

## Sovereignties in Conflict: Socio-environmental Mobilization and the Glaciers Law in Argentina

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### Abstract:

Until 2010, the cycle of socio-environmental mobilization in Argentina against transnational mining that began in 2003 had influenced legislative power only at subnational levels. The enactment of the Glaciers Law in 2010 constituted the first time that socio-environmental mobilization successfully influenced legislative power at the federal level. This article makes a double contribution to the analysis of this type of conflict. In theoretical terms, through the notion of “sovereignties in conflict”, it problematizes the question of sovereignty in relation to socio-environmental conflicts, a dimension currently absent in studies of this kind. In empirical terms, it carries out a study of the enactment of the Glaciers Law. The principal argument is that the greater influence of socio-environmental mobilization on federal legislative power was made possible by the higher degree of openness to various viewpoints at this level, in contrast to that observed at subnational levels, and by the more successful organization and articulation of socio-environmental mobilization in this broader context. *Keywords:* Argentina, sovereignties in conflict, socio-environmental mobilization, transnational mining, Glaciers Law.

Resumen: Soberanías en conflicto: Movilización socioambiental y La Ley de Glaciares en Argentina

Hasta 2010, el ciclo de movilización socioambiental en la Argentina contra la minería transnacional que comenzó en 2003 había influenciado el poder legislativo a escala subnacional. Sin embargo, la sanción de la Ley de Glaciares en 2010 constituyó la primera vez que la movilización socioambiental logró condicionar el poder legislativo a escala federal. Este artículo realiza una doble contribución al análisis de este tipo de conflictos. En términos teóricos, a través de la noción de soberanías en conflicto, problematiza la cuestión de la soberanía en relación a los conflictos socioambientales, dimensión ausente hasta el presente en este tipo de estudios. En términos empíricos, realiza un estudio de la sanción de La Ley de Glaciares. El argumento principal sostiene que la influencia de la movilización socioambiental sobre el poder legislativo federal fue posible por el mayor grado de apertura que

presenta con respecto a otros poderes legislativos subnacionales y el mayor grado de organización y articulación de la movilización socioambiental. *Palabras claves*: Argentina, soberanías en conflicto, movilización socioambiental, minería transnacional, Ley de Glaciares.

## **Introduction**

Since the emergence of socio-environmental mobilization against transnational mining developments in Argentina between 2002 and 2012, its legislative effects have principally remained at the scale of subnational sovereignty. In a context in which more than half of the twenty-four provinces are affected by conflicts of this kind, nine provincial legislatures have enacted laws banning open-pit mining (Svampa & Viale, 2014).<sup>1</sup> In October 2010, a regulation was passed at the federal level regarding minimum standards for the preservation of glaciers and the periglacial environment (Law 26.639, hereafter the Glaciers Law), which bans, among other things, mining and hydrocarbon exploration and exploitation in glacial zones.

With the exceptions of Costa Rica, which established a moratorium on metalliferous mining, and El Salvador (Broad & Cavanagh, 2015), which recently prohibited it throughout its territory,<sup>2</sup> the intensification of protests in other Latin American countries against the development of such extractive projects has not resulted in the enactment of legislation at the federal level. In the past decade a vast and rich literature has emerged, analysing, from different case studies, socio-environmental conflicts in relation to the continued development of extractive industries in the region. These publications help us to understand issues such as the processes of dispossession of indigenous and rural communities in the context of the emergence of a new development model (Arsel, Hogenboom, Pellegrini, 2016), the multiple socio-political impacts in the subsoil of such extractive activities (Bebbington & Bury, 2013), and the implications of community-level consultation processes on extractive projects (Walter & Urkidi, 2015). However, the analysis of enacted law regulating large-scale mining in response to socio-environmental mobilization has received scant attention (Broad & Cavanagh, 2015). Given this gap in the literature, and based on the concept of sovereignties in conflict, this paper asks: Under what conditions can a law such as the Glaciers Law arise and succeed in being enacted?

Our conceptual proposition argues that the socio-environmental conflicts that emerged in the last decade in Latin America place the question of sovereignty at the centre of a debate in which the two principal dimensions of sovereignty are contested: power and territory. We maintain, as the main hypothesis, that the escalation of the social-environmental mobilization from a subnational scale of sovereignty to the federal scale, in the process of enacting the Glaciers Law, was made possible and conditioned by two main dimensions: a greater degree of political openness, and a more effective organization and articulation of the those involved in the socio-environmental mobilization. While the first aspect makes reference to different degrees of democratization at the federal

level and certain subnational levels in Argentina, the second highlights both feasibility issues of broad coalition formation among actors in the process and questions of availability of the resources (material, organizational, etc.) necessary to influence the legislative process. The contribution of this article to the study of socio-environmental conflicts in Latin America is twofold. First, it provides, in theoretical terms, a new framework of interpretation based on the notion of sovereignties in conflict (Torunczyk, 2015); and secondly it offers, in empirical terms, a study of the enactment of the Glaciers Law in Argentina.

The disputes and divergent positions around the value of water place the discussion about glaciers in a position of relevance in socio-environmental conflicts. Glaciers are crucial components of mountain hydrological systems and act as strategic reserves of water given the periglacial environment usually found in zones surrounding glaciers, characterized by patches of frozen soil saturated with ice that act as water resource regulators (IANIGLIA ND). The cycle of the gradual replenishing and melting of glaciers is a critical element in the natural environment, especially in dry ecosystems where they ensure water provision in the driest months of the year (Taillant, 2012). This study uses a qualitative methodology in order to understand the phenomenon under examination. It is based on a thorough analysis that reconstructs the legislative debates around the enactment of the Glaciers Law and a set of ten semi-structured personal interviews with key actors who participated in the process, carried out between March and August 2016.

