

ADVISORY OPINION 23/2017 OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS AND INNOVATIONS TO ENVIRONMENTAL PROTECTION IN INTERNATIONAL LAW

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ABSTRACT

This article aims to analyze the innovations and contributions brought by the Advisory Opinion 23/2017 of the Inter-American Court of Human Rights on the protection of the human right related to the environment. The chosen research methodology was the deductive method of documentary, bibliographic and jurisprudential research. Initially, it was necessary to contextualize the environmental right at the international level; followed by a brief review of the work of the Commission and the Inter-American Court in cases where indirect protection of the environment right was adopted, interrelated to another expressly recognized human right; and, finally, the analysis of the effective contributions brought by said Advisory Opinion. In this sense, there is the emergence of an innovative and paradigmatic view of the environment as an autonomous right, as well as an expansion of the jurisdiction concept in the case of environmental damage.

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OPINIÃO CONSULTIVA 23/2017 DA CORTE INTERAMERICANA DE DIREITOS HUMANOS E AS INOVAÇÕES À TUTELA DO MEIO AMBIENTE NO DIREITO INTERNACIONAL

RESUMO

O presente artigo visa analisar as inovações e contribuições trazidas pela Opinião Consultiva 23/17 da Corte Interamericana de Direitos Humanos acerca da proteção ao direito humano ao meio ambiente. Como metodologia de pesquisa, optou-se pelo método dedutivo, de pesquisa documental, bibliográfica e jurisprudencial. Inicialmente, fez-se necessária a contextualização do direito ao meio ambiente no âmbito internacional; depois, fizemos uma breve incursão pela jurisprudência da Corte Europeia dos Direitos Humanos; em seguida, um breve retrospecto da atuação da Comissão e da Corte Interamericana nos casos em que adotou a proteção indireta do direito ao meio ambiente, inter-relacionado a outro direito humano expressamente reconhecido; e, por fim, da análise das efetivas contribuições trazidas pela referida Opinião Consultiva. Nesse sentido, observa-se o surgimento de visão inovadora e paradigmática do meio ambiente como direito autônomo, bem como ampliação do conceito de jurisdição no caso de danos ao meio ambiente.

Palavras-chave: *Corte Europeia dos Direitos Humanos; Corte Interamericana de Direitos Humanos; Opinião Consultiva; proteção ambiental.*

INTRODUCTION

Postmodern society has become increasingly aware that environmental changes result from human action and are directly or indirectly related to the materialization of human rights. The need for a balance between economic development and environmental protection is paramount in international relations, especially if one considers that actions or omissions that generate environmental damage are not restricted to the State in which they occurred, but have cross-border and even global reach.

Thus, effective environmental protection requires cooperation between States, in order to establish channels of communication and promote constant exchanges of information regarding potential damage in their territories and possible transnational impacts. In this context, the theme chosen is justified in view of the importance assumed by International Law in the protection of the human right related to a healthy environment, especially within the scope of the Inter-American Human Rights System, due to the emblematic Advisory Opinion no. 23/2017 of the Inter-American Court.

Initially, for didactic purposes, one will seek to contextualize the protection of the environment at the international level, increasingly consolidated since the 1972 Stockholm Conference, with the pulverization of normative instruments dedicated to the protection of the environment, primarily from a regional and/or sectoral perspective and, after the first 1992 Rio Conference, holistically, through adoption of conventions such as the Convention on Biological Diversity or the UN Framework Convention on Climate Change. At the same time, several instruments for the protection of human rights gradually introduced the notion of the right to the environment, which had its debut in the Stockholm Declaration (refer to principle 1).

In a second moment, reflex protection methodology practiced by the European Court of Human Rights will be briefly summarized, within the framework of the 1950 European Convention on Human Rights. This experience is profoundly original because of the citizens' direct access to the Court, but mainly because of the way in which the Court developed mediate protection of the environment based on the theory of the positive obligations of States in the absence of the enshrinement of the "right to environment" in the Convention.

The following is a brief review of the work of the Commission and the Inter-American Court of Human Rights in relation to issues related to the environment in the context of its indirect protection, given the possibility of

interrelation with another human right expressly recognized.

Finally, by studying the content of Advisory Opinion no. 23/2017, of the Inter-American Court of Human Rights, an analysis will be made of the innovative aspects and of the possibility of effective evolution in the environmental protection system.

The method used in this study will be deductive since it will start from broad concepts to arrive at the particular analysis of environmental protection in the scope of Advisory Opinion no. 23/2017 of the Inter-American Court of Human Rights. In order to achieve the desired objectives, essentially bibliographic, documentary and jurisprudential research will be used.

1 ENVIRONMENTAL PROTECTION IN INTERNATIONAL LAW

In developing countries, a large part of environmental problems are related to poverty and social exclusion, besides lack of housing, access to adequate health, education and hygiene, while in developed countries environmental problems arise precisely from industrialization and technological development (PIOVESAN, 2019). Thus, it seems inevitable to establish a direct connection between International Environmental Law and International Human Rights Law, given that the damage to environmental components affects human rights directly or indirectly, such as the rights to life and physical integrity or, more particularly, the rights of access to water or food or, more broadly, an alleged “right to a climate system capable of sustaining life” (BLUMM; WOOD, 2017, p. 38-40).

In any case, environmental damage has an impact on today’s society as well as compromising future generations’ livelihood, especially of the groups considered most vulnerable, at the same time that they foster the emergence of concepts such as sustainable development, defined as development “that meets the needs of the present without compromising the ability of future generations to meet their own needs” (WCED, 1987). In this context, International Environmental Law stands out in the face of meta-state and meta-generational risks, facing the emergence of mega infrastructure projects and hydrocarbon extraction of often dubious utility, with profound inequalities in income distribution and other harms caused by economic growth and waste production and also due to the discrepancy in development between countries (FERIA-TINTA; MILNES, 2019). Thus, it can be said that the expansion and strengthening of International Environmental Law results from the “generalization of environmental concerns

and the acceleration of ecological and economic interdependence between countries, in a scenario of complex and, why not say, uneven globalization” (FONSECA, 2007, p. 123).

It was between the late 1960s and the early 1970s that International Environmental Law began to take shape. In order to express the main concerns and find possible solutions, it is possible to mention, at a global level, the UN Conference on the Human Environment (Stockholm, 1972); the UN Conference on the Environment and Development (Rio de Janeiro, 1992), in which the right to a healthy environment was included in the list of fundamental human guarantees, and the World Conference on Human Rights (Stockholm, 1993), when it was established that all human rights are universal, indivisible, interdependent and interrelated.

In fact, the problem of the finitude of environmental resources and the need for rational management of these became part of the global political agenda after the Stockholm Conference. In the Stockholm Declaration, the document that resulted from this Conference, principles such as the following were established: Earth’s natural resources must be carefully managed for the benefit of present and future generations; nature, wild species and their habitats are a heritage whose conservation is a common responsibility; non-renewable resources are especially fragile, so States must avoid depletion; States must combat all forms of pollution, especially the marine one.

