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Murilo Alves Zacareli

Atores Não Estatais e a Governança Ambiental Transnacional-Local: O Impacto da Cooperação entre Empresas, ONGs e Governos

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Abstract

This dissertation addresses the rise of non-state actors in International Environmental Politics. More precisely, it tackles the cooperation among NGOs, local communities and the private sector in transnational arenas, the 'new mode' of global governance. The aim is to show that non-state actors have played a major role in biodiversity governance as 'global governors' given that International Organizations have increasingly delegated functional roles to non-state actors. Through case studies involving the Amazon Cooperation Treaty Organization, the Union for Ethical BioTrade, and Natura, this research study contributes theoretically and empirically to the literature in International Relations and Political Science by answering the following research question: to what extent NGOs, the private sector and local communities contribute to the implementation process of the Convention on Biological Diversity (CBD)?

Keywords: governance; regulation; transnational arenas; biodiversity; non-state actors, NGOs; private sector; local communities.

Resumo

Esta tese aborda a ascensão de atores não estatais na Política Ambiental Internacional. De forma mais precisa, a cooperação entre ONGs, comunidades locais e o setor privado em arenas transnacionais, o "novo modo" de governança global. O objetivo é mostrar que os atores não estatais têm desempenhado um papel importante na governança da biodiversidade como "global governors", uma vez que as Organizações Internacionais têm delegado cada vez mais funções a atores não-estatais. Por meio de estudos de caso envolvendo a Organização do Tratado de Cooperação Amazônica, a União para o Comércio BioÉtico, e a Natura, esta pesquisa contribui teoricamente e empiricamente para a literatura em Relações Internacionais e Ciência Política ao responder a seguinte questão de pesquisa: em que medida as ONGs, o setor privado e as comunidades locais contribuem para o processo de implementação da Convenção sobre Diversidade Biológica (CDB)?

Palavras-chave: governança; regulação; arenas transnacionais; biodiversidade; atores não estatais; ONGs; setor privado; comunidades locais.

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Introduction and Research Design

This dissertation addresses the rise of non-state actors in international environmental politics. More precisely, it tackles the cooperation among the third sector, local communities and private actors in transnational arenas, the 'new mode' of global governance. These actors have become prominent in International Relations in the past decades and "[…] states are no longer the exclusive source of regulatory global authority […]" (Vogel, 2009, p. 154). The private sector has gained the ability to make rules which means they have become "global governors" (Avant et al., 2010). The best concept to capture the rise of the private sector in transnational arenas is "Private Authority", which Green (2013) defines as "[…] situations in which private actors make rules or set standards that others in world politics adopt […]". Being the opposite of centralized state authority, this new type of private authority is polycentric because it involves different actors in multiple levels and provides incentives for multilevel cooperation, what Ostrom (2009) refers to as "polycentric governance". In this context, non-state actors do not merely play "supporting roles" to the state within the international system (O'Neill, 2009, p. 48).

This perspective lies outside traditional mainstream approaches of International Relations theories, most of them based on states' central authority in international politics. The "poverty of statism" (Avant et al., 2010) and the so-called "state-centric" perspectives of International Relations theories have downsized the tasks, roles, activities and impacts of non-state actors, such as the global civil society, transnational advocacy networks, the private sector and epistemic communities (Haas, 1990)[1]. In international relations, intergovernmental multilateral arenas have prevailed in different issues such as security and commerce. In the case of the environment, the intergovernmental cooperation has resulted in multilateral agreements (MEAs) or the so-called "international regimes" (Krasner, 1983) which were the dominant mode of global (environmental) governance from the 1970s to 2000s.

[1] The author identifies transnational groups of scientific experts who are in the position to work with each other to influence governments in the intergovernmental multilateral arena of environmental issues. According to O'Neill (2009), the concept of 'expert' is wider and more contested with the incorporation of the local level in the form of "local knowledge perspective" and the expansion of the concept of 'science' to a broader one related to 'knowledge'. In the case of the Convention on Biological Diversity, it contains the direct participation of local communities and "indigenous groups as local knowledge holders" (O'Neill, 2009, p. 66).

International environmental regimes were the basic form of global environmental cooperation. Several environmental issues were negotiated in intergovernmental decision-making arenas, such as climate change, biological diversity and desertification, and originated major international agreements signed by states during Rio 1992[2]. The role of the United Nations as the main player in environmental affairs started with the Stockholm Conference[3] in 1972[4] and provided the intergovernmental multilateral agendas for the creation of the United Nations Environment Programme (UNEP) in 1976, Rio 1992 (UNCED), Rio + 5 in 1997, the Johannesburg Summit in 2002[5], Rio +20 (2012) and the Paris Agreement in 2015, not to mention the Conference on the Parties (COPs), Secretariats as well as special bodies that manage Conventions and Protocols.

Sovereign states have avoided since the 1970s the creation of a centralized environmental agency, a 'focal point' needed to govern the environmental agenda, provide the right incentives, coordinate and organize priorities, and develop important policy functions as monitoring, impact evaluation, and the provision of reports to showcase advancements. Furthermore, governments and the UN agencies have stimulated "issue-by-issue" environmental agreements in the form of MEAs that produce inefficiencies, waste resources, and overlap activities. Clearly, the interlinked indivisible dimensions of global environmental problems demanded a rather hierarchical and centralized authority to deal with them (Chambers, 2009).

Governments are no longer the only actors with decision-making authority. However, only states can use force to regulate and organize individuals, institutions and organizations, what they can do or not. States can also exercise the coercive power on taxation. Governments get to decide how public monetary resources can be spent (Abers and Keck, 2013). Only states are empowered to make environmental regulations enforceable among their territories. Intergovernmental multilateral arenas mean more than just signing and enforcing treaties. States make decisions about rules and norms, establish mechanisms for conflict resolution, monitor treaties and protocols, issue reports, provide transparency and accountability and assess impacts. Most of these policy

[2]The United Nations Conference on Environment and Development (UNCED).
[3] The United Nations Conference on the Human Environment (UNCHE).
[4] The Conference placed environmental issues in the intergovernmental multilateral agenda of states as high-level priority and not as 'low politics'; it also defined the boundaries of the debate about development, conservation of nature, and other environment-related issues as global (O'Neill, 2009).
[5] The World Summit on Sustainable Development (WSSD).

functions can be shared with international organizations, NGOs and corporations without violating the sovereignty of states (O'Neill, 2009).

I argue that corporations, NGOs, social movements and epistemic communities have been delegated roles that prevent them from merely playing supporting roles, which remove them from a rather peripheral zone in International Relations. In fact,from the 1990s onwards, NGOs and corporations have been working together to provide governance in transnational arenas. At the same time, IOs are involving non-state actors in decision-making processes. The global civil society has developed the ability to 'name and shame' firms which result in more accountability and transparency of corporate policies, programs and actions. This a powerful mechanism to change companies' behavior towards more sustainable environmental practices (O'Neill, 2009; Abers and Keck, 2013).

From the private sector's perspective, changes in the pattern of trade and investment affected have multinational operations all over the world: 1. the technology-driven economy prompt companies to provide regulations where states are absents; 2. the operational freedom of firms amongst globalization processes has produced new forms of ownership which resulted in the outsourcing of more complex value chains; 3. states have realized it is more efficient and less costly to delegate policy functions to the new 'private authorities' which have become focal points that provide governance (Büthe and Mattli, 2011); 4. firms have 'learned' how to provide regulation through standard-setting in certification schemes which can be found across different value chains all over the world. Certification schemes and labels have produced competitive advantage and drawn consumer attention. States and IOs have been benefited "[…] by avoiding the political and economic costs of imposing government regulation on key sectors of the economy, specially transnational sectors, where control is difficult […]"(O'Neill, 2009).

The rise of certification schemes and labels with institutionalized bodies, rules and norms, specific decision-making processes can be compared to states' centralized authority enforcing decisions. Scholars have referred to this as non-state market driven governance systems (NSMDGSs) (Cashore, 2002), transnational private regulation (Cafaggi et al., 2011), transnational governance (Held and Hale, 2011), global governors (Avant et. Al, 2010) among other concepts that shed light on the cooperation of non-state actors with states and IOs.

Possible research questions include, but are not limited to: to what extent are non-state actors actually suplementing state actors in performing key global governance roles?

Is there a 'new' international division of labor/competencies? How can the rise of transnational arenas be understood? How can the influence of non-state actors in global environmental governance be portrayed, as well as the channels and roles through which those actors exert influence across different issues? In the case of the local arena, which is oftentimes a missing level of analysis in International Relations theories, how do non-state are dealt with? In the case of biodiversity governance, the Convention on Biological Diversity (CBD) brings instruments to foster the participation of Indigenous groups, local communities and associated traditional knowledge to promote environmental conservation. Do these mechanisms work out? Are they recognized? What is the role of institutions in global environmental governance? And what types of institutions have been (re)designed in the past decades to cope with environmental issues? Is there a retreat of the state or rather a complementary overlap of competencies between state and non-state actors? How do non-state actors gain legitimacy in this context and how do they operate through partnerships? What is their role in the face of global environmental change? Have informal institutions gained prominence? What are the implications for biodiversity governance? These are some of the major questions confronting society, policy makers and stakeholders over the world, and to which this research agenda aims to contribute by shedding light on cooperation among NGOs, local communities and companies not only in decision-making, but also in the implementation process of the biodiversity agenda through standard-setting. It is important to highlight though that these are just guiding questions for the dissertation.

This research study is about the public-private cooperation that take place in the context of the CBD, the Nagoya Protocol, the 'private transnational authority' of the Union for Ethical BioTrade (UEBT) – the United Nations' spinoff that set up standards and provide certification for companies that comply with the biodiversity principle of 'sourcing with respect'. The transnational arena is created when UEBT in tandem with cosmetics, pharmaceutical and food industries decide to apply UEBT standard. It can be argued that transnational arenas operate in 'the shadow of states' because UEBT standards are inspired upon the public regulation set up in the intergovernmental multilateral arena produced by the CBD and Nagoya protocol, a transversal movement from public to private and from private to public, as discussed in Chapter 2.

When Natura, a Brazilian cosmetics multinational company, comply with the UEBT standard, the company is meets requirements of the governmental agency in charge of overseeing the use of biodiversity in Brazil. There is also a transnational-local

dimension of biodiversity governance: Access and Benefit-Sharing (ABS), which entails benefits for local communities and Indigenous groups that possess traditional knowledge when dealing with biodiversity. The transnational arena draws a much more complex picture of multilevel governance when compared to traditional approaches of international environmental politics.

The research question is stated: to what extent do non-state actors – NGOs, the private sector and local communities – contribute to the implementation process of the Convention on Biological Diversity (CBD)? Attention is given to Access and Benefit-Sharing (ABS) which is one of the foundational pillars of the CBD. The answer to this question is built upon dimensions that stem from case studies in Chapters 4 and 5 – UEBT as a transnational private authority, and Natura as a member that complies with standards at the local/national levels. The IAD Framework is used as an analytical tool that helps understand governance through mechanisms in which non-state actors play a vital role. This research brings together institutional, empirical and stakeholder analyses as well as archival research, secondary data, conference observation, and interviews (Ostrom, 2011).

The dissertation is comprised of five chapters that strategically answer the research question. Firstly, the CBD and Nagoya Protocol are introduced under the lenses of public-private partnerships along with a literature review that aims at discussing the main approaches of global environmental affairs from the perspective of international relations and interdisciplinary environmental theories. Secondly, a chapter on main concepts and theoretical approaches that address the rise of non-state actors in international relations theories and other applied social sciences. Thirdly, a chapter on the Amazon Cooperation Treaty Organization (ACTO) is presented as a contrafactual which means a case study that clarifies the failure of an ineffective state-centered regional cooperation effort to cope with biodiversity conservation among Amazonian countries[6]. Fourthly, the case study addresses the private authority in the institutional transnational arrangement known as the Union for Ethical BioTrade (UEBT) which challenges the state domain of biodiversity global governance by bringing a real example of a transnational non-state actor (NGO) whose core goal is to promote the "Sourcing with Respect" of biodiversity inputs. Lastly, Natura's case study is presented to understand how a Brazilian multinational company that complies with UEBT standards at the local level, as well as

[6] The members of OTCA are the Plurinational State of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname, and the Bolivarian Republic of Venezuela.

related spillover impacts and effects on local communities. This approach sheds light on how the public regulation of the CBD and Nagoya Protocol is implemented on the ground thorough the relationship among Natura, UEBT and local communities.

Chapter 1

Biodiversity: The Environmental Issue and Institutional Framework

The Convention on Biological Diversity (CBD) emerges in a context of profound changes in International Relations when environmental issues referred to as low-priority started to be in the spotlight, especially in the 1990s after the end of the Cold War (Cashore, 2002; Hall and Biersteker, 2002; Ruggie, 2004; Büthe and Mattli, 2011). It was not different with the biodiversity agenda. The complexity of environmental issues and the need to design mechanisms to regulate the three-dimensional character of the environmental agenda led to the creation of three legally-binding Conventions: the Convention to Combat Desertification (UNCCD), the Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (UNCBD).

The first draft of the CBD was crafted by the International Union for the Conservation of nature (IUCN), a network of conservation groups (O'Neill, 2009). The CBD was a result of meetings held in the late 1980s by a scientific community interested in the economic value and sustainable use of biodiversity, the Ad Hoc Working Group of Experts on Biological Diversity. Not only did those meetings represented the concerns of the scientific community, but also the movements of groups ranging from the civil society and farmers to bio-prospecting ones. In 1990, the United Nations Environment Programme (UNEP) through its Governing Council established an Ad Hoc Working Group of Legal and Technical Experts to work on a new international legal instrument whose essence was to promote the conservation and the sustainable use of biodiversity (CBD News, 2004).

After being discussed by an Intergovernmental Negotiating committee (INC), the final text was adopted in Nairobi, Kenya in 1992, the same year when the United Nations Conference on Environment and Development – the "Earth Summit" – was held in Rio de Janeiro, Brazil. At that meeting, the main goal was to foster development and sustainability. As a result, three agreements were adopted: Agenda 21, the Rio Declaration on Environment and Development, and the Statement of Forest principles.

Besides, two legally binding Conventions were open for signature: the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity. The negotiations regarding the Convention to Combat Desertification were triggered in the occasion. In 1993, the Intergovernmental Committee on the Convention on Biological Diversity (ICCBD) was established in preparation of the first meeting of the Conference of the Parties (COP). The aim was to pave the way to the Convention in order to make sure it would properly enter into force, as it did on December 29th, 1993 (CBD News, 2004).

Biodiversity can be considered a 'local-cumulative problem' because most areas are located within national boundaries, under public regulation. At the same time, biodiversity gets international because of the global impact on species and ecosystems due to transboundary issues, such as air water pollution and climate change, as well as the cultural value of local communities and Indigenous groups involved in the use of natural resources, and the economic value there off or the pharmaceutical, cosmetics and food industries (O'Neill, 2009).

The exponential decline of biodiversity worldwide and the consequent effects on ecosystems and peoples (Hooper et al., 2012) still pose a major challenge for decision makers. In order to foster implementation and incentivize parties to devise strategies as to the achievement of the CBD goals, National Biodiversity Strategies and Action Plans have become pivotal for the implementation of the Convention at the national level. The Strategic Plan for Biodiversity has set various goals to be attained within the 2011-2020 period. In this regard, the Aichi Targets have been designed to bolster implementation efforts nationally. As an accountability mechanism, national reports have been submitted by parties over the years as a way of reporting back to the CBD's Secretariat on the advancement towards the general goals of the Convention itself, and those set by the Aichi Targets (CBD Website, 2018)[7].

Biodiversity monitoring is conducted by UNEP´s Global Environmental Outlook Series.The reports bring information about the global environment but "[…] they do not provide guidance as to whether […] action should be taken at national, local, international

[7]Strategic Goal A: address the underlying causes of biodiversity loss by mainstreaming biodiversity across government and society; strategic Goal B: reduce the direct pressures on biodiversity and promote its sustainable use; strategic Goal C: to improve the status of biodiversity by safeguarding ecosystems, species and genetic diversity; strategic Goal D: enhance the benefits to all from biodiversity and ecosystem services; strategic Goal E: enhance implementation through participatory planning, knowledge management and capacity building (CBD Website, 2018).

[…]" or transnational levels (O'Neill, 2009, p. 30).The CBD is an example of intergovernmental multilateral arena, a traditional mode of decision-making under the control of sovereign states. It is almosta 30-year-old Convention that established the most important mechanisms to advance biodiversity conservation worldwide. However, it was not a simple challenge in the intergovernmental multilateral agenda. Developed countries sought to define biodiversity as a 'global common', that is, not subject to the authority of states, which attributes another property right to biodiversity governance, above the states' sovereignty (Buck, 1999). The CBD states that biodiversity is "[…] part of a 'common heritage' of mankind […]" that involves the development of countries.The definition of biological diversity as sovereign property of states, opposing the 'common heritage of humanity' concept, provided developing countries with "[…] important leverage in maintaining control over and the right to benefit from their own resources […]" (O'Neill, 2009, p. 77).

1.1. Setting Up the Global-Local Agenda for Biodiversity

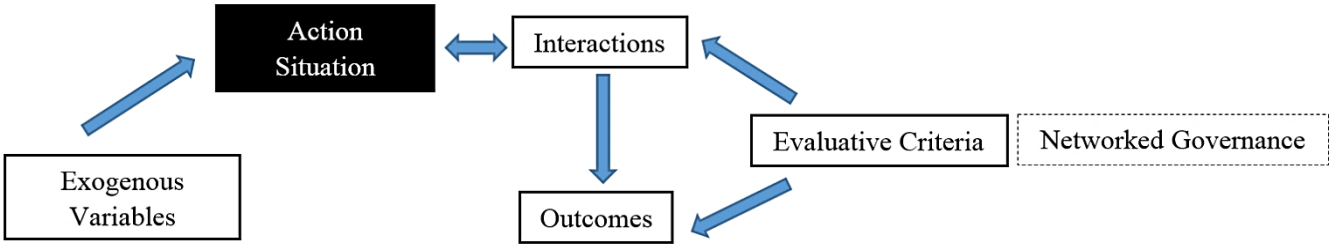
Twenty targets stem from the Strategic Plan for Biodiversity and help advance specific issue-areas of the CBD agenda. The intertwined role of state and non-state actors is clear and highlights the importance of the former as key to biodiversity conservation. The main argument of this research study is that despite being a result of intergovernmental multilateral arenas, the CBD and its implementation is largely dependent on non-state actors. While relevant to many other dimensions of the CBD. The systematic study of how non-state actors engage in and help implement the CBD is rather challenging given the mosaic of initiatives, diversity of stakeholders and interests, and underlying informal institutions and processes in the biodiversity agenda. The identification of the mechanisms through which non-state actors relate to intergovernmental processes in implementation is the general objective of this research.

The human-environment interaction issue involves a collective action problem in which participants with different positions, goals, worldviews and influence interact and negotiate agreements, as observed in the Thirteenth United Nations Biodiversity Conference in 2016[8]. Furthermore, the action of non-state actors cannot be examined

[8]I had the opportunity to participate in the 13th COP to the CBD as an observer and was able to witness the importance of non-state actors in carrying out the Strategic Plan. At the occasion, the first Global Biodiversity Outlook was launched by Indians from Asia.

separately from their environmental, social and political contexts and the ways these influence collective action, here referred to as action situation, as depicted by the Institutional Analysis and Development Framework (Ostrom, 1990). The IAD is an analytical tool that provides researchers with the opportunity to look at collective action issues in a systematic way. It is flexible and allows for applications with the research object, as presented in Chapters 3, 4 and 5.

Figure 1 - The Institutional Analysis and Development (IAD) Framework



Source: adapted from Ostrom (2011).

The interactions observed in the institutional analysis depicted in Figure 1 influence policies, mechanisms and initiatives ("outcomes") that are intimately related to the conservation of biodiversity on the ground. The relationship among actors ("action arena") has evolved since the coming into force of the CBD. For this reason, the IAD Framework has been chosen for this research as it sheds light on networked governance mechanisms that operate in the biodiversity agenda, such as Public-Private Partnerships (PPPs).

The governance of environmental affairs has long been fostered by state actors. In other words, formal institutions have been responsible for shaping and putting the environmental agenda into practice. However, International Relations has gone through profound changes in the last decades and so has the governance of the environment, such as in biodiversity conservation, climate change, water and land use, and natural resources management (Dingwerth and Pattberg, 2006). The issue of levels (or scales) also emerged decades ago (Singer, 1961), but the actual challenge would only be more emphasized during the 1990s with the end of the Cold War when questions regarding institutional design either in communities at the local level or within international organizations posed common issues (Keohane & Ostrom, 1994). Given that international organizations devise rules and principles that are applied at the national, regional and/or local levels, the awareness of the processes taking place in each domain varies across issues and places

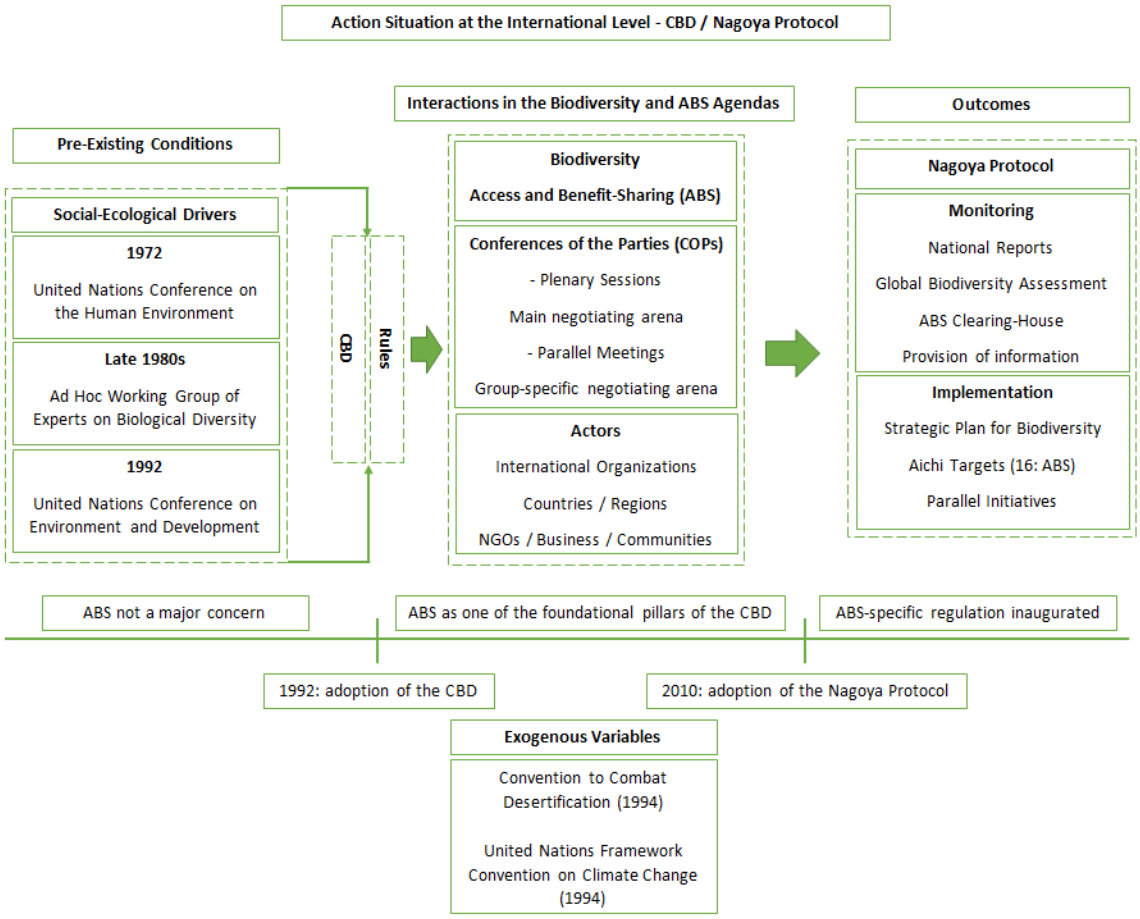
and is largely dependent on the role of the actors involved in the "action situation" (Ostrom, 2011).

Crafted by Elinor Ostrom, the IAD Framework has been applied in different settings by researchers affiliated and non-affiliated to the Ostrom Workshop in Political Theory and Policy Analysis at Indiana University (Bloomington). Despite the initial focus on policies, the Framework evolved over time and new applications as well as interpretations have been drawn as it provides researchers with a tool to understand institutions and the myriad of incentives that steer both the decisions of individuals and institutions in general (McGinnis, 2011; Ostrom, 2011).

The Bloomington School has adopted polycentricity to investigate policy and decision-making processes as part of a system of governance that encompasses different levels (local, regional, national, international – transnational), sectors (public, private, community-based and hybrid kinds of arrangements), and purposes (Ostrom, 2010; McGinnis, 2011). The action situation is the arena in which the interplay of different actors produces outcomes of great importance for the governance of a particular issue. The interactions of different stakeholders through networked mechanisms as observed in Cross-Sector Partnerships (CSPs) - and other types of arrangements – produce outcomes that, along with the interactions, are subjected to the evaluative criteria which represents the legitimacy conferred by the parties in the system. In this context, networked governance, which has been added to the IAD Framework for the purposes of this research, represents the mechanism through which non-state actors implement the principles and rules of the CBD and the interlinkage with CBD and Nagoya Protocol.

The IAD Framework has been used over the past 25 years and has provided a systematic, yet flexible approach to understand and take into account how social, environmental and political problems facing collective action relate to institutional diversity (Ostrom, 1995).

Figure 2 – The IAD Framework and Biodiversity Governance



Source: adapted from Ostrom (2011) with information available on the CBD website (2018).

The IAD Framework provides fundamental elements for institutional analysis and underpins the design of this research. As shown in Figure 2, the IAD Framework allows for the inclusion of the model has been adapted so that the research object could be fully compatible with the premises of the IAD as it depicts all the dimensions and underlying processes that take place in the environmental agenda and flashes out non-state actors as key in the implementation process of the CBD. Given the lack of enforceable mechanisms to implement the rules and principles of the CBD at the local level, networks comprised of non-state actors, yet in direct or indirect collaboration, formal and informal, with public actors, take on regulatory and implemental roles, such as the case of the Union for Ethical BioTrade (UEBT) and the Brazilian cosmetics company Natura, as addressed in Chapters 4 and 5.

Two hypotheses are derived from this context:

H_1: state actors have increasingly delegated functional roles to non-state actors in transnational arenas.

H_2: firms at the local level help the conservation of biodiversity when they comply with private standards which are inspired upon principles of the CBD and Nagoya Protocol.

Both hypotheses echoe the connection between the negotiation arena at the intergovernmental level of the CBD and the implementation process which takes place at the local level with local communities, NGOs and the private sector through the IAD Framework. Despite being an intuitive assumption, some of the literature on non-state actors portrays their role within the state domain, that is, these actors act in the "shadow of hierarchy", and wouldn't be able to operate were it not for the conditions created by states themselves (Börzel and Risse, 2010). This research looks at a different angle regarding non-state actors' involvement in global environmental affairs, which is the emergence of alternative forms of governance that stand alongside states.

This study provides an instrumental interpretation of the underlying processes that underpin the implementation of the CBD, and more specifically the ABS agenda[9] through the case studies in Chapters 4 and 5. For this reason, the IAD Framework is a valuable tool for assessing governance mechanisms that non-state actors devise in order to act on the ground. On a clarification remark, networked governance is a rather interpretative and generic term used to refer to non-state actors' initiatives such as monitoring at the local level, certification schemes, auditing and reporting.

This research adopts an inductive approach to questioning theories, mainly in International Relations and Political Science, as well as suggests new terms in the light of the empirical work carried out in Chapters 3, 4 and 5. This is combined with the IAD Framework to allow for the identification and understanding of initiatives that non-state

[9]'ABS agenda' is used instead of Nagoya Protocol provided that ABS is an issue for the CBD since its origins. The Nagoya Protocol represents a very recent effort to create an ABS-driven mechanism specifically designed for the access and the sharing of benefits related to the use of biodiversity, so it would not be able to capture the entire span of the CBD.

actors promote at the local level (collective action). This helps understand how bottom-up processes interact with macro-level, top-down processes.

1.2. What is Access and Benefit-Sharing (ABS)?

The issue of ABS is addressed in the empirical chapters as a way of showcasing a particular domain of the CDB and Nagoya Protocol that is intimately related to the work done by companies in tandem with NGOs at the local level. Not only environmental governance encompasses the conservation of natural resources *per se*, but it also involves the access to them and the benefits arising from their utilization. This is what ABS is all about. The CBD established a framework for global ABS governance in 1992[10], and more recently in 2010[11], the Nagoya Protocol upheld the ABS agenda. Also, the 2011-2020 Strategic Plan for Biodiversity – Aichi Targets – were included during the Tenth COP in 2010. However, ABS has neither been properly considered as a major issue by global environmental politics nor by scholars analyzing global environmental governance. Most of the literature on ABS is rather technical, that is, reports that respond to international agreements, but do not necessarily provide a systematic comparative analysis of cases and the role of non-state actors (Buck and Hamilton, 2011; Oberthür and Rosendal, 2014). ABS also tackle a social dimension of national and global conservation agendas, which is the fact that conservation efforts have been largely dependent on the use and management of natural resources by indigenous peoples and local communities, most of which are poor and marginalized. ABS has become a central element of global biodiversity. This is particularly the case for regions such as the Amazon Rainforest, which is megadiverse and has significant areas managed by local populations. In Brazil, for instance, most of the targets have been achieved in the protected areas, managed and used by indigenous population (Duraiappah et al., 2013).

[10] Article 1: "The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding" (CBD, 1992).

[11] Article 1: "The objective of this Protocol is the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components" (Nagoya Protocol, 2010).

Initiatives carried out by non-state actors, such as those promoted by the Union for Ethical BioTrade and other NGOs, have played a major role in fostering the ABS agenda, although most of them have not been studied in a systematic and comparative way yet. The terms 'genetic resources' and 'biological diversity' are mentioned oftentimes. The former refers to hereditary materials (genes) present in animals, plants and microorganisms whose manipulation allows for the development of new products by the pharmaceutical sector, for instance; the latter is related to the diversity found in nature, such as fauna and flora species. Traditional knowledge is also evoked when it comes to considering the relationship between the resources themselves and the related knowledge of indigenous peoples and local communities (CBD, 1992).

ABS is central to biodiversity conservation along with the sustainable bioprospecting of valuable biodiversity inputs used for industrial purposes. From the beginning of the 2000s, numerous bioprospecting projects have been implemented around the world, and ABS in the Amazon Rainforest turned out to be a solution to recognize the value of local knowledge, biodiversity conservation and the potential to solve inequalities. Most of the initiatives have failed or led to frustrations, and even to some cases of conflicts involving communities. During that stage, different tools were used to recognize the rights of indigenous populations to their knowledge and to the use of natural resources, such as intellectual property rights agreements and industrial contracts. Over time, there has been wide recognition that these mechanisms have not been completely successful in achieving ABS goals. Associated with the increase of climate change, other mechanisms have appeared in the last two decades, such as a full range payment for ecosystem services, accounting of carbon stocks, management of agricultural and extractivist activities, and represent a way of recognizing and transferring economic incentives (Kohler and Brondizio, 2016).

Based on this experience, different segments of non-state actors have been mobilized to voice concerns and expectations and to evaluate benefits, different system of values and promote more participation in the process. In this sense, non state-actors have become increasingly relevant in mediating processes such as in the CBD and ABS agendas and in the implementation of goals defined at the international level, but fostered at the local level (Brondizio and Le Tourneau, 2016).

