

Spring 2009

## Climate Change and the Inuit: A Melting of Actions into a Cloudy Mess

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# CLIMATE CHANGE AND THE INUIT: A MELTING OF ACTIONS INTO A CLOUDY MESS

KATHERINE KING\*

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## I. INTRODUCTION

Climate change is a reality in the world today. In 2007, the Intergovernmental Panel on Climate Change concluded that warming due to greenhouse gas emissions, associated with anthropogenic activities,<sup>1</sup> is

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<sup>1</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: SYNTHESIS REPORT - SUMMARY FOR POLICYMAKERS, at 2 (Nov. 2007), available at

"very likely."<sup>2</sup> Since the beginning of the Industrial Revolution, anthropogenic activities have forced concentrations of carbon dioxide in the atmosphere to rise dramatically above the average range over the preceding 650,000 years.<sup>3</sup> Policymakers confronted with climate change are faced not only with navigating daunting scientific complexities but also with responding to a variety of constituencies with often conflicting interests.<sup>4</sup>

One constituency involved in the climate change debate is the Inuit people of the Arctic Region. The Inuit are indigenous peoples who span the landscape of the Arctic and reside in the jurisdictions of Russia, the kingdom of Denmark (Greenland), Canada and the United States (Alaska).<sup>5</sup> Within this indigenous group, the Inupiat<sup>6</sup> are a subgroup who

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[http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4\\_syr\\_spm.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf) [hereinafter IPCC] ("There is *very high confidence* that the net effect of human activities since 1750 has been one of warming.").

<sup>2</sup> *Id.* at 5 (emphasis in original). For a definition of "very likely" as used in this report, see INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: SYNTHESIS REPORT, SYNTHESIS REPORT, at 27 (Nov. 2007), available at [http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4\\_syr.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf) ("Where uncertainty in specific outcomes is assessed using expert judgment and statistical analysis of a body of evidence (e.g. observations or model results), then the following likelihood ranges are used to express the assessed probability of occurrence: . . . very likely >90%.").

<sup>3</sup> *Id.* at 2. The synthesis report further stated:

The global atmospheric concentration of carbon dioxide has increased from a pre-industrial value of about 280 ppm to 379 ppm<sup>3</sup> in 2005. The atmospheric concentration of carbon dioxide in 2005 exceeds by far the natural range over the last 650,000 years [180 to 300 ppm] as determined from ice cores.

<sup>4</sup> *Id.* See generally IPCC, *supra* note 1, at Part 3. As discussed in the IPCC *Summary for Policymakers*, regulating climate change will involve many parties from all parts of the world with vastly differing objectives and views. *Id.* at 11 Table SPM 2.

<sup>5</sup> Inuit Circumpolar Council (Canada), Inuit Circumpolar Council (ICC), [http://inuitcircumpolar.com/index.php?auto\\_slide=&ID=16&Lang=En&Parent\\_ID=&current\\_slide\\_num=](http://inuitcircumpolar.com/index.php?auto_slide=&ID=16&Lang=En&Parent_ID=&current_slide_num=) (last visited May 14, 2009).

<sup>6</sup> The Inupiat are Inuit who live in Alaska. They have the cultural heritage of being Inuit but are a sub-category of the Inuit and only reside in Alaska. See A.W. Harris, *Making the Case for Collective Rights: Claims to Stocks of Marine Living Resources*, 15 GEO. INT'L ENVTL. L. REV. 379, 390 (2003) ("The Inupiat are generally considered a subgroup of the Inuit."); Rebecca Tsosie, *Tribal Environmental Policy in an Era of Self-Determination: The Role of Ethics, Economics, and Traditional Ecological Knowledge*, 21 VT. L. REV. 225, 313 (1996) ("[T]he Inupiat . . . [are] a group of Inuit people who inhabit portions of Alaska's North Slope.").

live in Alaska and many have benefitted financially from oil and gas exploration on their homelands.<sup>7</sup>

While the Inupiat are Inuit, they often differ in interest and perspective from the larger Inuit community, likely as a result of their interactions with outside influences.<sup>8</sup> But the Inuit and many Inupiat are not as separated as it may initially appear. This note will address the many issues and people involved with the Inuit.

The Inuit are one of many groups involved and affected by climate change. This note attempts to help policymakers better understand an example of one constituency, by analyzing the many internal complexities of the Inuit, to potentially draft more informed laws and regulations. Unveiling the diverse and often opposing goals illustrates that many Inupiat and Inuit have differing views on climate change. The complexity of these views on climate change is an example of the internal complexities in this group. Getting to the root of these complexities will help shape appropriate climate change laws that adequately address the varied needs and issues of the Inuit and Inupiat.

Most Inuit have experienced effects of climate change in their everyday subsistence lifestyle and have sought United States governmental action to curb greenhouse gas emissions.<sup>9</sup> But there are some Inupiat who, despite feeling the effects of climate change,<sup>10</sup> have not called for the United States government to curb emissions; in fact, these same Inupiat seek increased fossil fuel recovery because of the economic benefits they have reaped from this industry over the years.<sup>11</sup>

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<sup>7</sup> See *infra* Part II.

<sup>8</sup> *Id.*

<sup>9</sup> See Sheila Watt-Cloutier et al., 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, 1 (Dec. 7, 2005), <http://www.inuitcircumpolar.com/files/uploads/icc-files/FINALPetitionSummary.pdf> [hereinafter Petition Summary].

<sup>10</sup> See Alaska Native Science Commission, *Impact of Climate Change on Alaska Native Communities*, <http://www.nativescience.org/pubs/AFN%202005%20Impact%20of%20Climate%20Change%20on%20Alaska%20Native%20Communities.pdf> (last visited May 14, 2009) (testimonials of the impact of climate change by Inuit).

<sup>11</sup> See Hal Bernton, *Alaska Native Corporation a Lead Player for Oil on Wildlife Refuge*, SEATTLE TIMES, Apr. 12, 2005, available at <http://community.seattletimes.nwsources.com/archive/?date=20050412&slug=refuge12m>; David Wastell, *Eskimos Back Bush Plan for Oil Drilling in Alaska Wildlife Refuge*, DAILY TEL., June 24, 2001, available at

This note analyzes the variations in Inuit calls for addressing climate change and the implications of a mixed Inuit message for the big picture of climate change law-making. Part II provides a brief introduction of climate change as related to the indigenous populations of the Arctic. Part III begins to unravel various Inuit calls for legal action in the realm of climate change. Part IV discusses actions and omissions by the United States government in dealing with climate change, since the United States is connected to the particular Inuit discussed in this paper. Part V analyzes the interconnected yet distinct U.S. and Inuit groups and examines how they relate to the larger challenges in responding to climate change. Part V also analyzes another way the Inuit can engage with the political process through a document titled the UN Declaration on the Rights of Indigenous Peoples.

## II. CLIMATE CHANGE AND ARCTIC INDIGENOUS GROUPS

### A. *Climate Change and its Effects on the Arctic*

Leading scientists agree that climate change is occurring.<sup>12</sup> According to the IPCC, eleven of the last twelve years have had the hottest measured average surface temperature since 1850.<sup>13</sup> Further, there is a consensus among scientists that climate change is partially attributable to anthropogenic industrial activity.<sup>14</sup> According to the IPCC, there is a "very high confidence" that human activity has contributed to the warming climate.<sup>15</sup>

Climate change affects the Earth in many different ways,<sup>16</sup> but its impacts in the Arctic have been more apparent and severe.<sup>17</sup> One of the reasons that the Arctic may experience a more intensive effect from

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<http://www.telegraph.co.uk/news/worldnews/northamerica/usa/1314983/Eskimos-back-Bush-plan-for-oil-drilling-in-Alaska-wildlife-refuge.html?mobile=true>.

<sup>12</sup> IPCC, *supra* note 1, at 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See *id.* at Part 1.

<sup>17</sup> ARCTIC CLIMATE IMPACT ASSESSMENT, IMPACTS OF A WARMING ARCTIC HIGHLIGHTS 7 (2004) [hereinafter ACIA], available at <http://www.amap.no/acia/Highlights.pdf>.

climate change is a reduction in the albedo effect.<sup>18</sup> Snow covered areas naturally reflect light away from the Earth, which helps prevent warming of the atmosphere.<sup>19</sup> As snow melts in a warmer climate, the darker land and water absorb more of the previously reflected energy.<sup>20</sup> The absorbed energy is easily transferred to the atmosphere in the Arctic, because the atmosphere in the Arctic is shallower than in other parts of the Earth.<sup>21</sup> The result is a warming atmosphere; this disruption of the natural cycle is ongoing and creates a positive feedback loop that causes extreme climate changes in the Arctic.<sup>22</sup>

According to the *Arctic Climate Impact Assessment*, the very surface upon which the Inuit live is disappearing.<sup>23</sup> The Arctic is experiencing a reduction in sea ice, unpredictable weather patterns, a change in migration routes for species, and rising sea levels. These effects are of greater consequence in the Arctic than in many other parts of the world.<sup>24</sup> Just as the canary in the coalmine is an indicator to humans of harmful gases in a mine,<sup>25</sup> the Arctic is an early indicator of the harmful effects of climate change on the rest of the Earth as the effects of climate change are more visible in the Arctic than in other parts of the world.<sup>26</sup>

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<sup>18</sup> See Maggie Villiger, *The Arctic – Our Global Thermostat: The Ice-Albedo Effect* (Jun. 15, 2004), <http://www.pbs.org/saf/1404/features/thermostat.htm>. Albedo is “a measure of how much light a surface reflects.” *Id.*

<sup>19</sup> James L. Olmsted, *Climate Surfing: A Conceptual Guide to Drafting Conservation Easements in the Age of Global Warming*, 23 ST. JOHN’S J. LEGAL COMMENT. 765, 837-38 (2008).

