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Decolonizing the Environment: Third World Approaches to the Planetary Crisis

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DECOLONIZING THE ENVIRONMENT: THIRD WORLD APPROACHES TO THE PLANETARY CRISIS

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Abstract

The colonial process transformed the landscape of the Earth with devastating consequence for communities and ecosystems. It also set the foundations of the planetary crisis that we see today. Using a TWAIL approach, this article argues for the relevance of colonial and post-colonial analysis in combatting today's planetary crisis and advancing a more effective form of global environmental governance. Today's global order of multilateral agreements is increasingly under criticism, ineffective in combating the planetary crisis and in halting the disproportionate impact of ecological change experienced across the global South. A TWAIL lens helps to understand the root causes of today's crisis in the colonial past, and to embrace calls by vulnerable communities across the South for equity and justice in environmental decision-making. It brings clarity to the socio-political context from which today's planetary crisis arose, ways colonial and post-colonial legacies continue to shape today's multilateral frameworks, and why, despite an array of well-crafted global regimes, the planetary crisis continues to escalate.

Keywords : *decolonization, planetary crisis, third world*

I. INTRODUCTION

The world commemorated the 50th anniversary of the 1972 UN Conference on the Human Environment and the adoption of the Stockholm Declaration in 2022. This served as the inception point for modern international and domestic environmental law, with the rapid expansion of multilateral agreements in the years that followed its inception.[2] For instance, twenty years later, at the 1992 Rio Earth Summit, the landmark UN Convention on Biological Diversity and the UN Framework Convention on Climate Change was adopted. The affiliated Sustainable Development Goals and the Paris Agreement on climate

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[1] The opinions expressed herein are solely those of the author and in no way represent those of the UN, UNDP or its Member States.

[2] Pamela Chasek, "The Legacies of the Stockholm Conference, Policy Brief No. 40" in *Still Only One Earth Series* (Winnipeg: International Institute for Sustainable Development (IISD), 2022).

change are expected to be implemented by adopting the 2030 Agenda for Sustainable Development.

Despite the rapid expansion of multilateral environmental frameworks and the ascent of the sustainability agenda to the forefront of global policy-making, the planetary crisis continues to accelerate. Current atmospheric carbon levels are at significant heights not seen in millions of years. However, people believe it is presently the onset of the sixth mass extinction in the earth's history.[3] Far from a purely environmental issue, the cumulative impacts of ecological change are now a driving force of growing inequality and fragility globally.[4] Vulnerable communities in the global South are seeing levels of instability rise dramatically due to the converging impacts of climate change, more frequent and severe disasters, and acceleration of zoonotic disease outbreaks.[5]

Several practitioners have assumed that after decades of progressive evolution, the passage of normative frameworks remained efficient and effective in system implementation, including scaled-up finance, market-based mechanisms, technology innovation, etc. However, global environmental sustainability has been a socially and politically contested crisis. It is associated with debates over issues of justice and accountability at the forefront of negotiations over global regimes, such as the Paris Agreement on Climate Change and the Global Biodiversity Framework. Meanwhile, significant attention is placed on mobilizing global financial and technical solutions to combat the crisis associated with the fundamental root causes in the social and political realm.[6] The global narrative around environmental sustainability tends to obfuscate the historical roots of the planetary crisis by ignoring or misconstruing the role of colonial legacies and continued geopolitical power and wealth imbalances in the post-colonial era as sources of current planetary crisis.[7]

A greater percentage of the ecological decline around the world originated from the rise in advanced industrial economies of the West during

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[3]	Ashley Dawson, *Extinction: A Radical History* (New York: O/R Books, 2016). See also "Earth's CO2 level passes a new climate milestone," Al Jazeera, 4 June 2022, https://www.aljazeera.com/news/2022/6/4/earths-co2-level-passes-a-new-climate-milestone).

[4]	Phillip Alston, "Climate Change and Poverty," OHCHR Geneva, 25 June 2019, https://www.ohchr.org/Documents/Issues/Poverty/A_HRC_41_39.pdf. See also UNDP, *New Threats to Human Security in the Anthropocene* (New York: UNDP, 2020).

[5]	Kishan Khoday, "Rethinking Nature, Crisis, and Complexity after the Pandemic," in *Development Future Series* (New York: UNDP, 2021).

[6]	Bruno Latour, *Facing Gaia: Eight Lectures on the New Climatic Regime* (Cambridge, United Kingdom: Polity Press, 2017). See also Jane Bennet, *Vibrant Matter - A Political Ecology of Things* (Durham, United States: Duke University Press, 2010); William Connolly, *Facing the Planetary: Entangled Humanism and the politics of swarming* (Durham, United States: Duke University Press, 2017).

[7]	Vassos Argyou, *The Logic of Environmentalism: Anthropology, Ecology, and Post-coloniality* (Oxford, United Kingdom: Berghahn Books, 2005), 52.

the colonial and post-colonial eras.[8] The colonial process transformed the earth's landscape, including its critical ecosystems across the tropics, with devastating consequences for both societies and the planet. Meanwhile, the post-colonial era saw an attempted redress and rise of the modern regimes for environmental sustainability, the foundations of the planetary crisis were in many ways set on course during the preceded regimes of plunder. This is important for understanding the root causes of current crisis and the rising calls by civil society leaders to move beyond conventional solutions.

