

INTERNATIONAL LAW AND POSTHUMAN THEORY

Edited by Matilda Arvidsson and Emily Jones

First published 2024

ISBN: 978-1-032-65802-5 (hbk)

ISBN: 978-1-032-04404-0 (pbk)

ISBN: 978-1-032-65803-2 (ebk)

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POSTHUMAN FEMINISM AS A THEORETICAL AND METHODOLOGICAL APPROACH TO INTERNATIONAL LAW

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DOI: 10.4324/9781032658032-3

The funder of the Open Access version of this chapter is Goteborgs Universitet.



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Matilda Arvidsson

Introduction

This chapter takes on the question of how posthuman feminism may be helpful as a theoretical and methodological approach to international law. Its focus is on methodology. I will do two things, organized into three parts. *First*, I will set out some fundamentals about posthuman methodologies, with examples and emphases on posthuman feminism. In doing so, I will highlight Rosi Braidotti's method of posthuman figurations, and Karen Barad's diffractive method. Drawing on these examples, alongside the rich traditions of posthuman feminist scholarship, I will explain posthuman theory and methodology as necessarily both material and discursive-linguistic, setting out some theoretical and methodological context. Doing this I will show how posthuman feminist methodology combines methods to capture the figurative and the empirical dimensions of the posthuman condition. This means that an inter- and transdisciplinary mode of analysis is necessary. I will frame the discussion within existing international legal scholarship. *Second*, I will argue that posthuman feminism is useful for international lawyers when describing and analyzing international law in the historical and material context of the posthuman convergence – and argue that posthuman theory and, in particular, posthuman methodology are central to the doing of posthuman international legal scholarship and practice. In the vein of this second argument, I provide a step-by-step example, drawing primarily on my own experience in working with international humanitarian law (IHL), posthuman feminist theory and frontier technologies – including artificial intelligence (AI) – in contemporary warfare. The *third* and last part concludes the chapter. In it, I return to the two main arguments pointing to the need for further

theoretical and methodological attention to be paid to both material and discursive-linguistic aspects in posthuman international law analyses, while also arguing for the usefulness of posthuman feminism as a theoretical and methodological approach to international law for all international lawyers.

Posthuman Feminism and International Law: Why and How

Why should international lawyers use posthuman theory as a theoretical and methodological approach? And why posthuman *feminism*? Starting with the first question, the posthuman convergence that posthumanism and hence this chapter addresses lies, as Braidotti explains, at the conjunction of posthumanism and post-anthropocentrism, as defined by three related phenomena: the height of technological advancement, the intensification of advanced capitalism, and the catastrophic sixth extinction in the Anthropocene (Braidotti 2019). These are three areas that coincide with core contemporary challenges for international law: the rise of advanced technology – in particular AI (Arvidsson and Noll 2023; Korhonen *et al* 2023), capitalism as a failed international peace project (Baars 2019; Tzouvala 2019) and present and looming irreversible environmental and planetary degradation (Gilbert *et al* 2023; Jones 2023). These are all questions that international lawyers have engaged with – and critically so. Yet, many of international laws’ responses are lacking in terms of an overarching theoretical and methodological framework capable of analyzing the complexity and interrelatedness of the problems altogether. Posthuman feminist theory, in contrast, has the tools needed to analyze and respond across these three core concerns simultaneously.

I follow Emily Jones in understanding posthuman theory in international law as ‘broadly call[ing] for an account of subjectivity that includes non-human entities, including a better understanding of the agency of matter’ (2021: 6). This means a possibility for international law and scholarship to reconsider fundamental categories of subjects and objects, and with that the rights, duties and international legal obligations that follow (Arvidsson and Sjöstedt 2023). Posthuman theory, Jones explains, ‘sits at the convergence between post-humanism and post-anthropocentrism’, with not only an aim to ‘dismantle hierarchies of privilege’ between humans in terms of, for example, gender, race and class (the central idea of posthumanism) but also to dismantle human hierarchical supremacy over other subjects – including the environment and nonhumans (the central idea of post-anthropocentrism) (Jones 2023: 9). Posthuman *feminist* theory, Jones continues,

stretches in multiple, rhizomatic and tentacular directions, bringing critiques of humanism as found, for example, in intersectional feminist theory, postcolonial theory, queer theory and critical disability studies,

together and alongside fields such as critical animal and environmental studies, and science and technology studies.

(ibid: 10, references omitted)

So, why posthuman *feminism*? The feminist version of critical posthumanism to which both I and Jones ascribe (Jones and Arvidsson 2023) builds on feminist traditions and practices of critique: it distinguish itself from transhumanism and long-termism with its ‘ethics’ of ‘human enhancement’ (e.g. Bostrom and Savulescu 2009), and from the fascist eugenics that follow (Arvidsson *et al* 2024). Acknowledging differences among the many feminist and critical posthumanist traditions, the aim of the posthuman feminist jurisprudence I pursue is to build on feminist knowledge, politics and practice to pursue intergenerational and transversal posthuman and feminist alliances, encompassing intra- and infralegal, as well as cross-disciplinary relations (Arvidsson 2023a; Braidotti 2021; Jones 2023). I will return later and develop how this has already taken place in international law, scholarship and practice. Emphasizing that this is not a question of ‘more’ or ‘better rights’ (Harris 2022), more or better international law, or even a question of more and better ‘inclusion’ of the disenfranchised and de-selected, the posthuman feminist transversal alliance acknowledges that ‘We-Are-All-In-This-Together-But-We-Are-Not-One-And-The-Same’ (Braidotti 2009: 32, 2020). The ‘we’ is neither built around nor aims toward furthering the white, male, Western, heterosexual ‘Man’ – it is not even built on ‘the human’, regardless of gender, race or able-bodiedness. ‘We’ are in the posthuman condition together, and a posthuman feminist alliance, with ‘the human’ decentered from its previous and current privileges in our common ecology, can make a real difference in the world – also in international law.

The analytical force of posthuman feminism resides in its rich theoretical and methodological approaches toward describing and offering a ‘navigational tool’ to international law in the posthuman condition (Braidotti 2013: 3). Posthuman feminism concerns ‘the human’– because of its historically hierarchical dominant position – and seeks to undo the continuation of oppression while building on feminist traditions of theory and practice. Just as feminism does not only or necessarily concern ‘women’, posthumanism does not only concern ‘the human’ for the sake of the human. Rather, the idea is to question how a dominant figure has come to direct international law’s development, scholarship and practice. At the center of analysis are relations through which some subjects and objects emerge and become recognizable to international law, while others remain unrecognizable: inhuman, a-human, nonhuman, less-than-human, more-than-human, non-subjects.

