

The Implications of Soft-Law on the International Environmental Governance of the Amazon: Neocolonialism and Indigenous Rights

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I. INTRODUCTION

A. *International Law and the Environmental Governance of the Amazon*

Lawmakers have long used soft law as a fast and effective mechanism for creating complicated contemporaneous environmental governance, but within the same regulatory landscape, it now functions as a form of neocolonialism. Soft law governance in the Amazon Rainforest is an example of how non-regional entities can use their political and economic upper hand to influence the environmental governance of vulnerable environmental and political systems. Using contemporary problems in the Amazon Rainforest as a case study, this Note will demonstrate how soft law governance in the regulatory framework of international environmental law bends towards modern-day neocolonialism employed by non-regional entities.

First, through an analysis of the evolving governance of the Amazon by both regional and non-regional entities through political and economic influence, then by analyzing the current state of political Indigenous rights, and ultimately through this analytical lens, this Note proposes a soft law solution of creating an agreement providing for and enumerating Indigenous political rights and involvement in the environmental governance of the Amazon Rainforest. This agreement can be employed to combat the negative consequences of neocolonialism spurred by soft law governance in international environmental regulation.

B. *International, Environmental, and Soft Law*

While international law has historically been met with skepticism,¹ all law only works because of the voluntary compliance of the entities it purports to govern. International law is no different. Because it is so vast, the definition of

¹ See, e.g., JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* 3 (2005) (noting that international law often is critiqued for being ineffective unenforceable, and even unimportant).

international law is notoriously difficult to pinpoint.² Generally, however, international law refers to the body of norms and conduct used by independent nations to govern a wide variety of legal relationships among them.³

International environmental law is a rapidly growing subject of international law.⁴ This growth is in response to the increasing environmental degradation the Earth is experiencing.⁵ International environmental law is used to guide international interaction related to the resolution of environmental impacts.⁶ The ever-expanding need for effective environmental regulation has directly caused the nascent field of international environmental law to develop as an efficient response and has therefore become prolific in its short lifetime.⁷ The international regime for environmental protection comes from several sources and is made up of many principles.⁸

Both international and international environmental law recognize four principal sources of international law as set out by the International Court of Justice ("ICJ"): conventions and treaties, international customary law, generally recognized principles of law, and judicial decisions and scholarly writings.⁹ International environmental law recognizes one additional principal source: "soft law."¹⁰ While soft law is recognized in international law generally, it can be especially useful in international environmental law and is therefore abundant in the subject.¹¹

Soft law is the intermediary between the complete absence of law and the traditionally binding "hard law" that provides a flexible, non-binding alternative when a staunch binding agreement cannot be reached.¹² Soft law is an extremely important tool in international environmental governance. International

² 1 ROLAND ROBERTS FOULKE, A TREATISE ON INTERNATIONAL LAW 143–46 (1920).

³ VALERIE EPPS ET AL., EXAMPLES & EXPLANATIONS FOR INTERNATIONAL LAW 2 (3d ed. 2023).

⁴ Anthony D'Amato, *The Path of International Law* 2 (Nw. Univ. Sch. of L., Working Paper No. 97, 2010).

⁵ Karen N. Scott et al., *An Introduction to International Environmental Law*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 1, 2–3 (Erika Techera et al. eds., 2d ed. 2021).

⁶ *Environmental Law*, U.N. AND THE RULE OF L., <https://www.un.org/ruleoflaw/thematic-areas/land-property-environment/environmental-law> [<https://perma.cc/7F9T-XM4W>] (last visited Apr. 3, 2026, at 12:18 CT).

⁷ LINDA ETCHART, GLOBAL GOVERNANCE OF THE ENVIRONMENT, INDIGENOUS PEOPLES AND THE RIGHTS OF NATURE: EXTRACTIVE INDUSTRIES IN THE ECUADORIAN AMAZON 48–51 (Rebecka V. Ulfgard & César V. Rivas eds., 2022).

⁸ JONATHAN C. CARLSON & SIR GEOFFREY W.R. PALMER, INTERNATIONAL ENVIRONMENTAL LAW: A PROBLEM-ORIENTED COURSEBOOK 45–55, 256–91 (4th ed. 2019).

⁹ Statute of the International Court of Justice art. 38. The International Court of Justice, or the ICJ, is "the principal judicial organ of the United Nations," and therefore, it is the international court that governs most of international society. *The Court*, INT'L CT. OF JUST., <https://www.icj-cij.org/court> [<https://perma.cc/MY4C-D9V4>] (last visited Mar. 8, 2026, at 16:03 CT).

¹⁰ CARLSON & PALMER, *supra* note 8, at 53–55.

¹¹ *Id.*

¹² Mirko Pečarič, *Soft Law – The Intermediate Stage Between Freedom and Control*, 13 DANUBE J. 42, 45 (2022).

institutions and states continually use “nonbinding instruments instead of or in addition to binding ones to pursue their objectives.”¹³ Nearly all international environmental matters begin, or at some point use, this nonbinding structure as the basis for their agreements.¹⁴ This is due to the noncommittal nature of such agreements. Soft law allows nations to respond to emerging environmental impacts efficiently without the fear that they will face political, economic, and/or moral consequences on an international scale if they are unable to comply.

These concepts and sources are the foundation for international cooperation and are used by states, organizations, and other actors to collaborate on global challenges.¹⁵ Understanding this legal framework is essential to the analysis of international environmental governance. It is through this lens that we will evaluate the regime for the international environmental governance of the Amazon Rainforest.

II. BACKGROUND

A. *Environmental State and Importance of the Amazon*

In an era characterized by unprecedented interconnectedness and escalating environmental crises, international environmental law is imperative to the future of the planet and the survival of the human species. The U.N. Environment Programme has recognized the modern scientific idea that Earth has entered a new geological epoch, entitled the Anthropocene.¹⁶ The Anthropocene is used to describe the current period in Earth’s history as characterized by the profound impact of humanity in which humans have overtaken nature—resulting in lasting effects on the Earth’s systems, environment, and consequences that have followed.¹⁷

The Amazon Rainforest is especially important for the global environment because it is the world’s largest tropical forest, accounting for about forty percent of the remaining rainforests on Earth.¹⁸ The Amazon has incredibly rich biodiversity, and the possibility of its collapse threatens a global climate spiral.¹⁹ Without the environmental stability the Amazon Rainforest provides, other

¹³ JURGEN FRIEDRICH, INTERNATIONAL ENVIRONMENTAL “SOFT LAW” 2 (2013).

¹⁴ *Id.*

¹⁵ *International Law*, CORN. L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/international_law [<https://perma.cc/9KTZ-6A98>] (last visited Feb. 4, 2026, at 12:30 CT).

