



GLOBAL WARMING AND HUMAN RIGHTS

**TESTIMONY OF MARTIN WAGNER
BEFORE THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

MARCH 1, 2007

Honorable members of the Commission:

Sheila has provided a powerful description of some of the ways global warming is already affecting individuals and communities throughout the hemisphere. I would like to take a few minutes to discuss the relationship between these impacts and human rights, and what that means for the obligations of Members of the Organization of American States.

Because I want to leave time for us to answer questions that you may have, I am not going to discuss in detail here all of the rights implicated by the effects of global warming. A more complete discussion is contained in the background materials we have provided the Commission. Here, I am going to discuss three rights.

The rights of indigenous peoples

Before I discuss the first right, I want to note that – as Sheila so clearly described – global warming has particular impacts on indigenous peoples throughout the hemisphere. The relationship between human rights and global warming must therefore be evaluated in the context of indigenous rights. This Commission has recognized that the protection of indigenous populations is a “sacred commitment” of States.¹ Because indigenous peoples’ traditional lands and natural resources are essential to their physical and cultural survival, the Commission and the Court have acknowledged that environmental damage – like that being caused by global warming – can interfere with the rights of indigenous peoples to life and to cultural integrity.² We must keep these principles in mind in considering the relationship of the following rights to the effects of global warming.

The right to use and enjoy property without undue interference

The first right I would like to discuss is the right to use and enjoy property, which is guaranteed in the American Declaration and American Convention, as well as in numerous other international instruments.³ The Commission has declared this right to be “among the fundamental rights of man.”⁴ In the case of indigenous peoples, both the Inter-American Court and this Commission recognized that the right to property guarantees the use of those lands to which indigenous peoples have historically had access for their traditional activities and

livelihood,” regardless of domestic title.⁵ In the *Belize Maya* case, the Commission stated that the right to property is impeded “when the State itself, or third parties acting with the acquiescence or tolerance of the State, affect the existence, value, use or enjoyment of that property.”⁶

The effects of global warming interfere with property in each of these ways. In some cases, property is literally disappearing as a result of warming. This is true in the case of the Inuit’s loss of sea ice, which has been recognized as “an extension of their land,”⁷ or the rapid erosion or submersion of land on which some coastal villages sit. In other cases, increasingly severe storms or the destruction of environmental resources essential to survival undermines the use and enjoyment of property, particularly in the case of poor and indigenous communities with limited ability to turn to other sources for their needs.

The rights to life, physical integrity and security

The second right I would like to discuss is the right to life, physical integrity and security. This most fundamental of rights is guaranteed in all major American and international human rights agreements.⁸

The Inter-American Commission has recognized that the realization of the right to life is necessarily related to and dependent upon one’s physical environment.⁹ In the *Yanomami* case, the Commission recognized that allowing the construction of a highway through indigenous territory, leading to an influx of contagious deadly diseases that spread to the Yanomami, the government had failed to protect the integrity of Yanomami lands, thereby violating the Yanomami’s rights to life, liberty and personal security.

In its 1997 Report on the Situation of Human Rights in Ecuador, the Commission addressed environmental degradation caused by irresponsible petroleum exploitation, and noted that where environmental harm causes “serious physical illness, impairment and suffering on the part of the local populace, [it is] inconsistent with the right to be respected as a human being.”¹⁰

The effects of global warming interfere with the realization of the right to life, physical integrity, and security throughout the hemisphere. For example, more numerous, intense and extreme weather events will result in more deaths from hurricanes, floods, and heat waves. Migration of species that cause malaria, dengue fever, and avian flu may spread these deadly diseases to areas of the Americas where they were previously unknown. Inuit hunters are falling through the ice to their death more frequently as a result of the thinner ice in the Arctic.

In the context of the right to life and physical integrity, I would like to mention the right of all peoples to a means of subsistence. Although the Protocol of San Salvador guarantees the right to food,¹¹ a general right to means of subsistence is not explicitly recognized in any of the American human rights documents. Nevertheless, this right – which is recognized in both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights¹² – is inherent in and a necessary component of the right to life, as well as other rights. In its discussion of the Proposed American Declaration on the Rights of Indigenous Peoples, the Commission has commented that the right to a means of subsistence is a general international legal principle that applies in the Inter-American system.¹³ As global

warming interferes with the ability of people to hunt, gather, or engage in subsistence farming on their traditional lands, it undermines their right to a means of subsistence and their right to life.

