

ARTICLE

Governing International Commons: Re-examining Environmental and Sovereignty Imaginaries in the Amazon

Roger Merino 

Universidad del Pacífico, Lima (Peru)

Email: RA.MerinoA@up.edu.pe

Abstract

The international community has consistently emphasized the importance of protecting the Amazon rainforest as a global carbon reservoir and climate regulator. Basin states have historically responded by rejecting the ‘internationalization of the Amazon’, arguing that they have sovereign rights to exploit the area under their own development plans. By reaffirming their sovereignty rights over international environmental concerns, they have also excluded the ancestral rights of Indigenous peoples in the basin. This article examines how the principles of absolute sovereignty (‘enclosure’), ‘common heritage of humankind’, and ‘common concern of humankind’ have been incorporated into the discourses, instruments, and practices of international environmental governance of the Amazon. These principles interact through shared anthropocentric, ethnocentric, and state-centric premises. Through an analysis of the Amazon Cooperation Treaty Organization (ACTO), the article finds that despite the discursive rejection of international forces, the basin states appeal to ‘common concern’ to embrace international cooperation while promoting transnational extractive and infrastructure projects through the principle of ‘enclosure’. This produces fragmented governance that legitimizes the expansion of extractivism under sovereign and developmental imaginaries while excluding the self-determination claims and ecological perspectives of the Indigenous peoples of the Amazon.

Keywords: International commons; Sovereignty; Common concern of humankind; Common heritage of humankind; Indigenous peoples; Forests

1. Introduction

As the largest tropical forest and biodiversity and freshwater reserve in the world,¹ the Amazon covers 5.3 million square kilometres (km²) shared among eight basin states (Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname, Venezuela) and one

¹ S. Fauset et al., ‘Hyperdominance in Amazonian Forest Carbon Cycling’ (2015) 6(6857) *Nature Communication*, pp. 1–9, at 2; C.A. Nobre et al., ‘Land-use and Climate Change Risks in the Amazon and the Need of a Novel Sustainable Development Paradigm’ (2016) 113(39) *The Proceedings of the National Academy of Sciences*, pp. 10759–68; M. Picq, ‘Situating the Amazon in World Politics’, in C. Tan & J. Faundez (eds), *Natural Resources and Sustainable Development* (Edward Elgar, 2017), pp. 165–85.

French overseas department (French Guyana). The Amazon holds international importance² as a global carbon reservoir and climate regulator,³ and as a global source of food, water, and energy.⁴ Moreover, deforestation and environmental degradation in the Amazon affect global sustainability by creating a cascading effect that might completely alter the planet's water cycle, climate, and food security.⁵ These impacts also produce disastrous effects on the local well-being. Today, the Amazon is home to nearly 2.2 million Indigenous individuals, belonging to approximately 410 Indigenous groups (80 of which live in voluntary isolation),⁶ who are subjected to displacement and land degradation.⁷

International actors and governments have consistently expressed their concerns about the state of the Amazon. Scientists have warned that the Amazon's resilience is already deteriorating, possibly leading to irreversible environmental damage during this century.⁸ In 2005, former European Union Commissioner Pascal Lamy expressed his concern about the deterioration of the tropical forests of the world. He proposed that the Amazon had to be protected as a 'global public asset' and internationally administered.⁹ Despite some improvements at the beginning of the 2000s, the Amazonian governments have been unable to stop deforestation in the basin.¹⁰

In Brazil, satellite imaging shows that during Jair Bolsonaro's government (2019–23) the rate of deforestation soared by as much as 92%. In Peru, Colombia, and Bolivia the rate of deforestation has also increased in recent years.¹¹ Following the 2019 fires, French president Emmanuel Macron said that the Amazon forest is of planetary concern and that Brazil could not be allowed to destroy it;¹² the Brazilian government rejected this declaration as a form of neocolonialism.¹³ Bolsonaro claimed

² B. García, *The Amazon from an International Law Perspective* (Cambridge University Press, 2011).

³ A. Cardil et al., 'Recent Deforestation Drove the Spike in Amazonian Fires' (2020) 15(12) *Environmental Research Letters*, article 121003.

⁴ S.G. Azevedo et al., 'Climate Change and Sustainable Development: The Case of Amazonia and Policy Implications' (2020) 27(8) *Environmental Science and Pollution Research*, pp. 7745–56.

⁵ B.D. Spracklen et al., 'A Global Analysis of Deforestation in Moist Tropical Forest Protected Areas' (2015) 10(12) *PloS One*, article e0143886; Azevedo et al., n. 4 above; A. Esquivel-Muelbert, 'A Compositional Response of Amazon Forests to Climate Change' (2019) 25(1) *Global Change Biology*, pp. 39–56.

⁶ Science Panel for the Amazon (SPA), 'Amazon Assessment Report 2021, Executive Summary 2021', available at: <https://www.theamazonwewant.org/wp-content/uploads/2022/06/220717-SPA-Executive-Summary-2021-EN.pdf>.

⁷ Picq, n. 1 above; G. Fontaine, 'La Globalización de la Amazonía: Una Perspectiva Andina' (2006) 25 *Íconos: Revista de Ciencias Sociales*, pp. 25–36.

⁸ J. Pereira & E. Viola, 'Close to a Tipping Point? The Amazon and the Challenge of Sustainable Development under Growing Climate Pressures' (2020) 52(3) *Journal of Latin American Studies*, pp. 467–94.

⁹ 'Brasil No Cederá el Amazonas', *BBC News*, 25 Feb. 2005, available at: https://news.bbc.co.uk/hi/spanish/latin_america/newsid_4299000/4299623.stm.

¹⁰ P. Artaxo, 'Working Together for Amazonia' (2019) 363(6425) *Science*, p. 323; Cardil et al., n. 3 above.

¹¹ Pereira & Viola, n. 8 above.

¹² 'The Latest: Macron Calls Amazon an Issue for the Whole Planet', *Associated Press*, 27 Aug. 2017, available at: <https://apnews.com/article/brazil-france-emmanuel-macron-iran-nuclear-global-trade-9193fb6a2dc84d55bbc67b16d650b9bc>.

¹³ A. López Rivera, 'Global Cooperation in Amazonia: Matters of Fact and Matters of Concern' (2019) 1(3) *Global Cooperation Research*, pp. 16–7.

that developed nations were using an environmental agenda to take over Brazilian natural resources: 'Sovereignty of the region and its riches is what is truly at stake ... No country in the world has the moral right to talk about the Amazon. You destroyed your own ecosystems'.¹⁴

Bolsonaro's position recalls old debates about the internationalization of the Amazon. Given the rise of modern environmentalism in the 1970s and the view of the Amazon as the 'lungs of the world' that should be internationally protected, basin states signed the Amazonian Cooperation Treaty (ACT) in July 1978.¹⁵ The Treaty was intended to demonstrate that basin states could manage this region with no foreign interference that risks their sovereignty. In 1998, the parties created the Amazon Cooperation Treaty Organization (ACTO) as an international organization, with headquarters in Brasília (Brazil).¹⁶ The ACTO agenda included the rights of Indigenous peoples and climate change. However, ACTO lacks enforcement mechanisms among its member states; it only advances diplomatic coordination and the exchange of information.¹⁷ Thus, this governance arrangement has not pushed for regional policies to protect Amazonian ecosystems and Indigenous rights, and relies rather heavily on the sovereign decisions of each basin state. The economic and environmental policies of these governments, however, often privilege the interests of the most powerful stakeholders at play, such as mining and oil companies, agribusiness, and construction firms.

In August 2023, the presidents of the eight Amazonian government members of ACTO came to a compromise to improve the international governance of the Amazon. They gathered in the Fourth Presidential Summit since ratification of the ACT in 1978 and enacted the Belém Declaration.¹⁸ With this Declaration, the governments announced a new common cooperation agenda in the Amazon to achieve sustainable development and take urgent action to avoid the point of no return in the Amazon. The Declaration formulated new principles for this agenda, such as the participation of Indigenous peoples, gender equality, and intercultural and intergenerational approaches. It also reiterated the only principle in force since the conclusion of the ACT: 'The sovereignty of the States, including the respect of national legislation of each country'.¹⁹

¹⁴ D. Phillips, 'Bolsonaro Declares "The Amazon is Ours" and Calls Deforestation Data "Lies"', *The Guardian*, 19 July 2019, available at: <https://www.theguardian.com/world/2019/jul/19/jair-bolsonaro-brazil-amazon-rainforest-deforestation>.

¹⁵ Treaty for Amazonian Cooperation (Amazon Cooperation Treaty (ACT)), Brasília (Brazil), 3 July 1978, in force 2 Aug. 1980, available at: <https://otca.org/en/wp-content/uploads/2021/01/Amazon-Cooperation-Treaty.pdf>.

¹⁶ Amendment Protocol to the Amazon Cooperation Treaty, Caracas (Venezuela), 14 Dec. 1998, in force 2 Aug. 2002 (ACT Amendment Protocol), available (in Spanish) at: <https://otca.org/en/wp-content/uploads/2021/01/Amendment-Protocol-2.pdf>.

¹⁷ Pereira & Viola, n. 8 above; M.A. Tigre, 'Building a Regional Adaptation Strategy for Amazon Countries' (2019) 19(4) *International Environmental Agreements: Politics, Law, and Economics*, pp. 411–27.

¹⁸ Declaration of Belém, 9 Aug. 2023, available at: <https://otca.org/en/wp-content/uploads/2023/10/Declaration-of-Belem.pdf>.

¹⁹ *Ibid.*, Art. 1(e).

This article presents a broad survey of the international governance of the Amazon by exploring how the emphasis on national sovereignty has an impact on this international governance and how strong sovereignty claims relate to other principles for governing international commons. Historically, the conception of the Amazon rainforest as a ‘global commons’ has been deeply contested. Since the 1870s, with the rise of the international agenda for protecting global forests, developed nations suggested that the Amazon should be treated as a global commons governed under the principle of ‘common heritage of humankind’.²⁰ Basin states have rejected these attempts, reaffirming their absolute sovereignty over their respective Amazonian territory.²¹ In the last two decades, international lawyers have suggested ‘the common concern of humankind’ as the most suitable principle to govern the Amazon rainforest as it allows some indirect influence of international forces through cooperation and assistance but without direct incidence over Amazonian spaces.²² The underlying premise for these discussions – and for this article – is that the Amazon rainforest is a commons that can be subjected to various arrangements. The absolute sovereignty of basin states under the idea of ‘enclosure’ and the principle of ‘common concern of humankind’ conceive of the Amazon as an international commons shared among basin states, as both principles reaffirm state sovereignty. The principle of ‘common heritage of humankind’ would conceive of the Amazon as a global commons where no one nation-state would, or should, have strong sovereign claims over Amazonian areas. This article treats and defines enclosure, common heritage, and common concern as distinct ‘governance principles’ for managing global and international commons rather than as principles of international law.

