

WHY DO STATES PROTECT THE ENVIRONMENT? THE INFLUENCE OF CULTURAL DIVERSITY IN THE INTERNATIONAL ENVIRONMENTAL LAW-MAKING PROCESS¹

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ABSTRACT

The reasons why States engage in environmental defense vary in such a way that it can be said that their objectives are different with the same multilateral treaties. The environment is understood differently with the cultural background of each group of countries. Understanding this dynamic is important to understand the positions, limits and objectives of each group of States, as well as to understand international environmental law itself. In this article, based on legal anthropology of complex societies, we analyze how different perceptions of the environment in four groups of countries influenced the formation of International Law. The following were analyzed: the Nordic countries and Germany; France; the United Kingdom and the United States; and Brazil, in particular through the analysis of the arguments used for environmental protection in the statements by these countries' heads of state in the main environmental conferences during the period of designing and consolidating this branch of law (1972-1992). The analysis comprises a study of each group's conception of environment and the reflexes in the country's international performance in the main global environmental negotiations. The objective is to demonstrate how and what are the reasons that lead States to protect the environment at the international level.

Keywords: International Environmental Law; legal anthropology of complex societies; international negotiations.

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POR QUE OS ESTADOS PROTEGEM O MEIO AMBIENTE? A INFLUÊNCIA DA DIVERSIDADE DE CONCEPÇÕES CULTURAIS NA CONSTRUÇÃO DO DIREITO INTERNACIONAL DO MEIO AMBIENTE

RESUMO

Os motivos pelos quais os Estados se engajam na defesa ambiental variam de tal modo que se pode afirmar que os seus objetivos são distintos com os mesmos tratados multilaterais. O meio ambiente é entendido de forma diversa, com a formação cultural de cada grupo de países. Compreender esta dinâmica é importante para entender as posições, os limites e os objetivos de cada conjunto de Estados, bem como para entender o próprio Direito Internacional do Meio Ambiente. Neste artigo, de antropologia jurídica de sociedades complexas, analisa-se como as diferentes percepções sobre o meio ambiente, em quatro grupos de países, influenciaram a formação do Direito Internacional. Foram analisados: os países nórdicos e a Alemanha, a França, o Reino Unido e os Estados Unidos e o Brasil, em especial por meio da análise dos argumentos utilizados para a proteção do meio ambiente declarações dos chefes de Estado destes países nas principais conferências ambientais durante o período de construção e consolidação deste ramo do Direito (1972-1992). A análise compreende um estudo da concepção de cada grupo sobre o meio ambiente e os reflexos na atuação internacional do país nas principais negociações ambientais globais. Objetiva-se demonstrar como e quais os motivos levam os Estados a proteger o meio ambiente no plano internacional.

Palavras-chave: *Direito Internacional Ambiental; antropologia jurídica de sociedades complexas; negociações internacionais.*

INTRODUCTION

The participation of civil society in the development of International Environmental Law allows for a greater contribution of peoples' culture to the treatment of international affairs, which does not occur to the same extent in other legal subsystems, such as International Economic Law or Nuclear Disarmament Law. In International Environmental Law this state of affairs is favored by pressure from political parties, non-governmental organizations, scientific communities or, directly, from individuals themselves.

In International Environmental Law, the man-nature relationship plays an essential role. The cultural importance of the environment decides whether or not the State will participate in the formulation of legal norms on the subject. To demonstrate this hypothesis, four groups of States were selected: (a) Nordic States; (b) Anglo-Saxon States; (c) France; and (d) Brazil, due to the particularities of each one and their importance in the global legal regulation of the environment. These groups will be analyzed on a case-by-case basis, so that it is possible to demonstrate how different relationships with nature can contribute to increasing or destroying economic differences in the formulation of legal norms relating to a field of greater or lesser cultural importance for a State, in all the specifics of each group. The idea is to demonstrate the reasons that lead States to protect the environment and how cultural differences influence this protection.

1 JUSTIFICATION OF THE CHOICE OF THE FOUR GROUPS OF STATES FOR AN EMPIRICAL ANALYSIS

Four groups of countries were chosen to analyze: (a) the Nordic countries, comprising Sweden, Norway, Germany, the Netherlands and Denmark; (b) the United States and England; (c) France; and (d) Brazil. Analyzing the anthropological aspects of complex societies is a difficult activity due to the heterogeneities present in any large society, and even more so if we take into account several different countries in the same context of analysis.

Nordic countries have common positions in international negotiations. The man-nature relationship is more focused on protection and less on domination. Germany was included in this group based on its similarities in international environmental negotiations with selected countries. Finland

was excluded because it had a particular cultural evolution in terms of the environment and the Russian influence exerted during a certain period in international affairs may compromise the analysis.

The group with the United States and the United Kingdom is justified not only because they share the same language and have a common Anglo-Saxon culture, but also because of the influence of liberalism on the cultural formation of these two countries. This gives, in international relations, a duality of pressures, sometimes opposite, sometimes united, coming from environmental groups, arising from the cultural relationship with environmental protection, and from economic groups, particularly important given the value given by liberal culture to money.

France was isolated in a group of its own, so to speak, because it has neither the human nature relationship of the Latin countries nor the Northern countries, but a very special position. Due to the duality between the Cartesian desire to dominate nature and the Enlightenment humanism that shaped French culture, there is a very anthropocentric vision. If nature is protected, it is to ensure the protection of man. Finally, one can see the emergence of the environmental movement that is becoming an important counterweight to the anthropocentric, more humanitarian vision.

Brazil was included in the analysis because of its cultural heterogeneity and for being an important leader of the countries of the South in environmental negotiations. It is home to 60% of the Amazon rainforest, in addition to one of the largest industrial parks in the South, which gives it a crucial place in negotiations for sustainable development.