Some of the world's largest-ever social protests on issues related to justice and accountability for the poor and vulnerable without historical relationship to the causes of environmental crises have been experienced in recent years.[9] Accordingly, social movements have focused on the need for new approaches to global environmental governance. The era of modern environmentalism that emerged over the last fifty years and resulted in current global order of multilateral agreements is increasingly under criticism. This is because conventional systems are ineffective in advancing action and, in some ways, complicit in escalating the planetary crisis. [10] The specter of civilizational collapse has depleted peoples' faith in dominant paradigms of progress, triggering calls for a transformation to systems of law, policy, and governance.[11]

A Third World Approach to International Law (TWAIL) is an important means of responding to this challenge. Understanding the nature of current planetary crisis requires looking beyond the evolutionary pathways of the present normative frameworks with their conventional underpinnings in Western environmentalism and the systems that emerged from the Stockholm summit. A broader perspective that helps to understand the socio-political history and geopolitical contexts of current planetary crisis is needed to shape the colonial and post-colonial dynamics of international law. Furthermore, a TWAIL lens can help understand the socio-political barriers that hold back actions to confront the planetary crisis and explain why the crises continue to escalate despite an expanding array of well-crafted international regimes.

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[8] Alfred Crosby, *Ecological Imperialism: The Biological Expansion of Europe 900-1900* (Cambridge, United Kingdom: Cambridge University Press, 2004); Robert Marks, *The Origins of the Modern World: A Global and Ecological Narrative from the Fifteenth to the Twenty-First Century*, Second Edition (Oxford: Rowman and Littlefield Publishers Co., 2007); and Christina Folke Ax et al. (eds) *Cultivating the Colonies: the Colonial States and their Environmental Legacies*, (Athens: Ohio University Press, 2011).

[9] Ban Ki-moon and Patrick Verkooijen, "Time is Running Out to Stop the Forces Driving a New Climate Apartheid, Devex Opinion," Devex, *18 October 2019*, https://www.devex.com/news/opinion-time-is-running-out-to-stop-the-forces-driving-a-new-climate-apartheid-95841.

[10] Argyou, *The Logic of Environmentalism*, 52.

[11] Jonathan Paul Marshall and Linda H. Connor, *Environmental Change and the World's Futures – Ecologies, ontologies and mythologies*, (Routledge, New York: Earthscan, 2017), 96.

As a geopolitical project focused on the social, historical, and political underpinning of international law, a TWAIL perspective can help understand the roots of current global challenges as well as the ways that inequality, injustice, and ecological decline have been deeply intertwined.[12] It is also a social movement focused on solidarity and justice for those disproportionately impacted by natural resource plunder and ecological change across the globe. Therefore, it is an important lens that enables people to rethink the law toward addressing the plight of the vulnerable in society. The planetary crisis is not only rooted in a history of inequality and injustice but is also a future threat to lives and livelihoods. A TWAIL approach is both a way of understanding the historical foundations of the crisis and a pragmatic, forward-looking project to rethink the future of international law and promote greater agency and social movements for change.

Section 2 starts by reviewing current planetary crisis, which has its roots in the colonial experience, the strategies needed for post-colonial transition to continue shaping the modern environmental regimes, and these legacies have continued to shape the nature of the planetary crisis. It reviewed two related features for future analysis. These include current shifting geopolitics for the future of global environmental regimes and how bottom-up social movements for change across the South drive evolution in value formation.

Section 3 examines the strategies needed to catalyze a shift in the re-emergence of the global South politically and economically. This is in addition to how the continued struggle for 'de-coloniality' in the South is reshaping core aspects of the global environmental governance system. Section 4 evaluates the rise of social movements for change across the South and how this can drive the evolution of ethics and values to better embrace diverse local worldviews on balance between people and the planet. This process enables the TWAIL to help shape a new narrative based on the diverse, lived experiences across the global South as a driver of new norms, values, and solutions.

II. ROOTS OF THE PLANETARY CRISIS

Current climate emergency and ecological crisis are closely connected to poor and vulnerable communities' eras across the Southern part of the globe. The plunder of the South during the colonial era, including its numerous globally critical ecosystems, was a primary factor in the successful emergence of the advanced economies of the West.[13] This history of social and ecological

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12   Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Cambridge, United Kingdom: Harvard University Press, 2011), 233.
13   Simon Lewis and Marc Maslin, "Defining the Anthropocene," *Nature* 519 (2015): 177.

exploitation is an important factor in understanding the socio-political context in which current planetary crisis arose and the North-South response to modern international environmental law architecture.[14]

One of the most significant and lasting impacts of the colonial era on the global environment was shaping the overarching paradigms associated with concepts such as modernity, development, and progress. Before the evolution of the modern era of global environmentalism in the 1970s, the prolonged dominant discourse produced by the West indicated that the environment was in a 'state of nature.'[15] The path to modernity was in many ways rooted in a distinct set of principles and worldviews on the nature of global society that arose from the Enlightenment and spread globally through colonization.[16]

The 'civilizing mission' that fueled the colonial era was a key dynamic in this process. The conquest of nature was seen as a fundamental prerequisite for progress, modernity, and civilization goals. Furthermore, a negative teleology emerged as colonial forces interacted with local communities worldwide. This led to the construction of the ideas of being modern and civilized in opposition to primitive 'others,' seen as lacking the agency and capability to reshape nature for the benefit of progress.[17] The civilization mission evolved out of the interaction between colonial forces and communities across the South by holding the acquaintance with the physical laws of the world and the accompanying power of unlocking the secrets of nature. This is in addition to adapting nature to man's ends, which are the lowest, mean, and highest among savages, barbarians, and modern educated nations.[18] The ability to control nature was seen as a pre-condition for being civilized, intertwined with notions of individuality, liberty, and freedom. It became a primary goal in legal frameworks that emerged to govern the colonies and the world. Freedom from nature was perceived as integral to internal freedom, with a 'liberated, sovereign subject' envisaged to emerge out of this increased power of control over the forces of nature. Those opposing this vision were seen as primitive and 'underdeveloped.[19]