<sup>20</sup> ACIA, *supra* note 17, at 7.

<sup>21</sup> *Id.* at 15.

<sup>22</sup> *Id.* at 12.

<sup>23</sup> See, e.g., *id.* at 3-7, 8-10; Petition Summary, *supra* note 9, at 1-2.

<sup>24</sup> See *supra* notes 16-22.

<sup>25</sup> See Kevin L. Bolander, *Discretion and Flexibility: A Look at the Forest Service’s 2004 Planning Rules and the Shift Away from Management Indicator Species*, 26 J. LAND RESOURCES & ENVTL. L. 171, 174 (2005); Robert W. Collin, *Environmental Justice in Oregon: It’s the Law*, 38 ENVTL. L. 413, 434 (2008).

<sup>26</sup> ACIA, *supra* note 17, at 1.

*B. Indigenous Populations of the Arctic and How Climate Change is Affecting Them*

Of the many cultures of indigenous people who live in the harsh climate of the Arctic,<sup>27</sup> one example is the Inuit culture.<sup>28</sup> For the Inuit, the landscape of the Arctic is integral to their survival<sup>29</sup> and economic prosperity.<sup>30</sup> Many Inuit are intimately connected to the land for their economic stability and subsistence lifestyles.<sup>31</sup>

Climate change is making it increasingly difficult for Arctic indigenous cultures to hunt animals for survival because of changing migration patterns.<sup>32</sup> This disruption of the land makes it more difficult for indigenous peoples to find the food necessary for their survival.<sup>33</sup> Further, the very essence of the indigenous population's culture is being lost because climate of the heavy modification of the landscape by climate change; the tribes' elder people, who once transmitted important knowledge to their younger generations regarding the land and its aspects, can no longer pass along useful information because of the changing landscape.<sup>34</sup> The elders' knowledge of the past concerning the land and strategies to survive in the Arctic is becoming obsolete with the changing landscape.

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<sup>27</sup> Marguerite E. Middaugh, *Linking Global Warming to Inuit Human Rights*, 8 SAN DIEGO INT'L L.J. 179, 180 (2006).

<sup>28</sup> See, e.g., *Id.* at 180; Petition Summary, *supra* note 9, at 1; MARTIN WAGNER & DONALD M. GOLDBERG, AN INUIT PETITION TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS FOR DANGEROUS IMPACTS OF CLIMATE CHANGE 1-2 (Dec. 15, 2004), available at [http://www.ciel.org/Publications/COP10\\_Handout\\_EJCIEL.pdf](http://www.ciel.org/Publications/COP10_Handout_EJCIEL.pdf).

<sup>29</sup> See Petition Summary, *supra* note 9, at 1.

<sup>30</sup> Gary Kofinas, *Subsistence Hunting in a Global Economy*, <http://arcticcircle.uconn.edu/NatResources/subsistglobal.html> (last visited May 14, 2009).

<sup>31</sup> ACIA, *supra* note 17, at 7.

<sup>32</sup> *Id.* For a discussion on the specific effects of climate change on indigenous populations in the Arctic, see Randall S. Abate, *Climate Change, the United States, and the Impacts of Arctic Melting: A Case Study in the Need for Enforceable International Environmental Human Rights*, 26A STAN. ENVTL. L.J. 3, 29-35 (2007).

<sup>33</sup> ACIA, *supra* note 17, at 7.

<sup>34</sup> Sarah Krakoff, *American Indians, Climate Change, and Ethics for a Warming World*, 85 DENV. U. L. REV. 865, 881 (2008) ("[E]lders have traditionally passed on centuries' worth of accumulated wisdom about how to read ice, snow, and other environmental conditions. That wisdom is proving empty in a world of changing weather. Not only does the inability to read the weather make travel and hunting more dangerous, it also undermines the ability of the elder generations to teach the younger generations.").

The Inuit have lived off the land for many generations and many still depend on the Arctic for survival.<sup>35</sup> The level of dependence differs; with the introduction of western influence in the Arctic, some groups have maintained their subsistence economies<sup>36</sup> while others have adapted to western industrialization and lifestyles.<sup>37</sup> Many Inuit depend on the Arctic environment to support their subsistence economy.<sup>38</sup> However, there are some Inuit in Alaska, the Inupiat,<sup>39</sup> who have depended upon the economic stability provided by the oil industry for many decades.<sup>40</sup>

While many Arctic indigenous people have been isolated from the people and politics of their nation state, the Inupiat have played a vital role in shaping the laws and policies that affect their livelihood.<sup>41</sup> The combination of statehood recognition for Alaska and the discovery of oil on the Northern Slope of Alaska led Congress to pass the Alaska Native Claims Settlement Act (ANCSA) of 1971.<sup>42</sup> ANCSA was enacted to

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<sup>35</sup> SHELIA WATT-CLOUTIER, INUIT CIRCUMPOLAR CONFERENCE (CANADA), PRESENTATION AT THE ELEVENTH CONFERENCE OF PARTIES TO THE UN FRAMEWORK CONVENTION ON CLIMATE CHANGE, MONTREAL: THE CLIMATE CHANGE PETITION BY THE INUIT CIRCUMPOLAR CONFERENCE TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (Dec. 7, 2005), available at <http://inuitcircumpolar.com/index.php?ID=318&Lang=En>.

<sup>36</sup> See Rebecca Tsosie, *Indigenous People and Environmental Justice: The Impact of Climate Change*, 78 U. COLO. L. REV. 1625, 1640 (2007) ("The Native peoples of the Arctic region continue to live their traditional subsistence lifeways[sic] and are dependent upon the environment, including many species of marine and terrestrial animals, for their cultural and material survival.").

<sup>37</sup> See E. Budd Simpson, *Doing Business with Alaska Native Corporations*, 16 BUS. L. TODAY, July-Aug. 2007, at 37, 39.

<sup>38</sup> Tsosie, *supra* note 36, at 1640.

<sup>39</sup> See *supra* note 6.

<sup>40</sup> Simpson, *supra* note 37, at 39. The Inupiat have been substantially dependent since the 1960s, when they helped shape the resource laws that now affect their livelihood. See *infra* note 41 and accompanying text.

<sup>41</sup> DONALD CRAIG MITCHELL, TAKE MY LAND TAKE MY LIFE, 118-19 (2001). Mitchell writes:

Most Indians lived on geographically isolated reservations, which was (and today remains) one cause of estrangement. However, because Alaska's harsh climate and hopeless economics had discouraged white settlement, Alaska Natives not only had not been forced onto reservations, but because their labor was needed, they had been allowed to participate in the white cash economy. As a consequence of that historical experience, early in the twentieth century Alaska Natives began participating, first as voters and then as candidates in the political life of the territory and, beginning in 1959, of the state of Alaska.

<sup>42</sup> See Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq. (2006).



clear title to the lands in Alaska, where many parties claimed to own many of the same lands.<sup>43</sup> Because of the unique nature of the land in Alaska and the potentially substantial oil reserves, the federal government offered the Inupiat money and land to settle their Alaskan land claims.<sup>44</sup> The Inupiat were given fee simple title in land through the creation of village and regional corporations,<sup>45</sup> and ANSCA extinguished the Inupiat's claims to other lands not now owned by the Inupiat.<sup>46</sup> In order for the Inupiat to claim the Federal land and money from ANCSA, they had to create and become a part of both a village corporation<sup>47</sup> and a regional corporation.<sup>48</sup> ANCSA is a very unique act wherein the US government traded the Inupiat's claims to the land in return for "45.5 million acres of land and payments totaling \$962.5 million."<sup>49</sup> This exchange of land and money for the extinguishment of title to the lands allowed the federal government access to the North Slope, the location of potential oil deposits.<sup>50</sup> Therefore, ANSCA provided an avenue for the Inupiat to retain much of their tribal land as an effort by the United States' government to allow the Inupiat to preserve some independence.<sup>51</sup>

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<sup>43</sup> 43 U.S.C. § 1601.

