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ORIGINAL ARTICLE

INTERNATIONAL LEGAL THEORY: SYMPOSIUM ON GLOBAL SOUTH PERSPECTIVES ON METHODOLOGY AND CRITIQUE IN INTERNATIONAL LAW

Rethinking international law *along with* Amazonian ontologies: problematizing human-non-human divisions

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Abstract

This article focuses on the nature-culture dimension in the Amazonian territory as an ontological question. It is argued that international law, as a product of modern Western societies, reflects and reproduces particular ideas about what the environment is. These ideas in turn reflect specific nature-culture relations that are not necessarily present in other societies. This is especially evident in contexts such as the Amazon, where the basic assumptions that modern Western society takes for granted cannot be extrapolated. The argument is illustrated through the Amazonian Kukama-Kukamiria people's conception of the river, which was put on the ropes by the implementation of a development project. It is proposed that rethinking international law *along with* the Amazon means situating oneself in not only a geographically but also ontologically different place.

Keywords: Amazonian ontology; decolonization; environment; indigenous peoples; international law

> '"Before, when animals were people . . . ":
> these are the words with which many people begin
> stories among the Kukama people and
> other indigenous peoples of the Amazon.'
> Leonardo Tello, Kukama and Achuar thinker and communicator.[1]

1. Introduction

In the era of the Anthropocene, law has been criticized for its complicity in ecological destruction.[2] Critiques of international law, in particular, have become increasingly frequent. One such critique

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[1]L. Tello Imaina, 'Ser Gente En La Amazonía, Fronteras De Lo Humano: Aportes Del Pueblo Kukama', (2014) *Amazzonia indigena e pratiche di autorappresentazione. Milano, Franco Angeli* 39.

[2]G. Garver, *Ecological Law and the Planetary Crisis: A Legal Guide for Harmony on Earth* (2020); A. Grear, 'Deconstructing Anthropos: A Critical Legal Reflection on "Anthropocentric" law and Anthropocene "Humanity"', (2015) 26 *Law and critique*

involves prompting an inquiry into the position of 'nature' within the field and re-examining the underlying assumptions of international law about the natural world.[3] This necessitates carefully examining how international law relates to areas that, at least in discourse, hold significant importance in environmentalist endeavours to tackle the climate crisis.

One of them is what we now call Amazonia. As is commonly asserted, the Amazon is a critical space in the current climate crisis because it is a biome that functions as a global climate stabilizer. At the same time, what is done in the coming years will be decisive. We are reaching a 'tipping point' in the Amazon, after which it will not only not be able to recover but possibly accelerate climate change.[4] It is, therefore, not only necessary but increasingly urgent to rethink international law's relationship with the Amazon.[5]

It is a place that has allowed other disciplines to deeply problematize nature-culture relations based on the particular conceptions of Amazonian indigenous peoples. This problematization has led to the recognition – in broad terms – that the dichotomies between nature and culture prevalent in modern Western societies may not necessarily exist in Amazonian thought.[6] As the words of Leonardo Tello, to which I return below, suggest, Amazonian thought allows us to blur the hard-wired lines that we take for granted regarding the human-non-human divides. It offers the possibility of seeing the contours of our divisions blurred in 'a more dramatic dimension' than in other regions 'for the simple fact that the process of colonisation is more recent'.[7]

In this context, this article focuses on the nature-culture dimension in the Amazonian territory as an ontological question. Its central argument is that international law, as a product of modern Western societies, reflects and reproduces certain particular ideas about the environment. These ideas, in turn, are shaped by specific nature-culture relationships that may not exist in other societies. This disparity becomes especially apparent in contexts such as the Amazon, where fundamental assumptions modern Western society holds cannot be simply extrapolated. I illustrate this argument through the Kukama-Kukamiria conception of the river, put on the ropes by the implementation of a development project. Building upon this, I aim to demonstrate that (re)thinking international law *along with* the Amazonia implies not only being situated in a geographically different but also an ontologically different place. Specifically, such rethinking entails recognizing the divergent perspectives on nature-culture relationships between modern Western and Amazonian societies.

The main question of this piece is, thus, why international law does not see the ontological difference in nature-culture relations in the Amazonian context. This question can be understood in at least two senses. One sense would be to justify such a claim, showing that international law does indeed lose sight of this kind of difference. The other would be to inquire into the reasons *why* international law is blind to this ontological difference. The article offers potential answers to both angles of this question.

For this purpose, this article is organized into three parts. The first section presents the methodological approach employed, based on the ontological turn within modern anthropological

225; A. Grear, 'The Discourse of Biocultural Rights and the Search for New Epistemic Parameters: Moving Beyond Essentialisms and Old Certainties in an Age of Anthropocene Complexity', (2015) 6 *Journal of Human Rights and the Environment* 1.

[3]U. Natarajan and J. Dehm, 'Introduction: Where Is the Environment?', in U. Natarajan and J. Dehm, (eds.), *Locating Nature: Making and Unmaking International Law* (2022), 1.

[4]Rising temperatures, devastating fires, and land clearing for livestock and crops have extended dry seasons, killed water-sensitive vegetation and created the conditions for an alarming increase in fires. Considering that trees in the Amazon store 60–80 billion tonnes of carbon, forest fires could release millions of tonnes of carbon into the atmosphere annually, which would fuel climate change at a much faster rate. See C. Mooney and B. Dennis, 'Top Scientists Warn of an Amazon tipping Point', *The Washington Post,* 2019, https://www.washingtonpost.com/climate-environment/top-scientists-warn-of-an-amazon-tipping-point/2019/12/20/9c9be954-233e-11ea-bed5-880264cc91a9_story.html. M. De Bolle, 'The Amazon Is a Carbon Bomb: How Can Brazil and the World Work Together to Avoid Setting It Off?', *Peterson Institute for International Economics, Policy Brief*, 2019.

[5]For an overview of international law in the Amazon see B. Garcia, *The Amazon from an International Law Perspective* (2011).

[6]The term is used in the sense of the 'modern constitution'. See B. Latour, *We Have Never Been Modern* (2012).

[7]A. Surrallés and P. García Hierro, *Tierra Adentro. Territorio Indígena y Percepción Del Entorno* (2004), at 14.

literature. The subsequent two sections address the question from each of the aforementioned perspectives. Notably, this article draws on anthropological studies that have played a substantial role in rethinking nature-culture relations, particularly in the Amazonian context. It also incorporates works of Amazonian indigenous intellectuals, with a particular focus on the perspectives of Kukama thinkers.

The second section aims to shed light on the nature-culture divide underlying international law by illustrating how it is influenced by specific notions regarding the environment. These notions, in turn, are shaped by particular nature-culture relationships that may not necessarily be found in Amazonian societies. Specifically, I refer to international environmental law to demonstrate how it embodies a nature-human duality rooted in a specific ontology. Subsequently, I delve into this issue within the context of indigenous collective rights, where different worldviews are often framed as a cultural matter, reflecting the multiculturalism inherent in a specific ontology. I then briefly refer to the concept of rights of nature to highlight the distinction with the ontological approach.

The third section aims to outline a central idea to address the question of why international law fails to recognize the ontological difference in nature-culture relations found in societies such as the Amazon. Drawing mainly on critical approaches to international law, notably contributions from Third World Approaches to International Law (TWAIL), the section emphasizes that international law, as a product of modern Western societies, not only reflects specific notions about nature-culture relationships but also reproduces, projects, and imposes them on societies such as those of the Amazon due to its marked colonialism and universalizing tendency.

In broad terms, this article can be situated close to discussions on the place of 'nature' in international law that have shed light on the role of the discipline in reproducing specific ideas about this concept.[8] More specifically, the article aims to contribute to challenging assumptions about nature by thinking about international law along with indigenous worldviews. In doing so, it aligns with efforts to critically re-evaluate international law by taking indigenous epistemology seriously.[9] What sets this contribution apart is its specific focus on the Amazonian worldview, as exemplified by Kukama thought. It also shares common ground with those who have raised questions about culture-nature relationships in the realm of international environmental law, drawing from concepts proposed by authors within the ontological turn.[10] This article broadens the scope of this analysis by also considering the rights of indigenous peoples and illustrating these theoretical concerns through the lens of Kukama cosmology.

