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Sovereignty and the Environment: complaints of environmental crimes and the protection of indigenous peoples as mechanisms of international constraint to Brazil

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Abstract

The text discusses, in an exploratory way, how the environmental issue related to the Brazilian Amazon attracts international attention and potentially serves as a mechanism of external constraint in Brazil's internal affairs. Complaints of environmental crimes and crimes against indigenous peoples are debated in the international political environment, without considering Brazilian sovereignty on these and other topics. In some cases, such debates are used, as pretexts, to halt negotiations of trade agreements beneficial to the country. In summary, the text explores the concept of national sovereignty in the face of global pressures and the impacts of international agendas on Brazilian government action, pointing out that there are complexities and nuances of this geopolitical interaction, in addition to the common good of environmental preservation or the protection of indigenous peoples.

KEYWORDS

Sovereignty; Brazilian Amazon; Environmental Crimes; Mechanisms of Constraint.

Sovereignty and the Environment: complaints of environmental crimes and the protection of indigenous peoples as mechanisms of international constraint to Brazil

Tássio Franchi¹

1. Introduction

“National Sovereignty is a non-negotiable precept. However, external influence on decision-making is an everyday reality in different countries of the world.”

National Sovereignty is a non-negotiable precept. However, external influence on decision-making is an everyday reality in different countries of the world. Brazil is not the only country to suffer interference in matters considered internal. The expansion of the concept of security with the increasingly solid inclusion of environmental issues (connected with climate change) and the fact that the country holds one of the largest preserved areas of native forest on the planet makes it a focus of international attention. This is a *status quo* that the Brazilian state will live with during the 21st century.

Who has not already heard that there are international interests about the Amazon? Does anyone doubt that there are? In addition to the generalizations or conspiracy theories about the internationalization of the Amazon that circulate in different media, the fact is that other countries and supranational entities discuss issues related to the Amazon region and sometimes mention that the region does not belong to one country or another, but to the whole world. For example, in discussions in the US Senate, the following point was argued: “The Amazon River has long been recognized as an important repository of biodiversity and natural resources, **not only for local peoples and indigenous communities, but also for the rest of the world** due to [...]” (US/Senate, 2021, emphasis added).

But it is necessary to understand the core of this concern, which may be linked to the debate on climate change and the impacts resulting from it and affecting the world as a whole and not just some regions, as pointed out a few years ago by the reports of the Intergovernmental Panel on Climate Change – IPCC (Parmesan *et al*, 2022). They can also be connected with classic economic interests of access or denial of access to natural resources, economic agreements between nations, among others. Looking pragmatically, concerns about the Amazon are not about preservation *per se*, or its use in favor of the nations that own the territory. National interests guide in part the actions of the states² when referring to the region and demanding actions from the Brazilian government.

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2. A parenthesis: we are not addressing here the actions of Non-Governmental Organizations or Civil Society organizations focused on environmental preservation or ethnic-cultural preservation of specific populations. We are looking at the actions of states and their representatives.

5 | Sovereignty and the Environment

A validation of this pragmatic view can be thought of with a simple example. The most common environmental crimes in Brazil are those linked to the lack of basic sanitation, the disposal of solid waste and environmental pollution generated by industries and cities. But they do not appear daily in national and international newspapers. They do not draw the attention of most politicians and environmentalists and are not in the spotlight of global financing projects. They are ugly and dirty environmental crimes, but, except in some cases, they do not cause public commotion. A quick consultation of data regarding public sanitation in the northern region indicates that only 21% of households were served with sewage collection in 2021. That is, almost 80% of the sewage was discharged into rivers, streams, pits, and other sinks. This, in a population of approximately 17 million people in Brazil (Instituto Trata Brasil, n.d.). However, we do not find references to these types of crimes when we read international documents. The focus is on deforestation, illegal mining, or threats to indigenous peoples. All are serious crimes, but they do not directly and daily affect most Amazonians. But they serve other purposes well, as we shall see.

The text is divided into a first part that presents the supporting theories and some essential concepts, the sources of the data and a description of the analysis process. Next, we present and discuss the results found in the sources. Finally, the conclusions bring the final reflections and point out the need for further investigations.

2. Supporting concepts and theories

2.1. Environmental crimes: a very brief view of the legal framework

In Brazil, the definition of environment is established in the Federal Constitution of 1988, in article 225. This article consecrates the environment as a good of common use of the people and essential to the quality of life, imposing on the public power and the community the duty to defend and preserve it for present and future generations. Through the bias of environmental preservation, the actions date back to the imperial period, with the creation of the first national parks in the current state of Rio de Janeiro. But, looking at the issue of the definition of environmental crimes, the enactment of the National Environmental Policy (Brasil 1981, Law 6.938) established the Policy and created the National Environmental System (SISNAMA, for its acronym in Portuguese). Although it did not specifically define “environmental crimes”, it based government action on environmental protection. A relevant excerpt is: “Anyone who, in any way, contributes to the degradation of environmental quality will incur, in accordance with the law, imprisonment and fines” (Brasil 1981, Law 6.983, our translation).

Subsequently, with Article 225 of the 1988 Federal Constitution, several aspects of the environment were addressed, including the protection of fauna and flora, the prohibition of practices that endanger their ecological function, cause the extinction of species or subject animals to cruelty. Art.225 also provides for the need for pollution control, the preservation of areas representative of all ecosystems, environmental education, and the promotion of sustainable development.

Art. 225. Everyone is entitled to an ecologically balanced environment, which is common use of the people and essential to a healthy quality of life, being imposed to the Government and the collective the duty to defend it and preserve it for present and future generations.

§ 1 To ensure the effectiveness of this law, the Public Authority is responsible for:

“Art. 225. Everyone is entitled to an ecologically balanced environment, which is common use of the people and essential to a healthy quality of life, being imposed to the Government and the collective the duty to defend it and preserve it for present and future generations.”

6 | Sovereignty and the Environment

§ 2 Those who exploit mineral resources are obliged to recover the degraded environment, according to the technical solution required by the competent public body, in accordance with the law.

§ 3 Conduct and activities considered harmful to the environment will subject violators, whether individuals or legal entities, to criminal and administrative sanctions, regardless of the obligation to repair the damage caused (Brasil, 1988, Art.225, our translation).

Subsequently, in 1998, the Environmental Crimes Law was enacted. In this Act, conceptualization becomes more explicit, and penalties are determined. An example of determination of penalty can be found in Art. 54, which reads that “To cause pollution of any nature at levels that result or may result in damage to human health, or that cause the death of animals or the significant destruction of flora: Penalty – imprisonment, from one to four years, and fine (Brasil 1998, Law 9.605, our translation). Other laws were created and instituted as a way to complement legislation in specific sectors, such as the National Solid Waste Policy (Law N. 12.305, of August 2, 2010) and the Forest Code (Law 12.651, of May 25, 2012).