<sup>44</sup> Eric C. Chaffee, *Business Organizations and Tribal Self-Determination: A Critical Reexamination of the Alaska Native Claims Settlement Act*, 25 ALASKA L. REV. 107, 116 (2008).

<sup>45</sup> 43 U.S.C. § 1607(a) ("The Native residents of each Native village entitled to receive lands and benefits under this chapter shall organize as a business for profit or nonprofit corporation under the laws of the State before the Native village may receive patent to lands or benefits under this chapter, except as otherwise provided."); §1606(a).

<sup>46</sup> § 1603(a).

<sup>47</sup> § 1602(j) ("Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village in accordance with the terms of this chapter.").

<sup>48</sup> § 1606(a) ("For purposes of this chapter, the State of Alaska shall be divided by the Secretary within one year after December 18, 1971, into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests."). Inupiat had to become members of both Village and Regional corporations in order to receive benefits from the distribution of land and money under ANSCA. §1606-07.

<sup>49</sup> Chaffee, *supra* note 44, at 116.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

Another important section of ANCSA concerns the revenues from mineral and natural resources on the corporations' lands.<sup>52</sup> Inupiat corporations make money from leases for natural resources, which include the "timber resources and subsurface estate."<sup>53</sup> Seventy percent of these revenues are split among the other regional corporations as a revenue stream to the Inupiat.<sup>54</sup> In addition to their one-time payment of land and money, the Inupiat also receive a percentage of revenues generated from ongoing natural resources leases.

The money the Inupiat receive from the terms of ANCSA has provided a stream of income from which the Inupiat can now spend on items that were previously unavailable to this group. The funds from the leases provide Inupiat with "goods and services they simply want to consume," along with providing basic services such as schools and sewer lines.<sup>55</sup> In other words, the Inupiat now had access to both luxuries and necessities of the western world. ANCSA has modified the cultural organization of many Inupiat in Alaska through the creation of these corporations. By providing economic benefits, the for-profit corporations have altered the mindsets of the Inupiat because now that many Inupiat have been exposed to the luxuries available with money, many Inupiat have put the want of these necessities in front of the push for conservation efforts in Alaska.<sup>56</sup> As a consequence, many Inupiat groups now operate in a business-minded way.<sup>57</sup>

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<sup>52</sup> 43 U.S.C. § 1606(i)(1)(A).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Mitchell, *supra* note 41, at 530.

<sup>56</sup> *Id.* at 529-30.

<sup>57</sup> Chaffee, *supra* note 44, at 133 (acting with business success first means that many Inupiat involved with the corporations formed under the ANCSA "measure success by financial performance, rather than by success in land stewardship."). The enactment of ANCSA was a turning point in many Inupiat's lives, creating better economic conditions for many Inupiat and decreasing reliance on the federal government for their finances. Now that the Inupiat had money from the settling of land claims as well as income from natural resources leases on their land, many Inupiat could buy luxuries of western civilization. Chaffee, *supra* note 44, at 125-26. Further, "beyond giving Alaska Natives the financial assets to survive in a capitalist society, the Settlement Act arguably established a vehicle for their self-sufficient, economic success. The Act can be viewed as increasing sovereignty for Alaska Natives by reducing their dependence on the federal government for their long-term financial well-being. Through the creation of Native corporations, Alaska Native communities are better equipped to develop

Even though all indigenous cultures in the Arctic are affected by climate change to some degree, their varying circumstances preclude unity in how they want the situation to be dealt with by national and international entities.<sup>58</sup> Representatives of the Inuit population, acting through the Inuit Circumpolar Council, are calling for legal change in national climate change regulations.<sup>59</sup> However the Inupiat, who are benefiting financially from ANCSA, are concerned with oil industry profit and the attendant financial wellbeing of their culture.<sup>60</sup> This want for more financial benefits from the oil industry leads to more oil production, which when burned contributes greenhouse gases to the atmosphere, and ultimately a greater contribution to climate change.<sup>61</sup> This picture of indigenous cultures in the Arctic is not as clear as it initially seems.

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natural resources, provide employment opportunities, and build needed infrastructure in remote areas of Alaska. The corporations created by the Settlement Act are designed to give Alaska Natives the economic and organizational resources necessary to survive and prosper.”  
*Id.*

<sup>58</sup> Tsosie, *supra* note 36, at 1640. Though the effects of climate change are being felt by all indigenous groups in the Arctic, their calls for action from the United States government have not been unified. This specialized scenario of a disjointed call for action concerning climate change is part of the larger picture of the overwhelming obstacles of dealing with climate change by trying to incorporate all parties and their objectives. For a detailed explanation on the Inuit's dependence on the land and ice for their survival, see *Inuit Leader Sheila Watt-Cloutier's Testimony Before the Inter-American Commission on Human Rights put Spotlight on Climate Change and Indigenous Peoples*, (Mar. 1, 1997), [http://www.ciel.org/Publications/IACHR\\_WC\\_Mar07.pdf](http://www.ciel.org/Publications/IACHR_WC_Mar07.pdf) (“For Inuit, sea ice allows for safe travel on the perilous Arctic waters and provides a stable platform from which to hunt its bounty. The ice is not only our ‘road[]’ but also our ‘supermarket.’”).

<sup>59</sup> Petition Summary, *supra* note 9, at 1.

<sup>60</sup> Hal Bernton, *Alaska Native Corporation a Lead Player for Oil on Wildlife Refuge*, SEATTLE TIMES, Apr. 12, 2005, <http://community.seattletimes.nwsources.com/archive/?date=20050412&slug=refuge12m>.

<sup>61</sup> *Id.*

### III. COMPLEXITIES OF CALLS FOR ACTION

#### A. *Complex and Competing Issues Among the Inuit*

##### 1. The Inuit Circumpolar Council (ICC) Petition

The Inuit's cultural heritage is heavily affected by climate change. They have long relied on the land for survival,<sup>62</sup> and their representatives are responding to perceived threats to their cultural and physical survival by calling for international legal help.<sup>63</sup> In December of 2005, Shelia Watt-Cloutier filed a petition on behalf of the ICC<sup>64</sup> with the Inter American Commission on Human Rights (IACHR)<sup>65</sup> of the Organization of American States (OAS) against the United States (Petition).<sup>66</sup> The Petition claimed that the acts and omissions of the United States relating to greenhouse gas emissions laws violated various provisions of the American Declaration of the Rights and Duties of Man (American Declaration).<sup>67</sup> The American Declaration was adopted by the OAS in

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<sup>62</sup> Middaugh, *supra* note 27, at 186-87.

<sup>63</sup> Petition Summary, *supra* note 9, at 7.

<sup>64</sup> See generally Inuit Circumpolar Council, *Inuit Circumpolar Council (ICC)*, [http://inuitcircumpolar.com/index.php?auto\\_slide=&ID=16&Lang=En&Parent\\_ID=&current\\_slide\\_num=](http://inuitcircumpolar.com/index.php?auto_slide=&ID=16&Lang=En&Parent_ID=&current_slide_num=) (last visited May 14, 2009) ("[T]he Inuit Circumpolar Council (ICC) has flourished and grown into a major international non-government organization representing approximately 150,000 Inuit of Alaska, Canada, Greenland, and Chukotka (Russia)."). It is interesting to note that the ICC has four different websites, each relating to a specific country where the Inuit live. While there are four websites, it seems that they are all interconnected with each other as they all contain the same ICC logo and have internal links to other countries' websites. Perhaps the ICC within each country wanted to maintain separate websites for sovereignty? To browse these four websites, see Inuit Circumpolar Council (Canada), *Welcome to the Inuit Circumpolar Council*, <http://inuitcircumpolar.com/index.php?ID=1&Lang=En> (last visited May 14, 2009). Shelia Watt-Cloutier is the former chair for the ICC.

<sup>65</sup> For a detailed analysis of how the IACHR works, see Organization of American States, *What is the IACHR?*, <http://www.cidh.oas.org/what.htm> (last visited May 14, 2009).

<sup>66</sup> Petition Summary, *supra* note 9, at 1.

<sup>67</sup> Organization of American States, American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992), available at <http://www1.umn.edu/humanrts/oasinstr/zoas2dec.htm>.

1998 and “was the first international human rights instrument of a general nature.”<sup>68</sup>

The ICC targeted the United States in the Petition as the United States contributed twenty percent of the world’s greenhouse gas emissions even though its population is only five percent of the global population.<sup>69</sup> By filing this Petition, the ICC wanted to see drastic legal change in the way the United States dealt with its emissions.<sup>70</sup> The Petition stated that the United States was a large emitter of greenhouse gases and had not taken action in the legal or policy sphere to combat global climate change.<sup>71</sup>

The ICC claimed that the inaction of the United States government violated several of the Inuit’s human rights due to the negative effect of climate change on the Arctic.<sup>72</sup> The Petition laid out several human rights the United States had violated. A primary complaint was the right to enjoy the benefit of the Inuit culture, and the petition alleged that if the Arctic landscape changes drastically, the Inuit would no longer have traditional ties to their land.<sup>73</sup> Other fundamental rights included the “right to enjoy their personal property, . . . right[] to health and life, . . . residence and movement, . . . [and] means of subsistence.”<sup>74</sup> Since most Inuit are so connected to the land around them, climate change has the ability to affect almost every detail of their day to day life.