It is thus an attempt to think of international law *along with* the periphery of the periphery, considering that the centre – or centres – of international law is far from the Peruvian Amazon and certainly very distant from any Kukama community. My positionality as a non-indigenous Peruvian international lawyer determines the modest aspiration of this piece. It is only an exercise in trying to think international law *along with* (*junto con*) them – not 'from', let alone 'as'.[11] Using Eduardo Viveiros de Castro's words, it attempts to 'put in relation' or 'produce an interference' between premises underlying international law on nature-culture relations and those on which Amazonian societies are based.[12]

[8]See Natarajan and Dehm, *Locating Nature: Making and Unmaking International Law*, *supra* note 3. See also U. Natarajan and K. Khoday, in Natarajan and Dehm, ibid., at 21. U. Natarajan and K. Khoday, 'Locating Nature: Making and Unmaking International Law', (2014) 27(3) *Leiden Journal of International Law* 573.

[9]P. Ilich Bacca, 'Indigenizing International Law and Decolonizing the Anthropocene: Genocide by Ecological Means and Indigenous Nationhood in Contemporary Colombia', (2019) 33(2) *Maguaré* 139. See also G. Corradi et al., *Critical Indigenous Rights Studies* (2018).

[10]Building on E. Viveiros de Castro's concept of *multinaturalism*, Nunes examines the significance of admitting indigenous forms of life in international environmental law in order to move beyond anthropocentrism and invert the traditional Western conception of nature and culture. A. Nunes Chaib, 'Multinaturalism in International Environmental Law: Redefining the Legal Context for Human and Non-Human Relations', (2022) 12(1) *Asian Journal of International Law* 82.

[11]E. Viveiros De Castro, *Metafísicas Caníbales: Líneas De Antropología Postestructural* (2010).

[12]E. Viveiros De Castro, *La Mirada Del Jaguar. Introducción Al Perspectivismo Amerindio* (2008), at 40.

2. Ontological turn as a methodological approach: The Amazon as a space for rethinking culture-nature relations

The ancestral territory of the Kukama people encompasses the basins of the Lower Huallaga, Lower Marañón, and Lower Ucayali rivers within the contemporary Peruvian Amazon. For the Kukama people, these rivers serve not only as primary sources of water and sustenance but also hold deep connections to their worldview. The Kukama's conceptualization of the river gained significance in the Western world within the context of the Amazon Waterway project (*Hidrovía Amazónica*). This infrastructure initiative formed part of the project portfolio of the Initiative for the Integration of Regional Infrastructure (IIRSA), a plan promoted by South American countries to develop regional infrastructure, including in the Amazon. Peru played an important role in this initiative as the country with the second largest Amazonian territory after Brazil. Especially since 2012, the Peruvian state has devoted significant efforts to attract investment for this project.[13]

The Amazon Waterway project consisted of eliminating the so-called *malos pasos*, understood as areas that prevent the navigation of large vessels during the dry season. This is because, during the dry season, the low water level in the Amazonian rivers makes it difficult for vessels with a deep draft to navigate. Although the peoples inhabiting the Amazon rainforest, including the Kukama, have travelled and traded using these rivers for centuries, the fluctuating water levels prevent uninterrupted large-scale transport. The *malos pasos* that the project sought to eliminate may be, for example, tree trunks embedded in the river bottom – commonly called *quirumas*. In this way, it can be said that for the project the river represented a stream of water used as a means of transport. The transport of large boats, especially for commercial purposes, made it necessary to intervene in the river to facilitate its continuity during the dry season.[14]

The Kukama people, although not the only one, were among the Amazonian peoples of Peru who most strongly opposed the implementation of this waterway. To find out what this project meant to them and to understand how they articulated their defence of the river, I spoke with some of the Kukama leaders of the lower Marañón River who most visibly resisted the project.[15] One of them was Rubén, *apu* of a Kukama community located a few hours from Iquitos, the capital of the Loreto region.[16] When I asked Apu Rubén about his concerns regarding the Amazon Waterway, he told me:

> In the *quirumas* – which for the project would be a *mal paso* to eliminate – the big fish, the *zungaros*, go there to spawn and go out to look for food. That's like their bed; that's where they go to rest … It's not just that this root is something where the *zungaros* live. It also has another reason … Because this root in the middle has a spirit. A spirit that takes care of it

[13]The IIRSA initiative was initially sponsored by the Inter-American Development Bank (IDB) and the Andean Development Corporation. Since 2008, it has come under the auspices of the Union of South American Nations (UNASUR), promoted by its Planning Council (COSIPLAN). P. Van Dijck, *The Impact of the IIRSA Road Infrastructure Programme on Amazonia* (2013).

[14]As Giuliana Borea and Rember Yahuarcani point out, from its very name '*Hidrovía Amazónica*', the project reflects a conception of the river centred on navigation: 'the water element is called "hydro", H20, as an inorganic chemical component … suggesting a more scientific, objective, real, controllable and neutral connotation and thus facilitating its management and use … Furthermore, the name of the project carries the prefix "hydro" with "via", which implies mobility from one point to another point. In other words, the river is not the place itself, but the way to get to a place'. G. Borea and R. Yahuarcani, 'Amazonian Waterway, Amazonian Water-Worlds', in L. Blackmore and L. Gómez (eds.), *Liquid Ecologies in Latin American and Caribbean Art* (2020), 19.

[15]In this piece, I take an excerpt from an anonymized interview conducted during my fieldwork, which took place between October 2021 and March 2022 in Iquitos and Nauta, Loreto, Peru, with the generous support of the Socio-Legal Studies Association (SLSA) PhD Fieldwork Grant. While this mention serves illustrative purposes, it goes beyond the scope of this article to discuss the findings of the fieldwork.

[16]The *apu* is the main authority at the community level. He represents the communal self-government and is elected by the community assembly. M. A. Ramírez Colombier, *Cuerpos y Territorialidad Del Pueblo Kukama En La Política Contemporánea Sobre La Amazonía* (2018).

> lives there . . . The spirits of the water are happy; they are calm because he lives there; he comes so that the *zungaros* can be with them, he takes care of them.

It is clear that the account given by Apu Rubén evidences a conception of the river different to that of the Western perspective and certainly to that which underlies the Amazon Waterway project. Now, let us turn back to international law to ask how it would address such differences in scenarios like the one described. One possibility would be to acknowledge the 'spirits' of the *quirumas*, as mentioned by Apu Rubén, as a cultural matter and channel them within the realm of indigenous peoples' rights. This approach would involve exploring relevant tools in international law that allow Kukama communities to protect the river, such as mechanisms for consultation or consent, with a good dose of self-determination at best. Another option, not mutually exclusive, would be to conceive of the river as part of the environment and, therefore, an object of protection. This perspective would involve utilizing the tools provided by international environmental law to prevent or mitigate the socio-environmental impacts resulting from the project's removal of essential elements necessary for maintaining the Amazonian ecosystem. Within the realm of critical approaches to international law, one could also focus on the fact that the project is not an isolated case but instead reflects the developmental paradigm inherent in international law, as emphasized by several authors.[17] Additionally, one could see this story as 'a meeting of rival practices of authorisation', in which the project represents a re-enactment of colonial control over rivers, consequently displacing indigenous law, which is not even recognized as 'law'.[18] While all these options are plausible, the ontological turn upon which this article draws may lead us to see it differently. To this end, I explain what this approach consists of, after which I return to the example.

The term 'ontological' in this context highlights the prioritization of questioning the fundamental assumptions we usually take for granted about how the world works rather than focusing on other kinds of order of things – i.e., the social, the political or the cultural.[19] The attention to the ontological is not meant to imply inherent depth or superiority but rather acknowledges its distinctiveness. As clarified by Holdbraad and Pedersen, the expression is not employed in a metaphysical or philosophical sense, meaning it does not aim to investigate a 'real sense of reality' or delve into the nature of the world.[20] Furthermore, the emphasis on the ontological does not diminish the significance of the epistemological; the intention is to explore questions of an epistemological nature through the lens of ontological inquiry.[21]

It is a fundamentally methodological approach that seeks to 'intensify' long-standing anthropological concerns.[22] In more concrete terms, it entails a dedication to exercises of reflexivity and conceptualization. On the one hand, reflexivity involves thinking of the conditions of the possibility of knowledge as ontological conditions. That is, being open to identifying whether what prevents us from seeing new things has to do with previous ontological premises and, if that is the case, making such assumptions explicit to be able to change or revise them. On the other hand, conceptualization is placed by the ontological turn in a critical place, as it takes seriously the challenge of paying attention to things beyond what our 'conceptual repertoire' allows us to understand.[23]

[17]S. Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (2011); L. Eslava, 'The Developmental State: Independence, Dependency, and the History of the South', in J. Von Bernstorff and P. Dann (eds.), *The Battle for International Law: South-North Perspectives on the Decolonization Era* (2019), 71.

[18]S. Pahuja, 'Laws of Encounter: A Jurisdictional Account of International Law', (2013) 1(1) *London Review of International Law* 63.

