

FROM MAGICAL REALISM TO MATERIAL AGENCY: ONTOLOGICAL PLURALISM AND REIMAGINATION OF WAR CRIMES IN COLOMBIA'S SPECIAL JURISDICTION FOR PEACE

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ABSTRACT

This Article examines how Colombia's Special Jurisdiction for Peace (JEP) redefines the conceptual boundaries of international criminal law through its recognition of the environment as a war crime victim. Moving from magical realism to material agency, it explores the JEP's recent rulings as ontological experiments in which indigenous cosmologies and positivist legality intersect. By treating Çxhab Wala Kile (the Nasa's "Territory of the Great People") as a victim, the JEP translates relational worldviews into the procedural language of transitional justice, exposing the limits of anthropocentric doctrines grounded in mens rea and actus reus. Drawing on new materialist philosophy and decolonial thought, the Article argues that the court's reasoning initiates a juridical experiment in ontological pluralism, where responsibility and harm are redistributed among human and nonhuman actants. This "ecological turn" in transitional justice not only expands the moral community of victims but also reveals the epistemic reduction inherent in legal personification. The JEP thus becomes a juridical Macondo—a space where myth, matter, and legality converge—inviting an evolution of international criminal law toward a decolonial ecology of justice, capable of acknowledging the material vitality of the world it seeks to regulate.

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**“‘Things have a life of their own,’ the gypsy proclaimed with a harsh accent.
‘It’s simply a matter of waking up their souls.’”**

GABRIEL GARCÍA MÁRQUEZ, ONE HUNDRED YEARS OF SOLITUDE
(Gregory Rabassa trans., London: Picador 1978).¹

I. INTRODUCTION: THE ONTOLOGICAL DILEMMAS OF TRANSITIONAL JUSTICE

The Special Jurisdiction for Peace of Colombia (*Jurisdicción Especial para la Paz*, JEP) represents one of the most ambitious attempts to articulate transitional justice and international criminal law in a post-conflict society.² Established by Legislative Act 01 of 2017 as a result of the Havana Peace Agreement between the government and the Revolutionary Armed Forces of Colombia—People’s Army (FARC-EP), it was tasked with investigating and sanctioning the most serious violations committed during the internal armed conflict.³ Unlike the International Criminal Court (ICC), created in 1998 as a result of the adoption of the Rome Statute, the JEP was designed as a domestic and hybrid institution, intended to function for twenty years and to combine elements of restorative and retributive justice.⁴

What makes the JEP particularly significant for international legal thought is not merely its institutional design but its epistemic ambition. In its 2023 *Order (Auto) No. 01* (Case 05, *Situación Territorial del Norte del Cauca y Sur del Valle del Cauca* [*Territorial Situation of North Cauca and South Valley of Cauca*]), the Judicial Panel for the Acknowledgment of Truth, Responsibility, and Determination of Facts and Conduct (SRVR) of the JEP recognized—for the first time in any criminal jurisdiction—that the *Çxhab Wala Kile* (the “Territory of the Great People,” in Nasa Yuwe language)⁵ constituted a victim in itself.⁶

1. GABRIEL GARCÍA MÁRQUEZ, ONE HUNDRED YEARS OF SOLITUDE 9 (Gregory Rabassa trans., Picador 1978). Original edition in Spanish: GABRIEL GARCÍA MÁRQUEZ, CIEN AÑOS DE SOLEDAD (Jacquez Joset ed., Editorial Sudamericana 1967).

2. KAI AMBOS, TRANSITIONAL JUSTICE IN COLOMBIA: THE SPECIAL JURISDICTION FOR PEACE 5 (Stefan Peters ed., Nomos 2022).

3. Legislative Act No. 01, abril 4, 2017, 50 DIARIO OFICIAL [D.O.] 189 (Colom.).

4. See AMBOS, *supra* note 2 (discussing the JEP).

5. Yaneth M. Pacho Hurtado & Sonia P. Rodríguez, *Volviendo a las raíces ancestrales desde la lengua Nasa Yuwe, en el norte del departamento del Cauca, Colombia* [*Returning to the Ancestral Roots from the Nasa Yuwe Language, in the North of the Cauca Department, Colombia*], REVISTA INTERCAMBIO 4, 6 (2024).

6. Jurisdicción Especial para la Paz [JEP] [Special Jurisdiction for Peace], Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas [SRVR] febrero 1, 2023, Expediente 9002794-97.2018.0.00.0001 (Colom.) [hereinafter JEP-SRVR *Order No. 1*, Case 05], https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-01_01-febrero-2023.docx [<https://perma.cc/8WCK-GB2M>]. A summary of its main findings in English is available at Sara María Astrálaga Cediel, *Colombia, Special Jurisdiction for Peace, Crimes Against the Environment in Cauca*, ICRC,

As one of the first indictments explicitly framing environmental destruction as war crimes, the pronouncement marks a turning point in the genealogy of transitional justice.⁷ By granting nature the status of victim, the JEP has reconfigured a foundational boundary between human victimhood and ecological harm that separates international humanitarian law (IHL) from an emergent law of relational existence.⁸ In doing so, it insinuates a profound ontological tension within the grammar of international criminal law: a tension between the Western anthropocentric conception of the world—as composed of human agents and nonhuman objects—and indigenous cosmologies, in which human and nonhuman beings participate in reciprocal relations of care, vulnerability, and harm.⁹

This Article asks how a domestic jurisdiction can translate nonhuman agency into the language of international justice—and what this translation reveals about the limits of positivist legality.¹⁰ Methodologically, this Article approaches judicial reasoning as a performative and narrative practice. It reads the JEP's decisions not only as legal texts but as ontological performances—acts that bring new worlds into being.¹¹ This interdisciplinary approach, which is part of a larger research agenda on the physicality and materialities of IHL, combines doctrinal analysis, legal anthropology, and the philosophy of new materialisms to trace how legality itself—in particular, adjudication of war crimes—becomes an arena of ontological translation.¹²

Through a specific examination of *Order No. 01* (Case 05) and *Order No. 03* (Case 02), this paper argues that the JEP's ecological turn constitutes a laboratory for what might be called ontological pluralism in transitional justice.¹³ It simultaneously expands the moral circle of victimhood and reveals the difficulty of translating non-Western epistemologies into positivist legal categories.¹⁴ The recognition of nature as a victim is therefore not only an act of cultural awareness, but also gives rise to an ontological confusion: the court must oscillate between traditional Western normativity—that has always treated nature as an object of protection—and indigenous relational worldviews that imagine it as a subject of existence.¹⁵

This Article will argue that by recognizing *Çxhab Wala Kile* as a victim, the JEP performs a double movement: it expands the moral community of

<https://casebook.icrc.org/case-study/colombia-special-jurisdiction-peace-crimes-against-environment-cauca> [<https://perma.cc/7YAP-QN64>] (last visited Jan. 27, 2026).

7. *See id.*

8. *See infra* Part II (expanding on the impact of defining the environment as a victim).

9. *See infra* Part V (emphasizing the need for movement away from Western perspective).

10. *See infra* Part VI (discussing the challenges of domestication).

11. *See infra* Part II (analyzing key JEP decisions).

12. *See infra* Part II (showing how this study adopts a jurisprudential hermeneutic approach, reading the JEP's decisions not only as legal texts but as performative acts of world-making, akin to what anthropologists call ontological translation).

13. *See infra* Part II (examining how the orders impact shifting policy).

14. *See infra* Part V (analyzing the gap in positivist legality).

15. *See infra* Part V (explaining the translation of indigenous concepts into legal theory).

law to include nonhuman entities, while simultaneously revealing the anthropocentric architecture of international criminal law.¹⁶ In doing so, the JEP's reasoning becomes an experimental site for reimagining war crimes beyond the framework of individual intent and human victimhood.¹⁷ The tension between translation and reduction, between relational cosmologies and positivist legality, thus becomes the Article's central concern.

II. THE JEP AS A LIMINAL INSTITUTION

From its inception, the JEP was conceived as an *in-between* jurisdiction.¹⁸ Its hybridity is not limited to procedural law; it is inherent in its own nature.¹⁹ The JEP has been crafted to mediate between the rationalities of state law and those of the FARC-EP insurgency, between the imperatives of accountability and reconciliation, between the adversarial and dialogical models of justice.²⁰ Victor Turner's concept of *liminality*, a phase of transition in which social categories lose stability and new identities are negotiated, aptly describes this condition.²¹ In that sense, the JEP does not simply apply law; it performs a ritual of re-founding the moral community of the post-conflict polity by overcoming differences and bridging gaps.²²

This liminality illustrates what Colombia's most famous writer, Gabriel García Márquez, once described in *One Hundred Years of Solitude* as the condition of Macondo, a world "so recent that many things lacked names," where myth and legality, faith and record, constantly overlap.²³ Like Macondo's chronicle of repetition and revelation, the JEP's proceedings fluctuate between realism and transcendence: a judicial order that must accommodate the co-presence of multiple, and sometimes conflicting, realities within the same legal framework.²⁴ Transitional justice here is not only procedural but also narrative—it weaves a story that allows subjective worldviews to coexist with the juridically verifiable in objective (legal) terms.²⁵

This liminal character also reflects the constitutional framework of plurinationality endorsed by the 1991 Political Constitution²⁶ and later

16. See *infra* Part I (discussing the effect of recognizing *Çxhab Wala Kile* as a victim).

17. See *infra* Part I (recognizing *Çxhab Wala Kile* and its role as a victim).

18. See AMBOS, *supra* note 2, at 236.

19. See *id.*

20. See *id.* at 172–73.

21. See VICTOR TURNER, THE RITUAL PROCESS: STRUCTURE AND ANTI-STRUCTURE 93–111 (Aldine Pub. Co. 1969).

22. See AMBOS, *supra* note 2, at 45–47.

23. GARCÍA MÁRQUEZ, *supra* note 1.

24. TURNER, *supra* note 21.

25. For a discussion of magical realism as a landmark in Latin American literature, see generally MAGICAL REALISM: THEORY, HISTORY, COMMUNITY (Lois Parkinson Zamora & Wendy B. Faris eds., Duke Univ. Press 1995).