In general, in the following decades some advances were made in terms of International Environmental Law. It is worth mentioning the fight against the reduction of the ozone layer by the Vienna Convention and the Montreal Protocol, as well as the entry into force of the United Nations Convention on the Law of the Sea, in 1993, in which the concept of “common heritage of Humanity” embodied in the figure of the Area, managed by an International Authority (AMADO GOMES, 2018), was universally proclaimed.

With regard to the United Nations Conference on the Environment and Development (Rio de Janeiro, 1992), twenty-six principles were added to the respective Final Declaration, which highlighted the concern with the human person and sustainable development, including: need to integrate environmental protection with the development process; responsibility of States arising from their sovereignty over resources, that is, the right to exploit their own resources and the responsibility for ensuring that activities carried out under their jurisdiction do not cause damage to the environment of other States or areas outside their limits; right to development corresponding to the environmental needs of present and future generations; need to eradicate

poverty as an indispensable requirement for sustainable development, in order to reduce inequalities, as a task for States and individuals; differentiation of public policies in the economic and environmental spheres between developed and developing countries, noting that everyone has responsibilities for environmental degradation; need for States to enable reduction and elimination of unsustainable production and consumption systems and promote demographic policies to achieve sustainable development and a better quality of life for all; scientific and technological knowledge exchange intensification; accessibility for all people to the information that public authorities have about the environment, including materials and activities that pose a danger to their communities, as well as the opportunity to participate in decision-making processes; effective access to judicial and administrative procedures; States' responsibility for drafting effective environmental standards and developing national legislation on liability and compensation for victims of environmental damage.

The aforementioned conferences, which are cited in a purely illustrative way, enabled a kind of "globalization" of the right to the environment, consolidated in the greater understanding and interconnection of the mechanisms of protection of human rights with regard to environmental issues (MAZZUOLI; TEIXEIRA, 2014). From the Conference in Rio de Janeiro in 1992, new solutions for the construction of environmental norms emerged, especially through the adoption of framework treaties, as well as techniques such as the use of annexes and appendices, which increased and made the normative field to be complemented by future decisions more flexible (MAZZUOLI; TEIXEIRA, 2014, p. 206).

Global environmental concern has extended to human rights protection systems: the African Charter on Human and Peoples' Rights (1981) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988), started to have express provisions on guaranteeing a healthy environment. Specifically with regard to the Inter-American Human Rights System, although there is no express mention by the American Convention, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988 – Protocol of San Salvador (OEA, 1988), in its art. 11, expressly recognizes the human right to the environment. Nevertheless, both the Commission and the Inter-American Court have been applying indirect protection of the environment, through their interrelation with other human rights.

In the context of the European Convention on Human Rights, the lack of a “right to the environment” has not prevented the Court, since the 1990s, from developing jurisprudence in the sense of reflex protection. In fact, “a technique that allows the protection of the environment in regional protection systems that, a priori, does not have specific protection on this topic” has been adopted (MAZZUOLI; TEIXEIRA, 2014, p. 204), called greening of international human rights law, which consists of linking environmental issues with other provisions, such as, for example, the rights to life, property, information, and judicial guarantees.

2 THE REFLEX PROTECTION PROMOTED BY THE EUROPEAN COURT OF HUMAN RIGHTS

In a decision of June 2, 2009, the European Court of Human Rights stated that:

[...] although there is no provision in the Convention to guarantee the protection of the environment as such [...], today’s society sees this as a constant concern. The Court has already dealt with issues related to environmental protection for several reasons and has not failed to underline the relevance of the matter. It reiterates that the environment is a value whose protection is demanded by public opinion and that it must be ensured by the public authorities, in a constant and sustained manner (case of *Hacısalihoglu v. Turkey*, no. n. 343/04, § 33, 2 July 2009, our translation)⁴.

Despite the proliferation of decisions with reference to the environment, it is certain that, unlike other cases in which the Court recognized, expressly calling them new rights (v.g., freedom of negative association; the right to the execution of judgments), at the environmental level there is no recognition, but association (MARGUÉNAUD, 2003). The incorporation of environmental value into the European Convention on Human Rights is merely indirect or instrumental, as the “right” is not enshrined in the Convention.

In fact, what some more enthusiastic doctrine describes as the Strasbourg Court’s recognition of a right to the environment is, after all, an operation to convert classic “negative rights”⁵ (rights to life; respect for private

4 In the original: [...] si aucune disposition de la Convention n’est spécialement destinée à garantir une protection générale de l’environnement [...] la société d’aujourd’hui se soucie sans cesse davantage de préserver celui-ci. Elle réitère que l’environnement constitue une valeur dont la défense suscite dans l’opinion publique, et par conséquent auprès des pouvoirs publics, un intérêt constant et soutenu. Des impératifs économiques et même certains droits fondamentaux, comme le droit de propriété, ne devraient pas se voir accorder la primauté face à des considérations relatives à la protection de l’environnement, en particulier lorsque l’Etat a légiféré en la matière.

5 On the primary meaning and scope of n. 1 (of article 8) in the delimitation of the scope of protection

and family life, freedom of expression – articles 2, 8 and 10 of the Convention) into rights to claims (refer to VERNET I LLOBET; JARIA MANZANO, 2007. As Sudre (1995) explains, this application of the theory of the “positive obligations” contributes to overcoming the classic conception of the rights to freedom as simply negative rights, evolutionarily interpreting rights as the inviolability of the home or of life and indicating them as support for pretensions of public performance. This theory was first used by the European Court in the *case related to certain aspects of language teaching in Belgian schools* (proc. nos. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, 23 July 1968), and has continued to serve as the basis for several decisions, although not always consensually (refer to SUDRE, 1995, p. 380-384). The European Court has been promoting environmental protection obliquely through various personal rights⁶. Below, five paradigmatic judgments stand out.

2.1 Violation of the right to inviolability of the home

The case of López Ostra v. Spain (1994)⁷ remained for many years as the most paradigmatic point in terms of alleged environmental protection analyzed by the Court. The claimants (the López Ostra family) alleged the violation of the rights to physical integrity and respect for the inviolability of the home⁸, perpetrated in the form of polluting emissions and various annoyances from a water and waste treatment plant in the city of Lorca. After having submitted several complaints to the Municipal Council – only partially attended to – and having exhausted the possibilities of domestic appeals (which involved from the higher courts to the Constitutional Court), the claimants, facing the inertia of the administrative authorities and the indifference of the national courts, decided to make one last attempt before the Strasbourg Court.

Emissions of sulfuric gas, repetitive noise, intense odors, were factors that led the European Court to grant the claim, even if such polluting agents did not seriously harm the lives of the members of the López Ostra family. It should be noted the careful weighing of interests that the Court has carried out, reconciling the individual’s well-being and the community

of the rights expressed therein (RUSSO, 2000).

