Miskolc Journal of International Law
MISKOLCI NEMZETKÖZI JOGI KÖZLEMÉNYEK

VOLUME 5. (2008) NO. 2. PP. 35-51.

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Indigenous Communities before the Inter-American Court of Human Rights – *New Century, New Era?*

In 2008, one of the most recent domains of development in international law in general, as well as in human rights law, is the recognition and protection of indigenous communities. Although the problem made think scholars of past centuries, such as Bartolomeo de Las Casas or Francisco de Vitoria,[2] we witness an effective development only in the last few decades and especially in the past few years, both at universal and regional level.[3] It is the general development in international human rights law that enables the protection of indigenous peoples, even against their states.

The protection of indigenous peoples is related to many issues of international law, beginning from human rights law, through environmental law until the questions of international investments, etc. This intimates that we are dealing with a rather complex issue. This article aims to present only a segment of it, namely the key points – and, in the meantime, we can proudly say: tendencies – of the Inter-American Court of Human Rights' (in the followings: IACtHR or Inter-American Court) 21st century jurisprudence in this regard.

Part I deals with indigenous communities as subjects to international law, while Part II treats the very human rights of indigenous peoples of the Americas the infringement of which the most often occurs. Finally, Part III deals with a special question concerning the examined jurisprudence: the reparations and equally refers to the question of interaction occurring in the treated judgments.

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[2] Anaya, S. James – Williams, Robert A. Jr.: The Protection of Indigenous Peoples' Rights over Lands and Natural Resources Under the Inter-American Human Rights System; *Harvard Human Rights Journal*, Volume 14, Spring 2001, pp. 33-86. p. 85.

[3] See Amiott, Jennifer A.: Environment, Equality, and Indigenous Peoples' Land Rights in the Inter-American Human Rights System: Mayagna (Sumo) Indigenous Community of Awas Tingni v. Nicaragua, *Environmental Law*, Vol. 32., 2002, pp. 873-903. p. 879.

Part I – Indigenous People in International Law

A. The Scope of the Wording 'Indigenous'

The first problematic to deal with is how to define the word 'indigenous': The heterogeneity of the very people this notion tries to imply indicates some problems. In English, we may find several notions: 'native', 'first nations', 'autochthonous' (coming from the French), or 'aboriginal', etc.;[4] the different words may refer to different backgrounds. There are places in the world where the colonial times have to be reminded of,[5] while in other regions no such reference would help the identification; indigenous peoples occupy various parts of the world.

Still, there are some objective elements for an appropriate definition of indigenous peoples. Of course, there are always states that try to deny the existence of indigenous communities on their territories (see e.g. the approach of China), but the present article deals exclusively with Inter-American problems, and there also with issues concerning countries having ratified the Inter-American Court's jurisdiction. As to this region, indigenous people would be i) 'the descendants of the original inhabitants of a particular territory, then conquered by a group arriving a second time',[6] i.e. the Europeans. Let us not forget that 'the indigenous people of today may be the conquerors of yesterday'.[7] ii) As to the way of living of indigenous peoples, their economy is generally subsistent, i.e. no production is aimed at the market or for profit; within their communities, they divide the labour along gender and age. As *Nesti* emphasizes, this is often the distinctive element between minorities and indigenous peoples.[8] iii) Usually, the decision-making process in the indigenous society is based rather on consent (although the authoritative element is undisputed) and not on centralised, modern state-like institutions. Some authors strongly recommend though to bear in mind the dynamics of the evolution of such societies. iv) An undoubtedly important element is the indigenous peoples' strong connection with nature, the land they live on, i.e. with their environment; this land is usually their collective property. v) The people concerned define themselves as belonging to the given group.

After having gathered in theory these elements,[9] the practice should be paid attention to. There are three 'official' definitions the present article is going to work with, when determining *who is* indigenous. The first document is the Proposed American Declaration on the Rights of

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[4] See Nesti, Lorenzo: Indigenous Peoples' Rights to Land and their Link To Environmental Protection: The Case of Mapuche-Pehuenche; in: Kuppe, René – Potz, Richard (eds.): *Law and Anthropology, International Yearbook for Legal Anthropology*, Volume 11, Martinus Nijhoff Publishers, The Hague, Boston, London, 2001, pp. 67-155. p. 71.

[5] Some scholars identify them as 'those who already inhabited the encroached-upon lands [during the colonial period] …' See Amiott, op.cit p. 875, citing Anaya.

[6] Nesti, op.cit. p. 72. ff.

[7] In original: 'les autochtone d'aujourd'hui peut être aussi le conquérant d'autrefois'. Rouland, Norbert – Pierré-Caps, Stéphane – Poumaréde, Jacques: *Droit des minorités et des peuples autochtones*. Presses Universitaires de France, Paris, 1996, p. 432.

[8] While for others, what the indigenous peoples are for the Americas, that's the minorities for Europe… a highly disputed approach – in my view, it may apply for some aspects (distinct language, culture, etc.), but certainly not for the entirety of the problematic. See Hannum, Hurst: The Protection of Indigenous Rights in the Inter-American System; in: Harris, David J. – Livingstone, Stephen (eds.): *The Inter-American System of Human Rights*. Calendron Press, Oxford, 1998, pp. 323-343. pp. 323 f.

[9] Different scholars may add some more, in their view relevant elements.

Indigenous Peoples (hereinafter: Proposed American Declaration or American Declaration) saying in its Article I that these peoples'

(1)...social, cultural and economic conditions distinguish them from other sections of the national community, and... [their] status is regulated wholly or partially by their own customs or traditions or by special laws or regulations. (2) Self identification as indigenous shall be regarded as a fundamental criterion for determining the peoples to which the provisions of this Declaration apply.

