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The legal nature and limits of environmental policing powers exercised by the armed forces in the border region: an analysis of jurisdictional competence in light of the democratic rule of law.

The legal nature and limits of environmental policing powers exercised by the armed forces in the border region: an analysis of jurisdictional competence considering the democratic rule of law.

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SUMMARY

This scientific article addresses the legal nature and limits of the environmental police power exercised by the Armed Forces in the Brazilian border region. This 150-kilometer zone is strategic for sovereignty and vulnerable to illegal activities such as illegal mining and deforestation. The legal regime, defined in Complementary Law No. 97/1999, allows the Armed Forces to carry out preventive and repressive actions against cross-border and environmental crimes, such as patrolling and arrests in flagrante delicto, acting in a subsidiary manner. The scope of this action, especially involving the arrest of civilians, raises the question of the extent of military police power. The study aims to analyze how this military action is compatible with the rule of law, guaranteeing transparency, proportionality, and respect for human rights, as well as examining the jurisdictional competence to judge the identified crimes.

Keywords: environmental police power; armed forces; border area; jurisdictional competence; democratic rule of law.

ABSTRACT

The scientific article addresses the legal nature and limits of the environmental police power exercised by the Armed Forces in the Brazilian border area. This zone, spanning 150 kilometers, is strategic for national sovereignty and vulnerable to illegal activities such as illegal mining and deforestation. The legal framework defined by Complementary Law No. 97/1999 allows the Armed Forces to carry out preventive and repressive actions against cross-border and environmental crimes, such as patrolling and arrests in flagrante delicto, acting in a subsidiary capacity. The scope of this action, especially involving the arrest of civilians, raises questions about the extent of military police power. The study aims to analyze how this military action aligns with the rule of law, ensuring transparency, proportionality, and respect for human rights, as well as examining the jurisdictional competence to judge the identified crimes.

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INTRODUCTION

The Brazilian border strip, extending for 150 kilometers along the land borders, it is configured as a strategic zone of national sovereignty and of Significant environmental importance. This region, rich in biodiversity and vulnerable to practices

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Transnational illicit activities, such as illegal mining, smuggling, and deforestation, require...

The State must act in a coordinated and efficient manner to guarantee both the defense of the territory and the environmental protection. In the contemporary context, the Armed Forces have played an increasing role in carrying out preventive and repressive actions, supported by Complementary Law No. 97/1999, with the amendments introduced by Complementary Law No. Law 136/2010, which conferred upon them subsidiary powers of administrative and environmental policing.

The increased use of the Armed Forces in combating environmental crimes and Cross-border trade has brought with it a series of legal and institutional controversies. The main debate concerns the nature of the police power exercised by such institutions and to The limits of their actions within the democratic rule of law are also questioned. jurisdictional competence to prosecute and judge the environmental crimes identified in Military operations, considering the principles of specialty and the natural judge. The analysis These issues reveal the tension between security and legality, between the state's power of control and the fundamental guarantees ensured to citizens.

This article aims to analyze the legal nature and limits of power. environmental policing carried out by the Armed Forces in the border region, examining the bases The legal arguments that support it, the related case law, and the discussion about jurisdiction. jurisdictional. Based on doctrine and current legislation, the aim is to understand how Military action is compatible with a democratic regime and the rule of law. especially when it involves civil and diffuse legal rights, such as the environment.

The methodological approach employed in this research is deductive, starting from premises. General principles of Constitutional and Administrative Law (police power, competence of the Armed Forces) (Armed forces) for the analysis of the specificities of environmental action in the border region. A The methodology used is bibliographic and documentary research, with analysis of specialized doctrine in Environmental and Military Law, and federal legislation, with emphasis for Complementary Law No. 97/1999 and Law No. 9,605/1998. The study is also guided by analysis of case law from the Supreme Federal Court (STF) and the Superior Court of Justice (STJ), focusing on the most recent decisions that define the jurisdiction of the Military Justice of The Union and the constitutionality of repressive environmental police power.