The representatives from the ICC called for the United States to establish “mandatory measures to limit its emissions of greenhouse gases and cooperate in efforts of the community of the nations. . . to limit such

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<sup>68</sup> Organization of American States, What is the IACHR?, <http://www.cidh.oas.org/what.htm> (last visited May 14, 2009). See also John H. Knox, *Horizontal Human Rights Law*, 102 AM. J. INT’L L. 1, 3 (2008) (“The first [document outlining duties toward human rights], the American Declaration of the Rights and Duties of Man, adopted by Latin American countries and the United States in 1948, emphasizes human rights and duties equally, as its title suggests.”); Wendy Scott, *Guide to Sources in International and Comparative Disability Law*, 34 SYRACUSE J. INT’L L. & COM. 621, 638 (Spring 2007) (“The 1948 American Declaration of the Rights and Duties of Man was the first human rights treaty.”).

<sup>69</sup> Middaugh, *supra* note 27, at 183.

<sup>70</sup> Petition Summary, *supra* note 9, at 6.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 5-6.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

emissions at the global level.”<sup>75</sup> The representatives further asked that the United States evaluate the effects of governmental actions on the Arctic, implement a plan to protect the Inuit in the Arctic from the effects of climate change, and possibly help them adapt to the changing environment.<sup>76</sup> The IACHR dismissed the Petition in 2006, stating it contained insufficient information to determine if the United States violated any human rights protected under the American Declaration.<sup>77</sup>

After the IACHR rejected the Petition, the ICC’s request for a hearing was granted in 2007 which resulted in testimony by members of the ICC, EarthJustice, and the Center for International Environmental Law.<sup>78</sup> The testimony described the links between climate change and human rights.<sup>79</sup> The IACHR heard testimony of climate change and its effects on the Inuit from personal experiences. Though they rejected the Petition, the IACHR recognized the importance of the Inuit’s call for action in dealing with climate change simply from hearing this testimony.<sup>80</sup>

Even if the IACHR had found that the United States violated human rights, the IACHR’s findings would have had little impact other than publicizing the Inuit’s concern of the affects of climate change on their existence; the IACHR’s primary “function [is] promoting the observance and the defense of human rights.”<sup>81</sup> The IACHR is an avenue for people to publicly address human rights issues, and if the IACHR believes that an issue is of great importance, it will petition the OAS to undertake the issue in litigation.<sup>82</sup> But openly discussing the issue of climate change in

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<sup>75</sup> *Id.* at 7.

<sup>76</sup> Petition Summary, *supra* note 9, at 7-8.

<sup>77</sup> Abate, *supra* note 32, at 46.

<sup>78</sup> Center for International Environmental Law, *The Inuit Case*, [http://www.ciel.org/Climate/Climate\\_Inuit.html](http://www.ciel.org/Climate/Climate_Inuit.html) (last visited May 14, 2009).

<sup>79</sup> Center for International Environmental Law, *Global Warming and Human Rights Gets Hearing on the World Stage*, [http://www.ciel.org/Climate/IACHR\\_Inuit\\_5Mar07.html](http://www.ciel.org/Climate/IACHR_Inuit_5Mar07.html) (last visited May 14, 2009). The testimony given by these groups publicized the issue of the link between climate change and human rights.

<sup>80</sup> *Id.*

<sup>81</sup> Organization of American States, *What is the IACHR?*, <http://www.cidh.oas.org/what.htm> (last visited May 14, 2009).

<sup>82</sup> *Id.* As the website indicates:

the Arctic was a primary goal of filing this petition. Shelia Watt-Cloutier stated that while a decision by the IACHR “may not [be] enforceable, . . . it has great moral value.”<sup>83</sup>

## 2. Endangered Species Listing of the Polar Bear

In revealing the complexity among the Inuit community on questions of climate change, the ICC issued a statement opposing the possible listing of the polar bear as threatened under the US Endangered Species Act by the US Fish and Wildlife Service.<sup>84</sup> Their opposition against the listing of the polar bear is two-fold. First, the listing would be detrimental to their hunting of the bear, much of which is commercial in nature.<sup>85</sup> Second, the ICC said it would like to see direct measures taken against actions that contribute to climate change.<sup>86</sup> Since the subsistence hunting of the polar bear is not the problem, the ICC wants to see actions taken on the cause of potential harm to the polar bear, specifically the harm from anthropogenic actions that are contributing to the increase in

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The IACHR has the principal function of promoting the observance and the defense of human rights. In carrying out its mandate, the Commission: . . . d) Stimulates public consciousness regarding human rights in the Americas. To that end, carries out and publishes studies on specific subjects, such as: measures to be taken to ensure greater independence of the judiciary; the activities of irregular armed groups; the human rights situation of minors and women, and; the human rights of indigenous peoples. . . . h) Submits cases to the Inter-American Court and appears before the Court in the litigation of cases.

*Id.*

<sup>83</sup> Shelia Watt-Cloutier, Chairwoman, Presentation at the Eleventh Conference of Parties to the UN Framework Convention on Climate Change, Montreal: The Climate Change Petition by the Inuit Circumpolar Conference to the Inter-American Commission on Human Rights (Dec. 7, 2005), available at <http://inuitcircumpolar.com/index.php?ID=318&Lang=En>.

<sup>84</sup> Stephen Hendrie, *Canadian Inuit Question US Environmental Group Pressure on Canada's Polar Bear*, INUIT TAPIRIIT KANATAMI, May 1, 2008, <http://www.itk.ca/media-centre/media-releases/canadian-inuit-question-us-environmental-group-pressure-canadas-polar-be>.

<sup>85</sup> *Inuit Reject US Polar Bear Proposal*, CBS NEWS, Jun. 21, 2007, <http://www.cbc.ca/canada/north/story/2007/06/21/polar-bears.html>.

<sup>86</sup> Clive Tesar, *Polar Bears are the Wrong Suit Say Inuit*, ARCTIC PEOPLES, <http://www.arcticpeoples.org/2008/01/17/polar-bears-are-the-wrong-target-say-inuit/> (last visited May 14, 2009) (reporting that the Inuit claim that the polar bear population is currently hunted sustainably, and that listing the bear would both threaten an important revenue stream for small Inuit villages and address climate change from the wrong direction).

atmospheric greenhouse gases and resulting in the loss of the polar bear's habitat.<sup>87</sup>

### *B. Complex and Competing Issues Among the Inupiat*

In contrast to many Inuit concentrating on the detrimental effects of climate change, many Inupiat are focused more on ensuring the continued viability of the revenue producing oil industry.<sup>88</sup> The Inupiat are still negatively affected by climate change and are still parties to the ICC, since they are Inuit.<sup>89</sup> Though many Inupiat still maintain a subsistence economy, those who are members of regional and village corporations have also benefited from oil and gas royalties. Since Congress passed ANCSA in 1971, the Inupiat have received revenues from oil drilling projects in Alaska's Northern Slope.<sup>90</sup> These Inupiat want less regulation of the fossil fuel industries from which they benefit, in order to maintain revenues and job opportunities associated with the industry.<sup>91</sup>

An area that has been historically off limits to oil and gas production is the Alaska National Wildlife Refuge (ANWR).<sup>92</sup> ANWR was initially created through a Public Land Order issued by the former Secretary of the Interior, Fred Seaton.<sup>93</sup> The original size of ANWR was doubled through the passage of the Alaska National Interest Land Conservation Act (ANILCA).<sup>94</sup> Section 1002 of ANILCA mandated the US Fish and Wildlife Service to conduct studies of the land and the effects of oil and

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<sup>87</sup> *Id.*

<sup>88</sup> Sara N. Pasquinelli, *To Drill or Not to Drill: The Arctic National Wildlife Refuge v. The "Need" for U.S. Energy Independence*, 33 GOLDEN GATE U. L. REV. 503, 521 (2003). See Arctic Slope Regional Corporation, <http://www.asrc.com/home/home.asp> (last visited May 14, 2009) (discussing a particular group of Alaska natives who are in favor of drilling in ANWR).

<sup>89</sup> See *supra* Part II.B.

<sup>90</sup> 43 U.S.C. § 1605.

<sup>91</sup> Pasquinelli, *supra* note 88, at 520.

<sup>92</sup> Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3142 (2006). With the passage of ANILCA, ANWR became known as the 1002 area of Alaska from the section of the code that designated more lands for the Refuge.