⁶ For further developments, see Amado Gomes (2009; 2019).

⁷ Appellate Decision of December 9, 1994, proc. 16798/90.

⁸ As well as the prohibition of inflicting degrading or inhuman treatments on any person, or of subjecting them to torture (art. 3). This claim was rejected by the Court.

interest in the existence and functioning of the waste treatment plant, which resulted in attributing an indemnity of 4,000.000.00 pesetas for damages to the health and quality of life of the López Ostra family. The ambivalent argument used by the Court is curious: it is whether a matter of demonstrating the deficit in the fulfillment of a duty of protection by public entities (not having ordered the definitive closure of the station, or imposing measures to minimize the polluting effects with a view to mitigate negative impacts for the population living in the station neighborhood), or of attesting the excess of “interference” that pollution causes in the applicant’s privacy sphere, the harmonization of interests and the conflict between individual health and collective health (according as the station contributes to reducing waste).

2.2 Violation of the right to life

Only in 2002 the European Court would choose a more obvious path – life and physical integrity (art. 2 of the Convention) – without, however, abandoning the path of the right to inviolability of the home. More than a decade later from the case of *Öneryıldız v. Turkey* (no. 48939/99, 18 June 2002), this decision remains a landmark in the expansion of the protection object of the norm of art. 2 of the Convention – in fact, this decision reveals a growing boldness of the Court regarding the imposition of positive obligations on the State⁹. The facts are dramatic: in 1993, due to an explosion of methane gas in a dump outside Istanbul, thirty-nine people died, nine of whom belonged to the applicant’s family. Having gone into a long legal battle to hold the local authorities responsible for the loss of family members and the tent where they lived in, the applicant has always been denied his claim to be compensated for his property (for the loss of the tent, which he considered his “property” – despite this recognition have been expressly refused in court) and on a nonproperty basis. After exhausted domestic appeals, he went to the Court, invoking violation of the rights to life, respect for private and family life, freedom of expression, property and a fair trial (articles 2; 8; 10; 1 of Protocol 1, and 6, respectively).

The European Court reduced the question of the protection duties to life protection, granted the claim related to nonproperty damages based on the violation of art. 2 of the Convention¹⁰. This is because, despite having

⁹ On this judgment, refer to Laurent (2003, p. 261).

¹⁰ Attention should be drawn to a case prior to this one, in which the request had not been considered, but which already opened up good argumentative perspectives from the right to life. This is the case of *L.C.B. v. the United Kingdom* (no. 23413/949, 9 June 1998), in which the State’s responsibility for

been widely proven that the authorities knew the risks inherent in the dump and that they had communicated them to the – illegal – “residents,” in order to cause them to leave with a view to the subsequent re-qualification of the area, the Court understood that the authorities have not exhausted possible measures to prevent risks to people’s lives. As highlighted by De Fontbressin (2006, p. 87), the Court “conferred a kind of transcendental effect to the right to a healthy environment based on a biased understanding of the right to life.”

2.3 Violation of freedom of expression

The Court also used art. 10 of the Convention, which contains the right to freedom of expression, associated with the defense of the environment/public health. In the case of *Vides Aizsardzibas Klubs v. Latvia* (no. 57829/00, 27 May 2004), a non-governmental environmental protection association published a report in a local newspaper warning of the risks of an intervention planned by municipal authorities in the Gulf of Riga, which was, allegedly, illegally facilitated by the Mayor. The Mayor sued the association for defamation and the national courts found him right, ordering it to pay damages.

The association appealed to the Court alleging violation of freedom of expression and the disclosure of socially relevant information, and the Strasbourg Court found it right, obtaining that, acting as a “watchdog” of public authorities with regard to protection of the environment, within the scope of the powers that national law recognizes, it is its function to disclose information about actions that it considers illegal (emphasizing that, with the national courts, the defamed has not proved the untruth of the facts disclosed) in the domain of the environment and health. This mission is essential in the framework of a democratic society (§ 42).

2.4 The restriction of rights to protecting the environment

In the last group of cases, protection of the environment constitutes a basis for conditioning or restriction of rights such as liberty (art. 5) and

omitting measures to protect the right to life was discussed in a case of alleged contamination of a child not yet conceived by the father, who had been exposed to nuclear radiation as a result of trials conducted by the Ministry of Defense. The Court accepted the theoretical hypothesis of making duties to adopt information measures, safeguard and minimize effects deriving from art. 2 of the Convention, but removed the obligation to compensate based on the fact that, in 1960, the information about the transmission of the effects of radiation exposure to a child did not exist and, subsequently, such exposure would not even be considered a risk factor (refer to JARVIS; SHERLOCK, 1999).

property (art. 1 of Protocol 1 to the Convention).

As for the first restriction, the case of *Mangouras v. Spain* (GC, no. 12050/04, 28 September 2010) can be mentioned. The Court was called upon for the assessment of the violation of the right to liberty, namely the right to be present before a judge as soon as possible and to be tried within a reasonable time. The applicant was the captain of the Prestige ship, which sank on the Spanish coast in November 2002, leaking 70,000 tons of oil and causing an environmental disaster in the area. The appellant understood that his right to freedom had been violated, since he stayed eighty-three days in custody until the insurance company related to the boat owner paid the bail of three million euros, which he considered manifestly excessive considering his personal situation.

The Court found that the Spanish judge did not violate the Convention, because, despite art. 5, n. 3, demanding that the bail only should be maintained as long as the reasons that justified the detention prevail and that, as a rule, the value of the bail is determined according to the detained person's assets, it is not inappropriate to admit that, in certain circumstances, the bail value is calculated according to the damage caused – which was of enormous magnitude (§§ 78 to 81).

As for the second restriction, among the various cases, the choice was the case of *O'Sullivan McCarthy Mussel Development Lda v. Ireland*, no. 44460/16, 7 June 2018. The O'Sullivan company sold mussels, fished as embryos and raised for two years for sale, developing its activity in the harbor of Castlemaine. Every year, its fishing and breeding authorization was renewed, until, in 2008, for reasons linked to low species regeneration rates, the authorities temporarily closed the harbor, forcing it to suspend its activity. This closure occurred in the context of compliance with the Habitats Directive, a European norm dedicated to the protection to habitats integrated in the Natura 2000 network, a normative scenario known to the company and which entailed potential risk for its business.

Despite O'Sullivan's claim that suspending its activities without compensation would result in an "indirect expropriation," with a consequent violation of its right to property, the Court found the measure to be legitimate and proportionate. In fact, the restriction of the right to property was neither intolerable nor arbitrary, since not only was the measure temporary (the company resumed its activities the following year), but it was fully justified for reasons of general interest, reflected in the safeguarding of ecological values.

