The international legal personhood of Nature and other ecosystems: A legal approach based on ecocentric ethics

Synopsis of PhD Dissertation
- *Booklet* -

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I. Background of the Dissertation

1.1 Overall presentation

The dissertation aims at appraising the proposition of conferring international legal personhood on Nature,[1] as an alternative instrument to cope with the present ecological crisis. It focuses on the transition from the object to the subject of law; namely from the traditional Western worldview of understanding natural resources as goods, even as commodities, chiefly represented by the contemporary notion of the human right to a healthy environment, towards the recognition of Nature as an entity endowed with rights. Correspondingly, it deals with encouraging the participation of Nature as a new actor in the international arena, emphasising its intervention, particularly in green judgements before the international courts of justice. The jurisprudence coming from the Court of Justice of the European Union (CJEU) constitutes the referential case study.

In fairness, although the idea is not new at the national level and seems to resurface every now and then, the scheme of Nature as a holder of rights merits further research and development. Indeed, the state of affairs has been significantly modified in the ordinary course of events, mainly because what was "*unthinkable*" in the past, before the U.S. courts, has become presently feasible before tribunals of New Zealand, Colombia, and India, which have conferred legal personality on rivers and other ecosystems.[2]

Although one of the first and most celebrated propositions about the recognition of rights of Nature is on the records of *Sierra Club v. Morton*, nay in the dissent opinion by Justice Douglas, the case also represented a relative judicial setback. It is due to the fact that the Court of Appeals rejected the lawsuit –brought before it to prevent the construction of a ski resort and its facilities on Mineral King Valley– holding that the claimant lacked legal standing to claim on behalf of the ecosystem.[3]

Nevertheless, twenty years later, the community of *Whanganui Iwi* and the Crown of New Zealand signed an agreement to discharge a long-running legal dispute, begun in 1990, which mainly focused on the creation of legal personality for the *Whanganui River.* On their part, Colombian Courts have been acutely active in recognising diverse ecosystems as subjects of law and granting rights. In that regard, the Colombian Constitutional Court recognised the *Atrato River*, including its watershed and tributaries as a subject of law in 2016, in order to be protected, conserved, maintained and restored, by the State along with ethnic communities. In addition, the Administrative Tribunal of Boyacá declared Pisba Highlands (*páramo*) as a subject of rights, just like the Supreme Court did it to Colombian Amazon. India followed suit, when the High Court of Uttarakhand at Nainital bestowed legal personality on the rivers

[1] The term 'Nature' with the first capital letter will be used as a synonym of Mother Earth, environment, planet, or ecosystem to avoid misunderstandings of meaning.
[2] Stone (1972) 450-7; United Nations (2018).
[3] Case 70-34, *Sierra Club v. Morton* (1972) § III, 741.

Ganga and *Yamuna*, in addition to the ecosystems comprised of the glaciers *Gangotri* and *Yamunotri* in 2017.[4]

Moreover, the recognition of Nature's rights has gone beyond, reaching out to be part of domestic law in the United States, Bolivia, and New Zealand, and even of constitutional law in Ecuador. Indeed, the first formal acknowledgement of an ecosystem as a person–endowed of rights–occurred in 2006, in Tamaqua Borough, Pennsylvania, by means of an ordinance relative to the ban on corporations from engaging in the land application of sewage sludge. Thenceforth, a total of twenty-six towns in the United States counts on similar bylaws, i.e. in addition to Pennsylvania, the states of Virginia, New Hampshire, New Jersey, New York, Maryland, Ohio, New Mexico, Idaho, Wisconsin, and California.[5]

On its part, Nature or "*Mother Earth*" is legally a "*collective subject of public interest*", who has rights to life, diversity of life, water, clean air, balance, restoration, and a life free of pollution in Bolivia. Meanwhile, in New Zealand, the 2012 agreement between *Maori* people and the Crown of New Zealand was enacted into law in 2017, declaring the so-called *Te Awa Tupua*–the ecosystem linked to the *Whanganui River*–as a legal person. Finally, as the corollary of the constitution-making process in Ecuador, Nature has the constitutional right to *integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes*" since 2008.[6]

All of these national experiences have led this question towards a new judicial, legal, and even ethical moment, in which will turn out crucial, at least, to contextualise the real scope of Nature, as a global entity, and reinforce the mechanisms allowing the implementation of its legal representation systematically. In order to attain these ends, it will be necessary to pose the dilemma of the bearer of rights since the perspective of international law, is this one single scenario that is capable of encompassing the authentic physical extension of Nature beyond the mere national boundaries.

On the other hand, the common thread running within this work will be property rights, given the remarkable role they played in the different dimensions of the debate about how to understand and address the current environmental emergency. Indeed, ownership of natural resources quite probably represents the major criticism of anthropocentrism, being deemed by its detractors as one of the chief sources of ecological depletion[7] and social conflict.[8] David R.

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[4] Agreement between *Whanganui Iwi* and the Crown (2012) para. 2.7; Caso T-622, *Centro de Estudios para la Justicia Social 'Tierra Digna' y otros v. Colombia* (2016) Decisión No. 4; Expediente 15238 3333 002 2018 00016 01, *Juan Carlos Alvarado Rodríguez y otros v. Ministerio de Medio Ambiente y otros* (2018) Decisión No.3; Caso STC4360-2018, *Andrea Lozano Barragán y otros v Presidencia de la República de Colombia y otros* (2018) numeral 14; Writ Petition (PIL) No.126 of 2014, *Mohammed Salim v. State of Uttarakhand & others* (2017) Direction No. 19; Writ Petition (PIL) No.140 of 2015, *Lalit Miglani v. State of Uttarakhand & others* (2017) Direction No. 2.

[5] Ordinance Tamaqua Borough No. 612 (2006) § 7.6; United Nations (2018) § 23.

[6] Ley de Derechos de la Madre Tierra (2010) Article 7; Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien (2012) Article 1 (a) and 9 (1); Te Awa Tupua (Whanganui River Claims Settlement) Act (2017) § 14; Agreement between *Whanganui Iwi* and the Crown (2012) paras. 2.6 to 2.9; Translation of the Constitution of the Republic of Ecuador (2011) Article 71.

[7] Sands (1994) 294; Borràs (2016) 113-4; Ramlogan (2002) 15-6.

Boyd himself, the current U.N. Special Rapporteur on Human Rights and the Environment, has assured that "[a]*nthropocentrism and property 'rights' provide the foundations of contemporary industrial society,* [where economic] *growth is the principal objective for governments and businesses, and it consistently trumps concerns about the environment*".[9]

Nevertheless, there are also utterly contradictory criteria thereon, such as Cole's or Flipo's. So, Cole asserts that those views about property rights at the centre of environmental concerns are too much reductionist since they do not take into account many other circumstances involved, like institutional distortions, technological deficiencies, extremely high transaction costs, and so on. On his part, Flipo pleads the rights of Nature should articulate with human rights, given that both categories are not excluding. He believes Nature's rights, just like human rights, can get instrumentalised against those promoting selfishness surreptitiously and enforced against polluters and exploiters. "*Nature rights might be enforced against the poor but not the rich,* [he asserts] *in a Malthusian approach, just as human rights can serve as a mask for ownership*". Interestingly, Boyd himself quotes a couple of judicial cases, albeit at the Constitutional level, recounting how certain courts, in Slovenia and Belgium, have not decided in favour of property rights and to the detriment of Nature, based predominantly on reasons of public interest.[10]

To that extent, the acknowledgement of Nature as a holder of rights, instead of merely a set of possessions, comprises a radical measure going beyond the continuous necessity of rethinking and restructuring the concept concerning the property of natural resources, as suggested by Taylor. In other words, it does not deal with that empirical definition of Nature, wherein environmental protection and its economic functions are correctly balanced, as argued by Sax, Hunter, and Rieser, even though in the end without brushing aside its legal category of commodity.[11]

The notion of rights rather involves bringing Nature further the limits of the paradigm of legality, and even of morality, overriding any loophole of ownership, in order to extend its ambit of lawful protection like any another existing subject of law, similarly–perhaps–to what has once occurred with slaves, women, workers or blacks, and so on.[12] Around this reasoning, it arouses various enquiries that exceed the purely legal analysis and settle in the field of other related disciplines, particularly ethics. It is well known that legal practices improve if they get integrated with ethical considerations.[13]

1.2 Identification of research tasks

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[8] Taylor (1998a) 383.
[9] Boyd (2017) xxiii.
[10] Cole (2002) 1-19; Flipo (2012) 136-7; Boyd (2018) 34-5.
[11] Taylor (1998a) 394-5; 384-5; Sax (1993); Hunter (1988); Rieser (1991).
[12] Nash (1989) 7.
[13] Deák (2019) 284.