¹⁶ MATTHEW BILLOT ET AL., UNEP, GLOBAL ENVIRONMENT OUTLOOK-5: ENVIRONMENT FOR THE FUTURE WE WANT, xviii, 195–96, 506 (Bart Ullstein et al. eds., 2012), <https://www.unep.org/resources/global-environment-outlook-5> [<https://perma.cc/38HL-TNDB>].

¹⁷ Katie Pavid, *What Is the Anthropocene and Why Does It Matter?*, NAT. HIST. MUSEUM, <https://www.nhm.ac.uk/discover/what-is-the-anthropocene.html> [<https://perma.cc/7YXC-GQGJ>] (last visited Feb. 4, 2026, at 10:31 CT).

¹⁸ Juan Bello, *Last Chance to Save The Amazon*, UNEP: LATIN AM. & THE CARIBBEAN OFF. (May 22, 2023), <https://www.unep.org/news-and-stories/statements/last-chance-save-amazon> [<https://perma.cc/KY5K-64GV>].

¹⁹ *Id.*

ecosystems internationally would likely begin to fail. The irreversible depletion of the Amazon Rainforest could thus create a domino effect leading to global environmental collapse.

B. *Regional Governance of the Amazon*

The Amazon Rainforest spans across 6.7 million square kilometers and over eight basin countries—Brazil, Bolivia, Peru, Ecuador, Colombia, Venezuela, Guyana, and Suriname.²⁰ The governance of the Amazon is inherently complicated due to its vast land area expanding across multiple countries. The multi-state span of Amazonian territory creates many potential opportunities for political and logistical conflicts.²¹ Due to the complexity of these circumstances, it is important to analyze the overall scope of cooperation between the Amazon Basin States, both through their governance domestically as well as in the international sphere.

C. *Amazon Basin States' Governance*

All eight Amazon Basin countries work both individually and together to govern the Amazon. To do so, they use their domestic law to have a binding effect on their respective portions of the Amazon, and use international agreements, both hard and soft, to support regional cooperation and regulation. It is evident through their commitment to international soft law agreements that the Basin countries recognize the importance of international and regional cooperation in environmental management.²² These soft law agreements maintain state sovereignty while still using guidance of the broader international regime.

1. Cooperative Governance

There are numerous international agreements that are pertinent to the protection of the Amazon Rainforest. While most of them are not regionally specific, they are still relevant when the Amazon Basin States are signatories. Even if the agreements are not specific to the environment of the Amazon, they can still govern and advise on how to govern rainforest climates generally. Relevant agreements governing the Amazon are: (1) the Amazon Cooperation Treaty; (2) the United Nations Framework Convention on Climate Change; (3) the Paris Agreement; (4) the Convention on Biological Diversity; (5) the United Nations Convention to Combat Desertification; (6) the International Tropical Timber Agreement; (7) the Ramsar Convention on Wetlands; (8) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and (9)

²⁰ *Top Facts About the Amazon*, WORLD WILDLIFE FUND (Aug. 21, 2023), <https://www.wwf.org.uk/learn/fascinating-facts/amazon> [<https://perma.cc/9CU3-K6X8>].

²¹ Balancing national interests—such as economic development versus environmental protection—within complex legal frameworks and differing enforcement capacities across a shared ecological system creates conditions in which disagreements arise quickly, and solutions are difficult to achieve. These circumstances are even further exacerbated given the logistical challenges of coordinating policy and monitoring across a vast, remote region.

²² See *infra* Section II.C.1.

the United Nations Declaration on the Rights of Indigenous Peoples. Of these, only the Amazon Cooperation Treaty is regionally specific.

a. The Amazon Cooperation Treaty

One of the only regional agreements between all eight Amazon Basin States is the Amazon Cooperation Treaty of 1978 (“ACT”).²³ The ACT employs many of the numerous principles recognized in international environmental law. The ACT recognizes the importance of sovereignty and development while simultaneously showing commitment to regional cooperation for conservation and the sustainable use of Amazonian resources.²⁴

State sovereignty is the principle that every individual state has the right to freedom, ultimate authority, and autonomy within its own territories.²⁵ Sustainable development is the principle that the development of nations must meet the needs of both the present and future.²⁶ The obligation of cooperation is recognized in conjunction with many other procedural obligations—notification, consultation, and negotiation—all of which function mainly to facilitate communication between nations.²⁷ The use of these principles shows the region’s commitment to creating a fair and effective agreement by indicating the States’ intent to follow concepts that are known to make functional and productive agreements.

In 1998, the Member States of the ACT amended the treaty in order to create the Amazon Cooperation Treaty Organization (“ACTO”).²⁸ The ACTO is an intergovernmental organization made up of the eight Amazon Basin States and was created to assist the cooperative process of Amazonian governance.²⁹ It is currently “the only socio-environmental bloc in Latin America,” and is incredibly important for regional cooperation.³⁰ The organization has identified a framework and priorities that allow it to effectively cooperate and communicate to achieve its mission.³¹

²³ Treaty for Amazonian Cooperation, July 3, 1978, 17 I.L.M. 1045, 1202 U.N.T.S. 71.

²⁴ *Id.* arts. I, IV, V (Article I recognizes the obligations of cooperation and sustainable use; Article VI recognizes state sovereignty; Article 5 recognizes sustainable development).

²⁵ See FOULKE, *supra* note 2, at 69 (explaining that while sovereignty is ambiguous and difficult to define it is used to describe “the independence and the inherent power of a state”).

²⁶ CARLSON & PALMER, *supra* note 8, at 296–301.

²⁷ *Id.* at 183.

²⁸ Anna Dell’Amico, *Amazon Summit: 6 Proposals for Preserving the Amazon Through Regional Cooperation*, INTERAMERICAN ASS’N FOR ENV’T DEF. (Aug. 15, 2023), <https://aida-americas.org/en/blog/amazon-summit-6-proposals-for-preserving-the-amazon-through-regional-cooperation> [<https://perma.cc/2RPN-8V38>].

²⁹ *Id.*

³⁰ *Id.*

³¹ *Who We Are*, AMAZON COOP. TREATY ORG., <https://otca.org/en/who-we-are> [<https://perma.cc/QR5V-9LNU>] (last visited Feb. 3, 2026, at 20:55 CT).

b. The United Nations Framework Convention on Climate Change

All Amazon Basin countries have ratified the U.N. Framework Convention on Climate Change (“UNFCCC”).³² This agreement is aimed at preventing irreversible damage to the Earth’s climate.³³ The UNFCCC was a revolutionary agreement in international environmental law because it was created in a time before climate change was recognized as readily as it is now,³⁴ and it is still incredibly important in this context. The goal of this agreement revolves around the stabilization of greenhouse gas emissions to keep them at a level that prevents irreversible harm to the climate system.³⁵

The language used in this agreement lends itself to interesting analysis. The language of an instrument is key to deriving the subjective intent of the parties as to whether they meant to create a binding versus nonbinding agreement.³⁶ The provisions of the agreement provide that “the Parties *shall* be guided” by the principles,³⁷ which indicates its binding nature.³⁸ However, the subsequent provisions use the verb “should” to encourage the Parties to act in accordance with the agreement.³⁹ This language suggests that the terms of the agreement are not binding on the Parties; thus suggesting that the Parties are legally bound by the agreement, but in the sense that they are legally bound to make an effort to follow the principles stated within, rather than legally bound to act in strict accordance with them.