26. See CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] arts. 329–30 (Colom.).

reaffirmed by the Constitutional Court in Decisions T-129/11 and T-530/16.²⁷ The recognition of ethnic jurisdictions and indigenous authorities entails that national justice must coexist with alternative normative orders.²⁸ In practice, however, the integration of these epistemic worlds remains precarious, and abstract “pluralism” needs to materialize in concrete actions responding to real entanglements.²⁹

The JEP’s macro-cases illustrate this dialectic and hybridity. Case 05—opened in November 2018 and concerned the territorial situation in northern Cauca and the southern Valle del Cauca—investigates 2,308 victimizing acts committed between 1993 and 2016, and involves 124,785 accredited victims, making it the largest proceeding of its kind.³⁰ Environmental destruction appears in these proceedings not merely as collateral damage but as a dimension of structural harm affecting both ecosystems and the communities that depend on them.³¹ Thus, when the JEP recognized *Çxhab Wala Kile* as a victim, it placed ecological integrity alongside human suffering within the architecture of transitional justice.³² It underscored constitutional obligations to protect the environment and explained that the harm in Case 05 affected the natural environment and the territories autonomously, i.e., as victims in their own right.³³ This affirmation implies that the natural environment may be an autonomous subject of harm within an armed conflict, thereby providing a rationale for the identification of specific war crimes.³⁴ The decision indicates that anthropocentric and eco-centric perspectives in the protection of the environment should complement each other and cannot be understood as contradictory.³⁵ Humans and nature jointly participate in the construction of a community of values and interests, and both must be taken into consideration when assessing the factors that may affect the preservation of social bonds.

It is in this sense that the JEP may be seen as a kind of juridical Macondo—a space where legality, myth, and memory coexist in unstable synthesis.³⁶ Like García Márquez’s town, it is both ordinary and miraculous—a metaphor for the coexistence of rational legality and ontological multiplicity within Colombia’s post-conflict order; it is a place

27. See Corte Constitucional [C.C.] [Constitutional Court] marzo 3, 2011, J. Palacio, Sentencia T-129/11, Gaceta de la Corte Constitucional [G.C.C.] (Colom.) [hereinafter T-129/11 Decision]; C.C. septiembre 27, 2016, J. Silva, T-530/16, G.C.C. (Colom.) [hereinafter T-530/16 Decision].

28. See T-129/11 Decision, *supra* note 27; T-530/16 Decision, *supra* note 27.

29. See YURI-ALEXANDER ROMANA RIVAS, LEGAL PLURALISM, TRANSITIONAL JUSTICE, AND ETHNIC JUSTICE SYSTEMS: THE STORY OF HOW COLOMBIA IS BUILDING A TRANSITIONAL JUSTICE SYSTEM OBSERVANT OF LEGAL PLURALISM 1–24 (2022).

30. JEP-SRVR Order No. 1, Case 05, *supra* note 6.

31. *Id.* ¶¶ 63–70.

32. *Id.*

33. *Id.* ¶¶ 1056–57.

34. *Id.*

35. *Id.* ¶ 1006.

36. GARCÍA MÁRQUEZ, *supra* note 1.

where records, landscapes, and memories converge within the language of law.³⁷ The jurisdiction, much like Macondo, becomes a site where improbability is domesticated through legal form—where cosmological narratives and bureaucratic procedure coexist within a single evidentiary logic.³⁸ This analogy is not decorative but diagnostic: it encapsulates, in wider terms, the JEP’s liminal condition, suspended between the rational promise of justice and the local beliefs of Colombia’s plural worlds.

III. THE ENVIRONMENT AS VICTIM: ANTHROPOCENTRIC, ECO-CENTRIC, AND RELATIONAL LOGICS

The JEP-SRVR’s decision in Case 05 did not emerge *ex nihilo*. It built upon a longer trajectory of Colombian jurisprudence that had progressively expanded the legal personhood of nature on the basis of applicable law.³⁹ Domestic legislation Decree-Law 4633/2011, which established in its Article 3, that “for [i]ndigenous peoples, the land is a victim,” already made it clear that:

The territory, understood as a living entity and the foundation of identity and harmony, in accordance with the worldview of indigenous peoples and by virtue of the special and collective bond they have with it, suffers damage when it is violated or desecrated by internal armed conflict and its related and underlying factors.⁴⁰

Regarding jurisprudence, the most emblematic precedent is Constitutional Court Judgment T-622/16, which declared the Atrato River a subject of rights, emphasizing the “biocultural rights” of the river’s guardian communities.⁴¹ That decision introduced an interdependence between human and non-human entities grounded in what the tribunal interpreted as a

37. *Id.*; see JEP-SRVR Order No. 1, Case 05, *supra* note 6.

38. See JEP-SRVR Order No. 1, Case 05, *supra* note 6.

39. L. 4633/2011, diciembre 9, 2011, D.O. arts. 3, 45 (Colom.) (recognizing territory as a victim of armed conflict).

40. *Id.* (author’s translation). For the political and ontological consequences of this recognition in Decree-Law 4633/2011, see Daniel Ruiz-Serna, *El territorio como víctima. Ontología política y las leyes de víctimas para comunidades indígenas y negras en Colombia* [The Territory as a Victim. Political Ontology and Victim Law for Indigenous and Black Communities in Colombia], 53 REVISTA COLOMBIANA DE ANTROPOLOGÍA 85, 85–113 (2017).

41. C.C. noviembre 10, 2016, Sentencia T-622/16, G.C.C. (Colom.) [hereinafter Atrato River Case]. For the original aspects of this decision, see Luis Felipe Guzmán Jiménez, *Análisis de efectividad de la sentencia T-622/16 ¿Sentencia estructural-dialógica?* [Analysis of the Effectiveness of Judgment T-622/16 Structural-Dialogical Sentence?], 16 REVISTA IUS 213–22 (2022); María del Pilar García Pachón & Lisneider Hinestroza Cuesta, *El reconocimiento de los recursos naturales como sujetos de derechos. Análisis crítico sobre los fundamentos y efectividad de la sentencia del río Atrato* [The Recognition of Natural Resources as Subjects of Rights. Critical Analysis of the Foundations and Effectiveness of the Atrato River Ruling], in RECONOCIMIENTO DE LA NATURALEZA Y DE SUS COMPONENTES COMO SUJETOS DE DERECHOS [RECOGNITION OF NATURE AND ITS COMPONENTS AS SUBJECTS OF RIGHTS] 21–74 (María del Pilar García Pachón ed., Universidad Externado de Colombia, 2020).

principle of bio-culturality.⁴² Later, the Colombian Supreme Court of Justice reaffirmed this principle by stating that the interdependence of human beings and nature must be understood as a unity of life that requires mutual respect and protection.⁴³ At the same time, this ruling reflected the recent advances related to the “environmental turn” in IHL, through which a better protection of natural environment during armed conflict has been promoted.⁴⁴

Against this backdrop, the JEP-SRVR’s 2023 decision elaborates three overlapping legal logics: an anthropocentric logic, where the environment is protected as a human interest or as property; an eco-centric logic, where the environment has intrinsic value; and a relational logic, where harm to nature and to human communities are inseparable.⁴⁵ As the magistrates noted, its analysis emphasized that nature functions as an ecosystem in which all living beings coexist in balance, a view echoing the ethnic and spiritual conceptions of the territory found in indigenous worldviews.⁴⁶

With a strong emphasis on legal pluralist approaches,⁴⁷ the decision further cites a previous order dealing with the Nasa people’s understanding of *Uma Kiwe* (Mother Earth) as a living being whose suffering disrupts cosmic harmony and community autonomy in northern Cauca, as a precedent of this understanding.⁴⁸ Similarly, in another decision related to the Awá people, the JEP-SRVR had already affirmed that their territory—*Katsa Su*,

42. Atrato River Case, *supra* note 41, at ¶ 6.3 (the territory “is not an object of dominion but an essential element of the ecosystems and biodiversity with which they interact on a daily basis . . .”).

