

Chapter 3

The Rights of Nature as a Legal Response to the Global Environmental Crisis? A Critical Review of International Law's 'Greening' Agenda



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Elizabeth Macpherson has the following related funding to declare: Project 4.2-Options for policy and legislative change to enable ecosystem-based marine management across scales-Sustainable Seas National Science Challenge (NIWA/MBIE); Project 4.4-Improving understanding and communication of scale-dependencies for ecosystem-based marine management-Sustainable Seas National Science Challenge (NIWA/MBIE); Riverine Rights: Exploring the Currents and Consequences of Legal Innovations on the Rights of Rivers-Oslo Metropolitan University/Research Council of Norway.

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D. Dam-de Jong and F. Amtenbrink (eds.), *Netherlands Yearbook of International Law 2021*, Netherlands Yearbook of International Law 52,
https://doi.org/10.1007/978-94-6265-587-4_3

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Abstract Over the past decade and a half, various natural entities have been recognised as having rights or legal personhood in certain domestic jurisdictions. The idea of nature as rights-bearing is seen by advocates to be a new and improved response to environmental threats. While rights of nature approaches are increasingly evident in transnational law, orthodox international law has yet to engage seriously with such approaches, despite increasing calls to recognise the rights of nature in international law. In this contribution we consider the potential and limitations of rights-based protections of nature as part of the ‘greening’ of international law. We argue that attempts to incorporate the rights of nature into international law need to be understood within the wider context and history of international law, including trajectories of colonialism and economic resource exploitation. Although rights of nature approaches may offer a path towards a greener international law, this path should not be followed in a way that reproduces problematic, homogenising aspects of international law, but instead centres human relationality with nature in place. Instead, we argue that there are important lessons to be learnt from transnational attempts to protect and implement rights of nature and legal personhood, especially where models are informed by Indigenous peoples’ relationships with nature.

Keywords Rights of nature • international law • environmental law • sovereignty • development • Indigenous rights

3.1 Introduction

Despite increasingly dire warnings about serious ecological harms resulting from environmental contamination, biodiversity loss and climate change,¹ international law has been unable to produce viable responses commensurable with the threats faced.² A number of the ‘planetary boundaries’ within which humanity can safely operate have already been transgressed.³ Although biodiversity loss and climate change have been the most high-profile environmental concerns of the past three decades, scientists advise that we have entered a ‘sixth mass extinction’ with 27,000 species annually becoming extinct.⁴ Early 2022 saw temperatures in parts of the Arctic reach 30 °C warmer than normal.⁵ Annually the world generates almost 250 million tonnes of plastic waste and 400 million tonnes of hazardous waste, much of

¹ Steffen et al. 2015.

² Natarajan and Dehm 2019.

³ French and Kotzé 2021.

⁴ Cowie et al. 2022.

⁵ Lu 2022.

which finds its way into waterways and oceans.⁶ As the recent report of the Intergovernmental Panel on Climate Change (IPCC) has made emphatically clear, ‘the time for action is now’ to unite environmental policy and implementation across states, communities and businesses for the survival of the planet and species.⁷ In this context, we need a greener international law that takes bold and innovative approaches to respect and protect ecosystems and nature. International law continues to understand the natural world primarily as a ‘resource’, yet to describe nature in this way presupposes an epistemological frame in which human appropriation and extraction is dominant.⁸ A shift to a greener international law will require fundamentally rethinking how the law treats nature as a resource for wealth generation.⁹

One potential path to green our legal approach to nature has emerged under the banner of the transnational rights of nature (RoN) movement. Over the past decade and a half, certain national constitutions, local legislations, and juridical decisions have recognised nature or natural entities as having rights or legal personhood. This includes, for example, the Constitutions of Ecuador and Bolivia, judicial decisions in Colombia, Bangladesh, India, and legislative provisions in Uganda, New Zealand/Aotearoa, and Spain to name a few.¹⁰ Recognising RoN is seen as a response to environmental degradation and its increasing impacts on societies, evidencing a strong and growing need to find new and better ways to protect the environment.¹¹ The idea typically put forward by the advocates of RoN, although it is subject to increasing criticism and nuance, is that nature has fundamental rights that are not dependent only on human needs. Rather, nature itself should be protected by the law and, in some contexts, itself granted legal standing in law. This differs to more traditional approaches to environmental law that view the environment solely through human use and exploitation.¹² RoN advocates argue that nature itself should be protected and nature’s rights need to be more adequately balanced alongside human interests.¹³

While advocacy and scholarship around legal responses to the developing ecological crisis predicated on RoN and the legal personality of natural entities are gaining

⁶ Atapattu et al. 2021, at 1–2.

⁷ IPCC 2022.

⁸ Dehm 2020.

⁹ See Natarajan and Khoday 2014.

¹⁰ For an analysis, see Kauffman and Martin 2021, and for updates, see Ecological Jurisprudence Monitor, available at <https://elgaworld.org/ecological-jurisprudence-monitor>.

¹¹ We acknowledge that the term ‘rights of nature’ (RoN) is used to describe a broad range of legal or political mechanisms that attempt to grant or recognise some sort of subjectivity for nature or natural entities in comparative practice. We acknowledge that there are large discrepancies between models, in terms of their form, content and effect, and not all comparative models are willingly or knowingly associated with the global rights of nature movement. We use the term as a broad catch-all in this contribution, without making any normative claim as to effectiveness or appropriateness in any particular place. See Macpherson 2021.

¹² Gillespie 2000.

¹³ Boyd 2017.

momentum, orthodox international law has yet to engage seriously with this potentially transformative transnational trend. Although RoN are being recognised in an increasing number of domestic laws, policies, and court decisions around the world, in an attempt to foster social and environmental transformation, international law remains conspicuously silent on the potential adoption of a RoN approach. This represents both a gap in RoN scholarship (which tends to focus mainly on transnational advocacy) and an opportunity to consider the impact international law might have on the development of domestic RoN laws. Our contribution breaches this gap, as an early, critical analysis of the relevance and currency of RoN in international law as held alongside place-based implementation in transnational legal frameworks.

In this contribution, accordingly, we consider the potential for, and the limitations of, increased recognition of rights-based protections of nature for the greening of international law. Given that international law is deeply implicated in driving the unsustainable extraction of natural resources, and in enabling the production of dangerous levels of waste, emissions and other pollutants, transformational change towards a more ecologically supportive international law is urgently needed.¹⁴ In such a context, we critically explore whether international law could engage more thoughtfully with the idea that nature has its own interests, subjectivity or personality, and whether this could provide a system-rethink to challenge the way international law has so far engaged with the natural environment.