[19]M. Holbraad and M. A. Pedersen, *The Ontological Turn: An Anthropological Exposition* (2017).

[20]Ibid.

[21]Ibid.

[22]Ibid.

[23]Ibid.

Although considered a 'turn', this approach does not imply a sharp or radical break. Instead, it draws on different lines of thought.[24] Due to its relevance to the argument I present in this piece, I refer to the work of Philippe Descola and Viveiros de Castro. For some, Philippe Descola is synonymous with the 'ontological turn', even though he does not use the term or expressly ascribe to this approach.[25] As Descola states, 'we should look for the roots of human diversity at a deeper level, where basic inferences are made about the kinds of beings the world is made of and how they relate to each other'.[26] The aim is 'to take anthropological analysis to the deepest level at which differences between human ways of life can be registered'. For Descola, this level is that of ontology, which is why he is associated with this approach.[27]

However, in Viveiros de Castro's work, the notion of ontology emerged most clearly as a matter of concern for contemporary anthropology.[28] Although his work is vast, the concepts of *perspectivism* and *multinaturalism* used to describe what happens in indigenous Amerindian cosmologies are recognized as his main contribution.[29] I return to these concepts in the next section. Still, just to provide a general definition, it is worth noting that perspectivism refers to how Amazonian peoples see other beings, which 'is radically different from the way in which those beings see humans and see themselves'.[30] As Viveiros de Castro points out: '[p]redatory animals and spirits see humans as prey animals, while prey animals see humans as spirits or predatory animals … Seeing us as non-human, it is themselves whom the animals and spirits see as human'.[31]

The conception of territory as a space inhabited by human and non-human entities is characteristic of other Amazonian indigenous peoples.[32] However, as Viveiros de Castro acknowledges, like any 'ideal model', perspectivism 'departs to a greater or lesser extent from all the ethnographic realities that inspired it'. It offers, nevertheless, the potential to highlight the

[24]Two of the main trajectories that lie at its roots are those of Roy Wagner and Marilyn Strathern. While Wagner's work does not explicitly discuss ontology, it is considered key because it places *conceptualization* at the heart of anthropology. Through his theory of invention, developed for the study of myth, Wagner systematically places *conceptualization* at the centre, and thus represents one of the most important theoretical influences of the ontological turn. Strathern, for her part, is key for her 'radically reflexive method', which is at the heart of the ontological turn. For a detailed discussion of Wagner's and Strathern's work in the framework of the ontological turn, see ibid. Ch. 2 and 3, respectively. Other authors considered part of the ontological turn are Mario Blaser and Marisol de la Cadena. See M. De La Cadena, *Earth Beings* (2015); M. De La Cadena and M. Blaser, *A World of Many Worlds* (2018).

[25]Descola makes the following disclaimer: 'My conviction is that systems of differences in the ways humans inhabit the world are not to be understood as by-products of institutions, economic systems, sets of values, cultural patterns, worldviews, or the like; on the contrary, the latter are the outcome of more basic assumptions as to what the world contains and how the elements of this furniture are connected … My only claim in the so-called "ontological turn" – an expression I have never used myself – is just one of conceptual hygiene: we should look for the roots of human diversity at a deeper level, where basic inferences are made about the kinds of beings the world is made of and how they relate to each other.' See P. Descola, 'Modes of Being and Forms of Predication', (2014) 4(1) *HAU: Journal of Ethnographic Theory* 271. Cited by Holbraad and Pedersen, *supra* note 19, at 62.

[26]See Descola, ibid., at 273.

[27]See Holbraad and Pedersen, *supra* note 19. It is illustrative of the place of Amazonia that Descola begins his most comprehensive work by saying, 'It was in the lower reaches of the Kapawi, a silt-laden river in upper Amazonia, that I began to question how self-evident the notion of nature is'. See P. Descola, *Beyond Nature and Culture* (2013).

[28]He is considered part of postcolonial anthropology because of the political project that underlies his academic contribution. See Holbraad and Pedersen, ibid., at 157–9.

[29]E. Viveiros De Castro, 'Cosmological Deixis and Amerindian Perspectivism', (1998) 4(3) *Journal of the Royal Anthropological Institute* 469; E. Viveiros De Castro, 'Perspectivismo Y Multinaturalismo En La América Indígena', in A. Chaparro and C. Schumacher (eds.), *Racionalidad y Discurso Mítico* (2003), 191; Viveiros De Castro, *supra* note 12; Viveiros De Castro, *supra* note 11.

[30]E. Viveiros De Castro, 'Perspectivismo E Multinaturalismo En La América Indígena', in Surrallés and García Hierro, *supra* note 7, at 37–82.

[31]Ibid.

[32]See, for instance, D. Kopenawa and B. Albert, *The Falling Sky: Words of a Yanomami Shaman* (2013); A. Krenak, *Life Is Not Useful* (2023).

contrast with the ontology of Western modernity very well.[33] At the same time, while studies related to Amazonia have contributed in a decisive way to the ontological turn, 'it is by no means exclusive to places, themes or questions related to "non-Western" peoples'.[34]

Let us consider again that for the Kukama the river contains spirits that inhabit 'objects' such as the *quirumas*. Let us pause for a moment to ask whether the river is still an object even though it contains spirits? By definition, is not an object precisely that which has no spirit? If it is not an object, what is the river? The realization of this difference of what the river *is* for the Kukama may be what Holdbraad and Pedersen call an 'a-ha! moment'.[35] That is a moment of realizing that we can question the most basic things we have taken for granted. These are 'moments of ontological relativisation' that allow us to question our basic assumptions and thereby destabilize or disrupt 'what we think we know in favour of what we may have not imagined'.[36] With this in mind, we can think of the different conceptualizations of the river as distinct ways of understanding the world, specifically in terms of culture-nature relations. By referring to fundamental premises of ways of understanding what *something* (the river in the example) *is*, this is an ontological distinction. As the next section shows, this ontological difference is one that international law does not usually see, and international lawyers generally remain blind to it.

3. Problematizing culture-nature relations with Amazonian thinking: How do we characterize the difference in the solutions offered by international law?

3.1 Nature-culture divide in international environmental law: The river as an object of environmental protection

The profound differences between indigenous relationships with the natural world and those of international environmental law have been noted by several authors. As Watson states, '[a]ncient relationships and obligations to the natural world have been recharacterized in narratives such as the "protection of human rights" and environmental laws framed by colonial states'.[37] International environmental law is informed by a 'Western uniform worldview' based primarily on 'an individualised connection to land as property and commodity'.[38]

According to Natarajan and Dehm, international law's understanding of the environment is shaped by Western history and culture, influenced by the development of 'Western environmentalism' in the United States during the 1960s–1970s and subsequently incorporated into international legal frameworks.[39] This perspective is exemplified by the 1972 Stockholm Conference on the Human Environment, considered a seminal moment for international environmental law.[40] The authors argue that international law perceives the environment as an *object* of legal protection and conveniently establishes a distinction between the public and private spheres.[41] However, as they point out, 'this conceptualisation of the environment is not self-evident to, or it is not shared by most of the world'.[42]

Indeed, international environmental law reflects a dualism between culture and nature, the human and the non-human, characteristic of a particular Western ontology. Consider the 1972 Stockholm Declaration, whose preamble states in the first sentence: 'Man is both creature and

[33]See Viveiros De Castro, *supra* note 12.

[34]See Holbraad and Pedersen, *supra* note 19.

[35]Ibid.

[36]Ibid.

[37]I. Watson, 'Inter-Nation Relationships and the Natural World as Relation', in Natarajan and Dehm, *supra* note 3, at 355.

[38]I. Watson, 'Aboriginal Relationships to the Natural World: Colonial "Protection" of Human Rights and the Environment', (2018) 9(2) *Journal of Human Rights and the Environment* 119.

[39]See Natarajan and Dehm, *supra* note 3; see also Natarajan and Khoday, *supra* note 8.

[40]See Natarajan and Dehm, ibid., at 3.

[41]Ibid.

[42]Ibid.

moulder of his environment [sic].'[43] This sentence shows the conception of the human being, not only as a creation of the environment but also as the 'moulder' of 'his' own environment. In other words, the human being comes from nature but has somehow separated and positioned themself in a way that allows them to shape the environment that surrounds them. Therefore, the environment is understood as something separated from the human being. This externalization of the environment is not unique to the Declaration but underlies international environmental law. As Sands and Peel state, '[l]egal definitions of "environment" conventionally take dictionaries as their starting point, which define "environment" as "the objects or the region surrounding anything"'.[44] The environment is thus understood as an *object*, as something external to the human.

