



Asymmetries versus Sustainability: the Human Right to Peace in Brazil post-1988¹

Assimetrias versus Sustentabilidade: o Direito Humano à Paz no Brasil pós-1988

Filipe Bellincanta de Souza²

<https://orcid.org/0000-0002-6528-6164>

Letícia Bellincanta de Souza³

<https://orcid.org/0000-0002-3661-5774>

Abstract: This article has as object of study the repercussions of the dimension of the Human Right to Peace in Brazil after the decision of the Supreme Federal Court on Declaratory Action of Unconstitutionality No. 3,540, which recognized the rights of a brand-new dimension between economic and environmental aspects. The research method used was inductive, with bibliographic, jurisprudential, documentary, and normative investigation. The consequences of the pluralities of rights and people make the recognition of the Human Right to Peace in Brazil expose the advances and challenges regarding the applicability of sustainable intergenerational legal certainty. The result permeates the moral blindness of global actors, their *modus vivendi* and *modus operandi* in risk societies. Pointing out better efforts regarding Brazil's constitutional objectives and foundations in the face of the 2030 Agenda offers perspectives on understanding a complex of crises in which this right involves, giving prospects for an asymmetry to sustainability.

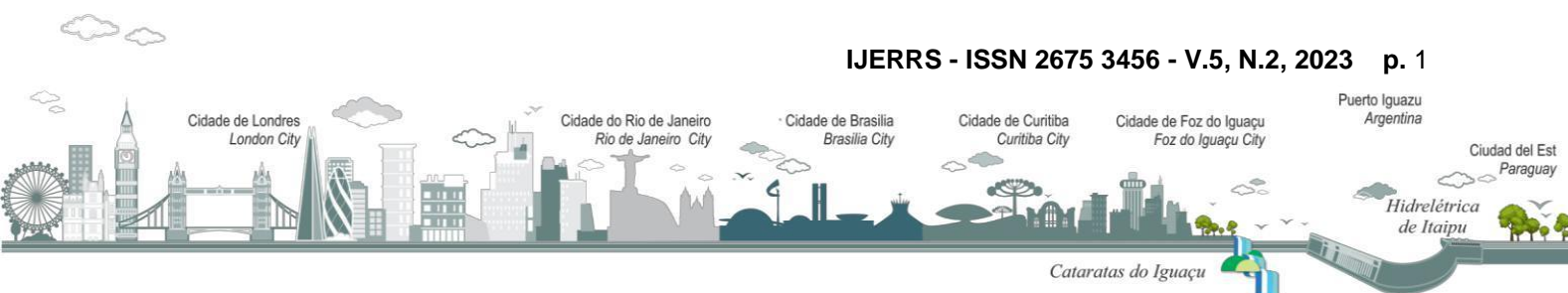
Keywords: Peace. Risk and Sustainability. Intergenerational Legal Certainty. Development and Democracy.

Resumo: O presente artigo tem como objeto de estudo as repercussões da dimensão do Direito Humano à paz no Brasil após a decisão do Supremo Tribunal Federal acerca da Ação Declaratória de Inconstitucionalidade nº 3.540, que reconheceu os direitos de novíssima dimensão entre os aspectos econômicos e ambientais. O método de pesquisa utilizado foi o indutivo, com investigação bibliográfica, jurisprudencial, documental e normativa. Os desdobramentos das pluralidades dos direitos e das pessoas fazem com que o reconhecimento do Direito Humano à Paz no Brasil venha a expor os avanços e os desafios quanto à aplicabilidade da segurança jurídica intergeracional sustentável. O resultado permeia a cegueira moral dos atores globais, o seu *modus vivendi* e *modus operandi* nas Sociedades de Risco. Apontar melhores desempenhos quanto aos objetivos e fundamentos

¹ Translated by Karine Razzia. Master in Translation Studies at Federal University of Ceará – UFC. Postgraduated in English Language, emphasis in Translation at Planalto Catarinense University. Graduated in Portuguese and English Languages at Contestado University – UC.

² Master in Territorial Planning and Socio-environmental Development at Santa Catarina State University –UDESC. Member of International Center of Comparative Environmental Law –CIDCE/CRIDEAU/ECOSOC, Limoges, France. Specialist in Sustainable Management and Environment at Pontifical Catholic University of Paraná/PUC/PR. Bachelor of Law at Vale do Itajaí University – UNIVALI. Santa Catarina, Brazil. fibellins@gmail.com

³ Specialist in Federal Jurisdiction at Federal Magistrature School of Santa Catarina – ESMAFE. Specialist in Public Law at Damásio de Jesus. Bachelor of Law at Faculty of Law of Curitiba– UNICURITIBA. Paraná, Brazil. lelecabs@gmail.com





constitucionais do Brasil diante da Agenda 2030 oferece perspectivas em compreender um complexo de crises em que o referido direito envolve, dando prospecções de uma assimetria à sustentabilidade.

Palavras-chave: Paz. Risco e Sustentabilidade. Segurança Jurídica Intergeracional. Desenvolvimento e Democracia.

