

Washington Law Review

Volume 85
Number 2 *Symposium: Three Degrees*
Conference on the Law of Climate Change and
Human Rights

5-1-2010

The Three Degrees Conference: One Year Later

Jennifer K. Barcelos

Gregory A. Hicks
University of Washington School of Law

Jennifer Marlow

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>



Part of the [Environmental Law Commons](#)

Recommended Citation

Jennifer K. Barcelos, Gregory A. Hicks & Jennifer Marlow, Symposium, *The Three Degrees Conference: One Year Later*, 85 Wash. L. Rev. 193 (2010).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol85/iss2/2>

This Symposium is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact lawref@uw.edu.

THE THREE DEGREES CONFERENCE: ONE YEAR LATER

Jennifer K. Barcelos,^{*} Gregory A. Hicks,[†] and Jennifer Marlow[‡]

Increasing drought, the spread of tropical disease, storm surges with rising duration and severity, and unprecedented human dislocation will reduce food security and access to fresh water, promote the spread of disease beyond normative ranges, and uproot millions of people who inhabit coastal regions. It is certain that the survival ability of many of the world's indigenous and most disadvantaged peoples is at stake. And yet, the law is inadequately prepared to deal with these human impacts of climate change. The application of both codified and customary international and domestic law will be critical in addressing the massive human and humanitarian crises ignored by technical market solutions to climate change, moderate political reforms, and stalled treaty efforts.

The legal community is in a unique position to spearhead innovative adaptations to climate change to account for the basic protection of fundamental human rights. Numerous scholars have suggested that human rights law may provide the most adequate and responsible remedy for climate-related impacts, and yet others debate its utility in the climate context.

To provide a forum for debate, the University of Washington School of Law hosted the Three Degrees Conference on the Law of Climate Change and Human Rights in May 2009. The conference gathered an international cross-section of key stakeholders including corporate CEOs, World Bank consultants, former heads of state, legal scholars, physicians, atmospheric scientists, ethicists, international relief organizations, disaster relief agents, native peoples, and political strategists to examine the strengths of legal institutions to provide

^{*} Co-organizer of the Three Degrees Conference on the Law of Climate Change and Human Rights; co-founder and inaugural fellow of Three Degrees, a multidisciplinary climate justice project at the University of Washington School of Law; co-editor of the forthcoming book, *Climate Change: A Reader*, from Carolina Academic Press.

[†] Moderator and Panelist, Three Degrees Conference on the Law of Climate Change and Human Rights; Professor of Law, University of Washington School of Law.

[‡] Co-organizer of the Three Degrees Conference on the Law of Climate Change and Human Rights; co-founder and inaugural fellow of Three Degrees.

redress for the human rights impacts of climate change. Keynote speakers included Mary Robinson, the first woman president of Ireland and former United Nations High Commissioner for Human Rights; Henry Shue, Senior Research Fellow at Oxford University's Centre for International Studies; and Kim Taylor Thompson, Chief Executive Officer of Duke Corporate Education and former moderator for PBS's *Fred Friendly Seminar* series.

This edition of the *Washington Law Review* features scholarship emanating from the 2009 Three Degrees Conference,¹ and is a testament to the University of Washington School of Law's continuing exploration of the connection between climate change and human rights through its larger Three Degrees project. Three Degrees is building on an agenda that began to take shape in late 2007 with the Malé Declaration on the Human Dimension of Global Climate Change,² an initiative of the Association of Small Island States. It was the Malé Declaration that led to a call for the Office of the High Commissioner for Human Rights (OHCHR) of the United Nations to undertake an analytical study of the relationship between human rights protections and climate change. The resulting report,³ promulgated in January 2009, affirmed the impact of climate change on a wide array of recognized human rights, articulated the foundations of arguments for legal duties to threatened and injured people, and advocated international cooperation among states to address human rights impacts of climate change. And yet, reasonable commentators argue that the linkage between the existing structure of international human rights obligations and the ability to use that structure to address climate injuries seems insecure as a formal legal matter, and the framing of climate injuries as human rights harms strikes others as impolitic. Thus, while the OHCHR Report has sharpened awareness that discussion of climate change cannot be complete without consideration of issues of justice to the vulnerable peoples of the world, the work of making that justice a necessary element of our global climate response remains incomplete.