There is no specific law to typify mining as a crime, and it is usually framed using two laws. One of them is the aforementioned Environmental Crimes Law (Lei 9.605/98); and Law N. 8.176, of February 8, 1991, which defines crimes against the economic order and creates the Fuel Inventory System. It is interesting to point out that an illegal mining activity can be framed in two articles of Law N. 8.176 simultaneously - Art. 1 (§1) and Art. 2 (§1) - as the activity requires the use of machinery, it is necessary to transport and stock considerable quantities of fuels.

Art. 1 It is a crime against the economic order:

I – Acquire, distribute and resell petroleum products, natural gas and its recoverable fractions, ethyl alcohol, hydrated fuel and other liquid fuel, in disagreement with the rules established by law;

(...)

Art. 2 It is a crime against property, in the form of usurpation, to produce goods or exploit raw materials belonging to the Union, without legal authorization or in disagreement with the obligations imposed by the authorizing title. Penalty of imprisonment, from one to five years and a fine.

§ 1 The same penalty is incurred by those who, without legal authorization, acquire, transport, industrialize, have with them, consume, or sell products or raw materials, obtained as provided for in the caput of this article. (Brasil, 1991, Law N. 8.176, our translation)

The legal framework related to environmental crimes in Brazil is extensive and is not the central object in this text. The important thing is to understand the importance that issues related to environmental preservation have been taking on with the Brazilian state. Although authors argue that there are advances and setbacks in legislation (Ferraz da Fonseca, 2022), the fact is that there is a set of established rules that has been expanded in the last 50 years. The concerns of the state in not only demarcating to preserve, but monitoring, inspecting, and repressing environmental crimes, have at times extrapolated the different agencies and sectors responsible for the inspection and repression of environmental crimes, such as IBAMA, ICMBio, Environmental Police (Arm of the State Military Police), Federal Police, and even the Armed Forces (Paim, 2022).

“The idea of national sovereignty is fundamental to nation-states because it is at the basis of their functioning, in theory separating domestic from international affairs, and delimiting the entities that form the concert of nations.”

2.2. National Sovereignty and Global Agendas

The idea of national sovereignty is fundamental to nation-states because it is at the basis of their functioning, in theory separating domestic from international affairs, and delimiting the entities that form the concert of nations. The idea of national sovereignty in Brazil is explicitly mentioned in the 1988 Federal Constitution. In the preamble of the constitutional text, the role of the Democratic state to ensure sovereignty is emphasized, among other grounds, through Article 1, Item I: “The Federative Republic of Brazil, formed by the indissoluble union of the states and municipalities and the Federal District, constitutes a Democratic State of Law and has as its foundations: I – sovereignty” (Brasil, 1988, our translation).

With regard to international relations, article 4 of the Constitution defines ten guiding principles, some of which we can understand as intrinsically related to sovereignty, as is the case of principles I – National independence; III – Self-determination of peoples; and IV – Non-intervention (Brasil, 1988).

Principle IV on Non-intervention derives from the Westphalian ideal of non-intervention in domestic affairs of other states and its delimitation given by national borders. In practice, states are legally responsible for their domestic affairs, although there is pressure on some topics such as the environment and human rights. However, some Westphalian assumptions, such as equality between nations, do not survive the pragmatism of realistic views of the phenomenon, in which nations have different powers and allocate them according to their interests (Jackson, 2018). Formal dialogue between states or organizations of which they are officially part is still the basis for the creation of legislation and agreements.

In relation to the territory, the Brazilian Magna Carta establishes the political-administrative organization and the responsibilities of decisions about it. However, the image and prestige that countries enjoy in the international system can generate vulnerabilities that produce questions by other states about the real control they have over their territories (Franchi, 2023). Thus, throughout the text we focus on speeches by institutions or politicians who seek to defend ideas in parliaments, chambers, and senates in order to pressure the executive branch, or to influence future laws and norms in their countries, which may interfere with third parties.

For a long time, the intervention of a nation over a territory no longer needs to be carried out directly. Bertha Becker spoke of two ways in which the relativization of national sovereignty could be found: the constraints on adherence to international agreements and the establishment of conditions for the sending of external financing and/or international cooperation (Becker, 2006). Both forms are still well clear and noticeable nowadays. Sometimes, international pressure can be fueled by local actors, as long as they have a minimum capacity for international projection. Bertha pointed out:

In the context of globalization, geopolitics is strengthened in a new form. It is less about the need to conquer territories and more about the emphasis on multiple forms of pressure to influence decision-making on the use of the territories of sovereign states (Becker, 2006, p. 225, our translation).

Regarding the environmental agenda, Bertha warns: “(...) it is necessary to distinguish ecological geopolitics from legitimate ecological and social awareness before making decisions, particularly in the Amazon, an area in which the country suffers the strongest external attempts to limit its sovereignty” (Becker, 2006, p. 225). She continues to draw for us a picture of the Trojan horse that agendas that defend ‘common goods’ such as the environment can become, if we are not attentive.

New institutions are created to deal with this new reality. They demand the participation of governments in international organizations that aim to regulate trade, environmental protection, and citizenship issues worldwide. In theory, such insti-

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8 | Sovereignty and the Environment

tutions seek to share sovereignty in matters of common interest. But in this sharing the power is unequal, the norms depend on the interests of the most powerful states and the context is one of tension and dispute. In a veiled way, the possibility of intervention in the name of the common good is created (Becker, 2006, p. 226, our translation).

Observing the phenomena of relativization of sovereignty, the Amazon Fund is an example of how conditions are established for the provision of external financing. Although the resources are mostly Norwegian, they are managed by the National Bank for Economic and Social Development (BNDES, for its acronym in Portuguese). Although a significant part of the investments is directed to states and the Union, the criteria for the selection of projects are designed by external agents such as the Organization for Economic Cooperation and Development (OECD), based in France (Areal, 2020). This logic can also be observed in relation to the international trade in tropical timber, which went from boycott, which flooded the European and North American markets, to a conception in which management could be adapted and certifications of origin for wood could be created, in order to continue meeting international demands (Zhorí, 2006). And all this, ignoring the international smuggling that continues to occur in parallel, as demonstrated by Federal Police operations such as Operation Handroanthus (Ministério Público Federal, 2021).

The issue of constraints on the accession of international agreements has recently resurfaced in the debates surrounding the signing of the trade agreement between Mercosur and the European Union. The possibility of exports with lower rates for some agro-industrial products encouraged Mercosur countries (Sardinha, 2022). However, French President Emmanuel Macron, German Agriculture Minister Julia Klöckner, among other authorities, said they would not sign the agreement if Brazil did not act against the increase in fires and deforestation in the Amazon (Deutsche Welle, 2019).