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[14]   *See* Ashley Dawson, *Extinction: A Radical History*, (New York O/R Books, 2016). See also Alfred Crosby, *Ecological Imperialism: The Biological Expansion of Europe 900-1900 (New Edition)*, (Cambridge: Cambridge University Press, 2004); Robert Marks, *The Origins of the Modern World: A Global and Ecological Narrative from the Fifteenth to the Twenty-First Century*, Second Edition (Oxford: Rowman and Littlefield Publishers Co, 2007); and Christina Folke Ax et. al., eds., *Cultivating the Colonies: The Colonial States and their Environmental Legacies* (United States: Ohio University Press, 2011).
[15]   Vassos Argyou, *The Logic of Environmentalism: Anthropology, Ecology, and Post-coloniality* (Oxford: Berghahn Books, 2005), vii.
[16]   Argyou, *The Logic of Environmentalism*, vii.
[17]   Peter Fitzpatrick, *The Mythology of Modern Law* (London: Routledge, 1992), ix-xiii.
[18]   Argyrou, 17.
[19]   Argyrou, 17.

The extractive utilitarianism that underlay the civilizing mission stood in opposition to the pluralism of worldviews that existed across the globe. *Descola* stated that the elements of nature were traditionally seen by many people globally as imbued "with souls, consciousness, language, and culture, similar to humankind. Nature equally distributed many technical skills, ways of life, and modes of reasoning to humans and nonhumans." [20] Many cultures associated humans with societal norms and traditional customary laws, which focused on aligning society with the broader forces of nature.

Conversely, in the modernist paradigm, "nature is devoid of a spirit and a standing reserve of resources for development. Its mastery can be concerned as an expression of cultural superiority and the key mark of civilization."[21] The transformation was considered a "primordial act, transforming chaos into order, imbuing the environment with human form, a divine-like act to craft a new world."[22] The concept of civilization and modernity was grounded in a vision of the environment as a "domain of utility, mastered and brought under man's control, compelled to satisfy their needs and provide happiness. Opposers were primitive, traditional, and underdeveloped, which was the 'anthropology' of the modernist paradigm."[23] Modern society was seen as evolving beyond a primitive state of nature out of which humans arose "as a band of bold though diminutive giants, gradually descending from the mountains, to subjugate the Earth, and change climates with their feeble arms."[24] According to Fitzpatrick, through the colonial enterprise, "culture confronted nature in standard mythic terms, and won, thereby eliminating the deific obstacle to human progress and unveiling the true nature of the universe; a kind of reversal of Eden." This enables humanity to control nature and reshape the planet in its image. [25]

The conquest of nature took on an almost mythic character at the base of the globalized order and theory of international law that emerged in the colonial era. This led to the period of 'Enlightenment imperialism,' which in numerous ways sets the roots of current planetary crisis. It also shaped the difference between developed and developing countries in the making and practicing modern international environmental law in the post-colonial era.[26] A new vision of international order evolved during the post-colonial era in the mid-20th century, which inherited many underlying defects. The idea

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[20]   Philippe Descola, *Beyond Nature and Culture*, (Chicago: University of Chicago Press, 2013), xiv.

[21]   *Ibid*., 2.

[22]   Argyrou, 10-11.

[23]   Argyrou, *The Logic of Environmentalism*, vii.

[24]   Johann Gottfried Herder, *Outlines of a Philosophy of the History of Man 1784-91* (New York: s.n., 1966), 196; Ivonne del Valle, "From Jose de Acosta to the Enlightenment: Barbarians, Climate Change and (Colonial) Technology as the End of History," *The Eighteenth Century* 54, no. 4 (2013), 435-459.

[25]   Fitzpatrick, *The Mythology of Modern Law*, 44-53.

[26]   Valle, "From Jose de Acosta to the Enlightenment," 436.

that progress was inherently contingent on a conquest of nature continued in many ways as a core premise of modernity. According to the United Nations, "progress occurs only when people believe in man's capability to master nature consciously."[27]

The modern rise of global environmentalism in the West in the 1970s shifted the 1972 Stockholm Conference on the Human Environment, which saw an attempt to adapt the preceding worldview and reverse the ecological decline inflicted by modernity on the planet. It was not seen as a state of nature in permanent combat with humanity but as a complex and fragile ecosystem in need of protection. "To attain freedom in the world of nature, man must use knowledge to build a better environment, which is an imperative goal."[28] The corpus of international environmental law that followed in the past fifty years has expressed the goal of mending the deep divide between people and the planet. Beyond the legalistic functions, international environmental law emerged as a revolutionary act to advance an "ontological transformation", reflecting a "new 'physics", "anthropology", and "order of things".[29]

For some years and decades, most countries in the global South pause to compose and reflect on whether there was anything more to do than to take the plunge forward and shift towards new sustainability paradigms.[30] However, this proposed shift stood in stark contrast to the legacy of violence against nature and communities imposed by the West. It also contrasted with advanced economies' continued reliance on the exploitation of ecosystems in the post-colonial era for the pursuit of social and economic gain and progress. The increase in Stockholm, the plunder of ecosystems, and the planetary crisis have led to a rapid rise in multilateral frameworks for the environment in the decades.

Since the push to achieve sustainability faced a situation where the South is "expected, cajoled, promoted, assisted, and threatened to take a stance, it has continued to act suspiciously with doubts, questions, rejects, negotiates, co-opts, recognition, endorsement."[31] Over the past fifty years, post-colonial society's relationship to international environmental law was shaped "in dialectic relation to the preceded colonial destruction", "Its roots consumed blood, and its extracted tears from the soil raised through its branches, were dispersed in its architecture".[32] While the South has proactively engaged in

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27   Gilbert Rist, *Le développement: Histoire d'une croyance occidentale* [The History of Development: From Western Origins to Global Faith] (France: Presses de Sciences Po, 2004), 27.