Posthuman feminism is, moreover, helpful to international law as it tends to manifestations of both material and discursive relations. Its methods are empirical: to actively engage – physically, in minute and collaborative ways – with

the problems, sites and entitles that international law seeks to address is vital. Yet, posthuman feminist methods tend to discursive elements too: the linguistic and psychic registers in the analysis focus on subjectivity, power, relations and the potentials for a more hopeful future. To ‘reworld’, as Donna Haraway notes, one must act with the power of language (Haraway 2011, 2016a; Jones *et al* 2023). I will return, later in the chapter, to set out in more detail how the discursive-linguistic aspect of posthuman theory has been overlooked in parts of the scholarly field, as well as why it forms an intrinsic and necessary part of posthuman analysis in international law and elsewhere. Here it suffices to note that the combined methodological approach enables an analysis that captures, on the one hand, the discursive-linguistic, normative and performative powers of international law, especially elements of binary categorization and knowledge-production in international law and beyond (e.g. an entity is *either* a weapons system under IHL regulation *or* not – and if it is a *new* weapons system it must pass the tests of Article 36 of *Additional Protocol I* of 1977, or else it is illegal under international law. See further: Jones 2023). On the other hand, posthuman feminism enables an analysis of the material effects and power by which international law moves and changes things. In addition, it enables analyses of the material effects of economic, technological and discursive hierarchical power-relations such as they emerge in international law and practice. This must occur while keeping a focus on the conjunction of technological advancement, the intensification of advanced capitalism and the sixth extinction in the Anthropocene.

Like Jones, I am dedicated to applying posthuman feminism to legal practice, proposing ‘concrete international legal change’ (Jones 2023: 154). To do so, this chapter avails a posthuman theoretical and methodological framework for academic as well as practice-oriented international legal work with an emphasis on the posthuman feminism. As Jones aptly puts it, there is an ‘inherent tension between wanting to work within international law but then having to accept international law’s constraints when doing so’ (155). This emerges through ‘a wider tension’ between theory and the work of ‘bringing theory to practice’ (155). With a background in legal practice, I can add the tension in bringing practice to theory: practice comes to scholarship with its own questions and concerns. In the meeting of these different positions important changes can happen, with due respect to the constraints under which international legal scholarship and practice exist. But how does one do it?

Let me give an example: drawing on the so-called turn to history in international law I have, together with Miriam Bak McKenna, argued that history is a fundamental part of the conventional ‘sources doctrine’ in international law (Arvidsson and Bak McKenna 2020). The sources doctrine is one of the ‘constraints’ (Jones 2023: 155) that international lawyers must work with. While a ‘fixed’ doctrine – building on customary international law and

codified in Article 38(1) of the International Court of Justice Statute – its interpretation and application remains open and indeterminate to a degree: it is a legal doctrine that must adequately describe and respond to contemporary questions and concerns, also when those shift. Posthuman feminism, I argue, avails adequate tools for both describing and addressing pressing questions and concerns in international law, to reconsider subjects, objects and aims of international law, and to do so while working with the ‘constraints’ of the sources doctrine. In the posthuman condition, the sources doctrine thus can be reconsidered through posthuman feminist concerns to respond adequately in the present.

Although doctrinal international law avails a ‘canon’ on what and whose history counts, there is a critical consensus on the need and room for change in terms of the sources and histories relied upon by international lawyers (e.g. Knop 2002; Nesiah 2018; Obrégon 2019). This includes narratives (the discursive-linguistic part that posthuman feminist methodology tends to) de-selected – for ideological, racist, sexist, speciesist and other reasons. It also, as Rose Parfitt (2018) points out, includes sculptures and highways and other objects of international law (Hohmann and Joyce 2018) (the material part that posthuman feminist methodology tends to). Using the sources doctrine as an example, my point is that to accept international law’s constraints is to work carefully and creatively with international law to reconfigure *what* international law is, and for *whom* and which ends it is set to work (Chinkin 2022). For this theory beyond what international law’s doctrines avail is necessary – posthuman feminist is the theory I suggest responds best to the most critical concerns of our time.

I have created an image (Figure 1.1) with a highly condensed version of posthuman feminism as a theoretical and methodological approach to international law. I will return to it as I pursue the arguments of this chapter, hoping it will prove useful in allowing international legal scholars and practitioners to come back to its fundamental and ‘simplified’ main points in search of entries, inspiration and courage to go on to change the world into a better place.

Posthuman Feminist Methods: Some Fundamentals and Examples

I will now turn to the inter- and transdisciplinary mode of analysis in posthuman feminist theory and methodology. Empirical research methods for posthuman feminist scholarship can be drawn from any field – the humanities, social and natural sciences and beyond. Often the multiple-methods approach means ‘getting down and dirty in the field of play’ (Massumi 2018: 69) to not only observe but to immerse oneself within that which one analyzes as to sense it – smell, taste, hear, feel – in a situated (Haraway 1988) and

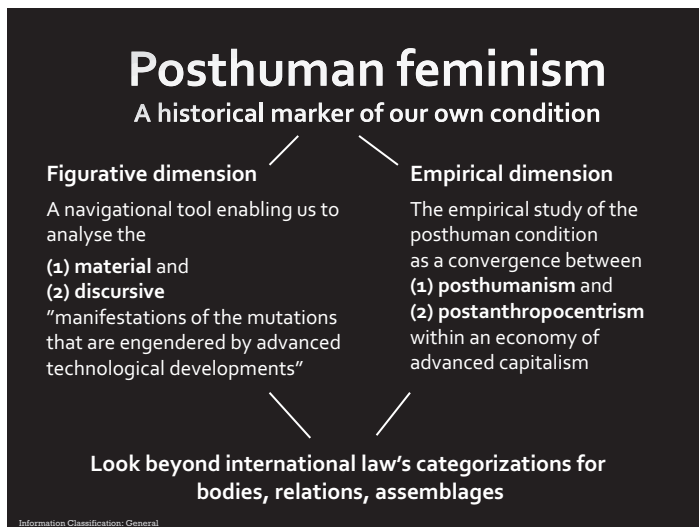


FIGURE 1.1 A simplified theoretical and methodological framework for international law scholars working with feminist posthumanism. Feminist traditions and ethics are part of the overarching framework, with methodological considerations in the figurative and empirical dimensions analyzed. Citation from Braidotti (2019: 2).

embodied (Gallop 1988) way, as often done in feminist autoethnographic and autobiographic methods (hooks 1999; Williams 1992). Research methods for the figurative dimension are more specific to posthuman feminist scholarship, which is why I will focus primarily on those here.

