc{Fergus Mackay}, \textit{A Guide to Indigenous Peoples' Rights in the Inter-American Human Rights System} 62 (2002). MacKay discusses the limitations of the Inter-American System and the extent to which political considerations shape human rights decisions. Brazil was under military rule and not likely to cooperate with an investigation, thus the IACHR praised the positive steps of the Brazilian government and attributed the violations to a failure to take preventive measures rather than affirmative behavior causing or contributing to the violations.
\textsuperscript{146.} American Declaration, \textit{supra} note 123, art. IX; Universal Declaration, \textit{supra} note 127, art. 12; American Convention, \textit{supra} note 127, art. 11; African Charter, \textit{supra} note 8, art. 4.
environment with the right to private and family life. The European Court requires states to balance the rights of individuals protected under international human rights law with the collective well-being, and when states fail to strike a proper balance, or make efforts to do so, often human rights violations have been found. In its landmark case, *Lopez-Ostra v. Spain*, the European Court found that, "severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life." The European Court reaffirmed that positive obligations may be imposed on states to ensure respect for private and family life when it held Italy liable for pollution resulting from operation of a chemical factory.

International law also recognizes and protects the right to the freedom of residence and movement. Article VIII of the American Declaration provides that, "Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will." Like the right to life, private and family life and inviolability of the home, all major international human rights instruments protect the right to freedom of residence and movement. A violation of this right was found by the Inter-American Commission in *Yanomami*, after activity authorized by the Brazilian government forced the abandonment of Yanomami villages and caused much of their land to be disrupted and inhabitable.

The right to property is protected by most international human rights instruments as well as many national constitutions. The Inter-American Commission has concluded that the right to property guaranteed in the

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148. *Guerra and Others v. Italy*, Case 14967/89, 1998-1 Eur. Ct. H.R. (1998), The European Court unanimously found a violation of Article 8 of the European Convention, declaring that the government failed to take measures to prevent a major accident, reiterating that "severe environmental pollution may affect individuals' well-being and prevent[ing] them from enjoying their homes in such a way as to affect their private and family life."

149. American Declaration, supra note 123, art. VIII.

150. Universal Declaration, supra note 127, art. 13; ICCPR, supra note 128, art. 12.1; American Convention, supra note 127, art. 22; European Convention, supra note 128, Protocol 1, art. 2.1; African Charter, supra note 8, art. 12.1.

American Declaration\textsuperscript{152} and American Convention\textsuperscript{153} is fundamental and inalienable and that no State, group or person may undertake or conduct activities to suppress the rights upheld in Article XXIII and Article 21.\textsuperscript{154} In the past, the Commission refrained from deciding whether a claim of indigenous rights to ancestral lands was legally valid.\textsuperscript{155} More recently, international tribunals have interpreted the right to property in the context of indigenous rights, finding that the right includes special protection for indigenous lands and resources.\textsuperscript{156} Such special protection was important in the \textit{Awas Tingni} case, where both the Inter-American Commission and Court found that Nicaragua violated internationally protected property rights of the Mayangna community when it failed to recognize and secure the community’s traditional lands and granted large-scale logging concessions over those lands.\textsuperscript{157}

The Commission recognizes the special relationship that Indigenous Peoples have with their lands and resources and have applied this "evolutionary" method of interpretation in other cases involving indigenous property rights.\textsuperscript{158} Using an approach which has been described as favoring realism over formalism, the Commission found that the United States had failed to ensure the petitioners right to property in connection with claims to Western Shoshone ancestral lands in Dann\textsuperscript{159} and that Belize had violated Mayan right to property in allowing large-scale logging to take place on their traditional lands.\textsuperscript{160} Extending the right to property to include rights to indigenous lands has occurred outside the Inter-American Human Rights System as well.\textsuperscript{161}

\begin{itemize}
  \item \textsuperscript{152} American Declaration, \textit{supra} note 123, art. XXIII ("Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain dignity of the individual and the home.").
  \item \textsuperscript{153} American Convention, \textit{supra} note 127, art. 21 ("Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.").
  \item \textsuperscript{156} \textit{Awas Tingni} case, \textit{supra} note 11.
  \item \textsuperscript{157} \textit{Id.}
  \item \textsuperscript{160} Anaya, \textit{supra} note 60, at 255.117.
  \item \textsuperscript{161} ICCPR, \textit{supra} note 128, art. 27 (article 27 of the International Covenant on Civil and Political Rights has been invoked to protect indigenous land and culture from environmental degradation, although in Apirana Mahuika et al. v. New Zealand, the
\end{itemize}
The special protection of indigenous rights is gaining momentum under international human rights law. Currently only one international treaty solely concerned with indigenous rights is in force but several drafts of indigenous rights instruments have been proposed, including the Proposed American Declaration on the Rights of Indigenous Peoples and the United Nations Draft Declaration on the Rights of Indigenous Peoples. Protection for indigenous rights can be found within the major human rights instruments as well, such as Article 27 of the International Covenant on Civil and Political Rights, which provides that members of minority groups, "shall not be denied the right, in community with other member of their groups, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