Article 1[12] of the Convention on Biological Diversity (CBD) is the backbone of the Nagoya Protocol. The fourth meeting of the CBD COP in 1998 established a Panel of Experts on ABS. Then, in 2000, an Ad Hoc Open-ended Working Group on Access and Benefit-sharing was set up to design guidelines as to implementing ABS measures to achieve Article 1's goals. As a result, the Bonn Guidelines on ABS was adopted in 2002. Later on, from 2005 to 2010, the aforementioned Ad Hoc Group met several times to come up with an international regime specialized in ABS. The last meeting took place in Nagoya, Japan, where the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity – or simply Nagoya Protocol – was finally adopted. It came into force only in 2014 with the after the deposit of the fiftieth instrument of ratification (CBD Secretariat, 2017).

Procedures

Introduction, Chapter 1 and Chapter 2 provide the research design, the context in which the research study was carried out, as well as the theoretical frameworks that underpins the entire dissertation.

Chapter 3 presents the case of ACTO (the Amazon Cooperation Treaty Organization) which provides an example of state-led processes that have proven ineffective to foster biodiversity conversion amongst countries that share the Amazon rainforest, let alone the implementation of the CDB agenda regionally in terms of cooperation efforts. It is acknowledged that the Organization has been quite successful in dealing with transboundary water issues across sovereign territories, but the same is not valid for biodiversity conservation and cooperation with non-state actors. Interviews with representatives of ACTO were conducted in 2018. However, interviewees did not consent to the use of their names in the research.

Chapter 4 introduces the case of a transnational private actor, the Union for Ethical BioTrade (UEBT) and how the cooperation with a private company, Natura, advances the sustainability agenda of the CDB and Nagoya Protocol, as presented in Chapter 5. Both Chapters provide the local-global nexus through case studies in the Amazon. Interviews

[12] "Fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding" (CBD, 1992).

were conducted among community members and staff. Again, the name of interviewees cannot be divulged in the research study, but their views and opinions were heavily used to compose both Chapters.

Chapter 2

Literature Review

Introdução

O que existe em comum a todos os conceitos apresentados a seguir? Regulação Civil (Vogel, 2009), Global Governor (Avant et al., 2010), Transnational Governance (Held e Hale, 2011; Duvergne e Rogers 2016), Non-State Market Driven Governance Systems (Cashore, 2002), Private Authority (Green 2013), Transnational (Private) Regulation (Cafaggi et al., 2011, Cafaggi, 2012;), Padrões Privados (Thorstensen e Vieira, 2016), Private/Hybrid Governance Regimes (O'Neill, 2009), Regimes Internacionais Privados (Cutler e Virginia, 2002).

A ascensão de atores não estatais, sua relevância e impacto para a área de Ciência Política e Relações Internacionais não é nova. Esta está presente no debate acadêmico, pelo menos, desde os anos 1960 (Wolfers, 1962). A globalização e a mudança tecnológica teriam empoderado os novos atores que passaram a compartilhar com os Estados soberanos a política internacional, e o final da Guerra Fria parece ter aberto novas oportunidades para aqueles operarem (Avant et al., 2010).

Se tomarmos as páginas internacionais dos principais jornais de prestígio no mundo, parece que os assuntos globais são majoritariamente conduzidos por governos e organizações internacionais, através de diplomatas e representantes do poder executivo. Mas essa é só uma impressão causada por um viés produzido pelas redações que reelaboram o senso comum, ou seja, a política internacional é conduzida por arenas intergovernamentais. Mas para Avant et al. "[…] only a small fraction of global governance activity involves state representatives negotiating only with one another […]" (Avant et al., 2010, p. 6).

Essa literatura começa a ganhar contornos mais precisos, particularmente no período pós-Guerra Fria, quando fenômenos empíricos trouxeram à baila a discussão de atores não estatais em competição com a soberania do Estado. A criação do Forest Stewardship Council (FSC) em 1993 é um divisor de águas na literatura. Se tomarmos as páginas internacionais dos principais jornais de prestígio no mundo, parece que os assuntos globais são majoritariamente conduzidos por governos e OIs, através de diplomatas e representantes do poder executivo. Mas essa é só uma impressão causada

por um viés produzido pelas redações que reelaboram o senso comum, qual seja, o de que a política internacional é conduzida por arenas intergovernamentais. Mas para Avant et al. "[...] only a small fraction of global governance activity involves state representatives negotiating only with one another […]" (Avant et al., 2010, p. 6). Essa literatura começa a ganhar contornos mais precisos, particularmente no período pós-Guerra Fria, quando fenômenos empíricos trouxeram à discussão atores não estatais em competição/complementaridade com a soberania do Estado. A criação do Forest Steardship Council (FSC) em 1993 é um divisor de águas na literatura.

A discussão em torno de atores não estatais construindo arranjos institucionais fora das dimensões doméstica e internacional padece de três grandes problemas. Em primeiro lugar, há um problema de conceituação e terminologia que dificulta estabelecer as fronteiras da discussão. São várias abordagens teóricas que produzem reflexão sobre o fenômeno em tela, fora da área de Ciência Política e Relações Internacionais, com diferentes perguntas de pesquisa. Em segundo lugar, há um problema metodológico onde a grande maioria dos estudos são estudos de caso, não há estudos de N grande com recursos estatísticos mais sofisticados. Em terceiro lugar, a ascensão de atores não estatais nas arenas transnacionais acontece em uma série de temas que vão de padrões trabalhistas a meio ambiente até direitos humanos e tecnologia da informação.

A sociologia pergunta-se se os arranjos transnacionais de governança privada, na forma de Non-State Market Driven Governance Systems, podem ser legítimos, isto é, promoverem um processo de aprendizado que modifique o interesse e as preferências previamente manifestadas dos stakeholders (Cashore, 2002). Trata-se de uma abordagem construtivista ou reflexiva que valoriza a dimensão cognitiva da interação entre os atores envolvidos. Como coloca O'Neill (2009), a influência das ONGs sobre o resultado da negociação intergovernamental multilateral no âmbito dos multilateral environmental agreements (MEAs) é uma pergunta clássica de pesquisa para a agenda construtivista. Essa abordagem também valoriza processos em detrimento de atores que resultam em uma sociedade civil globalizada com capacidade de influenciar o comportamento de firmas em direção ao *compliance* de padrões sociais e ambientais. As estratégias de *name and shame* e o *boomerang effect* são alguns dos recursos utilizados (Keck and Sikkink, 1998).

No caso da economia institucional, os arranjos de governança transnacional privados são mais eficientes do que o *enforcement* da regulação pública internacional. O ISO 14001 é um caso paradigmático. A IO é não estatal em seu estatuto, mas os membros

são indicados por governos e muitos deles são órgãos públicos de parametrização e produção de Standards. O argumento central é que o ISO 14001 é um eficiente mecanismo de redução de custos de transação para as empresas implementarem sistemas de gestão ambiental. Os custos de transação envolvem a dimensão propriamente transnacional porque o standard ISO 14001 é um mecanismo de acesso a mercados (Prakash e Potoski, 2010).

O aumento da influência dos atores não estatais também coloca em questão a origem da autoridade destes instrumentos, já que possuem caráter voluntário. Essa pergunta de pesquisa é sugerida por Rodney Bruce Hall e Thomas J. Biersteker (2004, p. 24):

> […] these new actors are not states, are not state-based, and do not rely exclusively on the actions or explicit support of states in the international arena" (…) they perform the role of authorship over some important issue or domain" (…) they claim to be, perform as, and are recognized as legitimate by some larger public" (…) they set agendas, they establish boundaries or limits for action, they certify, they offer salvation, they guarantee contracts, and they provide order and security" (…) they do many of the things traditionally, and exclusively associated with the state. They act simultaneously both in the domestic and in the international arenas. What is most significant, however, is that they appear to have been accorded a form of legitimate authority […].

Uma análise mais objetiva poderia afirmar que o principal vetor da proliferação dos padrões privados foi o que Rodney Bruce Hall e Thomas J. Biersteker (2004) classificaram como "a emergência da autoridade privada no sistema internacional"[13]. A noção tradicional de autoridade no sistema internacional presume que os Estados Nacionais são os detentores do monopólio da violência legítima, em sua concepção weberiana. No entanto, o rápido crescimento da influência das transações internacionais, ancoradas no poder cada vez maior das empresas multinacionais, criou uma nova categoria de autoridade, baseada no poder econômico e nas transações de mercado (Hall

[13] Tradução livre do autor para o título do livro "The emergence of private authority in the international system" editado por Rodney Bruce Hall e Thomas J. Biersteker.

e Biersteker, 2002).Para Rodney Bruce Hall e Thomas J. Biersteker (2002), o processo de globalização e desregulamentação doméstica fomentou uma demanda por regulação em nível global das externalidades resultantes das interações sociais e ambientais. As forças de mercado ocasionadas pelos padrões privados, ainda que não estejam sujeitas ao mesmo processo legal e de *enforcement* que a regulação pública, tornam mandatória a adesão a estas regras.

Ainda na chave da Ciência Política e Relações Internacionais, Claire Cutler e Virginia Haufler (2002), por sua vez, fazem uma análise da autoridade focada no setor empresarial. Para as autoras, os 'Regimes internacionais Privados' podem ser definidos como "manifestações institucionalizadas de autoridade privada". Claire Cutler, Virginia Haufler e Tony Porter (1999, p. 5) também afirmam que o conceito de autoridade existe quando um indivíduo ou organização possui um poder de decisão sobre um tema em particular e o exercício deste poder é reconhecido como legítimo. Esta autoridade não precisa estar associada, necessariamente, a instituições governamentais. Desta forma, uma vez que estas organizações passam a ser reconhecidas por sua destacada expertise nas áreas em que atuam, o resultado da cooperação entre as empresas na esfera internacional passa a se tornar "autoritativo". O *authoritative* aqui ganha contornos importantes porque possui uma dimensão informal cada vez mais reconhecida pela literatura acadêmica e que ajuda a resolver abordagens teóricas onde a delegação de *policy functions* - *rule-making*, *adjudication*, *implementation*, *monitoring* and *enforcement*[14] - para autoridades privadas precisa ser formalizada mediante um contrato[15].

No caso do Direito e da Economia internacional, o diálogo a respeito de padrões privados merece uma consideração à parte. As duas áreas têm nos padrões privados um ponto privilegiado de discussão com dois focos bem diferentes e definidos: 1. Qual o impacto dos padrões privados sobre a hierarquia do sistema multilateral de comércio? A questão central aqui é a autoridade de uma Organização Internacional sem competidores, 'ponto focal', como foi o caso do Acordo Geral de Tarifas de Comércio (GATT) e é hoje o da OMC. Essa característica é fundamental para o bom funcionamento do sistema econômico em geral, e para as trocas comerciais na globalização (Büthe e Mattli, 2011);

[14] Green, 2014, 73.
[15] Essa é uma das razões que explica porque a teoria da delegação aplicada à autoridade privada transnacional não traz resultados robustos em termos da discussão das *policy functions* para atores não estatais, ver Green 2013.

e 2. Se os padrões privados representam uma barreira não tarifária[16] (BNT), com efeitos deletérios para as trocas comerciais? Essa é outra questão central, a saber, se por trás dos padrões privados escondem-se interesses protecionistas que desvirtuam o livre-comércio.

Além desses pontos, no campo do Direito Internacional, chama a atenção o caráter voluntário das regras que emanam da regulação privada destas arenas (na maioria dos casos, ainda que não em todos eles), e traz o debate para a distinção entre *soft law* e *hard law*. São três as principais características da "soft law", de acordo com Boyle (apud Manuela Kirshner do Amaral, 2014, p. 29 e 30). Em primeiro lugar, essas medidas não possuem caráter mandatório, diferentemente do "hard law", que possui natureza vinculante. Em segundo lugar, trata-se de um conjunto de normas gerais ou princípios e não regras, o que as torna flexíveis a interpretações. Finalmente, não há adjudicação compulsória ou qualquer outro instrumento de solução de controvérsias e arbitragem nos casos envolvendo "soft law".

Abbott e Snidal (2000) apresentam o conceito de "soft law" para os casos em que a negociação intergovernamental embute custos contratuais elevados, por conta da complexidade dos temas ou da quantidade de partes envolvidas. Koremenos et al. (2001), afirma que a "soft law" permite com que os Estados respondam às incertezas ao criarem arranjos menos formais do que as "hard law". Apesar de ser visto como uma "falha" do Direito Internacional, a "soft law" pode ser considerada uma adaptação institucional importante, devido, justamente, à flexibilidade que ela oferece. Este debate, sobre o caráter "soft" ou "hard" da regulação privada, faz fronteira com a discussão sobre a hierarquia destas medidas no sistema multilateral de comércio e no importante debate sobre protecionismo e barreiras não tarifárias. Além disso, aponta para mecanismos e instrumentos informais de reconhecimento de regras e normas, práticas de boa conduta,

[16] De maneira genérica, pode-se definir as BNTs como toda e qualquer medida e/ou instrumento que restringe o comércio internacional, sem assumir a forma de uma tarifa aduaneira (Camargo e Martinelli Jr., 2014). Mas existem definições mais estritas como a do Instituto de Estudos do Comércio e Negociações Internacionais – ICONE: "restrições à entrada de mercadorias importadas que possuem como fundamento requisitos técnicos, sanitários, ambientais, laborais, restrições quantitativas (quotas e contingenciamento de importação), bem como políticas de valoração aduaneira, de preços mínimos e de bandas de preços, diferentemente das barreiras tarifárias, que se baseiam na imposição de tarifas aos produtos importados". Normalmente, as BNTs visam a proteger bens jurídicos importantes para os Estados, como a segurança nacional, a proteção do meio ambiente e do consumidor, e ainda, a saúde dos animais e das plantas. No entanto, é justamente o fato de os países aplicarem medidas ou exigências sem que haja fundamentos claros e nítidos que as justifiquem, que dá origem às barreiras não-tarifárias ao comércio, formando o que se chama de neoprotecionismo". Extraído de ICONE, http://www.iconebrasil.org.br/biblioteca/glossario/letra/b Access in February, 01, 2017. As BNTs classificam-se em: (i) (quotas ou contingenciamento de importação; (ii) barreiras técnicas; (iii) medidas sanitárias e fitossanitárias e (iv) exigências ambientais e laborais.

que serão objeto de interesse e discussão mais adiante. O Direito Internacional, portanto, desenvolveu conceitos analíticos para dar conta de processos decisórios, e *policy functions*, aplicáveis à cooperação entre atores públicos e privados nas arenas transnacionais.

No caso dos economistas, não existe consenso em torno dos efeitos protecionistas dos padrões privados associados às BNTs. Elas passaram a fazer parte do léxico do comércio internacional nos anos 1970 com os *Standards Code*[17] para disciplinar as barreiras técnicas. No entanto, é comum relacionar as BNTs a práticas de defesa do 'mercado doméstico', proteger a 'segurança do consumidor', 'padrões ambientais e sociais mínimos', uma forma suave de caracterizar os seus objetivos protecionistas. As BNT ensejam ainda propósitos 'dissimulados', com objetivos sociais e econômicos não claramente definidos e explicitados (Camargo e Martinelli Jr., 2014). Ocorre, entretanto, que BNTs não são sinônimos de padrões privados. Os padrões privados podem ser classificados como BNTs mas nem todas as BNTs são padrões privados.

Segundo o economista de origem indiana radicado nos EUA, Jagdish Bhagwati, as BNTs passaram a ser adotadas com as crises do petróleo (1973 e 1980) e por isso entraram na agenda da Rodada Tóquio (Bhagwati 1989; 1991)[18]. As medidas protecionistas tomadas pelos países desenvolvidos constituíram-se em BNTs na forma de *Voluntary Export Restrains* (VERs), quotas de importação, licenciamento não automáticos, incidência de tributos variáveis[19], regulamentos técnicos, sanitários, fitossanitários, entre outros. Camargo e Martinelli Jr. são precisos: as BNTs podem ser

[17] Acordo sobre barreiras Técnicas ao Comércio, aberto para assinaturas em 12 de abril de 1979 durante a Rodada Tóquio do GATT. O *Standards Code* foi um dos seis Códigos de Conduta adotados pela Rodada Tóquio para disciplinas as BNTs (Finger e Olechowski, 1987).

[18] Desde que emergiram nos anos 1970, o Banco Mundial e a UNCTAD trataram de aferir o seu impacto para o comércio internacional. Em 1981, por exemplo, representavam 13% das importações das nações industrializadas, e se fossem incluídos os Direitos Compensatórios e as Cláusulas Anti-dumping, esse número poderia chegar perto dos 20% do comércio internacional (Bhagwati, 1989). Essa agenda de pesquisa dispõe hoje de dois bancos de dados importantes. O da OMC trabalha com fontes secundárias: notificações sobre medidas técnicas realizadas pelos países membros; informações retiradas das próprias disputas e controvérsias legais entre países, especialmente no que diz respeito às *Specific Trade Concerns*; e dados retirados dos *trade policy reviews*, procedimento pelo qual todos os países membros, a cada quatro anos, são obrigados a descortinar as medidas adotadas em âmbito de suas políticas de comércio exterior (Camargo e Martinelli Júnior, 2014). O segundo banco de dados agrupa BNTs de 86 países através do *Trade AnalysisandInformation System* (TRAINS) na Conferência das Nações Unidas sobre Comércio e Desenvolvimento (UNCTAD) – com informações da Organização das Nações Unidas para a Agricultura e Alimentação (FAO), o Fundo Monetário Internacional (FMI), e a Organização para a Cooperação e o Desenvolvimento (OCDE).

[19]Bhagwati menciona dois tipos de BNTs, aquelas que contornam as determinações legais do GATT, visíveis e politicamente negociáveis, e as que as capturam e as pervertem, essas últimas guardam certo grau de opacidade e falta de transparência (Bhagwati, 1989).

classificadas como instrumentos que limitam a quantidade transacionada de um produto (cotas de importação e salvaguardas), instrumentos que afetam os preços relativos dos produtos ou serviços (licenças de importação, determinação de valores aduaneiros ou alfandegários), medidas anti-dumping e medidas compensatórias (2014: 102).

O problema ganha complexidade quando as BNTs se transformam em padrões técnicos, de qualidade, e remetem a processos de produção, manufatura, verificação, monitoramento, manuseio, até chegar a dinâmicas que envolvem escolhas coletivas, a cooperação entre grupos sociais, participação política que passam a vocalizar valores e identidades[20]. Nesses casos, há dois recortes: 1. quando o padrão é realmente técnico ou exibe uma dimensão técnica irrefutável (especificações de uso, embalagem, rotulagem etc.), ou remete a processos político-decisórios em algum nível; e 2. Quando qualquer que seja o padrão, ele foi objeto de um processo de negociação intergovernamental, portanto, sujeito à sanção legal, e quando a resultante é uma 'norma privada'[21], por definição, não sujeita à coerção legal.

A pergunta de Bhagwati do final dos anos 1980 permanece válida hoje: dado que as medidas protecionistas aumentaram, e se traduziram em um volume crescente de BNTs qual a sua eficácia para a restrição do comércio internacional? O cão latiu, mas será que mordeu?, pergunta-se o economista? A resposta é não. Nos anos 1970 e 1980, apesar dos choques e crises o comércio internacional cresceu mais do que a renda, e o aumento da expansão do comércio em relação ao PIB continuou nos anos 1980, o que significa que as BNTs tiveram o efeito moderadamente adverso, não suficiente para frear a expansão das trocas comerciais (Bhagwati, 1989). Mas será que a conclusão de Bhagwati é válida para os anos 1990 e 2000? As BNTs permanecem as mesmas, têm o mesmo sentido e possuem as mesmas características? Podem ameaçar o comércio internacional?

Para mensurar a incidência das BNTs sobre o comércio internacional, Camargo e Martinelli Júnior lançam mão de duas métricas, retiradas de um estudo relativamente

[20] Camargo e Martinelli Júnior (2014) mencionam barreiras técnicas, medidas sanitárias e fitossanitárias, direitos de propriedade intelectual e barreiras ambientais incluindo nessa categoria os selos, certificados e 'rótulos' ecológicos (idem: 103).

[21] Camargo e Martinelli Júnior (2014) utilizam o conceito de 'norma privada' para discutirem o caso do setor de alimentos, um dos que mais fazem uso desses padrões. Ao contrário do Direito que se preocupa com o sistema internacional, os economistas indicam que a mudança para os padrões privados foi trazida pelos consumidores mais exigentes em relação aos padrões, o que abre a possibilidade de diálogo com a sociologia econômica que também enxerga no consumidor final um eixo de mudança normativa para o comércio internacional. As implicações são diferentes, mas a economia e a sociologia reconhecem o mesmo agente de mudança.

recente sobre o tema[22]: 1) o índice de frequência que capta o percentual de produtos a que estão sujeitos a uma ou mais BNTs; e 2) a taxa de cobertura que indica a grandeza das importações submetidas às BTNs. Os resultados impressionam. As TBTs impactam 28% das importações mundiais, com uma taxa de cobertura de 31%, seguido dos controles quantitativos (16 e 20%, respectivamente), e das medidas sanitárias e fitossanitárias (13 e 14%, respectivamente). Interessante observar que a incidência de selos e certificados são considerados barreiras técnicas, teoricamente sob o alcance do acordo da OMC sobre o tema, o mesmo vale para o SPS. Em resumo, as VERs, cotas, as medidas anti-dumping e os direitos compensatórios deram lugar às barreiras técnicas e aos padrões sanitários e fitossanitários, uma mudança que aconteceu nos últimos 40 anos.

Os especialistas e operadores do Direito Internacional adotam um tom mais alarmista a esse respeito. Vera Thorstensen alude às 'novas guerras regulatórias, e aos 'sistemas de regulação em confronto', aquele constituído pelos Estados soberanos, e outro dominado pelas empresas multinacionais (2013)[23]. Como o Direito se preocupa com a 'coerência' e a 'compatibilidade' entre as normas, e precisa garantir a 'uniformidade' e 'convergência' entre as mesmas, para que o sistema possa permanecer de pé, os dados são realmente preocupantes: as notificações ao comitê de TBT vem aumentando desde o início dos anos 2000; as STCs idem; o número de certificações nos então 27 países da EU chegou a 181 em 2010; e é possível dizer que a grande maioria deles tem origem nos países europeus ocidentais; e a grande maioria deles é de caráter voluntário, seja *non-profit* ou *profit-oriented*.

Deve-se dizer que as BNTs ganharam novos contornos, características e sentidos depois do término da Rodada Uruguai do GATT e da criação da OMC em 1995. As BNTs

[22]Gourdon, J.; Nicita, A. Non-Tariff Measures: Evidence From Recent Data Collection in Cadot, O.; Maluche, M. (Eds.) *Non Tariff Measures – A Fresh Look at Trade Policy´s New Frontier*, Centre for Economic Policy Research, London/Washington D.C., World Bank, 2012, apud Camargo e Martinelli Júnior, op. cit, p, 107.

[23] Entre os problemas dos padrões privados estão a multiplicidade e sobreposição de padrões privados, resultando em uma baixa harmonização; os custos de conformidade para as empresas, que tem que se adequar a padrões semelhantes; a marginalização dos pequenos produtores dos países em desenvolvimento diante da impossibilidade de se adequarem a padrões complexos, custosos, rigorosos e multidimensionais; o risco de que os padrões privados alterem a aplicabilidade dos Acordos da OMC sobre Barreiras Técnicas (TBT) e Sanitárias e Fitossanitárias (SPS); o risco de que os padrões privados sejam utilizados como medidas arbitrárias que ameacem o livre-comércio; a multiplicação de padrões privados pode colocar em risco seus objetivos iniciais de sustentabilidade social e ambiental, e apenas criar confusão entre produtores e consumidores ("*green-washing*"); a falta de uma abordagem multidimensional pode gerar riscos, uma vez que muitas dessas regras não possuem bases científicas adequadas; e existem ainda efeitos ainda não mensurados sobre as cadeias globais de valor, sobre políticas e prioridades nacionais além de impactos na capacidade de comércio dos países exportadores – um indicador de que as agendas de pesquisa sobre o tema precisam ser desenvolvidas, ver Thorstensein e Vieira (2016).

expandiram-se para novos temas e áreas, ganharam maior precisão por um lado, mas encontram-se mais difusas por outro. De acordo com a OMC, entre 2008 e meados de 2016, as vinte maiores economias do mundo haviam criado cerca de 1.583 medidas restritivas ao comércio, sendo que apenas 387 delas foram eliminadas posteriormente, resultando em 1.196 medidas ainda em vigor.[24]

Os economistas internacionalistas *mainstream*, continuam a ter uma posição negativa sobre as BNTs, por conta de suas motivações protecionistas e por desvirtuarem o sentido das trocas comerciais, ancorado na fundamentação de que o livre-comércio é o caminho para a prosperidade e o bem-estar de todos os países, um jogo ganha-ganha. Apesar de hegemônica entre os *handbooks* de economia internacional, ela não é unanime. Autores como o próprio Jagdish Bhagwati (2004) se referem às BNTs como "códigos voluntários". Bhagwati argumenta que é positiva a existência de um número grande de códigos voluntários, para que desta forma o próprio mercado seja capaz de depurar aqueles que vão prevalecer com o tempo. Os códigos a que se refere Bhagwati são, justamente, aqueles oriundos da regulação e dos regimes privados, e da regulação civil.

Bhagwati (2004) reforça o papel dos atores não-estatais como agentes de monitoramento do *compliance* da regulação pública, que muitas vezes é falha. Com isso, o autor avança sobre a noção, inaugurada por autores como Friedrich Hayek, de que é mais vantajoso para uma sociedade deixar que o setor privado regule as decisões econômicas, por deter informações mais precisas sobre as transações, além de terem um compromisso racional com a eficiência de seus investimentos. Essa posição encontra eco entre os autores que defendem os padrões privados na forma de Green Clubs (Prakash and Potoski, 2006; 2009).

Ocorre que se juntam aos economistas mais ortodoxos os operadores do Direito Internacional preocupados com o funcionamento do sistema multilateral de comércio, ou seja, de que é preciso uma autoridade centralizada capaz de organizar e dotar o sistema econômico de eficiência. Para eles, as BNTs, principalmente aquelas que se manifestam na forma de regulação privada, tem o potencial de destruir o sistema multilateral ancorado na soberania dos Estados. Isso se deve ao fato de a cooperação entre empresas, ONGs e a sociedade civil criarem padrões que sejam reconhecidos e legitimados entre os agentes econômicos, e que acabem por prescindir de uma autoridade internacional reconhecida pelo Direito Público como é o caso da OMC e de seu tribunal arbitral, o órgão de solução

[24] Disponível em: Organização Mundial do Comércio, https://www.wto.org/english/news_e/news16_e/trdev_21jun16_e.htm Access in January, 31, 2017.

de controvérsias. Os chamados 'padrões privados' têm o poder de, no limite, bagunçar as trocar comerciais porque boa parte desses padrões não são reconhecidos pelos acordos do GATT/OMC (Thorstensen e Vieira, 2016).

Para discutir a adequação de padrões privados ao sistema multilateral de comércio, a literatura acadêmica foca o Trade Barriers to Trade (TBT) e o Sanitary and Phitosanitary Measures (SPS). Na realidade, nenhum dos dois acordos reconhece a regulação privada. O TBT e o SPS trazem regras previstas para serem implementadas por governos. Encaixam-se também aquelas autoridades com poder delegado que possuem determinada *expertise* como é o caso do Codex Alimentarius[25]. O problema é que os chamados padrões privados são criados por entidades fora do âmbito do Estado, ou seja, uma jurisdição não reconhecida pelas Organizações Internacionais formais. Como os padrões privados não se encaixam propriamente nos acordos TBT e SPS, os respectivos comitês da OMC vem tentando incluí-los na agenda de discussão, sem grandes avanços.

O Acordo TBT trata de regulamentações, padrões e procedimentos, todos de caráter técnico, que englobam uma gama ampla e variada de atividades[26].A orientação do TBT é para a adoção de princípios não discriminatórios, evitar barreiras ao comércio e seguir padrões internacionais, reconhecidos e aceitos. Nesse caso, entende-se por 'padrões internacionais' os incentivos à harmonização de padrões, ou seja, deve-se reconhecer aqueles oriundos de organismos internacionais por disporem de uma determinada expertise sobre o tema, não necessariamente OIs formais. São os casos do *CodexAlimentarius*, cujos padrões devem ser 'harmonizados' à regulação pública doméstica, ou do International Standard Organization (ISO), onde a organização internacional não governamental congrega as associações de normalização de padrões de cada país e promove assim a harmonização de padrões[27].

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[25] O *Codex Alimentarius* é uma regulação pública global para alimentos, organizada em um código – Food Code, estabelecido pela FAO e a Organização Mundial da Saúde em 1963. No website do MAPA (Ministério de Agricultura, Pecuária e Abastecimento) o Codex é citado como um "fórum internacional de normatização do comércio de alimentos", ver www.agricultura.gov.br (Access in January, 01, 2017).

[26] O TBT inclui (i) regulamentos técnicos, relativos às características de produtos, processos ou métodos de produção, cuja *compliance* é obrigatória; (ii) padrões, oriundos de órgãos reconhecidos por estabelecer regras, orientações ou características de produtos, processos ou métodos de produção, de natureza não obrigatória; e (iii) procedimentos de avaliação de conformidade, que refere-se a qualquer procedimento utilizado, direta ou indiretamente, para determinar que as prescrições pertinentes de regulamentos técnicos ou normas são cumpridas. Ver "Agreement on Technical Barriers to Trade" - WTO. [Disponível em https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm (acessado em 01/02/2017).

[27] Dentro do acordo TBT da OMC existe um mecanismo de consultas chamado "Specific Trade Concerns" (STC), onde os países podem apresentar queixas ou consultas relativas a práticas específicas de outros membros. Disponível em: https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm. Accessado em 01/02/2017.

O Artigo 3 do TBT sobre "Elaboração, Adoção e Aplicação de Regulamentos Técnicos por instituições Públicas Locais e Instituições Não Governamentais", prevê que os

> [...] Membros devem adotar medidas razoáveis para que entidades não governamentais dentro de seus territórios cumpram as regras do Acordo". O referido artigo pode ser lido de diferentes maneiras. Os governos reconhecem a existência de padrões privados apenas em âmbito doméstico (nacional) mas os condicionam à adoção de incentivos para as 'instituições não governamentais' cumprirem o acordado. Dentro dos 'incentivos' podem estar embutidos parcerias público-privadas onde os governos delegam autoridade a entidades privadas, ou mesmo reconhecem as regras privadas como sendo públicas.

O Artigo 4.1 do acordo TBT, "Elaboração, Adoção e Aplicação de Padrões", estabelece que:

> [os países Membros] tomarão as medidas razoáveis a seu alcance para assegurar com que as instituições de normalização públicas locais ou não governamentais existentes em seu território (...) aceitem e cumpram este Código de Boa Conduta. (...) As obrigações dos Membros a respeito do cumprimento das disposições do Código de Boa Conduta pelas instituições de normalização se aplicarão independentemente de uma instituição de normalização ter aceito ou não o Código de Boa Conduta.

Ou seja, espera-se em alguma medida um comportamento pró-ativo por parte do setor privado (ou do terceiro setor) na implementação dos padrões. Mesmo a menção aos 'códigos de boa conduta' pode sugerir com que as autoridades entendam que os padrões voluntários ("Soft Law") são positivos e devam ser implementados, independentemente de uma instituição de normalização reconhecê-lo como tal. Em outras palavras, ao menos em âmbito doméstico (nacional), os padrões privados parecem cumprir um papel importante muito embora o texto deixe claro que a origem da regulação é sempre governamental. Deve-se 'aceitar' e 'cumprir' o código de boa conduta, e sua

implementação por parte do setor privado deve acontecer na ausência de uma 'instituição de normalização pública local'. Em resumo, é muito limitado o papel dos padrões privados para o Acordo TBT.

