

SYMPOSIUM

INTERNATIONAL HUMAN RIGHTS AND CLIMATE CHANGE

**INTRODUCTION: CLIMATE CHANGE AND HUMAN RIGHTS:
UNPACKING THE ISSUES**

*Daniel Bodansky**

TABLE OF CONTENTS

I. WHAT DISTINGUISHES A HUMAN RIGHTS APPROACH TO CLIMATE CHANGE? 514

II. WHAT IS THE APPEAL OF A HUMAN RIGHTS APPROACH TO CLIMATE CHANGE? 516

III. DOES CLIMATE CHANGE VIOLATE HUMAN RIGHTS? 518

IV. ARE THERE HUMAN RIGHTS DUTIES TO PREVENT OR LIMIT CLIMATE CHANGE? IF SO, WHO OWES THEM TO WHOM? 519

V. WHAT ARE THE HUMAN RIGHTS IMPLICATIONS OF ACTIONS TO COMBAT CLIMATE CHANGE? 522

VI. DOES A HUMAN RIGHTS APPROACH TO CLIMATE CHANGE MAKE SENSE? 523

* Emily and Ernest Woodruff Chair of International Law, University of Georgia School of Law. Thanks to John Knox and Mac Darrow for their comments and suggestions. Needless to say, any remaining errors remain my own.

Global warming is expected to contribute to many human wrongs: disease, malnutrition, and flooding of coastal communities, to name a few.¹ But does every human wrong violate a human right? Should we conceptualize climate change not only as an environmental problem—the preeminent one of our time—but also as a human rights violation?

Since climate change first emerged as an international issue in the mid-1980s, it has been addressed primarily through inter-state negotiations, aimed at reaching agreement on reciprocal cuts in national greenhouse gas emissions. In the 1990s, these negotiations seemed to be making progress. States adopted the UN Framework Convention on Climate Change² (UNFCCC) in 1992 and the Kyoto Protocol³ five years later, which called for emission reductions by developed countries of roughly 5%, as the first of what was envisioned as a series of sequential cuts. But over the last decade, the UNFCCC negotiations have seemingly stalled, a perception reinforced by the failure of the recent Copenhagen Conference to adopt a new legal instrument. Although world leaders did negotiate a political agreement—the Copenhagen Accord—critics argue that the Accord delivers far too little by way of emissions cuts and, in any event, is non-binding and therefore likely to be ineffective.⁴ Whether right or wrong, this pessimistic perspective on the process of inter-state negotiations has spurred the search for alternatives, including human rights approaches to climate change.

Over the last several years, interest has grown tremendously in the subject of climate change and human rights.⁵ Litigators have begun to bring claims

¹ For a general description of the impacts of climate change, see INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE [IPCC], CLIMATE CHANGE 2007: IMPACTS, ADAPTATION AND VULNERABILITY (2007). For impacts on the United States, see U.S. GLOBAL CHANGE RES. PROGRAM, GLOBAL CLIMATE CHANGE IMPACTS IN THE UNITED STATES (Thomas R. Karl et al. eds., 2009).

² United Nations Framework Convention on Climate Change, *opened for signature* May 9, 1992, S. TREATY DOC. NO. 102-38, 1771 U.N.T.S. 107.

³ Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 11, 1997, 37 I.L.M. 22 (1998).

⁴ For a more positive assessment of the Copenhagen Accord, see Daniel Bodansky, *The Copenhagen Climate Change Conference - A Post-Mortem*, 104 AM. J. INT'L L. (forthcoming 2010).

⁵ This literature is part of a broader literature on human rights and the environment that has proliferated over the last fifteen years. See generally SVITLANA KRAVCHENKO & JOHN E. BONNE, HUMAN RIGHTS AND THE ENVIRONMENT: CASES, LAW, AND POLICY (2008) (providing a collection of international and national court cases on human rights and the environment); HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION (Alan E. Boyle & Michael R. Anderson eds., 1996) (providing a collection of essays on human rights approaches to environmental protection).

asserting that climate change is responsible for human rights violations.⁶ The UN Human Rights Council has adopted several resolutions on climate change and requested the High Commissioner on Human Rights to produce a report on the subject, which was published in 2009.⁷ Additionally, the academic community has examined the theoretical and practical issues involved.⁸

Proposals to treat climate change as a human rights problem raise many fundamental questions. Theoretically, what does it mean to conceptualize climate change in human rights terms? How would a human rights approach differ from treating climate change as an environmental, economic, or scientific problem? Descriptively, what does human rights law say about climate change and, conversely, what does climate change law say about human rights? Normatively, does it make sense to approach climate change as a human rights issue? What are the pros and cons?