Most major international human rights documents also protect the right to the benefits of culture. The American Declaration provides that "every person has the right to take part in the cultural life of the community." For the Inuit, this protected right to culture is deeply connected to the environment and inextricable from the right to property. The important link between the environment and culture, especially for indigenous groups, has been recognized in the Inter-American Human Rights System and in other international tribunals. The Commission

U.N. Human Rights Committee did not find the severity of harm amounted to a violation of Article 27).

162. International Labor Organization Convention, supra note 12, at 1384.
165. ICCPR, supra note 128, art. 27.
166. American Declaration, supra note 123, art. XIII; American Convention, supra note 127; Universal Declaration, supra note 127, art. 27; ICESCR, supra note 132, arts. 15.1, 15.2; ICCPR, supra note 128; Protocol of San Salvador, supra note 8, art. 14.
167. American Declaration, supra note 123, art. XIII.
has noted the special relationship that indigenous peoples have with their land and stated that such dependence and use of the environment is “essential to [their] physical and cultural survival.” As the Inter-American Court observed in *Awas Tingni v. Nicaragua*, “[f]or indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.”

The Inuits also have a right to their own means of subsistence and a right to freely dispose of natural resources, which are protected under international law. The ICCPR specifically provides that “[n]o one may be deprived of its own means of subsistence,” and both the ICCPR and ICESCR provide for the free disposal of natural wealth and resources. Although the American Declaration or American Convention do not contain specific provisions protecting the rights to subsistence or natural resources, the Inuit claim that such rights are integral parts of their rights to life, property and culture as protected under the documents. The Proposed American Declaration on the Rights of Indigenous Peoples contains a provision which specifically protects the natural resources and means of subsistence of indigenous peoples. Although the Proposed American Declaration is not yet in force, when interpreting the American Declaration the Commission will likely consider and apply such provisions, as well as the other international legal principles, which do explicitly provide for subsistence rights.

The right to the preservation of health is protected by the American Declaration as well as other international human rights documents.

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Lubicon Lake Band’s right to enjoy their own culture, Article 27 may be violated if the mining activities were approved on a larger scale and significantly expanded.


170. *Awas Tingni case*, supra note 11, at 149.

171. ICCPR, supra note 128, art 1.2; ICESCR, supra note 132, art 1; U.N. Draft Declaration, supra note 164, art. 7.

172. ICCPR, supra note 128, art 1.2; ICESCR, supra note 132, art 1.

173. *Inuit Petition*, supra note 1.

174. Proposed American Declaration on the Rights of Indigenous Peoples, supra note 13, art. XVIII.

175. American Declaration, supra note 123, art. XI (stating “[e]very person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources”); Universal Declaration, supra note 127, art. 25(1) (stating “right to a standard of living adequate for the health and well-being of himself and his family”); ICESCR, supra note 132, art. 12 (stating “[t]he state parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”); ACHPR, supra note 136, art. 16 (stating “[e]very individual shall have the right to enjoy the best attainable state of physical and mental health.”).
Like the right to culture and right to subsistence, the right to the preservation of health for the Inuit people is especially dependent on the environment. The Inter-American Commission recognized the relationship between environmental quality and health in the Yanomami case, where they found a violation of the right to the preservation of health and well-being under Article XI of the American Declaration.\(^{176}\) When the Brazilian government approved a highway through Yanomami territory to develop resources, non-indigenous people swept through bringing contagious diseases, which killed many Yanomami, who lacked medical care and were not treated.\(^{177}\)

The importance of preventing environmental degradation that might threaten human health was also discussed in the Inter-American Commission’s Report on Ecuador.\(^{178}\) The Commission noted that state parties may be required to take positive measures to protect basic human rights including the prevention of severe environmental pollution that could threaten human life and health.\(^{179}\) Most recently, in the Belize Maya case, the Commission articulated its view that due to the indigenous people’s dependence on land, violations of their property rights impacted their health and well being.\(^{180}\)

While many international human rights bodies have recognized the link between the environment and the right to health, particularly in the context of indigenous people’s rights, fewer have explicitly stated that a right to a healthy environment exists. There is a growing need for such a right and considerable international support exists for a right to a healthy environment.\(^{181}\) The Inter-American Commission found that a right to a secure, healthy and ecologically secure environment existed in its Report on Ecuador\(^{182}\) and the Protocol of San Salvador expands on the American Declaration, providing, “[e]veryone shall have the right to live in a healthy environment and to have access to basic public services,” and “[t]he

\(^{176}\) Yanomami v. Brazil, supra note 142.  
\(^{177}\) Id.  
\(^{178}\) Report on Ecuador, supra note 133.  
\(^{179}\) Id.  
\(^{180}\) See Belize Maya case, supra note 169.  
\(^{182}\) Report on Ecuador, supra note 133.
State Parties shall promote the protection, preservation, and improvement of the environment.”

