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## Amazon in flames: for a multilevel environmental transnational governance

### *Amazonía en llamas: para una gobernanza transnacional ambiental multinivel*

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## ABSTRACT

This paper allows an analysis of transnational governance perspectives for the protection, defense and management of natural resources of planetary dimensions, such as the Amazon, which has been strongly impacted by the recent burnings of widespread media dissemination, heated diplomatic debates and the performance of non-state actors. The problem that is analyzed is the adequate understanding of the meaning of nation state and sovereignty, as well as its repercussion in the effective protection of juridical goods with planetary dimension. The approach starts from an analysis of Amazonian burning and the challenges of good environmental governance; discusses the state crisis and state sovereignty as concepts that demand redefinition. Finally, it argues for the need for multilevel environmental transnational governance, as a joint strategy to promote sustainability in a global perspective and to defend and protect the Amazonian natural resources. The research consists of bibliographic research produced from inductive logic-based methodology.

**Keywords:** transnationality; multilevel environmental transnational governance; Amazon.



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## **RESUMEN**

Este artículo permite un análisis de las perspectivas de gobernanza transnacional para la protección, defensa y gestión de los recursos naturales de dimensiones planetarias, como la Amazonía, que se ha visto fuertemente afectado por los recientes incendios de la difusión generalizada de los medios, los acalorados debates diplomáticos y el desempeño de actores no estatales. El problema que se analiza es la comprensión adecuada del significado del estado nación y la soberanía, así como sus reflejos en la protección efectiva de los bienes jurídicos con dimensión planetaria. El enfoque parte de un análisis de la quema de la Amazonía y los desafíos de la buena gobernanza ambiental; analiza la crisis del estado y la soberanía del estado como conceptos que exigen la redefinición. Finalmente, defiende la necesidad de una gobernanza transnacional ambiental multinivel, como una estrategia conjunta para promover la sostenibilidad en una perspectiva global y para defender y proteger los recursos naturales amazónicos. La investigación consiste en una investigación bibliográfica producida a partir de una metodología inductiva basada en la lógica.

**Palabras clave:** transnacionalidad; gobernanza transnacional ambiental multinivel; Amazonía.

## **1. Introduction**

A planetary spatial vocation of environmental law is permitted in cases that cause damage and disasters that go beyond the geographic dimensions of the nation state. There is a legitimate interest of all mankind in adopting preventive and harm-mitigation measures and strategies that are cross-border. Therefore, the protection of the environment, in its multiple dimensions, over decades and legal documents is now understood as a common good, which is why it poses new challenges to the postulates of sovereignty, territoriality and state authority.

The recent burning in the Amazon also serves as a striking example of the transnational mobilization of countries, institutions and people in favor of this common humanitarian axiological agenda. After all, the defense and protection of the Amazonian natural resources matter and concern the entire planet as an intergenerational common good.

From this background, the problem that emerges in this article is the analysis of the adequacy and sufficiency of the current model of classic governance in the mold of a nation state, endowed with pretended sovereignty, as some political and military leaders still boast. In a general sense, globalization promotes a radical change in the powers in operation at the most diverse levels, including ideological, institutional and normative power, with the respective social interactions that always find new arrangements.

To meet the objectives of this paper, multilevel transnational governance is understood not only to decentralize state actions and their relationship with civil society actors, but also to transnational relations, that is, beyond the nation state. The focus is on the highest possible empowerment, at all scales, so that the synergistic and multiplied performance of various actors can produce more consistent results.

The approach begins with the analysis of Amazonian burning and the challenges of transnational environmental governance; discusses the state crisis and state sovereignty as concepts that require redefinition and, finally, defends the need for a multilevel environmental transnational governance, as a joint strategy for promoting sustainability in a global perspective and for defending and protecting the Amazonian natural resources.

Regarding the methodology, the deductive method was used for the development of this research, operationalized by the operational concept's techniques and the bibliographic research.