There is a rich interdisciplinary discussion on posthuman theory as a methodological scholarly and practice approach (e.g. Gravett and Kinchin 2020; Appleby and Pennycook 2017; Taylor and Hughes 2016). Yet in the field of law, posthuman methodology-oriented debates are limited (Davis 2017; Dekkha 2010; Gear 2023, 2017; Quiroga-Villamarín 2020). In recent years, posthuman international legal scholarship has grown in terms of the issues and fields covered as well as in the range of scholarship (e.g. Arvidsson 2018, 2020, 2023a, 2023b; Arvidsson and Sjöstedt 2023; Cirkovic 2021; Heathcote 2018; Hohmann 2021; Jones 2018, 2021, 2023; Jones and Otto 2020; Petersmann 2021a). Even so, little attention has been awarded to the methodological implications of posthuman theory for international law scholarship and practice.

As discussed in the introduction to this book (Jones and Arvidsson 2023), critical posthumanism – specifically posthuman feminism – builds on, converges and intersects with a range of issues, problems and theoretical and methodological approaches well known to international law

and its scholarship: feminism (Braidotti 2021), Marxism (Braidotti 2019), post- and de-colonial theory and race (Wynter 2015), Indigenous and aboriginal knowledge (Bennett 2010; Bignall *et al* 2016), eco-feminism (Gaard 1993, 1997; Tsing 2015), gender and queer theory (Gaard 1997; Braidotti 2021), feminist science (fiction) and technology studies (Haraway 2016a, 2016b), quantum physics (Barad 2007) and related critical variants of scholarship and practices. With these a range of methodological approaches follow.

In *Posthuman Knowledge* (2019) Braidotti sets out the central methodological tenants of posthuman feminism in the following way:

As a theoretical figuration, the posthuman is a navigational tool that enables us to survey the material and the discursive manifestations of the mutations that are engendered by advanced technological developments (am I a robot?), climate change (will I survive?), and capitalism (can I afford this?). The posthuman is a work in progress.

(2)

In *Posthumanism Feminism* (2021) Braidotti explains this navigational tool – what we could also name as the tool for analysis of, in our case, international law in the present – as a ‘chartography . . . that enables us to develop adequate understandings of our material life conditions and the complexities of the present’ (212–13). This analysis is coupled with feminist figurations – ‘projective anticipations about what can be done’ about the material life conditions and the complexities of the present (213). ‘They apply’, Braidotti advises, ‘and operationalize into action the epistemic insights of feminist theory, like conceptual personae, or “thinking aids” that helps us work through complex issues’ (*ibid*). Barad, in contrast, works with a ‘diffractive method’:

Diffraction is the physical phenomenon that occurs as waves emerge, when water flows across an obstacle like a rock. As opposed to reflection, which is a common metaphor for analysis that invites images of mirroring, diffraction is the process of ongoing differences. As a thinking-tool for analysis, diffraction attunes us to the differences generated by our knowledge-making practices and the effects these practices have on the world.

(*Sauzet* 2015: 40)

Coming from two different methodological perspectives and traditions – Braidotti from the humanities and Barad from quantum physics – what brings the two together is a joint attention to the figurative and empirical dimensions through which the material and the discursive-linguistic come together, where relations and bodies are formed, subjects come into being and power operates in the posthuman condition. Before engaging with how

the material and discursive-linguistic come together methodologically as intertwined questions of ontology and epistemology, I will expand on the two different posthuman feminist methods as examples, with some international law context.

Example 1: Posthuman Figurations

The use of figurations – described by Braidotti (2019: 2) in the preceding quote – for epistemological and ontological (normative) ends should sound familiar to the international lawyer: ‘Theoretical fictions’ – are often used as figurations in international law. These are idealized figures – such as the ‘human in the loop’ in IHL (Arvidsson 2021) or the ‘victim’ in international criminal law (Elander 2019) – working as metaphorical reflections rather than as matter. Through these figures international law is made to matter, concretely and normatively speaking. Posthuman figurations, in contrast – Braidotti’s ‘posthuman’ or Haraway’s ‘cyborg’: both of which I will turn to later – act to dismantle ‘the posture of scientific objectivity, academic hierarchies and lethal binary oppositions’ (Braidotti 2021: 213). Posthuman feminist international legal scholarship draws on both international legal figures and posthuman feminist traditions to provide new and altered figurations for directing law’s normative effects toward less-violent, unequal and destructive ends (Arvidsson 2021; Jones 2023).

In Braidotti’s work the central figuration of ‘the posthuman’ targets the power formations of the ‘invasive nature of contemporary technologies’ and ‘the consequences for the production of knowledge today’ (Braidotti 2021: 213). The posthuman is a ‘materially embedded and embodied’ signpost of ‘crucial knots of knowledge and power, anticipating emergent meta-patterns of resistance and of dissonant and creative becoming’ (213). The posthuman is thus not a ‘thing’ that can be found or constructed, but rather a mode of analysis and an operationalization ‘into action’ of ‘the epistemic insights of feminist theory’ (213). In my work on posthumanitarian international law the ‘posthuman’ works as a figuration questioning where and whether the distinction between human (warfighter) and semi-autonomous weapons systems can, at all, be meaningfully made (Arvidsson 2018, 2020, 2023b). If the international legal categories of ‘the human’ and ‘the weapons systems’ can no longer be distinguished from one another – given the developments in warfare and weapons technology and given the posthuman condition in which these take place, at the height of technological advancement, the intensification of advanced capitalism and the sixth extinction in the Anthropocene – then, why would IHL hold on to categorizations that neither reflect the state-of-the-world nor address the most pressing concerns of the world IHL is set to act in? In this context, ‘the posthuman’ is not a new kind of warfighter or way of applying IHL to make new/other distinctions

and categorizations, but rather a navigational tool to map the discursive-linguistic as well as the empirical fields of IHL and contemporary technology-driven and advanced warfare. It can suggest where other ways of perceiving the world and international law – its roles and aims – are possible.

Haraway notes that posthuman feminist figurations offer ‘condensed maps of contestable worlds’ (1997: 11). They thus allow ‘the complexity of the differential, materially embedded subject positions they represent and account for’ (Braidotti 2021: 213). In Haraway’s scholarship the most emblematic of these figurations – the cyborg – emerges outside of human/animal sexual reproduction, being neither fully human nor un-human (Haraway 1985, 2016b). The cyborg is ‘a condensed image of both imagination and material reality, the two joined centers structuring any possibility of historical transformation’ (2016b: 7). Being ‘both a matter of fiction and lived experience’ (ibid: 6) it functions as a ‘thinking aid’ to consider the ‘interconnection that grounds technology into its earthly environment’ (Braidotti 2021: 214). The cyborg can thus work as a thinking aid to sense ‘the human in the loop’ as a body of technological, biological and discursive-linguistic-legal matter (Arvidsson 2018, 2021). John Haskell (2023) invokes the cyborg to argue that the field of international law and technology is cyborgian in nature – being, as it were, both material and a matter of fiction. In understanding international law as cyborgian the scholar and practitioner of international law can approach the field with a vitality of always bringing change beyond static categorizations of old paradigms of thought and practice.

