

ECONOMIC RECOVERY VS. ENVIRONMENTAL COOPERATION: A MADE-UP CONTRADICTION?

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1. INTRODUCTION

The health crisis caused by Covid-19 pandemic can be investigated in parallel with the environmental crisis.

Due to its rapid spread, Covid-19 was declared a global pandemic by the World Health Organization on March 11, 2020. In his statement at that occasion, WHO's Director-General stressed that Covid-19 was not just a public health crisis, but one that could impact various sectors.²

Although there is still no scientific consensus regarding the origins of the new coronavirus, the most widely accepted hypothesis so far is that Covid-19 is a zoonotic disease that first passed to people from a still unidentified animal.³ A laboratory origin of Sars-Cov-2 was found to be extremely unlikely.⁴

On the other hand, the environmental crisis also manifests in various ways, such as depletion of natural resources, extinction of species and climate change. It started to be perceived as a global problem from the 1970s, when discussions that were restricted to academic and social circles were elevated to the international political agenda through the United Nations.

Considering the likely zoonotic origins of the Covid-19 pandemic, it has been argued that the current health crisis may be potentially related to the environmental crisis, as the ecological imbalance, deforestation, the loss of biodiversity and of natural habitats are potential sources for new zoonotic diseases.

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² *Timeline: WHO's COVID-19 response*, WORLD HEALTH ORGANIZATION (n.d.).

³ WORLD HEALTH ORGANIZATION [WHO], WHO-CONVENED GLOBAL STUDY OF ORIGINS OF SARS-CoV-2: CHINA PART. Joint report 119-120 (Mar. 30, 2021a); Smriti Mallapaty, Amy Maxmen & Ewen Callaway, *Mysteries Persist After World Health Organization Reports on Covid-Origin Search*, 590 NATURE, Feb. 18, 2021 at 371, 371-72.

⁴ WHO, *supra* note 2, at 119-120.

In fact, most pandemic-causing viruses – including HIV/AIDS and Ebola – come directly or indirectly from wildlife, with more than 30% of new diseases reported since 1960 being linked to deforestation⁵, a practice that disturbs natural habitats and favors spillovers.⁶

Both the sanitary and the ecological crises, although disproportionately affecting some segments of society, project their effects globally; therefore, they must be addressed at the international level. Though domestic measures are important, effective solutions can only be achieved through international cooperation.

2. COOPERATIVE MEASURES TO TACKLE THE ENVIRONMENTAL CRISIS

One of the main negative outcomes of the environmental issue is global warming, which is seen as a global problem that demands a cooperative solution at least since 1992, when the United Nations Framework Convention on Climate Change – UNFCCC was negotiated. In its text, the participating countries acknowledged “*the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities*”.⁷

Likewise, the Paris Agreement, adopted in 2015 under the UNFCCC, established a common goal⁸, to be achieved through Nationally Determined Contributions – NDC’s, which consist of ambitious and progressive efforts to reduce greenhouse gas emissions, defined by each participating country according to the main goal set out in the Agreement.

In this sense, the Paris Agreement can be considered an instrument of harmonisation, as it determines a common goal and a common mechanism to achieve it. The recognition of common but differentiated responsibilities enforces the idea of harmonisation, instead of uniformity, as local efforts are tailored according to the characteristics of the proponent.⁹

⁵ Mariana M. Vale et al., *Could a Future Pandemic Come From the Amazon? The Science and Policy of Pandemic Prevention in the Amazon*, ZENODO, Mar. 15, 2021a, at 2.

⁶ One single study carried out in the Amazon isolated more than 180 different species of viruses in Amazonian vertebrates, two-thirds of which have been confirmed to be pathogenic to humans (Vale et. al., *supra* note 4, at 3).

⁷ United Nations Framework Convention on Climate Change [UNFCCC] FCC/INFORMAL/84/Rev.1 GE.14-20481 (E) (1992).

⁸ Consisting in “[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels” (Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015[hereinafter Paris Agreement], art. 2).

⁹ Article 4.4 of the Paris Agreement states: “Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue

In addition, the Paris Agreement functions as an instrument of legal harmonisation, as it furthers the enactment of national legislations to comply with it. Indeed, all Parties to the Agreement passed at least one law or policy concerning climate change.¹⁰

3. IMPACTS CAUSED BY THE HEALTH CRISIS

The need for cooperative solutions is also present in the health crisis. Concerted actions are necessary to contain viral proliferation, and immunization efforts can be rendered useless if restrained to a single or a few countries, as the spread of the coronavirus in other countries gives rise to the emergence of new variants that may spread more quickly and may even be, at some level, immune to existing vaccines.¹¹

However, instead of the experience in tackling climate change inspiring cooperative solutions to the current health problem the contrary occurred: the pandemic context negatively affected the international cooperation efforts to reduce emissions of greenhouse gases as many countries turned to state-centric solutions to protect themselves.