The concept of sovereignty, commonly related to direct military threats, gains new contours, requiring a distinct approach from traditional state responses. Established as a National Defense Objective in the country's National Defense Policy (PND, for its acronym in Portuguese), its guarantee requires insertion in the international scenario, based on greater representativeness in decisions in regional and global forums (Brasil, 2020). Thus, the PND recognizes the new mechanisms of international action, particularly due to the growing demands for economic and social development and presents the need for the state to remain able to exercise its sovereignty, either in the traditional way or adapted to the new geopolitical scenarios that are presented.

2.3. Environmental security within the expansion of the security concept

The expansion of the concept of security in international relations is a trend at the end of the Cold War, marked by a paradigmatic change, in which the concept of security, which was linked to a state-centered view, gradually moved to a more individual-focused view and human security, understood in a comprehensive way. It is not a complete replacement of the classic security themes, focused on military, economic or political threats, but rather the inclusion of new security agendas oriented towards society and the environment. Overall, the debate revolves around the recognition that threats to the security of individuals and communities go beyond armed conflict and economic crises.

Although these conflicts persist clearly in today's world, having seen the war in Ukraine and interstate tensions around the world, not even South America is free of such tensions between states (Franchi *et al.*, 2017), with the most recent episode being Venezuela's aggressive claim to Guyana (2023). The fact is that problems such as pandemics, climate change, human rights violations and natural disasters have begun to be seen as challenges that directly affect human well-being, the stability of the nation-state and even international security.

Around the 1970s, authors such as Richard Falk (1971) and Lester Brown (1977) introduced environmental issues into the security debate. The proposal of these authors was based on the existence of other threats to the security of nations, which were constantly ignored to the detriment of military matters. It is within this context that Barry Buzan, in the 1980s, defended an expansion of the concept of security that includes thematic axes, in his opinion, as relevant as the military issue, such as societal, economic, political, and environmental security. In the 1980s, the perception that “being safe” was based on a plural condition of threats that did not fit exclusively into military problems gained prominence (Altunkaya, 2021).

Academically, the group of researchers linked to the Copenhagen Peace Research Institute (COPRI) observed these changes and sought, from a realistic approach, to understand the evolution of the role of the state (Livon, 2019, p. 16-17). A work that synthesizes these efforts is “Security: a new framework for analysis” (1998), written by Barry Buzan, Ole Waever and Jaap de Wilde. The general conception of the work points to five major spheres of concern for security on the part of the states in that period. They are: military, political, economic, corporate and environmental (Buzan, Waever, Wilde, 1998).

On the environmental issue, Buzan and colleagues highlighted the importance of considering the environment as a central element in security issues. They recognize that environmental threats are not limited to national boundaries and often require a collective international response. They also address the need to include the environment in countries’ security agenda by identifying the way in which environmental issues such as climate change, habitat destruction, and pollution have the potential to destabilize nations and regions.

In addition, they suggest that environmental threats may be more pernicious than traditional ones, as they have the ability to affect humanity broadly and lastingly. According to the authors, this implies recognizing that national security is intrinsically linked to the health of the environment. Thus, environmental degradation and resource scarcity can lead to social conflict, population displacement, and even war. Therefore, sustainable management of the environment and mitigation of environmental risks should be integrated into national and international security policies (Buzan *et al.*, 1998).

Safak Kaypak and Üyesi Yılmaz (2019) summarize this process of evolution of the environmental agenda in parallel with globalization. According to the authors, the rapid transformations at the international level (where security is more “felt”) have caused the environmental issue to be incorporated as part of potential collective challenges. The authors’ reasoning assumes that ‘security’ is based on a constant legal order and absence of fear. Then, at the international level, the logic of the Cold War order, which helped to stagnate a concept of militarized security, was revised as the conflict became extinct. This allowed the expansion of concerns about threats, including environmental issues.

Maria Claro (2017) points out that environmental security can be interpreted broadly or narrowly, depending on the sources of risk and the objects related to each approach. In addition, she highlights that environmental security is a complex concept that can be influenced by political, economic, and social factors, and that it can be addressed at different levels of analysis. Janpeter Schilling and co-authors (2018) define “Environmental Security” as the ability of an environmental system to maintain its ecological functions and provide ecosystem services for present and future generations. In summary, the central finding is that the notion of environmental security began to be incorporated into the agendas of national states, being perceived by different theorists.

“...environmental degradation and resource scarcity can lead to social conflict, population displacement, and even war. Therefore, sustainable management of the environment and mitigation of environmental risks should be integrated into national and international security policies.”

3. Methods and Data

Having presented some of the supporting concepts and theories, we move on to the explanation of how we will use the historical method and the critical method to assist in the presentation of data and results, and later in the discussion. As primary sources, we used: (i) documents with transcription of speeches by politicians from different nations and by representatives of international organizations taken from reports, draft resolutions and resolutions, all between 2019 and 2021 (Table 1); (ii) data on qualitative indicators such as violence rates, mortality rates, quantities of airstrips on indigenous lands and percentages of indigenous lands mining, which were obtained through consultations with different secondary sources; and (iii) news published in the media on indigenous issues.

Table 1. International documents with references to the Amazon issued by political representatives of different countries

Country	Author	Date	Title
United States	117TF congress 1 ST session	August 06, 2021	H. Report 117-84 - State, Foreign Operations, and Related Programs Appropriations Bill, 2022
	Congress	April 19, 2021	Congressional Record - Senate. April 19th 2021
Portugal	Assembly of the Republic	January 08, 2021	Draft Resolution N. 848/XIV/2. a (PCP) — For the rejection of the International Free Trade Agreement between the European Union and Mercosur
	Assembly of the Republic	January 08, 2021	Draft Resolution N. 849/XIV/2.a (PCP) - Recommends that the Portuguese government ensure compliance with environmental criteria in trade agreements with Mercosur.
Multilateral Organization	CIDH/OEA, 2020	December 11, 2020	Inter-American Commission on Human Rights Resolution 94/2020 - Precautionary Measure N. 679-20 – Mundurukú
	CIDH/OEA, 2020b	July 17, 2020	Inter-American Commission on Human Rights Resolution 35/2020 - Precautionary Measure N. 679-20 – Yanomami
United Kingdom	Members of the UK Parliament	October 07, 2019	Westminster Hall - Hansard. Volume 664, Monday, October 7, 2019. London: [s.n.], 2019
United States	116TF congress 1 ST session	September 25, 2019	H. RES. 594 Expressing profound concern about threats to human rights, the rule of law, democracy, and the environment in Brazil
	116TF congress 1 ST session	September 10, 2019	H. R. 4263 To prohibit importation of certain products of Brazil, to prohibit certain assistance to Brazil, and to prohibit negotiations to enter into a free trade agreement with Brazil
Ireland	Dáil Éireann* Assembly of Ireland	July 19, 2019	EU-Mercosur Trade Agreement: Motion

*Similar to the lower house of the English parliament.

Sources: Portugal/Assembleia da República, 2021; CIDH/OEA, 2020; 2020b; US/Senate, 2021; UK/Parliament, 2019; Ireland/Dáil Éireann, 2019. Our translation.