Engaging with Third World Approaches to International Law (TWAIL) critiques on the application of these principles to forests,²³ this article examines how enclosure, common heritage, and common concern have been incorporated into the actual

²⁰ Current usage refers to ‘humankind’ instead of ‘mankind’ as in the original formulation; e.g., Art. 7 of the Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement), New York, NY (United States (US)), 19 June 2023, not yet in force, available at: <https://www.un.org/bbnjagreement/sites/default/files/2024-08/Text%20of%20the%20Agreement%20in%20English.pdf>.

²¹ J. Cazala, ‘What International Law Can Teach Us About the Commons’, in M.B. Pillai & G. Ganapathy-Doré (eds), *Global Commons: Issues, Concerns and Strategies* (SAGE, 2020), pp. 12–22; J. Vogler, ‘Global Commons Revisited’ (2012) 3(1) *Global Policy*, pp. 61–71.

²² Garcia, n. 2 above; I. Mgbeoji, ‘Beyond Rhetoric: State Sovereignty, Common Concern, and the Inapplicability of the Common Heritage Concept to Plant Genetic Resources’ (2003) 16(4) *Leiden Journal of International Law*, pp. 821–37; X. Arnaud de Sartre & R. Taravella, ‘National Sovereignty vs. Sustainable Development: Lessons from the Narrative on the Internationalization of the Brazilian Amazon’ (2009) 28(6) *Political Geography*, pp. 406–15; M. Bastos Lima et al., ‘Large-Scale Collective Action to Avoid an Amazon Tipping Point: Key Actors and Interventions’ (2021) 3 *Current Research in Environmental Sustainability*, article 100048; M.A. Franchini & E. Viola, ‘Myths and Images in Global Climate Governance, Conceptualization, and the Case of Brazil (1989–2019)’ (2019) 62(2) *Revista Brasileira de Política Internacional*, article e005.

²³ J. Dehm, *Reconsidering REDD+: Authority, Power and Law in the Green Economy* (Cambridge University Press, 2021), p. 130; R. Chandra, ‘The “Moral Economy” of Cosmopolitan Commons’ (2020) 1 *TWAIL Review*, pp. 51–73.

governance of the Amazon, and discusses their implications and limitations. After analyzing all official documents produced by ACTO since its creation, including declarations and minutes of their governing bodies; and complementing this analysis with fieldwork in its headquarters in Brasília (Brazil) in 2022 and 63 semi-structured interviews with former and current ACTO officials and other international actors, this article found unexpected interactions among the three principles.

‘Enclosure’ and ‘common concern’ have been incorporated in the ACTO governing instruments and practices, while ‘common heritage’ has been excluded as a potential vehicle of international force. Nonetheless, through the principle of ‘common concern’, international actors have been welcomed into the governance of the basin through focalized cooperation and, through ‘enclosure’, national governments promote transnational extractive and infrastructure projects. Through these principles, basin states have validated their sovereignty and environmental imaginaries. They articulate strong sovereignty claims (enclosure) while proclaiming international environmental compromises and partnerships (common concern).

The article contributes to rethinking these principles as governance principles. Beyond the internationalization *versus* sovereignty debate, the principles of enclosure, common heritage, and common concern have obscured the sovereign claims of Indigenous peoples by relying on anthropocentric, ethnocentric, and state-centric premises. They are state-centric by excluding Indigenous nations from the international governance of the basin. Moreover, they are ethnocentric by excluding other notions and principles alien to Western conceptions of sovereignty and environmentalism. Finally, they are anthropocentric by focusing on the welfare of ‘humankind’ rather than that of the natural world. Indigenous holistic cosmovisions on human–nature relationships and self-determination claims challenge these premises and might assist in reimagining sovereignty and environmentalism and, in this way, restructuring the arrangements for governing international commons.

The remainder of this article is organized as follows. Section 2 presents the scholarly debates on the principles for governing the commons and international forests. Section 3 introduces the Amazon rainforest as an international common. Section 4 analyzes how the principles for governing the commons have been incorporated into the ACTO organization, instruments, and discourses. Section 5 discusses the prospects for reformulating those principles in the Amazon and beyond. Section 6 formulates the conclusions and implications of the study.

2. Competing or Complementary Principles for Governing International Commons?

‘Global commons’ refers mainly to areas outside national jurisdiction in which international law regulates some special forms of access, such as the high seas and deep

seabed, outer space, and the atmosphere;²⁴ the ozone layer and the electromagnetic frequency spectrum might also qualify.²⁵ Global commons have also been conceptualized from an economic perspective as material domains in which common-pool goods exist, such as fisheries in the oceans, characterized by having high subtractability or competitiveness (its consumption might lead to depletion) and low exclusion (it is difficult to exclude others from using them).²⁶ A related but different notion is ‘global public goods’, which have non-competitive properties and low exclusion, therefore suffering from free-riding,²⁷ such as global climate protection,²⁸ control of epidemics, and knowledge.²⁹

One way to govern global commons is through ‘open access’, a space with no exclusionary rights and institutional rules for common management. Another way is ‘enclosure’, whereby absolute sovereignty over specific portions of the area is established, transforming it into an ‘international common’ shared among some nation-states. Inspired by Hardin’s ‘Tragedy of the Commons’,³⁰ which focused on the local depletion of common-pool resources for not defining clear property rights, scholars have argued that this tragedy occurs on the international level because governments are either unable to design appropriate international authorities or are unwilling to engage with binding international treaties that divide commons at the same time as limiting their sovereign rights.³¹

One example of global commons enclosure is the establishment of 200-nautical-mile exclusive economic zones (EEZs) under the 1982 UN Convention on the Law of the Sea (UNCLOS).³² The 200-miles thesis is associated with the struggle of developing countries vis-à-vis the interests of strong maritime powers.³³ Advanced

²⁴ Vogler, n. 21 above, p. 61; A.L. Kurian & C. Vinodan, ‘The Global Commons and the Climate Governance Regime: Effectiveness and Challenges’, in Pillai & Ganapathy-Doré, n. 21 above, pp. 60–8, at 61.

²⁵ K. Brown, ‘Global Environmental Change I: A Social Turn for Resilience?’ (2014) 38(1) *Progress in Human Geography*, pp. 107–17; M. Wijkman, ‘Managing the Global Commons’ (1982) 36(3) *International Organization*, pp. 511–36, at 513.

²⁶ Vogler, n. 21 above; P. Pokorny et al., ‘Forests as a Global Commons: International Governance and the Role of Germany’, Report to the Science Platform Sustainability 2030, 14 Feb. 2019, available at: <https://www.wpn2030.de/wp-content/uploads/2019/12/Studie-W%C3%A4lder.pdf>.

²⁷ C. Boonen et al., ‘Governing as Commons or as Global Public Goods: Two Tales of Power’ (2019) 13(1) *International Journal of the Commons*, pp. 553–77; A. Schaeffer et al., ‘The CERN Model, United Nations and Global Public Goods: Addressing Global Challenges’, Report on the Symposium that took place on 2 Nov. 2015 at the Palais des Nations, Geneva (Switzerland), available at: https://cds.cern.ch/record/2271745/files/Report_TheCERNmodel_theUN_andGlobalPublicGoods_Final_20.04.2017.pdf.

²⁸ A. Magnan & T. Ribera, ‘Global Adaptation after Paris’ (2016) 352(6291) *Science*, pp. 1280–2; A. Wit & M. Freitas, ‘Global Climate Adaptation Governance in the Amazon through a Polycentricity Lens’ (2019) 62(2) *Revista Brasileira de Política Internacional*, article e007.

²⁹ Boonen et al., n. 27 above.

³⁰ G. Hardin, ‘The Tragedy of the Commons: The Population Problem Has No Technical Solution; It Requires a Fundamental Extension in Morality’ (1968) 162(3859) *Science*, pp. 1243–8.

³¹ Wijkman, n. 25 above, p. 521.

³² Montego Bay (Jamaica), 10 Dec. 1982, in force 16 Nov. 1994, available at: http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm. See Vogler, n. 21 above, p. 62.

³³ M.A. Young, ‘A Quiet Revolution: The Exclusivity of Exclusive Economic Zones’, in K. Rubenstein (ed.), *Traversing the Divide: Honouring Deborah Cass’s Contributions to Public and International Law* (ANU Press, 2021), pp. 59–86.

originally by Peru and Chile in the 1950s, it sought a just redistribution of maritime world resources and the empowerment of the smallest states to deny access to their fishing zones to the ‘distant water fishing nations’.³⁴ This trend was reinforced by the New International Economic Order (NIEO) movement against neocolonialism³⁵ and the enactment of declarations and institutions that advanced third-world interests, such as the United Nations General Assembly (UNGA) Resolution on permanent sovereignty over natural resources (1962),³⁶ the Declaration on the Establishment of a New International Economic Order (1974),³⁷ the Charter of Economic Rights and Duties of States (1975),³⁸ and the Declaration on the Right to Development (1986).³⁹

The use of enclosure reinforced the sovereignty of former colonies to deal with international powers under developmental imaginaries,⁴⁰ excluding Indigenous peoples.⁴¹ For instance, the NIEO theory of ‘permanent sovereignty over natural resources’⁴² was a means of protecting the sovereignty of developing countries and the use of their natural resources vis-à-vis foreign states or businesses. Since the original purpose was to strengthen the position of newly independent states, the term ‘peoples’ was understood as referring to post-colonial states and not to constituent peoples. To this day, global south states employ this doctrine to pursue development projects promoting the ‘national interest’, conflating the identities of various groups with that of the state and invalidating Indigenous claims to land.⁴³ Even when states recognize Indigenous territorial rights and ‘enclosure’ forest areas in their favour, this does not entail full decision making. As argued by Chandra,⁴⁴ the purpose of the commons enclosure in biodiversity zones is not to benefit proximate interests, but to serve the interests of humankind as a whole. Local communities then became entangled in a global network of rulemaking and decision making.