The contribution unfolds as follows. Section 3.2 identifies some of the key underlying reasons why international law has not yet engaged seriously with the idea of RoN. Section 3.3 critically discusses and evaluates attempts by civil society for recognition of RoN at the international level. In Sect. 3.4, we consider the relevance of transnational RoN developments for international law, both in theory and practice, showing how an increasingly critical and nuanced body of scholarship has moved away from strict rights-based and binary anthropocentric/eco-centric thinking towards environmental governance approaches framed around responsibilities, reciprocity, relationality, and embeddedness in place. Using this review of the learnings emerging from transnational law, we propose some pathways forward for international law. We highlight the need for international law to learn from, and foreground, Indigenous epistemologies and support Indigenous authority, and to be attentive to the way in which existing power dynamics themselves shape and continue to play out in RoN initiatives.

3.2 The Problems with International Law: Sovereignty, Development and Extractivism

Before exploring the potential and limitations of rights-based protections of nature under international law, it is necessary to first take step back and consider international law's traditional approach to relationships between people and nature. As explored

¹⁴ For an insightful reading on this, see Natarajan and Khoday 2014. See also Mégret et al. 2023.

below, we argue that some of the key overarching principles of international law, namely sovereignty and development, have authorised environmental destruction and undermined international law's effort to become 'greener' while also reproducing (neo)colonial hierarchies, producing a dominantly extractivist approach to nature.

3.2.1 *Nature and Sovereignty*

Sovereignty is arguably the single most intractable barrier against efforts to green, and decolonise, international law. The concept of sovereignty is itself a product of the colonial encounter, and remains structured around a distinction between those deemed 'civilised' and others deemed 'uncivilised'.¹⁵ Colonial assumptions about nature that shaped sovereignty continue to shape how sovereignty over natural resources is used to perpetuate Eurocentric and colonial understandings of nature solely as a resource.¹⁶ Indeed, one of the key principles of international law is the idea that states exercise permanent sovereignty over natural resources within their sovereign territories. This is expressed in the UN General Assembly resolution on 'Permanent sovereignty over natural resources',¹⁷ which affirms the 'inalienable right of all states to freely dispose of their natural wealth and resources in accordance with their national interests, and with respect for the economic independence of States'.

As well as entailing state control over natural resources, and jurisdictional rights for states over resources within their territory,¹⁸ sovereignty over natural resources is also at the heart of international economic law. Even supposedly redistributive visions of a new international economic order (NIEO) are founded on full respect for the 'full permanent sovereignty of every State over its natural resources and all economic activities'.¹⁹ More recently, the principle of state sovereignty over natural resources was reiterated in the adoption of the Sustainable Development Goals (SDGs). It has been affirmed in several key rulings from the International Court of Justice (ICJ), which has restated that permanent sovereignty over natural resources is a principle of customary international law.²⁰ Overall, under public international law the principle

¹⁵ Anghie 1999.

¹⁶ Natarajan and Khoday 2014, at 588; Fisher et al. 2022.

¹⁷ General Assembly Resolution 1803 (XVII) of 14 December 1962, Permanent sovereignty over natural resources, ST/HR/1/Rev.6 (vol 1, part 1) 2002, 81–83.

¹⁸ Hyde 1956; Gess 1964; Elian 1979.

¹⁹ United Nations General Assembly, Declaration on the Establishment of a New International Economic Order, UN Doc A/Res/(S-VI), 1 May 1974. Likewise, art 2 of the Charter of Economic Rights and Duties of States reads: 'Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities', Charter of Economic Rights and Duties of States (1974) UN Doc A/Res/3201 (xxix).

²⁰ See *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, ICJ, Judgment, 19 December 2005, para 244. See also *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security*

of states' permanent sovereignty over their natural resources is a well-established principle affirmed in more than 80 resolutions and instruments of different bodies of the United Nations.²¹

Under this seemingly entrenched approach to natural resources in international law, the governance of nature within sovereign territories is seen to be an issue for domestic governments. The principle of permanent sovereignty focuses on states' rights to control use of their natural resources,²² without recognising any rights or interests of or obligations to nature itself. The only limitations to states' absolute sovereignty over the exploitation of resources located within their territory are the protection of international investments, and the fact that nature should be exploited for the benefits of the peoples of the states.²³ But there is nothing under this principle of sovereignty over nature about human responsibilities towards nature or parts of it, let alone nature having any rights or interests of its own. The possibility that nature itself (or parts of it) might rival state sovereignty to freely dispose of natural resources within their territories seems unlikely, especially given the economic benefits states derive from resource extraction. However, an argument based on RoN theory could be made that nature should not belong to a state, but that nature has fundamental rights (perhaps to survive, exist or thrive) which might run contrary to state, extractive national interest. Meanwhile, within contemporary international law, the doctrine of states' sovereignty over natural resources continues to promote the view that nature is a resource subject to national imperatives of exploitation and management.

3.2.2 *The Sustainable Development Paradigm*

Although it has provided the underlying conceptual framework for international environmental law, the principle of sustainable development is another significant barrier to a greener international law.²⁴ Sustainable development is the 'overarching paradigm of the United Nations',²⁵ and is made up of several components, including the need to exploit resources in a manner that is 'sustainable,' the need to preserve resources for future generation use, the equitable use of resources between states,

Council Resolution 276 (1970) ICJ, Advisory Opinion, 21 June 1971; *Case concerning certain phosphate lands in Nauru (Nauru v Australia)*, ICJ, Preliminary Objections, Judgment, 26 June 1992.

²¹ The principle of States' sovereignty over their natural resources is also encapsulated in various international treaties, such as: Vienna Convention on Succession of States in Respect of Treaties (1978), 1946 UNTS 3; Convention on the Law of the Sea (1982), 1833 UNTS 3; Vienna Convention on Succession of States in Respect of State Property, Archives and Debt (1983) 22 ILM 306; UN Framework Convention on Climate Change (1992) 1771 UNTS 107; Convention on Biological Diversity (1993) 1760 UNTS 79.

²² McNeish 2021.

²³ Schrijver 1997; Wenar and Gilbert 2021.

²⁴ Benson and Craig 2014.

²⁵ See UNESCO 2015.

and the need to consider economic and development plans and objectives.²⁶ While it imposes some limitations on type and degree of resource exploitation, the concept of sustainable development reinforces the idea that nature exists for the sole or dominant purpose of human exploitation and utilisation.