This agreement is important when discussing the governance of the Amazon Rainforest for many reasons. First, all eight Basin countries are parties to the agreement, making it an important agreement to the region. Further, it is important to the region because the Amazon Rainforest is relied upon to combat greenhouse gases as a major carbon sink.⁴⁰ Additionally, it is important due to the overall degradation of the Amazon with rampant deforestation and

³² U.N. Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC]. Although the parties are not listed in the original Annex I of the UNFCCC, they subsequently ratified the Convention. *Parties to the United Nations Framework Convention on Climate Change*, U.N. CLIMATE CHANGE, <https://unfccc.int/process/parties-non-party-stakeholders/parties-convention-and-observer-states> [https://perma.cc/F8YJ-Y96S] (last visited Apr. 3, 2026, at 11:52 CT).

³³ *United Nations Framework Convention on Climate Change*, U.N. CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/what-is-the-united-nations-framework-convention-on-climate-change> [https://perma.cc/MUS2-3N44] (last visited on Mar. 15, 2026) [hereinafter UNCC].

³⁴ *Id.*

³⁵ *Id.*

³⁶ FRIEDRICH, *supra* note 13, at 128.

³⁷ UNFCCC, *supra* note 32, art. 3 (emphasis added).

³⁸ FRIEDRICH, *supra* note 13, at 128–29 (noting one of the main indicators of a soft law agreement is the use of “should” instead of “shall” to show the lack of intent to be bound by an agreement).

³⁹ UNFCCC, *supra* note 32, art. 3.

⁴⁰ See Carlos Clemente Cerri et al., *Carbon Cycling in the Amazon*, in RECARBONIZATION OF THE BIOSPHERE: ECOSYSTEMS AND THE GLOBAL CARBON CYCLE 253, 255 (Rattan Lal et al. eds., 2012) (“The TRF represents significant sources/sinks of greenhouse gases (GHGs), and the exchange of carbon dioxide (CO₂) between forest and the atmosphere is an important component of the global C cycle.”).

unsustainable development. This agreement guides its parties in the face of environmental harms and encourages them to act in line with essentially all the recognized principles of international environmental law.⁴¹

c. The Paris Agreement

The Paris Agreement is a legally binding treaty under the UNFCCC.⁴² The agreement elaborates on the UNFCCC by creating specific goals and methods of implementation to reach those goals. For example, Article 2 of the agreement compels the parties to combat climate change by “[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit temperature increase to 1.5°C above pre-industrial levels.”⁴³ The agreement implements this obligation to increase adaptability to the threat of climate change, and aims to open channels of finance that will allow “climate-resilient development.”⁴⁴

The agreement commits to do so under the principle of common but differentiated responsibilities, to account for differences in national circumstances.⁴⁵ The principle of common but differentiated responsibilities encapsulates the idea that while all states are responsible to cooperate to protect the environment, the means in which they are obliged to do so depends on the State’s ability to undertake those measures.⁴⁶ The method for implementation of the Paris Agreement is through “a five-year cycle of increasingly ambitious climate action,” based on nationally determined contributions (“NDCs”).⁴⁷ In 2020 countries began to submit their NDCs, which elaborate on the actions that they find feasible for their country to take in order to reduce their greenhouse gas emissions.⁴⁸ This agreement is similar in nature to the UNFCCC in that it is legally binding, but it instead uses an approach analogous to soft law. Countries are bound by the overall agreement, but their obligation is to set performance commitments to work towards meeting the goals identified in the treaty. Conscious of the circumstances facing their country, they are free to control how vigorous their performance will be. Further, the accountability process is focused less on consequences, and more on collaboration, as an incentive to improve performance and ambition.⁴⁹

⁴¹ UNFCCC, *supra* note 32, arts. 3–4.

⁴² U.N. CLIMATE CHANGE, *Ever Wondered: What is the 'Paris Agreement,' and How Does It Work?*, at 00:05 (YouTube, Sep. 24, 2020), <https://www.youtube.com/watch?v=WiGD0OgK2ug&t=6s> [<https://perma.cc/YU6X-2SH3>].

⁴³ Paris Agreement art. 2(1), Dec. 12, 2015, 3156 U.N.T.S. 79.

⁴⁴ *Id.*

⁴⁵ *Id.* art. 2(2).

⁴⁶ CARLSON & PALMER, *supra* note 8, at 278.

⁴⁷ U.N. CLIMATE CHANGE, *supra* note 42, at 00:27–00:38.

⁴⁸ *Id.* at 00:40–00:46.

⁴⁹ See *id.* at 01:03 (highlighting the Paris Agreement offers countries “financial,” “technical,” and “capacity-building” supports).

For many of the same reasons as the UNFCCC, the Paris Agreement is relevant to Amazon environmental governance. All Amazon Basin States are party to the agreement, and therefore, the region is governed by it. Because it is focused on greenhouse gas emission reduction and sustainable development, it is directly related to the governance of the Amazon.

d. The Convention on Biological Diversity

The Convention on Biological Diversity (“CBD”) ⁵⁰ is a multilateral international agreement and is the most widespread agreement on the protection of biodiversity.⁵¹ It is a sister convention to the UNFCCC⁵² and has been ratified by 196 nations.⁵³ While the CBD is not regionally specific to the Amazon, it is still extremely important because it is specific to biodiversity, a major concern in the region.⁵⁴ All eight Basin countries have signed the convention,⁵⁵ which makes it regionally significant because it sets guidelines for how to handle environmental circumstances threatening biodiversity. The CBD is a binding agreement that covers “all possible domains that are directly or indirectly related to biodiversity and its role in development.”⁵⁶ It promotes the cooperation and strategic development for biodiversity conservation.⁵⁷

e. The United Nations Convention to Combat Desertification

At first glance, this binding international treaty may not seem relevant in the context of the Amazon, but the United Nations Convention to Combat Desertification (“UNCCD”) is important to mention.⁵⁸ While the UNCCD does focus on degradation by drought, it touches more broadly on the prevention of land degradation as well as the restoration of degraded land, which is a notable problem in the Amazon region.⁵⁹ Furthermore, all Basin States are parties to the agreement and thus this governing document holds universally accepted jurisdiction for the Amazon Rainforest in the face of desertification or drought.⁶⁰

⁵⁰ Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79 [hereinafter CBD].