28   UNEP, *Declaration on the Human Environment*, 1973, 3.

29   Argyrou, 39.

30   *Ibid*., 33.

31   *Ibid*., xi.

32   Elizabeth DeLoughrey and George Handley, *Post-colonial Ecologies* (United Kingdom: Oxford Uni-

forming global environmental governance, there has always been a "post-colonial wariness of globalizing impulses".[33] The tension between global and local, as well as past and future, remained at the center of negotiations around the 1992 Rio Conventions on climate change and biodiversity. This is in addition to the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change.

A better understanding of colonial and post-colonial legacies can help provide adequate knowledge of the foundations of current global agenda and ongoing tensions in multilateral policy making. Historical legacies continue to shape the world's ability to combat the planetary crisis. It provides a view of the future with a continuous struggle for 'de-coloniality' in the global South[34] and ways international law needs to evolve to better embrace the re-emergence of the local constituencies for action.[35]

III. NATURE AND GEOPOLITICS IN A MULTI-POLAR WORLD

According to preliminary research, the legacies of the past continue to influence the nature of law and order currently. Mitchell stated that the geopolitical matrix of power and knowledge production generated in the colonial era is crucial in understanding barriers to sustainable and equitable use of natural assets.[36] In more recent times, the gradual re-emergence of the global South, politically, economically, socially, and culturally, disrupted and destabilized the status quo. This tends to drive an evolution in global policy and law. It also has implications for the geopolitical context for global responses to the planetary crisis, including the nature and architecture of global environmental regimes and the emergence of more multi-polar world order.

While the ecological implications of the rise of emerging economies of the South have been the topic of significant debate in global processes, with the global ecological footprint of China and India rising rapidly in recent years, less attention has been placed on its potential role in shaping the principles of sustainability to the planetary crisis. Therefore, a TWAIL perspective is needed to understand better current planetary crisis in the context of colonial

versity Press, 2011), 5-6. Also see Thomas McCarthy, *Race, Empire and the Idea of Human Development* (United States: Cambridge Press, 2009).

[33]   DeLoughrey and Handley, *Post-colonial Ecologies*, 28.

[34]   Walter D. Mignolo, *The Darker Side of Western Modernity – Global Futures, Decolonial Options* (London, United Kingdom: Duke University Press, 2011), 10-13.

[35]   Connolly, "Facing the Planetary," 9.

[36]   Timothy Mitchell, *Carbon Democracy: Political Power in the Age of Oil* (London, United Kingdom: Verso, 2011).

and post-colonial legacies. This process will help rethink the future and ways international law can be transformed to embrace the re-emergence of the South as a growing socio-political force in forming and implementing normative frameworks and global regimes. Many Southern countries are also witnessing a cultural re-emergence, with a young and globally connected population increasingly expressing its views as global citizens, particularly around issues of planetary crisis.[37] With the diversification of values and visions for the future, the shift to a multi-polar order provides hope for "a growing sense of global human commonality as a practical social force" to address the planetary crisis.[38] This process provides new and inventive thinking that seeks to redress and move beyond the legacies of the past. "The ability to think differently needs the confidence to break through historical "whitewash", as well as the arrogance of old, established, and ultimately borrowed ideas".[39] This represents an opportunity for countries "to determine their development paths, thereby leapfrogging the technologies, policies and even cultures presently prevailing in many western countries".[40] By engaging in this process, the South revalorizes its place in the world as an act of agency, but it can also bring into the process post-colonial critiques of modernity and understanding of the geopolitics knowledge of production.

Mignolo posits two ways of thinking about this as an emancipatory process, known as "dewesternization", which seeks to rebalance global and local forms of knowledge. The other is "de-coloniality" as a practical act to delink from the geopolitical matrix of power that shaped colonial and post-colonial eras.[41] Both ways of thinking entail an epistemic struggle to reclaim and reshape core elements of the global agenda, including ways to rebalance humanity's relation with nature and the planet. Furthermore, engaging greater voice and solutions from the South should not be seen as a form of reverse Orientalism or an attempt to return to the past, but rather to "re-inscribe it in the present, towards the future".[42] It is a means of adapting international legal theory to engage diverse visions on balance between people and the planet to reflect the lived local contours of societal and cultural change. Therefore, to achieve this process, an appreciation is acquired of "the local and often inassimilable aspects of culture and history, which helps to uphold a sense of

[37]   UNDP, *Human Development Report 2020: The Next Frontier: Human Development in the Anthropocene*, (New York: UNDP, 2020).
[38]   Malcolm Shaw, *Theory of the Global State – Globality as Unfinished Revolution* (Cambridge, United Kingdom: Cambridge University Press, 2000), 1.
[39]   Argyrou, xix.
[40]   Argyrou,19
[41]   Mignolo, *The Darker Side of Western*, 10-13.
[42]   *Ibid.*, 49, 330-332.

alterity while still engaging a global imaginary".[43]

It is important to examine how this process can shape global policy and international law practice beyond academic exercise. An example is the emergence of the Paris Agreement on climate change, one of the first major multilateral agreements to attempt a move beyond the developed and developing country dichotomy that has shaped global order since the post-colonial era. The UN Framework Convention on Climate Change (UNFCCC) and other multilateral environmental agreements that emerged from the 1992 Rio Earth Summit established the common principle. However, it also differentiated responsibilities by recognizing environmental sustainability as a common concern of humanity while acknowledging the disproportionate burden of action on advanced industrialized countries due to their large ecological footprints and important historical legacies and ecological debt. Unlike the preceding Kyoto Protocol on climate change, which set mandatory emission reduction targets for advanced economies of the West, the Paris Agreement focused on universal voluntary commitments by developed, emerging, and developing economies.