No caso do SPS, em seu Artigo 13, está disposto que

> [...] os Membros adotarão as medidas razoáveis que estiverem a seu alcance para assegurar que as *instituições não-governamentais* existentes em seus territórios (...) cumpram com as disposições relevantes do presente Acordo. (...) Os Membros assegurarão o uso dos serviços de *instituições não governamentais* para a implementação de medidas sanitárias ou fitossanitárias apenas se tais entidades cumprirem com as disposições do presente Acordo.

Aqui existe menos margem para dúvidas porque está explicitado que as 'instituições não governamentais' são *rule-takers* e devem reconhecer as disposições do Acordo. Ou seja, não há margem para interpretações a respeito do *rule-making* privado. Ao mesmo tempo, foi criado em 2011 um grupo de trabalho dentro do Comitê do SPS para estimular a discussão de padrões privados. Do grupo de trabalho foi criado outro, denominado de *e-Working Group* (e-WG), de onde surgiu a primeira proposta de sistematização de padrões privados relacionados ao SPS: os padrões privados deveriam estar relacionados ao Acordo na forma de um 'requerimento' ou 'condição escrita', ou seja, deveriam ser anexados formalmente a uma solicitação que envolvesse os aspectos relacionados à segurança alimentar, à vida animal ou vegetal ou à saúde, incidentes exclusivamente às trocas comerciais, e aplicado por uma entidade não governamental. Imaginando que essa definição poderia ser utilizada por países em desenvolvimento com vistas à exportação aos países desenvolvidos, Estados Unidos e União Europeia entenderam que se tratava de um precedente inaceitável e se manifestaram terminantemente contra a menção à "entidade não governamental" e "requerimento". De fato, é paradoxal o conceito utilizado para padrões privados, porque o Artigo 13 do Acordo SPS não deixa dúvidas (ao contrário do TBT) de que são os governos os responsáveis pelo reconhecimento dos padrões previstos no Acordo.

Para solucionar o impasse entre a proliferação dos padrões privados e a necessidade de uma autoridade 'ponto focal' para o sistema multilateral de comércio,

Thorstensen e Vieira (2016, p. 66-67) sugerem a negociação de uma "meta-regulação" capaz de lidar com a complexidade oriunda deste novo contexto. Faz-se mister, diante desse cenário, criar uma estrutura capaz de desenvolver, legitimamente, princípios básicos, regras e instrumentos que supervisionem e arbitrem conflitos entre os diversos padrões existente no mundo, o que demanda uma autoridade internacional de tipo 'ponto focal', ou seja, sem competidores quanto à origem institucional dos padrões[28].

Apresentada a discussão acerca da proliferação de conceitos sobre o mesmo fenômeno – a ascensão de atores não estatais como *rule-makers* em arenas transnacionais (Veiga e Zacareli, 2015), de várias áreas diferentes das Ciências Humanas, e das Ciências Humanas aplicadas, no caso da Economia e do Direito, há ainda um problema de ordem metodológica.

Uma segunda ordem de questões é o fato do debate acadêmico está praticamente ancorado em estudos de caso. Mesmo os autores que trabalharam com N relativamente grande o fizeram sem a utilização de técnicas e instrumentos estatísticos mais sofisticados. São estudos baseados em tipologias onde os autores criam novos conceitos e os utilizam sobre um N pequeno de, em sua grande maioria, estudos de caso. O único estudo de N grande é o de Green (2014), desenvolvido a partir da teoria da delegação. De todo modo, vale destacar aqui os autores que se debruçaram sobre tipologias que ajudaram a engrandecer o tema e precisar as perguntas de pesquisa (Held e Hale, 2011; Büthe e Mattli, 2011; Abbott e Snidal, 2009; Duvergne e Rogers, 2016).

As perguntas de pesquisa são diferentes a depender da área de conhecimento. Aquelas perguntas feitas dentro das fronteiras da área de CPRIs são: a constelação de atores não estatais que produzem regulação e governança fora do espaço de excelência dos Estados e das Organizações Internacionais (OIs) formais competem, complementam (ou não há correlação) com as atribuições e competências tradicionais da soberania do Estado? Os arranjos institucionais em tela, considerados 'privados' porque os partícipes são atores não estatais, gozam, realmente, de plena autonomia e independência dos governos e OIs? Qual o real impacto desses arranjos institucionais em vários níveis e dimensões? Por exemplo, na questão de sua implementação ou do seu *enforcement* cujo conceito, na etimologia anglo saxônica, significa a implementação da legislação/regulação já aprovada por instituição competente? Qual é o tipo de

[28] Como já existe uma autoridade 'ponto focal' na própria OMC, presume-se que Thorstensen e Vieira (2016) defendam que a constituição da "meta-regulação" seja uma atribuição daquela OI formal.

accountability desenvolvido por esses arranjos? São endereçados a quem? Quais ferramentas e instrumentos utilizados para prover essa funcionalidade? Em relação ao 'déficit democrático' ampla e reconhecidamente constatado e discutido pela área de CPRIs, como qualificar o *compliance* a procedimentos, processos de tomada de decisão que podem ser considerados democráticos? Como lidar com a constatação de que boa parte desses arranjos os Estados e OIs estão presentes, mesmo que de forma indireta? O hibridismo e a cooperação público-privada é uma variável importante? Em qual dimensão, nível de análise? Por fim, e não menos importante, sabe-se quais as fontes de legitimidade para a soberania do Estado e para os seus agentes, as OIs formais. Quais as fontes de legitimidade dos arranjos institucionais compostos por atores não estatais?

Os estudos de caso são importantes porque eles desafiam a "sabedoria convencional" e inspiram "refinamentos teóricos" relacionados à efetividade dos atores não estatais nas Relações Internacionais. No entanto, os desafios e melhorias circunscrevem-se aos seus efeitos iniciais. Fica difícil dispor de uma visão abrangente porque os estudos de caso são produzidos por muitas abordagens teóricas diferentes, são provenientes de uma variedade de disciplinas como o Direito, a Sociologia Econômica e a Economia Institucional que se misturam à área de Ciência Política e Relações Internacionais. Dessa forma, a orientação aqui é sugerida por Elinor Ostrom, ou seja, submeter os casos de N pequeno a uma lente de aumento (Ostrom, 2010, p. 53).

Da mesma forma, a frequência de estudos distribuída sobre os temas e casos é muito assimétrica. Os estudos tratam de casos em meio ambiente, padrões trabalhistas, direitos humanos, internet, entre outros. Dentro de cada um dos *issues* forma-se uma constelação de estudos que chegam a apontar para um determinado consenso/dissenso na literatura, mas dificilmente as conclusões aferidas podem ser estendidas aos outros *issues*.

2.2. Os Maiores Modelos[29], Teorias e Conceitos: limites e possibilidades

Todas as *core questions* acima foram, direta ou indiretamente, consideradas pelos autores em tela que tentaram desenvolver 'modelos' para lidar com o fenômeno (Held and Hale, 2011; Mattli e Büthe, 2011; Abbott and Snidal, 2009, 2015; Duvergne e Rogers 2016; Green 2014; Prakash and Potoski, 2006; Avant et al., 2010). Esses autores foram além dos estudos de caso e tentaram produzir uma taxonomia abrangente para a análise

[29] 'Models' here are considered typologies.

do fenômeno. Ao contrário dos autores do subitem anterior que levantaram conceitos para valorizar a novidade do fenômeno empírico, os 'modelos' a seguir procuram sistematizar os conceitos e perguntas de pesquisa dentro de uma nova área ou sub-área no campo da Ciência Política e Relações Internacionais, em diálogo com o Direito, a Economia e a Sociologia. Os autores que explicitamente defendem a criação de uma nova sub-área da CPRIs são Held and Hale (2011) e Duvergne and Rogers (2016).

Held and Hale (2011) cunham o conceito de 'Governança Transnacional', onde a governança é entendida como "processos e instituições, formais e informais, onde regras são criadas, o *compliance* é elicitado, e bens são produzidos na perspectiva de se alcançar bens coletivos" (p. 12). Não há clara divisão entre o público e o privado. Os autores quiseram açambarcar o maior número de estudos de caso. Contudo, incorreram em equívocos. Os governos estão subordinados à governança "cuja performance é definida pelo Estado" (p. 13), uma contradição com o que é deliberadamente deixado de fora do conceito, qual seja, as organizações regionais intergovernamentais, e o "*state-to-state elements of the global human rights regime*" (p. 13)[30]. Não fica claro porque os atores entram em um *issue* específico como os Direitos Humanos. De todo modo, a 'inovação' tipológica diz respeito a cinco tipos de Governança Transnacional, e não esclarecem a separação entre os Estados e OIs, de um lado, e os atores não estatais que se organizam em arranjos institucionais, por outro lado: 1. Transgovernmental Networks; 2. Arbitration Bodies, 3. Multistakeholder Initiatives, 4. Voluntary Regulations, e 5. Finance Mechanisms. No total, Held and Hale (2011) identificaram 51 casos de Governança Transnacional.

Entende-se que organizações internacionais empregam orquestração quando engajam atores intermediários de maneira voluntária, fornecendo a eles suporte ideacional e/ou material, para endereçar atores alvos na busca para atingir os objetivos das organizações internacionais de maneira a garantir certa efetividade (Abbott et al., 2015). A literatura avançou na direção de que os atores privados operam à sombra dos Estados e que no fundo a regulação privada acontece onde existe omissão das Organizações Internacionais. Os atores (não estatais) – Organizações não governamentais e empresas privadas – não podem ser entendidos como agentes autossuficientes no

[30] Na página 16, Held e Hale fundamental a imprecisão conceitual e os casos que entram e saem. Alguns foram excluídos por uma razão não teórica, já teriam sido extensivamente estudados e, por essa razão, ficam de fora da definição, quase uma confissão de que o conceito de Governança Transnacional não deve ser levado a sério, em última instância, trata-se de apenas de uma tentativa não muito rigorosa de compreender as mudanças nas Relações Internacionais contemporâneas.

processo de governança e regulação transnacional, a despeito de sua inegável importância. Estes atores operam em um ecossistema institucional, ainda moldado, primordialmente, pelas Organizações Internacionais e pelos próprios Estados (Held and Hale, 2011; Mattli e Büthe, 2011; Abbott and Snidal, 2009, 2015; Duvergne e Rogers 2016; Green 2014; Prakash and Potoski, 2006; Avant et al., 2010).

O conceito de orquestração entre Estado, Organizações Internacionais e atores não-estatais, se por um lado contesta a ideia de que a regulação civil tem capacidade de atuar de maneira totalmente independente, por outro dialoga perfeitamente com o conceito de que, em uma Arena Transnacional, os Regimes Privados podem não somente ocupar lacunas deixadas pelo Estado, como também se tornar uma importante ferramenta para que a autoridade pública logre seus objetivos, sem que sejam feitas concessões de autoridade significativas. Além disso, Kenneth Abbott et al (2015, 378) observa que esta atuação orquestrada gera uma dependência mútua entre os atores públicos e privados, criando um sistema de "checks and balances" que no limite contribui para diminuir as ameaças à autoridade dos Estados, o que contribui para a sua efetividade e perpetuação no tempo.

É possível diferenciar o ato de orquestrar da hierarquização tradicional da governança, ou ainda das práticas de delegação, por duas características fundamentais: ser indireto e *soft*. Na orquestração, as organizações agem através de intermediários, que podem ser atores da sociedade civil ou até mesmo outras organizações internacionais, e sem nenhum controle sobre eles para atingir alvos, que podem ser os Estados ou o setor privado (Abbott et al., 2015).

Apesar de ser ainda pouco identificada e estudada, a orquestração é um modo de governança amplamente utilizado pelas organizações internacionais em paralelo às atribuições tradicionais conferidas a elas pelo Direito Internacional (Abbott et al., 2015; Widerberg, 2017; Dryzek, 2017). Ao adotar a orquestração como modo de governança, organizações internacionais buscam superar lacunas orçamentárias, de expertise técnica e de capacidade de execução. Abbott et al. (2015) postulam dois tipos de orquestração: "gerenciando Estados" e "contornando Estados".

No modelo "gerenciando Estados", as organizações internacionais atuam como orquestradoras de intermediários para que estes possam moldar as preferências dos Estados. Por sua vez, ao empregar o modo "contornando Estados", as organizações internacionais podem convocar intermediários para influenciar a conduta do setor privado sem a mediação do Estado. Por fim, é fundamental ressaltar a premissa anunciada pelos

autores de que os Estados podem encorajar a orquestração quando os objetivos a serem atingidos são claramente acordados, mas tanto Estados quanto organizações internacionais, em conjunto ou separadamente, possuem lacunas em suas capacidades para o cumprimento desses objetivos.

A teoria de delegação (agência) aplicada às Relações Internacionais explora a relação entre Principais (Ps) e Agentes (As). Os primeiros delegam ou transferem um *grant* de autoridade aos agentes que os empodera e os faz agir em nome dos Principais. O problema de pesquisa emerge com o *agency slack*, ou seja, a autonomia indesejada do A que coloca a relação P➔A em dois caminhos distintos. O comportamento s*hirking*, quando o agente minimiza o esforço para entregar aquilo que está embutido na expectativa do P (e/ou no contrato entre as partes); e o *slippage*, quando o A muda a preferência do P e passa a agir em nome de sua própria preferência, rompendo assim o contrato previamente estabelecido entre as partes. Vale notar que existe uma autonomia do A considerada benigna e que não se confunde com o *slack*. A literatura traduz essa autonomia como 'discrição' ou aquela dimensão informal ou oculta do A, necessária para o cumprimento do contrato e a entrega do resultado previsto pelo P[31].

No livro editado por Hawkins et al. (2006), mais tarde retomada por Green (2014), os autores enumeram seis razões para a delegação acontecer por parte dos Estados (Ps) às Organizações Internacionais como agentes (As). Elas não são excludentes e podem se sobrepor. A primeira é a 'divisão de trabalho' e os 'ganhos de especialização', ou seja, quando o *issue* em tela demanda alto grau de especialização técnica, altamente custosa para os Estados desenvolverem por sua própria conta. A especialização implica em uma divisão de trabalho onde a OI formal passa a responder pela ação coletiva em torno do *issue*.

A segunda é a 'administração de externalidades políticas', ou seja, os Estados transferem às OIs a administração de dilemas de coordenação e cooperação, 'falhas' políticas que ao invés de centralizadas e coordenadas pelos Estados, são transferidas para um A que gera incentivos próprios para promover a cooperação/coordenação de

[31]Espera-se que o comandante de uma Operação de Paz desenvolva uma estratégia de ocupação do território que não pode ser inteiramente publicizada sob pena de comprometer o resultado, ou seja, a redução da violência no território alvo da PKO. Da mesma forma, o mandado de prisão expedido pelo Tribunal Penal Internacional (P) não pode relevar inteiramente a natureza da operação de busca e apreensão executada pela Interpol, ver Hawkins et al. (2006).

diferentes *policy functions*: *agenda-setting*, *rule-making*, *monitoring*, etc[32]. A terceira é o 'collective decison-making' quando os Estados vão além da coordenação/cooperação e criam um A para promover um novo processo decisório em torno de *issues* de interesse direto de governos. No caso, o resultado é um novo arcabouço jurídico com a implementação de regras e normas e o *compliance* das partes.

A quarta motivação acontece quando os Estados promovem a 'resolução de disputas', isto é, delegam a um A um mecanismo de resolução de disputas e controvérsias como acontece com a OMC e o Órgão de Solução de Controvérsias. O mecanismo pode ser *ad hoc* ou fazer parte do arcabouço legal previsto pelo direito público internacional de forma permanente. A quinta razão diz respeito à 'credibilidade' quando o objetivo é prover um A com credibilidade/legitimidade. O exemplo apresentado pelo livro de Hawkins et al. (2006) é o caso do Banco Central Europeu. Os governos queriam transferir o conservadorismo e a austeridade do Banco Central alemão no trato da política monetária para o novo banco com a criação do euro em 1999. Por fim, os Estados podem promover um p*olicy bias* e/ou uma situação *lock in* para perenizar um viés ou assimetria política que seja praticamente irremovível no futuro. O viés em favor dos Ps acaba sendo irreversível. O caso dos cinco membros permanentes do Conselho de Segurança da ONU, apesar da agenda de reformas estar em andamento desde o final da Guerra Fria, é um caso paradigmático. Da mesma forma, os *stakeholders* fundadores da OIT – governos, empresários e sindicatos de trabalhadores - parecem não estar dispostos a promover o diálogo com o terceiro setor que ameace o processo decisório tripartite da OI.

Apesar de a teoria da delegação aplicada às relações internacionais ter aberto uma agenda de pesquisa robusta, ela é limitada às OIs como agentes. Ou seja, é uma agenda de pesquisa entre Estados soberanos e organizações internacionais formais. Algumas perguntas de pesquisa ficam sem resposta: 1. É possível aplicá-la na delegação a agentes privados (do público para o privado nas relações internacionais)? Se sim, a delegação rompe com as premissas duras da área de relações internacionais, entre o doméstico e o internacional? Se é possível delegar a um agente privado, existe um contrato ou a delegação é informal? Há casos que confirmam a delegação público➔privado? Ela

[32] A criação do G-7 nos anos 1970 respondeu à necessidade de coordenação das políticas monetárias depois dos choques do petróleo. O IPCC (Intergovernmental Panel on Climate Change respondeu à necessidade de provisão de informação científica sobre mudança climática.

prescinde de um contrato? Como construir uma cadeia de delegação entre os Ps e os seus As? Essas são algumas perguntas suscitadas pela leitura do livro de Hawkins et al. (2006).

Green (2014) avança na discussão da teoria da delegação. A autora utiliza a teoria em 152 tratados ambientais entre 1902 e 2002. As perguntas de pesquisa são duas: 1. Quais atividades os tratados desempenham?; 2. Quem ou qual órgão é responsável por elas? Green (2014) define dois níveis para avaliar a delegação, o primeiro que trata da delegação diretamente de Estados soberanos, e a segunda aonde a delegação ocorre em um *sub-treaty level*. A mistura de agentes (atores) e as VDs a serem explicadas resultam em uma matriz:

Tabela 1 – Delegação

Agents	States	States	IOs		Private Agents	
Levels	Treaty level	Sub-treaty level	Treaty level	Sub-treaty level	Treaty level	Sub-treaty level
Rule Making	21%	27%	10%	23%	9%	23%
Implementation	52%	50%	64%	57%	33%	65%
Monitoring	9%	20%	12%	18%	16%	13%
Enforcement	6%	3%	4%	2%	7%	0%
Adjudication	13%	0%	10%	0%	33%	0%

Fonte: adaptado de Green (2014).

Green (2014) exclui os casos domésticos de delegação, ou seja, não entra a delegação entre Estado soberano e um órgão doméstico privado[33]. A VD mais freqüente, ou seja, o caso de delegação que mais aparece na amostra de Green (2014) é a 'implementação' porque ela é o tipo de delegação mais difuso e abrangente entre as cinco VDs. Entram na implementação os casos de desenvolvimento de projetos específicos, o de *capacity buiding*, treinamento, transferência de tecnologia, questões orçamentárias, financiamento, empréstimos, etc. A VD menos comum é exatamente o do *enforcement*, ou seja, os Estados delegam aos agentes a implementação do acordo previsto em lei, a promoção da norma e a elaboração de regras dos próprios Principais. Como os Estados relutam em 'enforçar' as regras e normas, fica claro que a dimensão do *enforcement* é o tipo de delegação menos frequente.

[33] "É certamente possível que cada Estado individualmente escolha delegar a um agente privado doméstico. Contudo, para que esse Estado atenha-se à delegação no plano internacional, esses casos domésticos de delegação são excluídos", ver Green (2014), p. 61.

Green (2014) avança ainda na tipificação da delegação privada a partir de um conceito de autoridade diferente daquele usualmente utilizado pela área de Ciência Política e de Relações Internacionais. O conceito de 'Autoridade Privada' desdobra-se em dois tipos. Uma autoridade privada 'delegada', ou seja, que respeita a cadeia de delegação e tem origem, em última instância, na vontade do Estado soberano como Principal (*De Jure*). E o conceito de autoridade privada 'empreendedora' (*De Facto*) que não tem origem no Estado como P, produz regras, padrões e práticas (regulação) e pode se tornar *authoritative*, ou seja, portadora de autoridade sem o reconhecimento, validação e legitimidade conferida por outro P na hierarquia do sistema internacional. No entanto, para ser *authoritative*, é preciso que a autoridade seja chancelada, reconhecida ou legitimada no âmbito da cadeia de delegação privada, existe, portanto, um P e um A privados.

Green (2014) reconhece que "[…] the recent spike in transnational environmental civil regulations – one form of entrepreneurial authority – shows that this is a new and fast-growing phenomenon in environmental politics […]" (idem, p. 164). A dimensão 'transnacional' da autoridade privada empreendedora significa que a arena não é nem doméstica nem internacional. É civil porque a sua origem está na sociedade civil, fora do alcance do Estado, seja do terceiro setor, seja do setor privado, seja de ambos em cooperação. E trata-se de regulação, ou seja, há produção de regras e normas fora do âmbito do Estado e das OIs. Assumir esse pressuposto colocado como um conceito teórico construído por Green (2014) traz profundas implicações para várias áreas do conhecimento nas humanidades e nas ciências sociais aplicadas.

Para a autora, em termos absolutos há um aumento exponencial das funções delegadas a atores privados mas em termos relativos, o que acontece é que a delegação privada não está aumentando. O que ocorre é que os mesmos atores estão desempenhando mais funções, sobrepondo atribuições e competências. Como resultado, a forma como Estados governam está mudando: há mais atores desempenhando os mesmos papéis. Esse é um sintoma inequívoco de que há mais governança já que existem mais autoridades desempenhando as mesmas funções.

Büthe e Mattli (2011) exemplificam o fenômeno da delegação P(público)➔A(privado) em uma arena transnacional. No dia 28 de agosto de 2008, a SEC (Security Exchange Comission), o órgão regulador do mercado de capitais norte-americano (o equivalente à Comissão de Valores Mobiliários – CVM, uma autarquia) reconheceu os *international financial accounting reporting Standards* (IFRS),

desenvolvido por um órgão privado, sediado em Londres, o *International Account Standard Board* (IASB), como o padrão a ser utilizado pelas empresas com ações e papéis (ADRs – American Deposit Receipts) listados pela bolsa de valores nos EUA (Dow Jones, Nasdaq e FT500). Trata-se de uma delegação baseada na expertise técnica e na redução de custos de transação para o setor privado norte americano e estrangeiro (com papéis nos EUA) que sugere uma nova 'divisão de trabalho' entre o público e o privado. Detalhe: não houve qualquer processo deliberativo, a decisão foi vertical (*top-down*) e sem a mediação de um contrato. Büthe e Mattli (2011) abrem as portas teóricas e analíticas para aplicar a teoria da delegação entre o público e o privado em arenas transnacionais.

Na realidade, Büthe e Mattli (2011) desenvolvem a teoria da complementaridade institucional, uma abordagem interdisciplinar para refletir sobre a teoria da regulação a partir da mudança tecnológica e da eficiência do sistema econômico global. Antes, porém, os autores criaram um 'modelo' para pensar a centralização da autoridade a partir de duas variáveis: a origem da regra institucional, e o mecanismo de seleção. A combinação entre as duas variáveis produz os quatro possíveis resultados do quadro abaixo. Se a origem da regulação for pública e o mecanismo de seleção for *non-market*, estamos falando de autoridades 'pontos focais', sem competidores (I). Se a origem da regulação for pública e o mecanismo de seleção for *market based*, estamos falando de autoridades públicas que competem em determinado *issue*. Se a origem da regulação for privada e o mecanismo de seleção for *market based*, estamos falando de padrões privados, esquemas de certificação, e Standards que competem entre si, e aumentam os custos de transação, portanto, diminuem a eficiência da economia global. Por esse motivo, para os dois autores, a nova teoria da regulação, a mudança tecnológica, conduzem à necessidade de uma autoridade privada 'ponto focal', ou seja, sem competidores.

Tabela 2 - Typology of Global Regulation

		Institutional Setting for Rule Making	
Selection Mechanism		Public	Private
	Non-market based	(I) Public international agreement 'focal point'; and IOs	(IV) Private institutional international body 'focal point' (without competition)
	Market-based	(II) Public authorities (with competition)	(III) Private institutional international bodies (with competition)

Source: adaptado de Büthe and Mattli (2011).

2.3. Outras Abordagens

Escolhi sistematizar aqueles autores cujos novos conceitos apresentados jogam luz à discussão do objeto de estudo em tela nesta tese de doutorado, precisam a pergunta de pesquisa, e permitem ir além da mera aplicação de abordagens teóricas já conhecidas e enunciadas. Na medida do possível, a proposta é realçar as abordagens teórico-conceituais da área de Ciência Política e Relações Internacionais, mas vários conceitos são pervasivos e transbordam para outras áreas das Ciências Sociais aplicadas. Os conceitos abaixo mencionados jogam luz à discussão acerca da ascensão dos atores não estatais nas últimas décadas. A dimensão propriamente 'transnacional' não chega a ser necessariamente um conceito, é um adjetivo utilizado junto a outros conceitos como 'governança transnacional', ou 'regulação transnacional'. No entanto, ele ajuda a precisar o conceito de 'arena transnacional', ou seja, um espaço bem definido onde acontece o processo de tomada de decisão. O ponto de partida é a arena intergovernamental multilateral, um espaço por excelência para os movimentos de governos e OIs que se pretende marcar aqui nesta tese de doutorado.

2.3.1. Arenas Transnacionais

O termo 'transnacional' tem ganhado destaque na agenda de pesquisa de Ciência Política e Relações Internacionais nas últimas décadas. A proposta aqui é torná-lo 'operacional' no sentido da sua etimologia e, simultaneamente, alçá-lo à qualidade de um

conceito útil para a área de CPRIs em sua dimensão propriamente analítica. Em sua trajetória recente, ele apresenta referências analíticas, descritivas e normativas sem, necessariamente, consubstanciar-se em um novo conceito. Held e Hale (2011) utilizam o 'Transnacional' apenas em sua dimensão descritiva[34]. Ao mesmo tempo, o intuito aqui é utilizá-lo para definir um espaço próprio para processos decisórios que acontecem fora do âmbito governamental e, ao mesmo tempo, ocorrem fora do espaço propriamente doméstico da política, a arena, por definição, de hierarquia e centralização da autoridade do Estado. A primeira aproximação é adicionar ao 'transnacional' a dimensão de uma arena, um espaço para a tomada decisão que se diferencia do internacional, entendido aqui como o espaço por excelência de governos e organizações internacionais formais, ou seja, a arena intergovernamental multilateral (Veiga e Zacareli, 2015).

Existe, em primeiro lugar, uma ideia do transnacional como fluxo daquilo que não depende do Estado. Raymond Aron, em sua monumental obra Paz & Guerra Entre as Nações – "o mais ambicioso livro já escrito sobre Relações Internacionais" nas palavras de Stanley Hoffman[35], menciona apenas 8 vezes o 'transnacional', uma prova de que o adjetivo não estava no radar dos *scholars* e analistas no momento em que a obra foi escrita. No livro, Aron faz uma distinção importante entre o sistema internacional e a sociedade transnacional. No primeiro caso, a referência é a arena interestatal de Estados soberanos, e no âmbito da sociedade, o transnacional remete aos fluxos, trocas, deslocamentos de indivíduos, ou seja, aos movimentos que transbordam fronteiras, fora do alcance da autoridade pública, recorte que já foi bastante explorado por Keohane e Nye Jr. em seus primeiros escritos sobre o tema nos anos 1970.

Ainda no campo dos clássicos de Relações Internacionais, Arnold Wolfers também valorizou o 'transnacional' ao indicar o protagonismo de determinados atores que acionavam os fluxos e movimentos para promover a interação societal (Wolfers, 1962). Karl Deutsch et al., (1957), nos anos 1950 apontava as 'transações transnacionais' como variáveis importantes para a compreensão das chamadas 'comunidades de segurança', um conceito carregado de normatividade para realçar valores e identidades comuns, também o acionou.

[34] "We therefore employ the term 'transnational' simply to describe activities, institutions, actors or process that cross at least one national border, specially when actors than national governments are involved. This open definition excludes purely domestic interactions and institutions", p. 15.
[35]See Stanley Hoffmann (1985) "Raymond Aron and the Theory of International Relations", *International Studies Quarterly*, Vol. 29, No. 1 (Mar., 1985), p. 13-27.

Se esses autores, Aron, Wolfers e Deutsch foram precursores do 'transnacional', sem abrir mão do estadocentrismo em RIs, foi um *scholar* alemão, Karl Kaiser, quem trouxe o 'transnacional', pela primeira vez, para o centro do debate acadêmico. Jönsson (2010) cita o artigo 'Transnational e Politik', publicado pelo periódico *Politische Vierteljahresschrift* em 1969[36].

Na realidade, o autor distingue o 'transnational' do 'multinational'. No primeiro, trata-se de um processo político "entre governos de Estados-Nação e/ou entre a sociedade transnacional e governos que são iniciados pelas interações na sociedade transnacional" (Jönsson, 2010, p. 24). Importante mencionar que é um recorte horizontal, entre sociedades, e também vertical, da sociedade para o Estado, ou seja, é uma perspectiva *bottom-up*, como sugere a interpretação de Jönsson (idem). Klaus Dingwerth e Philipp Pattberg (2006) ajudam a compreender a proposta de Kaiser: são três os aspectos da política transnacional, as sociedades comunicam-se através de suas fronteiras, que conduzem a mudanças em suas respectivas sociedades, e que forçam os governos a reagirem em relação às suas respectivas sociedades e/ou a outros governos (idem, p. 197).

Já no caso da 'Política Multinacional' a referência é a política que permite Estados 'penetrados' e 'integrados', ou seja, uma alusão à integração européia do final dos anos 1960.Talvez o aspecto mais curioso na proposta de Kaiser é como o 'transnacional' impacta a política doméstica. Para ele, a política transnacional é uma séria ameaça à democracia porque o processo decisório institucional se desloca para fora das fronteiras nacionais (Kaiser, 1969).

Apesar da introdução aos autores precursores do 'transnacional', principalmente nos anos 1960 e 1970, Jönsson (2010) revela que o adjetivo 'transnacional' já estava presente em artigos acadêmicos desde os anos 1950. Ele menciona dois, um na área de Educação e outro em Ciência Política mas ambos publicados em periódicos mais laterais ao *mainstream* da área de CPRIs – *Journal of Educational Sociology* e o *Western Political Quarterly*.

Paradoxalmente, a primeira referência ao 'transnacional' não veio da área de CPRIs (Jönsson, 2010, p. 25). Philip Jessup (1956), da área do Direito Internacional,

[36] Na realidade, Jönsson se equivocou, o artigo nunca foi publicado no periódico citado, ele é parte de uma coletânea em alemão, editada por Ernst-Otto Czempiel (ed.), *Die anachronistische Souvernit?*, na forma de pergunta (*The Anachronistic Sovereingty*, A Soberania Anacrônica, tradução livre do alemão) no mesmo ano de 1969.

publicou um livro chamado *Transnational Law*, baseado em conferências proferidas na Universidade de Yale na década de 1950. No livro, o autor adianta alguns fenômenos presentes no período pós-guerra fria: 1. Fusão entre o doméstico e o internacional; 2. A inadequação do 'internacional' como domínio quase exclusivo dos Estados-Nação; e 3. A 'comunidade mundial' inter-relacionada de forma complexa, segundo a interpretação de Jönsson (idem).

A maior novidade de Jessup é a de que o 'transnacional' refere-se a situações não confinadas às fronteiras nacionais mas pode envolver atores ou grupo de atores como indivíduos, empresas, governos, organizações internacionais formais, ou seja, o transnacional envolve a dimensão legal/normativa de regula ações ou eventos que transcendem as fronteiras nacionais. Com essa proposta, Jessup (1956) abre as portas para o direito reconhecer a possibilidade de regras e normas passarem a constranger a ação transnacional desses atores em dois sentidos. Em primeiro lugar, abre-se a possibilidade de uma regulação específica para a esfera 'transnacional'. O pressuposto é de que ações e eventos transnacionais requeiram uma regulação específica. A origem dessa regulação é uma questão em aberto e será objeto de discussão em outro capítulo da presente tese.

