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- Estudi -

REVIEWING CLIMATE CHANGE AND THE RIGHTS OF NATURE: A COLOMBIAN EXAMPLE THROUGH AN INTERNATIONAL PERSPECTIVE

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ABSTRACT: In 2018, the Colombian Supreme Court bestowed rights to the Amazon Region. The growing climate change risks brought the Court to rule this way. The ruling relied on international environmental law, comparative law, and national policies. The discussion of the Rights of Nature is not new; various States have relied on this practice to strengthen environmental protection. Constitutional provisions, legal acts and courts' decisions are the source chosen by States to entitle the environment with rights. Remarkably, the Inter-American Court of Human Rights already identified how rights of nature are applied in certain American States, raising this discussion to international environmental law. The Colombian Court award may cause further discussions, such as: firstly, it will allow rights of nature as an alternative in environmental litigation processes, including climate ones. Secondly, concerning international environmental law, it may contribute to the idea of constituting a regional state practice on rights of nature recognition.

RESUM: El 2018, la Cort Suprema de Colòmbia va concedir drets a la regió amazònica. Els creixents riscos del canvi climàtic van portar el Tribunal a

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pronunciar-se d'aquesta manera. La sentència es basava en el dret ambiental internacional, el dret comparat i les polítiques nacionals. La discussió sobre els drets de la natura no és nova; diversos estats han confiat en aquesta pràctica per reforçar la protecció del medi ambient. Les disposicions constitucionals, els actes jurídics i les decisions dels tribunals són la font escollida pels Estats per atorgar drets al medi ambient. Notablement, la Cort Interamericana de Drets Humans ja va identificar com s'apliquen els drets de la natura en determinats estats americans, elevant aquesta discussió al dret ambiental internacional. La sentència de la cort colombiana pot provocar més discussions: en primer lloc, permetrà els drets de la natura com a alternativa en els processos litigis ambientals, inclosos els climàtics. En segon lloc, pel que fa al dret internacional ambiental, pot contribuir a la idea de constituir una pràctica estatal regional sobre el reconeixement dels drets de la natura.

RESUMEN: En el 2018, la Corte Suprema Colombiana otorgó derechos a la Región Amazónica. Los crecientes riesgos climáticos llevaron a la Corte para decidir en esta manera. El fallo se basó en el derecho internacional ambiental, derecho comparado y políticas nacionales. La discusión de los derechos de la naturaleza no es nueva; varios estados han confiado en esta práctica para fortalecer la protección ambiental. Disposiciones constitucionales, leyes y decisiones de cortes son las principales fuentes elegidas por los estados para dotar de derechos al medio ambiente. Notablemente, la Corte Interamericana de Derechos Humanos ya identificó como los derechos de la naturaleza son aplicados en ciertos estados americanos, elevando esta discusión al derecho internacional ambiental. La sentencia de la Corte Colombiana puede dar lugar a discusiones futuras: en primer lugar, permitiría que los derechos de la naturaleza sean una alternativa en procesos de litigación ambiental, incluyendo a aquellos climáticos. Segundo, con relación al derecho internacional ambiental, la sentencia contribuir a la idea de constituir una práctica estatal regional sobre el reconocimiento de los derechos de la naturaleza.

KEYWORDS: Rights of nature — Climate change — Climate litigation — International Environmental Law — Colombian Supreme Court.

PARAULES CLAU: Drets de la natura — Canvi climàtic — Litigi climàtic — Dret ambiental internacional — Tribunal Suprem de Colòmbia.

PALABRAS CLAVE: Derechos de la naturaleza — Cambio climático — Litigación climática — Derecho ambiental internacional — Corte Suprema de Justicia de Colombia.

I. INTRODUCTION

The Ecuadorian Constitution was the first to include the rights of nature in positive law,[1] however, these rights are already part of the legal framework of various countries.[2] The idea of recognizing non-human beings as subjects of law has been spreading worldwide.[3] Remarkably, the creation of an international forum known as 'The Tribunal for the Rights of Nature,' is, indeed, a curious alternative that intends to generate at least social pressure towards governments and corporations regarding alleged environmental violations.[4]

In 2018, the Colombian Supreme Court (CSC) decided on an environmental legal claim raised by a group of children and youngsters towards the protection of their present and future rights when confronting climate change. They demanded the

[1] Paola Villavicencio Calzadilla, Louis J. Kotzé, "Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador", in *Transnational Environmental Law*, num. 6, 3, (2017), p. 404. <https://www.cambridge.org/core/journals/transnational-environmental-law/article/abs/somewhere-between-rhetoric-and-reality-environmental-constitutionalism-and-the-rights-of-nature-in-ecuador/E26AA06DB87E4096E00D53D8D17A99BF> [Retrieved 13 February 2022]

[2] See section 2.

[3] See section 2

[4] However, this tribunal cannot hold anyone accountable for any breach, nor have the authority to impose any sanction. See International Rights of Nature Tribunal, <https://www.rightsofnaturetribunal.org/> [Retrieved on 24 September 2021]

protection of the right to a healthy environment, life, health,[5] and the rights of future generations.[6]

Increasing deforestation rates in the Amazon region triggered this ruling. The claimants used the official and public information issued by the Government as further evidence of the worrying percentage of deforestation in the region. According to the claimants, this deforestation poses serious environmental risks to the entire country.[7]

Additionally, the plaintiffs elaborated on the risk that deforestation and climate change will pose upon their present, mature, and elderly lives.[8] They also argued that deforestation occurs due to the Government's lack of appropriate measures to tackle it,[9] contrasting these measures with Colombia's national and international obligations to reduce deforestation and GHG emissions,[10] until reaching a zero deforestation rate by 2020.[11] Finally, the plaintiffs requested the Court to enforce certain measures on the Government, such as the duty of coming up with concrete solutions to reduce the deforestation rate and to carry out a criminal investigation against anyone committing unlawful acts involving deforestation.[12]

The defendants did not contest the arguments brought by the claimants; but rather, in the view of the Court, they only exposed irrelevant plans and opinions.[13]

Therefore, the CSC asserted that the Colombian Government did not properly address its international climate change law obligations. This, in turn, made it evident that those environmental problems, specifically deforestation, have been causing

[5] Corte Suprema de Justicia, Sala de Casación Civil, Sentencia STC4360-2018, 05 abril 2018, p. 1-3, <https://www.escr-net.org/sites/default/files/caselaw/fallo-corte-suprema-de-justicia-litigio-cambio-climatico.pdf> [Retrieved on 14 August 2021] (Amazon Region case). In Spanish only. All quotes in this article are the author's translations.
[6] Ibid., p. 2
[7] Ibid., p. 2-5
[8] Ibid.
[9] Ibid., p. 3-4
[10] Ibid.
[11] Ibid.
[12] Ibid., p. 3
[13] Ibid., p. 6-9

serious damage to the Colombian Amazon Region and hindering intergenerational rights.

As a result, the Court examined tested Colombia's international obligations, national policies, and the measures taken to fulfil them. To this end, besides ordering administrative sanctions on the Government, the Colombian Court noted that there must be a more effective way to fight climate change than the measures already in practice.[14] The Court concluded that to protect the environment and ensure the fulfilment of Colombia's climate change obligations, the Colombian Amazon Region was to be entitled to certain rights: the right to protection, conservation, maintenance, and reparation.

The judgement developed a new paradigm for addressing climate change commitments and their connection with the Rights of Nature (RoN), to the point of making it the cornerstone for upcoming judicial awards concerning the environment,[15] and creating a consistent judicial practice. In the same sense, the importance of the ruling was in the decision to bestow rights to a whole ecosystem, rather than to a single entity like some previous cases.[16] Finally, it linked three legal concepts: deforestation (climate change), rights of future generations, and RoN; an unusual occurrence in the legal world.

This study, relying on this particular case, evaluates whether there is a link between international environmental law and the foundations of RoN. If so, it will review how the Supreme Court managed to merge both concepts. This investigation will give a general overview of RoN, citing the diverse roads taken by those States that have recognised this set of rights. Then, it will examine how the Court addressed general environmental issues and discuss its approach towards RoN by contrasting its

[14] See, generally, Amazon Region case, cit.
[15] Numerous lower Courts in Colombia have been using the arguments discussed in the judgment referred to in the current research. For further reference, see United Nations, 'Rights of Nature Law, Policy and Education', <http://www.harmonywithnatureun.org/rightsOfNature/> [Retrieved on 24 September 2021] (Harmony with Nature*).*
[16] In a previous case, the Colombian Constitutional Court bestowed rights to the River Atrato. See Corte Constitucional de Colombia, Sentencia T-622/16, 10 Noviembre 2016, <http://www.corteconstitucional.gov.co/relatoria/2016/T-622-16.htm> [Retrieved on 10 September 2021] (Atrato River case)

arguments with existing international environmental law norms. Afterwards, this paper will examine how the Court, taking into consideration the existing climate change emergency,[17] determined that recognizing the Amazon region as a bearer of rights was imperative. Finally, the study will review how RoN and climate change are interrelated by reviewing how these rights could contribute to climate litigation processes.

Although this research does not intend to extensively discuss the legal and philosophical perspective of RoN, it will expose how national and international judges are using legal conceptual alternatives to address environmental matters, specifically, climate change. It will briefly display the current legal status of this set of rights. This study also explains how certain contested concepts, such as RoN, can be employed when interpreting an environmental legal claim, even though they are not part of a legal framework, such as in the Colombian case. Additionally, this document will expose the potential repercussions of the Colombian Court's decision in future environmental-related legal claims at both the national and international levels.

II. RIGHTS OF NATURE: A GLOBAL OVERVIEW

[17] The latest Report from the Intergovernmental Panel on Climate Change urges for radical actions to stop climate change. See Intergovernmental Panel on Climate Change, *Climate Change 2021. The Physical Science Basis. Summary for Policymakers*, Intergovernmental Panel on Climate Change, Switzerland, 2021 (1st Edition). <https://www.ipcc.ch/report/sixth-assessment-report-working-group-i/> [Retrieved 13 February 2022]

The discussion on RoN is not new.[18] Although the worldview of indigenous peoples does not automatically trigger them[19], their ancestral cultural knowledge and their coexistence with the environment are part of RoN's foundations.[20] From the indigenous perspective, Mother Earth or *Pachamama*[21] is a protective deity; she is nature, the cosmos, and time; she is alive and sacred, and she lets human beings farm or hunt, and to enjoy the nature, but in an essential and adequate manner.[22]

The key point of indigenous peoples' philosophy concerning nature is that human beings are a part of Mother Earth but without owning her. Living and non-living species interact and flow through the cosmic living space, which is moved by an energy that moves into symbiotic cooperation among all the members of the cosmic wholeness.[23]

[18] For a broader discussion about the Rights of Nature, see Christopher Stone, "Should Trees Have Standing? Toward Legal Rights for Natural Objects", in *Southern California Law Review*, num. 45 (1972).; Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice*, 2nd, Chelsea Green Publisher, Vermont, 2011 (2nd Edition).; Alberto Acosta, Esperanza Martínez (eds.), *La Naturaleza con Derechos: De la filosofía a la política*, Ediciones Abya-Yala, Quito, 2011.; Ramiro Ávila Santamaría, "El derecho de la naturaleza: fundamentos", in Alberto Acosta, Esperanza Martínez (eds.), *La Naturaleza con Derechos de la Filosofía a la Política*, Ediciones Abya-Yala, Quito, 2011.; Eugenio Zaffaroni, *La Pachamama y el Humano*, Ediciones Colihue, Buenos Aires, 2012 (1st Edition).; David R. Boyd, *The Rights of Nature: A Legal Revolution that Could Save the World*, ECW Press, Ontario, 2017 (1st Edition); Cameron La Follette, Chris Maser (eds.), *Sustainability and the Rights of Nature in Practise*, CRC Press, Boca Raton, 2020; Cormac Cullinan, "Earth Jurisprudence", in Lavanya Rajamani, Jacqueline Peel (eds.), *The Oxford Handbook of International Environmental Law*, 2nd edition, Oxford University Press, Oxford, 2021.

