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REDD+ AND PROTECTION OF FOREST ECOSYSTEMS: THE CASE OF THE AMAZON FUND IN BRAZIL

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ABSTRACT

The Framework Convention on Climate Change (FCCC) and the Convention on Biological Diversity (CBD) are two pillars of international environmental law. Brazil is party to both conventions, thereby confirming its contemporary diplomatic position, which is based on the right to national sovereignty and the protection of socio-environmental rights. As a strategy to comply with climate change obligations, the Reduction of Emissions from Deforestation and Forest Degradation, Conservation of Forest Carbon Stocks, Sustainable Management of Forests and Enhancement of Forest Carbon Stocks (REDD+) were instituted within the scope of the Conference of the Parties to the FCCC. In relation to the Amazon rainforest, REDD+ has stood out as an important mechanism for complying with international obligations, which are not restricted to climate change. Therefore, our intention here is to demonstrate that REDD+ should also be understood as a legal mechanism for safeguarding biodiversity, in accordance with the CBD. For this purpose, based on primary and doctrinal

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sources, a specific analysis of the Amazon Fund experience is carried out and the conclusion is that REDD+ is effectively an instrument to protect the Brazilian Amazon beyond the limits of the law on climate change, addressing the specific duties related to the conservation of biodiversity.

Keywords: biodiversity; forests; Amazon Fund; climate change; REDD+.

REDD+ E PROTEÇÃO DE ECOSSISTEMAS FLORESTAIS: O CASO DO FUNDO AMAZÔNIA NO BRASIL

RESUMO

A Convenção-Quadro sobre Mudanças Climáticas (CQMC) e a Convenção sobre Diversidade Biológica (CDB) são dois pilares do direito internacional ambiental. O Brasil é parte de ambas as convenções, confirmando sua posição diplomática contemporânea, fundada no direito à soberania nacional e na proteção de direitos socioambientais. Como estratégia de cumprimento das obrigações sobre mudanças climáticas, instituiu-se, no âmbito da Conferência das Partes da CQMC, a Redução das Emissões Provenientes do Desmatamento e da Degradação Florestal, Conservação dos Estoques de Carbono Florestal, Manejo Sustentável de Florestas e Aumento de Estoques de Carbono Florestal (REDD+). Em relação à floresta amazônica, a REDD+ tem se destacado como importante mecanismo de cumprimento de obrigações internacionais, que não se restringem às mudanças climáticas. Intenta-se, portanto, demonstrar que a REDD+ deve ser entendida também como mecanismo jurídico de proteção da biodiversidade, em conformidade com a CDB. Para tanto, a partir de fontes primárias e doutrinárias, faz-se uma análise específica da experiência do Fundo Amazônia para concluir que a REDD+ é efetivamente um instrumento de proteção da Amazônia brasileira para-além dos limites do direito sobre mudanças climáticas, alcançando os vínculos jurídicos próprios à conservação da biodiversidade.

Palavras-chave: *biodiversidade; florestas; Fundo Amazônia; mudança climática; REDD+.*

INTRODUCTION

Between June 3 and 14, 1992, Rio de Janeiro hosted the United Nations Conference on Environment and Development (Eco-92), whose legal consequences are very important. It was at that moment that two international treaties were adopted, becoming pillars of international environmental law, namely the Convention on Biological Diversity (CBD) and the Framework Convention on Climate Change (FCCC).

The adoption of these two instruments represented a unique movement towards the specialization of environmental legal norms. As of 1992, on the one hand, the legal-environmental branch was dedicated to the conservation of biodiversity and, on the other hand, the fight against the greenhouse effect was the central regulatory element. This did not mean, however, that there was no intersection between these legal-environmental branches. On the contrary, it is inherent to environmental integrality that the treatment of biodiversity has climatic consequences, and vice versa. The interaction between the global and the local is clear when it comes to protecting the natural environment.

The Amazon forest is one of those places that, despite being placed in a specific territorial context, is also a source of regional and global interest. Indeed, the Amazon, seen as a specific ecosystem space, is located within the borders of nine different States, which – except for one – are parties to the 1978 Amazon Cooperation Treaty. As well as the Brazilian Amazon, there is also the Bolivian, Colombian, Ecuadorian, Guyanese, Peruvian, Surinamese, Venezuelan and – even – the French Amazon[4]. Due to the international sharing of the Amazon ecosystem unit, the measures adopted internally by a State are of interest to other States in the region, as there is constant concern about their possible transboundary impacts.

The broader regional implications are easily seen, as a good part of the moisture that is carried by the air currents to the South originates in the Amazon, reaching the Rio da Prata basin. The Amazon hydrological cycle is, therefore, very important for the rainfall regime, which runs from the Brazilian Midwest to the Argentine North, including Uruguay. Convective activity over this huge South American region is influenced by the circulation of moisture through the southern band of the Amazon basin, carried out by low-level jets west of the Andes Mountain Range.

4 Precisely France is not a party to the Amazon Cooperation Treaty, signed in 1978, in force since 1980. Roughly speaking, this international treaty corresponded to a diplomatic reaction of the Southern Amazonian States against the eventual attempt to internationalize the Amazon by the States of the North, justified in the environmentalist rhetoric consolidated at the United Nations Conference on the Human Environment, held in 1972 in Stockholm.

At the global level, the conservation of biological diversity is a common concern of humanity, under the terms of the preamble of the CBD. Applying this principle to the object of this work, it is of interest to humanity as a whole, legally identified with the international community, that the Amazonian biodiversity is preserved.

However, it is in the international legal order on climate change, founded on the FCCC, that the Amazon issue is challenging due to the global impacts. Indeed, the conservation of the Amazon is directly related to greenhouse gas (GHG) emissions, as it is based on the storage in the forest of gigantic amounts of carbon that, once burned, is eliminated into the atmosphere in the form of GHG. Thus, combating deforestation and burning of the Amazon forest has a double international benefit. First, it prevents the emission of carbon dioxide into the atmosphere and, second, it contributes to the continent's hydrological balance.

In the case of Brazil, the destruction of the Amazon must be understood according to the logic of capitalist production, that is, it is a systemic unfolding of the local interactions of holders of real rights over rural properties, supported by the State. These economic actors intend to enter the valued international commodity market, especially soybeans, beef and wood, supplying the dollarized demand. Such interactions are supported by public policies and private initiatives, based on credit, tax exemptions and investment in infrastructure, which have guaranteed the inflow of dollars into Brazil and, consequently, the stability of the Brazilian trade balance.

It is verified, therefore, that the conservation of the Amazon forest, as a strategy to combat the climate emergency, would only be possible in the short term, also taking into account local and national economic interests. In an international context of lack of socioeconomic development in the vast majority of Amazonian countries[5], combined with a predominance – at least on the American continent – of neoliberal economic policies, this aspect becomes even more dramatic.