Em segundo lugar, o 'transnacional' passa a ser objeto específico do direito internacional. Aqui, encontra-se o argumento basilar para a constituição das chamadas 'arenas transnacionais' porque é o reconhecimento de um espaço específico, constituído de sujeito com direitos e obrigações. No momento em que o direito internacional reconhece o 'transnacional', ele imediatamente transfere direitos e obrigações para sujeitos localizados nesse espaço, ou seja, está definida assim o lócus por excelência de uma arena transnacional, assim como fez o direito internacional público com a fundação das organizações internacionais no passado.

Para Jessup (1956), o 'transnacional' demanda menor ênfase em abordagens teóricas territorialistas para o conceito de soberania. Ele termina o livro indicando que muito ainda precisa ser problematizado e conceituado a respeito dos problemas 'transnacionais' e aponta o setor de transporte marítimo como o mais 'transnacional', uma pista para a compreensão da evolução do direito internacional do transporte marítimo em paralelo aos aspectos transnacionais do desenvolvimento setorial (Jönsson, 2010, p. 25).

A repercussão do livro de Jessup foi surpreendente. Inis Claude (1957) no *American Political Science Review* manifestou satisfação com o 'estímulo ao frescor de idéias' proposto por Jönsson; no britânico *International Affairs* o mesmo tom de surpresa, a perspectiva de estar diante de uma nova abordagem da qual 'muito se pode aprender'

(Honig, 1958: 79). O impacto do livro nos círculos do direito internacional foi também relevante, mas não imediato. Em 1964, o periódico *Columbia Society of International Law* teria mudado de nome para *Columbia Journal of Transnational Law*, com uma nota introdutória do Professor Jessup (Jönsson, 2010). Ele justifica a dimensão transnacional a partir dos problemas legais que transcendem fronteiras nacionais ao refletir sobre a Corte Internacional de Justiça. A mudança de nome do periódico é para o autor uma prova da capacidade de evolução legal demonstrado pelo Direito Internacional, a partir da interconexão entre o direito privado internacional e o direito público. A mudança de nome seria ainda uma recusa à construção de muros e barreiras entre o direito internacional e a área de CPRIs entendida aqui como a área por excelência do estudo do sistema interestatal de estados (Jessup, 1964).

Um dos primeiros momentos de reflexão mais detida acerca do 'transnacional', no campo da CPRIse também da sub-área de Economia Política Internacional (EPI), aconteceu na coletânea de Nye Jr. E Keohane (1971), publicada pela *Harvard University Press*. O livro é resultado de uma edição especial do periódico. Os dois autores reconhecem a contribuição da obra de Jessup (1956) e definem as relações transnacionais como "contatos, coalizões, e interações entre as fronteiras estatais que não podem ser controladas pelos órgãos de relações exteriores de governos ou de uma autoridade centralizada". Os autores reconhecem ainda a dimensão intangível das interações quando ao menos "um dos atores não é um agente de governo", ou seja, eles pensam o transnacional como as trocas entre governos e a sociedade transnacional, como menciona Jönsson (2010, p.26), inclui os efeitos recíprocos entre a relações transnacionais e o sistema interestatal o que resulta na dimensão propriamente transgovernamental, ou seja, inclui-se os governos mas vai além deles. Dessa forma, o transnacional aqui, para Nye Jr. e Keohane, inclui também o transgovernamental, inclusive a autoridade estatal em âmbito subnacional (idem), sub-área que se desenvolveu nas últimas décadas com o conceito de Paradiplomacia, redes transnacionais de atores estatais sub-nacionais.

O adjetivo 'transgovernamental' vem sendo repaginado como uma forma de 'transnacionalismo estatal' na medida em que sublinha as atividades específicas de determinados Estados em apoiar e sustentar fluxos *cross-border* entre governos e etnias, comunidades e grupos identitários no exterior. Ao invés de contrapor o retraimento do Estado ao transnacional, nessa abordagem, Estados são catalizadores e agentes dos fluxos

transnacionais, podem mediar e dirigir a dinâmica. Dessa forma, o transnacional não está fora ou além do Estado, é patrocinado e dirigido por ele (Chin e Smith, 2015)[37].

Samuel Huntington ficou mundialmente conhecido pelo choque de civilizações, livro de mesmo nome lançado na primeira metade dos anos 1990 e até hoje referência para a área de CPRIs pós-Guerra Fria. Antes, havia sido referência acadêmica na análise do processo de modernização em sociedades em mudança acelerada. No entanto, poucos analistas deram atenção ao seu artigo Transnational Organizations in World Politics (1973). Sua interpretação do 'transnacional' é *sui generis*. Por um lado, reforça a dimensão *cross-border* de fluxos os mais variados, sem o incentivo de qualquer autoridade ou organização central. Ao mesmo tempo, argumenta que o processo de internacionalização acontece sem a expansão territorial das potências, mas pela 'penetração', como o principal motor de transnacionalização (Huntington, 1973). A ideia de que os fluxos tangíveis e intangíveis 'desarmam' o poder político através do uso da força é uma ideia clássica de Relações Internacionais que perpassa o debate realista/idealista.

[37] Os autores identificam dois tipos de transnacionalismo estatal: 'ativo', quando os estados são os agentes da dinâmica transnacional, e 'reativo' quando o Estado responde à iniciativa de grupos promoverem a dinâmica transnacional do exterior, o caso em tela é o da diáspora coreana nos EUA.

Chapter 3

Intergovernmental Multilateral/Regional Arenas and National Legislations on Biodiversity and Access and Benefit-Sharing: The Case of ATCO Countries

Introduction

The aim of this chapter is to address how biodiversity conservation and environmental protection have evolved within the intergovernmental multilateral/regional arenas of the Amazon Cooperation Treaty Organization (ACTO). Composed of eight member countries - Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela – and created in 1995, one of the Organization's goals is to foster sustainable development and social inclusion in the region pursuant to the Amazon Cooperation Treaty (ACT) of 1978. Considered as an instrument of the so-called South-South cooperation, ACTO's political/diplomatic, strategic and technical characters are associated with the different dimensions found in the Treaty, which seek to ensure compliance and implementation amongst country members[38].

I argue here that ACTO is essentially a governmental body that has placed little emphasis on the role of non-state actors, and that compliance and implementation has proven challenging given that the monitoring of collective action at the local level is quite difficult when it comes to biodiversity conservation. As a matter of fact, member countries have not submitted reports to showcase their advancements toward the Organization's goals. Currently, the Amazonian Strategic Cooperation Agenda (ASCA) of 2010 steers most of the work carried out by the Organization and member countries.

Generally, there are three categories of international treaties for biodiversity conservation. The first category includes treaties that are applicable to all species and habitats of the planet without geographical distinction. The 1973 Convention on International Trade and Endangered Species (CITES), and the 1992 Convention on Biological Diversity (CBD) are examples. The second category involves treaties applicable to all species and habitats within a region. And the third one is applicable at any level in order to protect some particular specie or habitat as whales, polar bear, forests, savannas or wetlands (Garcia, 2011, p.74). The ACTO treaty has been considered

[38]Amazon Cooperation Treaty Organization (ACTO). Available at: http://www.otca-oficial.info/about/who_we_are. Access: March 1st, 2017.

through the lenses of different approaches and theories of international politics and legal studies. Firstly, some authors consider the Treaty as a defensive movement of eight sovereign states to consolidate their authority over the Amazon territory against the risk of foreign interference with the rise of global interest in environmental issues after the Stockholm Conference in 1972. Garcia (2011) mentions the controversy between Brazil and Bolivia over the Acre region and some mega projects in the region, such as the "Jari Project", – close to one of the visited communities during the fieldwork - which brought back past experiences of exploration of the Amazon, such as Henry Ford's rubber plantation in Forlândia[39][40]. Another aspect of sovereignty meant that states should ensure the integration of their territories rather than a simple integration of the Amazon basin (Garcia, 2011).

Another perspective considers ACTO as an incentive to foster regional cooperation. Garcia (2011, p. 79) quotes Montenegro (2000) to mention that the regional treaty "[…] would then complement national development policies and help reduce the isolation of these countries' respective Amazonian territories vis-à-vis their own national economies […]"; and the idea of cooperation as "[…] a way of attaining joint solutions […]", such as "[…] improving the navigability of the Amazon and its tributaries, preserving the wildlife species and maintaining the region´s ecological balance […]"[41] (Articles 6, 7 and 10).

The last perspective evaluates environmental protection instruments embedded by ACTO. One of the main objectives is to protect wildlife, endangered species and biodiversity in general. It is possible to say that the Treaty adopted the principles of environmental preservation and sustainable development as "[…] parties recognized the need to rationally exploit their fauna and flora […]", and water resources (Article 5) to "[…] maintain the ecological balance within the region and preserve the species […]" (Garcia, 2011, p. 89).

The main challenge is that efforts and commitments are subordinated to the sovereignty of the parties, which means that the intergovernmental arena of decision-

[39] See Grandin (2009) "Forlandia – The Rise and Fall of Henry Ford´s Forgotten Jungle City", Warner Bros. Inc.

[40] Garcia (2011, p.76) mentions that international media triggered concerns about the internationalization of the Amazon: Amazon as "the lungs of the world" (Houston Post, 1989), the controversial words of President Mitterand (1989) - "Brazil must accept a relative sovereignty over the Amazon", "Brazil should delegate some of its rights [over the Amazon] to competent international organizations" (Mikail Gorbachov, 1989), and "Contrarily to what Brazilians think, the Amazon is not theirs, but for everyone" (Al Gore, 1989).

[41] Articles 6,7 and 10 of the ACTO.

making will always prevail on any attempt to horizontal cooperation among them or with them and outside actors or international formal organizations. The principle of national sovereignty over natural resources is embodied in Article 4 and is one the Treaty's main pillars (Garcia, 2011)[42]. Parties assumed that development and environmental conservation are "[…] responsibilities inherent to the sovereignty of each State […]" (Garcia, 2011, p. 89). States are also considered "sovereign guardians" of the Amazon with "sovereign responsibility" of state members to preserve the environment. The principle of national sovereignty is balanced with an 'inherent responsibility' to preserve the Amazon basin. At the same time, Garcia acknowledges a definition of sovereignty because the Declaration of Manaus (2004) brings the term "sovereign responsibility" which could be seen as an approach to horizontal cooperation (Garcia, 2011)[43]. Actually, "sovereign responsibility" is another way to reaffirm that "[…] sovereignty over the Amazon involves a duty to preserve the environment […]" (Garcia, 2011, p. 90)[44].

ACTO is not a conservation and environmental regional agreement among state members in the Amazon basin. However, the Treaty embraces environmental protection and seeks to strengthen the rational use of natural resources (Garcia, 2011). Was ACTO's normative framework expected to develop substantive and procedural norms over time about conservation of biodiversity in amendments, protocols and resolutions adopted by institutional bodies (Garcia, 2011). Some environmental areas were not initially covered and have been introduced by resolutions and non-binding instruments under the framework of the Treaty. Three of the "six programmatic areas" were adopted by the Strategic Plan 2004 – 2012, and included waterways, forests, soil, protected natural areas,

[42] "The contracting Parties declare that the exclusive use and utilization of natural resources within their respective territories is a right inherent to the sovereignty of each state and that the exercise of this right shall not be subject to any restrictions other than those arising from international law", Article 4, see Garcia (2011, p. 88).

[43] Garcia recognizes it is not "[…] an established principle of international environmental law, and has not been reflected in a regional State practice […]" (2011, p. 90).

[44] "[…] the duty to preserve a State´s own environment is contained in the principle of environmental preservation, which is foundational to international environmental law". This duty is embedded in Article 192 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which affirms that States have an obligation to protect and preserve the marine environment. The novelty of the notion of 'sovereign responsibility' is probably in assembling the principle of environmental preservation and that of a permanent sovereignty over natural resources […]" (Garcia, 2011, p. 90).

biological diversity, biotechnology and biotrade[45]. The concept of biodiversity was only used in the Second Meeting of the Presidents of the Amazon countries in 1992[46].

3.1. Brief Analysis of the Amazon Cooperation Treaty

The legal basis of the ACTO stems from the Treaty celebrated in 1978, and later amended in 1998. As stated in Article I, the Parties agreed "[…] to undertake joint actions and efforts to promote the harmonious development of their respective Amazonian territories […]" with the aim to "[…] produce equitable and mutually beneficial results […]" and promote "[…] the conservation and rational utilization of the natural resources of those territories […]". Strong emphasis was placed on navigation and trade facilitation across borders throughout the Amazonian rivers as observed in Article III and VI. Despite the clear intent to promote commercial relations across political boundaries, the Treaty reinforced each Party's sovereignty over the natural resources found in their territories, which are geographically, ecologically and economically related (Article II), as well as "[…] the exclusive use and utilization of natural resources […]" therein (Article IV).

Pursuant to Article V, water was identified as a major driver of development in the region. Therefore, Parties ought to seek the rational utilization of hydro resources as well as guarantee navigability and access to the Atlantic Ocean through "[…] national, bilateral or multilateral measures […]" (Article VI). Article VII specifically addresses the use of biodiversity and the rational use thereof: "Taking into account the need for the exploitation of the flora and fauna of the Amazon region to be rationally planned so as to maintain the ecological balance within the region and preserve the species […]". In order to do so, the Treaty suggests two main measures that ought to be adopted amongst members and their agencies so that Article VII can be implemented: 1. the promotion of scientific research as well as information and technical personnel exchange with the aim to "[…] increase their knowledge of the flora and fauna of their Amazon territories and

[45] Garcia acknowledges that the concept of 'biodiversity' was not covered by ACTO because its foundation "[…] worldwide was laid down after the World Conservation Strategy in 1980 – prepared by the World Conservation Union, United Nations Environment Program (UNEP) and World Wildlife Fund (WWF), in collaboration with the United Nations Food and Agriculture Organization (FAO) […]" - "[…] and did not become familiar to the general public until the 1992 United Nations Conference on Environment and Development (UNCED)" that took place in Rio de Janeiro where it was proposed "[…] a definition of biological diversity (or biodiversity) in Article 2 of the Convention on Biological Diversity (CBD) (Garcia, 2011, p. 91).

[46] The meeting took place in Manaus and adopted the Manaus Declaration on the United Nations Conference on Environment and Development "[…] which included a whole section on 'biological diversity and biotechnology', see Garcia (2011, p. 91).

prevent and control diseases in said territories.", and 2. the establishment of a "[…] regular system for the proper exchange of information on the conservationist measures adopted or to be adopted by each State in its Amazonian territories; these shall be the subject of an annual report to be presented by each country.".

Article XXI reaffirms the composition of the Organization which adopts a purely intergovernmental character to dealing with issues and carrying out decisions made during the Foreign Affair Ministers' meetings. Initiatives and plans presented by parties as well as the adoption of bilateral or multilateral studies and plans and their execution by Permanent National Commissions. In this context, rules and regulations need to be crafted to ensure the Organization's proper functioning.

3.2. Institutional Design and Implementation Mechanisms Towards Effectiveness

ACTO is weak in terms of instruments of implementation, enforcement and bodies with special competencies to protect biodiversity and promote the sustainable development of the Amazon region. The treaty seems to be framed with this institutional design. The language is "vague"; parties declare that "efforts shall be made", "agree on advisability of", "agree to encourage", "seek to maintain", "give special attention to". Garcia (2011) reveals the imprecise nature of legal obligations, which means that parties have "large discretion" considering what needs to be done and by which means. The Treaty delivers legal effects which means that the cooperation process and the general duty involved demand more specific obligations and more detailed rule making (idem).

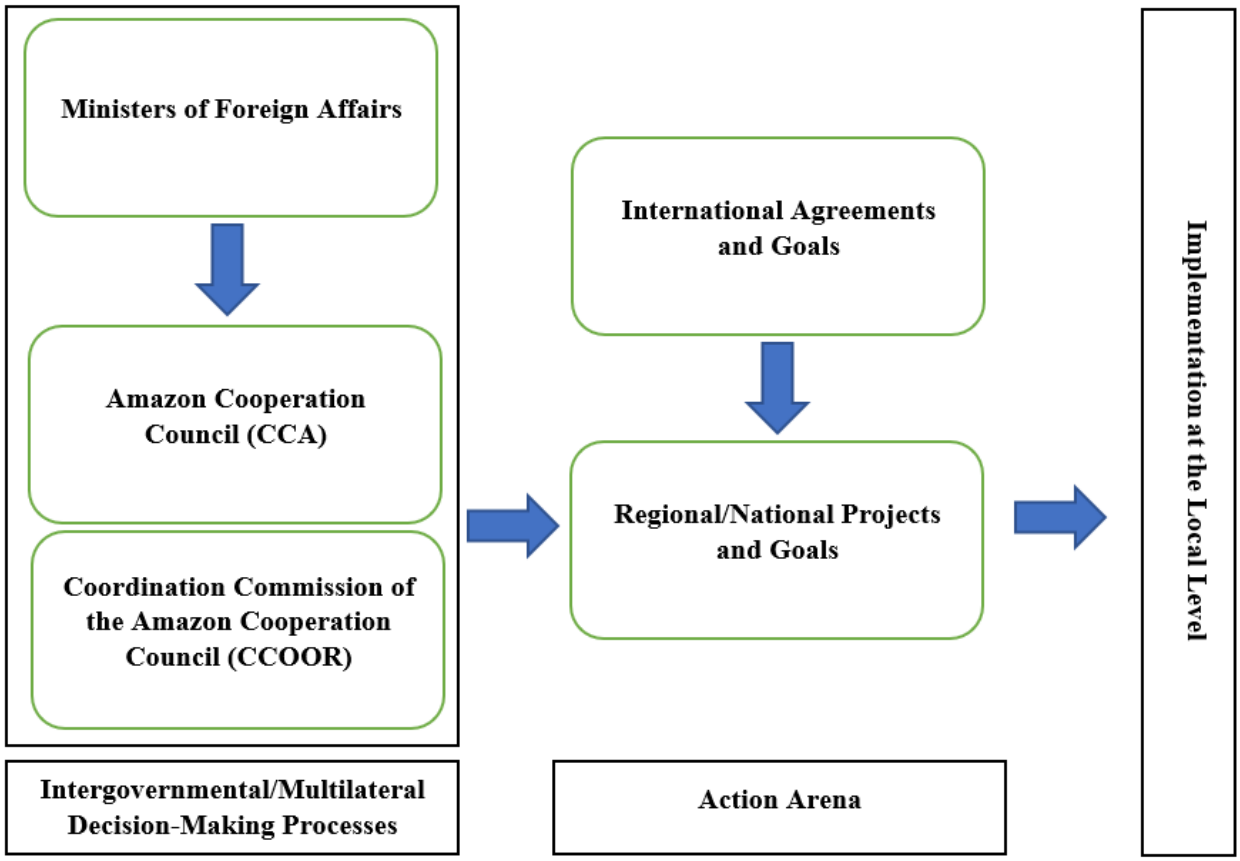
Table 1 - ACT Normative Framework

Agreements
1978 Amazon Cooperation Treaty
1998 Amendment Protocol to the Amazon Cooperation Treaty
2002 Headquarter Agreement between ACTO and Brazil
Declarations and Resolutions
Meetings of the Presidents of ACT Member States
Meetings of Ministers of Foreign Affairs
Amazon Cooperation Council
Regulations of the ACT Institutional Bodies

Meetings of the Ministers of Foreign Affairs
Amazon Cooperation Council
Permanent Secretariat
Regulation of the Personnel of the Secretariat

Source: Garcia, 2011, p. 100 updated by the author.

Figure 1 - Collective Action Analysis of the ACTO



Source: inspired upon the IAD/SES Frameworks (Ostrom, 2009).

For example, the 1995 Lima Declaration adopted in the Fifth Ministerial Meeting that followed the UNCED Conference in Rio de Janeiro (1992), ACTO reiterated the importance of the Amazonian forests. During the first regional meeting in Peru, parties decided on common criteria and indicators to manage the region, a clear indication that states wanted to go further with instruments of implementation. The instruments to develop criteria and indicators depend on the generation of knowledge and diffusion of scientific research (Articles 7(a) and 9). Incentives to research agendas come from regular meetings of the parties held mainly by Ministers of Foreign Affairs (MMFA) and the Amazon Cooperation Council (ACC), or material produced by the Permanent Secretariat.

Article 7(b) mentions that parties have the obligation to present annual reports "[…] on existing or future measures aimed at the protection of the region's wildlife […]" (Garcia, 2011, p. 96). Many non-binding instruments have been created within the Treaty as working plans, guidelines and projects, but they lack enforcement mechanisms.

Until 2011, ACTO had only been modified once by the Protocol of Amendment of the Amazon Cooperation Treaty, adopted on December 14, 1998, which modified Article 22 of the ACTO, dealing with the functions of the Secretariat so as to create the Organization. This was the most important change in the institutional design since 1978. Garcia indicates that "[…] most resolutions adopted by the MMFA and the ACC have addressed institutional matters only. The declarations adopted at the MMFA have provided guidance and political backing for measures and projects conducted under the aegis of the ACTO, and the resolutions have addressed mostly administrative matters" (Garcia, 2011, p. 97). Garcia concludes that ACTO has not "tackled more substantive matters" such as "[…] list of protected species (…) sites to be legally protected, or restricting the use of certain pollutants" (idem, p. 98).

Until the publication of Garcia's book in 2011, the presidents of the ACTO had met three times (1989, 1992, 2009). The second presidential meeting, the most important one, was held "[…] in preparation for the 1992 UNCED […]" and participant countries produced a document entitled "Joint Position of the Amazon Countries with a View to the United Nations Conference on the Environment and Development" which brought issues related to biodiversity, forests, climate change, among others (Garcia, 2011, p. 101). The other two presidential meetings also provided joint declarations without any effective outcome[47].

In the case of the Meeting of Ministers of Foreign Affairs (MMFA), it's the highest body within the ACTO institutional structure which usually adopts declarations and resolutions (Garcia, 2011). The plenary sessions are public, but the working groups are private. Only the secretariat staff and invited observers can participate in private sessions. The invited ones can be states, United Nations special agencies, members of the Organization of American States (OAS), the Association of Latin America Integration, the Latin American Economic System and any other international governmental organization. Non-governmental organization or non-state actor, such as NGOs, companies and local communities or business associations rarely participate in meetings.

[47]The 1989 Amazon Declaration and the declaration signed on November 26, 2009 during the COP 15 in Copenhagen, Denmark (Garcia, 2011).

As affirmed by one ATCO's employees during one of the interviews, the Organization is intergovernmental, and the participation of non-state actors is not common at all. As a matter of fact, ACTO has recently showed the need to measure efforts at the local level so as to evaluate the effectiveness of projects and action plans. In 2004, member states decided to convene "thematic ministerial meetings" on specific areas, including biodiversity, but at the same time (2006 and 2008) and intellectual property (2005) (Garcia, 2011).

The ACTO foresees the scaling down in order to request parties to create permanent national commissions "that should operate in their respective territories" without interference of one party to the territory of the other parties. Each state can adopt national regulations to govern their respective national commissions. Garcia recognizes that national commissions have been created formally by most of the parties, but have not yet functioned in a wider scale. Article 24 of the ACT "[…] envisage the creation of special commissions […]" in order to study specific issues or problems. Garcia (2011, p. 105) counted seven special commissions created in environment, science and technology, transport, communication and infrastructure, health, indigenous affairs, tourism and education, but no one on biodiversity topics (idem, p. 105). The only mention was that "[…] some special commissions have been more active than others in terms of number of activities and meetings […]" and that "[…] the commissions of Science and Technology and on the Environment have set up criteria to prioritize projects and evaluate their own activities […]" (Garcia, 2011, p. 106).

The major change in the Treaty occurred when parties established the Permanent Secretariat in Brasília (1995) during the Fifth MMFA[48]. Before the collective decision, eight Pro Tempore Secretariats were instituted for a period of one year (Article 22 of the ACT). In practice, "[…] the Pro Tempore Secretariats were established in the country where the next ACC regular meeting was scheduled […]" (Garcia, 211, p. 107). Venezuela's government emphasized that the Permanent Secretariat should be "auxiliary to the MMFA and ACC, with functional and administrative autonomy, but should not function as a political organ" (idem, p. 109). It was not a consensus among the parties.
Garcia (2011) mentions that ACTO opened new possibilities for regional cooperation with more institutional stability after the Organization's headquarter was established in Brasília, Brazil. Besides that, ACTO has legal personality to enter into "[…] agreements

[48] The Permanent Secretariat was created through RES/V MRE-TCA, see Garcia (2011, p. 109).

with member countries, third parties [others sovereignty States outside the treaty], and international organizations in conformity with specific mandates conferred on it by the MMFA and the ACC […]" (Garcia, 2011, p. 111). The legal personality conferred authority to ACTO to sign agreements with non-state actors but there is nothing about this in the official documents.

The new ACTO institutional structure was approved in 2002 at the Seventh MMFA and from now on is headed by a secretary-general who is a national of one of the member states, unanimously elected by a MMFA for a three-year period, and the "[…] ACTO permanent Secretariat has a directive board formed by the secretary-general and an administrative director […]". (Garcia, 2011, p. 111).

In a more salient sign of intergovernmentalism around ACTO, "[…] Brazil suggested at the Third Meeting of the Ad Hoc Working Group on the Establishment of a Permanent Secretariat at ACTO in 1996 the creation of a consultative organ auxiliary to the Permanent Secretariat responsible for the coordination among the governments and the ACT's institutional bodies […]". The idea behind the Brazilian suggestion was to improve coordination among parties and the hierarchy of the Treaty, but the other members welcomed the proposal only if this new organ would have "[…] consultative and liaising functions without any decision-making power […]". Governments did not accept anybody with political functions and the decision-making would have always be in the hands of the parties. The Coordination Commission was created in 2000 with the acronym of CCOOR (Garcia, 2011, p. 112)[49].

After more than two decades, the majority of the "[…] projects approved by the ACTO's Special Commissions have not been executed […]"[50]. Regarding Permanent National Commissions, they have not been operative. The reason was the "[…] excessive number of projects approved by the Special Commissions without required technical and financial capacity, the institutional weaknesses of the Pro Tempore Secretariats and the lack of financial resources […]" (Garcia, 2011, p. 121). "The obligation to submit national reports on conservation measures taken by each of the parties in the management of

[49] "The CCOOR is "[…] a consultive organ auxiliary to the ACC, composed of diplomatic officers of each country´s diplomatic representations in Brasília. It monitors the planning of functioning of the Permanent Secretariat, evaluates activities carried out by ACTO, and prepare recommendations to ACC […]" and has discussed "[…] issues related to the Permanent Secretariat's administration and personnel, including staff travel expenses, salary policy and scales, and the evaluation of applications for vacant posts […]" (Garcia, 2011, p. 112).

[50] "Cotribuciones para la Definición de una Propuesta de Trabjo Técnico para la Organización del Tratato de Cooperación Amazónica" (Garcia, 2001, p. 113).

species of fauna and flora, envisaged in Article 7(b) has never been met." (Garcia, 2011, p. 124). The Treaty was also ignored by policy-makers in their parliament positions in each country. The Treaty was rarely or never considered and "[…] has not been mentioned in the jurisprudence of the Brazilian federal courts […]" (Garcia, 2011, p. 113.). In order to cope with this situation, the Permanent Secretariat requested a strategic plan for the period of 2004-2012 with more focused actions on specific issues[51]. The plan "[…] identifies four 'strategic axes' and six 'programmatic areas'. 'Conservation and sustainable use of biodiversity' was one of the axes, as well as "biological diversity, biotechnology, and biotrade' (Garcia, 2011, p. 114). For the first time the biodiversity was part of a strategic intergovernmental plan to tackle the Amazon loss of fauna and flora.

In parallel, since 2003 "ACTO´s Permanent Secretariat has signed technical cooperation agreements and understandings with other international organizations in areas such as waterways, forests and biodiversity. In general, projects carried out by ACTO are financed by international organizations and governments, some of them with regional scope and the so-called "demonstration projects" implemented in particular countries (Garcia, 2011, p. 114). 'Joint declarations' or 'joint positions' first occurred at the Fifth Session of the United Nations Forum on Forests (UNFF) in 2005, and ACTO parties were recognized as a block identified as the "Amazon Group" in negotiations. The same happened before the Ninth Conference of the Parties to the 1992 Convention on Biological Diversity with the "Bonn Report" and with the declaration signed by the head of states in the United Nations Framework Convention on Climate Change (UNFCCC) COP 15 in Copenhagen (Garcia, 2011, p. 115-116, 120).

With regards to ABS, legislation varies greatly across countries and barely touches upon the issue regulated by the Nagoya Protocol. The implications for ABS are highly dependable on the national regulations towards the use of genetic resources and the sharing of benefits with the affected social groups. In order to achieve this, collaboration with NGOs and the private sector is vital, as addressed in Chapter 4 and 5. Both Brazil and Peru have been the countries with noticeable advancements in terms of regulating ABS in their territories. However, Peru has ratified the Protocol; Brazil has not done so yet. Considering that the ABS agenda was founded along with the entry into force of the CBD, a considerable amount of parallel initiatives have been designed and put into

[51] See the document "Lineamientos Estratégicos para la Organzación Del Tratado de Cooperación Amazónica", Garcia (2011, p. 113).

practice by non-state actors throughout the years. Table 2 summarizes the ABS National Structure set up by the eight ACTO countries. The intention is to provide evidence on the development of a structure to put ABS measures into practice as a response to (1) the ratification or (2) the non-ratification of the Nagoya Protocol. As observed, all the countries have established an ABS NFP – generally the Ministry of Environment – since they are all CBD parties, which is an ex-ante condition. However, when it comes to analyzing each country, Brazil and Peru stand out as being the ones with the most advanced ABS national apparatus, with special emphasis to Peru, a Nagoya Protocol Party since 2014. At the same time, Brazil has been able to build a national structure despite being a non-party.

Table 2: ABS National Structure	Bolivia*	Brazil	Colombia	Ecuador	Guyana*	Peru*	Suriname	Venezuela
ABS National Focal Point (NFP)	1	1	1	1	1	1	1	1
Competent National Authorities (CNA)	0	1	0	0	0	1	0	0
Legislative, administrative or policy measures on access and benefit-sharing (MSR)	0	1	0	0	0	1	0	0
National Databases and Websites (NDB)	0	0	0	0	0	1	0	0
Checkpoints (CP)	0	0	0	0	0	1	0	0
Internationally Recognized Certificates of Compliance (IRCC)	0	0	0	0	0	0	0	0
Checkpoint Communiqués (CPC)	0	0	0	0	0	0	0	0
Interim National Report on the Implementation of the Nagoya Protocol (NR)	0	0	0	0	0	0	0	0

Source: ABS Clearing House, 2017. Available at https://absch.cbd.int/ (access: February 10th, 2017).

*Nagoya Protocol Party.

Bolivia has recently become a member to the Protocol and has no specific regulation towards ABS so far. Brazil passed a legislation on ABS in 2015. Colombia and Ecuador regulate the access of genetic resources, but does not offer a specific legislation for the sharing of benefits arising from their utilization. Guyana, Suriname and Venezuela have legislation for ABS whatsoever. Peru has pioneered public regulations that address ABS in its various domains and "competes" with Brazil in this regard. Besides, as noticed in the graphs about data contribution (Annex I), it is clear that most of the OTCA countries are not responsible for producing their own scientific knowledge involving biological diversity, with Brazil and Colombia being the exceptions.