³⁴ Young, *ibid.*; B. Boczek, ‘Ideology and the Law of the Sea: The Challenge of the New International Economic Order’ (1984) 7(1) *Boston College International & Comparative Law Review*, pp. 1–30.

³⁵ Boczek, *ibid.*

³⁶ UNGA Resolution 1803 (XVII), ‘Permanent Sovereignty Over Natural Resources’, 14 Dec. 1962, available at: <https://documents.un.org/doc/resolution/gen/nr0/193/11/pdf/nr019311.pdf>.

³⁷ New York, NY (US), 1 May 1974, UN Doc. A/RES/3201(S-VI), available at: <https://digitallibrary.un.org/record/218450?v=pdf>.

³⁸ New York, NY (US), 12 Dec. 1974, UN Doc. A/RES/3281 (XXIX), available at: <https://digitallibrary.un.org/record/190150?ln=en&v=pdf>.

³⁹ Adopted by UNGA Resolution 41/128, 4 Dec. 1986, UN Doc. A/RES/41/128, available at: <https://www.ohchr.org/sites/default/files/rtd.pdf>.

⁴⁰ L. Eslava, M. Fakhri & V. Nesiah (eds), *Bandung, Global History, and International Law: Critical Past and Pending Futures* (Cambridge University Press, 2017); J.T. Gathii, ‘The Agenda of Third World Approaches to International Law (TWAIL)’, in J.L. Dunoff & M.A. Pollack (eds), *International Legal Theory: Foundations and Frontiers* (Cambridge University Press, 2019), pp. 153–73.

⁴¹ H. Fukurai, ‘Fourth World Approaches to International Law (FWAIL) and Asia’s Indigenous Struggles and Quests for Recognition under International Law’ (2018) 5(1) *Asian Journal of Law and Society*, pp. 221–31.

⁴² UNGA Resolution 626 (VII), ‘Right to Exploit Freely Natural Wealth and Resources’, 21 Dec. 1952, UN Doc. A_RES_626(VII).

⁴³ A.B.E. Bayot, ‘Free, Prior, and Informed Consent in the Philippines: A Fourth World Critique’, in I. Feichtner, M. Krajewski & R. Roesch (eds), *Human Rights in the Extractive Industries: Transparency, Participation, Resistance* (Springer, 2019), pp. 281–309.

⁴⁴ Chandra, n. 23 above, p. 70.

Vogler argues that enclosure cannot always provide a management solution and is blind to distributional consequences,⁴⁵ or what is known as ‘tragedies of dispossession’.⁴⁶ For instance, contrary to Hardin’s logic,⁴⁷ world fishing resources have declined as a result of over-exploitation,⁴⁸ affecting mainly local and Indigenous communities who depend on these resources. The deepest problem is that concepts such as EEZ and ‘permanent sovereignty over natural resources’ are justified in nationalistic rhetoric that serves only to promote the self-interest of developmental states with no concern for local and international environmental impacts and inequalities. In general, authors have doubted the ability of these doctrines to truly contribute to decolonization.⁴⁹

2.1. *The Common Heritage and the Common Concern of Humankind*

The ‘common heritage of humankind’ principle suggests that the management of the commons would be carried out on behalf of all peoples; the economic benefits from this management must be shared by the global community, and the area of common global ownership must be a completely demilitarized zone where only peaceful activities are conducted, such as scientific activities.⁵⁰ It has been portrayed as the alternative to enclosure to govern global commons. However, both principles were promoted by developing nations under the NIEO campaign during UNCLOS negotiations in the 1970s and early 1980s.⁵¹ The aim was that enclosure through EEZ applies to 200 nautical miles and the ‘common heritage’ to the seabed beyond 200 miles.⁵² The international community would have full legal ownership of the seabed ‘as common heritage’ through the International Seabed Authority acting as trustee,⁵³ with developing states holding preferential rights in the distribution of the area’s resources.⁵⁴

In practice, however, the ‘common heritage’ principle has not prevented the extractivism of the deep seabed.⁵⁵ The International Seabed Authority has granted

⁴⁵ Vogler, n. 21 above, p. 66.

⁴⁶ B. Balagopal & J. Chacko, ‘From the Tragedy of the Commons to Sustainable Commons: A Survey of the Theoretical Developments on CPR’, in Pillai & Ganapathy-Doré, n. 21 above, pp. 2–11.

⁴⁷ Hardin, n. 30 above.

⁴⁸ Food and Agriculture Organization of the UN (FAO), ‘*The State of World Fisheries and Aquaculture*’ (FAO, 2020), available at: <https://openknowledge.fao.org/items/b752285b-b2ac-4983-92a9-fdb24e92312b>.

⁴⁹ Young, n. 33 above.

⁵⁰ Mgbefji, n. 22 above; D. Shelton, ‘Common Concern of Humanity’, *Iustum Aequum Salutare*, V.2009/1, pp. 33–40, available at: <https://ias.jak.ppke.hu/20091sz/05.pdf>; S. Ranganathan, ‘Global Commons’ (2016) 27(3) *European Journal of International Law*, pp. 693–717, at 694.

⁵¹ Vogler, n. 21 above, p. 67.

⁵² M. Lodge, ‘Enclosure of the Oceans versus the Common Heritage of Mankind: The Inherent Tension between the Continental Shelf beyond 200 Nautical Miles and the Area’ (2021) 97(1) *International Law Studies*, pp. 804–32.

⁵³ UNCLOS, n. 32 above, Art. 137(2). See also Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, New York, NY (US), 28 July 1994, in force 28 June 1996, available at: https://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm.

⁵⁴ E. Egede, *Politics of International Law and International Justice* (Edinburgh University Press, 2013).

⁵⁵ K. Mickelson, ‘The Maps of International Law: Perceptions of Nature in the Classification of Territory’ (2014) 27(3) *Leiden Journal of International Law*, pp. 621–39.

licences for the exploration of potential mining sites in the Atlantic, Indian, and Pacific Oceans, fostering a 'new global gold rush' of deep-sea mining. According to Hunter, Singh and Aguon,⁵⁶ this can be explained partly by the original 1960s 'common heritage' framing because it focused on the redistribution of benefits from mineral exploitation, neglecting its environmental impacts. In formulating this principle, Maltese diplomat Arvid Pardo presented a fantastical portrayal of almost inexhaustible mineral resources in the seabed to the First Committee of the UNGA in 1967. This framing has continued to dominate the deep-sea narrative,⁵⁷ and has also been incorporated in the Moon Treaty, which includes 'other celestial bodies'.⁵⁸ Alongside seabed mining, extra-terrestrial mining has become the object of an expanding legal and financial architecture in the United States (US) and Luxembourg, which recognize private property rights in minerals mined in space.⁵⁹

Another critique of 'common heritage' is its limited scope,⁶⁰ as treaties that mention it have the lowest numbers of ratifications, except for UNCLOS and its associated instruments.⁶¹ More critically, it is difficult to apply in areas subject to clear national jurisdictions. For instance, although some proposed conceiving the forest as global commons⁶² subject to 'common heritage', sovereignty claims led to the failure to adopt a forest convention at the UN Conference on Environment and Development (UNCED), also known as the 'Earth Summit' or Rio Summit, in 1992.⁶³ Bedjaoui, in 1979, had already noted how conceiving the Amazon and the Congo rainforest as 'mankind's common heritage' would not be outrageous if there was a fair distribution of rights and duties for all states.⁶⁴ However, for him, this was not the case because the third world would shoulder the obligations resulting from the application of this principle, while the industrialized states would only benefit from it. These fears continued in the following years. In their Declaration of San Francisco de Quito of March 1989,⁶⁵ the foreign ministers of the Amazon countries repudiated international

⁵⁶ J. Hunter, P. Singh & J. Aguon, 'Broadening Common Heritage: Addressing Gaps in the Deep Sea Mining Regulatory Regime', *Harvard Environmental Law Review Online*, 16 Apr. 2018, available at: <https://journals.law.harvard.edu/elr/2018/04/16/broadening-common-heritage>.

⁵⁷ Ibid.

⁵⁸ Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Treaty), New York, NY (US), 5 Dec. 1979, in force 11 July 1984, available at: <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/intromoon-agreement.html>.

⁵⁹ I. Feichtner & S. Ranganathan, 'International Law and Economic Exploitation in the Global Commons: Introduction' (2019) 30(2) *European Journal of International Law*, pp. 541–6, at 543.

⁶⁰ Mgbeoji, n. 22 above; S. Buck, *The Global Commons: An Introduction* (Routledge, 1998), p. 28; Cazala, n. 21 above.

⁶¹ E.g., the BBNJ Agreement, n. 20 above.

⁶² Vogler, n. 21 above, p. 63; Pokorny et al., n. 26 above, p. 7.

⁶³ Rio de Janeiro (Brazil), 3–14 June 1992. See K. Mickelson, 'Seeing the Forest, the Trees and the People: Coming to Terms with Developing Country Perspectives on the Proposed Global Forests Convention', in Canadian Council of International Law (ed.), *Global Forests and International Environmental Law* (Kluwer Law, 1996), pp. 239–64.

⁶⁴ M. Bedjaoui, *Towards a New International Economic Order* (United Nations Educational, Scientific and Cultural Organization, 1979), p. 235.

⁶⁵ Declaration adopted by the signatories of the Amazon Cooperation Treaty, 7 Mar. 1989, available at: https://otca.org/en/wp-content/uploads/2021/01/LEGAL_BASIS.pdf.

interferences with the Amazonian policies of basin states.⁶⁶ They criticized the declarations and activities of international environmental organizations as an encroachment upon their sovereignty. Regional leaders argued that environmental concerns were only a pretext for the global north to prevent Brazil and other Amazonian states from developing.⁶⁷

These tensions accompanied the proposal by G7 leaders, with the support of conservation non-governmental organizations (NGOs), to negotiate a forest convention.⁶⁸ At the first UNCED preparatory committee meeting in July 1990, timber-exporting and developing countries (such as Brazil, Malaysia, and Indonesia) resisted any suggestions that forests were a 'global commons' rather than a 'national resource'.⁶⁹ Amazonian countries strongly opposed this conceptualization based on sovereignty arguments,⁷⁰ and claimed that any attempt to conceive of the Amazon as a global commons was a neocolonial tactic of developed nations to have open access to their biological resources.⁷¹ Suspicious of ecological imperialism, they opposed any restrictions on sovereignty and the right to pursue national interests.⁷² During the UNCED, Malaysian Prime Minister Mathahir Mohamad synthesized this position: 'Obviously the North wants to have a direct say in the management of forests in the poor South at next to no cost to themselves'.⁷³ Mohamad denounced the attempts of rich countries to 'regulate the development of the poor countries'.⁷⁴ The conflict led to the decision to produce only the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (Forest Principles),⁷⁵ rather than an international treaty.