<sup>93</sup> DEP'T OF INTERIOR, ESTABLISHING THE ARCTIC NATIONAL WILDLIFE REFUGE, PUBLIC LAND ORDER 2214 (Dec. 8, 1960), available at [http://library.fws.gov/Pubs7/ANWR\\_plo.pdf](http://library.fws.gov/Pubs7/ANWR_plo.pdf). See Exec. Order 10,355, 17 Fed. Reg. 4,831 (May 26, 1952).

<sup>94</sup> 16 U.S.C. § 3142(a).



gas development on the land's flora and fauna.<sup>95</sup> After the studies were completed, the US FWS designated ANWR as an area of "minimal management"<sup>96</sup> and drilling for oil production was prohibited. No drilling activities may occur on the land until Congress takes action on the issue.<sup>97</sup> Further, ANWR "is the only area on Alaska's North Slope where Congress has specifically prohibited petroleum development."<sup>98</sup>

There has been an ongoing argument over whether opening ANWR for oil and gas exploration and production would improve the conditions of some economically depressed communities in Alaska by increasing the revenues received and divided between the regional native

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<sup>95</sup> The Code provides that:

The Secretary, in consultation with the Governor of the State, Native Village and Regional Corporations, and the North Slope Borough within the study area and interested persons, shall conduct a continuing study of the fish and wildlife (with special emphasis on caribou, wolves, wolverines, grizzly bears, migratory waterfowl, musk oxen, and polar bears) of the coastal plain and their habitat. In conducting the study, the Secretary shall--

- (A) assess the size, range, and distribution of the populations of the fish and wildlife;
- (B) determine the extent, location and carrying capacity of the habitats of the fish and wildlife;
- (C) assess the impacts of human activities and natural processes on the fish and wildlife and their habitats;
- (D) analyze the potential impacts of oil and gas exploration, development, and production on such wildlife and habitats; and
- (E) analyze the potential effects of such activities on the culture and lifestyle (including subsistence) of affected Native and other people.

*Id.* at § 3142(c).

<sup>96</sup> US Fish & Wildlife Service, Final Comprehensive Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plans for the Arctic National Wildlife Refuge (Sept. 1988), <http://library.fws.gov/CCPs/Arctic01.pdf> [hereinafter Final Plan]. For a definition of "minimal management," see *id.* at 184.

<sup>97</sup> 16 U.S.C. § 3143 ("Production of oil and gas from the Arctic National Wildlife Refuge is prohibited and no leasing or other development leading to production of oil and gas from the range shall be undertaken until authorized by an Act of Congress.").

<sup>98</sup> Pasquinelli, *supra* note 88, at 509. The state of Alaska is 616,240 square miles. National Atlas of the United States, *Profile of the People and Land of the United States*, [http://www.nationalatlas.gov/articles/mapping/a\\_general.html](http://www.nationalatlas.gov/articles/mapping/a_general.html) (last visited May 14, 2009). The North Slope in Alaska is 89,800 square miles. Alaska State Geo-Spatial Data Clearinghouse, *Subarea Contingency Planning Maps*, <http://www.asgdc.state.ak.us/maps/cplans/subareas.html#northslope> (last visited May 14, 2009). And ANWR, which is located within the North Slope, is 30,468.75 square miles. Jonathan Waterman, *Alaska's Arctic National Wildlife Refuge*, NAT'L GEOGRAPHIC ADVENTURE, <http://www.nationalgeographic.com/adventure/travel/alaska/arctic-national-wildlife-refuge-conservation.html> (last visited May 14, 2009).

corporations.<sup>99</sup> Many Inupiat do not want a decrease in the consumption of oil and gas, since they benefit financially from oil drilling in Alaska.<sup>100</sup> With the enactment of ANCSA, many Inupiat have become attached to the financial benefits of the programs created under the act.<sup>101</sup> Since ANCSA provided for many Inupiat to receive natural resources revenues, many Inupiat see the opening of ANWR as a way to increase their financial stability by obtaining more revenues from oil and gas exploration in this area.<sup>102</sup> This comes at the potential detriment of addressing other issues, such as the effects of anthropogenic actions that contribute to climate change.

As discussed above, many Inupiat support opening ANWR for drilling<sup>103</sup> because of the potential economic benefits.<sup>104</sup> By opening up ANWR to more oil and gas exploration, many Inupiat believe that the area and its people will benefit from more jobs and money coming into the area.<sup>105</sup> Thousands of jobs could potentially be created, and oil revenue produced in ANWR could total in the hundreds of millions. All natives in Alaska could obtain these benefits.<sup>106</sup>

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<sup>99</sup> Arctic Power, *Making the Case for ANWR*, <http://www.anwr.org/Background/Making-the-Case-for-ANWR.php> (last visited May 15, 2009) Along with jobs and revenues, there are many arguments that drilling in ANWR will not leave a large footprint like oil and gas exploration has done in the past. These environmental arguments also help the Alaska Natives' call to let drilling occur in ANWR since it can be done in an environmentally friendly way. *Id.*

<sup>100</sup> Pasquinelli, *supra* note 88, at 521.

<sup>101</sup> See *supra* Part II.B.

<sup>102</sup> Arctic Power, *Making the Case for ANWR*, <http://www.anwr.org/Background/Making-the-Case-for-ANWR.php> (last visited May 14, 2009).

<sup>103</sup> See Hal Bernton, *Alaska Native Corporation a Lead Player for Oil on Wildlife Refuge*, SEATTLE TIMES, Apr. 12, 2005, <http://community.seattletimes.nwsources.com/archive/?date=20050412&slug=>; David Wastell, *Eskimos Back Bush Plan for Oil Drilling in Alaska Wildlife Refuge*, DAILY TEL., June 24, 2001, <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/1314983/Eskimos-back-Bush-plan-for-oil-drilling-in-Alaska-wildlife-refuge.html?mobile=true>.

<sup>104</sup> See Policy Memorandum from the White House Press Sec'y, American Made Energy, (June 18, 2008), available at <http://georgewebush-whitehouse.archives.gov/infocus/energy/energy-policy-memo.pdf>.

<sup>105</sup> See Bernton, *supra* note 103; Wastell, *supra* note 103.

<sup>106</sup> McDOWEL GROUP, ANWR AND THE ALASKA ECONOMY: AN ECONOMIC IMPACT ASSESSMENT (2002), available at <http://www.akrdc.org/issues/oilgas/anwr0902.pdf> (\$800 million in revenues from oil that is priced at \$22/barrel, so that number would potentially increase with oil price).

Many Inupiat have benefitted financially from existing associations with western culture and have adapted to and now depend on a post-industrial way of life.<sup>107</sup> But the ongoing debate of opening ANWR is further complicated since there are Inupiat for and against opening this area. There are the corporations and individuals who have benefitted financially from the oil companies in Alaska who want to see ANWR opened for drilling.<sup>108</sup> But there are also individuals and corporations that, even though they receive benefits through the terms of ANCSA, are concerned that opening ANWR will be detrimental to the health of the land.<sup>109</sup>

An example of many Inupiat who are opposed to opening ANWR for oil and gas exploration is the village corporation of Kaktovik.<sup>110</sup> The village corporation of Kaktovik was formed after the passage of ANCSA, but the villagers are concerned with maintaining their historical ties to land for survival.<sup>111</sup> While the oil and gas industry has become intertwined with their subsistence lifestyle, many individuals in the village of Kaktovik have maintained their historical subsistence lifestyle because of "the deep social and cultural value placed upon traditional harvesting by Kaktovik people."<sup>112</sup> The Kaktovik people harvest many

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<sup>107</sup> Wastell, *supra* note 103.

<sup>108</sup> See Bernton, *supra* note 103; Wastell, *supra* note 103.

<sup>109</sup> See, e.g., Arctic Power, *Making the Case for ANWR*, <http://www.anwr.org/Background/Making-the-Case-for-ANWR.php> (last visited May 14, 2009).

<sup>110</sup> City of Kaktovik, *Our Land/ Culture*, <http://www.kaktovik.com/ourland.html> (last visited May 14, 2009).

<sup>111</sup> City of Kaktovik, *History*, <http://www.kaktovik.com/ourland2.html> (last visited May 14, 2009) ("Then came the issue of ANWR, whether to drill for oil and gas on what was once our homelands. That proved the biggest storm of all, and it has been raging here for well over two decades now. ... Living on the land as we do it is relatively simple. We have been able to keep our focus in this place we call home, providing for ourselves and taking care of the land, the animals and one another, just as we have for thousands of years").