This perspective reflects a specific way of objectifying nature, a characteristic feature of modern Western ontology.[45] It is relevant to refer here to Descola's work, particularly to his definition of ontology as 'systems of properties of existing beings, which serve as a reference for contrasting forms of cosmologies, models of social bonds and theories of identity and otherness'.[46] Descola employs the opposition between 'physicality' and 'interiority' to give the contours of the possible ways the self can relate to others. One of these forms is the naturalistic ontology of modern Western society, characterized by the 'continuity of the physicality of the entities of the world and a discontinuity of their interiorities'.[47] That is to say, 'faced with another entity, human or non-human', a naturalistic ontology would assume that 'its interiorities are different and [its] physicalities analogous'.[48]

It presupposes a division or discontinuity between the human and the non-human, resulting from a 'prolonged and singular process of multiple decantations and ruptures'.[49] Descola makes an intricate 'genealogical sketch' of the genesis of the division, which I will not attempt to outline here. However, it is worth mentioning that it was in the first half of the fifteenth century that 'the operation by which nature and the world are produced as autonomous objects by the grace of man's gaze upon them' can be located.[50] A fundamental operation for the externalization of the human being concerning nature was the 'double idea of a transcendence of man and of a universe extracted from nothingness by the divine will', stemming from the Christian tradition.[51] The representation of the environment as the exterior is, in turn, 'inseparable from the movement of the mathematization of space' effected 'by geometry, physics and optics, from the cosmological decentring of Copernicus to the *res extensa* of Descartes'.[52]

These few elements allow us to see the historicity of the exteriority of nature. From a naturalist ontology, as Descola points out, nature is presented 'as an autonomous ontological domain, a field of research and scientific experimentation, an object to be exploited and improved'.[53] This ontology is built on the premise that natural entities exist and develop independently of human

[43]1972 Stockholm Declaration, Preamble, para. 1.

[44]P. Sands and J. Peel, *Principles of International Environmental Law* (2012), at 14. See the section on 'The Environment and International Law: Defining Terms'.

[45]P. Descola, 'Constructing Natures: Symbolic Ecology and Social Practice', in P. Descola and G. Pálsson (eds.), *Nature and Society: Anthropological Perspectives* (1996), 82.

[46]See Descola, *supra* note 25.

[47]See Descola, *supra* note 27.

[48]See Descola, *supra* note 25.

[49]See Descola, *supra* note 27.

[50]Ibid.

[51]Ibid.

[52]Ibid. The threads can even be traced back to Aristotelian philosophy: the 'decontextualisation of the entities of nature and organisation into an exhaustive causal taxonomy [which] creates an original domain of objects that will henceforth lend the West many features of its strange individuality'. Ibid.

[53]Ibid.

will.[54] Naturalism considers that the natural is governed by an order in which nothing happens without a cause, and that science is called upon to know the laws of that order.[55]

Therefore, international law not only understands the environment as an object of legal protection due to Western history and culture, but it also perceives the 'environment' as an *object* as a result precisely of its particular historical circumstances. This alone reveals a particular conception of the culture-nature relationships, i.e., a specific objectification of nature. Even those who call, from the Global South, for a more just international economic order to respond to environmental challenges can do so within the terms of the environment as an object. If we want to go beyond what modern Western ontology dictates, we should look at other ways of conceiving these relations.

Indeed, while this phrase from the 1972 Declaration preamble may have been clear to the state representatives gathered in Stockholm, it might not have held the same clarity for indigenous representatives. In particular, the Amazonian thought, described as an animist ontology, would assume that the 'interiorities' are similar and the 'physicalities' are heterogeneous.[56] As Descola points out, animism refers to the 'attribution that humans make to non-humans of an interiority identical to their own',[57] so it is based on a 'continuity between humans and non-humans'.[58] It is a continuity that:

> humanises plants and above all animals because the soul with which they are endowed enables them not only to behave in accordance with the social norms and ethical precepts of humans but also to establish relations of communication with them and between them.[59]

Thus, in the absence of such a distinction, what modern Western societies call 'nature' can be the object of 'social relations'.[60]

In the Kukama people's worldview, for instance, the territory is inhabited by different categories of 'people' who 'inhabit a plurality of "worlds"'.[61] As pointed out by Leonardo Tello, for the Kukama people, 'being people' is an ongoing process of constructing humanity that interconnects three main forms of existence: 'being people, being forest animals, and being spirits'.[62] These presences, in turn, play a significant role in configuring various ways of inhabiting the space, blurring the boundaries between human and non-human agents.[63] In Kukama communities, encounters with these other forms of inhabiting space are part of everyday life. There are numerous accounts of interactions with these beings who 'share with them their knowledge about the characteristics of their lives, their appearances, their forms of socialisation, the extent of their powers and their influence on the evolution of terrestrial, celestial and aquatic life through the transformations of the environment'.[64] This relationship generates a strong affective link with the aquatic space that crosses all aspects of life.[65]

[54]Ibid.; P. Descola, 'Las Cosmologías Indígenas De La Amazonía', in Surrallés and García Hierro, *supra* note 7, at 25.

[55]See Descola, *supra* note 7.

[56]See Descola, *supra* note 27, at 190.

[57]Ibid., at 199.

[58]See Descola, *supra* note 45, at 89.

[59]See Descola, *supra* note 27, at 199.

[60]See Descola, *supra* note 54.

[61]See Tello Imaina, *supra* note 1.

[62]Ibid.; see also D. Fernandes Moreira and M. Ramírez Colombier, 'Mi Casa Pequeña, Mi Corazón Grande. Política Territorial Y Cosmológica Del Pueblo Kukama/My Little House, My Big Heart. Territorial and Cosmological Politics of the Kukama People', (2019) 10(1) *Mundo Amazónico* 157.

[63]D. Fernandes Moreira and M. Ramírez Colombier, 'Geografías Afectivas Del Pueblo Kukama, Amazonía Peruana', (2019) 33 *Espacio y Desarrollo* 47; L. Tello Imaina, 'Prólogo', in L. Tello Imaina and S. Boyd (eds.), *Karuara: La Gente Del Río* (2016), 8.

[64]See Fernandez Moreira and Ramírez Colombier, *supra* note 62.

[65]See Fernandez Moreira and Ramírez Colombier, *supra* note 63.

Naturalism and animism, as well as totemism and analogism, represent the four ways in which the self can relate to others, according to Descola.[66] The naturalistic ontology is, therefore, one of the possible relations between nature and culture, explained by its historically particular character as a society. This relegation to one among other possible forms implies a 'provincialisation' of Western naturalistic ontology.[67] The provincialization of the human-non-human relationship in Western society, which underlies international environmental law, carries significant critical potential. It reveals how distributions of the natural-non-natural, derived from a specific ontology, are extended to diverse societies like those in the Amazon that may not share the same perspective. This is relevant not only for addressing ecological degradation but also for recognizing that the notion of being the 'moulder'[68] of the environment is inseparable from a naturalistic ontology that enables a relationship of subjection and exploitation.[69]

3.2 Multiculturalism in indigenous collective rights: The river as cultural expression

Although indigenous peoples have had to take advantage of the avenues opened by international human rights law, indigenous activists and scholars have pointed out the limits of this framework and the distorting ways indigenous interests may be interpreted. The approaches from which works critical of indigenous peoples' rights have been elaborated are very diverse. They relate, in general, to questions about 'the normative content of indigenous peoples' rights, the transformative potential of rights discourse, and the limits of law to realise human dignity'.[70]

The point I would like to make here, in line with this article's central argument, is that the framework of indigenous peoples' rights is strongly – though not exclusively – based on cultural differences. This is premised on the existence of a multiplicity of cultures. This, in turn, can be identified as an element of Western naturalistic ontology, which differs from other possible culture-nature relations, such as those of Amazonian peoples.

More or less obvious expressions of the centrality of culture can be found in international instruments on indigenous peoples' rights. For example, the United Nations (UN) Declaration on the Rights of Indigenous Peoples states in its preamble: 'affirming ... that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind'.[71] The International Labour Organization (ILO) Convention 169 also contains numerous references to culture as a central issue underpinning the recognition of indigenous peoples.[72] Something similar can be said of the American Declaration on the Rights of Indigenous

[66]The four ontologies are succinctly defined by Descola as follows: 'Faced with some other entity, human or nonhuman, I can assume either that it possesses elements of physicality and interiority identical to my own, that both its interiority and its physicality are distinct from mine, that we have similar interiorities and different physicalities, or, finally, that our interiorities are different and our physicalities are analogous. I shall call the first combination "totemism", the second "analogism", the third "animism", and the fourth "naturalism".' See Descola, *supra* note 25, at 121. These four ontologies identified by Descola are described in depth in his work: see Descola, *supra* note 27.