## **2. Amazon burning and the challenges of good environmental governance**

One of the main threats to the Amazon region, directly related to deforestation, is the severe burns that occur continuously in the area, with serious damage to the rich local ecosystem.

In this year 2019, the severity of the burns has been even higher than in recent years. According to information from the American Space Agency (NASA), 2019 reached the worst burn rate since 2010. Considering a text posted in its Twitter account, "there is a noticeable increase in outbreaks of large, intense and persistent fires along the main highways in central Amazonia of Brazil". This conclusion is also confirmed by data from INPE (National Institute for Space Research), which also uses data from active fires recorded by NASA Modis sensors to monitor burns (G1, 2019).

The empirical studies about the tropical forests of South America complements this understanding and demonstrate the need to address the lack of regional cooperation on climate adaptation in the Amazon region (Tigre, 2019). This study provides a view of how a regional strategy could result in the provision of water security as a common public good. It follows, however, that this strategy has not yet materialized.

Due to the inertia of the South American countries on the subject of the preservation of their Amazonian biome, in June of this year of 2019 an agreement was signed between the Mercosur countries with the European Union, to encourage sustainable practices, especially with regard to respect for the preservation of the Amazon. For the Europe, the free trade agreement would result in the abolition of high customs duties on its manufactured products that are exported to the countries of South America. On the other hand, agricultural products from the Mercosur countries would have easier access to the European market.

In this sense, it is important to highlight that, according to research conducted by INPE (2019), the number of outbreaks of fire detected in 2019 peaked 48% over the previous year. Figures show an increase from 100,804 in 2018 to 149,177 this year.

Immediately thereafter, Harstad (2019) believes that today's accelerating deforestation in the Amazon is the most urgent problem on the planet, not only because we must conserve it in order to limit global warming to 2 degrees Celsius, but because this rainforest is the most biodiverse place in the world and, still home to several indigenous peoples.

Burning thus puts in question the health of the Amazon ecosystem. This is because if the forest shrinks to a critical threshold, it becomes too small to generate its own subsistence.

Precisely because of the large repercussions of burning on the international scene, under the trade agreement signed between Mercosur and the European Union, the chapter on sustainable development provides that countries cannot weaken their levels of environmental protection to stimulate trade and attract investments.

In this bias is that the free trade agreement not only aims profit, but mainly the sustainable development of the Mercosur countries, especially regarding the Amazon Rainforest.

According to Nasser (2019), this agreement prescribes the need to include in these texts the premise that economic development should not occur at the expense of the environment.

It is so important that the Mercosur countries value the preservation of the Amazon and its sustainable development, that several components of the European Union, in view of the events narrated, expressly express that they do not wish to sign a trade deal with countries that do not respect their biome.

Austria, Netherlands and France these are some of the countries that have already expressed their disagreement with the way the current Brazilian government has been dealing with fires and their consequences. This is because the environmental issue is central to the conclusion of the agreement.

In this regard, Environment Minister Elisabeth Borne points out in an interview with the BFM news channel: “We cannot sign a trade treaty with a country that does not respect the Amazon rainforest, that does not respect the Paris (climate) treaty. France will not sign the Mercosur agreement under these conditions” (OECD, 2019).

About the environment, it is the political choices and decisions of the present that will define the future. Brazilian environmental policy also influences the decision-making of investors and financiers, especially members of the European Union regarding the EU-Mercosur agreement, depends on their importance for the conservation of South American forests for a sustainable future.

Harstad (2019) Professor of Economics at the University of Oslo, points out:

It is insufficient for the EU to require a chain of certified products. This is because non-certified goods would simply be consumed on the domestic market or exported to buyers who care less about these environmental issues. Instead, trading partners must establish a guarantee as soon as possible, providing that the trade agreement with Mercosur countries - including Brazil - will not be ratified or continued unless conservation policies are reintroduced, laws are satisfied or indigenous rights are respected, according with the development of transparent and reliable monitoring.

Therefore, there are ways for Brazilian exporters to become allies - not enemies - in the fight against deforestation. However, it is known that Brazilian agribusiness, widely and unrestrictedly supported by the figure of its President Jair Bolsonaro, profits, precisely, by signaling the “development” of the Amazon.