<sup>112</sup> Final Plan, *supra* note 96, at 132. This Final Plan also analyzes the relationship between the introduction of industry in this community after the passage of ANSCA and its effect on the communities. But the Kaktovik people, while they receive monetary benefits from ANSCA, have maintained their subsistence way of life more than other Inupiat involved with ANSCA. Final Plan, *supra* note 96, at 132.

of their natural resources from ANWR to maintain their subsistence economy from ANWR.<sup>113</sup>

There are some regional corporations involved in the fight against climate change that have similar views as organizations like the ICC. The Arctic Slope Regional Corporation (ASRC), formed under ANCSA, is one of the largest and most influential regional corporations in Alaska, reporting “\$1.6 billion in revenue in 2005.”<sup>114</sup> ASRC was very influential in the ESA listing process of the polar bear and filed a motion to intervene in the lawsuit against listing the polar bear.<sup>115</sup> ASRC did not want the polar bear listed because many of the shareholders did not think that listing the polar bear as threatened would save the polar bear.<sup>116</sup> These Inupiat shareholders pushed for more direct legislation in combating climate change instead of using the listing of the polar bear as a roundabout way of addressing climate change.<sup>117</sup>

#### IV. GOVERNMENTAL ACTIONS AND INACTIONS IN LAW AND POLICY

Having explored the diverse interests and perspectives within the Inuit community, we turn to review the legal and political responses from all levels in reply to Inuit climate change concerns. A starting point, in order to assess how laws and policies should be shaped from this point forward, is analyzing the past and present actions of the United States government addressing climate change. The United States government is implicated in the ICC petition since it was filed against the government of the United States.<sup>118</sup> Further, the United States government has not

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<sup>113</sup> *Id.* at 142-49.

<sup>114</sup> Simpson, *supra* note 37, at 39. See Kristofer Pasquale, Note, *ANWR: The Legislative Quagmire Surrounding Stakeholder Control and Protection, and the Practical Consequences of Allowing Exploration*, 9 BUFF. ENVTL. L.J. 245, 256-57 (2002).

<sup>115</sup> Tamar Ben-Yosef, *Arctic Slope Corporation Joins Polar Bear Lawsuit*, ARCTIC SOUNDER, July 10, 2008, <http://www.thearcticsounder.com/news/show/2693>.

<sup>116</sup> Keith Goetzman, *Inupiat Against Polar Bear Listing*, UTNE READER, Aug. 22, 2008, <http://www.utne.com/2008-08-21/Environment/Inupiat-Against-Polar-Bear-Listing.aspx>.

<sup>117</sup> *Id.*

<sup>118</sup> See *supra* Part III.A.

adopted substantial and direct laws, at any level of government, to regulate greenhouse gas emissions.<sup>119</sup>

#### A. International Laws and Policies Concerning the United States

The United Nations Framework Convention on Climate Change (UNFCCC) opened the discussion of climate change regulation at the international level.<sup>120</sup> This document did not contain binding emission reductions like the Kyoto Protocol, but it sought to “require[] parties to adopt measures and policies toward this end” of reducing emissions.<sup>121</sup> The United States does have some commitments under the UNFCCC, and the UNFCCC contains promises, though aspirational, to help fuel the climate change regulation debate internationally.<sup>122</sup>

The UNFCC led to the creation of an important international climate change treaty, the Kyoto Protocol.<sup>123</sup> The Kyoto Protocol created “binding targets for 37 industrialized countries and the European community for reducing greenhouse gas (GHG) emissions. These amount to an average of five per cent against 1990 levels over the five-year period 2008-2012.”<sup>124</sup> The United States rescinded its signature to

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<sup>119</sup> Krakoff, *supra* note 34, at 887 (“To date, Congress has not passed any serious carbon emission reduction legislation. But several bills have been introduced, most of which propose a cap-and-trade scheme to limit emissions.”). The United States’ policies and laws concerning climate change may change as the new administration gets underway. See WHITE HOUSE, Energy and the Environment, [http://www.whitehouse.gov/agenda/energy\\_and\\_environment/](http://www.whitehouse.gov/agenda/energy_and_environment/) (last visited May 14, 2009); John M. Broder, *Obama Affirms Climate Change Goals*, N.Y. TIMES, Nov. 18, 2008, available at <http://www.nytimes.com/2008/11/19/us/politics/19climate.html>; Kate Galbraith, *E.P.A. Proposal Calls Greenhouse Gases a Danger to the Public*, N.Y. TIMES, Mar. 23, 2009, available at <http://greeninc.blogs.nytimes.com/2009/03/23/epa-proposal-calls-greenhouse-gases-a-danger-to-the-public/?scp=3&sq=EPA&st=cse>.

<sup>120</sup> United Nations Framework Convention on Climate Change, July 1992, 31 I.L.M. 849 (1992).

<sup>121</sup> Andrew Long, *International Consensus and U.S. Climate Change Litigation*, 33 WM. & MARY ENVTL. L. & POL’Y REV. 177, 184 (2008).

<sup>122</sup> *Id.* at 186.

<sup>123</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change, U.N. Doc. FCCC/CP/1997/L.7/Add.1, Dec. 11, 1997, reprinted in 37 I.L.M. 22 (1998) [hereinafter Kyoto Protocol].

<sup>124</sup> *Id.* The Kyoto Protocol calls for a five percent reduction in greenhouse gas emissions from the Annex I countries under the Protocol. *Id.* at Art. 3.1. It states:

The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse

the Kyoto Protocol,<sup>125</sup> but the United States is a party to the UNFCCC,<sup>126</sup> which marks significant progress in addressing climate change in the international community as it is the first international agreement to lay out broad principles to begin to address climate change.<sup>127</sup>

*B. United States Domestic Laws and Policies*

Despite the rejection of the Kyoto Protocol by the previous administration,<sup>128</sup> some domestic legislation has been implemented that addresses climate change. President George W. Bush signed the Energy Independence and Security Act of 2007, which aimed at reducing the nation's dependence on foreign oil as well as improving energy conservation and reducing carbon dioxide emissions.<sup>129</sup> Though relevant, this law did not demand drastic cuts in greenhouse gas emissions; no specific policies and programs have ever been implemented to meet the goals of the proposal.<sup>130</sup>

President Barack Obama stated that climate change will "wreak unnatural havoc across the landscape."<sup>131</sup> Although the administration is just beginning to implement policies and laws, it has stated that it wants to develop a federal cap and trade program to lower carbon emissions 80 percent by 2050.<sup>132</sup> Along with lowering our dependence on oil, the

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gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.

*Id.* The Annex I countries can be located at United Nations Framework Convention on Climate Change, July 1992, 31 I.L.M. 849, 872 (1992).

<sup>125</sup> Pres. George W. Bush, Office of Press Secretary, President Bush Discusses Global Climate Change (June 11 2001), *available at* <http://georgewbush-whitehouse.archives.gov/news/releases/2001/06/20010611-2.html>.

<sup>126</sup> United Nations Framework Convention on Climate Change, July 1992, 31 I.L.M. 849, 872 (1992).

<sup>127</sup> *Id.*

<sup>128</sup> Pres. George W. Bush, *supra* note 125.

<sup>129</sup> Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. 1498 (2007).

<sup>130</sup> See Krakoff, *supra* note 34, at 887.

<sup>131</sup> White House Press Secretary, Remarks by the President on Clean Energy (April 22, 2009), [http://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-in-Newton-IA/](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-in-Newton-IA/).

<sup>132</sup> *Id.*

Obama administration hopes that investing in clean energy will create more jobs and help clean up the environment.<sup>133</sup> Further, President Obama has appointed cabinet members with backgrounds in science,<sup>134</sup> and these appointments are likely to change the role science plays in the creation and implementation of climate change law and policy.

In contrast to the concern for conservation measures discussed above, the United States has debated whether to open ANWR for drilling for years.<sup>135</sup> The Bush Administration recently lobbied Congress to open up ANWR for drilling, arguably to combat rising oil prices and decrease America's dependence on foreign oil.<sup>136</sup> An act of particular significance occurred in 2005 when the United States Senate voted 51-49 to support drilling in the Arctic.<sup>137</sup> These examples indicate that the United States has not taken substantive measures to curb climate change. As this area of law is further developed, these laws and policies should be shaped by the voices and goals of the many groups affected, including the Inuit and the subgroup of Inupiat.<sup>138</sup>

### C. Laws and Regulations at the State and Local Level

In addition to Federal actions, there have been many actions taken by states both independently and regionally around the United States in combating climate change. These include the Regional Greenhouse Gas

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<sup>133</sup> *Id.*

<sup>134</sup> See, e.g., Department of Energy, *Dr. Steven Chu*, [http://www.energy.gov/organization/dr\\_steven\\_chu.htm](http://www.energy.gov/organization/dr_steven_chu.htm) (last visited May 14, 2009) (Steven Chu is also the first Cabinet member ever appointed who has also won the Nobel Peace Prize, which he won for his work in Physics in 1997); U.S. Environmental Protection Agency, *Administrator Lisa Jackson: Biography*, <http://www.epa.gov/administrator/biography.htm> (last visited May 31, 2009); Matthew Wald, *Carol M. Browner*, N.Y. TIMES, Nov. 28, 2008, [http://www.nytimes.com/2008/11/26/us/politics/26web-browner.html?\\_r=1](http://www.nytimes.com/2008/11/26/us/politics/26web-browner.html?_r=1).