The Proposed American Declaration was prepared in the frame of the OAS (Organization of American States), by the Inter-American Commission on Human Rights (hereinafter: IACnHR or Inter-American Commission), approved on February 26, 1997. This Declaration not yet in force has nevertheless its roots in certain universal precedents, such as the recently (in September 2007 finally adopted) United Nations Declaration on the Rights of Indigenous Peoples (UN 1994)[10] or the ILO Convention No. 169 on Indigenous and Tribal People (1989). The latter gives a proper definition on indigenous peoples: they are, according to Article I,

a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

It is clearly visible that the 1989 ILO Convention[11] served as a direct inspiration to the definition of the Proposed American Declaration. The present article therefore considers peoples to be indigenous according to the ILO Convention. The author considers it to be even more legitimate knowing that the IACtHR does not hesitate to take into account prior solutions of even other organisations, when arriving at an – in the Inter-American system – unknown problem.[12] Another document, the Study on the Problem of Discrimination against Indigenous Populations of the UN Sub-Commission for the Prevention of Discrimination and Protection of Minorities in 1983 tried equally to give a rather accurate definition: here, the maybe most important element was

[10] On the Draft, see furthermore Burger, Julian: The United Nations Draft Declaration on the Rights of Indigenous Peoples, *St. Thomas Law Review*, Vol. 9, 1996, pp. 209-229.
[11] The previous ILO Convention of 1957 made several significant steps, but was criticized for its highly assimilationist approach.
[12] Therefore, the IACtHR – when deciding on the case Mayagna Awas Tingni v. Nicaragua – took explicitly into consideration the achievements of indigenous peoples' protection at universal level, in particular as to the jurisprudence of the Human Rights Committee. Furthermore, Advisory Opinion No. 1 of the IACtHR has to be quoted explicitly here; the given advisory opinion, dealing with the question what 'other treaties' (Article 64 American Convention) the Court may be requested to interpret, has already opened the gate for such an approach. To go further, already Article 29(b) of the American Convention declares that '*no provision of [the] Convention shall be interpreted as: restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party*'. It contributes to the *pro homine* principle. See Melo, Mario: Recent advances in the justiciability of indigenous rights in the Inter-American System of Human Rights, *Sur – International Journal on Human Rights*, No 4, 2006, Vol. 3, pp. 31-49. p. 33.

that it preserved the right for such communities to decide who belongs to them.[13]

B. Indigenous Peoples' Protection and the Inter-American System

Without entering into details of how indigenous peoples' protection at universal level looks like, the mere fact has to be mentioned that this special field of human rights protection is progressively developing in the last decades.[14] Apart from the two above mentioned documents, some elements of other universal documents serve as a reference in the Inter-American system, such as the UN Charter (Article 55), the International Covenant on Civil and Political Rights (Article 1(1)), the International Covenant on Economic, Social and Cultural Rights (Article 1(1)) or the Vienna Convention on the Law of Treaties (Preamble) (self-determination). These documents as well as the jurisprudence and practice of the Human Rights Committee and the UN Committee on the Elimination of Racial Discrimination show that since the 1960s, 1970s there has been a significant development as to the protection of human rights.
Nevertheless, the American States – presumably due to the different situation they had – created already in 1942, six years before the creation of the OAS, the Inter-American Indian Institute.[15]

When giving the OAS documentary framework of indigenous peoples' protection[16] in the Americas, three major documents have to be mentioned: the American Declaration of the Rights and Duties of Man (1948; hereinafter: American Declaration), the American Convention on Human Rights (hereinafter: American Convention) and the Inter-American Charter of Social Guarantees of 1948.[17] The first two failed to deal explicitly with the issue of indigenous communities, but many of their provisions can be interpreted and applied in a sense to protect the lands and resources of indigenous communities – and it is done so by the IACnHR and the IACtHR, while the latter, in its Article 39 *expressis verbis* treats indigenous peoples as special

[13] See furthermore José Martínez Cobo, Study on the Problem of Discrimination against Indigenous Populations, hereinafter: Martínez Cobo Report, United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, United Nations, New York, 1986, 1987. This definition caused problems as to the Asiatic countries, but only a few in the Americas.

[14] See furthermore Cerna, Christina M.: How the Inter-American system for the protection of human rights has contributed to the development of international law; in: Delas, Olivier – Côté, René – Crépeau, François – Luprecht, Peter (eds.): *Les juridictions internationales: complémentarité ou concurrence?* Bruylant, Brussels, 2005, pp. 127-151 and Cuneo, Isabel Madariaga: The Rights of Indigenous Peoples and the Inter-American Human Rights System, *Arizona Journal of International and Comparative Law*, Vol. 22, No. 1, 2005, pp. 53-63. p. 53.

[15] See furthermore Nesti, op.cit. p. 111.

[16] For further aspects, see: Price Cohen, Cynthia: Development of the Rights of the Indigenous Child Under International Law, *St. Thomas Law Review*, Vol. 9., 1996, pp. 231-250; Heise, Wolfram: Indigenous Rights in Chile: Elaboration and Application of the New Indigenous Law (Ley No. 19.253) of 1993; in: Kuppe – Potz: op.cit. pp. 32-66. For further, in the present article not mentioned states see Ludescher, Monika: Indigenous Peoples' Territories and Natural Resources: International Standards and Peruvian Legislation; in: Kuppe – Potz: op.cit. pp. 156-178; Kimerling, Judith: Uncommon Ground: Occidental's Land Access and Community Relations Standards and Practices in Quichua Communities in the Ecuadorian Amazon; in: Kuppe – Potz: op.cit. pp. 179-247.

[17] Concerning the recent development of the Inter-American Human Rights System, see Laly-Chevalier, Caroline: Chronique de la jurisprudence de la Cour Interaméricaine des Droits de l'Homme (2002-2004), in: *Revue trimestrielle des droits de l'homme*, 62/2005, pp. 459-498; Cançado-Trindade, Antonio Augusto: The Inter-American Court of Human Rights at a crossroads: Current challenges and its emerging case-law on the eve of the new century, in: Mahoney, Paul – Matscher, Franz – Petzold, Herbert – Wildhaber, Luzius: *Protection des droits de l'homme: la perspective européenne, mélanges à la mémoire de Rolv Ryssdal*, Köln, Berlin, Bonn, München, Carl Heymanns Verlag, 2000, pp. 167-191; Tigroudja, Hélène: Chronique de la jurisprudence de la Cour Interaméricaine des Droits de l'Homme (2005), in: *Revue trimestrielle des droits de l'homme*, 66/2006, pp. 277-329.

subjects of international law.[18]

The Inter-American Commission had to deal with the problems of indigenous peoples several times. In 1974, even a Special Rapporteur was assigned to the case of the Aché Guayaki people of Paraguay and a Special Report was made on the Miskito Indians in Nicaragua in 1983.[19] In the meantime, the concern about indigenous peoples reached the highest level in the OAS, so in November 2005, in the so-called Declaration of Mar del Plata, at the Fourth Summit of the Americas' Heads of State and Government, even a political commitment was emphasized (p. 31.):

We reaffirm our commitment to respect indigenous peoples' rights and we commit to successfully concluding negotiations on the American Declaration on the Rights of Indigenous Peoples. The full exercise of these rights is essential for the existence, welfare, and integral development of indigenous peoples and for their full participation in national activities. For this reason, we must create the necessary conditions to facilitate their access to decent work and living conditions that allow them to overcome social exclusion and inequality, and poverty.