After Rio, some proposals tried to reactivate the discussions for negotiating a forest convention. Mickelson⁷⁶ proposed integrating the concerns of developing nations through the principles of sovereignty over resources and the right to development. Brunnée proposed the emerging principle of 'common concern' as the basis for a new proposal.⁷⁷ This principle was first formulated in 1988 by UNGA Resolution 43/53,

⁶⁶ M. Nabais da Furricla, 'The Internationalization of the Amazon' (2000) 1 *International and Comparative Environmental Law*, pp. 17–20.

⁶⁷ A. Kolk, 'From Conflict to Cooperation: International Policies to Protect the Brazilian Amazon' (1998) 26(8) *World Development*, pp. 1481–93; Bastos Lima et al., n. 22 above.

⁶⁸ M. Smouts, 'Tropical Forests, International Jungle: The Underside of Global Ecopolitics' (Palgrave, 2003), p. 141.

⁶⁹ Dehm, n. 23 above.

⁷⁰ Cazala, n. 21 above.

⁷¹ Vogler, n. 21 above, p. 67.

⁷² J. Brunnée & A. Nollkaemper, 'Between the Forests and the Trees: An Emerging International Forest Law' (1996) 23(4) *Environmental Conservation*, pp. 307–14, at 308.

⁷³ Mickelson, n. 63 above, p. 240.

⁷⁴ Ibid.

⁷⁵ UN Doc. A/CONF.151/6/Rev.1, 21 Apr. 1992, available at: <https://digitallibrary.un.org/record/144461?v=pdf>.

⁷⁶ Mickelson, n. 63 above, p. 240.

⁷⁷ J. Brunnée, 'A Conceptual Framework for an International Forests Convention: Customary Law and Emerging Principles', in Canadian Council of International Law, n. 63 above, pp. 41–78.

which positions ‘climate change as a common concern of humankind’,⁷⁸ and in 1990 by the UNGA Declaration on International Economic Co-operation,⁷⁹ which acknowledged the threat to the environment as ‘the common concern of all’.⁸⁰ The United Nations Framework Convention on Climate Change (UNFCCC),⁸¹ the Convention on Biological Diversity,⁸² and the Paris Agreement⁸³ include it in their preambles to emphasize the global responsibility of states to assist in addressing climate change and biological diversity. The concept has three dimensions. Firstly, the global dimension involves the cooperation of all states when responding to environmental threats because the subject of the concern is of significance to the international community. Secondly, the temporal dimension results from the long-term effects of major environmental problems like climate change, which affect the rights and obligations of present and future generations. Thirdly, the social dimension requires the engagement of all sectors of society, including governmental organizations, businesses, NGOs, civil society, and individuals.⁸⁴

Unlike the concept of common heritage, the idea of ‘common concern’ indicates that all states have an interest in ecological protection rather than an internationalization of ownership of resources.⁸⁵ As a result, all countries have differentiated obligations to address the common concerns, including ‘less capacitated countries’, to achieve the effectiveness of international agreements.⁸⁶ Therefore, whereas common heritage and enclosure are territorial in nature, common concerns are not spatial, belonging to a specific area, but can apply within or outside a sovereign territory. It does not prevent the state from exploiting its natural resources, but only requests that these resources be exploited considering the international interest in environmental sustainability.⁸⁷ States therefore have an ethical duty to cooperate to conserve biodiversity in areas beyond the limits of their jurisdiction. The concept, thus, can be useful for resources or areas where national sovereignty claims remain strong.⁸⁸ For these reasons, in current forest discussions, common concern is considered better

⁷⁸ UNGA Resolution 43/53, ‘Protection of Global Climate for Present and Future Generations of Mankind’, 6 Dec. 1988, UN Doc. A/RES/43/53, para. 1, available at: <https://documents.un.org/doc/resolution/gen/nr0/530/32/img/nr053032.pdf>.

⁷⁹ UNGA Resolution S-18/3, ‘Declaration on International Economic Co-operation, in particular the Revitalization of Economic Growth and Development of the Developing Countries’, UN Doc. A/RES/S-18/3, para. 29, available at: <https://digitallibrary.un.org/record/93860?v=pdf>.

⁸⁰ Dehm, n. 23 above.

⁸¹ New York, NY (US), 9 May 1992, in force 21 Mar. 1994, available at: <http://unfccc.int>.

⁸² Rio de Janeiro (Brazil), 5 June 1992, in force 29 Dec. 1993, available at: <http://www.cbd.int/convention>.

⁸³ Paris (France), 13 Dec. 2015, in force 4 Nov. 2016, available at: https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

⁸⁴ L. Horn, ‘Climate Change and the Future Role of the Concept of the Common Concern’ (2015) 2(1) *Australian Journal of Environmental Law*, pp. 24–56, at 27.

⁸⁵ *Ibid.*, p. 25; Brown, n. 25 above.

⁸⁶ V. Bellinx et al., ‘Addressing Climate Change through International Human Rights Law: From (Extra) Territoriality to Common Concern of Humankind’ (2022) 11(1) *Transnational Environmental Law*, pp. 69–93.

⁸⁷ Shelton, n. 50 above.

⁸⁸ E. Brown Weiss, ‘The Coming Water Crisis: A Common Concern of Humankind’ (2012) 1(1) *Transnational Environmental Law*, pp. 153–68.

suited than the 'common heritage'. By not focusing on the 'ownership' dimension of forest resources, but merely on its 'function' or 'use' dimension as carbon storage, states share responsibility for protecting this function.⁸⁹

After Rio, interest in a forest convention diminished. NGOs feared that the timber industry would dominate the process and lead to low standards. They had a more pragmatic view: instead of engaging in a long and costly process, it would be better to resolve pressing problems and implement existing agreements.⁹⁰ This can be considered the triumph of 'common concern'; as this principle does not necessarily require global solutions, it might be advanced through national strategies, plans, or programmes.⁹¹ Thus, developing countries committed to maintaining their forest cover and preserve biological diversity contained in their forests. In exchange, industrialized countries would contribute with financial support and technology. All states, funding agencies, the private sector, and NGOs would cooperate to promote the 'sustainable' use of the forest while developing trade in forest products.⁹² Amazonian governments reaffirmed that the sustainable development of the Amazon is of common concern to humankind, but the final responsibility and authority over the management of this area lies with each Amazonian government.⁹³ The application of 'common concern', however, did not fulfil its promises to protect the forest.

2.2. *Reinventing Governing Principles for the Commons*

Engaging with TWAIL, Dehm criticizes the common concern principle.⁹⁴ She explains how, since the 2000s, tensions over ownership and control over tropical forests were sidestepped by avoiding the conflictual 'proprietary' question and instead focusing on the functions that forests serve. Although formally national sovereignty over forests was affirmed, the understanding of forests' carbon sequestration functions as a matter of global 'common concern' led to 'actualise global authority over forested areas'.⁹⁵ This means that global south countries can be differently compelled to act pursuant to a 'common concern', including through mechanisms of conditionality and finance. Those responsible for the greatest proportion of current and historical greenhouse gas (GHG) emissions, in contrast, are least subject to an international jurisdiction pursuant to a 'common concern'. For Dehm, this global authority consolidates pre-existing relations of power by locating the problem of deforestation within nation-states, obscuring global drivers of deforestation such as the global financing that enables the production of timber, agricultural goods and palm oil that contribute to deforestation; the global supply chains through which these commodities circulate; and the global consumption of these products.

⁸⁹ Brunnée & Nollkaemper, n. 72 above.

⁹⁰ Smouts, n. 68 above.

⁹¹ Brown Weiss, n. 88 above.

⁹² Smouts, n. 68 above.

⁹³ Garcia, n. 2 above; Nabais da Furrícula, n. 66 above, p. 17.

⁹⁴ Dehm, n. 23 above.

⁹⁵ Ibid.

Chandra also criticizes ‘common concern’ from a TWAIL perspective.⁹⁶ Under this principle, the international community seeks to protect the forest from the ‘tragedy of overuse’. International law then provides the meta-frames of governance, national states provide the regulatory framework, and local communities must work with and alongside these global and government actors. This means that the sovereign ‘eminent domain’ of the state and the internationalization of nature protection are not contradictory but complementary. The common concern principle serves to frame the rules that enclose the forest. It legitimizes both state sovereignty, granting land rights for local communities, and international actions on these areas by global entities that use environmental discourses (international organizations, corporations, NGOs). For Chandra, once the commons have been endowed with a value that transcends their utility to the local communities, the collective rights of these communities no longer allude to their interests but to the larger collective of humankind, obscuring the social history of the place and the social relations that produced the ‘commons’. These communities become subjected to a larger network of rules and decision making.

These reflections emphasize the ‘north–south divide’ about how to exert state authority over the forest,⁹⁷ and how international and state forces instrumentalize local communities’ authority over the forest.⁹⁸ Dehm’s position replicates the TWAIL critique of global environmental law as being dominated by the priorities and concerns of affluent countries, whereas the concerns of poor countries are frequently marginalized.⁹⁹ The tensions recognized within the south remain state-centric: they refer mainly to the different environmental priorities of leading southern states, such as China and India, in contrast to more ecologically vulnerable small island states. Chandra’s critique is attentive to internal forms of hierarchy and oppression within third-world nation-states (an early questioning on TWAIL¹⁰⁰), but gives little attention to the political agency of Indigenous communities and how Indigenous agency and politics might renew the field. These reflections might be complemented by the emphasis of decolonial theory on how Indigenous epistemologies and ontologies of care and respect for the natural world and non-human beings challenge coloniality. According to decolonial theory, even though colonialism has formally ended in most of the world, power distribution *within* countries and *among* countries expresses the legacies of two global processes inaugurated with colonialism: global extraction or the accumulation of resources from the south to the north, and a global naming or

⁹⁶ Chandra, n. 23 above, p. 70.