One cannot speak of a stable man-nature relationship in any of the complex societies mentioned. In each case, there is a dynamic and dialectical relationship between nature and society. Nature shapes culture, while culture imposes its forms on nature. The interpretation of the means of interaction varies with the theoretical current of anthropology adopted, whether structuralism or symbolism, which we excluded from the analysis of this study (DESCOLA; PÁLSSON, 1996). The four selected groups are representative of the Western view of nature, taken in a more general classification, marked by the duality between human society and nature, in a hierarchy “human subject – master” and “natural object – protected”, to a certain extent, which varies with each of the four groups chosen. The protection of the environment has meaning, insofar as the environment is the other and not the self, and yet it is subject to protection. Although still distinct, the evolution of international relations

and International Environmental Law, towards global regulations and the expansion of an international environmental movement, is contributing to a gradual homogenization of the man-nature relationship. Of course, one can distinguish huge variations in the position of each group of countries and even in each country alone, which can range from a monistic view where nature is part of society and therefore protection has no meaning, to deep ecology, where man is completely separated from nature and where nature must be isolated in order to be protected. However, the formation of a global consensus on the protection of the environment and the means to protect it seems increasingly clear.

Each of the distinct groups has its own idea about the environment and such idea has repercussions on their positions in International Environmental Law. These countries' position in international negotiations is directly linked to cultural relations with nature.

Once the country groups are identified, they must be analyzed, which will be done in the following order: the Nordic countries, the United States and United Kingdom, France and Brazil.

2 NORDIC COUNTRIES

In Germany, Denmark, Holland, Sweden and Norway, the prevailing view of nature is practically that of a value in itself. Nature is protected for the sake of nature itself and not for indirect preservation of man, who would be affected in case of destruction of the planet. Some peoples, like the ancient Scandinavians, had a less dualistic view of the relationship between man and nature and saw the Earth as an extension of the self. According to Gurevich, "*the fact that a man was thus personally linked with his possessions found reflection in a general awareness of the indivisibility of men and the world of nature*" (GUREVICH, 1992). Social honor was built into the land. In this conception, anthropocentrism is not very marked and in ancient Germanic Law it was not strange to find a concept of nature taken as a subject of Law (ROGER, 1991). The environment, for these countries, is less financially quantifiable than in more liberal countries. This means that these countries are willing to dedicate more resources to the environment and more easily sacrifice improving their social rights to preserve nature.

In domestic law, these countries and the United States were the first to create ministries of the environment. The other countries followed

suit: Sweden created its ministry in 1969, followed by the United States (LAROUCHE, 1998), Germany, Norway and the Netherlands. Four years later, especially between 1970 and 1972, 26 states created ministries of the environment or other equivalent administrative structures (RÉMOND-GOUILLOUD, 1989). Consequently, these countries were the forerunners of International Environmental Law, especially from the 1960s and 1970s onwards. They are also, until today, the main authors of proposals for legal norms in the European Parliament, the United Nations and practically all international organizations. Environmental Law was born and developed in these regions. It became International Environmental Law, mainly thanks to the influence of countries such as Denmark and Germany, which were the only ones in the early 1970s to have a defined internal policy and were at the origin of International Environmental Law.

The evolution of the representatives of the Green Party in the European Community is quite illustrative of this movement: several Green deputies were elected to the European Community, at the beginning of the rise of the environmental movement:

- a) In 1989: 23 elected MEPs, including 12 Germans, 4 Italians, 2 Belgians, 2 Irish, 1 Danish, 1 Luxemburger and 1 Dutch (PRIEUR, 1996).
- b) Between 1994 and 1999, 27 Green MEPs were elected, including 12 Germans, 4 Swedes, 3 Italians, 2 Dutch, 2 Belgians, 1 Irish, 1 Finnish, 1 from the UK and 1 Austrian (PRIEUR, 1996).
- c) Between 1999 and 2004, there were already 46 MEPs, including 9 French, 7 Belgians, 6 from the UK, 5 Germans, 4 Dutch, 4 Spanish, 2 Swedes, 2 Italians, 2 Irish, 2 Austrians, 2 Finns, 1 Luxemburger.

The Greens gained influence in all parts of Europe. In the Nordic countries they were, at least proportionally, the most important in the beginning. From the 1980s onwards, the ideology of environmental preservation became a common element on the political agenda of all parties. Increasingly, a homogenization of the discourse on nature protection has been established. So, the further you go in time, the less the data is representative of reality, since citizens vote for the environment, but not necessarily for the Greens. It is possible for someone to vote, for example, for a socialist or communist, who has integrated nature protection into their political platform.

These countries' action in the making of European Environmental Law is particularly decisive. A considerable part of the environmental standards were proposed by the Nordic countries. These countries' representatives

managed to change the rules for approving environmental standards, which used to be done unanimously, but today a qualified majority is enough. Thus, most countries that have not yet adhered to International Environmental Law were forced to adopt these standards. The approved standards became part of Community Law and became global International Law, due to the influence of European Environmental Law, such as what happened with the precautionary principle, for example.

It is difficult to demonstrate that a country is solely or primarily responsible for an international standard, because the standards are suggested by the European Commission, and it is not possible to know exactly who the initiative was or which country was the most combative to obtain its approval in the Parliament. But in some cases the origin is obvious. In the discussions on air pollution, the German participation was decisive. It was this country that initiated and provided the basis for the discussion after 1972. Directive 80/779, on the limitation of sulfur dioxide, presents two measurement systems, because Germany insisted on maintaining its own system. Likewise, Directive 85/210 on unleaded petrol. The United Kingdom and Germany supported this standard, the former for reasons of protection of human health, the latter for reasons of protection of the environment. For the control of chemicals, for example, all limits imposed on pentachlorophenol (Directive du Conseil 91/173; 1991 OJ (K 85) 34, asbestos, benzene, PCBs and cadmium came from the German standard.

In International Environmental Law, the Nordic countries' discourse in favor of sustainable development is easily identifiable. The analysis of the proposals and speeches of these countries' representatives helps to understand the influence they exerted on the legal norms in force and on the prevailing view of the environment. The speech of Olof Palme, Swedish prime minister, at the Stockholm Conference in 1972, is based more on the fight against the destruction of nature than on the protection of the human environment. The environment is presented as a good related to human activities, but its protection is both associated with the protection of man and the protection of an autonomous good, in this case nature.

The earth's resources are limited and our environment is vulnerable to the forces set in motion by technical and economic development. The amounts of air and water are restricted and so are sources of energy. ... Environmental issues are the urgent concern of all the peoples of the world. They demonstrate in a dramatic way the need for international cooperation and an international legal system. The seas are our common property and national frontiers do not act as barriers to air pollution and

toxic waste. If the soil is destroyed, if water is polluted and if natural resources are squandered, we shall all suffer the consequences. War is the worst destroyer of our environment. This has always been the case but modern techniques of war extend the threat to coming generations and can rob them of their future. ... The catastrophe, if it comes, will be a result of wrong political decisions or of no political decisions at all. The environment need not decay. We can control our development. We can be masters of our future (TOLBA, 1972).