43. Corte Suprema de Justicia [C.S.J.] [Supreme Court], junio 18, 2020, J. Octavio Augusto Tejeiro Duque, Sentencia STC3872-2020, Gaceta Judicial [G.J.] (Colom.) [hereinafter Sentencia STC3872-2020].

44. See Helen Obregón Gieseken & Vanessa Murphy, *The Protection of the Natural Environment Under International Humanitarian Law: The ICRC’s 2020 Guidelines*, 105 INT’L REV. RED CROSS 1180, 1180–1207 (2023); C. Droege & M. L. Tougas, *The Protection of the Natural Environment on Armed Conflict—Existing Rules and Need for Further Legal Protection*, 82 NORDIC J. INT’L L. 21, 21–52 (2013); Jean-Marie Henckaerts & Dana Constantin, *Protection of the Natural Environment*, in THE OXFORD HANDBOOK OF INTERNATIONAL LAW IN ARMED CONFLICT 469, 469–91 (Andrew Clapham & Paola Gaeta eds., Oxford Univ. Press 2014); Alan Vogelfanger, *Derecho internacional humanitario y derecho internacional ambiental, una relación todavía verde* [International Humanitarian Law and International Environmental Law, a Still-Green Relationship], in LA GUERRA ANTE LA FRAGMENTACIÓN DEL DERECHO INTERNACIONAL: INTERACCIONES, INTERCAMBIOS, INTERFERENCIAS [WAR IN THE FACE OF THE FRAGMENTATION OF INTERNATIONAL LAW: INTERACTIONS, EXCHANGES, INTERFERENCES] 92, 92–107 (Emiliano J. Buis & Natalia M. Luterstein eds., Serie Académica Sempithidia, UBA 2016).

45. See JEP-SRVR Order No. 1, Case 05, *supra* note 6.

46. See *id.*; Alexandra Huneus & Pablo Rueda Saiz, *Territory as a Victim of Armed Conflict*, 15 INT’L J. TRANSITIONAL JUST. 210, 210–29 (2021).

47. See generally Yuri Alexander Romana-Rivas, *Legal Pluralism, Transitional Justice, and Ethnic Justice Systems: The Story of How Colombia Is Building a Transitional Justice System Observant of Legal Pluralism*, 2 MCGILL GLSA RSCH. SERIES, Oct. 2022 (analyzing the jurisprudence of the JEP through the lens of legal pluralism).

48. JEP-SRVR Order No. 1, Case 05, *supra* note 6, at ¶ 13.1 (citing JEP, SRVR enero 17, 2020, Raúl Sánchez, Expediente 2018340160501256E (Colom.) [hereinafter JEP-SRVR Order No. 02, Case 05], https://www.coljuristas.org/observatorio_jep/documentos/documento.php?lan=en&id=142 [https://perma.cc/MH3N-U7R9]). According to the decision, the *Uma Kiwe* (as an ancestral and sacred territory) was considered a living being that needed to be taken care of and nurtured. JEP-SRVR Order No. 02, Case 05, *supra*, at ¶ 13.5.

“Big House” in the native Awa Pit language—was to be considered a victim, as the attacks against it have fractured the relationship of the Awá with their spiritual and material environment, creating thus an “energetic imbalance.”⁴⁹ The coexistence of legal reasoning and cosmological narration within the JEP recalls the literary structure of magical realism itself: a mode in which sacred cosmovisions and the institutionalized legal system speak the same language and become interdependent.⁵⁰

These formulations trace a gradual evolution from environmental protection toward environmental victimhood. Yet, it should be argued that the very distinction between subject and object is a cultural artifact of Western naturalism, one that does not echo the idea of nature as an active force.⁵¹ When transplanted into indigenous cosmologies, the traditional law’s object-subject dichotomy falters.⁵² The JEP’s innovation thus lies less in doctrinal novelty than in the friction it creates between incompatible ontologies.⁵³

From a comparative perspective, this move aligns the JEP with global experiments in ecological jurisprudence—the Whanganui River in New Zealand, the Ganges and Yamuna Rivers in India, and Ecuador’s constitutional recognition of *Pachamama*, among other national developments worldwide.⁵⁴ But unlike these civil or constitutional recognitions, the JEP’s recognition occurs within criminal jurisdiction, where

49. JEP, SRVR noviembre 12, 2019 SRVBIT-79, ¶ 94 (Colom.) [hereinafter SRVBIT-79] (“[F]or some indigenous peoples, the experiences of war are not limited to the harm caused to people, but their consequences are also inscribed in the gaze of the beings that inhabit their territories and in the natural environment itself. The disappearance of enchantments, protective spirits, or spiritual parents describes a series of effects that transcend the human realm, that is, they affect both the rights of individuals and the network of relationships in which people, places, and non-human agencies participate. Rather, ‘when humans harm non-humans or nature, an energetic imbalance is created that leads to changes in physical life.’”). For the importance of this decision for the protection of the environment in the context of Colombia’s non-international armed conflict, see Saavedra Eslava, *Protección étnica, del medio ambiente y del territorio en la justicia transicional colombiana: comentario al Auto 079 de 2019* [Ethnic, Environmental and Territory Protection in Colombian Transitional Justice: Commentary on Auto 079 of 2019], in 1 EL DERECHO INTERNACIONAL HUMANITARIO EN LA JURISDICCIÓN ESPECIAL PARA LA PAZ DE COLOMBIA [INTERNATIONAL HUMANITARIAN LAW IN THE SPECIAL JURISDICTION FOR PEACE OF COLOMBIA] 277–332 (Emiliano J. Buis & Carlos Ramírez Gutiérrez eds., Tirant lo Blanch 2022) (describing the importance of this decision for the protection of the environment in the context of Colombia’s non-international armed conflict).

50. See GARCÍA MÁRQUEZ, *supra* note 1 (depicting a fictional universe in which a rain that lasts four years, eleven months, and two days is both a meteorological event and a moral trial); JEP-SRVR *Order No. 1*, Case 05, *supra* note 6 (describing the ecological devastation of *Çxhab Wala Kile* which is simultaneously an evidentiary fact and a metaphysical wound).

51. PHILIPPE DESCOLA, *BEYOND NATURE AND CULTURE* 64–89 (Janet Lloyd trans., University of Chicago Press 2013).

52. *Id.* at 45–51.

53. See *supra* notes 45–50 and accompanying text (describing JEP’s focus on the environment and its related problems).

54. Craig M. Kauffman & Pamela L. Martin, *When Rivers Have Rights: Case Comparisons of New Zealand, Colombia, and India*, Address at the International Studies Association Annual Conference (Apr. 4, 2018); Ruiz-Serna, *supra* note 40, at 87–88.

“victim” is a procedural and moral category linked to culpability and reparations.⁵⁵ This transplantation of ecological consciousness into penal reason is unprecedented—and problematic, as the next section explains.

IV. LEGAL TRANSPOSITION AND THE STRETCHING OF IHL

The environmental reasoning of the JEP raises a first doctrinal issue: the transposition of rules applicable to international armed conflicts into a non-international context.⁵⁶ In the case of interstate warfare, Articles 35(3) and 55 of Additional Protocol I to the Geneva Conventions prohibit methods of warfare “which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.”⁵⁷ The Rome Statute’s environmental provision—Article 8(2)(b)(iv)—only applies to international armed conflicts and requires that environmental damage be “clearly excessive in relation to the concrete and direct overall military advantage anticipated.”⁵⁸ Additional Protocol II—governing internal conflicts—contains no equivalent provisions.⁵⁹ Thus, applying this clause by analogy to a non-international conflict risks violating the principle of legality.⁶⁰

In its 2023 decision, the JEP cited these norms by analogy, together with Rules 43, 44, and 45 of the ICRC’s Customary IHL Study.⁶¹ Rule 43,

55. See *supra* note 7 and accompanying text (explaining JEP’s recognition of a victim).

56. Mete Erdem, *Enforcing Conventional Humanitarian Law for Environmental Damage During Internal Armed Conflict*, 29 GEO. INT’L ENV’T. L. REV. 435, 435–37 (2017).

57. Protocol (I) Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts arts. 35, 55 June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol I]; Eslava, *supra* note 49. For a critical approach to the current challenges of this legal regime under international humanitarian law, see LUISA GÓMEZ BETANCUR, APROXIMACIONES, REFLEXIONES Y CRÍTICAS SOBRE EL DERECHO INTERNACIONAL HUMANITARIO [APPROACHES, REFLECTIONS AND CRITICISM ON INTERNATIONAL HUMANITARIAN LAW] 555–61 (Edgar Solano González et al. eds., 2022).

58. Rome Statute of the International Criminal Court, July 17, 1998 art. 8(2)(b)(iv), 2187 U.N.T.S. 3 [hereinafter Rome Statute].

59. See Protocol (II) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflict, June 08, 1977, 1125 U.N.T.S. 609 [hereinafter Protocol II].