Regarding the historical method, its main contribution to this article is the chronological organization of the facts, in order to seek an understanding of the linking and the influence certain actions may have on others. The criticism of the sources was applied in the selection of documents, secondary data, laws, and reports collected in order to validate them, always making the internal criticism of their coherence, and not presenting sources with discrepant data, or where the actors were not clearly identified. We also tried to bring a brief case study, looking at the issue of indigenous lands affected by mining and the answers (or absences) of the international system. Thus, we illustrate, albeit incipiently, given the space limitations of an article, some of the arguments directly and indirectly related to the Amazon used in senates, assemblies, and chambers of other nations.

4. Results and Discussion

4.1. International arguments on socio-environmental issues in Brazil

“In addition to the generalizations and conspiracy theories about the internationalization of the Amazon that circulate in various media, the fact is that other countries and supranational entities do discuss issues related to the Amazon region in official spaces and propose measures and sanctions to be taken.”

In addition to the generalizations and conspiracy theories about the internationalization of the Amazon that circulate in various media, the fact is that other countries and supranational entities do discuss issues related to the Amazon region in official spaces and propose measures and sanctions to be taken. The US Senate, the European Parliament and individual parliaments of European nations debate issues such as deforestation in the Amazon, threats to indigenous populations, among others. Supranational bodies such as the Inter-American Commission on Human Rights and the United Nations Human Rights Council are also spaces that denounce the mistreatment of indigenous people, associating it with issues such as deforestation, mining, and the lack of government policies.

The purpose of this excerpt from the text is to bring, as an illustration, some examples that dialogue with what Bertha Becker argues as “mechanisms of constraint”, especially those that mention the indigenous issue, illegal mining, and the European Union’s agreements with Mercosur, but not exclusively.

On October 7, 2019, the session of the UK Parliament, led by Daniel Stephen Zeichner, debated electronic petition 266.638, on Amazon Deforestation. The petition condemns Brazil and:

Demand the EU & UN sanction Brazil to halt increased deforestation of the Amazon. The government of Brazil led by Bolsonaro favour the development of the Amazon rainforest over conservation, escalating deforestation. Deforestation threatens indigenous populations who live in the forest, loss of a precious and complex ecosystem and a vital carbon store that slows global warming. Indigenous people have called for the EU to impose trade sanctions on Brazil to halt the deforestation because they fear genocide. Also, the UK parliament has recognised a climate emergency. Since the Amazon rainforest is an important carbon store, absorbing huge volumes of CO₂ each year, its deforestation is of global significance. The intrinsic value of the rainforest should also be recognised. Trade sanctions are used elsewhere for important issues as an effective means to force action (UK/Parliament, 2019).

The petition was not approved. However, it is an example that the topic is discussed in legitimate spaces and by elected representatives of a country that does not have territories in the Legal Amazon.

In the context of the Covid-19 pandemic, there were direct appeals from some indigenous leaders to the Inter-American Commission on Human Rights (IACHR), an agency of the Organization of American States (OAS). After analysis, such appeals resulted in resolutions and precautionary measures presented to the Brazilian Government by the IACHR. The first of them was Resolution 35/2020, alongside Precautionary Measure N. 563-20 of July 17, 2020. Although the focus was on the need for responses against the Covid-19 pandemic and the lack of attention of the Brazilian Government to the inhabitants of the Yanomami Indigenous Land, the figure of illegal mining was also present among the arguments.

According to the document, it is estimated that there are currently 20 thousand informal miners in the Yanomami Indigenous Land, despite constituting an illegal activity. This number would reflect the growth of gold exploration in Roraima, which is attributed by the applicants to the lack of measures implemented to repress it,

highlighting mainly the deactivation of three “Ethno-environmental Protection Bases” (CIDH/OEA, 2020, p.3, our translation).

It is interesting that the document mentions Davi Kopenawa 5 times as a persecuted Yanomami leader who must have protective measures implemented by the Brazilian Government (CIDH/OEA, 2020, p.4). Much more than an indigenous leader, Davi Kopenawa is an actor recognized worldwide as an activist for the defense of the rights of indigenous peoples, with books written and translated into English (Kopenawa and Albert, 2013), several lectures in other countries and meetings with authorities from different nations. The nominal presence in a document like this from the IACHR/OAS gives us clues as to how national actors can bring a domestic issue to be discussed in international organizations.

A few months later, on December 11, 2020, Resolution 94/2020 and Precautionary Measure N. 679-20 made similar warnings for the Mundurukú Indigenous Land. This time, with an emphasis on the issue of illegal mining and deforestation, perpetrated by invaders who brought diseases and insecurity into the Mundurukú Indigenous Land (CIDH/OEA, 2020b).

From a South American multilateral organization to a global entity, we have another example in the speech of former President of Chile, Michelle Bachelet, during the 48th session of the UN Human Rights Council, on September 13, 2021, while she was president of the UNHRC:

In Brazil, **I am alarmed by recent attacks against members of the Yanomami and Munduruku peoples by illegal miners in the Amazon.** Attempts to legalize the entry of businesses into indigenous territories, and limit the demarcation of indigenous lands — notably via a draft law that is under consideration in the House of Representatives — are also of serious concern. I urge the authorities to reverse policies that negatively affect indigenous peoples, and to refrain from withdrawing from ILO Convention 169, the Indigenous and Tribal Peoples Convention. My Office is also concerned about new draft anti-terrorism legislation in Brazil that includes excessively vague and broad provisions which pose risks of abuse, particularly against social activists and human rights defenders (Bachelet, 2021, emphasis added).

In the speech, it is interesting to note the nominal indication of the two groups and the association with the problem of illegal mining, in addition to the call for attention to Brazil for being a signatory to Convention N. 169 of the International Labor Organization (ILO, 1989). In these two cases, the IACHR/OAS and the UNHRC, we can see the mechanism of constraint through international agreements that Bertha Becker referred to. The universal agendas expressed in such agreements were later incorporated into national legislation and have their intrinsic moral value. This is not discussed here, but rather its use by international entities to demand actions at the domestic level.

In the United States, the topic of the Amazon was debated in Congress and the Senate. An excerpt extracted from a session of the U.S. Senate on April 19, 2021, offers us elements to understand some of the related arguments.

SEC.507. SENSE OF CONGRESS ON CONSERVATION OF THE AMAZON RIVER BASIN.

(a) FINDINGS. - Congress makes the following findings:

(3) The Amazon River has long been recognized as an important repository of **biodiversity and natural resources, not only for local peoples and indigenous communities, but also for the rest of the world** due to -

(C) **its important role as an oxygen source, producing 20 percent of the Earth's oxygen** and earning the Amazon forest the nickname “lungs of our Earth” for its role in taking in enormous amounts of the carbon dioxide emitted by human ac-

tivity and the burning of fossil fuels and replacing it with the oxygen we breathe through the process of photosynthesis;

(E) **its role in climate control** caused by its exchange of enormous quantities of water and energy with the surrounding atmosphere, which is estimated as being responsible for creating 75 percent of its own rainfall, which feeds the nearby rivers through evapotranspiration before flowing directly into the ocean and influencing the currents that impact the climate; [...]