This led to the inception of the following question - will the planetary crisis serve as a tipping point pushing the world beyond the post-colonial era of global governance and international law? The Paris Agreement was adopted in 2015 at a time when global affairs were decidedly and rapidly shifting to a multi-polar order, driven by the rise of the emerging economies of the South. It represented a very different geopolitical backdrop relative to when the UNFCCC was adopted in the 1990s.[44] In this situation, the Paris Agreement is evaluated as a strategy used to signal the movement of early incipients to embrace the new multi-polar reality beyond the post-colonial geopolitical matrix that had shaped the world for the past half-century.

However, there are major concerns in the South regarding differentiation issues of justice and accountability for legacies of the past that should not be left behind. Loosening the developed-developing binary can in many ways be an empowering act for a re-emerging South and viewed as an attempt to dilute historical accountabilities to avoid reparations for the planetary crisis.[45] In the lead-up to the Paris Agreement, and indeed during its initial implementation in recent years, historical legacy issues have emerged as an important element of

[43]   Susie O'Brien, "Articulating a World of Difference: Ecocriticism, Postcolonialism, and Globalization," *Canadian Literature* 170/171 (2001): 140-158.
[44]   Maria Jernnas and Bjorn-Ola Linner, "A discursive cartography of nationally determined contributions to the Paris climate agreement," *Global Environment Change* 55 (2019), 73-83.
[45]   Raoni Rajao and Tiago Duarte, "Performing post-colonial identities at the United Nations' climate negotiations," *Postcolonial Studies* 21, no. 3 (2018): 365.

negotiations. Many countries have resisted perceived attempts to deconstruct historical ecological debt. The principle of common but differentiated responsibility and the developed-developing dichotomy reaffirms the relevance of colonial and post-colonial legacies on communities.[46]

Advanced economies of the West built their industrial complex and wealth on the ever-expanding reliance on fossil fuels and the extensive extraction and exploitation of natural resources across the South. By some estimates, more than half of all carbon in the atmosphere currently was the output of the emerging industrial economies of the West from the 18th to 20th centuries, during colonial and post-colonial eras.[47] Meanwhile, expanding emission levels in current emerging economies of the South are important for addressing global sustainability. Many are concerned the expense of addressing historic legacies continues to shape vulnerability in the South, including the ecological debt owed to vulnerable countries around the world during colonial and post-colonial eras.[48] Furthermore, the call to raise ambition and accelerate action in the South is also closely tied with challenges of inequality and lack of systemic capacities, which often turn on entrenched legacies from past eras.

The Paris Agreement is an example of continued tension between balancing the past's legacies and future challenges. According to *Paprocki*, without adequate attention to socio-political history and context, the technocratic and future-facing nature of global regimes can downplay the historical bases of inequality and poverty across the South and misconstrue the role of colonial legacies as a source of current ecological vulnerability.[49] *Hickel* stated that 90% of the excess amount of carbon in the atmosphere currently is above the 350 parts per million thresholds for maintaining planetary boundaries, with its origins in historical emissions by advanced industrial economies of the West.[50] This includes emissions generated within countries' territorial boundaries since the onset of the industrial revolution during colonial times, as well as consumption-based emissions generated by manufacturing facilities within Western transnational corporations relocated by the West to the global South in the post-colonial era.

From this perspective, the primary responsibility for most of the

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[46]   *Ibid.*, 376-377.

[47]   Hannah Ritchie, "Who has contributed most to global CO2 emissions?" Our World in Data, 1 October 2019, accessed https://ourworldindata.org/contributed-most-global-co2.

[48]   Jason Hickel, "Quantifying National Responsibility for Climate Breakdown: An Equality-Based Attribution Approach for Carbon Dioxide Emissions in Excess of The Planetary Boundary," *Lancet Planet Health* 4, (2020): 399.

[49]   Kasia Paprocki, "Anti-politics of climate change," Himal Southasian, 28 November 2016, accessed https://himalmag.com/anti-politics-of-climate-change/.

[50]   Hickel, "Quantifying National Responsibility."

carbon in the world and rapid emission reductions in coming years should be focused on the advanced economies of the West. While this does not displace the importance of taking more ambitious action in large emerging economies, this must be balanced by a principle of ecological debt owed to vulnerable communities and the continued importance of the developing-developed dichotomy in international law. *Hickel* proposed a regime based on the principle of equal per-capita access to the atmospheric commons to operationalize such a balance.[51] All countries need to remain within their fair share of the carbon budget because breaching this level constitutes a type of occupation or colonization of atmospheric space. However, this is unable to correct the historical imbalance and ecological debt owed to the global South, and it is a means of preventing the continued imbalance by ensuring access to the carbon budget in the future.

Beyond the confines of specific environmental regimes such as the Paris Agreement, the move to reaffirm colonial and post-colonial legacies in global affairs has also come into focus in recent years through broader UN processes, including General Assembly Resolution A/RES/73/240 (2018) Towards a New International Economic Order (NIEO).[52] This represents a renewed call to affirm the unfinished business of the original NIEO Declaration of 1974, which sought to establish a more equitable approach to natural resource development globally. The new NIEO vision notes how "many relevant aspects of the Programme of Action on the Establishment of a New International Economic Order have not been implemented. Consequently, many developing countries continue to face significant challenges to their development prospects". In contrast to the original Declaration, it focuses on "the challenges posed by climate change, which have a negative impact on the development prospects of some developing countries". This process is used to note how new solutions address the planetary crisis by "carrying forward many of the ideas and recommendations" of the original 1974 NIEO Declaration.[53]

Returning to the question - is the existential threat of the planetary crisis acting as a tipping point pushing the world beyond the post-colonial era of global governance and international law? The call of global regimes like the Paris Agreement for universal commitments signals an incipient attempt to move beyond the post-colonial architecture of international order, seeking to embrace a future shaped by a re-emerging South. While embracing the future, international law remains a socially and culturally contested project to combat

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[51]   *Ibid*.
[52]   United Nations, UN General Assembly Resolution A/RES/73/240 *Towards a New International Economic Order*, available at <[https://digitallibrary.un.org/record/1660913].
[53]   *Ibid.*

historical legacies of injustice. Accordingly, rather than moving beyond colonial and post-colonial legacies, the planetary crisis needs to be catalyzing greater reflection on the origins of current planetary crisis, the root causes of rising vulnerability, and the systemic barriers that continue to impede goals of justice, accountability, and more ambitious action.