The position taken by Denmark at the Stockholm Conference emphasizes the protection of the environment even more than the protection of man:

Hesitation on our part will mean that the harm we inflict on our environments, and thereby on our conditions of life, will in some respects be irremediable even by the most advanced technology and by any economic sacrifice. We have already had the first dire warnings: the discharge of heavy metals, such as mercury and cadmium, has already claimed a heavy toll in human lives and incurable disablement, and species of animals have been exterminated as a result of man's encroachment on nature. We should aim at a better understanding of environmental problems and, not least, their relationship with other social factors.

Ecology is the key to our understanding of the complex processes of our environment and of the interdependence of living organisms and their surroundings. Ecology has shown us that environmental processes are interlinked and that individual processes cannot be isolated – except, perhaps, in laboratories. From this branch of science we have got ample evidence that we have been overlooking essential factors in the application of technology and industrial know-how (TOLBA, 1972).

Ten years later, in 1982, at the Nairobi Conference, this view is still centered on nature, with an overview of the effects on humans. Both elements are emphasized. The participation of Prince Claus of the Netherlands is an illustration of this:

Environmental awareness is greater now than ten years ago and our perception of the environment has widened considerably. [...] Looking at the continuing state of poverty in many parts of the world; at the continuing depletion and destruction of natural resources and its consequences, especially for the poorest people; in short, looking at the twin problems of poverty and environmental degradation, we must, I am afraid, conclude that we still have a long journey ahead.

As you remember, the whale became the symbol of the world's concern for nature conservation in the years immediately after Stockholm. We can be happy that the chances for its survival have now increased. The whale, the largest mammal, has thus been saved by the wisest mammal, *Homo sapiens*. So, why can the wisest mammal not save itself? ...

A few hundred miles west of here we find examples of one of this planet's most complex and luxuriant ecosystems, the tropical rainforests. It is difficult to conceive

of the wealth of resources which these natural treasure houses contain. But at this very moment hundreds of thousands of people throughout the world have to make intensive use of them ... control are forcing them to destroy annually many hundreds of thousands of acres of rich forests (TOLBA, 1988).

The German position statement, of 1982, carries a vision as anthropocentric as it is biocentric:

We are convinced that, in the long run, environmental protection can only be practiced successfully on a preventive basis. The important thing is to avoid and to reduce harmful effects on the environment from the very beginning and not – as is unfortunately still the practice today – to eliminate them afterwards at great expense. This naturally calls for long-term future planning by all responsible parties. It also calls for consideration to be given to the manifold, systematic interrelationships between living beings and between them and the inanimate environment. This principle of prevention which we are advocating should form the basis of the ecological approach to environmental problems which has become indispensable, particularly from a global standpoint. In economically difficult times, measures for protecting the environment are just as necessary as in periods of economic upswing (TOLBA, 1988).

The same situation was repeated at the United Nations Conference on Environment and Development, in Rio de Janeiro, in 1992. At that time, the discourse was more homogeneous, but the differences were still present. The two subjects – man and nature – are placed in parallel. Sweden makes a constant link between the destruction of the environment and the increase in population. The position of Mr. Lubbers, Prime Minister of the Netherlands, illustrates this point well by comparing the evolution of human rights protection agreements with that of global environmental agreements:

Some would say that the lack of binding agreements makes the Conference a failure. I do not agree. To expect the world-wide acceptance of legal obligations is probably aiming too high at this stage. It took one and a half centuries before the human rights enshrined in the constitutions of various countries were translated into an international legal instrument in the Universal Declaration of Human Rights. On environment, we do not have that much time. In accepting the principles of the Rio Declaration, however, the countries of the international community will be laying the basis for a sustainable future in the form of norms, objectives and policy commitments, anchored in a new partnership.

Other aspects of the basic discourse accompanying the Nordic countries' participation in the Rio Convention can also be used to highlight this connection with nature. Development aid, generally linked to the

development of human beings, can be interpreted in this context. Although all countries cited the need for development aid, one of the main points of debate at the time, the necessary link between aid provided for human development and protection of the environment was always a constant in the Nordic countries' position. This does not mean that the help is not intended for man, but it does mean that this help is for both man and nature. The same speech given by the representative of the Netherlands is once again an example:

As far as financing by the Netherlands is concerned, my government is willing to provide, in addition to the current commitments for development cooperation, which now substantially exceed the target of 0.7 per cent of GNP, new and additional financial resources up to a maximum of 0.1 per cent of GNP for the implementation of global environmental agreements, provided that other countries take a similar course in generating resources for such an earth increment.

The following is one small example. The Netherlands has been prompted to enter into a new form of cooperation with Costa Rica and Bhutan. This cooperation in environmental matters will focus on sustainable development, taking Agenda 21 as its guide; it imposes mutual obligations in keeping with environmental measures being taken in each of the three countries concerned. The declarations of intent were signed here in Rio.

In the implementation of sustainable development, the Nordic countries are the most dedicated to the implementation of international agreements. Internally, they more easily accept budgetary restrictions to protect the environment. At the international level, the Netherlands, Sweden and Norway are the only ones to allocate the 0.7% of their budgets foreseen for international cooperation, in framework agreements. Private cooperation is also important. These three countries are among those with the highest contribution per capita. In the Netherlands, it is eight times higher than the United States and twice the average for OECD countries (LAROCHE, 1998).

These countries have a well-established perspective on sustainable development. The financial and technical contributions of these countries focus both on preserving the environment and on strengthening the means of action by civil society, represented mainly by associations. The membership rates for the associative movement are higher than in the other selected groups. It starts from the idea that the association of people may be able to promote development more effectively. Therefore, the Nordic countries want to reproduce this reality in developing countries. Thus, donations to indigenous peoples and non-governmental organizations are always more

relevant. Denmark, the Netherlands and Norway, for example, were the first countries in the North to sign Convention 169, of the International Labor Organization, which strengthens the role of indigenous peoples in national and international negotiations. Denmark provides resources to enable indigenous communities to participate in international meetings.