(c) POLICY STATEMENT - The Secretary of State shall elevate bilateral engagements around cooperation and peer-to-peer accountability on Brazil's climate action commitments by -

(2) encouraging the Government of Brazil to enforce its conservation laws, which include - [...]

(A) restoring the responsibility of managing indigenous reserves and the demarcation of lands back to indigenous peoples;

(B) deescalating violence against indigenous peoples, prosecuting individuals and entities that threaten or harm indigenous peoples or communities, and maintain the National Indian Foundation;

(C) addressing activities that increase deforestation rates in the Amazon basin, which include -

(i) curtailing indigenous people's land rights; and

(ii) unsustainable cattle ranching, soybean farming, mining, hydropower dam construction, and highway construction activities (US/Senate, 2021, emphasis added).

According to the document, the Amazon River basin, its biodiversity, and its natural resources do not belong to the local people, or to the indigenous people, but to the whole world. In the course of the document, the association of the region as an oxygen producer, and responsible for climate regulation, is clear. Subsequently, the document becomes a statement of intent or objectives ("policy statement"). At this moment, the US Secretary of State is indicated to engage with his Brazilian counterpart in order to "encourage" (freely interpret the term) Brazil to continue with its commitments in the pursuit of conservation, in the protection of indigenous peoples and in the maintenance of self-management of their territories (the same ones that at the beginning of the document they indicate belong to the world and not to indigenous peoples). Finally, it refers to unsustainable economic activities that increase deforestation rates such as agriculture, mining, hydroelectric dams, and highways. However, it is necessary to make a critical reading: without a correct typification of what is or is not unsustainable, the criticism is addressed to important sectors not only for the economy of the Amazonian states, but of the country. In addition to being sectors in which there is direct competition with the United States, such as the production of grains focused on the Chinese market (Friend *et al.*, 2011; Gale *et al.*, 2019).

In the 2022 United States budget bill submitted to Congress and to the Department of State, the document instructs the USAID Fund Administrator on indigenous communities:

Indigenous Amazonian communities. - The Committee is concerned about the increasing threats to Indigenous peoples across the Amazon rainforest in Peru, Ecuador, Colombia, Brazil, and elsewhere. The Committee directs the Secretary of State to work with these countries receiving funds in this Act to ensure such governments consult with affected peoples and communities on projects and policies that impact them, as required under international law, and to take appropriate steps to mitigate any environmental and human rights impact on these communities. The Committee encourages the Secretary to prioritize preventative actions for the pro-

tection of threatened community leaders and other environmental human rights defenders. **Further, specific to the Brazilian Amazon, the Committee directs the Secretary to consult with the Committees on Appropriations regarding the steps taken by the Brazilian government on the aforementioned actions, including as they pertain to the Indigenous and Afro-Brazilian communities and programs supported by funds appropriated in this Act and prior acts making appropriations for the Department of State, foreign operations, and related programs** (United States, 2021, p. 121, emphasis added).

Regarding the association of the situation of indigenous communities, deforestation, and fires in the Amazon as a way of defending specific economic interests, one of the most striking examples of this debate revolved around the European Union's Agreements with Mercosur. The public clash in the media took place between France and Brazil, but in other European parliaments the subject was already debated using these same arguments a few years ago, as shown by the speeches of Irish and Portuguese representatives. Irish Deputy Brian Stanley, speaking in the Lower House of the Irish Parliament defending a motion to repudiate the EU-Mercosur Agreement:

[...] the Brazilian Government has failed to adequately demarcate land to indigenous communities, and this has led to huge land grabs by agri-business, which is leading to a destruction of these indigenous communities, the environment, and the assassination of community leaders who resist, which will increase massively if the EU-Mercosur Trade Agreement is ratified (Ireland, 2019).

In the Assembly of the Republic of Portugal, two Draft Resolutions (N. 848 and N. 849) deny the EU-Mercosur Agreement, arguing in parallel both the issue of socio-environmental degradation of the Amazon and the need to protect its farmers. In "Draft Resolution N. 848 - For the rejection of the international free trade agreement between the European Union and Mercosur", the following argument is read:

The Amazon, with its environmental and ecosystemic importance, as well as in terms of biodiversity, is a particularly illuminating example in what it has been forced to give in to this model, in the process of deforestation it has suffered, in the destruction of protected areas, in the aggressions against indigenous communities, in the destruction of small and medium-sized agriculture and family farming (Portugal/Assembleia da República, 2021, our translation).

Draft Resolutions N. 848 and N. 849 were approved and incorporated into the final Resolution, with the following wording:

The Assembly of the Republic, pursuant to paragraph 5 of article 166 of the Constitution of the Republic, resolves:

1. Speak out for the rejection of the International Free Trade Agreement between the European Union and Mercosur, in its current terms, advocating a new approach in trade and economic cooperation, enshrining mutually advantageous relations, envisaging the right to food sovereignty, the safeguarding of national production, the defense of social rights and respect for the environment and biodiversity.
2. Recommend the Government to advocate the opening of a new negotiation process alongside the European Union, with the elaboration of a new negotiation mandate and with an open and democratic discussion, which allows to safeguard the defense of broad sectors of national production (Portugal, 2021, our translation).

After observing statements from Ireland, Portugal, and the United Kingdom, it is clear that arguments related to the weakening of indigenous peoples and environmental degradation in the Amazon are used as a mechanism to justify sanctions or the non-ratification of the EU-Mercosur Agreement, in which Brazil remains the main articulator. On this side of the Atlantic Ocean, the same strategy is observed in the United States Congress.

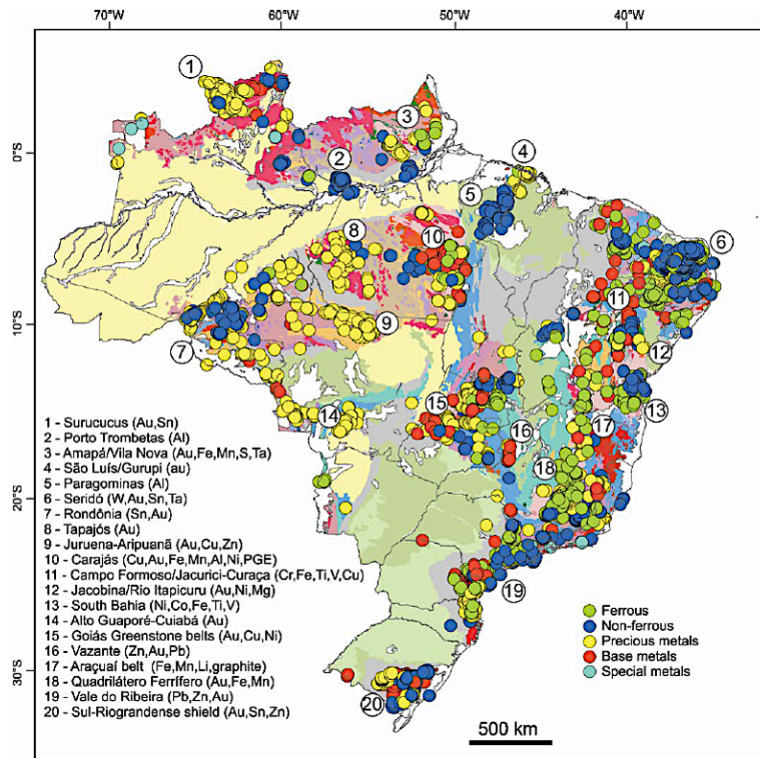
We also noticed during the research that there is a drop in attention given to environmental issues from 2022 onwards. The reason for this may be explained by the events of February 24, 2022, when Russia invaded Ukraine and started the war. But real problems do not always serve the pragmatic interests of other nations and the country itself in the search for the preservation of its image, or other political issues.

