

THE ESCAZÚ AGREEMENT

Its Effect on Latin America's Economy and Trade Policy

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BACKGROUND

Besides large deposits of raw materials, Latin America has great biodiversity and ecosystems like the Amazon Basin that are significant for the world's climate. However, the region's wealth of resources – including ores and large amounts of productive agricultural land – has also meant that in the global division of labour, Latin America primarily exports raw materials and provides cheap labour. The region now leads in investments for raw material extraction through mining: In 2018, for example, 28 per cent of global investment went to Latin American countries. To cope with the economic consequences of the Covid-19 pandemic, many governments will increasingly exploit mineral resources, such as copper, lithium, gold and oil. They will also clear more forest areas in response to the growing global demand for ores and agricultural products, especially soy and beef. This implies major infrastructure construction projects for dams, wind farms, ports and roads to ensure proper production and export. But new mines, infrastructure and agricultural land are destroying the habitats of local communities and indigenous peoples, as well as numerous ecosystems. Large tourism projects and using farmland to produce renewable energy, especially dams and solar parks, exacerbate this development. Although most Latin American countries have progressive environmental legislation, they often do not observe environmental impact study guidelines or consider local residents' interests and allow them to participate.

In many cases, the economic advantages of investments at best marginally benefit local populations, raising the potential for conflict. Protests against large projects often turn into violent clashes and are connected with the criminalisation of protesters, expulsions and human rights violations. One such case is the Peruvian "Las Bambas" copper mine protests conducted since 2018, which have temporarily stopped mining operations. The police and military violently intimidate and suppress protesters in numerous countries in the region, which for years has been one of the most dangerous for environmental activists. The NGO Global Witness reports that 227 environmental defenders were murdered worldwide in 2020, 165 of them in Latin America, mostly in Colombia and Mexico.

THE MOST IMPORTANT POINTS IN THE ESCAZÚ AGREEMENT

"The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean" – generally known as the "Escazú Agreement" – entered into force in April 2021. Ratified by 13 countries thus far, the innovative, internationally binding treaty has created a new framework for environmental and human rights in Latin America.

The four main pillars of the Escazú Agreement are:

- access to comprehensible non-technical information on the environment, including in local languages,
- establishment of a specialised judiciary and qualified staff,
- new, far-reaching regulations for civil society participation regarding investments that affect them, and
- special mechanisms to protect environmental activists.

The agreement specifically addresses existing problems and offers possible solutions. The European Aarhus Convention, which came into force in 2001 and regulates access to information, public participation in decision-making and access to justice in environmental matters, served as a model. The Escazú Agreement complements other international treaties such as the ILO Convention 169 on consultation with indigenous and tribal peoples. The first international treaty to protect environmental activists, the agreement also set an example by involving civil society throughout negotiations. Civil society is expected to play a further role in the agreement's implementation, as evidenced by the participation of elected representatives of civil society in the plenary sessions (Conferencias de los Partes, COP).

Signatory states commit to creating a legal framework for implementing the rights and institutions agreed in the treaty. To date, 12 states, including major regional players like Mexico and Argentina, have ratified the Escazú Agreement. Chile signed in March 2022, becoming the thirteenth mem-

ber. The negotiations involved 24 countries, so more are expected to sign.

In April 2022, in Santiago de Chile, additional procedural rules were negotiated between the members at the first general assembly, which is only open to signatories. The first COP discussed the composition of bodies, rules of procedure and funding mechanisms. Given the cooperative character of the process, which was been repeatedly emphasised by the negotiating states, there are no plans to create sanction mechanisms.

International organisations are following the agreement with great interest. The negotiations were actively supported by the UN Economic Commission for Latin America and the Caribbean (ECLAC), which also serves as its technical secretariat. Other important international actors such as the World Bank, the Inter-American Development Bank and the European Development Bank welcome the agreement, which conforms to their transparency and sustainability criteria. The OECD rated the agreement as “good practice” for achieving legal certainty in investments.