1. THEORETICAL FRAMEWORK

1.1. The Police Power: Concept, Attributes, and Limits

Police power is one of the classic manifestations of the supremacy of interest. public over private, consisting of the prerogative conferred on the Public Administration of To restrict and condition individual rights for the benefit of the community. According to Hely Lopes Meirelles (2006) states that this refers to the power the State has to regulate and restrict the use of goods, activities and individual rights, with the aim of ensuring order and security. and social well-being. For Celso Antônio Bandeira de Mello (2012), police power is the The activity of the Administration that limits the freedom and property of individuals, aiming to Harmonization between public and private interests.

The attributes of police power: discretion, self-enforcement. Coercibility and legality reflect the very structure of state authority. Discretion allows the Administration to choose, within legal limits, the timing and the The form of intervention. Self-enforcement allows the Administration to impose its decisions without the need for prior judicial authorization. Coercibility, in turn, This represents the possibility of imposing coercive measures to ensure compliance with orders. administrative. Finally, legality ensures that all administrative action is Subject to the law, preventing abuses and guaranteeing respect for fundamental rights.

However, police power is not unlimited. It encounters constitutional limitations. expressed, especially in the principle of proportionality, due process of law and in legal reserve. As Maria Sylvia Zanella Di Pietro (2022) teaches, administrative action It must be reasonable, adequate, and necessary for the intended public purpose. In the environmental field, such Limits become even more relevant, as they involve the balance between development. Economic, security, and preservation of natural resources. Thus, the police power must to be exercised with strict observance of fundamental rights, avoiding arbitrariness and ensuring judicial oversight of state actions.

1.2. The Power of Environmental Policing

Environmental policing powers are an extension of general police powers. administrative, aimed at protecting the environment, considered a legal asset of a legal nature. diffuse and essential to a healthy quality of life. Article 225 of the Federal Constitution enshrines the

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The right of all to an ecologically balanced environment imposes on the Public Authorities and the community the duty to defend and preserve it for present and future generations. Édis

Milaré (2021) observes that the purpose of environmental police power is to prevent and repress conduct harmful to ecological balance, characterized by linked action and by

Mandatory enforcement action when an environmental threat is identified.

Within the federal system, environmental policing power is exercised by various bodies, such as IBAMA, ICMBio, the Environmental Police, and the State and Municipal Secretariats of Environment. The role of the Armed Forces, however, is subsidiary.

when there is a need for logistical, technological or operational support, especially in areas difficult-to-access areas, such as the Amazon. Decree No. 10,341/2020 and the joint operations under the umbrella of the Ministry of Defense — such as Operation Ágata — demonstrate this.

interinstitutional cooperation.

Although legitimate, the exercise of environmental police power by the military requires Strict adherence to the principles of legality and public purpose. This is an action exceptional and temporary, intended to complement the actions of environmental agencies, and not to replace them. The control of these operations must guarantee transparency, proportionality and respect for human rights, under penalty of violating the principles of the Democratic State of Right.

1.3. LEGAL FRAMEWORK FOR THE ACTIONS OF THE ARMED FORCES IN THE AIR FORCE STRIP OF BORDER

The legal framework governing the use of the Armed Forces in the border region is defined in Complementary Law No. 97/1999, amended by Complementary Laws No. 117/2004 and No. 136/2010. Article 16-A of this law establishes that the Armed Forces may carry out actions preventive and repressive measures against cross-border and environmental crimes, carrying out patrolling, searching and making arrests in the act, alone or in cooperation with others organs of the Executive Branch. Article 17-A specifies that these attributions are subsidiary, while respecting the exclusive powers of the judicial police.

In practice, this legal framework creates an area of intersection between national defense and public safety. As Carlos Alberto Martins de Barros (2012) explains, the performance of The military presence on the border should only occur in exceptional situations, aimed at suppressing [crime/crime]. illegal acts that affect the sovereignty and integrity of the national territory. However, the scope The use of the expressions "preventive and repressive actions" generates controversy regarding the extent of power.

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military police, especially when civilians are arrested for environmental crimes. It is in this
This raises the debate about the legal nature of this action and its limits.
constitutional.

According to the study by Nogueira (2024), the effectiveness of operations in the range of
Border security depends on the integration between the Armed Forces and civilian agencies, through...
interagency coordination as foreseen in the Integrated Border Protection Program (PIIF).
This integration must be conducted under the aegis of legality and institutional cooperation.
preventing the military police power from becoming an autonomous instrument of control.
social, which would violate the republican principle and the federal pact.