⁹⁷ Dehm, n. 23 above.

⁹⁸ Chandra, n. 23 above, p. 70.

⁹⁹ S. Atapattu & C.G. Gonzalez, ‘The North–South Divide in International Environmental Law: Framing the Issues’, in S. Alam et al. (eds), *International Environmental Law and the Global South* (Cambridge University Press, 2015), pp. 1–20.

¹⁰⁰ V. Phillips, ‘Indigenous Peoples and the Role of the Nation-State’ (2007) 101 *Proceedings of the Annual Meeting of the American Society of International Law*, pp. 319–23; S. Burra, ‘TWAIL’s Others: A Caste Critique of TWAILers and Their Field of Analysis’ (2016) 33(3) *Windsor Yearbook of Access to Justice*, pp. 111–28; P. Singh, ‘Indian International Law: From a Colonized Apologist to a Subaltern Protagonist’ (2010) 23(1) *Leiden Journal of International Law*, pp. 79–103; S. Xavier et al. (eds), *Decolonizing Law: Indigenous, Third World and Settler Perspectives* (Routledge, 2021).

imposition of identities (Indians, Blacks, Mestizos) as social and politically inferior to white Europeans.¹⁰¹ For decolonial scholars, the aim is decoloniality – namely, overcoming colonial epistemes and power structures located in national and international spheres.

The analytical tools of decolonial theory assist in rethinking the governing principles for managing the commons. For instance, Indigenous knowledge and ontologies of human–nature relationships would suggest that protecting the forest is not only a question of ‘humankind’ but a question of protecting ‘life on the planet’.¹⁰² This unveils how the principles of common concern and common heritage are anthropocentric by relying on the centrality of human interests.¹⁰³ Indigenous struggles for self-determination also question the state-centric basis of enclosure, common concern, and common heritage as those principles conceive of nation-states as the only actors with international political agency.

3. Rethinking the Amazon as an International Commons

The Amazon’s geospatial boundaries can be defined by hydrographical criteria based on the extent of the basin, ecological criteria based on the rainforest ecoregions, and political-administrative criteria based on legal recognition by each country’s standards.¹⁰⁴ Alternatively, Amazonian boundaries can be understood by considering the rainforest cover by country recorded by satellite data.¹⁰⁵ In this sense, the Amazon’s distribution is the following: Brazil (59%), Peru (12%), Colombia (8%), Bolivia (7%), Venezuela (6%), Guyana (3%), Suriname (2%), Ecuador (2%), and French Guyana (1%).

Given the current sovereignty boundaries in the basin, rather than being a global commons, the Amazon might be conceptualized as an international commons shared among basin countries under sovereignty rules established in post-colonial nation-building processes. These have been complex processes that have implied military tensions, wars, and peace treaties during the 19th and 20th centuries. Nonetheless, the conceptualization of international commons might be also applied to the basin before colonization because hundreds of Indigenous nations had their own territorial claims over the rainforest. They shared and enclosed Amazonian areas under their own arrangements that then were reconfigured by colonial powers and post-colonial nation-states. During colonization, Indigenous communities were plundered by the

¹⁰¹ A. Quijano, ‘Coloniality of Power, Eurocentrism, and Latin America’ (2000) 1(3) *Nepantla: Views from South*, pp. 533–80; W. Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (Duke University Press, 2011); S. Gómez, *La hybris del punto cero: ciencia, raza e ilustración en la Nueva Granada* (Editorial Pontificia Universidad Javeriana, 2005), pp. 1750–816; R. Grosfoguel, ‘A Decolonial Approach to Political-Economy: Transmodernity, Border Thinking and Global Coloniality’ (2009) 6 *Kult*, pp. 10–38.

¹⁰² Horn, n. 84 above, p. 55.

¹⁰³ Mickelson, n. 55 above.

¹⁰⁴ M.A. Tigre, *Regional Cooperation in Amazonia: A Comparative Environmental Law Analysis* (Brill, 2017).

¹⁰⁵ R. Butler, ‘The Amazon Rainforest: The World’s Largest Rainforest’, *Mongabay*, 14 Aug. 2020, available at: <https://worldrainforests.com/amazon>.

‘gold rush’; in the early republic era, the ‘rubber rush’ implied the slavery and displacement of Indigenous peoples, especially in Brazil and Peru. Under the developmental agenda of the last century and the responses of basin states against the internationalization of the Amazon, governments strongly reaffirmed state sovereignty and promoted large-scale neocolonization of the region despite the territorial rights of Indigenous peoples.¹⁰⁶ The Amazon was again conceived of as the last frontier to develop mega-infrastructures, oil, mining, and agribusiness, while illegal economies (logging, drugs) started to develop in the shadows of the states.

For Western conservationists, saving the Amazon is fundamental to reducing carbon emissions and conserving biodiversity and, for state officials, the Amazon is crucial for ensuring national development goals. However, for Amazonian peoples, saving the Amazon is equivalent to saving their natural, spiritual, and social world.¹⁰⁷ Nemonte Nenquino, Waorani Indigenous leader in the Ecuadorian Amazon, explains Indigenous perspectives in these terms: ‘As Indigenous peoples, we are fighting to protect what we love—our way of life, our rivers, the animals, our forests, life on Earth’.¹⁰⁸ In this view, the Amazon is not only a rainforest the natural functions of which serve human interests; the protection of the Amazon is ethically grounded on the need to protect ‘life on Earth’. In this endeavour, Indigenous peoples play a critical role. Olivia Bisa, President of the Autonomous Government of Chapra in the Peruvian Amazon, says that it is thanks to the Indigenous peoples that the Amazon has historically been protected. She also mentions that the Peruvian state itself talks about the importance of the Amazon, as it covers 80% of the country’s biodiversity, but this is not by magic; it is because there are Indigenous peoples who are living there, who conserve it, who take care of it.¹⁰⁹

Indigenous cosmovisions and their practical governance over the forest have been obscured by nation-states. As Bisa states, Indigenous peoples pre-exist the Peruvian state. The state was formed with its laws, its policies, its systems of government, but the Indigenous peoples, in Bisa’s words, ‘were never participants in decision-making at those times and in those spaces, even though this altered our territory, our ways of life, our cosmology’.¹¹⁰ For this reason, Indigenous peoples are re-enacting their sovereignty over the forest. As stated by the Shipibo-Conibo leader Julio Cusurichi, ‘the goal is for Indigenous people to be the protagonists. We have to administer the Amazon regions that are our ancestral territories and not just leave it to the government’.¹¹¹

These claims resonate in international spheres, where the Coordinating Body of Indigenous Organizations of the Amazon Basin (COICA), representing more than 500

¹⁰⁶ Arnauld de Sartre & Taravella, n. 22 above; Bastos Lima et al., n. 22 above; Mgbeoji, n. 22 above.

¹⁰⁷ C. Aoki, ‘Worlding the Study of Global Environmental Politics in the Anthropocene: Indigenous Voices from the Amazon’ (2018) 18(4) *Global Environmental Politics*, pp. 25–42.

¹⁰⁸ The Goldman Environmental Prize, ‘Three Indigenous Leaders Protecting the Amazon’, 4 Oct. 2021, available at: <https://www.goldmanprize.org/blog/three-indigenous-leaders-protecting-the-amazon>.

¹⁰⁹ Interview, 15 May 2024.

¹¹⁰ Ibid.

¹¹¹ The Goldman Environmental Prize, n. 108 above.

Indigenous peoples across the Amazon, has achieved some prominence. At the World Economic Forum (WEF) in 2024, Fany Kuiru, the first woman to be appointed General Coordinator of COICA, emphasized the need to ensure that Indigenous peoples are given a place at the table. During a session in Davos (Switzerland), she stressed the need for the world to ensure ‘full and effective participation in decision-making regarding policies affecting the Amazon’.¹¹² In this respect, Indigenous leaders and officials from COICA propose having a protagonistic role in ACTO governance. This means that ACTO ‘should be a forum of representation between Indigenous peoples and states ... and COICA should have a voice in ACTO decision-making units’.¹¹³ In this view, COICA should be ‘a member [of ACTO] but ensuring proper representation of regional leaders’.¹¹⁴ For Adolfo Chávez, former COICA Coordinator of International Relations, ‘the role of ACTO could be to facilitate the dialogue directly with the ... delegations of each country to reach agreements on issues crucial for the Amazon basin’.¹¹⁵ For Zack Romo, COICA planning official, it is a necessity that ACTO includes the vision of Indigenous peoples: ‘We suffer the problems then we should be involved in the solutions ... we should be part in an inclusive, effective, and efficient mode in ACTO decisions to improve its activities’.¹¹⁶

Indigenous cosmovisions on human–nature relationships and their quest for having a voice in the international governance of the Amazon offer insights to reconceptualize ACTO and the governing principles for managing the basin.

4. ACTO: A Precarious and Fragmented Governance System

This section discusses how ACTO has incorporated the principles of enclosure, common heritage, and common concern, and how those principles influence the governance of the basin.

Scholars have shown how ACTO advances diplomatic coordination as a cooperation forum, promoting focalized projects, and knowledge exchange about regional issues. Despite being conceived of as a multilateral platform, it has no meaningful influence on state agendas and common policies because of its lack of supranational power, dispute resolution bodies, and enforcement mechanisms.¹¹⁷

The governing bodies of ACTO are the Permanent Secretariat, the Meeting of Foreign Affairs Ministers of Member States (the Meeting), the Council of Amazonian Cooperation (the Council), and the Commission of Coordination of the Amazonian

¹¹² WEF, ‘Indigenous Leaders Bringing Their Knowledge to Davos 2024’, 14 Feb. 2024, available at: <https://www.weforum.org/agenda/2024/01/indigenous-leaders-knowledge-davos-2024>.

¹¹³ Interview with Juan Reátegui, former COICA assessor, 22 Apr. 2022.

¹¹⁴ Interview with Heroldo Salazar, former COICA leader, 21 Mar. 2022.

¹¹⁵ Interview, 31 Mar. 2022.

¹¹⁶ Interview, 9 May 2022.

¹¹⁷ Pereira & Viola, n. 8 above; R. Pio, ‘La Organización del Tratado de Cooperación Amazónica (OTCA): Un análisis crítico de su funcionamiento’ (Master’s thesis in International Studies, Universitat de Barcelona (Spain), 2020), available at: <https://diposit.ub.edu/dspace/handle/2445/176919>; C.G. Zárate & J.A. Motta, ‘Las Fronteras Amazónicas: Un Mundo Desconocido’ (2020) 289 *Nueva Sociedad*, pp. 126–37.