Thus, in view of the preservation of the Amazon, it must be interesting, in economic terms, for the local agent – whether the owner or the possessor, legal or even illegal – to keep the forest standing. With this aim, in the context of the application and improvement of the international legal order on climate change, from the annual Conference of the Parties (COP), it was created at the COP 14 of the FCCC, in 2008, in Poznan, the

5 According to the ecological criterion, the largest Amazonian countries are Brazil (60.7%), Peru (11.3%), Bolivia (8.2%), Colombia (6.6%) and Venezuela (5.7%). In turn, Ecuador, France, Guyana and Suriname together account for 7.5% of the Amazon biome.

Reduction of Emissions from Deforestation and Forest Degradation, Conservation of Forest Carbon Stocks, Sustainable Management of Forests and Enhancement of Forest Carbon Stocks (REDD+), which aims to be an international financing mechanism, in developing countries – as is the case of most Amazonian countries –, of projects for the sustainable use of natural resources, thus reducing GHG emissions into the atmosphere.

For some years now, REDD+ has been applied in the Brazilian Amazon, notably with the Amazon Fund, which promotes a series of local projects with a view to achieving ecologically sustainable socio-economic development. The primary objective of applying REDD+ in the Brazilian Amazon is to reduce GHG emissions and increase forest carbon stocks, which is in line with the FCCC's own system.

Despite being a mechanism created in view of the effectiveness of the obligations contained in the provisions of the FCCC, which are not confused with the purpose of the CBD, it is possible to identify the existence of REDD+ developments in favor of the conservation of the forest ecosystem, as well demonstrated by Goal 15 of the Aichi Biodiversity Goals, adopted in 2010, during the COP 10 of the CBD, held in Nagoya.

That is why, at the United Nations (UN) Secretary-General's Climate Summit in 2014, the New York Declaration on Forests (New York Declaration) was adopted, recognizing the importance of ecosystem conservation. forests to combat climate change. Combating climate change and protecting biological diversity are two sides of the same coin (UN, 2014).

In this sense, more recently, during the FCCC COP 26, held in Glasgow, in 2021, the Declaration on Forests and Land Use[6] (Glasgow Declaration) was adopted, which indicates the reversal of deforestation as a biodiversity and climate conservation strategy (UNFCCC, 2021).

When it comes to the protection of Amazonian biological diversity, which is an obligation assumed by the Brazilian State through various international legal instruments such as, for example, the Amazon Cooperation Treaty and the CBD, which is not to be confused with the commitments made by the country within the scope of FCCC, one questions the relevance of REDD+ as a strategic instrument for compliance with this and those international treaties. In short: can REDD+ be an instrument for the effectiveness not only of the FCCC, but also of the CBD?

To answer this question, we analyzed public documents from the Brazilian State and doctrinal texts on the management of the Amazon Fund,

6 The Brazilian State is a signatory to the Declaration of Glasgow.

which is the main REDD+ strategy in Brazil, under the terms of the FCCC, in order to verify the existence of positive developments for the protection of Amazonian forest ecosystems, under the terms of the CBD. The hypothesis, which was confirmed at the end, is positive, that is, there is significant adequacy of REDD+ as a mechanism for fulfilling Brazil's obligations in relation to the CBD. Therefore, REDD+ is an instrument for implementing the CBD, despite having been constituted under the aegis of the FCCC.

1 THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND ITS OPERATIVE INSTRUMENTS

Between the late 1970s and the early 1980s, the international scientific community began to assume that the variation in the Earth's average temperature, perceptible a few years ago, had an anthropic origin. In 1988, the World Meteorological Organization and the UN Environment Program (UNEP) established the Intergovernmental Panel on Climate Change (IPCC), whose mission is to study the causes of climate change and the weight of human activities in this phenomenon. In the same period, the UN General Assembly declared that climate change was a *common concern of humanity* and boosted the negotiation process between States, through the convening of Eco-92, which culminated in the conclusion of the FCCC (UN, 1988). Adopted at the same conference, the CBD establishes in its preamble that environmental preservation and the conservation of biodiversity are a common concern of humanity (TOLEDO; BIZAWU, 2019).

At the heart of IPCC investigations and FCCC provisions is the idea that the main cause of climate change and the increase in planetary temperatures is the worsening of the greenhouse effect, caused by the increase in GHG emissions into the atmosphere[7] as a result of human activities.

It is important to note that many different human activities can cause GHG emissions. Pursuant to art. 4, paragraph 1, *c*, of the FCCC, States parties must collaborate for sustainable development in order to control, reduce or prevent the emission of GHG, in all relevant sectors, including the forestry sector or forestry activities. In this case, it is the deforestation and burning of forests, which release large volumes of CO_2 into the atmosphere. Furthermore, with regard to forests, the FCCC refers to the concept of a sink as a process capable of removing GHG from the atmosphere.[8]

7 Pursuant to art. 1, § 5, of the FCCC, "'Greenhouse gases' means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation".

8 Pursuant to art. 1, § 8, of the FCCC, "'Sink' means any process, activity or mechanism which removes

One of the most important sinks on the planet are forests, which remove CO_2 through the process of photosynthesis (NOBRE; NOBRE, 2002).

The FCCC, being a framework convention, provides general obligations for States parties. These general obligations are provided for in the aforementioned art. 4, in whose § 1 there are only obligations of promotion and cooperation, without an effective normative meaning. Paragraph 2, on the other hand, provides, according to the basic principle of common but differentiated responsibilities, more specific obligations assumed by the more developed States[9], where GHG emissions should be reduced to the level verified in 1990, without the existence of counterparts on the part of the less developed States. However, these differentiated obligations are accompanied by a flexibility formula, guaranteeing to the States the discretion in the choice of measures, without quantitative indications. After all, the legal nature of the FCCC indicates that the obligations of States parties should actually be set out in instruments decided upon during future COPs, which take place annually, as of the entry into force of the FCCC[10].

In this systemic context, during COP 3, a protocol was adopted to the FCCC, known as the Kyoto Protocol, which essentially provides for two types of innovative actions (BRASIL, 2005). First, it imposes quantitative limits on GHG emissions[11] by industrialized states[12]. Second, it establishes three specific instruments to facilitate States Parties to meet their GHG emission reduction obligations, namely the Clean Development Mechanism (CDM), Joint Implementation (JI) and Emissions Trading (ET). These are instruments inspired by a market logic and characterized by flexibility. In particular, CDM initiatives allow states listed in Annex I of the FCCC to carry out GHG emission reduction projects in developing states, i.e. those not listed in Annex I[13]. Thus, developed States can obtain carbon

a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere".