The popularisation of sustainable development responded to the need to reconcile imperatives of environmental protection with demands for economic development and poverty alleviation by countries of the Global South,²⁷ although the principle also has a longer and darker colonial history.²⁸ Sustainable development (arguably an oxymoron)²⁹ assumes that economic growth, human development, and environmental protection can co-exist. Critics, however, argue that sustainable development is impossible while capitalist economic growth remains embedded within the principle itself.³⁰ In short, the sustainable development paradigm ultimately allows environmental exploitation to proliferate.

While sustainable development seeks, in part, to account for economic inequalities between states (many of which are the result of colonialism and the ways in which European powers profited, and continue to profit from, the extraction of resources from the places they once colonised) there are risks presented by this approach, namely that States can continue to justify environmental damage. Sustainable development continues to posit western capitalist modernity as the norm, that ‘developing’ states should seek to aspire towards.³¹ Speaking specifically about Global North/South inequalities, Natarajan and Khoday note, while sustainable development does challenge ideas of economic growth, (in contrast to more recent de-growth scholarship³²) it is seldom used ‘to call for less development’.³³ They argue that the concept of sustainable development, in the end, ensures that the status quo remains, helping to ‘naturalize and obfuscate the process whereby some people systemically under-develop others’, resulting in the continued deepening of global inequalities.³⁴ Under the concept of sustainable development, nature is still treated as an object to be exploited. Humans, in this paradigm, remain the central subjects. Thus, the principles of permanent sovereignty over natural resources and economic (albeit) sustainable development which structure international law, including international environmental law, present significant barriers to developing a greener international

²⁶ For a history of sustainable development, see Atapattu et al. 2021. Sustainable development concretised recently through its use in the Paris Agreement to the UN Framework Convention on Climate Change (UNFCCC) (2016) 3156 UNTS and the Resolution of the UN General Assembly, ‘Our Ocean, Our Future: Call to Action,’ UNGA Res. 71/312, 6 July 2017.

²⁷ Brundtland 1987.

²⁸ Macekura 2015; Humphreys and Otomo 2016.

²⁹ Neuwirth 2018; Kotzé and Adelman 2022.

³⁰ Gordon 2015; Atapattu et al. 2021, at 5.

³¹ Escobar 2012.

³² Kallis 2018.

³³ Natarajan and Khoday 2014.

³⁴ Natarajan and Khoday 2014, at 589.

law, that treats nature as a resource to be exploited and decentres the human as meshed within the natural world.

3.2.3 *Extractivism and Nature*

International law both reflects and reproduces a worldview that treats the natural world as inert, and whose value is derived predominantly from its potential for appropriation and ownership. As Porras has shown, ‘nature’ became visible to the founding figures of the law of nations only once it was conceptually transformed into a resource and thus, ‘subject to appropriation, reducible to property, and capable of entering the stream of commerce’.³⁵ Building on scholarship that has demonstrated how fundamental international law concepts emerged out of the colonial encounter and that a colonial ‘dynamic of difference’ persistently structures international law,³⁶ it becomes clear that international law’s coloniality is inherently intertwined with its conception of the natural world.

The process of resource extraction was central to colonialism and,³⁷ as Achiume highlights, these legacies continue to structure the present so that ‘[t]he contemporary political economy of global extractivism cannot properly be understood without reference to its colonial origins’.³⁸ Assumptions of domination and human mastery over the natural world drove the colonial plunder of resources.³⁹ Exercising such control over nature was treated as an ‘indicator of civilisational advancement’,⁴⁰ with peoples who practice other ways of relating to nature often deemed less ‘civilised’. The violent process of colonial resource plunder is therefore interlinked with the violent dispossession of Indigenous peoples and the attempted eradication and suppression of their cultural traditions, cosmovisions and knowledge systems.

The global political economy of resource use is still structured by an unequal political economy: a recent study in the *Lancet* showed that developed countries are the ‘primary drivers of global ecological breakdown’, given that those countries are responsible for 74% of global excess material use.⁴¹ Yet, even as Indigenous communities are disproportionately impacted by environmental harms, many Indigenous peoples are at the forefront of struggles to protect the natural world. Local environmental defenders are subject to intensifying threats and violence for defending their homes, land and livelihoods, and ecosystems vital for biodiversity and the climate.⁴² Therefore, contesting the failures of international law calls for

³⁵ Porras 2014.

³⁶ Anghie 2005.

³⁷ Shapiro and McNeish 2021.

³⁸ Achiume 2019.

³⁹ Gear 2015.

⁴⁰ Yao 2019.

⁴¹ Hickel et al. 2022.

⁴² Global Witness 2021.

more than an ‘ecocentric shift’,⁴³ but rather foregrounding of alternative, ways of relating to nature beyond the Eurocentric norm, especially Indigenous conceptions of the natural world and human relationships with and obligations to nature.⁴⁴ From these perspectives, the RoN movement may appear as an attractive new approach to challenge the way international law approaches nature by putting an emphasis on nature’s rights and human relationships and reciprocity obligations towards nature.

3.3 Critical Review of the Various Attempts to Incorporate Rights of Nature into International Law

In recent decades there have been multiple attempts to challenge international law’s exploitative relationship with the natural world.⁴⁵ In this section we discuss and evaluate several initiatives that seek to incorporate RoN into international law. Although each initiative is distinct, our discussion below shows that these various initiatives to incorporate RoN into international law share some key epistemological assumptions as well as often being underpinned by what Tănăsescu describes as an ‘ecothological’ worldview.⁴⁶ This reflects the fact that many of these initiatives have been driven by a ‘transnational policy network’ focused on promoting RoN and this ‘epistemic community’ is constituted by close connections between relevant institutions, organisations and individuals.⁴⁷

3.3.1 *Asserting Rights of Nature as an International Right: The Universal Declaration of Mother Earth*

One of the most prominent attempts to introduce RoN into international law was the Universal Declaration on the Rights of Mother Earth, which was presented to the General Assembly. The Declaration came out of the World People’s Conference on Climate Change and the Rights of Mother Earth hosted by Bolivia in 2010 that brought together around 35,000 people from over 140 countries.⁴⁸ The preamble,

⁴³ Mégret et al. 2023.

⁴⁴ Macpherson and Ospina 2018.

⁴⁵ Natarajan and Dehm 2022.

⁴⁶ Tănăsescu 2022.

⁴⁷ Rawson and Mansfield 2018.