Cooperation to increase NGO infrastructure in the South is significantly higher – as a percentage of Gross Domestic Product – than cooperation directed at other important actors. These countries have a tradition of funding the participation of NGOs in international negotiation forums and supporting their right to vote. In summary, 18% of NGO donations come from Denmark and 24% from Norway (STUAN, 1998), figures far above their relevance in the global economy.

This cultural predisposition to give importance to the subject does not mean that it has no limits. Nordic countries also consider their economic and political interests before international decisions. Norway opposed regulation of pollution in the North Sea because of its oil companies, while on the other side of the argument were the Netherlands, Germany and Sweden.

3 THE UNITED STATES AND THE UNITED KINGDOM

In Anglo-Saxon culture, the environment is protected more because a specific value is given to nature, than for the protection of man. Nature has great economic value. It should not be forgotten that the influence of money is a fundamental aspect of liberal culture in the United States and the United Kingdom. Everything becomes economically measurable, including nature. This economic influence contributes to the difference in the position of Anglo-Saxon countries in international negotiations.

The first national parks were created in the United States, with Yellowstone Park in 1872, Niagara Falls and Yosemite in 1885 (CONAN, 1991). Its stated purpose was to preserve the environment. C. Potvin associates the creation of parks with a romantic vision that intends to keep the natural environment as it was at the time of American colonization. It's a conservation view versus a preservation view. But the purely conservationist vision in the sense of freezing a situation has proved difficult to achieve, due to the very dynamics of ecosystems (POTVIN, 1998).

The United States has an extensive preserved territory, which

demonstrates the importance of the environment to the American people. For Americans, the biosphere is more fundamental than the geosphere. A Gallup poll carried out in the United States in 1988 showed that only 57% of respondents knew how to locate England on a world map, only 55% knew where the state of New York was; one in seven could not locate the United States on the world map; and only 25% knew where the Soviet Union was. One in three did not know any other NATO member; 16% believed that the Soviet Union was part of NATO. Even among university students, 10% believed that the Soviet Union was a member of NATO, 50% did not know how to name a member of the Warsaw Pact, and 11% believed that the United States was part of the Soviet alliance. As a US Army General once told me, if anyone in the United States knew where Brazil was on the map, it was probably because he was a geography teacher.

On the other hand, with regard to the biosphere, the reality is the opposite: 84% knew that CFCs are harmful to the ozone layer and 94% knew about the repercussions of the loss of the ozone layer on the global climate. Sixty-eight per cent were aware of the problems associated with acid rain, one in three knew about the problem of deforestation in the Brazilian Amazon and the impacts of deforestation on the stability of the global ecosystem (RIFKIN, 1991). Hardly an American does not know how to talk about climate change. This undoubtedly explains why, despite the United States' refusal to sign the Kyoto protocol, states and private companies have decided to adopt important measures to reduce carbon emissions.

At the parliamentary level, the environment is on the political agenda of the two main political parties in the United States: Democrats and Republicans, and it was even a central point of discussion during the last presidential campaigns. The UK, for its part, has consistently elected a large number of green parliamentarians to the European Parliament. Environmental protection is a constant in the speeches of public authorities.

The environmental movement is very developed in the United States. The first associations were born there, such as the Audubon Society in 1886, the Boone and Crockett Club in 1887 for the defense of animal species and the Appalachian Mountain Club in 1876 and the Sierra Club in 1892 for protection sites (CONAN, 1991). Major environmental non-governmental organizations are supported by US and UK public and private aid resources. Several influential non-governmental organizations were born in these two countries, such as Greenpeace, Friends of the Earth

and WWF in England. In summary, the expansion of the environmental movement, in the global scope, is mainly due to the activity of the Anglo-Saxons and Nordics.

The views of environmental NGOs are not homogeneous, which reflects the difference in cultural conceptions about nature protection in each country. A significant part of the NGOs uses a discourse in which Western man is the “owner of nature”, and nature, including the peoples who live in harmony in the forest, are “protected goods”. Finally, G. Pálsson sees the illustration of this discourse in animal protection movements, which often differentiate between “us”, Euro-Americans and “them”, local populations and indigenous peoples, considered part of the forest. Only some segments of human society belong to nature, while others do not. The segments that comprise it are designated by the terms “primitive”, “children of nature” or “naturvölker” (PÁLSSON, 1996).

However, the North American and British decision-making process includes an important counterweight, which is not similar in the Nordic context: the economic weight (Remond-Gouilloud, 1998). Anglo-Saxons, at least their elected governments, are *less likely* to make economic sacrifices in the name of nature protection and sustainable development. The United States, mainly, in the name of its economic interests, refuses or delays as much as possible signing most of the most important international conventions related to environmental protection. This is the case of the Convention on Biological Diversity, the Montego Bay Convention, the Kyoto Protocol, and the Convention on Climate Change framework. Their attitude is the same when it comes to accepting new principles.

The London Convention on the Disposal of Waste in the Ocean is a good illustration of the differences. While the United States and the United Kingdom were reluctant to adopt the precautionary principle, given their confidence in the sufficiency of the precautionary principle, the Scandinavians and the Germans already supported the preeminence of the precautionary principle (STAIRS; TAILOR, 1992) over the principle of prevention.

Here lies the marked influence of capitalism on the culture of the United States and the United Kingdom. Capitalist individualism had important repercussions on their cultural formation. As J. Gray states, “individualist capitalism subverts cultural traditions more successfully than any government” (GRAY, 1999). In fact, these two countries are the ones that have known the deepest capitalist experience. No other European

country has experienced individualistic forms of family and property as distinct as those found in the United States and England (GRAY, 1999).

The relationship with the land changed considerably with the industrial revolution and the creation of *fences* in England. Government officials went door-to-door to set a monetary value for farmland, dividing up land and delimiting property. The relationships between man and nature, culturally established long ago, were discredited. These processes have contributed to the monetization of life, the intensification of individualism and the change in the relationship between man and nature, which is taking on a new form (RIFKIN, 1991).

In international negotiations, there is the same coexistence of monetary and environmental values, which can be in harmony or in conflict. These countries, but especially the United States, are making efforts to reconcile the two values and link economic conditions to environmental agreements, for example, by organizing emissions trading under the Convention on Climate Change. The monetary aspect is a constant in the proposals made by these countries in the international discussions. The analysis of the positions taken in Stockholm, in 1972; Nairobi, in 1982; and in Rio, in 1992, demonstrates the hypothesis. Although several countries have cited the importance of making investments for the protection of the environment in their speeches and in their proposals, only the United States and the United Kingdom³ cited figures and highlighted the importance of their monetary sacrifices for the environment.