Example 2: Individuation, the ‘Cut’ and Diffractive Method

Taking a slightly different position, posthuman feminist methodology can also be described as highlighting what Gilbert Simondon calls the process of ‘individuation’ (e.g. Simondon 1980 [1958]). This is the material process through which entities are set apart, made individual, making them *one* thing and not the other. In this process a constant state of ‘becoming’ (a term adopted by Gilles Deleuze and Felix Guattari from Simondon) is interrupted, discursively and materially, by ‘cuts’ – a central idea of Barad’s new materialist scholarship, by which “‘the thing” “we” research, is enacted in entanglement with “the way” we research it’ (Sauzet 2018). With Barad this is called ‘diffractive method’ (Barad 2007), a term that Barad draws from Deleuze-Guattarian philosophy. Simply put, it means that on the level of physics, things are not stable or stay within their ‘categories’, all the way down to atomic particles. The point about ‘things’ being constructs rather than objective truths and stable entities has been made several times before in history, philosophy and science – for example, by Michel Foucault and Judith Butler. Barad’s scholarship brings the linguistic-psychic and historical registers *as well as* the natural science-oriented registers together to consider

the continuous formation of things, persons, objects or, in short: how matter becomes through mattering. This is a mattering that Haraway expresses as '[i]t matters which stories tell stories, which concepts think concepts. Mathematically, visually, and narratively, it matters which figures figure figures, which systems systemize systems' (2016a: 160). This come to matter in international law, as Elena Cirkovic notes when arguing for an international law that 'instead of being the mirror of permanently split human subjectivity, could recognize the indeterminate nature of the world beyond it', showing how international law narrates and how carbon oxide is mathematically figuring the figure of the 'Arctic' (2021: 167).

The point is simple but crucial: there are no such things as 'things'. At least not as ready-mades. Neither in international law nor elsewhere. Instead, there are 'cuts' by which phenomena are individualized and set apart as individual entities, things or subjects. Or, in international legal terminology: subjects, objects and the many 'others' (Orford 2006). When Haraway notes that 'concepts thinks concepts' and 'figures figure figures' this is to say that (international legal) concepts and (international legal) figures can never 'mirror' anything else other than their own ontological and epistemological making of that which they seek to describe and normatively impose in the world. This is how international law operates: it 'cuts' phenomena in the world and thereby discursively and normatively sets them apart from other phenomenon, treating each differently according to its categorization and international legal definition. Illustrative international law examples include how civilians are cut apart from combatants in IHL (Articles 43(2) and 50 of the 1977 *Additional Protocol I*), and how AI is cut apart from human intelligence (the EU AI Act, Article 3(1)). Of course, nothing and no one exist in any real sense as a 'combatant' outside of international law's figurations – anyone who falls under the category of combatant only does so for the purpose of international law, and only so far as they momentarily embody the subject position of the combatant. It is a discursive-linguistic 'fiction' or, with Braidotti's words: an international legal figuration. One that has normative and material effects.

Drawing on the insights from physics – that there are no such things as things, physically speaking: there are neither subjects nor objects – the normative effects of how 'cuts' are made are substantial. How cuts – or, in international legal terminology: distinctions and categorizations – are made depends on the ontological, epistemological and ethical frameworks through which knowledge is established and legal normativity emerges. These ontological and epistemological frameworks change with time and place, history and geography: the natural law theory of the early history of international law is now abandoned for other ideals of knowledge-making in contemporary international law, scholarship and practice. How the 'cut' is made makes the difference. Making new 'cuts', and cutting in new ways, as international

lawyers, enables us to understand the world in new ways, to see new problems – and old ones – and find new ways of approaching them. Posthuman feminism provides the framework through which to do this.

Another central move in Barad's method is the turn away from the 'linguistic turn' (mentioned previously):

Language has been granted too much power. The linguistic turn, the semiotic turn, the interpretative turn, the cultural turn: it seems that at every turn lately every 'thing' – even materiality – is turned into a matter of language or some other form of cultural representation.

(Barad 2003: 801)

Diffraction method involves taking seriously the inability of international law to 're-present' the world, as if it was simply 'reflecting' reality. Instead, as noted earlier, '[a]s opposed to reflection, which is a common metaphor for analysis that invites images of mirroring, diffraction is the process of ongoing differences' (Sauzet 2015: 40). Along these lines, Daniela Gandorfer and Zuleika Ayub emphasize the necessity for legal scholarship to move beyond the representable and to question representability as a function of international law:

We want to think about the production of meaning in its inextricability from matter, with meaning understood not as representational (i.e. as a semiotic or symbolic quality or quantity), but rather as something constantly being carried (*phora/φορά*) 'with,' 'after' or 'between' (*meta-/μετα-*) semantic domains while also always traveling with or through an entanglement with matter – where 'matter' is understood not as fixed substance, but, following Karen Barad's claim, as 'substance in its intra-active becoming,' as such 'not situated in the world' but 'worlding in its materiality.' We are concerned with those political, aesthetic, legal, social, technological, physical, and environmental entanglements that not only shape but are onto-epistemologically constitutive of processes of knowledge and meaning production and transmission.

(Gandorfer and Ayub in Helmreich et al 2021: 158, citing Barad 2007: 180–1, 83)

The idea, thus, is that substance, matter, things, subjects, and so on are 'not situated *in* the world' (emphasis added) but make the world come forth and 'worlding in its materiality' (Barad 2007: 83). To capture this point, diffraction method helps as a thinking-tool for locating where international law 'cuts' subjects and objects apart, and how and where cuts can be made differently as to matter the world into a less exclusionary and violent place for the benefit of others than just some humans and their privileged pleasures.

The Material and Discursive in Posthuman Feminist Methods: How Language and Matter Come Together

In Figure 1.1 I have indicated a fundamental methodological insight that goes with all posthuman feminist scholarship: it tends to *both* material *and* discursive relations as intertwined questions of ontology and epistemology, and it does so building on feminist traditions and practices. This has also become evident in the two examples I expanded on earlier: while emphasizing matter, both Braidotti's posthuman feminism – the posthuman figurations – and Barad's new materialism – diffractive method – hinge on the work done by and through language with material effects. So, even if posthuman international legal scholarship foregrounds '*material conditions*' (Hohman 2021: 2, emphasis in original), and there has, alongside the posthuman international legal scholarship (cited in the beginning of this chapter), emerged a scholarship in international law focusing on objects (Hohmann and Joyce 2018; Kang and Kendall 2019; Parfitt 2018), attending to the material conditions is only part of the theoretical and methodological design of posthuman analysis – feminist or otherwise.

