INTERNATIONAL COURT OF JUSTICE

REQUEST FOR AN ADVISORY OPINION CONCERNING FRESHWATER RIGHTS UNDER INTERNATIONAL LAW IN RELATION TO THE POTENTIAL LEGAL PERSONALITY OF RIVERS AND THE CLIMATE CRISIS

MEMORIAL FOR THE ORGANIZATION OF AMERICAN STATES (OAS)

THE 1st WCEL INTERNATIONAL WATER JUSTICE MOOT COURT AT THE CONFERENCE OF JUDGES AND PROSECUTORS ON WATER JUSTICE DURING THE 8th WORLD WATER FORUM IN BRASÍLIA, BRAZIL

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I. STATEMENT OF JURISDICTION

The United Nations General Assembly adopted resolution A/RES/72/Water, requesting an advisory opinion from the International Court of Justice ("The Court") pursuant to Article 65 of the Statute of The Court. In accordance with Article 66, the Court invited all interested State parties entitled to appear before the Court to submit memorials through regional intergovernmental organizations as an efficient way to represent the multiplicity of State interests in the proceedings. Therefore, the Organization of American States ("OAS") submits this memorial in answer to the questions presented.

II. PROBLEM PRESENT

Water impacts geographical, physical, social, historical and cultural elements. When we talk about water, we are not talking only about a vital source for all species but also the most important element in many cultures since the beginning of humanity. It is also a cause of many conflicts that persist today.

The vital importance of water necessitates a global thinking process about ethics in the area of water resources. For example, the French researcher Sohnle[1] approaches water with three different points of view: as an ecological element, as a social good, and as a shared resource that confronts the idea of state sovereignty. Today, many international conflicts derive from the imbalance between supply and demand of water, either in quantity or quality. This happens because water has become a fundamental social factor, which all states must provide for all people, in adequate quantity and quality.

This scenario makes water a source of inequality because of its vital nature. Inequality results from individual policies by States, who do not consider the whole region, or even the whole world, in social and economic points, besides nature itself. For this reason, water sharing must rest on ethical grounds. International law should create a legal device that turns water into a common good among all people.

International law must recognize all water resources, not just superficial water. Some glaciers, for example, can be an important source of water, depending on the weather and technologies. In the same way, law needs to consider the entire hydrologic cycle, as a single unit; thus, it cannot be limited to those water courses that cross two or more states, or those that work as borders, because the impacts of pollution or bad management of these resources can impact many people in the international scene, regardless of their geographical relationships. This happens because pollution increasingly affects human health around the

[1] SOHNLE, Jochen. *Le droit international des ressources en eau douce: solidarité contre souveraineté.* Collection "Monde européen et international". La documentation française: Paris, 2002.

world in addition to having economical and financial implications. Therefore, an international regulation must consider water resources as broadly as possible, both vertical (atmospheric, surface and underground) and horizontal (rivers, watercourses and all the basin).

Law should recognize integrated management of water resources, creating some scale or space, depending on the case. Integrated management between states allows prevention and balance of inequalities in water supply. It could avoid many wars and conflicts, as has already happened in Israel, Vietnam and in Gulf War[2].

Accordingly, the OAS, through its constituted lawyer, submits to the International Court of Justice this **Memorial**, answering to the following proposed inquiries:

Question 1) Under what circumstances does international law recognize the rights of rivers as having legal personality?

Question 2) Is international water law adequate to respond to the global climate crisis, which causes significant disruption in the hydrologic cycle, by providing a framework for preventing and resolving disputes among states over the protection from pollution and sharing of water quantities from transboundary rivers, lakes, and aquifers?

[2] SOHNLE, Jochen. Op. cit.

III. IN CONTEXT

The Organization of American States ("OAS") was established in 1948 through the Charter of the OAS with the objective of achieving a peaceful and just order, promoting solidarity and collaboration among its member states. Today, the Organization gathers all 35 independent states of the Americas.

The OAS has four main pillars: democracy, human rights, security, and development. Bearing in mind this set of beliefs, it constitutes the main political, juridical, and social governmental forum in the Hemisphere.

On February 1st 2018, the United Nations General Assembly adopted the Resolution A/RES/72/Water, in which it requested the advisory opinion from the International Court of Justice. The ICJ, at its turn, pursuant to the Statute of the Court, invited the regional organizations to present their assessments on the matters discussed.

IV. QUESTION 1: UNDER WHAT CIRCUMSTANCES DOES INTERNATIONAL LAW RECOGNIZE THE RIGHTS OF RIVERS AS HAVING LEGAL PERSONALITY?

IV. 1. International law

Currently, the possibility of rivers having personhood rights is a prominent theme in international law.

In general, this recognition is the result of the relationship between the river and the traditional communities, insofar as they have a survival, spiritual and cultural relationship with the watercourse.

Understanding the river as a natural resource with personhood rights means considering the river as a legal entity with legal recognition and protection, and the ability to take legal action based on any wrongdoing.

As will be pointed out, several countries in America have already recognized this possibility, and other countries are in the process of recognizing it. However, the recognition stems from the cultural characteristics of these countries where there is a history of traditional communities whose relationship with water bodies affects not only the survival of individuals but also their traditional customs.

Under international law, some instruments develop a basis for the assignment of legal personality to rivers.

The International Labour Organization ("ILO") Convention 169 on Indigenous and Tribal Peoples (1989) recognizes the existence of a special link between the way of life of indigenous and tribal peoples, their cultural identity and spiritual conception with their

territories and resources. In this sense, article 13[3] of the Convention establishes that the State must respect the spiritual importance that the land has for these peoples.

In relation to the United Nations ("UN") Convention on Biological Diversity (1992), ILO Convention 169 article 13 obliges the State to respect, preserve and maintain knowledge, innovations and sustainable practices of traditional communities. Moreover, the Convention is an instrument that addresses biocultural rights, not only from a scientific perspective, but also from the perspective of the traditional population's relationship with nature, recognizing the fundamental role that the indigenous and ethnic communities' livelihoods play in the conservation of biodiversity.

The UN Declaration on the Rights of Indigenous Peoples (2007) (UNDRIP), regarded in the same manner as the OAS ("Organization of American States") Declaration on the Rights of Indigenous Peoples (2016), obliges the State not to weaken the spiritual relationship of indigenous peoples with water and to recognize the right of these peoples to their cultural identity. The Declaration also recognizes that respect for traditional indigenous knowledge, cultures and practices contributes to sustainable development.