Cooperation Council (CCOOR). The General Secretary represents the organization and is elected by unanimity in the Meeting for three years (and may be re-elected once).¹¹⁸ The Meeting is ACTO's supreme unit; it celebrates ordinary summits every two years, and establishes the general directives for the organization. The Council is a deliberative body integrated by diplomatic representatives of each member state. It holds annual meetings and supervises the fulfilment of both treaty goals and decisions taken by the Meeting. The CCOOR is responsible for monitoring the activities of the Permanent Secretariat. High-level authorities from member countries integrate CCOOR and celebrate trimestral meetings. The Meeting, the Council, and CCOOR are political-strategical bodies and periodic forums of decision making (designations, enactment of declarations, approval of conventions and partnerships) and are very hierarchical (decisions in one unit often escalate for approval to the upper one). National implementation of treaty stipulations and governing bodies' decisions are the responsibility of Permanent National Commissions.

At the operative level, the ACTO Permanent Secretariat has two Directors (Executive Director and Administrative Director) and seven coordinators of thematic areas: environment, Indigenous affairs, health, tourism, infrastructure, science and technology, and transport and infrastructure. They are delegates from each Treaty member and work inside the organization as permanent officials for the period of each new administration. These are technical-administrative offices in charge of executing the everyday activities of ACTO.

4.1. Enclosure

Under the doctrine of national security, Bolivia, Brazil, Colombia, Ecuador, Guyana, Suriname, Peru, and Venezuela signed the Amazonian Cooperation Treaty (ACT) in July 1978.¹¹⁹ The main objective of the Treaty was to 'defend the sovereignty of Amazonian countries'¹²⁰ and 'avoid that other international forces might interfere in the Amazon'.¹²¹ At the First Chancellors Meeting under the Treaty, in Belém (Brazil) on 23–24 October 1980, the Ministers proclaimed:

The use and exploitation of all the natural resources of the Amazon is the sovereign and exclusive right of each of the States located therein ... Initiatives that tend to raise doubts about the sovereignty of States ... regarding the use and preservation of their forest resources are unacceptable.¹²²

¹¹⁸ ACTO, Regulations of the Meeting of Ministers of Foreign Affairs of the Amazon Cooperation Treaty, available (in Spanish) at: <https://otca.org/wp-content/uploads/2020/01/Reglamento-de-la-Reuni%C3%B3n-de-Ministros-1.pdf>.

¹¹⁹ N. 15 above.

¹²⁰ Interview with ACTO Director, 14 Mar. 2022.

¹²¹ Interview with former ACTO Director, 7 Mar. 2022.

¹²² ACTO Permanent Secretariat, 'First Meeting of Foreign Affairs Ministers of Member Countries of the Treaty of Amazonian Cooperation', p. 4, available (in Spanish) at: <https://otca.org/wp-content/uploads/2020/01/I-Reunión-Ministros-1.pdf>.

The parties decided to create a Permanent Secretariat under the Treaty in 1995 and ACTO in 1998, with headquarters in Brasília (Brazil).¹²³ Considering the Treaty framework, ACTO was born as an international and intergovernmental organization of cooperation, heavily dependent on national legislation rather than being a supranational organization for integration.¹²⁴ Between 1978 and 2022, only three meetings of presidents and 13 meetings of ministers of foreign affairs were held under the ACT.

Former General Secretary (2004–07) Rosalía Arteaga led a phase of institutional development.¹²⁵ Under her mandate, the VIII Meeting of Ministers of Foreign Affairs, in Manaus (Brazil) on 14 September 2004, approved the ACTO Strategic Plan 2004–12. This aimed at institutional consolidation and declared:

[T]he determination of ACTO Member States to reaffirm the total exercise of its sovereignty on the Amazon resources in order to promote the economic and social development of the region and the protection of its cultural and environmental patrimony, to the benefit of its respective populations.¹²⁶

With the appointment of Manuel Picasso as General Secretary in 2009, the organization entered a new phase of strengthening, with the enactment of the Manaus Declaration in November 2009.¹²⁷ The Manaus Meeting was attended by the President of France, Nicolas Sarkozy, representing for the first (and last) time the non-member French Guyana.¹²⁸ The declaration set forth the content of a new agenda that redefined ACTO as an international organization for sustainable development, encompassing both environmental and socio-economic goals.¹²⁹

With the Lima Declaration approved at the X Meeting of Ministers of Foreign Affairs in 2010, the parties approved the Strategic Agenda of Amazonian Cooperation (AECA 2010–18). The updated AECA (2020–30) strategic objectives are:

[to] facilitate exchange and cooperation between Member Countries promoting sustainable development ... in the region to improve the quality of life of its inhabitants Ensure that the interests and sovereignty of the Member Countries are respected and promoted.¹³⁰

In the Lima Declaration, the parties also ratified the ‘sovereign right of each country over its natural resources’.¹³¹

¹²³ ACT Amendment Protocol, n. 16 above.

¹²⁴ Interview, 29 Apr. 2022.

¹²⁵ Pio, n. 117 above; Tigre, n. 104 above.

¹²⁶ ACTO Permanent Secretariat, ‘Legal Basis of the Amazon Cooperation Treaty: Updated Summary 2003–2012’, p. 125, available at: https://otca.org/en/wp-content/uploads/2021/01/LEGAL_BASIS.pdf.

¹²⁷ Pio, n. 117 above; Tigre, n. 104 above.

¹²⁸ Tigre, n. 104 above.

¹²⁹ Ibid.

¹³⁰ ACTO, Amazonian Strategic Cooperation Agenda, approved at the X Meeting of the TCA’s Ministers of Foreign Affairs, Lima (Peru), 29 Nov. 2010, available at: <https://otca.org/en/wp-content/uploads/2021/01/Strategic-Agenda-of-Amazon-Cooperation.pdf>.

¹³¹ Lima (Peru), 4–5 Nov. 1995, available (in Spanish) at: <https://otca.org/wp-content/uploads/2020/01/V-Reuni%C3%B3n-Ministros-acta-declaraci%C3%B3n-Resol.pdf>.

The emphasis on state sovereignty is repeated in most documents produced by the various units of the organization and might explain deep disagreements among country members. Former ACTO General Secretary, Francisco Ruíz, said that the main tensions, at the beginning of the 2000s, referred to the position of Venezuela on international financing. Venezuela opposed the finance of US-based organizations for allegedly risking state sovereignty.¹³² A former Coordinator of Environment said that for many years ACTO discussions implied two dominant groups: Venezuela, Bolivia, and Ecuador leading one block, and Brazil, Peru, and Colombia leading the other.¹³³ There was no way of reaching a consensus because there are eight countries and the table was often divided four against four. The political discrepancies had an impact on the ACTO administration. Given that, in practice, Venezuela was excluded from ACTO governance since its ambassador was not recognized by Brazil, the organization was unable to designate a new General Secretary in 2021 (the mandate of María Moreira was de facto extended). One official argues that the Venezuelan issue led to three years of paralysis.¹³⁴ This situation also precluded the designation of coordinators for thematic areas and, by 2022, the organization had only three designated officials: the General Secretary and the two directors. The remainder of the personnel worked on temporary contracts as consultants for specific cooperation projects.

Discourses of sovereignty have not been as critical in other international organizations and forums with more influence on regional governance.¹³⁵ For instance, the international organization Andean Community of Nations (CAN) – which includes Peru, Bolivia, Ecuador, and Colombia – has two legislative units that enact binding decisions on issues of international commerce and intellectual property: the Andean Council and the Commission of the Andean Community, with delegates from each country member. CAN also has the Andean Tribunal of Justice, one of the most active international courts, which facilitates dispute resolution and compliance with Andean obligations.¹³⁶ Another example is the Initiative for the Integration of the Regional Infrastructure of South America (IIRSA). IIRSA included ACTO members and developed an ambitious portfolio of infrastructure projects across the region.¹³⁷ To implement IIRSA, Amazonian countries ceded in practice their sovereignty to multilateral banks and transnational corporations to develop more than 150 mega-

¹³² Interview, 18 Mar. 22.

¹³³ Interview, 3 Mar. 2022.

¹³⁴ Interview with CCOOR member, 28 Apr. 2022.

¹³⁵ Pereira & Viola, n. 8 above.

¹³⁶ L.R. Helfer, K.J. Alter & M. Florencia Guertzovich, 'Islands of Effective International Adjudication: Constructing an Intellectual Property Rule of Law in the Andean Community' (2009) 103(1) *American Journal of International Law*, pp. 1–47.

¹³⁷ M. Betancout-Santiago & S. Rubiños-Cea, 'Colonialidad Territorial: Disputas Globales-locales en la Amazonía Andina (Colombia, Ecuador, Perú y Bolivia)', in *Amazonía y Expansión Mercantil Capitalista: Nueva Frontera de Recursos en el Siglo XXI* (Consejo Latinoamericano de Ciencias Sociales, 2021), pp. 315–76.

infrastructure projects across the region.¹³⁸ ACTO actively supported this endeavour. In the Iquitos Declaration approved at the IX Meeting of Ministers of Foreign Affairs, in Iquitos (Peru) on 25 November 2005, the parties '[a]gree[d] to intensify national and regional efforts to advance studies on the development of navigation routes, waterways and other means of transportation in the Amazon system, contributing to the advances made within the framework of ... IIRSA'. For the ACTO Strategic Plan 2004–12, IIRSA is of 'the greatest relevance for the Amazon in the development of physical integration, communications and energy, which will bring closer intra-Amazonian markets ... with international markets'.

CAN and IIRSA (through infrastructure) promote commercial integration, both affecting the Amazon but with no emphasis on environmental and social goals. ACTO has focused on low-scale social and environmental projects, but it has not been a space for formulating or promoting international environmental policies. For Roberto Espinoza, former COICA assessor,¹³⁹ the extractive political economy of Amazonian countries explains this situation and the difficulties for a dialogue between ACTO and COICA. COICA is autonomous whereas ACTO depends on conditions imposed by the states. These states often prioritize extractive policies that disregard the rights and agency of Indigenous peoples.