4.2. When real problems do not serve international interests: illegal mining in Indigenous Lands in the Amazon

The Legal Amazon region contains 10 of the 20 Brazilian mineral provinces. With the exception of the province of Porto Trombetas and Paragominas, where the concentration is almost exclusively aluminum, gold is found in all others (Map 1). The search for gold dates back to the colonial and imperial period of the country, with *bandeirantes*³ and other adventurers (Brown, 2012). In the twentieth century, the Mine Codes of 1934, 1940, and 1967 saw the activity as a small enterprise that, using rudimentary techniques, did not need more specific regulation, limiting them to more complex industrial activities (Ministério Público Federal, 2020, p.13). These laws supported mining throughout the period of Getúlio Vargas' March to the West (1930-1945) and in the interiorization and national integration promoted by the government of Juscelino Kubitschek (1956-1961) (Maia, 2010).

From the 1970s onwards, the exploration of the region gained contours and scale, with the incentive to migration and the opening of access routes to the region (Paim and Franchi, 2020). Mineral exploration was encouraged as a way to transform resources into the capital needed to develop the country (Hemming, 2009). From the late eighties to the first decades of the twentieth century, changes in legislation did not repress the activity, but characterized it. This is the case of Law N. 7.805/1989 and Law N. 11.685/2008, which established the Mining Statute. In summary, the activity was for decades endorsed by successive governments and practiced by thousands of workers.

Map 1. Simplified map of methanogenic districts and provinces in Brazil



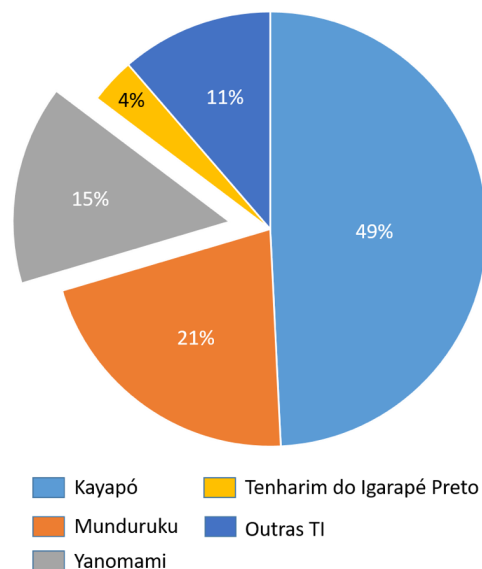
Source: Klein et al., 2018, p.10.

3. *Bandeirantes* were settlers in Portuguese Brazil who participated in exploratory voyages during the early modern period to expand the colony's borders and subjugate indigenous Brazilians.

However, in the path of this movement to integrate the Amazon into the country's productive chains were indigenous communities, some of which were isolated or had little contact with civilization. The struggles for the demarcation of indigenous reserves in the Amazon are old, having as one of the milestones the creation of the Xingú Indigenous Park in 1961, through Decree N. 50.455 of April 14, 1961 (Valle, 2021). However, it is only with the Federal Constitution of 1988 that the original rights of indigenous peoples are recognized. In Article 231/Federal Constitution 1988, it reads: "The Indians are recognized for their social organization, customs, languages, beliefs and traditions, and the original rights over the lands they traditionally occupy, and it is up to the Union to demarcate them, protect and ensure respect for all their assets" (Brasil, 1988, Art.231, our translation).

The clash of illegal mining activities with indigenous populations is a constant in the Amazon. According to data from the Management and Operational Center of the Amazon Protection System (CENSIPAM, for its acronym in Portuguese), the occurrence of illegal mining in Indigenous Lands occupies a total area of approximately 30 thousand hectares, and almost 50% of this area is within the Kayapó Indigenous Land (Furtado *et al.*, 2024). The Yanomami Indigenous Land occupies the third position, with about 15% (approximately 4,455 hectares) affected by illegal mining, behind the Mundurukú Indigenous Land with about 21% (graph 1).

Graph 1. Presence of mining on indigenous lands in the Legal Amazon (%)



Source: Adapted from Furtado *et al.*, 2024.

“The impacts of mining on Indigenous Lands are diverse, starting with deforestation, alteration of river courses, water pollution with light particulates that cause water turbidity, to the contamination of ichthyofauna by mercury and its ingestion by indigenous people.”

The impacts of mining on Indigenous Lands are diverse, starting with deforestation, alteration of river courses, water pollution with light particulates that cause water turbidity, to the contamination of ichthyofauna by mercury and its ingestion by indigenous people. Since at least the late 1990s, there have been scientific records of mercury contamination in the Kayapó Indigenous Land (Gonçalves *et al.*, 1999). Recently, other indigenous lands and non-indigenous areas have been showing high levels of mercury (WWF, 2019). This is directly related to human security and the protection of universal human rights, and the indigenous rights provided for in the constitution, in addition to direct confrontations between prospectors and indigenous people.

In the indigenous lands, there is an aggravating factor little understood by most people, which involves the question of which actors linked to security can act within these territories. When an indigenous reserve is demarcated, it becomes in practice a territory under direct federal protection.

[The] action of the Armed Forces and the Federal Police, Presidential Decrees N. 4.411 and 4.412, of October 7, 2002, the latter being amended by Decree 6.513, of July 22, 2008, deal with the conditions of action, as well as the installation of

military bases and police stations in the Conservation Units and Indigenous Lands (Oliveira *et al.*, 2023. p.6, our translation).

Therefore, the State Military Police and Municipal Guards have no legal support to act on a daily basis in the indigenous lands (Ramos, 2019). As the Armed Forces do not have the function of acting in public security (such function being incumbent on the institutions provided for in Article 144 of the Federal Constitution of 1988), and the Federal Police does not have an ostensible presence to guarantee security, in practice indigenous territories are unprotected in their daily lives. Bill N. 2326/2022, approved on December 12, 2023, provides for the possibility of carrying a firearm to agents of the National Indigenous Foundation (FUNAI, for its acronym in Portuguese). However, the project has not yet been regulated, and it takes a long way for agents to have the means to exert some deterrence on traffickers, miners and other individuals involved in illicit or harmful activities to indigenous people.