9 In Annex I of the FCCC, the most industrialized states are listed.

10 The COP is the decision-making body established within the framework of the FCCC, in which all States Parties participate directly. The COP is empowered to verify compliance with the FCCC and all other legal instruments adopted by the COP. Since the FCCC came into force on March 21, 1994, COP 1 took place in 1995 in Berlin. Due to the COVID-19 pandemic, in 2021, COP 26 was held in Glasgow. Between 7 and 18 November 2022, COP 27 will be held in Sharm El-Sheikh.

11 Annex A of the Kyoto Protocol lists the six gases that cause the greenhouse effect (BRASIL, 2005).

12 Pursuant to art. 3, § 1, of the Kyoto Protocol, "The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex Band in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012" (BRASIL, 2005).

13 Brazil and the other Latin American States are not listed in Annex I of the FCCC.

credits to be used to fulfill their conventional obligations. In essence, JI initiatives do the same, provided they are established exclusively between developed countries. On the other hand, ET initiatives allow States to negotiate the credits obtained either directly or indirectly, establishing a true carbon market.

The Kyoto Protocol represents a fundamental transformation of the fight against climate change at the international level. However, this international legal instrument faced two important barriers. On the one hand, the concrete implementation of the obligations was difficult and the results of the flexibility instruments were below expectations. On the other hand, the departure of important States, in the first years of the 21st century, and the exclusion of all developing countries, in the 1990s, implied the exclusion of countries that, from the 2000s, were characterized by a strong increase of GHG emissions on a global scale, in particular China and India (BARBADO; LEAL, 2021).

In that period, the COPs produced important results in several thematic areas, such as technology transfer and also the identification of forest preservation as a strategy to combat GHG emissions (BIRNIE; BOYLE; REDGWELL, 2009). In 2008, for example, in Poznan, COP 14 instituted REDD+, which refers to actions to reduce GHG emissions from deforestation and forest degradation through the conservation of carbon stocks, sustainable management of forests and the enhancement of forest carbon stocks.

Five years later, in Warsaw, the COP 19 took seven decisions on methodological, institutional and financial elements of REDD+ (RECIO, 2014). Known as the Warsaw Framework for REDD+, this international mechanism aims to direct financial incentives to developing States that are facing the greenhouse effect by combating deforestation (BRASIL, 2014).

In any case, at the international level, the most important step taken in regulatory terms to combat GHG emissions took place in 2015, during COP 21. At this conference, the Paris Agreement was signed, through which all UN member states, irrespective of their degree of development – including those absent from the Kyoto Protocol, such as the United States, China and India – have committed to reducing their GHG emissions from individual targets (BRASIL, 2017).

The Paris Agreement indicates the general objective of reducing GHG emissions only to keep global warming between 1.5 °C and 2 °C in relation to the pre-industrial level, without indicating specific temperature

objectives for each party (BRASIL, 2017). The most important provisions are found in arts. 3 and 4 of the Agreement, which provide for each party the obligation to determine their levels of GHG reduction in the perspective of that objective (BRASIL, 2017). In addition, States Parties must maintain a reciprocal communication channel, which is the basis of international cooperation. Although the determination of GHG reduction levels is left to the discretion of each State, the Agreement is seen as a success because it broadens the base of subjects committed to combating the greenhouse effect (BRASIL, 2017).

2 FORESTS IN THE PRACTICE OF THE FRAMEWORK CONVENTION ON CLIMATE CHANGE

Forests play a very important role in achieving the objectives of the FCCC and the resulting instruments and mechanisms[14], in particular the reduction of the emission and presence of CO_2 in the atmosphere. On the one hand, forests are *reservoirs*, i.e. components of the climate system that contain elements that, once released into the atmosphere, become GHG[15]. In this case, the FCCC aims to prevent the destruction of forests from representing a *source* of GHG emissions, that is, from being the origin of the dispersion of CO_2[16] in the atmosphere, which can happen mainly in the case of deforestation carried out through fires[17].

At the same time, as stated earlier, forests are *sinks*, i.e. a process that removes GHG from the atmosphere[18] through the absorption of CO_2 in photosynthesis. In this case, the objective of the FCCC is not only the reduction of GHG emissions in the atmosphere, but the reduction of gases in the atmosphere. Therefore, an increase in the surface – and in the quality – of forests corresponds to a greater absorption of CO_2 from the atmosphere.

For this reason, art. 4, § 1, *d*, of the FCCC determines that States parties must promote and cooperate in the conservation and strengthening

14 Kyoto Protocol, REDD+ and Paris Agreement.

15 Pursuant to art. 1, § 7, of the FCCC, "'Reservoir means a component or components of the climate system where a greenhouse gas or a precursor of a greenhouse gas is stored".

16 Pursuant to art. 1, § 9, of the FCCC, "'Source' means any process or activity which releases a greenhouse gas, an aerosol or a precursor of a greenhouse gas into the atmosphere".

17 In nature, the death of trees does not in itself cause significant CO_2 emissions into the atmosphere because carbon is absorbed by the soil and reabsorbed in the ecosystem cycle. This carbon can also slowly turn into a hydrocarbon. Likewise, the reduction of trees to wood does not in itself cause significant CO_2 emissions into the atmosphere. The problem is the burning of the trees after they are felled.

18 *See* note 8 above.

of sinks and reservoirs of all greenhouse gases, including forests and terrestrial ecosystems, while the following paragraph establishes the parties of Annex I must adopt measures that protect and improve the condition of carbon sinks and reservoirs.

Since the beginning of its activities, the FCCC COP started to consider the concrete implementation of the aforementioned provisions and the Kyoto Protocol an important advance, with the aim of valuing the role of sinks. In fact, art. 3, § 3, of the Protocol establishes that the obligations set forth therein can also be fulfilled through "removals by sinks resulting from direct human-induced land use change and forestry activities, limited to afforestation, reforestation, and deforestation since 1990" (BRASIL, 2005).

Then, during COP 7, held in Marrakesh, in 2001, States adopted an agreement on the implementation of obligations against climate change and also addressed the issue of land and forest use[19] (SANDS *et al.,* 2018). After the entry into force of the Kyoto Protocol in 2005, COP 11 took a decision in Montreal on art. 3, § 3, of the Protocol, determining the principles for implementing rules and practices regarding the use of soil and forests.[20] This decision provides that, when the measures adopted pursuant to art. 3, § 3, of the Kyoto Protocol lead to a reduction of GHG, the agent State can obtain credits[21] to be used, in turn, to fulfill its GHG emission reduction obligations. These credits can circulate according to the ET system.