INTRODUCTION

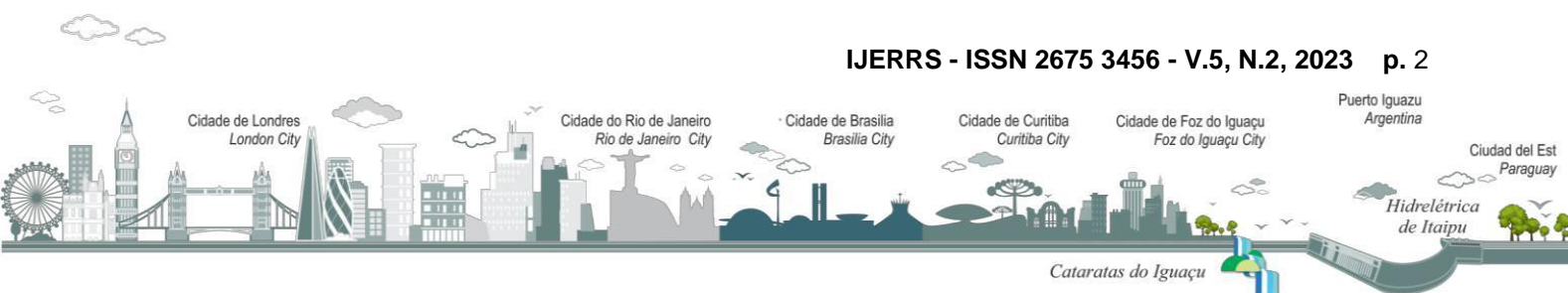
Nowadays, in Brazilian society, it has been easy to perceive the difficulty of the predominance of human interests in environmental protection and the guarantee of safe, effective, and healthy exercise of the human right to peace. The dialogue has been selfless by the very legitimacy of the actors involved in all institutional spheres of Brazil, where the extreme social poles have not been in line with the breadth and appreciation of human rights, especially the vulnerable.

Understanding the particularities of this right offers a driving force of better perceptions, improvements and treatment of conflicts that reach sustainability, now threatened in its contemporary dimensions. The situations of inefficiency, insecurity and human mobility caused by the dispute for natural resources have generated puzzles to realize the human experience in a multidimensional, interterritorial and transindividual way.

Therefore, it is intended to demonstrate some developments on the dimension of the human right to peace, its legal repercussions in Brazil and its extension before the 2030 Agenda, to be able to affirm whether the rights of the new dimension in risk societies generate legal certainty or not intergenerational and sustainable.

THE DIMENSION OF THE HUMAN RIGHT TO PEACE

Considering the accumulation and progression of risks and tragedies arising from socioeconomic processes produced since the end of the 19th century, it can be said that today humanity already lives in Risk Societies, whose essence corresponds to the contemporary moment of development with social, political, ecological, individual and sentimental risks that escape control by global actors due to the lack of protective measures to the effects of the performances by industrial society until then (GUERRA, 2012).





Consequently, these implications of human interaction in the environment have occurred due to an erroneous posture to the treatment of the extreme effects of global climate change. To this end, the disposition of human rights arose in the need to understand the fragility of humanity for its own reasons and interests, where the human right to peace is one of the ways of overcoming the cross-border risks that most intensely affect vulnerable peoples (MBAYA, 1997).

Considering these capacities, the human right to peace overcomes war conflicts, extending to social, economic, cult, ecological, security and respect for all dimensions of human rights (CONPAZ, 2007). Thus, this right becomes a catalyst for the generation of public freedoms and because it is integrated into the fifth dimension of human rights, its insertion into the scenarios in which vulnerable peoples are fleeing begins to gain expressiveness in recognizing them as subjects of rights (BULOS, 2012).

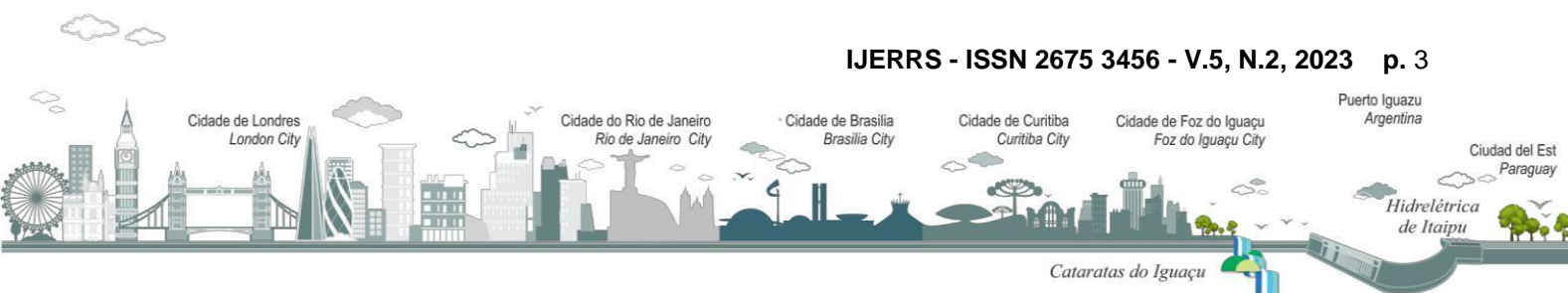
In this sense, the mobilization of global actors in favor of risk reduction in extreme situations results in the treatment of affectation, asserting the importance of human rights in which, even with socio-environmental divergences, the human right to peace has become increasingly relevant to the process of evolution of peoples (LAFER, 1995).

Although there are great heterogeneities regarding adaptation and sustainable development, the conditions, and qualities of life prevailing by capitalism have been disrupting access to basic survival needs in situations of extreme vulnerability (MORIN, 2003).