Notwithstanding the multiple endeavours that one can perceive from various ambits of sciences and humanities to preserve Nature or, at least, to control the environmental depletion of the ecosystems, it turns out quite difficult to stop thinking about something is failing. It is enough to review the results of international reports about the current conditions of some environmental components and resources, such as forestry, climate, or biodiversity, for instance, to notice that the pendant tasks to do ends up being much more than the achieved goals in practice.

From that perspective, the present research essentially comprises a twofold task. Firstly, there is a critical review in detail of the international legal framework, currently in force. This juridical assessment aims at the identification of the most significative incongruencies of law, emphasising those regulations that address natural resources as mere goods or commodities and protrude the importance of property rights over environmental protection. The study considers not only an examination of international binding instruments and soft law but also the adjudications issued by the CJEU concerning environmental matters.

Secondly, the dissertation will provide an evaluation concerning the possibility of recognising Nature as a subject of international law, as a mechanism to face the environmental crisis. To accomplish this goal, it has been reviewed in detail a series of scholar stances in this subject matter, as well as national experiences, which can be useful to set up the characteristics of a potential acknowledgement of Nature as a holder of rights, at the global level. In addition, it was necessary to incorporate an analysis of diverse ethical positions so that they can theoretically and philosophically support the proposal in academic terms.

1.3 Research questions

The primary objective of this research comprises the assessment of the bestowal of legal personhood on Nature, within the realm of international law, as an alternative mechanism to face the environmental crisis of these days. In this regard, as a methodological mechanism to guide the study, the main aid has been posed as a question research under the following terms:

How feasible is it to confer international legal personality on Nature, as an alternative instrument to cope with the environmental crisis?

However, the complexity of the topic involves a series of particularities in matters of legislation and judicial decisions, let alone the derived ethical perceptions supporting the scholar proposal. For this reason, it got formulated a series of subsidiary research questions, which facilitated the general analysis and guided the whole structure of the dissertation. For a better understanding, these ancillary queries get organised according to the three core subject matters of the research, legal, judicial, and ethical ones, as appropriate.

1.3.1 From the ethical perspective

From the ethical point of view, the overall aim is: ***to determine what would be the best model of moral considerability to support the bestowal of international legal personality on Nature***. The research questions guiding this objective are:

a) *Are the traditional human-centred principles sufficient to provide the ethical foundations for the recognition of international legal personality to Nature?*
b) *What is the moral status of Nature according to the principles guided by anthropocentric ethics?*
c) *How feasible would be to enlarge the anthropocentric moral limits towards including Nature within them?*
d) *What would be the key ethical foundations with which the holistic perspective would contribute to enhancing the interplay between humans and Nature?*

1.3.2 From the legal viewpoint

From a legal point of view, there are three specific objects of study. The first aim consists of ***critically analysing the current conditions of environmental protection coming from the international legal framework***. The research questions are:

e) *Are the existing legal mechanisms, based on anthropocentric tenets, enough to guarantee the protection and respect of Nature?*
f) *How necessary would it be the representation of Nature as a bearer of rights and a subject of international law in the current state of legal affairs?*

The second aim is: ***to verify if the international legal framework, currently in force, prioritise the property rights over environmental issues***. The research questions are:

g) *Is it true that Nature is considered as a mere set of goods, subject to property, in the international legal framework currently in effect?*
h) *Are property rights really deemed more important than Nature, according to the international legal framework, currently in force?*
i) *To what extent would the bestowal of international legal personality to Nature modify the legal conditions of the property rights?*

The third objective is: ***to formulate the fundamental conditions to the conferment of international legal personality on Nature, based on national experiences***. The research questions are:

j) *What aspects of the national laws in current force, by which Nature has been recognised as a holder of rights, would be useful for its international acknowledgment?*
k) *What would be the key rights and duties of Nature as an international subject of law?*
l) *Who would represent Nature as a subject of law in the international ambit?*

1.3.3 From the judicial standpoint

From the judicial point of view, the aim is: ***to describe how the Court of Justice of the European Union rules about the interplay between property rights and environmental protection and determine if the present judicial decisions are enough to protect Nature***. The research questions are:

m) Do international courts of justice rule in favour of property rights and individual interests to the detriment of Nature?

n) Is it necessary to be the owner of natural resources or exercise any kind of associated rights for obtaining eco-friendly rulings before international courts?

o) Is there anybody who can represent Nature's interests before international courts within the international legal framework currently in force?

p) Are there enough warranties to protect natural resources in the current international system of justice?

1.4 Reasons for doing further research on the topic

In 2008, Ecuador recognised the rights of Nature at the constitutional level, being the only country worldwide that counts on such provisions until now. Given that it was one of the first experiences thereon, and being an Ecuadorian attorney, I was drawn to research about the theme. Later, I noticed the topic was novel in the field of study. Indeed, despite the fact that there are a lot of developments in matters of recognition of rights of Nature at the national level, even concerning comparative law, this is one of the first efforts to present an assessment from the global legal perspective and scrutinise the international judicial decisions thereon.

1.5 Applied methods

1.5.1 Qualitative methods

The scope of the legal, judicial, and ethical perspectives determined the methodology employed in the present dissertation. In that regard, the traditional doctrinal method guided the analysis of the legal and judicial components of the research, which corresponds to the classic technique of analysing "*black-letter law*", in the words of Paul Chynoweth. In general terms, following to Jacobstein, Mersky, and Dunn, black-letter law deals with a colloquial expression relating to "[…] *the basic principles of law generally accepted by the courts and/or embodied in the statutes of a particular jurisdiction*".[14] Its application is going to allow counting on a systematic formulation of legal data about the international instruments currently in force, just like the academic works about the topic.

[14] Chynoweth (2008) 29; Jacobstein, Mersky and Dunn (1998) xx.

On its part, the search for bibliographic information about the methods "*of*" ethics does not look like a difficult task at first glance. However, once one has undertaken the quest, the lack of specific references is quite noticeable. The bulk of study materials refers mainly to the role of ethics in the research of both sciences and humanities, evidently including law, emphasising the addressing of ethical challenges and dilemmas during the process of conducting research.[15]

Thus, when one reviews several works about applied ethics, including academic dissertations, they give the impression that authors take it for granted the analysis of moral principles should fit the traditional Western practices, namely they adopt those methods influenced mainly by Kant and his categorical imperative towards deontological enquiries. In the course of the examination, however, it is common to be tempted to occasionally opt for empirical analysis, assigning a greater weight to the behavioural observations and practices than the categories of thought. In contradistinction to what Kantianism states, it often occurs– for example–with generally accepted tenets like the precautionary principle, which differ from the aprioristic focus of the categorical imperative.[16] It turns out hard to contrast the persuasive scientific evidence through, so to speak, mere intuitions.