3 REDD+ AND PROTECTION OF FOREST ECOSYSTEMS: A POSSIBLE SYNERGY

In the preamble to the FCCC it is written that further warming of the Earth can "negatively affect natural ecosystems". In view of REDD+, it seems evident that, in addition to reducing GHG in the atmosphere, programs for the conservation and increase of forest carbon stocks are positive for the conservation of the forest biome.

However, there is no automatism between the implementation of instruments related to REDD+ and the protection and promotion of forest

19 Point K of the agreement regarding issues involving *land use, land-use change and forestry* (LULUCF).

20 *See* Cancun Safeguards.

21 These credits are represented by Removal Units (RMU), which are tradable as permits to emit one ton of greenhouse gases absorbed by a carbon removal or sink activity in a State of Annex I of the FCCC.

ecosystems. Indeed, afforestation and reforestation programs can be limited to planting trees of the same species, without considering the ecological impact[22]. This is also the case with the interruption of deforestation in an area almost entirely deforested, which does not prevent the irremediable impairment of the forest ecosystem.

Unlike what had been happening since the 1990s, when international obligations to combat climate change were restricted to developed countries, in 2005 the parties to the FCCC began to address the issue of forest sinks autonomously, involving developing countries (O'SULLIVAN; STRECK, 2016), which took place through the Reduction of Emissions from Deforestation and Forest Degradation (REDD).

In 2007, COP 13, in Bali, consolidated and expanded the theme. In particular, in Decision no. 1/CP.13, known as *the Bali Action Plan*, the parties decided to expand REDD cooperation, including the conservation and sustainable development of forests in developing countries[23]. Since then, this cooperation program is called REDD+ (UNFCCC, 2007a). Furthermore, Decision no. 2/CP.13[24] of Bali specifically addresses the issue of reducing GHG emissions caused by deforestation in developing countries and, among other aspects, emphasizes the importance of each party to identify and address the *drivers of deforestation* to reduce GHG+ emissions (UNFCCC, 2007b).[25] This provision is intended for all States, even those in development, consisting of a considerable strategy, at a global level, to fight against the destruction of forest ecosystems.

Once REDD+ was created, the challenge emerges of effective correspondence between the reduction of GHG, through the fight against deforestation and sustainable forest management, on the one hand, and environmental protection, on the other. The COP adopted some rules to try to institutionalize a synergy between the fight against climate change and the protection of forest ecosystems. Unprecedentedly, it was argued that

22 For example, a eucalyptus plantation, which absorbs CO_2, but which demands a lot of water and is not endemic in the region where the plantation is located, which goes against ecological principles.

23 Pursuant to § 1, letter "b", number "iii" of the Bali Action Plan: "The Conference of the Parties […] Decides to launch a comprehensive process […] through long-term cooperative action […] by addressing, inter alia: Strengthened national/international action on climate change mitigation, including, among others, consideration of: Policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and forest degradation in developing countries; and *the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries*;" (emphasis added).

24 Decision 2/CP.13 entitled *Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulating Action*.

25 Decision 2/CP.13, § 3.

it was impossible to guarantee an effective fight against climate change leaving aside issues related to biodiversity conservation. The law on climate change must henceforth interact with the law on biological diversity protection.

A fundamental step towards consolidating and strengthening REDD+ as a mechanism for protecting the climate and biodiversity took place at COP 16, held in Cancún, in 2010. An entire session of Decision no. 1/CP.16 (Cancún Safeguards) was dedicated to REDD+, its main point being related to the drivers of deforestation; in particular, human pressure on forests (UNFCCC, 2010).

The Cancun Safeguards have the function of ensuring that the application of REDD+ around the world is suited*, inter alia*, to the preservation of natural ecosystems, associated with the approach to the conservation of biodiversity. Therefore, the REDD+ mechanism must be an instrument for financing, in developing countries, projects consistent with the conservation of forest ecosystems (SAVARESI, 2010) and their biological diversity, under the terms of § 70. In effect, this provision establishes that States parties to the FCCC, which are developing States, are encouraged to contribute to mitigation work in the forest sector, adopting, for example, the conservation of forest carbon stocks and sustainable management of forests.

The aforementioned § 70 is justified by the provisions of § 25 of the Cancún Safeguards, which recognize the need to strengthen international cooperation to control the damage associated with the adverse effects of climate change as gradual phenomena, which are understood as the increase sea level rise, rising temperatures, ocean acidification, glacial retreat and its related effects, salinization, forest and land degradation, *loss of biodiversity* and desertification. The express mention of the conservation of biodiversity in the Cancún Safeguards is an important fact to support that there is a legal possibility of complying with the obligations of the CBD from the application of REDD+, which is, in turn, exclusively linked to the FCCC system.

In particular, art. 1, *d*, of Appendix I of the Cancún Safeguards, determines that the measures are compatible with the objective of environmental integrity and take into account the multiple functions of forests and other ecosystems. The reference to environmental integrity is very important, as it corresponds to a unitary consideration of the environment and, therefore, requires that REDD+ is also functional to other environmental aspects, especially the protection of ecosystems, including forests.

In addition, the Cancún Safeguards provide that, when applying its § 70, parties must ensure that their actions are consistent with the conservation of natural forests and biological diversity. This must happen without converting natural forests into sanctuaries, but by encouraging the protection and conservation of natural forests and their ecosystem services, diversifying the socio-environmental benefits[26].

As had already happened at the COPs in Cancún and Warsaw; during the COP 21, in Paris, there was a reinforcement of the norms related to REDD+. Although the Paris Agreement did not dedicate a specific part to REDD+, there is an express reference to the importance of forest conservation efforts in the face of climate change[27].

In the same sense, the New York Declaration is a legally non-binding international instrument, which emerged from the dialogue between various actors in the government sector and civil society in the UN member states. Despite not being an international treaty, the New York Declaration is important because it represents the recognition of the conservation of forest ecosystems as a condition for effectively combating climate change (UN, 2014).

Under the New York Declaration, forests, which support up to 80% of terrestrial biodiversity, play a vital role in safeguarding the climate by naturally *sequestering* carbon sink (UN, 2014). Thus, all forest ecosystem conservation initiatives – including through REDD+ – can contribute *inter alia* to climate resilience and biodiversity conservation (UNEP, 2014).

More recently, during the COP 26 of the FCCC, held in Glasgow, in 2021, the Glasgow Declaration was adopted, in which point 6 it is established that the signatory States undertake to align efforts to facilitate financial flows to reverse the loss and forest degradation as a *biodiversity* and climate conservation strategy (UNFCCC, 2021). However, within the scope of the FCCC system, no cash flow mechanism is more important than REDD+.