60. On the lack of rigor in the identification here of a war crime related to the destruction of the environment in non-international armed conflicts, see Ann Maria Gómez Mendivelso, *La Protección del Medio Ambiente por parte de la Jurisdicción Especial para la Paz en el Auto 01 de 2023* [Protection of the Environment by the Special Jurisdiction for Peace in Order 01 of 2023], in 4 ANUARIO IBEROAMERICANO SOBRE DERECHO INTERNACIONAL HUMANITARIO [IBERO-AMERICAN YEARBOOK ON INTERNATIONAL HUMANITARIAN LAW] 389, 389–99 (2023). The JEP-SRVV has faced different situations in which crimes that were not foreseen in the Rome Statute had to be identified later. See Ana Elena Abello Jiménez, *Crímenes de Guerra no Previstos en el Estatuto de Roma: los Primeros Salvamentos de Voto en la Sala de Reconocimiento de la Jurisdicción Especial para la Paz* [War Crimes Not Provided for in the Rome Statute: The First Dissenting Votes in the Recognition Chamber of the Special Jurisdiction for Peace], in 4 ANUARIO IBEROAMERICANO DE DERECHO INTERNACIONAL HUMANITARIO [IBERO-AMERICAN YEARBOOK ON INTERNATIONAL HUMANITARIAN LAW] 315, 315–59 (2023).

61. JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL

applicable to both types of conflict, provides that “[c]are shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage.”⁶² According to Rule 44, methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment, and all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the environment.⁶³ Finally, Rule 45 adds that “the use of methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the environment” is prohibited, and that the destruction of the natural environment “may not be used as a weapon.”⁶⁴ The analogical reasoning behind these customary norms reflects the gradual, or creeping, expansion of customary law into internal conflicts; while such expansion promotes coherence, it also blurs the boundary between lawmaking and adjudication.⁶⁵

The JEP’s inventive use of IHL can be read in two opposite ways. From one angle, it demonstrates the creativity of transitional justice, capable of filling normative gaps to address unprecedented harms.⁶⁶ From another, it reveals the fragility of legality in hybrid jurisdictions: if the JEP extends rules beyond their textual scope to accommodate indigenous cosmologies, it risks undermining its own claim to legal universality.⁶⁷ As indicated, the legitimacy of expanding the scope of conventional IHL to internal conflicts may be questionable.⁶⁸

As described below, this tension—between contextual justice and formal legality—is the doctrinal counterpart of the ontological confusion discussed above.⁶⁹ The court’s ambition to “decolonize” international criminal law by integrating indigenous perspectives paradoxically leads it to re-colonize those perspectives through the very language of positivist legality.⁷⁰ In other words, the JEP’s ecological turn both challenges and reproduces the epistemic boundaries of the international legal order.⁷¹

HUMANITARIAN LAW 143–61 (Cambridge Univ. Press 2012); see *supra* note 50 and accompanying text (describing JEP norms when dealing with victim status).

62. Protocol I, *supra* note 57, art. 55.

63. HENCKAERTS & DOSWALD-BECK, *supra* note 61, at 147–51.

64. See Protocol I, *supra* note 57, art. 55.

65. HENCKAERTS & DOSWALD-BECK, *supra* note 61, at 151–58.

66. See *id.* at xxiii.

67. See *id.* at 604.

68. I have explicitly addressed this problem of analogy in Emiliano J. Buis, *Los riesgos de una hermenéutica humanitaria: minas antipersonal, actores no estatales e interpretación jurídica en la Resolución SAI-AOI-010-2019* [The Risks of a Humanitarian Hermeneutics: Anti-Personnel Landmines, Non-State Actors and Legal Interpretation in Resolution SAI-AOI-010-2019], in I EL DERECHO INTERNACIONAL HUMANITARIO EN LA JURISDICCIÓN ESPECIAL PARA LA PAZ DE COLOMBIA [INTERNATIONAL HUMANITARIAN LAW IN THE SPECIAL JURISDICTION FOR PEACE OF COLOMBIA] 29–90 (Emiliano J. Buis & Camilo Ramírez Gutiérrez eds., 2022).

69. See *id.*

70. See ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* 32–37 (Cambridge Univ. Press 2004).

71. See *id.*

V. THE ONTOLOGICAL CONFUSION: SUBJECT OR OBJECT?

In light of the absence of domestic war crimes dealing with environmental destruction and the impossibility of applying specific articles of the Rome Statute to non-international armed conflicts, as indicated in the previous section, the majority of the judges have considered that, in affecting the environment, former members of the FARC-EP could be charged with the war crime of “destroying or seizing the property of an adversary” in these terms:

The environment has a very special character because, as well as being protected in its own right, it takes physical form in places and objects that are legally regulated by property law. Thus, with regard to internal conflicts, protection of the environment can also come about through crimes related to the protection of property, which does not exclude the importance of its protection in its own right, but rather underscores the multi-offensive character of such acts. Article 8(2)(e)(xii) is relevant here, as it designates as a war crime “destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.”⁷²

Through this analysis, the magistrates considered that, in the context of hostilities, the “enemy” of the armed group, against whom violence had been exerted, was the Colombian State:

It should be borne in mind that, from the day it was founded as an armed organization, the FARC-EP had the objective of attacking the [s]tate through the use of arms, thus an attack on natural resources also implies an attack on the [s]tate, as an adversary in the armed conflict.⁷³

This reasoning has generated well-grounded criticism. Among the most revealing critiques to the majority vote is the concurring opinion of Judge Belkis Florentina Izquierdo Torres, one of the five magistrates who issued separate votes.⁷⁴ As the first indigenous magistrate of the JEP, hers is not a mere supplementary argument; it embodies the epistemic tension at the heart of the JEP’s enterprise.⁷⁵ In fact, she rejects the majority’s reliance on article 8(2)(e)(xii) of the Rome Statute because, in her mind, it reproduces an

72. JEP-SRVR *Order No. 1*, Case 05, *supra* note 6, ¶ 1027 (The translation corresponds to Sara María Astrálaga Cediel, under the supervision of Professors Marco Sassòli and Julia Grignon).

73. *Id.* ¶ 1029.

74. JEP-SRVR, *Order No. 1*, Case 05, Concurring Opinion of judge B.F. Izquierdo, ¶ 42 (Colom.) [hereinafter *Izquierdo Order No. 1 Opinion*], https://relatoria.jep.gov.co/documentos/providencias/1/4/AV_Dra-Belkis-Izquierdo_Auto_SRVR-01_01-febrero-2023.pdf [<https://perma.cc/M5BY-TF7W>].

75. On the unique role of indigenous judges in Colombia as intercultural translators, see Nina Bries Silva, *Indigenous Judges at the Special Jurisdiction for Peace: Reimagining the Role of Transitional Justice Judges*, 30 INT’L J. HUM. RTS. 234, 234–53 (2025).

anthropocentric conception of territory as the object of domination and “does not appear to adequately respond to the visions, experiences, and feeling of the ethnic peoples that are present in the prioritized municipalities.”⁷⁶ When they decided to apply article 8(2)(e)(xii)—pointing to the language of “property,” instead of ecology—they converted a cosmological question into a technical one; they forced a translation between incompatible categories.⁷⁷ Izquierdo’s position went against this reasoning, suggesting that true decolonization of the law demanded a shift not merely of interpretation but of ontology.⁷⁸

Izquierdo’s concurring opinion shows that the mention of “property of the enemy” becomes highly problematic when assessing crimes committed against the natural environment—as indigenous cosmovision conceived—in the sense that it is an argument which can compromise (and even undermine) their ancestral claim to sovereignty of the lands.⁷⁹ For the Nasa and Awá, the territory is not *property* but *kin*.⁸⁰ Reducing the environment to the control of the state conceals the political resistance of autochthonous people.⁸¹

In the absence of a more specific war crime, Izquierdo therefore proposed an alternative analogy when trying to find a relevant provision in the Rome Statute—applicable to non-international armed conflicts as well—that could eventually respond to the damage against nature.⁸² She resorted then to article 8(2)(e)(iv), focused on cultural property in the following terms: “Intentionally directing attacks against buildings dedicated to religion, education . . . art[], science[] or [charitable purposes], historic monuments, hospitals, and other places where the sick and wounded are [collected], provided they are not military objectives.”⁸³

76. Izquierdo *Order No. 1* Opinion, *supra* note 74 (original quote in Spanish).

77. See JEP-SRVR *Order No. 1*, Case 05, *supra* note 6, ¶¶ 1028–29.

78. For a deeper study of these challenges in the asymmetrical context of Colombia’s reality, see Kristina Lyons, “Nature” and Territories as Victims: Decolonizing Colombia’s Transitional Justice Process, 125 AM. ANTHROPOLOGIST 63, 63–76 (2023).

79. Izquierdo *Order No. 1* Opinion, *supra* note 74. Judge Óscar Parra Vera, in his own opinion indicates that speaking of state property does not correspond to local perspectives; the provision is insufficient and it can “hamper recognition of the environment as a human right of the community, or even as a subject of rights with its own legal personality.” JEP-SRVR. *Order No. 1*, Case 05, Concurring Opinion of judge O. Parra Vera, ¶ 19 (Colom.) [hereinafter Parra Vera *Order No. 1* Opinion], https://relatoria.jep.gov.co/documentos/providencias/1/4/AV_Dr-Oscar-Parra_Auto_SRVR-01_01-febre-ro-2023.pdf [<https://perma.cc/TC96-6RCD>]. He considered that it was also possible to use Article 8(2)(e)(v)—also enshrined in customary Rules 40 and 52, as well as Article 4(2)(g) of Additional Protocol II—related to “[p]illaging a town or place, even when taken by assault.” *Id.* (internal quotations omitted).