IV. NATURE IS A STORY: EMBRACING PLURALISM

In addition to better understanding social and political history and adapting international law for a new era of geopolitics, a TWAIL lens can also provide adequate knowledge of the role of culture and values in the formation and operationalization of international law. It is also important as a project focused on the sociological history and geopolitics of international law, a social movement for change based on solidarity across the South. This is particularly important for combating the planetary crisis.

According to Argyrou, "the science of global environmental change can only point to facts, which are not enough to explain effective engagement with the world. A system of values, a moral story, and an ontological master narrative within which the ecological crisis becomes visible but also relevant and meaningful are needed to captivate people's full being".[54] Recent years have been associated with the evolution of unprecedented social movements around the planetary crisis, representing some of the largest worldwide civil society protests in history. In advocating for systemic change, these social movements encourage humans to take more concerted action by reimagining the basic values underlying modernity. This triggers the consideration of the existential nature of the planetary crisis in catalyzing a new set of social values. The new approaches to global regimes, such as transformative change, also need a motivating narrative and a forward-looking vision grounded in the lived realities and experiences of the global South.

The breach in planetary stability provides the standard social and cultural frames of reference for understanding and addressing its associated crisis in flux.[55] The consensus at the base of current world order is increasingly under review, with social movements calling out conventional neo-liberal ethics and values as complicit in generating the planetary crisis and ineffective in advancing corrective action. The specter of ecological and civilizational collapse is depleting society's faith in conventional values, triggering calls for

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[54] Argyrou, "The Logic of Environmentalism," 48.
[55] Marshall and Connor, "Environmental Change and the World's Futures," 96; See Amy Elias and Christian Moraru, *The Planetary Turn – Relationality and Geoaesthetics in the Twenty-First Century* (Evanston: Northwestern University Press, 2015).

a transformation to ethical paradigms on the relationship between people and the planet.

Since the inception of modern environmentalism in the 1970s, multilateral environmental agreements have come to reflect society's evolving norms and values, historically driven by the rise of environmentalism in the West. However, achieving a transition to sustainability currently requires a better engagement with the diversity of values worldwide. This is due to the diverse set of perspectives capable of shaping a more bottom-up narrative for action, vital to achieving more ambitious action locally as well as addressing the numerous geopolitical challenges noted earlier.

Many current global policy analyses and debates point to the need for a shift, on the horizon whereby conventional values to transform paradigms towards a new common understanding needed to reinvent the world.[56] For example, the 2020 Global Human Development Report calls for a shift beyond the anthropocentric values and paradigms that defined development paradigms towards embracing the plurality of global values that remain at the periphery of the dominant discourse. James Speth, former head of the United Nations Development Programme (UNDP), stated "the top environmental problems are selfishness, greed, and apathy, which need to be dealt with through a spiritual and cultural transformation".[57] Remaking ethics and values are a core concern within global thinking on ways to combat the planetary crisis, reimagining the epistemic boundaries that have fenced-in legal and policy responses.[58] This includes an aspired 'shift from an ontology of possessive individualism, of "having more," to a relational ontology and ethic of "being more".[59]

It also addresses calls by civil society for 'system change' and to remedy the legacies of colonial and post-colonial eras from which the world advanced a distinct set of anthropocentric, reductive, linear, and mechanistic views of nature, fueling the extraction of value from the ecology of 'others' across the global South.[60] New ethical frameworks do not need to emerge as a spark from above or a re-enlightened global center. Instead, the process of reimagining ethics and values should build on the variety of worldviews and traditions on balance between people and the planet that exist globally, thereby revalorizing eco-cosmologies and values that were long subjugated during colonial and post-colonial eras.

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56   Marshall and Connor, "Environmental Change and the World's Futures," 96.
57   Joseph Cederwall, "Hope for Nature: A New Deal for the Commons," Scoop Independent News, 14 November 2019, accessed https://www.scoop.co.nz/stories/HL1911/S00063/hope-for-nature-a-new-deal-for-the-commons.htm, accessed on 12 November 2020.
58   G. Chakravorty Spivak, *An Aesthetic Education in the Era of Globalization* (Vienna: Passagen Verlag, 1999), 34.
59   Marshall and Connor, "Environmental Change and the World's Futures," 96.
60   Philippe Descola, et. al., *The Ecology of Others* (Chicago: Prickly Paradigm Press, 2013), 13.

For many communities across the South, the elements of nature have always been imbued "with souls, consciousness, language, and culture, similar to humankind. Nature reigned everywhere, distributing many technical skills, ways of life, and modes of reasoning equally among humans and nonhumans".[61] Knowledge and inspiration exist in local communities whose epistemologies have survived colonial and post-colonial impositions over decades and centuries. Many cultures see agency in human and nonhuman entities, with societal norms and customary laws focused on aligning social order with broader forces of nature.