⁵¹ *Convention on Biological Diversity, Key International Instrument for Sustainable Development*, U.N., <https://www.un.org/en/observances/biological-diversity-day/convention> [https://perma.cc/7NBY-E6VR] (last visited Feb. 9, 2026, at 12:20 CT).

⁵² UNCC, *supra* note 33.

⁵³ *Convention on Biological Diversity, Key International Instrument For Sustainable Development*, *supra* note 51.

⁵⁴ Bello, *supra* note 18.

⁵⁵ CBD, *supra* note 50.

⁵⁶ *Convention on Biological Diversity, Key International Instrument for Sustainable Development*, *supra* note 51.

⁵⁷ CBD, *supra* note 50, arts. 5–6.

⁵⁸ U.N. Convention to Combat Desertification, *opened for signature* Oct. 14, 1994, 1954 U.N.T.S. 3 [hereinafter UNCCD].

⁵⁹ *Annex III: Latin America and the Caribbean (LAC)*, U.N. CONVENTION TO COMBAT DESERTIFICATION, <https://www.unccd.int/convention/regions/annex-iii-latin-america-and-caribbean-lac> [https://perma.cc/E4BK-P6AR] (last visited Feb. 9, 2026, at 14:29 CT).

⁶⁰ UNCCD, *supra* note 58, arts. 2–4.

f. The International Tropical Timber Agreement

The International Tropical Timber Agreement (“ITTA”)⁶¹ is extremely important to the environmental governance of the Amazon Rainforest. The main objective of the agreement is to promote the sustainable management of tropical forests and provide the legal provisions on international trade in tropical timber.⁶² The ITTA has the following objectives: increasing consultation and development, improving forest management and utilization, encouraging reforestation and land restoration, and increased policy, governance, and enforcement of laws.⁶³

Nearly all the Amazon Basin countries are part of the agreement; Bolivia is the only non-party State.⁶⁴ This agreement is particularly important in the region due to the immense and continuously growing concern about deforestation in the Amazon Rainforest. This deforestation is especially concerning due to non-regional economic influences that encourage continued overutilization of the resources.

g. The Ramsar Convention on Wetlands

The Convention on Wetlands of International Importance Especially as Waterfowl Habitat, known commonly as the Ramsar Convention or the Convention on Wetlands, is an intergovernmental agreement on the conservation and sustainable use of all wetlands.⁶⁵ This agreement was one of the first international environmental treaties to be negotiated.⁶⁶ While its name bodes an emphasis on wetlands as habit for waterfowl, the agreement has become substantially more broad to cover all aspects of wetland and freshwater conservation.⁶⁷ The wetlands included in the Ramsar definition are coastal wetlands, deltas, tidal marshes, mangrove swamps, lake wetlands, rivers, streams, marsh wetlands, swamps, and bogs.⁶⁸

To be party to the agreement, a country must designate at least one ‘Ramsar site’—i.e., a wetland that meets the criteria for inclusion on the List of Wetlands

⁶¹ International Tropical Timber Agreement, Jan. 27, 2006, 2797 U.N.T.S. 75 [hereinafter ITTA].

⁶² *International Tropical Timber Agreement*, EUR-LEX (Feb. 3, 2022), <https://eur-lex.europa.eu/EN/legal-content/summary/international-tropical-timber-agreement.html> [https://perma.cc/2SXB-ACRQ].

⁶³ *Id.*

⁶⁴ U.N. TREATY STATUS, CH. XIX 46. INTERNATIONAL TROPICAL TIMBER AGREEMENT 1–3 (Dec. 7, 2011), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XIX/xix-46.en.pdf> [https://perma.cc/6KNG-5HDX].

⁶⁵ Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Feb. 2, 1971, 996 U.N.T.S. 14583 [hereinafter Ramsar Convention].

⁶⁶ Bureau Oceans and Int’l Env’t Sci. Affs., *Fact Sheet: Ramsar Convention on Wetlands*, U.S. DEP’T OF STATE ARCHIVE (Jan. 20, 2009), <https://1997-2001.state.gov/global/oes/fs Ramsar980818.html> [https://perma.cc/A6HY-RWXG].

⁶⁷ *Id.*

⁶⁸ *Id.*

of International Importance.⁶⁹ This designation is a commitment to implement the guidelines in the agreement for wetland management.⁷⁰ While the Ramsar convention is a legally binding treaty, it has a soft law-esque nature because its commitment does not carry any sanctions.⁷¹ This allows countries to commit without concern of international backlash, at least in a legal sense.

Bolivia, Brazil, Colombia, Ecuador, Peru, Suriname, and Venezuela are all contracting parties under the agreement, meaning that Guyana is the only Amazon Basin State that is not party to the agreement.⁷² Due to the variety of wetland ecosystems in the Amazon, this is an important international agreement for the region. By agreeing to this treaty, nations are guided to promote conservation, monitoring, and research in their designated wetlands.⁷³ Additionally, the Ramsar Convention promotes communication and consultation between nations who share wetland systems.⁷⁴

h. The Convention on International Trade in Endangered Species of Wild Fauna and Flora

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”) is a multilateral international agreement that aims to protect endangered species as part of the Earth’s ecosystem and for future generations.⁷⁵ The exploitation of hundreds of species of wildlife through the international wildlife trade is estimated to be worth billions of dollars annually.⁷⁶ It was early in the history of international environmental law that the protection of plant and animal species became apparent if these species were going to ward off extinction.⁷⁷ For some species, the high demand of their product requires extensive harvesting, and for others, additional environmental factors are in play, such as habitat loss.⁷⁸ By any process involved, without regulation these species may end up endangered or, even worse, extinct.

In order to protect the species enumerated in CITES, the agreement sets out regulations for the trade of species depending on the level of threat to their existence.⁷⁹ It also provides measures for the management, enforcement, and

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Bureau Oceans and Int’l Env’t Sci. Affs., *supra* note 66.

⁷² Ramsar Convention, *supra* note 65.

⁷³ *Id.* art. 4.

⁷⁴ *Id.* art. 5.

⁷⁵ Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 993 U.N.T.S. 243 [hereinafter CITES].

⁷⁶ *What is CITES?*, CITES, <https://cites.org/eng/disc/what.php> [<https://perma.cc/579E-P73E>] (last visited Apr. 6, 2026, at 17:56 CT).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ CITES, *supra* note 75, arts. III–VI.

implementation of its provisions.⁸⁰ Additionally, CITES enumerates where there may be exemptions from the agreement.⁸¹ This agreement is legally binding and one of the most aggressive agreements in terms of the level of performance required.