80. Piergiuseppe Parisi, *Beyond Compliance Symposium: Security Beyond the Physical – Addressing the Nasa Indigenous People’s Spiritual Harm in Armed Conflict*, ARMED GRPS. & INT’L L. (Oct. 29, 2024), <https://www.armedgroups-internationallaw.org/2024/10/29/beyond-compliance-symposium-security-beyond-the-physical-addressing-the-nasa-indigenous-peoples-spiritual-harm-in-armed-conflict/> [<https://perma.cc/P2ZG-M5Y2>] (discussing indigenous peoples’ harm due to harm to the land).

81. Izquierdo *Order No. 1* Opinion, *supra* note 74, ¶ 50.

82. *Id.* at ¶¶ 63–70.

83. *Id.* at ¶ 71 (citing Rome Statute, *supra* note 58, art. 8(2)(e)(iv)) (internal quotations omitted).

The provision clearly prohibits attacks against buildings dedicated to religion, education, art, or science.⁸⁴ Because the environment is a natural place of worship, it should be treated as part of cultural and spiritual heritage.⁸⁵ Izquierdo's opinion exposed the limits of the positivist imagination: she argued that the environment must be approached as a locus of spirituality.⁸⁶ According to her, for the Nasa people, territory is a sacred space of life, so any aggression against it undermines the community's physical and metaphysical integrity.⁸⁷

Izquierdo's reasoning resonates with broader tendencies in international criminal law to recognize spiritual harm.⁸⁸ The ICC's *Al-Mahdi* judgment (2016), for example, had already treated the destruction of Timbuktu's shrines as a war crime against cultural heritage, recognizing that such acts inflict emotional and moral injury upon communities.⁸⁹ Yet Izquierdo moved beyond the anthropological notion of "cultural property": her argument displaced the object altogether, because the harm was not merely symbolic—it struck at the living relationship between humans and their environment. This view is unique because it portrays indigenous philosophies that locate personhood in relationality rather than individuality.⁹⁰ The territory is not an external resource but a member of the moral community.⁹¹ So, by invoking article 8(2)(e)(iv) of the Rome Statute, Izquierdo would implicitly reframe the environment as a temple without walls—a site of worship, knowledge, and transmission.⁹² She thus introduced into transitional justice a novel concept related to ecological sacrality, implicitly demanding that reparation account for spiritual rupture as much as material loss.⁹³

The larger implications of her argument are twofold. First, by overcoming well-rooted dichotomies, it challenged the Cartesian divide that underpins international criminal law—the separation of body and soul,

84. *Id.*

85. *Id.* This interpretation is in accordance with the content of Article 62 of Decree-Law 4633/2011: "From the date of entry into force of this decree, sacred sites and places considered by indigenous peoples as sacred or indispensable for the exercise of individual and collective spirituality shall be understood as cultural assets and/or places of worship referred to in Article 16 of Additional Protocol II to the Geneva Conventions and the Hague Convention of May 14, 1954." L. 4633/2011, diciembre 9, 2011, D.O. (Colom.).

86. See Izquierdo *Order No. 1* Opinion, *supra* note 74, ¶ 46.

87. See *id.* ¶¶ 63–70.

88. See Parisi, *supra* note 80 (discussing spiritual harm in JEP proceedings related to the Nasa cosmovision).

89. Prosecutor v. Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15-171, Judgment and Sentence, ¶¶ 79–80 (Sep. 27, 2016) ("Thus, the Chamber considers that the fact that the targeted buildings were not only religious buildings but had also a symbolic and emotional value for the inhabitants of Timbuktu is relevant in assessing the gravity of the crime committed.")

90. See generally EDUARDO KOHN, *HOW FORESTS THINK: TOWARD AN ANTHROPOLOGY BEYOND THE HUMAN* (2013) (describing the relationship between an indigenous group and the Amazon Rainforest where they live).

91. See Izquierdo *Order No. 1* Opinion, *supra* note 74, ¶ 21.

92. See *id.* ¶¶ 83–84.

93. *Id.* ¶¶ 40, 94.

human and nature, property and spirit.⁹⁴ Second, it offered a bridge between transitional justice and ecological jurisprudence, suggesting that reconciliation with the Earth is inseparable from settlement among humans.⁹⁵ Izquierdo's opinion cannot be underestimated in these achievements: it marked the emergence of a jurisprudence of the sacred within a secular institution, providing the administration of justice with local experiences, practices, and ideologies.⁹⁶

But beyond those conceptual shifts, the acknowledgment of nature as a "victim" has confronted the magistrates of the JEP with an ontological dilemma.⁹⁷ In criminal law, the victim is a *person*—a bearer of rights who suffers harm caused by a perpetrator.⁹⁸ If the victim is *Çxhab Wala Kile* itself, then how is agency, harm, or reparation to be conceptualized? The JEP's solution was, in Izquierdo's words, to translate the indigenous cosmology into the familiar language of legal personhood.⁹⁹ Yet, as Bruno Latour has argued, modern law has never ceased to create hybrids while pretending to purify.¹⁰⁰ By personifying nature, the Judicial Panel has performed a juridical translation: it domesticated the foreign ontology within a humanist frame.¹⁰¹

This confusion—between recognizing nature as subject and treating it as object of legal protection—reveals a deeper structure of epistemic dependency.¹⁰² As noted by de la Cadena in her ethnography of Andean earth beings, the encounter between state law and indigenous cosmology is always a negotiation between worlds that do not share the same assumptions about what exists.¹⁰³ When invoking the protection of indigenous victims, the JEP inhabits a borderland of worlds: it cannot speak the language of *Uma Kiwe* without first converting it into juridical grammar, and transposing those notions to Western categories deprives them of their particular meanings and understandings.¹⁰⁴

94. DESCOLA, *supra* note 51, at 125–32.

95. See Parisi, *supra* note 80.

96. Izquierdo *Order No. 1* Opinion, *supra* note 74, ¶ 19.

97. See Felipe Cadena García, Beatriz Eugenia Suárez López & Gloria Patricia Lopera Mesa, *Protección del Territorio como Víctima del Conflicto Armado en el Marco de la Justicia Transicional. Un Análisis de los Casos 002 y 005 de la Jurisdicción Especial para la Paz* [Protection of Territory as a Victim of the Armed Conflict in the Framework of Transitional Justice. An Analysis of Cases 002 and 005 of the Special Jurisdiction for Peace], 62 REVISTA DERECHO DEL ESTADO 201, 201–27 (2025) <https://revistas.uexternado.edu.co/index.php/derest/article/view/10358/18298> [<https://perma.cc/XY4P-5AYR>].

98. See CÓDIGO DE PROCEDIMIENTO PENAL [C.P.P.] [CRIMINAL PROCEDURE CODE] art. 132 (Colom.).

99. See *supra* note 40 and accompanying text (treating territory as a legal victim).

100. BRUNO LATOUR, WE HAVE NEVER BEEN MODERN 50–51 (Catherine Porter trans., Harv. Univ. Press 1993).

101. *Id.*

102. See MARISOL DE LA CADENA, EARTH BEINGS: ECOLOGIES OF PRACTICE ACROSS ANDEAN WORLDS 33–34 (Duke Univ. Press 2015).

103. *Id.* at 91–94, 273–76.

104. *Id.* This borderland recalls García Márquez's vision of Colombia as a country where ghosts coexist with the living, and where the past continually reappears demanding acknowledgment. See

This paradox, reminiscent of García Márquez's dialectics of wonder and disenchantment, illustrates how the JEP's recognition of nature as a victim both expands and constrains the moral horizon of law: it listens to the voices of the oppressed without being able to fully incorporate them, revealing therefore its structural limits as an instrument intended to achieve peace and justice.¹⁰⁵

Opening the floor to these conflicting expectations, of course, requires an original theoretical framework that can serve as an efficient means of channeling these anxieties related to new forms of subjectivity.¹⁰⁶ Even if the need for a new framework was only hinted by Izquierdo in her opinion, without further development, a later decision by the JEP-SRVR suggested an alternative approach that could better explain the coexistence of Western-centered criminal law and local perceptions.¹⁰⁷ In *Order No. 03*, decided on July 5, 2023 (macro-case 02), former FARC-EP members were deemed responsible for the damage caused to nature and the territory by oil spills resulting from the blowing up of oil pipelines and criminal mining.¹⁰⁸ As in Izquierdo's previous vote, the actions were legally classified here as the war crime of "directing attacks against buildings dedicated to religion, education, art, science or charitable purposes", quoting Article 8(2)(e)(iv) of the Rome Statute.¹⁰⁹ But additionally, the magistrates decided to replace "environment"—as the object of protection—with the new concept of *nature-territory*, in a renewed attempt to translate indigenous understandings of land into the language of transitional justice.¹¹⁰ And, more importantly, the JEP-SRVR has explicitly stated here that the ways in which ethnic peoples and peasant communities relate to their ancestral territories required the adoption of a new "relational ontological approach."¹¹¹ In spite of this interesting statement, however, it did not explain the scope or practical implementation of such approach.¹¹²

GARCÍA MÁRQUEZ, *supra* note 1. Magical realism thus becomes an interpretive framework for this ontological coexistence—a realism capacious enough to admit spirits, rivers, and territories as living witnesses. *See id.*

105. *See* GARCÍA MÁRQUEZ, *supra* note 1 (discussing his treatment of magical realism, ghosts, and overlapping worlds); DE LA CADENA, *supra* note 102 (noting the theory of translating indigenous cosmologies into law).