[19] See Virginia Marshall, "Removing the Veil from the "Rights of Nature": The Dichotomy between First Nations Customary Rights and Environmental Legal Personhood", in *Australian Feminist Law Journal*, num. 45, 2, 2019. <https://www.tandfonline.com/doi/abs/10.1080/13200968.2019.1802154#:~:text=Articles-,Removing%20the%20Veil%20from%20the%20'Rights%20of%20Nature'%3A%20The,Rights%20and%20Environmental%20Legal%20Personhood&text=The%20legal%20concept%20of%20the,of%20a%20river%20may%20be.> [Retrieved 13 February 2022]

[20] Zaffaroni, "La Pachamama…" cit., p. 113-118

[21] The expression Pachamama, in quichua, literally means Mother Earth, see Ibid., p. 117–119. Yet 'she' may have different names according to each indigenous peoples' traditions, see Mario Delgado Galarraga, "Exploring the connection between indigenous peoples' human rights and international environmental law", in *Revista Chilena de Derecho y Ciencia Política*, num. 9, 2, 2018, p. 111–114. <http://derechoycienciapolitica.uct.cl/index.php/RDCP/article/view/1468> [Retrieved 16 December 2021]

[22] Zaffaroni, "La Pachamama …" cit., p. 113–118.

[23] Ibid., p. 119.

The perspective of RoN, no longer considered as an elitist point of view held only by those who have spare time to talk about the intrinsic value of the environment,[24] has played a major role in the evolution of universal law.[25] No longer is the recognition of RoN considered only as the folkloric expression of a country.[26]

Professor Christopher Stone was one of the first legal practitioners to deal with the argument concerning the right of natural elements to stand before the Courts.[27] Likewise, various scholars developed further the legal discussions about the concept and extent of RoN to establish a coherent legal basis for their recognition;[28] nevertheless, some of these scholars still argue against its legal applicability.[29] However, for the current study, it will be necessary to describe what constitute the foundations of RoN's.

On this issue, the former Ecuadorian Constitutional Judge, Ávila Santamaría, summarises the foundational thoughts of RoN through an indigenous (Andean) perspective.[30] First, nature needs beings to inhabit her, and these beings are not capable of living without her. Second, human beings cannot be separated from nature as both are one; hence, to harm her is to harm themselves and vice versa. Third, all entities coexist. One element depends on all the others to be complete;

[24] James Anaya, "Environmentalism, Human Rights and Indigenous Peoples: A Tale of Converging and Diverging Interests", in *Environmental Law Journal*, num. 7, 1, 1999, p. 1–13.
[25] Zaffaroni, "La Pachamama …" cit., p. 130–144. The author compares the rights of nature with the last century's paradigm shift when it was affirmed, 'Every human being is a person.'
[26] Ibid. p. 114.
[27] Stone, "Should Trees Have Standing?…" cit., p. 450-457
[28] For instance, Ávila Santamaria relied on a socio-legal approach for conceiving the necessity of bestowing rights to the environment. See Ávila Santamaría, "El derecho de la naturaleza: fundamentos…" cit. See, generally, n. 18 above.
[29] Bétaille confronts the idea of RoN by enacting strong laws that protect the environment, and by using existing institutions at the national and international level. See Julien Bétaille, "Rights of Nature: Why it Might Not Save the Entire World", in *Journal for European Environmental & Planning Law*, num. 16, 1, 2019. <http://publications.ut-capitole.fr/42307/> [Retrieved 16 December 2021] See also P.S. Elder, "Legal Rights for Nature: The Wrong Answer to the Right(s) Question", in *Osgoode Hall Law Journal*, num. 22, 2, 1984. Mary Elizabeth Whittenmore, "The Problem of Enforcing Nature's Rights under Ecuador's Constitution: Why the 2008 Environmental Amendments Have No Bite", in *Pacific Rim Law & Policy Journal*, num. 659, 2011. <https://digitalcommons.law.uw.edu/wilj/vol20/iss3/8/> [Retrieved 16 December 2021] Mary Warnock, "Should trees have standing?", in *Journal of Human Rights and the Environment*, num. 3, 2012. <https://www.elgaronline.com/view/journals/jhre/3-0/jhre.2012.02.03.xml> [Retrieved 16 December 2021]
[30] See Ávila Santamaría, "El derecho de la naturaleza: fundamentos…" cit., p. 207–218.

they are complementary and harmonic. In the logic of rights, then, it would be inappropriate to protect one of the elements that shape the complement, otherwise, it would generate an imbalance. Finally, the acts of human beings, like those of nature, condition each other; an improper action from one of them could upset the whole order. Thus, following the human rights theory, nature should be protected by bestowing her rights, as they establish boundaries to human behaviour.

With regard to international law, there does not yet exist a consistent legal framework to represent and protect RoN. The UN has attempted to address this through various resolutions. It has referred to the need to protect 'Mother Earth' by identifying 'the interdependence that exists among human beings, other living species and the planet we all inhabit,'[31] and the need to 'promote a holistic approach to sustainable development in harmony with nature.'[32] Similarly, the International Union for Conservation of Nature (IUCN) has been actively building policies that deal with RoN.[33]

The World Charter for Nature might be the closest thing we have to a piece of legislation that establishes the foundations of RoN. It states that '[n]ature shall be

[31] UN GA Resolution A/RES/63/278, on International Mother Earth Day, 2009, <https://undocs.org/A/RES/63/278> [Retrieved on 11 September 2021]

[32] See also UN GA Resolution A/RES/66/204, on Harmony with Nature, 2012, <https://undocs.org/A/RES/66/204> [Retrieved on 11 September 2021]; UN GA Resolution A/RES/67/214, 2013, on Harmony with Nature, <https://undocs.org/A/RES/67/214> [Retrieved on 11 September 2021]; UN GA Resolution A/RES/68/216, on Harmony with Nature, 2014, <https://undocs.org/A/RES/68/216> [Retrieved on 11 September 2021]; UN GA Resolution A/RES/69/224, on Harmony with Nature, 2015, <https://undocs.org/A/RES/69/224> [Retrieved on 11 September 2021]; UN GA Resolution A/RES/70/208, on Harmony with Nature, 2016, <https://undocs.org/A/RES/70/208> [Retrieved on 11 September 2021]; UN GA Resolution A/RES/71/232, on Harmony with Nature, 2017, <https://undocs.org/A/RES/71/232> [Retrieved on 11 September 2021]; UN GA Resolution A/RES/72/223, on Harmony with Nature, 2018, <https://undocs.org/A/RES/72/223> [Retrieved on 11 September 2021]; UN GA Resolution A/RES/73/235, on Harmony with Nature, 2019, <https://undocs.org/A/RES/73/235> [Retrieved on 11 September 2021]; UN GA Resolution A/RES/75/220, on Harmony with Nature, 2019, <https://undocs.org/A/RES/75/220> [Retrieved on 11 September 2021]

[33] IUCN 'Incorporation of the Rights of Nature as the organizational focal point in IUCN's decision making' Resolution WCC-2012-Res-100-EN, 2012, <https://portals.iucn.org/library/node/44067> [Retrieved on 11 September 2021]; World Conservation Congress, Honolulu, 2016, <https://portals.iucn.org/library/node/46410> [Retrieved on 11 September 2021]; IUCN 'IUCN World Declaration on the Environmental Rule of Law', 2016, principle 2, <https://www.iucn.org/commissions/world-commission-environmental-law/wcel-resources/wcel-important-documentation/environmental-rule-law> [Retrieved on 11 September 2021]

respected and its essential processes shall not be impaired.'[34] Additionally, it laid emphasis on the importance of environmental protection. Regrettably, these 'soft-law' instruments are not binding to international law actors; nevertheless, they still form a significant body of principles and provisions that might be included as a part of international law sources as references, at least for now.[35]

On the other hand, national law has played a valuable role in developing the concept and scope of RoN. The importance of domestic law does not only emphasise the formal recognition of these rights at any level of government, it also relies on the legal instrument employed by some States to bestow rights to the environment to the point of considering this recognition as a consistent state practice.[36] Various countries have dealt with RoN in different ways, e.g. adopting constitutional texts

[34] UN GA Resolution A/RES/37/7, on World Charter for Nature, 1982, <https://undocs.org/A/RES/37/7> [Retrieved on 11 September 2021], principle 1 (World Charter for Nature)

[35] Alan Boyle, Christine Chinkin, *The Making of International Law*, Oxford University Press, Oxford, 2007 (1st Edition).

[36] The International Court of Justice, in the Arrest Warrant case, affirmed that it had 'carefully examined State practice, including national legislation and those few decisions of national higher courts, such as the House of Lords or the French Court of Cassation.' See *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, 14 Feb. 2002, *ICJ Reports* (2002), p 3, para. 58 <https://www.icj-cij.org/en/case/121> [Retrieved on 31 January 2022]. See also International Law Commission Report 'Draft conclusions on identification of customary international law, with commentaries' GAOR A/73/10, New York, 2018, p. 119, conclusion 3 and its commentary; Ibid., p. 111–112.

(Ecuador[37] and Mexico[38]), legal acts (Australia,[39] Bolivia,[40] New Zealand,[41] Panama,[42] and Uganda[43]), and court decisions (Bangladesh,[44] Colombia,[45] and India[46]). Additionally, this legal movement is also a part of 'lower legal and

[37] Constitución de la República del Ecuador, 2008, Arts 71-72, <http://www.ambiente.gob.ec/wp-content/uploads/downloads/2018/09/Constitucion-de-la-Republica-del-Ecuador.pdf> [Retrieved on 22 October 2021]; Corte Provincial de Justicia de Loja, Sentencia 11121-2011-0010, 2011, <https://www.elaw.org/content/juicio%2011121-2011-0010> [Retrieved on 22 October 2021]

[38] Constitución Política Del Estado Libre y Soberano de Guerrero, 1918, Art. 2, <http://congresogro.gob.mx/62/legislacion> [Retrieved on 22 October 2021]; Constitución Política de La Ciudad de México, 2017, Art. 13, <http://www.infodf.org.mx/documentospdf/constitucion_cdmx/Constitucion_Politica_CDMX.pdf> [Retrieved on 22 October 2021]; Constitución Política Del Estado Libre y Soberano de Colima, 2017, Art. 2(IX)(a), <https://congresocol.gob.mx/web/Sistema/uploads/LegislacionEstatal/Constitucion/constitucion_local_reorganizada_24Agos2019.pdf> [Retrieved on 22 October 2021].

[39] Great Ocean Road and Environs Protection Act 2020, No. 19 of 2020, Parliament of Victoria, 2020, <https://content.legislation.vic.gov.au/sites/default/files/2020-06/20-019aa%20authorised.pdf> [Retrieved on 11 September 2021]

[40] Constitución Política del Estado de Bolivia, 2009, art. 33, 34, <https://www.oas.org/dil/esp/constitucion_bolivia.pdf> [Retrieved on 31 January 2022]; Ley de Derechos de la Madre Tierra, 2010, art. 1, 3, 7, 10 <https://cedla.org/diytf/ley-de-derechos-de-la-madre-tierra-ley-071/> [Retrieved on 31 January 2022]; Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien, 2012, arts 52-57, <http://www.mineria.gob.bo/juridica/20121015-11-39-39.pdf>, [Retrieved on 31 January 2022].