26 Cancun Safeguards, Appendix I, art. 2nd, *e.*

27 Paris Agreement, art. 5th: "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" (BRASIL, 2017).

Finally, within the scope of the CBD, in 2010, during COP 10, held in Nagoya, the Aichi Biodiversity Targets were adopted, notably Target 15, according to which the resilience of the ecosystem and the contribution of biodiversity to carbon stocks must be enhanced through conservation and restoration in order to contribute to climate change mitigation and adaptation (CBD, 2022).

4 CONSERVATION OF THE BRAZILIAN AMAZON FOREST BEFORE ECO-92

The promulgation of the 1988 Constitution meant the beginning of the process of redemocratization of the rule of law in Brazil. It is no coincidence that annual data on deforestation of the Amazon rainforest, based on satellite images, became publicly available as early as 1989 (BÖRNER *et al.,* 2015).

This internal movement of political and legal emancipation coincides, at the international level, with a deepening of the discussions about environmental protection. In fact, in 1985, UNEP was created within the framework of the UN. In addition, in 1987, the Brundtland Report, produced by the World Commission on Environment and Development, was published, specifically dedicated to the principle of sustainable development. Finally, in 1988, the UN General Assembly adopted Resolution no. 43/196 about Eco-92, which would take place precisely in Brazil, in the city of Rio de Janeiro (UN, 1988).

The deepening of international negotiations on the environment, throughout the 1980s, with the recognition of the need to combat poverty and underdevelopment as a condition for effective environmental protection, had repercussions on the Brazilian constitutional text. In this sense, art. 225, caput of the Constitution, establishes that it is the right of all those under Brazilian jurisdiction to have a healthy quality of life, that is, to live in an ecologically balanced environment. In addition, the same article, in its § 4, determines that: "The Brazilian Amazonian Forest […] [is] part of the national patrimony, and they shall be used, as provided by law, under conditions which ensure the preservation of the environment, therein included the use of mineral resources".

It is verified that, in the Brazilian constitutional order in force, the State has the duty to take all the necessary measures for the conservation of the Amazon, in view of the maintenance of the ecological balance of

the natural environment as a condition for the exercise of the right to life. However, the State has the right to give the Amazon an economic destination, insofar as it exercises national sovereignty over the Amazon's natural resources. Since 1988, the Amazon issue is no longer just a matter of State and becomes a broader issue.

In this logic, it is up to the State, under the terms of art. 225, § 1, I and IV combined with art. 225, § 4, of the Constitution, to preserve and restore essential ecological processes and provide for the ecological management of species and ecosystems in the Amazon (REIS NETO; SILVA; ARAÚJO, 2017), as well as to require a prior environmental impact study for the installation of a work or activity, to which publicity should be given.

The Brazilian Constitution was prepared and promulgated in a context of a very serious fiscal crisis of the dictatorial State, which was economically immobilized, unable to carry out its interventionist policy of import substitution (BRESSER-PEREIRA, 1993).

Over the previous decade, in a conservative neoliberal context, Latin American countries – therefore, the Amazonian ones – decided to borrow the dollars that oil-producing countries had deposited in banks in the United States and Europe. In the following years, foreign indebtedness increased at an unsustainable pace, which culminated in 1981 in the increase in rates in the United States, compromising, in the following years, the payment capacity of those countries (STIGLITZ, 2003), including Brazil.

When the Latin American countries's external debt crisis erupted, at first – between 1982 and 1984 – creditors thought it was a simple liquidity crisis. From 1985 onwards, however, the crisis was taken more seriously, demanding a reduction system, which resulted in the Brady Plan[28] of 1989 (BRESSER-PEREIRA, 1993).

The external debt crisis of the Amazonian countries was seen, in that period, as an opportunity to equate the global interest in the conservation of the Amazon and the national right to economic growth, which was seen as a vital element for the end of the crisis. The tension between ecological goals and economic goals reached an impasse in the mid-1980s.

In this context, Thomas E. Lovejoy[29] proposed the implementation of

28 The Brady Plan was a mechanism for reducing the debt of states to US creditors at a lower price than that achievable through secondary market buybacks. On April 15, 1994, under the presidency of Fernando Henrique Cardoso, Brazil concluded the agreement to renegotiate its foreign debt, along the lines of the Brady Plan (TERRA, 1999). The Brady Plan is considered by Bresser-Pereira (1993) a step towards the Washington Consensus, in a neoliberal conservative conjuncture originated in developed countries in the mid-1970s.

29 American biologist who died on December 25, 2021, Lovejoy was an advisor for environmental

debt-for-nature swaps (GUYVARC'H, 1998), according to which Amazonian states could exchange part of their external debt for nature conservation projects. In 1991, Brazil announced its first debt-for-nature swap by selling US$ 2.2 million of its foreign debt on the secondary market in favor of the environmental non-governmental organization Natural Conservancy, which would pay US$ 850,000 in private donations for Brazilian bonds. Then, the organization would transfer the debt to a Brazilian bank, which would exchange it for other long-term bonds, paying a rate of 6% per year. These bonds would thus be replaced by an investment fund that would finance conservation projects in the Grande Sertão Veredas National Park (NEAL, 1998).

The debt-for-nature swaps system was the target of harsh criticism, which focused on the ineffectiveness of on-site conservation projects, which would only exist in documents, given that the rates of environmental destruction continued at the same pace as before, regardless of external debt offset projects. In addition, operations were restricted almost exclusively to banking institutions, with no resources reaching those most in need (MAHONY, 1992).

In fact, debt-for-nature swap operations, planned within the financial market, never allowed a significant reduction in the burden of the external debt of the Amazonian countries, while at the same time they did not contribute to a reduction in the pace of environmental destruction. "It was never meant to provide debt relief of significant magnitude nor was it meant to solve the world's environmental or conservation problems" (THAPA, 1998, p. 260).

5 CONSERVATION OF THE BRAZILIAN AMAZON FOREST AFTER ECO-92

After hosting Eco-92, Brazil deposited in 1994 the instrument of ratification of the CBD and the FCCC[30]. The Kyoto Protocol was ratified[31] by Brazil in 2002, while the Paris Agreement, adopted during COP 21, entered into force for Brazil on November 4, 2016. In this international regulatory context, Brazil, based on the 2005 indices, has the obligation to reduce its GHG emissions by 37% by 2025, by 43% by 2030 and achieve climate

affairs at the World Bank and executive vice president of the WWF Nature Fund (PRIZIBISCKI, 2021).

30 According to Decree no. 2,519, of March 16, 1998, and Decree no. 2,652, of July 1, 1998 (BRASIL, 1998a; 1998b).

31 According to Decree no. 5,445, of May 12, 2005.

neutrality by 2050 (KERAMIDAS *et al.*, 2021). Therefore, it is necessary to reduce and control deforestation and burning in the Amazon ecosystem.