In Stockholm, in 1972, the speech of the United States representative is emblematic:

In addressing this universal subject of the human environment, every nation's view is conditioned by its own historical experience.

Some 65 years ago, when the American frontier was a thing of the past, President Theodore Roosevelt wrote that our natural resources were being rapidly depleted. He said: "The time has come to inquire seriously what will happen when our forests are gone, when the coal, the iron, the oil, and the gas exhausted, when the soils shall have been still furthered impoverished and washed into the streams, polluting the rivers, denuding the fields and obstructing navigation". But we ignore his advice and, through inadequate control of our increasingly powerful technology, imposed burdens on our environment, urban and rural alike, such as he never dreamed of.

Now the United States is altering its course. We have examined the costs of correcting the most obvious of these problems – pollution – and we have begun to pay the high price of corrective action too long delayed.

³ The citation of monetary resources was made by the United Kingdom only in 1992. At the Rio Conference, Germany and Norway cite figures associated with the value of their relative participation in development aid.

The environmental afflictions we are coping with are largely those of an affluent nation. My country enjoys economic blessings such as many another country earnestly desires to achieve ... My country has learned that economic development at the expense of the environment imposes heavy costs in health and in the quality of life in generally – costs that can be minimized through forethought and planning. We are learning that it is far less costly and more effective to build the necessary environmental quality into new plants and new communities from the outset than it is to rebuild or modify old facilities.

At the 1982 Nairobi Conference, the relationship is even more explicit:

The spirit of Stockholm parallels a concern for the careful use, conservation and enrichment of our natural heritage that has been expressed by political leaders in the USA for many years.

Environmental issues are a continuing concern of the US people. Their political leadership will continue to enforce existing laws and to develop more effective approaches to address emerging environmental problems. President Reagan and his entire administration share a commitment to continue to improve the environment so that future generations will be able to enjoy our natural resources.

In bearing the substantial expense of these measures, the US people have demonstrated their commitment to ensuring a healthy and productive harmony between man and nature. Since the adoption of the 1970 Clean Air Act, for example, industries and government in the USA have spent an estimated \$150 billion on air pollution control.

...

Our progress toward cleaner air has been complemented by progress toward cleaner water. During the past decade, the US government has spent 30 billion dollars to assist the cities of our nation to reduce the impact of their sewage on the nation's waterways. This expenditure has been supplemented by the expenditures of our state and local governments, as well as the costs borne by citizens and industries as they comply with our environmental laws. Many of our rivers, the Great Lakes and other waterways have shown marked improvement. ...

During the past six years – from fiscal year 1978 to fiscal year 1983 – AID's financial support for environmental programmes has increased more than tenfold, from \$13 million to \$153 million (TOLBA, 1982).

And, again in Rio, the same economic-based defense is worth highlighting:

We come to Rio recognizing that the developing countries must play a role in protecting the global environment but will need assistance in pursuing these cleaner growths. So we stand ready to increase U.S. international environmental aid by 66 percent above the 1990 levels, on top of the more than \$2.5 billion that we provide through the world's development banks for Agenda 21 projects.

The strong cultural link between economic aspects and environmental protection has important repercussions on international law. Depending on

its weight in discussions on the matter, the United States may subordinate the effectiveness of an international regime to economic aspects. The creation of the global emissions market under the Convention on Climate Change is an example. International law, under pressure from the United States, adopted a more restrictive system of global regulation. However, given the non-participation of the countries of the South, the United States withdrew from the negotiations, remembering that the price of emissions would be higher. If Europeans were willing to pay that price, Americans were not.

The consequences for sustainable development are relevant. The United States systematically opposes the creation of international standards with concrete instruments that favor the development of the countries of the South, when these standards have any negative impact on their economy. India's full participation in the Kyoto Protocol was conditional on the flexibility of intellectual property rights relating to less polluting equipment, for example. However, the United States opposed any concessions, even if the amounts were residual in their economy. With the expansion of liberalism, particularly after the 1990s, and the fall of the Soviet empire, US participation in international development assistance has declined significantly in several areas, the environment being one of the most significant.

4 FRANCE

The man-nature relationship in France is more linked to humanism. It is based on a relationship of domination. Nature must be controlled. The landscape is shaped by man. The nature protection, mainly until the 1980s, was marked by a strongly anthropocentric vision. The global environment is protected because, in protecting it, man is protected. If the environment is destroyed, so will man.

The French view of the world is built around man. Man, who thinks, is opposed to nature, which does not think and is therefore relegated to the background. Humanism is expanding rapidly, with a perverse corollary: anti-naturalism (Remond-Gouilloud, 1989). Colbert issued directives to save the Bourbonnais oak forests, not to protect the forest, but to have the material needed for the repair of Louis XIV's war fleet (POTVIN, 1997). Before 1789, Environmental Law was treated mainly at the rural level, and consisted of a multiplicity of rights related to the same object, but totally

utilitarian. Wood, for example, was considered for heating (affouage), for repairing buildings (marronage), but never as an object of protection for its own value. From the Civil Code, the norms are unified, but the utilitarian vision of nature remains the same (MALAFOSSE, 1973). “Law was interested in the environment only to claim that it was not interested in the environment” (HERMITTE, 1991).

The Roman tradition is notable in the regulation of French social life. In the civil code, which inspired the Civil Law of several countries, especially in Latin America, real rights should not be limited, and property is defined as “the right to enjoy and dispose of things in an absolute way”. The owner can thus abuse, destroy his property, even if it is contrary to society’s interests. This position does not change until 1917, with the Constitution of Mexico, where the social function of property is invoked, and is followed by the German Civil Code of 1919. The environmental function of property is required in some legislation, as in Brazil. In France, it was only in 1988 that an exception was created to the idea of absolute right over property in the Civil Code (DUPUY, 1998).

Of course, Roman law also influenced German law, but if in France there was a change in the landscape, this did not happen in Germany. While in France we have divided land and forests into properties since Roman times, in Germany the natural environment has become closer to the wild.