The analysis of the registered decisions, albeit brief, allows concluding that the Court only accepts to promote environmental protection through individual protection, refusing to recognize the legitimacy of applicants who appear in court only in defense of diffuse interests, namely the environment, without being grounded on individual or institutional rights. As interesting as the theory of positive obligations applied to personality rights may be, such originality cannot obscure that the environment as such (in its *ecological purity*) remains outside the Convention's protection objectives and that only an amendment by Protocol could change this scenario¹¹. In the current framework, as the doctrine points out,

Since only the “victims” of a violation of the Convention have the legitimacy to fill an action, any dispute triggered by environmental groups would have to take the form of an individual action, focused on the rights of some subjects and not on the defense of the (environmental) general interest. It is clear that the ecological damage per se is unlikely to constitute a violation of the Convention. It only gains relevance through the violation of an individual right enshrined in its text (JARVIS; SHERLOCK, 1995, p. 15).

In the next topic, the topic will be discussed focusing on the Inter-American Human Rights System.

3 THE PROTECTION TO THE ENVIRONMENT IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

As mentioned, there is no express provision for protection of the environment in the American Declaration of the Rights and Duties of Man (1948), the American Convention on Human Rights (1969) and the European Convention on Human Rights (1950).

However, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, of 1988 – Protocol of San Salvador (OEA, 1988) –, in its art. 11 expressly recognizes the human right to a healthy environment, but mentions that such right shall have progressive and limited implementation up to the maximum of the available resources and according to the degree of development (art. 1). In addition, art. 19, paragraph 1, of the same Protocol, provides that States must submit periodic reports on the progressive measures adopted and, in paragraph 6, restricts the scope of application of the individual petitioning mechanism to workers' union rights, based on the possibility of

¹¹ Jean-François Renucci (2007) stresses the originality of the ECHR' approach to the environmental issue but considers that the protection to the “right to the environment” is limited.

self-organization and free association, as well as the right to education, not applying to the right to the environment.

As the case may be, the primary intention of the member states of the Organization of American States (OAS), when formulating the Protocol of San Salvador, was to make rights positive in the form of a program, given that their effectiveness is “closely linked to the degree of economic development of each State, thus denying the jurisdiction of the Inter-American Court to condemn a State for the lack of effectiveness of these rights” (LOPES; MARQUES, 2019, p. 59).

Nevertheless, the decisions rendered by the Inter-American Human Rights System in matters involving violations of the right to the environment have been based on the provisions that regulate other human rights affected by environmental degradation, that is, the right to life, health, property and procedural guarantees, without mentioning the environmental rules explicit in the Protocol of San Salvador (STIVAL, 2018).

Thus, the practice of the Commission and the Inter-American Court of Human Rights has demonstrated the possibility of protecting and supporting issues related to the environment through its indirect protection, when it coincides with a human right expressly recognized, “based on indivisibility, interdependence and the interrelation of human rights, in the molds advocated during the World Conference on Human Rights, held in Vienna in 1993 (ONU, 1993)” (LOPES; MARQUES, 2019, p. 62).

In this context, indirect environmental protection takes place in the jurisprudential sphere, when the Inter-American Human Rights System interprets concrete cases, and the consequent extension of the concept of human rights is expressly recognized, so as not to exceed its competence nor fail to protect so important right.

In this sense, Valério Mazzuoli (2019, p. 70) teaches that:

Both the global system (United Nations system) and the regional protection systems have a primordial characteristic, typical of legal postmodernity, which is the ability to extract values and harmonize ideas from different sources of production, aiming at bringing them together in order to safeguard the human person.

It is clear that “[...] all human rights constitute an integral, unique and indivisible compound, in which the different rights are necessarily interrelated and interdependent with each other” (PIOVESAN, 2009, p. 9), so that the Inter-American System complements itself within its own regulations.

In view of the receipt of several petitions reporting typical cases of violations of the human right to the environment, despite related to other

human rights expressly protected, the Inter-American System formed ample jurisprudence regarding the indirect protection of the environment, going through a true greening process.

In cases involving indigenous people, for example, even with regard to environmental protection, the Inter-American System based its decisions on other violated human rights, such as life, health, property, information, participation, subsistence and the relationship with the land, thus giving preference to civil rights (STIVAL, 2018).

In this context, the Inter-American Commission on Human Rights has built a concept of a healthy environment by means of a reflex path:

[...] from the violation of other human rights in cases of exploitation of natural resources in properties of indigenous and traditional communities, such as logging, carrying out polluting activities, irregular construction of works of great social and environmental impact, as power plants and roads, without guaranteeing the right to information and participation of communities, which end up affecting the right to life, health, physical integrity, the community's relationship with the land, including spiritual, customs and the very livelihood of community members (STIVAL, 2018, p. 20).

It should be noted that, in relation to the victims of environmental cases, eventual damages admit both individualized protection and the protection of a community, since the offended ones normally belong to an identifiable group, where those involved are linked by a common factual or legal circumstance or in a situation of socio-environmental fragility and, generally, “refer to public health issues, where the damage occurs due to the high levels of polluting activities derived from both the public and private sectors that affect the indigenous population directly or indirectly” (STIVAL, 2018, p. 43).

The Report on Human Rights and the Environment of the Secretary General of the Organization of American States, of April 4, 2002, highlights the first cases of environmental issues analyzed by the Inter-American Commission and Court, respectively: Resolution no. 12/85 of the Yanomami people versus Brazil, which dealt with the interrelationships between the construction of a highway in an Amazonian territory inhabited by the Yanomami ethnic group, the right to life, health, freedom, security and housing for that indigenous group; and the case of the Awás Tingni Mayagna Indigenous Community (Sumo) versus Nicaragua, about the irregular concession of logging in indigenous lands.

After the first cases, the Inter-American Commission on Human

Rights faced, in particular, eight other cases involving the environmental theme, of which only two (Report No. 84/03 on the Metropolitan Natural Park of Panama and La Oroya Community versus Peru) did not deal with issues related to indigenous peoples or traditional communities, but with the damage caused by the construction of a road in an environmental reserve and the atmospheric pollution caused by a metallurgical complex in a city with approximately thirty thousand inhabitants, respectively.

Of the remaining six cases involving environmental issues, five are related to violations of traditional peoples' rights in the Americas, and of these, four are related to the negative impacts resulting from the lack of demarcation of indigenous and quilombola lands in Paraguay and Suriname (cases of *Moiwana v. Suriname*, *Yakye Axa Indigenous Community v. Paraguay*; *Sawhoyamaya Indigenous Community v. Paraguay*, and *Saramaka People v. Suriname*). Only the case of *Kichwa Indigenous People of Sarayacu and its members v. Ecuador* had an interrelation between the environment and the state concession of indigenous lands for oil exploitation without consulting the indigenous people (MAZZUOLI; TEIXEIRA, 2014, p. 212-213).