[67]D. Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (2008). In a similar vein, see Holbraad and Pedersen, *supra* note 19, at 64.

[68]See Stockholm Declaration, *supra* note 43, Preamble, para. 1.

[69]See Grear, 'The Discourse of Biocultural Rights and the Search for New Epistemic Parameters', *supra* note 2.

[70]See Corradi et al., *supra* note 9. These questions have given rise to the emergence of the field of 'critical indigenous rights studies' characterized as 'a knowledge/power domain whereby scholars operationalise Indigenous knowledges to develop theories, build academic infrastructure, and inform our cultural and ethical practices': A. Moreton-Robinson, 'Introduction: Locations of Engagement in the First World', in A. Moreton-Robinson (ed.), *Critical Indigenous Studies: Engagements in First World Locations* (2016), 3.

[71]United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295 (13 September 2007), Preamble.

[72]For instance, it states: 'Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding': See ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, Preamble.

Peoples, adopted by the states of the American region, including those with Amazonian territory.[73]

However, it is in practical application that the point can best be seen. While the Kukama people have not (yet) turned to the Inter-American system, several Amazonian peoples have had to do so to protect their ancestral territories from development or extractive projects.[74] The Kichwa people of Sarayaku, whose ancestral territory is located in what is now the province of Pastaza in the Ecuadorian Amazon, had to seek protection from oil activities before the Inter-American system.

In the landmark judgment of the Inter-American Court of Human Rights, testimonies provided by representatives of the Sarayaku people are cited to characterize what the Court calls 'the special relationship of the Sarayaku people with its territory'. The Court acknowledges that, according to the Kichwa of Sarayaku, '"all the elements of nature" possess a spirit or *Supay*, and their presence renders the inhabited places sacred'.[75] It also includes statements made by Mr. Sabino Gualinga, an authority figure of Sarayaku, who stated that:

> Sarayaku is a living land, a living forest; it contains medicinal trees and plants, and other types of beings ... Beneath the ground, *ucupacha*, there are people living as they do here ... Sometimes you hear doors shutting in the mountains; that is the presence of those that live there ...[76]

These testimonies, among others,[77] lead the Court to conclude that 'the Kichwa People of Sarayaku have a deep and special relationship with their ancestral territory, which is not limited to ensuring their subsistence, but integrates their own cosmovision and cultural and spiritual identity'.[78]

Other authors, such as Lupin and Townsend, have criticized the Court's treatment of these statements from an epistemic perspective.[79] Given the focus of this piece, I would like to highlight the ontological dimension. Despite its brevity, the section discussing the 'special relationship of the Sarayaku people with their territory' carries significant importance. These words shed light on the ontological diversity of Amazonian peoples, expressing a continuity between humans and non-humans rooted in an animistic ontology according to Descola's framework. However, in this context, it is reduced to a mere 'special' aspect related to their 'cultural and spiritual identity'.[80] To grasp the problematic implication of this reduction, it is relevant to consider Viveiros de Castro's concept of perspectivism. While Viveiros de Castro offers a similar definition of animism,[81] this

[73]OAS, American Declaration on the Rights of Indigenous Peoples, AG/RES. 2888 (XLVI-O/16) (14 June 2016). For example, its Preamble reads: 'Recognizing ... [t]he important presence in the Americas of indigenous peoples, and their immense contribution to development, plurality and cultural diversity, and reiterating our commitment to their economic and social well-being, as well as the obligation to respect their rights and cultural identity; and that the existence of indigenous cultures and peoples of the Americas is important to humanity.'

[74]The 2019 report of the Inter-American Commission on Human Rights on the 'Human Rights Situation of Indigenous and Tribal Peoples of the Pan-Amazon' includes a systematization of the Inter-American system's pronouncements on Amazonian peoples. IACHR, Situation of the Human Rights of Indigenous and Tribal Peoples of the Pan-Amazon Region, OAS/Ser.L/V/II. Doc. 176 (29 September 2019), Ann. 2.

[75]*Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment of 27 June 2012, [2012] IACtHR (Ser. C No. 245.), para. 57.

[76]Ibid., paras. 148–155.

[77]Similar expressions were made at other stages of the proceedings before the Inter-American system: *Application to the Inter-American Court of Human Rights in the case of Kichwa People of Sarayaku and its members (Case 12.465) v. Ecuador*, IACtHR, para. 52.

[78]See *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, *supra* note 75, para. 150.

[79]D. Lupin Townsend and L. Townsend, 'Epistemic Injustice and Indigenous Peoples in the Inter-American Human Rights System', (2021) 35(2) *Social Epistemology* 147.

[80]See *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, *supra* note 75, para. 150.

[81]He understands it as 'an ontology that postulates the social character of relations between humans and non-humans: the space between nature and society is itself social'. See Viveiros De Castro (1998), *supra* note 29, at 473.

concept allows us to 'trace the subtlety with which this "continuity" between humans and other species is expressed in Amerindian cosmologies and the practices they inform'.[82]

Perspectivism or 'perspective relativity', Viveiros de Castro argues, is a quality of Amerindian thought 'according to which the world is inhabited by different species of subjects or persons, human and non-human, who apprehend it from different points of view'.[83] Although at first sight this quality seems to be related to cultural relativism, 'the premises and conclusions of this idea' cannot be reduced to this concept. As Viveiros de Castro explains, it is not possible to extrapolate the ontological divisions underlying the opposition between relativism and universalism to Amerindian perspectivism. This is because the Western distinction between nature and culture cannot simply be used to explain areas of non-Western cosmology.[84]

Certainly, Amerindian perspectivism would require 'shuffling the conceptual cards' of the labels associated with nature and culture. In modern Western thought, nature is associated with something universal, objective, physical or factual; while culture is related to labels linked to the particular, subjective, moral or evaluative. As Viveiros de Castro points out, modern cosmologies are based on the idea of the uniqueness of nature as opposed to the multiplicity of cultures.[85] This is why the term *multiculturalism* is used to refer to this aspect of modern cosmology.[86] This division of labels and premises between nature-culture does not apply in Amerindian thought. Unlike modern multiculturalist cosmology, Amerindian thought assumes 'a unity of spirit and a diversity of bodies', as illustrated in the following excerpt:

> The idea that non-human agents perceive themselves and their behaviour in the form of human culture plays a crucial role. The translation of "culture" for the worlds of extra-human subjectivities has as a corollary the redefinition of various "natural" events and objects as cues from which social agency can be abducted ... what we call "blood" is the jaguar's beer, what we have for a mudflat is for the tapirs a great ceremonial house, etc .... And so what some call "nature" can be the "culture" of others.[87]

Viveiros de Castro uses the term *multinaturalism* to indicate this differentiated feature of Amerindian thought.[88] In this way, perspectivism, says the author, 'is not a *multiculturalism* with its good dose of relativism, but rather a *multinaturalism*'.[89] There is then a re-shuffling of terms: *uniqueness of nature/multiplicity of cultures* of modern cosmology vs. *multiplicity of nature/uniqueness of the culture* of Amerindian cosmology. As Viveiros de Castro points out, this in turn is rooted in a distinct fundamental assumption. In Amazonian thought, 'the shared foundation of humanity and animality is not animality, as it is for us, but humanity'.[90] This is evident in the words quoted from Leonardo Tello: 'Before, when animals were people.'[91] In essence, while for Amazonian thought 'animals were human and ceased to be so', for Western thought 'humans were animals and "ceased" to be so, with the emergence of culture, etc.'.[92]

Beyond the apparent complexities of the issue, the central point to note here is that perspectivism shows that the nature-culture binary is not inverted or overcome in Amazonian

[82]See Holbraad and Pedersen, *supra* note 19, at 162.

[83]See Viveiros De Castro (2003), *supra* note 29; Viveiros De Castro, *supra* note 30, at 37; Viveiros De Castro, *supra* note 12.

[84]See Viveiros De Castro, *supra* note 29.

[85]As the author points out, the uniqueness of nature is 'guaranteed by the objective universality of bodies and substance'; while the multiplicity of cultures is ensured by 'the subjective particularity of spirits and meaning', Ibid.

[86]See Viveiros De Castro, *supra* note 30, at 38.

[87]Ibid.

[88]Ibid.

[89]Ibid.

[90]See Viveiros De Castro, *supra* note 12, at 37. Ibid.

[91]See Tello Imaina, *supra* note 1.

[92]See Viveiros De Castro, *supra* note 12.

cosmology but rather 'distorted'.[93] This distortion of perspectivism evidences the contrast with the naturalism characteristic of Western modernity.[94] Therefore, defining difference as cultural is premised on the idea of a multiplicity of cultures, an expression of multiculturalism. This does not mean it cannot be expressed in terms of culture. Still, we must be aware that in doing so, we are flattening it insofar as it does not express the disruption of the Western nature-human division of the Amazonian indigenous conception of the world.