Reversing this situation and achieve the human right to peace, it is important to show that it is not possible to have a resilient equation of human interactions with the same echoes, where it is important to have the dissolution of the human system in defense of the next generations (BONAVIDES, 2015).

Thus, peace being a human right, the awareness of peoples is restricted while states act for sovereign rights without reaping a supreme right for life. Thus, the minimum consensus in situations of conflict between sovereignty, sustainability and peace is not reinforced among themselves because international instruments of protection of nature do not involve all the human dimensions demonstrated, thus invalidating the realization of the common good (BONAVIDES, 2015; MAZZUOLI; AYALA, 2012).

In this two-way street, human rights are at risk as to its effectiveness and, even protected by the international community, its intrinsic link for freedoms and equality in an inalienable way begins to be broken by the omission of their own global actors. Thus, without





abstaining from their egocentric activities, they fail to ensure the exercise of the human right to peace (ARAÚJO; BIZAWU; LEISTER, 2015).

This understanding extends to environmental disasters, where there is a systematic-legal gap generated from the Industrial Revolution to the configuration of the current Risk Societies, and the lack of evolution of social tissues and legal adaptations to these scenarios is remarkable (CANOTILHO, 2008).

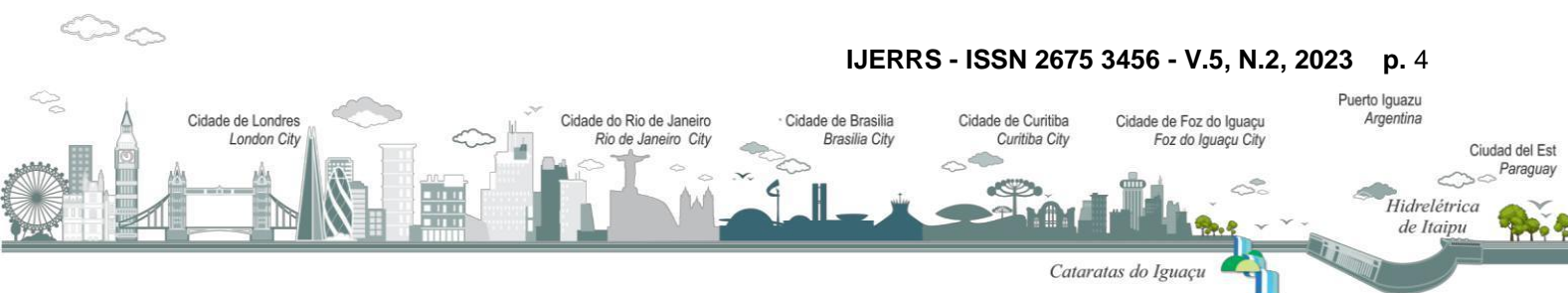
This negativity is demonstrated by the inadequate functioning of normative systems for environmental care and for the human cognitive inability to respond to these reactions with resilience, in which there was often the human deficiency of perceptions of a global crisis (LEITE; AYALA, 2004).

Furthermore, from the perspective of the Intergovernmental Panel on Climate Change (IPCC), through the 5th Report on climate change of 2014, it starts that if there are no adaptations in different regions of the Earth there may be the continuity of melting glaciers, the geographical change in seasonal location of the species, risks to agriculture, the increase in food prices and the susceptibility of these markets to global climate variations (IPCC, 2014).

Furthermore, if contemporary societies persist in *their modus operandi* and *modus vivendi* until 2080, there will be a worsening of the increase in temperature, which will determine climate change in the 21st century, putting at risk the area of health, electricity supply, mortality and morbidity of living beings, drinking water, marine, coastal, aquatic and terrestrial ecosystems, with the temperature rise in at is 11.7°C to 2100 in different regions of the planet (IPCC, 2014).

In addition, risks arising from extreme temperature increases were identified, such as water scarcity and river flooding, especially in dry subtropical regions, with sea level rising by up to 07 meters by the beginning of the 21st century, where there can be seen an increase in the dispute for access to water and the reduction of access to renewable water resources (IPCC, 2014).

Considering that the mere expression of the decisions of global actors demonstrates the destruction of social balance and relations between peoples, this is because human relations are delicate, and that today's societies are in a situation of disorder. Deep down, inequalities are aggravated by wars, terrorism, illiteracy, migratory processes, and the exposure of vulnerable people to market imperialism, technological risks and fanaticism that frustrate





states' proposals and the capacities of conflict resolution in the face of human imbalances (ZAMBAM; KUJAWA, 2017).

Thus, democratic participation, citizenship, access to information to adaptation, "not yet applied in the kinds of current societies, may enable vulnerable peoples to develop human and social in an environmentally sustainable manner"⁴ through the exercise of human freedoms.

AGENDA 2030: THE RELATIONSHIP BETWEEN THE HUMAN RIGHT TO PEACE AND SUSTAINABILITY

In view of human rights, the divergent situations showed, it is possible to identify that dispute over natural resources, globalization processes and their effects can contribute and offer new parameters of reflection for what kind of society it seeks to rebuild.

The vulnerable public has remained strongly isolated from the benefits of industrial performances due to the absence of minimum living conditions until the realization of human rights by all, and their protection is still at risk due to inertia and unconsciousness by actors in contemporary societies (UNDP, 1968).