## **Mining in Argentina**

In just twenty years mining in Argentina was radically transformed. A lagging economic activity in the early 1990s, mining became a state policy and strategic gamble by the middle of the year 2000. In terms of percentages, the industry increased from 0.22 per cent of the Gross Domestic Product (GDP) to 1993 to near 4 per cent in 2011 (Secretary of Mining of the Nation, 2012). At the same time, while in some provinces investment in mining advanced, social protests against the activity led to regulations regarding mining restrictions. This section does not propose an exhaustive discussion of mining legislation, but aims to set forth and explain the principal reforms of the last decades.

From the first years of the 1990s, the Argentine state moved toward a set of regulations that established a new legal-political framework. This process of reforms had its correlative movement in the mining sector, in the enactment of the Mining Investment Regime, Law N°. 24.196/93, which guarantees fiscal stability and tax exemptions for investors and limits provincial royalty charges to no more than 3 per cent of the mineral value (Moorí-Koenig, 2000; Svampa & Antonelli, 2009). Subsequently, the National Constitution reform of 1994 (hereafter NC) granted constitutional status to the original dominion of the provinces over the natural resources existing in its territory. This aspect is crucial to understanding environmental policies in Argentina, a federal republic

made up of twenty-three provinces and an autonomous capital city. Although historically provincial ownership of resources had been respected (what is not expressly delegated to the nation remains in the hands of the provinces – Article 75 NC) Article 124 emphasized the role of the provinces in the exploitation of mining resources and in the collection of royalties as established by the investment regime. At the same time, however, the NC Reform, in order to guarantee a minimum of environmental protection at the federal level (Article 41), empowered Congress with the authority to create laws with respect to minimum standards laws, allowing provinces to enact more protective environmental laws, but requiring them to respected the environmental standards set by federal legislation.<sup>3</sup>

The first open-pit metal mines were inaugurated in Catamarca in 1997 (“Bajo La Alumbra”) and the following year in Santa Cruz (“Cerro Vanguardia”) in a context of harmony and optimism with respect to the potential of the undertaking. However, six years later the events of Esquel, Chubut had become a foundational factor in the social resistance against mega-mining (Svampa & Antonelli, 2009; Walter & Martinez-Alier, 2010; Torunczyk, 2016). In Esquel, the citizens stopped the installation of a gold mine by Meridian Gold through a municipal plebiscite. Furthermore, this rejection of the operation provided the impetus toward the enactment of a provincial law banned open-pit mining and the use of cyanide in mining (Law 5.001 – in April 2003), and the so-called “Esquel effect” (Svampa & Antonelli; Marín, 2009; Renauld, 2016) favoured the replication of social resistance in different Argentine provinces.

Despite this first setback, support for mining became state policy at the federal level. Following the political, economical and social crisis of 2001, and after a period of transition, Néstor Kirchner, with the *Partido Justicialista* (PJ)-*Frente para la Victoria* (FPV) coalition, came to power (2003-2007) with only 22 per cent of electoral support. The Kirchner government rapidly generated social support based on a progressive discourse and policies aimed at “economic redistribution”. The “Kirchnerista” experience was part of the cycle of post-neoliberal governments of the previous decade in Latin America (Levistky & Roberts, 2012), questioning the socio-economic consequences of the neoliberal policies of the 1990s and maintaining the necessity of a more active State role in regulating natural resource exploitation, with the objective of channelling these funds into infrastructure and reducing poverty (Burchardt & Dietz, 2014). However, this neo-extractivist model (Svampa & Viale, 2014), in Argentina as in other countries of the region, overlooked socio-environmental questions with respect to mining and left intact the legal framework governing the industry inherited from the 1990s (Cisneros & Christel, 2014).

### **Socio-environmental conflicts and sovereignties in conflict**

We support the hypothesis that the wave of socio-environmental conflicts that rejected the development of transnational mining in Argentina reframes the

concept of sovereignty in terms of its two principal dimensions: power and territory. We understand sovereignty as the political decision-making process on territory (Foucault, 2004). By “power” we make reference to who is the legitimate actor to decide with respect to the exploitation of natural resources while “territory” reflects the different languages of valuation in conflict (Martinez-Alier, 2004).

From the emergence of the first socio-environmental conflict in Esquel (Marín 2009; Svampa & Antonelli, 2009; Walter & Martinez-Alier, 2010; Renaud, 2016), through the expansion of the movement to other provinces, and up to the enactment of the Glaciers Law, the concept of sovereignty underwent a fundamental mutation effected by a plurality of visions in contention. According to Article 124 (NC) the decision whether or not to move ahead with a given mining project falls to the highest authority at the subnational level. However, the actual exercise of subnational sovereignty over mining resources is subject to the established environmental norms and laws that regulate extractive activity at different levels, as well as the actions of transnational companies, socio-environmental movements, provincial legislatures, and federal powers.

Subnational sovereignty in matters of natural resources was put in question at the local, provincial, and federal levels. At the local level, the question as to who should decide about mining projects is not normally articulated explicitly by social movements in terms of sovereignty but, rather, with respect to notions of consultative rights or self-determination. Insistence on the right to be consulted comes from local communities and peasants who claim the right to direct their own local development, framing their argument in the constitutional recognition of environmental rights and the mechanisms of semi-direct democracy. Meanwhile, the principle of self-determination is claimed by indigenous communities with reference to the protection of their identity and territory within the framework of ILO Convention No. 169 for Indigenous and Tribal Peoples. The consultation process, far from being homogeneous, as pointed out by Walter & Urkidi (2015), is characterized as a “hybrid institution that combines formal and informal competences (i.e. regulations, management and communication) and different forms of power (e.g. legitimacy, networks, resources, trust) of social movements and local governments” (Walter & Urkidi, 2015, p. 12).