Lastly, the United Nation Educational, Scientific and Cultural Organization ("UNESCO") Convention for the Safeguarding of the Intangible Cultural Heritage (2003), in its articles 14, section C[4], obliges the State to protect natural spaces and places of memory, whose existence is indispensable for the expression of intangible cultural heritage of a people.

Thus, all these instruments of international law recognize the duty of States to preserve the territories and essential natural resources for maintaining the way of life traditional communities, that live in coexistence with nature and do not see it as an economic

[3] In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

[4] Each State Party shall endeavor, by all appropriate means, to:(c) promote education for the protection of natural spaces and places of memory whose existence is necessary for expressing the intangible cultural heritage.

resource, but as an important part of the ecosystem. Accordingly, traditional communities do not have an anthropocentric view of the nature, but a biocentric one.

Thereby, as water is a vital resource and a fundamental right, it requires more severe legal protection, and recognition of its legal personality is a way to achieve such protection, benefiting all citizens, not only traditional communities.

Regarding the legitimacy of indigenous peoples to claim legal personality on behalf of the river, the same instruments of international law contain the answers.

The ILO 169 Convention establishes that States must protect traditional peoples against the violation of their rights and ensure that they can initiate legal proceedings in person or through representative organizations to protect their rights[5]. In addition, the Convention also provides that indigenous peoples have the right to participate in the use, management and conservation of natural resources on their lands[6]. In the same vein, UNDRIP recognizes the importance of indigenous peoples' control over their lands and resources[7].

Therefore, strong arguments exist for indigenous peoples to be legitimate parties to claim legal personality on behalf of a river.

[5]Article 12 - The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

6 Article 15 - 1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

[7] Article 26 - 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Furthermore, in 2009, United Nations General Assembly proclaimed 22 April "International Mother Earth Day" and adopted the first Resolution on Harmony with Nature[8], an initiative to promote the exchange between our anthropocentric dominance and control for an eco-centered perspective that recognizes humankind as a part of the broader Earth community.

One of the themes addressed by the Harmony with Nature is Earth Jurisprudence, which "is an emerging field of law that seeks to develop a philosophy and practice of law that gives greater consideration to nature, by recognizing the interconnectedness of Earth's natural systems, the inherent rights and value of nature, and the dependence of humanity and all living beings on a healthy Earth."[9]

Earth Jurisprudence has key principles, which are based on Thomas Berry's book *The Great Work*. Some of these key principles are:

> "(..) *2. the Earth community and all the beings that constitute it have fundamental "rights" including the right to exist, to habitat or a place to be, and to participate in the evolution of the Earth community;*
>
> *(...)*
>
> *5. Humans must adapt their legal, political, economic and social systems to be consistent with the Great Jurisprudence and to guide humans to live in accordance with it, which means that human governance systems at all times must take account of the interests of the whole Earth community and must:*
>
> *(...)*
>
> - *recognize all members of the Earth community as subjects before the law, with the right to the protection of the law and to an effective remedy for human acts that violate their fundamental rights.*"[10]

[8] Resolution adopted by the General Assembly on 22 April 2009 - 63/278 - International Mother Earth Day.
[9] Available in http://www.earthjurist.org/. Accessed in 03.08.2018.
[10] MAGALLANES, Catherine J Iorns. *Foreword: New Thinking on Sustainability*. New Zealand Journal of Public and International Law. New Zeland, 2015. p. 6-7.

This view corroborates the recognition of the legal personality of rivers, insofar as it recognizes the deep connection of the human being with nature and that all members of the Earth are subject to the law and have effective remedies to protect their rights violated by human acts. Thus, it is possible to understand that rivers have legal personalities and can protect their own rights.

IV.2. Latin American Precedents

Practice of Latin American states includes some examples where a river has become a subject of law. These cases have something in common: the legal personality of the river was on behalf of a traditional community, which has a survival, spiritual, and cultural relationship with the watercourse.

Thus, it is necessary to explore these cases to understand that the recognition of the river as a subject of law is a consequence of its relationship with indigenous peoples and other traditional communities.

IV.2.1. Ecuador and Bolivia

Ecuador and Bolivia can be put together in this analysis because the theory of "Buen Vívir" ("live well", in spanish) or "Vivir Bien," influences both countries with their similarities. Their starting points are the distinct ways of viewing life and the relationship with "Pacha Mama", an Andean expression for something as Mother Nature.

"Buen Vívir" comes from *sumak kawsay*, from the *kíchwa* people, an indigenous group from Ecuador. In the same manner, "Vívir Bien" comes from *suma qamaña*, from *aymara* people, from Bolívia. There are a lot of similar expression in other indigenous languages, as the *mapuches* (Chile), *kunas* (Panama) and *guaranis* (Brazil). For this reason, no absolute translation exists for this life's philosophy and way of being, other than its first assumption of some plurality of cultures and complementarity between them. The attempt to

translate or homogenize those different philosophies could restrict visions and comprehensions.

The first important idea from Buen Vivir is multinationality, which means that coexistence is related to diversity and harmony with nature as an alternative *for* development, and not an alternative development, as an adjective. The connector for this point of view is the relations between all the living beings, including the human species as part of Nature. In this way, we have to move from an anthropocentric view to a biocentric one: Nature becomes a subject of law.

In that point, we start to distinguish human rights for a balanced and healthy environment, from nature rights, that, for sure, includes humans, but values nature itself, independently of its relation with human communities. Nature rights are oriented to protect all life cycles and evolutionary processes, not only endangered species and natural reserves.

Ecuador brings the Buen Vivir philosophy in its Constitution, in the second chapter. Similarly, Bolívia passed a specific law, number 300, of October 15th 2012 ("Ley marco de la madre Tierra y desarrollo integral para vivir bien"). As an anti-capitalism theory, Nature cannot be seen as something possible to be marketed, as ordered in the article number 74 from the Ecuador Constitution. It means that nature can be explored, as long as the ecosystem operation is assured. Both laws recognized water as fundamental human right.

Bolivia also assumed an important role in the People's World Conference about Climate Change and Mother Nature's Rights, held in Cochabamba, in 2010. It signed the Universal Declaration of Mother Nature's Rights, recognizing water as life source, as an inherent right of Nature.