This symposium issue of the *Georgia Journal of International and Comparative Law* represents an important contribution to the emerging scholarship on climate change and human rights, with articles by leading experts from around the country. Keynote speaker Professor Thomas Pogge, a professor of philosophy and international affairs at Yale University, considers the broad implications of climate change for human rights in the context of world poverty.⁹ Marc Limon, Counselor of the Permanent Mission of the Republic of the Maldives to the UN office in Geneva, examines the treatment of the subject within the United Nations system.¹⁰ Professor Naomi Roht-Arriaza

⁶ The most prominent example was a claim submitted in 2005 in the Inter-American Commission on Human Rights against the United States on behalf of Inuits, asserting that global warming was causing violations of their rights to life, health, culture, and subsistence. Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States (Dec. 7, 2005), available at http://www.earthjustice.org/library/legal_docs/petition-to-the-inter-american-commission-on-human-rights-on-behalf-of-the-inuit-circumpolar-conference.pdf.

⁷ U.N. Human Rights Council [UNHRC], *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights*, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009).

⁸ See, e.g., HUMAN RIGHTS AND CLIMATE CHANGE (Stephen Humphreys ed., 2010) (examining questions raised by climate change policies); John H. Knox, *Climate Change and Human Rights Law*, 50 VA. J. INT'L L. 163 (2009) (addressing duties human rights law imposes with respect to climate change); Eric A. Posner, *Climate Change and International Human Rights Litigation: A Critical Appraisal*, 155 U. PA. L. REV. 1925 (2007) (questioning whether international human rights litigation would lead to a desirable outcome); Amy Sinden, *Climate Change and Human Rights*, 27 J. LAND RESOURCES & ENVTL. L. 255 (2007).

⁹ Thomas Pogge, *Poverty, Climate Change, and Overpopulation*, 38 GA. J. INT'L & COMP. L. 525 (2010).

¹⁰ Marc Limon, *Human Rights Obligations and Accountability in the Face of Climate*

of the University of California Hastings Law School considers the human rights implications of measures undertaken by states in response to climate change.¹¹ University of Oregon School of Law Professor Svitlana Kravchenko focuses on procedural rights concerning access to information and public participation.¹² Professor Rebecca Bratspies of the City University of New York School of Law looks at the role of human rights norms in domestic regulatory decision-making. Finally, Edward Cameron examines the development of a human rights-based approach to addressing climate change, assessing the usefulness of such an approach in shaping effective policy responses and informing economic development.¹³ In this brief introductory essay, I seek to map out the overarching distinctions and questions, in order to frame the more detailed studies that follow.

I. WHAT DISTINGUISHES A HUMAN RIGHTS APPROACH TO CLIMATE CHANGE?

Despite the hullabaloo about climate change and human rights, it is not completely clear as to how much and in what way a human rights perspective on climate change differs from an environmental perspective. The policy debate about climate change has always focused on its human impacts—the harms to coastal communities, drought-prone areas, agriculture, human health, and human welfare more generally. What, if anything, does a human rights approach add to our understanding of the issues and choices involved?

For example, is human rights law more absolutist than environmental law? Do human rights serve as trumps, rather than merely as factors that must be balanced along with other costs and benefits in the policy equation? Do they have “lexical priority,” as some philosophers put it?¹⁴ Perhaps so in the case of civil and political rights—although even some civil and political rights can be derogated from in times of national emergency, reflecting a less-than-absolutist approach.¹⁵ In any event, economic and social rights clearly do not

Change, 38 GA. J. INT'L & COMP. L. 543 (2010).

¹¹ Naomi Roht-Arriaza, “*First Do No Harm*”: *Human Rights and Efforts to Combat Climate Change*, 38 GA. J. INT'L & COMP. L. 593 (2010).

¹² Svitlana Kravchenko, *Procedural Rights as a Crucial Tool to Combat Climate Change*, 38 GA. J. INT'L & COMP. L. 613 (2010).