In compliance with the principle of publicizing data on the sustainable use of Brazil's Amazonian natural resources and in view of the international and national obligations assumed by the State, it is known that, between 2004 and 2012, annual deforestation in the Amazon fell from 27,772 km^2 to 4,656 km^2 (BÖRNER *et al.*, 2015). Contrary to what happened in the previous decade, from 2004 onwards, there was an increase in the number of inspection operations, due to the adoption of the Action Plan for the Prevention and Control of Deforestation in the Legal Amazon (PPCDAm) (BRASIL, 2004), which significantly contributed to the reduction of deforestation (MELLO; ARTAXO, 2017).

In 2013, the beginning of a politically troubled period in Brazil, deforestation in the Amazon increased again, reaching 9,762 km^2 of destroyed area in 2019 (INPE, 2019). Coincidentally, the PPCDAm, coordinated by the Civil House of the Presidency of the Republic until March 2013, became managed by the Ministry of the Environment, when the fourth phase of the plan was organized, in force between 2016 and 2020. More recently, from 2019 to 2021, the destruction of the Amazon rainforest exceeded the average of 10,000 km^2 per year, 56.6% greater than between 2016 and 2018 (ALENCAR *et al.*, 2022).

Public policies to combat deforestation and burning in the Amazon depend substantially on the engagement of governments, whether at the municipal, state or federal level, combined with the financing of conservation projects through taxes or donations, which can undergo significant changes over time (GARRET *et al.,* 2021).

If one takes what was done in Brazil, in the period when the destruction of the Amazon was better controlled, it appears that the obligation of individual reduction, linked to the Paris Agreement, is not so daring. Indeed, in 2012, Brazilian GHG emissions were already 43% lower than the 2005 parameters, that is, 6% more than they should be in 2025 (GARCIA *et al.*, 2021). Despite the worsening in the rates of destruction of the Amazon forest in the last decade, the perspective is that Brazil, even so, will have no difficulty in complying with the provisions of the Paris Agreement, in terms of percentage of reduction of GHG emissions (BRASIL, 2017).

Therefore, the fight against deforestation and burning in the Amazon does not involve so much the international treaties on climate change in force for the Brazilian State, but legal obligations related to the protection

of Amazonian biodiversity, based on the CBD. If there is a more significant decrease in GHG emissions by Brazil, in relation to the targets defined individually, this will ensure compliance not only with the FCCC, but especially with the CBD.

The reduction of GHG and the conservation of Amazonian biodiversity are two legal obligations of the Brazilian State, which has at its disposal for the protection of the Amazon multiple national and international efforts, gathered in REDD+ (POKORNY; SCHOLZ; JONG, 2013). This is not only important from the perspective of internal benefits, but also when analyzing Brazil's position in the global context, knowing that the country is the fifth largest emitter of carbon dioxide (RODRIGUES; MENDES, 2019).

6 COMBATING CLIMATE CHANGE THROUGH THE AMAZON FUND

In order to achieve zero deforestation in the Amazon, in 2007, a group of non-governmental organizations proposed a pact to the Brazilian National Congress, demonstrating that US$ 588 million would be needed to achieve the daring objective, which would require the constitution of its own fund. The following year, President Luiz Inácio Lula da Silva signed Decree no. 6,527, of August 1, 2008 (BRASIL, 2008), which creates the Amazon Fund to be constituted by donations aimed at protecting the Amazon and to be managed by the National Bank for Economic and Social Development (BNDES) (MAY *et al.*, 2016).

Until the creation of the Amazon Fund, there were many suspicions, within the Brazilian government, about the loss of sovereignty over the territory by Brazil from once the projects carried out in the Amazon were financed with resources from foreign donors (VAN DER HOFF; RAJÃO; LEROY, 2018).

These suspicions were gradually dispelled, especially based on the provisions of art. 1, *caput*, of Decree no. 6,527/2008, according to which BNDES – which is a federal public company[32] – is responsible for managing the Amazon Fund "to make non-reimbursable investments in actions to prevent, monitor and combat deforestation and promote conservation

32 There was speculation about the feasibility of managing the Amazon Fund's resources by the World Bank, which was absolutely ruled out due to the sovereigntist claim of the Brazilian State (VAN DER HOFF; RAJÃO; LEROY, 2018).

and sustainable use" in the Amazon (BRAZIL, 2008). This means that, although the origin of donations may be foreign, the control of operations would be the sole responsibility of a company directly controlled by the Brazilian State.

The Amazon Fund's donors are the government of Germany (KFW, 2021), the government of Norway (BNDES, 2009) and Petróleo Brasileiro S.A. (Petrobras) (BNDES, 2011), a publicly traded company whose majority shareholder is the government of Brazil. These donors have already contributed more than a billion dollars to the Amazon Fund, which is almost double what non-governmental organizations estimated in 2007 to be needed to stop deforestation in the Amazon (PINSKY; KRUGLIANSKAS; VICTOR, 2019).

The Amazon Fund was declared eligible, under the terms of Decree no. 8,576, of November 26, 2015, signed by President Dilma Rousseff, which established the National Commission for REDD+ (CONAREDD+), for access to payments for REDD+ results achieved by the country and recognized by the FCCC[33] (BRASIL, 2015). In this sense, Decree no. 8,773, of May 11, 2016, modified art. 1, § 2, of the Amazon Fund Decree (Decree no. 6,527/2008), which had the following wording:

> The actions referred to in the *caput* must comply with the guidelines of the Plan for the Prevention and Control of Deforestation in the Legal Amazon – PPCDAM, except for the provisions of § 1 and the National Strategy for Reducing GHG Emissions from Deforestation and Forest Degradation, Conservation of Forest Carbon Stocks, Sustainable Management of Forests and Enhnacement of Forest Carbon Stocks – ENREDD+ (BRAZIL, 2008).

The existence of the Amazon Fund made Brazil responsible for the largest REDD+ program in the world. Furthermore, the Amazon Fund was considered an interesting model that combined international cooperation with the participation of local actors in governance and project implementation, without undermining the expectations of donors, in the search for alternatives to the strict basis of Brazilian commodity exports (BACEN, 2019). In any case, especially in the period of reduced deforestation, between 2004 and 2012, donors recognized that the transfers of financial resources referred to reductions in GHG emissions already achieved by Brazil, without requiring the country to present additional reductions through the Amazon Fund projects. It is concluded that the donations corresponded to a prize for what had been done by Brazil, but that such prize should

33 Decree no. 6,527, of August 1, 2008, art. 8-A.

always be concentrated on actions to preserve the Amazon, not being possible to allocate them to expenses or investments of another nature (VAN DER HOFF; RAJÃO; LEROY, 2018).