1.4. The Legal Nature of the Police Power of Defense

The Armed Forces' actions along the border, although materially similar
The environmental police power exercised by civil bodies has a distinct legal nature.
which deserves further study. The classic administrative law doctrine, focused on limiting
individual rights in favor of the general public interest (MEIRELLES, 2006) shows itself
insufficient to capture the complexity of the military function. The performance of the Armed Forces,
Even in times of peace, it is intrinsically linked to its primary constitutional mission: the
Defense of the Fatherland and the guarantee of sovereignty (Brazilian Federal Constitution of 1988, art. 142). In this context, the concept emerges.
of defensive police power, a state prerogative that should not be confused with police power.
public security or traditional administrative policing.

In this sense, the contemporary doctrine of Military Law and Public Security has
The concept of defensive police power was developed, a state prerogative that does not...
It is often confused with public security police or traditional administrative police. This power
It is exercised to safeguard the integrity of the territory and national sovereignty against threats.
whether conventional or not. Cross-border and environmental crimes, such as illegal mining.
Large-scale illegal logging and deforestation promoted by criminal organizations transcend
a mere administrative infraction, constituting genuine threats to sovereignty and to
territorial integrity, justifying the application of this specific power.

The main distinction lies in the purpose and origin of the competence. While the
IBAMA's environmental police power aims at the protection of the environment per se; the power of
The Armed Forces' defense police on the border, when suppressing an environmental crime, do so with
The primary objective is to neutralize a threat to the sovereignty and territorial control of the State.
This is therefore an atypical administrative function, exercised in a subsidiary capacity, whose

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Legitimacy depends on strict adherence to legal limits and its connection to the defense.
national.

2. MATERIALS AND METHODS

The methodological approach employed in this research is deductive, starting from premises. General principles of Constitutional and Administrative Law (police power, competence of the Armed Forces) (Armed forces) for the analysis of the specificities of environmental action in the border region. A The methodology used is bibliographic and documentary research, with analysis of specialized doctrine in Environmental and Military Law, and federal legislation, with emphasis for Complementary Law No. 97/1999, Law No. 13.491/2017 and Law No. 9.605/1998.

The study is also based on an analysis of the jurisprudence of the Supreme Federal Court. (STF) and the Superior Court of Justice (STJ), focusing on decisions issued between 2017 and 2025 that define the jurisdiction of the Military Justice of the Union and the constitutionality of the power of repressive environmental policing. The rulings of ADIs 5032, 7200, and 7204 were analyzed, as well as... as doctrinal articles published in specialized journals. Additionally, empirical data on Operation Agata (2025) were collected from official sources.

Ministry of Defense and the Brazilian Army, to demonstrate the practical relevance of the topic.

3. RESULTS AND DISCUSSION

3.1. The Role of the Armed Forces in Operations in the Zone of BORDER

The Armed Forces' actions in operations along the border reflect that The increasing complexity of contemporary threats to national security. Environmental crimes, Drug trafficking, smuggling, and illegal mining constitute illicit practices that challenge both The sovereignty of the State regarding environmental protection. In this context, the use of The Armed Forces aim to ensure a state presence in remote areas and guarantee the application of... Environmental and criminal laws. The relevance and intensity of this action are evidenced by the empirical data from Operation Ágata, the main initiative to repress illegal activities on the border. In In its 2025 edition, for example, the operation demonstrated the rapid response capability of Armed Forces, with impressive results that demonstrate the magnitude of military action.

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in the region. According to official data from the Ministry of Defense, the joint operation resulted in seizure of 62,168 kg of drugs, and the destruction of 33 dredges used in illegal mining and in the seizure of 317 tons of illegally extracted ore. In addition, other items were seized. 45 vehicles and 11 vessels used in criminal activities were rendered unusable, with a Estimated damage to organized crime of approximately R\$ 490 million (BRAZIL, 2025). These numbers not only quantify the state's effort, but also highlight the... The complexity and scale of transboundary and environmental threats justify the need. from an in-depth legal analysis regarding legality, limits, and jurisdictional competence resulting from these operations.

