

BOFAXE

Playing with Fire

IS THE AID PLEDGED BY THE G7 AN OFFER BRAZIL'S PRESIDENT BOLSONARO CANNOT REFUSE?

— “Our house is burning”. French President Macron found graphic words to address the wildfires in the Amazon rainforest, which have reached threatening levels in the past weeks. 80,000 fires this year alone have resulted in the loss of approximately 350,000 hectares of [rainforest](#). Notably, Brazilian President Bolsonaro is [known to support](#) the ‘slash-and-burn’ agriculture, which is responsible for most of the fires, and only initiated a two month ban of the practice on August 28th after pressure exerted by the international community. Additionally, President Bolsonaro rejected aid offered by the G7 states in late August, arguing it was a matter of Brazilian sovereignty to deal with the wildfires. In times of accelerating climate change, can handling a threat to the world’s biggest rainforest ([which is of crucial importance for a variety of ecological reasons](#)) truly be a matter of national sovereignty alone, or is Brazil obliged to accept the aid – in international legal terms: is Brazil violating international environmental and human rights law?

Under international environmental law, Brazil’s obligations arise firstly from the no-harm-doctrine. According to this customary rule, a state is responsible for environmental damage emanating from its territory and occurring on the territory of another state. This is pertinent vis-à-vis Brazil’s neighboring states with which it shares the Amazon rainforest. Not preventing wildfires that expand to their territory is a clear violation of this rule. Secondly, on a broader scale, the wildfires have implications on climate change. Potential legal requirements for combating climate change should be assessed under the [Paris Agreement](#) (PA), the most prominent treaty in international climate change law, despite its only partially binding legal nature. The main goal of the PA is to reduce the increase in the global temperature to a maximum of 1,5 degrees Celsius (Art. 2(1)(a) PA). To achieve this goal, the PA implements a ‘bottom-up’ approach: in the absence of obligations of result, states parties are obliged to submit nationally determined contributions (NDCs) and to exert their best efforts to achieve the goals formulated therein (Arts. 3, 4 PA). [In its NDC](#), Brazil pledged to reduce its carbon emissions significantly and to reforest 12 million hectares of forest by 2025. With 6 more years to go, it is of course still possible to achieve these goals, but the trend is moving in the opposite direction. Importantly, the PA contains a mechanism to assist developing states in meeting their obligations under the agreement: the principle of common but differentiated responsibilities, enshrined in Arts. 2(2), 9 PA, establishes a system in which industrialized nations (like the G7 states) provide financial aid to developing states (including Brazil). Conversely, refusing aid while at the same time struggling to meet its own goals, Brazil is undermining the PA’s normative framework, and – in our view – violating its obligation to exert its best efforts to achieve its NDC goals.

While President Macron’s ‘burning house’ statement was meant as a metaphor, it is reality for the indigenous peoples living in the Amazon region. Brazil is a state party to the [ILO Indigenous and Tribal Peoples Convention, 1989](#) (ILO 169), the main international treaty protecting indigenous peoples, as well as to the [ICCPR](#). The [2010 Brazilian census](#) shows that at least 135,877 indigenous people live in the Brazilian state of Amazonas. ILO 169 protects the rights of indigenous peoples to use their traditional lands (Arts. 14(1)), as well as resources pertaining to these lands (Art. 15(1)). Similarly, Art. 27 ICCPR protects the exercise of minority, including indigenous, cultural rights, such as a particular way of life associated with the [use of land resources](#). To comply with its obligation to protect these rights, Brazil must actively fight fires, reduce slash-and-burn agriculture and prohibit it during the dry season ([the Human Rights Committee also recently held](#) that a duty to protect human rights may require environmental protection by the state).

Further, this connects to the question whether Brazil is obliged to accept international disaster relief, touching upon the tense relationship between state sovereignty and human rights obligations. Primarily, as an expression of its sovereignty, it is Brazil that must determine whether it can control the wildfires or whether it needs international aid. Generally, Arts. 55(c), 56 UN Charter provide the legal basis for a state duty to cooperate in the field of human rights. The International Law Commission (ILC) has addressed and substantiated this issue in its 2016 [draft articles on the protection of peoples in the event of disasters](#), which are of non-binding legal nature. Draft article 13 stipulates that states shall not reject aid arbitrarily, where they are themselves unable to protect their population. Arbitrariness can manifest itself in several ways, one of them being that the rejection of aid leads to a violation of the state’s obligations under international law ([see ILC commentaries to draft Art. 13](#)).

As has been shown, this would be the case for Brazil’s obligations under both international environmental and human rights law. Although it is doubtful whether the ILC’s draft articles already reflect customary international law, they signal a development towards a better regulated framework for international cooperation, which is to be welcomed.