The mentioned Proposed American Declaration is under negotiation for more than a decade now (and the IACnHR began to prepare it in 1989).[20] A special Working Group runs these negotiations; their last documented meeting took place in April, 2007.[21] Although the commitment is there, political results in this regard do not seem to come quickly… Therefore, jurisdictional organs like the Inter-American Commission and Court – in my opinion – are still going to have a determining role in the protection of indigenous peoples in the coming years.

In 2000, a Special Report on the Situation of the Human Rights of Indigenous Persons and Peoples in the Americas was published by the Commission,[22] where the followings were stated: 'More than 40 million persons who identify themselves as belonging to indigenous peoples live in the Americas, and it is estimated that there are no fewer than 400 indigenous ethnic groups and peoples. In general, and especially in Latin America, the indigenous are the poorest of the poor,

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[18] The article reads as follows :
In those countries in which the problem of the native population exists, the necessary measures shall be taken to provide the Indian protection and assistance, protecting his life, liberty, and property, and defending him from extermination, and safeguarding him from oppression and exploitation, protecting him from poverty, and providing adequate education.
The State shall exercise its tutelage to preserve, maintain, and develop the assets of the Indians or their tribes, and shall promote the exploitation of the natural, industrial, and extractive wealth or other sources of income from such assets or related to it, so as to ensure, when appropriate, the economic emancipation of the indigenous groups.
Institutions or services should be created to protect the Indians, and in particular to ensure respect for their lands, to legalize their possession by them, and to prevent the invasion of such lands by outsiders.
(Quoted in the Special Report on the Situation of the Human Rights of Indigenous Persons and Peoples in the Americas, Introduction, see below.) See furthermore Anaya – Williams, op.cit. p. 33.

[19] See Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, November 23, 1983, OEA/Ser.L./V.II.62, http://www.cidh.oas.org/countryrep/Miskitoeng/toc.htm. See furthermore MacKay, Fergus: *A Guide to Indigenous Peoples' Rights in the Inter-American Human Rights System.* IWGIA, Copenhagen, 2002. pp. 63 ff.

[20] Kreimer, Osvaldo: The Beginnings of the Inter-American Declaration on the Rights of Indigenous Peoples, *St. Thomas Law Review*, Vol. 9, 1996, pp. 271-293.

[21] See furthermore http://www.oas.org/key_issues/eng/KeyIssue_Detail.asp?kis_sec=13.

[22] The Special Report on the Situation of the Human Rights of Indigenous Persons and Peoples in the Americas was published by the Commission, hereinafter: Indigenous Peoples' Report; October 20, 2000, OEA/Ser.L/V/II.108, prepared by two successive rapporteurs, Patrick Lipton Robinson (1991-1995) and Carlos Ayala Corao (1996-1999), http://www.cidh.oas.org/Indigenas/TOC.htm.

and the most excluded of the excluded; in other words, they are among the poorest and most excluded persons in our societies.'[23] The Report draws the attention to the following statutory provisions: the Preamble of the American Declaration, saying that

All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another. Since culture is the highest social and historical expression of ... spiritual development, it is the duty of man to preserve, practice and foster culture by every means within his power.

It also presents explicitly, what rights are of particular relevance for the indigenous persons and peoples: the right to life (Article 4 AC[24]), to personal liberty (Article 7 AC), and to humane treatment (Article 5 AC), the right to freely profess their religious ideas and beliefs and to manifest and practice them both in public and in private (Article 12 AC), the right to the preservation of health and to well-being (Article XI AD), to the benefits of culture (Article XIII AD), to recognition of juridical personality and civil rights (Article 3 AC), to vote and to be elected to public office (Article 25 AC); to freedom of association, to promote, exercise and protect one's own rights regardless of their nature (Article 16 AC), to own, use and enjoy one's own property (Article 21 AC), to privacy (Article 11 AC), and to a fair trial and due process (Articles 8 and 25 AC). The following part is going to examine what violations of these rights took place in the chosen cases concerning Nicaragua, Suriname and Paraguay.

Part II – Jurisprudence of the Inter-American Court of Human Rights

I chose three cases to present the different aspects and major development stages of the IACtHR's jurisprudence on indigenous peoples. The first and most important case to deal with is the very first case in this regard, brought to the Inter-American Court by the Inter-American Commission,[25] the Mayagna Awas Tingni Community v. Nicaragua. Two other cases are going to be examined: the Saramaka People v. Suriname, as – being one of the latest judgments – it shows clearly how this issue is established in the jurisprudence of the Inter-American Court, as well as the Sawhoyamaxa Indigenous Community v. Paraguay, in order to treat a case concerning indigenous peoples living in the Southern part of the Americas.

The relevant decisions touch upon several interesting legal questions, among others on the question what do we consider as an indigenous community, a question partially treated already in Part I. Indigenous peoples have always been, since the conquests and colonization in a specific situation: in the Americas, they have often been attacked militarily, forced assimilation happened;

[23] Indigenous Peoples' Report, Introduction.
[24] Here: AC: American Convention, AD: American Declaration.
[25] In the Inter-American system, the victims of human rights violations do not have *ius standi* before the Inter-American Court. Their individual or collective petitions may be filed to the Inter-American Commission. The IACnHR, after having attempted to solve the case, may bring a case before the Court. See among others Gialdino, Rolando E.: Le nouveau règlement de la Cour interaméricaine des droits de l'homme, *Revue trimestrielle des droits de l'homme*, pp. 979-997.

since the 16th century, they have been denied rights to their lands,[26] mainly due to a so-called 'doctrine of discovery'.[27] Even nowadays, there are several forms of human rights violations to the detriment of indigenous communities of Latin America: from expropriation to massacres,[28] from inefficient judicial remedies to forced displacements.