106. *See* DE LA CADENA, *supra* note 102.

107. JEP, SRVR julio 5, 2023, *Order No. 03*, Case 02, ¶ 446 (Colom.) [hereinafter JEP-SRVR, *Order No. 03*, Case 02].

108. *Id.*

109. Rome Statute, *supra* note 58, art. (8)(2)(e)(iv).

110. Cadena García, Suárez López & Lopera Mesa, *supra* note 97, at 201–27.

111. JEP-SRVR, *Order No. 03*, Case 02, *supra* note 107 ("Case 02's approach to understanding the diverse views and experiences of ethnic peoples, populations, and communities is that of the relational ontological approach, which considers that there is a relationship with and within the territory, where the natural world does not reflect a relationship of domination, but rather reveals itself as a social, inseparable, and complementary relationship 'to the extent that the entities that populate the territory manifest themselves as alive.'").

112. *Id.*

So, how can this new perspective be operationalized? The substantive deadlock Judge Izquierdo identified—between the legal grammar of property and the cosmology of kinship—illustrates a broader epistemic impasse within modern law: its incapacity to recognize agency beyond the human subject.¹¹³ To understand how this limitation might be overcome, it is useful to turn to contemporary philosophical debates that have similarly challenged the human/nonhuman divide.¹¹⁴ The framework of new materialisms provides precisely such a language, enabling us to theorize the JEP’s innovation as part of a wider shift toward distributed agency and relational ontology.¹¹⁵

VI. REVISITING ONTOLOGIES: NEW MATERIALISMS, DISTRIBUTED AGENCY, AND THE REIMAGINATION OF WAR CRIMES

The conceptual difficulty the JEP encountered—the impossibility of fully translating indigenous cosmologies into legal language—finds a resonance in contemporary philosophy, where new materialisms also seek to dismantle the human/non-human divide.¹¹⁶ Indeed, the JEP’s recognition of *Çxhab Wala Kile* as a victim implicitly enacts what new materialist theorists have been describing as a redistribution of agency among human and non-human actors.¹¹⁷ Rather than an abstract philosophical coincidence, this alignment invites a material-ontological reading of war crimes themselves—as events produced through heterogeneous assemblages of humans, landscapes, and infrastructures, capable of affecting the interests of similarly heterogeneous stakeholders.¹¹⁸

New materialisms represent a diverse set of philosophical approaches that challenge traditional notions of matter and subjectivity.¹¹⁹ A central concept in new materialisms is that of “agency,” which refers to the capacity

113. See *id.*

114. See *id.*

115. See generally DIANA COOLE & SAMANTHA FROST, *NEW MATERIALISMS: ONTOLOGY, AGENCY, AND POLITICS* (Duke Univ. Press 2010) (explaining the shift towards distributed agency and relational ontology).

116. See JEP-SRVR, *Order No. 03*, Case 02, *supra* note 107.

117. See JEP-SRVR *Order No. 1*, Case 05, *supra* note 6.

118. On the methodological challenges related to the legal appropriation of these entanglements, see Daniel Ruiz-Serna, *Diplomacia, Ecologías Relacionales y Subjetividades Distintas a la Humana: Los Desafíos de Asir los Daños del Conflicto en Territorios de los Pueblos Indígenas y Afrocolombianos* [*Diplomacy, Relational Ecologies and Subjectivities Other than Human: The Challenges of Grasping the Damage of Conflict in the Territories of Indigenous and Afro-Colombian Peoples*], in CONFLICTO ARMADO, MEDIO AMBIENTE Y TERRITORIOS: REFLEXIONES SOBRE EL ENFOQUE TERRITORIAL Y AMBIENTAL EN LA JURISDICCIÓN ESPECIAL PARA LA PAZ [ARMED CONFLICT, ENVIRONMENT AND TERRITORIES: REFLECTIONS ON THE TERRITORIAL AND ENVIRONMENTAL APPROACH IN THE SPECIAL JURISDICTION FOR PEACE] 86–132 (JEP 2022); Daniel Ruiz-Serna, *Transitional Justice Beyond the Human: Indigenous Cosmopolitics and the Realm of Law in Colombia*, 19 *CULTURAL POL.* 57, 57–76 (2023).

119. COOLE & FROST, *supra* note 115.

of non-human entities to act and produce differences in the world.¹²⁰ New materialists argue that agency is not unique to humans, but is distributed across all material beings, including of course the natural environment.¹²¹ This distributed agency has been identified as “material vitality,” considering that even inanimate objects have the capacity to affect and be affected by others.¹²² Tangible things are not simply passive tools that follow human commands, but have the capacity to actively shape social actions. In this ontology, matter is understood as an active participant in social and ecological processes rather than a passive substrate.¹²³

Another key concept in new materialisms is that of “entanglement,” which refers to the interconnections and interdependencies between all material beings.¹²⁴ New materialists argue that nothing exists in isolation; instead, everything is intertwined with other beings in complex networks of relationships.¹²⁵ Despite the criticisms that can be directed at this questioning of traditional subjectivity,¹²⁶ the potential offered by these perspectives allows us to redefine agencies and, therefore, to decentrate the anthropocentrism which has been long entrenched in the humanities and social sciences.¹²⁷

Within the philosophical and sociological perspective of these new materialisms, the so-called “Actor-Network-Theory” offers an even more specific framework for understanding these relationships by proposing that actors are not only human subjects, but that objects and technologies also form a kind of “network of actors” that generate effects in the social and material world.¹²⁸ Within the framework of this theory, objects are not simply “out there,” but are actively involved in the construction of social reality.¹²⁹

The interpretive framework of new materialisms, then, generates a novel sociological approach that emphasizes the interconnections and relationships between human and non-human actors in a community network that gives meaning to the collective phenomenon.¹³⁰ With these projections, new materialisms call into question the traditional Roman legal distinction

120. *Id.*

121. *Id.*

122. See JANE BENNETT, *VIBRANT MATTER: A POLITICAL ECOLOGY OF THINGS* 17 (2010).

123. See KAREN BARAD, *MEETING THE UNIVERSE HALFWAY: QUANTUM PHYSICS AND THE ENTANGLEMENT OF MATTER AND MEANING* 3 (2007).

124. See COOLE & FROST, *supra* note 115.

125. See *id.*

126. See Paul Rekret, *A Critique of New Materialism: Ethics and Ontology*, 9 *SUBJECTIVITY* 225, 225–45 (2016); Charles Devellennes & Benoit Dillet, *Questioning New Materialisms: An Introduction*, 35 *THEORY, CULTURE & SOCIETY* 5, 5–20 (2018).

127. See Anna Grear, *Deconstructing Anthropos: A Critical Legal Reflection on ‘Anthropocentric’ Law and Anthropocene ‘Humanity’*, 26 *L. & CRITIQUE*, 225, 225–49 (2015).

128. See LATOUR, *supra* note 100.

129. *Id.* at 93.

130. John Law, *Notes on the Theory of the Actor-Network: Ordering, Strategy, and Heterogeneity*, 5 *SYS. PRAC.* 379, 379–93 (1992).

between subjects—centers of imputation of norms—and passive objects upon which rights and obligations simply materialized.¹³¹

From this perspective, the natural environment would not simply be a human-centered location or an object at our disposal, but rather a material force that is intertwined with the world and co-constitutes reality.¹³² These theories become an interesting framework to translate the indigenous gaze of their living earth to the normative level. They allow for a methodological transformation of war crimes: moving from a logic of individual imputation based on isolable acts to a systemic logic that considers how decisions emerge from a complex network of multiple human and non-human agencies that may affect not only human victims, but also all social relations that exist between them and their surroundings.¹³³

If we adopt this relational ontology, war crimes cease to be isolated acts of human intent and become distributed phenomena in which soils, rivers, weapons, and extractive infrastructures participate.¹³⁴ The burning of a forest or the contamination of a river are not simply a *means* employed by combatants but an *actant* that reconfigures the field of war itself.¹³⁵ In this sense, environmental destruction operates as both agent and victim, collapsing the dualism that international criminal law presupposes.¹³⁶ The JEP's struggle to classify such harms under Article 8(2)(e) of the Rome Statute, as indicated, mirrors the legal system's difficulty in accommodating material agency within doctrines designed for anthropocentric culpability and victimhood.¹³⁷

Seen through this prism, new materialisms provide not only a vocabulary for distributed agency but also an ethical opening toward what decolonial thinkers would call an *ecology of justice*.¹³⁸ By tracing how matter itself participates in harm, these theories converge with indigenous understandings of territory as living being and with Izquierdo's vision of sacred relationality.¹³⁹ They thus prepare the terrain for a decolonial

131. See generally *id.* at 380–84 (describing Actor-Network-Theory and theory of society as a heterogeneous network).

132. *Id.* at 381–85.