What is the possible impact of this on the Kayapó, Mundurukú and Yanomami Indigenous Lands (and others)? As the indigenous lands are found in areas of municipalities and states that have their own dynamics regarding security, it is necessary to start from this point. Table 2 shows the municipalities where the territories of the three selected indigenous lands are located and some rates of violence raised by the study of the Brazilian Forum on Public Security, under the coordination of Professor Aiala Couto (FBSP, 2023).

Table 2. Indicators of violence in the municipalities where the Kayapó, Mundurukú and Yanomami Indigenous Lands are located

Indigenous Land	City	Indigenous Land Area in the Municipality (%)	100 most violent cities	Average three-year rate 2020-2022 (per one hundred thousand inhabitants)	Presence of criminal faction
Kayapó	São Félix do Xingu-PA	50.66	yes	64.7	CV
	Ourilândia do Norte-PA	37.29	yes	89.4	PCC
	Cumaru do Norte-PA	12.00	yes	128.5	
	Bannach-PA	0.51	yes	67.2	
Mundurukú	Jacareacanga-PA	98.68	yes	55.0	CV
	Itaituba-PA	2.06		61.6	
Yanomami	Barcelos-AM	22.57			CV-PCC-Os Crias*
	Alto Alegre-RR	19.28	yes	77.5	CV (urban part) - PCC (TIY)*
	Amajari-RR	16.24			PCC
	Santa Isabel do Rio Negro-AM	15.94			
	Iracema-RR	10.59			
	Mucajai-RR	7.50	yes	65.4	PCC
	Caracarái-RR	5.81			CV-PCC*
São Gabriel da Cachoeira-AM	0.77			CV-PCC-ELN-Ex-Farc*	

*in dispute by different factions. - No data.
Source: based on FBSP (2023); ISA (2023).

We can see from the data that the Kayapó indigenous land is completely inserted in municipalities with high rates of violence, whose headquarters appear among the 100 most violent cities in the country and also with the presence of at least two important national criminal factions: Red Command (CV, for its acronym in Portuguese) and First Command of the Capital (PCC, for its acronym in Portuguese).

The increase in violence in cities close to places where environmental disasters/crimes involving mining have occurred has already been identified in another type of situation, such as the collapse of the Fundão dam in Mariana, in the state of Minas Gerais. Even though the collapse occurred in the rural area of the municipality, in the following two years there were impacts on public security, with an increase in homicides, robber-

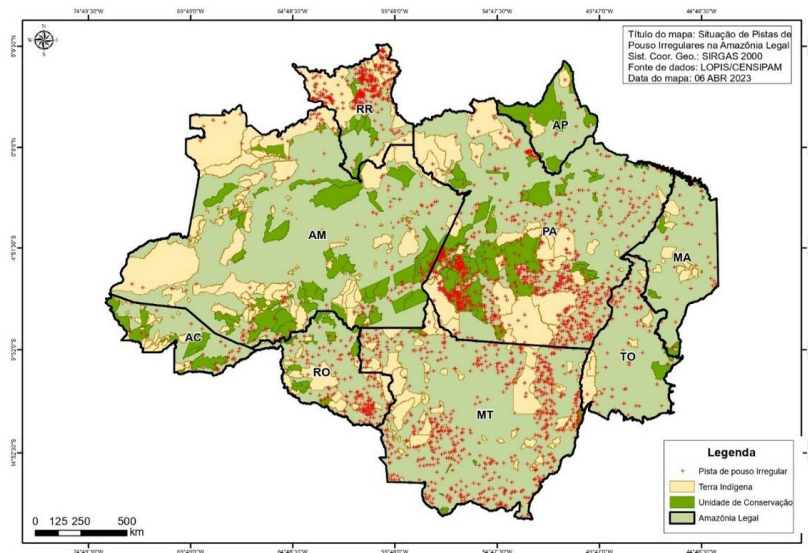
ies and others (Fachini and Durante 2023). Thus, the dynamics that now occur within an environmental preservation area or an indigenous land can impact not only that area, but also the municipalities in its surroundings. Added to this is the information from the latest Census of the Brazilian Institute of Geography and Statistics that the majority of the population lives in urban areas of the municipalities and not in rural areas (IBGE, 2023).

“The ease of laundering money from illicit activities is one of the main attractions for simple reasons: gold can be sold anonymously (“cash for gold”); its origin is difficult to trace; it is accepted as a payment currency worldwide; and it is easy to transport and smuggle.”

The correlations between illegal gold mining and Transnational Organized Crime (or national and local criminal factions) have been documented in different national and international studies (Giatoc, 2016; Interpol, 2018; 2022; Rodrigues and Furtado, 2023; UNODC, 2023). The ease of laundering money from illicit activities is one of the main attractions for simple reasons: gold can be sold anonymously (“cash for gold”); its origin is difficult to trace; it is accepted as a payment currency worldwide; and it is easy to transport and smuggle (FATF, 2015). The value of one kilogram of gold is quoted at USD 65,774.00 (approximately R\$ 317,574.16 with an exchange rate of R\$ 4.87 reais per dollar) (Bullion by Post, 2024).

In fact, there had been an increase in several indicators linked to illegal mining in the region in recent years. According to CENSIPAM data, between 2018 and 2022, 23 new clandestine airstrips were identified in the Yanomami indigenous land, out of a total of 624 throughout the Legal Amazon. Also, according to the same data set, 25.50% of irregular airstrips are in the Yanomami indigenous lands, in contrast to 6.95% in the Mundurukú lands and 6.29% in the Kayapó ones (Furtado *et al.*, 2024, p. 19). The explanation for this comes from two factors: first, there are no roads in the Yanomami region, but there are in the Mundurukú and Kayapó ones; second, the number of irregular lanes in southern Pará is considerably higher than in northern Roraima (Map 2), facilitating intermodal logistics in that area.

Map 2. Georeferencing of irregular landing strips in the legal Amazon



Source: Furtado *et al.*, 2024, p. 18.

Data related to police investigations in the two states where the indigenous lands analyzed are located may indicate an advance of the mining front in Pará and Roraima in the years 2018 to 2022, with crimes of usurpation of mineral resources without authorization growing 566% in the latter (Table 3). It is important to note here that this data does not refer only to gold, but to ores in general, including cassiterite, tantalite and others.