The jurisprudence of the Inter-American Court that concerns directly the divergent communities begins with the Mayagna (Sumo) Awas Tingni Community v. Nicaragua of 2001. After a short break, from 2004 onwards, the Inter-American Court dealt every year with violations committed against an indigenous community. In 2004, it was the Plan de Sánchez Massacre v. Guatemala, in 2005, the Moiwana Village v. Suriname, the Yakye Axa Indigenous Community v. Paraguay, the Yatama v. Nicaragua and the 'Mapiripán Massacre' v. Colombia, in 2006, the Pueblo Bello Massacre v. Colombia, the Sawhoyamaxa Indigenous Community v. Paraguay and the Ituango Massacres v. Colombia, and in 2007, the Rochela Massacre v. Colombia as well as the Saramaka People c. Suriname. Concerning the special aspects of reparations, the Aloeboetoe v. Suriname case of 1993 has to be mentioned in this row.

A. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*[29]

The first case concerning Nicaragua touches upon the so-called Sumo population (also called Mayagna). The Mayagna are a people that live on the Atlantic coasts of Nicaragua (and also in Honduras), this area is commonly known as the 'Mosquito Coast'. Their language belongs to the Misumalpan language family, and they inhabited much of the Mosquito Coast in the 1500s.[30] Their self-determination was impeded since the 19th century when the Awas Tingni territory became part of Nicaragua.[31] As the Court presents, the Community has a population of approximately 630 individuals, in 142 families, and its principal village is on the Wawa River, in the municipality of Waspan, in the North Atlantic Autonomous Region (Judgment, para. 2a). They use their lands for agriculture, hunting and fishing. In 1995, the Nicaraguan government granted a timber company a concession to log approximately 62 000 hectares of tropical forests,[32] forest that belong to the Mayagna Awas Tingni Community and constitutes more than 60 percent of its territory. The community sought remedy, but when rejected, turned to the Inter-American Commission.

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[26] Macdonald, Theodore: Internationalizing Indigenous Community Land Rights: Nicaraguan Indians and the Inter-American Court of Human Rights, Program on Nonviolent Sanctions and Cultural Survival, cited by Amiott, op.cit. p. 878.
[27] The doctrine of discovery places indigenous peoples 'within the exclusive jurisdiction of the settler state regimes that invaded and subjugated them'. Williams, Robert A. Jr.: Encounters on the Frontiers of International Human Rights Law: Redefining the terms of Indigenous Peoples' Survival in the World, 1990 *Duke Law Journal*, pp. 660-704. p. 672.
[28] See e.g. the Plan de Sánchez massacre in Guatemala, in 2004, against the Mayas… IACtHR, Plan de Sánchez Massacre v. Guatemala, Judgment of April 29, 2004 (Merits).
[29] Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of February 1, 2000 (Preliminary Objections), Judgment of August 31, 2001 (Merits, Reparations and Costs).
[30] See http://en.wikipedia.org/wiki/Sumo_%28people%29.
[31] Amiott, op.cit. p. 886.
[32] Amiott, op.cit. p. 873.

The broader problematic concerns also the fact that most of the indigenous peoples of the Americas live in so-called developing countries or countries under economic pressure, but most of the world's biological resources are found in exactly these countries…[33] Therefore, admittedly, these cases are often connected to the issue: sustainable development and/or environmental protection.

Already in the 1983 Miskito Report, the alleged violation of the following rights was examined: right to life, right to liberty, personal security and to due process, right to residence and movement, right to property.[34] The Mayagna Awas Tingni case shows that the Nicaraguan State did not fully comply with the recommendations of the IACnHR, such as to let them participate in 'national decisions that concern their interests'. (Miskito Report, Part III, B. 3.b.)

As to the relevance of the Mayagna case,[35] that was the first case where the Inter-American Court held a three-day hearing on the merits.[36] The Court had to deliver a judgment on preliminary objections as well, as the Nicaraguan State tried to invoke the non-exhaustion of domestic remedies, in vain.

In the Mayagna affair, the Inter-American Commission asked the Court to decide on the violation of the following articles of the American Convention: Article 1 (Obligation to Respect Rights), Article 2 (Domestic Legal Effects), Article 21 (Right to Property) and Article 25 (Right to Judicial Protection). The events here seem to be less tragic than a massacre, still, they can endanger the lives of the concerned people.[37] Nicaragua failed to demarcate the communal lands of the Mayagna community, nor has adopted effective measures to ensure the property rights of the community to its ancestral lands and natural resources. Furthermore, the Nicaraguan State granted a concession (to SOLCARSA, a Korean logging company)[38] on community lands without their assent, and did not ensure an effective remedy in response to the community's protests regarding its property rights.

By indigenous peoples, problems often derive from the fact that the lands as well as the land's resources are occupied and utilized by the entire community, nobody owns the land individually.[39] If somebody is not member of the community, he cannot use them. (para. 83a)

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[33] See Amiott, op.cit. p. 875.
[34] See http://www.cidh.oas.org/countryrep/Miskitoeng/toc.htm.
[35] As to the pre-Mayagna situation, see Peña Guzmán, Mireya Maritza: The Emerging System of International Protection of Indigenous Peoples' Rights, *St. Thomas Law Review*, Vol. 9., 1996, pp. 251-270; Stavroupoulou, Maria: Indigenous peoples Displaced from Their Environment: Is There Adequate Protection? *Colorado Journal of International Environmental Law and Policy*, No 5, Winter 1994, pp. 105-134.
[36] See Anaya – Williams, op.cit. p. 37.
[37] Nevertheless, in the present case, the Court held that there is no such violation, para. 156. Nevertheless, see later the Sawhoyamaxa case.
[38] Concerning other transnational companies and indigenous peoples, see Rodgers Kalas, Peggy: The Implications of Jota v. Texaco and the Accountability of Transnational Corporations, *Pace International Law Review*, No 12, Spring 2000, pp. 47-83; Figueroa, Isabela: Indigenous peoples versus oil companies: Constitutional control within resistance, *Sur – International Journal on Human Rights*, No 4, 2006, Vol. 3, pp. 51-79.
[39] See furthermore Anaya, James: Indigenous Peoples' Participatory Rights in Relation to Decisions About Natural Resource Extraction: the More Fundamental Issue of What Rights Indigenous Peoples Have in Lands and Resources, *Arizona Journal of International and Comparative Law*, Vol. 22., No. 1., 2005, pp. 7-17.

Without entering into the very details – as Part I deals with this issue –,[40] the Court had to face the problem of indigenous peoples' definition in this case: its answer corresponds to the above mentioned elements – emphasizing the importance of the land, being essential for the cultural identity of these peoples (para. 83d). As *Rodolfo Stavenhagen Gruenbaum,* anthropologist and sociologist, later Special Rapporteur of the UN High Commissioner for Human Rights emphasized in his expert opinion: 'the land is an essential tie which provides and maintains the cultural identity of those peoples. One must understand that the land is not a mere instrument of agricultural production, but part of a geographic and social, symbolic and religious space, with which the history and current dynamics of those peoples are linked.' (para. 83d) The Court recognized that for indigenous communities, relations to the land are not merely a matter of possession and production, but a material and spiritual element (para. 149).