¹³ Rebecca M. Bratspies, *The Intersection of International Human Rights and Domestic Environmental Regulation*, 38 GA. J. INT'L & COMP. L. 649 (2010).

¹⁴ See, e.g., Simon Caney, *Climate Change, Human Rights and Moral Thresholds*, in HUMAN RIGHTS AND CLIMATE CHANGE, *supra* note 8, at 69, 73.

¹⁵ See, e.g., International Covenant on Civil and Political Rights art. 4(1), *opened for*

always trump other priorities—that is why they must only be “progressively realized,” rather than provided immediately. The relatively few environmental cases that have been decided thus far by international human rights tribunals recognize that “states have discretion within wide limits to determine how to strike the balance between environmental harm and the benefits of the activities causing it.”¹⁶ Conversely, environmental law itself sometimes takes a more absolutist stance by banning hazardous activities altogether, rather than balancing their costs and benefits.

Another feature of human rights law, sometimes characterized as distinctive, is its focus on thresholds.¹⁷ Even if states have an obligation only to “progressively realize” environmental rights, there are minimum threshold levels to which people have a right and which states must therefore achieve. As Henry Shue states: “Basic rights are the morality of the depths. They specify the line beneath which no one is to be allowed to sink.”¹⁸ To the extent that climate change results in human rights violations, then different levels of emissions of greenhouse gases do not represent a continuum; instead, there is a maximum permissible level of emissions.

Again, however, an emphasis on thresholds does not distinguish human rights from environmental law. Environmental law also frequently defines minimum or maximum thresholds. For example, the UNFCCC defines its objective in terms of a maximum threshold level of greenhouse gas concentrations, above which dangerous climate change would occur.¹⁹ The Copenhagen Conference supplements this concentration threshold with a temperature change threshold—that is, no more than 2°C.²⁰

That said, human rights regimes do tend to be more legalistic in nature than international environmental regimes. Once an issue is conceived in terms of rights, it is removed from the political arena of competing interests and policies. Perhaps for this reason, the paradigmatic institution established by human rights treaties is the expert committee, composed largely of lawyers. In

signature Dec. 16, 1966, 1966 U.S.T. 521, 999 U.N.T.S. 171 (allowing derogations “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed”).

¹⁶ Knox, *supra* note 8, at 196 (surveying the existing case law).

¹⁷ See Caney, *supra* note 14, at 72 (discussing moral thresholds in human rights law).

¹⁸ HENRY SHUE, BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY 18 (2d ed. 1996).

¹⁹ U.N. Framework Convention on Climate Change [UNFCCC], Fifteenth Conference of the Parties, Copenhagen, Den., Dec. 7–18, 2009, *Copenhagen Accord*, ¶ 2, U.N. Doc. FCCC/CP/2009/L.7 (Dec. 18, 2009) (draft decision).

²⁰ *Id.* (recognizing that deep cuts in emissions are required “so as to hold the increase in global temperature below 2 degrees Celsius”).

contrast, the central institution established by international environmental agreements is the conference of the parties, whose primary task is political, namely to direct the implementation and evolution of the regime. Even the more specialized implementation committees established by some international environmental agreements are generally composed of government rather than independent experts, who tend to take a more political than strictly legal approach to compliance questions.

The more noticeably “political” character of international environmental regimes is reflected not only in their institutional and procedural arrangements, but also in their substantive obligations, which often reflect political compromises struck in order to achieve agreement. Of course, human rights agreements are also the product of negotiation, but with an important difference. In human rights agreements, the end point of the negotiations is a common core of human rights to be respected. In contrast, international environmental negotiations often involve a process of outright horse-trading that, on the one hand, results in different requirements for different countries, but, by virtue of that fact, allows more stringent and specific requirements to be adopted than would otherwise be possible.

Another important difference between international environmental law and human rights law is that international environmental law depends on reciprocity while human rights law does not.²¹ International environmental law is grounded in the need for mutual action. Most international environmental problems—including climate change—cannot be addressed by individual states acting alone; they require collective effort. In contrast, human rights obligations do not depend on reciprocity. States owe obligations not only to one another, but also to individuals; moreover, one state’s respect for human rights does not depend on, and may not be conditioned on, compliance by other states.