[41] New Zealand Legislation 'Te Awa Tupua (Whanganui River Claims Settlement) Act 2017,' 2017, <http://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html> [Retrieved on 22 October 2021]

[42] República de Panamá, Gaceta Oficial No. 29484-A, Ley No. 287, 2022, < https://www.gacetaoficial.gob.pa/pdfTemp/29484_A/GacetaNo_29484a_20220224.pdf> [Retrieved 01 June 2022]

[43] Rights of Nature Gain Ground in Uganda's Legal System, The Gaia Foundation, 2019, <https://www.gaiafoundation.org/rights-of-nature-gain-ground-in-ugandas-legal-system/> [Retrieved on 22 October 2021]

[44] Client Earth, 'Legal rights of rivers – an international trend?', 2019, <https://www.clientearth.org/projects/access-to-justice-for-a-greener-europe/updates/legal-rights-of-rivers-an-international-trend/> [Retrieved on 11 September 2021]

[45] Corte Constitucional de la República de Colombia, Sentencia C-632/11, 24 Agosto 2011, <http://www.corteconstitucional.gov.co/RELATORIA/2011/C-632-11.htm> [Retrieved on 22 October 2021]; Corte Suprema de Justicia, Sala de Casación Civil, Sentencia AHC4806-2017, 2 2017, <http://derechoanimal.info/sites/default/files/legacyfiles/bbdd/Documentos/2276.pdf> [Retrieved on 11 September 2021]; Amazon Region case, cit.; Atrato River, cit.

[46] Hindustan Times, 'Sukhna Lake is a living entity with rights: HC', Hindustan Times, 2021, <https://www.hindustantimes.com/chandigarh/sukhna-lake-is-a-living-entity-with-rights-hc/story-Jrt8vKUy8kqIUwWaLpcYtM.html> [Retrieved on 22 October 2021]; Radhika Agarwal 'Punjab and Haryana High Court according legal person status to animals a step forward to stop cruelty against them', Firstpost, 2019, <https://www.firstpost.com/india/punjab-and-haryana-high-court-according-legal-person-status-to-animals-a-step-forward-to-stop-cruelty-against-them-6812081.html> [Retrieved on 22 October 2021]

administrative resolutions', i.e. lower-ranged courts and local (municipal) regulations, among others.[47]

III. THE AMAZON REGION AND THE COURT

Once we have mentioned the overall facts that led to the judgement, it is important to establish the legal ground concerning Colombia and its obligations. Colombia ratified the United Nations Framework Convention on Climate Change (UNFCCC) on 22 March 1995,[48] and it has been a party to the Paris Agreement since 12 July 2018.[49] One of the most important obligations within the Paris Agreement is for signatories to submit their Nationally Determined Contributions (NDC) containing 'ambitious efforts […] with the view to achieving the purpose'[50] of the treaty. Colombia accomplished this by submitting its NDCs[51] to the UNFCCC Secretariat on 12 July 2018.[52]

Additionally, the judgement of the Colombian Court was drawn upon the Atrato River case. Keeping this in mind, the *ratio decidendi* released by the Constitutional Court of Colombia offered some insights on the importance of bestowing rights to the nature. Firstly, the major challenge that contemporary law faces is to effectively safeguard and protect nature and biodiversity, as well as the cultures and ways of living associated with her, as they are living entities made of many other living

[47] Harmony with Nature, cit. See also UN GA Report of the Secretary-General A/74/236, 2019, on Harmony with Nature, <https://undocs.org/A/74/236> [Retrieved on 11 September 2021], paras. 23-65.

[48] United Nations, 'United Nations Treaty Collection 7. United Nations Framework Convention on Climate Change,' 2019, <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en> [Retrieved on 22 October 2021]

[49] United Nations, 'United Nations Treaty Collection 7. d Paris Agreement,' 2019, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en> [Retrieved on 22 October]

[50] Paris Agreement, Paris, (12 Dec. 2015, in force 4 Nov. 2016), <http://unfccc.int/paris_agreement/items/9485.php> [Retrieved on 22 October 2021]

[51] However, the document expresses that 'the Republic of Colombia is pleased to present its "Intended Nationally Determined Contribution" (iNDC),' 2019, <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Colombia%20First/Colombia%20iNDC%20Unofficial%20translation%20Eng.pdf> [Retrieved on 22 October 2021] (Colombia's NDC)

[52] NDC Registry (interim), 'Colombia,' 2019, <https://www4.unfccc.int/sites/NDCStaging/pages/Party.aspx?party=COL> [Retrieved on 22 October 2021]

organisms and cultural representations that are subjects of individual rights, making them, as a whole, entitled to legal protection.[53]

Secondly, only through respectful behavior towards nature, her inhabitants, and their cultures will it be possible to relate to them on fair and equitable terms, leaving aside, any utilitarian, economic or efficient concepts.[54] Thirdly, the Court stressed the importance of the interdependence that connects all the living beings on the planet, recognising them as part of a global ecosystem, disregarding normative categories of domination or exploitation.[55] Finally, the Court concluded that justice towards nature shall be applied beyond any human scenario, and she must be allowed to hold her rights; thus, the Court considered it necessary to step forward to ensure the protection of the environmental element.[56]

3.1. A Glance at the Environment from the Supreme Court's Perspective.

The Court has recognized the existence of various natural phenomena, e.g. global warming, species extinction, the melting of polar ice, and droughts, among others, which, will be part of the current discussion among multilevel actors, including judges and law practitioners.[57] It is well accepted that climate change and its negative effects should be of concern to all humankind,[58] who should come together to ensure the

[53] Atrato River case, cit., p. 15-16
[54] Ibid.
[55] Ibid.
[56] Ibid.
[57] Amazon Region case cit, p. 15-16.
[58] United Nations Framework Convention on Climate Change (UNFCCC), New York, (9 May 1992, in force 21 Mar. 1994), <https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf> [Retrieved on 22 October 2021]; Paris Agreement, cit., preamble. See also Boyle, Alan and Singh Ghaleigh, Navraj, "Climate Change and International Law beyond the UNFCCC", in: Gray, Kevin R.; Tarasofsky, Richard and Carlarne, Cinnamon (eds.), The Oxford Handbook of International Climate Change Law, Oxford, Oxford University Press, 2016, p. 27–54, p. 27, 40-41; Soltau, Frederiech, "Common Concern of Humankind", in: Gray, Kevin R.; Tarasofsky, Richard and Carlarne, Cinnamon (eds.), The Oxford Handbook of International Climate Change Law, Oxford, Oxford University Press, 2016, p. 203–211; Daniel Bodansky et al., International Climate Change Law, Oxford University Press, Oxford, 2017 (1st Edition), p. 49–50.

'protection and safeguarding of the interests of humanity and the planet as a whole.'[59]

According to the Colombian Supreme Court (CSC), ecosystems are facing significant threats to their subsistence, such as depleting natural resources[60] caused by the irrational colonization of forests and the expansion of urban and industrial agriculture that causes deforestation.[61] The main responsibility for this scenario lies on the current anthropocentric and selfish society model.[62]

Indeed, international actors are conscious of human influence on current environmental issues. Various international instruments[63] and literature[64] have ascertained that the environment needs protection from certain human activities.[65]

[59] Soltau, "Common Concern of Humankind…" cit., p. 206.
[60] Amazon Region case, cit*.,* p. 16.
[61] Ibid.
[62] Ibid.
[63] UNFCCC, cit., preamble; Convention on Biological Diversity (CBD), Rio de Janeiro (5 Jun. 1992, in force 29 Dec. 1993), preamble, <https://www.cbd.int/doc/legal/cbd-en.pdf> [Retrieved on 31 January 2022]; United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, Paris (17 Jun. 1994, in force 26 Dec. 1996), preamble, <https://catalogue.unccd.int/936_UNCCD_Convention_ENG.pdf>, [Retrieved on 31 January 2022]; Vienna Convention for the Protection of the Ozone Layer, Vienna (22 Mar. 1985, in force 22 Sep. 1988), preamble, <https://ozone.unep.org/treaties/vienna-convention/vienna-convention-protection-ozone-layer> [Retrieved on 31 January 2022]; Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal (16 Sep. 1987, in force 1 Jan 1989), preamble, (Montreal Protocol) <https://ozone.unep.org/treaties/montreal-protocol-substances-deplete-ozone-layer/text> [Retrieved on 31 January 2022]; Minamata Convention on Mercury, Minamata (10 Oct. 2013, in force 16 Aug. 2017), preamble, <https://www.mercuryconvention.org/sites/default/files/2021-06/Minamata-Convention-booklet-Sep2019-EN.pdf> [Retrieved on 31 January 2022]; Declaration of the United Nations Conference on the Human Environment, Stockholm (16 Jun. 1972), principle 1 (Stockholm Declaration), <https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf?sequence=1&isAllowed=y> [Retrieved on 31 January 2022]. See also Intergovernmental Panel on Climate Change, *Climate Change 2021. The Physical Science Basis. Summary for Policymakers,* Intergovernmental Panel on Climate Change, Switzerland, 2021*;* United Nations Environment Programme, *Global Environment Outlook – GEO-6: Summary for Policymakers*, Nairobi, Cambridge University Press, 2019;
[64] Johan Hattingh, "Whose Climate, which Ethics? On the Foundations of Climate Change Law", in Oliver C. Ruppel et al. (eds.), *Climate Change: International Law and Global Governance: Volume I: Legal Responses and Global Responsibility*, Nomos Verlagsgesellschaft mbH, Baden, 2013, p. 95-120; Leroy Marcel, Fana Gebresenbet, "Science, Facts and Fears: The Debate on Climate Change and Security", in Oliver C. Ruppel et al. (eds.), *Climate Change: International Law and Global Governance: Volume II: Policy, Diplomacy and Governance in a Changing Environment*, Nomos Verlagsgesellschaft mbH, Baden, 2013.
[65] See also *Case Concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia)*, Judgement, 25 Sep. 1997, *ICJ Rep* (1997), p. 7, para. 140, <https://www.icj-cij.org/en/case/92> [Retrieved on 31 January 2022]

The CSC is aware that the current climate change regime has not taken a convincing approach towards this issue. In recent years, high temperature records have occurred due to increasing greenhouse gas (GHG) emissions.[66] However, international courts have not developed a consistent case-law concerning climate change.[67]

Nevertheless, the Colombian Court has acknowledged the existence of an ongoing social evolution from an anthropocentric society towards an 'ecocentric'[68] one, merging environmental protection with the idea of progress and sustainable development.[69] To reach this conclusion, it first emphasized the need to change the way of looking at the environment, moving away from the idea of its utility being to only satisfy human needs, which is the basis of anthropocentrism, to the point of recognising the existence of an intrinsic value of the environment and its elements.[70] Second, the Court referred to the alterity conception, pointing out that 'humanity's neighbours' is not a concept that only applies to other members of the same species, rather it also concerns animals and vegetation.[71]

[66] Brad Plumer, 'Carbon Dioxide in Atmosphere Hits Record High Despite Pandemic Dip', The New York Times, 2021, <https://www.nytimes.com/2021/06/07/climate/climate-change-emissions.html> [Retrieved on 30 August 2021]. See also James Griffiths, 'There is more CO2 in the atmosphere today than any point since the evolution of humans', CNN, 2019, <https://edition.cnn.com/2019/05/13/health/carbon-dioxide-world-intl/index.html?fbclid=IwAR0YMaT48ceZ5Gx-hTz4oRzEpr0YvgZ5BmjCFjfdQ-6TgN9zY3-KmMW-k24> [Retrieved on 30 August 2021]. Scripps Institution of Oceanography 'The Keeling Curve', 2021, <https://scripps.ucsd.edu/programs/keelingcurve/> [Retrieved on 30 August 2021]

[67] An Advisory Opinion issued by the ICJ or even ITLOS on the issue of the current climate change negative effects is one interesting alternative. See Daniel Bodansky, "The Role of the International Court of Justice in Addressing Climate Change: Some Preliminary Reflections", in *Arizona State Law Journal*, num. 49, 2017. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3012916> [Retrieved on 13 February 2022]. See also Annalisa Savaresi, "Inter- State Climate Change Litigation: "Neither a Chimera nor a Panacea"", in Ivano Alogna et al. (eds.), *Climate Change Litigation:!Global Perspectives*, Koninklijke Brill, Leiden, 2020.