The judgment referred to the development occurring at universal level as to the protection of indigenous rights, and it is also clearly visible that, at least formally, the Nicaraguan State took into account – among the first countries of the region – this international development as well: it adopted the 1987 Constitution (Articles 5, 89 and 180) and the Autonomy Law No. 28, which established that indigenous peoples have the right to recognition of their ownership of the land, of their possession of the land, since then the indigenous peoples can be considered full owners of the land, and if they have no written titles, they can demonstrate their possession through different types of evidence (para. 83k), such as their own knowledge![41] Even the judges A. Cançado Trindade, M. Pacheco Gómez and A. Abreu Burelli's joint separate opinion emphasizes the importance of the raised problematic; and it was confirmed by the legal literature (para. 1). As the Nicaraguan State even tried to bring into challenge that the Mayagna *are* an indigenous community,[42] it is a significant step that the Court declared the opposite (para. 103a). Moreover, it took into account the indigenous peoples' customary law (para. 151) – a great step on the route of protecting indigenous rights!

Article 25 American Convention says:

(1) Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
(2) The States Parties undertake:
a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
b. to develop the possibilities of judicial remedy; and
c. to ensure that the competent authorities shall enforce such remedies when granted.

[40] The complexity of the case is visible: even the WWF (World Wildlife Fund) presented its arguments (para. 83e); and the authorities apparently did not consider themselves to be competent for the demarcation (para. 83f).
[41] See Anaya – Williams, op.cit. p. 47.
[42] See Amiott, op.cit. p. 899.

The Court emphasized several times[43] that for an effective recourse, it is not enough that it is formally admissible; it must be appropriate to establish whether there was a violation and to provide true remedy to it (para. 113). Concerning Article 25, the Inter-American Court examined two questions: whether there is an appropriate land titling procedure in Nicaragua and whether the '*amparo*' remedies were decided according to Article 25. As for the first question, the Court held that although the existence of norms recognizing and protecting indigenous communal property in Nicaragua is evident, there is no effective procedure for delimitation, demarcation, and titling of indigenous communal lands (paras. 122 and 127). And without the demarcation, the State considers the territory concerned as of its own – and grants concessions. As for the second question, the Court decided that it has been proven that the Awas Tingni Community has taken various steps before different Nicaraguan authorities, claiming the violation of the Nicaraguan Constitution, the Autonomy Law and the mahogany export laws in force, as well as the negative impacts of the logging activity on the nearby BOSAWAS reserve; but the authorities did not process the *amparo* remedy filed by members of the community within a reasonable time, which also constitutes a violation of Article 25 (in connection with articles 1(1) and 2 AC).[44]

Concerning the right to property,[45] Article 21 of the Convention declares that:

(1) Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
(2) No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
(3) Usury and any other form of exploitation of man by man shall by prohibited by law.

In this regard, the Court profited of the evolutive interpretation (para. 146). For this reason, the Court is convinced that the above article includes, among others, the rights of members of the indigenous communities within the framework of communal property; something that was recognized also by the Constitution of Nicaragua (para. 148); but the Nicaraguan State failed to regulate the specific procedure to materialize that recognition (para. 152). As the state's governing apparatus was not in conformity with the norms formally declared in the Constitution, the breach of human rights norms, in connection with Articles 1 and 2 of the American Convention, was declared.

Article 21 means that the indigenous peoples' customary or traditional land tenure has to be accepted, independently of the official state regimes, mainly as an 'acknowledgement of a *de facto* situation',[46] if not, it constitutes a clear discrimination.[47] It is for this that the Inter-American

[43] E.g. IACtHR, Ivcher-Bronstein v. Peru, Judgment of February 6, 2001 (Merits, Reparations and Costs); Cantoral Benavides v. Peru, Judgment of August 18, 2000 (Merits); Durand and Ugarte v. Peru, Judgment of August 16, 2000 (Merits).
[44] In 1997, the Nicaraguan Supreme Court agreed on the unconstitutionality of the concession, but only after the North Atlantic Coast Autonomous Regions filed another *amparo* petition; and the case had already been pending before the IACnHR. And the forty-five day deadline for *amparo* procedures had been already up for more than eleven months…
[45] Epstein, Richard A.: Property Rights Claims of Indigenous Populations: the View from the Common Law, *University of Toledo Law Review*, Vol. 31, 1999, pp. 1-15.
[46] See Martínez Cobo Report, p. 217.
[47] Anaya – Williams, op.cit. p. 43.

Court and every other organ[48] dealing with such a protection has to analyse the given situation case by case: as property rights of indigenous communities may vary from community to community, they may even migrate over time, making a standard assessment of the issue impossible.[49] The most important and common problem today – not only in Nicaragua or the Americas – is the states' failure to demarcate.[50]

Not only concerning the Mayagna, but also as to other indigenous communities, there exists an obligation of the states to consult with the given indigenous groups before a decision affecting their interests, such as e.g. logging on their lands. It may be connected to the above mentioned articles, but also to the fundamental principle of self-determination. The consultation may not simply be, as in the Mayagna case, a written paper, distributed kilometres away from the territory concerned, in a language most of the people do not or hardly understand… It must be active and effective, and not scenical; therefore, it is evident that the Inter-American Court declared the violation in the present case… One of the two final elements of the states' obligation in this regard is that when concessions are granted, the quite common and unfortunately often devastating environmental impacts have to be compensated. Fortunately, in the Mayagna case, irreparable harm to nature could be prevented; probably also due to the exceptive international attention in the case.[51] And finally, indigenous peoples have to be accorded a part of the benefits of the projects in case.

B. The Development in Indigenous Issues

The decision of the Mayagna case has exceptional relevance in the Americas where conflicts between state and indigenous interests are not rare. Although the Inter-American Commission already had several times the possibility to deal with the human rights of indigenous communities, this was the first time the IACnHR decided to bring a case alike before the Court – and the impact resembles that of a tsunami in a sense. To date, ten alike cases have been decided already, in many cases neither the Inter-American Court nor Commission did hesitate to make use of provisional measures. Aid packages are granted now after an examination of indigenous peoples' situation in the country; and, furthermore, the indigenous communities themselves and their helpers turn more courageously to the Inter-American system – I am quite convinced to have several similar judgments in the next seven years as well.