The reconstruction of the rural landscape, since World War II, and the urbanization process also contribute to this logic, since until then 50% of the French lived in rural areas (FROMAGEAU, 2002). The concentrated rural exodus towards urban centers, especially Paris, demystifies the French view of nature. The rupture between man and nature made since the humanist period is accelerating with the process of urbanization and industrialization. In this context, a rapid change in the rural landscape is also noticeable, with the expansion of the urban.

The strong division between society and nature and the representation of control over nature as a sign of the development of society are specific elements of French culture. The “French gardens” are an example of a controlled, regularized nature, sized by man. Each tree in the Jardin du Luxembourg must have its own shape, controlled by man. Nature is an accessory element of human life (GERARD; OST; VAN DE KERCHOVE, 1993). Man must be its master, and it is only as a master that he must protect it. Hunting is not considered to defend agriculture or contribute to food, as in Eastern Europe (Poland, Hungary or Slovakia, where hunting is

considered a form of harvest), but as a sport, practiced to obtain a trophy (HELL, 1996), which marks the French view of its natural environment (MALAFOSSE, 1973).

Table 1. Cultural interpretation of hunting as agriculture and as gathering

<i>Hunting included as agriculture</i>		<i>Hunting included as harvest</i>	
Region	Proportion	Region	Proportion
Germany	0.4	Italy	2.6
Alsace	0.6	France	3.6
Austria	1.2	Spain	2.1
Luxembourg	0.6	Greece	3.1

Source: Hell (1996, p. 208).

The creation of “French national parks”, considered by some authors either as a “legal heresy” or as a result of a traditional, conservative and centralizing double reflex, also reflects this view (MALAFOSSE, 1973). The French parks were created in the form of national parks and regional parks, with, among other purposes, “to respond to the objective of keeping alive a rich and complex ecological balance”, as stated in a ministerial response prior to the creation of the French national park of Cévennes, in 1970. However, among the purposes declared in the documents creating the parks, nature conservation is an accessory element and that “the main purpose is the rest and relaxation of those who live in cities and the promotion of the rural environment”, or, in other parks, “simple samples for use in scientific research” (MALAFOSSE, 1973). Therefore, even in the foundations for the constitution of national parks, the preservation of nature always has a utilitarian purpose and must meet human needs. Of course, nature was already preserved in the past, as the police did in the 19th century, but even then, the purpose of protection was to maintain safety, tranquility and public health (PRIUER, 1996; FROMAGEAU, 2002).

The anthropocentric view began to change in France with the expansion of environmental movements, e.g. the greens, motivated by the emergence of the global environmental movement. The influence of Anglo-Saxon and Nordic NGOs has been essential for the development of the green movement in France, a movement in which there is a tendency to preserve nature as such and not just as an intermediate element in the protection of man. The extent of the green movement in Germany, the strong ties and pressures of the Nordic countries, the influence of the United States and

England were also decisive (HERMITTE, 1998; 1991).

This double vision is present in political discourses and in the French position on nature protection. This puts France in a *sui generis* situation, compared to other important actors in the discussion of legal protection of the environment. Political ecology entered the French electoral scene in 1974 with the candidacy of René Dumont for the presidency of the Republic, but unlike the Nordic countries, for example, and Germany, where the Greens have a faster rise and become the third political force in seven of the sixteen Länders, it was only after 1988 that French ecologists managed to gain political weight (BOY; LE SEIGNEUR; ROCHE, 1995). Nature protection was built on the foundation of man's dominion over nature, the urban over the rural (UNTERMAIER, 2001), in a humanist and utilitarian view.

The analysis of French positions at international conferences demonstrates this French view of nature:

Stockholm, 1972:

Our aspirations towards a better life are shared by the whole of humanity. However, we must be careful not to overstress this universality for in doing so we risk forgetting the social, economic and cultural particularities which give originality and value to the aspirations of each nation. [...]

Social and economic development and the protection of the environment are not in opposition: on the contrary, one is the condition of the other. It is growth alone that will give us the possibility of releasing resources and inventing techniques that will improve our lives. Some campaigns advocate a return to a state of nature. This is a luxury for people who are already well provided for and a real provocation to the Third World, as well as the rejects in our own consumer-oriented societies. Such views jeopardize rather than help the cause of the environment. The solutions to most environmental problems are technological; this therefore implies that what is needed is an acceleration of the modernization process and also, of the development of our societies. Is the consciousness of the threat hanging over our planet not a result of the progress of science?

The protection of the environment must be taken in its widest sense. It means that for developing countries the struggle against hunger and against diseases is one of their major environmental objectives. In highly industrialized countries, the question is not one of stopping growth but of refusing to pursue growth at any cost.

The importance we have been attaching, for the last few years, to nature protection, points up the deficiencies of an economic theory which does not take into account the values of our environment such as the purity of water, silence, the quality of air and space. [...]

In Nairobi, in 1982, France followed the same logic, criticizing the position of protecting nature for nature and demanding a more social vision:

I would stress two priorities: regionalization and decentralization and the importance of a better link between environmental policy and development policies. An efficient environment policy can only work through contact with people, places and milieux. A better link is required between environment policies and economic and social policies

We know now that a bold environment policy will produce development, create jobs, provide better answers to questions of land use, restrict wastage and indirectly lead to substantial savings.

New technologies – replanned industrial processes that minimize adverse effects, pollution and the wastage of energy, materials or space – are essential. They are not universal. They must be created in every region of the world, for each nation, so that they become genuinely appropriate and well adapted.

To link the environment with economic and social life is also to encourage more rational management by developing the means of controlling economic life, Inadequate account has been taken of our heritage of renewable resources or of the risks of overexploitation or depletion. A public accounting should be carried out by the major sectors of economic life. As an objective exercise this will facilitate the task of legislators and those responsible for the negotiation of treaties. (TOLBA, 1988).

In Rio, the discourse was more related to the protection of man. Mitterrand's speech at the 1992 Rio conference highlights man in almost every paragraph. The justification for the preservation of the environment is, if not directly, at least indirectly linked to the preservation of human life on the planet. The parallelism of two subjects (environment and man), identified in Nordic discourse, for example, has no place in French discourse.

President Mitterrand offers three views on nature in his speech⁴:

In the long sequence of time, we are in fact the first generation, some 3 million years after the emergence of our distant ancestors, to acquire awareness of the physical laws that govern us. Let us try to formulate the laws that will give our meeting in Rio its true meaning.