By adopting Buen Vivir philosophy, Ecuador and Bolivia assume an important and fundamental role in the recognition of Nature's rights by itself, separated from human relations. For these reason, both countries are important to analyze before creating an

international regulation for water, because it is a relevant reinforcement to the nature's rights defense over sovereignty.

IV. 2. 2. Colombia

In Colombia, there is an important precedent that recognized the possibility of a river as a subject of law, based on international and local law.

The Political Charter of Colombia, in article 8[11], imposes as a fundamental obligation of the State and of society to protect the country's natural and cultural wealth. In addition, the chapter about collective rights and environment (articles 79[12] and 80[13]) and specific obligations (articles 95-8[14]), establishes the obligation to protect the environment in order to prevent and control environmental deterioration, seeking its preservation and restoration, as well as sustainable development.

The Political Charter also establishes that: the State must protect the natural wealth of the nation (articles 1[15], 2[16], 8 and 366[17]); the healthy environment is a fundamental and

[11] Artículo 8. Es obligación del Estado y de las personas proteger las riquezas culturales y naturales de la Nación.

[12] Artículo 79. Todas las personas tienen derecho a gozar de un ambiente sano. La ley garantizará la participación de la comunidad en las decisiones que puedan afectarloEs deber del Estado proteger la diversidad e integridad del ambiente, conservar las áreas de especial importancia ecológica y fomentar la educación para el logro de estos fines.

[13]Artículo 80. El Estado planificará el manejo y aprovechamiento de los recursos naturales, para garantizar su desarrollo sostenible, su conservación, restauración o sustitución. Además, deberá prevenir y controlar los factores de deterioro ambiental, imponer las sanciones legales y exigir la reparación de los daños causados. Así mismo, cooperará con otras naciones en la protección de los ecosistemas situados en las zonas fronterizas.

[14] Artículo 95. La calidad de colombiano enaltece a todos los miembros de la comunidad nacional. Todos están en el deber de engrandecerla y dignificarla. El ejercicio de los derechos y libertades reconocidos en esta Constitución implica responsabilidades. Toda persona está obligada a cumplir la Constitución y las leyes. Son deberes de la persona y del ciudadano: 8. Proteger los recursos culturales y naturales del país y velar por la conservación de un ambiente sano;

[15] Artículo 1. Colombia es un Estado social de derecho, organizado en forma de República unitaria, descentralizada, con autonomía de sus entidades territoriales, democrática, participativa y pluralista, fundada en el respeto de la dignidad humana, en el trabajo y la solidaridad de las personas que la integran y en la prevalencia del interés general.

[16] Artículo 2. Son fines esenciales del Estado: servir a la comunidad, promover la prosperidad general y garantizar la efectividad de los principios, derechos y deberes consagrados en la Constitución; facilitar la participación de todos en las decisiones que los afectan y en la vida económica, política, administrativa y

collective right that can be demanded by all people through lawsuits (articles 86[18] and 88[19]); and environmental sanitation is a public service that must be carried out by the State (articles 49[20] and 366).

The Political Charter creates a biocultural rights protection because it unifies the rights to natural resources and culture, considering the profound unity of relationship between nature and the human species.

Considering the above, on November 2016, the Constitutional Court of Colombia recognized the Atrato River as a subject of biocultural rights.[21] The court decided this case after the river's region suffered from illegal mining, creating environmental and humanitarian crises, causing a serious violation of the fundamental rights to life, water, food security, the healthy environment, culture and territory of the communities that live near the river.

The decision recognizes that there is a unity between the river and the river communities that inhabit its basin and its tributaries, which requires that both be treated as a

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cultural de la Nación; defender la independencia nacional, mantener la integridad territorial y asegurar la convivencia pacífica y la vigencia de un orden justo.
Las autoridades de la República están instituidas para proteger a todas las personas residentes en Colombia, en su vida, honra, bienes, creencias, y demás derechos y libertades, y para asegurar el cumplimiento de los deberes sociales del Estado y de los particulares.

[17] Artículo 366. El bienestar general y el mejoramiento de la calidad de vida de la población son finalidades sociales del Estado. Será objetivo fundamental de su actividad la solución de las necesidades insatisfechas de salud, de educación, de saneamiento ambiental y de agua potable. Para tales efectos, en los planes y presupuestos de la Nación y de las entidades territoriales, el gasto público social tendrá prioridad sobre cualquier otra asignación.

[18] Artículo 86. Toda persona tendrá acción de tutela para reclamar ante los jueces, en todo momento y lugar, mediante un procedimiento preferente y sumario, por sí misma o por quien actúe a su nombre, la protección inmediata de sus derechos constitucionales fundamentales, cuando quiera que éstos resulten vulnerados o amenazados por la acción o la omisión de cualquier autoridad pública.

[19] Artículo 88. La ley regulará las acciones populares para la protección de los derechos e intereses colectivos, relacionados con el patrimonio, el espacio, la seguridad y la salubridad pública, la moral administrativa, el ambiente, la libre competencia económica y otros de similar naturaleza que se definen en ella. También regulará las acciones originadas en los daños ocasionados a un número plural de personas, sin perjuicio de las correspondientes acciones particulares. Así mismo, definirá los casos de responsabilidad civil objetiva por el daño inferido a los derechos e intereses colectivos.

[20] Artículo 49. Acto Legislativo No. 02 de 2009, artículo 1. El artículo 49 de la Constitución Política quedará así: La atención de la salud y el saneamiento ambiental son servicios públicos a cargo del Estado. Se garantiza a todas las personas el acceso a los servicios de promoción, protección y recuperación de la salud.

[21] Judgment of the Constitutional Court in Case T-5,016,242 on November of 2016. Available in https://redjusticiaambientalcolombia.files.wordpress.com/2017/05/sentencia-t-622-de-2016-rio-atrato.pdf. Accessed in 03.08.2018.

single entity, since the communities contribute to the conservation of the Atrato River. It also recognizes the status of legal person ecosystem of the Atrato River, considering its interdependence between the biological diversity of the river and the cultural diversity of the communities that live in the region of Atrato.

