

SYMPOSIUM ON EXPLORING EXTRATERRITORIALITY'S EMPIRE

EXTRATERRITORIALITY, CLIMATE CHANGE, AND NATIONAL SECURITY:  
IN DEFENSE OF EXTRATERRITORIAL LAWS

*Danielle Ireland-Piper\**

*Introduction*

Extraterritorial jurisdiction inherently tests the boundary between sovereign governance and international cooperation. It hovers between unilateralism and cosmopolitan conceptions of obligation. Evan Criddle has argued that extraterritorial laws violate the right to self-determination if those laws subject a people to “uninvited foreign rule.”<sup>1</sup> In turn, however, the right to self-determination permits extraterritorial lawmaking in service of shared legal norms. This is because “there is no conflict between the right to self-determination and the extraterritorial extension of national laws based on universally accepted norms, such as those enshrined in international human rights law.”<sup>2</sup> Criddle also accepts that active nationality jurisdiction is less likely to offend self-determination.<sup>3</sup> Assuming Criddle is correct, criminal laws with extraterritorial scope that address climate change are likely to fall into the category of “laws based on universally accepted norms.” This is particularly so given the existential risks posed to all life on Earth by a warming planet, and the now widely recognized human right to a clean, healthy, and sustainable environment. Climate change also creates national security risks, and the right of a nation state to defend its national security is not incompatible with self-determination. While there is no fixed definition of national security under international law, and domestic definitions vary according to context, the essence of national security is the right and obligation of a nation state to defend its existence, its citizens, and its values. Even narrow conceptions of national security now accommodate climate change due to the breadth and depth of its existential consequences.

For context, 2025 was one of the three hottest years on record,<sup>4</sup> and the past eleven years have been the eleven warmest years in the 176-year observational record.<sup>5</sup> In 2024, the global mean near-surface temperature was 1.55 degrees Celsius, 0.13 degrees above the 1850–1900 average.<sup>6</sup> In that same year, global mean sea level reached a record high in the satellite record.<sup>7</sup> These trends mean increases in the severity and regularity of extreme weather

\* Associate Professor, National Security College, Australian National University, Australia.

<sup>1</sup> Evan J. Criddle, *Extraterritoriality's Empire: How Self-Determination Limits Extraterritorial Lawmaking*, 118 AJIL 607, 610–11 (2024).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 636.

<sup>4</sup> See Alexa St. John, *Warning as Scientists Find This Year Was One of the Three Hottest on Record*, INDEPENDENT (Dec. 30, 2025) (citing the World Weather Attribution Report).

<sup>5</sup> World Meteorological Organisation Press Release, *WMO Confirms 2025 Was One of Warmest Years on Record* (Jan. 14, 2026).

<sup>6</sup> *Id.*

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

events. In turn, those increases create security risks around food, health, resources, housing, dislocation, and defense force capabilities. This can contribute to recruitment into armed groups (where people are forced away from traditional lands and agricultural life by extreme weather) and cause general instability. For example, a study on the climate conflict links in Nigeria found that 41 percent of respondents knew people who joined Boko Haram, a militant group, as a result of climate-related difficulties farming, fishing, or herding.<sup>8</sup> In a similar study in Colombia, 32 percent of Indigenous respondents reported conflicts over resources and land due to deforestation, mining, and oil drilling, and 13 percent of respondents who acknowledged climate change effects in their community knew people who joined armed groups due to difficulties associated with climate change.<sup>9</sup> In the Asia-Pacific region, leading Australian security analysts identify climate change as “a global *systemic* crisis with disruptions that will transform the geopolitical landscape.”<sup>10</sup>

Climate change is a major disruptor and threat amplifier, and therefore a “national security risk with interdisciplinary implications.” Such implications are relevant to the types of universal norms to which Criddle presumably refers, including rights to life, food, safety, shelter, housing, and emerging recognition of a right to a clean, healthy, and sustainable environment.<sup>11</sup> To that end, addressing climate change means reducing emissions, including emissions by private actors operating across borders. Extraterritorial jurisdiction is an underutilized tool in so doing.

The exercise of extraterritorial criminal jurisdiction is common in national security law, as states seek to disrupt and counter espionage, foreign interference, cyber threats, transnational organized crime, and other types of national security threats that cross borders. Arguably, this framework is well suited to address the national security risks posed by climate change because the causes and consequences of climate change (and the private actors who contribute risk) are not constrained by national borders. However, as Mark Gibney has observed, “while climate change is extraterritorial in the sense that GHG (greenhouse gas) emissions do not respect national borders, both domestic and international law are generally tethered to national territory.”<sup>12</sup> This does not necessarily need to be so.