When analyzing REDD+ in the Amazon, it is noteworthy that the issue of climate change is tackled with the broad participation of civil society actors, highlighting populations that have historically been excluded from decision-making by the Brazilian State. In addition, another interesting point is to seek to economically value the standing Amazon forest (REIS NETO; SILVA; ARAÚJO, 2017). The forest, which in the past was seen as a natural barrier[34] to national economic development, is now seen as a potential for environmental socioeconomic development.

To this end, publicity and transparency at home and abroad were highlighted. Finally, from the beginning, Brazil's sovereignty over the Amazon was never in check, and it was guaranteed the right to freely manage REDD+ resources in its territory, in accordance with collectively defined guidelines[35]– including the participation of indigenous people (EULER, 2016) – which was widely publicized internationally (PINSKY; KRUGLIANSKAS, 2019). With the repeal of Decree no. 8.576/2015 through Decree no. 10,144/2019, there was a significant narrowing of the collective degree of CONAREDD+ (BRASIL, 2019).

7 REDD+ IN THE BRAZILIAN AMAZON RAINFOREST: SAFEGUARDING BIODIVERSITY

The Brazilian Constitution determines, in its art. 225, § 1, I and II, that it is the State's obligation to preserve and restore essential ecological processes and provide for the ecological management of species and

34 During the Military Dictatorship in Brazil (1964-1985), General Emílio Garrastazu Médici, accompanied the construction of the trans-Amazonian highway on site, and it is reported that, in 1970, he was moved as he witnessed the felling of a 50-meter tree high to the sound of the national anthem (SILVA; SMITH JÚNIOR; SILVA, 2018).

35 To coordinate, follow up and monitor ENREDD+, under the terms of Decree no. 8,576/2015, CONAREDD+ was created, which was composed of the Ministry of the Environment; Civil House of the Presidency of the Republic; Ministry of Finance; Ministry of Foreign Affairs; Ministry of Agriculture, Livestock and Supply; Ministry of Science, Technology and Innovation; Ministry of Agrarian Development, which was merged into the Ministry of Social Development by President Michel Temer; Secretary of Government of the Presidency of the Republic; two representatives of state governments; a representative of the municipalities; and two representatives of organized civil society (BRASIL, 2015). On November 28, 2019, through Decree no. 10,144/2019, President Jair Messias Bolsonaro revoked Decree no. 8,576/2015, determining that CONAREDD+ is now composed of the Ministry of the Environment; Ministry of Foreign Affairs; Ministry of Economy; Ministry of Agriculture, Livestock and Supply; Ministry of Science, Technology, Innovations and Communications; a representative of state environmental agencies; a representative of organized civil society (BRASIL, 2019).

ecosystems, as well as preserve the diversity and integrity of the country's genetic heritage and inspect the entities dedicated to the research and manipulation of genetic material (BRASIL, 1988).

According to art. 2 of the CBD, of which Brazil has been a party since 1994, biodiversity corresponds to the variability of living organisms of all origins, including, among others, ecosystems, the ecological complexes of which they are part, diversity within species, between species and of ecosystems.

Therefore, it is a constitutional obligation of the Brazilian State to take all necessary measures to preserve the biodiversity found naturally in its territory or area of national jurisdiction, including genetic material, which, according to the aforementioned article of the CBD, "means any material of plant, animal, microbial or other origin containing functional units of heredity".

Despite REDD+ being a mechanism created and implemented under the aegis of the FCCC, its importance for the conservation of biological diversity is considered, which is in the list of legal obligations set out in the CBD. Would it be possible, therefore, to identify REDD+ as an instrument for the effectiveness of both international treaties, adopted at the time of Eco-92?

For this analysis, one must start from art. 5 of the CBD, which determines that each State Party must cooperate with other States Parties, either directly or through an appropriate international organization, in matters of mutual interest, for the conservation and sustainable use of biodiversity.

REDD+ is a mechanism for direct cooperation between States parties to the FCCC, whose objective is to reduce GHG emissions, in view of the individual goals taken under the Paris Agreement. When thinking specifically about the Amazon Fund, which is one of the main instruments for implementing REDD+ in the world, it is an arrangement based on international cooperation established between Norway[36], Germany[37] and Brazil[38] – States parties to the CBD – which, through a contract of donation, make up the financing fund for the conservation and use of the biodiversity of the Brazilian Amazon. It is in the mutual interest of the three States to ensure

36 Norway has been a State party to the CBD since 29 December 1993.

37 Germany has been a State party to the CBD since March 21, 1994.

38 Brazil has been a State party to the CBD since May 29, 1994.

that the main objective – reduction of GHG emissions – and the accessory object – sustainable use of biodiversity – of REDD+ are achieved.

In line with the principle of conservation and environmental recovery, REDD+ must be seen by the Brazilian State as an instrument to contribute not only to the reduction of GHG emissions, but also to the conservation and recovery of ecosystems of Amazonian biodiversity. The agents involved in these projects on biodiversity, financed through REDD+, must identify, protect and monitor species or ecosystems that are important for local life, particularly those that are rare, endemic or threatened with extinction (GOMES *et al.*, 2010).

The management and conservation of the Brazilian Amazon through the application of REDD+ in harmony with the Cancún Safeguards (BRASIL, 2016b), besides guaranteeing the real rights[39] of the population that lives there, must aim to conserve the forest and its rich biodiversity, while contributing to the reduction of GHG emissions, under the terms of the National Policy on Climate Change[40] (PNMC) and the Paris Agreement, by the Brazilian State (NERY *et al.*, 2013).

The adequacy of REDD+ to the objectives of the CBD and of the declarations on forests is verified, when analyzing Decree no. 6,527/2008, revoked in 2019, which, in its art. 3, II, determined that CONAREDD+ was responsible for promoting integration and synergy between public policies on forests, biodiversity and climate change (BRASIL, 2008). In the current Decree no. 10.144/2019, in force, there is no mention of biodiversity (BRASIL, 2019).

The fact that the decree in force since 2019 does not expressly provide for the competence of CONAREDD+ to promote the protection of biodiversity does not exclude the Amazon Fund from the perspective of being an instrument of such promotion. On the contrary, the pillars of the Amazon Fund are not only the fight against deforestation and illegal fires, but also "the protection of biodiversity and the development of sustainable activities" (GOMES; FERREIRA, 2019, p. 93).

39 According to the Brazilian Constitution, art. 20, XI, combined with art. 231, § 4, the lands traditionally occupied by indigenous peoples are property of the Federation, inalienable and unavailable, and the rights over them are imprescriptible. Such rights are the permanent possession of the land by the indigenous people and the exclusive usufruct of the riches of the soil, rivers and lakes existing therein, in accordance with the provisions of art. 231, § 2, of the Brazilian Constitution.