The call for a new set of ethics and values should be understood as resistance by communities left behind and ecologically impacted by current totalizing epistemes of modernity and development used to assert a more meaningful set of values. For example, a spirit of pluralism and local valorization was an important element of the process on the road to the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change. In addition to the evolving geopolitical implications of the Paris Agreement, the new regime has also sought to embrace a more locally contextualized form of climate action using two examples.

The first is the national NDC climate plans emerging as a key instrument for operationalizing the Paris Agreement and 2030 Agenda for Sustainable Development. It is important to note that they are envisaged and formulated from a bottom-up local vision for more climate-resilient development pathways, with diverse approaches among NDCs contextualized to each country's context. Beyond setting targets for scaled-up technology and finance, the NDCs also express a discursive struggle and contestation of values as countries across the global South come to terms with the causes and effects of ecological vulnerability and ways local values can shape the future.[62]

As the process of NDC implementation continues to unfold, a mosaic of local narratives continues to emerge. Jernnas and Linner analyzed 136 NDCs globally and the diversity of narratives and values they represent. Most reflect conventional approaches around market-based solutions and scaled-up finance. Meanwhile, others express several emerging narratives specific to the contexts of the global South, signaling a process of discursive localization and expression of unique local values.[63] Examples include prioritizing actions that address climate change as a threat to security and building climate resilience for the poor. Some NDCs in the global South, such as in Bolivia, China, India, and Morocco, also focus on the need for transformation beyond neoliberal narratives of environmentalism. These comprise actions to embrace local cultural constructs of nature, as well as the

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[61]   Philippe Descola, *Beyond Nature and Culture* (Chicago: University of Chicago Press, 2013), xiv.
[62]   Maria Jernnas and Bjorn-Ola Linner, "A discursive cartography of nationally," *Global Environmental Change* 55, (2019): 73.
[63]   *Ibid*., 79-80.

vision advanced by social movements regarding the rights of nature.[64] While only modestly expressed through NDCs until now, more localized ethical values are an important base for addressing the planetary crisis, a syncretic process between global goals and local visions of the future.

Secondly, it is driven by mounting social movements and calls for systemic change, with many countries in the global South seeing a rapid evolution of legal jurisprudence balancing the vision set in multilateral environmental agreements and global frameworks with local values and ethics on environmental sustainability.[65] Beyond resolving specific complaints and disputes, these decisions are an important expression of evolving ethics and values in the South through legal discourse on ways to engage issues of justice, accountability, and sustainability. In India, for example, a large and vibrant set of social movements and mass protests have occurred on the environmental agenda in recent years. In addition to public protest, citizens have also increasingly taken their calls for change to the courts, arguing and winning several influential cases that advance the cause of setting a new vision on sustainability.[66] The issues focused on deep roots in the past's extractive policies and exploitative practices instead of current affairs.

Colonial control systems in India were enacted with a clear view of the value of ecosystem exploitation, operationalized through a "tripartite alliance between political reality, revenue enhancement, and climate theory".[67] The paradigms of progress initiated during this period were born out of a confrontation between nature and culture, with the modern developmental state arising from basic assumptions on the division between civilized and primitive eras, as well as nature and culture. India's freedom movements and eventual independence in the 20th century embraced a critique of these underpinnings. Mahatma Gandhi stated that humans' mastery over nature should not be used as the essential benchmark for measuring civilization and progress. This is because it leads to a drive to overcome colonial legacies and advance alternative paradigms in the global South as an act of agency and self-realization.[68] Despite the call to rethink the balance between people and the planet, the civilizing mission's goal of achieving 'freedom from nature'

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[64]   *Ibid*.

[65]   George Pring and Catherine Pring, *Environmental Courts and Tribunals*: *A Guide for Policy Makers* (Nairobi, Kenya: UN Environment, 2016), 74.

[66]   Kishan Khoday and Natarajan, "Fairness and International Environmental Law from Below: Social Movements and Legal Transformation in India," *Leiden Journal of International Law* 25, no. 2 (2012): 415.

[67]   Gregory Barton, *Empire, Forestry and the Origins of Environmentalism* (Cambridge, United Kingdom: Cambridge University Press, 2002), 19.

[68]   T.N. Khoshoo and John Moolakkattu, *Mahatma Gandhi and the Environment*, (New Delhi, India: TERI Press, 2009).

was difficult to dislodge. It was formalized in the post-colonial era through the matrix of development policies and practices advanced by the modern developmental state.

However, the call to rethink inherited paradigms inspired social movements for change, including the landmark protests in the Himalayan foothills over poverty, accountability, and justice in forest ecosystems.[69] The Chipko tree hugger movement that emerged fifty years ago, in 1973, inspired a wave of nationwide protests in subsequent decades. These movements focused on the need to transform conventional views of development, engage bottom-up values, and reset the balance between communities and ecosystems.[70] It is also important to recognize what Chipko meant for an 'environmentalism of the poor'. This is because it represented a form of ethics grounded in the local life experiences and values of those for whom the systemic power of colonial and post-colonial paradigms and systems emerges as an insult to lives and livelihoods. It still stands currently as an important representation of the transversal, bottom-up social movements for change across the global South and how locally-driven third-world approaches to inclusion and sustainability can affect change to the law, development, and order paradigms. In more recent years, several landmark decisions have been issued by courts in India, in which communities have challenged the basic premise of anthropocentrism and called for a radical rethinking of the relationship between people and nature. This includes landmark decisions in the Himalayan jurisdiction of Uttarakhand, where the State High Court stated that local watersheds, including rivers, glaciers, and biological species, had legal rights to exist akin to humans. It grants rights of personhood to natural entities and entrusts citizens to act as representatives of ecosystems to bring claims on their behalf. In *Lalit Miglani v State of Uttarkhand* (Writ Petition PIL No.140, 1970), civil society petitioners filed public interest litigation calling on the state to recognize the existential threat to local ecosystems as living entities with agency and entitled to personality under the law. [71]

The Court stated that the rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests, wetlands, grasslands, springs, and waterfalls of the Himalayan ecosystem are considered by law as 'juristic persons' entitled to legal rights. These included the rights of these legal entities to human beings and that the State "must recognize and bestow Constitutional legal rights." Therefore, through its decision, the Court recognized the impersonal agency

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[69] Ramachandra Guha, *How Much Should a Person Consume? Thinking through the Environment* (India: Permanent Black, 2006), 55.