Among the cases mentioned, in order to better understand the indirect application of human rights expressly provided for in cases of environmental protection, it is important to detail the emblematic case of *Yakye Axa Indigenous Community v. Paraguay*, in which the Inter-American Commission on Human Rights denounced Paraguay to the Inter-American Court on March 17, 2003, for the violation of the rights to life, fair trial, property, and judicial protection (articles 4, 8, 21 and 25 of the American Convention on Human Rights, respectively).

The complaint was based on the lack of recognition by the State of the occupation of the land by the Yakye Axa Indigenous Community, with the consequent failure to demarcate and determinate the ownership of the land (Paraguayan Chaco), which had a large part of its extension sold on the stock exchange of London. As a result, British businessmen began to occupy the place, changing the relationship of the indigenous people with the lands and with the natural resources contained therein, since the first installed missions of the Anglican Church in the region with the objective of evangelizing the indigenous communities and restraining their cultural practices.

According to the reports presented, in 1979, Anglican missions began a process of transition of the indigenous people to another location (*Estancia*

El Estribo), so that the formal owners could explore the lands freely. However, the new location had other environmental characteristics and natural resources, so that the indigenous people would lose contact with their cultural practices, in addition to resulting in several deaths caused by the lack of water and food. They decided to return to the traditionally occupied lands and were faced with repression by the businessmen, which is why they settled near a highway.

In the absence of success in complaining to the state administrative bodies, the indigenous people of the Yakye Axa Community turned to the bodies of the Inter-American Human Rights System. After due process, the Court decided to condemn Paraguay for violating the right to life, judicial guarantees, right to property and judicial protection, recognizing that indigenous cultural peculiarities have their essence related to lands and natural resources coming from it, given that their subsistence, way of life, religiosity and cultural identity would be linked to the environment with which they relate.

As for the indigenous case of *Sarayaku versus Ecuador*, for example, it refers to granting permission to a private company for oil exploitation within the indigenous territory, without prior consultation with the victims. The activities started in various points of the site, including the introduction of explosives with high destructive power. During the period of exploitation, the victims were prevented from seeking livelihood and their circulation and ways of expressing their culture were restricted.

In this case, they alleged violation of the rights to private property, life, judicial guarantees, circulation, expression of culture and personal integrity.

In the decision of the Inter-American Court, it was stated that the State of Ecuador violated norms of international and domestic law by failing to make it possible to consult victims on the impacts that the project would have on their territory, their lives, their cultural and social identity, and their right to property. The victims were indemnified materially and morally, and the State was condemned to adopt legislative and administrative measures to implement the community's right to participation and to modify rules that prevented the free exercise of that right.

Indeed, in cases related to conflicts in indigenous lands and traditional peoples, both the Commission and the Inter-American Court have consolidated their understanding that the concept of property expressly established, in a broad manner, in art. 21 of the American Convention, also

covers the elements that make up the communal property of traditional peoples, and not only the legal provision normally used in the Western world (MAZZUOLI; TEIXEIRA, 2014, p. 213).

In this sense, the Inter-American Court admits that the relationship of indigenous and traditional peoples with the land must be recognized as the basis of their cultures, their spiritual life, as well as their economic survival, so that neglecting the importance of this relationship would imply ignoring their own cultural legacy of these communities. Otherwise we see:

[...] [a]simismo, la Corte ha señalado que los conceptos de propiedad y posesión en las comunidades indígenas pueden tener una significación colectiva, en el sentido de que la pertenencia de ésta “no se centra en un individuo sino en el grupo y su comunidad”. Esta noción del dominio y de la posesión sobre las tierras no necesariamente corresponde a la concepción clásica de propiedad, pero merece igual protección del artículo 21 de la Convención. Desconocer las versiones específicas del derecho al uso y goce de los bienes, dadas por la cultura, usos, costumbres y creencias de cada pueblo, equivaldría a sostener que sólo existe una forma de usar y disponer de los bienes, lo que a su vez significaría hacer ilusoria la protección del artículo 21 de la Convención para millones de personas [...] (CORTEIDH, 2011).

Thus, from the interrelationship between the right to the environment of lands traditionally occupied by indigenous people and the right to property, in a broad sense, there is the indirect protection of that right.

Furthermore, with regard to the victims of environmental cases, possible damages admit both individualized protection and the protection of a community, given that normally the victims belong to an identifiable group, related to a common factual circumstance or situation of socioenvironmental fragility (STIVAL, 2018, p. 43).

In this way, the decisions of the Court and the Inter-American Commission on Human Rights established a certain standard in their decisions, through environmental protection through transversal path, always interrelated to other human rights expressly established.

In the specific case of the Inter-American Court, this protection has been exercised through its dual litigation and advisory function.

Through litigious competence, after verifying the admissibility assumptions (exhaustion of domestic remedies; absence of *lis pendens* or *res judicata*; no analysis in another international sphere, and the six-month period has not elapsed since the decision was acknowledged which denied recognition of the claim), the Court will decide whether there has been a violation of the right or freedom protected by the Convention, with

the consequent entry of the judgment. In cases of extreme urgency and seriousness, it may take precautionary measures in order to avoid injury, at the request of the Commission, when the case is not yet under analysis.

The advisory function corresponds to the preparation of opinions on the interpretation of other provisions of the Convention or human rights protection treaties in American States, in consultation with the States Parties or the Convention, as well as on the compatibility between the domestic laws of the requesting country and other international instruments. It is also the Court's responsibility to prepare reports to be submitted to the General Assembly of the Organization of American States on its activities and to indicate cases in which the States Parties have not complied with their judgments.

Also in the exercise of its advisory function, the Inter-American Court may enter into cooperation agreements with non-profit institutions, with the aim of obtaining collaboration and strengthening the legal principles of the Convention and the Court.

It should be noted that, although the binding force of advisory opinions cannot be assumed, it is certain that they "declare International Law and, with this, enable greater legal certainty for International Law subjects" (RAMOS, 2012, p. 241).

With regard to the advisory competence scope, Antônio Augusto Cançado Trindade (1999, p. 46) states that:

Due to article 64 (1) of the American Convention, OAS member states – whether they have ratified the Convention or not – can consult the Court regarding the interpretation of the American Convention itself or other treaties concerning the protection of human rights in American states . Likewise, the bodies listed in Chapter X of the OAS Charter can also consult the Court, within their respective spheres of competence. In addition, the Convention allows the Court (Article 64, n. 2) to issue, at the request of any OAS member state – Party or not to the Convention – opinions on the compatibility or not of any of its domestic laws with the American Convention or other relevant treaties of protection of human rights in American states. Accordingly, the Inter-American Court has a particularly broad advisory competence.

In this sense, in the next topic, some paradigm changes presented by Advisory Opinion 23/2017 of the Inter-American Court of Human Rights, regarding the protection of the environment, have to be analyzed.