[68] It is necessary to clarify that the term used does not endorse a specific concept of the ideas of ecocentrism or environmentalism; the Court tried to show the evolution of how societies have been looking currently to the environment and its components, by arguing that humankind should not be the centre of its relationship with nature.

[69] Amazon Region case, cit*.,* p. 16-17.

[70] Ibid., p. 18-21.

[71] Ibid*.,* p. 18-19.

Literature has contributed to the anthropocentric/ecocentric discussion in the international arena;[72] however, the current research does not analyse the philosophical or theoretical arguments of these issues, as it will deviate from the main topic.

a) The environment for its value

According to the Court's verdict, the environment must be valued and protected because of its intrinsic worth, disregarding its utility to human beings. Conversely, international instruments have relied on the anthropocentric vision of the environment.[73] For instance, although the Rio Declaration recognised the 'integral and interdependent nature of the Earth,'[74] it fell short of separating itself from anthropocentrism.[75]

Though considered to be soft-law,[76] both the World Charter for Nature and the Earth Charter contributed significantly to the arguments made by the CSC. The former affirmed that '[e]very form of life is unique, warranting respect regardless of its worth to man [sic],'[77] attacking anthropocentric arguments and opposing the principles of the Rio Declaration. Additionally, the perspective of the Earth Charter was that 'all

[72] For further discussion see Alan Boyle, "The Role of International Human Rights Law in the Protection of the Environment", in Alan Boyle, Michael Anderson (eds.), *Human Rights Approaches to Environmental Protection*, Oxford University Press, Oxford, 1996. Catherine Redgwell, "Life, the Universe and Everything: A critique of Anthropocentric Rights", in Alan Boyle, Michael Anderson (eds.), *Human Rights Approaches to Environmental Protection*, Oxford University Press, Oxford, 1996.; Alexander Gillespie, *International Environmental Law, Policy, and Ethics*, Oxford University Press, Oxford, 2014 (2nd Edition), p. 4–13.; Patricia Birnie et al., *International Law and the Environment*, Oxford University Press, Oxford, 2021 (4th Edition).

[73] Delgado Galarraga, "Exploring the connection between …" cit., p. 113; see also Stockholm Declaration, cit., preamble, principle 1.

[74] Rio Declaration on Environment and Development, Rio de Janeiro, 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. I), principles 4, 7, 15 (Rio Declaration), <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm> [Retrieved on 30 September 2021]

[75] Ibid. principle 1.

[76] Boyle and Chinkin, "The Making of International Law…", cit., p. 232–235.

[77] World Charter for Nature, cit., preamble.

beings are interdependent, and every form of life has value regardless of its worth to human beings.'[78]

On the contrary, for some authors, the intrinsic value of the environment and its components can be recognised within existing law.[79] For instance, the Convention on Biological Diversity (CBD) has recognized the intrinsic value of biological diversity,[80] although it still follows the anthropocentric perspective throughout the rest of its provisions. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), as well, has a peculiar approach towards the importance of the species it protects. It aims to protect fauna and flora from international trade by asserting the worth of their 'aesthetic, scientific, cultural, recreational, and economic' value.[81]

Similarly, environmental damage reparations can be perceived as legal procedures that imply the recognition of the intrinsic value of nature. The term 'pure environmental damage,' used by the Governing Council of the United Nations Compensation Commission[82] refers to the harm caused to natural resources without commercial value.[83] Similarly, in *Costa Rica vs. Nicaragua*, the International Court of Justice (ICJ) underlined that 'compensation is due for damage caused to the

[78] Earth Charter Initiative, 'The Earth Charter', 2001, (Earth Charter), <https://earthcharter.org/library/the-earth-charter-text/> [Retrieved on 30 September 2021]
[79] Warnock, "Should trees have standing?...", cit., p. 59.
[80] CBD, cit., preamble.
[81] Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Washington, D.C (3 Mar. 1973, in force 1 Jul. 1975), preamble, <https://cites.org/eng/disc/text.php> [Retrieved on 30 September 2021]. See also Conference of the Parties to CITES Resolution Conf. 9.24, Criteria for amendment of Appendices I and II, Conf. 9.24 (Rev. CoP17)-1, 1994, <https://cites.org/eng/res/09/09-24R16.php> [Retrieved on 30 September 2021]
[82] UN Security Council Compensation Commission Governing Council S/AC.26/2005/10, 2005, on Report and Recommendations made by the Panel of Commissioners Concerning the Fifth Instalment of "F4" Claims, para. 52, <https://undocs.org/en/S/AC.26/2005/10> [Retrieved on 30 September 2021]
[83] Ibid.

environment, in and of itself.'[84] However, it falls short of dealing with environmental damage per se.[85]

The Inter-American Court of Human Rights (IACrtHR), in its Advisory Opinion OC-23/17 (Environment and Human Rights)[86] made a notable contribution on the issue of how to assess the environment and its components. The Advisory Opinion defined the scope of the right to a healthy environment by denoting, first, that it is an autonomous right, leaving aside its dependency on other human rights.[87] Second, it established environmental protection for its intrinsic value, detaching itself from the human utility perspective;[88] and turning towards an eco-centred discourse. Finally, it matched this right with RoN.[89]

Consequently, the Colombian Court relied on the rules and principles of international environmental, and concurred with the international environmental litigation trend.[90] However, it went further on the statements concerning the intrinsic value of the environment and its elements; elevating the status of the environment to a legally protected entity, which in turn will widen the path to litigate purely environmental claims (RoN), and may allow individuals or groups of people to invoke justice against

[84] *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment, 2 Feb. 2018, *ICJ Reports* (2018), p. 15, para. 41, <https://www.icj-cij.org/en/case/150> [Retrieved on 30 September 2021]

[85] Kévine Kindj, Michael Faure, "Assessing reparation of environmental damage by the ICJ: A lost opportunity?", in *Questions of International Law*, num. 57, 2019. <http://www.qil-qdi.org/assessing-reparation-of-environmental-damage-by-the-icj-a-lost-opportunity/> [Retrieved 13 February 2022]

[86] The Court stressed the 'general interest' of its Advisory Opinion, as it is of the importance of all the States in the world; see *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights),* Advisory Opinion OC-23/17, 15 Nov. 2017, *Inter-American Court of Human Rights Series A No 23* (2017), para. 35 (IACrtHR Advisory Opinion), <https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf.> [Retrieved on 30 September 2021]

[87] Ibid., para. 62-3.

[88] Ibid.

[89] Ibid., para. 62

[90] International Courts have contributed to the evolution of international environmental dispute settlement. See *Certain Activities Carried Out by Nicaragua in the Border Area,* cit., at 15; *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Provisional Measures, Order of 25 Apr, 2015, *ITLOS Reports* (2015), p. 146, <https://www.itlos.org/en/main/cases/list-of-cases/case-no-23/> [Retrieved on 08 October 2021]; *Burlington Resources v Republic of Ecuador*, Decision on Counterclaims, 7 Feb. 2017, ICSID Case No ARB/08/5 <https://www.italaw.com/cases/181> [Retrieved on 08 October 2021].

human-made damages caused to the environment. The era of anthropocentrism in national and international environmental law is fading away.[91]

The second group of ideas posed by the CSC referred to viewing humankind as an integral part of nature rather than a separate entity. On this subject, indigenous peoples concur with the CSC. Their cosmovision relies on the existing interdependence among all the elements of Mother Earth,[92] including human beings.[93]

According to the IACrtHR, all the living organisms that share the planet interact with each other.[94] It infers that non-human individuals deserve the same protection as humans, widening the scope of legal protection to forests, rivers, and seas.[95] This argument breaks with the Eurocentric idea of human superiority[96] over other forms of life, which is still embodied in international law.[97]

The international arena has not given due importance to this reasoning. The various civil society-adopted international declarations about the symbiotic connection between the environment and human beings[98] are not binding on various States, and they are not considered to be of essential importance to international law.[99] However, the single instrument that stands out is the World Charter for Nature, which is the only international instrument that has broken from the rest by stating that '[m]ankind [sic] is a part of nature.'[100]

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[91] See Atrato River case, cit.
[92] Delgado Galarraga, "Exploring the connection…", cit., p. 110–114.
[93] Ibid.
[94] IACrtHR Advisory Opinion, cit. para. 62.
[95] Ibid.
[96] See Cormac Cullinan, "The rule of Nature's law", in Voigt Christina (ed.), *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law*, Cambridge University Press, 2013, p. 94.
[97] Alberto Acosta, *El Buen Vivir: Sumak Kawsay, una oportunidad para imaginar otro mundo*, Icaria Editorial, Barcelona, 2013 (1st Edition), p. 16–18.
[98] To name a few, see Earth Charter, cit., principle 1(a); World People's Conference on Climate Change and the Rights of Mother Earth, 'Universal Declaration of Rights of Mother Earth', 2010, Cochabamba, <https://www.therightsofnature.org/universal-declaration/> [Retrieved on 30 September 2021]; Kari-Oca Declaration and Indigenous Peoples´ Earth Charter, 1992, <https://trc.org.nz/content/indigenous-peoples-earth-charter> [Retrieved on 30 September 2021]
[99] See generally Malcolm Shaw, *International Law*, Cambridge University Press, Cambridge, 2017 (9th Edition), chapter 3.
[100] World Charter for Nature, cit., preamble.

b) Climate change appreciations

The Colombian Court reaffirmed the legal importance of the UNFCCC and the Paris Agreement.[101] It further argued the importance of the Amazon forest by declaring it as the planet's main environmental axis that deserves protection from national and international actors and policies.[102] Moreover, it expressed that both the Paris Agreement and the Treaty for Amazonian Cooperation[103] are the principal international instruments that Colombia should have followed when developing and executing forestry policies.[104]

The Court relied on the current state of Amazon forests to make this affirmation.[105] Additionally, it deemed it necessary to prove whether climate change through deforestation, is linked to the negative effects to human health, and with other rights violations, namely, decent life, right to water, and the right to food.[106] The CSC found that agricultural expansion, drug farming, mining, and illegal woodcutting were the main issues that harmed the Amazon Region.[107] These activities deposited CO_2 into the atmosphere, causing water and soil degradation, and threatening flora and fauna.[108] Thus, the Court had to verify how law subsumes these matters by contrasting Colombia's forestry reality with legal norms, such as the precautionary principle, intergenerational equity, and solidarity.[109]

First, concerning the precautionary principle, the Court determined that there is no doubt about the risk of harm that deforestation has caused in Colombian territory, e.g., rising temperatures, ecosystem disruption, species extinction and threat to extinction, changes in water cycles, and prolonged droughts. This has resulted in

[101] Amazon Region cit., p. 25.
[102] Ibid. p. 30.
[103] Treaty for Amazonian Cooperation, Brasilia (3 Jul. 1978, in force 2 Aug. 1980), <https://www.oas.org/dsd/publications/Unit/oea08b/ch24.htm> [Retrieved on 30 September 2021]
[104] Amazon Region case, cit., p. 31-32.
[105] Ibid., p. 30-31, 34.
[106] Ibid., p. 33.
[107] Ibid., p. 34.
[108] Ibid., p. 35.
[109] Ibid.

serious and irreversible damage to ecological integrity.[110] Second, when referring to intergenerational equity, the Court made the assumption based on the data[111] that temperatures would rise between 1.6°C in 2041 and 2.14°C in 2071, which would damage the integral development of present and future generations.[112] Finally, with regard to solidarity, the CSC determined that the Colombian Government shared responsibility among their institutions to prevent GHG emissions caused by forest depletion in the Amazon Region. The government should have adopted mitigation measures to protect its inhabitants, national and international citizens, ecosystems, and living beings.[113]