3.3 Multinationalism in the rights of nature: The river as a subject of rights

A mention of the rights of nature (RoN) is in order, as they represent today one of the most important and innovative trends worldwide in the face of planetary degradation.[95] Beyond the differences in terminology, nuances and different models, the central idea of RoN is that 'nature has fundamental rights that are not dependent only on human needs'.[96] In contrast to the traditional approach to environmental law, which protects the environment as valuable and necessary for human life, the RoN assume that 'nature itself should be protected by the law and, in some contexts, itself granted legal standing in law'.[97] In this way, nature is understood as something that has value in itself, and the way to protect it is by recognizing its rights. Thus, RoN can accommodate onto-epistemic conceptions with different valuations of nature.[98]

Although, as Gilbert et al. point out, 'international law has engaged little with the idea that nature might have its own rights and interests', RoN are being recognized in various national norms, policies and judicial decisions around the world.[99] Examples from Amazonian countries include the constitutions of Ecuador[100] and Bolivia[101], as well as a growing body of jurisprudence in Colombia.[102] While these rights may be more permeable to the recognition of different ontological relationships with nature, several authors have advised caution and expressed scepticism. The cause for caution is that RoNs are underpinned by the liberal paradigm of the concept of rights, itself 'a universalist and neoliberal idea'.[103] Although RoN can be considered 'a hybrid concept, a mestizo concept and an epistemic pact or intermediate language', 'neither of these conceptions seems satisfactory for explaining the complexity of indigenous thinking'.[104]

[93]See Descola, *supra* note 25; Viveiros de Castro's perspectivism has been called a 'stronger form of animism or "new animism"'. See Holbraad and Pedersen, *supra* note 19.

[94]See Viveiros De Castro, *supra* note 12.

[95]J. Gilbert et al., 'The Rights of Nature as a Legal Response to the Global Environmental Crisis? A Critical Review of International Law's "Greening" Agenda', (2021) *Netherlands Yearbook of International Law* 47; M. Tanasescu, *Understanding the Rights of Nature: A Critical Introduction* (transcript Verlag, 2022).

[96]See Gilbert et al., ibid.

[97]Ibid.

[98]See Grear, 'The Discourse of Biocultural Rights and the Search for New Epistemic Parameters', *supra* note 2.

[99]See Gilbert et al., *supra* note 95.

[100]Chapter 7 of the 2008 Constitution of the Republic of Ecuador states: 'Nature or Pacha Mama, where life is reproduced and realised, has the right to full respect for its existence, maintenance and regeneration', 2008 Constitution of the Republic of Ecuador, Ch. 7 Rights of Nature, Arts. 71–74.

[101]Bolivia, Law on the Rights of Mother Earth, Law 071 of 2010, and Ley Marco de la Madre Tierra y Desarrollo Integral para Vivier Bien, Law 300 of 2012.

[102]The recognition of RoN was initiated in 2016 by the Colombian Constitutional Court based on the case of the Atrato River in Choco. Since then, it has had a rapid development in judicial decisions, including the decision of the Supreme Court of Justice to recognize the Amazon as a subject of law. Constitutional Court of Colombia, Judgment T-622/16, 10 November 2016; Supreme Court of Justice, Civil Cassation Chamber, Judgment 4360-2018, 5 April 2018.

[103]See Gilbert et al., *supra* note 95.

[104]R. Merino, 'Law and Politics of the Human/Nature: Exploring the Foundations and Institutions of the "Rights of Nature"', in Natarajan and Dehm, *supra* note 8, at 307. Other challenges to RoN from an indigenous perspective include T. A. Eisenstadt and K. Jones West, *Who Speaks for Nature?: Indigenous Movements, Public Opinion, and the Petro-State in Ecuador* (2019); E. O'donnell et al., 'Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature', (2020) 9(3) *Transnational Environmental Law* 403. A. Rawson and B. Mansfield, 'Producing Juridical Knowledge: "Rights of Nature" or the Naturalization of Rights?', (2018) 1(1–2) *Environment and Planning E: Nature and Space* 99;

Moreover, RoN is a concept that has emerged within the national legal framework in contexts strongly based on the idea of multi or plurinationalism rather than under *multinaturalism*.[105] But when we say 'rights of nature', we tend to think of non-human entities, understood in Western terms, as objects of protection. Recognizing rights of the river usually implies that indigenous representatives and other key actors act as a kind of 'guardian' of the river. However, for the Kukama, for example, it is the other way around. The river is the mother, she is the one who takes care of them, she is the one who has that responsibility.[106] Therefore, as the rights of nature are also based on a human-nature divide, they would need to be put 'in relation to' Amazonian thinking, where these boundaries are experienced differently.

3.4 Amazonian multinaturalism: Blurring human-non-human divisions

From an ontological dimension, it can be said that the river *is* all these things at once. Focusing on only one aspect reduces its complexity. We could describe the case of the Kukama and the Amazon Waterway as a typical case of *development* vs. *environment/indigenous peoples' rights*. That is to say, as a scenario of contraposition between the *river as a highway* vs. *the river as a space of environmental protection/sacred-cultural space*. That is indeed often the case. But in some scenarios, as in this one, it is not only that. I return to the example to show how rethinking what the river is can allow us to see this encounter differently.

We had described the *quirumas* as tree trunks embedded in the river bottom. We might assume about the *quirumas* that they are an 'object'. However, according to Apu Rubén's account, the *quirumas* contain a spirit. This account also coincides with ethnographic works on aquatic spaces, according to which, for the Kukama, the great water snake is the most emblematic and hegemonic being of the river space.[107] The existence of fish, for example, does not depend on humans, but on the mother snake.[108] The *quirumas* – those trunks that the project sought to eliminate – are the homes of the fish, cared for by this powerful being that inhabits the bodies of water. The river is thus a being that '"walks" and acts with the *purawa* (the mother snake that weaves the territory), the one responsible for configuring its territorial spaces and giving rise to the sediment, the enchanted areas, the houses, the black lands, the plants and the forests'.[109]

It is worth asking, then, in what sense can *quirumas* be described as 'embedded trunks' if that is to assume that they are objects (as opposed to subjects or something else)? Describing the *quirumas* as mere 'objects' would not comprehensively reflect what they are; insofar as for the Kukama, they possess spirits.[110] Thus, the ontological turn would invite us to relativize the concept of *quiruma* and to reconceptualize it 'in relation to', *inter alia*, the distinction between subjects and objects, human and non-human. The revised concept of *quiruma* would have to 'avoid the initial confusion of assuming that something described as containing a spirit could also be taken as a kind of object'.[111]

I. D. Vargas-Roncancio, *The Legal Lives of Forests: Law and the Other-Than-Human in the Andes-Amazon, Colombia (an Anthropological and Legal Theory Approach)*, (2021).

[105]R. J. Coombe and D. J. Jefferson, 'Posthuman Rights Struggles and Environmentalisms from Below in the Political Ontologies of Ecuador and Colombia', (2021) 12(2) *Journal of Human Rights and the Environment* 177; A. Álvez-Marín et al., 'Legal Personhood of Latin American Rivers: Time to Shift Constitutional Paradigms?', (2021) 12(2) *Journal of Human Rights and the Environment* 147.

[106]In Rivas's words: 'it is endowed with the attribute of being *mama*, mother; or *mai*, spirit of any body of water: river, lagoon, stream and rain … [T]he water serpent is an emblem of fertility and the continuity of aquatic life', R. Rivas Ruiz, *Le Serpent, Mère De L'eau: Chamanisme Aquatique Chez Les Cocama-Cocamilla D'amazonie Péruvienne* (2011). See also R. Rivas Ruiz, *La Serpiente, Madre Del Agua: Chamanismo Acuático Entre Los Kukama-Kukamiria De La Amazonía Peruana* (2022).

[107]See Rivas Ruiz (2011), ibid.

[108]See Moreira and Colombier, *supra* note 62.

[109]See Moreira and Colombier, *supra* note 63.

[110]See Holbraad and Pedersen, *supra* note 19.

[111]Ibid.