Viewed in terms of the concept of sovereignties in conflict, this exercise of local sovereignty points up the tension between legality and legitimacy. Recognition of the results of consultation by governing authorities is not automatic, and in certain cases authorities can challenge the results judicially or by using force. With regard to the validity of non-binding consultation, whether it acquires the force of law may depend on the mobilization capacity of social movements that often have a rather ambivalent relationship with the legitimacy or legality of public consultations.

In the case of Argentina, the dispute over the exercise of local sovereignty is not homogeneous, but is conditioned by the subnational socio-political char-

acteristics (Torunczyk, 2016). To date, four instances have been recorded in which local sovereignty has in turn conditioned the exercise of subnational sovereignty. Although in all cases social mobilization appeared as a common element, in the case of Esquel in Chubut (2003) the mobilization succeeded in preventing the mining project by a non-binding plebiscite that was in the end recognized by the provincial government. In the case of the Mapuche community of Loncopué in Neuquén (2012), a public non-binding consultation took place that also obliged the halt of the project, despite the fact that the provincial government judicially challenged the constitutionality of the plebiscite. In the cases of Famatina and Chilecito in La Rioja (2007 and 2012), it was the direct action of the socio-environmental movements that forced a number of companies to desist from exploiting various mining sites. While in Neuquén and La Rioja the conflicts did not succeed in escalating the issue from the local to the provincial scale, the events of Esquel led the legislature of Chubut to enact a law regulating in part metalliferous mining activity, prohibiting exploitation but allowing exploration. As for subnational sovereignty, it has been limited to the provincial level, the product of laws passed between the years 2003 and 2011, which prohibit metalliferous mining in nine provinces.<sup>4</sup> And with respect to the federal scale, this has been conditioned by the enactment of the Law of Minimum Standards for the Protection of Glaciers and the Periglacial Environment in 2010, which is the focus of the present article.

### **Sovereignties in conflict: The dynamics between power and territory**

Power and territory constitute the main dimensions of analysis in studies that analyse socio-environmental conflicts related to mining. However, we consider that it is necessary to view these dimensions in relation to each other and to introduce into the debate the question of a reconfiguration of sovereignty. The notion of “sovereignties in conflict” proposes a theoretical approach that contributes to this task and is based on two main fields in the social sciences: subnational politics and the sociology of globalization.

From the notion of “sovereignties in conflict” we underline three central ideas: 1) subnational sovereignty, especially in federal countries, is a key dimension in analyses of socio-environmental conflicts and it is necessary to analyse how these are reconfigured at that subnational level; 2) sovereignties in conflict include a multiplicity of economic, political, and social actors who express different conceptions of the relationship between power and territory that weave through sovereignty at different scales (subnational, federal, and global); and, 3) sovereignties in conflict can acquire three different dynamics: convergent, agonistic, and antagonistic. This proposed typology will enable us to account for the different dynamics that enter into socio-environmental conflicts according to the different power configurations at the sub-national level.

Discussion regarding subnational sovereignty is relevant both with respect to the sovereignty exercised over natural resources by the provinces and to the

various political science studies that problematize the heterogeneity of political regimes in federal Latin American countries (Hagopian, 1996; Cornelius et al., 1999; Gibson, 2005, 2012; Durazo-Herrmann, 2010; Montero, 2010; Behrend, 2011; Gervasoni, 2010; Giraudy, 2011). Studies on subnational politics allow us to elucidate the democratic or authoritarian characteristics of subnational political regimes (Behrend, 2011; Gervasoni, 2010; Giraudy, 2010; Cornelius et al., 1999; Gibson, 2012; Durazo-Herrmann, 2010). In addition, this literature has advanced our understanding of the causes behind different degrees of subnational democratization, as a result of the relationship established between the federal and subnational political regimes (Gibson, 2012; Giraudy, 2009; Gervasoni, 2010), or in consequence of its own internal political dynamics (Durazo-Herrmann, 2010; Behrend, 2011). Analysis of the characteristics of subnational political regimes is important for the characterization of state-society relations, and we position ourselves alongside those who affirm that in Argentina there exist different degrees of subnational democracy (Gervasoni, 2010; Behrend, 2011). Nevertheless, based on the notion of sovereignties in conflict, we underline that discussion strictly in terms of political regimes does not permit an understanding of the various subnational power dynamics at play with respect to territory.

The literature on subnational democratization has equated the notion of territory with the mere idea of territorial representation. In so doing, it has paid little attention to the existence of conflicting perceptions of territory among subnational governments, socio-environmental movements, and indigenous peoples in relation to natural resource exploitation. The last point is key to our argument. The development of transnational mining is federally-driven state policy, but this federal endorsement cannot explain the difference in actual mining developments at the subnational scale, or the varying degrees of compliance with the Glaciers Law. Sovereignty reconfiguration, in relation to transnational mining, is not a process that is transferred from the global to the national scale without political and social mediation within the territory of the nation-state. On the contrary, sovereignty gives structure to political reality in terms of power and territory, but its sense and scope are put into question in different ways by the actors in the conflict.