Conclusion

Much needs to be done to make ACTO effective. It's necessary to create more precise legal obligations, and stronger mechanisms and institutions, as well as cooperation mechanisms at the local level. In practice, the Treaty has not been able to address common problems, such as deforestation. More biding instruments are needed in order to enforce and implement the decisions and to go beyond declarations and joint positional diplomatic documents. Garcia (2011) calls for negotiations on common criteria and indicators for the management of the Amazon forests as well as norms related to commercial navigation and pollution of the Amazon rivers. "[…] the ACTO should be strengthened to help in attaining further cohesion and effectiveness in the efforts to protect the Amazon […]", but parties have never created any instrument to do so. Quite the opposite, member states avoid costs to delegate powers to a body with decision-making functions that are beyond the sovereignty of each country, such as transnational actors. It is not just a problem of financial and human resources, and strong political support, it is a characteristic of the institutional design.

ACTO was designed intentionally to not deliver some functions as some could be perceived as a threat to national sovereignties (Garcia, 2011). Just by reading the Articles of the ACTO, it is clear that the Treaty "[…] should not in any way supersede their national institutions and should only address matters of common interest, without interfering in any way in their domestic affairs.". This concern was ultimately reflected in Article 4, which states that the exclusive use of natural resources by sovereign states. As the environment and the use of biodiversity is a global issue, it becomes clear that agreements based on the sovereignty of states are not ideal for biodiversity governance.

Annex I - OTCA Countries' Legislations on Biological Diversity

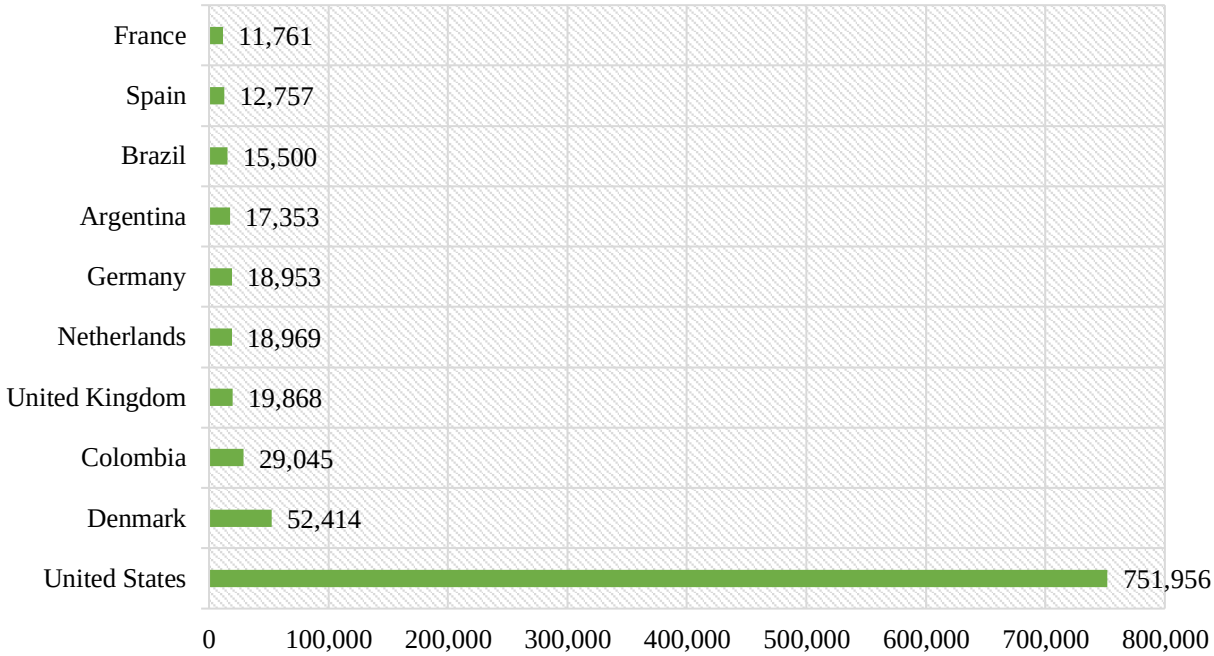
A comprehensive list of ACTO countries' legislations on biodiversity follows. The aim is not to provide an instrument to compare legislations, but rather to list the state-of-the-art public
regulations on biodiversity.

Plurinational State of Bolivia

Bolivia is one of the eight countries that share the Amazon Rainforest and is home to a rich biological diversity. Despite not being officially listed as a megadiverse country[52], many new species have been reported in the past years which underpins the country's status as biologically diverse, even though only a limited number of studies regarding its biodiversity has been carried out by nationals so far. According to the Global Biodiversity Information Facility (GBIF)[53], an open-access database hosted by the CBD, no institution in Bolivia made information on biodiversity available in the platform. Most of the data about the Bolivian biodiversity is produced by researchers from other countries, as observed in Graph 1.Given that data availability is vital to advance the biodiversity agenda (Global Biodiversity Outlook 4, 2015), this could mean that the lack of national studies on biodiversity may hinder not only Bolivia, but also other countries from pursuing the CBD goals and from achieving the Aichi Targets.

[52] As of 2002, the Cancun Declaration of Like-Minded Megadiverse Countries established the group of countries whose biological diversity represents around 70% of the world's total biodiversity. This classification is widely used and recognized by the United Nations Environment Programme (UNEP) and by the World Conservation Monitoring Centre (WCMC).
[53] Global Biodiversity Information Facility (GBIF). http://www.gbif.org/.

Graph 1 - Top Data Contributors about Biodiversity in Bolivia



Source: GBIF, 2016. Available on www.gbif.org (access: January 24th, 2017).

According to the Secretariat of the CBD (2017), the main threat to biodiversity in Bolivia is agriculture, mainly due to the production of monocultures for export, such as soybean, and extensive livestock (beef) production. Other anthropogenic threats include poaching, illegal logging, extraction, sale or trafficking of wildlife species, the burning of grasslands, extraction of species that exist in restricted or isolated habitats or whose populations are fragmented with a low level of connectivity and low genetic variability, loss of food resources due to competition in hunting livestock breeding and commercial fishing.

Climate change in Bolivia could have severe impacts on biodiversity, especially in the high Andean plain where an ongoing process of rapid desertification is taking place due to reduced precipitation and increased variability in temperature. In contrast, the greatest threat to biodiversity in lowland areas is the expansion of the agricultural frontier (Bolivia's Fifth National Report, 2015).

Bolivia has been a CBD Party since January, 1995 and a Nagoya Protocol Party since early January, 2017.A few Decrees and Laws that have been issued and passed throughout the years reinforce the country's willingness to implement the CBD:

1. Supreme Decree No. 25.158 - Rules for the organization and operation of the National Service for Protected Areas[54];
2. Supreme Decree Nº 25.929 - Creates the Commission for the modification and complementation of laws and norms related to biodiversity[55];
3. Supreme Decree No. 26.556 - Approves the National Strategy for the Conservation and Sustainable Use of Biodiversity[56];
4. Supreme Decree No. 27.904 - Creates the Permanent National Commission for the Amazon[57];
5. Supreme Decree No. 443 - Creates the National Forestry and Reforestation Program[58];
6. Law No. 300 - Framework for Mother Earth and Integral Development to Live Well[59].

Bolivia has just become a Party to the Nagoya Protocol. For this reason, the national structure to actually implement the Protocol is in its early stages. The country already has an ABS National Focal Point (NFP) around which the information on ABS is centered.Ibisch (2005) points out that Bolivia's National System of Genetic Resources was mainly initiated through the activities of the NGO Fundación Amigos de la Naturaleza (FAN). This sort of initiative will be further detailed in the Chapter focused on ABS.

Brazil

Countless publications regard Brazil as the most biologically diverse country in the world (Brazil's Fifth National Report, 2015).Brazil has been a CBD Party since 1994, but has not ratified the Nagoya Protocol so far. Among the countries that are part of the OTCA, Brazil is notably the Party whose public regulations on biodiversity are the most advanced, along with a constellation of initiatives designed and implemented not only by

[54] Decreto Supremo Nº 25.158 - Normas de organización y funcionamientodelServicio Nacional de Areas Protegidas (01/01/1998).
[55] Decreto Supremo Nº 25.929 - Crea Comisión para lamodificación y complementación de leyes y normas referidas a labiodiversidad (01/01/2000).
[56] Decreto Supremo Nº 26.556 - ApruebalaEstrategia Nacional de Conservación y Uso Sostenible de laBiodiversidad (01/01/2002).
[57] Decreto Supremo Nº 27.904 - Crea laComisión Nacional Permanente de laAmazonía (01/01/2004).
[58] Decreto Supremo Nº 443 - Crea el Programa Nacional de Forestación y Reforestación (01/01/2010).
[59]Ley No. 300 Marco de la Madre Tierra y Desarrollo Integral para VivirBien (15/10/2012).

the government, but also by NGOs, local communities and the private sector. According to the CBD (2017), Brazil's Ministry of Environment identified 550 legal instruments in 2009 that are related to the implementation of the global biodiversity targets at the local, regional and national levels.

The Brazilian environmental legislation originated in the early 1980s, when a complex system of authorizations to operate in forest areas overlapped with public executive bodies, such as the Brazilian Institute of Environment and Renewable Resources[60], and enforcement institutions (secretaries and councils) at the local, municipal, regional and federal levels under the Ministry of Environment[61].InB razil, forest areas are protected by the government, and the extractionactivity cannot take place in reserves and national parks.

Brazil is the OTCA country which has developed the most advanced legal apparatus to regulate the various dimensions of biodiversity in its territory. The following list enumerates various legislations since early 1990s[62].

1. Law No. 6.884 - Regulation of State Forests and Protected areas[63];
2. Decree No. 1.354 – Creation of the National Program of Biodiversity[64];
3. Decree No. 2.519 on the 1992 Convention on Biological Diversity signed in Rio de Janeiro[65];
4. Decree No. 3.420 – Creation of the National Forestry Program[66];
5. Law No. 9.985 – Establishment of the National System for the Management of Protected Areas[67];

[60] Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis (IBAMA).
[61] Ministério do Meio Ambiente (MMA).
[62] As opposed to other OTCA countries, the creation of a list was considered the best option to outline Brazil's numerous public regulations on biodiversity. The information is made available by the United Nations Information Portal on Multilateral Environmental Agreements (InforMEA).
[63] Lei N° 6.884 - Dispõe sobre os parques e florestas estaduais, monumentos naturais e dá outras providências (29/08/1962).
[64] Decreto Nº 1.354 - Institui, no âmbito do Ministério do Meio Ambiente e da Amazônia Legal, o Programa Nacional da Diversidade Biológica, e dá outras providências (29/12/1994).
[65] Decreto Nº 2.519 - Promulga a Convenção sobre Diversidade Biológica, assinada no Rio de Janeiro, em 05 de junho de 1992 (16/03/1998).
[66] Decreto Nº 3.420 - Dispõe sobre a criação do Programa Nacional de Florestas (PNF), e dá outras providências (20/04/2000).
[67] Lei N° 9.985 - Regulamenta o Art. 225, incisos I, II, III e VII da Constituição Federal, institui o Sistema Nacional de Unidades de Conservação da Natureza (SNUC) e dá outras providências (18/07/2000).

6. Decree No. 4.339 – Establishment of principles and guidelines for the implementation of the National Policy on Biodiversity[68];
7. Decree No. 4.340 – Implementationof the Act No. 9.985 that regulates the National System for Protected Areas[69];
8. Decree No. 4.703 on the National Program on Biological Diversity and on the National Commission on Biodiversity[70];
9. Decree No. 5092 on priority areas for the conservation, protection and sustainable use of biodiversity[71];
10. Norm No. 34 - Regulation of the baselines and procedures for assessing the state of conservation of the Brazilian fauna[72];
11. Decree No. 5.813 – Approval of the National Policy for Medical Plants[73];
12. Law No. 11.428 on the use and protection of Atlantic Forest[74];
13. Law No. 11.516 on IBAMA and Chico Mendes Institute[75];
14. Decree No. 6.043 - Amending of Decree No. 4.703 on the National Program for Biological Diversity and the National Commission on Biodiversity[76];
15. Decree No. 6.527 – Creation of the Amazon Fund established by the National Bank for Economic and Social Development[77];

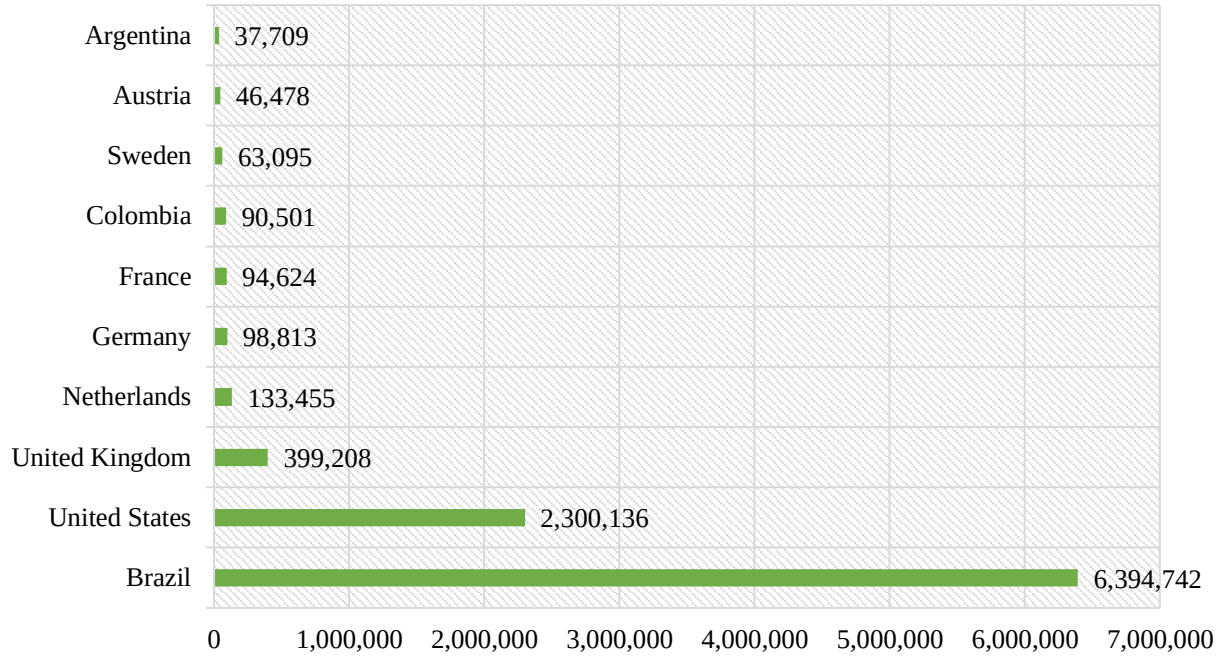
[68] Decreto Nº 4.339 - Institui princípios e diretrizes para a implementação da Política Nacional da Biodiversidade (22/08/2002).
[69] Decreto Nº 4.340 - Regulamenta artigos da Lei nº 9.985, de 18 de julho de 2000, que dispõe sobre o sistema nacional de unidades de conservação da natureza - SNUC, e dá outras providências (22/08/2002).
[70] Decreto Nº 4.703 - Dispõe sobre o Programa Nacional da Diversidade Biológica (PRONABIO) e a Comissão Nacional da Biodiversidade, e dá outras providências (21/05/2003).
[71] Decreto Nº 5.092 - Define regras para identificação de áreas prioritárias para a conservação, utilização sustentável e repartição dos benefícios da biodiversidade, no âmbito das atribuições do Ministério do Meio Ambiente (21/05/2004).
[72] Instrução Normativa No. 34 - Disciplina as diretrizes e procedimentos para a Avaliação do Estado de Conservação das Espécies da Fauna Brasileira, a utilização do sistema ESPÉCIES e a publicação dos resultados, e cria a Série Fauna Brasileira (17/10/2005).
[73] Decreto Nº 5.813 - Aprova a Política Nacional de Plantas Medicinais e Fitoterápicos e dá outras providências (22/06/2006).
[74] Lei Nº 11.428 - Dispõe sobre a utilização e proteção da vegetação nativa do Bioma Mata Atlântica, e dá outras providências (22/12/2006).
[75] Lei Nº 11.516 - Dispõe sobre a criação do Instituto Chico Mendes de Conservação da Biodiversidade – Instituto Chico Mendes; altera as Leis Nºs 7.735, de 22 de fevereiro de 1989, 11.284, de 2 de março de 2006, 9.985, de 18 de julho de 2000, 10.410, de 11 de janeiro de 2002, 11.156, de 29 de julho de 2005, 11.357, de 19 de outubro de 2006, e 7.957, de 20 de dezembro de 1989; revoga dispositivos da Lei Nº 8.028, de 12 de abril de 1990, e da Medida Provisória Nº 2.216-37, de 31 de agosto de 2001; e dá outras providências (28/08/2007).
[76] Decreto Nº 6.043 - Dá nova redação ao Art. 7o do Decreto No 4.703, de 21 de maio de 2003, que dispõe sobre o Programa Nacional da Diversidade Biológica (PRONABIO) e a Comissão Nacional de Biodiversidade (12/02/2007).
[77] Decreto Nº 6.527 - Dispõe sobre o estabelecimento do Fundo Amazônia pelo Banco Nacional de Desenvolvimento Econômico e Social (BNDES) (01/08/2008).

16. Decree No. 6.915 – Regulation of the Provisional Measure 2186/16 on Biodiversity[78];
17. Decree No. 7.353 – Amendment of the composition and duties of IBAMA and Chico Mendes Institute[79];
18. Law No. 12.727 - Amendment of the Law No. 12.651 on the protection of Native Forests[80];
19. Law No. 12.651 on the protection of Native Forests[81];
20. Decree No. 8.505 on the Program for Protected Areas in the Amazon established under the Ministry of Environment[82];
21. Law No. 13.123 – Regulation of the Decree No. 2.519 on the access to genetic resources, protection and access to associated traditional knowledge and the sharing of benefits for conservation and sustainable use of biodiversity[83];

When it comes to scientific production, Brazil is responsible for producing most of its data on national biodiversity, as can be observed in the following chart.

[78] Decreto Nº 6.915 - Regulamenta o Art. 33 da Medida Provisória Nº 2.186-16, de 23 de agosto de 2001 (29/07/2009).
[79] Decreto Nº 7.353 - Dispõe sobre o remanejamento dos cargos em comissão do Grupo-Direção e Assessoramento Superior (DAS); altera os Anexos II aos Decretos Nºs 6.099 e 6.100, ambos de 26 de abril de 2007, que aprovam respectivamente, as Estruturas Regimentais e os Quadro Demonstrativos dos Cargos em Comissão e das Funções Gratificadas do Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis (IBAMA) e do Instituto Chico Mendes de Conservação da Biodiversidade; e dá outras providências (04/11/2010).
[80] Lei Nº 12.727 - Altera a Lei Nº 12.651, de 25 de maio de 2012, que dispõe sobre a proteção da vegetação nativa; altera as Leis Nºs 6.938, de 31 de agosto de 1981, 9.393, de 19 de dezembro de 1996, e 11.428, de 22 de dezembro de 2006; e revoga as Leis Nºs 4.771, de 15 de setembro de 1965, e 7.754, de 14 de abril de 1989, a Medida Provisória Nº 2.166-67, de 24 de agosto de 2001, o item 22 do inciso II do Art. 167 da Lei Nº 6.015, de 31 de dezembro de 1973, e o § 2o do Artº. 4 da Lei Nº 12.651, de 25 de maio de 2012 (17/10/2012).
[81] Lei Nº 12.651 - Dispõe sobre a proteção da vegetação nativa; altera as Leis nºs 6.938, de 31 de agosto de 1981, 9.393, de 19 de dezembro de 1996, e 11.428, de 22 de dezembro de 2006; revoga as Leis nºs 4.771, de 15 de setembro de 1965, e 7.754, de 14 de abril de 1989, e a Medida Provisória nº 2.166-67, de 24 de agosto de 2001; e dá outras providências (25/05/2012).
[82] Decreto Nº 8.505 - Dispõe sobre o Programa Áreas Protegidas da Amazônia, instituído no âmbito do Ministério do Meio Ambiente (20/08/2015).
[83] Lei Nº 13123 - Regulamenta o inciso II do § 1° e o § 4º do Art. 225 da Constituição Federal, o Artigo 1, a alínea j do Artigo 8, a alínea c do Artigo 10, o Artigo 15 e os §§ 3º e 4º do Artigo 16 da Convenção sobre Diversidade Biológica, promulgada pelo Decreto Nº 2.519, de 16 de março de 1998; dispõe sobre o acesso ao patrimônio genético, sobre a proteção e o acesso ao conhecimento tradicional associado e sobre a repartição de benefícios para conservação e uso sustentável da biodiversidade; revoga a Medida Provisória Nº 2.186-16, de 23 de agosto de 2001; e dá outras providências (20/05/2015).

Graph 2 - Top Data Contributors about Biodiversity in Brazil



Source: GBIF, 2016. Available on www.gbif.org (access: January 24th, 2017).

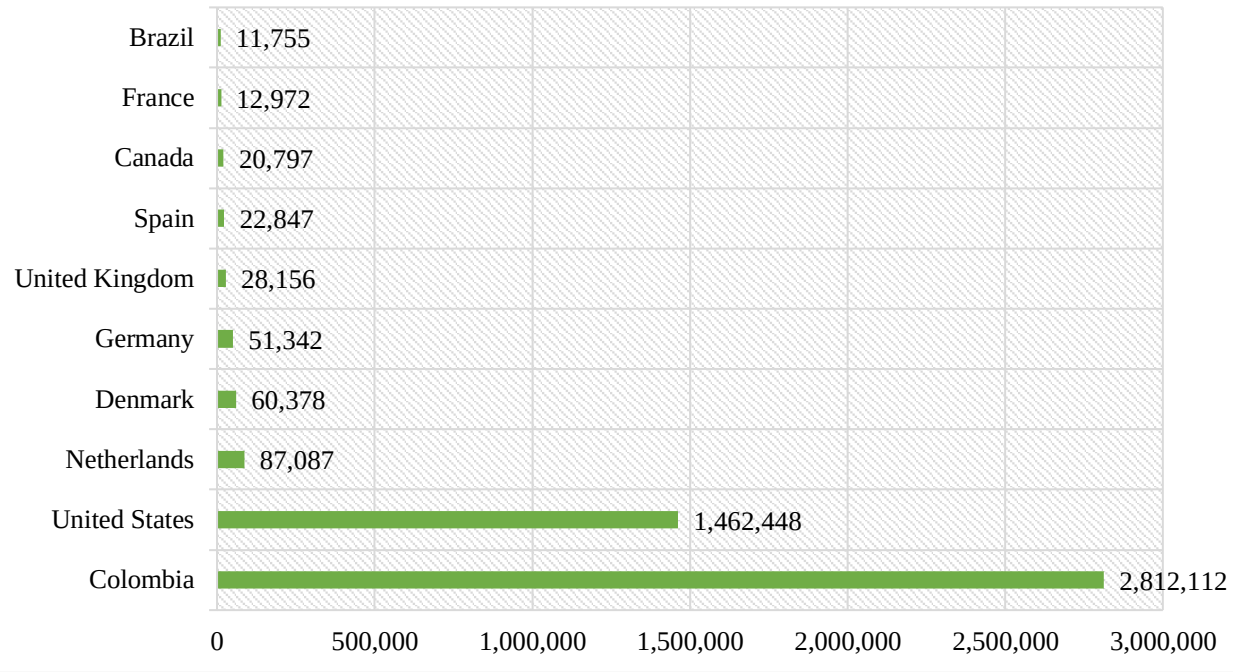
This could mean that national policies on biodiversity could be better implemented given the amount of scientific knowledge about biodiversity that is produced by the country. At the same time, this could also be a cause for having various legislations on biodiversity as demonstrated previously.

According to Brazil's Fifth National Report (2015), the main threats to biodiversity are fragmentation and loss of habitats, introduction of alien species, overexploitation of plants and animals, use of hybrids and monoculture in agroindustry, especially commodities, cattle raising, pollution and climate change. Habitat loss is by far the most significant cause driving species towards threatened status.

Colombia

Colombia is a CBD Party since 1995, but is not a Nagoya Protocol Party. Yet, the country hosts a rich biological diversity in its territory, placing it in the list of megadiverse countries. According to the country's Fifth National Report(2015), it ranks first in bird and orchid species diversity and second in plants, butterflies, freshwater fishes and amphibians. Like Brazil, Colombia is responsible for producing most of the data on its national biodiversity.

Graph 3 - Top Data Contributors about Biodiversity in Colombia



Source: GBIF, 2016. Available on www.gbif.org (access: January 24th, 2017).

The country has several areas of high biological diversity in the Andean ecosystems, with a significant variety of endemic species, followed by the Amazon Rainforest and the humid ecosystems in the Chocó biogeographical area. This biological diversity represents a significant challenge for implementing sustainable development initiatives. However, a considerable part of these natural ecosystems has been transformed for agriculture, primarily in the Andean and Caribbean regions. It has been estimated that almost 95% of the country's dry forests have been reduced from their original cover (Colombia's Fifth National Report, 2015).

Still according to the National Report (2015), the main threats to the conservation of biodiversity include increasing social inequality; internal armed conflict; the illegal drug trade; implementation of extensive livestock and agricultural practices. Such factors contribute to habitat degradation, changes in land use, increased presence of invasive species, climate change, overconsumption of services and pollution. There are intrinsic elements that threaten biodiversity protection in Colombia, some of which include a lack of political priority of environmental issues in national and sectorial policies, undesired effects of macroeconomic policies, conflict with indigenous rights and traditional

knowledge, and conflicts due to a lack of coordination regarding land-use planning that takes place at various state levels (Colombia's Fifth National Report, 2015).

The following list represents Colombia's national legislations on biodiversity in its various domains.

1. Decree No 622 - Partially regulates Decree Law No 2.811 of 1974 on the National Park System and Law No. 2 of 1959[84];
2. Decree No. 1.059 - Creates the Coordinating Committee for the formulation of the National Biodiversity Strategy[85];
3. Law No. 99 - Creates the Ministry of Environment and Renewable Natural Resources and organizes the National Environmental System[86];
4. Decree No. 1.397 - Creates the National Commission of Indigenous Territories and the Permanent Board of Agreement with the Indigenous Peoples and Organizations[87];
5. Decree No. 888 - Regulates the operation and administration of the Environmental Fund for the Amazon[88];
6. Decree No. 337 - Provisions on natural resources used in pharmaceutical compounds[89];
7. Decree No. 309 - Regulates scientific research on biodiversity[90];
8. Resolution No. 438 - Establishes the national safe-conduct for the mobilization of specimens from the biological diversity[91];
9. Decree No. 302 - Modifies Decree No. 309, which regulates scientific research on biological diversity[92];

[84] Decreto Nº 622 - Reglamenta parcialmente el Decreto Ley Nº 2.811 de 1974 sobre el Sistema de Parques Nacionales y laLey Nº 2 de 1959 (16/03/1977).
[85] Decreto Nº 1.059 - Crea el Comité coordinador para laformulación de laestrategia nacional de biodiversidad (07/06/1993).
[86]Ley Nº 99 - Crea elMinisteriodelMedio ambiente y los recursos naturalesrenovables y se organiza el Sistema Nacional Ambiental (SINA) (22/12/1993).
[87] Decreto Nº 1.397 - Crea la Comisión Nacional de Territorios Indígenas y la Mesa Permanente de ConcertaciónconlosPueblos y Organizaciones Indígenas (08/08/1996).
[88] Decreto Nº 888 - Reglamentaelfuncionamiento y laadministracióndelFondo Ambiental de laAmazonía (FAMAZONICO) (31/03/1997).
[89] Decreto Nº 337 - Disposiciones sobre recursos naturalesuntilizadosenpreparacionesfarmacéuticas (17/02/1998).
[90] Decreto Nº 309 - Reglamentalainvestigación científica sobre diversidad biológica (29/02/2000).
[91] Resolución Nº 438 - Estableceelsalvoconducto único nacional para lamovilización de especímenes de ladiversidad biológica (23/05/2001).
[92] Decreto Nº 302 - Modifica el Decreto Nº 309, que reglamentalainvestigación científica sobre diversidad biológica (10/02/2003).

10. Decree No. 2.372 - Regulates the National System for Protected Areas, the management categories that compose it and the related general procedures[93];

11. Resolution No. 958 - Operation of the National Technical Biosafety Committee for Living Modified Organisms for environmental purposes only[94];

12. Resolution No. 75 - Conservation objectives of the 56 protected areas of the Natural National Parks System[95];

13. Resolution No. 1.517 - Manual for the Allocation of Compensations for Biodiversity Loss[96];

14. Resolution No. 1.090 - Guidelines for the issuance of national safe-conduct for the mobilization of specimens from the biological diversity (flora)[97];

15. Decree No. 1.375 - Regulates biological collections[98];

16. Decree No. 1.376 - Regulates the permit for the collection of specimens of wild species from the biological diversity for purposes of non-commercial scientific research[99];

17. Decree No. 3.016 - Regulates the permit for the collection of specimens of wild species from the biological diversity for the purpose of elaborating environmental studies[100];

18. Resolution No. 1.348 - Establishes the activities that provide access to genetic resources and their derived products[101];

19. Decree No. 1.076 - Regulatory Decree of the Environment and Sustainable Development Sector[102].

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[93] Decreto Nº 2.372 - Reglamentael Sistema Nacional de Áreas Protegidas (SINAP), lascategorías de manejo que loconforman y losprocedimientosgenerals (01/07/2010).

[94] Resolución Nº 958 - Funcionamientodel Comité Técnico Nacional de Bioseguridad para Organismos Vivos Modificados con fines exclusivamente ambientales (26/05/2010).

[95]Resolución Nº 75 - Objetivos de conservación de las 56 áreas protegidas del Sistema de Parques NacionalesNaturales (12/02/2012).

[96] Resolución Nº 1.517 - Manual para laAsignación de Compensaciones por Pérdida de Biodiversidad (16/09/2012).

[97] Resolución Nº 1.090 - Directrices para laexpediciónde lsalvoconducto único nacional para lamovilización de especímenes de ladiversidad biológica (flora) (17/06/2013).

[98] Decreto Nº 1.375 - Reglamentalascolecciones biológicas (27/06/2013).

[99] Decreto Nº 1.376 - Reglamentaelpermiso de recolección de especímenes de especies silvestres de ladiversidad biológica con fines de investigación científica no commercial (27/06/2013).

[100] Decreto Nº 3.016 - Reglamentaelpermiso de estudio para a recolección de especímenes de especies silvestres de ladiversidad biológica con fines de elaboración de estudiosambientales (27/12/2013).

[101] Resolución Nº 1.348 – Establece las actividades que configuran acceso a los recursos genéticos y sus productos derivados (30/08/2014).

[102] Decreto Nº 1.076 - Decreto Único Reglamentario del Sector Ambiente y Desarrollo Sostenible (26/05/2015).