Regarding the legitimacy of the indigenous population to litigate on behalf of the river, the Court considered that processes promoted by ethnic minorities and vulnerable groups should be examined with weighted criteria in order to overcome the difficulties these groups face in guaranteeing their rights judicially. Thus, the Court has admitted that processes that seek to protect fundamental rights of minorities can be judicially demanded by any individual in the community, or by organizations representing community members, in order to facilitate access to justice.

Furthermore, the Court also justified the legitimacy of the indigenous population based on ILO 169 Convention, which was incorporated into domestic law by Law 21 of 1991[22]. Therefore, the State has undertaken measures to protect the peoples concerned against violations of their rights and to ensure that they can initiate procedures legal persons or represented by organizations.

Regarding the consideration of the river as a subject of law, in addition to the Court applying the local law mentioned above, it also bases its decision on international law. The Court invoked the precepts of the ILO 169 Convention, UN Convention on Biological Diversity, the UN Declaration on the Rights of Indigenous People, the OAS Declaration on the Rights of Indigenous Peoples and the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage[23].

[22] Judgment of the Constitutional Court in Case T-5,016,242. Op. cit. Page 18.
[23] Judgment of the Constitutional Court in Case T-5,016,242. Op. cit. Pages 48-51.

Therefore, the court understands water as a fundamental right, as it is part of an essential core of the right to life, especially for ethnic groups, who depend on this for the survival of their members and their cultures.

Considering the connection between the river and the river communities, water is understood as a subject of biocultural rights. Therefore, the Court determined that its protection must be ensured by a Commission of Guardians. With representatives of the communities and the State, the Commission must devise a plan for decontaminating the river[24], and consult communities about resource exploration projects that could damage the territory[25].

The Guardianship Commission is currently comprised of the Minister of the Environment and representatives of the ethnic peoples who proposed the action, elected by the communities. To ensure compliance with the obligations imposed at the trial, the following technical committees were created: river decontamination, led by the Ministry of the Environment; food security, led by the Ministry of Finance; eradication of illicit extraction of minerals, led by the Ministry of Defense; toxicological and epidemiological studies, led by the Ministry of Health.[26] The Commission is currently working on the definition of a decontamination plan for the Atrato River.

IV.2.3. Brazil

In Brazil, there is no consolidated understanding about the possibility of recognizing a river as having legal personality, or about the possibility of an indigenous community claiming this on behalf of a river.

[24] Judgment of the Constitutional Court in Case T-5,016,242. Op. cit. Page 154.
[25] Judgment of the Constitutional Court in Case T-5,016,242. Op. cit. Page 144.
[26] http://www.minambiente.gov.co/index.php/noticias-minambiente/3126-proponen-crear-comites-para-implementar-sentencia-del-rio-atrato. Accessed in 04.13.2018.

However, there is a judicial process which discussed the possibility of the Rio Doce River Basin ("Rio") having legal personality[27]. The Rio Doce was victim of a socio-environmental disaster on 11.05.2015 when 65 million cubic meters of iron ore sludge was dumped in its bed due to the rupture of a tailings dam from a mining company located in the municipality of Mariana / MG.

A special feature of the case is that Rio filed the action in its own name, claiming to be a subject of rights, with the representation of the Pachamama Association, a legal institution focused on environmental and traditional cultures protection[28].

In relation to the Brazilian legal system, Rio argued that the Federal Constitution of Brazil has instituted a Democratic State of Right to ensure well-being as the supreme value of a pluralistic society, which will seek the cultural integration of the peoples of Latin America (sole paragraph of the article 4[29]). This requires the State to guarantee the protection of the environment as widely as that of other Latin American States, in order to effectively collaborate in the creation of a Latin American community of nations.

In addition, it also used the argument that the Brazilian State should protect: life (article 5[30]); the ancestral ways of creating, doing and living (Article 215, § 1º[31] and 216, II[32]); the spaces of ancestral cultural manifestations (article 216, IV[33]); the essential

[27] Federal Regional Court of 1st Region – process nº 1009247-73.2017.4.01.3800. Initial petition available in https://docs.wixstatic.com/ugd/da3e7c_8a0e636930d54e848e208a395d6e917c.pdf. Accessed in 04.13.2018.
[28] Initial petition of process nº 1009247-73.2017.4.01.3800. Ob cit. Page 1.
[29] Art. 4º. Parágrafo único. A República Federativa do Brasil buscará a integração econômica, política, social e cultural dos povos da América Latina, visando à formação de uma comunidade latino-americana de nações.
[30] Art. 5º Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade [...].
[31] Art. 215. O Estado garantirá a todos o pleno exercício dos direitos culturais e acesso às fontes da cultura nacional, e apoiará e incentivará a valorização e a difusão das manifestações culturais.
§ 1º O Estado protegerá as manifestações das culturas populares, indígenas e afro-brasileiras, e das de outros grupos participantes do processo civilizatório nacional.
[32] Art. 216. Constituem patrimônio cultural brasileiro os bens de natureza material e imaterial, tomados individualmente ou em conjunto, portadores de referência à identidade, à ação, à memória dos diferentes grupos formadores da sociedade brasileira, nos quais se incluem:
II - os modos de criar, fazer e viver.

ecological processes (article 225, § 1º, I[34]); biodiversity (Article 225, § 1º, II[35]); the environmental resources necessary for the physical and cultural reproduction of the ancestral peoples, according to their uses, customs and traditions (article 231, § 1º[36]).

In relation to the right to life, it emphasized that it must be understood as the right to the existence of nature, which generates and sustains the life of all living beings, thus encompassing the right to the ecosystemic existence of the Rio Doce River Basin. Regarding the right to culture, cultural spaces and cultural environmental resources, it emphasized that the State must protect Rio against uses or disasters that make it impossible to continue the cultural expression of traditional communities. Finally, concerning the right to essential ecological processes and biodiversity, the state must preserve the water cycle and the ecosystem interactions that affect the health of the river, thus guaranteeing the life to all living beings that depend on it[37].

Finally, it emphasized the existence of instruments of international law capable of justifying the declaration of its legal personality: ILO Convention 169 on Indigenous and Tribal Peoples (1989), UN Convention on Biological Diversity (1992), UN Declaration on the

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[33] Art. 216. IV - as obras, objetos, documentos, edificações e demais espaços destinados às manifestações artístico-culturais;

[34] Art. 225. Todos têm direito ao meio ambiente ecologicamente equilibrado, bem de uso comum do povo e essencial à sadia qualidade de vida, impondo-se ao Poder Público e à coletividade o dever de defendê-lo e preservá- lo para as presentes e futuras gerações.