40 Established by Law no. 12,187, of December 29, 2009. Art. 12 of the PNMC establishes that: "In order to achieve the objectives of the PNMC, the country will adopt, as a voluntary national commitment, actions to mitigate GHG emissions, with a view to reducing between 36.1% (thirty-six and one-tenth percent) and 38.9% (thirty-eight and nine-tenths percent) of their projected emissions by 2020" (BRASIL, 2009). The PNMC goals are bolder than the goals assumed by Brazil in the face of the Paris Agreement, which consists of a 37% reduction by 2025.

In the same year of 2019, the Amazon Fund was paralyzed due to changes in priorities and governance, imposed unilaterally by the Brazilian government, based on suspicions of misuse of resources, which generated discontent and suspension of transfers from the main donors, Norway and Germany (MARCOVITCH; PINSKY, 2020). At first, the increase in deforestation in the Amazon was the reason for the suspension of transfers of amounts to the Amazon Fund by the two European countries (BARROSO; MELLO, 2020), but later reinforced by the Brazilian government's position of opposition to socio-environmental rights in the Amazon (TEIXEIRA; CHIHOVSKI, 2020). Faced with the impasse at the federal level, there has been an increase – still timid – of state initiatives on REDD+ in the Brazilian Amazon (SIMONET *et al.*, 2019).

Far from trying to establish the right position, that is, if the amounts donated are sufficient to fight deforestation and promote sustainable development, what we can see is that the resources stopped being donated, at that moment, by both Norway and Germany, due to the government's position on the matter. This impasse persists and should be the topic of international negotiations involving Brazil in the coming years[41]. It must be economically interesting for everyone involved to keep the Amazon forest standing (MOUTINHO *et al.*, 2011).

CONCLUSION

After the first UN conference on the environment was held in Stockholm in 1972, when the emergence of the environmental branch of international law was noted (SOARES, 2001), the ecological issue became an important aspect of diplomatic relations (TOLEDO, 2012). The Amazon Cooperation Treaty, which is so important to the South American regional integration process (GARCIA, 2011), was adopted by the eight developing states (ARAGÓN, 2018), in whose territory the Amazon biome is located, in 1978. The Treaty symbolized a regional response to the global concern about the fate of the Pan-Amazon, on a clearly sovereigntist basis. For this reason, despite being an Amazonian state, France was excluded from the Amazon Cooperation Treaty, with no possibility of future membership (TOLEDO; DI BENEDETTO, 2018).

41 With regard, for example, to the free trade agreement between Mercosur and the European Union, the governments of France and Ireland, due to the increase in the rates of illegal deforestation and burning in the Brazilian Amazon, expressed their opposition to the ratification of the commercial treaty. (GREGOSZ, 2020).

With the redemocratization of the Brazilian State, in 1985, Brazil rebuilds its legal order based on the protection of human rights, the strengthening of social rights and the guarantee of environmental rights. Indeed, the 1988 Constitution contains provisions on the right to a balanced environment as a condition for exercising the right to life and personal integrity. Likewise, the Brazilian State reaffirms its territorial sovereignty, assuming the duty of conserving its biomes, including the Amazon (BRASIL, 1988).

Brazil's leading role in international negotiations on environmental protection made the country host to the second UN conference on the environment, Eco-92, held in Rio de Janeiro, twenty years after the Stockholm meeting. This is a period in which developing countries demand that, by historical commitment, developed States assume greater environmental responsibilities (GIOSTRI; NASCIMENTO, 2016).

Shortly before Eco-92, in a context of redemocratization and economic collapse, Brazil participates in debt-for-nature swaps operations that, even with criticism, failures and inconsistencies, constitute an initiative to financially reward developing States for environmental preservation.

Once Eco-92 has been held, international environmental law is now structured on two pillars, namely the law on climate change and the law on biodiversity. In the climate sphere, founded on the FCCC, the system is established, which will unfold in instruments such as the Kyoto Protocol and the Paris Agreement (BRASIL, 2005; 2017). Brazil is a party to these international treaties, committing itself to reduce GHG emissions by 37% by 2025, by 43% by 2030 and reaching carbon neutrality in 2050.

In view of the effectiveness of international climate change law, before the adoption of the Paris Agreement, the States parties to the FCCC, meeting in Poznan, instituted REDD+. A few months earlier, the Brazilian government decreed the creation of the Amazon Fund, under the management of BNDES, in order to finance sustainable development projects in the Brazilian Amazon, which was then officially linked to REDD+. This decision corresponded to Brazil's initiative to comply with the FCCC, which is directly related to the country's individual goals for reducing greenhouse gases, assumed later.

Such funding is financed by donations made by the government of Norway, the government of Germany and Petrobras. Along with an active stance on the part of Brazil to implement strategies to control and inspect its territory, the destruction of the Amazon reaches its lowest historical level in 2012, which fulfills, in advance and with some slack, the commitments

assumed by the country in the Paris Agreement, in force since 2016.

Since 2013, Brazil has faced a continuous political crisis, which also became an economic crisis in 2015, one that has compromised the State's efficiency in maintaining historically low levels – less than 5,000 km^2 per year – of deforestation and burning in the Amazon. In the last three years, for example, the annual average of destruction exceeded the mark of 10,000 km^2. In legal terms, the significant worsening of the Brazilian State's performance in keeping the Amazon forest standing and the threat of a recent stoppage of the Amazon Fund linked to REDD+ are not associated with Brazil's failure to comply[42] with the international climate change law, but with the international law on biodiversity.

Projects financed by the Amazon Fund, recognized as REDD+ operations, involving the native ecosystem should aim not only at reducing and fixing carbon, but also at conserving biodiversity. In this sense, it is also interesting to think about financing reforestation for the restoration of biodiversity in degraded lands (STICKLER *et al.*, 2009) as a strategy related to REDD+.

The effective fight against deforestation and burning of the Amazon forest by Brazil, through REDD+, is of triple interest to the international community, as it not only reduces strong GHG emissions into the atmosphere, contributing to the hydrological balance of the South American continent (ROCHA; CORREIA; FONSECA, 2015), but it also allows the preservation of Amazonian biodiversity.

In this sense, the valorization of REDD+ in the Brazilian Amazon goes beyond the limits of the FCCC, becoming a strategic element for the fulfillment of international law on biodiversity. This is how the New York Declaration and the Glasgow Declaration must be understood. Therefore, REDD+ should be examined as a mechanism for implementing the CBD, of which not only Brazil, but also Germany and Norway are parties.

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42 It is worth remembering, as a curiosity, that in 2005, the base year for calculating the reduction of GHG emissions, under the terms of the Paris Agreement, an area of 18,790 km^2 of the Brazilian Amazon was deforested (BRASIL, 2006), which corresponds to 80% more than was deforested in 2021 (DESMATAMENTO NA AMAZÔNIA…, 2022).

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