1.5.2 Quantitative methods

The method to compare the data regarding the adjudications issued by the CJEU was the "*Pearson product-moment correlation coefficient*", perhaps the most known and used correlation coefficient for two variables. Its choice was principally due to its frequent utilisation in the cluster analysis of data with linguistic contents (e.g. regulations, contracts, and corporate bylaws, among other legal documents); i.e. it accurately was fitting to the examination of court decisions.[17]

In technical terms, the universe and the variables comprise the information derived from the Court's adjudications concerning both environmental protection and property rights. However, some other variables subject to comparison were the representation of ecological interests, trade, and a healthy environment. Its mainstream symbol is the letter "r", and the ranges of results are as follows: the closer the coefficient is to 1, the stronger the association between the two variables, while the closer the score is to 0, the weaker the association.[18]

1.6 Data collection concerning case-law

1.6.1 The universe of cases

[15] Wiles (2013) 9.
[16] Hill (2000) 228-9.
[17] Moisl (2015) 11.
[18] Lær statistics (2018) <https://statistics.laerd.com/statistical-guides/pearson-correlation-coefficient-statistic al-guide.php> accessed 3 December 2018.

As a starting point, the universe and every sample of analysis come from a handy online search engine the Court of Justice of the European Union (CJEU) maintains. The entire database divides into 65 categories, clustering more than 100 thousand documents in total. The selection restricted only to environmental judgements and closed cases (either published or unpublished in the European Court Reports–ECR), owing to they are the sole legal instruments in respect of which one could attempt to corroborate the hypotheses. The rest of the documents are merely procedural ones, so they have been excluded, given that they do not allow achieving the foreseen research aim. Consequently, the total universe number of selected judgements is 965, comprised between 1 January 1979 and 31 December 2019. The adjudications pertain to the Court of Justice (898) and the General Court (67).[19]

1.6.2 The selection of the sample of CJEU's adjudications

Given the interactions between property rights and environmental issues are the driving force behind the present research, it would not only turn out useful to count on a statistical reference concerning their correlation but also to construct the indicators in the function of both variables. Indeed, in the framework of the CJEU's adjudications, one can find some decisions oriented to impractical or disjointed matters, in terms of both ownership and Nature's protection. Therefore, it is indispensable to carry out a depuration of data that adequately transpires from the Court's information.

The initial step to determine how influential "property rights" could be within the legal parlance of the Court consists of examining their frequency of repetitions in the judicial adjudications. This incidence of mentions aims at a twofold objective. Firstly, it is a general indicator of the importance and recurrence of the concept of property rights within the ambit of the Court's activities. Effectively, if the judges do not even allude to the idea of property rights within the judicial reasoning, for example, how could one evaluate their degree of influence upon the CJEU's decisions? Secondly, it reduces the number of rulings towards a lesser sample, which will permit focusing solely on the specific cases and handling much more adequately the statistical data.

Essentially, the set of data was constructed from the inclusion of adjudications that alluded to property rights and other associated words, such as, "owner", "proprietor", "private", and their linked terms (e.g. plurals, suffix and prefix in nouns, and so on). Moreover, the selection was validated through the contrast with other terminologies, such as "belong", "possess", "tenant", and their linked expressions. Nevertheless, after the first review in detail of documents, one can also notice the locution "economic interest(s)" frequently refers to cases in which there is a tension between property rights and Nature so that it was necessary to include those cases in the sample as well.

[19] Case-law of the Court of Justice (2019), <http://curia.europa.eu/juris/recherche.jsf?language=en> accessed 2 January 2020.

Once concluded the selection, the final sample contains 355 records in total, which corresponds to both the General Court and the Court of Justice.

II. Scientific Results

2.1 Conclusions

2.1.1 Nature in the international legal framework in force

This chapter two principally enquired into two scholarly issues, derived from the efficiency of law and legal representation. Regarding the first research question, i.e., ***if the existing legal mechanisms are enough to protect and respect Nature in itself, and not necessarily for human sake,*** one should argue there is abundant evidence otherwise, namely international treaties–either global or regional ones– continuously emphasise the importance of people's welfare over Nature.

Thus, for example, it has been said the regulations of the right to a healthy environment attempt to enhance ecological conditions to favour adequate living standards (e.g. physical and mental health, food, clothing, housing, and so on). Therefore, no environmental improvement is exclusively eco-friendly in itself, given that it aims at benefitting human wellbeing. Indeed, authors often assume this right is an extension of the inherent right to life, closely associated with health and suitable standards of living.

In the conflict between fundamental rights and human rights (e.g. the right to life v. property rights, or environmental protection v. development) the restriction of rights constitutes a legitimate solution. In this regard, for example, the limitation of property rights could make up a manner to promote the protection of Nature as an inseparable component from the right to life. Notwithstanding, for meeting this goal, Nature must compose an independent legal entity because the traditional application of the anthropocentric, individual human rights approach has failed to preserve the environment for decades, as a result of the exploitative, hegemonic operation of global capitalism. The reason lies in the fact that the anthropocentric principles, along with its procedural boundaries, have not been able to improve the efficiency of environmental protection, even with the use of procedural [human] rights. Although the sustainability would offer a kind of compromise, self-restraint of States and markets do not work, so one must find an alternative solution to protect the ecosystems.

In principle, although ecological measures based on the right to a healthy environment do enhance the ecosystemic conditions, they do not operate if there is no demonstrable welfare for people, according to international law. Whether it is not for human sake, it does not seem justifiable to take any measures to protect Nature. Consequently, current international environmental normative concerning the right to a healthy environment is not sufficient to warrantee the protection and respect of Nature. It possesses a mere instrumental function, where natural resources get represented as suppliers of goods and services.

Likewise, the principles around sustainability tend toward guaranteeing anthropocentric conditions instead of green ones. The profuse references concerning the eradication of poverty, social development, the increased participation of women, youth, and Indigenous, among others, as constitutive elements of sustainable development illustrate very well its propensity for preferring human sake over Nature's.

In a similar vein, several instruments show decisive support of international trade within the framework of sustainability. They bring into question any restriction to its regular operation, even when the mentioned constraints concentrate attention on environmental objectives (Convention on Climate Change is particularly illustrative thereof). Furthermore, they also emphasise the '*sustained or sustainable economic growth*' as one of the priorities of development and as an essential mechanism to reach sustainability.

Accordingly, the existence of various social and economic preferences over Nature signifies that sustainability international laws' promote a human-centred standpoint and, above all, the achievement of sustainable development in practice does not necessarily imply the enhancement of ecological conditions *per se*. Human welfare will be the clue aspect to consider when one should apply politics, programmes, and projects intended to reach sustainable development.

There is a parallelism between future generations and the previously alluded cases. As mentioned, the notion of forthcoming people is conceptually anthropocentric, given it refers to human beings in principle. It is true those people do not exist at present, but they are going to be humans in the future. Consequently, the protection of Nature on behalf of persons-to-come does not represent an ecological end in itself, it rather constitutes an instrumental aim, useful for the search of human wellbeing. Following this logic, it would not be justifiable the application of environmental provisions if it does not entail any benefit for upcoming people. Therefore, this schema of protection is neither enough to protect Nature.