§ 1º Para assegurar a efetividade desse direito, incumbe ao Poder Público:

I - preservar e restaurar os processos ecológicos essenciais e prover o manejo ecológico das espécies e ecossistemas;

[35] Art. 225, §1º, II - preservar a diversidade e a integridade do patrimônio genético do País e fiscalizar as entidades dedicadas à pesquisa e manipulação de material genético

[36] Art. 231. São reconhecidos aos índios sua organização social, costumes, línguas, crenças e tradições, e os direitos originários sobre as terras que tradicionalmente ocupam, competindo à União demarcá-las, proteger e fazer respeitar todos os seus bens.

§ 1º São terras tradicionalmente ocupadas pelos índios as por eles habitadas em caráter permanente, as utilizadas para suas atividades produtivas, as imprescindíveis à preservação dos recursos ambientais necessários a seu bem-estar e as necessárias a sua reprodução física e cultural, segundo seus usos, costumes e tradições.

[37] Initial petition of process nº 1009247-73.2017.4.01.3800. Ob cit. Pages 10-11.

Rights of Indigenous Peoples (2007), OAS Declaration on the Rights of Indigenous Peoples (2016) and UNESCO Convention on the Protection of Intangible Cultural Heritage (2003)[38].

In sum, the Rio Doce requires: (1) its recognition as a legal personality; (2) recognition of the broad legitimacy of all people to defend the right to healthy existence of the Rio Doce River Basin; (3) the establishment of the national registry of municipalities with areas susceptible to the occurrence of disasters, provided for in article 3th-A of Law 12.340/2010[39]; (4) the preparation of the Plan for the Prevention of Disasters in Minas Gerais, provided for in the sole paragraph of article 7th of Law 12.608 / 2012.[40]

The Court of Justice has not yet decided on whether to Rio Doce be considered subject of law.

Analyzing the process, the lawsuit filed by Rio Doce does not adequately explore the consequences of the recognition of the river as a subject of law. There is no discussion about the management of the rights claimed by Rio. Likewise, the recognition of its legal personality is not related to other requests made in the process, which could have been requested by other procedural means, without the need to consider the Rio Doce as a subject of law.

Thus, although the possibility of recognition of the legal personality of the river is an advance for Brazilian environmental law, it may not have many practical consequences for the Rio Doce case.

[38] Initial petition of process nº 1009247-73.2017.4.01.3800. Ob cit. Pages 9-10.

[39] Art. 3º-A. O Governo Federal instituirá cadastro nacional de municípios com áreas suscetíveis à ocorrência de deslizamentos de grande impacto, inundações bruscas ou processos geológicos ou hidrológicos correlatos, conforme regulamento.

[40] Parágrafo único. O Plano Estadual de Proteção e Defesa Civil conterá, no mínimo:
I - a identificação das bacias hidrográficas com risco de ocorrência de desastres; e
II - as diretrizes de ação governamental de proteção e defesa civil no âmbito estadual, em especial no que se refere à implantação da rede de monitoramento meteorológico, hidrológico e geológico das bacias com risco de desastre.

IV.3. OAS Legal Framework

As explained above, the understanding that a river can be subject to a law derives from a form of interpretation of international and local law in order to reconcile a country's legal regime with the culture of traditional peoples.

The Organization of American States recognizes the importance of water conservation.

The Plan of Action for the Sustainable Development of the Americas[41] (1996), a result of the Declaration of Santa Cruz de la Sierra, recognized that prevention of the contamination of water resources and assurance that drinking water supplies are safe and adequate is one of the primary challenges to the attainment of sustainable development[42].

Accordingly, the OAS, in the Declaration of Santa Cruz +10[43](2006), elaborated by Inter-American Council Integral Development (CIDI), recognized that water is fundamental for life and that sustainable management must be promoted with a view to ensuring access to water for present and future generations[44]. It also strove to increase access to clean drinking water and sanitation services for all peoples within the jurisdiction of each Member State, as well as the promotion of studies, plans, programs, projects and joint actions for the protection and sustainable use of water resources[45].

[41] Plan of Action for the Sustainable Development of the Americas, available in http://www.summit-americas.org/summit_sd/summit_sd_poa_en.pdf. Accessed in 04.13.2018.
[42] II.4. Water Resources and Coastal Areas - Recognizing that the primary challenges to the attainment of sustainable development in this area include: Prevention of the contamination of water resources and assurance that drinking water supplies are safe and adequate;
[43] Declaration of Santa Cruz +10, available in http://www.oas.org/dsd/MinisterialMeeting/Documents/declaration/CIDI01830E01.pdf. Accessed in 03.13.2018.
[44] 8. Water is fundamental for life and basic for socio-economic development and the conservation of ecosystems, and that, in this regard, its sustainable management must be promoted with a view to ensuring access to water for present and future generations, taking into account internationally-agreed development goals, including those contained in the Millennium Declaration.
[45] 29. To strive to increase access to clean drinking water and sanitation services for all peoples within the jurisdiction of each Member State, on the basis of non-discrimination, solidarity and environmental sustainability.

Similarly, the Declaration of Santo Domingo for the Sustainable Development of the Americas (2010) recognizes that water is fundamental for life, and similarly, the Resolution of Water, Health and Human Rights (2007) of OAS recognizes and emphasizes that water is essential to the life and health of all human beings and that access to safe drinking water and basic sanitation is indispensable for a life with human dignity.[46]

Thus, despite the fact that no OAS legal instrument provides for the possibility of recognizing a river as a subject of rights, the OAS recognizes the importance of water conservation.

Nonetheless, OAS encourages initiatives such as that of Colombia to create a commission, formed by the State and interested citizens, to take care of the management of water resources.

The Plan of Action for Sustainable Development of the Americas recognizes the importance of promotion of user participation in the decision-making process on water resources management,[47] and it establishes as initiative the implementation of an integrated water resources management action[48] and the promotion of the public participation in the palling and decision-making process related to water resources[49].