While the classical notion of sovereignty holds to the idea of the predominance of an absolute and supreme power in a territory (Hobbes, [1651] 1996), with the concept of sovereignties in conflict we adopt a plural and non-hierarchical view of sovereignty (Bellamy, 2000). In Argentina, sovereignty over natural resources constitutes a conflictive process with respect to the legitimacy of each actor and also to the territory being disputed. Socio-environmental conflict is situated in a specific territory at the subnational scale, but the rules of the game are not limited to that scale but also transcend to federal and international levels due to a variety of existing laws.<sup>5</sup> The actors involved establish, then, alliances at different levels with the aim of legitimizing their positions and conditioning the exercise of sovereignty at the subnational

scale. Our conception of sovereignty avoids falling into an essentialist reading as if it were definitively defined. From the sociology of globalization we understand that sovereignty is permeated by a dynamic of conflict in which the notions of power and territory are put into question (Sassen, 2009; Sassen, 2014; Hardt & Negri, 2000). Although power and territory are two dimensions usually analysed separately, our position assumes that it is necessary to problematize this relationship given that socio-environmental conflicts reconfigure power and territory in different ways.

The concept of sovereignties in conflict makes clear the existence of a multiplicity of economic, political, and social actors that express different understandings of the relationship between power and territory across sovereignty at different levels (local, subnational, federal and global). The idea of sovereignties in conflict shares some assumptions with political ecology studies that analyse socio-environmental conflicts in Latin America. Natural resource exploitation entails unequal economic and environmental cost distributions among contending actors that express different languages of valuation of the territory (Martínez-Alier, 2004).

Mining companies have an economic interest in the export of minerals. Political actors, whether subnational or federal, do not manifest a common, homogenous position on this, but exhibit a range of priorities from maximizing mining income to arriving at regulatory frameworks for extractive activity. For their part, the socio-environmental movements usually express an environmental or ontological reasoning with respect to territory that goes beyond the realm of political or economic concerns. One perspective of political ecology based in geography favours an analysis of mining conflicts at the local or territorial level, understanding them within the framework of governance (Bebbington, 2007). Another theoretical framework understands such socio-environmental conflicts as the expression of different development models in dispute (Svampa, 2011; Svampa & Viale, 2014) in which the plurality of actors involved (social, economic and political) and the multiscale<sup>6</sup> operate as mechanisms favouring legislative influences and therefore result in disputes over provincial sovereignties.

Based on the analysis of sovereignties in conflict we propose a typology that allows us to identify three distinct dynamics established among the different actors: convergent, agonistic and antagonistic. The idea of convergent sovereignties refers to a process of convergence among the interests of subnational governments and companies that achieve to advance with mining exploitation development. The idea of converging conflicting sovereignties may seem contradictory at first glance. However, it is explained by the ability of political and economic actors to neutralize or conceal the conflict by marginalizing the actions of socio-environmental movements. Thus, despite the existence of a localized conflict, socio-environmental movements do not successfully escalate the conflict, perhaps on account of their ineffectiveness, or on account of a lack of interest manifested by the population regarding environmental issues. Such reasoning



would explain several cases in Argentine provinces that do effectively exercise sovereignty over mining resources: Santa Cruz, San Juan, and Catamarca.

The concept of agonistic sovereignties implies the formation of a response movement at the subnational level that achieves the prevention of the development of such extractive projects. The conflict takes place, in such cases, within a socio-political context in which violence and authoritarianism are less developed or are not systematically employed by the subnational power against militants of the socio-environmental movements. The agonistic idea envisages a more open or democratic political space in which conflict is shaped by the notion of adversary rather than enemy (Mouffe, 2005). This idea can be used to explain, for example, the cases of Chubut, Mendoza, and Córdoba.

In the so-called antagonist dynamic, socio-environmental militants who stand against mining development are considered by the state as enemies of economic progress, and in certain cases as terrorists. This type of conflict happens in a political context in which the rule of law is weak and the response of the state to the movement’s militants includes a variety of authoritarian responses: the criminalization of social protest, police repression, army intervention, or even the assassination of demonstrators. We also do not consider the different dynamics of sovereignties in conflict to be mutually exclusive. For example in certain cases, such as that of Catamarca, it is possible to identify both convergent and antagonistic sovereignties. Table 1 summarizes the typology of sovereignties in conflict proposed:

**Table 1:** Typology of sovereignties in conflict proposed

<b>SOVEREIGNTIES IN CONFLICT</b>	<b>CONVERGENT SOVEREIGNTIES</b>	Convergence between the interests of subnational governments and mining companies. Development of mining exploitation.
	<b>AGONISTIC SOVEREIGNTIES</b>	Formation of a response movement at a subnational level that succeeds in preventing mining development.
	<b>ANTAGONISTIC SOVEREIGNTIES</b>	Socio-environmental militants against mining are considered by the state as enemies of economic progress and in certain cases as terrorists.

Source: Developed by the authors

### The Glaciers Law

The protection of glaciers is fundamental for the safeguard of water resources, the defence of the ecosystem of the Andes mountain range and, fundamentally,

to guarantee the subsistence of productive activities and human survival itself (Taillant, 2012). During the public discussion about glaciers in Argentina, water and the importance of water resources were politicized (Bottaro & Sola Álvarez, 2016), and the reconfiguration of sovereignty with respect to federal and subnational powers was at the centre of the debate. The concept of sovereignties in conflict offers a way to explain the different dynamics involved in sovereignty in the case of the enactment of the Glaciers Law. The shift in scale of the socio-environmental conflict from the subnational to the federal level was a function of the existence, at the national scale, of an agonistic dynamic that provided a greater degree of political openness and the possibility of impact within the federal legislative arena, as well as a greater capacity for organization and articulation of the socio-environmental movement.