4 THE INNOVATIONS TO INTERNATIONAL ENVIRONMENTAL GUARANTEE IMPLEMENTED THROUGH ADVISORY OPINION 23/2017 OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Colombia requested the Inter-American Court of Human Rights, on March 14, 2016, pronouncement on the extent of the States' obligations regarding the environment, interrelated with the protection and guarantee of the rights to life and the integrity of the human person, provided for in arts. 4 and 5 of the Inter-American Convention in relation to arts. 1.1 and 2, of the same document.

In its request, Colombia questioned the interpretation of the term jurisdiction in art. 1.1 of the American Convention, within the scope of environmental obligations, in particular in relation to conduct practiced outside the national territory of a given State. Therefore, the following conditions should be met, cumulatively: the person should be located or reside in an area delimited and protected by a conventional environmental protection regime, of which the State is a part; and that human rights had been violated or threatened as a result of the damage or risk of environmental damage in the protected area attributable to the State Party.

It also inquired about the compatibility of conducts practiced by a State Party that had produced serious damage to the marine environment with the obligations provided for in arts. 4.1 and 5.1 of the Convention or with another provision of the same document.

In the end, Colombia questioned the extent of the obligation to respect and guarantee the human rights and freedoms provided for in arts. 4.1 and 5.1 of the Convention, that is, to what extent the effective enjoyment of the rights to life and personal integrity are interrelated with environmental damage and whether the performance of environmental impact studies in an area protected by international law, as well as the cooperation of affected states, would apply. If so, what general parameters should be taken into account when carrying out such studies in the region and what would be their minimum content.

It is known that the Colombian consultation was motivated by the threat to the rights of island populations in the Greater Caribbean Region, due to the possibility of cross-border impact on the region and on the marine environment as a result of the implementation of major projects developed by Nicaragua, in particular the construction, with funding from China, of a

huge project connecting the Caribbean Sea to the Pacific Ocean, considered by scientists as an irreversible threat to the local marine ecosystem due to chemical pollution (FERIA-TINTA; MILNES, 2019).

In analyzing the request, the Court exercised its discretion to reformulate advisory requests in understanding that it would cover general responsibilities regarding the environment arising from the obligation to respect human rights, in particular the rights to life and physical integrity (LIMA; VELOSO, 2018).

Initially, the Inter-American Court of Human Rights expressly recognized the existence of an undeniable relationship between the protection of the environment and the realization of other human rights, as well as the interdependence and indivisibility between human rights, the environment and sustainable development. It found that, although several human rights protection systems recognize the right to a healthy environment as a right in itself, there is no doubt that other human rights are vulnerable to environmental degradation, giving rise to obligations by States with regard to respecting and guaranteeing those rights.

In the Advisory Opinion, the Court transcribed art. 11 of the Protocol of San Salvador, in which there is express protection of the right to a healthy environment, as well as referring to art. 26 of the American Convention, which includes the environment among protected economic, social, and cultural rights.

Thus, it considered it important to emphasize that the right to a healthy environment, as an autonomous right, unlike other rights, protects the components of the environment, such as forests, rivers, seas and others, as legal interests in themselves, although in absence certainty or evidence of risk to individual persons. Thus, the environment should be protected not only by its connection with a utility for humans or by the effects that degradation could cause in relation to other people's rights, such as health, life or integrity, but because of its importance for other living organisms.

Thus, it referred to the importance of granting legal protection to components of the environment, such as forests or rivers, as subjects of rights, so that it addresses not only the usefulness of nature for human beings, but also its importance for other living organisms of the planet (FERIA-TINTA; MILNES, 2019).

It was stated that the human right to a healthy environment has collective connotations (constitutes universal interest of present and future generations) and individual connotations (connection with rights such as

health, personal integrity, life etc.), as well as constituting a fundamental right to the humanity's existence.

In this case, the Court defined the right to a healthy environment autonomously, although connected to other human rights, which it classified substantive rights as those whose enjoyment is particularly vulnerable to environmental degradation (life, personal integrity, health, property), and procedural rights as those whose exercise is based on a better formulation of environmental policies (freedom of expression and association, information).

Then we understood that, despite the fact that the State of Colombia had consulted on the substantive obligations and procedures of the States with regard to environmental protection derived from the duty to respect and guarantee the rights to life and personal integrity, it included other rights that could be affected, in particular the economic, social, cultural and environmental rights protected by the Protocol of San Salvador, the American Convention, and other treaties and instruments.

With regard to the term "jurisdiction," in the context of compliance with environmental obligations, the Court held that, according to the American Convention, the jurisdiction of States is not limited to their territorial space, so that an individual could be subject to jurisdiction of a State even if it was not physically in its territory, provided that, in some way, it came under its authority, responsibility, or control.

Thus, the Inter-American Court made it clear that the concept of jurisdiction was broadened with respect to the application of extraterritorial responsibility, in understanding that States have an obligation to take the necessary measures to prevent the activities carried out in their respective territories or under their control from causing damage and consequent violation of human rights within or outside their territories.

Regarding the obligations arising from the duty to respect and guarantee the rights to life and personal integrity, within the scope of environmental protection, the Court found that States have an obligation to avoid significant environmental damage within or outside their territory, and must: regulate and supervise the activities under their jurisdiction; conduct environmental impact studies; define a contingency plan to determine safety measures and procedures to minimize the possibility of serious environmental accidents and mitigate the significant environmental damage that may have occurred, despite preventive actions by States; observe the provisions of the precautionary principle, in order to protect the rights to life

and personal integrity against possible serious or irreversible damage to the environment, even in the absence of scientific certainty; cooperate in good faith for environmental protection and notify other potentially affected States when they become aware that any activity planned under their jurisdiction may involve cross-border environmental damage, as well as consulting and negotiating in good faith with them; guarantee the right to access information related to possible effects on the environment; guarantee the right to public participation of people under their jurisdiction when making decisions that may affect the environment; and guarantee access to justice in relation to state environmental protection obligations.

According to what has been shown, the expansion of the concept of jurisdiction is more beneficial for the protection of the environment in the international context and, consequently, for the sustainable development of American States, since it allows the exercise of jurisdiction by the Court in relation to cross-border damages (LIMA; VELOSO, 2018).

Likewise, the Inter-American Court has recognized that the scope of protection of human rights “reaches the responsibility for inspection and control of States over the activities of companies, as well as of the companies themselves, with regard to conservation and preservation of the environment in the American continent” (MAZZUOLI, 2019, p. 612).

In short, from the analysis of the content exposed in Advisory Opinion no. 23 of 2017, it is clear that the Inter-American Court of Human Rights has expressly established duties and obligations for member states with regard to protecting the environment, further establishing that States are obliged to guarantee and respect human rights of all people in their territories and, depending on the analysis of the specific case, the guarantee of these rights beyond their territorial limits.