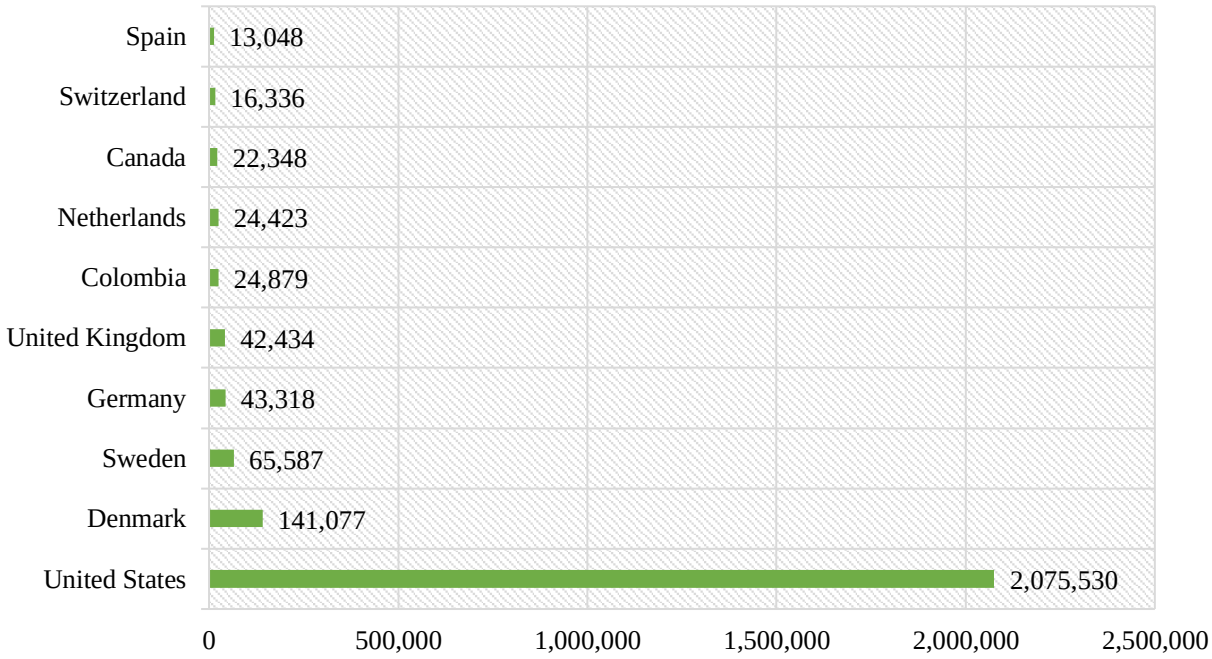
Ecuador

Ecuador is also in the list of megadiverse countries. According to the country's Fifth National Report (2015), the diversity is due to its location in the tropics, the presence of the Andes and the influence of the ocean's currents on its coasts. It is divided into four well-defined natural geographical zones: coast, mountain range, the Amazon and the Galapagos Islands.

The main threat to biodiversity conservation in Ecuador is deforestation, which ranks the country as the second among Latin American countries with the highest levels of deforestation. Firewood collection, urban expansion, agriculture, mining, fishing, overexploitation of natural resources, poverty, human migrations, tourism development, and alien species are other important factors that jeopardize the country's biological diversity.

When it comes to available data on biodiversity, Ecuador is not even among the top ten contributors according to GBIF (2016). The United States stands out in the amount of input provided to the platform with regards to biodiversity in Ecuador, as shown in the following chart.

Graph 4 - Top Data Contributors about Biodiversity in Ecuador



Source: GBIF, 2016. Available on www.gbif.org (access: January 24th, 2017).

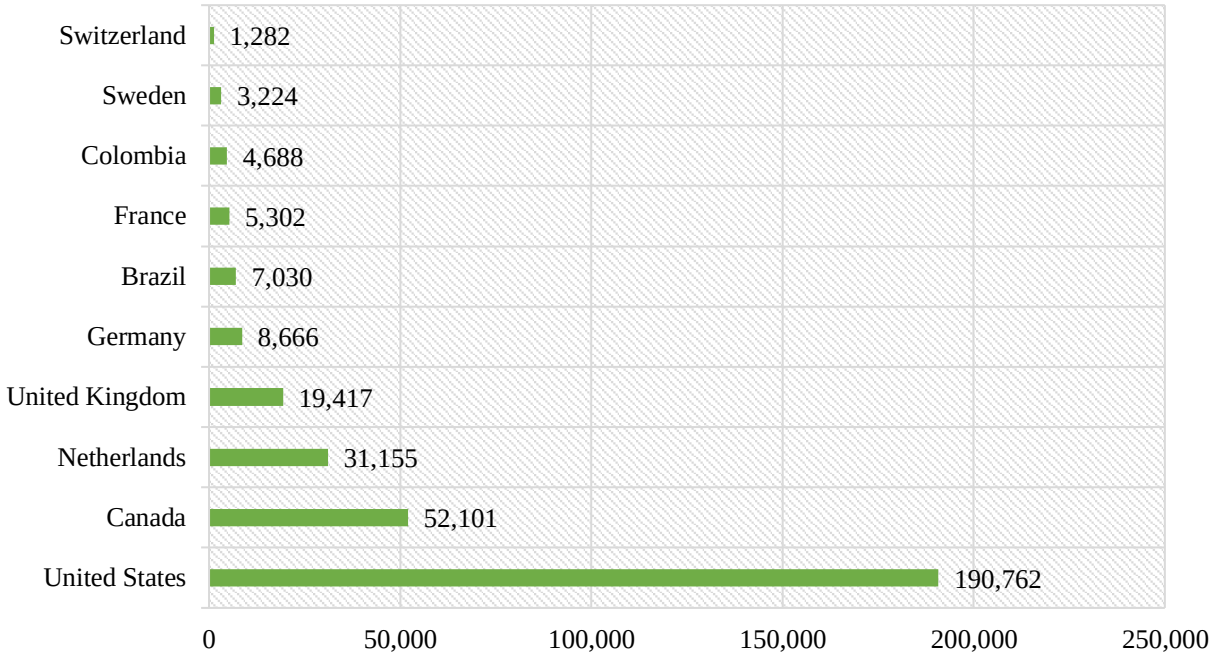
1. Agreement No. 121 - Internal Regulations of the Permanent Ecuadorean Commission for Amazonian Cooperation. (21/02/1979)[103];
2. Resolution No. 50 - Recognizes the official red books of endangered species in Ecuador[104];
3. Law No. 10 - Law of the Fund for the Amazon Regional Ecodevelopment[105];
4. Law No. 3 - Law that promotes the protection of biodiversity (01/01/1996)[106];
5. Decree No. 3.399 - Issue the Unified Text of the Secondary Legislation of the Ministry of Environment[107];
6. Decree No. 2.232 - National Biodiversity Strategy[108];
7. Agreement No. 168 - Recognition of biosphere reserves designated by competent bodies (13/11/2008)[109];
8. Agreement No. 64 - Andean Ecosystem Policy of Ecuador[110];
9. Decree No. 905 - National Regulations to the Common Regime on Access to Genetic Resources[111];
10. Agreement No. 99 - Creates the Public Registry of Solicitants for Access to Genetic Resources[112].

Guyana

With approximately 85% of its total land area being covered by forest (18.5 million hectares), the country presents a very low deforestation rate of less than 1%. However, Guyana's biodiversity is understudied and most of the data available comes from sources in the United States (GBIF, 2016), as observed in the following chart.

[103]Acuerdo Nº 121 - Reglamento Interno de la Comisión Ecuatoriana Permanente de Cooperación Amazónica (CEPCA) (21/02/1979).
[104]Resolución Nº 50 – Reconocelos libros rojos oficiales de espécies amenazadas del Ecuador (19/08/2002).
[105]Ley Nº 10 - LeydelFondo para el Ecodesarrollo Regional Amazónico (ECORAE) (11/09/1992).
[106]Ley Nº 3 - Ley que protege labiodiversidad (01/01/1996).
[107] Decreto Nº 3.399 - Expideel Texto Unificado de laLegislación Secundaria del Ministerio del Ambiente (22/07/2002).
[108] Decreto Nº 2.232 - Estrategia Nacional de Biodiversidad (09/01/2007).
[109] Acuerdo Nº 168 - Reconocimiento de las reservas de biosfera designadas por organismos competentes (13/11/2008).
[110] Acuerdo Nº 64 - Política de Ecosistemas Andinos delEcuador (07/07/2009).
[111] Decreto Nº 905 - Reglamento nacional al Régimen común sobre acceso a los recursos genéticos (03/10/2011).
[112] Acuerdo Nº 99 - Crea el Registro Público de Solicitantes de Acceso a Recursos Genéticos (27/07/2012).

Graph 5 - Top Data Contributors about Biodiversity in Guyana



Source: GBIF, 2016. Available on www.gbif.org (access: January 24th, 2017).

Despite being a CBD Party since 1993 and a Nagoya Protocol Party since 2014, Guyana's public regulations on biodiversity are very limited and no concern about the use of genetic resources in terms of a specific regulatory framework has been translated into legislation so far.

1. Environmental Protection Act (1996)[113];
2. Forests Act 2009[114];
3. Protected Areas Regulations[115];

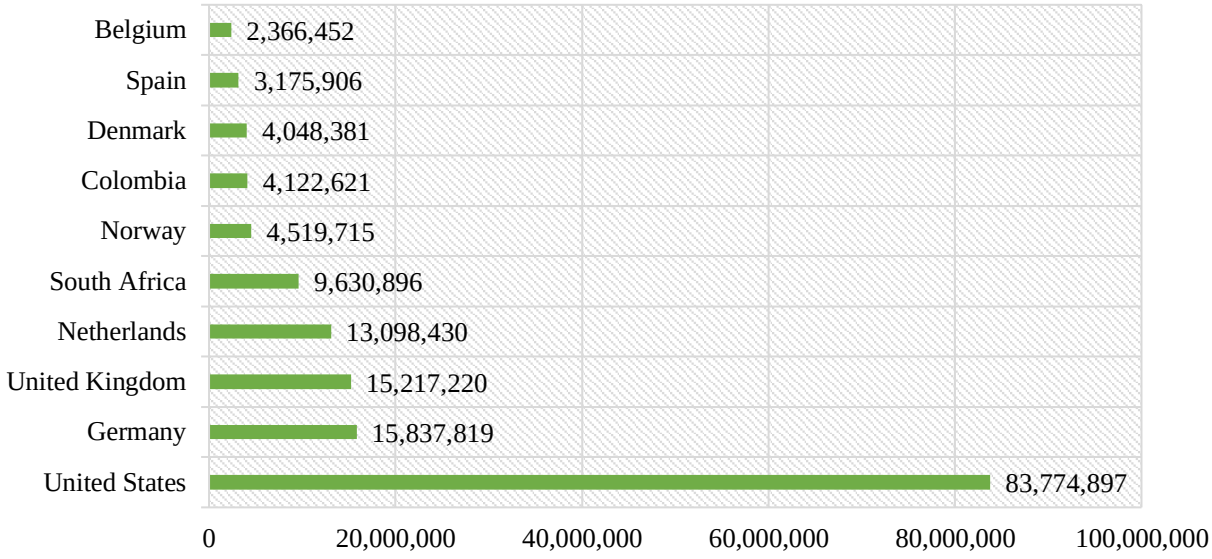
Peru

The country's Fifth National Report (2015) pointed out that biodiversity in Peru is increasing, with the numbers of species of wild flora and fauna having risen and currently totaling 20,585 and 5,585, respectively. However, most of the information about

[113] Environmental Protection Act (1996);
[114] Forests Act 2009 (No. 6 of 2009) (22/01/2009).
[115] Protected Areas (Board of Trustees Additional Members) Regulations (No. 3 of 2014) (10/01/2014).

biodiversity id provided by other countries, with special emphasis to the United States, as shown in Graph 5.

Graph 6 - Top Data Contributors about Biodiversity in Peru



Source: GBIF, 2016. Available on www.gbif.org (access: January 24th, 2017).

Peru is a CBD Party since 1993 and a Nagoya Protocol Party since 2014. Peru is one of the OTCA countries with the most developed legislations for biodiversity. However, according to its CBD (2017), the country has done little to tackle access and benefit-sharing since the ratification of the Nagoya Protocol. The ecosystems of greatest importance in the country are mountains, coastal hills located in the piedmont regions, rainforests, dry forests, followed by wetlands and moors. Plains ecosystems, particularly tropical forests, cover over 94% of the country's forest lands. These forests possess a high diversity of species of flora and fauna, including economically important resources, such as timber. The main threats are those of the advancement of the agricultural frontier, logging and hunting. Deforestation is also largely driven by road construction (Peru's Fifth National Report, 2015).

1. Law No. 26.839 - Law on conservation and sustainable use of biological diversity[116];

[116]Ley Nº 26.839 - Ley sobre conservación y aprovechamientosostenible de ladiversidad biológica (16/07/1997).

2. Supreme Decree No. 038/98/PCM - Determines that CONAM is the intersectoral coordination body for conservation and sustainable use of biological diversity[117];
3. Supreme Decree No. 010/99/AG - Master Plan for Natural Protected Areas[118];
4. Law No. 27.300 - Law for the sustainable use of medicinal plants[119];
5. Supreme Decree No. 038/01/AG - Regulation of the Law on Natural Protected Areas[120];
6. Supreme Decree No. 102/01 PCM - National Strategy for Biological Diversity in Peru[121];
7. Supreme Decree No. 014/01/AG - Regulates Law No. 27.308, Forestry and Wildlife Act[122];
8. Law No. 27.811 - Regime for the protection of collective knowledge of indigenous peoples linked to biological resources[123];
9. Law No. 28.216 - Law on the Protection of Access to Peruvian Biodiversity and Collective Knowledge of Indigenous Peoples[124];
10. Resolution No. 090/05/INRENA - Register of access to genetic resources[125];
11. Legislative Decree No. 1.090 - Forestry and Wildlife Law[126];
12. Resolution No. 087/08/MINAM - Regulation of access to genetic resources[127];
13. Supreme Decree No. 016/09/MINAM - Master Plan for Natural Protected Areas[128];
14. Supreme Decree No. 009/10/MINCETUR - Creates the National Commission for the Promotion of BioTrade[129];

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[117] Decreto Supremo Nº 038/98/PCM - Determina que el CONAM es la instancia de coordinación intersectorial sobre conservación y aprovechamiento sostenible de la diversidad biológica (19/08/1998).
[118] Decreto Supremo Nº 010/99/AG – Plan Director de las Areas Naturales Protegidas (04/1999).
[119] Ley Nº 27.300 - Ley de aprovechamiento sostenible de las plantas medicinales (08/07/2000).
[120] Decreto Supremo Nº 038/01/AG - Reglamento de la Ley de Áreas Naturales Protegidas (22/06/2001).
[121] Decreto Supremo Nº 102/01/PCM - Estrategia nacional de la diversidad biológica del Perú (02/09/2001).
[122] Decreto Supremo Nº 014/01/AG – Reglamenta la Ley Nº 27.308, Ley Forestal y de Fauna Silvestre (04/08/2001).
[123] Ley Nº 27.811 - Régimen de protección de los conocimientos colectivos de los pueblos indígenas vinculados a los recursos biológicos (21/07/2002).
[124] Ley Nº 28.216 - Ley de protección al acceso a la diversidad biológica peruana y a los conocimientos colectivos de los pueblos indígenas (31/04/2004).
[125] Resolución Nº 090/05/INRENA - Registro de acceso a recursos genéticos (29/04/2005).
[126] Decreto Legislativo Nº 1.090 - LeyForestal y de Fauna Silvestre (27/06/2008).
[127] Resolución Nº 087/08/MINAM - Reglamento de acceso a recursos genéticos (31/12/2008).
[128] Decreto Supremo Nº 016/09/MINAM - PlanDirector de lasAreasNaturales Protegidas (02/09/2009).
[129] Decreto Supremo Nº 003/11/AG - Reglamento interno sectorial sobre seguridad de labiotecnología (14/04/2011).

15. Law No. 29.763 - Forestry and Wildlife Act[130];

16. Supreme Decree No. 009/13/MINAGRI - National Forestry and Wildlife Policy[131];

17. Resolution No. 250/13/SERNANP - Certificate of origin for renewable natural resources, forest, flora and/or wildlife originated in Protected Natural Areas[132];

18. Resolution No. 368/14/MINAM - Operations Manual of the Program for the Knowledge and Conservation of Native Genetic Resources for Biosafety[133];

19. Supreme Decree No. 009/14 / MINAM – 20121 National Biodiversity Strategy and its 2014-2018 Plan of Action[134];

20. Resolution No. 409/14/MINAM - Guide to the Economic Valuation of Natural Heritage[135];

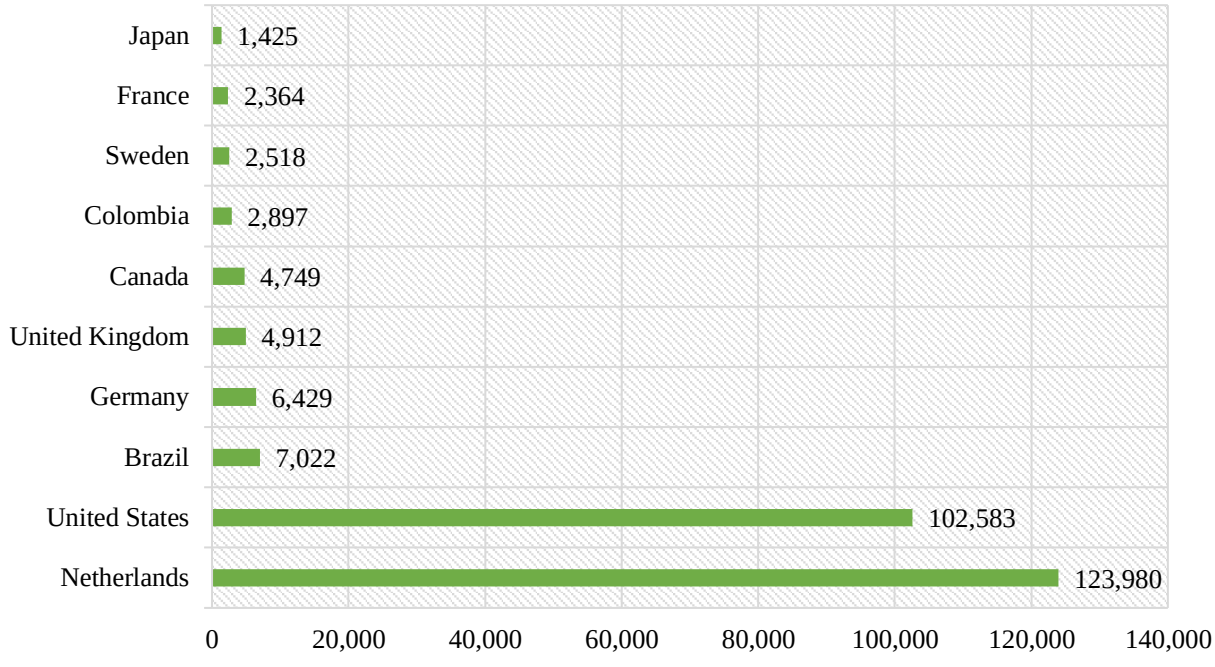
21. Supreme Decree No. 021/15/MINAGRI - Regulations for Forest and Wildlife Management in Native and Peasant Communities[136].

Suriname

Suriname has a forest cover of 94% of its national territory. The country is home to diverse ecosystems, but little information on them is available nowadays. Comparatively, Suriname data on biodiversity is mainly provided by other countries, with emphasis to the Netherlands and the United States. Mineral mining, the unsustainable use of mangrove forests, the presence of invasive species, illegal hunting and fisheries, and the illegal trade in biological diversity are among the threats to the country's biodiversity (Suriname's Fifth National Report, 2015).

[130] Ley Nº 29.763 - LeyForestal y de Fauna Silvestre (22/07/2011).
[131] Decreto Supremo Nº 009/13/MINAGRI - Política Nacional Forestal y de Fauna Silvestre (14/08/2013).
[132] Resolución Nº 250/13/SERNANP - Certificado de procedencia de los recursos naturales renovables, forestales, flora y/o fauna silvestre provenientes de Áreas Naturales Protegidas (26/12/2013).
[133] Resolución Nº 368/14/MINAM - Manual de operaciones del Programa para el Conocimiento y Conservación de los Recursos Genéticos Nativos con Fines de Bioseguridad (31/10/2014).
[134] Decreto Supremo Nº 009/14/MINAM - Estrategia Nacional de Diversidad Biológica al 2021 y su Plan de Acción 2014 – 2018 (06/11/2014).
[135] Resolución Nº 409/14/MINAM - Guía de Valoración Económica del Patrimonio Natural (29/12/2014).
[136] Decreto Supremo Nº 021/15/MINAGRI - Reglamento para la Gestión Forestal y de Fauna Silvestre en Comunidades Nativas y Comunidades Campesinas (10/2015).

Graph 7 - Top Data Contributors about Biodiversity in Suriname



Source: GBIF, 2016. Available on www.gbif.org (access: January 24th, 2017).

The country is a CBD Party since 1996, but is not a Nagoya Protocol Party. Therefore, the use of genetic resources from biodiversity still lacks specific national legislation. Only a few public regulations have been designed so far, and more recently the National Plan for Forest Cover Monitoring (2014-2018) has been implemented.

1. Nature Conservation Act 1954[137];
2. Forest Management Act of 1992[138].

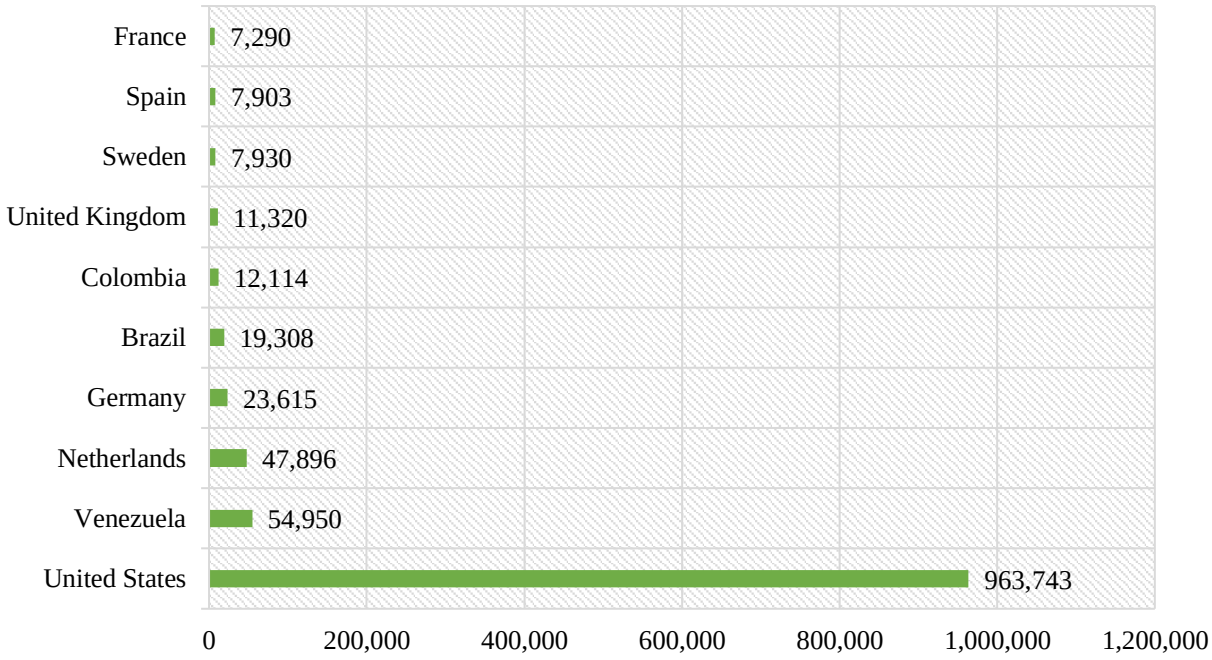
Bolivarian Republic of Venezuela

Venezuela is among the megadiverse countries given its rich biological diversity hosted in its national territory of which 52% is covered with tropical rainforest. The loss of biodiversity nationwide is subject of concern for the public authorities and a National Strategy for the Conservation of Biological Diversity (2010-2020)is being implemented, not only to combat biodiversity loss, but also to implement the objectives of the CBD provided that Venezuela is a Party since 1994 (Venezuela's Fifth National Report, 2015).

[137] Nature Conservation Act 1954 (03/04/1954).
[138] Forest Management Act of 1992 (18/09/1992).

The United States is by far the country that most produces data on the Venezuelan Biodiversity, followed by Venezuela. However, the gap between the two countries is enormous, as illustrated in the following graph.

Graph 8 - Top Data Contributors about Biodiversity in Venezuela



Source: GBIF, 2016. Available on www.gbif.org (access: January 24th, 2017).

1. Resolution No. 125 - Reassignment and decentralization of powers on the granting and control of authorizations related to the use of forest resources[139];
2. Law of biological diversity[140];
3. Organic Law of the Environment[141];
4. Decree Law No. 6.070/08 – Woods and Forest Management Law[142];
5. Law for the management of the biological diversity[143];
6. Resolution No. 80 - Creates the National Register of Biological Collections[144].

[139] Resolución Nº 125 - Reasignación y desconcentración de atribuciones sobre el otorgamiento y control de las autorizaciones relativas al aprovechamiento de los recursos forestales (09/12/2002).
[140] Ley de diversidad biológica (24/05/2000).
[141] Ley orgânica del ambiente (12/09/2006).
[142] Decreto Ley Nº 6.070/08 - Ley de Bosques y Gestión Forestal (05/06/2008).
[143] Ley de gestión de la diversidad biológica (01/12/2008).
[144] Resolución Nº 80 - Crea el Registro Nacional de Colecciones Biológicas (16/11/2009).

Venezuela is not a Nagoya Protocol Party, and unlike Peru shows no indication to develop specific national regulation on the matter for the time being.

Chapter 4

The Union for Ethical BioTrade (UEBT) as a Global Biodiversity Governor: A Bridge for Public-Private Partnerships

The main goal of this chapter is to contribute to the literature that discusses transnational environmental regulation and governance by analyzing UEBT as a global governor and/or a standard-setter in biodiversity governance. In order to achieve this, interviews were made during UEBT's 2018 "Beauty of Sourcing with Respect Conference" in Paris, France. Besides, documents available online were analyzed to compose the case study. The major contribution to the literature of international relations and political science is done through the introduction of new terms that help understand how non-state actors are capable of leading governance processes in a context of delegation (and other theoretical approaches), as discussed in Chapter 2.

Introduction

The UEBT aims at promoting, facilitating and recognizing the ethical sourcing of biodiversity in line with the public international regulation inaugurated by the Convention on Biological Diversity (CBD), the Nagoya Protocol, and the Sustainable Development Goals (SDGs). The Ethical BioTrade standard also mobilizes organizations and individuals committed to the ethical sourcing of biodiversity inputs (UEBT, 2019).

The context in which the transnational non-profit organization originated was marked by discussions over the commercialization of biodiversity inputs and related impacts. The United Nations Conference on Trade and Development (UNCTAD) launched in 1996 the BioTrade Initiative. BioTrade is associated with the collection, production, transformation, and commercialization of goods and services derived from biodiversity. At the same time, these foster environmental, social and economic sustainability (UNCTAD, 2019). The Initiative has supported the CBD as well as developed regional programs around the globe. Among them is the BioTrade Facilitation Programme (BTFP), which has been in place since 2003.The BioTrade Initiative focuses on the sustainable management of biodiversity, product development, as well as valuation and marketing goods and services that use biodiversity inputs (UEBT, 2019).

Before jumping into more details about why the UEBT can be considered a global biodiversity standard-setter, the theoretical framework through which this type of phenomena can be explained needs to be addressed. Environmental governance and regulation beyond the state has been a remarkable phenomenon specially over the past four decades (Hahn and Richards, 1989). This type of regulation is not primarily under the traditional 'command and control' of public entities whose mandates are applied to a defined sovereign territory and ensured by domestic laws and regulations (Biermann and Pattberg, 2012). Rather, the regulation of environmental affairs evades traditional borders and decision-making processes and is placed in a realm that is neither national nor international, but transnational. I highlight here the transnational arena where UEBT members make decisions in line with traditional intergovernmental multilateral processes through which the public domain of biodiversity regulation was created (Veiga and Zacareli, 2015).

There have been international efforts aimed at promoting sustainable development and biodiversity conservation through BioTrade more recently. Actually, the term BioTrade was not even mentioned in the CBD's text. Despite the fact that the CBD is largely responsible for fostering the biodiversity agenda worldwide, the term was first coined by UNCTAD in 1996 as part of a wider strategy to support the development of emerging economies by incentivizing the use of biodiversity inputs – the BioTrade Initiative. Needless to say, the initiative also raised questions regarding the sustainability of biodiversity inputs, that is, the limits of resource extraction that would be within what is considered as sustainably accepted. The challenge remains since the setting of a limit to extraction is mostly unclear. In the case of the UEBT, market forces have played an important role given that its member companies clearly operate in consideration of demands for natural resources used in supply chains (UEBT, 2019).

It is noticeable that market forces and trade have become central for the biodiversity agenda. This means that achieving biodiversity conservation goals entails finding the balance between resource extraction and development. Besides, given the myriad of actors involved in the biodiversity agenda, its governance is delegated to non-state actors once they relate to biodiversity more directly than state actors themselves, especially in the context where NGOs, the private sector and local communities are directly linked to biodiversity conservation efforts and natural resource extraction.

1. What is UEBT?

Anchored in the United Nations' Convention on Biological Diversity, the UEBT is considered a spin off of the United Nations, more specifically. The UEBT principles and criteria have taken up or adapted several principles from the Convention's articles and Protocols to ensure implementation by member companies. In 1992, countries adopted the Convention on Biological Diversity. In 1996, the UN Conference on Trade and Development (UNCTAD) launched the BioTrade Initiative to support the CBD's objectives. In 2007, the UEBT was born along with the aforementioned BioTrade Initiative to promote the engagement of companies in the ethical sourcing of biodiversity. In 2008, the UEBT formally began a relationship with the CBD's Secretariat. In 2015, the UEBT started to certify natural ingredients as well as initiated the UEBT/UTZ Herbal Tea Certification Program with the aim to protect biodiversity as well as create a better future for farmers and workers. In 2018, the UEBT ethical sourcing system certification began (UEBT, 2019).

The Union for Ethical BioTrade reflects major developments in International Relations and Political Science with regards to new forms of governance mechanisms through non-state-led processes. UEBT is a private body that complements the traditional public authority of biodiversity governance (Veiga e Zacareli, 2015). It is a non-profit "[…] business driven association committed to respect people and biodiversity […]", as defined by Rik Lojenga[145]. The business incentives of UEBT are quite similar to other private transnational bodies, such as multistakeholder initiatives and private certification schemes (such as the Forest Stewardship Council - FSC). However, there is a quite unique character to UEBT. It represents a clear case where the delegation of functions has occurred from a public international domain to a transnational private organism. It can be captured by the Memorandum of Understanding (MoU[146]) between CBD and UEBT. The delegation theory (Green, 2014) as discussed in Chapter 2 helps understand the unique status of UEBT in biodiversity governance.

In applying Green's functionalist approach, UEBT can be portrayed in a principal-agent relation where the non-profit organization acts as an agent to the principal (CBD).

[145] PowerPoint presentation of UEBT by the Executive Director Rik Lojenga. Source: www.cbd.int. Access: 2nd May, 2019.
[146] Memorandum of Understanding (MoU). Signed on August 18, 2011. Source: www.cbd.int Access: 2nd May, 2019.

The delegation theory demands a contract among parties, which has been expressed through the MoU. The goal is "to enhance cooperation between the CBD Secretariat and UEBT […]" as well as "to contribute to the implementation of the Strategic Plan for Biodiversity 2011-2020"[147]."Implementation" here means a generic designation for the provision of information that supports the achievement of biodiversity goals. UEBT also provides updated information through its Biodiversity Barometer[148], the monitoring instrument used to evaluate business engagement with 'sourcing with respect', as well asmeasure such impacts[149]. Not surprisingly, there is a clear sign of 'enforcement' capability of UEBT when it comes to advancing the National Biodiversity Strategies and Action Plans (NBSAPs): "[…] CBD and UEBT will cooperate to develop guidance and advice the Parties on how ethical trade can be integrated into NBSAPs […]", which means UEBT must cooperate with the regulatory body that oversees the use of biodiversity at the national level.