In this sense, the high level of progress can no longer be simply accepted as something normal, nor the fact that it satisfies only the most economically advantaged, or that it affects the environment due to the ease of access to production factors. In such a way, it is taught that from the relationships between people arises to depend on the same resources that the environment has, and that as the greater the needs of the populations, the greater the impacts on consumption levels (ZULAUF, 2000).

Therefore, solidarity and pacification in a multidimensional way to the crisis scenarios evidenced, if they are added to equality by consensus, seeking to preserve the environment today, it may be possible to leave some legacy to the next generations (HABERMAS, 2015).

As a result, the United Nations – UN developed the 2030 Agenda with 17 Sustainable Development Goals, and it is important to expose the sustainability indices of Objective 16, as follows in Figure 1.

⁴ UNDP - United Nations Development Programme. **Human Development Report for everyone**. 1968. P.139. Available: http://www.br.undp.org/content/dam/brazil/docs/Relatorios_Desenvolvimento/undp-br-2016-human-development-report-2017.pdf Access: 11 jul. 2018

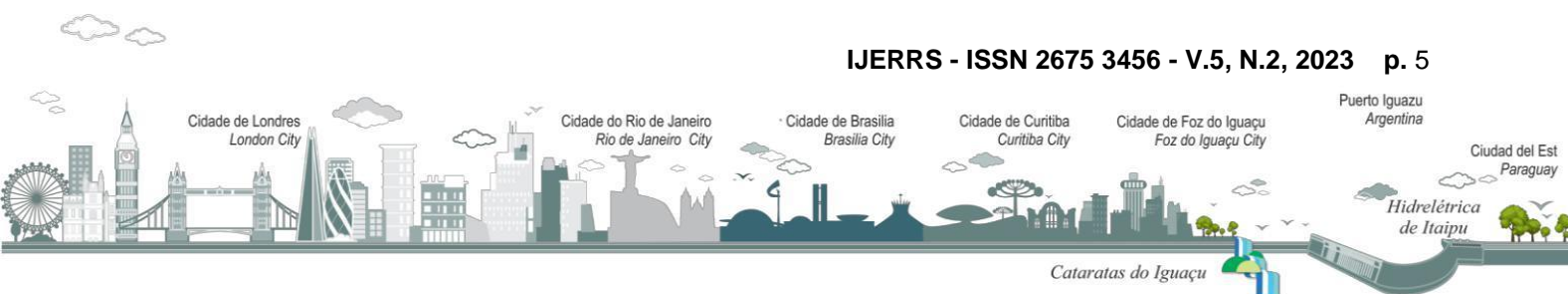




Figure 1 - Brazil's Performance Indices: Sustainable Development Goals - SDGs 16

Goal 16 - Peace, justice and strong institutions	
Homicides (each 100.00 people).....	26.7
Arrested (each 100.000 people).....	299,4
People that feel safe in urban and country areas.....	31% - Decreasing
Governmental Efficiency (1-7%).....	2.4% - Decreasing
Right to property (1-7%).....	4.3% - Decreasing
Children Civil Register less than 05 years old (%).....	96.4% - Balanced
Corruption Perception Index (0-100 points).....	37 - Decreasing
Children between 5-14 years linked to labor (%).....	6.6% - Growing
Weapons exports since 1990 - US\$ million per 100.000 people...0	- Balanced

Source: Made by authors, based on: Bertelsmann Stiftung; Sustainable Development Solutions Network. **Indices and Panels Report on Sustainable Development Objectives: Global Responsibilities, Implementation of Objectives, G20 and Major Countries.**2018. P.85.

Observing Figure 1 for the Brazilian context, the dimensions of the human right to peace evidenced receive a significant affectation due to the low perception of corruption, the fall to the right to property, the governmental inefficiency, and the prevailing insecurity in cities. Even with the benefits of the ecologically balanced environment and protected by full constitutionality, it is not possible to achieve peace, justice, and the strengthening of institutions.

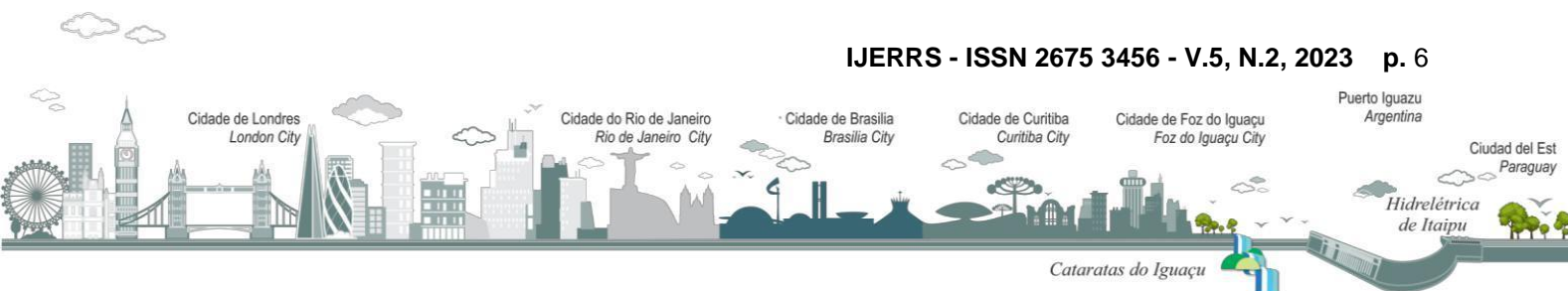
Therefore, if the 2030 Agenda is available to all nations and vulnerabilities are intensifying, it can then say that "half of humanity is not enjoying progress in human development, such development is not universal⁵" (Free translation).