All eight Amazon Basin countries are party to this agreement.⁸² This agreement is important to the region due to the dense species population and the vastness of the ecosystem. Being one of the most biodiverse places on the planet, the protection of species therein is essential. Yet the expansive area of the Amazon may make it difficult to monitor and enforce the policies under this agreement. However, being part of this agreement allows the Amazon Basin States to have more communication and collaboration and hopefully ease the immense burden of protecting the species in the Amazon.

i. The United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) is the most comprehensive international agreement on the rights of Indigenous people.⁸³ The declaration establishes a framework for minimum rights for the well-being of Indigenous Peoples around the globe.⁸⁴ Addressing both individual and collective rights, this framework covers many categories of rights, including rights for culture, identity, education, health, employment, language, and more.⁸⁵ The declaration bars discrimination and encourages the involvement of Indigenous Peoples in relevant matters.⁸⁶

All eight Amazon Basin countries have adopted UNDRIP.⁸⁷ While this instrument may not seem salient in the context of environmental law, it is because the governance of the Amazon necessarily includes the Indigenous Peoples that reside therein. Beyond its global significance, this document is the first regionally significant declaration of rights for Indigenous people who

⁸⁰ *Id.* arts. VIII, IX, X, XIV.

⁸¹ *Id.* art. VII.

⁸² *List of Contracting Parties*, CITES, <https://cites.org/eng/disc/what.php> [<https://perma.cc/S4CX-JXNH>] (last visited Feb. 3, 2026, at 23:24 CT).

⁸³ See G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Sep. 13, 2007).

⁸⁴ Office of the High Commissioner for Human Rights, UN Declaration on the Rights of Indigenous Peoples, OHCHR (Sep. 13, 2007), <https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples> [<https://perma.cc/757G-ESHD>] (last visited Feb. 3, 2026, at 23:25 CT).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ All of the Amazon Basin countries, except for Colombia voted “Yes” to adopt UNDRIP. *United Nations Declaration on the Rights of Indigenous Peoples: Resolution/Adopted by the General Assembly*, U.N. DIGIT. LIB., <https://digitallibrary.un.org/record/609197?ln=en> [<https://perma.cc/K7CP-LSTB>] (last visited Apr. 4, 2026, at 18:57 CT) (U.N. library entry that includes the voting information for the adoption of UNDRIP, showing that Bolivia, Brazil, Ecuador, Guyana, Peru, Suriname, and Venezuela all voted “Yes”). While Colombia initially abstained from voting, it subsequently showed support for the Declaration in 2009. José Francisco Calí Tzay (Special Rapporteur on the rights of Indigenous Peoples), *Visit to Colombia*, ¶ 9, U.N. Doc. A/HRC/57/47/Add.1 (Sep. 10, 2024).

inhabit the Amazon Rainforest. As governance of the environment affects Indigenous people who are native to that ecosystem, it is important to recognize their rights in doing so. This instrument recognizes incredibly important rights that should be afforded to Indigenous people; however, it is not the end of the rights they deserve. For example, this declaration still lacks provisions to protect Indigenous rights concerning the positive right to be involved in the law-making process that will govern the lands they inhabit. Without the expansion of this declaration, Indigenous people are still being underserved as humans in the Amazon.

2. Governance by State

More consequential binding laws on the Amazon often come from domestic laws made by each Amazon Basin country. Each country has their own distinct set of laws and regulations that rules over their respective portions of the Amazon Basin. For instance, many of the Basin States (i.e.—Brazil, Bolivia, Colombia, Ecuador, Peru, and Venezuela) have recently reformed their constitutions to mandate environmental legislation and create environmental legislative bodies.⁸⁸

a. *Brazilian Governance of the Amazon*

With sixty-three percent of the total land area constituting the Amazon, governance of the Brazilian Amazon is crucial.⁸⁹ Not uncommonly, Brazil's environmental policies have fluctuated with changes in its political history. Currently, their environmental laws and policies are plentiful and span many topics. For example, in an international context, the 1970s are recognized as a pivotal point in global environmental management, and Brazil played a great part in such change.⁹⁰ For example, Brazilian participation in the 1972 Stockholm Conference was imperative for the voice of developing countries, which were wary of any policies that would limit their ability to advance domestically.⁹¹

Brazil's 1988 Constitution contains a chapter on the environment, positing sustainable use and protection of the Amazon: "[t]he Brazilian Amazonian Forest . . . shall be used as provided by law, under conditions which ensure the preservation of the environment."⁹² Other legislation includes a general environmental policy and policies on environmental crimes, mining, the forest, conservation, waste management, water resources, biodiversity, hunting, and

⁸⁸ Timothy J. Killeen, *Environmental Governance in the Amazon*, MONGABAY (June 28, 2023), <https://news.mongabay.com/2023/06/environmental-governance-in-the-amazon> [<https://perma.cc/73MD-DJST>].

⁸⁹ BEATRIZ GARCIA, *THE AMAZON: FROM AN INTERNATIONAL LAW PERSPECTIVE* 23 (2011).

⁹⁰ JOANA BEZERRA, *THE BRAZILIAN AMAZON: POLITICS, SCIENCE AND INTERNATIONAL RELATIONS IN THE HISTORY OF THE FOREST* 112-14 (2015).

⁹¹ *Id.* at 112.

⁹² CONSTITUÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 225 (Braz.).

fishing.⁹³ These laws promote the maintenance of ecological balance, responsible use of resources, protection of ecosystems, monitoring and research, and recovery of degraded areas.⁹⁴ While Brazil seemingly has good intentions, its overall environmental policy and action are currently seen as insufficient.⁹⁵

b. Bolivian Governance of the Amazon

In 2009, Bolivia adopted a new Constitution that specified the importance of the environment.⁹⁶ The Constitution requires the country to protect and preserve the environment and profit from its use in a sustainable manner.⁹⁷ Environmental governance in Bolivia is also “regulated by the Bolivian Environmental Law No. 1333 of 27-04-1992” and subsequent regulations.⁹⁸ While these regulations were put in place prior to the new Constitution,⁹⁹ they are in line with and valid under it.¹⁰⁰

There is also an important Bolivian law on forestation and reforestation which aims to preserve biodiversity and combat climate change.¹⁰¹ Perhaps one of the most famous Bolivian environmental laws is the Decree that recognizes the rights of “Mother Earth,” granting it legal personhood.¹⁰² Further laws recognize the importance of knowledge, risk management, waste management, restoration of degraded land, food safety and security, and protection of all sorts of wild plants and animals in various habitats.¹⁰³

c. Colombian Governance of the Amazon

Colombia has a vast environmental policy that continues to evolve.¹⁰⁴ There are laws spanning many categories of environmental law, including natural resources, energy, environmental protection, marine resources, fossil fuels, and

⁹³ Maíra Rodrigues, *Legal Research in Brazil*, GLOBALEX (Sep. & Oct. 2019), <https://www.nyulawglobal.org/globalex/brazil1.html> [https://perma.cc/JK5J-KFTG] (§ 4.10 Environmental Law).

⁹⁴ Lei No. 6.938, de 31 De Agosto De 1981 (Braz.).