The first is that the Earth is a living system whose parts are interdependent and therefore that the destinies of all species – human, animal, plant – are connected.

The second tells us that Earth's resources are limited.

The third says that humanity cannot be separated from nature, as it is part of nature itself like water, trees, wind or the depths of the seas. Dominated by the elements since the dark ages, humanity now has the ability to kill all life on Earth and thus destroy itself. That's really the point. One day they will tell us: Did you know all this and what did you do? This is the real theme of our Conference.

4 The Ministry of Foreign Affairs did not have copies of the speeches from the 1992 Rio Conference.

The environment is analyzed from two perspectives: that of human rights and that of Environmental Law. The two views coexist. The continuous expansion of the movement for the protection of human rights, especially since 1990, has contributed to the accumulation of two logics. NGOs of French origin, such as Médecins Sans Frontières, which won the Nobel Peace Prize in 1999, Médecins du Monde, the International Federation for Human Rights, which participated in the world coalition for mine clearance and won the Nobel Peace Prize in 2000, are growing movements. For them, the environment is part of human rights, with a strong anthropocentric vision. The analysis of the environment as a protection of human rights can be seen, internationally, through the decisions of the European Commission on Human Rights and those of the European Court of Human Rights, regarding the protection of the environment, based on article 8, aimed at the protection of the quality of human life.

In practice, France is less likely than the Nordic countries to yield in the economic field to environmental requirements, for example, but on the other hand, it is sometimes much more advanced than the United States or England, depending on the case. The discussion on the installation of catalytic converters in low-end engines is a good example: Germany was in favor of its adoption and France tried to block the discussions (MORAU DEFARGES, 1997). In fact, this is not a hard and fast rule, but a *trend*. In the transboundary pollution negotiations of the 1970s, for example, Germany, the United Kingdom, the United States and Denmark opposed restrictions imposed on emissions responsible for acid rain, while France, Norway and Sweden favored environmental protection standards (PORTER; BROWN, 1991).

International cooperation provides examples of this duality. France was in 1998, in terms of gross domestic product, the country that contributed the most to the G7, with 0.40%. Its aid to developing countries amounted to CHF 5.742 billion, which places it third among the 22 largest contributors. Of course, those numbers dropped to 47% between 1994 and 1998, but this is a global phenomenon, which helps keep France in the same position. The main object of French cooperation is the humanitarian-inspired social sector, which represents 42% of aid. The environment occupies a smaller percentage and disappears more or less in several graphs, where it is not even entitled to its own heading.

5 BRAZIL

In Brazil, a balance was created between the pressure forces linked to different views of the environment. Brazil is a large country, very mixed, with different views on nature, which vary according to the region, ethnicity or natural environment in question. While in the south of the country there was an important German and Slavic colonization; in the North, there is great indigenous influence; in the Southeast, Italian, Spanish and Arabic influences; Portuguese and African influence everywhere. It is therefore difficult to identify a single Brazilian view of nature, presenting at least a certain degree of homogeneity as in the other groups presented above. In addition, the view of the environment varies with ecosystems. The view of Brazilians of the Atlantic region (*mata atlântica*), 92% deforested, is not the same as their view of the Cerrado or the Pantanal or the Amazon rainforest. The object of analysis is the different positions of pressure groups on the Amazon rainforest, which is the largest forest in Brazil.

Positions on each ecosystem have changed a lot since the beginning of colonization, with the progression of nationalism, the expansion of agriculture, the period of the “rubber miracle” in the Amazon, the progression of the national and international environmental movement. In relation to the Amazon rainforest, there are many different positions. These groups are also distributed in decision-making power, which contributes to their heterogeneity.

Viola, who identified six distinct groups:

- 1) **Nationalists – conservationists:** They are in favor of the development policy of the sixties, carried out by the military dictatorship, with the occupation of the Amazon, through migration, large national projects, the exploitation of natural resources. They are a minority in the Armed Forces and in the civilian bureaucracy. They are strong in the less efficient and more internationalized sectors of entrepreneurs and in the urban elites of the Amazon;
- 2) **Nationalists – progressives – sustainabilistis:** They are opposed to large-scale economic activities, but favorable to artisanal extractivism, they defend the “peoples of the forest”, and the preservation of the environment with strong State intervention. They are a minority in the civil and military bureaucracy and left-wing political parties. They are strong in the environmental movement;
- 3) **Globalists – conservationists:** They are in favor of general subsidies

- to foreign investment for exploitation of natural resources, with a certain environmental concern. They oppose massive state intervention. Minorities in the civil and military bureaucracy are strong in the more internationalized sectors of business people and in the modern sectors of conservative political parties;
- 4) **The Globalists – progressives:** They are favorable to the rapid exploitation of the Amazonian natural resources, with a significant participation of the State. They are strong in the civilian bureaucracy and important in the armed forces, in the urban middle classes of the South-Southeast region (the largest regions economically and in population) and in progressive political parties;
 - 5) **Globalists – conservationists – sustainabilitists:** They are in favor of the total preservation of the forest, placed under the control of local people, in conservation units. They have limited expression, but they are present in the internationalized sector of the environmental movement;
 - 6) **Globalists – progressives – sustainabilitists:** They are in favor of preservation and sustainable development, thanks to high technology. They defend State intervention in line with the sectors of the world market favorable to sustainable development, environmental protection, regional scientific and technological development, association of intensive productive sectors; for social development. They are represented in the science and technology, environment and strategic government sectors; in the environmentalist sector of entrepreneurs, in the more professionalized sectors of the NGOs and with some representation in the more progressive political parties (VIOLA, 1996).

Other groups can also be identified. In Brazil there are more than a million indigenous people, belonging to dozens of different cultures, whose relationship with nature is very different from each other. The distance between the cultures of different Amazonian indigenous peoples can be compared with the distance between Chinese culture and American culture, for example. This cultural diversity, not yet fully known, is not taken into account in the above classification, but it should not be ignored. Indigenous peoples lack effective political representation. Unfortunately, they are not heard within the government in the same way as the other political groups whose views are presented here. Therefore, the indigenous view of nature in Brazil does not have much influence on the country's diplomatic positions.