On one hand, many natural protected areas faced the suspension or reduction of activities, including surveillance and monitoring, due to cuts in funding and lack of personnel because of social distancing. This made way to the increase of illegal activities like logging, poaching and fires, and affected the livelihood of traditional populations, especially in less developed regions, such as Africa, South Asia and Latin America.¹²

On the other hand, even though economic activities and air travel were scaled down because of the pandemic, causing 2020 emissions to be lower than in 2019, “*GHG [greenhouse gas] concentrations in the atmosphere continue to rise, with the immediate reduction in emissions expected to have a negligible long-term impact on climate change*”.¹³ The measures adopted to foster economic recovery from the pandemic will be crucial to determine if the gap

enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances” (Paris Agreement, *supra* note 7).

¹⁰ LITIGÂNCIA CLIMÁTICA: NOVAS FRONTEIRAS PARA O DIREITO AMBIENTAL NO BRASIL 23 (Joana Setzer, Kamyła Cunha & Amália S. Botter Fabri eds., 2019) (Braz.).

¹¹ WHO, *The effects of virus variants on COVID-19 vaccines*, WORLD HEALTH ORGANIZATION, Mar. 1, 2021b.

¹² John Waithaka et al., *Impacts of COVID-19 on protected and conserved areas: a global overview and regional perspectives*, 27 PARKS, THE INTERNATIONAL JOURNAL OF PROTECTED AREAS AND CONSERVATION (SPECIAL ISSUE) 41, 41-56 (Adrian Phillips & Brent A. Mitchell eds., 2021).

¹³ UNITED NATIONS ENVIRONMENT PROGRAMME [UNEP]. *Emissions Gap Report 2020 - Executive summary* IV (2020).

between current greenhouse gas emissions and the reductions needed to meet the Paris Agreement's goals will increase or decrease.

If recovery measures are based in fossil fuel intensive activities, GHG emissions should rise when compared to pre-Covid-19 scenarios. Conversely, if the opportunity to start a low-carbon transition is seized, emissions are expected to decrease significantly¹⁴, meeting both goals of achieving zero net-emissions of GHGs and promoting development, as set in the United Nation's Sustainable Development Goals.

Despite this, in many cases environmental policies were set aside as economic recovery measures were prioritised. Considering the data available in October 2020, "*COVID-19 fiscal spending has primarily supported the global status quo of high-carbon economic production or had neutral effects on GHG emissions*".¹⁵

4. THE BRAZILIAN CASE

The situation in Brazil provides a clear example of this. Several measures and omissions raise doubts concerning the directions that will be taken towards post-pandemic economic recovery.

At the beginning of the pandemic, in April 2020, the country's former Minister of Environment¹⁶ claimed in an official meeting that the government should "profit" from the "public distraction" caused by the pandemic to pass bills weakening environmental protection.¹⁷ Unfortunately, this intent seems to be succeeding, as environmental regulations were weakened, public bodies dedicated to the subject were extinguished and inspection forces of federal environmental agencies were dismantled.¹⁸ As result, in June 2019 (first year of President Jair Bolsonaro in office), deforestation rates were 57% higher compared to the previous year¹⁹ and, in July 2020, this rate was 9.5% higher.²⁰

Besides, federal government has stopped demarcating indigenous lands, has transferred this task from the National Indigenous Foundation to the Agriculture Ministry, despite its

¹⁴ *Id.*

¹⁵ UNEP, *supra* note 12, at XI.

¹⁶ In June 2021, the Minister left office, amid accusations of involvement in favoring illegal logging.

¹⁷ Jake Spring, *Brazil minister calls for environmental deregulation while public distracted by COVID*, REUTERS, May 22, 2020.

¹⁸ Mariana M. Vale et al., *The COVID-19 pandemic as an opportunity to weaken environmental protection in Brazil*, in 255 BIOLOGICAL CONSERVATION 1, 1-5 (Amanda Bates et al. eds., 2021b).

¹⁹ RICARDO ABRAMOVAY, *AMAZÔNIA: POR UMA ECONOMIA DO CONHECIMENTO DA NATUREZA* (2019) (Braz.).

²⁰ Carolina Dantas, *Desmatamento na Amazônia cresce 9,5% em um ano e passa de 11 mil km², aponta Inpe*, G1 (30 nov. 2020) (Braz.).

potentially conflicting interest, and considers permitting economic activities such as mining in these areas.²¹

This set of measures that sacrificed environmental protection and, therefore, international commitments assumed by Brazil on this subject, were challenged before the Supreme Court in several lawsuits. Even though there are no decisions on merits yet, the preliminary decisions indicate the Brazilian Supreme Court considers that the international commitments undertaken by the country to contain climate change can guide the interpretation of the constitutional duty to protect the environment.