These three concepts are at the core of international environmental law. First, the precautionary principle has been referred to in international instruments.[114] The Rio Declaration defined the principle, stating that '[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.'[115] Some international case-law have endorsed this concept,[116] but the most prominent being, the Advisory Opinion on Responsibilities and Obligations of States with respect to Activities in the Area issued by the International Tribunal for the Law of the Sea. In this ruling, the Tribunal went further by ascertaining the legal obligatory nature of the

[110] Ibid., p. 35-37.
[111] Intergovernmental Panel on Climate Change, "Climate Change 2021 …" cit.
[112] Ibid., p. 35-36.
[113] Ibid., p. 37.
[114] For instance, see UNFCCC, cit., preamble, art. 3(3); CBD, cit., preamble; Montreal Protocol, cit., preamble, art. 6(2)
[115] Rio Declaration, cit., principle 15.
[116] See *Southern Bluefin Tuna (Australia v. Japan; New Zealand v. Japan),* Provisional Measures, Order of 27 Aug. 1999, *ITLOS Reports* (2000) p. 3 paras. 77-80, <https://www.itlos.org/en/main/cases/list-of-cases/case-no-3-4/> [Retrieved on 08 January 2022]; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, 20 Abr. 2010, *ICJ Reports* (2010), p. 14, para. 164, <https://www.icj-cij.org/en/case/135/judgments> [Retrieved on 08 January 2022].

precautionary principle,[117] as well as the tendency[118] to make it part of international customary law.[119]

Second, principle three of the Rio Declaration held that intergenerational equity was a part of sustainable development, stating that '[t]he right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.'[120] This implies that a 'fair allocation of costs and benefits across succeeding generations.'[121] This principle was intended to protect both the rights of future generations[122] and the rights of the current one (principally the youth and children). The CSC recalled the importance of intergenerational equity, already mentioned by the ICJ in the *Nuclear Weapons Advisory Opinion*[123] and the *Gabcikovo-Nagymaros* case.[124] The generations to come will surely bear the burden of climate change as the state of the world would be significantly damaged if contamination rates keep the same level. Nevertheless, in international law, intergenerational equity remains a guiding principle.[125]

Finally, solidarity is about State-to-State cooperation. Principle seven of the Rio Declaration expressed that '[s]tates shall co-operate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem.'[126] Various treaties have addressed this principle in their provisions.[127] Moreover,

[117] *Responsibilities and obligations of States with respect to activities in the Area,* Advisory Opinion, 1 Feb. 2011, *ITLOS Reports* (2011) p. 10, paras. 126-127, <https://www.itlos.org/index.php?id=109> [Retrieved on 08 January 2022]
[118] Treaties, like the UNFCCC, the CBD, and the Montreal Protocol, to name a few, have also included this principle. See, respectively, UNFCCC, cit*.,* preamble, art. 3(3); CBD, cit*.,* preamble; Montreal Protocol, cit*.,* preamble, art. 6(2)
[119] *Responsibilities and obligations of States with respect to activities in the Area,* cit*.,* para. 135
[120] Rio Declaration, cit*.,* principle 3.
[121] Birnie et al., "International Law and the Environment…", cit., p. 5.
[122] Jochelle Greaves Siew, "Facing the Future: The Case for A Right to a Healthy Environment for Future Generations under International Law", in *Groningen Journal of International Law*, num. 8, 1, 2020, p. 33. <https://ugp.rug.nl/GROJIL/article/view/37074> [Retrieved on 04 January 2022]
[123] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 Jul. 1996, *ICJ Reports* (1996), p. 226, paras. 29, 36, <https://www.icj-cij.org/en/case/95> [Retrieved on 08 January 2022].
[124] *Gabcikovo-Nagymaros,* cit., para. 140.
[125] Catherine Redgwell, "Principles and Emerging Norms in International Law: Intra- and Inter-generational Equity", in Kevin R. Gray et al. (eds.), *The Oxford Handbook of International Climate Change Law*, Oxford University Press, Oxford, 2016, p. 198–199.
[126] Rio Declaration, cit*.,* principle 7.
[127] See, for instance, UNFCCC, cit., Arts 4(1)(c), 4(3), 4(5), 11; CBD, cit., at Arts 16, 20, 21; Montreal Protocol, cit., Arts 10, 10A.

developed countries should aid developing countries with access to funds and the transfer of environmentally sound technologies. The idea is to 'help developing countries implement their commitments by meeting the incremental cost and building up their capacity to do so.' [128] In the Colombian case, the principle of solidarity depends on the State's duty to refrain from participating in GHG-emitting activities, and to maintain and preserve ecosystems, allowing the planet's inhabitants (including all the living beings) to enjoy the right to a healthy environment. These two approaches to solidarity are not fully related. The first aims towards fostering cooperation between various States, while the latter points towards the duty of this countries towards humanity as a whole.

Of these three principles, only the precautionary principle is a rule of customary international law. Intergenerational equity is an international guiding principle, while solidarity has a different scope for the CSC. While the reference made by the Colombian Court to international law is vital; it does not fully encompass the whole foundation of RoN. The CSC depended on the principles of climate change law and applied those more extensively to achieve the integral protection of the environment. The Court did not restrain itself by applying rigorously existing norms and principles; rather, it gave them a different approach, a different angle to look at rules in practice. The Court evaluated all the existing facts, rights, and principles, and decided about the necessity of bestowing rights to Mother Earth. In addition, the CSC established the government's breach of international climate change obligations and concluded that current environmental practices are not enough to fight climate change. The Court, however, has gone beyond what has been discussed internationally.

c) Court findings and its resolution

The CSC ruled that Colombia did not fulfil its forestry obligations[129] and miscarried their NDCs by not reducing deforestation to zero % in the Amazon region.[130] Hence,

[128] Birnie et al., "International Law and the Environment…", cit., p. 134–136.
[129] Amazon Region case, cit., p. 39, 41-45.
[130] Ibid., p, 41.

it breached its obligations under the Paris Agreement and behaved inefficiently while trying to comply with the same.[131]

Therefore, the CSC called the Government to take action to diminish deforestation, emphasising that the State must take corrective measures towards illegal crops, illegal mining, conflagration, agricultural and stockbreeding expansion, ecosystem protection, lack of scientific data of CO2 liberation, and to effectively handle climate change, which has been destroying the Amazon rainforest.[132]

Additionally, the Colombian Court endorsed three main arguments from the Colombian Constitutional Court in a previous case.[133] First, nature is a living organism composed by other forms of life with individualized rights and shall be protected by the society and States, disregarding their utility to humans.[134] Second, the existence of an interdependent relationship between Earth's living beings, recognising humans as part of the planetary ecosystem, and leaving aside concepts of domination, mere exploitation and utility is to be recognised.[135] Third, the concept of justice shall be applied beyond the human scenario and it shall allow the entitlement of certain rights to the environment, thereby going further in jurisprudential evolution towards the constitutional protection of the environment.[136]

Consequently, the CSC bestowed the whole Colombian Amazon Region with legal rights.[137] It further compelled the Government to fulfil certain obligations that Colombia committed to which will help to fight climate change.[138]

[131] Ibid., p, 38.
[132] Ibid., p. 38-39.
[133] The Colombian Supreme Court also endorsed the reasoning of the Colombian Constitutional Court in a previous case. See Amazon Region case, cit., p. 40-1 contrasting with the Atrato River case, cit., 32.
[134] Amazon Region cit., p. 40-1.
[135] Ibid.
[136] Ibid.
[137] Ibid. p. 45.
[138] The State was ordered, namely, to engage with stakeholders towards the elaboration of short, middle, and long-term plans, with the purpose of identifying and mitigating deforestation early warns. As well, as a form of reparation, the Court ordered the Government to adopt an inter-generational pact for the life of the Colombian Amazon Region. Additionally, local governments were commanded to update and apply territorial planning instruments for deforestation reduction. See Ibid. p. 45-47

While Colombia designed its NDCs, it failed to accomplish the commitments therein, triggering serious legal and factual problems that directly affect both people and the environment. It is evident, thus, that climate change effects respond mainly to a failure of State control; bringing into discussion the effectiveness of the bottom-up approach included in the Paris Agreement.

The lack of effective compliance with self-imposed obligations related to climate change and the global socio-environmental phenomena regarding this issue urged the CSC to establish a cutting-edge decision by bestowing rights to the Colombian Amazon Region. In addition, it served as a milestone for further local judgements that also recognized RoN. Nevertheless, the efficiency and effectiveness of this set of rights are still to be measured in the following years by monitoring compliance with judgments. In any case, the RoN's fundamentals are spreading through various countries, and it will not be a surprise if this concept reaches the international arena.

IV. RIGHTS OF NATURE AND CLIMATE CHANGE

Although the CSC did not explicitly develop the premises that directly referred to the link between climate change and RON, it is important to unwrap their legal interrelation.

The Intergovernmental Panel on Climate Change (IPCC) has denounced that climate change harms are unequivocally due to a direct influence of humankind on Earth's cycles,[139] and damages are evident.[140] Moreover, one of the latest reports raises alarm about the future scenarios foreseen by the IPCC if urgent actions are not taken and the planet's temperature continues to rise.[141]

The international community has been fighting climate change for approximately the past 30 years;[142] however, it 'has not yet produced the type of changes in state

[139] Intergovernmental Panel on Climate Change, "Climate Change 2021 …" cit., p. 4-7.
[140] Ibid. p. 8-11
[141] Ibid. p. 12-31
[142] Ivano Alogna et al., "Climate Change Litigation: Global Perspectives—An Introduction", in Ivano Alogna et al. (eds.), *Climate Change Litigation: Global Perspectives*, Koninklijke Brill, Leiden, 2020, p. 30-33.

behaviour that are necessary to effectively address'[143] its ongoing harmful effects. Governments, have also been contributing to this international failure by overlooking opportunities to prevent 'human activities [from] undermining the integrity, vitality, health and functioning of the natural communities of the planet.'[144] This lack of effective national and international reaction against climate change have triggered a deep public awareness about its effects and how to tackle them. Civil society has incited activism by pushing for laws and policies on climate change, striking, developing grassroot activities, and even resorting to courts to prompt states and corporations to take action, reduce emissions, stop their harmful activities, and/or obtain redress due to the damages caused to people, property, and/or the environment.

In this context, the CSC resolution and the ongoing evolution of RoN jurisprudence[145] might constitute an influential piece of law to fight climate change, for instance, as an argumentative tool within climate litigation processes,[146] enabling plaintiffs to rely on them to achieve their ends. Other specific scenarios may also prove the relationship between RoN and climate change, such as their interaction with adaptation or mitigation policies. However, the following section will contrast the CSC decision with those of climate litigation processes.

4.1. Could Climate Litigation Encompass RoN?

[143] Cinnamon Carlarne et al., "The Emergence of International Climate Change Law", en Cinnamon Carlarne et al. (eds.), *The Oxford Handbook of International Climate Change Law*, Oxford University Press, 2016., p. 4. See also William C. G. Burns, Hari M. Osofsky, "Overview: The Exigencies That Drive Potential Causes of Action for Climate Change", in William C. G. Burns, Hari M. Osofsky (eds.), *Adjudicating Climate Change: State, National, and International Approaches*, Cambridge University Press, Cambridge, 2009, pp. 19–20.
[144] Cormac Cullinan, "The rule of Nature's law …" cit., p 95.
[145] Harmony with Nature, cit.
[146] Plenty of authors have discussed thoroughly climate litigation processes worldwide, among the most relevant ones, see William C. G. Burns, Hari M. Osofsky (eds.), *Adjudicating Climate Change: State, National, And International Approaches*, Cambridge University Press, Cambridge, 2009; Ivano Alogna et al. (eds.), *Climate Change Litigation: Global Perspectives*, Koninklijke Brill, Leiden, 2020; Francesco Sindico, Moïse Mbengue Makane (eds.), *Comparative Climate Change Litigation: Beyond the Usual Suspects*, Springer Nature Switzerland, Cham, 2021.