An often-appearing emphasis on 'material' – and ontology as subsuming epistemology – may be caused by it being underplayed in previous international legal scholarship – think only of the international legal scholarship on the language and grammar of international law, following Martti Koskeniemi's work (e.g. 2007, 1989). However, it is important not to lose sight of discursive-linguistic elements by overemphasizing materiality as the 'new' by which scholarship is to 'overcome' the 'old' (language). 'Overcoming' the past is a well-known trope as the glossing over of international law's colonial past and present (e.g. Hohmann and Schwöbel-Patel 2023). Moreover, when Barad (2007) states that language has been granted too much power, and when Braidotti speaks of posthumanism as refusing 'the linguistic paradigm' (Braidotti in Dolphijn and van der Tuin 2012: 21), it is understandable that some scholars have come to see posthumanism as focusing on all things material, leaving language behind (as if language somehow exists outside of the material). This, however, is to misunderstand what Barad, Braidotti and other posthuman (feminist) scholars are, and have been, doing.

In what follows I will set out the context on how language and the material come together through ontological and epistemological concerns in posthuman (feminist) theory and method. After this, I will turn the focus to the material, to then provide concrete examples of how posthuman feminist theory and methodology sits within international law, scholarship and practice.

The Discursive-Linguistic

In the so-called linguistic turns, especially its Saussurean variations and the discursive turns that followed, the problem for critical posthuman scholars,

such as Barad and Braidotti and the international legal scholars and practitioners who draw on posthuman (feminist) theory, is not only the ways in which language and power become conflated – and materiality subsumed under language – but instead primarily the political hopes and agency that become invested in language (Braidotti 2021). Matter and materiality has become, in the most extreme cases in the linguistic turns, a mere product of language.

Moreover, posthuman scholars have turned away from language's mode of representationalism – for example Gandorfer and Ayoub (in Helmreich *et al* 2021: 158) as quoted earlier. Whereas language-as-representation invites a sense of language as 'mirroring' reality – and thus capable of (re)presenting reality as determined, determinable and defined through language – posthuman theory aims at 'processes of ongoing differences' (Sauzet 2015: 40). Posthuman feminist scholarship engages with language as part of the material and the relations studied rather than as its main vehicle for political hope and action. In a Koskenniemi turn, for international law the question of language, representation and the real can be translated into the question of the indeterminacy of international law. International law, Koskenniemi argues, maintains itself 'in constant movement from emphasizing concreteness to emphasizing normativity and vice-versa without being able to establish itself permanently in either position' (Koskenniemi 2007: 65). To Koskenniemi international law becomes a language and a grammar through which indeterminacy is operated or managed. It is done so less to 'mirror' the state of the art in the relations between states – although it does so to some degree aiming to gain a 'descriptive' force (Orford 2012) – but rather to normatively order the indeterminacy. Still, international law, scholarship and practice remain in the representational corner: ordering through a language that matters through stories telling stories, concepts thinking concepts, figures figuring figures and systems systemizing systems (paraphrasing Haraway 2016a: 160).

In sum: in approaching posthuman theory as a theoretical and methodological framework for international law the material *as well* as the discursive dimension are part of the posthuman condition. They are inseparable parts of the ontological and epistemological concerns posthuman theory takes on, *not* as dualistic or opposite ends but as non-separable and fundamental entry points. Posthuman theory as a theoretical and methodological framework for international law requires methods that are discursively 'mapping', availing what Braidotti calls a 'cartography', while simultaneously tending to the empirical dimension through empirical methods. In terms of methodologies posthuman feminist scholarship works through the posthuman shift beyond the human as the central organizing frame, often combining a linguistic-genealogical-discursive register with empirical research methods. The first can be a method centered on the meaning and use of language,

including the normative force and power attached to it. Methodologically, this is how conventional international legal doctrinal method asks the international law scholar and practitioner to approach international laws' texts: availing methods of interpretation of language and the performativity and emergence of normativity through language, of historical contextualization and anachronism, the hierarchy of sources and the ways in which general principles are made part of a discursive interpretation and argumentation.

Examples

Some examples of how critical posthuman feminist scholars have combined language oriented and feminist methods – empirical as well as discursive-linguistic – toward a critical posthuman analysis include what Jane Bennett calls 'doodling', 'decanting', 'dividuality' and 'middle-voiced verbs' (Bennett 2023). Some of these are well-known feminist and ethnographic practices, for example, 'doodling' to de-center oneself through 'automatic writing' as the researcher 'jots down' or scribbles both as a way of performing that which Jacques Derrida calls *différance* (Derrida 1981) and to write oneself forth as in Hélène Cixous' *écriture féminine* (Cixous 1976 [1975]; Arvidsson 2022). To 'decant' is to aerate (as is with a bottle of wine): 'The "efficacy"', Bennet notes, 'of decanting consists in an intensification of the subtle flavors, shades, tones, scents, trajectories already on the scene' (Bennet 2023: 6). All of which are part of embodied sensing in empirically oriented methods. Dividuality is the opposite of 'individuality' which harks back to the method of looking (and sensing) beyond the distinct categorizations to see figures that are neither 'individuals' nor 'everything': instead, such dividuality is comprehending 'lively elements continuously engaged in unstable and contingent relations' (8). Moving into linguistic methods of action and actionability the 'middle voice verbs' is a grammatical form of 'activities in which an actor is inside, and thus also altered by, the process . . . indicating an effectivity *amidst* a (heterogeneous, recursive) process' (9).¹ Whereas Bennett's methods are generally applicable to many scholarly fields and problems – including international law fields and topics – other posthuman feminist methods are more specific in terms of their embodied material research method, at least so on a first account: open water swimming with sharks, as Roslyn Appleby and Alastair Pennycook do in their posthuman language and education research, enables the researcher to map human–nonhuman relations in a multisensory way specific to the human–shark encounter (Appleby and Pennycook 2017). Yet, this specific relation – and the method through which it is studied – has

1 Bennet 2023 is still forthcoming when this is being written; therefore, pages refer to the pre-print version of the chapter, on file with the author.

broader implications, also for international law, its scholarship and practice. It decenters the researcher from a hierarchical anthropocentric order in which the human is – when in open water – out of her element, and instead in that of the ‘object of study’. The latter is in Appleby and Pennycook sharks, but to study AI as an international lawyer the ‘open water swimming’ method may be translated into ‘swimming’ in the ‘deep waters’ of designing an AI-driven application (Arvidsson and Noll 2023). So, even as open water swimming is a method specific to its topic studied, the method of de-centering is central and generally applicable to all posthuman feminist work.