POTENTIAL IMPACTS

The Escazú Agreement creates new minimum standards for transparent investment, thereby reducing competitive disadvantages and conflict. The contracting parties still have to negotiate some procedural rules but the agreement already has major implications for companies and international trade relations.

A) PUBLIC AND PRIVATE INVESTMENT

In some countries that have not yet ratified the agreement, such as Costa Rica and Peru, the private sector is heavily campaigning against ratification. Hardly any private sector representatives took part in the treaty’s negotiations: Fierce resistance arose only after it was presented. The standard argument is that ratifying states will lose sovereignty over their resources and investments will decline.

Successful implementation of the agreement will have a big impact on decision-making about major investments. Until now, decisions have often been taken by ministries in country capitals, where participation rights have been thwarted by short objection periods to environmental impact studies that are difficult to understand. The Escazú Agreement provides for all environmentally relevant information to be presented in comprehensible language and, where necessary, translated into local languages. Along with the new participation rights, this means more time and funds will be needed to prepare investment decisions. The agreement also allows for the negotiation of compensation for affected populations and the possibility of reversing the burden of proof in case of conflict. No longer would those concerned have to prove that a project will negatively affect their environment: Instead, companies would have to prove that it will *not*.

Critics ignore the fact that the Escazú Agreement bolsters global economic policy trends confronting the corporate sector.

- In producing and consumer countries worldwide, civil society is increasing pressure to fulfill criteria such as sustainability, decent work and respect for human rights, and demanding comprehensive corporate responsibility. Reports of violations of environmental regulations, and harm to indigenous populations and the environment quickly tarnish a company’s image and result in calls to boycott.
- On the international financial markets, demand is growing for sustainable investments, and projects that do not meet the requirements are having a harder time finding financing.
- Implementing the Escazú Agreement regulations will facilitate product certification.
- Uniform standards for preparing and implementing investments can reduce competitive distortions.
- Investment transparency can significantly reduce the risk of social conflict, preventing delays in project implementation.

B) TRADE POLICY

Debate about more socially just international trade policy has resulted in many trade agreements featuring sustainability and decent work clauses. Although the Escazú Agreement primarily aims to improve environmental and human rights policies, its implementation will also have repercussions on the region’s trade with international partners and discourage a race to the bottom regarding environmental protection and human rights.

Civil society is more and more critically monitoring negotiations on international trade agreements – as shown by the public discussions about the EU-Mercosur Agreement. Referring to the Escazú Agreement in other treaties could help avoid further rejection and create an additional framework for guarantees, especially on environmental sustainability. So far, the Paris Agreement on Climate Change is the only reference framework for such European trade agreements.

C) SUPPLY CHAIN LAWS

The Escazú Agreement can also give new impetus to the current debate on supply chain laws, which aim to guarantee respect for human rights and environmental protection and to compel companies to conduct due diligence for entire supply chains. Relevant laws have been adopted or are under discussion in Germany and the EU. Rules on access to information, citizen participation and a competent judiciary for environmental disputes could show that Latin American supply chains take sustainability criteria into account.

CONCLUSION

The Escazú Agreement opens up new possibilities for exchange and cooperation between the signatories and their partners. Nevertheless, it is not clear that the agreement will not remain a paper tiger. It was greeted with euphoria but its implementation could be sluggish. Civil society will definitely continue to play a key role in monitoring implementation, but accompaniment and support by Latin America's international partners is needed. International (development) cooperation actively supported the negotiation process and should continue – helping to create the legal basis in participating countries and establish environmental jurisdiction. Exchange with other regions with similar agreements, like the Aarhus Convention in Europe, could help in the discussion about procedural rules at the COPs. The treaties' very different designs should be the starting point for discussing their various experiences and how to further develop the treaties. In other regions, including Africa, the Escazú Agreement is being observed with great interest. Last but not least, referring to the Escazú Agreement in bilateral and multilateral trade agreements could help promote its implementation.

The Escazú Agreement can provide the impetus to realign cooperation and trade arrangements between Latin America and its partners in an exemplary manner.

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