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[48] See furthermore Ress, George: Reflections on the Protection of Property under the European Convention on Human Rights; in: Breitenmoser, Stephan – Ehrenzeller, Bernhard – Sassòli, Marco – Stoffel, Walter – Wagner Pfeifer, Beatrice (eds.): *Human Rights, Democracy and the Rule of Law, Liber Amicorum Luzius Wildhaber*, Dike-Nomos, Zürich, St-Gallen, Baden-Baden, 2007, pp. 625-645.

[49] Still, even the above mentioned ILO Convention No. 169 recognizes the evidence of protection in such cases (Article 14(1)). Nicaragua is not party to this convention though.

[50] See Indigenous people and their relationship to land: Final working paper prepared by Mrs. Erica-Irene A. Daes, Special Rapporteur, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub.2/2001/21, June 11, 2001. p. 50.

[51] The World Bank, the Inter-American Development Bank as well as the European Union restricted their financial aid requirements, including the respect of indigenous rights therein.

Concerning Paraguay, which has otherwise the most homogenous population in Latin America, the case of the Sawhoyamaxa[52] ('from the place where coconuts have run out')[53] treats an indigenous group living to the West of the Paraguay River. The judgment had to decide on whether Paraguay violated Articles 4 (Right to Life), 5 (Right to Humane Treatment),[54] 21 (Right to Property), 8 (Right to A Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, with relation to Articles 1(1) and 2 thereof, to the detriment of the Sawhoyamaxa Indigenous Community of the Enxet-Lengua people and its members. The case concerned ancestral property rights, where the State allegedly barred the community and its members from title to and possession of their lands, and had implied keeping it in a state of nutritional, medical and health vulnerability, which constantly threatened their survival and integrity (para. 2). This case treated therefore highly delicate issues which – in their schocking way – could nevertheless contribute to an effective protection of indigenous rights. The Sawhoyamaxa, displaced from their homes and lands, were short of drinking water, did not even have the possibility to lead a proper birth and death record, due to administrative obstacles (para. 34a), education in their own language was missing (para. 34c). Also considering the death toll of the small community, the Inter-American Court finally declared the violation of Articles 3, 8, 25 and 21 AC, and – making a significative step forward – the violation of the right to life (Article 4 AC)!

The recent Saramaka v. Suriname case[55] of 2007 deals with similar problems as the Mayagna case: an indigenous community, by the Suriname River, searching for recognition as a community. The Saramaka are a group of Maroons whose ancestors were African slaves forcibly taken to Suriname during the European colonization in the 17th century (coming from the word *marronage* or American/Spanish *cimarrón*: 'fugitive, runaway', 'living on mountaintops') who escaped to the interior regions of the country and established small autonomous communities along the Suriname River during the 18th century. Their language, the Saramaccan is a Creole language spoken by about 30,000 people.[56]

They claimed the infringement of their rights to property, to a judicial remedy and also – and it is a new element – to a juridical personality. The Court followed the same logic as by the Mayagna, but made its position concerning its attention to other – universal or regional – human rights fora,[57] elaborated in the previous chapter, more clear when citing explicitly a decision of the Human Rights Committee.[58]

The lands of the Saramaka became interesting for the state – apart from logging activities – due to a goldmine… but they were also affected by some devastating impacts of the nearby Afobaka dam (paras. 11 f.), although the latter factor was finally not taken into consideration in the

[52] IACtHR, Sawhoyamaxa Indigenous Community v. Paraguay, Judgment of March 29, 2006 (Merits, Reparations and Costs)
[53] See Article 73 (5) of the judgment. Furthermore, for NGO activities concerning the Sawhoyamaxa see http://www.fian.de/fian/index.php?option=content&task=view&id=30&Itemid=62.
[54] Finally, the IACtHR did not rule on this question.
[55] IACtHR, Saramaka People v. Suriname, Judgment of November 28, 2007 (Preliminary Objections, Merits, Reparations, and Costs)
[56] See Saramaka case, para. 80.
[57] Just as in the Sawhoyamaxa case, stating that the Court took international precedent into account (para. 32).
[58] The quoted case concerns New Zealand, and the decision-making procedures in the communities.

judgment. Suriname tried to invoke various preliminary objections, such as the lack of legal standing of the petitioners, the duplication of international proceedings (referring to some pending cases before the Human Rights Committee and the Committee on the Elimination of Racial Discrimination) or the non-exhaustion of remedies, among many others (paras. 19 f.); in vain. The Inter-American Court recognized the Saramaka people as a distinct social, cultural and economic group with a special relationship with its ancestral territory (paras. 80 f.). Concerning the property rights, the Mayagna and the Sawhoyamaxa cases served as reference, the Court having declared there 'that indigenous communities might have a collective understanding of the concepts of property and possession, in the sense that ownership of the land 'is not centered [sic] on an individual, but rather on the group and its community'.[59] Although the Surinamese domestic legislation – unlike the Nicaraguan – did not recognise communal property of members of its tribal communities (para. 93), the Court took into consideration the documents at universal level ratified by the state. Furthermore, in the present case, even the State's concern regarding discrimination against non-indigenous or non-tribal members had to be examined.

As to the use and enjoyment of the natural resources that lie on and within the traditionally owned territory of the Saramaka community, the Court – referring to previous judgments, among others on the Sawhoyamaxa case – held that 'the cultural and economic survival of indigenous and tribal peoples, and their members, depend on their access and use of the natural resources in their territory "that are related to their culture and are found therein", and that Article 21 protects their right to such natural resources' (para. 120). The Court assessed the restrictions on the right to property, and did not hesitate to invoke that Suriname voted in the UN General Assembly in support of the United Nations Declaration on the Rights of Indigenous Peoples (para. 131). The above mentioned right to consultation and benefit-sharing also appeared in the judgment, the Inter-American Court even moved towards the notion 'consent' rather than simple 'consultation'. Concerning the benefits, the Court simply founded its argumentation on Article 21(2) AC (para. 138). It is clearly visible what a progress has been made in the past few years: the not too long ago theoretical rights of indigenous peoples start to gain gradually *res judicata* position, and therefore, international recognition. The Inter-American Court declared the violation of Article 3 American Convention as well, stating that the Saramaka people have been denied of their juridical personality. After a thorough examination of the domestic legal order, violation of the right to an effective remedy was equally declared.