<sup>135</sup> See Anthony R. Chase, *Imminent Threat to America's Last Great Wilderness*, 70 DENV. U. L. REV. 43, 65 (1992); Pasquinelli, *supra* note 88, at 503, 507; Jay Schoenfarber, *Capitalizing on Environmental Disasters: Efficient Utilization of Green Capital*, 9 TUL. ENVTL. L.J. 147, 159 (1995).

<sup>136</sup> Policy Memorandum from the White House, *Am. Made Energy*, (June 18, 2008), available at <http://georgewbush-whitehouse.archives.gov/infocus/energy/energy-policy-memo.pdf>.

<sup>137</sup> S. Res. 83, 109th Cong. (2006).

<sup>138</sup> See *supra* Part V.B-D.

Initiative (RGGI) in the northeastern United States<sup>139</sup> and the Western Climate Initiative in the northwestern United States.<sup>140</sup>

The state of Alaska adopted the Alaska Climate Change Strategy.<sup>141</sup> Signed by Governor Sarah Palin in July of 2008, the strategy created the Climate Change sub-cabinet.<sup>142</sup> One of the main concerns of this sub-cabinet is to help some villages that have been affected by coastal erosion and flooding with creating adaptation measures for dealing with climate change.<sup>143</sup> The sub-cabinet will also work with villages to develop long-term strategies for adapting to the effects of climate change.<sup>144</sup>

As this discussion reveals, there has been some legislation passed to address climate change at different jurisdictional levels, but these laws are not the substantial actions that the ICC Petition called for. In sum, to date United States' climate change laws and policies, from the international to the local level, have not addressed the specific remedies outlined in the Petition filed by the ICC. Along with a myriad of other initiatives,<sup>145</sup> these efforts to combat climate change show progress has begun but is a long way from completion.

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<sup>139</sup> See generally RGGI Inc, *About RGGI*, [www.rggi.org](http://www.rggi.org) (last visited Apr. 2, 2009) (noting that RGGI is a program in which "[t]en Northeastern and Mid-Atlantic states will cap and then reduce CO<sub>2</sub> emissions from the power sector 10% by 2018").

<sup>140</sup> See generally Western Climate Initiative, *Western Climate Initiative*, <http://www.westernclimateinitiative.org> (last visited Apr. 5, 2009) ("The Western Climate Initiative, launched in February 2007, is a collaboration of seven U.S. governors and four Canadian Premiers. ... WCI was created to identify, evaluate, and implement collective and cooperative ways to reduce greenhouse gases in the region, focusing on a market-based cap-and-trade system.").

<sup>141</sup> Governor Sarah Palin, Alaska Administrative Order No. 238 (Sept. 14, 2007), <http://gov.state.ak.us/admin-orders/238.html>. For a copy of the Sub-Cabinet's report, see ALASKA ADMIN. CODE tit. 3, § 195.050 (2008).

<sup>142</sup> *Id.*

<sup>143</sup> ALASKA ADMIN. CODE tit. 3, § 195.030 (2008). These villages include Kivalina and Unalakleet.

<sup>144</sup> *Id.*

<sup>145</sup> See, e.g., Governors' Global Climate Summit, Background on the Governors' Climate Summit, <http://site.governorsglobalclimatesummit.org/> (last visited May 14, 2009); *Climate Change 101: State Action*, PEW CENTER ON CLIMATE CHANGE, Jan., 2009, [http://www.pewclimate.org/docUploads/Climate101-State-Jan09\\_0.pdf](http://www.pewclimate.org/docUploads/Climate101-State-Jan09_0.pdf); and UNFCCC, *supra* Part IV.A.



## V. UNRAVELING THE PICTURE FURTHER

### A. *Understanding the Complexities*

Though the picture of these various issues and goals may at first seem simple, exploring the myriad connections between and among the Inuit reveals layers of complexity.

There are many Inupiat who have benefitted from jobs and revenues from the oil and gas industry's drilling projects in the state of Alaska.<sup>146</sup> And since their standard of living is tied to oil and gas exploration, their goals differ from many other indigenous Arctic people who have not reaped similar economic benefits. And many Inupiat, since they are Inuit and are as represented by the ICC, want drastic steps to be taken by the United States in addressing climate change, as evident from the filing of the petition by the ICC.<sup>147</sup> Also, many Inupiat have concerns about the effects of climate change, as evident from a regional corporation intervening in the listing of the polar bear under the ESA.<sup>148</sup>

As previously discussed, there are both some Inupiat and some Inuit who have similar views on the listing the polar bear as threatened under the ESA because they do not think that the listing is the proper way to address climate change.<sup>149</sup> The ASRC intervened in the lawsuit concerning the listing of the polar bear since the listing would be detrimental to their economic livelihood;<sup>150</sup> similarly, the larger Inuit community, represented by the ICC, was also involved in the listing of the polar bear because the threatened status of the animal under the ESA would have detrimental effects on their cultural livelihood.<sup>151</sup> And both groups who opposed this listing further wanted rigorous legislation to directly combat climate change and not through protection of the habitat of an icon of climate change in the Arctic.

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<sup>146</sup> See *supra* Part III.B.

<sup>147</sup> See *supra* Part III.A.1.

<sup>148</sup> See *supra* notes 115-117 and accompanying text.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> See *supra* Part III.A.2.

There are some Inuit in other areas in the Arctic that still rely to a large extent on subsistence hunting and fishing,<sup>152</sup> and they do not want climate change to disrupt how they have lived for thousands of years.<sup>153</sup> The effects of these differing relationships with western culture shape how these individuals and the organizations that represent them view climate change and the operations of the fossil fuel industry.

*B. The Larger Picture of Climate Change Debate*

How do policy and lawmakers ensure all voices are heard and taken into account concerning policies for climate change? The picture of how the Inuit want policies to be shaped is not as clear as it may initially appear. As evident from the discussion above, different groups of Inuit are calling for different actions but also have interconnected goals among those issues. Differing calls from indigenous groups affected by climate change make the already complicated task of regulating greenhouse gas emissions even more difficult.

There are Inuit who want strong environmental protection against the effects of climate change<sup>154</sup> while, at the same time, opposing the listing of the polar bear as threatened under the ESA.<sup>155</sup> And there are some Inupiat who believe that substantial action should be taken to address climate change.<sup>156</sup> But many Inupiat corporate shareholders are more concerned with the revenue side of the oil industry and want to see more drilling in the Arctic to help their culture benefit financially.<sup>157</sup> Just as these distinct calls for action are meshed together, each group has become intertwined, and the picture is not as simple as it initially seemed. Fleshing out the complexities of Inuit perspectives on climate change, from the individual level to the over-arching organizations that represent their goals, will help policymakers understand the complexities inherent in shaping climate policies that address diverse needs among constituencies.

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<sup>152</sup> Petition Summary, *supra* note 9, at 1.

<sup>153</sup> *Id.*

<sup>154</sup> See *supra* Part III.A.1.

<sup>155</sup> See *supra* Part III.A.2.

<sup>156</sup> See *supra* Part III.B.

<sup>157</sup> *Id.*

While these voices seem separate in terms of their goals for environmental policies, the Inuit are a complex cultural group with interconnectedness among the peoples. The thread that connects all the Inuit is their Arctic cultural heritage of being Inuit, and this common connection is an aspect that policymakers must incorporate in creating laws and policies that deal with climate change. Policymakers who do not understand that these people are interconnected and have differing views, though they are from the same cultural heritage, mask the complexity of these people. From this analysis, it becomes apparent that the Inuit are a multi-faceted group of people who have views and goals that vary across sub-groups. And the organizations that represent these people unsurprisingly vary in terms of purpose and methods. The Inuit/Inupiat relationship depicts an indigenous group with vastly different internal views even though they make up a small population of the countries with territory in the Arctic Circle.<sup>158</sup> This crossover of Inuit populations, both calling for stringent measures to combat climate change and fighting to enable more oil drilling in the Arctic, shows the complexity of the parties involved in the climate change debate.

Lumping these two groups together and simply calling them all Inuit, thus only analyzing the Inuit's call to curb carbon emissions, would be detrimental to the Inupiat, who want to promote industries in the Arctic to receive revenue and compensation from the exploitation of mineral leases on their lands.<sup>159</sup> Conflating them within one category will also be detrimental to others who are asking for different action than the action asked for in the Petition to the IACHR. Opening ANWR for drilling will not help to curb greenhouse gas emissions that cause climate change; allowing companies to drill for oil in ANWR will exacerbate the cause of greenhouse gas emissions, as the products from this industry are one of the leading contributors of greenhouse gas emissions.<sup>160</sup> Grouping these peoples together as a single entity in the climate change debate does not allow for their individualized concerns to be taken into account.