Similarly, the Declaration of Santa Cruz+10 has as one of its initiatives the advancement in integrated water resources management, strengthening good governance

[46] 1. To recognize and emphasize that water is essential to the life and health of all human beings and that access to safe drinking water and basic sanitation is indispensable for a life with human dignity.

[47] II.4. Water Resources and Coastal Areas - Recognizing that the primary challenges to the attainment of sustainable development in this area include: (…) Promotion of user participation in the decision-making process on water resources management.

[48] Initiative 48. Implement, in accordance with national laws and practice, integrated water resources management actions using watersheds and river basins as planning units whenever possible. These actions should include surface water and groundwater assessments and the preparation of strategic plans for water resource management, as well as the use of water utility revenues under local control, where appropriate, to fund watershed protection and the work of river basin authorities.

[49] Initiative 53. Promote public participation in the planning and decision-making process related to water resources. Public participation could be enhanced through education and awareness programs in schools and local communities. Where appropriate, establish public-private partnerships to promote programs that encourage compliance with laws and the adoption of mitigation measures to address water resources issues.

through public participation, institutional transparency and access to environmental information[50].

In addition, the Resolution of Water, Health and Human Rights, urges the member states to develop government policies that envisage the participation of civil society in water resource management.[51]

Accordingly, OAS recognizes rivers as subjects of rights in its instruments and encourages the management of water resources in an integrated manner between the state and society, in order to promote environmental governance and ensure respect at will of citizens.

Thus, considering the instruments of international law and of OAS, as well the various precedents of America, OAS submits that rivers have legal capacity, and encourages states to adopt a participatory management system, including agents of state and community to deal with rivers rights.

V. QUESTION 2: IS INTERNATIONAL WATER LAW ADEQUATE TO RESPOND TO THE GLOBAL CLIMATE CRISIS, WHICH CAUSES SIGNIFICANT DISRUPTION IN THE HYDROLOGIC CYCLE, BY PROVIDING A FRAMEWORK FOR PREVENTING AND RESOLVING DISPUTES AMONG STATES OVER THE PROTECTION FROM POLLUTION AND SHARING OF WATER QUANTITIES FROM TRANSBOUNDARY RIVERS, LAKES, AND AQUIFERS?

V.1. Climate change and international law

Climate change can be understood as the impacts of the increase of the global temperature on weather related phenomena. Thus, it affects the whole planet by, for example,

[50] 31. To advance integrated water resources management, strengthening good governance through public participation, institutional transparency and access to environmental information, among others.

[51] 5. To urge member states to develop government policies that envisage the participation of civil society in water resource management and in planning options for improving their drinking-water and sanitation services, with respect for the rule of law, bearing in mind, among other considerations, the needs of urban, rural, and indigenous communities, facilitating to that end access to specialized know-how and information on integrated water resource management in a democratic, transparent, and equitable manner.

increasing the likelihood of extreme events. The water cycle is one of the areas greatly affected since it depends on precipitation levels. Because of that, water related conflicts tend to become more frequent with climate change.

Luckily, climate change was not ignored and has become such an important matter on the international level that, in 1992, the United Nations Framework Convention on Climate Change[52] (UNFCCC) was drafted. The idea was the creation of a framework for international cooperation[53] to deal with the consequences of climate change by measures of mitigation and adaptation[54].

Therefore, the objective is to limit the average global temperature increase and to improve the measures taken to cope with the related impacts[55]. In 1997, the Parties adopted the Kyoto Protocol[56], which would legally bind developed States Parties to reduce emissions. However, this Protocol was severely criticized because it did not bind developing countries.

After many years of debates, in 2015, the Convention adopted the Paris Agreement[57], which establishes a new regime for climate change actions. The main goal agreed was to keep

[52] United Nations Framework Convention on Climate Change, available in https://unfccc.int/resource/docs/convkp/conveng.pdf. Accessed in 04.13.2018.

[53] Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions,

[54] Article 4. 1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:
(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;

[55] Article 2. The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

[56] Kyoto Protocol To The United Nations Framework Convention on Climate Change, available in https://unfccc.int/resource/docs/convkp/kpeng.pdf. Accessed in 04.13.2018.

[57] Paris Agreement, available in https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf. Accessed in 04.13.2018

the global temperature rise in this century "well below 2 degrees"[58] (in relation to pre-industrial levels).

Today, there are 197 Parties to the Convention, 175 of which ratified the Paris Agreement.

The OAS itself has already pronounced itself on this matter when, in 2009, the Declaration of Commitment of Port of Spain. On this Declaration, the Organization reaffirmed many previous commitments, as well as recognized the impacts of climate change. Among other provisions, article 58 states:

> "*We recognise the adverse impacts of climate change on all countries of the Hemisphere, in particular, Small Island Developing States, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, developing countries with fragile mountainous ecosystems and land locked countries.* ***We reaffirm our commitment to the United Nations Framework Convention on Climate Change (UNFCCC) and its objective of achieving stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system****. We recognise that deep cuts in greenhouse gas emissions will be required to achieve the ultimate objective of the Convention, respecting its principles, notably that which states that we should protect the climate system for the benefit of the present and future generations of humankind, on the basis of equity, and in accordance with our common but differentiated responsibilities and respective capabilities*"[59].

[58] Article 2. 1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:
(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

[59] Declaration of Commitment of Port of Spain. Available in https://www.state.gov/documents/organization/122843.pdf. Accessed in 04.13.2018.

Thus, creating measures of mitigation and adaptation to deal with climate change is a very efficient way of preventing water related conflicts.

V.2. International framework

The international framework for water law is composed of customary laws and many treaties, of which two stand out.

In 1992, the UN Economic Commission for Europe adopted the Convention on the Protection of Transboundary Watercourses and International Lakes[60] (hereinafter called "UNECE Watercourses Convention"). Since 2013, by force of the 2003 amendment[61], all United Nations Member States are allowed to accede to the UNECE Watercourses Convention. Therefore, the convention became not only a regional but an international instrument for solving disputes related to water among States.

As such, the UNECE Watercourses Convention is now used along with the Convention on the Law of Non-Navigational Uses of International Watercourses[62] (hereinafter called "UN Watercourses Convention"). This convention, although signed in 1997, only entered into force in 2014 and now has 38 signatories.[63] Despite the significant number of States that have not ratified the UN Watercourses Convention, there are many provisions that mirror international customary law[64], so the dispute settlement mechanisms are widely used.