Therefore, Brazil resists continuing to develop its conservation payment agreements with Germany and Norway, for example. This is because when these deals fail, other potential donors are discouraged from investing in Amazonian environmental conservation.

Still, regarding the Amazon, the President, at the UN General Assembly (2019) said that it is a “fallacy” to affirm that the Amazon is the lung of the world and a heritage of humanity: “They questioned what is most sacred to us: our sovereignty!”

In this sense, Jair Bolsonaro ratified his understanding that any initiative supporting the preservation of the Amazon rainforest must be treated in full respect of Brazilian sovereignty.

### **3. Nation-state crisis and the classical conception of sovereignty**

The deconstruction and requalification of institutes and categories, forged for other historical moments and different demands, practically integrate the theoretical common sense of jurists and internationalists.

However, what is intended in this study is not only to denounce its theoretical and practical insufficiency, but, above all, to identify and resignify remaining and indispensable forms of local action, especially regarding the protagonism of the states.

From this perspective, the relevance of the local and immediate action of the instituted public powers is not disputed, including the application of administrative and criminal sanctions with the management of the classical institutionality.

Hall and Biersteker (2009, p. 35) point out that public intervention is not sufficient to realize with the cogent force in the state authority, especially with regard to international environmental matters: "Being public, however, does not imply that a state or public institution should be engaged in or exercising authority, even though they may participate in its recognition - of authority - at times".

From the perspective of environmental protection, the territory is one of the elements considered by the classical conception as originating and inseparable from the nation state, which undoubtedly generates more incompatibilities.

According to Appadurai (1997, p. 49), "territory can be seen as a crucial problem in the contemporary crisis of the nation-state or, more precisely, in the crisis of the relationship between state and nation". It also emphasizes the same author that territory - once a commonsense justification for nation-state legitimacy - has become the focal point of the sovereignty crisis in a transnational world.

The diffusion of power relations, together with the complete reconfiguration of the most diverse bonds that take place on new scales, also requires the rethinking of the idea and the very function of sovereignty today.

The entangled relations between local companies, multinationals, public and private institutions, as well as multilateral organizations, generate a diffusion of bonds that can no longer be trapped within the regulatory framework of states. The market also plays strong in this arena and does not always allow it to be domesticated by traditional command and control mechanisms of the established institutionality.

On the other hand, there remains an essential and indispensable reserve for the nation-state, since only the nation-state can act as an articulator of solidarity on all levels through the imposition of duties and the recognition of multidimensional rights.

In a similar vein, the position of Koh (2006) is advanced, considering that the process of transnationalization of law is embodied in the complementarity of action of the actors

responsible for activating the process (transnational norm entrepreneurs) with governmental norm sponsors, developed in conjunction with transnational/global normative standards.

Thus, the law, as an instrument of protection and guarantee, must face diverse problems, such as conflicts of uniformity and national differences, competition from global-national-local norms, the attribution of competences, the regulation of capital and the north. global governance, the promotion of human rights, environmental preservation and planetary sustainability criteria, the fight against criminal networks, in short, a new and effective way of limiting an extremely fluid power, as is the current global order (Staffen, 2018, p. 48).

Such essential reserve protagonism is also salutary due to the greater fluidity between the actions of the state and the market, resulting from contemporary capitalism. About this term, prescribe Costa and Godoy (2019):

The globalization process provides changes in the world of consumption through strategies that reorganize the ways of accessing an increasing diversity of products through the extension of credit and the materialization of urban equipment articulated through networks formed around centers of interest that unite specific forces market share. These socio-economic and cultural metamorphoses that go beyond their functional and objective appearance, contribute to the identification of a new period that we call *contemporary capitalism*.