According to the literature, two perspectives are needed to cover the definition of climate litigation. First, a narrow definition, 'in which the party filings or tribunal decisions directly and expressly raise an issue of fact or law regarding the substance or policy of climate change causes and impacts,'[147] or where climate change is 'an explicit subject of the case, though not necessarily the only subject.'[148] Conversely, a broader definition adds to these arguments the idea of considering a proceeding as a climate litigation case even when climate change is a secondary feature, or if it is not expressly referred to.[149]

From this perspective, the CSC ruling is a climate litigation case. First, it was triggered due to the high deforestation rate in the Amazon region, which is one of the focal causes of climate change.[150] Second, the increased deforestation percentage was also a consequence of other human activities, such as mining, livestock, and agricultural expansion, which at the same time are causes of climate change.[151] Third, and most importantly, the entitlement of rights to the Amazon region obeyed the idea of considering nature as an ecosystem net where all the elements are intertwined, and each of them has a specific role,[152] creating, thus, a link between environmental protection *per se* and climate change mitigation and adaptation.

Under this last premise, whenever a proceeding is brought before a court and the claimants' motivation, or the decision, relies on RoN arguments, it will also become, directly or indirectly, a climate litigation case. For instance, the Ecuadorian Constitutional Court, when reviewing a claim about the unconstitutionality of a legal provision that allowed mangroves to be exploited deliberately, recalled the

[147] David Markell, J.B. Ruhl, "An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual?", in *Florida Law Review*, num. 64, 1, (2012), p. 15, 27.
[148] Michael B. Gerrard, "Climate Change Litigation in the United States: High Volume of Cases, Mostly About Statutes", in Ivano Alogna et al. (eds.), *Climate Change Litigation: Global Perspectives*, Koninklijke Brill, Leiden, 2020, p. 33.
[149] Ivano Alogna et al., "Climate Change Litigation: Global Perspectives …" cit., p. 16-18
[150] Our World in Data, 'Emissions by sector', <https://ourworldindata.org/emissions-by-sector> [Retrieved on 01 June 2022]
[151] Ibid.
[152] Fritjof Capra, Pier Luigi Luisi, *The Systems View of Life: A Unifying Vision*, Cambridge University Press, Cambridge, 2014, p. 66.

importance of this ecosystem for climate change mitigation and adaptation.[153] The Ecuadorian Court held, when referring to the environment, that '[w]hen one [Mother Earth's] element is affected, the functioning of the system is altered. When the system changes, it also affects each of its elements.'[154]

From that point on, the argument for including RoN as a tool for climate litigation processes establishes two procedural alternatives for initiating a legal claim. The first involves relying on RoN's own procedures, which will depend on the legislation of each country; for instance, in Ecuador, this set of rights can be defended only through a constitutional process.[155]

At the time of writing, according to the Sabin Center for Climate Change Law, sixteen climate litigation cases worldwide relate to biodiversity and ecosystems protection;[156] however, cases that make 'only a passing reference to climate change, but do not address climate-relevant laws, policies, or actions in a meaningful way' were not included.[157] In the same sense, the Grantham Research Institute on Climate Change and the Environment contains around 98 climate litigation cases linked to environmental protection;[158] however, it endorses the criteria from the Sabin Center.[159] These numbers might increase if both Centers' standards would include the intention of litigants concerning environmental protection per se.

The second alternative for RoN to contribute as a climate litigation tool is through human rights law. Various sources of law have provided evidence of the close link

[153] Corte Constitucional del Ecuador, Sentencia 22-18-IN/21, 11 Octubre 2021, <https://portal.corteconstitucional.gob.ec/FichaRelatoria.aspx?numdocumento=22-18-IN/21> [Retrieved on 01 June 2022], para 13

[154] Ibid., para 27

[155] See Constitución de la República del Ecuador cit., 88 contrasting with articles 71 - 74.

[156] Sabin Center for Climate Change Law, 'Non-U.S. Climate Change Litigation, Suits against governments, Protecting biodiversity and ecosystems' <http://climatecasechart.com/non-us-case-category/protecting-biodiveristy-and-ecosystems/> [Retrieved on 01 June 2022].

[157] Sabin Center for Climate Change Law, 'About' <http://climatecasechart.com/about/> [Retrieved on 01 June 2022].

[158] All the environment-protection-related terms were filtered for this search. See Grantham Research Institute on Climate Change and the Environment, 'Litigation Cases' <https://climate-laws.org/litigation_cases> [Retrieved on 01 June 2022].

[159] Grantham Research Institute on Climate Change and the Environment, 'Methodology – Litigation' <https://climate-laws.org/methodology-litigation> [Retrieved on 01 June 2022].

between climate change and human rights;[160] furthermore, they have also demonstrated how human rights-based climate litigation is gaining recognition in the legal arena.[161]

In this matter, RoN entered the debate when contrasting their legal grounds with those posed by the IACrtHR regarding to the right to a healthy environment. Although the Court does not explicitly bestow rights to the environment, its wording denotes how the right to a healthy environment holds certain similitudes with the foundations of RoN.[162] For instance, both rights intend to give legal protection to the environment and her elements because of their intrinsic value, rather than relying on their utility to human beings. Additional similarities and differences might also arise.

The legal analogy formed by both sets of rights would indirectly allow exercising RoN within a climate litigation process before a competent human rights court. Relying on this logic would conceive two further issues. First, claims could have an impact within the inter-American human rights system or in states where the IACrtHR has jurisdiction.[163] Second, claims could hinge on the right to a healthy environment, while RoN would only be a reference as it has not been expressly recognized by the Court nor by certain countries.

It has been proven, thus, that RoN could serve as a legal tool to approach climate litigation proceedings. The Colombian case serves as an effective example of this.

[160] OHCHR, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, A/HRC/31/52, 2016, paras. 50–64 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/015/72/PDF/G1601572.pdf?OpenElement> [Retrieved 01 June 2022]. See also Julie H. Albers, "Human Rights and Climate Change", in *Security and Human Rights*, num. 28, 1–4, (2018); Bridget Lewis, *Environmental Human Rights and Climate Change*, Springer, Singapore, 2018; John H. Knox, "Bringing Human Rights to Bear on Climate Change", in *Climate Law*, num. 9, 3, (2019).

[161] See generally Annalisa Savaresi, Juan Auz, "Climate Change Litigation and Human Rights: Pushing the Boundaries", in *Climate Law*, num. 9, 3, (2019).

[162] IACrtHR Advisory Opinion, cit. para. 62

[163] According to the former President of the Inter-American Court of Human Rights, Pedro Nikken, The Court's Advisory Opinions are jurisprudence as an auxiliar source of international law. See Pedro Nikken, "La función consultiva de la Corte Interamericana de Derechos Humanos", in *Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México*, num. 15, p. 171-176. <https://nidh.com.br/wp-content/uploads/2018/06/5.-Pedro-NIkken-Fun%C3%A7%C3%A3o-consultiva.pdf> [Retrieved on 01 June 2022]

However, certain additional characteristics about climate litigation processes detailed in literature remain to be consulted.

4.2. Additional Features of Climate Litigation

Climate litigation procedures encompass three alternatives based on their actors. Complaints are addressed by non-state actors against state actors, as well between non-state actors, and inter-state litigation.[164] The Colombian case falls into the first category, while, generally, RoN suits would be included in either the first or second categories.

The third possibility poses considerable material and procedural hurdles, as well as legitimacy and jurisdictional constraints.[165] For some authors, the role of international judiciary bodies should go beyond a mere interpretation and application of the law, and should be an active part of law-making processes;[166] however, according to Boyle, international courts 'can only interpret and apply what has already been agreed. That helps explain why no advisory opinion has yet been requested on climate change, and why sinking island States have not sued anyone yet;'[167] proving, hat inter-state climate litigation or any related topic is far from being solved by international courts.

In contrast, according to Savaresi's categorization of climate litigation, there are two types of cases: '"pro-" litigation— initiated in order to engender policy change, for example, by requesting the adoption or reform of legislation; and "anti-" litigation— initiated to resist such change, for example, by challenging the adoption of new or

[164] Annalisa Savaresi, Juan Auz, "Climate Change Litigation and Human Rights …" cit., p 247.
[165] For a thorough study, see Daniel Bodansky, "The Role of the International Court of Justice …", cit.; Alan Boyle, "Progressive Development of International Environmental Law: Legislate or Litigate?", in *German Yearbook of International Law*, num. 62 (2019); Annalisa Savaresi, "Inter- State Climate Change …" cit..
[166] Philippe Sands, "Climate Change and the Rule of Law: Adjudicating the Future in International Law", in *Journal of Environmental Law*, num. 28 (2016)., p 7-8; Armin von Bogdandy, Ingo Venzke, *In Whose Name? A Public Law Theory of International Adjudication* (International Courts and Tribunals Series), Oxford University Press, Oxford, 2014, p. 101-118.
[167] Alan Boyle, "Progressive Development of International Environmental Law: Legislate or Litigate?", p. 331.

reformed legislation.'[168] The Amazon region case would certainly fall in the category of the former's, as it challenged the government's actions (or omissions), and complained about their human rights violations associated with the climate crisis and the lack of governmental action.

Following the ideas expressed in this final chapter, RoN governs the features of climate litigation processes. Moreover, the most suitable way of including RoN in these claims would be by encompassing them within the right to a healthy environment; allowing plaintiffs to bring cases before those Courts entitled to review such proceedings. To that end, the legal system and principles of human rights may serve as the proper path to follow.

On the other hand, relying purely on RoN still depends on their legal recognition, either in national or international law. The former will decide on the appropriate legal mechanisms to protect them. However, the international arena has been reluctant in recognizing RoN as part of its *corpus juris*. Although the IACrtHR acknowledged the rising state practice on this matter, it fell short of developing the implications such recognition may have in international law, for instance, nothing has been said about the link between RoN and international environmental law, nor what would be the implications for the international judiciary bodies, just to name a few. Certainly, in this context, these doubts need to be cleared in forthcoming studies.

V. CONCLUSION

According to the CSC, Colombia was far from reaching the self-imposed obligations related to deforestation included in its NCDs. The Court relied on the case facts and the evidence of the evolving views of the world regarding the environment. It also applied legal principles and rules from the international arena, ruling in favour of the environment, rather than focusing only on deforestation issues.

The legal recognition of RoN draws on the awareness of how the law is confronting environmental matters. Three alternatives were discussed in the current work. The

[168] Annalisa Savaresi, "Inter- State Climate Change Litigation …", cit., pp. 390–391.

first was how environmental protection is appraised in international law and still relies on existing agreements, though they are not showing the expected results.[169] Second, the approach suggested by international courts concerning environmental protection does not fully achieve the expectation of an ambitious interpretation of the law in favour of nature. Third, the exposure of an emerging recognition of RoN, at least at a regional level, is taking place.[170]

RoN is gaining force in the global arena. This institution is directing new legal issues towards an alternative path that aims to protect the environment. Indeed, some detractors do not consider RoN as a plausible option to stop harm to the environmental; rather, they still endorse the idea of relying on the current legal methods.[171] Nevertheless, a review of the effectiveness of RoN in assessing their compliance mechanisms and the results achieved through their application still need to be carried out.

This study does not intend to convince the audience that recognising RoN is the best option to stop environmental harm or to slow down the effects of climate. Instead, it aspires to reveal this set of rights as an option that national legislations are following to fight them, despite the downsides and counterarguments it may present. Replicating and improving the CSC judgement, as an example of 'creating law' to address environmental degradation and climate change, will depend on each jurisdiction. The consequences of this growing practice in the international arena will need further discussion as it has not been developed yet.

Finally, two criticisms should be pointed out. First, proof of an emerging regional state practice dealing with RoN is evident; thus, international law should not avoid discussions on the topic, including issues such as its legal status, efficiency, effectiveness, and applicability. Second, an appropriate international tribunal to address RoN-related claims needs to be agreed upon.

[169] Cullinan, "The rule of Nature's law…", cit..
[170] IACrtHR Advisory Opinion, cit., para. 62.
[171] See the references in n. 30.