⁹⁵ *Brazil*, CLIMATE ACTION TRACKER (Aug. 9, 2024), <https://climateactiontracker.org/countries/brazil/policies-action> [https://perma.cc/CL9E-PN2X].

⁹⁶ Gonzalo Dávila Maceda, *The Bolivian Legal Framework*, GLOBALEX (Sep. & Oct. 2022), https://www.nyulawglobal.org/globalex/bolivian_legal_framework1.html [https://perma.cc/HF2E-YGC5] (§ 2.4.2 Environmental Policies).

⁹⁷ *Id.*

⁹⁸ Maceda, *supra* note 96, at § 3.7 Environmental Law.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Maceda, *supra* note 96, at § 3.7.

¹⁰⁴ *Colombia – Environment & Natural Resources*, FOREIGN LAW GUIDE (Mar. 1, 2018), <https://referenceworks-brill-com.proxy.lib.uiowa.edu/display/entries/FLG/COM-054124.xml?Tab-menu=article> [https://perma.cc/E2BP-ZVEF].

mining.¹⁰⁵ Overall, their policies focus on environmental prevention, protection, rehabilitation, economic development, and sanctions for failing to follow the regulations held within their respective legal instruments.¹⁰⁶

d. Ecuadorian Governance of the Amazon

In the early 21st Century, Ecuador decided to adopt a new Constitution in an attempt to rebuild their country's legal, political, and social systems.¹⁰⁷ In October of 2008, this new Constitution came into effect, endorsing principles of respect, fundamental rights, and social justice.¹⁰⁸ Within the fundamental rights provided within their Constitution are the rights to water and a healthy environment.¹⁰⁹ On a more specific scale, "the Ecuadorian national environmental policy. . . promotes the conservation, protection, regulation, management, use, and exploitation of renewable natural resources to guarantee all citizens their right to enjoy and inherit a healthy environment."¹¹⁰

e. Peruvian Governance of the Amazon

While Peru has robust protection of the environment throughout its legislation, the framework on environmental law is in Ley 28,611.¹¹¹ This law is the foundation for much of Peruvian environmental law, as it created the country's National Environmental Council, the Consejo Nacional del Medio Ambiente ("CONAM").¹¹² Its regime of environmental law includes promoting the protection of the environment through management, protection, preservation, and sustainable use of water resources, forests, biodiversity, and air quality.¹¹³ Further legislation regulates the use and exploitation of fossil fuels, minerals, and natural gas through taxation and economic control.¹¹⁴

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ See Juan Andres Fuentes, *The Basic Structure of the Ecuadorian Legal System and Legal Research*, GLOBALEX (Apr. & May 2021), <https://www.nyulawglobal.org/globalex/ecuador1.html> [<https://perma.cc/3RQK-JW77>] (discussing Ecuador's constitutional reform).

¹⁰⁸ *See id.*

¹⁰⁹ *See id.* § 2.1 Fundamental Rights Enshrined in the Constitution.

¹¹⁰ *Id.*

¹¹¹ *Peru – Environment & Natural Resources*, FOREIGN L. GUIDE (Mar. 1, 2018), <https://referenceworks-brill-com.proxy.lib.uiowa.edu/display/entries/FLG/COM-154120.xml> [<https://perma.cc/7FUU-USTR>].

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

f. Venezuelan Governance of the Amazon

Venezuela has a comprehensive framework of environmental policies.¹¹⁵ The foundation of their regime for environmental protection is the Ley Orgánica del Ambiente (Sep. 12, 2006). This law is a public-oriented protection of the environment that introduces a national environmental plan.¹¹⁶ Its system of legislation includes a variety of categorical laws, including water resources, forests, fossil fuels, mining, and energy.¹¹⁷

g. Guyanese Governance of the Amazon

The environmental policy of Guyana is important for its region because it contains some of the largest untouched portions of the rainforest in South America.¹¹⁸ Guyana is an extremely young country, only gaining full political independence as a “cooperative republic” in 1970, therefore, it emerged into nationhood right at the environmental revolution.¹¹⁹ Environmental policies in Guyana are based on the 1996 Environmental Protection Act (hereinafter “the Act”). Regulations cover various topics of environmental management, including mining, forestry, agriculture, fossil fuels, and industry.¹²⁰ Environmental policy is regulated by the Environmental Protection Agency, which is committed to monitoring and enforcing the Act.¹²¹

h. Surinamese Governance of the Amazon

As a young country, only gaining independence in 1975 and solidifying its constitution in 1987,¹²² the environmental law in Suriname is not as prolific as some of the other Basin States. They still have, however, laws regarding forests, hunting, marine resources, fossil fuels, and mining.¹²³ This legislation focuses on the preservation of nature and the sustainable management of resources.¹²⁴

¹¹⁵ *Venezuela – Environment & Natural Resources*, FOREIGN LAW GUIDE (Mar. 1, 2018), <https://referenceworks-brill-com.proxy.lib.uiowa.edu/display/entries/FLG/COM-200122.xml> [<https://perma.cc/K5D4-BXP7>].

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Errol A. Adams, *Guyana Law and Legal Research*, GLOBALEX (May & June 2020), <https://www.nyulawglobal.org/globalex/guyana.html> [<https://perma.cc/ZTE4-4EW7>] (§ 1.1 Background and History).

¹¹⁹ *Id.*

¹²⁰ *What We Do*, ENV'T PROT. AGENCY GUYANA, <https://epaguyana.org/about/> [<https://perma.cc/5XHR-Q9T8>] (last visited Feb. 3, 2026, at 23:20 CT).

¹²¹ *Id.*

¹²² *Suriname – Introduction*, FOREIGN L. GUIDE, (Mar. 1, 2018), <https://referenceworks-brill-com.proxy.lib.uiowa.edu/display/entries/FLG/COM-179300.xml> [<https://perma.cc/T96E-593S>].

¹²³ *Suriname – Environment & Natural Resources*, FOREIGN L. GUIDE (Mar. 1, 2018), <https://referenceworks-brill-com.proxy.lib.uiowa.edu/display/entries/FLG/COM-179120.xml> [<https://perma.cc/E7MJ-CBJB>].

¹²⁴ *Id.*

D. *Role of Soft Law in Amazon Governance*

1. Soft Law as a Rapid Response Mechanism

Soft law is notably easy to create and amend because it is nonbinding. Logically, states are much more likely to get involved in agreements made where there is virtually no risk of any consequential enforcement mechanisms. This nonbinding framework allows a rapid response to burgeoning issues and is, therefore, extremely prevalent in international environmental law. The Amazon region is an especially appropriate forum for soft law agreements because the developing nature of the countries disincentivizes them to commit to treaties that will quell their ability to advance.¹²⁵

The ACT is a great example of how soft law can be used to combat environmental degradation in the Amazon. Other treaties also use soft law mechanisms to garner broad agreement from the world's countries without imposing harsh consequences. Many successful international environmental treaties are binding in nature but have soft law characteristics. For example, the Paris Agreement is binding overall but calls only for good faith efforts and nationally determined contributions—both lenient, non-binding principles.