We will therefore analyse the tensions that emerge with respect to these issues when there is a change of scale from subnational sovereignty to the federal scale. The analysis of the enactment of the law protecting glaciers and the periglacial environment shows that the movement to the federal scale does not necessarily imply, in concrete terms, a greater degree of compliance with environmental law at the subnational level. This passage to the federal level is pervaded by a dynamic of open conflict between claims for economic development versus environmental protection, and between different ways of understanding sovereignty over natural resources at different scales.

Previous to the enactment of the Glaciers Law (Law 26.639) there was an antecedent beset by great controversy. In October of 2007, the Chamber of Deputies approved a glacier protection measure based on the guidelines established in the General Law on the Environment (hereafter LGA)<sup>7</sup> by MP Marta Maffei (ARI). On 22 October 2008, and with broad support from the ruling party FPV, the bill was unanimously approved by Senate and became Law N°. 26.418 (hereafter Maffei Law). However, on 11 November, then President Cristina Fernández de Kirchner (2007-2015) vetoed this environmental legislation regarding glaciers by means of Decree N°. 1837/2008.

The official position argued that legislation such as the LGA and other environmental laws already existed at both the national and provincial levels. However, from the opposition it was put forward that the presidential decision was in consequence of pressures from the mining provinces, in particular from San Juan, with Governor José Luis Gioja (FPV) in the lead, and the Canadian mining company Barrick Gold. The government's determination to veto the law was publicly known as the "Barrick veto". In this regard, Deputy Bonasso (*Diálogo por Buenos Aires*) would later declare "What is in dispute is water, and I will reveal how the agreement was made with Senator Filmus in order that the Chamber, the media and the public know. They also have to know what dark machinations of the Barrick Gold lobby are behind all these postponements, the veto, and this discussion" (Cámara de Diputados de la Nación, 2010: 30-31).

## Between direct action and institutional action

The enactment of the first Glaciers Law (Maffei Law) was a product of the lack of awareness of the ruling party legislators; it transpired in a context of relatively harmonious legislative negotiations and did not involve any process of wide mobilization of social actors. Following the presidential veto the scenario was transformed, inaugurating a new era in public discussion of the mining issue. The legislative process that ended with the enactment of the current Glaciers Law involved a “multiplicity of actors” committed to the restitution of glacier protection at the federal level and was characterized by an agonistic dynamic. The interaction between non-governmental, social, and legislative actors (intellectuals, environmental assemblies, environmental NGOs, legislators from both chambers) can be recognized in two central aspects: first, in the efforts to generate social support for the initiative, and secondly, in the momentum within the legislative debate itself and the inclusion of various speakers in favour of the glacier standard.<sup>8</sup> This discussion about the protection of glaciers made it possible to debate the mining issue at the federal level in Argentina, a topic which, until that moment, several environmental organizations had found blocked at the subnational level. The context of the dynamics of agonistic sovereignties enabled the coalition of socio-environmental actors to condition the dynamics of convergent sovereignties that prevailed in several mining provinces.

After the presidential veto, the actions in favour of a new Glaciers Law multiplied and different social groups deployed three central strategies that, complementarily, continued to increase social pressure. In the first place, a strong operation of diffusion and denunciation of the different assemblies in several Argentine provinces came from a mainly local component. Secondly, the collection of more than 150,000 signatures in favour of a new sanction of the law counted among its membership more than a hundred social and environmental organizations across the country and from abroad. Thirdly, open letters were sent to President Cristina Fernández de Kircher and to the National Deputies and Senators, notably including letters from Nobel Peace Prize winner Adolfo Pérez Esquivel and one of formal cooperation for the purpose on the part of several environmental organizations.<sup>9</sup> Toward this last effort, environmental assemblies, mostly linked to local work, shared slogans and a central objective similar to those of environmental NGOs such as Greenpeace and the Argentine Natural Resources Foundation (FARN), which favoured the collaboration of these actors towards a shared goal.

Legislative channels took a new course when, in December 2008, Deputy Miguel Bonasso (*Diálogo por Buenos Aires*) presented a project identical to that of Deputy Maffei. However, the climax of the conflict came with the presentation, by Senator Filmus of the governing FPV party in September 2009, of a new glacier protection bill. From that point onward there was a confrontation between the so-called “Filmus Law” and “Bonasso Law”, the de-

fenders of the latter accusing the bill supported by the governing party of being highly permissive with respect to mining activity. In this context of high controversy, the voices of a plurality of actors were incorporated into the legislative debate, particularly through the Commission on Environment and Sustainable Development of the Senate. In the final stages of the legislative process, various social, political and economic actors were invited to present their positions. Through September 2010, a broad coalition was formed including representatives of environmental NGOs such as Greenpeace and FARN, renowned academics and researchers on environmental issues, human rights activists and representatives of the social and environmental movement. They supported the “Bonasso Law” and environmental protection measures in the aforementioned Senate commission. This collaboration between different actors resulted in a shared document<sup>10</sup> (which was later expanded and became a book; see Machado Aráoz et al., 2011), with the object of articulating the various positions against mega-mining and persuading senators of all parties to approve the law.