It should be added that sustainable development would not be achieved by unfair results of processes resulting from social and environmental development, since it does not "have as its requirement an indispensable economic growth that involves equitable redistribution of the results of the population's life process⁶".

In this sense, without the integration of rights with freedoms in the social and cultural aspects, it would not be possible to achieve progress in the application of human rights and

⁵ UNDP - United Nations Development Programme. **Human Development Report for everyone.** 2016. P. 179. Available: <http://www.br.undp.org/content/dam/brazil/docs/RelatoriosDesenvolvimento/undp-br-2016-human-development-report-2017.pdf> Access: 11 jul. 2018

⁶ SILVA, José Afonso. **Direito ambiental constitucional.** 4ª ed. São Paulo: Malheiros. 2003. P. 26-27.





international development policies about effectiveness (UNDP, 1968).

About these respects, capitalism generates a misdemeanor in favor of the environment by accumulating its consequences by transferring its weight to the States the islanders, landlocked developing countries, and African countries, as well as middle-income countries among the less developed.

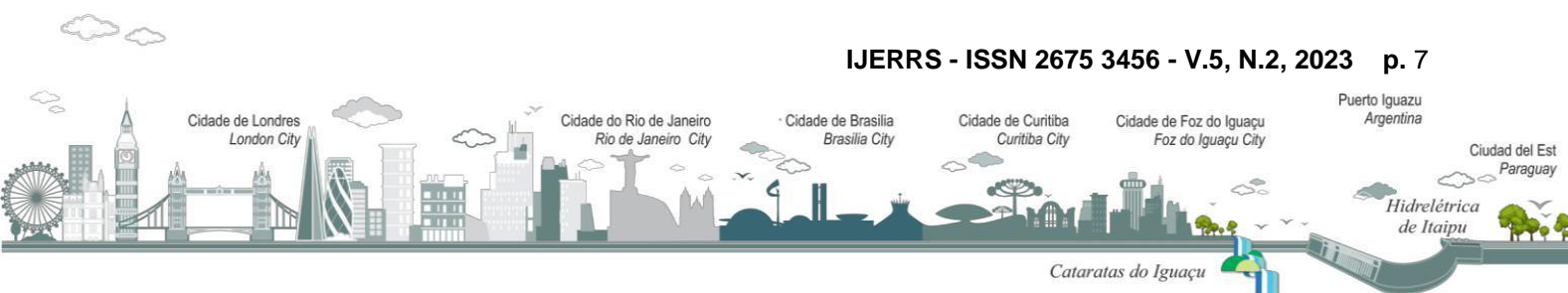
A LEGAL VIEW ON THE HUMAN RIGHT TO PEACE IN BRAZIL

From the Constitution of the Federative Republic of Brazil 1988 – CRFB/88, Brazil began to act in its international relations in defense of peace²⁶, whose dimension covers the natural, cultural, natural, artificial heritage, the preservation of all available life and the protection of its people and the environment (BRAZIL, 1988; SOARES, 2001).

Although there is this corollary recognized in the Brazilian legal sphere, it has not yet been a majority as a solid legal reality, so the Security Council of the United Nations acts as an actor that seeks to ensure peace and international security (BULOS, 2012; HUSEK, 2015).

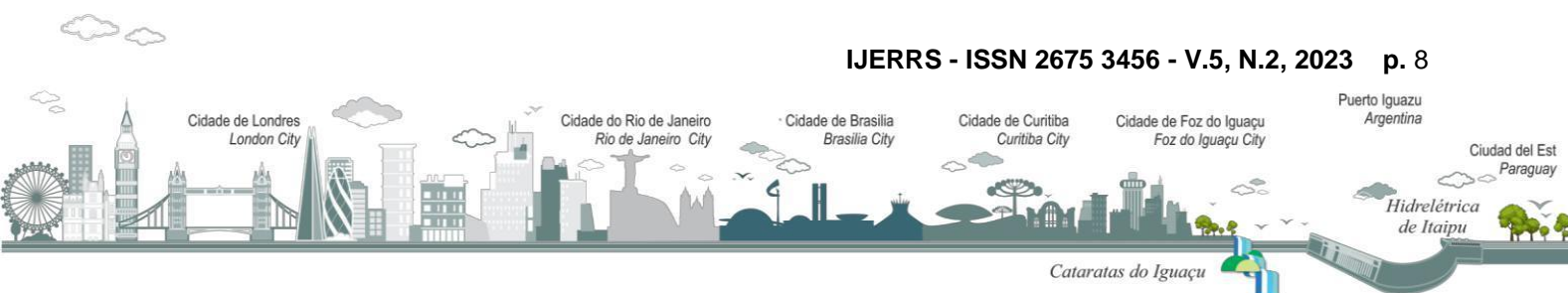
Entering one of these aspects, in an exemplifying way, we highlight the understanding of the STF- Brazilian Supreme Federal Court that addresses the defense of the environment, the rights of new dimension – human right to peace and dispute and economic, whose decision had readjustment content the adequacy of society, the exit of anthropocentrism to reach ecocentrism:

Syllabus: environment - right to the preservation of its **integrity (CF, art. 225)** - qualified prerogative for **its character of metaindividuality - third generation right (or of the same dimension) that consecrates the postulate of solidarity - need to prevent the transgression of this right to break forth, within the coleti life, intergenerational conflicts - specially protected territorial spaces (CRFB/88, art. 225, § 1, iii) - amendment and suppression of the legal regime to them relevant - measures subject to the constitutional principle of the law reserve- suppression of vegein permanent preservation area - possibility of public administration, fulfilled the legal requirements, authorize, license or permit works and/or activities in protected territorial spaces, provided that respected, as to these, the integrity of the justifying attributes of the special protection regime - **relations between economy (CRFB/88, art. 3º, ii, c/c art. 170, vi) and ecology (CRFB/88, art. 225) - collision of fundamental rights - criteria of overcoming this state of tension between constitutional values as relevant criteria - the basic rights of the peoples and successive rights (generations or dimensions) of rights (RTJ 164/158, 160-161) - the issue of the preedance of the right to the preservation of the environment: an explicit constitutional limitation to the****





economic ativage (CRFB/88, art. 170, vi) - decision not endorsed - consequent rejection of the request for precautionary measure. **the preservation of the integrity of the environment: constitutional expression of a fundamental right that protect the generality of peoples.** Everyone has the right to the ecologically balanced environment. It is a typical third generation right (or recent dimension), which assists the entire human species (RTJ 158/205-206). **It is related upon the State and the community itself to defend and preserve, for the benefit of present and future generations, this right of collective and transindividual ownership** (RTJ 164/158-161). The implementation this burden, **which is indispensable, represents the guarantee that the serious intergenerational conflicts marked by the disrespect of the duty of solidarity imposed on all in the protection of this essential good of common use of the rules in general will not be established within the community.** Doctrine. **The economic activity cannot be carried out in disharmony with the principles intended to make effective the protection of the environment. The environment security cannot be compromised by business interests or be dependent only by economic motivations,** especially if it is in mind that economic activity, considered the constitutional discipline that governs it, is bribed, among other general principles, to those who favor the **"defense of the environment"** (CRFB/88, art. 170, VI), **which shows a broad and comprehensive concept of the meanings of the natural, cultural artificial environment (urban space) and the buildings.** Doctrine. The legal instruments of legal nature and constitutional nature aim to enable the effective protection of the environment, **so that the properties and attributes inherent to it are not changed, which would cause unacceptable compromise of the health, safety, culture, work and well-being of the population, besides causing serious ecological damage to the environmental heritage, considered this in its physical or natural aspect.** **The question of national development** (CRFB/88, ART. 3º, II) and the need to preserve the integrity of the environment (CF, ART. 225): The principle of sustainable development as a factor to get fair and balanced relation **between the requirements of the economy and the ecology.** - The principle of sustainable development, besides being impregnated with an eminently constitutional nature, finds legitimizing support in international commitments assumed by the Brazilian State and representative factor of achieving the right balance between the requirements of the economy and those of ecology, subordinated, however, the invocation of this postulate, when the conflict between relevant constitutional values occurs, to an insecure condition, which observance does not compromise or empty the essential content of one of the most significant fundamental rights: **the right to the preservation of the environment, which translates well from the common use of the generality of people, to be protected in favor of present and future generations.** Art. 4º Of the forest code and provisional measure No. 2,166-67/2001: a significant advance in the protection of the areas of permanent preservation. - Provisional Measure No. 2,166-67, of 24/08/2001, in so far as it introduced significant changes in Article 4 of the Forest Code, far from compromising the constitutional values enshrined in art. 225 of the Federal Constitution, it has, on the contrary, established mechanisms that allow a real control, by the State, of the activities developed in the areas of permanent preservation, in **order to prevent predatory actions and harmful to the**





environmental heritage, whose situation of greater importance demands more intense protection, now provided, in an appropriate and compatible way with the text constitutional law, by the normative legislation in question. Only the amendment and deletion of the legal regime relevant to territorial spaces specially protected qualified, by the effect of the clause in article. 225, § 1, III, of the Constitution, as matters subject to the principle of legal reserve. It is lawful to the Public Power - whatever the institutional dimension in which it is positioned in the federative structure (Union, Member States, Federal District and Municipalities) - authorize, license or permit the execution of works and/or the performance of services within the areas of territorial areas specially protected, provided that, in addition to the restrictions, limitations and requirements abstractly established by law, the integrity of the attributes that justified, in regard to such territories, the institution of special protection regime - CRFB/88, art. 225, § 1, III (STF, 2005, p. 01-68).

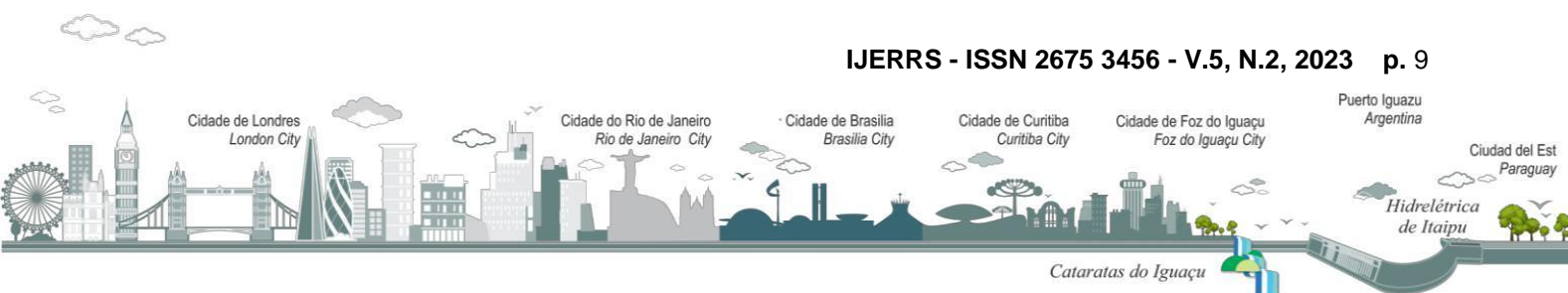
Noting the above legal decision, it would not be appropriate to fail to protect the environment by anthropocentric activities, because the ethical justice now demonstrated is the responsibility of all those involved in development processes.

