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Juliette Niehuss


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# LITIGATION UPDATE

## INUIT CIRCUMPOLAR CONFERENCE V. BUSH ADMINISTRATION:

### WHY THE ARCTIC PEOPLES CLAIM THE UNITED STATES' ROLE IN CLIMATE CHANGE HAS VIOLATED THEIR FUNDAMENTAL HUMAN RIGHTS AND THREATENS THEIR VERY EXISTENCE.

By Juliette Niehuss\*

#### INTRODUCTION

In 2003, at a series of climate talks in Milan, Italy, the Inuit Circumpolar Conference (“ICC”), the main representative body for over 150,000 Inuit peoples within the Arctic rim, announced that the Alaskan and Canadian Inuit were developing a human rights petition against the United States to be submitted to the Inter-American Commission on Human Rights (“IACHR”). The Inuit are claiming that the United States has effectively violated their fundamental human rights and threatened their very existence by refusing to cut the country’s greenhouse gas emissions and by reneging on its international commitments to address climate change.<sup>1</sup> The petitioners emphasize the responsibility of the United States as the world’s leader in carbon dioxide emissions, and the petition is currently being organized with the help of NGOs such as the Center for International Environmental Law (“CIEL”) and Earthjustice. The aim of the petition is to obtain an international declaration recognizing that human-induced climate change has infringed on the human rights of the Inuit and to create a new foundation under international law for linking environmental degradation to human rights claims.<sup>2</sup> Moreover, the Inuit hope that an IACHR ruling that the U.S. is liable for its role in global warming might put other countries on notice of the human rights consequences of climate change.<sup>3</sup>

#### SCIENTIFIC BACKGROUND

While the Bush Administration remains generally skeptical regarding the causes of global climate change, there is evidence of a growing consensus within the scientific community that human influences have greatly impacted climate change over the past fifty years.<sup>4</sup> Industrial impacts – largely traceable to the U.S. – such as heat-trapping smokestacks and vehicle tailpipe emissions have led to marked increases in greenhouse gases like carbon dioxide and atmospheric warming.<sup>5</sup> A range of scientific studies support the Inuit’s claim that climate change is affected by such human activities and their “modification” of the Earth’s atmosphere.<sup>6</sup> The Intergovernmental Panel on Climate Change (“IPCC”), an arm of the World Meteorological Organization and the United Nations Environment Programme,

has concluded that there is international “consensus of scientific opinion that the Earth’s climate is being affected by human activities” and that “[m]ost of the observed warming over the last fifty years is likely . . . due to the increase in greenhouse gas concentration.”<sup>7</sup> The National Academy of Sciences has echoed this consensus, stating that greenhouse gases accumulating in the atmosphere “as a result of human activities . . . [are] causing surface air temperatures and subsurface ocean temperatures to rise.”<sup>8</sup> Other American groups, including the American Meteorological Society, the American Geophysical Union, and the American Association for the Advancement of Science, have issued similar statements.<sup>9</sup> Most recently, the Arctic Climate Impact Assessment of November 2004, a study by three-hundred scientists authorized by the eight countries of the Arctic Council has concluded that “human influences” may be the dominant factor in current climate change patterns.<sup>10</sup>

The Inuit claim is also grounded in specific scientific data showing that presently and in the near future, the Arctic regions will “bear a disproportionate burden of the impacts of climate change.”<sup>11</sup> The Inuit have recently noticed dramatic shifts in seasonal snows and icing; increased warming of surrounding ocean waters; a resulting inability to conduct traditional subsistence fishing and hunting; and rapid permafrost melting, a condition that has caused the erosion of housing foundations and seashore lines as well as the collapse of airports, roads, and local harbors.<sup>12</sup> As CIEL describes it, “if global warming continues unchecked it threatens to destroy [the Inuit’s] culture, render their land uninhabitable, and rob them of their means of subsistence.”<sup>13</sup> With this new science in hand, the Inuit have begun collecting videotaped statements by village elders and traditional hunters about the direct effects they have witnessed from the shrinking northern icecaps.<sup>14</sup>

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# LITIGATION UPDATE

## BASIS FOR THE PETITION TO THE INTER-AMERICAN COMMISSION

The Inuit claim that the U.S. is principally responsible for violating their human rights because the U.S. currently creates 25 percent of global carbon dioxide emissions, yet has refused to sign on to the Kyoto process or cut its production of greenhouse gas emissions.<sup>15</sup> U.S. liability also rests in legal arguments based on both customary international human rights law and several international agreements that the Inuit claim bind the U.S. to take on greater responsibility for its role in climate change.