The right of peoples to enjoy the benefits of culture

The last right I want to discuss is the right to enjoy the benefits of culture, which is given a place of importance in the Charter of the OAS¹⁴ and guaranteed in the American Declaration.¹⁵ In the *Belize Maya* case, the Commission noted that “the use and enjoyment of the land and its resources are integral components of the physical and cultural survival of the indigenous communities.”¹⁶

Global warming is destroying lands and ecosystems to which indigenous cultures throughout the hemisphere are tied; it is interfering with the ability of indigenous peoples to sustain themselves as they traditionally have, and to engage in and pass on practices that define them and their culture. In order to survive, indigenous peoples are thus forced to assimilate with other cultures in ways, and on a schedule, that they have not chosen. This Commission – in its Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin – noted that it is precisely this kind of forced assimilation that the right to culture is intended to prevent.¹⁷

The relevance of international environmental law

Because global warming implicates human rights, as Sheila and I have explained, we must ask what that means for States. Before I move to a discussion of the implications for States of the relationship between global warming and human rights, I would like to say a word about the relevance of international environmental law in the context of today’s topic. The Inter-American Court has noted that “a treaty can *concern* the protection of human rights, regardless of what the principal purpose of the treaty might be.”¹⁸ This Commission has applied that principle, noting that the rights of the American Declaration should be applied “with due regard to other relevant rules of international law applicable to member states against which complaints of human rights violations are properly lodged.”¹⁹

One of the most fundamental norms of customary international law is, in the words of the International Court of Justice, “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.”²⁰ Because the emission of greenhouse gases in one State causes harm in other States, this norm provides context for assessing States’ human rights obligations with respect to global warming.

Implications for States of the Relationship Between Global Warming and Human Rights

It is a fundamental principle of international law that States have a duty to prevent and remedy violations of their international obligations. In the case of global warming, this obligation does not end with the responsibility to address greenhouse gas emissions caused by

the government itself, but extends to a responsibility to regulate private actors within State jurisdiction who are contributing to the problem.

The Inter-American Commission has recognized the responsibility of States to prevent non-governmental entities from causing environmental degradation that violates human rights. In its 1997 report on the human rights situation in Ecuador, the Commission called upon Ecuador to “ensure that measures are in place to prevent and protect against” human rights violations related to environmental contamination caused by private actors.²¹ In the *Belize Maya* case, the Commission recommended that the government not acquiesce in or tolerate acts of third parties that would violate the Maya peoples’ rights.²²

Other human rights institutions have acknowledged the obligation of States to protect against human rights violations by the actions of third parties. For example, the UN Human Rights Committee has stated that the obligation of States to ensure civil and political rights “will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities.”²³ The UN Committee on Economic, Social and Cultural Rights has stated that States violate their duty to protect the right to health if they fail to “enact or enforce laws to prevent [air pollution].”²⁴

In light of these principles, and recognizing the serious human rights implications of the effects of global warming, States have an international obligation to address their role global warming, whether through their own activities or by the activities of private actors within their jurisdiction.

While it is up to States how to go about implementing these obligations, there is a strong presumption that they should at a minimum participate in international efforts to address the problem of global warming. In the UN Framework Convention on Climate Change, 190 nations have recognized the need for coordinated effort and established a regime for doing so.

But simply participating in that regime is not necessarily sufficient to discharge States’ duty to prevent human rights violations related to global warming. Because States’ human rights obligations are independent of their obligations under the UN Framework system, States must work to ensure that the international system is strong enough to fully protect human rights. If they are unable to do so through global collaboration, they must take the individual steps necessary to avoid contributing to human rights violations through their own actions or the actions of private entities under their jurisdiction.

I appreciate the time the Commission has taken to consider this important topic today, and I offer my assistance as the Commission plays its important role in addressing the problem of global warming in the coming months and years.

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Notes

¹ Resolution of the IACHR on the Problem of Special Protection for Indigenous Populations, Inter-Am. C.H.R., OEA/Ser.L/V/II.29, doc. 38, rev. (1972) *quoted in* The Human Rights Situation of the Indigenous People in the Americas, Inter-Am. C.H.R., OEA/Ser.L/V/II.108, Doc. 62 (2000) at 1, n.1, *available at* <http://www.cidh.org/Indigenas/TOC.htm> (“In that resolution the Commission called on the member states ‘to implement the recommendations made by the Inter-American and Indian Conferences... and, in particular, the provisions contained in Article 39 of the Inter-American Charter of Social Guarantees’”); *See also* Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, Inter-Am. C.H.R., OEA/Ser.L/V/II.62, doc. 10, rev. 3 (1983) at 81 § 2-B-15.

² *Report on the Human Rights Situation in Ecuador* (“Ecuador Report”), OEA/Ser.L/V/II.96, Ch. 9. *See also* *Caso de la Comunidad Mayagna (Sumo) Awas Tingni* (“*Awas Tingni*”), Inter-Am. Ct. H.R. Ser. C, No. 79 ¶ 149 (Nicaragua) (2001), *available at* http://www.corteidh.or.cr/seriecpdf_ing/seriec_79_ing.pdf (last visited Nov. 11, 2005) (“the close relationship that the communities have with the land must be recognized and understood as a foundation for their cultures, spiritual life, cultural integrity, and economic survival”).

³³ American Declaration of the Rights and Duties of Man, (“American Declaration”), Organization of American States (O.A.S.) Res. XXX (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/I.4 rev.8 (May 2001) at 16, Preamble), Article XXIII; American Convention on Human Rights (“American Convention”), Article 21, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9, (January 2003), *available at* <http://cidh.org/basic.eng.htm>.

⁴ Inter-Am. C.H.R., Annual Report of the Inter-American Commission on Human Rights 1993, OEA/Ser.L/V/II.85, doc. 9 rev. (1994) ch. 6 at 464.