### *Extraterritoriality, Climate, and the Environment Under International Law*

States have obligations not to cause transboundary environmental harm. For example, the Declaration of the United Nations Conference on the Human Environment sets out as follows:

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, *and the responsibility* to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.<sup>13</sup>

<sup>8</sup> Jessica Caus, *Climate-Driven Recruitment into Armed Groups in Nigeria*, MEAC FINDINGS REP. 1, at 2 (2021).

<sup>9</sup> Javier Cárdenas, Cristal Downing & Juanita Vélez, *Climate-Driven Recruitment and Other Conflict Dynamics in Colombia*, UN U. CTR. POL’Y RSCH., MEAC FINDINGS REP. 8, at 2 (2021).

<sup>10</sup> Tobias Ide, *Climate Change and Australia’s National Security*, 77 AUSTL. J. INT’L AFF. 26 (2023).

<sup>11</sup> Danielle Ireland-Piper, *Who Holds a Hose? Climate Change as a National Security Risk in Australian Federalism*, INTERPRETER (Nov. 14, 2024).

<sup>12</sup> Mark Gibney, *Extraterritoriality*, in *THE CAMBRIDGE HANDBOOK ON CLIMATE LITIGATION* 201 (Margaretha Wewerinke-Singh & Sarah Mead eds., 2025).

<sup>13</sup> *Declaration of the United Nations Conference on the Human Environment*, UN Doc. A/CONF/48/14 (1972) (emphasis added).

State responsibility for environmental damage can extend to damage caused extraterritorially.<sup>14</sup> As Mark Gibney has pointed out, this re-affirms the “Trail Smelter” principle, which requires states to ensure that activities within their territory and under their control do not cause damage to those who are outside their borders (noting, though, that the cause and effect of damaging emissions are harder to establish than a “simple” incident of cross-border pollution).

As noted above, climate change also has consequences for human rights, including the right to a clean and healthy environment, the right to life, and rights related to food and housing.<sup>15</sup> Human rights obligations owed by states are generally territorial. The jurisdictional clauses of the International Covenant on Civil and Political Rights (ICCPR), for example, provide that state parties shall respect, ensure, or secure to everyone within their “jurisdiction” the rights recognized by the Convention. However, in a 2004 advisory opinion, the International Court of Justice held that states parties to the ICCPR should be bound to comply with its provisions even when exercising jurisdiction outside national territory.<sup>16</sup> The Inter-American Court of Human Rights has considered the extraterritorial application of human rights law in the specific context of transboundary environmental harm:

The exercise of jurisdiction by a State of origin is based on the understanding that it is the State in whose territory or under whose jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing transboundary harm that impacts the enjoyment of human rights of persons outside its territory.<sup>17</sup>

In the context of human rights obligations owed by states, “jurisdiction is not necessarily territorial, but established by effective control over territory or persons even outside states’ territories.”<sup>18</sup> Notably, there has been significant litigation seeking to situate legal obligations at the nexus of climate change, human rights, and extraterritoriality. M. Medvedieva and S. Bilotskiy have provided an excellent account of many of these cases.<sup>19</sup> Of these decisions, *Sacchi et al. v. Argentina* is of particular note. This case was brought before the United Nations Committee on the Rights of the Child by sixteen children who were nationals of twelve different states. The complaint was against Argentina, Brazil, France, Germany, and Turkey.<sup>20</sup> The applicants claimed that the respondent states violated their rights under the United Nations Convention on the Rights of the Child by failing to prevent and mitigate the consequences of climate change.<sup>21</sup> The Committee concluded that “the collective responsibility for climate change does not absolve a state of its individual responsibility that may derive from the harmful effects of emissions originating in its territory on children, *whatever their location*.”<sup>22</sup> The Committee found

<sup>14</sup> See, e.g., Obligations of States in Respect of Climate Change, *Advisory Opinion*, paras 405–56 (ICJ July 23, 2025).

<sup>15</sup> See, e.g., Global Compact Network Australia, *Climate Change & Human Rights*; Pooja Yadav, *How Climate Change is Threatening Human Rights*, UN NEWS (Dec. 26, 2025).