For international law, *quiruma's* spirits or sentient beings such as the *mother serpent* are usually an expression of another 'culture'. They may be mystical, exotic or may be given protection through the framework of indigenous peoples' rights. However, it is not possible to reduce what happens in Amazonian societies to the 'binary opposition between the natural and the cultural'.[112] Such reductionism obscures other realities that, although considered obscure, do not cease to exist.[113]

It can be thought of as the river perceived differently. To think that it is about nature that 'is apprehended, perceived, conceived differently from different points of view' would be part of modern Western thought.[114] From perspectivism, 'there is only one point of view, that of every conscious being. Every actor in cosmological subject position sees the world in the same way'.[115] In other words, it is not only different or opposing interpretations of nature (different cultures but only one reality) but also struggles for the existence, stabilization and protection of different socio-natural worlds.[116]

We are, as Marisol de la Cadena puts it, *anthropo-not-seen*. That is part of a:

> process by which heterogeneous worlds (such as that of the Kukama), which are not constituted based on the division between humans and non-humans – and which do not even conceive of the different entities that compose them in this way – are subjected to this division . . .[117]

There is a subjugation insofar as the *anthropo-not-seen* exercises ontological power: they can define what is possible or what is real on the basis of their particular conception of the world. In the case of the Amazon Waterway project, this ontological power makes it possible, for instance, to eliminate the *malos pasos* removing the sediments from the bottom of the rivers so that large ships can navigate the Amazonian rivers, even if this means eliminating the river beings of the Kukamas.

4. Why international law cannot see this ontological difference: Searching for answers among the well-known deficiencies of international law

TWAIL has been broadly understood as a politically oriented academic community with a concern for asymmetries of power and injustice in the Global South. Rather than a closed theoretical-methodological approach, it is a movement characterized by its critical, open and inclusive approach with the common intention 'to give voice to viewpoints systematically underrepresented and silenced'.[118] TWAIL thus offers a sufficiently broad space for diverse agendas linked to undoing 'colonial legacies of international law in the lives of peoples of the global South'.[119] This opening provides an entry point to the present piece, which seeks to contribute to unpack colonial relations over the Amazonian territory from an ontological approach inspired by Kukama thought.

As Natarajan et al. have noted, the question that has dominated the discussion in TWAIL has been how the West constructed the rest of the world in order to exert control over it through law,

[112]See Viveiros De Castro, *supra* note 12, at 38.

[113]F. Li, 'Relating Divergent Worlds: Mines, Aquifers and Sacred Mountains in Peru', (2013) 55(2) *Anthropologica* 399.

[114]See Viveiros De Castro, *supra* note 12, at 54.

[115]Ibid.

[116]F. Li, *Unearthing Conflict: Corporate Mining, Activism & Expertise in Peru* (2015); Li, *supra* note 113.

[117]M. De La Cadena, 'Protestando Desde Lo Incomún', in R. Silva-Santisteban (ed.), *Mujeres Indígenas Frente Al Cambio Climático* (2019), 35. M. De La Cadena, 'Indigenous Cosmopolitics in the Andes: Conceptual Reflections Beyond "Politics"', (2010) 25(2) *Cultural Anthropology* 334.

[118]U. Natarajan et al., 'Introduction: TWAIL-on Praxis and the Intellectual', (2016) 37 *Third Word Quarterly* 1946.

[119]U. Natarajan et al., 'Third World Approaches to International Law Review: A Journal for a Community', (2020) 1 *TWAIL Rev.* 7.

locally, globally and internationally.[120] But talking about the way in which the Western organizing hierarchical order was constructed and is maintained does not necessarily encompass talking about the perspective of the non-Western other, the ways of being and thinking that were and are left behind. As Bhatia has warned, TWAIL needs to seriously consider the indigenous perspective, a task to which several works have been devoted in recent years.[121] This article aligns with this concern and builds upon this engagement. The particular intention here, as I mentioned previously, is to put international law 'in relation to' Amazonian thinking. More specifically, I would like to do so by paying attention to a TWAIL concept that has helped explain how international law has hierarchically organized the world, namely the 'dynamics of difference' as developed by Anghie. With this in mind, I first refer in this section to how (unsurprisingly) Amazonian territory has also been subjected to this Western hierarchical organizing order, and then reread the 'dynamics of difference' in relation to Amazonian thinking.

The projection of Western ontology in terms of culture-nature relations in what we now call Amazonia is inseparable from colonialism, an operation in which international law was and is implicated. As widely developed by TWAIL scholars, international law is a product of modern Western societies that has been expanded and projected to other societies through colonialism, justified through the civilizing mission.[122] The colonial origins of international law 'create a set of structures that continually repeat themselves at various stages in the history of international law'.[123] Thus, far from being located solely in its remote origins, colonialism and its civilizing project structurally determine international law.

As Anghie has famously argued, this project was driven by what he calls 'the question of "cultural difference"', that is, 'the imperial idea that fundamental cultural differences divided the European and non-European worlds was profoundly important to the civilising mission in several ways'.[124] As he asserts, the trajectory of international law is marked by the 'dynamics of difference', an expression that serves to describe: 'broadly, the endless process of creating a gap between two cultures, demarcating one as "universal" and civilized and the other as "particular" and uncivilized, and seeking to bridge the gap by developing techniques to normalize the aberrant society'.[125]

The idea of the 'dynamics of difference' certainly helps to explain international law operations in the Amazon. Although the colonization of the Amazon began with the first wave of colonization, [126] various factors made the Spanish occupation of the forest limited and unstable.[127] However, it served to lay the foundations for the conceptions of the territory and the Amazonian other. From the colonial period onwards, the Amazonian territory was conceived by the Spanish

[120]As they put it, 'international law and its institutions have primarily served to universalize and normalize Western worldviews and interests, especially related to capitalism, modernity and statehood'. Ibid.

[121]A. Bhatia, 'The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World', (2012) 14 *Oregon Review of International Law* 131.

[122]M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2001).

[123]A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2007), at 3. See also A. Anghie, 'Francisco De Vitoria and the Colonial Origins of International Law', (1996) 5(3) *Social & Legal Studies* 321.

[124]See Anghie (2007), ibid., at 4.

[125]Ibid.

[126]The Treaty of Tordesillas of 1494, which marks the beginning of a narrative about the right to territory, had enormous implications for its occupation in that it divided the region for the first time between two European powers, Spain and Portugal. M. Koskenniemi, 'Sovereignty: A Gift of Civilization-International Lawyers and Imperialism, 1870–1914', in Koskenniemi, *supra* note 122. Material colonization came much later, as the first known Spanish expedition to the Amazon took place half a century after the signing of the Treaty of Tordesillas. G. De Carvajal, *Descubrimiento Del Río De Las Amazonas Según La Relación Hasta Ahora Inédita De Fr. Gaspar De Carvajal, Con Otros Documentos Referentes Á Francisco De Orellana Y Sus Compañeros: Publicados Á Expensas Del Excmo. Sr. Duque De T'serclaes De Tilly* (1894).

[127]Amazonian historiography refers especially to the lack of desired minerals and spices, along with low population density. F. Barclay, 'Olvido De Una Historia. Reflexiones Acerca De La Historiografía Andino-Amazónica', (2001) 61(223) *Revista de Indias* 493; J. V. San Román, *Perfiles Históricos De La Amazonía Peruana* (1994), Ch. II.

as a vast and deserted area waiting to be brought under civilization.[128] As the geographical accounts of the time show, the so-called Amazonia was considered an 'unchristianised, unadministered and unpopulated area ... inhabited exclusively by pagan Indians [sic]'.[129] The colonization of the Amazon enabled the imposition of a particular vision of this territory while at the same time silencing other ways of seeing the rainforest that differed from the Western perspective.[130] This silencing went hand in hand with the conceptualization of the Amazonian peoples as 'pagans', 'savages', and 'barbarians' who had to be Christianized and civilized.[131] In this way, the violence of colonialism reduced 'the colonised other to an inferior being inhabiting a zone of non-being'.[132]

This conceptualization, far from being overcome with the process of independence, was maintained well into the Republican era. As Obregón has pointed out, in postcolonial Latin America, 'the ideas of civilisation were fundamental for the new nations to become participants in and contributors to international law'.[133] The centrality of the civilizing mission in the Amazonia can be seen, for instance, in the Convention on River Navigation of 23 October 1851, in which the Republic of Peru and the Emperor of Brazil put this task at the heart of the first treaty to enter into force between the two states.[134]

These are just a few examples that allow us to see how the dynamic of difference helps explain the operations of international law in the Amazon. However, to understand its implications regarding nature-culture relationships in the Amazonian context, we would need to revisit this dynamic from an ontological perspective. The dynamic of difference in international law is based on the premise that there is a multiplicity of cultures. Within the idea of a multiplicity of cultures, one can be a universalist or a relativist. Broadly speaking, universalists would be 'those who think

[128]This resonates with Yao's point that 'the European imaginary constituted the periphery as conceptually empty and ready to be remade by European models'. See J. Yao, 'The Power of Geographical Imaginaries in the European International Order: Colonialism, the 1884–85 Berlin Conference, and Model International Organizations', (2022) 76(4) *International Organization* 901.