133. See generally *id.* at 381–85 (summarizing the theory that the effects of heterogeneous networks are felt beyond human impact).

134. See generally *id.* at 381–83 (describing the social effects of nonhuman materials in agency).

135. See generally *id.* at 381–85 (summarizing the Actor-Network-Theory and its application to nonhuman actants).

136. See generally *id.* at 383–85 (rejecting a categorical divide between humans and objects).

137. See *supra* Part I (discussing the JEP as a liminal institution).

138. See generally BRIAN BAXTER, *A THEORY OF ECOLOGICAL JUSTICE* (2004) (arguing for ecological justice); DAVID SCHLOSBERG, *DEFINING ENVIRONMENTAL JUSTICE: THEORIES, MOVEMENTS, AND NATURE* (2007) (explaining theories and movements of ecological justice).

139. See generally Law, *supra* note 130, at 381–83 (describing the role of non-human participants in heterogeneous participants).

jurisprudence capable of hearing the voices of rivers and soils—not as metaphors but as co-authors of the legal event.¹⁴⁰

These ontological reconfigurations inevitably reverberate at the doctrinal level of international criminal law. If agency is distributed among human and nonhuman actors, the architecture of war crimes under the Rome Statute—premised on discrete *actus reus* and *mens rea* elements attributable to individual subjects—comes under strain.¹⁴¹ Environmental destruction or extractive violence cannot easily be traced to a single volitional act or intent; rather, they unfold through assemblages of command structures, technologies, and material forces.¹⁴² Besides, the JEP’s ecological reasoning exposes a structural gap within positivist legality: a regime designed to identify human perpetrators and human victims now faces harms whose causality is diffuse and whose victims include non-human entities.¹⁴³ In these transitional processes, to preserve its legitimacy international criminal law requires new foundations compatible with domestic expectations, including non-Western standards and values.¹⁴⁴ To “re-imagine” war crimes, therefore, is to confront the limits of imputability itself—an invitation to expand responsibility beyond anthropocentric volition toward forms of distributed or relational accountability adequate to the ecological realities of contemporary conflict.¹⁴⁵ At the same time, the identification of victims of war crimes should include all animate and inanimate agents that can suffer the consequences of harm and injury caused in the context of an armed conflict.¹⁴⁶

VII. TOWARD A DECOLONIAL ECOLOGY OF JUSTICE: FROM MATERIAL AGENCY TO RELATIONAL LEGALITY

The interpretive horizon opened by new materialisms invites a juridical transformation: if agency, responsibility and victimhood are distributed across networks of human and non-human actants, then justice must also become ecological.¹⁴⁷ A decolonial ecology of justice extends this premise

140. See generally Law, *supra* note 130, at 381–86 (exploring the extension of justice to ecological systems).

141. See Rome Statute, *supra* note 58, art. 8.

142. See *Pac. Coast Fed’n of Fishermen’s Ass’ns Inc. v. Nickels*, 150 F.4th 1260, 1265 (9th Cir. 2025) (defining “nonpoint source pollution” as pollution that is not traceable to any single discrete source).

143. See Jessie Hohmann, *Diffuse Subjects and Dispersed Power: New Materialist Insights and Cautionary Lessons for International Law*, 34 LEIDEN J. INT’L L. 585, 596 (2021).

144. Shantau Singh, *A TWAIL Critique of International Criminal Justice*, BERKELEY J. INT’L L. (Apr. 26, 2022), <https://www.berkeleyjournalofinternationalallaw.com/post/a-twail-critique-of-international-criminal-justice> [<https://perma.cc/N9BP-BNHS>].

145. See *supra* text accompanying notes 32–34 (providing examples of non-human entities as victims).

146. See, e.g., *supra* text accompanying notes 32–34 (discussing the recognition of non-human entities as victims and offering an example).

147. See Hohmann, *supra* note 143, at 603.

by seeking to dismantle the epistemic hierarchies through which modern law has monopolized the power to define who—or what—may suffer harm.¹⁴⁸ In this sense, it complements rather than replaces the analytic of distributed agency developed so far in this Article: the material interdependence described by Bennett, Barad, and Latour finds its political counterpart in the pluriversal ethics advanced by de Sousa Santos and Escobar.¹⁴⁹ Both perspectives converge in challenging the assumption that legality must flow from the human toward the world; instead, they propose that the world itself participates in the production of the legal, helping to define its formal institutions and technical concepts.¹⁵⁰ To convey this change in perception, we should be prepared as jurists to conflate different views—instead of “translating” one into the other—and to denounce the traditional Western bias of international criminal law.¹⁵¹

Within this frame, some of the reflections manifested in the 2020 ICRC *Guidelines on the Protection of the Natural Environment in Armed Conflict* become significant. Rule 12.B explicitly links the natural and the cultural, pointing to the need of assimilating spiritual intangible goods and concrete artistic or historical sites:

For [s]tates party to Additional Protocols I and II, as well as for non-state actors that are party to non-international armed conflicts to which Additional Protocol II applies, directing acts of hostility against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, including when these are part of the natural environment, or using in support of the military effort, is prohibited.¹⁵²

By embedding religious beliefs within environmental protection, the guidelines implicitly endorse the same relational ontology that the JEP sought to articulate in *Order No. 01* and *Order No. 03*. Yet, the Colombian experience goes further: it translates this environmental turn from the humanitarian plane of conduct-of-hostilities norms into the penal logic of

148. See *id.* at 600.

149. Compare BENNETT, *supra* note 122, at 1–2 (introducing the idea that nonhuman materials play an active part in public life), with ARTURO ESCOBAR, *PLURIVERSAL POLITICS: THE REAL AND THE POSSIBLE* 2–3 (2020) (rejecting the worldview that divides the world into subjects and objects).

150. *Id.*

151. See Paulo Bacca, *Indigenizing International Law and Decolonizing the Anthropocene: Genocide by Ecological Means and Indigenous Nationhood in Contemporary Colombia*, 33 *MAGUARÉ* 139, 139–69, 165 (“[T]he indigenization of international law does not imply the pretention to talk on behalf of indigenous peoples, but the possibility of producing a new perspective on international law, allowing us to be seduced by indigenous jurisprudences.”).

152. INT’L COMM. OF THE RED CROSS, *GUIDELINES ON THE PROTECTION OF THE NATURAL ENVIRONMENT IN ARMED CONFLICT* 69 (2020). In a similar vein, Principle 4 of the 2022 Draft Principles on the Protection of the Environment in Relation to Armed Conflicts mentions the possibility of designating protected areas of “environmental importance” which could include those of “cultural importance.” These Drafts Principles, as adopted by the United Nations General Assembly, are available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/8_7_2022.pdf [<https://perma.cc/GU3Q-Z3RJ>].

international criminal law and war crimes.¹⁵³ In doing so, the apparent contradictions of the JEP's environmental reasoning reflect the coexistence—familiar in García Márquez's fiction—of rational law and enchanted reality: a frontier where legal universalism and ontological pluralism necessarily intersect.¹⁵⁴ To understand this frontier, it is useful to recall what Arturo Escobar calls the “*pluriverse*,” “a world where many worlds fit.”¹⁵⁵ The JEP's valuable attempt to combine Western legal categories with indigenous cosmologies is a practical enactment of this idea, albeit one constantly threatened by asymmetry and practical mismatches.¹⁵⁶

If legal forms bind heterogeneous practices into a recognizable order, in the work of the JEP-SRVR, this attachment works both ways: it pretends to domesticate indigenous ontologies while unsettling the positivist form itself.¹⁵⁷ The recognition of *Çxhab Wala Kile* as a victim has forced the Judicial Panel to invent new procedural devices—such as collective victims' representation and symbolic reparations—that stretch the meaning of harm beyond anthropocentric metrics.¹⁵⁸

Yet this inventive reaction remains trapped within the idiom of human rights and victimhood. The relational worldview of the Nasa or Awá peoples does not distinguish between human and environmental suffering; both are expressions of imbalance.¹⁵⁹ Translating this cosmology into the procedural notion of *victim* necessarily entails an epistemic reduction: nature is acknowledged only insofar as it can be personified.¹⁶⁰ The peril is evident: in this regard, the decolonial gesture risks re-colonization through the grammar of personhood.¹⁶¹

A decolonial ecology of justice would move beyond personification toward relational legality: a mode of law attuned to interdependence rather

153. *See id.*

154. Bacca, *supra* note 151, at 162–65.

155. *See* ESCOBAR, *supra* note 149, at 15–16; Arturo Escobar, *Más allá del desarrollo: postdesarrollo y transiciones hacia el pluriverso* [*Beyond Development: Post-Development and Transitions Towards the Pluriverse*], 21 REVISTA DE ANTROPOLOGÍA SOCIAL 23, 25 (2012); Amaya Querejazu, *Encountering the Pluriverse: Looking for Alternatives in Other Worlds*, 52 REVISTA BRASILEIRA DE POLÍTICA INTERNACIONAL 1, 9–13 (2016); Janey Conway & Jakeet Singh, *Radical Democracy in Global Perspective: Notes from the Pluriverse*, 32 THIRD WORLD Q. 689, 701 (2011) (“Notions of the pluriverse imply multiple ontologies, multiple worlds to be known—not simply multiple perspectives on one world. Universalist discourses and globalist projects are grounded in a unitary ontology and imperialist epistemologies which assume that the world is one, that it is knowable on a global scale within single modes of thought, and is thus manageable and governable in those terms.”).