Table 3. Police investigations of mining-related crimes

a) Crime of Extraction of Mineral Resources without authorization (Art. 5 of the Law 9.605/98)						
	2018	2019	2020	2021	2022	Variation (%)
Legal Amazon	154	224	234	276	298	93.50%
Pará	31	42	72	92	103	232.30%
Roraima	12	22	29	59	35	191.70%
b) Crime of Usurpation of Federal Government Assets (art. 2 of the Law 8.176/1991)						
Legal Amazon	267	298	392	459	555	107.90%
Pará	57	48	118	140	134	135.10%
Roraima	24	40	60	97	160	566.70%

Source: Adapted from FBSP, 2023, p. 127-128.

Looking at the set of data presented, it can be seen that there was an increase in mining activity in the Yanomami indigenous land, but the extent of the presence of illegal mining and violence, partly due to this activity, is still more intense in the Kayapó and Mundurukú indigenous lands, in Pará. However, the ability to bring the problem into the national and political debate was different in all three.

As we have seen, the theme of the threat to indigenous people has always been present in the international debate on the Amazon. In the ten documents analyzed, the indigenous issue is always mentioned in some way, regardless of whether the actor is European, North American or a multilateral entity. The Yanomami and Munduruku leaders successfully sought international support for their demands at the OAS Inter-American Commission on Human Rights. Resolutions 35/2020 and 94/2020 nominally serve the Yanomamis and Mundurukus. The Kayapós, although also affected by illegal mining, did not appear nominally in any international document.

Table 4. News in national and international media about the Yanomami indigenous people

Country	Publication / Author	Date	News Title
Brazil	Amazônia Real/Medeiros	December 23, 2022	Yanomami are threatened in the villages and in the city
	Agência Pública/Oliveira	December 14, 2022	Yanomami children die 13 times more from preventable causes than the national average
	Amazônia Real/Munduruku	December 13, 2022	Open letter to the President-elect: 'Hunger also exists among indigenous peoples'
England	The Guardian/Phillips	December 12, 2022	Revealed: Brazil goldminers carve illegal 'Road to Chaos' out of Amazon reserve
Brazil	G1 e Rede Amazônica/hisayasu	December 11, 2022	Illegal miners open a clandestine road of 150 km in the middle of the forest to explore Yanomami Land
	Repórter Brasil/Camargos	November 26, 2022	Supported by indigenous leaders for ministry, Joenia Wapichana wants to turn illegal mining into a heinous crime
United States	United Nations Human Rights	August 09, 2022	In the Amazon rainforest, an indigenous tribe fights for survival
	The New York Times/ Andreoni <i>et al.</i>	August 02, 2022	The Illegal Airstrips Bringing Toxic Mining to Brazil's Indigenous Land
Brazil	Amazônia Real/Brasil	July 03, 2022	Yanomami Indigenous of Marauíá protest for health improvements
	G1 – Roraima/Ramalho <i>et al.</i>	June 06, 2022	Rivers in Yanomami Land have 8600% mercury contamination, reveals Federal Police report
	Folha de S. Paulo/Sassine	May 25, 2022	Federal judge points to risk of genocide on Yanomami land: 'nothing is missing for worst-case scenarios'
	G1 – Roraima/Rodrigues	May 18, 2022	Inter-American Commission on Human Rights demands measures to protect Yanomami people due to 'extreme gravity'
	G1 – Roraima/Rodrigues; Ramalho	May 10, 2022	Yanomami community lives in a climate of fear and insecurity one year after an attack by gold miners
	ONU News/Nações Unidas Brasil	May 06, 2022	UN Brazil calls for greater protection for the Yanomami people
	Repórter Brasil/Costa; Cowie	April 14, 2022	Cassiterite, the mineral that is the new threat to the Yanomami
France	Le Monde/ Vigna	March 15, 2022	New threats for the Brazilian Amazon
Brazil	Repórter Brasil/Moncau <i>et al.</i>	February 02, 2022	Camera, drone, and cell phone: the 'weapons' of the young Munduruku to resist the escalation of invasions and threats

Source: own elaboration; consult authors in the bibliographic references.

“Operation Yanomami Shield’ was initially in charge of the Brazilian Air Force, which established an Air Defense Identification Zone (ZIDA, for its acronym in Portuguese), provided logistical support to the activities of other federal agencies, among other activities.”

In the same period that Yanomamis and Mundurukus are demanding the government’s attention to health and security issues in their indigenous lands, international pressure was focused on the fires in the Amazon and the increase in deforestation rates (Fonseca *et al.*, 2022), which led the Brazilian government to decree Operations Green Brazil I and II (Paim, 2022). With the conflict between Russia and Ukraine drawing the attention of NATO member countries to the east, in 2022 there was less attention to the topic in the international media and official documents. However, national media coverage directed attention to the Yanomami people (Table 4).

The change of the Brazilian government on January 1 and the internal demands generated by the exposure in the media contributed to the issuance of Presidential Decree N. 11.405, of January 30, 2023, which “Provides for measures to face the Public Health Emergency of National Importance and to combat illegal mining in the Yanomami territory to be adopted by federal administration bodies.” Subsequently amended by Decree N. 11.575, of June 21, 2023, “Operation Yanomami Shield” was initially in charge of the Brazilian Air Force, which established an Air Defense Identification Zone (ZIDA, for its acronym in Portuguese), provided logistical support to the activities of other federal agencies, among other activities.

If the concern with issues related to threats to indigenous peoples and illegal mining, one of the drivers of deforestation in the Amazon, was a constant in the documents and speeches of international actors, why did they not pay attention to the cases of the three Indigenous Lands where the problem was, and is, a daily routine? Even more considering that they are places where different arguments that we observe in international documents are aggregated, such as mining, deforestation and threats to indigenous peoples and their leaders.

“It is evident that responses to climate change, the need for sustainable development models, respect for human rights and the search for solutions to profound socioeconomic inequalities are challenges for Brazil and for all Brazilians. These are legitimate concerns, but we cannot discuss them with the world without being clear about national objectives, based on pragmatic analyses of the international context.”

5. Conclusions

Returning to Bertha Becker, the author makes it clear that speeches and actions on the preservation of the common goods can often be used only in favor of the national interests of foreign nations and not really in favor of those populations and countries where they are located, and these interests can either change or cease to be a priority in certain contexts. Now, the war in Eastern Europe is a much more obvious existential threat to European and North American politicians at the moment than attention to a public health emergency (why not say sanitary?) for the indigenous populations of another nation. As we have seen in the different speeches in the senate, in foreign assemblies and chambers, the words are not guided by a frivolous altruism, but rather connected with more or less explicit interests and fears, which can range from commercial interests and protectionism to fears of the threat that the climate change may pose for such nations in the future.

It is evident that responses to climate change, the need for sustainable development models, respect for human rights and the search for solutions to profound socioeconomic inequalities are challenges for Brazil and for all Brazilians. These are legitimate concerns, but we cannot discuss them with the world without being clear about national objectives, based on pragmatic analyses of the international context. In this perspective, the defense of Brazil’s sovereignty emerges as a crucial point, highlighting the importance of a balanced approach that values the global challenges of our era, but without disregarding the importance of national autonomy in decision-making. ■

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