As an overall conclusion, whether black-letter law does not offer enough warranties to protect Nature, let alone its enforcement in practice. The application of eco-friendly policies, programmes, action plans, and so forth will not be significantly efficient to avoid ecological devastation if their legal sources are neither enough to accomplish green aims. To some extent, the association with human welfare could mean an obstacle concerning conservation, protection or restoration of Nature, among other favourable actions. Notwithstanding, it does not mean international legislation is thoroughly useless to cope with the environmental crisis, owing to many treaties ['*specific provisions*' to be exact] have turned out to be successful. Unfortunately, this is not the case of the whole global or regional legislation. Hence, one cannot conclude ***the existing legal mechanisms are sufficient to defend and respect Nature in itself*** in the ambit of international law.

The second research question consisted of establishing ***how necessary the representation of Nature as a bearer of rights and a subject of international law would be in the current state of legal affairs.*** The response to this query initially derives from the previous one, namely if international environmental law cannot be satisfactorily employed to protect Nature, it becomes imperative to represent its interests in the juridical arena. As a result of this

assertion, someone could wrongly believe there is not any form to defend Nature legally. It is not the case, however, given the fact that States have been traditionally in charge of protecting natural resources.

Effectively, the first section of the present chapter contains many indications regarding the existence of States as the most ancient and traditional subjects of international law. For a long time, they have even constituted the only ones. In this regard, although historical regulations have recognised the legal personhood of other participants, actors, or stakeholders–such as NGOs, confederations, and even human beings, among others–States have been customarily the institutions responsible for environmental protection.

Nevertheless, the relationship between State and Nature does not correspond to a couple of actors interacting on an equal footing. Their interplay resembles what occurs between owner and ownership, meaning the notion of property or any other associated form of control, such as sovereignty, links both concepts together. The implications of property rights, however, will get examined in the next chapter. For the time being, one has to keep in mind that Nature has been historically a set of goods, or even commodities, intended to meet human needs. As a result, States have managed Nature as things under their control and will continue to do it, instead of considering it as a group of beings endowed with specific interests. Thus, the representation of Nature, based on the current international legislation, merely reproduces the anthropocentric connotation of the right to a healthy environment, sustainable development, or future generations.

Likewise, as mentioned before, the rights-based approach predominantly implies the incorporation of environmental issues into the international system of human rights. Not on the contrary. It deals with a thoroughly anthropocentric standpoint. Therefore, no matter the employed method–either the green reinterpretation of existing entitlements or the creation of new ones–international law will tend to prioritise people's welfare over Nature's. In other words, instruments of human rights will emphasise detrimental impacts on people rather than on the wild itself, because it is their original essence. Accordingly, one cannot pretend the protection of Nature predominate in front of social interests within this ambit of the law.

Moreover, as argued throughout this chapter, one cannot lose sight of the fact that States have an obligation to protect both human beings and Nature. States are even responsible for the respect of human rights, mainly through the justice system. In this regard, it turns out quite difficult to believe that States are knowingly going to enforce international treaties in favour of Nature; even though their provisions generally cherish the inherent values of human beings more than purely environmental interests.

As mentioned, the last assertion definitively does not mean the international legal framework is thoroughly useless to protect Nature. It only implies that the enforcement of international law is going to support human beings instead of Nature in case of any conflict between their respective interests. In such circumstances, one could conclude States are not always the best protectors of ecosystems. Therefore, by way of a response to the second research question, it is worth acknowledging the need to count on an independent and

legitimate actor [different from State], someone who can be legally capable of representing Nature in front of harmful human activities. Who is it? It is coming next.

2.1.2 The ubiquity of property rights in the sphere of International Environmental Law

The two hypotheses formulated within the chapter three followed a logic pattern structured in the function of interconnections between property rights and Nature. In this regard, the first research question searched for corroborating ***if it is true or not that the international legal framework, currently in force, merely considers Nature as a set of goods subject to property***. The response did not set off from scratch, because there was an assumption concerning Nature does constitute an array of things and commodities, an aspect analysed and somehow concluded in the previous chapter. Consequently, once reviewed the most noteworthy binding and non-binding instruments of international law, currently in effect, one can indubitably determine that Nature is thoroughly susceptible to be the property of human beings.

Effectively, everything that exists on Earth, especially lands and species, belong to human beings, either by private means or public ones. Moreover, the international legal framework, from the older instruments to the more recent ones, is littered with references to property rights over Nature. As mentioned, the very fact that some conventions contain allusions to "*natural resources*", instead of other expressions, such as Nature, environment, or ecosystem, for example, evokes the ideas of commodification and objectification of the wild; i.e. the conceptualisation of flora, fauna and ecosystems as goods, things or commodities. In this line of reasoning, the Conventions on biodiversity, climate change, access to information, and combating desertification allude to biological, genetic, water or land resources, indistinctly. In some way, they have followed the course set by earlier treaties, such as the economic and political covenants, which established the people's right to fully and freely exploit and use their natural resources.

In particular, the influence of the covenants concerning the handle of Nature has turned out decisive, not least because they defined the overall conditions of the so-called principle of permanent sovereignty over natural resources. As a result, one of the most powerful conclusions derived from the present analysis consists of the fact that the exercise of State sovereignty grants to nations a legal right easily comparable with property rights, that is, in practice, countries participate as owners of Nature in the international sphere but sheltered and supported by the normative framework.

As announced in the first pages of the chapter, the examination of property rights over Nature was going to be guided by the ownership's constituent elements, i.e. possession, use, and disposition. In consequence, pursuant to the mentioned structure, this chapter counts on a compilation in detail of plentiful legal exemplifications regarding ownership upon natural resources. Thus, the commerce of wild species, regulated by the CITES, represents perhaps the archetype of Nature as merchandise, where its purchase and sale pursue the logic of traditional property rights. Nevertheless, the trade of endangered species is not the only

regulation of the international market, given there is a series of provisions oriented to protect it. Sundry treaties even bring into question any restriction of international trade, based on environmental measures, or promote greater flexibility in the application of green actions to those countries tending to market economies. Within this commercial ambit, the Convention to Combat Desertification plays a controversial role, by warranting to the owners of traditional knowledge and know-how the economic profits derived from their uses and technological applications. As mentioned, any potential commercialisation of ancestral practices and native cultural elements, such as folk medicine, for example, could represent a threat to the very survival of indigenous peoples.

Another remarkable result concerns the incontrovertible association between poverty and environmental degradation, being property rights, once again, the common thread running within both aspects. In context, several economic experts, and even sundry conventions causally link poverty with the environmental crisis through the failures or the lack of property rights accurately defined. The response coming from the international legal framework, however, seems to be a little bit confusing. Some treaties usually propose economic growth as a valid response to ecological problems despite the fact that various critics of economic growth often consider it as the root of environmental catastrophe.

In practice, it is possible to describe the interplay between any failures or lack of property rights with poverty, and with the environmental detriment (characterised by the free access). Nonetheless, the interconnections between poverty and environmental problems are not always clear-cut and determinant. Perhaps, that is the reason why attempting to employ similar solutions for both situations does not permanently work out. In other words, as asserted throughout the correspondent section, the continuous breakdown of environmental policies, grounded on economic growth, shows how the application of anthropocentric measures upon ecological problems does not always succeed.

On the other hand, the second research query attempted to establish the pecking order between Nature and ownership. In plain language, ***the question looked for determining if property rights are more important than Nature in the light of international law in force***. The answer, however, cannot tilt the balance toward one side or another thoroughly, as one could easily infer from reviewing the whole chapter. Admittedly, for example, several passages of the law denote a strong predominance of international trade over Nature, which constitutes in itself a confirmation of the hypothesis. Still, one cannot entirely assure the treaties bias toward the prevalence of property rights regarding other themes, such as overexploitation or pollution on private property, for instance. As explained, various conventions forbid any kind of restriction of global commerce in the name of environmental policies and measures or even promote the flexibility of its actions in favour of the market economy. Nevertheless, it is not the general principle operating for all other cases, where green issues are of greater importance.