II. WHAT IS THE APPEAL OF A HUMAN RIGHTS APPROACH TO CLIMATE CHANGE?

Regardless of the degree to which a human rights approach to climate change is conceptually distinctive, it offers a number of advantages over the inter-governmental negotiating process that make it attractive to environmentalists. To begin with, if the activities that contribute to climate

²¹ This paragraph and the next two are drawn from Daniel Bodansky, *The Role of Reporting in International Environmental Treaties: Lessons for Human Rights Supervision*, in *THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING* 361 (Philip Alston & James Crawford eds., 2000).

change violate human rights law, then we do not need to wait for governments to agree to cut their emissions; our current practices are illegal already. Under existing law we can make legal arguments about what countries *must* do, as opposed simply to policy arguments about what they *should* do.

Human rights law promises not only legal arguments but also forums in which to make those arguments. In contrast to international environmental law, where dispute resolution mechanisms are in short supply, human rights law is full of tribunals to hear complaints and rapporteurs to investigate more general situations.²² These procedures give victims of climate change, who generally have little influence in inter-governmental negotiations, a forum in which they possess greater power.²³

Moreover, by focusing on the harms suffered by particular individuals and groups, human rights procedures help put a human face on climate change and make the impacts more concrete. Politicians have long intuited that people respond more to individual stories than to general statistics.²⁴ Human rights cases serve as a vehicle for telling the stories of those victimized by climate change. As the International Council on Human Rights Policy notes:

Lawsuits draw attention to harmful effects that might otherwise remain below the public radar, put a name and face to the otherwise abstract suffering of individuals and provide impetus and expression to those most affected by the harms of climate

²² Potential forums include, at the global level, the Human Rights Committee established by the International Covenant on Civil and Political Rights and the Committee on Economic, Social and Cultural Rights established by the International Covenant on Economic, Social and Cultural Rights. Regional tribunals include the Inter-American Commission and Court of Human Rights and the European Court of Human Rights. In addition, claims could potentially be pursued in national courts—for example, in the United States under the Alien Tort Statute. *See generally* ADJUDICATING CLIMATE CHANGE: STATE, NATIONAL, AND INTERNATIONAL APPROACHES (William C.G. Burns & Hari M. Osofsky eds., 2009) (asserting that courts represent crucial forums for addressing climate change).

²³ *See* Sinden, *supra* note 8, at 264–65 (discussing the “distribution of power and resources in society” and arguing that those who stand to gain the most from climate change regulation are “primarily individual people” who otherwise would “have no political voice or standing in those developed countries where the vast bulk of the problem originates”). As Rebecca Bratspies notes, ExxonMobil earned \$45.2 billion in 2008, giving them political influence that victims of climate change cannot match. Bratspies, *supra* note 13, at 652.

²⁴ As Joseph Stalin is said to have remarked, “The death of one man is a tragedy. The death of millions is a statistic.” PETER YORK, *DICTATOR STYLE: LIFESTYLES OF THE WORLD’S MOST COLORFUL DESPOTS* 111 (2006).

change. They can thus mobilise public opinion in support of policy change.²⁵

More generally, characterizing something as a human rights problem elevates its standing relative to other issues. It gives the problem greater moral urgency and appeals to an additional constituency beyond environmentalists. In this regard, it serves a similar function as efforts to characterize climate change as an energy security or military security problem. As “merely” an environmental problem, climate change may not muster the political will necessary for costly actions to reduce emissions; but if climate change is a security problem—or a human rights problem—then perhaps people will be more willing to act.

III. DOES CLIMATE CHANGE VIOLATE HUMAN RIGHTS?

It is sometimes said that climate change violates human rights.²⁶ If this is simply a shorthand way of saying that climate change will affect the realization and enjoyment of a variety of widely recognized human rights, then it is very likely true. Although the extent and nature of these harms are still unclear and will vary from region to region, climate change is likely to affect the right to life, the right to adequate food and water, the right to health, and the right to self-determination, among others.²⁷ Some of the harms are caused by climate change directly—the heat wave that struck Europe in 2003 was directly responsible for tens of thousands of deaths from cardiovascular and respiratory diseases. Other effects are indirect. For example, global warming is expected to result in more intense storms, increased drought, water shortages, and flooding of coastal areas, which in turn may result in malnutrition due to heat- and drought-related crop losses, disease due to changed disease vectors and lack of access to clean drinking water, and loss of homes and means of subsistence due to flooding and extreme weather events. Tragically, the biggest impacts are expected in poor regions of the world such as Africa and Bangladesh, where people are the most vulnerable, have the least capacity to

²⁵ INT'L COUNCIL ON HUM. RTS. POL'Y, CLIMATE CHANGE AND HUMAN RIGHTS: A ROUGH GUIDE 41 (Stephen Humphreys & Robert Archer eds., 2008), available at http://www.ichrp.org/files/reports/45/136_report.pdf.