The U.N. Committee on Economic, Social and Cultural Rights has also shown openness to recognizing this right. In General Comment 14, issued in November of 2000, the Committee stated that a wide range of socio-economic factors are encompassed in the right to health, which “extend[] to the underlying determinates of health[. . .], such as a healthy environment.” Human rights claims brought before the African Commission on Human and Peoples’ Rights often cite the right to health and the African Charter on Human and Peoples’ Rights is the only binding human right treaty besides the San Salvador Protocol to contain a right to a healthy environment. Although the right to a healthy environment has not been widely recognized, the environment has been interpreted to be closely related and sometimes essential to the human rights of which the Inuit are claiming violations, providing them with protection and a strong basis for their petition.

V. CONCLUSION

The Inuit have chosen an advantageous forum for their petition given the Inter-American Commission’s progression toward a more expansive interpretation of human rights. The Commission has particularly been more expansive and innovative in the context of indigenous rights when it comes to state action or inaction leading to the destruction of indigenous lands and environment. Global warming may appear on the surface to present a less concrete and specific form of environmental harm that may not be directly tied to a particular actor, such as hazards like deforestation and pollution, which led to declarations of violations by the Inter-American Commission in previous cases. However, the Inuit have focused their claims on the very specific and concrete harms in the indigenous communities, particularly with respect to their culture and special relationship with the environment. By presenting their petition in such a way, the Inuit have been able to support their claims

183. Protocol of San Salvador, supra note 8, art. 11.
185. ACHPR, supra note 136, art. 16, 24; Osofsky, supra note 7.
186. Taillant, supra note 5, at 149 (Explaining that Article 29 of the American Convention allows for the adoption of new trends as international law evolves. In the context of rights violations, the Convention requires that developments in international law be used to broaden the interpretation of rights).
with science and the observations and life experiences of the Inuit who have suffered harm. Their evidence provides strong support and justification for the allegations of human rights violations.

Most universal and international human rights instruments expressly guarantee the right to a remedy when any human rights are violated. The remedies requested by the Inuit focus on correcting those failures by acting now to prevent further harm. Such remedies include the implementation of mandatory GHG emission targets, further investigation into U.S. contribution to climate change, especially focusing on impacts in the Arctic and harms to individuals named in the petition, the implementation of plans to protect Inuit life, resources and culture, plans to provide assistance to Inuit for the adaptation to climate change for those harms that cannot be avoided and a declaration that the United States is responsible for Inuit human rights violations and further investigation into such claims.

Although the Inter-American Commission does not have enforcement power of its judgments, its declarations of state violations of human rights have proven to be quite effective. A declaration that the United States has violated Inuit Human Rights may create pressure on the government to take action toward emissions targets or at the very least, provide aid to the Inuits who have suffered harm and take action to prevent harm to Inuits who are struggling with the effects of global warming. However, it is not certain that the media attention, embarrassment and pressure created by a ruling of the Commission that human rights have been violated would be as effective against the United States government. Such a ruling may have more influence within the judicial system, where U.S. judges have shown increasing willingness to consider international law and decisions. A finding of U.S. obligations to address global warming may provide persuasive authority for future lawsuits, including claims brought in U.S. courts and claims brought against U.S. corporations and other entities which contribute to global warming. The

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188. Universal Declaration, supra note 127, art. 8; American Declaration, supra note 123, art. XXVII; ICCPR, supra note 128, art. 2(3); African Charter, supra note 8, art. 7.
189. Inuit Petition, supra note 1.
190. Taillant, supra note 5, at 20 (discussing the Yanomami case in which the Commission declared that Brazil had violated the Yanomami's human rights. Brazil suffered much media attention and embarrassment following the decision and was quick to take steps to redress the situation and repair its reputation before the Commission and the rest of the world.).
effects of global warming are not limited to the Arctic region and it is a certainty that if the United States continues to fail to act, global warming will so severely impact the entire world, that the nation will be violating not just the Inuit’s human rights but those of all the world’s human inhabitants.

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