One of these lawsuits discusses the lack of implementation of projects funded by the Amazonian Fund, an initiative designed in Brazil to support actions destined to reduce GHG emissions caused by deforestation, in compliance with the REDD+ mechanism.²² At the end of March 2020, over R\$ 1 billion²³ awaited destination, and changes in governance structures, extinguishing a council formed by government and civil society representatives, created a diplomatic incident with donor countries that can impact their donations. According to Justice Rosa Weber, this created “*a scenario of insufficient protection of the Amazon biome*”.²⁴

In a similar way the Court, in a preliminary decision concerning the paralyzation of a fund created to implement measures of mitigation and adaptation to climate change, acknowledged the existence of “*a continuous, progressive and worrying trajectory destined to empty Brazilian public policies in environmental issues*”²⁵, leading to an “*unconstitutional state of affairs*” capable of compromising international credibility and funding capacities of Brazil.

²¹ Lucas Ferrante & Philip M. Fearnside, *Brazil threatens indigeous lands*, 368 SCIENCE, May 1, 2020, at 481, 481-482.

²² REDD+ (Reducing Emissions from Deforestation and Forest Degradation) is a cooperative mechanism provided for in Article 5 of Paris Agreement (Paris Agreement, *supra* note 7), which reads:

“1. Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4, paragraph 1 (d), of the Convention, including forests.

2. Parties are encouraged to take action to implement and support, including through results-based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for: policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries; and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches.”

²³ From a sum of approximately R\$ 3.5 billion, formed by donations from Norway (R\$ 3.186.719.318,40 = 91%), Germany (R\$ 192.690.396,00 = 5,7%) and Brazilian company PETROBRAS (R\$ 17.285.079,13 = 0,5%).

²⁴ STF [Supremo Tribunal Federal], ADO 59, Relatora: Min. Rosa Weber, 31.08.2020 (Braz.).

²⁵ STF, ADPF 708/DF (previously ADO 60/DF), Relator: Min. Luís Roberto Barroso, 28.06.2020 (Braz.).

Regarding the lack of adequate measures to protect indigenous people from Covid-19, the Supreme Court issued a provisional measure determining the confection of a “*Plan for Coping with COVID-19 for Brazilian Indigenous Peoples*”, which is currently ongoing.²⁶

5. CHALLENGES TO HARMONISATION IN A POST-PANDEMIC FUTURE

Both sanitary and environmental crises project their effects globally and, therefore, require shared solutions. In a globalized society, state-centric solutions do not seem to be effective to tackle these problems.

Change is inevitable; the choice is whether it will occur as a chaotic response to a disruption or as carefully planned transition towards a system that does not overlap the physical limits imposed by the environment and the moral limits expressed in our ethical values.²⁷

Covid-19 showed us how dramatic abrupt change can be, and how inefficient state-centric solutions in a globalized world can be. This should encourage us to plan a collaborative transition to a more cooperative, inclusive and green future, which will equally have the effect to avoid or reduce the risks and/or impacts of a future new pandemic, as well as the loss of lives and of social advances that this entails.

Furthermore, the only way to meet the goals set in the Paris Agreement is to promote a post-Covid-19 economic recovery based on decarbonizing and decoupling the economy.²⁸ If we keep business as usual, we will face an average increase in global temperature of 3° C compared to pre-industrial levels, with potentially catastrophic consequences to human existence.²⁹

Although indisputably necessary, the transition is not expected to be easy, as it requires a reformulation of traditional concepts such as national sovereignty, as collaborative solutions challenge the idea of unconditional national self-determination on behalf of attaining internationally elected goals.

At some level, though, this prioritisation of common goals can already be seen in climate change litigation, as national courts are being called upon to enforce international

²⁶ STF, ADPF 709 MC/DF, Relator: Min. Luís Roberto Barroso, 08.07.2020 (Braz.).

²⁷ HERMAN E. DALY & JOSHUA FARLEY, *ECOLOGICAL ECONOMICS: PRINCIPLES AND APPLICATIONS* 11 (2d ed. 2010).

²⁸ UNEP, *supra* note 12.

²⁹ IPCC, *Summary for Policymakers*, in *GLOBAL WARMING OF 1.5°C at 3, 18* (Valérie Masson-Delmotte et al. eds., 2018).

commitments.³⁰ Legal instruments can work as fundamental tools to promote change, as they can institutionalize shared values and enforce collaborative solutions that prioritise common good in detriment of individual interests.

Relying on this framework, the next steps of the research aim to analyze whether post-pandemic economic recovery measures promote cooperation towards common goals or prioritise national interests, and in which extent these measures harmonise with the goals set out in the Paris Agreement.

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³⁰ One of the most famous examples of this is the Urgenda Case, from the Netherlands, described in LITIGÂNCIA CLIMÁTICA, *supra* note 9, at 71-73.

Mariana M. Vale et al., *The COVID-19 pandemic as an opportunity to weaken environmental protection in Brazil*, in 255 *BIOLOGICAL CONSERVATION* 1 (Amanda Bates et al. eds., 2021b), DOI <https://doi.org/10.1016/j.biocon.2021.108994>.

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