Moreover, it is inferable that the human right to peace, enshrined as a right of the 05th dimension, began to be positive and applied in Brazil only seventeen years after the elaboration of the Federal Constitution. With this, respect for the protected environment has entered the list of sustainable intergenerational legal certainty, validating environmental protection in the face of anthropocentrism.

Thus, Brazilian society became a collective holder and, in a transindividual and indispensable way, the exercise of the human right to peace, where the mere economic interest cannot prevail in the face of full effectiveness of norms.

Thus, extending the dimensions of this right to the breadth of natural, cultural, artificial, urban, and labor sphere heritage. This is because of the well-being of the people need to be consistent with the ecological balance through not only the common generality of people, but especially those who are in a situation of vulnerability.

On the other hand, it becomes possible this range and to walk the disruption of the human right to peace in the face of anthropocentric threats while the forces of ecological risks and interactions between nations that have isolated themselves due to imperialist nationalisms, wars, terrorism, illiteracy and endemic fanaticism that come to be driving elements of the fall of institutions and states, for example, in Brazil (ZAMBAM; KUJAWA, 2017).





On this way, the commitment of sustainability is configured while corruption, insecurity and governmental ineffectiveness do not generate the vocation for peace, where the UN also tries to be an actor of impartiality and, at the same time, becomes a barrier to the realization of Sustainable Development Goals, whose limits are aggravated by attacks that have been carried out directly on the peace operations (UN, 2015).

Furthermore, global climate and economic policy is dangerous, limited and disbelieving to the demands encountered since the realization of the Universal Declaration of Human Rights of 1948, and it is imperative to protect vulnerable peoples (UN, 2015).

It is therefore certain that in the face of supremacy among people in which states enclose their citizens to "chase them, in order to deny their fundamental rights and to shock the conscience of peoples, which intervention is legally permissible⁷".

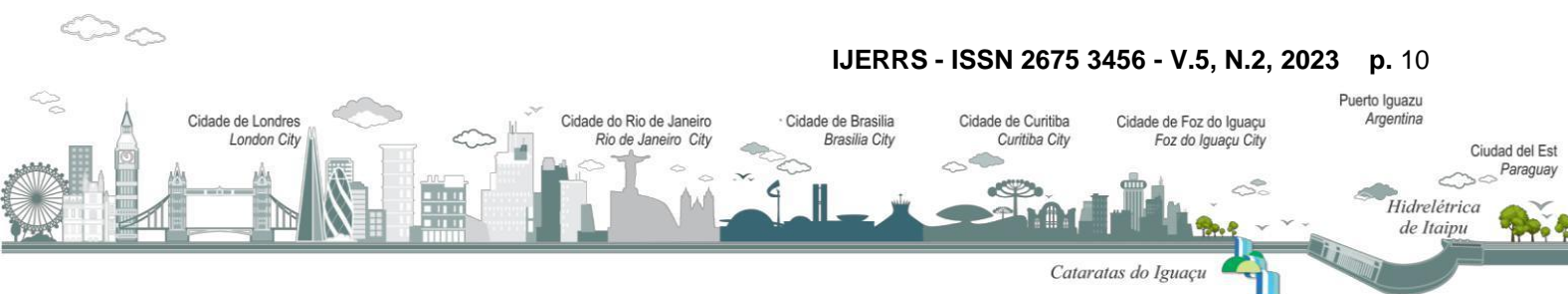
During the propulsion of ethics and the realization of public freedoms, it is possible for everyone "to communicate, to argue, to be able to choose to be better informed, to be treated more considerately by others⁸". By perceiving what affects the human being, popular participation in social and environmental causes offer greater discernment and the will to change the reality of what impacts them (HABERMAS, 2015).

In this way, the consequences, and reflections of the human right to peace that affect all the contexts evidenced need to make humanity find an innovative path beyond cooperation and solidarity mitigation, for example, the sustainable management on human mobility.

However, by maintaining the *modus vivendi*, the *modus operandi* and the anthropocentrism in the state performances by the global actors, the treatment of multidimensional problems may not be mild. While states are not evolving with effective transnational responses, the social tissues most susceptible to the experience of affecting the human right to peace are much further away from the realization of development projects, whose proposals are valid but unfeasible to bring about such profound changes to the core of human consciousness.

⁷ FERRAJOLI, Luigi. **A Soberania no Mundo Moderno: Nascimento e Crise do Estado Nacional**. Tradução: Carlo Coccioli e Márcio Lauria Filho. São Paulo: Martins Fontes. 2002. P. 39-40.