Of course, there are other rights of indigenous communities, not mentioned above, international law has to deal with: such as the right to physical well-being and cultural integrity, or the right to development; but the present article aimed at presenting those rights (and their protection) that are explicitly examined in the elaborated three major judgments.

Part III – Reparations in Indigenous Cases

Reparations in human rights cases is generally an issue that the Inter-American human rights protection system can be proud of. Apart from revolutionary ideas like the so-called "project of

[59] IACtHR, Indigenous Community Sawhoyamaxa, para. 120 (quoting the Mayagna case, para. 149).

life" theory,[60] concerning the remedies themselves, there exists a variegation which the Inter-American Court uses more than the European Court: pecuniary reparation, non-pecuniary reparation, moral compensation, fact-finding, social reconciliation, "*obligaciones de hacer*", the obligation to do something (e.g. to solve the explosive social situation), etc.[61] To name a street after the victim, to effectuate a public apology can also constitute a remedy. Europe, representing the concept that the state has to find out itself how to provide remedy,[62] stays mainly by the declaration of the injustice happened as an adequate moral indemnification. The following chapter deals with the remedies provided by the Inter-American Court in the above treated judgments on the protection of indigenous rights.

First of all, an earlier case (preceding the Mayagna) of the Inter-American Court fits into the development of the judgments on reparations in indigenous cases, namely the Aloeboetoe case[63] of 1993. It was here for the first time that the Court took explicitly into account the needs of the members of an indigenous community and recognized the lawfulness of reparations based on indigenous customary family law, including polygamy as practiced by that community, in the context of a massacre of members of the indigenous community.[64]

In the first major indigenous case, the Mayagna Awas Tingni Community v. Nicaragua, the Commission asked for various forms of redress. The Court considered the community as a whole to be the addressee of the reparation provided, and decided on a collective compensation[65] – a relevant approach in the international law of human rights.

The requested *facere* forms were: to establish a juridical procedure which will lead to prompt official recognition and demarcation of the rights of the Awas Tingni Community to its communal natural resources and rights. The *non facere* forms was: the State had to abstain from granting or considering any concessions to utilize natural resources in the lands used and occupied by Awas Tingni, until the issue of land tenure affecting Awas Tingni has been resolved. And finally, a *dare* form of reparation was proposed by the Inter-American Commission: equitable compensation for the monetary and moral damage suffered by the community and for the costs it incurred in to defend its rights before the national courts and in the international procedures (before the Commission and the Inter-American Court).

Indeed, the Inter-American Court ordered Nicaragua to adopt legislative, administrative, and any other measures necessary to create an effective mechanism for delimitation, demarcation, and

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[60] IACtHR, "Street Children" (Villagrán-Morales et al.) v. Guatemala case, Judgment of September 11, 1997; Loayza-Tamayo v. Peru, Judgment of September 17, 1997 (Merits), Judgment of November 27, 1998 (Reparations).
[61] See Raisz, Anikó: Victims' Position in the European and Inter-American Human Rights Protection Systems, in: Róth, Erika (ed.): *Miskolci Egyetem, Doktorandusz Fórum, 2006. november 9.,* Állam- és Jogtudományi szekciókiadvány, pp. 185-188.
[62] See e.g. ECtHR, Zanghì v. Italy case, Judgment of February 10, 1993. Strasbourg rejected here the request for *in integrum restitution*.
[63] IACtHR, Aloeboetoe et al. v. Suriname, Judgment of September 10, 1993 (Reparations and Costs). Here, on December 31, 1987, in Atjoni and in Tjongalangapassi, unarmed Bushnegroes (Maroons) had been attacked, abused and beaten by a group of soldiers, and a group of the Maroons had been subsequently taken away and murdered.
[64] Indigenous Peoples' Report, Introduction.
[65] See Carrillo, Arturo J.: Justice in Context: The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past; in: De Greiff, Pablo (ed.): *The Handbook of Reparations*. Oxford, Oxford University Press, 2006, pp. 504-538. p. 524.

titling of the property of indigenous communities (p. 173), that is a *facere* obligation.[66] The Court ordered the requested *non facere* obligation: to abstain from any acts that might lead the agents of the State, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area where the members of the Mayagna community live. In the lack of proven material damages, only the immaterial damages had to be paid.[67]

The Inter-American Court showed also in its indigenous jurisprudence why is it considered to be so revolutionary as to reparations: it orders the Nicaraguan State to invest, as reparation for the immaterial damages, in the course of 12 months, the total sum of US$ 50,000 in works or services of collective interest for the benefit of the Awas Tingni Community (p. 167.). It was a *praestare* obligation, unlike the *dare* payment of US$ 30,000 for expenses and costs (p. 169.). As to the immaterial damages, the European Court of Human Rights' (hereinafter: European Court or ECtHR) jurisprudence[68] was quoted by the Inter-American Court, especially concerning the early 1990s: e.g. the judgment of 2 November 1993 in the case of Kenmmache v. France.[69] As often in Europe, here as well (and in the Sawhoyamaxa and Saramaka judgments), the Inter-American Court found that the judgment itself constituted a form of reparation.[70]

In the Sawhoyamaxa judgment, the Court ordered Paraguay to adopt all legislative, administrative and other measures necessary to formally and physically convey to the members of the community their traditional lands, and gave a three year-period for that; moreover, it had to abolish the administrative burdens through installation of a communication system. As for pecuniary damages, the IACtHR generally considers loss of earnings and consequential damages.[71] Here, the unexampled sum of US$ 1,000,000 had to be allocated for a community development fund (para. 224), and, furthermore, compensation provided for non-pecuniary damage, costs and expenses of the community. As long as the Sawhoyamaxa remained landless, the State had to deliver them the basic supplies and services necessary for their survival. The Sawhoyamaxa judgment is another example of the Inter-American Court's jurisprudence that examines thoroughly the given circumstances and takes into account the very needs of the victims.