<sup>16</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, *Advisory Opinion*, 2004 ICJ Rep. 136 (July 9).

<sup>17</sup> The Environment and Human Rights, *Advisory Opinion OC-23/17*, 102 (Inter-Am. Ct. Hum. Rts. 2017).

<sup>18</sup> Danielle Ireland-Piper & Steven Freeland, *Human Rights and Space: Reflections on the Implications of Human Activity in Outer Space on Human Rights Law*, 9 GRONINGEN J. INT’L L. 101, 109 (2021).

<sup>19</sup> M. Medvedieva & S. Bilotskiy, *Extraterritorial Jurisdiction in International Rights Based Climate Litigation*, 162 ACTUAL PROBS. INT’L REL. 63, 66 (2025).

<sup>20</sup> *Sacchi, et al. v. Argentina*, *Decision Adopted by the Committee on the Rights of the Child Under the Optional Protocol to the Convention on the Rights of the Child*, UN Doc. CRC/C/88/D/104/2019 (Oct. 8, 2021).

<sup>21</sup> Medvedieva & Bilotskiy, *supra* note 19, at 66.

<sup>22</sup> *Sacchi, et al. v. Argentina*, *supra* note 20, para. 9.10 (emphasis added).

the communication inadmissible for failure to exhaust domestic remedies.<sup>23</sup> Nonetheless, it remains a significant finding on the jurisdictional question and lends legitimacy to the notion of using extraterritorial jurisdiction in the context of climate change and the commons.

However, another case of interest is that of *Duarte Agostinho and Others v. Portugal and 32 Others*.<sup>24</sup> This case was brought before the European Court of Human Rights by six Portuguese nationals between the ages of ten and twenty-three years old against Portugal and thirty-two other states. The applicants complained that the respondents violated their rights by not taking ambitious climate measures and, as a result, the applicants experienced serious impacts on their lives, well-being, mental health, and the amenities of their homes, including due to heatwaves and wildfires. In relation to states other than Portugal, the complainants argued that the failure by those states to limit greenhouse gas emissions produced effects outside their boundaries on the applicants, and therefore brought the applicants within their jurisdiction. While acknowledging that “effective control over an area” and “state agent authority and control” are exceptions to the territorially bounded nature of human rights obligations, the Court nonetheless found that neither exception applied in this case. In short, the European Court declined the opportunity to develop novel exceptions for the transboundary effects of climate change.

In May 2024, the International Tribunal for the Law of the Sea (ITLOS) delivered its advisory opinion on the request submitted by the Commission of Small Island States on Climate Change and International Law.<sup>25</sup> The ITLOS concluded that the UN Convention on the Law of the Sea requires states “to take all necessary measures to ensure that GHG (Greenhouse Gas) emissions under their jurisdiction or control do not cause damage to other states and their environment, and that pollution arising from such emissions under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights.”<sup>26</sup> Climate offenses related to climate conduct that has extraterritorial effect are arguably within the ambit of “all necessary measures.”

The law on extraterritorial jurisdiction and climate change is underdeveloped, and there is scope to develop a novel jurisdictional matrix for the threats posed by climate change, permitting more effective regulation of cross-border private actors. Short of that, however, there is potential for domestic national security law to address extraterritorial conduct that excessively contributes to and/or impedes efforts to address climate change in a way that is inherently linked to self-determination. In particular, this could be achieved through reliance on the nationality principle of jurisdiction, as well as the protective principle, given the national security nexus. It is also possible that the crime of ecocide<sup>27</sup> will develop into the type of international crime that attracts the universal jurisdiction principle.

### *The Climate, Environment, and National Security Nexus*

Climate change is widely recognized as a national security risk. The 2023 Australian strategic defense review, for instance, observed that “climate change will increase the challenges for . . . Defence” and that climate events have “negatively affected force preparedness, readiness and combat effectiveness.”<sup>28</sup> On the other side of the planet, Tom Middendorp, a former Chief of Defense in the Netherlands, mused:

I realise just how much climate and security impact on each other and how water shortages cause local conflicts all over the place. They are a breeding ground for extremism. For the military, climate, weather

<sup>23</sup> Medvedieva & Bilotskiy, *supra* note 19, at 67.

<sup>24</sup> Duarte Agostinho and Others v. Portugal and 32 Others, App. No. 39371/20, [Decision](#) (Eur. Ct. Hum. Rts. 2024).

<sup>25</sup> [Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission \(SRFC\)](#) (ITLOS 2024).