In this context, Advisory Opinion no. 23 of 2017 established the expansion of the jurisdiction of States beyond their territorial space with regard to obligations related to human rights and especially regarding the environment, since many environmental impacts involve cross-border damage. As a guarantee of the realization of these rights, the obligations arising from the duty to avoid environmental damage within or outside the territories of the states were also established.

Regarding the importance of Advisory Opinion for International Law, Paula Monteiro Danese (2019, p. 163) infers that:

[...] The Advisory Opinion consolidated the importance of the environment for realization of the other rights established in the American Convention and to determine the obligations of the States that ratified the Convention regarding the right to a healthy environment, considered by the Inter-American Court as an autonomous right, not subsidiary to other rights, going beyond its protection, including its promotion in the expression of preservation and environmental studies.

Thus, despite the fact that the Inter-American Court has ruled several times, albeit indirectly, on the need to protect the environment as a human right, it has to be said that, in the case of Advisory Opinion no. 23 of 2017, presented an innovative and paradigmatic vision regarding the environment as an autonomous right, as well as “[...] an understanding that goes beyond that of other international courts regarding the concept of extraterritorial jurisdiction in the case of damage to the environment” (LIMA; VELOSO, 2018, p. 646).

In addition, this Advisory Opinion made unprecedented contributions in the scope of International Law by emphasizing the need to protect the right to a healthy environment as an autonomous right, and not only because of its connection with other human rights or because of the effects of environmental degradation on people’s rights.

In this regard, the positive reflections of the innovative content of Advisory Opinion 23/2017 could recently be verified through the sentence delivered in the case of the Lhaka Honhat Indigenous Communities, on February 6, 2020, when the Inter-American Court of Human Rights recognized the responsibility of the Argentine Republic for the violation of several rights in relation to 132 indigenous communities in the Province of Salta.

In the judgment, the Court concluded that the State violated the right to property by not providing legal security by allowing the presence of settlers named ‘crioulos’ in that territory, as well as not using the appropriate mechanisms to consult with communities about the construction of an international bridge in its territory (Misión de La Paz International Bridge, that unites Argentina to Paraguay). In addition, it found that illegal logging and activities such as cattle raising and installation of barbed wire on the site affected the environmental heritage and the traditional way of eating of that community and its access to water.

Among the remedial measures set out in the sentence, it is possible to mention: delimitation, demarcation and granting of land ownership in favor of indigenous communities; removal of fences and cattle, as well as transfer of the ‘crioulo’ population from the area; Argentine government’s refraining

from carrying out acts, works or undertakings in the indigenous territory, which may affect its existence, value, use or enjoyment, without prior provision of adequate information and consultations; performance of a study that identifies situations of lack of access to drinking water or food, as well as the formulation of action plans to deal with these situations; establishment of actions to conserve water and guarantee its access, to prevent loss or decrease of forest resources and to prevent access to adequate food nutritionally and culturally; and creation of a community development fund.

On that occasion, the International Court of Human Rights recognized, for the first time in a contentious case, the autonomous protection of the rights to a healthy environment, adequate food and cultural identity, based on art. 26 of the American Convention.

Therefore, it is evident that the innovations brought by Advisory Opinion no. 23 of 2017 began to produce effects with regard to the international panorama, mainly through the recognition of the need to protect the environment in a direct and effective way.

FINAL REMARKS

From the analysis of the content of Advisory Opinion 23/2017 of the Inter-American Court of Human Rights, significant innovations were observed regarding the protection of the right to the environment at the international level, which until then was timidly dealt with in that Court's jurisprudence.

In addition to recognizing the interrelationship between the right to a healthy environment and other human rights, and the need for their indirect protection already carried out within the scope of the Court and the Inter-American Commission on Human Rights, in the Advisory Opinion under analysis, in an unprecedented way, the right to a healthy environment as an autonomous right was affirmed, and not only for its connection with a utility for human beings or for the effects of environmental degradation on people's rights.

There was also the expansion of the jurisdiction of States beyond their territorial space with regard to obligations related to human rights and, specifically regarding the environment, since many environmental impacts involve cross-border damage. Obligations arising from the duty to avoid environmental damage within or outside the territories of States were also established.

Therefore, it is about innovative content and paradigmatic concepts

regarding the most effective protection of the environment, not only for the Inter-American Human Rights System's jurisprudence, but also for the development of contemporary International Law.

REFERENCES

AMADO GOMES, C. Escrever verde por linhas tortas: o direito ao ambiente na jurisprudência da Corte Europeia dos Direitos do Homem. *Revista do Ministério Público*, Lisboa, n. 120, 2009.

AMADO GOMES, C. Introdução: as fases de evolução do Direito Internacional do Ambiente. In: AMADO GOMES, C. *Direito Internacional do Ambiente: uma abordagem temática*. Lisboa: AAFDL, 2018. p. 11-31.

AMADO GOMES, C. Direito ao respeito pelo ambiente não associado à proteção do domicílio. In: ALBUQUERQUE, P. P. (org.). *Comentário da Convenção Europeia dos Direitos do Homem e dos Protocolos Adicionais*. v. II. Lisboa: Universidade Católica, 2019. p. 1597-1617.

BLUMM, M. C.; WOOD, M. C. "No ordinary lawsuit": climate change, due process, and the public trust doctrine. *American University Law Review*, Washington, D.C, v. 67, p. 1-87, 2017. Available from: http://www.aulawreview.org/au_law_review/wp-content/uploads/2017/12/01-BlummWood.to_Printer.pdf. Access on: Apr. 24, 2020.

DANESE, P. M. *Meio ambiente na contemporaneidade: de sua proteção à luz do Sistema Interamericano de Direitos Humanos*. Curitiba: Juruá, 2019.

DE FONTBRESSIN, P. De l'effectivité du droit à l'environnement sain à l'effectivité du droit à un logement décent? (En marge de l'Arrêt Önerildiz c. Turquie du 30 novembre 2004). *Revue Trimestrielle des Droits de l'Homme*, Brussels, n. 65, p. 87-97, 2006.

FERIA-TINTA, M.; MILNES, S. C. International environmental law for the 21st century: the constitutionalization of the right to a healthy environment in the Inter-American Court of Human Rights Advisory Opinion 23. *Anuario Colombiano de Derecho Internacional*, 2019, v. 12, p. 43-84. Available from: https://www.researchgate.net/publication/332048880_International_Environmental_Law_for_the_21st_Century_The_Constitutionalization_of_the_Right_to_a_Healthy_Environment_in_the_Inter-American_Court_of_Human_Rights_Advisory_Opinion_No_23/link/5c9cc2f6a6fdc-cd4603f77f4/download. Access on: Feb. 13, 2020.

FONSECA, F. E. A convergência entre a proteção ambiental e a proteção da pessoa humana no âmbito do direito internacional. *Revista Brasileira de Política Internacional*, Brasília, DF, v. 50, n. 1. jan./jun. 2007. Available from: <http://www.scielo.br/pdf/rbpi/v50n1/a07v50n1.pdf>. Access on: Mar. 9, 2020.