First, the Inuit point to fundamental human rights principles laid out in the American Declarations of Rights and the Duties of Man. As a member of the Organization of American States ("OAS") and a signatory to the American Declaration, the U.S. bears certain responsibilities to its northern American neighbors; these include: the right to life (Article I); the rights to residence and movement (Article VIII); the right to the inviolability of the home (Article IX); the right to the preservation of health and well-being (Article XI); the right to benefits of culture (Article XIII); and the right to work (Article XIV).<sup>16</sup> Groups like CIEL and Earthjustice argue that the U.S. is responsible for violating Inuit rights to privacy, residence, and protection of the home by failing to properly regulate its own greenhouse gas emissions and refusing to take part in the international process addressing their impact on global warming and climate change.

Second, the U.S. bears responsibility stemming from its participation in international negotiations on climate change, starting with the 1992 United Nations Framework Convention on Climate Change, to which the U.S. is a signatory.<sup>17</sup> Despite President Bush's recent refusal to take part in the ongoing Kyoto Protocol round of negotiations, the U.S. acknowledged the problem of climate change and the need to address its causes and solutions when President Clinton signed onto the pact.<sup>18</sup> By failing to take any steps in cutting its emissions, the Inuit argue that the U.S. is threatening their way of life and has obligations under international human rights law to remedy violations to their rights to life and personal security, subsistence and food, travel and freedom of movement, housing, culture, and health.<sup>19</sup>

## POTENTIAL FOR FUTURE LITIGATION

The IACHR has a "record of treating environmental degradation as a human rights matter,"<sup>20</sup> and may provide the Inuit's best hope at recognizing their human rights claim based on climate change. The IACHR, a human rights protection body created by the 1948 American Declaration on the Rights and Duties of Man and the OAS Charter, has the power to promote the observance and defense of human rights and analyze specif-

ic cases of human rights violations.<sup>21</sup> While the IACHR may review such petitions and make recommendations to the states involved, its recommendations are non-enforceable. Enforcement of remedies for human rights violations is the ambit of the Inter-American Court of Human Rights, created by the American Convention on Human Rights of 1969, to which the U.S. is not a signatory and thus not subject to the jurisdiction of the Court. The Inuit's claims against the U.S. therefore have the best chance of being recognized through a nonbinding declaration or ruling by the IACHR. While recognizing that any finding by the Commission on their petition would not be enforceable against the U.S., the Inuit hope that a favorable declaration could break new ground in the realm of international environmental law.<sup>22</sup> If the IACHR recognizes the validity of the Inuit's claim of a link between global warming and human rights violations, it could establish a future legal basis for holding countries and even individual industries or companies responsible for their roles in contribution to greenhouse gas emissions. As the *New York Times* pointed out, a ruling favorable to the Inuit could "lead to a[] . . . stream of litigation, somewhat akin to lawsuits against tobacco companies."<sup>23</sup> Most importantly, it could provide the needed motivation for countries like the U.S. to commit to processes like the Kyoto Protocol and take a more active role in international strategies to combat climate change.



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## ENDNOTES: INUIT CIRCUMPOLAR CONFERENCE

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<sup>1</sup> See Inuit Circumpolar Conference ("ICC"), Executive Council Resolution 2003-01: Climate Change and Inuit Human Rights, 2003, available at <http://www.inuit.org/index.asp?lang=eng&num=244> (last visited Mar. 10, 2005).