<sup>26</sup> *Id.* at 148 (emphasis added).

<sup>27</sup> See, e.g., Juraj Panigaj & Eva Berníková, *Ecocide: A New Crime Under International Law?*, 13 JURIDICAL TRIB. 5 (2023).

<sup>28</sup> Australian Government, [National Defence: Defence Strategic Review](#) (2023).

and geographical conditions and the terrain are always a given that you have to take into account when preparing and executing missions and operations. Any operational analysis starts with an assessment of these aspects and, of course, of the enemy. But it is only when you zoom out and look at trends over the years that you see the strategic and existential significance of the changing climate.<sup>29</sup>

Rising sea levels caused by climate change also pose challenges to territorial sovereignty and security. This was considered in the International Court of Justice's 2025 advisory opinion on the *Obligation of States in Respect of Climate Change*. That opinion considered a number of legal issues; examining it through a national security lens, however, brings at least two into sharp relief. First, on the issue of a nation's territorial sovereignty, participants in the case raised concerns about sea level rise and its impact on maritime zones. In short, it was argued by some participants that sea level rise should not have the effect of diminishing the maritime entitlements of States and that the "complete submergence of their territory should not deprive them of their maritime entitlements." The Court's view was that

The provisions of UNCLOS do not require States parties, in the context of physical changes resulting from climate-change related sea level rise, to update their charts or lists of geographical co-ordinates that show the baselines and outer limit lines of their maritime zones once they have been duly established in conformity with the Convention.<sup>30</sup>

In turn, this line of reasoning led to a highly significant finding on the notion of statehood itself. Specifically, "In the view of the Court, once a State is established, the disappearance of one of its constituent elements would not necessarily entail the loss of its statehood."

As I have noted elsewhere, this means that "[s]tatehood—and its manifestation as sovereignty—can no longer be entirely understood purely by reference to physical geography. Given protection of statehood sits at the heart of national security, for low-lying nations (and their neighbors like Australia), this may mean a re-think of the conceptualization and practice of maritime sovereignty, as well as notions of self-determination more generally."<sup>31</sup> This raises questions as to exercises of extraterritorial jurisdiction by nation states whose land mass may be reduced or submerged by rising seas levels. In particular, the question will arise whether regulation in those areas from afar is actually territorial or extraterritorial, and whether, in Criddle's framing, such regulation is a manifestation of the right to self-determination.

Second, the ICJ opinion addressed whether or not a state can be legally responsible for the actions of private actors. As a matter of international law, the principles of state responsibility provide that the conduct of private actors can be attributed to a state where, for example, a corporate entity is a de facto organ of the state, or where a corporation acts on the instructions of a state or is under its control.<sup>32</sup> This is a high threshold and hard to prove, and is also complicated by the lack of common rules on corporate nationality. It is significant, then, that the court found that a state's due diligence obligations under customary international law include the appropriate regulation of private actors. This effectively bypasses the issue of attribution, because the wrongful conduct lies in the state's failure to regulate the private actor. Specifically, the court held that "attribution in this context involves attaching

<sup>29</sup> TOM MIDDENDORP WITH ANTONIE VAN CAMPEN, *THE CLIMATE GENERAL: STEPPING UP THE FIGHT* (Kate Walsarie Wolff trans., 2023).

<sup>30</sup> *Obligations of States in Respect of Climate Change*, *supra* note 14, para 362.

<sup>31</sup> Danielle Ireland-Piper, *Applying a National Security Lens to the International Court's Climate Change Opinion*, INTERPRETER (Oct. 2, 2025).

<sup>32</sup> See, e.g., Danielle Ireland-Piper, Makaela Fehlhaber & Alana Bonenfant, *State Responsibility for Corporate Actors in Outer Space*, OXFORD RSCH. ENCYCLOPEDIA PLANETARY SCI. (2023).

to a State its own actions or omissions that constitute a *failure to exercise regulatory due diligence*. In such circumstances, the question of attributing the conduct of private actors to a State does not arise.”<sup>33</sup>

Focused and disciplined exercises of extraterritorial jurisdiction over private conduct that negatively impacts the climate may be a way states can avoid such “failure to exercise regulatory due diligence.”