The most ambitious regional environmental initiative has been the Leticia Pact,¹⁴⁰ signed in 2019 by Amazonian countries (except Venezuela), to formulate general commitments to share information, curb deforestation and wildfires, restore degraded areas, monitor climate change and biodiversity loss, and empower women and Indigenous people.¹⁴¹ However, the Pact worked outside ACTO arrangements. Although CCOOR members said that the Leticia Pact was not a competitor but a complement to ACTO,¹⁴² it overlapped with ACTO's goals and actions, and ACTO was not the orchestrator of the Pact; it was promoted by specific governments outside ACTO coordination.¹⁴³ Moreover, the Pact does not establish concrete binding compromises or enforcement mechanisms.

Could the new impulse of ACTO proclaimed by the Belém Declaration of 2023 foster environmental policy integration? Former ACTO officials¹⁴⁴ consider it important to undertake reforms to empower ACTO and increase its regional authority, but they are sceptical about the possibility that all members agree on changing ACTO's foundational limitation focused on cooperation instead of policy

¹³⁸ G. Agostinis & S. Palestini, 'Transnational Governance in Motion: Regional Development Banks, Power Politics, and the Rise and Fall of South America's Infrastructure Integration' (2021) 34(3) *Governance*, pp. 765–84.

¹³⁹ Interview, 26 Apr. 2022.

¹⁴⁰ Leticia (Colombia), 6 Sept. 2019, available (in Spanish) at: <https://imgs.mongabay.com/wp-content/uploads/sites/25/2019/09/07191704/Pacto-de-Leticia-por-la-Amazonia.pdf>.

¹⁴¹ SPA, n. 6 above.

¹⁴² Interview with Colombian CCOR delegate, 29 Apr. 2022; interview with Peruvian CCOR delegate, 29 Apr. 2022.

¹⁴³ S. Jabiél, 'Hay Que Entender que la Amazonía No Es de Renta Media', *El País*, 3 May 2021, available at: <https://elpais.com/planeta-futuro/2021-05-04/hay-que-entender-que-la-amazonia-no-es-de-renta-media.html>.

¹⁴⁴ Interview with Peruvian National Commission delegate, 2 Apr. 2022; interview with Administrative Director, 14 Mar. 2022; interview with former General Secretary, 18 Mar. 2002.

integration¹⁴⁵ given the emphasis of state representatives on national sovereignty.¹⁴⁶ During the Belém negotiations, Colombia proposed the creation of an International Tribunal for Environmental Justice in the Amazon, but the Declaration ended up reinforcing the cooperative character of ACTO and did not establish any measure to enact binding decisions and enforcement mechanisms. Moreover, the Declaration creates the Presidential Meeting as another unit, which would make the organization more bureaucratic in making decisions.

4.2. Common Heritage and Common Concern in the Amazon

No ACTO instrument or official declaration has mentioned the ‘common heritage’ principle. Some sources include notions such as the ‘heritage’ of the Amazonian forest and ‘future generations’, but refer only to the resources belonging to current or future Amazonian generations, rather than world generations. Instead, the principle of ‘common concern’ seems relevant in official documents and discourses. For instance, former ACTO General Secretary Rosalia Arteaga said: ‘I oppose ... the internationalization [of the Amazon] because the sovereignty of our countries would be at risk’;¹⁴⁷ at the same time, however, she highlights how, in her mandate, ACTO had a great openness to international cooperation: ‘We knock the door of many countries and had positive responses ... We also signed agreements with multilateral institutions, such as the Development Bank of Latin America and the Caribbean (CAF), World Bank, Inter-American Development Bank, and others’.¹⁴⁸

The first ACTO instruments had already highlighted the importance of cooperation. The Declaration of the II Meeting of Chancellors under the Treaty, in Cali (Colombia) on 7–8 December 1983, proclaimed that states would examine ‘the possibility of having financial, technical and personnel support from international organizations and institutions’.¹⁴⁹ The Manaus Declaration of the first President Meeting in May 1988, stated:

[W]e welcome the cooperation of countries from other regions of the world and international organizations that can contribute to the implementation of national and

¹⁴⁵ Interview with former ACTO Director, 3 Mar. 2022; interview with former Coordinator of Environment, 3 Mar. 2022; interview with former ACTO Director, 7 Mar. 2022; interview with former General Secretary, 18 Mar. 2022.

¹⁴⁶ Interview with former ACTO Director, 3 Mar. 2022; interview with former Coordinator of Environment, 3 Mar. 2022; interview with former ACTO Director, 7 Mar. 2022; interview with former General Secretary, 18 Mar. 2022.

¹⁴⁷ Interview, 18 Mar. 2022.

¹⁴⁸ Ibid.

¹⁴⁹ Santiago de Cali (Colombia), adopted in the Final Act of the II Meeting of Ministers of Foreign Affairs of the Amazon Cooperation Treaty, Cali (Colombia), 7–8 Dec. 1983, available (in Spanish) at: <https://otca.org/wp-content/uploads/2020/01/II-Reuni%C3%B3n-Ministros-acta-declaraci%C3%B3n.pdf>.

regional projects and programs that we freely decide to adopt ... in accordance with the priorities of our governments'.¹⁵⁰

The Declaration of the Second Meeting of Presidents, in Manaus (Brazil) on 11–12 February 1992, stated that national efforts 'will not be sufficient without international cooperation to support the efforts made by our States'.¹⁵¹ In this Declaration the parties also recognized the 'greater responsibility of developed countries in the progressive deterioration of the environment ... reason why ecological controls and conditionalities cannot be imposed on developing countries'.¹⁵² They demanded a new approach of international cooperation based on 'the expansion of financial resources and trade flows' and 'access to technologies',¹⁵³ and acknowledged that cooperation is critical 'for the conservation and rational use of the natural heritage'.¹⁵⁴

At the V Meeting of Foreign Ministers, in Lima (Peru) on 4–5 November 1995, state representatives emphasized 'the importance of non-reimbursable technical and financial cooperation provided at the national and regional level by various friendly countries and international organizations'.¹⁵⁵ The members made 'an urgent call' to 'significantly expand' cooperation to the 'efforts made by the Parties in favour of sustainable development of their respective Amazonian territories'.¹⁵⁶ ACTO has continued to develop cooperation projects, such as the Network of Solutions for Sustainable Development (2014), the Project Monitoring of Forest Cover in the Amazon Region (2011–18), and the most recent Regional Amazonian Observatory, a project financed by the German Development Bank (KfW).¹⁵⁷ This project-oriented governance has been reinforced in the new Strategic Agenda of Amazonian Cooperation 2020–30.

The proliferation of regional cooperation under ACTO and state cooperation under the UNFCCC nationally determined contributions has produced overlapping goals and policy fragmentation.¹⁵⁸ A former ACTO Director said that the priorities of international actors and organizations, such as the World Bank, do not always align with the ACTO priorities because of a lack of coordination: 'They finance some

¹⁵⁰ Manaus Declaration, adopted at the I Meeting of the Presidents of the Amazon Countries, Manaus (Brazil), 6 May 1989, available (in Spanish) at: <https://otca.org/wp-content/uploads/2020/07/I-Reuni%C3%B3n-de-Presidentes-Acta.pdf>.

¹⁵¹ Declaration of the II Meeting of the Presidents of the Amazon Countries, Manaus (Brazil), 10–11 Feb. 1992, available (in Spanish) at: <https://otca.org/wp-content/uploads/2020/07/II-Reuni%C3%B3n-de-Presidentes-Acta.pdf>.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Final Act: 'V Meeting of Ministers of Foreign Affairs of the Amazon Cooperation Treaty', Lima (Peru), 4–5 Nov. 1995, available (in Spanish) at: <https://otca.org/wp-content/uploads/2020/01/V-Reuni%C3%B3n-Ministros-acta-declaraci%C3%B3n-Resol.pdf>.

¹⁵⁶ Ibid.

¹⁵⁷ ACTO Amendment Protocol, n. 16 above.

¹⁵⁸ M.A. Tigre, 'Cooperation for Climate Mitigation in Amazonia: Brazil's Emerging Role as a Regional Leader' (2018) 5(2) *Transnational Environmental Law*, pp. 401–25; R. Wegner & M. Pereira, 'The Amazon and the Internationalisation of Chinese Companies' (2018) 40(2) *Contexto Internacional*, pp. 361–85.

projects and we are working on other projects with overlapping areas'.¹⁵⁹ The financial limitations of ACTO reinforce this situation. The budget of the organization depends on differentiated contributions from each government,¹⁶⁰ but former officials confirmed that not all pay on time or in full.¹⁶¹ For a former ACTO Coordinator of Environment, the key problem is that ACTO is not a priority for the member parties;¹⁶² therefore, ACTO officials have no option but to work with funding from international cooperation.¹⁶³ The lack of countries' technical capacities would also reinforce the reliance on international cooperation. For a CCOOR diplomatic representative,¹⁶⁴ the organization must reinforce technical cooperation at local and national levels just as ACTO was intended to work from the beginning.

In this context, a crucial feature of ACTO governance is that the participation of Indigenous peoples is restricted to cooperation projects and programmes focused on specific Amazonian areas. These interventions see Indigenous peoples as mere beneficiaries of social services and not as political agents in policymaking processes. Moreover, Indigenous issues are addressed merely in strategic plans as a matter of 'exchange of experiences of country-members' (AECA 2010–18). In all minutes of the meetings of the various ACTO units, Indigenous peoples are subjects of protection, not actors with political agency. An ACTO official¹⁶⁵ confirmed that ACTO interacts with Indigenous peoples only in the implementation of cooperation projects; another said¹⁶⁶ that there is no intention of involving them in higher decision making. In 2022, ACTO announced a more participative approach with the creation of the Amazonian Regional Platform of Indigenous Peoples and Climate Change, as a space to make known Indigenous peoples' practices of forest conservation. In 2023, the Declaration of Belém created the Amazonian Mechanism of Indigenous Peoples with the aim of 'strengthen[ing] and promot[ing] dialogue between governments and Indigenous peoples in the Amazon region for management and coordination with regard to topics relating to Indigenous Peoples and that contribute to achieving ACTO's objectives'.¹⁶⁷ However, these initiatives still must be implemented, and they seem to place Indigenous participation at the lowest levels of ACTO structures.