⁴⁸ Cullinan 2011. The drafting of the declaration was led by South African lawyer Cormac Cullinan, who is director of the executive committee of the Global Alliance and author of *Wild Law: A Manifesto for Earth Justice* (Cullinan 2003). The Declaration draws heavily on an earlier version drawn directly from the Universal Declaration on Planetary Rights, co-authored by Cullinan and Higgins [undated](#), at 107).

which opens with an invocation of ‘we, the peoples and nations of Earth’ is ‘significant in its articulation of the prescient vision of Earth Jurisprudence’, especially in how it affirms Mother Earth as ‘an indivisible, living community of interrelated and interdependent beings with a common destiny’.⁴⁹ Proponents see the declaration’s affirmation of the rights of ‘Mother Earth’ as a ‘call to leave the dominant anthropocentric paradigm and to imagine a new Earth society’.⁵⁰

At the UN level, annual intergovernmental negotiations have been held since 2009 on constructing a non-anthropocentric understanding of sustainable development under the banner of ‘harmony with nature’.⁵¹ The Declaration was subsequently formally considered at the UN Dialogue on Harmony with Nature, and several UN General Assembly Resolutions and UN Secretary General Reports have now been produced that call for the recognition of RoN.⁵² Proponents of the Declaration also sought to mobilise support for it at the 2012 United Nations Conference on Sustainable Development (Rio+20), and the summit’s outcome document, *The Future We Want*, noted that ‘some countries recognise rights of nature in the context of the promotion of sustainable development’ and also recognised ‘Mother Earth’ as ‘a common expression in a number of countries and regions’.⁵³ RoN received greater support in the final declarations of the concurrently held Peoples’ Summit for Social and Environmental Justice in Defence of the Commons and the Indigenous Peoples’ World Conference on Rio+20 and Mother Earth (Kari-Oca 2).⁵⁴

The Declaration on the Rights of Mother Earth has also inspired other similar declarations, including a proposed Universal Declaration on the Rights of Wetlands, which its proponents hope will ‘provide a timely basis for a step-change in effective and morally robust re-visioning of the human relationship with wetlands’.⁵⁵ Similar to the Declaration on the Rights of Mother Earth, the proposed Declaration on the Rights of Wetlands asserts the inherent rights of wetlands to exist, to be free from pollution and degradation, to regeneration and restoration, as well as to their ‘ecologically determined location in the landscape’, to ‘natural, connected and sustainable hydrological regimes’, to ‘ecologically sustainable climatic conditions’, ‘naturally

⁴⁹ Fukurai and Krooth 2021.

⁵⁰ See Sólón 2018.

⁵¹ The international negotiations on the principles of harmony with nature have been driven by Bolivia, and since 2009 have entailed at least 12 General Assembly resolutions on Harmony with nature as well as at least nine Secretary-General on Harmony reports on this topic and at least nine interactive dialogues. See UNGA 2010.

⁵² UNGA 2012. A series of UNGA Interactive Dialogues have also been held on Harmony with Nature. In 2015, the UNGA called for the creation of an expert report on Earth Jurisprudence, establishing a global network of experts. The Expert Report on Earth Jurisprudence that followed was released in 2016 (UNGA 2016). The Report recognises the ‘fundamental legal rights of ecosystems and species to exist, thrive and regenerate’. In 2017, the UNGA Dialogue focused on applying Earth Jurisprudence to the Sustainable Development goals. UNGA 2017.

⁵³ UNGA 2012, at para 39.

⁵⁴ Espinosa 2014.

⁵⁵ Davies et al. 2020, at 597.

occurring biodiversity’ and ‘integrity of structure, function, evolutionary processes and the ability to fulfil national ecological roles in the Earth’s process’.⁵⁶

However, the Declaration on the Rights of Mother Earth remains marginalised in mainstream international legal discussions and is unlikely to be adopted by orthodox international legal mechanisms in the near future. The Declaration, both in its content and its form, has numerous shortcomings. First, the Declaration is marked by a key tension, in that it is based around a very specific idea of nature as ‘Mother’, supposedly drawn from Andean cosmologies, yet at the same time asserts this way of understanding nature, which is unique to certain Indigenous cultures, as universal. As Cristina Espinosa notes, the challenge faced by the Declaration’s proponents of ‘articulating a discourse that does not erase local, environmental, and cultural differences and which speaks to all relevant actors’ is perhaps ultimately ‘insurmountable due to the global scope, universalistic aim, and the combative tone of its advocacy’.⁵⁷ The Declaration has sought to adopt an ‘Indigenous speaker position’ and, while this has given authority to the Declaration, such a positioning is both contested and fraught given that different Indigenous groups have taken a broad range of positions on the Declaration.⁵⁸ Moreover, even though ‘[n]otions such as the sacredness of Mother Earth as possibly part of the contemporary discourse of certain indigenous groups, ... the technical-juridical elements of RoN are not’.⁵⁹

Second, the Declaration is based on a highly problematic gendering of nature as feminine. Some proponents of this terminology highlight that the term ‘Mother Nature’ is important as it conveys the Andean concept of *Pachamama*, the symbiosis between humankind and nature, and as ‘implicitly affirming the primary position of the ‘feminine principle’ in ecology’.⁶⁰ However, as Tănăsescu suggests, the adoption of such gendered language risks being a ‘blow to indigenous conceptions, which are much more multidimensional and variegated’.⁶¹

Third, the form of a Universal Declaration relies on treating the concept of ‘nature’ as a ‘totalizing abstraction’.⁶² By seeking to create something that applies universally across the globe, the Declaration risks perpetuating some of the problematic universalising tenancies of international law. Feminist and postcolonial theorists have long problematised international law’s claim to be universal (and its purported neutrality), noting the ways in which it both disguises and reproduces the gendered and racialised power hierarchies that are, in fact, upheld by the law.⁶³ Theorists have highlighted

⁵⁶ Ibid, at 598.

⁵⁷ Espinosa 2014, at 404.

⁵⁸ Ibid.

⁵⁹ Ibid., at 407.

⁶⁰ Thomas and Bhardwaj 2013.

⁶¹ Tănăsescu 2022, at 116.

⁶² Ibid., at 132.

⁶³ Charlesworth and Chinkin 2000; Anghie 2005; Pahuja 2011.

the importance of attending to emplaced and heterogenous norms, practices, subjectivities and encounters that are often subsumed by the universalist epistemologies that underlie grander theory-building projects.⁶⁴

Overall, the risks with a universalising approach, as proposed by the Universal Declaration on the Rights of Mother Earth, is that specific ideas that come from a specific place (here, with the idea of Mother Earth being particularly important for certain Indigenous peoples in the Andes, hence Ecuador's use of this language) will once again be imposed globally, losing their connection to place.