²⁶ See, e.g., THEODOR RATHGEBER, CLIMATE CHANGE VIOLATES HUMAN RIGHTS (2010).

²⁷ Caney, *supra* note 14, at 75–82; see also WORLD HEALTH ORGANIZATION, PROTECTING HEALTH FROM CLIMATE CHANGE: CONNECTING SCIENCE, POLICY AND PEOPLE 2 (2009), available at http://whqlibdoc.who.int/publications/2009/9789241598880_eng.pdf.

adapt, and are the least responsible for having caused the problem in the first place.

To the extent that conceptualizing climate change as a human rights problem serves a symbolic or political function, then identifying these human harms may be enough. In essence, the argument is that climate change will severely impact the enjoyment of important human rights—the right to life, the right to food, the right to health, the right to self-determination, and so forth. Therefore we need to prevent it.

But although this reasoning may be compelling as a policy argument, it is insufficient as a legal argument. Legally, climate change no more violates human rights than does a hurricane, earthquake, volcanic eruption, or meteor impact. Human rights are “human” by virtue of not only their victims but also their perpetrators. And they represent human rights “violations” only if there is some identifiable duty that some identifiable duty-holder has breached. As Professor John Knox notes: “Not all infringements of human rights violate legal obligations; human rights may have ethical or moral import without having correlative duties under human rights law.”²⁸ Thus, in considering the connections of human rights and climate change, we need to focus as much, if not more, on the nature of the duties involved as the nature of the rights.²⁹

IV. ARE THERE HUMAN RIGHTS DUTIES TO PREVENT OR LIMIT CLIMATE CHANGE? IF SO, WHO OWES THEM TO WHOM?

In thinking about possible duties to limit climate change, it is useful to separate three issues: first, the types of duties involved; second, the bearer of these duties; and third, the beneficiary of the duties (that is, the holder of the correlative rights). Or, to put it simply: what, who, and to whom.

What types of duties might exist to limit climate change? Human rights scholars often distinguish between duties to respect, protect, and fulfill.³⁰

The duty of states to respect human rights is the most familiar and the least controversial. States may not act in ways that deprive individuals of their rights. For example, states may not engage in torture, commit extrajudicial killings, or deliberately starve civilians. These negative duties are duties to refrain from particular types of actions. In the climate change context, the duty to respect has implications for government activities that directly contribute to

²⁸ Knox, *supra* note 8, at 165.

²⁹ *See id.* (providing an excellent exploration of human rights duties relevant to climate change).

³⁰ *Id.* at 179–80.

climate change—for example, emissions of carbon dioxide from government facilities and from military activities. It might also apply to government decisions regulating private conduct—for example, decisions about whether to grant oil leases, which Rebecca Bratspies examines in her contribution to this symposium issue.³¹ As Bratspies explores, a human rights framework suggests that when making regulatory decisions, governments should consider both substantive rights, such as the right to a healthy environment, and procedural rights, such as the right to information, assessment, and participation, which in general provide stricter and clearer duties, with less deference to government balancing.

In contrast to the duty to respect—a negative duty not to engage in actions that adversely affect the enjoyment of a human right—the duty to protect is a positive duty that potentially requires states to prevent non-governmental actors from infringing on human rights as well as to alleviate the harms.³² For example, the Convention on the Elimination of Racial Discrimination not only prohibits states from engaging in discrimination themselves, but also requires states to protect individuals against private discrimination—for example, through the enactment of anti-discrimination laws.³³ Similarly, the Committee on Economic, Social and Cultural Rights (CESCR) has found that the right to health imposes a duty to formulate and implement policies to promote health. In the context of climate change, the duty to protect could include a duty to regulate private emissions that contribute to climate change as well as a duty to undertake adaptation measures to limit the harms caused by global warming. Important questions regarding the duty to protect include: Is the duty one of due diligence, negligence, or strict liability? To what extent may a state balance protecting human rights against other important societal objectives? And to which activities does the duty apply—only activities within a state's territory or also activities by its nationals elsewhere?