The first question will depend on the agenda of the international actors, and the second will depend on which unit (states, NGOs, communities, or civil society) is willing to engage in a judicial dispute about RoN.[172] This can be determined in two ways: first, by establishing an international judiciary (or including the existing one[173]) and giving it exclusive jurisdiction and competence in these matters. This is an unlikely scenario due to the enormous time and effort that would be needed (administrative, economic, etc.) to accomplish this. Second, the IACrtHR, as discussed, has proven that although it is a Human Rights Court, it may also be an adequate forum to develop the necessary jurisprudence about this topic, including issues of interdependent relationships between humans and the environment. Other judiciary institutions such as the ITLOS or the ICJ itself may not have the intention of taking on this challenge, as it might impose legal and political struggles.

VI. BIBLIOGRAPHY

- Acosta, Alberto, *El Buen Vivir: Sumak Kawsay, una oportunidad para imaginar otro mundo*, Icaria Editorial, Barcelona, 2013.
- Acosta, Alberto; Martínez, Esperanza (eds.), *La Naturaleza con Derechos: De la filosofía a la política*, Ediciones Abya-Yala, Quito, 2011.
- Agarwal, Radhika 'Punjab and Haryana High Court according legal person status to animals a step forward to stop cruelty against them', Firstpost, 2019, <https://www.firstpost.com/india/punjab-and-haryana-high-court-according-legal-person-status-to-animals-a-step-forward-to-stop-cruelty-against-them-6812081.html> [Retrieved on 11 September 2021]
- Albers, Julie H., "Human Rights and Climate Change", in *Security and Human Rights*, num. 28, 1–4, (2018)
- Alogna, Ivano et al., (eds.), *Climate Change Litigation: Global Perspectives*, Koninklijke Brill, Leiden, 2020

[172] On the reluctance of International Courts to deal with controversial issues about the environment, see Bodansky, "The Role of the International Court of Justice…", cit.
[173] See Introduction

- Alogna, Ivano et al., "Climate Change Litigation: Global Perspectives—An Introduction", in Ivano Alogna et al. (eds.), *Climate Change Litigation: Global Perspectives*, Koninklijke Brill, Leiden, 2020, p. 30-33
- Anaya, James, "Environmentalism, Human Rights and Indigenous Peoples: A Tale of Converging and Diverging Interests", in *Environmental Law Journal*, num. 7, 1, (1999), p. 1–13.
- *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, 14 Feb. 2002, *ICJ Reports* (2002), p 3
- Ávila Santamaría, Ramiro, "El derecho de la naturaleza: fundamentos", in Alberto Acosta, Esperanza Martínez (eds.), *La Naturaleza con Derechos de la Filosofía a la Política*, Ediciones Abya-Yala, Quito, 2011, p. 173–238.
- Bétaille, Julien, "Rights of Nature: Why it Might Not Save the Entire World", in *Journal for European Environmental & Planning Law*, num. 16, 1, (2019), p. 35–64.
- Birnie, Patricia; Boyle, Alan; Redgwell, Catherine, *International Law and the Environment*, 4th, Oxford University Press, Oxford, 2021.
- Bodansky, Daniel, "The Role of the International Court of Justice in Addressing Climate Change: Some Preliminary Reflections", in *Arizona State Law Journal*, num. 49 (2017), p. 1–24.
- Bodansky, Daniel; Brunée, Jutta; Rajamani, Lavayana, *International Climate Change Law*, Oxford University Press, Oxford, 2017.
- Boyd, David R., *The Rights of Nature: A Legal Revolution that Could Save the World*, ECW Press, Ontario, 2017.
- Boyle, Alan, "The Role of International Human Rights Law in the Protection of the Environment", in Alan Boyle, Michael Anderson (eds.), *Human Rights Approaches to Environmental Protection*, Oxford University Press, Oxford, 1996, p. 43–65.
- Boyle, Alan; Chinkin, Christine, *The Making of International Law*, Oxford University Press, Oxford, 2007.
- Boyle, Alan; Singh Ghaleigh, Navraj, "Climate Change and International Law beyond the UNFCCC", in Kevin R. Gray, Richard Tarasofsky, Cinnamon

Carlarne (eds.), *The Oxford Handbook of International Climate Change Law*, Oxford University Press, Oxford, 2016, p. 27–54.

- Boyle, Alan, "Progressive Development of International Environmental Law: Legislate or Litigate?", in *German Yearbook of International Law*, num. 62 (2019), p. 305-333
- *Burlington Resources v Republic of Ecuador*, Decision on Counterclaims, 7 Feb. 2017, ICSID Case No ARB/08/5.
- Burns, William C. G., Osofsky, Hari M., (eds.), *Adjudicating Climate Change: State, National, and International Approaches*, Cambridge University Press, Cambridge, 2009
- Burns, William C. G., Osofsky, Hari M., "Overview: The Exigencies That Drive Potential Causes of Action for Climate Change", in William C. G. Burns, Hari M. Osofsky (eds.), *Adjudicating Climate Change: State, National, and International Approaches*, Cambridge University Press, Cambridge, 2009, p. 1-28
- Capra, Fritjof, Luisi, Pier Luigi, *The Systems View of Life: A Unifying Vision*, Cambridge University Press, Cambridge, 2014.
- *Case Concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia)*, Judgement, 25 Sep. 1997, *ICJ Rep* (1997), p. 7
- Carlarne, Cinnamon et al., "The Emergence of International Climate Change Law", en Cinnamon Carlarne et al. (eds.), *The Oxford Handbook of International Climate Change Law*, Oxford University Press, 2016, p. 4-25.
- *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment, 2 Feb. 2018, *ICJ Reports* (2018), p. 15
- Client Earth, 'Legal rights of rivers – an international trend?', 2019, <https://www.clientearth.org/projects/access-to-justice-for-a-greener-europe/updates/legal-rights-of-rivers-an-international-trend/> [Retrieved on 11 September 2021]
- Conference of the Parties to CITES Resolution Conf. 9.24, Criteria for amendment of Appendices I and II, Conf. 9.24 (Rev. CoP17)-1, 1994, <https://cites.org/eng/res/09/09-24R16.php> [Retrieved on 30 September 2021]

· Constitución de la República del Ecuador, 2008, <http://www.ambiente.gob.ec/wp-content/uploads/downloads/2018/09/Constitucion-de-la-Republica-del-Ecuador.pdf> [Retrieved on 11 September 2021]
· Constitución Política del Estado de Bolivia (2009)
· Constitución Política de La Ciudad de México, 2017, Art. 13, <http://www.infodf.org.mx/documentospdf/constitucion_cdmx/Constitucion_Politica_CDMX.pdf> [Retrieved on 11 September 2021]
· Constitución Política Del Estado Libre y Soberano de Colima, 2017, Art. 2(IX)(a), <https://congresocol.gob.mx/web/Sistema/uploads/LegislacionEstatal/Constitucion/constitucion_local_reorganizada_24Agos2019.pdf> [Retrieved on 11 September 2021]
· Constitución Política Del Estado Libre y Soberano de Guerrero, 1918, Art. 2, <http://congresogro.gob.mx/62/legislacion> [Retrieved on 11 September 2021]
· Convention on Biological Diversity, Rio de Janeiro (5 Jun. 1992, in force 29 Dec. 1993).
· Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Washington, D.C (3 Mar. 1973, in force 1 Jul. 1975)
· Corte Constitucional de la República de Colombia, Sentencia C-632/11, 24 Agosto 2011, <http://www.corteconstitucional.gov.co/RELATORIA/2011/C-632-11.htm> [Retrieved on 11 September 2021]
· Corte Constitucional de Colombia, Sentencia T-622/16, 10 Noviembre 2016, <http://www.corteconstitucional.gov.co/relatoria/2016/T-622-16.htm> [Retrieved on 10 September 2021].
· Corte Provincial de Justicia de Loja, Sentencia 11121-2011-0010, 2011, <https://www.elaw.org/content/juicio%2011121-2011-0010> [Retrieved on 11 September 2021].
· Corte Suprema de Justicia, Sala de Casación Civil, Sentencia AHC4806-2017, 2 2017, <http://derechoanimal.info/sites/default/files/legacyfiles/bbdd/Documentos/2276.pdf> [Retrieved on 11 September 2021].

- Corte Suprema de Justicia, Sala de Casación Civil, Sentencia STC4360-2018, 05 abril 2018, <https://www.escr-net.org/sites/default/files/caselaw/fallo-corte-suprema-de-justicia-litigio-cambio-climatico.pdf> [Retrieved on 14 August 2021].
- Cullinan, Cormac, *Wild Law: A Manifesto for Earth Justice*, 2nd, Chelsea Green Publisher, Vermont, 2011.
- Cullinan, Cormac, "The rule of Nature's law", in Voigt Christina (ed.), *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law*, Cambridge University Press, 2013, p. 94–108.
- Cullinan, Cormac, "Earth Jurisprudence", in Lavanya Rajamani, Jacqueline Peel (eds.), *The Oxford Handbook of International Environmental Law*, 2, Oxford University Press, Oxford, 2021
- Declaration of the United Nations Conference on the Human Environment, Stockholm (16 Jun. 1972)
- Delgado Galarraga, Mario, "Exploring the connection between indigenous peoples' human rights and international environmental law", in *Revista Chilena de Derecho y Ciencia Política*, num. 9, 2, (2018), p. 88–150.
- *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Provisional Measures, Order of 25 Apr, 2015, *ITLOS Reports* (2015), p. 146.
- Earth Charter Initiative, 'The Earth Charter', 2001, (Earth Charter), <https://earthcharter.org/library/the-earth-charter-text/> [Retrieved on 30 September 2021]
- Elder, P.S., "Legal Rights for Nature: The Wrong Answer to the Right(s) Question", in *Osgoode Hall Law Journal*, num. 22, 2, (1984), p. 285–295.
- Gerrard, Michael B., "Climate Change Litigation in the United States: High Volume of Cases, Mostly About Statutes", in Ivano Alogna et al. (eds.), *Climate Change Litigation: Global Perspectives*, Koninklijke Brill, Leiden, 2020, p. 33-46
- Gillespie, Alexander, *International Environmental Law, Policy, and Ethics*, 2, Oxford University Press, Oxford, 2014.