3.3.2 Common Heritage of Humankind, Areas Beyond National Jurisdiction and Rights of Nature

The Universal Declaration on the Rights of Mother Earth is not the only universal instrument proposed to support a greener international legal order associated with RoN. Several other declarations have been drafted and proposed by RoN advocates that assert the legal personhood and rights of various areas beyond national jurisdiction. As we have noted, one core barrier faced when seeking to apply RoN in international law is state sovereignty. Seeking to move beyond the challenges posed by sovereignty, many civil society groups have strategically proposed the recognition of RoN in areas that are beyond national jurisdiction, many of which have been designated as part of the common heritage of [hu]mankind. These territories include places such as Antarctica, the high seas and the deep seabed, and the moon and outer space.⁶⁵

RoN advocates argue that even though the 'common heritage' principle is presently the 'most expansive doctrine for protecting the commons' it remains 'anthropocentric' and moreover does not have sufficient power and institutional enforcement to halt the degradation of the world's resources.⁶⁶ La Follette and Maser⁶⁷ therefore suggest that the principle should be 'expanded' to make it an

⁶⁴ Canfield et al. 2021.

⁶⁵ While outer space and the moon have traditionally been seen as common heritage, the US has recently begun to challenge this through the release of NASA's Artemis Accords. The Accords aim to 'establish a common set of principles to govern the civil use of outer space', seeking to 'facilitate exploration, science, and *commercial activities* for the benefit of humanity'. This is a move away from ideas of shared cooperation and ownership, towards a property-based model which sees outer space as the next commercial frontier. The legal principle which states that outer space is part of the global commons to be held by all mankind is to be found in, for example: Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (The Outer Space Treaty) (1967) 610 UNTS; Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (The Moon Agreement) (1979) 1363 UNTS 3. See also: NASA [undated](#).

⁶⁶ See Feichtner and Ranganathan 2019.

⁶⁷ La Follette and Maser 2017, 84.

‘arm of Nature’s right to life’, remaining the principle the ‘Common Heritage of the Earth Principle’. They argue that:

Placing the Rights of Nature at the center of the international legal system, and organizing them around Nature’s Laws of Reciprocity, would solve the problem of continual marginalization of the Common Heritage Principle. It would become the centerpiece. The new Rights of Nature framework would create a ‘global environmental commons’, of which humans are a member, along with all the others.

Similarly, Harden-Davies et al have argued that the application of a RoN approach to global ocean governance could shape this field in a way that allows for a greater recognition of the connection between humans and the ocean, creating a more ecosystem-based perspective of ocean management.⁶⁸ They suggest that RoN could inform ongoing conversations on the development of a new international legally binding instrument for the conservation and sustainable use of Marine Biodiversity in Areas Beyond National Jurisdiction (the BBNJ discussions) or that it could inspire innovative solutions for global ocean governance, such as the establishment of an Council of Ocean Custodians to provide a ‘voice’ for the ocean in governance processes.⁶⁹

The proposed Declaration for the Rights of the Moon was released in early 2021.⁷⁰ The text declares the moon to be a ‘sovereign natural entity in its own right’ which is in possession of fundamental rights by virtue of its ‘existence in the universe’ including rights to ‘exist, persist and continue its vital cycles unaltered, unharmed and unpolluted by human beings’, and to ‘maintain ecological integrity’ amongst others.⁷¹ As such the drafters seek to ‘counter the prevailing perception of the Moon as a dead world ripe for exploitation’.⁷² Although the impetus behind the text was the increased interest by companies, governments and private actors about extracting resources from the moon,⁷³ the drafters do not expect that the Declaration will prevent or impact such plans, but rather hope that it initiates the ‘beginning of an important discussion’.⁷⁴ The prospects of instituting legal personhood for the moon remains extremely remote, given that it is unlikely to appeal to ‘space-faring nations focused on resource extraction’,⁷⁵ and would presumably be strongly opposed by corporate interests who could benefit from space exploitation, especially if it were to impose liability for environmental harms.⁷⁶ Altabef therefore suggests an alternative route to affirming the legal personhood of the moon, namely through judicial recognition

⁶⁸ Harden-Davies et al. 2020.

⁶⁹ Ibid., at 9.

⁷⁰ It was proposed after regular discussions between Dr Michelle Maloney (National Convenor, Australian Earth Law Alliance), Ceridwen Dovey (space researcher and writer), Alice Gorman (space archaeologist), Mari Margil (Executive Director of the Center for Democratic and Environmental Rights, US) and Thomas Gooch, see Australian Earth Laws Alliance [undated](#).

⁷¹ Australian Earth Laws Alliance [undated](#).

⁷² Rogers and Maloney 2022, at 4.

⁷³ Storr 2021.

⁷⁴ Dent 2021.

⁷⁵ Mouat et al. 2021.

⁷⁶ Altabef 2021, at 498.

of the ability to bring a claim on behalf of a celestial body,⁷⁷ yet, given the barriers to bringing a contentious action or seeking an advisory opinion, this also seems unlikely.

A proposal to create a Declaration that would recognise the rights of Antarctica was launched on Antarctica Day, 1 December 2021. Spearheaded by a group of environmental NGOs and academics, the initiative produced a zero draft for consultation in early 2022, with the aim of launching a Declaration for the Rights of Antarctica in 2022.⁷⁸ The draft Declaration opens by ‘celebrating the beautiful, wild continent we know as ‘Antarctica’, the surrounding waters of the Southern Ocean and the community of life that inhabit those awe-inspiring lands, ice, waters and skies’. Although wording has not yet been finalised, the draft articles of the Declaration seek to define Antarctica as the holder of rights and ‘autonomous and not subject to state sovereignty’. While scholars of Antarctic governance have characterised the ideas in this Declaration as ‘strange and far-fetched’, they recognise that the questions that the Declaration raises, including questions of ‘questions about the demos and the boundaries of the Antarctic community should be part of any serious conversation about a potential Antarctic democratisation’.⁷⁹

In addition, since 2018 there have been discussions between researchers, lawyers and Indigenous peoples about a possible process to create a Regional Convention for the Rights of the Pacific Ocean that would recognise the Pacific Ocean as a legal entity with its own legal rights.⁸⁰ The ‘Statement of Principle’ acknowledges ‘our kinship with the Ocean, and our responsibilities to the Ocean’ and suggests that this concept of ‘ocean kinship’ ‘could bring traditional indigenous thinking together with modern legal rights of nature concepts at a scale befitting the ocean’.⁸¹ Given the deep concerns about the dangers of experimental deep sea mining in the Pacific, Slatter suggests that ‘[a]chieving legal personhood status for the Pacific Ocean may be the only way to protect it and its life systems from being ravaged for short term gains by rapacious corporate interests and complicit, short-sighted leaders’.⁸²

While applying RoN to international territories seems like an innovative and promising way through which to apply this framework to international law, side-stepping some of the issues around sovereignty outlined above, these initiatives also raise crucial questions of legitimacy, representation, strategy, and power. First, many of these initiatives are driven by a small group of individuals. Second, these Declarations also raise important questions of strategy, namely how aspirational documents drafted outside of any formal legal processes could be taken up within international legal discussions or as a form of international soft law. Third, where they do not fully account for an existing relationship with these places, international initiatives

⁷⁷ Ibid., at 499.