1. Podcast recordings of conference panels are available at <http://threedegreesconference.org/about>.

2. Ass'n of Small Island States, Malé Declaration on the Human Dimension of Global Climate Change, Nov. 14, 2007 (alternatively referred to as the Male' Declaration), available at http://www.ciel.org/Publications/Male_Declaration_Nov07.pdf.

3. Office of the U.N. High Comm'r for Human Rights, *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).

The Three Degrees Conference engaged the question of the relative power of law, the international legal order, and extra-legal public policy mechanisms to address human rights injuries caused or exacerbated by climate change. Indeed, widely differing views as to whether the present or likely future structure of international treaty obligations might effectively spur action to address climate change's impacts on the world's vulnerable peoples prompted some of the conference's most vivid exchanges. Dialogue intensified when panelists considered whether advocacy efforts should focus on expanding the range of climate treaties, utilizing human rights treaties, or something altogether new.

Many followers of climate policy anticipated that some of these issues might be sorted out at COP 15—the fifteenth meeting of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC), which took place December 7–18, 2009, in Copenhagen, Denmark.⁴ While the major goal of the two-week session was to create a legally binding set of mitigation targets as a post-2012 follow-up to the 1997 Kyoto Protocol, the agenda also featured climate justice issues such as adaptation policy and technology transfer. Although many commentators consider the negotiations a catastrophe because the process failed to produce any kind of legally binding outcome, that result may be more an appraisal of the UNFCCC's governance process, which requires consensus among its 193 member countries, than a commentary on the overall state of international climate policy.

Notably, a small group of powerful countries including the United States, Brazil, India, South Africa, and China were able to successfully bypass the official COP 15 process and pull together the nonbinding Copenhagen Accord.⁵ This agreement creates a timetable for countries to follow in making formal emission reduction targets, but perhaps more importantly for climate justice purposes, it outlines a bold proposal for “[n]ew multilateral funding for adaptation [that] will be delivered through effective and efficient fund arrangements, with a governance structure providing for equal representation of developed and developing

4. For information on COP 15, see *Official Website of the U.N. Climate Change Conference in Copenhagen*, available at http://unfccc.int/meetings/cop_15/items/5257.php (last visited Apr. 13, 2010).

5. See U.N. Framework Convention on Climate Change Conference of the Parties, Copenhagen, Den., Dec. 7–19, 2009, *Copenhagen Accord*, Dec. 18, 2009, 4–7, U.N. Doc. FCCC/CP/2009/11/Add.1 (Mar. 30, 2010), available at <http://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf#page=4.pdf>.

countries.”⁶ It is unclear what impact the Copenhagen Accord will have on the climate justice agenda or the UNFCCC process, the next major meeting of which is expected to be held November 29–December 10, 2010, in Mexico. Until then, many climate policy advocates have their eyes on the U.S. Senate and the multitude of NGOs working to advocate for comprehensive climate policy at the national level.

Both COP 15 and the Three Degrees Conference revealed significant disparities in views regarding the law’s role and effectiveness. There is concern about the ability to develop laws speedily enough (particularly international climate policy), skepticism about the will and power to enforce laws intended to protect the injured, and doubts about the capacity of current laws to address climate-caused injuries. Such questions, and the work to engage them, will continue into the future.

To build on the work of the Three Degrees Conference, the University of Washington School of Law is formally launching Three Degrees, a brand new multidisciplinary project promoting scholarship, research, and advocacy around climate justice. One of the first climate justice projects based at an American law school, Three Degrees harnesses the power of law to promote fair and equitable climate adaptation strategies in the regions of the world most vulnerable to climate impacts. Its model for climate justice builds social, legal, academic, and political capacity to deliver equitable strategies for climate adaptation in the world’s most climate-vulnerable places.

To guide its work on climate justice, Three Degrees uses a five-part framework that examines the impacts of climate change on five basic human needs: health, food and water, security, equity, and justice. This replicable framework serves as a powerful tool for deepening the human rights response, integrating thinking across disciplines, and bridging traditionally separate issues. Three Degrees will translate its outcomes into actionable climate adaptation law and policy making, strengthened partnerships between the developed and developing worlds, and clearer pathways to creating high-level multidisciplinary programs at the graduate and professional school levels. For more information about the emerging work of Three Degrees, please visit the project’s website: www.threedegreeswarmer.org.

6. *Id.* at 7, art. 8.