

THE TRANSNATIONAL GOVERNANCE MODEL AS A NECESSARY TOOL FOR THE CONSTRUCTION OF AN ADEQUATE REGULATORY FRAMEWORK FOR THE ENERGY TRANSITION OF THE OIL AND GAS SECTOR.

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Overview

The climate warming caused by human action, principally through emissions of greenhouse gases, with global surface temperature reaching 1.1°C above 1850–1900 in 2011–2020, is currently undeniable (IPCC, 2023). The signs of climate change are evident, as proved by scientific information taken from natural sources (such as ice cores, rocks, and tree rings) and from modern equipment (like satellites and instruments (NASA, 2023)). In this way, the Paris Agreement represents an important step, aiming to keep the increase in the global average temperature below 2 °C, in relation to pre-industrial levels, setting the limit for the temperature increase at 1.5 °C (UNFCCC, 2015). Warming beyond this threshold, as warned by Margulis (2020), will bring catastrophic consequences for all of humanity. Therefore, urgent action is needed, as *“(g)lobal greenhouse gas emissions have continued to increase, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals”* (IPCC, 2023).

In the energy sector, the GHG emissions is almost 75% of global emissions (IEA, 2021), and its matrix is made up of 83% of fossil fuels, of which oil and gas represents 56% (BP, 2021). Thus, the climate emergency requires an energy transition towards a cleaner matrix. There are many options for decarbonising the energy sector – increasing the use of renewable energies; electrification of the economy; use of emerging technologies (CCUS, BECCS, direct capture); use of sustainable hydrogen; offshore wind energy production; construction of modular nuclear power plants. However, there is still enormous uncertainty regarding the promotion of these actions.

Furthermore, the transitions already witnessed in the energy sector were secular processes, the aimed transition differs by ambition in relation to speed. That is why it is imperative that it be promoted through public policies that implement targets for reducing GHG emissions, encourage and promote investments in renewable energies, energy efficiency and clean technologies (Pinto Jr, 2022).

Considering the challenge and complexity of regulating actions related to the energy transition, this article proposes that States adopt the model of **New Transnational Governance**, designed by Abbott and Snidal (2009) to face this regulatory challenge.

In this model, states, acting singly or associated in IGOs, would leave their central and exclusive position in the rule-making process in order to facilitate and orchestrate the participation of private actors and institutions, increasing the regulatory expertise in a collaborative and decentralized process to seek joint solutions. Abbott and Snidal (2009) suggest the state’s role of orchestrator to coordinate the plurality of actors and harmonize the adoption of rules resulting from state and non-state rule-making processes. Acting as orchestrator, the state will take measures to engage public and private actors in regulatory activities and facilitate adopting and enforcing these private rules.

It should be noted that, in order to adopt the New Transnational Governance model, it is necessary to understand regulation in a broader way, different from the traditional understanding, which only recognize the legal rules originating from a nation-state in a centralized and hierarchical way, based on positivist doctrine. Thus, this article defines regulation as an effort to organize a particular sector of society based on mandatory and voluntary rules, elaborated by a multiplicity of state and non-state actors endowed with specific expertise. Then the rules would be elaborated in a frequently negotiated process, making them more flexible, decentralized, adaptive, and evolutionary, and may rely on mechanisms of standard-setting, information gathering, and behavior modification (Black, 2002; Meidinger, 2007; Ost and Kerchove, 2002 and Abbott and Snidal, 2009).

Regulation will be considered in this article in the context of a transnational legal order (TLO), as proposed by Halliday and Shaffer (2015). The TLO would be formed by national, international and non-state rules, called by these authors transnational rules. For these authors, the transnational rules orbit around the national and international order and are valid because they interact, influence, and affect the national and international legal orders. Thus, TLO would be “less an overcoming than a transcending of the state”, a new order that does not suppress the state concept but extends beyond its powers and requires looking beyond the national lens.

Based on the new transnational governance model, all stakeholders involved in the energy transition process in the oil and gas sector – state and non state actors - will be able to act collaboratively, under state orchestration, and

thus arrive at adequate regulatory solutions that make the energy transition possible in time to avoid disastrous consequences for humanity.

Methodology

The approach adopted in this research utilize the exploratory method to describe the challenges and difficulties considering adoption of the new model of transnational governance and TLO approach for dealing with the energy transition, mostly based on documental and bibliographic analysis on the subject.

Expected results

In brief, the evaluation of the adoption of the new model of transnational governance and TLO approach for dealing with the energy transition can contribute to reach an adequate regulation for energy transition actions in a reasonable time.

Conclusions

The climate emergency requires tackling complex issues so that adequate regulation can be implemented. State regulators do not have enough resources – human and financial – to tackle these issues alone and within the timeframe needed. It is necessary to join forces so that all parties involved collaborate in this process. Thus, the adoption of the new model of transnational governance and TLO approach is a way to make this cooperation viable.

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