According to official data from the Ministry of Defense, the joint operation resulted in the seizure of... 62,168 kg of drugs were seized, 33 dredges used in illegal mining were destroyed, and 62,168 kg of drugs were retained. 317 tons of illegally extracted ore were seized. In addition, 45 vehicles were confiscated. and 11 vessels used in criminal activities were rendered unusable, resulting in a loss estimated to be worth approximately R\$ 490 million to organized crime (BRAZIL, 2025).

These numbers not only quantify the state's effort, but also put it into perspective. The complexity of threats in the border region justifies the need for an analysis. in-depth analysis of the legality, limits, and jurisdictional competence arising from these operations.

However, the military presence on the border should not be interpreted as militarization. of environmental management. As Nogueira (2024) observes, operations should be guided by principle of subsidiarity, so that the Armed Forces act as technical support and logistical, and not as substitutes for environmental enforcement agencies. The primary function of The Armed Forces remain responsible for the defense of the Nation and the guarantee of law and order, as per Article 142 of the Federal Constitution provides for this.

3.2. The Controversial Jurisdictional Competence Post-Law 13.491/2017

The definition of jurisdiction to prosecute and judge environmental crimes found in Military operations is perhaps the point of greatest legal tension in the matter. The controversy was radically transformed by Law No. 13,491 of 2017, which amended Article 9, II, of the Penal Code. Military (CPM), expanding the concept of military crime to encompass crimes foreseen in Common criminal law applies when crimes are committed by military personnel on duty or in connection with their duties. This The expansion, known as "military crime by extension," generated intense debate about the possible absorption of environmental crimes by military jurisdiction.

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Despite the scope of the new law, the Supreme Federal Court (STF) has been... positioned in such a way as to contain an unchecked expansion of the jurisdiction of the Military Justice system, reaffirming its specialized character and its vocation for the protection of hierarchy and discipline. ADI 5032, although its judgment has been suspended since 2018, already signaled this concern. In it, the Attorney General's Office questioned the constitutionality of the rule that It assigned to the Military Justice system the competence to judge crimes committed in GLO operations. The votes already cast indicate a strong trend toward limiting military jurisdiction to crimes. that affect legal assets that are eminently military in nature.

The prevailing understanding, both in the Supreme Federal Court and the Superior Court of Justice (STJ), is that environmental crime, because it protects a legal asset of a diffuse and civil nature (the environment An ecologically balanced environment (article 225 of the Brazilian Federal Constitution of 1988) does not lose this characteristic when it is... practiced in a military context. Therefore, the jurisdiction for its trial, when it involves Union interest (such as in border areas, indigenous lands or conservation units) Federal jurisdiction) is the responsibility of the Federal Courts (article 109, IV, of the Federal Constitution of 1988). The role of the Armed Forces is exhausted. During a police operation (arrest in flagrante delicto, seizure), the report must be drawn up by the authority. from the judicial police (Federal Police) and the process continues in the common jurisdiction.

Recently, the Superior Military Court (STM) itself has been judging cases of crimes. Environmental crimes committed by civilians in military areas, such as illegal fishing and damage to property. (FREITAS, 2025), applying both the Military Penal Code and the Environmental Crimes Law. This practice, However, it remains under intense scrutiny from higher courts, which tend to overturn such decisions. decisions based on the incompetence of the Military Justice system, especially when the defendant is a civilian and the property... The legal framework being protected is not strictly military. The solution to the impasse lies in strengthening of the integrated action protocols, ensuring that criminal prosecution is immediate transferred to the competent civil authority, in accordance with the principle of the natural judge.

3.3. THE CONSTITUTIONALITY OF THE DESTRUCTION OF SEIZED GOODS

One of the most controversial aspects of repressive environmental police power is the Destruction or rendering unusable of goods and equipment seized during inspection operations. The Supreme Federal Court, in ADIs 7200 and 7204, judged on February 17, 2023, declared the constitutionality of this measure, provided for in Decree No. 6,514/2008, which regulates environmental administrative sanctions.