⁷⁸ Antarctica Rights 2021.

⁷⁹ Flamm 2022.

⁸⁰ Maloney 2019.

⁸¹ Rights of Nature 2018.

⁸² Slatter 2020.

risk marginalising existing place-based legal relationships and contingencies.⁸³ This happens where international initiatives treat places beyond national jurisdiction as effectively unconnected to humans and devoid of existing rights or laws, despite myriad human interactions, relationships and interests existing in them. In areas beyond national jurisdiction, there is much at stake, as multiple actors vie for access to resources and recognition of their rights to do so.

While RoN are now increasingly being taken up and adopted in multiple different ways by different bodies and states, their radical potential lies in the possibility of foregrounding place-based Indigenous epistemologies and relationships.⁸⁴ While Indigenous thought is certainly not monolithic, much of this thought is deeply tied to connections between people and place. These belief-systems reflect the pragmatism that it is inexorably impossible to regulate nature divorced from people, and therefore pointless trying. Instead, legal models should regulate human relationships and interactions with living nature, often through a kinship-based approach.⁸⁵ Even in Antarctica, or the high seas, peoples have historic and ongoing relations with place. For example, Slatter highlights how ‘Oceanic people have an intrinsic connection with the Pacific Ocean, a relationship of deep historical, cultural and cosmological/spiritual significance that reaches back centuries’.⁸⁶ Although outer space is uninhabited, within many Indigenous cosmologies there is a ‘kinship relation between ... humans and celestial objects such as the planets, Moon, stars, and the Sun as well as the Universe’ and thus an existing ‘axiom of relationality’ between peoples and this place.⁸⁷

Yet, within some international RoN initiatives there appears to be a reluctance to take a strong and explicit anti-colonial or decolonial position. For example, in the draft Antarctic Declaration, the question of whether the word ‘colonial’ should be included when asserting the right of Antarctica to be ‘free from claims of ownership and harmful human influences’, reflects broader tensions between wanting to avoid alienating those states that have territorial claims to Antarctica and taking an explicitly anti-colonial normative position. Like any legal reforms, RoN developments in areas beyond national jurisdiction reflect (and have the power to entrench) existing power imbalances. Any reforms therefore need to be attentive to how they shift power relations by empowering those who were previously marginalised, in particular by creating greater space for Indigenous peoples to exercise power and authority.

Despite these creative initiatives promoted by transnational civil society networks, mainstream international law is yet to engage seriously with the concept of RoN.

⁸³ A domestic example of this is the attempt by the New Zealand Government to create the Kermadec Marine Sanctuary while effectively overriding the protection of Māori rights under the Treaty of Waitangi. See McCormack 2021.

⁸⁴ O’Donnell et al. 2020.

⁸⁵ See, e.g., Te Urewera Act 2014 (NZ) available at <https://www.legislation.govt.nz/act/public/2014/0051/latest/whole.html>.

⁸⁶ Slatter 2020.

⁸⁷ Neilson and Ćirković 2021.

The inclusion of ‘rights of nature’ as one of the ‘enabling conditions’ for the post-2020 Global Biodiversity Framework in the 2020 zero draft perhaps came closest to including language about RoN in formal international legal texts.⁸⁸ However, this language was replaced by the wording, ‘employing rights-based approaches’ in the first draft, released in 2021; a move critiqued as a ‘lost opportunity’ by RoN advocates.⁸⁹ The Kunming-Montreal Global Biodiversity Framework adopted in December 2022 makes reference to ‘diverse value systems and concepts’ including rights of nature as relevant to its implementation.⁹⁰ Some suggest that the development of the law on ecocide could provide another avenue for the recognition of RoN in international law.⁹¹ One issue with such approach is that it comes a ‘bit too late’, i.e., when nature has already been destroyed beyond any possible recovery (hence the analogy with genocide), so although offering promising way to embed nature’s rights within the international legal architecture via international criminal prosecution it might not provide a way to really integrate the rights of nature. It would act more as prosecution tool but not as a recognition of nature’s inherent rights. In any case, the various strands of advocacy outlined above remain on the fringe of international law and are generally not taken seriously by the orthodox international law community. Still, given that advocacy to recognise RoN in international law is likely to continue, below we signal some important lessons for international law from the transnational RoN movement.

3.4 Learning from Transnational Law: Towards a Relational Approach to Nature?

Although international law has engaged little with the idea that nature might have its own rights and interests (say to exist and reproduce), RoN models are emerging globally and can now be characterised as a leading trend in transnational environmental law.⁹² There are many competing theories underpinning RoN approaches,

⁸⁸ UN Convention on Biological Diversity, Update of the Zero Draft of the Post-2020 Global Biodiversity Framework, UN Doc CBD/POST2020/PREP/2/1, 17 August 2020; Earth Law Center et al. 2021.

⁸⁹ Bustamante 2021.

⁹⁰ Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity, 15/4 Kunming-Montreal Global Biodiversity Framework, CBD/COP/DEC/15/4 (19 December 2022) Annex, para 9.

⁹¹ In June 2021, the Independent Expert Panel for the Legal Definition of Ecocide, a civil society initiative, put forward a definition of ecocide, calling for state parties to the International Criminal Court to adopt the definition and incorporate the novel crime into the Rome Statute (Stop Ecocide Foundation 2021).

⁹² Kauffman and Martin 2017, 2021.

including ‘earth jurisprudence’,⁹³ ‘ecological jurisprudence’ and ‘wild law’,⁹⁴ as well as perspectives that advocate for the need for humans to live within ‘planetary boundaries’, provoking parallel theories of ‘planetary earth law’ and ‘earth systems law’.⁹⁵ These movements all challenge orthodox environmental law, with its focus on state sovereignty, development and resource extractivism, but they are also worryingly universalist, assuming the need for a supranational framework of planetary management and externally imposed law.⁹⁶ Their concern is the threat that ‘humanity’—imagined as a singular *anthrops*—poses to the viability of planetary survival, in a way that dangerously ignores hierarchies and inequalities along axes of class, race and gender, and differentiated vulnerabilities and how these are implicated in creating and perpetuating the ecological crisis.⁹⁷

Given the growing interest in recognising RoN within legal frameworks, we explore some of the risks and challenges in transposing RoN frameworks from national to international law. In this section, we explore the two critiques outlined above in more detail, namely, the risks posed by universalising approaches and the need to centre relationality between people and place. We highlight some of the different approaches and models adopted to recognise rights and personhood of nature in different jurisdictions and propose certain underlying principles and commitments that should guide the proposals to incorporate RoN in international law.

