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Help

In the case of the *Sawhoyamaya Indigenous Community*, the State of Paraguay asserted before the Inter-American Court of Human Rights that it could not give effect to the indigenous community's right to property over their ancestral lands because, among other reasons, these lands now belonged to a German investor, protected by a bilateral investment treaty signed between the two countries on 11 August 1993. The Court dismissed the argument on the following grounds:

'137. ... [The] Court has ascertained that the arguments put forth by the State to justify non-enforcement of the indigenous people's property rights have not sufficed to release it from international responsibility. The State has put forth three arguments: 1) that claimed lands have been conveyed from one owner to another 'for a long time' and are duly registered; 2) that said lands are being adequately exploited, and 3) that the owner's right 'is protected under a bilateral agreement between Paraguay and Germany[,] which ... has become part of the law of the land.'...

140. ... [W]ith regard to the third argument put forth by the State, the Court has not been furnished with the aforementioned treaty between Germany and Paraguay, but, according to the State, said convention allows for capital investments made by a contracting party to be condemned or nationalized for a 'public purpose or interest', which could justify land restitution to indigenous people. Moreover, the Court considers that the enforcement of bilateral commercial treaties negates vindication of non-compliance with state obligations under the American Convention; on the contrary, their enforcement should always be compatible with the American Convention, which is a multilateral treaty on human rights that stands in a class of its own and that generates rights for individual human beings and does not depend entirely on reciprocity among States.

141. Based on the foregoing, the Court dismisses the three arguments of the State described above and finds them insufficient to justify non-enforcement of the right to property of the Sawhoyamaya Community.'

The result is that the Inter-American Court of Human Rights decided to affirm the primacy of Paraguay's obligations under the American Convention on Human Rights, and to dismiss as irrelevant the duties towards German investors that were stipulated under the investment treaty concluded between Germany and Paraguay. The Court went on to find various violations of the American Convention on Human Rights, specifically articles 8 and 25 (right to a fair trial and judicial protection), art. 21 (right to property), art. 4(1) (right to life) and art. 3 (right to recognition as a Person before the Law), all of them in relation to art. 1(1) (the obligation to respect rights).


PROBLEM - THE SAWHOMAYAXA CASE (PART 1) (1/1 point)

1 Was the position of the Court on the argument based on the investment treaty between Germany and Paraguay on 11/26/2014 05:12 PM

Here are a range of arguments that could justify this position: please assess whether you think these arguments should be treated as valid.

1. The Inter-American Court of Human Rights could disregard the argument put forward by Paraguay, since its role is to apply the American Convention on Human Rights, and not investment treaties. Indeed, for the States parties to the ACHR, the treaty concluded between Germany and Paraguay is a *res inter alios acta*, a treaty to which they are not a party and therefore cannot be opposed to them: it would be unacceptable to restrict the duties of Paraguay vis-à-vis the other Parties to the ACHR simply by allowing Paraguay to invoke its obligations towards Germany, as stipulated in the investment treaty between the two countries.

☐ valid

☒ invalid 

EXPLANATION

This argument is plausible but in fact *invalid*. Human rights courts generally tend to interpret the human rights instruments they apply by taking into account other international agreements: they do not treat such instruments in "clinical isolation" from general international law, to borrow a phrase from the jurisprudence of the World Trade Organisation Dispute Settlement bodies, or "in a vacuum", as stated by the European Court of Human Rights (European Court of Human Rights (GC), *Al-Adsani v. the United Kingdom* (<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59885>) (Appl. No. 35763/97), judgment of 21 November 2001, para. 55). The Vienna Convention on the Law of Treaties (http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) of 23 May 1969 itself only states, in article 31 §3 (c), that account is to be taken of "any relevant rules of international law applicable in the relations between the parties": this would not require the Inter-American Court of Human Rights to take into account an instrument concluded between one State party to the ACHR and another State that is not a party. Nevertheless, though this may not be an obligation under international law, the practice has been for human rights to facilitate international cooperation by accepting that the obligations imposed on a State under a separate international agreement may constitute a "legitimate aim" justifying certain restrictions to the human rights guaranteed under a specialized human rights instrument. This will be especially the case where the said separate international instrument reflects customary international law: In the above-cited case of *Al-Adsani*, the United Kingdom was invoking a 1972 Council of Europe Convention on State Immunity to justify a restriction to the right of access to a court, after the applicant, a dual British-Koweiti national who fled to the United Kingdom after having been tortured in the hands of Koweiti agents, failed in his attempt to seek compensation against the State of Koweit before British courts. The European Court of Human Rights accepted the argument put forward by the UK government in defense of this limitation to the right of access to courts, noting that the European Convention on Human Rights "should so far as possible be interpreted in harmony with other rules of international law of which it forms part, including those relating to the grant of State immunity" (para. 55).

Check

Hide Answer(s)



The Sawhoyamaya Case Problem, The Saw
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