Table 1 –Memorandum of Understanding (MoU) and UEBT's functional roles

Rule-making	States and IOs do not delegate
Implementation	The most common delegated and generic task (Green, 2014) can be understood as information provision by UEBT: "[…] keeps business members informed about the CBD Meetings, consultations and encourage business participation […]", "[…] communicate practical cases and lessons learned […]"[150]
Monitoring	Biodiversity Barometer and reports
Enforcement	CBD and UEBT cooperate at the national level towards NBSAPs
Adjudication	There is no adjudication in the MoU

Source: elaborated by the author inspired upon Green (2013).

[147] Art.1 of MoU, see www.cbd.int Access May, 02, 2019.
[148] "Since 2009, UEBT annually measures consumer awareness of biodiversity, and how this affects purchasing decisions. Ten years of research, among 68,000 people from 16 countries, and among hundreds of leading companies, provides valuable insights that may guide companies and governments in their approaches towards people and biodiversity." (UEBT, 2019).
[149]Art. 2 of MoU, see www.cbd.int Access May 02, 2019.
[150]Art. 2 of MoU, see www.cbd.int Access May 02, 2019.

The delegated authority of UEBT helps the CBD at the transnational level bring multinational companies into compliance with the standards created within the public domain of the Convention. UEBT promotes collective action in transnational arenas, and "[…] is not merely occupying global structures […]", it is a 'global governor',a sort of private authority that "[…] exercises power across borders for purposes of affecting policy […]", which means it is not merely embedded in a process of governance. Global governors perform tasks, gain authority and 'govern' in the sense of division of labor and roles that promote outcomes with expected effectiveness (Avant et al., 2010, p. 11-14).

UEBT's authority can be interpreted in five different forms: institutional, delegated, expert, principled, and capacity-based (Avant et al., 2010). The non-profit is an institutional authority because it is governed by rules and standards. At the same time, UEBT has been granted authority through CBD's delegation of functional roles through which it developed expert authority in biodiversity affairs/governance. As the final goal is biodiversity conservation, it is possible to affirm that UEBT's authority brings some moral value that stakeholders recognize as capacity-based authority once it" […] involves deference based on perceived competence […]" (Avant et al., 2010, p. 11-14). However, in order to bring effectiveness in terms of compliance of firms, reduce biodiversity loss, and induce the value chain of natural resources, UEBT must be a 'focal point' (Büthe and Mattli, 2011).

In a typology of global regulation, two variables intersect: 1. The institutional setting for rule-making - whether the rule is public or private; and 2. If the selection mechanism is market or non-market. If it is market, there is competition, if it is non-market, it is based on a 'focal point' authority. This means that UEBT exercises its authority as the only private transnational body on biodiversity as ISO, IASB and IEC. The advantage is more effective and provide cost reductions for producers of goods and services. Market competition requires the compliance of several instruments at same time as it happens with certification schemes as FSC, Rainforest Alliance, UTZ and Fair Trade.

Table 2 - Global Regulation

Global Regulation	Institutional Setting	
Selection Mechanism	**Public**	**Private**
Non-Market	CBD, Nagoya Protocol	UEBT, ISO, IASB, IEC
Market	Anti-trust regulation bodies (USA and Europe)	Certification Schemes (FSC, Rainforest Alliance, UTZ, Fair Trade)

Source: adapted from Büthe and Mattli, 2011.

The fact that UEBT is a private authority – 'focal point' – without competition does not bring any relief for those who argue that private standards are destroying the international trade system (Throstensein and Vieira, 2016). However, the UEBT can play the role of a global governor (Finnemore et at., 2010), be vested with private authority (Green, 2014), be considered part of a non-state market driven governance system (Cashore, 2002), be a club good (Prakash and Potoski, 2010) or even a transnational private regulation body (Caffagi, 2013). UEBT is not a real rule-making body for private regulation. Actually, all the regulation came from the public domain and/or is part of some state-led instrument – conventions, protocols, guidelines, and declarations. The Ethical BioTrade standard of 2012 also includes other normative references as well as private instruments, such as ISO 14001 and 26000. But the core standards are public and come from intergovernmental multilateral arenas, what turns UEBT a private incentive for members to comply with standards. The Memorandum of Understanding between UEBT and the CBD Secretariat is the proof of formal delegation from the public to the private domain.

Cafaggi (2011) defines transnational private regulation (TPR) as being rules, practices, and processes created by actors other than states, that is, private actors, firms, non-governmental organizations, and epistemic communities. This is a new phenomenon in international relations given that non-state actors have become prominent in creating and/or implementing a new body of regulations and standards. However, I argue that these are neither purely public nor private, but rather hybrid. Private regulation is sector-specific and driven by different constituencies and has a stake at the international public domain of international affairs. Differently from Cafaggi's perspective, I prefer to use the term regulatory framework as opposed to regulatory power. Power in international

relations evoke diverse stream of thoughts that are not contemplated in this research, and thus are left aside.

1.1. The UEBT Standard

UEBT Standards are global because they fulfill the four conditions set up by Nadvi and Wältring (2004, p. 53) by 1. "[…] promoting economic efficiency and international trade […]". Standards also involve 2. supplier's responsibility under the concept of Global Value Chains[151]; 3. reflect concerns on "[…] social and ecological dimensions of international trade […]"; and "4. […] point to new forms of global governance […]" in a truly transnational arena with a very singular and specific public-private partnership between UEBT and the CBD Secretariat.

There is a wide interdisciplinary academic literature about standards. The theoretical approaches are not locked in but overlap sometimes. From the Classical Microeconomics standpoint, standards are an efficient way of transmitting informationto produce best market-related decision-making considering the allocation of production factors. The Institutional Economics approach looks at standards as a way of reducing transaction costs when consumersdo not have information about productionin Global Value Chains. Standards can help promote "[…] compatibility between diverse actors within the chain […]", organize the linkages among them, reduce costs associated withgovernance tools and "[…] lower risks for actors in the chain […]" (Nadvi and Wältring, 2004, p.54).

Standards can be incentives for market differentiation and creation of nichesorclub goods (Prakash and Potoski, 2010). Compliance with social, labor, environmental, gender, anti-corruption practices would provide a competitive advantage for the 'first movers' (Porter, 1990). In terms of governance tools, standards create new challenges. Standards operate over "[…] the relative erosion of the regulatory powers of the nation state […]" because the influence of "[…] global standards in global markets is likely to weaken national standards […]". The trend is to have national standards comply with international norms. Consequently, sovereignty over standard-setting moves out of the national domain. Standard-settingis more private than public or is the result of public-

[151]Global Value Chains (GVC) is a concept that "[…] emerged as a powerful tool in understanding how the distinct functions that turn raw materials into traded end-products are inter-linked through complex arrangements between globally diverse actors […]." (Nadvi and Wältring, 2004, p. 54).

private partnerships which suggest "[…] new institutional arrangements and complex local and global networks of public and private actors […]".(Nadvi and Wältring, 2004, p. 54).

UEBT is much more a standard-setter body than a rule-making functional organization with the inception of private regulation.The standard is the principal reference focal point in defining UEBT'smembership conditions and obligations, which is a core issue for trading members and for the legitimacy of the UEBT itself as a transnational private body. UEBT's concept of standard encompasses: 1. general principles of Ethical BioTrade, 2. tangible objectives that each trading member must reach, and 3. indicators, that is, everything that is measurable and can be translated into "steps" that UEBT trading members must take to reach objectives(UEBT, 2012, p. 6).

The 2012 version of the Ethical BioTrade standard is the result of the revision process of the 2007 standards[152]. The revision process followed the Code of Good Practices for Setting Social and Environmental Standard of the International Social and Environmental Accreditation and Labelling Alliance (ISEAL) (UEBT, 2012). UEBT's 2012 standards have expanded the scope of its verification system in order to include plants or animal inputs "[…] even if these inputs have been significantly processed […]" (UEBT, 2012, p. 4). The UEBT verification system must be internalized bytrading members in their "biodiversity management systems" which entails the preparation of "workplans" and "reports" about the implementation every year. Trading members must commit with these procedures and steps because they will be "externally verified" and periodically audited in order to measure the effectiveness of the biodiversity management systems and their "implementation in supply chains" (UEBT, 2012, p. 4).

In order to help trading members accomplish this, the "[…] UEBT Secretariat developed a tool that helps in the prioritization of their natural ingredient portfolio, called the Ingredient Portfolio Assessment.". Trading members need to define the "mid-to long-term Ethical Trade Sourcing Targets", the "tangible and measurable" goals they want to achieve as well as report the progress they have made on their supply chains (UEBT, 2012, p. 5). The external and independent audits occur every three years andfocus on 1.

[152] "Every Five years UEBT revises its standard", and a new revision procedure is open for public consultation. The first period was open from May1st, 2018 to July 31st, 2018. The second period is set up from May 20th, 2019 to July 20th, 2019, see https://www.ethicalbiotrade.org/revision-process-of-the-ethical-biotrade-standard Access in February 17th, 2018.

"[…] whether the required procedures are in place and are being applied"; 2. and "whether or not they are translated into Ethical BioTrade practices at the field level" (idem, p. 5).

TABLE 3: PRINCIPLES AND CRITERIA - ETHICAL BIOTRADE STANDARD (2012)
1. Conservation of Biodiversity There are three Criteria with identification of ecosystems, the threats, the initiatives to address these threats, the impacts of sourcing activities, the measures to avoid or mitigate the impacts, and to put in place conservation and/or restoration (avoid alien species and GMO organisms), and develop strategies, plans or programmes in charge of the trading member.
2. Sustainable Use of Biodiversity There are four Criteria as the management documents about harvest rates, monitoring systems, productivity indexes, regeneration rates in collection or cultivation areas, a training scheme for employees, suppliers and collectors, a correspondent purchasing schedules of the organization, mechanisms to prevent or mitigate negative environmental impacts based on international Standards (WHO Categories I and II), and Conventions (Stockholm and Rotterdam), respect the limits of agrochemicals recommended by WHO, provide a register of agrochemicals used in the sourcing area, and prevent or mitigate negative impacts on air quality, water resources, soil quality, minimize the waste the raw material with reducing the contamination risks.
3. Fair and Equitable Sharing of Benefits Derived from the Use of Biodiversity There are eight Criteria considering the negotiation process (recognize customary law and local practices, use transparency with information, empower the parties involved, document the outcomes reached, set up prices calculations considering the costs of implementing conservation, sustainable use, social cost with prices periodically reviewed), local sustainable development (local communities must be consulted, locals employed in sourcing areas, provide long-term partnership, increase value addition and document the consultations at all levels), traditional practices (preserve and restore, provide information, under the approval and involvement of producers and local communities), legislative or regulatory requirements on access to biodiversity and associated traditional knowledge (awareness of concepts and principles, provide information, meet the legislative and regulatory requirements, negotiations on ABS based on dialogue and trust, recognize and identifies institutions, groups or individuals with rights, engage these bodies and individuals, and provide and negotiate a prior and informed consent, even when there are no legislative or regulatory requirements) and recognize the patents and other intellectual property rights.
4. Socio-economic Sustainability

There are four Criteria about financial management (financial planning tools, reports available, long term financial sustainability), integrate the requirements of the UEBT Standard into the management system for both the operations and supply chains (with policies, procedures and standard practices, impact assessment of the implementation and monitor progress), provide a quality management system in place (identifies its target markets and quality requirements, keeps information about the quality and improve the quality of the sourced natural ingredients), and monitor traceability within its organization and its supply chains.
5. Compliance with National and International Legislation There are three Criteria with the concern of compliance with international agreements related to biodiversity (CBD, Nagoya Protocol and CITES). The organization must respect those agreements, national and local regulatory requirements and pay the taxes, fees and other charges.
6. Respect for the Rights of Actors Involved in BioTrade Activities There are four Criteria related to the respect of human rights, specifically the core labor standards (ILO, 1998), the UN Convention against TransNational Organized Crime, Protocol on Trafficking and Smuggling, OECD Guidelines for Multinationals, UN Convention on Contracts for Sale of Goods, respect indigenous and local communities (UNDRIP, ILO 169, 95, 26, 131, 100, 155, and pay attention on local food security (eliminate negative impacts caused by sourcing activities).
7. Clarity About Land Tenure, Right of Use and Access to Natural Resources There are two Criteria about land tenure and property rights which means the organization must have the right to use the land and the natural resource, build up conflict resolution mechanisms, reports the illegal use of sourcing areas and measures to prevent the illegality reported.

Source: adapted from the UEBT document 'Ethical BioTrade Standard' (2012).

One of the pillars of the UEBT standard is the fair and equitable sharing of the benefits arising from the use of biodiversity. This means that the principles of the Nagoya Protocol need to be satisfied through the 2012 Ethical BioTrade Standard amongst local communities, smallholders and individuals of rural areas where the sourcing of natural resources take place. Biodiversity conservation and its sustainable use, the compliance of UEBT with international agreements and conventions, and traceability of supply chains are central to the 2012 standard as well. On the latter, member companies have "[…] to monitor traceability within its organization and its supply chains […].", a core challenge for all businesses that use biodiversity inputs.

1.2. UEBT and ABS

The access of biodiversity inputs and the sharing of benefits arising from their utilization have become a cornerstone for the biodiversity agenda promoted by the Convention on Biological Diversity and related PPPs (Oliva, 2015).Access and Benefit-Sharing is overseen by the Convention on Biological Diversity. ABS is one of the foundational pillars of the Convention.However, it was not until 2010 that a specificpublic regulationwas created to govern the access to and the use of genetic resources worldwideand the fair and equitable sharing of benefits with local communities – the Nagoya Protocol, which entered into force in 2014.This means that the legal uncertaintywould be reduced as both providers and users of genetic resources could be connected. The Conventionought to create enforcing and monitoring mechanisms through the Protocol in order to guarantee implementation by member countries. As addressed in Chapter 3, some challenges have appeared: ABS varies across countries despite the existence of an international public regulation that serves as guidance to ABS implementation nationally. Nonetheless, all member countries need to set up focal points – either the Ministry responsible for environmental affairs, or another body from the public domain that is accountable for ABS.

The ABS Clearing-House gathers all the information related to ABS. Member countries feed the Clearing House with information derived from practices of ABS, such as the creation of a national fund for local communities, or the elaboration and implementation of projects aimed at improving local communities' livelihoods.TheClearing House is the mechanism through which the Nagoya Protocol is able tomonitor and receive information regarding ABS from member countries in compliance with ABS standards. The Clearing House relies on self-reported information, so there is no national verification carried out by an international entity. Instead, member countries submit a report on ABS, the veracity of the facts cannot be guaranteed as the system relies on reportable information by member countries.

The Access and Benefit-sharing Clearing-House (ABS Clearing-House, ABSCH) is a platform for exchanging information on access and benefit-sharing established by Article 14 of the Nagoya Protocol, as part of clearing-house mechanism under Article 18, paragraph 3 of the Convention. The ABSCH is a key tool for facilitating the implementation of the Nagoya Protocol by enhancing legal certainty, clarity, and transparency on procedures for accessing and monitoring the utilization of genetic

resources along the value chain, including through the internationally recognized certificate of compliance (IRCC). By making relevant information regarding ABS available, the ABSCH offers opportunities for connecting providers and users of genetic resources and associated traditional knowledge.

2. UEBT: Legitimacy in Global Environmental Affairs

Transnational environmental regulation (TER) is the combination of initiatives of different kinds that involve non-state actors who become global standard-setters for issues that state actors themselves would not be able to oversee (Heyvaert, 2019). This does not mean that TER excludes state actors. These continue to be fundamental players in environmental regulation. However, given their limited capacity to govern all domains of environmental issues, specially at the local level, state actors have formally and informally delegated functional roles to non-state actors (Green and Colgan, 2012). But how do non-state actors gain legitimacy?

Legitimacy can be defined as a process in which actors and rules are accepted, shared and thus justified within a certain community. It can either take place in the international or in the domestic domains and is comprised of at least two features that maintain its authoritative status: a rule or an institution as well as a normative argument that underpins the recognition of legitimacy by parties (Bernstein, 2004).

Legitimacy also evokes debates on the reconfiguration of global authority (Kahler and Lake, 2004). It has traditionally been exerted by states and formal international organizations; however, the decentralization of decision-making processes has been a trend in the last decades, remarkably after the end of the Cold War in 1991 (Biermann et al., 2009). Previously, authority beyond the state had also been debated by the literature on international regimes with an emphasis on institutions and political economy (Keohane and Nye, 1973; Krasner, 1983). With regards to the environmental agenda, the United Nations Conference on Environment and Development in 1992 challenged the state-led character of global environmental governance that had predominated the environmental agenda since the United Nations Conference on the Human Environment in 1972. In the 1990s' context, developed and developing countries "[…] also frequently attempt to combine global concerns with local decision-making and accountability, where activities are focused." (Bernstein, 2004). It is at the local level that the interplay of actors and processes - non-state mainly - has paved the way to the governance of environmental

issues. In the same decade, the influence of non-state actors on world politics also revealed that international relations had entered a period of profound changes on global order (Büthe, 2004; Hurrell, 2007). This is when non-state institutional arrangements, such as the UEBT, come into play.

As a consequence, new forms of governance emerged, and it has become even more challenging to clear understand or even portray the new institutional arrangements within a specific framework. Have they emerged in a context of a vacuum of governance? Is it due to institutional dysfunctionality? Hybrid, private and networked types of governance have placed emphasis on the role of non-state actors. However, debates on whether those are legitimate or have the necessary elements to create rules have emerged. What type of authority do non-state actors have? How do they gain authority and build legitimacy?

National and international regulation of both social and environmental issues have gradually been transferred to non-state actors (Büthe, 2004). The main argument is not that the state has lost its regulatory capacity, but rather that there is an ongoing process characterized by the rule-making of private actors such as in Cross-Sector Partnerships (CSPs) (Selsky and Parker, 2005; Clark and Fuller, 2010) and Non-State Market Driven (NSMD) Governance Systems (Cashore, 2002; Bernstein and Cashore, 2007) that operate in a transnational arena (Hale and Held, 2011) in a context of networked governance (Kahler, 2009), nodal governance (Burris et al., 2005) and polycentric governance (Ostrom, 1990; 1997; Cole, 2015). It is assumed that the public domain of international relations is being reconstituted (Ruggie, 2004) and that non-state actors are responsible for it to a great extent.

The policy or institutional void, the vacuum of power, dysfunctional institutions which all mean the absence or the insufficient presence of the state in governance issues have triggered processes and initiatives that aim to reduce the gap between needs and practices in global environmental governance, such as certification schemes in NSMD Governance Systems (Cashore, 2002; Auld et al., 2015) and CSPs (Clark and Fuller, 2010). This is very perceptible in the environmental agenda in general, and in biodiversity matters more specifically.

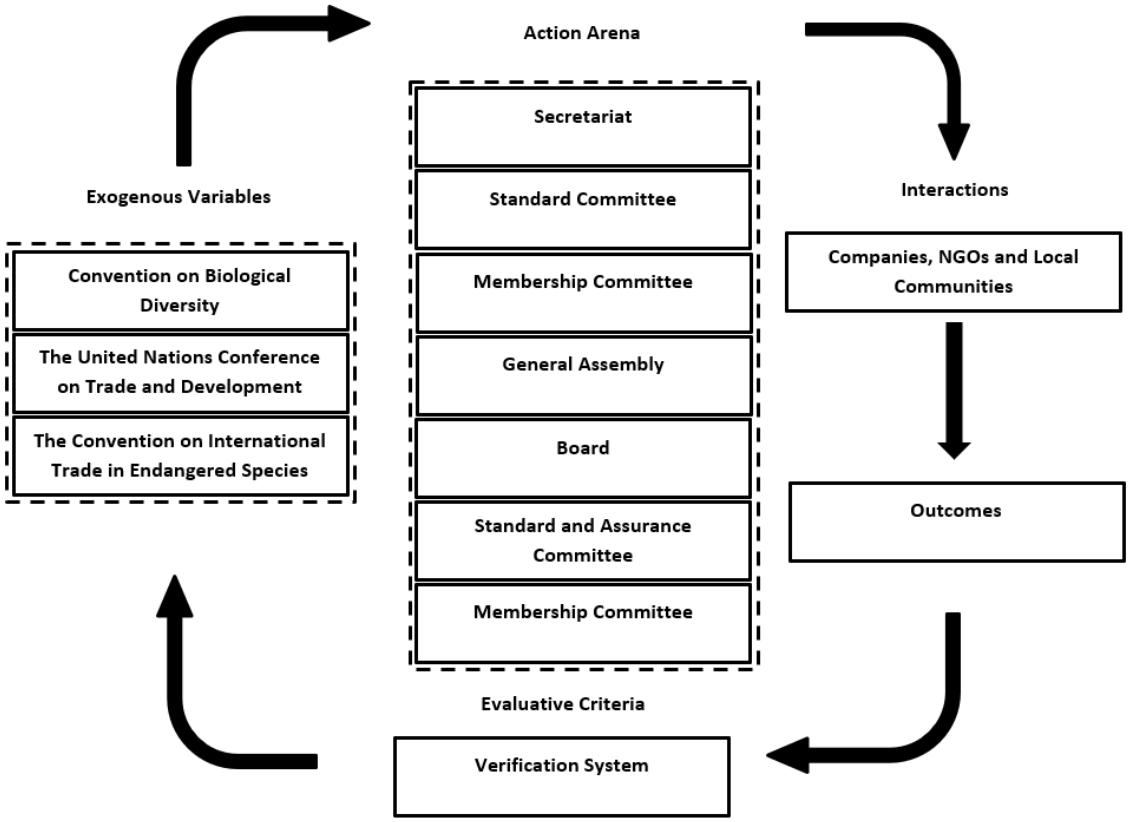
Before specifically addressing these, it is necessary to further the understanding of legitimacy in environmental affairs as it is intimately related to democracy which is portrayed as the fundamental principal in contemporary world politics and justifies authority (Held, 1995). While world politics faces a democratic deficit (Moravcsik,

2004), the environmental agenda offers to both state and non-state actors a fruitful way of increasing democracy as "[…] it is among the most transparent, participatory, and accessible realms of global governance […]." (Bernstein, 2004). However, the achievement of democratic legitimacy does not provide actors with more authority, but rather with a recognition of stakeholders that legitimizes the process as a whole in terms of acceptance and justification (Bernstein, 2011).

When it comes to environmental issues, translating principles into practices is a matter that public actors have been struggling with in the face of a lack of enforceable implementation mechanisms given the vacuum of governance and the efforts to coordinate issues at the local level. Since institutions are "humanly-constructed constraints or opportunities within which individual choices take place and which shape the consequences of their choices." (McGinnis, 2011), decision-making processes are influenced by the institutional arrangement in which individuals are inserted as well as the choices they make as rational, yet bounded, individuals. Making the same kind of assumption in the international level means that international organizations are not fully aware of the dynamics taking place at the local realm, and for this reason new types of governance mechanisms stem from locally designed rules and networks that have a stake in the transnational domain of international relations.

As mentioned by Ruggie (2004, p. 504), an "[…] increasingly institutionalized transnational arena of discourse, contestation, and action concerning the production of global public goods, involving private as well as public actors [...]". This is the case of PPPs. Despite being of relatively recent focus, PPPs have increasingly being pointed out as the way through which the vacuum created by international organizations is filled. Not only they provide a fruitful way for policy-makers and practitioners to properly deal with the challenges of nowadays' social and environmental agenda, they also integrate the agenda of researchers working across disciplines, such as business, political science and international relations.

Figure1: UEBT's Legitimacy and the IAD Framework



Source: created by the author based on Ostrom (1990, 2009).

Figure 1 clearly shows how international processes (exogenous variables) affects UEBT's decision-making (action arena), which in turn connects with non-state actors in arenas where what was decided is actually implemented so that outcomes are generated and verified (monitored).

3. UEBT as a Bridge for Public-Private Partnerships

Partnerships between the United Nations and the private sector are somewhat recent and represent a new form of institutionalizing international development through public-private partnerships (PPPs) (Utting and Zammit, 2009). The United Nations System through its various agencies, summits, commissions, and organizations, such as the United Nations Environment Programme (UNEP)and the Global Compact, have played a fundamental role in establishing and maintaining PPPs. The UEBT was launched

in 2007 as a spin-off of the CBD, a clear representation of 'new business models' that regard biodiversity as intimately related to development.

UEBT's collective action can also be explained in the context of the Theory of Clubs (or Green Clubs) as discussed by Potoski and Prakash (2009). The authors draw on Buchanan (1965) and Cornes and Sandler (1996) to provide a comprehensive approach to connect actors ("governors") to institutions ("governance systems") in an attempt to showcase how actors' functional roles are associated with the establishment of governance systems in a given area. In order to do so, they address the case of the ISO 14001 in the area of international product and management systems standardization. ISO 14001 certifies companies that are able to set up environmentally sustainable management practices in their operations. UEBT is not a perfect Green Club for just one reason. Green Clubs must impose new obligations on firms that are beyond the requirements of governments; the obligation requires the participation of firms to produce some broader public good which is not in the public regulation. UEBT standards reflect the international public regulation for biodiversity (originally in the form of multilateral agreements, conventions and protocols).

The authors turn their attention to actors and not to regime theory itself. According to Potoski and Prakash (2009), primary actors are those that establish a governance system; secondary actors are responsible for monitoring, enforcement, and sanctioning. When applied to the case of the UEBT, intuitively one would say that the CBD would be the primary actor given the international public regulation for biodiversity the Convention initiated in the early 1990s. However, I argue that the functional role of actors plays a crucial role when defining whether an actor is either primary or secondary. They could be both in different circumstances.

If the UEBT is portrayed within the international domain of international relations, then UEBT would be a secondary actor given that it has absorbed the principles crafted by the CBD. Besides, UEBT has been influenced by other intergovernmental constituencies, such as UNCTAD and CITES. However, once the emphasis is placed on the functional role, the UEBT could be a primary actor not only because ofits attribution to monitor member companies' compliance with standards, but also because of standards designed in consideration of the CBD's articles. So, if one hones in on the functional role to classify actors as either primary or secondary, the criterion would not rely on the level of analysis itself, but rather on what the actor does within a particular domain.

The UEBT can also be classified as a Club Good or a sort of Green Club (Prakash and Potoski, 2006). Voluntary programs are clubs with a shared group of firms that are non-rival and benefit from it. In return for taking on the costs of joining the club, and thereby producing public goods such as biodiversity conservation, members enjoy the reward of affiliating with the club and reputation. There´s a reputation dimension of the pay off for the members of the club. Club good theory is derived from Samuelson (1955) and Buchanan (1962) inquiry about the goods that are not private neither public, they are between and are called impure goods or toll goods which means there´s no rivalry once member of the club and there´s exclusion, the economic agent must pay to enter. The other impure good is the so called and worldwide known Common Poll Resource which is tragically right the opposite: rival in consumption and without exclusion which means is impossible (or very difficult) exclude the user of the good.

4. The 'Authoritative' Issue

The public-private cooperation at the local level is based on interdisciplinary theories which account shared interests, knowledge and expertise among firms, NGOs and local communities dealing with natural resources that come from the Brazilian biodiversity. The result is an apparatus of information flow and functional expertise from different actors, all connected in a network that overlaps state authorities (municipalities, provincial, national and international), local communities (cooperatives and associations), NGOs and multinational firms in a multilevel governance system that aims to institutionalize public and private regulation and governance. Among so many actors, diffuse 'authoritative' informal mechanisms enforce the rules based on corporate 'best practices', NGOs' principles and normative demands from social actors (Cutler, 2003).

A similar set of explanations come from orchestration theory and transnational governance approaches. Embedded in the international relations theories of cooperation, the approaches argue that the public-private partnerships are the best solutions to increase legitimacy, to provide expertise and to keep the state not as the traditional authority, but as a supplier of public good through regulation and the provision of information. This is a major positive scenario where public-private partnerships fill the gap of intergovernmental agendas and/or states and international organizations (IOs) delegate competencies to private actors (Pattberg, 2007, Link and Link, 2009, Held and Hale, 2011, Green, 2014, Büthe and Mattli, 2011, Abbott and Snidal, 2010).

It does not mean that the state is fading or imply its obsolescence or retreat. Abbott and Snidal (2010) and Büthe and Mattli (2011) preserve some core assumptions of international relations approaches: 1) the 'focal point' authority of the state (specific body or agency) in the contest of competition; and 2) the legitimacy of the state as a final resort (and IOs as agents).

A third perspective mixes institutional and sociological economics. The complexity of governance at local level needs different explanations. A bottom-up approach is based on Sociological Economics (Cashore, 2002, Bartley, 2007, Raynolds, 2009, Abramovay et al., 2010) and Institutional Economics approaches (Coase, 1937, Keohane, 1984, North, 1990). A more verticalized and inclusive approach at local-global level is necessary in order to detect latent 'conflicts of interests', and the 'learning process' among stakeholders (Cashore, 2002). Institutional Economics and the seminal definition of North (1990) are the starting points: institutions are 'rules of the games' and the source of incentives "[…] in human exchange, whether political, social or economic […]" (North, 1990, p. 3). The idea of market failures is added as the asymmetry of information and transaction costs to explain public-private cooperation among local stakeholders. Monitoring and enforcing social and environmental standards at local level can be costly and will demand strict functional capabilities which can overlap the traditional local authority of state. The concept of 'governance structures' and transaction costs from Economics is used to explain the choices of the collective action at local level.

The fusion of national and international arenas has been framed in different ways. Keohane and Ostrom suggested a convergence between analytical orientations of work on local Common-Pool Resources and environmental international regimes matched by the "[…] fact that in various domains people seek to create rules to enable them to cooperate." (Keohane and Ostrom, 1995, p. 2). Cooperation at the local level is the driver where the institutional arrangement must be built up. At the same time, the theory of international regimes has never properly explained why and how the environmental regulation could be enforced (Young, 1999).

NGOs and companies have the ability to act as enforcers as they develop an expertise through 'best practices' that are applied at the local level at the same time that they are connected to a wider transnational context that bridges the international, the national and the local arenas which are influenced by market incentives. The recognition of rules by different actors in multilevel governance depends on the 'authoritative'

mechanism (Cutler, 2003). The local is the operational level where firms' 'best practices' and codes of conduct are implemented with cooperatives and producer´s association.

It is argued that the co-governance of public and private cooperation at local level can be at the same time: 1) 'voluntary' enforcement of standards and regulation from intergovernmental and multilateral decision-making in the form of Conventions and Protocols based on the United Nations system; 2) providers of technical expertise set up through 'know how' are jointly developed with local stakeholders (rural communities, NGOs as monitors and standard-setters, private sector and public authorities); and 3) providers of legitimacy to respond to global civil society demands (eventually through certification and labeling schemes from labor, environmental and organic standards) (Auld, 2014).

5. The Global-Local Impact Assessment

According to Huxham et al. (2000), collaborative governance has long been related to the public sphere. However, the last decades have witnessed a process in which private actors and new forms of organizational structures have emerged in the form of partnerships that involve governmental and nongovernmental actors. With this regard, Selsky and Parker (2005) address four dimensions of Cross Sector Partnerships (CSPs) that are intimately related to the dynamics of networked governance: 1. The Business-Nonprofit Partnerships which have a complementary role as actors seek to find a synergic movement to pursue their interests in a multilevel context; 2. The Government-Business Partnerships that take the form of the so-called public-private partnerships (PPPs) with contracts and agreements between governmental and private parties supported by a legal apparatus which legitimize the network and the implementation process itself (Selsky and Parker, 2005); 3. The Government-Nonprofit Partnerships have been subjected to heavy criticism as many authors consider this arrangement to be part of the state's hierarchy, such as Abbott and Snidal (2010) with the term "shadow of the state" - which conveys the idea that nongovernmental forms are ultimately influenced by the governmental arena; and 4. The Trisector Partnerships which have evolved along with the idea that social and environmental dilemmas are overlapped and that bisectoral partnerships are no longer capable of dealing with such a complex scenario. In this sense, a three-dimension partnership would involve the government, a profit and a non-profit organization.