[129]B. S. Orlove, 'Putting Race in Its Place: Order in Colonial and Postcolonial Peruvian Geography', (1993) 60 *Social Research* 301.

[130]The very name of the region has its origin in Spanish incursions in which they thought they were confronted with the Amazons. The idea of the existence of the Amazons has its origin in a Greek myth, according to which, on the banks of the river Thermodon, near the Black Sea, lived a tribe of warrior women, the Amazons, who had fought epic battles and conquered vast territories. The myth of the existence of an all-female society spread to several continents and survived through the centuries. See J. Magasich-Airola and J. M. De Beer, *America Magica: When Renaissance Europe Thought It Had Conquered Paradise* (2007), at 99.

[131]The chronicler Cieza de León, for example, presents them 'as a people so rustic that they have neither house nor clothes: they walk like animals'. He also points out that their 'customs and way of life are more of brutes than of men [,] and that they are so bad that they not only use nefarious sin, but also eat each other'[sic]. See P. Cieza De León, *Crónica Del Perú: Primera Parte* (1986 [1553]). See O. Espinosa De Rivero, '¿Salvajes Opuestos Al Progreso?: Aproximaciones Históricas Y Antropológicas a Las Movilizaciones Indígenas En La Amazonía Peruana', (2009) 27(27) *Anthropologica* 123; San Román, *supra* note 127.

[132]M. P. Meneses, 'Colonialismo Como Violência: A "Missão Civilizadora" De Portugal Em Moçambique', (2018) especial *Revista Crítica de Ciências Sociais* 115; Watson, *supra* note 37.

[133]L. Obregón, 'Completing Civilization: Creole Consciousness and International Law in Nineteenth-Century Latin America', in A. Orford (ed.), *International Law and Its Others* (2006), 247. It is well documented that, at least since the nineteenth century, European nations used a rhetoric of civilization to justify their international relations and the massive extensions of their empires. See Koskenniemi, *supra* note 122; L. Obregón, 'The Civilized and the Uncivilized', in B. Fassbender et al. (eds.), *The Oxford Handbook of the History of International Law* (2012), 917. B. Bowden, 'The Colonial Origins of International Law. European Expansion and the Classical Standard of Civilization', (2005) 7(1) *Journal of the History of International Law* 1.

[134]Peru and Brazil agreed to promote 'the exportation of the immense products of those vast regions, [which] will contribute to increase the number of their inhabitants and to civilise the savage tribes [sic]'. Convention on River Navigation of 23 October 1851, Art. 1.

that each culture is only an emanation of a universal human nature that is itself part of Nature', while relativists would be 'those who think that each culture is a world unto itself'.[135] As has been widely developed, international law has a strong universalizing tendency. In Pahuja's words, 'the attempt to use international law was inspired and enabled by international law's promised universality'.[136] It was a 'rationality that successfully made a claim for universality of a particular (provincial) set of values originating in/congenial to the North'.[137]

But for a moment, let us try to put this dynamic of international law 'in relation to' what happens in the Amazon. Let us try to generate an interference in the idea of the multiplicity of cultures and consider that for Amazonian perspectivism, culture is one, and what is multiple is nature. If we remove or at least destabilize the premise that there is more than one culture, there would be no room for assigning different characteristics to something that is the same. This assignment between 'universal' vs. 'particular', 'civilized' vs 'uncivilized' is possible only insofar as it is conceived that there is a cultural multiplicity.

It is because international law reflects modern Western thought, which conceives of a multiplicity of cultures, that it is possible to draw a dividing line between universal-particular, civilized-uncivilized. However, understanding the difference as 'cultural' is already the expression of a particular ontology (*multiculturalism*). And in the face of this multiplicity – we could say only because of this multiplicity – these 'two cultures' can be demarcated in some particular way: one as 'universal' vs. the other as 'particular', one as 'civilized' vs. the other as 'uncivilized'. In other words, camouflaged in Western 'rationality'[138] are particular forms of nature-culture relations.

For international law, there is only one ontology and societies are hierarchized according to their degree of attainment of what is considered the one way of being. We have the essence of a singular criterion by virtue of which societies are organized hierarchically on the basis of different values (Christian, 'civilized', 'developed'). It may be backward or forward, but an ontology – in the singular – creates that dividing line. It is a division in which Amazonian peoples have historically been placed as the particular, the uncivilized, the backward.

In contrast, *multinaturalism* refers to ontological plurality, which challenges the ability to draw hierarchical lines and make comparative evaluations among different ontologies. Unlike cultural difference, ontological plurality recognizes that diverse entities cannot be measured against a standard metric. International law, however, is rooted in the concept of cultural difference rather than ontological plurality. Therefore, the 'dynamics of difference' can be understood not only in cultural terms but also in ontological terms. The organization of plurality, through flattening and hierarchization, is crucial in understanding the operations of international law in places like the Amazon.

5. Concluding remarks

The central idea of this article is that international law flattens ontological difference when it comes to culture-nature, human-non-human relations. International law is blind to this ontological plurality. Although some of its areas are more open (such as the indigenous rights framework), there is a cross-cutting blindness that can be linked to international law's colonial origins that permeate it to the present day. International law, as a product of modern Western societies, not only reflects certain specific culture-nature relations but is also implicated in the reproduction and imposition of these ideas on societies such as those in the Amazon through its marked colonialism and universalizing tendency.

[135]See Viveiros De Castro, *supra* note 12, at 51.
[136]See Pahuja, *supra* note 17, at 2.
[137]Ibid.
[138]Ibid.

It is a difference that international law has not been able to overcome because it has to do with the condition of being. The civilizing project has not been enough, nor has acculturation. The unfinished nature of the international law project in the Amazon can be seen in the ongoing resistance of peoples such as the Kukama. Although there is a totalizing aspiration in international law, these other ontologies have resisted and continue to do so to this day, and they need to be recognized.

Problematizing the nature-culture relationship has in itself an important critical potential in that it allows us to notice the blindness – and before undoing the ontological blindness of international law, it is crucial to acknowledge its existence. We would have to recognize the underlying distribution of fundamental assumptions that necessitate scrutiny and problematization. It entails recognizing the boundaries of the 'universal' and the profound abyss that separates it from alternative modes of existence.

Although it is not the aim of this article to propose a way out of the question posed, I would like to offer two ideas that derive from what has been said so far and, in some way, allow us to make sense of international law thought *along with* this other ontological place. On the one hand, rethinking international law in such a way would imply provincializing the Western ontological division between nature and culture, human and non-human.[139] That is, to understand that this is only one among other possible ways of understanding such relations. Such an exercise would contribute to highlighting the historical-geographical character of the divisions of Western modernity. The relevance of the debate on the decolonization of international law offers a key entry point for this.

On the other hand, it would entail a 'pluralization' in a different sense from the common understanding of plurality articulated around categories such as ethnicity, race, gender, etc.[140] It would be an 'onto-epistemic pluralisation' of international law that takes seriously Amazonian epistemologies, the water beings of the Kukama, the *mother serpent*. An 'onto-epistemic opening'[141] would allow us to reveal the richness of the Amazonian cosmovision, whose role is critical to understanding and conserving this territory.[142] It implies placing these other ways of being, silenced by the dominant Eurocentric ontology, at the centre, and thinking about international law on the basis of the acceptance of these other existences. The combination of both exercises would be, in effect, to *Amazonize* international law.[143] Exploring its potential to rethink international law seems more necessary than ever in the face of the current ecological crisis, characteristic of the Anthropocene (or we could also say, of the *anthropo-not-seen*).[144]

[139]See De La Cadena (2019),, *supra* note 117, 35.

[140]See De La Cadena (2010), *supra* note 117.

[141]M. De La Cadena, H. Risør and J. Feldman, 'Aperturas onto-Epistémicas: Conversaciones Con Marisol De La Cadena', (2018) 32 *Antípoda. Revista de Antropología y Arqueología* 159.

[142]Paulo Bacca's work offers insightful reflections on 'indigenizing international law'. See Ilich Bacca, *supra* note 9.

[143]Some Amazonian indigenous intellectuals speak of 'amazonisation'. For example, Brus Rubio, an artist belonging to the Bora and Huitoto nations, understands amazonization as an intercultural dialogue that involves 'allowing one's own culture to emerge without consuming the other while recognizing that the creativity of the other generates a new form of intercultural identity'. See Artexchange, 'Amazonart Project: Brus Rubio', University of Essex, 2021.

[144]See De La Cadena (2010), *supra* note 117.

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