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<sup>158</sup> See, e.g., Statistics Canada, Canada's Aboriginal population in 2017, June 28, 2005, <http://www.statcan.ca/Daily/English/050628/d050628d.htm> ("In 2001, the Aboriginal population of about 1,066,500 represented 3.4% of Canada's total population.").

<sup>159</sup> See *supra* Part III.B.

<sup>160</sup> IPCC, *supra* note 1, at fig. SPM.3.

From this snapshot of an analysis, one can get a sense of the difficulty of taking into account all relevant concerns in the climate change debate. There are a multitude of interest groups involved and affected by climate change; each of these groups wants to shape how climate change laws and policies are drafted.<sup>161</sup> If one single party involved in the climate change policymaking scheme, the Inuit, is so complex, as evident from the above discussion, how will policymakers be able to accurately assess how laws and policies will affect everyone? This question is open-ended, and as policymakers explore the Inuit further, they will find the answers to the questions about how all the Inuit connect with one another and the goals they ultimately seek to accomplish. Seeking these answers will help policymakers understand one constituency in the climate change debate. Constituencies such as the Inuit should be able to publicly voice their goals and concerns in order for policymakers to properly consider the various arguments addressing climate change. But is it really that important to take a look at these considerations when drafting climate change policies? Will anyone seriously consider the various viewpoints of the Inuit and the Inupiat? These questions should also be raised in the ongoing discussions of how to undertake actions concerning climate change.

Policymakers will have a better understanding of the issues of the indigenous people when these people can voice their concerns. Understanding the differences between these multi-faceted cultures and their distinct but interconnected calls for governmental action on climate change is a key factor in drafting laws and regulations concerning climate change. Calling attention to these indigenous groups and their needs increases the awareness of how complex the policy making process will be for addressing climate change. Once the policymakers begin to understand the concerns of the Inupiat and Inuit, the regulating authority will start to gain understanding of the indigenous cultures' concerns.

In order to craft responses to climate change that are based on relevant information from all affected parties, policy and lawmakers must seek input from all sides and all players and then create legitimate

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<sup>161</sup> See IPCC, *supra* note 1. As discussed in the IPCC Summary for Policymakers, regulating climate change will involve many parties from all parts of the world with vastly differing objectives and views.

action plans to targeting emissions in an effective manner. The only way all these different groups will be heard in the debate over climate change is if they are allowed to have a seat at the policy making table. But in reality, the climate change debate involves so many people with so many concerns that is practically impossible for everyone to be heard. Policymakers will not be able to address each little individual concern as the process simply does not allow for such discussions among so many people. But it is important to create an avenue for these indigenous peoples' voices to be heard in the climate change debate instead of pushing them aside.

*C. Other Ways to Publicly Voice Issues in the Climate Change Debate*

There may be other way to publicize the concerns of all Inuit. One avenue for calling attention to indigenous concerns is via an existing "soft law" UN resolution.<sup>162</sup> Soft law resolutions have been vital in addressing international concerns publicly, from human torture to environmental rights, in order for these rights to be publicly addressed and appropriate laws to be drafted.<sup>163</sup> Although these resolutions do not have any binding effect on the states that sign them, they are instrumental in guiding the adoption of forthcoming laws with enforceable obligations.<sup>164</sup>

In 2007, the United Nations adopted the United Nations Declaration on the Rights of Indigenous Peoples (Declaration).<sup>165</sup> The Declaration

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<sup>162</sup> DAVID BEDERMAN, INTERNATIONAL LAW FRAMEWORKS, 45-46 (2d ed. 2006). Soft law documents are generally utilized in international law and are not legally binding. Soft law documents include instruments such as declarations and codes of conduct. BLACK'S LAW DICTIONARY (8th ed. 2004). See also Jacob Gerson and Eric Posner, *Soft Law: Lessons from Congressional Practice*, 61 STAN. L. REV. 573, 575 (2008) ("Soft international law includes nonbinding declarations such as the Universal Declaration of Human Rights and General Assembly resolutions. Despite their lack of formal legal status, these materials can ultimately have real effect--by working their way into customary international law or by providing the framework for informal interstate cooperation.").

<sup>163</sup> *Id.*

<sup>164</sup> See *id.*; Pierre-Marie Dupuy, *Soft Law and the International Law of the Environment*, 12 MICH. J. INT'L L. 420, 434 (1991); Mark Allan Gray, *The International Crime of Ecocide*, 26 CAL. W. INT'L L.J. 215, 247 (1996).

<sup>165</sup> United Nations Declaration on the Rights of Indigenous Peoples, Inter-Am. C.H.R., OEA/Ser/L/V/II.95, doc.6 (draft approved Feb. 26, 1997) [hereinafter Declaration], available at [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf).

was adopted by a vote of 143 to four.<sup>166</sup> Though the Declaration does not require a state to act, it sets out a list of basic needs of indigenous peoples so that states can more appropriately govern them.<sup>167</sup> The Declaration recognizes the historical discrimination of indigenous cultures in the world<sup>168</sup> and seeks to provide an avenue for these peoples to preserve their unique cultures.<sup>169</sup> The Declaration outlines strategies states should take in combating discrimination and facilitating open discussion with indigenous groups.<sup>170</sup> The Declaration's goals are to help states and indigenous groups engage in open discussion to address the needs of these peoples,<sup>171</sup> and this document may be instrumental for indigenous groups to be represented in governmental law and policy-making procedures.<sup>172</sup> By using the Declaration to facilitate open discussions with national governments, the Inupiat and Inuit could publicly voice their issues on climate change.

This Declaration is a recent instrument in international law that many states have signed on to which addresses the unique needs of indigenous peoples and specifically states that the government must be involved in knowledgeable decision making by states in creating policies that affect indigenous peoples.<sup>173</sup> The various groups of Inuit could use the Declaration to facilitate discussion concerning climate change in the Arctic and also to help preserve the culture of the various Inuit groups.

The Declaration represents another avenue for indigenous people to get their issues in front of policymakers to consider. Similar to the potential of the Declaration, the ICC's petition to the IAHR, though

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<sup>166</sup> International Work Group for Indigenous Affairs, *Declaration on the Rights of Indigenous Peoples*, <http://www.iwgia.org/sw248.asp> (last visited May 14, 2009). One of those nations casting a vote against the Declaration was the United States.

<sup>167</sup> Declaration, *supra* note 165.

<sup>168</sup> *Id.* at p. 2 ("Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.").

<sup>169</sup> *Id.* at arts. 9 & 20.

<sup>170</sup> *Id.* at arts. 2, 8, 15, & 18.

<sup>171</sup> *Id.* at art. 15.

<sup>172</sup> Alessandro Fodèlla, *International Law and the Diversity of Indigenous Peoples*, 30 VT. L. REV. 565, 588 (2006).

<sup>173</sup> *Id.*

rejected, increases global awareness of the calls from indigenous cultures in the Arctic region. The Petition represents a new era of actions brought against governments for their inaction towards climate change and raises awareness of the fact that indigenous people have distinct needs and perspectives that are relevant to climate change law and policy-making. And in this new era of awareness of the issues of indigenous people, the Declaration has the prospect of advancing the issues of the Inuit and Inupiat in a public forum.

## VI. CONCLUSION

Climate change affects many different cultures and constituencies, but the indigenous populations in the Arctic are feeling the effects of climate change to a greater degree than most.<sup>174</sup> The Inuit are already experiencing the effects of climate change,<sup>175</sup> but the internal objectives of this multi-faceted indigenous population vary greatly, even though related through common threads and interconnected goals. Many Inuit want to see significant changes in the way climate change is legally addressed;<sup>176</sup> they are many of the same indigenous group who opposed the listing of the polar bear as threatened, believing it an inappropriate avenue to directly address climate change.<sup>177</sup> Some Inupiat do not want to inhibit the activities of industries that contribute to greenhouse gas emissions, i.e., the product of the oil and gas industries,<sup>178</sup> because they benefit financially from these industries.<sup>179</sup> But some Inupiat are involved in the fight to address climate change in the Arctic through their opposition to listing the polar bear under the ESA.<sup>180</sup> This paper only begins to unravel the picture of the relationship of Inuit and the Inupiat and their various goals in the realm of climate change. This paper hopefully begins to map out some concerns that policymakers should address when drafting climate change laws and policies for the Inuit and the Arctic.

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<sup>174</sup> ACIA, *supra* note 17, at 1.

<sup>175</sup> *Id.* at 7.

<sup>176</sup> Petition Summary, *supra* note 9, at 1.

<sup>177</sup> See *supra* notes 84-87 and accompanying text.

<sup>178</sup> See IPCC, *supra* note 1, at fig. SPM.3.

<sup>179</sup> See *supra* Part II.B.

<sup>180</sup> See *supra* notes 114-117 and accompanying text.