⁸ SEN, Amartya Kumar. **Desenvolvimento como liberdade**. Tradução: Laura Teixeira Motta. Revisão técnica: Ricardo Doniselli Mendes. São Paulo. Companhia das Letras. 2000. P. 333.





FINAL CONSIDERATIONS

The consequences of social processes today imply disputes over natural resources at any cost, the effects of which are harmful to all living beings and the human right to peace, because it is in the dimension of this the risks and opportunities of a new destiny for peoples in search of participatory environmental democracy, especially for the vulnerable.

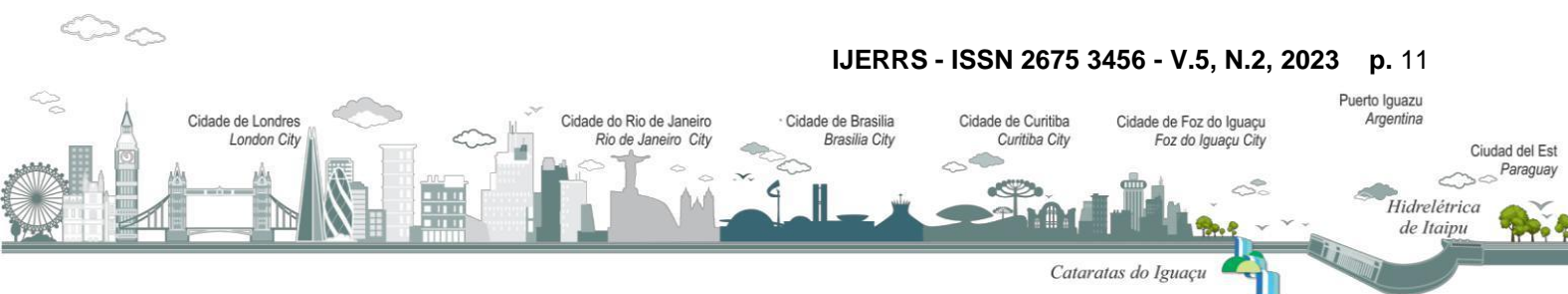
The inertia of all those involved in the treatment of the current *modus operandi* causes oral blindness of global actors who need to stop exercising dominance over other peoples who, if they do not, lead the socio-environmental risks arising from the interactions between the human being and the environment to a crossroads created by the very legitimate democratic action, whether by states, the UN, and citizens.

Vulnerable peoples have reached a very high level of longing and search for survival and not for the dispute of territories, which generates a cross-border and transgenerational crisis even though it has universality, integrality and intersubjectivity recognized. Furthermore, even in a situation of economic power versus environmental protection involve the dimension of the human right to peace in general, in the intraterritoriality in the multidimension between ecosystems and the human being.

The advance on the decision of the STF on this subject drives the emergence of a new *jus gentium* in national and international relations that are currently in the field of global environmental governance, as this right encompasses the identities, cultural, the world heritage, natural and historical of norms, living ecosystems and exercise of citizenship by the awareness that there are good values to be reintegrated into humanity, because it is thus fully disposed, but still extremely far from achievement by all of us.

Thus, the human right to peace ceases to be a supreme common interest of humanity when instrumentalized by anthropocentric means, invalidating access to all dimensions of this right, in which its protection does not become a reflex path of protection to all people. Therefore, a freak sustainability goes into a *modus vivendi* since global actors cannot have any notions about the human dimension of the effects of global climate change on the allocation of the human right to peace.

The mechanisms of justice are mixed in theoretical ramblings about their ideal, without



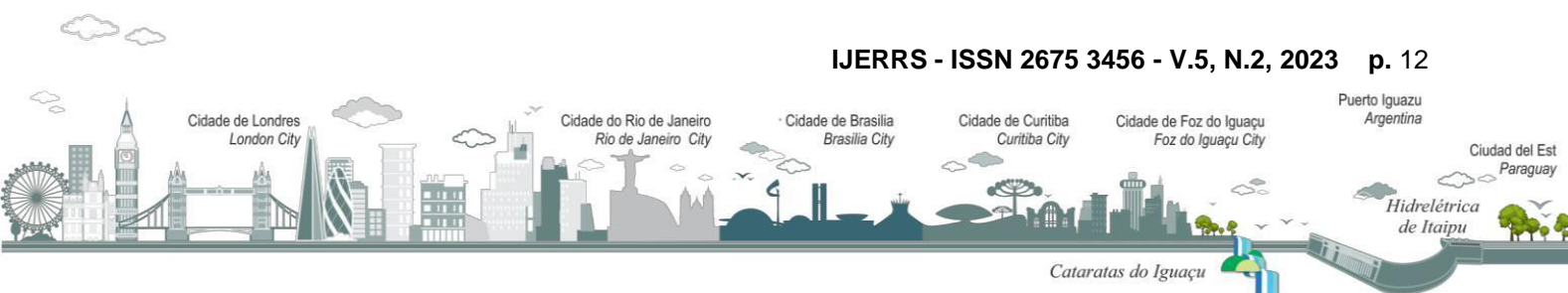


specific notes to environmental justice, whereby participatory environmental democracy has difficulties in repelling the threats of anthropic actions.

Thus, these risks become irreversible to human perception until there is access to information, popular participation in decision-making in the legislative sphere and in environmental justice. Finally, this unfolding to address the transnational problem is not willing to extend multidimensional, territorial, sustainable interest and the generality of people, especially vulnerable peoples, no longer generating sustainable intergenerational legal certainty.

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