³¹ Bratspies, *supra* note 13, at 649.

³² See, e.g., Soc. & Econ. Rights Action Ctr. v. Nigeria (Oganiland Case), Comm. No. 155/96, ¶57 (Afr. Comm'n on Human & Peoples' Rights 2001) (asserting that states have a duty to "protect [its] citizens . . . from damaging acts that may be perpetrated by private parties"); Inter-Am C.H.R., *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96, doc 10 rev. 1, at ch. VIII (April 24, 1997), available at <http://www.cidh.org/countryrep/ecuador-eng/Index%20-%20Ecuador.htm> (detailing that states have "an obligation . . . to take reasonable measures to prevent such risk [to life or health], or the necessary measures to respond when persons have suffered injury"). See generally Knox, *supra* note 8, at 172–73, 179–80 (stating that a "state is under an obligation to take positive steps to protect against the harm" and detailing the duties to regulate state and private conduct).

³³ International Convention on the Elimination of All Forms of Racial Discrimination art. 2, opened for signature Dec. 21, 1965, 660 U.N.T.S. 195.

In addition to duties to respect and protect, some argue that human rights law imposes duties to take positive steps to fulfill or facilitate the satisfaction of human rights. For example, the CESCR has found that the International Covenant on Economic, Social and Cultural Rights requires states “to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health,”³⁴ including “national policies aimed at reducing and eliminating pollution of air, water and soil.”³⁵ According to the CESCR, states have a duty to “ensure the satisfaction of, at the very least, minimum essential levels” of economic, social, and cultural rights.³⁶ Similarly, pursuant to a duty to fulfill, rich states might have a duty to provide assistance to poorer states to help them mitigate or adapt to climate change.

Since climate change is attributable primarily to emissions by private actors—for example, the utilities that generate electricity and the individuals who use it, the companies that manufacture products and the consumers who buy them, the auto companies that make cars and the individuals who drive them—a crucial question is whether the duties to respect, protect, and fulfill apply to private actors as well as to states. International criminal law demonstrates that international law can in some cases impose duties directly on individuals, and some have proposed that corporations have duties to respect human rights.³⁷ Thus, in theory, human rights law could impose a duty on private actors to respect human rights by limiting their emissions of greenhouse gases.³⁸ But generally, human rights law—like international environmental law—imposes duties only on states. If this is true of climate change, then human rights law limits the activities of non-state actors only to the extent that states have a duty to protect against climate change by controlling private activities.

Finally, to whom are duties to respect, protect and fulfill owed? Are they owed only to individuals (and possibly groups) within a state’s territory? Or

³⁴ U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. & Cultural Rts. [CESCR], General Comment No. 14, *The Right to the Highest Attainable Standard of Health*, ¶ 33, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

³⁵ *Id.* ¶ 36.

³⁶ U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. & Cultural Rts. [CESCR], General Comment No. 3, *The Nature of States Parties Obligations*, ¶ 10, U.N. Doc. E/1991/23 (Dec. 14, 1990).

³⁷ See e.g., Stephen R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L.J. 443 (2001).

³⁸ See Peter Newell, *Climate Change, Human Rights and Corporate Accountability*, in HUMAN RIGHTS AND CLIMATE CHANGE, *supra* note 8, at 126.

do they extend to people in other countries, giving them correlative rights? Generally, the answer to this question depends on whether human rights law applies extraterritorially, when a government acts in another country. But, in the climate change context, defining the geographic scope of the rights holders is necessary even when a government acts, or fails to act, within its territory, since greenhouse gas emissions do not respect borders; emissions purely within a state's territory affect the enjoyment of human rights by people everywhere. Do the extraterritorial effects of greenhouse gas emissions mean that states owe duties to respect and protect to people throughout the world? And, if there is a duty to fulfill, is the same true of it? Do states have a duty to provide assistance internationally?³⁹ These are crucial questions in fleshing out the interconnections between climate change and human rights.⁴⁰

V. WHAT ARE THE HUMAN RIGHTS IMPLICATIONS OF ACTIONS TO COMBAT CLIMATE CHANGE?

Thus far we have been considering the impacts of climate change itself on the enjoyment of human rights. In addition, the measures undertaken by states and private actors in response to climate change may affect human rights, as Naomi Roht-Arriaza considers in her contribution to this symposium issue.⁴¹ For example, policies to slow deforestation or to increase reforestation could affect forest communities, the use of corn to produce ethanol could raise the price of agricultural products, and investments in expensive new emissions control technologies could divert resources from other uses and undermine a country's ability to develop.