The Material

What, then, is the ‘material’ of posthuman scholarship? The question has been less materially bent in scholarly discussions, as it has come to focus on how the ‘ism’ stands in relation to previous scholarship dedicated to the material, materiality and materialisms. While Braidotti’s posthuman feminism is straightforward as to how it deals with matter – it is a central part of that which constitutes the field of study (see Figure 1.1) as well as how it is studied – scholars and scholarships under the banner of new materialism have received a less straightforward response: a persistent suggestion in scholarship is that new materialism builds on, or seeks to supplant, *historical* materialism, and that it should stand more closely in conversation with historical materialism than it currently does (Jones and Arvidsson 2023). While new materialist scholarship may or may not gain from closer conversations with historical materialism, it is – as is critical posthumanism more broadly – not specifically a Marxist or post-Marxist field. There are, to be precise, relations between posthuman feminist scholarship and Marxism – relations widely acknowledged in posthuman feminist scholarship. Yet, the ‘new’ of new materialism is not a reference to a materialism that is ‘new’ in relation to historical materialism. Instead, new materialism(s) primarily builds on matter and materiality such as it has been considered in physics – in Barad’s case quantum physics – philosophy of science, and philosophy broadly conceived. Most variants of posthumanism – including its critical, feminist and new materialist – harks back to the Spinozian philosophical tradition, especially as popularized and interpreted by Gilles Deleuze and Felix Guattari. The materialism in relation to which ‘new’ materialism is new is thus not historical materialism or Marxism, but the much broader and ‘older’ field of physics and the philosophical question of matter as it is considered in, for example, Aristotle, Spinoza, Nietzsche, Freud and not the least by Deleuze and Guattari. Moreover, new materialism, as Anna Grear explains it (2023), is a plurality of ‘isms’. Some materialisms draw on and pursue conversations with historical materialism and its scholarship as their primary interlocutor. However, the main and shared methodological and theoretical point for

posthuman- and new material-‘isms’ is the centrality of ontology and epistemology to the mattering of matter.

Matter and Discourse as Part of International Law: The Discursive-Linguistic and Material When Taken to International Law

But what does this material *and* discursive of posthuman feminist theory and method mean to international legal scholarship? In international legal scholarship the various approaches I have touched on already are all part of the emerging field of scholarship. In terms of empirically practice-oriented international legal scholarship, I have, together with Gregor Noll, combined conventional doctrinal international legal analysis with intersectional and posthuman feminist theory while taking on the task of designing an algorithm as part of the study of AI, international law and automatic legal decision-making (Arvidsson and Noll 2023). In a less hands-on, yet still materially and empirically interdisciplinary analysis, Gina Heathcote draws on feminist theory and methods to study the material design of military uniforms to enquire about the posthuman convergence of gender, technology and (dis)ability in warfare and its laws (2018). In a similarly interdisciplinary mode Elena Cirkovic has studied methane craters, Arctic greenhouse gas emissions and orbital debris in space as ‘unpredictable and disruptive agents’ (2021). This while employing empirical methods drawn from natural sciences as well as doctrinal international legal methods to argue for a cosmolegal understanding of ‘the process of learning and lawmaking through which the law would recognize the unpredictability of human and non-human relations’ (2021: 149). Another example, where interdisciplinarity in terms of both theory and method serves as the guiding framework, is Jones *et al* who draw on Haraway’s ‘speculative fabulation’ as a method inspired by speculative fiction in which ‘a mode of attention, a theory of history, and a practice of worlding’ (Haraway 2016ba: 230) takes place as a ‘practice, a way of disrupting ways of knowing and thinking otherwise’ (2023: xx). Like Heathcote, Jones *et al* explicitly draw on feminist theory and practice. Yet another example is drawn from a proposition I have made together with Britta Sjöstedt for IHL to cover not only armed conflicts, with its specific distinctions and hierarchizations, but to instead ontologically and normatively move toward a merger with international disaster management law and policy. Toward this end we have argued for ‘a more cross-species and multiaspect, embracive, and non-exclusionary IHL legal ordering [. . .] engaging with violent outbursts’, of a potentially lethal character – regardless of if these are man-made or ‘natural’ disasters (Arvidsson and Sjöstedt 2023: 133). Drawing on doctrinal legal argumentation and method, post-anthropocentric mapping of the discursive and figurative dimensions

of distinctions – invoking the Deleuze-Guattarian ‘war machine’ – as well as empirically grounded research (in the fields of, for example, ecology, immunology and AI swarming engineering), the theoretical and methodological design in Arvidsson and Sjöstedt is an illustrative example of how international legal doctrinal argumentation can be made to work toward posthuman feminist practice-oriented ends when combined with posthuman theory and method.

Taken all together, posthuman international legal scholarship, following on the examples already set out, is indebted to, draw on and converge with a broad field of scholarships, the basic setting of which are the concerns I began this chapter with: the posthuman convergence – the posthuman condition as a convergence between posthumanism and post-anthropocentrism within an economy of advanced capitalism – such as it becomes manifested both materially and discursively in our present times. From the scholarship I have referred to this far, it is thus clear that there is not *one* method that we call posthuman or *the* posthuman methodology to which international legal scholarship heeds or should look to. Instead, posthuman scholarships employ a range of interwoven methods, methodological approaches and emphases. Consequently, posthuman international legal scholarship has developed, and continues to do so, through methodological alliances.

In the following I will focus on the practical aspect of ‘how to do it’ of two posthuman feminist methodological approaches. The first is the method of invoking posthuman figurations, and the second is of individuation, cuts and diffraction.

How to Do Posthuman Feminist Methods in International Law, Scholarship and Practice

So, how to ‘do’ it all? The first step is always a step back, looking at the world as if we did not already know the answers that doctrinal international legal analysis provides us with, or how it allows us to *see* certain things as ‘relevant’ to the analysis, while others remain outside the framework of analysis. Or, for that matter, let us move beyond the limit of ‘seeing’ as the only sense useful to the international lawyer: there is touch, taste, smell, hearing and more.

Conventional doctrinal international law answers and categorizations are relevant to keep in mind when approaching a new question because those are the ones all international lawyers and scholars must relate to when making interventions into central international legal debates. Accepting international law’s constraints, as Jones argues, means to know doctrinal international law well, without conflating oneself and one’s scholarship with its aims. To push the debates in new directions it is necessary to know against what to push. Yet, once we momentarily let go of the categorizations and distinctions

through which we, as international lawyers, are taught to navigate the world to identify international legal problems and possibilities, we can ‘cut’ a particular field or issue of analysis differently.

Example 1: A Grid, a Field of International Law or a De-Selection?

To provide a practical example I have provided Figure 1.2. It depicts *something*, yet what do we ‘see’?