5. Reinventing International Principles to Govern the Amazon

The 'sovereignty *versus* internationalization' debate about Amazonian resources is a false dilemma. The principles of 'enclosure' and 'common concern' have been

¹⁵⁹ Interview, 23 Mar. 2022.

¹⁶⁰ The VI Meeting of Foreign Affairs Ministers in 2000 approved the scale of contributions of each member state in percentages from the total budget (at that time, US\$1,139,600): Bolivia 6.5%; Brazil 35%; Colombia 16%; Ecuador 6.5%; Guyana 2%; Peru 16%; Suriname 2%; Venezuela 16%.

¹⁶¹ Interview with former ACTO Director, 3 Mar. 2022.

¹⁶² Interview, 3 Mar. 2022.

¹⁶³ Interview with former General Secretary, 18 Mar. 2022.

¹⁶⁴ Interview, 29 Apr. 2022.

¹⁶⁵ Interview, 12 Apr. 2022.

¹⁶⁶ Interview, 3 Mar. 2022.

¹⁶⁷ Declaration of Belém, n. 18 above, Art. 6.

explicitly and implicitly incorporated into ACTO instruments and practices. Whereas basin states strongly proclaim their sovereignty over their specific Amazonian territories against ‘international forces’, they give up their sovereignty to foster transnational investments, mega-infrastructures, and commercial integration. They also invite international cooperation to contribute to fight climate change. International forces are welcomed and empowered in so far as they align with states’ extractivist interests and the apparent fulfilment of their international environmental commitments.

This framework is limited to the sustainable governance of the Amazon. By reinforcing enclosure, basin states reject environmental integration as establishing binding environmental standards and enforcement mechanisms might risk extractive interests. The ‘common concern’ legitimizes the current situation of the proliferation of small-scale cooperation projects that help to portray Amazonian states as committed to international environmental goals. This results in fragmented governance with little possibility for providing regional solutions and with limited participation of Indigenous peoples. The first step in challenging this framework is to examine the state-centric, anthropocentric, and ethnocentric assumptions of these principles as they disregard other ways of conceiving and governing international commons.

State-centrism refers to the reinforcement of a Westphalian conception of sovereignty and the pursuit of developmental goals under this conception. Thus, ACTO members have defended their sovereignty over the Amazon against external forces while marginalizing the claims of Indigenous nations to be international actors with self-determination. This results in a paternalistic approach that only proclaims ‘the protection of Indigenous cultures and natural resources’,¹⁶⁸ as if Indigenous peoples were ancient relics and not collectives with political agency. The recent creation of the Amazonian Mechanism of Indigenous Peoples within ACTO might be promising but it does not tackle the colonial nature of international relations based on Westphalian sovereignty. If Indigenous peoples are not recognized as peoples or nations, therefore, with international political agency in deliberative processes, their participation in regional spaces will be very limited. In this context, a crucial governance problem in the Amazon is not that the international authority of basin states over the forest is diminished by international powers.¹⁶⁹ The key issue is that the authority of Indigenous peoples over their Amazonian territory is obscured or denied.

The principles for governing the commons are also anthropocentric because ‘humankind’ is the only beneficiary of the commons’ management. This avoids more holistic conceptions of ‘life on the planet’¹⁷⁰ to the benefit of the non-human natural environment, such as the forest and rivers, as subjects of rights. Indeed, Amazonian Indigenous peoples conceive of human and natural beings as ‘persons’ entangled in

¹⁶⁸ Resolution of the XII Meeting of Foreign Ministers, El Coca (Ecuador), 3 May. 2013, available (in Spanish) at: <https://otca.org/wp-content/uploads/2021/02/XII-Reunion-de-Ministros-de-Relaciones-Exteriores.pdf>.

¹⁶⁹ Dehm, n. 23 above.

¹⁷⁰ Horn, n. 84 above, p. 55.

social dynamics of respect and survival.¹⁷¹ Moreover, the abstract notion of ‘humankind’ obscures the historical hierarchies attached in the formulation of the idea of humanity, in which Indigenous peoples were conceived of as lesser humans and in urgent need of assimilation. In this context, Indigenous territorial claims and cosmologies are instrumentalized as expressions of ‘common concerns’,¹⁷² disregarding their own concerns on the way how to govern the rainforest beyond anthropocentric assumptions.

Finally, these principles are embedded in ethnocentrism because all the discussions about sovereignty and internationalization of resources are framed by Western epistemological and ontological systems. This is the case even when these principles are advanced by Amazonian country leaders as ‘third world champions’ as they rely heavily on state-centric and anthropocentric assumptions. This is also a problem for ‘the common heritage’ principle and the attempts to incorporate it into governance of the Amazon. This principle relies on the protection of Amazonian resources by world nation-states, conceiving ‘sovereignty’ and ‘resources’ under Westphalian frames that seem to imagine the Amazon as an empty space, devoid of people. However, the Amazon has been occupied by Indigenous peoples for over 12,000 years. During this long history, Indigenous societies advanced technologies that allowed cultural and agro-biological development.¹⁷³ In the Amazon, ‘natural heritage is cultural heritage’.¹⁷⁴

It is crucial to reformulate the principles governing international commons in general and their application to regional areas, such as the Amazon. By building on decolonial theory, the meaning of sovereignty can be expanded to include Indigenous sovereignty as a governing principle for managing international commons. The notion of humankind in ‘common concern’ and ‘common heritage’ principles can also be reformulated to include the interests of different human collectives not only represented by nation-states, as well as the interests of the natural environment. By reformulating these principles and broadening international interests governing the Amazon, Indigenous nations could participate in regional decision making, and could push for enacting regional binding standards to achieve ecological and social goals.

The examination of sovereignty arrangements, imaginaries, and discourses in the Amazon suggests that the aim should not be ‘decolonization’ in the sense of portraying third-world states as developmental champions against powerful Western states; it is about ‘decoloniality’ in the sense that the third world needs to fight the ethnocentric, anthropocentric, and state-centric legacies of colonialism in international and national stages. Ultimately, this means disputing current sovereignty and environmental

¹⁷¹ E. Kohn, *How Forests Think: Toward an Anthropology Beyond the Human* (University of California Press, 2003); E. Viveiros de Castro, ‘Perspectival Anthropology and the Method of Controlled Equivocation’ (2004) 2(1) *Tipiti: Journal of the Society for the Anthropology of Lowland South America*, pp. 3–22; P. Descola, ‘Las Cosmologías Indígenas de la Amazonía’, in A. Surrallés & P. García (eds), *Territorio Indígena y Percepción del Entorno* (IWGIA, 2004), pp. 25–36.

¹⁷² Chandra, n. 23 above, p. 70.

¹⁷³ SPA, n. 6 above.

¹⁷⁴ Ibid.

imaginaries that exclude Indigenous self-determination in the international arena and their struggles to protect Amazonian ecosystems.

6. Conclusion

This article contributes to the literature on the principles for governing global and international commons and to scholarly debates on how these principles have been incorporated into the discourses, instruments, and practices of Amazonian governance.

The principles of ‘enclosure’, ‘common heritage’, and ‘common concern’ have been formulated or advanced by third-world countries in the international struggles for governing global and international commons in a way that essential resources are fairly distributed and protected. With regard to international forests, these countries have both strongly reaffirmed their sovereignty and rejected the recognition of these areas as common heritage. In this discussion, common concern emerged as the most suitable principle to conciliate international concerns and national sovereignty.

However, these efforts have been framed under state-centric, anthropocentric, and ethnocentric premises that reinforce classical sovereignty and developmental imaginaries. By excluding Indigenous nations from the conception of these principles, they express anthropocentric and ethnocentric views centred on an abstract notion of ‘humankind’ and the pursuit of benefits for human collectives represented by all nation-states. This formulation rejects Indigenous claims for self-determination and more holistic perspectives of ‘life on the planet’, neglecting that colonial legacies remain within nation-states’ power structures in the south and the north.

This article, addressing the TWAIL critiques of the notion of ‘common interest’ and decolonial theory, analyzes the governance of the Amazon through ACTO, finding unexpected interactions between the principles of international commons management. While the ‘sovereignty *versus* internationalization’ debate suggests the rejection of international forces, the practices of ACTO indicate the opposite: member states proclaim their sovereignty, but cede it to foster extractivism and transnational projects. Moreover, they demand international cooperation to fulfil environmental commitments, resulting in fragmented and precarious governance.

Basin states reject environmental integration, as establishing binding environmental standards and enforcement mechanisms could jeopardize extractive interests. The recent Belém Declaration promises improved governance and the inclusion of Indigenous peoples but limits them to a specific mechanism without progress towards regional policies or international compliance mechanisms.

This analysis suggests that this framework should be reformulated and, for this aim, it is important to reformulate the principles for governing international commons. Decolonial theory is useful in challenging the state-centric, anthropocentric, and ethnocentric assumptions of these principles. Beyond state-centrism, the meaning of sovereignty can be enlarged to include Indigenous sovereignty as a governing principle for managing international commons. The notion of humankind in ‘common concern’ and ‘common heritage’ principles can also be reformulated to include Indigenous

holistic cosmovisions that conceive of the natural and human worlds as deeply entangled. In practice, this reformulation should include Indigenous nations as meaningful participants in the Amazonian governance with the political agency to push for international policies beyond general declarations. Ultimately, this changes the dominant geopolitical imaginary in the region: from conceiving of the Amazon as governed under classical state sovereignty and small-scale, project-oriented environmental cooperation, to imagining the basin governed by plural sovereignty and environmental arrangements inspired by Indigenous cosmovisions and struggles.

The implications of this study extend to the governance of other international commons, which requires not only ‘decolonization’ in the sense of third-world states struggling against powerful Western states, but ‘decoloniality’ in the sense that the third world needs to fight the ethnocentric, anthropocentric, and state-centric legacies of colonialism on international and national stages.

Acknowledgements: I am thankful to the international officials and Indigenous leaders interviewed for sharing with me their views. I also thank Laura Rival of the Oxford Department of International Development for her comments on the drafts of this paper. Transcripts of the cited interviews are on file with the author.

Funding statement: I thank the Global Development Network (GDN) for funding the fieldwork for this research.

Competing interests: The author declares none.

Cite this article: R. Merino, ‘Governing International Commons: Re-examining Environmental and Sovereignty Imaginaries in the Amazon’ (2025) *Transnational Environmental Law*, pp. 1–27. doi:[10.1017/S2047102524000414](https://doi.org/10.1017/S2047102524000414)