In addition, the 20 million inhabitants of the Brazilian Amazon are

concentrated in a few cities, mainly Manaus and Belém, which have more than two million residents each. These residents' view of the forest is different from that of village populations. Of course, the forest is important for the inhabitants of these cities, but this population does not have such a close connection with nature. The number of green areas per capita: gardens, woods and trees on the streets of these two cities, which are in the middle of the forest, for example, is much smaller than in European cities, far from any large forest. Thus, the streets of Paris have many more trees and green spaces than the streets of Manaus, capital of the state of Amazonas, in the middle of the Amazon rainforest.

The destruction of nature is conceived in this region as a sign of development, as the city itself is growing with the destruction of the forest that surrounds it. In addition, the non-existence of the forest is also seen as a symbol of social evolution, since the poorest communities are those that live in the forest and not those in the city.

In the South and Southeast regions, two thousand kilometers away, which comprise the States of São Paulo, Rio de Janeiro, Minas Gerais, Espírito Santo, Paraná, Santa Catarina and Rio Grande do Sul, on the contrary, the existence of forests or urban parks is seen as a sign of development. In these states, deforestation is controlled for each tree and authorization from the environmental agency is required to alter the local landscape. In general, at least in urban environments, this rule is observed. In some cities, such as Florianópolis, capital of the state of Santa Catarina, the presence of industries is prohibited to preserve the local environment and the presence of the original vegetation.

Of course, the various recent colonizations of these regions contribute significantly to the differences between one region and another. The Southern States were mainly colonized from the second half of the 19th century onwards, by Germans, Austrians, Poles, Italians, Spaniards and Lebanese. In some cities, for example, German is still spoken and Germanic culture is alive and this relationship with the environment could hardly be the same as in the distant northern regions of the country, colonized since the 17th and 18th centuries.

In this complex reality, trends regarding the acceptance of economic sacrifices for the preservation of the environment are very variable, depending on the group considered. As there is an important balance between the different views, it is difficult to speak of a prevailing view of Brazilian society in relation to Amazonian nature, for example.

Diplomacy in Brazil is also not very open to pressure from civil society in the case of the environment, which results in less repercussion of anthropological views of nature in international relations. The Ministry of Foreign Affairs remains hermetic, as a way of guaranteeing his political power. It is always difficult to obtain information about diplomats' motivations in international negotiations. Thus, the diplomatic service has, on the one hand, greater room for maneuver, since society's control over the Ministry's actions is not at the same level as in a developed country, such as the countries studied. The information deficit works as an important filter between cultural positions and diplomatic positions adopted in international negotiations. Furthermore, it is easy to see that protecting the environment is not always a priority, given the small number of diplomats linked to this sector.⁵

Furthermore, although the environmental movement has grown in the last thirty years, it is not a priority on the Brazilian political agenda. Despite the contrary rhetoric of the government and its representatives, the environment has always been placed in the background. Even in periods when the country was considered to have a privileged role, it was always below the possibilities for Brazil to act, given the country's ecological importance.

FINAL CONSIDERATIONS

These views are not static, they are dynamic. The evolution of the globalization process and the loss of cultural diversity contribute to the expansion of certain specific views of dominant cultures. Hornborg criticizes the diffusion of the discourse of "sustainable development", which changes the traditional relationship between man and nature. The traditional way of understanding the man-nature relationship as a reciprocal relationship becomes an investment relationship, especially for the "ecological economy", where ecosystems are presented as a form of capital, having a monetary measure. It is the same for the polluter-pays principle, for the progression of green taxes, which ratify this monetary vision of the man-nature relationship. This discourse is false, insofar as ecosystems do not provide services to the market and the biosphere cannot be restored with taxes levied: "the metaphorical understanding of nature in

⁵ Unlike the other groups, it was not possible to find Brazil's manifestations in international negotiations because such documents were not available at the Ministry of Foreign Affairs or in the archives of the Secretariats of the conventions themselves.

terms of ‘services’ to be paid for serves the crucial ideological function of marshalling the adverse effects of economic ‘growth’ merely to reinforce our faith in it” (HORNBERG, 1996)

Several periods marked with equal importance a change in the Western perspective of the relationship between man and nature. Pálsson highlights the Renaissance and Cartesianism. The view of nature as a quantifiable three-dimensional element, which man appropriates is typical of Renaissance artists and contributed greatly to the formation of the modern Western vision. Likewise, with Descartes, nature ceases to be *close* and becomes a controllable external object. The English language presents a clearer explanation, since nature is no longer *it* but becomes *i* (BORDO, 1988).

The expansion of neoliberalism, with the overvaluation of the market in a process of globalization, is fundamental for the understanding of this context, where the fetishization of nature has a significant diffusion (DESCOLA; PÁLSSON, 1996). This movement is under the influence of a new technological reality, where nature is no longer understood only as an animal, a plant or a cosmology, but as a carrier of elements such as the genetic code, the germplasm banks, in a “new multidimensional anthropological landscape that may arise” (DESCOLA; PÁLSSON, 1996). However, despite the loss of cultural diversity, differences in relation to nature still exert a great influence on the establishment of goals and the way in which the subject is treated.

As we have seen above, the defense of nature is not assumed for the same reasons by different international actors, and it does not have the same value for each actor because each one has a different view of what nature is. The nature of Nordic countries is not the same as for the Anglo-Saxons, the French or the Brazilians. The same holds for every complex society in the North and the South. Despite the common discussions, each one defends in international forums, an object is felt differently depending on the actor. It is a complex reality, but the understanding of which can contribute to better guarantee the formation and progress of International Environmental Law.

This difference in the value attributed to nature has important repercussions in international relations on the environment, in the North-South relationship. This change in values can be a factor that reduces or increases the differences in terms of economic and technical capacity to participate in international negotiations. In specific cases, we have seen

that the valuation of the environment is greater in the Nordic countries and in the United States than in Brazil in general. This helps to explain the political commitment to formulate a legal framework for nature protection, even though it implies economic losses. In addition, these countries are experiencing a greater maturation of democratic bodies, which facilitates the incorporation of social values in international relations. In short, in the North, the environment is one of the first concerns of governments; there are concrete efforts, research for the production of scientific knowledge and a greater relative investment of resources allocated for participation in international negotiations. In Brazil and in the South, in general, the environment is not always a priority, which leads us to conclude that the participation of the countries of the South in the formation of International Law is below their own capacities, already weakened by the economic situation.

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