In practice, all of the [so-called] environmental instruments declare as their objectives diverse ranges of the protection of Nature and struggle against critical ecological problems, such as pollution, global warming, desertification, among others. Moreover, it draws attention

to how the European Court of Human Rights has invoked property rights to decide more than 15% of the "*green*" case law.

A further element of analysis, derived from the exercise of state sovereignty, consists of the disjunction between the application of environmental or developmental policies to use and exploit natural resources. In one way or another, there was a preponderance of ecological motivations supporting any country's decision to utilise their natural resources until 1992, at least in discursive terms. Nonetheless, after the Earth Summit, where some of the most significant international binding and non-binding instruments in matters of environmental law came out, the legal and academic discourses dramatically shifted. Effectively, the inclusion of the phrase "*and developmental*", within the clauses regarding the sovereign exploitation of natural resources, constitutes an inflexion point. The reason was that developmental policy became a justification for exploiting Nature comparable with the environmental one; i.e. at the same level.

As a result, the decision to exploit national ecosystems entirely depends on States, predicated on environmental or developmental reasons, an aspect that could have repercussions on the hierarchical position of property rights over Nature, given that development gets often associated with economic growth and commerce. Therefore, from this point of view, the potential supremacy of ownership over Nature is uncertain and ambiguous. One should warn, additionally, that the bulk of treaties issued from 1992 include this option within their texts merely as a part of their preambles and not of operative sections.

To recapitulate, there cannot be a determinant conclusion regarding the prevalence of property rights over Nature because, despite there is evidence of the supremacy of the international market in sundry green treaties, it does not deal with a general principle governing the interactions between humans and Nature. Furthermore, the responsibility to choose between the application of environmental and developmental policies to use and exploit natural resources corresponds to each State. It means that every country is accountable for deciding what aspect is more important. Under this circumstance, the international legal framework does not play any role to determine pecking orders, in which property rights occupy a higher position than Nature. Other local or global entities and persons are neither liable, solely the States.

Ultimately, although the present chapter did not include any hypothesis concerning the representation of Nature, the analysis of sundry elements of state sovereignty, such as statehood, self-determination, and cooperation, it allowed arriving at complementary conclusions in this subject matter. Thus, one of the findings coming from the previous chapter consisted of bringing into question the historical capacity of States to act on behalf of Nature. The main criticism had to do with the responsibility of States to protect human rights and natural resources at the same time. The argument was that it would turn out virtually unviable to believe that States were knowingly going to enforce the international legal framework in favour of Nature and detriment to humans if the case. This presumption was focussing primarily on the judicial interventions of countries before the international tribunals of justice, although it could also apply to their participation within the global community.

Notwithstanding, it seems to be evident that the fact of accomplishing all the requirements to be recognised as a sovereign State–i.e. statehood, self-determination, independence, and so forth–is neither sufficient to exercise the right to protect the national ecosystems. The analysis of the lawsuit brought by the Marshall Islands against a group of nations, alleging they have not pursued negotiations in good faith to cease the atomic arms race and go forth the nuclear disarmament, proved it. Curiously, one of the criticisms against the jurisdiction's restriction imposed by International Court of Justice deals with allowing claims coming only from States, setting aside other participants, such as NGOs, confederations or human beings, for example. They could even represent better off Nature's interests most of the times. Nonetheless, the mentioned experience demonstrated that not even the sovereign States are capable of protecting the environment under unfavourable legal circumstances.

Another deduction hailing from the examination of sovereignty refers to the inequalities in the application of principles of international law. Sometimes, for instance, the tenet of cooperation or the no-harm rule in environmental matters only works out when the country that alleges its enforcement counts on enough political [or perhaps economic] influence to attain it. Otherwise, it could be useless.

Summing up, the legality of statehood, the strength of self-determination, and the warranty of state independence do not confer legitimacy to represent Nature's interests, in practice. At best, one should admit that, under adequate legal conditions, States [and even other entities or people] could have success acting on behalf of Nature. Still, one also ought to keep in mind that States could opt for the defence of property rights or the promotion of development, affecting directly or indirectly conservation and protection of Nature. Moreover, one must recall that the State oversees the local administration of justice, which usually would place it in the position of judge and jury, discrediting its environmental actions.

2.1.3 The Court of Justice of the European Union and its environmental decisions

The common thread of chapter four turned especially around the tensions between property rights and environmental protection, in the framework of the CJEU's adjudications. In this regard, the first hypothesis aimed at enquiring ***if international courts of justice were settling the environmental disputes in favour of property rights and individual interests to the detriment of Nature***. From the CJEU's standpoint, at least, one should recognise there is no evidence concerning the Court's likely biased trend to issue rulings favourable to property rights. On the contrary, in the totality of the proceedings in which there was any strain between ownership and environmental protection, the Court auspiciously ruled on the latter, arguing the social function of property and reasons of general interests.

Likewise, the statistical data concerning those judgements involving aspects associated with market showed a clear tendency, maybe even overwhelming, towards the emission of eco-friendly rulings (75%). As mentioned, however, this percentage is subjective, given the qualification of the category "eco-friendly" relies on the observer, without including *contra legem* decisions (i.e. against the law).

In any case, the precedent information constitutes an indicator that statistically contradicts the initial assumption, according to which the Court issued rulings promoting a sort of partiality for property rights. In plain language, the theoretical and legal predominance of property rights over natural resources, alleged by defenders and promoters of rights of nature appears to be more rhetorical than empirically verifiable in the international field.

Secondly, the research also aimed at ***determining if it was necessary to be the owner of natural resources or exercise any kind of associated rights for obtaining eco-friendly rulings***. Even though the response, statistically speaking, could be emphatically negative, one should deem several nuances thereon. From the outset, one should remark that litigants are not often owners of natural resources, save certain cases concerning lands. They exercise property rights associated with diverse economic interests, businesses, and other commercial activities. Even in those cases, nevertheless, their judicial participation is marginal (14.65%) in front of the total.

By and large, being a proprietary does not warranty a successful result before the Court. Quite the opposite, the data have proved that the petitioners-owners obtained an unfavourable decision in almost 53% of the cases. The performance of the defendants-owners was even less fruitful by getting a disadvantageous judgement in nearly 65% of the cases.

From the previous assertions on, one could conclude that it is not a requirement to be the owner for obtaining a favourable eco-friendly ruling, mainly predicated on the marginal character of data. Notwithstanding, one cannot also assure that all proprietors are searching for a green judgement, as it were. Thus, presupposing the subjectivity of the information, as alluded to in the body of the chapter, one can deduce that only 52.94% of the claimants-owners looked for eco-friendly decisions. Furthermore, the scrutiny of the sample showed that, even in those cases in which claimants were looking for green sentences, environmental motives were ancillary of property rights. Those petitioners were primarily individuals and private companies defending their lands or businesses.

The third hypothesis referred to ***the existence of someone who could represent Nature's interests before international courts***. The central premise denoted the application of the legal framework currently in force. Interestingly, within the answer to this research question, the surprisingly high significance of the dissatisfactions by States plays a crucial role. Effectively, the redundant lack of environmental impact assessments at the national level and failures to accomplish green obligations constitute two clear indicators of the need to count on someone who can represent the environmental rights in the international arena.

In this framework, the heterogeneity of positions coming from States concerning the disjunctive between environmental protection and property rights has undeniable repercussions. In effect, while some national public entities firmly champion ecological protection over economic interests, others defend the opposite openly under the umbrella of the "public" or "general" interest' as well. Moreover, while some States show divergences between their institutions of government and their entities in charge of the administration of justice, others even display aligned stances in defence of property rights instead. Under these circumstances, the manner of coping with the environmental crisis at the international level

cannot be uniform and organised. Consequently, a representative of green interests could be useful to promote a more organic defence of natural resources at a global level.