In the Saramaka judgment, the Court elaborated an interesting assessment concerning the measures of redress (para. 190 f.), considering pecuniary compensation, satisfaction and guarantees of non-repetition (such as the amendment of the insufficient domestic statutory provisions). This judgment is also an outstanding example of the revolutionary reparations-jurisprudence of the Inter-American Court: it ordered the Surinamese State (the former Dutch Guyana) to translate into Dutch and publish the relevant chapters of the judgment in the State's

[66] The same obligation appears in the Saramaka judgment, para. 214.
[67] As to this issue, see the problems of the above jurisprudence in Tomuschat, Christian: Human Rights. *Between Idealism and Realism*, Oxford University Press, New York, 2003. p. 301.
[68] Wildhaber, Luzius: Reparations for Internationally Wrongful Acts of States, Article 41 of the European Convention on Human Rights: Just Satisfaction under the European Convention on Human Rights; *Baltic Yearbook of International Law*, 2003/3. pp. 1-18.
[69] Mayagna judgment, para. 167, fn. 65.
[70] See Shelton, Dinah: *Remedies in International Human Rights Law*, Oxford, Oxford University Press, 2005, p. 277.
[71] Carrillo, op.cit. p. 514.

Official Gazette and in another national daily newspaper, to finance two radio broadcasts, in the Saramaka language, of the content of some given paragraphs, in a radio station accessible to the Saramaka people; even the time and date of said broadcasts had to be informed to the victims or their representatives with sufficient anticipation (para. 196). The Court ordered furthermore several amendments concerning the domestic legislation (para. 214) as well as the payment of compensation for material and non-material damages in a community development fund created and established for the benefit of the members of the Saramaka people in their traditional territory (altogether nearly US$ 400.000).

The by the Inter-American Court elaborated reparations system[72] also contains – as to indigenous communities – e.g. to open a school, or (in the Moiwana Village case[73]) to investigate and punish the guilty, to find the victims' bodies and give them to the families, to deliver a public ceremony with public apology, to build a commemoration place, etc. Not only due to the variation of the measures, but also due to the extraordinary attention *vis-à-vis* the victims, the system of reparations is a point where the Inter-American Court contributed to the international development of human rights law.[74] Here, in my view, the other direction of interaction – mentioned above – between the San José and Strasbourg Courts would be eligible.[75] Anyhow, through judgments like these – and a favourable international political background, which, after the adoption of the UN Declaration, seems to be reality right now – the new century may bring major development in the situation of indigenous peoples, at least in the Americas.

Conclusion

The geographical, sociological and historical particularities of the Americas determine the political and human rights problems occurring in that region; but also the solutions. A not at all

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72 For a detailed description see Shelton, Dinah: Reparations in the Inter-American System, in: Harris, David J. – Livingstone, Stephen: *The Inter-American System of Human Rights*, Oxford, Calendron Press, 1998, pp. 151-172.

73 IACtHR, Moiwana Community v. Suriname, Judgment of June 15, 2005 (Preliminary Objections, Merits, Reparations and Costs).

74 See Rodríguez Rescia, Víctor M.: Reparations in the Inter-American System for the Protection of Human Rights, *ILSA journal of international & comparative law*. Vol. 5, 1999/3, pp. 583-601. For further aspects see Schönsteiner, Judith: Dissuasive measures and the "society as a whole": A working theory of reparations in the Inter-American Court of Human Rights, *American University International Law Review*, Vol. 23, 2007/2008/1, pp. 127-164.

75 See furthermore Cançado Trindade, A.A.: General Course on Public International Law, in: *Recueil des cours, Académie de droit international, La Haye, 2005, Tome 316*. Martinus Nijhoff, Leiden-Boston, 2006. pp. 37-60.; Kovács, Péter: Développement et limites de la jurisprudence en droit international, in: Société Française pour le Droit International: *La juridictionnalisation du droit international*, Paris, Editions A. Pedone, 2003, pp. 269-341; Kovács, Péter: Szemtől szembe… Avagy hogyan kölcsönöznek egymástól a nemzetközi bíróságok, különös tekintettel az emberi jogi vonatkozású ügyekre. *Acta Humana*. 2002, N° 49, pp. 4-11; Ridjuero, José Antonio Pastor: Droit international et droit international des droits de l'homme – Unité ou fragmentation? in: Breitenmoser, et al. ibid. pp. 537-549; Buergenthal, Thomas: The European and Inter-American Human Rights Courts: Beneficial interaction, in: Mahoney et al.: ibid., pp. 123-133; Fix-Zamudio, Héctor: The European and the Inter-American Courts of Human Rights: A brief comparison. in: Mahoney et al.: ibid., pp. 507-533; Cançado Trindade, A. A.: Approximations and convergences in the case-law of the European and Inter-American Courts of Human Rights, in: Cohen-Jonathan, Gérard – Flauss, Jean-François (eds.): *Le rayonnement international de la jurisprudence de la Cour européenne des droits de l'homme*, Nemesis-Bruylant, Brussels, 2005, pp. 101-138; Raisz, Anikó: Hasonlóságok és különbségek a strasbourgi és a san joséi emberi jogi ítélkezésben; avagy mit tanulhatunk a latin-amerikaiaktól? *Publicationes Universitatis Miskolcinensis,* Sectio Juridica et Politica, Miskolc*,* 2007, pp. 431-445; Raisz, Anikó: Wechselwirkung der internationalen Menschenrechtsforen*, Collega*, 2007/2-3. pp. 306-309.

secondary human rights protection system exists here, and the Inter-American Court of Human Rights is for a long time a key figure of it. This Court does far more than attempting to ameliorate the human rights situation in the region; it has become – from a global point of view – a significant factor of international human rights protection. It developed theories that influenced e.g. the European continent, or particular solutions for the particular situations of the Americas. The recent jurisprudence of the Court concerning indigenous communities constitutes decisions that contribute in a significant way to this segment of the international protection of human rights and may indicate real changes in the 21st century.

Regarding the tremendous development in indigenous issues, there are already experts talking about a kind of customary law, existing as to the protection of indigenous rights, emphasizing that the actual state conduct is not a necessarily determinative element of customary law.[76]

At any rate, indigenous rights are naturally bound to the environment,[77] it often means that by protecting them, we protect a sustainable use of the natural resources, and so the environment. Environment experts have recently realised this point of connection, which could open new dimensions for the protection of indigenous peoples' human rights. As they are so close to nature, the destruction of their environment (e.g. by logging activities or oil companies) may harm their right to life, health, personal security, etc. As many of these groups hoping for protection from the international community live in the highly endangered tropical forests, the 'lungs' of the Earth, saving them from the devastation of their lands extends the life of mankind on Earth… Isn't it a goal worth fighting for?

[76] See Anaya – Williams, op.cit. pp. 53. ff.
[77] As to this issue, see Watters, Lawrence: Indigenous Peoples and the Environment: Convergence from a Nordic Perspective, *UCLA Journal of Environmental Law and Policy*, No 20, 2001/2002, pp. 237-323.