Analyzing these response measures from the perspective of human rights is in many ways more familiar and straightforward than analyzing the impacts of climate change itself. When a government acts to combat climate change, it must do so in ways that respect human rights. In this regard, measures to combat climate change are no different from measures to combat terrorism or

³⁹ Article 2 of the International Covenant on Economic, Social and Cultural Rights requires states "to take steps, individually and through international assistance and cooperation . . . , with a view to achieving progressively the full realization of the rights recognized in the present Covenant." International Covenant on Economic, Social and Cultural Rights art. 2(1), Dec. 16, 1966, 999 U.N.T.S. 53. But, as Stephen Humphreys notes, "the extent to which this exhortation comprises an obligation remains deeply contested." Stephen Humphreys, *Introduction: Human Rights and Climate Change*, in HUMAN RIGHTS AND CLIMATE CHANGE, *supra* note 8, at 10.

⁴⁰ For an excellent discussion of these issues, see Knox, *supra* note 8, at 200–12.

⁴¹ Roht-Arriaza, *supra* note 11, at 593; see also Knox, *supra* note 8, at 198–200 (discussing the constraints placed on states' responses to climate change).

crime. For example, forest policies should respect indigenous rights, biofuel policies should respect the right to food, and so forth. Even more controversial, some have proposed that climate change policy distinguish between “luxury” emissions and “subsistence” or “survival” emissions, which should not be cut because they are necessary for the enjoyment of basic human rights to food, water, and shelter.⁴²

Human rights law recognizes not only substantive rights such as the rights to life and to food, but also procedural rights such as the right to information and the right to participate in government decision-making processes. As Svitlana Kravchenko considers in her contribution to this symposium issue,⁴³ these procedural duties have obvious implications for the processes by which governments make decisions about their climate change response strategies both nationally and internationally.

VI. DOES A HUMAN RIGHTS APPROACH TO CLIMATE CHANGE MAKE SENSE?

In addition to the conceptual question: What does it mean to conceptualize climate change in human rights terms?—and the descriptive question: What does human rights law say about climate change?—there is the normative question: What *should* human rights law say about climate change, if anything?

As critics note, human rights approaches to climate change face significant practical barriers and come at a cost.⁴⁴ Attributing particular harms to climate change is difficult and tracing the causal connections between emitters and victims is even harder. As Eric Posner notes,

it would be impossible for a victim of global warming to show that one particular corporation or factory caused his injury. Any theory would need to allocate liability on the basis of market share or some other proxy for degree of responsibility, and although American courts sometimes do this, the difficulties of using such theories for global warming are considerable.⁴⁵

⁴² Henry Shue, *Subsistence Emissions and Luxury Emissions*, 15 LAW & POL’Y 39 (1993); see also PAUL BAER, TOM ATHANASIOU & SIVAN KARTHA, *THE RIGHT TO DEVELOPMENT IN A CLIMATE CONSTRAINED WORLD* (2007) (proposing a “greenhouse development rights” framework).

⁴³ Kravchenko, *supra* note 12, at 613.

⁴⁴ Posner, *supra* note 8.

⁴⁵ *Id.* at 1934.

In addition to these practical barriers, there are policy objections. Climate change mitigation involves tremendously complex tradeoffs between different values. Focusing on particular individuals or cases can obscure these tradeoffs, making sensible policymaking difficult. Moreover, a human rights approach fails to take account of the need for collective action to address climate change, as noted earlier.

Nevertheless, given the importance of the climate change issue and the slow pace of international negotiations, there is much to be said for the attitude, let a thousand flowers bloom. Ultimately, solving the climate change problem will depend on government regulation or technological developments or some combination of the two. But, in the meantime, human rights approaches can help mobilize public concern and prod the political process. They can play an important role, even if they cannot solve the climate change problem alone. Whatever our view of the role of human rights approaches to climate change, it behooves us to better understand the interrelationships between the two. This symposium issue makes an important contribution to this effort.