2. Soft law is Effective, but Still Lacking

Soft law is an effective mechanism through which international norms can be created.¹²⁶ However, its nonbinding nature allows for noncompliance, whereas the current state of the global environment requires aggressive compliance.¹²⁷ As the single most robust environmental features of the Earth, environmental compliance in the Amazon is essential. Although soft law is an important facet and can bring productive improvement, there has still been immense environmental degradation in the Amazon.¹²⁸

Current agreements may be seen as binding on their face, but without better enforcement procedures behind them, they hold little weight. Thus, the difficult-to-execute soft laws employed will not affect real change, at least not to the level necessary to recover our environment from the degradation it is currently experiencing.

III. NONREGIONAL STATE INFLUENCE

¹²⁵ *List of Developing Countries*, INT'L COUNCIL ON ARCHIVES (Mar. 2024), https://www.ica.org/app/uploads/2024/03/List-of-Developing-Countries-2024_Updated.pdf [<https://perma.cc/25Y6-CWCJ>].

¹²⁶ A.E. Boyle, *Some Reflections on the Relationship of Treaties and Soft Law*, 48 Int'l & Compar. L.Q. 901, 913 (1999).

¹²⁷ Rakhyn E. Kim & Klaus Bosselmann, *International Environmental Law in the Anthropocene: Towards a Purposive System of Multilateral Environmental Agreements*, 2 Transnat'l Env't L. 285, 285–86 (2013).

¹²⁸ See, e.g., Raphael Grodofzig, Martin Renoult & Thorsten Mauritsen, *Observation-Inferred Resilience Loss of the Amazon Rainforest Possibly Due to Internal Climate Variability*, 15 Earth Sys. Dynamics 913, 920 (2024) (indicating that there has been “a large observed trend since 1991, suggesting that the [Amazon rain] forest has undergone a pronounced loss of resilience”).

A. *Relationship Between Regional and Nonregional States*

Nonregional developed states can have an influence on regional states through international agreements.¹²⁹ More developed nations historically have more power and influence in the international sphere, and the Amazon has been specifically targeted.¹³⁰ By putting diplomatic pressure on the states of the Amazon Basin, more powerful countries like the United States and certain European Union member states are able to influence policy, the Basin States' willingness to agree to treaties and other international agreements, and to a them to open their lands to private investment.¹³¹

Wealthy countries and countries with more developed economies are also able to provide financial incentives for less wealthy countries, like the Amazon Basin States, to go along with their policies and plans.¹³² Some financial incentives come in the form of conditional aid, which provides financial resources conditioned on how the funds are used and the results achieved.¹³³ For example, the Amazon Fund provides funding for the development of monitoring systems to help control deforestation.¹³⁴

The Amazon presents a unique case for global-national tension as an ecosystem that spans across numerous states. Not only does its biome span borders, but its environmental value is global,¹³⁵ which creates an even deeper economic interest for nonregional States and entities.¹³⁶ While it is logical for nonregional States to want to be involved in the regulation of a globally important resource, there is a balance between assistance and overbearing influence. These mechanisms, combined with scientific cooperation, advocacy, and market pressures, allow more powerful countries the opportunity to heavily influence Amazon Basin States to do what the more powerful countries say.

IV. NON-STATE ACTORS

¹²⁹ Dispute resolution of nonregional U.N. Member States and regional States will be governed by the Statute of the International Court of Justice, unless either of the states has made a reservation to a relevant part of it. See Statute of the International Court of Justice art. 35 ("The conditions under which the court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.").

¹³⁰ See Ombelyne Dagicour, *The Geopolitics of the Amazon*, 2020/1 POLITIQUE ÉTRANGÈRE 135, 136 (2020) ("Historically brushed aside, [the Amazon] has taken on pressing strategic significance.").

¹³¹ See Guilherme Casarões & Déborah Barros Leal Farias, *Amazon and the International Order: From Promise to Peril*, 75 J. INT'L AFFS. 1, 3–4, 6–8 (2022) (describing the historical circumstances of the Amazon in the world order and how advanced societies have long influenced the "financial, institution, and military capabilities to promote progress" in developing countries).

¹³² See *id.*

¹³³ *Guidelines and Criteria*, AMAZON FUND, <https://www.amazonfund.gov.br/en/amazon-fund/guidelines-and-criteria/> [<https://perma.cc/NU3E-8KC7>] (last visited Feb. 3, 2026, at 23:21 CT).

¹³⁴ *Id.*

¹³⁵ Lucas de Oliveira Paes, *The Amazon Rainforest and the Global-Regional Politics of Ecosystem Governance*, 98 INT'L AFF. 2077, 2081 (2022).

¹³⁶ *Id.* at 2083.

The interest in influencing the Amazon is not just for environmental conservation—some entities also have an interest in the commercial benefits such a dense resource can provide. For example, there has been a vast effort to develop parts of the Amazon, and now up to seventy percent of the Brazilian Amazonian population lives in cities.¹³⁷ Transnational corporations seek these resources and use their economic wealth to gain access to the Amazon.¹³⁸ Once they are established in the Amazon, they have an economic interest and power in influencing policy pertaining to the regulation of the resources they are profiting from.¹³⁹ This form of influence can also be used by the Nonregional States. By governing the market, states can use corporations to put economic pressure on Amazon Basin countries.

Additionally, international non-governmental organizations (“INGOs”) and other environmental activists’ campaign for influence over the Amazonian environmental policies. These organizations and groups use societal and public pressure to sway lawmakers presiding over the Amazon into certain policies. Nonregional states may also assist INGOs through resources and funding in order to increase the width of their influence over these vulnerable nations.

V. SOFT LAW AS NEOCOLONIALISM

A. *Soft Law is Neocolonialism*

Neocolonialism is the use of economic, political, cultural, or other pressures to control or influence other countries, especially those that have been historically vulnerable. “The essence of neocolonialism is that the State which is subject to it is, in theory, independent and has all the outward trappings of international sovereignty. In reality its economic system and thus its political policy is directed from outside.”¹⁴⁰

Nonregional states and entities demanding influence over developing countries in the Amazon should be classified as a form of neocolonialism because the unequal power dynamics in global governance pose an unfair advantage to wealthy developed countries and a growing disadvantage to developing countries. For example, it has been argued that the REDD+ projects are a form of “carbon colonialism” by allowing foreign investors to profit from pollution credits and the local communities.¹⁴¹ Further, soft law mechanisms inherently lack accountability measures, which allows much of this problematic influence to go unnoticed. Lastly, because soft law often influences the creation of—or

¹³⁷ Dagicour, *supra* note 130.

¹³⁸ See Maria Hennessy, *Transnational Companies, Indigenous Peoples and International Law: An Ecuadorian Case Study*, 2 GALWAY STUDENT L. REV. 84, 84-103 (2003).