In this regard, the European Commission arose as an attractive option, given its impressive judicial results. The entity reached a rate of almost 81% of favourable rulings between 1979 and 2019. The vast majority of proceedings corresponded to declarations of failures to fulfil state obligations, among which the proportion of eco-friendly decisions encompassed an overwhelming success rate of nearly 90%.

Consequently, it turns out unavoidable to think about the Commission, or any other similar international entity (even the very European Union), as a genuine possibility to exercise the representation of environmental interests. Nevertheless, one should bear in mind that those results are limited in terms of litigants and types of judicial actions. In other words, the Commission virtually intervened before the Court only as petitioner or respondent in those proceedings involving countries. When the participants are others (e.g. companies, NGOs, or even individuals), the intervention of the Commission is entirely marginal. This reason also applies to different kinds of actions. Its high rate of favourable judgements refers almost exclusively to the declarations of failure to fulfil obligations. So, its participation in other disputes is merely peripheral. Therefore, although the Commission's role as a representative of green business could be a possibility, it still stands in the field of speculation.

Moreover, one should emphasise the momentous contribution of the Court's rulings. In effect, there was a high percentage of opinions coming from different governments that the Court contradicted or modified, and a set of breaches of law that the CJEU observed and punished. In consequence, its judgements could wrongly lead to think about it is not necessary to count on a representative of environmental interests because its intervention is enough. Nevertheless, once again, one must consider the ambit of action coming from the Court is restricted to its part as the organism to administrate justice. It directly depends on the initiative of litigants, either States, or companies, or even individuals. The court, therefore, could not be a kind of guardian of Nature at all or constitute even the protection warranty. Its action should encircle in impartiality, fairness, and equity, among other characteristics.

One should formulate a twofold remark concerning the Court's part played in the environmental question. So, one has first to admit that the root of the balance between the independence and influential power of the CJEU lies chiefly in its regional character. Furthermore, one should mention the legitimacy it possesses in front of the Member States. Those particular circumstances endow the Court a peripheral vision about ecological issues that adapts in a better fashion to the comprehensive character of Nature and facilitates it more appropriate enforcement of community and international law.

On the other hand, one also has to acknowledge there is a second side of the same coin, which occurs when nobody chooses to bring a lawsuit before the Court. Under these circumstances, its mechanisms merely would not have to work out. Therefore, it would be crucial to count on a specific instance in charge of taking care of natural resources, without depending on other's goodwill.

In a certain sense, the response to the fourth question research could pose as a consequence of the previous ones. It referred to ***the existence of sufficient guarantees to protect natural resources in the current international system of justice***. In that regard, one can corroborate the presence of various elements that favour the protection of Nature and other ecosystems. For example, there is no prevalence of property rights over environmental protection within the CJUE's rulings. Additionally, the quality of the litigants (as proprietors or not) is not determinant to obtain a favourable decision. Likewise, there are entities capable of representing Nature's interests before the Court, such as the Commission. And, finally, the Court certainly provides a balance to the strains between property rights and environmental protection through its adjudications.

One could affirm that all these elements describe a favourable milieu to warranty the protection of natural resources. Nonetheless, one also has to warn they have restrictions and do not correctly operate all occasions. If one considers this argument, joint with the failures of the legal system (explained in the previous chapters), the conclusion could not be emphatical. In other words, there are legal and judicial warranties to protect Nature, but they do not always reach their objectives thereon.

Beyond those four conclusions, there is still a couple of significant findings to observe. The first of them comprise the question concerning the right to a healthy environment. As mentioned, the Court reiteratively employs it as an argument even to justify measures oriented to protect Nature. Although the concept, as it stands, does not appear regularly within the Court's adjudications, it turns out clear-cut that the emphasis on health constitutes an effective alternative to promote the settlement of environmental issues. In any case, as also alluded, its judicial and legal analysis implies a new dedication, maybe through another dissertation or research.

Finally, one should argue the increasing trend of the environmental cases before the Court between 1979 and 2019 is not in isolation. The totality of variables analysed in this chapter, i.e., property, trade, eco-friendly rulings, and health are consistent in terms of growth. This assertion got confirmed through the association between the Pearson's correlation coefficient and the growth rates. Furthermore, one could see the cumulative dynamics of records is decelerating over time, according to parallel percentages. In that regard, it would be interesting to consider the effects of the adaptation to climate change in the tendency of the lines. The influence of resilience in the increase of litigation could even be a matter of future research.

2.1.4 The moral considerability of Nature from the perspective of Environmental Ethics

There were four hypotheses posed at the beginning of chapter five. The first one consisted of ***finding out if the traditional human-centred principles were enough to provide the ethical foundations for the recognition of international legal personhood to Nature***. In this regard, after a review of the core premises of traditional ethics, one could corroborate that the process

of expansion of the borders of morality exclusively occurs among human beings, from the anthropocentric standpoint.

Consequently, traditional ethics rejects any living being or entity positioned outside the ambit of the human sphere. Within a hierarchical understanding of life, were people occupy a preeminent place over any natural element or Nature itself, it would be unthinkable to consider non-human moral agents as equals to persons.

Moreover, one of the principal reasons to reject the possibility of acknowledging Nature as a legal person in general (international one in particular) refers to its juridical status. Effectively, from an anthropocentric perspective, natural resources make up a set of goods, even commodities, able to deliver food, clothes, shelter, and other services for human welfare. In other words, anthropocentric ethics appear so unquestionable because they precisely correspond to and fit well with an early, modern, and contemporary production of commodities and provision of services, coming from the different stages of capitalism.

Accordingly, from this outlook, the right to a healthy environment perhaps emerges as the perfect legal mechanism to warranty ecological protection. It does not imply a defence of the rights of Nature in itself but rather a way to guard the rights of people, their rights to have a sound, general satisfactory, safe, clean, or a healthy environment. So, Nature constitutes a thing, not a person.

The second hypothesis involved the query concerning ***what the moral considerability of Nature is, according to the principles of environmental ethics***. In this regard, as an initial step, one should divide the response into two approaches: an individualistic and another holistic.

As mentioned, the individualistic ethicists depict a different range of stances, which goes from the restricted recognition of specific species of animals, such as the higher mammals, to the broadest acknowledgement of all life, such as it happens in the egalitarian biocentrism. In effect, the psychocentrism of Singer and Regan, barely differentiated by specificities of ethical scope, restricts the moral considerability of natural elements exclusively to those mammals capable of feeling pain and pleasure or being mentally aware of their surroundings, respectively. On his part, through his teleological centres of life, Taylor has opened the purview of moral status to the totality of living beings on the planet. In parenthesis, it is worth clarifying the mentioned ethical doctrines are not the only ones promoting biocentric perspectives to address the environmental issues. They are merely examples of two doctrinal positions of the extremes, useful to illustrate the variety of scholar proposals.

Concerning the possibility to support the international legal personality of Nature throughout any of these theoretical postures, one should warn there are, at least, three main hindrances. On the one hand, the biocentric perspectives avoid extending the limits of the moral circle towards inanimate elements of Nature, such as air, water, and soil. This lack of recognition sets aside the possibility of granting moral considerability to ecosystems, which would mean a distortion for the application of rights of Nature in practice.

On the other hand, the general premises of psychocentrism impose a too-rigid restriction on the moral considerability of the natural world. The doctrines of animal liberation and rights,

in particular, exclude a significant group of species, reducing, even more, the spectrum of moral and legal recognition of Nature.