Finally, and in a climate of growing social and political tension, an agreement between deputies Filmus and Bonasso made it possible to unify legislative action behind the Bonasso bill by modifying it to: include a new definition of the periglacial environment; push back the start date of the national inventory of glaciers and periglacial environments; and permit the continuation of anthropogenic activities during the making of said inventory. Although these modifications were viewed as part of the political reality of partisan negotiation, at the same time they raised criticism among environmentalists for resulting in a less protective measure than that proposed by Maffei. After an extensive legislative session, which ended near 4:30 in the morning of Thursday, 30 September 2010, the senators approved with thirty-five votes the Bill of the Glaciers Law<sup>11</sup> (later referred to as the “Filmus-Bonasso Law”) over the original project of the Senate that obtained thirty-three votes (Di Paola, Pedace, Villalonga, 2011). Faced with this approval, the government of Cristina Fernández de Kirchner had no choice but to recognize the law, given that according to the NC, the executive branch could not again veto the law.<sup>12</sup> Despite this, it took more than six months to partially regulate the Glaciers Law (decree 207/11), and articles for the national inventory of glaciers were left unregulated.

Returning our focus to analysis, we underline that the coordinated work carried out by citizen assemblies and organizations of civil society to defend their territories and reinstate the vetoed law was crucial for the approval of glacier legislation. Through the reconstruction of this legislative process and the analysis of excerpts from the debates we can see how several representatives highlighted the role of such assemblies and other social organizations:

Above all, the success had to do with this struggle. It would be too much to attribute it only to our strength. This had to do with the exertion of citizen assemblies and intellectuals, such as Pérez Esquivel, Norma Giarracca, and Maristella Svampa. Also with people who every morning find themselves

among those mountains and who do not wish them to be destroyed or to surrender their water. That we are discussing this initiative today has to do with the battle given by each and every one of the people in our country, (Fernanda Reyes, Coalición Cívica, CABA, *Honorable Cámara de Diputados de la Nación*, 2010. p. 53).

We face a situation of extreme danger that puts at risk this extraordinary source of water that are the glaciers. We should pay homage to the citizens' assemblies because they have created, from the provinces, for the first time in our country, an environmental conscience that previously did not exist. If we are discussing this law today it is because it has been propelled by these mobilizations, (F. Solanas, Proyecto Sur, CABA, *Honorable Cámara de Diputados de la Nación*, 2010, p. 64).

Moreover, it seems very important to me to acknowledge what is being concretized today at the institutional level, because it represents the labour of much time, of many environmental organizations, of groups that have travelled throughout and across the country generating the kind of discussion that today is crowned institutionally, recognizing the work of colleagues like Marta Maffei and Miguel Bonasso, (C. Lozano, Proyecto Sur, CABA, *Honorable Cámara de Diputados de la Nación*, 2010 p. 86).

### **The affirmation of subnational sovereignty and the Glaciers Law**

Discussion around the Glaciers Law highlighted the tensions between subnational sovereignties and national sovereignty with respect to who constitutes the legitimate authority to decide on the management of natural resources. The representatives of the mining provinces (San Juan, La Rioja, Santa Cruz, Catamarca, among others) – in addition to providing explicit support for the Filmus bill – built a strong defence of mining activity based on the assertion of subnational sovereignty over natural resources as granted by the NC (Art. 124) and denunciation of the encroachment of national sovereignty into areas of subnational sovereignty:

The Cordillera provinces have enormous possibility; surely we are among the ten or twelve nations of the world that have such huge mining potential. And now we cannot develop it. Because fundamentally this is what it means. We are punished from all sides. History has punished us. Now everything is about mining. Can we not establish, as the Constitution says wisely, the minimum standards and let the provinces decide how to move forward? Now, under the pretext of the environment we also want to limit provincial powers that are in the Constitution. Natural resources belong to the provinces, (Gov. Beder Herrera, La Rioja, *Honorable Cámara de Senadores de la Nación*, 2010, p. 8).

I will not support any bill that means an attack against the autonomies and powers of the provinces in the management of their natural resources, and impede their progress, (Dep. Veaute, Catamarca, UCR, *Honorable Cámara de Diputados de la Nación*, 2010, p. 89).

Conversely, the defenders of Deputy Bonasso's bill sustained their position on the basis of article 41 (NC), constructing an argumentative strategy that considered the defence of water as a human right, and the benefit of a healthy environment a constitutional right:

We're talking about the source of life: water. Only 3 per cent of the water that covers the planet is potable, and two-thirds of that comes from water from glaciers. The economic models that place mining projects and the search for profit above water and life have already got their eye on the mountain range of the Andes. (...) The mining provinces, covered by Article 124 of the National Constitution, which establishes that natural resources are the primary domain of the provinces, believe that they can turn these local regulations into a legal obstacle to the application of a new national law. Let us remember that the National Congress has authority over the laws of minimum standards for environmental protection. This authority was delegated by the provinces through Article 41 of the National Constitution, (Dep. Solanas. CABA, Proyecto Sur, *Honorable Cámara de Diputados de la Nación*, 2010 p 37).

So it is very important that the Nation steps up to protect the glaciers because they constitute a public patrimony. Glaciers are a public good of interest to all Argentines, and not only to the provinces where they are located, (Dep. Basteiro CABA, Nuevo encuentro, *Honorable Cámara de Diputados de la Nación*, 2010, p 64).