[70] *Ibid.*, 119.

[71] "Rights of Nature Law and Policy," Harmony with Nature United Nations, accessed 20 Juni 2022, http://www.harmonywithnatureun.org/rightsOfNature/.

of ecosystems, holding the thrust of socio-political-scientific development evolution of a fictional personality, which becomes inevitable. In 2019 and 2020, the High Courts of Punjab State and Haryana State issued right of nature decisions, holding that local terrestrial ecosystems had legal personhood and rights enforceable under the law and granting citizens the ability to file claims to enforce this right.

Beyond individual decisions and progressive thinking by select local courts, an equally important trend across India, and the South, has been the institutionalization of new approaches to governing sustainability. Since 2000, over 1,200 environmental courts and tribunals (ECTs) have been established in over forty countries, with the vast majority in Central and South America, South, Southeast, East Asia, and Sub-Saharan Africa.[72] India's system of ECTs was implemented after the passage of the National Green Tribunal Act in 2010, with one national and four regional courts established to review environment cases. China has seen the largest growth of ECTs, with 456 specialized benches in use currently. Meanwhile, Pakistan has 250 dedicated judges who hear environmental cases within the general courts. The Philippines, Malaysia, Brazil, and Bolivia have 117, 42, 17, and 9 ECTs, respectively.[73]

ECTs represent a venue for advancing Third World approaches to combating the planetary crisis. It is a specialized judicial fora to adjudicate environmental claims and advance local jurisprudence on issues like climate change, biodiversity conservation, pollution, etc. In addition to the type of landmark decisions emerging from the general courts, the expansion of ECTs serves as a base for further jurisprudential innovation and disputation of colonial and post-colonial legacies that continue to shape trends of ecological decline. The convergence of rising social movements for systemic change with new localized institutional forms of governance is key factor in shaping a more culturally diverse and localized narrative of action on the planetary crisis. It reflects discursive struggles around issues of ethics and values and demands for transformational change to conventional paradigms of law and order.

V. CONCLUSIONS

Ecological change is eroding people's fundamental freedoms and choices worldwide. Its impacts are borne disproportionately by poor and vulnerable communities across the South, which has historically contributed the least

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[72]   Pring and Pring, *Environmental Courts and Tribunals*, 80-90.
[73]   *Ibid.*

to the planetary crisis.[74] As highlighted in the landmark 2019 report by the UN *Special Rapporteur on extreme poverty and human rights,* ecological change threatens to undo the past half-century of hard-won development gains across the South. This can generate a new 'ecological apartheid', with trends of climate change, biodiversity loss, and resource insecurity deepening levels of inequality between and within countries.[75] Meanwhile, the modern development pathways were meant to reduce the prosperity gap and socio-economic divisions in the world, which are now widening the planetary crisis.

The third-world approaches used to combat these trends are more important than ever. Global dialogues and UN summits on climate change, biodiversity, energy, food systems, and other topics have had only modest results, with an increase in ecological decline and levels of vulnerability across the global South. This has exacerbated a feeling among governments, practitioners, and civil society leaders that the global regime is ineffective and not up to the task of transformational change. As a result, social movements have expanded in recent years, calling into question the nature of development and the international legal regimes that enable current ecologically destructive models of progress in many ways.

Exploring new ways of addressing historical accountability, justice, and redress for affected communities is important. This is to transform the basic paradigms of development, freedom, and progress on which current global order rests. The passing and planetary crises have far-reaching social and cultural implications. Therefore, the scientific understandings of nature and the discoveries are a basis for enlightenment thinking and paradigms of progress, development, and modernity. This evolving understanding of planetary change emerged as an overarching lens through which society rethinks itself, norms of justice, freedom, law, and order.

Society is currently being destabilized, in addition to the principles of development and international law. For many practitioners, the launch of the 2030 Agenda is associated with the disciplinary fundamentals with challenges in scaled-up finance and technology. However, development and global governance have always been politically and culturally contested projects, needing to adapt to international law and governance. A path needs to be forged to renew the basic foundations of the legal order and address the colonial

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[74] "Human Development Report 2020: The Next Frontier: Human Development in the Anthropocene," United Nations for Development Program, accessed 20 June 2022, https://report.hdr.undp.org/

[75] Phillip Alston, "Climate Change and Poverty," OHCHR Geneva, accessed 20 June 2022, https://www.ohchr.org/Documents/Issues/Poverty/A_HRC_41_39.pdf. *See also* Ban Ki-moon and Patrick Verkooijen, "Time is Running Out to Stop the Forces Driving a New Climate Apartheid," Devex Opinion, 18 October 2019, https://www.devex.com/news/opinion-time-is-running-out-to-stop-the-forces-driving-a-new-climate-apartheid-95841.

and post-colonial legacies that continue to shape the issues of inequality and unsustainability in the world currently.

The planetary crisis is the most disruptive force in the world, but it can also be a basis for the South to unite around a common challenge and generate new governance modes between global, local, and state. The third-world approaches to international law can be a critical tool in this regard. Therefore, to better understand the geopolitical history and root causes of current planetary crisis, a forward-looking project is needed to help reimagine nature and international law and generate a more inclusive and sustainable future.

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