⁵ *Maya Indigenous Communities of the Toledo District (Belize Maya)*, Case 12.053, Inter-Am. C.H.R. Report 40/04 (2004) (Belize) at ¶ 117 (Indigenous property rights are broad, and are not limited “exclusively by entitlements within a state’s formal legal regime, but also include that indigenous communal property that arises from and is grounded in indigenous custom and tradition.” *See also* *Awas Tingni* case, *supra*, at ¶ 149 (“By the fact of their very existence, indigenous communities have the right to live freely on their own territories.”); *Case of Mary and Carrie Dann* (“*Dann*”), Report No. 75/02, Case 11.140 (United States), Inter-Am. C.H.R., 2002 ¶ 129 (2002).

⁶ *Maya Indigenous Communities of the Toledo District (Belize Maya)*, Case 12.053, Inter-Am. C.H.R. Report 40/04 (2004) (Belize) at ¶ 140.

⁷ Arctic Climate Impact Assessment, *Impacts of a Warming Climate: Final Overview Report* (“ACIA Overview”) 668 (Cambridge University Press 2004), *available at* <http://www.amap.no/acia/> (last visited February 4, 2005), at 24.

⁸ *See* American Declaration, Art. 1 (“Every human being has the right to life, liberty and the security of his person.”); International Covenant on Civil and Political Rights (“ICCPR”), art. 27, Dec. 16, 1966, Article 6; Universal Declaration of Human Rights; American Convention, at art. 4.1; European Convention, at art. 2.1, 5.1.

⁹ Ecuador Report, Ch. 8.

¹⁰ This application of the American Declaration is also consistent with the interpretation of the right to life under the International Covenant on Civil and Political Rights. In *E.H.P. v. Canada*, a group of Canadian citizens alleged that the storage of radioactive waste near their homes threatened the right to life of present and future generations. *E.H.P. v. Canada*, U.N. H.R.C., 17th Session, at ¶ 8, U.N. Doc. CCPR/C/17/D/67/1980 (1982). The U.N. Human Rights Committee found that the case raised “serious issues with regard to the obligation of States parties to protect human life,” but declared the case inadmissible due to failure to exhaust domestic remedies. *Id.* The Committee has also stated that the right to life “has been too often narrowly interpreted.... [It] cannot properly be understood in a restrictive manner, and the protection of this right requires that states adopt positive measures.” *Id.*

¹¹ Protocol of San Salvador, Article 12.

¹² ICCPR art. 1(2) (“In no case may a people be deprived of its own means of subsistence.”); International Covenant on Economic, Social and Cultural Rights (“ICESCR”), Dec. 16, 1966, art. 1(2).

¹³ This Commission has noted that the basic principles reflected in many of the provisions of the Proposed American Declaration on the Rights of Indigenous Peoples, “including aspects of Article XVIII, reflect general international legal principles developing out of and applicable inside and outside of the inter-American system and to this extent are properly considered in interpreting and applying the provisions of the American Declaration in the context of indigenous peoples.” *Dann, supra* note, at ¶ 129. Article XVIII of the Proposed Declaration states that indigenous peoples have the “right to an effective legal framework for the protection of their rights ... with respect to traditional uses of their lands, interests in lands, and resources, *such as subsistence.*”

¹⁴ Charter of the Organization of American States, arts. 2(f), 3(m), 30, 48, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9, (January 2003).

¹⁵ Art. 13.

¹⁶ *Belize Maya* at ¶ 120 (quoting Inter-Am. C.H.R., Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, (“Miskito Report”) OEA/Ser.L/V/II.62, Doc. 10 rev. 3 81 Part II, ¶¶ 15, 154-56 (1983).

¹⁷ “[S]pecial legal protection is recognized for the use of their language, the observance of their religion, and in general, all those aspects related to the preservation of their cultural identity. To this should be added the aspects linked to productive organization, which includes, among other things, the issue of the ancestral and communal lands. Non-observance of those rights and cultural values leads to a forced assimilation with results that can be disastrous.” Inter-Am. C.H.R., *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin* 76, OEA/Ser.L/V/II.62, doc. 10, rev. 3 (1983) at ¶ II.B.15.

¹⁸ Inter-Am. Court H.R., Advisory Opinion OC-16/99, The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Ser. A N° 16 (1999).

¹⁹ *Belize Maya, supra*, at ¶ 86 (citing *Consular Assistance, supra*).

²⁰ Corfu Channel Case (U.K. v. Alb.), 1949 I.C.J. 4, 22 (Apr. 9).

²¹ Ecuador Report, Chapter VIII.

²² *Belize Maya* case, ¶ 197.2 (State should “abstain from any acts that might lead the agents of the State itself, or *third parties acting with its acquiescence or its tolerance*, to affect the existence, value, use or enjoyment of the property”).

²³ UN Human Rights Committee General Comment No. 31 (Mar. 29, 2004), ¶ 8.

²⁴ UN Committee on Economic, Social and Cultural Rights General Comment 14 (Nov. 24, 2005), ¶ 51 (duty to “enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.”); *see also id.* ¶ 35.