¹³⁹ *Id.*

¹⁴⁰ KWAME NKUMAH, NEO-COLONIALISM: THE LAST STAGE OF IMPERIALISM 4 (Marxists Internet Archive ed., transcribed by Dominic Tweedie, converted by Janet Blackquill) (1966).

¹⁴¹ *Neo-colonialism in the Amazon: REDD Projects in Portel, Brasil*, WORLD RAINFOREST MOVEMENT (Nov. 9, 2022), <https://www.wrm.org.uy/publications/neocolonialism-in-the-amazon-redd-projects-in-portel-brasil> [https://perma.cc/7GB6-AADS].

already existing—binding law on both the domestic and international level, this influence can erode local governance and policy autonomy.

1. Non-State Actors

Transnational companies' "widespread activities in search of resources and markets brings them into contact with a variety of tragic human and environmental situations across the globe."¹⁴² Many transnational corporations have so much economic and technical wealth that their power exceeds that of host governments in the international sphere.¹⁴³ It is well established that through foreign investment, these corporations can take effective control over both economic and societal conditions in these vulnerable nations.¹⁴⁴ Furthermore, these corporations are unable to be held accountable through international law.¹⁴⁵

B. *The Amazon as a "Global Policy Object"*

The status of the Amazon as a global environmental resource deepens the interest of nonregional states in regulation¹⁴⁶ because they have an arguably legitimate interest in its preservation and management. The Amazon is an essential resource for all countries on Earth and the health of its environment affects people all over the world. While this interest is undeniable, it does not diminish the fact that using an imbalance in power to influence vulnerable nations and their people is unjust and absolutely a form of neocolonialism.

VI. POLITICAL RIGHTS OF INDIGENOUS PEOPLE IN THE AMAZON

A. *Currently Recognized Rights*

Under the U.N. Declaration on the Rights of Indigenous Peoples (hereinafter "the Declaration"), Indigenous people have numerous recognized rights.¹⁴⁷ The Declaration recognizes environmental rights to Indigenous lands, processes, and protections.¹⁴⁸ For example, Article 27 of the Declaration recognizes the right to establish and implement a fair process for the adjudication of Indigenous Peoples' rights pertaining to their lands.¹⁴⁹ While this political right is important, it represents merely a symbol of the rights Indigenous people deserve.

It is not recognized that Indigenous people have the right to other legal and political processes surrounding their land. We must recognize the rights of Indigenous people to be involved in the lawmaking process surrounding the land

¹⁴² Hennessy, *supra* note 138, at 100–01.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Oliveira Paes, *supra* note 135, at 2083.

¹⁴⁷ G.A. Res. 61/295 (Sep. 13, 2007).

¹⁴⁸ *Id.* arts. 26–29.

¹⁴⁹ *Id.* art. 27.

and environment in which they live. Their right to influence the policy and regulation regarding the Amazon is essential to effective conservation and governance of this global resource.

B. *Currently Unrecognized Rights*

There is still an incredible lack of political rights afforded to Indigenous groups. Indigenous people are entitled to have lawmaking rights on the lands they inhabit. International environmental law not only influences the states which govern the Amazon rainforest, but it also imposes laws on the populations that live there, often without giving them an opportunity to be informed on or involved in the process.

C. *Soft Law as a Potential Solution*

As a rapid response mechanism, a soft law instrument can consolidate the recognition of the right of Indigenous people to be involved in the lawmaking process. By providing a flexible and accessible framework, soft law can express the commitment of Amazonian nations to include Indigenous perspectives in legislation, even if it lacks legally binding mechanisms. The agreement should be influenced by the recognized principles of international environmental law to ensure a fair and forward-looking solution.

As a solution to this lack of Indigenous involvement in environmental regulation of the Amazon, ACTO should come together and create a soft law agreement enumerating a specific right for Indigenous groups to be actively involved in the law-making process. ACTO is uniquely positioned to create this agreement due to its regional nature. The populations of these countries are best situated to understand and be faithful to the environmental, social, and cultural values within the Amazon Rainforest. Indigenous participation in the legislative process and within public forums and decision-making bodies would have direct and positive impacts on their lands and resources by allowing the people who know the environment best to govern it.¹⁵⁰

The agreement should prioritize accountability by outlining measures for transparency and enforcement. Such provisions will ensure that the inclusion of Indigenous Peoples is not simply symbolic, but substantive and realized. Transparency measures should include accessible information, online platforms, open forums, and periodic reporting. As for enforcement measures, the agreement should include independent monitoring, a dispute resolution mechanism, and incentives for compliance.

Requiring accessible information would ensure that all documents and materials regarding the agreement are available in multiple languages (including Indigenous languages) and publicly accessible. Creating online platforms would provide real-time monitoring and feedback from the local communities. These platforms could also function as a location for open forums

¹⁵⁰ See *The Importance of Indigenous Communities in Land-Based Management and Carbon Projects*, EPCARBON (Nov. 28, 2024), <https://www.epcarbon.com/the-importance-of-indigenous-communities-in-land-based-management-and-carbon-projects/> [https://perma.cc/6J99-FTPY].

that would allow for frequent communication between Indigenous representatives, government officials, and an independent monitoring body. Finally, the implementation of periodic publication would require progress reports, including information on actions taken and successful outcomes. These reports would also highlight any missteps or inefficiencies so that problems can be identified quickly and remedied.

The agreement should stipulate the appointment of an independent body that will monitor the implementation and provide assessments of its effectiveness. This body should be responsible for publishing the periodic progress reports implemented through the transparency measures. The dispute resolution mechanism could take different forms, but should be established as what the States are most familiar with and confident in. Incentives for compliance could also take various forms; however, potentially successful incentives could include financial and technical support for state and local governmental adherence to the agreement.

With a focused mission and clear statement of intention, combined with a strong system for transparency and enforcement, this agreement will give power to Indigenous communities who deserve to be involved in the governance of their land. The states should start on a strong note by including Indigenous communities in the creation of the agreement. By including their perspectives, the states can ensure a complete and inclusive instrument. This agreement has the potential to foster a more equitable, inclusive, and sustainable future for the Amazon and its people.

VII. CONCLUSION

The dynamics of soft law governance in the Amazon Rainforest are undeniably intricate. While soft law has the potential to empower Indigenous Peoples and create necessary rights, it also presents the harsh reality of neocolonialism imposed by nonregional entities. The powerful economic and political forces of more developed nations impose an unfair influence on the governments and policymakers of developing nations. However, soft law can be used as a mechanism to combat some of the neocolonialism it has created by using its efficient nature to allow the recognition of lawmaking rights for Indigenous people. An agreement granting them the rights necessary to be materially involved in the governance of their land will begin to right the wrongs that neocolonialism, through soft law, has created.