Before answering the question it is helpful to ask where a ‘cut’ is made between the ‘one’ and the ‘other’ – in ‘everyday’ language as well as in international law’s categorizations in the image. What are the subjects and objects we can describe, and how do they relate: where do they start and end? Do they have any pre-set ‘limits’ or are their beginning and ends linguistic, material or otherwise defined? What do we have in front of us, and how can we see as to *not* repeat what others have told us to look for? How do we make a methodological ‘cut’ to approach the material and figurative in the image? And who, *or what*, are we, in relation to this image, and what difference can we make in the world of international law, scholarship and practice – based on what we see in the image? At this stage, it is helpful to recall Bennett’s methods of doodling, decanting and dividuation (2023). Stay with the image to see what transpires once it is aerated, doodle on the image and de-individuate yourself from it.

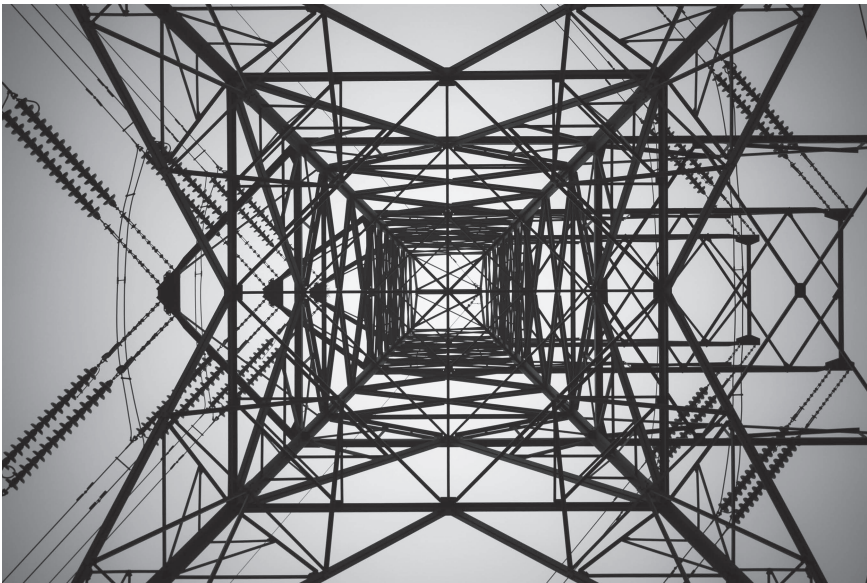


FIGURE 1.2 To make a ‘cut’.

The cut I have made in the image (Figure 1.2) is made from a particular angle, using several different media (a camera, digital and printing technology). With Haraway's words it emerges as 'situated knowledge' from which we perform our knowledge-making (1988). Since no one, Haraway argues, can see from all directions simultaneously it follows that we all see what we see from a particular point of view. In Figure 1.2 the cut is made from a terrestrial situated position, forcing our gazes to see and analyze from an angle where the 'self' – the gaze as well as the analysis – is the same as the situatedness and position. Any knowledge derived from Figure 1.2 – in other words, any analysis or international legal norm – is therefore privileging *one* particular perspective above others: a terrestrial, human – we assume – perspective, de-prioritizing – while still recognizing – some other perspectives while 'de-selecting' yet others (Braidotti 2019: 164; Arvidsson in Arvidsson *et al* 2024). Drawing on the methodological insights presented earlier, what happens if we probe the limits of the perspective to see from within the position the metal of the steel-frame in the image? Does that change our point of view? Does it change what we can see, feel, smell and hear? Does it matter? Yes. In international law terms it matters if the departure point is enabling human free and equal trade in steel for profit, or if it is from the perspective of metals as ending planetary resources – its industrial refinery methods being ecologically unsustainable. What happens if we 'edit in' and make visible the humans whose labor made the construction possible? Does it make a difference? Yes. It becomes a question of international labor and human rights law. Or, furthermore, if we were to make a relational chart of all the individuals and entities connected through the technology embedded in and made possible through the construction pictured in the image? And the ones affected, as they walk or fly by, sensing the vibrations of metal and electricity? Would we then have an entirely different material set of problems for our international law and technology analysis? Yes. What if we decant the image until the nonhuman encounters transpires and are made to matter (to us, to international law)? And if we, furthermore, add the camera itself as a mediator and as a diffractive tool, does it change the international legal analysis? Yes. Of course. Which human and nonhuman creatures taste the metal and its afterlives? Which fleshy changes do the radio waves enact on different bodies? How are earth and air felt/imagined in this image? What laws might be invoked against my trespass under the structure – and who or what may pass the frameworks of international law unseen, unheard and unrecognized?

The image *can* be of a field of international law. But it can also be of international legal 'things'. It can be an international legal question, principle or topic – the subject in international law or obligations *erga omnes*. Can you see it? The image may further be one of issues, problem and phenomena that doctrinal international law does not cover, have ready-made answers to or have a language for, at least not explicitly so: the image may be analyzed

in terms of inter-species communication, international data harvesting or international trade in digital identities made possible through what is ‘there’, within the cut we made. There is, in principle, no limit to what we can consider or sense. And: whose survival is at stake in the cuts made, and the differentiations and hierarchizations that follow? Who, in Braidotti’s words, is ‘de-selected’ (Braidotti 2019: 164)? Posthuman feminist ethics involves not only locating those power relations played out through the cuts/differentiations/hierarchizations/de-selections made but also to address them with an aim to make a change for a better and fairer world.

While other theoretical and methodological frameworks – such as Third World Approaches to International Law (TWAIL), Marxism and feminism – offer possibilities of other ways of ‘cutting’, posthuman feminism allows the ontological and epistemological moves of the cut to be part of the analysis. Thus, in contrast to parts of TWAIL, Marxist and feminist international legal scholarship, posthuman feminism offers international law, its scholarship and practice an analytical tool with, on the one hand, a situated, transparent and self-reflexive theoretical and methodological framework of analysis and, on the other hand, a multidisciplinary/multi-methodological analytic approach to the posthuman condition – the conjunction of posthumanism and post-anthropocentrism defined by three related phenomena: the height of technological advancement, the intensification of advanced capitalism and the catastrophic sixth extinction in the Anthropocene.

Example 2: Posthumanitarian International Law

The next two images move us into the field of IHL, technology and AI, a field where posthuman international legal scholarship have expanded exponentially (Arvidsson 2018, 2020, 2021, 2023b; Arvidsson and Sjöstedt 2023; Heathcote 2018; Jones 2018, 2023; Wilcox 2017). It features all of that which has brought about the posthuman condition: the conjunction of posthumanism and post-anthropocentrism defined by the height of technological advancement – including international law’s response to autonomous weapons (Jones 2021, 2023) and AI (Arvidsson *et al* 2024; Arvidsson and Noll 2023), the intensification of advanced capitalism – and international law’s entanglement with it (Tzouvala 2019; Käll 2022) not the least as part of the military industrial complex (Arvidsson 2018, 2020), and the catastrophic sixth extinction in the Anthropocene (Jones 2023; Petersmann 2021b).