Instead, the egalitarian biocentrism seems to be too flexible, by acknowledging the moral considerability of all living beings. If the sole condition to deserve moral standing is life, it would bring about an ontological struggle for morality between complete organisms (e.g. humans, plants or animals) and other microorganisms, which are often parts of them (e.g. virus, bacteria or archaea).

Another unwanted implication evokes the past judgements of animals, which has been entirely inconvenient for the development of law, as mentioned. An uncontrolled unfold of these theories could bring about a mere aesthetic transfiguration of animals from being historically defendants to being plaintiffs before contemporary courts.

The holistic approach concerning the moral considerability of Nature also contributes to answering the third ethical research question of this chapter, i.e., ***how feasible the enlargement of moral limits toward Nature would be***. Initially, one has to discard those positions associated with the so-called weak holism. The main reason to reject the doctrine lies in the hierarchical structure of values, which places once again to humans in a supervisory position over the natural world. Although the authors bestow moral importance to Nature and its components, it would be hard to claim equity of conditions with respect to humans in the international arena or before the system of justice.

For its part, the principles of deep ecology are neither enough to support the potential granting of rights to Nature ethically. Indeed, although one should admit this moral stance is the most comprehensive one among the biocentric trends, it lacks the recognition of abiotic elements of Nature. This deficiency of scope derives in an irremediable hindrance to consider the legal personhood of ecosystems.

In this line of analysis, although Gaia-hypothesis adapts better to the granting of moral personality to Nature, above all considering the personification of the planet, it has been said it deals with a scientific approach more than an ethical posture. Consequently, it is useful as a reference but not as a moral foundation of the legal system.

To conclude, both the land ethic and the earth jurisprudence describe the interplay between humans and Nature symmetrically, so to speak, that is, there is a biotic/earth community formed by members who play a specific role and possess particular entitlements. Their actions respond to moral restrictions that allow others the exercise of their very rights. The welfare of the community is the principal aim, while the wellbeing of its members turns out ancillary and functional to the benefit of the whole.

In sum, it proves hard to avoid a simile with the international community, where every single country possesses legal personality, which is different from their citizens'. The moral depictions designed by both Leopold and Berry are definitively the best allegories to promote the bestowment of legal personality to Nature, from an ethical standpoint. In addition, this affirmation constitutes the response to the fourth hypothesis as well. Thus, ***the central foundations of ethics with which the holistic perspective would contribute to enhancing the interplay between humans and Nature*** are the land ethic and the earth jurisprudence.

2.1.5 Current legal framework concerning the representation of Nature

The first research question of the chapter six somehow gathers the whole elements of analysis addressed within these last pages, which implies that the responses to the other queries also contribute to answering this one. As a reference, the question was: ***What aspects of the national laws in current force, by which Nature has been recognised as a holder of rights, would be useful for its international acknowledgement (it includes the judicial facet)***?

The response turns around four fundamental ideas: property rights, entitlements, duties, and legal representation. All these components comprise the final proposal of regulation posed through this research. One should take into account, however, that all these themes have already been a matter of analysis, with different intensity, throughout the whole research. Thus, the aim of this last subsection does not imply a large recapitulation of previous definitions and conclusions. It deals only with a final summary of arguments ratified by national experiences.

In this regard, the second question research referred to ***what happens with the legal conditions of property rights in the case of the bestowal of international legal personality to Nature***. The response should be emphatic. If Nature becomes an international legal person, property rights on natural resources (including land) cannot maintain their *status quo*. The logic of transmutation from object to subject of law gets imposed over current legality. Subjects possess objects, things, commodities, and so on. Subjects do not own other subjects.

The granting of legal personality and the subsequent recognition of rights of Nature brings about a tendency to vanish property rights. It will not occur overnight, as Professor Cullinan has foretold, but it will gradually happen sooner or later. In a certain sense, all the great scholars knew it. Leopold, Berry, Stone, and Cullinan quickly understood it so that they have addressed this issue either directly or indirectly.

Nevertheless, one should take into account that property rights would only fade if the conferral of legal personality automatically places legal persons on a level playing field. In effect, the law recognises that an entity is a holder of rights only in a specific legal relationship (for example, the editorial office of a newspaper is a juristic entity in press lawsuits but it is not on the stock exchange or in the court of registration). Consequently, in accordance with the interests of Nature, one can preserve some forms of ownership. Thus, a paradigm shift would also take place in the universality of property rights. Another solution is that the forms of ownership are not equal, i.e., a distinction would be made between the public and private property (also based on the objects that one can own), as it exists in several countries (e.g. land, forest, or water).

In either event, one should comprehend the shifts on the regulations of property rights would probably "*tend*" to its disappearance, which does not mean they are going to fade unfailingly. There are societies better prepared to cope with a change of paradigms, such as indigenous peoples, for example. Indeed, their modality of property-in-community appears as an effective alternative of adaptation to a potential new pattern of social organisation. For

instance, the fact that everybody owns the soils and water subtly implies that nobody is the owner in practice. The concept entirely aligns to the ecocentric perspective: "*The water owns the water; the land owns the land*". As seen, this idea facilitates the management of the fluvial ecosystems in New Zealand, India, and Colombia, given the existence of native peoples as actors of the process.

On their part, Ecuador and Bolivia would count on the same advantage because both countries possess an important indigenous population. However, their legal experiences seem to be quite more ambiguous. Their legislative systems opted to recognise the rights of Nature in general instead of focussing on specific ecosystems, such as rivers, glaciers, highlands, and so on. Indeed, one could criticise the idea of recognising the rights of the Amazon region in Colombia under similar reasons, i.e. the ambiguity that leads to uncertainty. If one cannot identify what the real scope of the recognition is, it is going to be awfully hard to determine the scope of protection.

Within this analysis, one should also consider the question of state sovereignty over natural resources. As mentioned, sovereign management of the environment constitutes a kind of variable of property rights in favour of State. In this sense, countries cannot continue to handle the environment as their private property, prioritising the economic and developmental benefits. Unlike property rights, sovereignty cannot tend to disappear because it could be a powerful ally to promote the administration of resources from an ecocentric perspective, based on the state capacity of enforcement.

To conclude, if the tendency of recognition of the rights of Nature continues to spread worldwide, it would be a great idea to think about the possible changes concerning the regulation of property rights, above all, because if there is no any modification in the manner how humans administrate their ownership, the recognition of rights of Nature will only be a utopic whim or simply dead letter.

The third research question corresponds to the essence of a juridical person, i.e. ***what the key rights and duties of Nature as an international subject of law would be.*** One could divide the answer to this query in two parts. Namely, it would be adequate to firstly address the entitlements and later the obligations. In this regard, the Declaration of the Rights of Mother Earth, the Ecuadorian Constitution, and the Bolivian law constitute outstanding sources because they somehow imply a systematisation of the rights of Nature. In consequence, according to the mentioned instruments, one could argue the main rights of Nature are life, diversity of life, existence, integral respect, regeneration of its bio-capacity, continuation, maintenance, and regeneration of its vital cycles and processes, maintenance of its identity, integrity, water, clean air, integral health, freedom from contamination, pollution, and toxic or radioactive waste, no modification of its genetic structure, restoration, and balance.

On the other hand, both the Whanganui River Act and the adjudication concerning the Ganga River constitute accurate sources to determine what would be the duties of Nature, as a subject of law. According to both experiences, the archetype of obligation derived from an

ecosystem is the payment of taxes, based on the productive and economic activities that people can carry out within those environments.