The Supreme Federal Court (STF) ruled that the immediate destruction of dredges, barges, and other equipment... used in illegal mining is a proportionate and necessary measure to prevent recurrence and

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to dismantle the logistical structure of organized crime. The Court recognized that the Maintaining these assets would entail high costs for the State and the risk of their reuse by others. offenders. This decision provides important legal support to military operations that, in In cooperation with environmental agencies, they proceed to disable equipment in areas of difficult to access, like the Amazon.

3.4. CONTROL AND ACCOUNTABILITY MECHANISMS OF PERFORMANCE MILITARY

The legitimacy of the Armed Forces' subsidiary role in environmental protection is not... The analysis is exhausted by its legal provision, but fundamentally depends on the existence of Effective control and accountability mechanisms. In a democratic state governed by the rule of law, all Any activity that restricts rights must be subject to oversight. The absence or weakness of oversight... These mechanisms can lead to abuses and distort the purpose of military intervention. transforming it into an autonomous activity outside of civil oversight.

3.4.1 External control by the Public Prosecutor's Office

The main instrument of external control is exercised by the Public Prosecutor's Office. The 1988 Constitution conferred upon the Public Prosecutor's Office the function of exercising external control over the activity. police officer (art. 129, VII), a prerogative that, by analogy and due to the nature of the activity, extends military operations with police powers fall under the jurisdiction of the Federal Public Prosecutor's Office (MPF). to oversee the legality of the actions taken, the proportionality of the measures (such as destruction). (of equipment) and the proper disposal of seized goods. Furthermore, the Public Prosecutor's Office The Military Police (MPM) is involved in investigating potential military crimes committed by its own agents. of the Armed Forces during operations.

Resolution No. 279/2023 of the National Council of the Public Prosecutor's Office regulates the external control of police activity, establishing guidelines for the oversight of operations, including analyzing reports, conducting inspections, and investigating complaints. of abuses.

3.4.2 FINANCIAL AND OPERATIONAL CONTROL BY THE COURT OF UNION ACCOUNTS

Another control mechanism is exercised by the Federal Court of Accounts (TCU). Large-scale operations, such as Operation Ágata, involve a significant expenditure of resources. public spending. The TCU (Brazilian Federal Court of Accounts) is responsible for overseeing not only the legality of expenditures, but also the efficiency, effectiveness and cost-effectiveness of operations (TCU, 2023). TCU audits can to assess whether the results achieved justify the costs and whether the military employment strategy is the right one. most suitable for combating environmental crimes, and may recommend adjustments to policies. public.

The effectiveness of these controls, however, depends on transparency on the part of Ministry of Defense and command of operations. Access to detailed information about the Operational plans, results, and costs are essential conditions for civil society and so that control institutions can exercise their supervisory function, ensuring that the force is used legitimately and responsibly

4. CONCLUSION

An in-depth analysis of the environmental policing powers exercised by the Armed Forces. The border region reveals a complex legal phenomenon, situated at the intersection between defense. national security and environmental protection. The research demonstrated that military action, Supported by Complementary Law No. 97/1999, it has a legal nature of police power. of defense, whose primary purpose is to guarantee sovereignty, exercised in a subsidiary manner and atypical.

The main contribution of this article was to update the discussion on the Jurisdictional competence in light of Law No. 13.491/2017 and the restrictive jurisprudence of the Supreme Federal Court. It is concluded that, despite the broadening of the concept of military crime, the jurisdiction to judge Environmental crimes committed by civilians in the context of a military operation remain before the courts. Federal, in respect for the protected legal right and the principle of the natural judge. Furthermore, it highlighted- if the Supreme Federal Court (STF) consolidates the thesis that validates the constitutionality of the destruction of property. (ADIs 7200 and 7204), providing an important instrument of qualified repression to the power environmental police.

However, the legitimacy of this action depends on rigorous control mechanisms. external powers, exercised by the Public Prosecutor's Office and the TCU (Federal Court of Accounts), and a policy of active transparency. For future research, it is suggested to delve deeper into comparative law analysis regarding employment.

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military operations in environmental protection and investigating the social and humanitarian impacts of these operations. Regarding local communities and indigenous peoples. The harmony between the defense of the territory and the Defending the rule of law remains the central challenge for consolidating a Effective and democratic border policy.

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