3.4.1 *The Dangers of Universalism*

Much of the early scholarship on RoN was underpinned by an optimism that RoN might be a ‘legal revolution that could save the world’.⁹⁸ This scholarship also generally relied upon, or took for granted, dichotomies like anthropocentric versus ecocentric, property versus nature,⁹⁹ or human rights versus nature’s rights. There is however, a growing recognition that these dichotomies were overly simplistic, inaccurate and often unhelpful for the real world.¹⁰⁰ Additionally, a growing critical scholarship is revealing new understandings to question what Tănăsescu calls ‘rights of nature orthodoxy’.¹⁰¹ This work has critically interrogated the understanding of nature and law underpinning this orthodoxy, as well as asking pertinent questions about the tendency in some RoN literature to attempt to protect nature by cordoning

⁹³ See, for example, Berry 1999; Burdon 2014; Cullinan 2003; Naess 2016; Rogers and Maloney 2018.

⁹⁴ See, for example, Cullinan 2003; Rogers and Maloney 2018.

⁹⁵ See Kotzé and Kim 2019, at 1.

⁹⁶ This is something Petersmann discusses in relation to earth system law (Petersmann 2021).

⁹⁷ Macpherson 2022; Tănăsescu 2022.

⁹⁸ Boyd 2017.

⁹⁹ Ibid. Maloney 2016; Shelton 2020.

¹⁰⁰ Macpherson 2021.

¹⁰¹ Tănăsescu 2022.

seemingly empty lands off from people.¹⁰² There is therefore increased awareness of the need to pay attention to distinctions between different RoN models and initiatives, and how such provisions have been applied through different means in different contexts. One clear division discernible is the difference between models that recognise and protect the rights of a broad and undefined ‘Nature with a capital N’¹⁰³ (as in Ecuador), and natural resource governance models that include some recognition of particular ecosystem entities as legal persons or subjects (as in Aotearoa New Zealand). This diversity of approaches within the RoN movement, and legal models commonly associated with this movement, are still poorly understood and under-theorised.¹⁰⁴

Until recently, RoN developments were so new and, to some, appeared so absurd, that there was little research available to understand these developments (in a way that would meet basic empirical standards) in their historical, political and cultural context. Vast differences in legal conditions in those countries in which initiatives have emerged have been routinely overlooked, especially by the international NGOs that advocate for the simple ‘transplantation’¹⁰⁵ of legal models. The cultural and political circumstances driving legal innovations, like the recognition of a river as a legal person as part of a negotiated settlement of historical injustice to Indigenous peoples in one place,¹⁰⁶ have, at times, been conflated (under the banner of RoN) with a broad-brush declaration of nature as being a subject of rights in the constitution of another.¹⁰⁷ Aside from ignoring important questions of scale (geographic, temporal and jurisdictional),¹⁰⁸ these conflations routinely occur with complete ignorance or disregard for Indigenous and local peoples, and their laws, cultures and political strategies.¹⁰⁹

However, the increasingly engaged and critical literature is helping us to better understand the amorphous idea of recognising nature’s subjectivity, personality or rights, and their implications for people and place.¹¹⁰ This literature is also pointing out what is ‘not enough, in practice’, to disturb existing power balances in issues of environmental protection and use.¹¹¹ Environmental constitutionalists argue, fairly convincingly, that high-level directives are needed to face the planetary crises of

¹⁰² Maloney and Burdon 2014. For a criticism of such framings as ‘environmental colonialism’, see O’Donnell et al. 2020.

¹⁰³ Tănăsescu 2022.

¹⁰⁴ Tănăsescu 2022.

¹⁰⁵ Gillespie and Nicholson 2012.

¹⁰⁶ Te Awa Tupua Whanganui River Claims Settlement Act 2017 (NZ).

¹⁰⁷ ‘Constitución de La República de Ecuador’ [Constitution of the Republic of Ecuador], 2008 (Ecuador).

¹⁰⁸ Mills et al. 2010; Head et al. 2016.

¹⁰⁹ Martuwarra RiverOfLife et al. 2021 is an example of an exception.

¹¹⁰ Taylor et al. 2020; Poelina et al. 2021; Richardson and McNeish 2021; Macpherson et al. 2021a; Laborde and Jackson 2022.

¹¹¹ Kauffman and Martin 2017.

biodiversity loss, climate change and environmental degradation.¹¹² However, others point out the importance of local implementation, and governance, in order to avoid the ‘implementation gap’ characteristic of environmental laws.¹¹³ RoN and legal personhood initiatives might even be harmful to local groups and Indigenous peoples where they distract or detract from more radical political agendas.¹¹⁴

On a more conceptual level, scholars have highlighted that nature’s rights laws are based on the same assumptions and rely on the same logic as human rights laws—found alongside each other in constitutions or bills of rights, or by extension of human rights norms in the courts.¹¹⁵ Some scholars have therefore called, not for protecting nature with human-style rights, but ‘a new framework in which the human is entangled and thrown in the midst of a lively materiality’.¹¹⁶ They have emphasised that, in extending legal personhood to nature, it is critical to be attentive to how personhood has long ‘been central to law’s titled distribution of power and privilege, marginalisation and dispossession’.¹¹⁷ However, others have pointed to the potential in adopting a more ‘denaturalised’ conception of the person and experimenting with ‘the jurisprudential art of crafting the person’.¹¹⁸ One key lesson for international law is the need to recognise the legally constructed nature of legal personhood, and to critically consider how the crafting of novel forms of legal personhood has implications for and transforms existing legal relations between peoples and places. A top-down universalist approach could reinforce the dangerous colonial and western approaches historically taken within international law.

3.4.2 *Towards a ‘Relational’ Approach to Nature*

Some of the most promising legal approaches to managing human use and management of the environment have come from Indigenous peoples, where they have led to the passage of environmental laws that are more holistic, integrated and ‘relational’.¹¹⁹ These examples suggest new possible paths for environmental law to better manage: the relationships between people and nature; and the tensions between resource use and protection.¹²⁰ The focus of these legal models is not just on rights, but on the ethics and responsibility of peoples to care for living, dynamic, related ecosystems, often drawing on Indigenous belief systems and reinforcing Indigenous

¹¹² May and Daly 2015.