In this perspective, new multilevel transnational governance models must operate in two directions: one that overcomes the classic and outdated National state model by creating new spaces for governance; and the other that aggregates, promotes and coordinates the local action of states with global effects based on widely agreed axiological guidelines, such as the environment. Of course, these governance strategies can also occur in the context of private relations, provided that the minimum axiological guidelines that reflect true humanitarian achievements are respected.

This is also Real Ferrer's (2002, p. 73-93) proposal, when it teaches that it is not a matter of establishing a planetary republic, but rather the search for institutional mechanisms that ensure the effective materialization of solidarity, at the same pitch of inspiration for new transnational rights, as is the case with environmental law.

Biermann (2014) analyzes international governance in its general context. Its proposal is that a "horizontal" norm of environmental adaptability needs to be institutionalized in the fields of global governance in order to achieve an effective outcome.

Still at this juncture, Biermann (2014, p. 90) points out:

Until now, the scientific community has not sufficiently reflected on one of the main trends in global environmental governance that is becoming increasingly relevant to global climate policy: the transnationalization of environmental governance.

Dingwerth and Pattberg (2006, p. 185) understand global governance as the presentation of a set of governance efforts in a multilevel system, marked by the intrinsic linkage of local and global political systems.

#### **4. Towards multilevel environmental transnational governance**

Traditional governance structures, designed and operationalized for previous time's demands, are in a state of constant obsolescence. This diagnosis calls for theorization and implementation of new governance strategies.

In this sense, governance could be defined as a set of instruments used for the development, research and production of resources, both for political influence and for normative production. As a rule, such production derives from the triangular dynamics among rulers - governed - public. According to statements made by Kooiman, Bavinck, Chuenpagdee, Mahon & Pullin (2008), governance is regarded as a term of order in the social sciences and, similarly, in the political sciences. Thus, the term acquires different meanings depending on who uses it. These differences basically concern the role that the state plays in the normative as well as the analytical sense. Governance is seen not only in horizontal networks, but also in all kinds of vertical arrangements of government between public and private entities.

In the same sense, Bulkeley, Andonova, Betsill, Compagnon, Hale, Hoffmann, Newell, Paterson, Roger & VanDeveer (2014, p. 203), expose that transnational governance is a form of global governance that concerns joint efforts "between state and non-state actors as they interact across state borders".

Today's demands, mainly due to their magnitude and complexity, require different answers and different forms of treatment. They also test political models of social organization, such as the nation state, and stimulate the development of new governance strategies.

After all, as pointed out by Cruz & Bodnar (2016), it is on the edge of the confines of the nation-state that many transnational issues (such as the environment) emerge challenging, particularly regarding good governance strategies.

Notably the processes of globalization increasingly created a world territory, a new supranational and transnational order that allows the circulation of people, ideologies, capital, goods, goods and services, which demonstrates the reduction (crisis) of the state and institutes instruments of global governance (Staffen, 2015, p. 1166). In this regard, the growing relevance of non-state and transnational approaches to climate change mitigation is emphasized, at a time when the intergovernmental negotiation process needs to overcome a substantial impasse and the international arena becomes increasingly fragmented (Pattberg and Stripple, 2008, p. 90).

Research on transnational adaptation can anticipate future developments and make contributions on the subject from the perspective of good governance practices. In addition, an important focus to be analyzed from the multilevel perspective of transnational governance is the necessary partnership that must be established with non-state actors and with strong involvement in planetary axiological dimensions such as environmental protection and defense.

Along with the idea of state sovereignty, the strength that the new actors and their behavioral patterns exert, including the protection of the environment, should be highlighted. National sovereignty in political, social, economic and legal matters is increasingly constrained by political, economic and governance interdependencies between states, international organizations and transnational actors, including standards at the global level. This has

become particularly salient since the political, economic and social episodes of the last thirty years. The decline of national autonomy, sometimes seen as the “end of the state” has given rise to political, institutional and legal pressures on normative production within each state, with exogenous and endogenous flows working simultaneously.

Banda (2018, p. 988) and Gupta, Van der Leeuw & de Moel (2007, p. 137) systematically identify a multilevel governance model of transnational adaptation, with the aim of optimizing efforts and avoiding overlapping legalism with respect to the effectiveness of cross-border governance itself.