[60] Convention on the Protection and Use of Transboundary Watercourses and International Lakes, available in https://www.unece.org/fileadmin/DAM/env/water/pdf/watercon.pdf. Accessed in 04.13.2018.
[61] Amendment to Articles 25 and 26 of the Convention, available in https://www.unece.org/fileadmin/DAM/env/documents/2004/wat/ece.mp.wat.14.e.pdf. Accessed in 04.13.2018.
[62] Convention on the Law of Non-Navigational Uses of International Watercourses, available in .http://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf. Accessed in 04.13.2018
[63] The countries that ratified the UN Watercourses Convention (until March, 2018) are: Benin, Burkina Faso, Chad, Côte d'Ivoire, Denmark, Finland, France, Germany, Greece, Guinea-Bissau, Hungary, Iraq, Ireland, Italy, Jordan, Lebanon, Libya, Luxembourg, Montenegro, Morocco, Namibia, Netherlands, Niger, Nigeria, Norway, Paraguay, Portugal, Qatar, South Africa, Spain, State of Palestine, Sweden, Syrian Arab Republic, Tunisia, United Kingdom of Great Britain and Northern Ireland, Uzbekistan, Venezuela, Vietnam and Yemen.
[64] SHAW, Malcolm N. International Law (Seventh Edition). 2014, Cambridge University Press.

Both conventions have many similarities. For example, based on the principles of equitable and reasonable utilization[65], they recognize the due diligence obligation of no-harm and the cooperation among States[66].

The UNECE Watercourses Convention is more assertive when it establishes the mandatory character of institutional cooperation between parties. On this subject, the UN Watercourses Convention only recommends the institutional cooperation.

Moreover, the UNECE Watercourses Convention provides obligations to prevent, control and reduce significant impacts on the environment. The UN Watercourses Convention, in its turn, considers the protection of the watercourse from the perspective of the interests of the watercourse States (article 5.1). As a result, the main obligations addressed in this convention are related to the obligation to notify and compensate other States of damages caused.

Very similarly, the treaties related to the use of water bodies signed between countries in the Americas (bilateral or multilateral agreements) focus on States' interests. An example is the treaty between Brazil and Argentina about the frontier sections of the Uruguay River (1980). Although the possibility of constructing a hydroelectric power plant is widely explored, not much is said about environmental aspects or the management of water resources that would certainly be disrupted by such activities.

Therefore, exist a "state-centered" perspective of water management in the international framework.

The Organization of American States submits that theses conventions prevent and resolve disputes among states, but not between state and citizens, which is the most important part of the conflicts caused by global climate crisis.

[65] Article 2, 2, "c" of the UNECE Watercourses Convention and Article 5 of the UN Watercourses Convention.
[66] Article 15, 2, "c" of the UNECE Watercourses Convention and Article 7 of the UN Watercourses Convention

V.2.1 Court decisions

Nonetheless, the disputes that are brought before the International Court of Justice tend to mirror the "state-centered" view of the international treaties. Usually, when the Court recognizes countries' obligations relating to the protection of water bodies, these are always related to the rights of other countries not to suffer adverse effects. Therefore, there is a predominance of the perspective that only recognizes States as subjects of rights and that does not acknowledge environmental protection as an objective in itself.

The lawsuit of Nicaragua v. Costa Rica,[67] decided by the ICJ, illustrates that situation. The conflict involved complaints from both parties that the other was not complying with its duties to protect the San Juan River, which constitutes the boundary between the two countries. On one hand, Costa Rica claimed that Nicaragua was dredging the San Juan River without adequate environmental impacts assessment (EIA) and the required notification to the neighbor country. As to that, Nicaragua made the commitment to do the EIA and the ICJ decided that there was no obligation to notify due to bilateral agreements.

On the other hand, Nicaragua claimed that the construction of a railroad by Costa Rica on the border area was causing environmental damages. Nicaragua claimed that the road construction was causing a transboundary movement of sediments that was damaging the San Juan River. Although the Court has decided that Costa Rica failed to comply to the obligation of carrying out an environmental impact assessment (EIA), the declaration of wrongful conduct was considered the appropriate measure of satisfaction.

As a conclusion, the International Court of Justice decision limited itself to declaring of wrongful conduct and inducing Nicaragua to admit to the necessity of carrying out an environmental impacts assessment. Although there were clear signs of environmental impacts

[67] International Court of Justice Reports, *Nicaragua v. Costa Rica,* available in http://www.icj-cij.org/files/case-related/150/150-20180202-JUD-01-00-EN.pdf. Accessed in 04.07.2018.

to the river, which could greatly compromise its quality and the lives of people depending on it, no measures were taken to protect the San Juan River.

Even Pulp Mills on the River Uruguay,[68] which is the most important case involving international watercourses and considered the paradigm for environmental concerns relating to water, did not escape from the "state-centered" perspective.

The Pulp Mills on the River Uruguay dispute was taken to the ICJ in 2010 in order to solve the conflict between Argentina and Uruguay relating to the construction of manufacturing facilities next to the river that constitutes the boundary of these countries. Argentina claimed that an environmental study was required before Uruguay could start the installation.

The Court recognized that, because of the potential environmental impact of the activity, Uruguay was obliged, under general international law, to undertake an environmental impact assessment (EIA). Furthermore, the ICJ recognized a general duty of environmental protection, as it stated:

> *"A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State." (Judgement, ICJ Reports 2010 (I), pp. 55-56, para. 101)*

As seen, despite the progress of recognizing the river protection as an obligation, this occurs only when there is the possibility of causing damage to another State. Thus, there is a general tendency in the ICJ to only consider the environmental concern as an obligation between States. This point of view ignores the value of the environment per se, as well as the fact that, in a deeper analysis, environmental aspects are always global.

[68] International Court of Justice Reports, *Pulp mills on the River Uruguay*, 2010, available in http://www.icj-cij.org/en/case/135. Accessed in 04.07.2018.

IV.3. American framework

When we think about international regulation to water sources, we have to take in consideration the Bogotá Pact[69], signed in 1948 by Americans countries, which deals with ways of resolving conflicts by peaceful means[70], mediation and arbitration, as mediation and arbitration. Furthermore, the Pact grants jurisdiction to the International Court of Justice to take cognizance of conflicts between the signatories' countries[71].