<sup>2</sup> See Andrew C. Revkin, with Larry Rohter, *Eskimos Seek to Recast Global Warming as a Rights Issue*, N.Y. TIMES, Dec. 15, 2004, at A.

<sup>3</sup> See generally ICC Executive Council Resolution 2003-01, *supra* note 1.

<sup>4</sup> Naomi Oreskes, *Beyond the Ivory Tower: The Scientific Consensus on Climate Change*, SCIENCE, Vol 306, Issue 5702, 1686, Dec. 3, 2004 (noting a statement by Christine Todd Whitman, former head of the U.S. Environmental Protection Agency, in which she claimed that in reviewing a major EPA report on the risks of climate change "there was less consensus on the science and conclusions on climate change"), available at <http://www.sciencemag.org/cgi/content/full/306/5702/1686?> (last visited Mar. 25, 2005)

<sup>5</sup> See Revkin, *supra* note 2.

ENDNOTES: Inuit Circumpolar Conference *Continued on page 82*

<sup>6</sup> See Oreskes, *supra* note 4.

<sup>7</sup> See *id.* (citing a recent assessment of current peer-reviewed and published scientific literature on the issue of whether a “general consensus” on climate change does in fact exist within the scientific community).

<sup>8</sup> See *id.* (citing National Academy of Sciences Committee on the Science of Climate Change, *Climate Change Science: An Analysis of Some Key Questions*, National Academy Press, Washington, DC, 2001).

<sup>9</sup> See Oreskes, *supra* note 4.

<sup>10</sup> See Revkin, *supra* note 2; see also Sheila Watt-Cloutier, Climate Change and Human Rights, *Human Rights Dialogue: Environmental Rights*, Carnegie Council on Ethics and International Affairs, Spring 2004, available at <http://www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/prmID/4445> (last visited Mar. 25, 2005).

<sup>11</sup> ICC Executive Council Resolution 2003-01(7) (citing the Kuujuaq Declaration, as declared by Inuit of Greenland, Canada, Alaska, and Russia on the occasion of the 9th General Assembly of the Inuit Circumpolar Conference, Aug. 11-16, 2002) available at <http://www.inuitcircumpolar.com/index.php?ID=167&Lang=En> (last visited Mar. 25, 2005).

<sup>12</sup> Alan Power, *Inuit to Launch Human Rights Case against Bush Administration*, THE GUARDIAN, Dec. 11, 2003.

<sup>13</sup> Center for International Environmental Law website, *Inuit Case*, Feb. 25, 2005, available at [http://www.ciel.org/Climate/Climate\\_Inuit.html](http://www.ciel.org/Climate/Climate_Inuit.html) (last visited Mar. 11, 2005), citing Donald M. Goldberg and Martin Wagner, *Petitioning for Adverse Impacts of Global Warming in the Inter-American Human Rights System*, in CLIMATE CHANGE FIVE YEARS AFTER KYOTO 192 (Vela I. Glover ed.)

<sup>14</sup> See Revkin *supra* note 2.

<sup>15</sup> See Power, *supra* note 12.

<sup>16</sup> See CIEL, *supra* note 13.

<sup>17</sup> United Nations Framework Convention on Climate Change, entered into force Mar. 21, 1994, available at <http://www.globelaw.com/Climate/fcc.htm> (last visited Mar. 25, 2005).

<sup>18</sup> See Revkin *supra* note 2.

<sup>19</sup> Earthjustice, Campaigns: Inuit Human Rights and Climate Change, available at <http://www.earthjustice.org/campaign/display.html?ID=12> (last visited Mar. 25, 2005).

<sup>20</sup> See Revkin, *supra* note 2.

<sup>21</sup> See The Organization of American States, Inter-American Commission on Human Rights, available at <http://www.oas.org/main/main.asp?sLang=E&sLink=../documents/eng/structure.asp> (last visited Mar. 25, 2005).

<sup>22</sup> ICC Executive Council Resolution 2003-01, *supra* note 1.

<sup>23</sup> See Revkin, *supra* note 2.