In Figure 1.3, we may think that we see a human warfighter. But do we? We see a helmet, parts of a uniform, a weapon and we see a few human fingertips – or so it seems. Taking the basic categories of human/nonhuman into consideration: where does the human start, and where does the ‘other’, the weapon and the uniform, begin (Arvidsson 2018, 2021; Heathcote 2018; Noll 2014; Parsley 2021)? These are questions easy to answer in doctrinal international law . . . or are they? There is, in fact, no definition of ‘the human’ in IHL (Arvidsson



FIGURE 1.3 A ‘human’ warfighter.

2018. Compare: *The Geneva Conventions of 1949* and *Additional Protocols I and II of 1977*; Henckaerts and Doswald-Beck 2005), yet in IHL targeting and the use of semi-autonomous weapon systems there must be a ‘human in the loop’. Who, or what, is ‘human’ in the human warfighter-uniform-neurostimulation-pharmaceutically enhanced-technological-media-mud-air body performing IHL targeting in contemporary technology-intensive warfare? Even with the best and sharpest of distinctions, doctrines and international legal arguments the question is not easy to answer. The suggestion from posthuman feminist jurisprudence is that the question is not the one that international law, scholarship and practice should be most concerned about. Instead, I and many other scholars with me have argued, the relevant question for international law is to how to curb lethal planetary destructive violence on all levels – regardless of it is ‘artificial’, ‘human’, ‘natural’, combined or otherwise (Arvidsson 2018, 2020, 2021, 2023b; Arvidsson and Sjöstedt 2023; Jones 2023; Parsley 2021).

Much of the weapons technology debates – but also those of AI – have centered on understanding the technology, *assuming* it to be different from, and distinctly not, human. But do we already know what the ‘human’ is or can be? A posthuman feminist answer is that ‘the human’ is not a stable

category, but one often used to exclude and dominate both human and ‘non-human’ others (Arvidsson 2018, 2020).

Can the figure in Figure 1.3 be ‘human’? Is it a ‘human in the loop’ of IHL and targeting? Or is that figure rather a posthuman entity of material agencies, relations, and technologies: that of a material human body, of a military uniform providing an exoskeleton to enhance the physical capacity of the human body (Heathcote 2018), and of a neuro-enhanced human brain using pharmaceutical drugs and electro-stimulation to elevate the human capacity to interact with the weapons-system it is part of (Noll 2014)? Is it rather a weapon that acts in concert with the neuro-enhanced brain? The list could go on: where does the human subject start and end, and where is the agency of nonhuman entities creating something entirely new: a posthuman, rather than a human, in the loop. The question is relevant to international law as humans are regulated in an entirely different way compared to weapons systems. Who, or what, is it? What would be a better way of regulating ‘it’— better than to just ‘assume’ that the established categories are the best available?

If we look at Figure 1.4, the cut is made differently as compared to Figure 1.3. The human warfighter emerges as part of a broader field: as a field of grass, as part of the human and nonhuman environment (Arvidsson and Sjöstedt 2023). Or should we see this as a body of water (Neimanis 2017; Heathcote 2023) and hydrospheric legal relations? Whose private or public property emerge in the image? What minerals, atoms and germs are forming the dividual relations the image reflects? Who and what is de-selected through the international legal normativities in the cuts we make in analyzing the image? What about the smells, tastes, and sounds? The earthly vibrations as heavy tanks roll by, making the straws of grass tremble?

Posthuman feminism always pushes the sensing toward reconsidering the present in new ontological and epistemological registers: of human–nonhuman relations, of nature–technology relations, of the makings of advanced capitalism through the resourcification of nonhumans, of the ongoing climate changes, and of planetary destruction and the extinction of ever-more species. Posthuman feminism asks of you to consider the figurative as well as the empirical dimension, regardless of what you decide to analyze: and to go on and act. Do so as part of posthuman feminist alliances because, as Braidotti puts it, ‘We-Are-All-In-This-Together-But-We-Are-Not-One-And-The-Same’ (Braidotti 2009: 32).

Conclusions

One of the reasons international law lends itself so well to posthuman feminist analysis is that it builds on abstract categories of distinctions, separations and ordering. These have for the most part some, but not necessarily convincing, relations of descriptive force to that which international law seeks



FIGURE 1.4 A human–nonhuman environment.

to order. In other words, international law seeks to describe that which it orders in ways that are convincing to those who are to recognize international law's normative power (Orford 2012). This means that international law's categorizations and distinctions are only relevant if, and to the degree that, they can convincingly describe that which it seeks its order. For this reason, international law is in a constant need of theoretical and methodological frameworks that can offer opportunities for the international legal scholar and practitioner to see, sense, cut and (re)describe the new – and old – in more relevant ways (Aristodemou 2014). As the world changes – through scientific findings and technological innovations, geopolitical disruptions or 'natural' and human-created disasters – international law adapts, it stretches and bends. It is the task of international lawyers – scholars and practitioners – to 'bend' creatively, critically and ethically.

In this chapter I have shown how posthuman feminism can work as a theoretical and methodological approach to international law to stretch and bend, probe and reconfigure it – while staying within, as Jones puts it, ‘international law’s constraints when doing so’ (2023: 155). Setting out some fundamentals about posthuman feminism, I have argued that that it can help international legal scholars and practitioners to pursue new ways of seeing and sensing our contemporary world, with its problems and possibilities: to cut the frames of analysis differently, to probe international law’s categories to reconsider and reconfigure dichotomic and hierarchical notions of oppression, exclusion and predatory violence. Toward this end, I have provided some examples, primarily from the field of IHL and technology.

Drawing on posthuman feminist theory, and working within the current posthuman condition, the aim of this chapter has been to attend more carefully to methodology in posthuman feminist international law. Thus, when working as international lawyers, in this world, what I have argued that we can do is no less than to *not* repeat the mistakes of those who came before us; to make use of posthuman figurations and make new methodological ‘cuts’ in international law to approach the material and figurative anew and toward less destructive aims; and to take serious the questions of what difference we can make in the world of international law, scholarship, practice and beyond for a more hopeful present and futures.

Acknowledgments

The research for this chapter has been generously funded by the WASP-HS research grant *AI, The Social Contract, and Democracy*. I want to thank Emily Jones and Gina Heathcote for their generous comments on the chapter, as well as the participants of the Asser Institute Spring Academy on AI and International Law, 2023, the Hague, for their engaged comments and discussions.

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