To understand this approach, Dzebo and Stripple (2015, p. 423) propose a concept for transnational adaptation as:

The adaptation that occurs beyond the borders of states involves, to a certain extent, non-state actors. It is a heterogeneous perspective of transnational governance, as it concerns cases of adaptation with other structures - and consequent problems - and observes other scales beyond national borders.

Once the relevance of multilevel governance is highlighted, Chan and Amling (2019), just like Dzebo (2019) and Papin (2019), share the perception that transnationalization may be the next iteration of climate governance adaptation development.

Thus, the noticeable becomes the need for a diversified and multilevel governance approach. According Bülow (2010) and Zajak (2014) in recent times, there is a significant call for a more longitudinal perspective in the field of transnational activism.

The issue of governance is also featured among the goals of the UN 2030 agenda. In this sense, objective 16 deserves to be emphasized, as it categorically prescribes the mission of “promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels” (Agenda 2030, 2019).

From this general objective, specific goals were set, and among them, the development of responsible, transparent and effective institutions, as well as ensuring that decisions are made in an inclusive, participatory, responsive and representative manner, are highlighted. Finally, one of the objectives that stands out directly for Brazil is to expand and strengthen the participation of developing countries in global governance institutions.

At the same time, the phenomenon of legal globalization, the progressive implementation of governance practices and the use of various indicators, rankings, indexes and observatories have produced a combination of limited national political autonomy and increasingly executive decision-making on specialized regimes in the world. transnational level. For this reason, the debate on the burning of the Amazon, the attitude of the Brazilian government and the means of mitigation and prohibition of environmentally reprehensible acts, took place mostly by the joining of transnational actors, exerting institutional articulation from the outside, pragmatically, fluid and fragmented, but always with the aim of multilevel environmental protection.



Given this scenario there are explanations for the interference of non-governmental organizations (Greenpeace, vg), bureaucratic organs of sovereign states without any relation of international law (NASA, for example), supranational institutions (European Union, Mercosur, UNASUR), companies (Cargill, Bunge, Kipling), churches (Amazon Synod, Roman Catholic Church) and investment funds (ESG - Enviromental, Social and Governance Fund).

Finally, the protection of the environment, under the bias of legal as well as the common good, completely challenges any act of justifying degrading conditions by the building of national sovereignty. Therefore, for pragmatic and/or teleological reasons, the circulation of transnational actors through governance devices fills a relevant legal, political, technical and institutional gap. Advocating in the opposite direction it will create new legal utopias or it will invigorate the maxim: “who will take care of caregivers?” When the meaning of responsibilities is only vertically measured.

## **5. Final considerations**

The recurrence of events of economic, political, environmental, sanitary, humanitarian, energy crises, as well as the rise of risks arising from the terrorist threat and corruption, has accelerated the formation of polycentric clusters for the management and regulation of these new manifestations. On the other hand, the accelerated development of new technologies, goods and services, led to the regulation of these from different state-owned flows.

In this sense, at a time when the substantial rise of indicators and other means of governance filled the spaces and relocated traditional models at the international level, mainly due to their specialized and comparative nature, the case of forest fires in the Amazon became part of the agenda. international contracts, in public demonstrations with government officials and, mainly, foreign politicians.

The acts of globalization of the legal system provide instruments for the establishment of channels for opening and interpenetrating the normative precepts established by multiple agents of public and/or private nature, who, in addition to their contribution to the production of the norm, exercise powers of control and correction, together with or instead of state bureaucratic functions.

Thus, the recent and still ongoing case of burning in the Amazon area serves as an impetus for measuring and assessing the need for a multilevel environmental transnational governance as an instrument of defense of the common good of paramount importance. In addition, the notion of sovereignty cannot serve as a shield for such desideratum, since, in essence, it would enable a seditious discourse denying the dignity of the human person, human rights, and specifically the sound and appropriate intergenerational environmental quality.

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