One way in which regulatory due diligence could be manifested is through the treatment of climate change as a national security threat, and therefore in the creation of criminal offenses for specified conduct adversely affecting the environment beyond the relevant permitted thresholds. Traditionally, national security is preoccupied with public entities and state actors. However, as Isabelle Bond has argued in the context of climate security policy, “the question arises as to how the extraordinary powers of . . . security agencies could be effectively, but proportionately, utilized” in relation to activities of private entities adversely affecting the climate in ways that pose a threat to national security.<sup>34</sup> She suggests there are “strategic opportunities” for intelligence agencies to “enhance substantially” government climate security responses. If humans are to meet the existential challenges posed by climate change, it may well be that the national security apparatus must reach further into the private sector and establish “climate crimes” and/or other types of legal obligations and restraints. Offenses with extraterritorial reach are one potential tool in so doing.

The process of securitizing issues of public policy brings both risks and opportunities. Securitization can trigger the application of secrecy laws and surveillance powers, as well as harsh penalties. This can be seen in the imposition of harsh penalties for climate protesters in the United Kingdom, for example.<sup>35</sup> It also risks using the national security apparatus against communities in ways that damage social cohesion and rights relating to freedom of expression and a free press. Many human rights protections and anti-corruption laws have national security exemptions, and these carveouts risk becoming normalized in the process of “securitization.”<sup>36</sup> This can have long-term impacts on human rights and public discourse. Further, national security agencies and national security laws generally operate—often by necessity—in significant secrecy. In Australia, for example, there are well over 800 secrecy offenses (offenses that criminalize or otherwise regulate disclosures of information in certain circumstances) in the national security law landscape.<sup>37</sup> There are risks in extending those powers into the regulation of climate activity. Nonetheless, national security is not incompatible with self-determination, and laws of a state that seek to protect it from the threats posed by climate change are laws with a legitimate goal. The key is in the execution of any such laws, ensuring they comply with principles of legality, proportionality, and even basic conceptions of the rule of law, as well as in conformity with principles of international human rights law.

### Conclusion

It is true that unilateral assertions of extraterritorial jurisdiction can undermine meaningful multilateralism and can be used to advance unilateral foreign policy objectives. While this is not an inherent evil in itself, it does mean that assertions of extraterritorial jurisdiction can be open to abuse. However, extraterritorial jurisdiction remains

<sup>33</sup> *Obligations of States in Respect of Climate Change*, *supra* note 14, para. 428.

<sup>34</sup> Isabelle Bond, *Emissions, the Strategic Omission: Climate Security and Australia's National Intelligence Community*, 38 INT'L J. INTELLIGENCE & COUNTER INTELLIGENCE 495 (2025).

<sup>35</sup> See, e.g., Haroon Siddique, *Just Stop Oil Protesters Convicted After Being Denied Right to State Climate Facts*, GUARDIAN (Nov. 5, 2025).

<sup>36</sup> See, e.g., Mitja Sardoc, *The Ethics of Securitisation: An Interview with Rita Floyd*, 14 CRITICAL STUDIES TERRORISM 139 (2021).

<sup>37</sup> Independent National Security Legislation Monitor, *Secrecy Offences—Review of Part 5.6 of the Criminal Code Act 1995*, at 7 (June 27, 2024).

a useful tool in seeking to regulate cross-border challenges such as those posed by climate change. As Hannah Buxbaum observes, “local legal and institutional frameworks remain relevant in the transition from traditional conflicts models to newer regulatory strategies.”<sup>38</sup> In the absence of coordinated global action on climate, domestic laws that apply extraterritorially remain useful in advancing principles of justice and cosmopolitanism.

In applying a national security lens to climate change, it is evident that a warming planet poses both existential and specific security risks to the safety of nations, and to the enjoyment of human rights by their citizens. It may be that states can develop jurisdictional frameworks to better regulate the private sector, including through the use of national security offenses. As noted above, the ICJ observed in its 2025 advisory opinion on climate that “failure to exercise regulatory due diligence,”<sup>39</sup> including over private actors, is in itself an international wrong, quite apart from any issue of attribution. Courts need meaningful tools to restrain unreasonable and unlawful assertions of extraterritoriality, but this should not stop the development of novel jurisdictional approaches to the unique and ubiquitous challenge of climate change and the very real challenges it presents to self-determination.

<sup>38</sup> Hannah L. Buxbaum, *Territory, Territoriality, and the Resolution of Jurisdictional Conflict*, 57 AM J. COMP. L. 631 (2009).

<sup>39</sup> *Obligations of States in Respect of Climate Change*, *supra* note 14, para. 428.