In the moments prior to the definitive enactment of the Glaciers Law, the pressure of prominent sectors to "provincialize" the issue and resolve conflicts under the shelter of their own convergent sovereignties was made explicit in two ways. Firstly, the *Declaración de las provincias cordilleranas: Afirmación de sus competencias en materia de Cuidado Ambiental* (Declaration of the Cordillera Provinces: Affirmation of their Jurisdiction over Environmental Welfare)<sup>13</sup> held that "the provincial governments of the Cordilleran Provinces are committed to the protection of the existing environment in each of their territories, federalism being as it is a political system of territorial jurisdiction distribution which allows for effective resolution of particular and verifiable environmental issues in the territories of each of these Provinces"; and secondly, by arguing in the parliamentary debate that the provinces already had specific regulations for the protection of glaciers and therefore it would not be necessary to pass a Glaciers Law at the federal level.<sup>14</sup>

## Conclusions

The analysis of the process of the Glaciers Law enactment in Argentina based on a notion of sovereignties in conflict made clear the importance of incorporating a perspective that problematizes the transformations affecting the question of sovereignty in relation to the exploitation of natural resources and socio-environmental conflicts. The notion of sovereignties in conflict thus contributes to the discussion of this problem by accounting for how the two main dimensions of sovereignty, power and territory undergo an important transformation that modifies its meaning and scope. We argue, therefore, that the various contending conceptions around extractive projects do not only imply conflicting views on development (Svampa & Viale, 2014, Svampa, 2015) or territory (Martinez-Alier, 2004; Bebbington & Bury, 2013), but also on sovereignty.

In Argentina, although sovereignty rests on subnational powers, these are conditioned by different socio-political dynamics that we systematize from a typology of sovereignties in conflict: convergent, agonistic or antagonistic. In this sense, the cases of San Juan and Mendoza illustrate two opposing tendencies noted in the subnational positions regarding mining and environmental protection. In the province of San Juan, a number of mining companies filed a series of injunctions before the provincial courts demanding the non-application of the Glaciers Law in the territory of San Juan. Despite the fact that these strategies on the part of the mining companies had the support of the subnational government, which was always inclined to defend its sovereignty, in July of 2012, the National Supreme Court of Justice finally revoked the injunctive measures, giving directives for the national inventory of glaciers in all national territories. Additionally, the province of San Juan delegated the creation of the inventory of glaciers to two institutes dependent on the National University of San Juan (UNSJ); and although the national law indicates that the body responsible for the inventory is the Argentine Institute of Nivology, Glaciology and Environmental Science (IANIGLIA), this federal agency did not participate in the reports prepared by the UNJS (IANIGLIA SD).

Conversely, Mendoza played a fundamental role in the application of the national Glaciers Law. With the strong backing of IANIGLIA, which has its main centre of operations in this province, it became the first Argentine jurisdiction to complete its inventory. In June of 2014, it was reported that the province counts 572.57 km<sup>2</sup> of glaciers, distributed in 1,625 bodies of ice (De la Rosa, 2014). More than five years after the enactment of the Glaciers Law, the national inventory ordered by law has not yet been finalized despite the fact that the rule established 180 days for this task.

Despite some progress, the impact of the standard on the modification of mining policies in Argentina has been limited. Even if the enactment of the Glaciers Law has been an effective example of the influence of socio-environmental mobilization, the capacity for the discussion of environmental and mining policies at the level of national sovereignty was notably limited.

The discussion around glaciers acted as a sort of “short cut” to discuss the issue of mining at the national level. And although the “anti-mining” and “pro-mining” positions confronted each other throughout the debate regarding this law, the deliberations developed there cannot even be considered a minor part of the deep, comprehensive and necessary debate about mining policy in Argentina that was systematically deferred by Congress.

In this sense, socio-environmental mobilization in Argentina has encountered recurrent limitations to open up discussions of mining at the federal level. Between 2005 and 2013, of the ten bills presented that sought to ban or prohibit the exploitation of open-pit mega-mining across all Argentine territory, seven of them remained without any positive result in the Lower House, and the remaining three were equally without success in the Senate. Despite comprising a plurality of actors and receiving the support of certain legislative sectors, mainly small parties, the socio-environmental movement finds a limit facing their demands. The pro-mining policy of the national government and the ruling majority in both chambers, as well as the control of key positions in mining commissions by representatives from mining provinces impede the possibility for deep debates on the mining issue at the national level at this time.<sup>15</sup>

Conflicts over the exploitation of natural resources (mining, land grabbing, soy, unconventional hydrocarbons) or the creation of large dams have been accelerating in Latin America and at the global level. The analysis of sovereignties in conflict may be useful to explain and compare how the dimensions of power and territory assume new dynamics in the analysis of other kinds of socio-territorial conflicts. In empirical terms, it would be interesting to compare the Argentine case with other cases in Latin America, such as Costa Rica and Nicaragua, which have enacted laws at the federal level prohibiting the exploitation of metalliferous mining and do not have an intermediate level of provincial authority which figures in federal countries. Moreover, as the essential point of sovereignties in conflict expresses the tension over who decides what over which territory, the future theoretical deepening of our analytical framework could have the potential to analyse a wide range of social, political, and cultural conflicts that cross local and regional realities.