¹¹³ Macpherson et al. 2021a.

¹¹⁴ Jones 2016; Marshall 2020; Birrell and Dehm 2021.

¹¹⁵ Macpherson 2021.

¹¹⁶ Gear 2019.

¹¹⁷ Blanco and Gear 2019, at 98.

¹¹⁸ Mussawir and Parsley 2017.

¹¹⁹ Morris and Ruru 2010; Te Aho 2010; Watts 2013; Salmond 2017; Milgin et al. 2020; Martuwarra RiverOfLife et al. 2020a.

¹²⁰ James 2020. Macpherson 2022.

authority and jurisdiction.¹²¹ They also position the use and protection of nature as two sides of the same coin, and resist the western conservationist approach of spatially enclosing 'wild areas' away from human communities, especially uses by Indigenous peoples.¹²² Relational approaches to environmental law depart from static ideas of granting rights to focus on the institutions and processes that support the implementation of environmental governance in plural, multicultural legal settings.¹²³ Examples include collaborative governance regimes with Indigenous peoples, local communities, users and governments, as representatives, guardians, voices or faces of nature (such as the Whanganui River model from Aotearoa New Zealand), to collaborate, negotiate and agree on the management of resources or ecosystems.¹²⁴

These observations are critical for international law because they question the efficacy of mandating nature's protection at the highest, international levels, if this does not flow down to 'on the ground' conditions. We argue that to become revolutionary in the sense of truly greening international law, RoN initiatives need to integrate and learn from on-the-ground attempts to implement RoN. Any RoN framework must acknowledge and support reciprocal relationships between people and place (including rights, responsibilities, use and protection) as part of multi-level governance arrangements.

As has been highlighted in the domestic context, it is 'immensely difficult to implement rights of nature in practice', and there are clear limitations to the ability of such laws to drive the 'behavioural transformation and effectively counter deeply vested corporate-driven neoliberal and political economic interests'.¹²⁵ Risks inherent in any attempt to recognise RoN include the ability for the law to truly move towards a post-colonial approach in its current framing. Even when seeking to recognise nature's subjectivity, we risk merely extending, replicating, and reinforcing existing systems of power without actually challenging them sufficiently (as we have seen, for example, in the case of women's rights).¹²⁶

At the same time, international legal frameworks play a crucial role in enabling or constraining the possibilities of on-the-ground attempts to implement RoN within domestic jurisdictions and in areas beyond national jurisdiction. One of the tensions any efforts to incorporate RoN in international law must work through with care, is how to avoid the risks posed by universalising approaches while transforming international principles and norms so that they create space for, foster and strengthens localised relational approaches that would support a truly new approach to human-nature relations. One answer may be to take what are now broadly deemed RoN initiatives and to detach them from the problematic obsession with rights,¹²⁷ noting that not all so-called RoN provisions actually focus primarily on rights. The focus

¹²¹ Martuwarra RiverOfLife et al. 2020b; Macpherson 2019.

¹²² Dowie 2011.

¹²³ Davies 2018.

¹²⁴ Muru-Lanning 2016; Te Aho 2019; Macpherson et al. 2021b.

¹²⁵ Villavicencio Calzadilla and Kotzé 2018. See also Natarajan and Dehm 2019.

¹²⁶ Jones 2021.

¹²⁷ Redvers et al. 2022.

could then be shifted instead to supporting human relationships with nature in environmental law and the reciprocal responsibilities human hold pursuant to these relationships to care for nature. The fact that RoN, as a movement, is gaining traction, may provide an opportunity to foster change. A way of thinking differently about RoN, therefore, would be to change the way rights are seen, as coupled with reciprocal responsibilities as part of relational approaches to human-nature interactions.¹²⁸

If we take a relational approach to recognising RoN, paying close attention to diverse relationships between people and place within place-based power structures, the framing shifts from a universalist, neoliberal idea of rights,¹²⁹ to something that is more grounded in multiple ontologies and epistemologies, or ‘pluriverse’.¹³⁰ From this perspective, the trajectory accomplished in translational law in understanding the potential value of recognising RoN to support a new sort of relationship with nature may offer a path to a less colonial international law and integrate a far more revolutionary green approach to law, moving away from extractivism, sovereignty and development.

3.5 Conclusion

International law is based upon a problematically narrow idea of the environment as simply a resource or object to be extracted, exploited, tamed, protected, and managed. Seeking to address some of these concerns, there have been several attempts to recognise RoN in international law, yet these attempts have, so far, not been taken up within mainstream international law debates and scholarship. Given that calls to recognise RoN in international law are likely to intensify, alongside the fact that environments are not contained by national boundaries, we believe that now is a crucial moment to think critically about the different approaches that could be used to incorporate RoN into international law, including their relative promise and peril. We argue that to develop these rights further under international law, important lessons from the transnational movement on RoN and legal personhood need to be unpacked and understood within the international legal sphere.

Our analysis shows that RoN models, in some contexts and circumstances, can offer important ways for enacting closer and more reciprocal relationships between people and the places they inhabit, and the ways humans live in and with the natural world, especially where those models are based on Indigenous approaches to managing human use of and relationships with the environment. However, it is critical that legal models for incorporating RoN into international law do not perpetuate the problematic dynamics that haunt international law, especially the perpetuation of colonial power dynamics. In particular, international law’s universalising

¹²⁸ Vargas-Roncancio 2021, at 122.

¹²⁹ Natarajan and Dehm 2019.

¹³⁰ De la Cadena and Blaser 2018; Reiter 2018.

tendencies, which risk side-lining plural worldviews and ignoring local and Indigenous relationships with place, must be resisted. As opposed to the promotion of a specific western notion of rights and personhood as universal, the focus must be on situated and embedded values underpinning human-nature relationships. Much can be learnt here from systems thinking in transnational environmental law that poses laws and decision-making processes as inherently ‘socio-ecological’, arguing for radical new patterns of legal thought that reflect ecosystem integrity, dynamism and interconnectedness.¹³¹ Although the recognition of human responsibilities to uphold nature’s fundamental rights may offer a path towards a greener international law, this this should not be followed in a way that reproduces problematic, homogenising aspects of international law, but instead centres human relationality with nature in place.

Acknowledgements We would like to thank Karen Grant and Alexandra Parkinson for their excellent research assistance.

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¹³¹ Kotzé 2020.

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