Both instruments are coherent in this matter. If those people whose subsistence depends on a specific ecosystem seize the benefits, derived from the utilisation of natural resources, it turns out consistent be claimed a correlative obligation. In the end, people are not the legal owners of Nature. In principle, the ecosystem possesses itself. However, if humans, who are also part of the ecosystem, obtain economic benefits, it would not be weird that they have to contribute to society through the payment of taxes. Under these circumstances, the redistributive character of taxes correctly fit with the theoretical stances of a juridical person and its capacity to acquire legal duties.

In consequence, considering the existence of an administrative body, co-represented by State and people from the river banks, the model described within the Whanganui River Act would seem to be the more realistic and adequate standard to warranty a healthy and correlative balance between rights and duties of Nature.

The fourth research question refers to one of the most remarkable characteristics of the acknowledgement of the rights of Nature, which consists of the "*legitimacy of representation*". It reads: ***Who would represent Nature as a subject of law in the international ambit, including the judicial facet?*** The best manner to answer this question is perhaps by means of the discard of options.

Thus, the representation of Nature's interest should respond to a balance among the political, economic, and social powers exercised within the international arena. Starting from the biggest organisations, it does not seem to be a good idea to count on new global or regional institutions to defend the rights of Nature because it would imply the redundant creation of more bureaucracy through immense political and economic efforts. If the international entities, such as the United Nations, the European Union, the Organization of American States, and so on, have not been able to cease the environmental disaster through their enormous political legitimacy, acceptance, and power, it seems little probable that another new organisation of similar peculiarities can do it.

Nevertheless, the inconvenience of creating new international or regional entities does not mean what exists is useless. All the contrary, the role of the global entities is crucial as the political platform where international instruments can be issued and implemented. For example, the programme "*Harmony with Nature*" has been a good beginning to visualise the question of rights of Nature worldwide. One should be conscious that bargaining processes are slow, and one can only obtain results gradually, but the fact that the theme can be included in the U.N. agenda is already an advance. On the other hand, although the States would appear to be the ideal political organisations to defend and represent the rights of Nature, the absence of total autonomy and independence to implement eco-friendly measures of public policy could be a hindrance. As seen, most of the times, States have an obligation to foster economic development as a response to poverty and other associated social inequalities. Nevertheless, that kind of economic development often contradicts any endeavour to protect, conserve, and preserve Nature. This duality circumvents that States can orient their policies exclusively

toward one side or another. If the society claims for public services of electricity, secure water, communications, and so on, or the countries have to promote the industries of oil or mining, it is going to be very difficult that public policies establish strong environmental restrictions to these activities in practice. States will have to defend those vested interests instead of green ones.

In that regard, however, States cannot be definitively isolated from the process. The defence of the rights of Nature does require their effective and permanent presence, playing their traditional role, i.e. making new laws, enforcing existing laws, and executing them through the implementation of public policies. Granted that governments often are not able to represent the rights of Nature fully, but their intervention is unavoidable to regulate behaviours and control harmful activities. Under specific circumstances, it is not maybe a good idea they oversee the rights of Nature due to vested interests over environmental-high-impact activities. Still, State is probably the only institution that counts on the resources and capacity to combat against the environmental disaster for the time being. One additional aspect to consider is the geographical range of representation. In plain language, the experiences of recognition of Nature as a bearer of rights have a twofold scope. On the one hand, the Declaration of the Rights of Mother Earth, the Ecuadorian Constitution, the Bolivian law, and the Colombian adjudication concerning the Amazon region turn out vague because they do not refer to a particular ecosystem but the whole. It generates difficulties, for example, to identify actors, determine the ambit of real protection, implement public policy measures, and so forth.

The determination of a specific ecosystem would seem the most effective way to address the recognition of the rights of Nature, as it happens in the Atrato, Whanganui and Ganges Rivers, or Pisba highlands, Gangotri and Yamunotri glaciers, or the U.S. ecosystems. The singularisation of every situation allows a major closeness between people and Nature, making feasible the communion alluded by Thomas Berry.

In the middle of the state insufficiency to exercise the representation of Nature, the legal structure of the ombudsperson arises as an interesting alternative. Namely, it does not deal with an ombudsperson institutionalised from the global perspective because it would imply to commit the same mistake alluded with regard to the international and regional entities, by duplicating the bureaucracy. The direct reference would be the structure designed within the Ecuadorian legislation, even the Bolivian one, which pertains to the orbit of the local regulations. Thus, if that ombudsperson, created at a local level, could participate within the international arena, and defend judicially to the different existing ecosystems. Nature before international tribunals and courts, one could argue this option should, at least, be thought.

To conclude, the best manner to assure the defence and protection of Nature probably comprises the entrustment of the representation to any individual or organisation with enough capacity to carry out its defence before the international system of justice or depict its interests over the table of international negotiations. It could endow legitimacy to the different processes, given those people or entities would enjoy autonomy and independence for struggling in favour of Nature.

Finally, to close the present chapter and the dissertation, a general research question was posed under the following terms: ***How feasible is it to confer international legal personality on Nature, as an alternative instrument to cope with the environmental crisis?*** As a response, one should theoretically admit that it is possible to grant international legal personhood to Nature. There is a scenery comprised by the international or regional entities, there is the legal instrument (e.g. conventions, treaties, covenants, and so on), and there are the conditions of crisis necessary to think about a shift of paradigm. There is probably a lack of political and economic will, which will be surely overcome if this legal alternative spreads worldwide. In any case, the recognition of the rights of Nature would respond preferably to the following conditions:

- A modification and rethinking of the regulations of property rights and state sovereignty.
- The maintenance and fulfilment of the current eco-friendly roles played by the international and regional entities, as well as States at a local level.
- The establishment of a correlative set of rights and duties of Nature, and
- The conferment of legal representation of Nature, based on legitimacy, independence, and autonomy from other public and private actors.

2.2 Future research

During the process of research, it was possible to identify some topics that would merit further study. They are:

- Under similar terms of CJEU's examination, it would be interesting to count on a review of jurisprudence coming from the international courts of human rights of Africa, America, and Europe.
- The analysis of the trends of law-cases concerning the effects of the adaptation to climate change, given it would be quite probable the number of adjudications rises during the next years.
- A review of the concept of ecofascism in detail, as an intermittence of the recognition of the rights of Nature, from an ethical standpoint.
- A more profound development of the ethical implications of the concept of Pachamama in the Andean region.
- An analysis of the theoretical stance of the ecocentrism as a resurgence of the traditional ideas of *iusnaturalism.*

III. Author's list of relevant publications

Los Derechos de la Naturaleza: Una revolución legal que podría salvar al mundo (Heinrich B Böll Stiftung, Bogotá, 2020) Translation to the Spanish language of the book: Boyd, David. The Rights of Nature: A Legal Revolution that could save the World (ECW Press, Ontario, 2017). 272 pages. Accepted, in the process of edition.

Moral Considerability: Ethical Foundation of the Recognition of Nature as Subject of Law, in Letras Verdes No. 26, Latin American Journal of Social and Environmental Studies (Facultad Latinoamericana de Ciencias Sociales, Quito, Ecuador 2019) pp. 11-34 (La considerabilidad moral: fundamento ético del reconocimiento de la naturaleza como sujeto de derecho). Version only in Spanish.

The Anthropocentrism of International Law in Zsuzsanna Fejes (ed), Jog és Kultúra, Szegedi Jogász Doktorandusz Konferenciák IX (University of Szeged, Hungary, 2018) pp. 19-27

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Recognition of Rights of Nature, as a Subject of Law in Jerzy Jendroska and Magdalena Bar (eds), Procedural Environmental Rights: Principle X in Theory and Practice, European Environmental Law Forum Series, Vol. 4 (Intersentia, Copenhagen, 2017) pp. 341-61

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