\* \* \*

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## Notes

1. We refer to metalliferous mega-mining, which, unlike the exploitation of underground mines, requires the use of dynamite through long passages of mountain and hills – due to the low concentration and diffuse distribution of minerals – followed by the use of chemicals and large amounts of water to separate rock from metal (Moody, 2007; Rodríguez Pardo, 2009).
2. El Salvador prohibits gold mining for the sake of environmental conservation <https://www.nytimes.com/es/2017/03/30/el-salvador-prohibe-la-mineria-de-oro-para-conservar-el-medioambiente/>.
3. Currently ten laws of minimum standards are in force: General Environmental Law (*Ley General del Ambiente*, 2002), Hazardous Materials (*Ley de Residuos Peligrosos*, 1991), Integral Management of Industrial Waste (*Ley de Gestión Integral de Residuos Industriales*, 2002), Management and Elimination of PCBs (*Ley de Gestión y Eliminación del*

- PCB, 2002), Management of Water (*Ley de Gestión del Agua*, 2003), Free Access to Public Environmental Information (*Ley de Régimen de Libre Acceso a la Información Pública Ambiental*, 2004), Protection of Native Forests (*Ley de Protección de Bosques Nativos*, 2009), Control of Conflagration Activities (*Ley de Manejo de Fuego*, 2013), Glaciers Law (*Ley de Protección de Glaciares*, 2011), Wetlands Law (*Ley de Humedales*, 2016). (Banco Mundial/World Bank, 2016).
4. Chubut (April 2003); Río Negro (May 2005 – repealed December 2011); La Rioja (July 2007 – repealed August 2008); Tucumán (July 2007); Mendoza (June 2007), La Pampa (July 2007), Córdoba (September 2008), San Luis (September 2008) and Tierra del Fuego (April 2011). The explanation of the enactment and repeal of such laws in Argentina will be the subject of a separate article.
  5. Until the enactment of the Glaciers Law, the National Constitution included protection of environmental rights (Art. 41) and indigenous rights (Art. 75). At the international level, Argentina ratified, in 2000, Convention 169 of the International Labour Organization (ILO), which establishes the right of consultation of indigenous communities regarding extractive projects in their territory.
  6. The concept of sovereignties in conflict involves the idea that multiscaleity is a central feature of socio-environmental conflicts (Svampa & Antonelli, 2009; Svampa & Viale, 2014, p. 200). However, the actors at the various scales do not carry the same weight. Sovereignty over natural resources is ultimately exercised at the subnational level, but the notion of territory incorporates the various dynamics of involvement with the global economy, the local histories combined within it, and the different meanings constructed by social actors (Bebbington, 2007).
  7. The General Environmental Law (25.675/02), dictates the governing principles guiding environmental policies. The objectives of environmental policy are: to ensure the preservation, conservation, recovery and improvement of the quality of environmental resources; to promote improvement of the quality of life of present and future generations; and to prevent the harmful or dangerous effects on the environment generated by anthropic activity, in addition to facilitating the ecological, economic and social sustainability of development.
  8. The roles of social and environmental coalitions during the legislative process were reconstructed by means of analysis of the stenographic transcripts of debates from more than ten legislative sessions (Senators and Deputies and Senate Committee on Environment and Sustainable Development meetings). The thematic axes of the analysis were “Invocation of Rights” (*Apelación a Derechos*); “Federalism” (*Federalismo*); “Water” (*Agua*); “Environment” (*Ambiente*); “Social Movements-NGOs” (*Movimientos Sociales-ONG*); “Mining” (*Minería*); “Origin of the Project/Veto” (*Origen del Proyecto/Veto*); “Expert knowledge” (*Conocimiento experto*); “Periglacial area” (*Área periglacial*).
  9. *Carta a Diputados y Senadores sobre la Ley de Glaciares*, the letter to deputies and senators regarding the Glaciers Law from Adolfo Péres Esquivel, 19 November, 2008. The complete letter is available at : <http://alainet.org/active/27619&lang=es>. The organizations that sent the *Carta de ONGs a la Presidenta Cristina Fernández con motivo del veto de la ley de Protección de Glaciares*, a letter from the NGOs to President Cristina Fernández on the occasion of the veto of the Glaciers Law, were: Greenpeace, Fundación Vida Silvestre Argentina, Conciencia Solidaria, Amigos de la Tierra, Taller Ecológico, CTERA, and Fundación ECOSUR. The complete letter is available at: <http://www.greenpeace.org/argentina/es/noticias/carta-de-ons-a-la-presidenta/>.

10. We refer to the document *Defendamos nuestra fábrica de agua: 10 razones para apoyar la Ley de protección de los Glaciares sancionada por la Cámara de Diputados*, <http://www.maristellasvampa.net/archivos/ddhh09.pdf>.
11. The law entrusts IANIGLA with the task of carrying out the national inventory of glaciers “for their adequate protection, control and monitoring” (*para su adecuada protección, control y monitoreo*; Art. 3, Law 26.639). On the basis of this inventory, the law stipulates in Article 6 certain prohibitions in glacial zones, installation of industries or development of construction sites or industrial activities, construction of buildings or infrastructure, except those necessary for scientific research and risk prevention. In addition the same article prohibits, in both the glacial and periglacial zones: the release, dispersal or disposal of polluting substances or contaminating elements, chemical products or residues of any nature or volume, as well as exploration and mining and hydrocarbons.
12. According to Article 83 of the National Constitution, if a bill vetoed by the executive is again treated and approved by both houses, it automatically becomes law and must be promulgated by the executive. In other words, it cannot be vetoed again by the presidency.
13. Available at:  
<http://wp.cedha.net/wp-content/uploads/2011/04/glaciares-docs-ley-glaciares-declaracion-gobernadores.doc>
14. Santa Cruz (Law 3123, 8 April, 2010), La Rioja (Law 8773, 8 July, 2010), Jujuy (Law 5467, 8 July 2010), San Juan (Law 8144, 14 June 2010) and Salta (Law 7625, 3 August, 2010).
15. Currently, the president and the vice-president of the Mining Commission of the Chamber of Deputies both belong to the province of San Juan. In the Senate the presidency was in the hands of a senator from Neuquen and the vice-presidency in the hands of a senator from San Juan. Also, between 2005 and 2011 the vice presidency was held by César Gioja (FPV), brother of the governor of San Juan.

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