On the other hand, some barriers exist to the Bogotá Pact in conflict resolutions relating to water questions. First of all, taking the Pact as a starting point is to presume that there is already a conflict. It will be, preferably, resolved by alternative ways, but still a conflict. It seems better to think water regulation in order to avoid conflicts, weighing all interests of all those involved and affected, direct and indirectly.

Added to this, we have the fact that there are countries that have not ratified the Pact. In this way, some big countries, geographically and economically, as United States of America, Argentina and Cuba, are not subject to its provisions. Thus, it is preferable to avoid dependence on this Pact, since there are countries with some big water resources that are not bound by the provisions of Bogotá. Other countries are still discussing their permanence on the Pact, as Bolivia and Chile, which argue that ICJ became too much political[72].

Regarding American framework to prevent water disputes, the Action Plan for Sustainable Development of the Americas at the Summit of the Americas for Sustainable

[69] American Treaty on Pacific Settlement - Pact of Bogotá. Available in http://www.oas.org/en/sla/dil/inter_american_treaties_A-42_pacific_settlement_pact_bogota.asp. Accessed in 04.13.2018.

[70] ARTICLE I. The High Contracting Parties, solemnly reaffirming their commitments made in earlier international conventions and declarations, as well as in the Charter of the United Nations, agree to refrain from the threat or the use of force, or from any other means of coercion for the settlement of their controversies, and to have recourse at all times to pacific procedures.

[71] ARTICLE V. The aforesaid procedures may not be applied to matters which, by their nature, are within the domestic jurisdiction of the state. If the parties are not in agreement as to whether the controversy concerns a matter of domestic jurisdiction, this preliminary question shall be submitted to decision by the International Court of Justice, at the request of any of the parties.

[72] Available in http://lanacion.cl/2017/12/01/las-claves-del-pacto-de-bogota/. Accessed in 13.04.2018.

Development - Santa Cruz de la Sierra Declaration recognize the importance of the integrated management of water resources:

> "Initiative 48. Implement, in accordance with national laws and practice, integrated water resources management actions using watersheds and river basins as planning units whenever possible. These actions should include surface water and groundwater assessments and the preparation of strategic plans for water resource management, as well as the use of water utility revenues under local control, where appropriate, to fund watershed protection and the work of river basin authorities.
>
> Initiative 49. Develop, strengthen, implement, and coordinate at the national or local level, as appropriate, water resources policies, laws, and regulations to ensure the protection and conservation of water resources.
>
> Initiative 50. Promote hemispheric cooperation at all levels, including through the use of existing transboundary agreements and initiatives, in the conservation, management, and sustainable use of water resources and biological diversity. This would include the exchange of information and experiences on issues related to inland watersheds, river basins, and sub-basins."[73]

In the same vein, in 2015, the Organization of American States edited the Strategic Framework for the Inter-American Program for Sustainable Development, which provides for the integrated management of water resources, according to the following strategic actions:

> "i. Foster dialogue, technical cooperation, sharing of information, and exchanges of experience and best practices among member states to develop public policies on integrated water resources management.
>
> ii. Promote dialogue for the development of Hemisphere-wide and regional strategies related to integrated water resources management.
>
> (..)

[73] Organization of American States, *Plan of Action for the Sustainable Development of the Americas*. Available in http://www.summit-americas.org/summit_sd/summit_sd_poa_en.pdf. Accessed in 04.07.2018.

> iv. Assist member states with the identification of synergies among their relevant institutions responsible for integrated water resources management, and promote coordinated activities, inter alia, on water sustainability."[74]

In addition, the Inter-American Program for Sustainable Development also regulates the commitments assumed in the 2030 Agenda for Sustainable Development and assumes obligations related to prevention of climate change, which contributes to the prevention of water conflicts between states.

Thus, the OAS submit that the American law is adequate to respond to the global climate crisis and water disputes by providing a framework for prevent and resolving disputes among states and for the integrated water resources management between the States.

However, the OAS would like to highlight the importance to improve the mechanisms for resolving conflicts between state and citizens.

[74] Organization of American States. Department of Sustainable Development, *Inter-American Program for Sustainable Development (PIDS): 2017-2021,* 2016. Available in http://www.oas.org/en/sedi/pub/pids_2017.pdf. Accessed in 04.07.2018.

V. CONCLUSION

Considering all the arguments expressed above, answering the first question submitted to the International Court of Justice, the OAS submits that:

1. International law, as well as the local law of several countries, have instruments that are capable of substantiating the possibility of indigenous peoples to claim legal personality on behalf of a river, such as the ILO Convention 169, UN Convention on Biological Diversity, UN Declaration on the Rights of Indigenous Peoples and UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.

2. The recognition of a river as subject of rights derives from respect for the rights of traditional communities, that have a biocentric view of the environment, as they have a deep relationship with nature, and do not see it as an economic resource, but as an important part of the ecosystem.

3. The OAS has made several commitments to protect water resources and to recognize it as a fundamental element for life, and recognize the rivers as subject of rights.

4. 4. The OAS encourages the creation of a system of water resources management between the State and the community concerned, so that the population can participate in the decision-making that involves this resource.

Concerning Question Two, the OAS submits that:

1. The current international framework for solving water conflicts is limited as it only considers States' interests and only marginally the protection of the environment per se. Thus, the international law is adequate to resolving disputes only among states, but not between states and citizens.

2. Even considering only disputes among States, many countries did not ratify any of the water management related treaties. Therefore, although most of the provisions are originated from customary law and could be applied to all countries that did not state their

opposition in a consistent way since the beginning of that practice, the international treaties alone seem insufficient to solve the conflicts.

3. The Bogotá Pact, signed by American countries, disposes about general mandatory of solving conflicts by pacific ways, which is a step forward when compared to global mechanisms to deal with environmental conflicts. However, it is only effective to resolving conflicts among states, not between states and citizens.

4. The American Framework is adequate to prevent disputes related to water, insofar as it provides for the needs of an integrated management of this resource, that should include diverse stakeholders.

5. It is necessary to have a multilateral and comprehensive debate in order to develop mechanisms that, along with governance (that has the role to prevent conflicts), are able to resolve the disputes involving international and transboundary waters, mainly from the point of view of disputes between states and citizens.