- Grantham Research Institute on Climate Change and the Environment <https://www.lse.ac.uk/granthaminstitute/> [Retrieved on 01 June 2022]
- Great Ocean Road and Environs Protection Act 2020, No. 19 of 2020, Parliament of Victoria, 2020, <https://content.legislation.vic.gov.au/sites/default/files/2020-06/20-019aa%20authorised.pdf> [Retrieved on 11 September 2021]
- Greaves Siew, Jochelle, "Facing the Future: The Case for A Right to a Healthy Environment for Future Generations under International Law", in *Groningen Journal of International Law*, num. 8, 1, (2020), p. 30–47.
- Griffiths, James, 'There is more CO2 in the atmosphere today than any point since the evolution of humans', CNN, 2019, <https://edition.cnn.com/2019/05/13/health/carbon-dioxide-world-intl/index.html?fbclid=IwAR0YMaT48ceZ5Gx-hTz4oRzEpr0YvgZ5BmjCFjfdQ-6TgN9zY3-KmMW-k24> [Retrieved on 30 August 2021].
- Hattingh, Johan, "Whose Climate, which Ethics? On the Foundations of Climate Change Law", in Oliver C. Ruppel, Christian Roschmann, Katharina Ruppel-Schlichting (eds.), *Climate Change: International Law and Global Governance: Volume I: Legal Responses and Global Responsibility*, Nomos Verlagsgesellschaft mbH, Baden, 2013, p. 95–120.
- Hindustan Times, 'Sukhna Lake is a living entity with rights: HC', Hindustan Times, 2021, <https://www.hindustantimes.com/chandigarh/sukhna-lake-is-a-living-entity-with-rights-hc/story-Jrt8vKUy8kqIUwWaLpcYtM.html> [Retrieved on 11 September 2021]
- Intergovernmental Panel on Climate Change, *Climate Change 2021. The Physical Science Basis. Summary for Policymakers*, Intergovernmental Panel on Climate Change, Switzerland, 2021.
- International Law Commission Report 'Draft conclusions on identification of customary international law, with commentaries' GAOR A/73/10, New York, 2018.
- International Rights of Nature Tribunal, <https://www.rightsofnaturetribunal.org/> [Retrieved on 24 September 2021]

- IUCN ‘Incorporation of the Rights of Nature as the organizational focal point in IUCN’s decision making’ Resolution WCC-2012-Res-100-EN, 2012, <https://portals.iucn.org/library/node/44067> [Retrieved on 11 September 2021]
- IUCN ‘IUCN World Declaration on the Environmental Rule of Law’, 2016, <https://www.iucn.org/commissions/world-commission-environmental-law/wcel-resources/wcel-important-documentation/environmental-rule-law> [Retrieved on 11 September 2021]
- Kari-Oca Declaration and Indigenous Peoples´ Earth Charter, 1992, <https://trc.org.nz/content/indigenous-peoples-earth-charter> [Retrieved on 30 September 2021]
- Kindj, Kévine; Faure, Michael, "Assessing reparation of environmental damage by the ICJ: A lost opportunity?", in *Questions of International Law*, num. 57 (2019), p. 5–33.
- Knox, John H., "Bringing Human Rights to Bear on Climate Change", in *Climate Law*, num. 9, 3, (2019)
- La Follette, Cameron, Maser, Chris (eds.), *Sustainability and the Rights of Nature in Practise*, CRC Press, Boca Raton, 2020
- *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 Jul. 1996, *ICJ Reports* (1996), p. 226.
- Ley de Derechos de la Madre Tierra (2010)
- Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien (2012)
- Lewis, Bridget, *Environmental Human Rights and Climate Change*, Springer, Singapore, 2018.
- Marcel, Leroy; Gebresenbet, Fana, "Science, Facts and Fears: The Debate on Climate Change and Security", in Oliver C. Ruppel, Christian Roschmann, Katharina Ruppel-Schlichting (eds.), *Climate Change: International Law and Global Governance: Volume II: Policy, Diplomacy and Governance in a Changing Environment*, Nomos Verlagsgesellschaft mbH, Baden, 2013, p. 685–712.

- Markell, David, Ruhl, J.B., "An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual?", in *Florida Law Review*, num. 64, 1, (2012), p. 15-72.
- Marshall, Virginia, "Removing the Veil from the “Rights of Nature”: The Dichotomy between First Nations Customary Rights and Environmental Legal Personhood", in *Australian Feminist Law Journal*, num. 45, 2, (2019), p. 233–248.
- Minamata Convention on Mercury, Minamata (10 Oct. 2013, in force 16 Aug. 2017)
- Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal (16 Sep. 1987, in force 1 Jan 1989)
- New Zealand Legislation ‘Te Awa Tupua (Whanganui River Claims Settlement) Act 2017,’ 2017, <http://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html> [Retrieved on 11 September 2021]
- NDC Registry (interim), ‘Colombia,’ 2019, <https://www4.unfccc.int/sites/NDCStaging/pages/Party.aspx?party=COL> [Retrieved on 04 September 2021]
- Nikken, Pedro, "La función consultiva de la Corte Interamericana de Derechos Humanos", in *Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México*, num. 15
- Our World in Data, ‘Emissions by sector’, <https://ourworldindata.org/emissions-by-sector> [Retrieved on 01 June 2022]
- Paris Agreement, Paris, (12 Dec. 2015, in force 4 Nov. 2016), <http://unfccc.int/paris_agreement/items/9485.php> [Retrieved on 11 September 2021].
- Plumer, Brad, ‘Carbon Dioxide in Atmosphere Hits Record High Despite Pandemic Dip’, The New York Times, 2021, <https://www.nytimes.com/2021/06/07/climate/climate-change-emissions.html> [Retrieved on 30 August 2021].

- *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, 20 Abr. 2010, *ICJ Reports* (2010), p. 14.
- Redgwell, Catherine, "Life, the Universe and Everything: A critique of Anthropocentric Rights", in Alan Boyle, Michael Anderson (eds.), *Human Rights Approaches to Environmental Protection*, Oxford University Press, Oxford, 1996, p. 68–88.
- Redgwell, Catherine, "Principles and Emerging Norms in International Law: Intra- and Inter-generational Equity", in Kevin R. Gray, Richard Tarasofsky, Cinnamon Carlarne (eds.), *The Oxford Handbook of International Climate Change Law*, Oxford University Press, Oxford, 2016, p. 186–201.
- *Responsibilities and obligations of States with respect to activities in the Area,* Advisory Opinion, 1 Feb. 2011, *ITLOS Reports* (2011) p. 10
- Rights of Nature Gain Ground in Uganda's Legal System, The Gaia Foundation, 2019, <https://www.gaiafoundation.org/rights-of-nature-gain-ground-in-ugandas-legal-system/> [Retrieved on 11 September 2021]
- Rio Declaration on Environment and Development, Rio de Janeiro, 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. I)
- Sabin Center for Climate Change Law <http://climatecasechart.com/> [Retrieved on 01 June 2021]
- Sands, Philippe, "Climate Change and the Rule of Law: Adjudicating the Future in International Law", in *Journal of Environmental Law*, num. 28 (2016), p. 19-35.
- Savaresi, Annalisa, "Inter- State Climate Change Litigation: "Neither a Chimera nor a Panacea"", in Ivano Alogna et al. (eds.), *Climate Change Litigation: Global Perspectives*, Koninklijke Brill, Leiden, 2020, p. 366-392
- Savaresi, Annalisa, Auz, Juan "Climate Change Litigation and Human Rights: Pushing the Boundaries", in *Climate Law*, num. 9, 3, (2019), p. 244-262
- Scripps Institution of Oceanography 'The Keeling Curve', 2021, <https://scripps.ucsd.edu/programs/keelingcurve/> [Retrieved on 30 August 2021].

- Shaw, Malcolm, *International Law*, 8, Cambridge University Press, Cambridge, 2017.
- Sindico, Francesco, Mbengue Makane, Moïse (eds.), *Comparative Climate Change Litigation: Beyond the Usual Suspects*, Springer Nature Switzerland, Cham, 2021.
- Soltau, Frederiech, "Common Concern of Humankind", in Kevin R. Gray, Richard Tarasofsky, Cinnamon Carlarne (eds.), *The Oxford Handbook of International Climate Change Law*, Oxford University Press, Oxford, 2016, p. 203–211.
- *Southern Bluefin Tuna (Australia v. Japan; New Zealand v. Japan),* Provisional Measures, Order of 27 Aug. 1999, *ITLOS Reports* (2000) p. 3.
- Stone, Christopher, "Should Trees Have Standing? Toward Legal Rights for Natural Objects", in *Southern California Law Review*, num. 45 (1972), p. 450–501.
- The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights), Advisory Opinion OC-23/17, 15 Nov. 2017, Inter-American Court of Human Rights Series A No 23 (2017).
- Treaty for Amazonian Cooperation, Brasilia (3 Jul. 1978, in force 2 Aug. 1980), <https://www.oas.org/dsd/publications/Unit/oea08b/ch24.htm> [Retrieved on 30 September 2021]
- UN GA Resolution A/RES/37/7, on World Charter for Nature, 1982, <https://undocs.org/A/RES/37/7> [Retrieved on 11 September 2021]
- UN GA Resolution A/RES/63/278, on International Mother Earth Day, 2009, <https://undocs.org/A/RES/63/278> [Retrieved on 11 September 2021]
- UN GA Resolution A/RES/66/204, on Harmony with Nature, 2012, <https://undocs.org/A/RES/66/204> [Retrieved on 11 September 2021];
- UN GA Resolution A/RES/67/214, 2013, on Harmony with Nature, <https://undocs.org/A/RES/67/214> [Retrieved on 11 September 2021];

- UN GA Resolution A/RES/68/216, on Harmony with Nature, 2014, <https://undocs.org/A/RES/68/216> [Retrieved on 11 September 2021];
- UN GA Resolution A/RES/69/224, on Harmony with Nature, 2015, <https://undocs.org/A/RES/69/224> [Retrieved on 11 September 2021];
- UN GA Resolution A/RES/70/208, on Harmony with Nature, 2016, <https://undocs.org/A/RES/70/208> [Retrieved on 11 September 2021];
- UN GA Resolution A/RES/71/232, on Harmony with Nature, 2017, <https://undocs.org/A/RES/71/232> [Retrieved on 11 September 2021];
- UN GA Resolution A/RES/72/223, on Harmony with Nature, 2018, <https://undocs.org/A/RES/72/223> [Retrieved on 11 September 2021];
- UN GA Resolution A/RES/73/235, on Harmony with Nature, 2019, <https://undocs.org/A/RES/73/235> [Retrieved on 11 September 2021];
- UN GA Resolution A/RES/75/220, on Harmony with Nature, 2019, <https://undocs.org/A/RES/75/220> [Retrieved on 11 September 2021]
- UN GA Report of the Secretary-General A/74/236, 2019, on Harmony with Nature, <https://undocs.org/A/74/236> [Retrieved on 11 September 2021]
- UN Security Council Compensation Commission Governing Council S/AC.26/2005/10, 2005, on Report and Recommendations made by the Panel of Commissioners Concerning the Fifth Instalment of “F4” Claims, para. 52, <https://undocs.org/en/S/AC.26/2005/10> [Retrieved on 30 September 2021]
- United Nations, ‘Rights of Nature Law, Policy and Education’, <http://www.harmonywithnatureun.org/rightsOfNature/> [Retrieved on 24 September 2021]
- United Nations, ‘United Nations Treaty Collection 7. d Paris Agreement,’ 2019, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en> [Retrieved on 11 September 2021]
- United Nations, ‘United Nations Treaty Collection 7. United Nations Framework Convention on Climate Change,’ 2019, <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en> [Retrieved on 11 September 2021]

- United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, Paris (17 Jun. 1994, in force 26 Dec. 1996)
- United Nations Environment Programme, *Global Environment Outlook – GEO-6: Summary for Policymakers*, Cambridge University Press, Nairobi, 2019.
- United Nations Framework Convention on Climate Change (UNFCCC), New York, (9 May 1992, in force 21 Mar. 1994).
- Vienna Convention for the Protection of the Ozone Layer, Vienna (22 Mar. 1985, in force 22 Sep. 1988)
- Villavicencio Calzadilla, Paola; Kotzé, Louis J., "Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador", in *Transnational Environmental Law*, num. 6, 3, (2017), p. 401–433.
- von Bogdandy, Armin, Venzke, Ingo, *In Whose Name? A Public Law Theory of International Adjudication* (International Courts and Tribunals Series), Oxford University Press, Oxford, 2014, p. 101-118
- Warnock, Mary, "Should trees have standing?", in *Journal of Human Rights and the Environment*, num. 3 (2012), p. 56–67.
- Whittenmore, Mary Elizabeth, "The Problem of Enforcing Nature's Rights under Ecuador's Constitution: Why the 2008 Environmental Amendments Have No Bite", in *Pacific Rim Law & Policy Journal*, num. 659 (2011), p. 659–691.
- World Conservation Congress, Honolulu, 2016, <https://portals.iucn.org/library/node/46410> [Retrieved on 11 September 2021]
- World People's Conference on Climate Change and the Rights of Mother Earth, 'Universal Declaration of Rights of Mother Earth', 2010, Cochabamba, <https://www.therightsofnature.org/universal-declaration/> [Retrieved on 30 September 2021]
- Zaffaroni, Eugenio, *La Pachamama y el Humano*, Ediciones Colihue, Buenos Aires, 2012.