156. *See* Angela Marcela Olarte Delgado, *Attempts in Strengthening Indigenous Justice Systems in Colombia Through Transitional Justice*, 14 INT'L J. FOR CRIME, JUST. & SOC. DEMOCRACY 83, 84–87 (2025), <https://doi.org/10.5204/ijcjsd.3905> [<https://perma.cc/T8C2-EUY8>].

157. *See id.*

158. JEP-SRVR Order No. 1, Case 05, *supra* note 6, ¶¶ 1042–48 (on collective reparations).

159. *See* Nina Bries Silva, *Territory as Victim: Rethinking the Right to Reparation Through Awa Indigenous Territories*, 119 AJIL UNBOUND 142, 142–43 (2025).

160. *See id.*

161. *See id.*

than autonomy.¹⁶² Boaventura de Sousa Santos calls this an “ecology of knowledges,” where modern law becomes one knowledge among others, not the measure of all; this means fighting against its tendency to hierarchize and domesticate subaltern rationalities.¹⁶³ Such legality would not ask whether nature is a legal subject but how multiple ontologies can coexist within the same normative field.¹⁶⁴

Practically, implementing this new paradigm requires acknowledging “territory” as both a spatial and spiritual entity.¹⁶⁵ Reparations must, therefore, include ecological restoration and ritual re-harmonization, not merely compensation.¹⁶⁶ In this sense, if moving forward in this endeavor, the JEP could serve as a prototype for what Latour envisioned as a “*Parliament of Things*”—a forum where nonhumans are represented politically and where politics becomes a multi-level and polyphonic forum.¹⁶⁷ Whether transitional justice can sustain such plural representation remains uncertain, but the attempt itself marks a jurisprudential innovation: the slow emergence of a legal forum in which rivers, soils, and spirits share the docket with human perpetrators and sufferers.¹⁶⁸ Unlike the logic of personification—which extends legal subjectivity to nature by analogy—relational legality acknowledges the co-constitutive entanglements that make harm and reparation inseparable across species and material forms.

VIII. MACONDO IN COURT: SOME FINAL REMARKS ON MAGICAL REALISM AND DECOLONIAL ONTOLOGIES

The JEP’s engagement with environmental harm reveals a paradoxical dynamic: it both expands and limits the horizons of international law.¹⁶⁹ By recognizing nature as a victim, the rulings of the Judicial Panel for the Acknowledgment of Truth, Responsibility and Determination of Facts and Conduct have extended moral and legal concern beyond the human.¹⁷⁰ Yet to operationalize this recognition, the magistrates must translate relational cosmologies into the anthropocentric idiom of criminal responsibility.¹⁷¹

162. BOAVENTURA DE SOUSA SANTOS, EPISTEMOLOGIES OF THE SOUTH: JUSTICE AGAINST EPISTEMICIDE 188–211 (2014).

163. *Id.*

164. *Id.*

165. See Daniel Bonilla Maldonado, *Legal Pluralism and Cultural Difference: The Colombian Constitutional Court and the Indigenous Jurisdiction*, 10 IND. J. GLOB. LEGAL STUD. 241, 247–49 (2003).

166. On the problems arising from “reparations” in the case of the damage to indigenous territory, see Bries Silva, *supra* note 159, at 140–44.

167. LATOUR, *supra* note 100, at 142–45.

168. See *id.*

169. See Delgado, *supra* note 156, at 83–84.

170. See Bries Silva, *supra* note 159, at 140–44.

171. See AMBOS, *supra* note 2, at 45–47.

However, in practical terms, the inclusion of these perspectives results in assimilation and, as a result, in their fading.¹⁷²

This paradox is not unique to Colombia. It mirrors a global moment in which law grapples with the Anthropocene and the epistemic challenge of nonhuman agency. In this sense, the JEP's experiment resonates with the philosophical intuitions of new materialisms, which conceive matter as active and relational rather than inert.¹⁷³ Following Bennett's notion of "vibrant matter" or Barad's "intra-actions," the JEP-SRVR's reasoning can be read as a juridical dramatization of distributed agency: a situation in which rivers, forests, and soils are seen not as mere scenery for human conflict, but as participants in the event of war itself.¹⁷⁴

Seen through this lens, the JEP's orders I discussed in the paper stand as a microcosm of the struggle to reconcile modern legality with the animated material world that sustains it. Its hearings and orders function like the narrative spaces of García Márquez's *Macondo*—arenas where archives, testimonies, and spirits converge in a single, unstable realism.¹⁷⁵ The identification of *Çxhab Wala Kile* as a victim reproduces the gesture of magical realism itself: transforming the unexpected into part of the everyday order of things.

At a doctrinal level, these ontological and material shifts unsettle the foundations of the positivist framework of war crimes.¹⁷⁶ Classical international criminal law presupposes that crimes are discrete, humanly attributable acts that violate prohibitive norms against identified victims within a closed legal system.¹⁷⁷ Yet the JEP's reasoning shows that the destruction of the environment—when read through the parameters of new materialisms and indigenous cosmologies—cannot be reduced to acts of human volition or distress alone.¹⁷⁸ Targeting nature is always a relational event involving multiple human and non-human agencies, infrastructures, and temporalities.¹⁷⁹ To criminalize such phenomena within the language of positivism demands an expansion of culpability beyond the anthropocentric subject: responsibility must account for entanglements of command, extraction, and ecological consequence.¹⁸⁰ Paying attention to vernacular ways of seeing does not abolish legality; it redefines it, inviting an evolution from the individualistic paradigm of the military tribunals of Nuremberg or Tokyo toward a networked conception of accountability and victimhood

172. *Id.*

173. Bennett, *supra* note 122.

174. Bennett, *supra* note 122, at 3–9.

175. GARCÍA MÁRQUEZ, *supra* note 1.

176. See ANGHIE, *supra* note 70.

177. AMBOS, *supra* note 2.

178. Bennett, *supra* note 122, at 3–9.

179. See *id.*

180. See ANGHIE, *supra* note 70.

adequate to the Anthropocene.¹⁸¹ In this sense, the JEP's decision prefigures a future in which the positivist logic of war-crime adjudication becomes porous to the material vitality of the world it seeks to regulate.¹⁸²

Ultimately, the value of the JEP's experiment lies not in its doctrinal coherence but in its epistemic audacity; it dares to stage a conversation between ontologies that modern law has long kept apart.¹⁸³ By naming *Katsa Su* or *Çxhab Wala Kile* as victims, the Judicial Panel has performed an imaginative act of legal creation—expanding the field of justice beyond the human, translating cosmological and material pluralism into procedural form. Yet, as indicated above, this very translation exposes the limits of positivist criminal law. If agency, responsibility, and victimhood are distributed among networks of human and non-human actants, the categories of *mens rea* and *actus reus*—the twin pillars of war-crime adjudication—no longer suffice. The JEP's decisions thus confront international criminal law with its own anthropocentric architecture, revealing that the positivist grounds of guilt were never designed to capture the diffuse, relational harm of ecological violence.¹⁸⁴ To preserve its legitimacy in contexts where plural cosmovisions collide, the law must therefore evolve from attributing fault to individual commanders, soldiers, or members of armed groups toward recognizing responsibility within assemblages of military activities; it must also evolve from focusing in affected individuals toward including environmental suffering and non-human destruction or casualties.

Seen in this light, I argue that the JEP's rulings are not merely Colombian innovations but precursors of a global jurisprudential shift. They signal that transitional justice can become a laboratory for rethinking legality itself—a site where indigenous cosmologies, new materialisms, and IHL can converge to reimagine what counts as a victim, a perpetrator, and a community of reparation. Whether this experiment will consolidate into a genuine decolonial ecology of justice depends on the courage of future magistrates to turn rhetoric into structure: to create procedures that allow non-human entities to be represented, restored, and remembered within legal forums. Only then will the “Parliament of Things” envisioned by Latour cease to be a metaphor and become an institutional reality.¹⁸⁵ In this horizon, the future of the JEP can advance the limits of war-crime investigations, so that Macondo can cease to be a literary allegory in order to become a juridical landscape: a framework where autochthonous convictions and positivist normative constructions coexist, compelling international law to listen carefully—perhaps for the first time—to the complex living world it seeks to regulate.

181. See AMBOS, *supra* note 2, at 45–47.

182. See Bennett, *supra* note 122, at 3–9.

183. See LATOUR, *supra* note 100, at 47–48.

184. Gear, *supra* note 127, at 225, 230, 236–37.

185. LATOUR, *supra* note 100, at 142–45.