JARVIS, F.; SHERLOCK, A. The European Convention on Human Rights and the environment. *European Law Review*, n. especial, p. 15-29, 1999.

LAURENT, C. Un droit à la vie en matière environnementale reconnu et conforté par une interprétation évolutive du droit des biens pour les habitants de bidonvilles. *Revue Trimestrielle des Droits de l'Homme*, Brussels, n. 53, p. 261-297, 2003.

LIMA, R. M.; VELOSO, N. E. M. R. A conceituação ampliada da jurisdição extraterritorial no Sistema Interamericano pela OC-23/17: os avanços na internacionalização ambiental. *Revista do Programa de Pós-Graduação em Direito da UFC*, Fortaleza, v. 38, n. 2, p. 641-651, jul./dez. 2018. Available from: <http://periodicos.ufc.br/nomos/article/view/39819/95987>. Access on: Feb. 18, 2020.

LOPES, A. M. D.; MARQUES, L. V. B. Proteção Indireta do Direito ao Meio Ambiente na jurisprudência das Cortes Europeia e Interamericana de Direitos Humanos. *Revista Brasileira de Direito Animal*, Salvador, v. 14, n. 1, p. 56-75, jan./abr. 2019. Available from: <https://portalseer.ufba.br/index.php/RBDA/article/view/30726/18204>. Access on: Nov. 27, 2019.

MARGUÉNAUD, J.-P. Droit de l'Homme a l'environnement et Cour Européenne des droits de l'Homme, *Revue Juridique de l'Environnement*, Cachan, n. especial, p. 15-21, 2003.

MAZZUOLI, V. O. *Curso de direitos humanos*. 6. ed. Rio de Janeiro: Forense, 2019. Available from: <http://pt.scribd.com/document/433397471/curso-de-direitos-humanos>. Access on: Nov. 25, 2019.

MAZZUOLI, V. O.; TEIXEIRA, G. F. M. Tutela jurídica do meio ambiente na jurisprudência da Corte Interamericana de Direitos Humanos. *Persona y Derecho*, v. 71. p. 203-227, 2014. Available from: <http://Downloads/3494-Texto%20del%20art%C3%ADculo-13656-1-10-20151201.pdf>. Access on: Nov. 20, 2019.

NASSER, S. H. Desenvolvimento, costume internacional e soft law. In: AMARAL JUNIOR, A. *Direito Internacional e Desenvolvimento*. Barueri: Manole, 2005. p. 201-218.

OEA – ORGANIZAÇÃO DOS ESTADOS AMERICANOS. *Convenção Interamericana de Direitos Humanos*. 22 nov. 1969. Available from: http://www.cidh.oas.org/basicos/portugues/c.convencao_americana.htm. Access on: Nov. 15, 2019.

OEA – ORGANIZAÇÃO DOS ESTADOS AMERICANOS. Comissão Interamericana de Direitos Humanos. *Protocolo Adicional à Convenção Americana sobre Direitos Humanos em Matéria de Direitos Econômicos, Sociais e Culturais*, “Protocolo de San Salvador”. San Salvador, 1988. Available from: http://www.cidh.org/Basicos/Portugues/e.Protocolo_de_San_Salvador.htm. Access on: Feb. 23, 2020.

OEA – ORGANIZAÇÃO DOS ESTADOS AMERICANOS. Corte Interamericana de Direitos Humanos. *Opinión Consultiva OC-23/2017*, de 15 de noviembre de 2017. Solicitada por la República de Colombia – Medio Ambiente y Derechos Humanos. Washington D.C., 2017b. Available from: http://www.corteidh.or.cr/docs/opiniones/serieae_23_esp.pdf. Access on: Nov. 15, 2019.

OEA – ORGANIZAÇÃO DOS ESTADOS AMERICANOS. *Relatório da Secretaria-Geral da Organização dos Estados Americanos sobre Direitos Humanos e Meio Ambiente*. 2002. Available from: <http://www.oas.org/consejo/pr/cajp/Documentos/cp09486p08.doc>. Access on: Feb. 15, 2020.

OEA – ORGANIZAÇÃO DOS ESTADOS AMERICANOS. Corte Interamericana de Direitos Humanos. *Caso Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Terra) vs. Argentina*, de 6 de febrero de 2020. Available from: http://www.corteidh.or.cr/docs/casos/articulos/seriec_400_esp.pdf. Access on: Apr. 5, 2020.

PIOVESAN, F. *Direitos humanos e justiça internacional: um estudo comparativo dos sistemas regionais europeu, interamericano e africano*. 9. ed. São Paulo: Saraiva Educação, 2019.

PIOVESAN, F. *Temas de direitos humanos*. 3. ed. São Paulo: Saraiva, 2009.

RAMOS, A. C. *Processo internacional dos direitos humanos*. 2. ed. São Paulo: Saraiva, 2012.

RENUCCI, J.-F. *Traité de Droit Européen des Droits de l'Homme*. Paris: LGDJ, 2007.

RUSSO, C. Anotação ao artigo 8/1. In: PETTITI, L.-E.; DECAUX, E.; IMBERT, P.-H. (orgs.). *Convention Européenne des droits de l'homme*. Commentaire article par article. Paris: Economica, 2000. p. 305-311.

STIVAL, M. M. *Direito Internacional ao Meio Ambiente: o meio ambiente na jurisprudência das Cortes Internacionais de Direitos Humanos*. Curitiba: Juruá, 2018.

SUDRE, F. Les ‘obligations positives’ dans la jurisprudence européenne des droits de l’Homme. *Revue Trimestrielle des Droits de l’Homme*, Brussels, n. 23, p. 363-384, 1995.

TRINDADE, A. A. C. O Sistema Interamericano de Direitos Humanos no limiar do novo século: recomendações para o fortalecimento de seu mecanismo de proteção. In: SEMINÁRIO A PROTEÇÃO INTERNACIONAL DOS DIREITOS HUMANOS E O BRASIL, 1999, Brasília, DF. *Anais [...]*. Brasília, DF: STJ, 1999. p. 31-67. Available from: <https://ww2.stj.jus.br/publicacaoinstitucional/index.php/API/article/view/3513/3635>. Access on: Feb. 18, 2020.

VERNET I LLOBET, J.; JARIA MANZANO, J. El derecho a un medio ambiente sano: su reconocimiento en el constitucionalismo comparado y en el Derecho internacional. *Teoría y Realidad Constitucional*, n. 20, p. 513-533, 2007. Available from: <http://revistas.uned.es/index.php/TRC/article/view/6774/6472>. Access on: Mar. 24, 2020.

WCED – WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT. *Report of the World Commission on Environment and Development: Our Common Future*. New York: WCED, 1987. Available from: <http://www.un-documents.net/our-common-future.pdf>. Access on: Feb. 28, 2020.

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