This research is mainly focuses on the former as part of the implementation process of the CBD with the tripod local communities, private sector and non-governmental organizations. The government is not neglected, but rather is considered the author that delegates its regulatory capacity to non-state actors (Green, 2010).

CSPs is an management and and business-driven approach. CSPs are about impact assessment in a multidimensional scenario basically due to three reasons: 1) shareholders activism want more transparency for corporate operations in more fragile environments; 2) increased demand for more sophisticated reporting and methods; and 3) new mechanisms to legitimate societal involvement opened a wide range of 'models' and 'methods' (Van Tulder et al., 2016). These three factors also legitimize non-state actors' engagement in networked governance. Table 3 demonstrates the dimensions as functional roles played by the types of CSPs described previously.

Table 4: Functional Classification of Key Stakeholders in CSPs

Dimensions	NGO-NGO	NGO-Business	Business-Business	Trisector
Rule-Making	Principles and criteria	Principles and criteria Corporate 'Best Practices'	Principles and criteria Corporate 'Best Practices'	Principles Criteria Corporate Best Practices Treaties/Protocols
Enforcement	Commitment	Commitment	Commitment	Commitment Binding
Implementation	Voluntary	Voluntary	Voluntary	Voluntary Binding
Monitoring/ Information	Indexes Indicators Reports	Indexes Indicators Reports Certification	Indexes Indicators Reports Certification	Indexes Indicators Reports Certification
Sanctioning	Moral	Removal Moral	Removal Moral	Legal Removal Moral

Source: adapted from Green (2010) and Selsky and Parker (2005).

Rule making is the process by which rules are created. It can assume different forms depending on the actor's nature. Broadly speaking, non-state actors produce informal rules that are non-binding, whereas state actors produce formal rules that are legally binding, that is, have formal legal mechanisms that guarantee their application or sanction in case of noncompliance. Enforcement is related to the application of rules (national and international). It is usually connected to binding rule making and normally carries a rather legal 'coercive' meaning as it is linked to sanctioning when noncompliance occurs (Josselin & Wallace, 2001; Hall & Biersteker, 2002; Büthe, 2004; Dingwerth & Pattberg, 2006). Implementation is normally referred to as the process by which 'rules' are put into practice. It is similar to enforcement, but it also implies the use of non-binding mechanisms, such as principles and standards that may support or complement the regulatory process as a whole. Monitoring/information is the process by which both formal and informal rules are checked in terms of their enforcement/implementation. The provision of information may be costly as well as monitoring mechanisms which vary from state to non-state actors. Sanctioning represents the consequences of noncompliance and offers an 'institutional' way of 'punishing' (Pattberg,

2007; Biermann & Pattberg, 2008). Next, the four types of stakeholder engagement in CSPs are unpacked (Selsky and Parker, 2005).

The NGO-NGO arrangement operates in correspondence to normative demands coming from the society in general. These normative demands take the form of guiding principles that are designed by NGOs that seek to disseminate and put those into practice. Enforcement is carried out by commitments and implementation is voluntary. Monitoring is mainly done through reports and information is conveyed with the aid of indexes and indicators that represent the performance of practices based on principles. Sanctioning aims at putting morality at stake.

The NGO-Business stakeholder arrangement creates 'rules' through a combination of principles and standards. Standards are considered to be the informal dimension of rule making as they provide regulation based on firsthand principles (Mattli and Büthe, 2003). Like the NGO-NGO arrangement, enforcement comes through commitment and implementation is voluntary as there is no obligatory relation between actors and principles/standards. Monitoring and information are also related to indexes and indicators that can be verified, but are highly dependable on stakeholders' reports. Sanctioning also targets morality to 'punish' non-compliers which are also added to a removal list (quarantine) as long as commitments are not fully fulfilled in accordance to agreed principles and standards.

The Business-Business functional arrangement is mainly formed by private actors, such as companies. Besides the nature of the actor, what differentiate this arrangement from the former one is the best practices designed and implemented by the private sector with regard to principles and standards that might also be shared by NGOs and other stakeholders. Enforcement is also through commitment and implementation is voluntary. It is up to companies whether best practices ought to be used or not. This is where certification schemes are placed. Monitoring and the provision information are accredited to a third party that certifies if 'rules' (standards) are being followed. Sanction also takes the form of morality and removal as one may lose the certification if standards are not implemented, for example.

Trisector Partnerships involve a wider range of private and public actors. Originally, binding mechanisms are used to ensure enforcement (commitment) and sanctioning encompasses a legal dimension that is originally nonexistent in the three other functionalist classifications. Monitoring and information are also translated into reports, indexes, indicators and certification labels. Sanctioning may be stronger with the legal character of the arrangement. However, this research considers the participation of public actors as the background, not the conditional cause for the interplay of non-state actors in the

implementation process of the CBD as local communities, the private sector and NGOs are the focus of the analysis.

6. The Entrepreneur Private Authority

Private actors are rule-makers in international affairs and private authority must be part of a "[…] constellation of institutions when considering approaches to global governance […]" (Green, 2014, p. 26). The right to make rules and norms is not restricted to states[153]. The theory of Private Authority is market-based, the source of legitimacy comes from market transactions. The sources of Private Authority are firms and NGOs; IOs are excluded because they are delegated authorities of states. To be a Private Authority it is necessary to make rules, persuade other actors to follow them, institutionalize the activity and be recognized as a well. When states and/or IOs recognize accept some international rule making by non-state actors as legitimate, the private ruler gets 'authoritative' status. This is very important to fill up the transnational arena and decision-making processes therein with rules and norms that operate through the multilevel mobility. For example, Natura´s compliance with the UEBT best practices is not formally recognized by the regulator body at national level in Brazil – Conselho de Gestão do Patrimônio Genético (GEN). But once the CBD and Nagoya Protocol standards are followed, Brazilian authorities grant an authoritative status to UEBT and the firms that comply with its standards.

But why does one consent to Private Authority? First, the expertise. The private ruler has developed technical expertise, 'know how' and perform policy functions as rule-making, monitoring, implementation, enforcement and information provision. Second, low cost decision-making processes and transaction costs involved in some of policy functions. For a private company that manages a supply chain, it is easier and more cost-effective to monitor 'best practices' on the field than any state authority. Market pressure and ethical consumption are other reasons to recognize Private Authority as legitimate (Green, 2014, 32). There are two types of Private authority: the delegated Private Authority – when the private actor provides rule making on behalf of states and/or IOs – which is exactly the case of UEBT with the Memorandum of Understanding between the transnational private body and the CBD. When the source of authority is not generated by states and/or IOs, "[…] then Private Authority is

[153] Green (2014) argues that Private Authority is not new. Law Merchant (Lex Mercatoria) created rules for trade by sea and land in the Roman Law and Greek maritime custom. In medieval era, craft guilds regulated professional qualifications and, sometimes, supplied military defense, see p. 28-29.

entrepreneurial […]", a "de facto" authority created by market transactions (Green, 2014, p. 33-34):

> […] Entrepreneurial authority, unlike delegated authority, does not confer de jure rights to act on behalf of the governed. Instead, authority accrues through a process that culminates in the governed deferring to the governors. Private actors must devise potential ways to govern and then peddle their ideas to those who might comprise the governed. If these potential governors can legitimate their claims to authority, the governed will choose to adopt them. However, if they fail to persuade adherents, there will be no private authority".

Green (2014) argues that the timing of consent is critical to define the type of authority. When the consent of the governed is granted *ex ante* – as it happens with UEBT – it is not a case of entrepreneurial authority. When the granted is conferred *ex post*, then we face a case of entrepreneurial private authority. Green believes the latter overlaps the notion of self-regulation (Haufler, 2001). But if the firm creates a code of conduct and apply to itself, it cannot be considered a case of private authority. But if the company is part of a complex accreditation system with third-party or fourth-party certification, then it can be considered private authority.

It is important to mention that any kind of private authority can operate in transnational arenas where actors, processes and levels are not perfectly connected. Lots of deferred recognition of private rule making comes from 'global governors' who grant authority to governed in informal ways using 'authoritative multilevel mobility'. The flow of authorities goes from the international to the local level, from the transnational to the national level, and vice-versa. The case of entrepreneurial private authority uses 'authoritative' mechanisms to recognize the policy functions of the private ruler. Mobility happens when levels overlap in transnational arenas – national governments implement the CBD and Nagoya Protocol, CGEN enforces them at the national level, firms comply with procedures and standards. There is also a level of analysis that deserves more publicity: the impact assessment at the local level.

7. Contributing to Theory: introducing new terms

Not only the creation of the UEBT is linked to the CBD, but it is also a response to the increasing demand for biodiversity inputs and the need to promote sustainable business models

and practices by placing emphasis on sustainable development. At the same time, the increasing demand for biodiversity inputs has also impacted ecosystems and local populations, and triggered discussions concerning environmental, social and cultural aspects of the "Sourcing with Respect", especially when it comes to the amount of natural inputs that can be harvested without depleting the ecosystem. This information is usually not available.

Conservation issues aside, one should step back and ask: which theories explain what is known as the UEBT? Traditionally, States have been considered legitimate actors in International Relations. The literature has exhaustively discussed how States' prominence has gradually eroded to different modes of governance that emphasize the role of non-state actors so long neglected as actors by mainstream theories of political science and international relations. Instead of focusing on the causes of states' weakening power over international affairs, this work addresses the new forms of governance in transnational arenas, the changes in the authority concept (Green, 2013; Keck, 2015), the metamorphosis of global governance, that is, those that exceeds states' political boundaries and encompasses the international and national domains to explain how institutional arrangements, such as the UEBT, have arisen in international relations and become key players in the biodiversity agenda.

In the case of biodiversity, non-state actors have multiplied and become implementers of the Convention on Biological Diversity (CBD) through a process I refer to as **multilevel mobility of actors** (MMA). MMA is fostered by **transversal regulatory movements** originated in the public international domain of biodiversity governance that scale down to the national level through the action of key actors, such as NGOs, the private sector and local communities. This differs from Cafaggi (2011) given that the author considers only two possible complementarity movements between the public and the private: horizontal and vertical. The former takes place when "public and private regulatory regimes" interact at the transnational level. In the latter, rule making happens at the transnational level and other activities such as monitoring at the national level. UEBT generates incentives for companies to comply with the public regulation (CBD and Nagoya Protocol). This transnational architecture does not work if there is not an institutional arrangement with a regulatory national body for biodiversity with hard enforcement and sanctioning instruments at the national level.

I make the case for a **transversal complementarity** as it is hard to dissociate movements that occur at one level from those occurring at other levels, that is, regulatory movements are horizontal and vertical all the time given that actors perform functional roles that happen simultaneously, and move from one level to another in a rather dynamic fashion (MMA). In the case of the CBD, the international domain of biodiversity governance originated

at the international level, but as far as new governance mechanisms are concerned, the biodiversity agenda rapidly evolved to a more complex institutional landscape, as identified by Pattberg et al. (2017).

In the case of the UEBT, the application of the principles upheld by the CBD happens through the flowing of regulation from the CBD to the UEBT in a process I name **rule-absorption**. Generally, authors refer to two types of rules: those that are made by actor A (rule-making) and taken by actor B (rule-taking). However, I argue that in the case of biodiversity, rule-absorption is mostly common as illustrated by the case of the UEBT. This means that regulatory rules are indeed born within the international domain (CBD), but are not necessarily taken by non-state actors as a given. Instead, these actors absorb rules' functional roles and tailor them to their own interests without diverting the essence of the public regulation.

The CBD underpins the regulatory framework created by non-state actors, such as the UEBT, whose rules are based upon the Ethical BioTrade principle foreseen by the CBD in other terms. This means that despite UEBT's autonomy to create, adapt, implement, and enforce rules, and sanction non-compliers, the transnational NGO responds to a wider set of principles envisioned by the biodiversity international public regulation.

Conclusion

This research does not build on traditional theories of international relations to explain UEBT, but rather it focuses on contemporary multidisciplinary theories and approaches that have become commonplace despite not being widely diffused among the International Relations community of scholars that are mostly focused on states as main actors. A growing number of approaches have addressed different levels of analysis to shed light on processes flowing inward and outward states' political boundaries. It is worth mentioning that neither is the transnational level intended to create a hierarchical relation, nor it is a supranational domain that governs international affairs in the face of anarchy. With the erosion of states as the sole actor in the international arena, regulatory matters have, on their end, overflown political boundaries and reached the international arena by scaling up to levels above the domestic realm of states.

Chapter 5

Natura's Compliance with UEBT Standards: How the Local Connects to the Global

Introduction

As debated in the previous chapter, UEBT promotes private sector engagement in the sourcing of natural ingredients with respect for people and biodiversity. The Ethical BioTrade standard guides company practices and drives sustainable business growth, local development, and biodiversity conservation. In the work of UEBT, most of the changes towards biodiversity conservation and access and benefit-sharing are achieved through its member companies. UEBT members commit to mainstream Ethical BioTrade principles in their operations, including research, innovation, product development, and sourcing strategies for supply chains. Companies implement Ethical BioTrade principles at two levels: within the company itself and along supply chains. To this end, member companies set up Ethical Sourcing Systems (ESS) as well as define an Internal Monitoring System (IMS) to assure compliance with UEBT standards as well as obtain the UEBT certification for the supply chains that are covered by this system (Natura Annual Report, 2018).

This chapter looks at Natura, a Brazilian multinational company that develops and manufactures products for the cosmetics, perfume and personal care. The company uses key raw materials from the Brazilian biodiversity and has had a long-term commitment to the sustainable sourcing of raw materials and production of final products. In 2007, Natura became UEBT's founding member and has ever since sought to follow and implement UEBT's principles. The company implemented a Biodiversity Management System[154] and has promoted Ethical BioTrade practices in prioritized supply chains. Between 2015 and 2016, it set up and certified its IMS with UEBT. Natura has engaged in enforcing Ethical BioTrade principles in the management of the company's sourcing activities and supply chains (Natura Annual Report, 2018).

The object of study here are two cooperatives, Cooperativa Mista dos Produtores e Extrativistas do Rio Iratapurú - Comaru, and Cooperativa Mista Agroextrativista de Santo Antônio do Tauá - Camtauá, located in the Northern Brazilian States of Amapá and Pará, respectively. A research study has been conducted to identify how Natura develops strategies

[154]Referred to as Ethical Sourcing System (ESS) and it will be referred to as this along the whole document.

to foster its commitment to sustainability once the IMS is defined and certified along with UEBT. The study has also investigated what stimulates and what hampers these strategies as well as their effects – positive and negative, intended and unintended. Attention is given to what happens at the company level and, in turn, at the level of the supply chains.

After some years of collaboration between the company and UEBT, this study is instrumental to provide an overview of established actions, their effectiveness and challenges as well as possible ways to further the work for biodiversity conservation and sustainable use, positive business performance, and fair living and working conditions for local people. The study is qualitative, exploratory and based on a fieldwork that took place in February of 2018 in Pará and Amapá with the conduction of semi-structured interviews among Natura's staff and local dwellers at remote communities in the Amazon. Findings are based on reports, documents as well as on the perceptions of interviewees. The aim of this research study is to show how a private company absorbs and complies with standards crafted by UEBT, which, in turn, was inspired upon principles from the Convention on Biological Diversity. I argue that the interplay of these actors is a clear representation of delegation to non-state actors as discussed in Chapter 2.

5.1. Natura's Global/Local Commitment and Institutional Context

Since the beginning of its activities, Natura has tackled many of the aspects of sustainability – ranging from socio-economic and health to environmental ones. A great part of Natura's research and innovation program focuses on *vegetalização* which is a process that replaces animal and mineral raw materials for vegetal ones, that is, the identification of new uses from different vegetal biodiversity inputs through research done by the technology sector. Moreover, the company supports the development of educational projects through collaboration projects with Instituto Natura.

Natura was also the first company in the world to have an access and benefit-sharing (ABS) agreement, signed in 2004. The company has been working to foster mechanisms to preserve biodiversity and promote the sustainable use of natural resources. In this context, the work of Natura has intersected with that of UEBT. The company is one of its founding members and, in 2007, the membership was formalized. Between 2015 and 2016, Natura set-up an IMS to certify the commitment with Ethical BioTrade principles, which was instrumental to advance pre-existing principles of sustainable sourcing of biodiversity inputs.

The UEBT membership and certification process have been chosen as a continuation of a broader effort to verify the work done for sustainable sourcing. Some tools and procedures were in place to track sourcing practices and ensure that they respect some key social, economic and environmental principles. The tools, standards and procedures were operated by different departments. The involved staff and management expressed the need to systematize the approach, foster collaborations among the different departments as well as consistency in the way the approach to sustainable sourcing is implemented. UEBT's Ethical Sourcing Standards and Programs appeared to be instrumental to this.

The first step is to define a risk assessment system. The system assesses potential risks that may arise for people and biodiversity amid the company's operations and stretches out to all the components of the supply chain – from local communities to consumers. The system has operated since 2013 and encompasses all relevant departments so that all those involved in the sourcing of biodiversity inputs undergo risk assessment on a regular basis to determine patterns in a specific geographic location, such as deforestation rates in the Amazon. The company uses the system to monitor risks in collection areas through the georeferencing.

The second step is to define a verification and traceability system. The verification and traceability system in the current form started to operate in 2013. The company defined a double-check auditing and verification system with internal and external evaluation processes. Both the internal and external verification processes are based on Natura's field checklist that has been developed based on UEBT standards and recognized as equivalent to the UEBT's certification checklist. The main responsibility for the internal evaluation shifted from the Innovation Department to GRAS[155] (Gerência de Relacionamento e Abastecimento da Sociobiodiversidade). The GRAS team comprises around 15 collaborators out of which 12 also serve as auditors. The number of auditors increased after the setting-up of the IMS. The external evaluation is introduced as required by UEBT and conducted by IBD Certificações[156], UEBT qualified certification body. External auditing follows the sampling rules defined by UEBT that, in this specific case, require auditing two or three cooperatives per year. The team goes to the field and verify the results of the internal audits conducted by GRAS (checklist). If there is no match between the internal audits and what is observed in the field, GRAS applies correction measures amongst suppliers to improve controls and reports. In 2013, the first external auditing

[155] Gerência de Relacionamento e Abastecimento da Sociobiodiversidade (GRAS), based in Belém, in the Natura Ecoparque.
[156]For more information on IBD: http://ibd.com.br/en/Default.aspx (Access on April 30th, 2019).

process was executed in 14 communities. In 2015, the same system verified 35 communities out of 65 communities. Two new communities were included in 2017.

The third step is incorporating the control system into the verification system. The company's verification system runs in parallel with a management tool and supply program that evaluate quality, environmental standards, logistics and other criteria for all company's purchases. The fourth and final step is to create a division within Natura to deal with ABS-related aspects and changes in the resources used for research activities to ensure forest conservation.

For all the above actions, some departments and programs at Natura have gone through readjustments. The formation of the GRAS in 2013 is one example. It emerges from the merging of two teams responsible for relations with communities: the Management for the Relation with Communities (Gerência de Relacionamento com Comunidades) and the Center for Biodiversity Inputs (Núcleo de Insumos da Biodiversidade). One of the tasks of GRAS is to stimulate interaction processes among different departments, namely sustainability, innovation (Research & Development), Regulatory, and Marketing. All collaborators of GRAS are also auditors which means that they contribute to the verification system as well. The GRAS team is based in Benevides (Pará) and reports to the sourcing department in São Paulo. Moreover, there are representatives of GRAS around the Brazilian territory. Their geographic distribution overlaps partially with the territorial divisions of the Amazon Program. The Program was launched in 2011 and plays a pivotal role in fostering company-community relations through three pillars: 1. science, technology and innovation; 2. socio-biodiversity in supply chains; and 3. institutional strengthening. Resources have been invested in hiring new staff, training staff (e.g. auditors), developing tools, structural projects and collaboration (e.g. standards, georeferencing systems, GRAS' offices, verification system).

5.2. The Classic Collective Action Dilemma

Since the late 1980s, the so-called non-timber forest products (NTFPs) have been in the spotlight as they have been regarded as a possible solution to (illegal) logging in forest ecosystems worldwide (Peters et al., 1989). Besides, the commercialization of these products has proven to be a strategy to improve local communities' livelihoods and a potential driver for environmental change and conservation as most of the literature has revealed (Ticktin, 2004; Veiga et al., 2015). However, some scholars argue that social and environmental impacts

associated with the commercialization of the NTFPs may not be as beneficial as it seems (Belcher and Schereckenberg, 2007). Social and environmental impacts can be assessed by investigating the extent to which the extraction of the NTFPs is sustainable through case studies in the Amazon Rainforest. Not only measuring the social and environmental impacts of the NTFPs is important, but also understanding the mechanisms that govern the system in which the extraction of the NTFPs take place.

Natura promotes collective action among members and non-members of local cooperatives that provide oleaginous seeds and fruits that are used by the cosmetics industry. Ostrom (1990) studied the collective action of local institutions of up to 500 individuals, where families were dependent on a natural resource and thus promoted the creation of bottom-up rules, which resulted in the Institutional Analysis and Development Framework (IAD), as previously discussed. The local community would be able to promote the sustainable use of natural resources as well as prevent the behavior of the free rider, i.e., the individual who accesses the resources without the discipline imposed by the common norms and rules. The free-riding problem happens when non-members collect NTFPs outside of the double-check monitoring system of Natura, without traceability.

Zylbersztajn (2002) explains that the individual who behaves as a free rider enjoys a strategic decision, taken collectively, but is not affected by their results, or, in other words, cannot be excluded. Non-members that supply Natura cannot be excluded. To avoid free riding a transaction cost is observed at the local level by the community of smallholders. Without any monitoring mechanism toward individual behavior, it is virtually impossible to avoid the opportunistic behavior of agents. Ostrom (1990) describes situations in which this transaction cost was divided collectively. In the community of fishermen from Alanya in Turkey, for example, the monitoring of fishing spots was defined by a system of rotation between members.

The case of the free rider is a recurring problem for the strengthening of cooperatives and associations of producers. In the case of NTFPs, it is an opportunistic behavior that choose to benefit from collective action in the creation of the cooperative/association without affording involved transaction costs, such as meetings and collective decisions. Natura has developed, with the aid of the UEBT standard, an intelligent system to circumvent the free-riding problem and which guarantees ‘best practices’ in the collection of NTFPs.

Table 1 - Changes and Effects Pathways: using the IAD Framework to understand UEBT's IMS certification

Inputs/interventions	Outputs/requirements	Areas of early and late benefits
1. UEBT Standards, UEBT IMS certification protocol and checklist **2. UEBT materials (procedures for certification, training materials, background notes)** **3. UEBT training and advisory services Ethical BioTrade issues** **4. UEBT verification system** **5. UEBT platform for networking, exchange and debate on Ethical BioTrade principles and practices**	1. Companies have an UEBT IMS in place 2. Companies have a traceability system in place 3. Companies have an ABS due diligence system in place and comply with legal and UEBT requirements on ABS, if applicable 4. Companies have audit protocols, staff and trainings 5. Companies undergo annual, external audits and regular, internal monitoring visits 6. Companies conducts risk assessment	1. Strategy 2. Company management system 3. Supply chain management system 4. Biodiversity conservation and sustainable use 5. Creating value 6. Right of actors 7. Brand value 8. External stakeholders

Other influencing factors	Possible unintended effects:
1. Company propensity to sustainable practices 2. Market and legal demand 3. Other sustainability standards requirements 4. Socio-economic necessities, motivations, dynamics 5. Environmental necessities, motivations, dynamics	1. Slow down innovation 2. Significant work undertaken and limited recognition 3. UEBT prompted investments reducing resources available other (more effective) investments *Supply chain/field specific* 4. Threats to food security 5. Over-demand of the thecompanyl ingredients 6. Procedural burden along the supply chain 7. New conflicts in sourcing areas

Source: adapted from UEBT, 2017.

5.3. The Case Study

Natura is present in seven countries in Latin and North America, as well as in France and develops and manufactures products for the cosmetics, perfume and personal care. Key raw materials come from the Brazilian biodiversity. In Brazil, the company works with several supply chains managed through cooperatives in different communities in the Amazon. The company has implemented an ESS and promoted Ethical BioTrade practices in prioritized supply chains. Ingredients are certified according to the UEBT Ethical BioTrade standard following the UEBT IMS certification protocol. The whole system is audited externally by a third party. Third-party auditing means credible monitoring and enforcement mechanisms and a source of legitimacy for the certification scheme[157] (Gereffi, 2001).

Natura has been chosen as a case study because it shows long-term commitment to sustainability and fulfilment of Ethical BioTrade principles, providing an appropriate time span of analysis. The company operates through suppliers involved in the IMS certification in Northern Brazil. The company as well as two of the supplying communities expressed their willingness to collaborate with the study. Part of Natura's portfolio of products uses natural resources in supply chains based in the Brazilian Amazon, and are also involved in the UEBT IMS certification. All the interviewees have played an important role in the implementation of UEBT's certification.Semi-structured questionnaires were conducted among the coordinator of sustainability; the manager of GRAS; the coordinator of GRAS' field team; the coordinator of the regulatory department; one staff member at the department for research and development in agriculture; two staff members from the marketing and communication department. In the case of supplier communities, two local cooperatives were visited – Comaru (Cooperativa Mista dos Produtores e Extrativistas da Reserva do Rio Iratapurú) and Camtauá (Cooperativa Mista Agroextrativista de Santo Antônio do Tauá) – based in the states of Amapá and Pará, and involved in a long-term partnership for sustainable sourcing with Natura. Two representatives – one per cooperative – were also interviewed – the president and the director who have an overview of the whole process of interaction with the company.

Table 2 - Natura's Case Study

[157] First-party certification is self-certification; second-party certification is the certification that comes from a different unit of the same company or from a different company of the same industry; Prakash recognizes that fourth-party certification is not usual and that third-party certification is enough to gain legitimacy (Wältring and Nadvi, 2004; Prakash and Potoski, 2006).

Case	Description	Units of analysis and interviewees	Data sources and purposes
Natura	Developer and manufacturerof products for the cosmetics, fragrances, personal care and food sectors. UEBT certified.	*Company* - Coordinator of Sustainability, - Coordinator of GRAS, - Coordinator of GRAS' field team - Coordinator at the Regulatory department, - 1 staff member at the department for research and development in Agriculture, - 2 staff members at the marketing and communication department. *Supplier* - 2 community cooperatives – Comaru and Camtauá - based in Northern Brazil - Amapá and Pará - and involved in a long-term partnership for sustainable sourcing with Natura, - 2 presidents – one per each cooperative - who have an overview of the whole process of interaction with the company.	Audits and self-reports – actions, effects& influencing factors Semi-structured interviews – verification of actions, effects& influencing factors Secondary data (statistics, scientific and grey literature) - background analysis of the context

Source: elaborated by the author.

The establishment of Cross-Sector Partnerships (CSPs) emphasizes the need to foster collaborative strategic management to deal with "institutional and regulatory voids" (Fransen and Kolk, 2007), social and environmental issues (Clark and Fuller, 2010), "wicked problems" (Waddock 2012; Dentoni et al., 2016) and public challenges (Stadler, 2016).

Alliances between the private sector and non-profit organizations (NGOs) in the configuration of CSPs were addressed for the first time by Austin (2000) with the analysis of fifteen case-studies with a CSP framework comprised of four components: the collaboration continuum, the collaboration value, alliance drivers and alliance enablers. The aim was to build on interorganizational research theories to reach a broader understanding of cross-sectoral alliances. Since then, CSPs have evolved as a framework designed for different purposes and mainly considered for multistakeholder initiatives to solve critical sustainable problems addressing institutional and regulatory voids in a context characterized by the retreat of states due to their inability to fully cope with societal issues (Fransen and Kolk 2007) as CSPs increasingly play a governance role in society (Teegan et al., 2004).

Considered a new paradigm for public-private involvement in critical issues, CSPs go further with soft topics of social, environmental and economic challenges of the sustainability research agenda. CSPs are now in a 'build-up' phase (Van Tulder et al., 2015). One of the challenges of CSPs is a preoccupation with monitoring, reporting and evaluation of outcomes

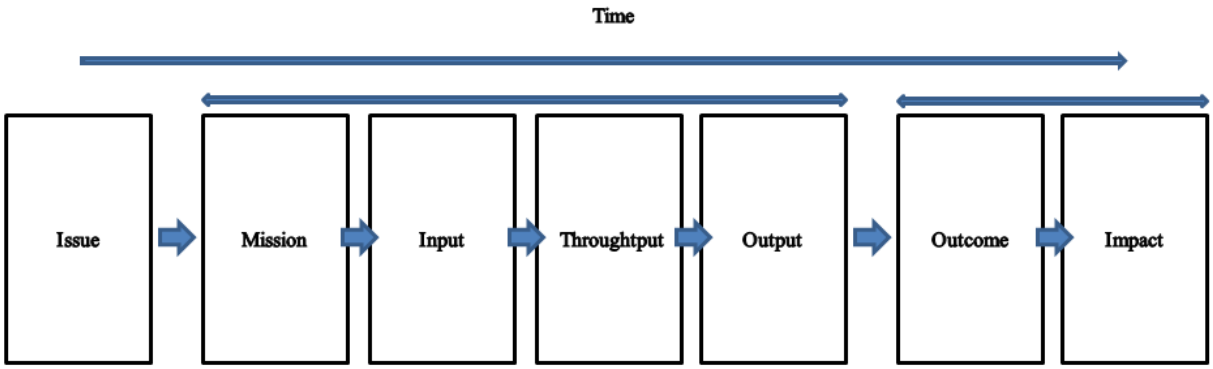
and impact assessment. Public and private constituencies require precise impact assessment on projects and interventions (Van Tulder et al., 2015).

Power asymmetries among partners, controversial solutions, fuzzy methodologies call for more evidence-based impact assessment. According to Lund-Thomsen (2009), Public-Private Partnerships (PPPs) have proliferated and studies have shown how, but not necessarily why such arrangements have been formed.

Natura's operation at the local level sheds light on the differences between outputs, outcomes and impacts of the intervention promoted by the CSP. Outputs refer to controlled immediate effects of participant organizations' interactions and come from intended effects of actions, programs and adopted policies. It is part of a decision-making process and benefits directly the members of CSPs. Outcomes joint the direct effects on the targeted communities, but they are not necessarily part of previous actions and strategic calculus of partners. Impacts would represent the long-term effects of direct and indirect, intended and unintended intervention (White, 2009). Long-term effects are difficult to measure. The absence of data is another reason for the lack of robustness which makes many CSPs projects appear to be 'impact-less' (Van Tulder et. al. 2015).

The approach is based on Van Tulder and Maas (2012) which builds on the original Kolk et al (2008). The framework contains two dimensions: 1) impact value chain and 2) effectiveness assessment approach. While intentions and outputs are related to the providers of the product, activity or service, outcomes and impacts are associated with beneficiaries and other stakeholders (Kolodinky et al., 2006).

Figure 1 - The Partnership Monitoring and Evaluation Framework



Source: adapted from Van Tulder and Maas (2012).

The two traditions are based on impact assessment research (Van Tulder et al., 2015). First, Evaluators Measuring Impact adopts an outcome perspective of partnership which means all partners look at value creation in a 'learning process' of knowledge. Outcomes assume expected effects of the intervention, most of them regarded as 'a first assessment of output', the firsthand impact to be verified. It is an instrumental perspective of CSPs as it focuses on the direct benefits for partners. Second, the Impact Evaluators perspective is focused on impact evaluation considering that intervention makes a difference to the social issue.

Table 3 - Partnership and Impact Assessment: Two Traditions

	Evaluators Measuring Impact	**Impact Evaluators**
Case Study	**Natura**	**Natura**
Approach	Partnership value creation as a 'learning process'	Intervention brings measurable outcomes and impacts
Priority	Direct benefits to partners	Social issues and environmental externalities
Measurement	Expected outcomes and 'plausible effects'	Impact evaluation
Methodology	Mixed methods (qualitative/quantitative)	Semi-experiments

Source: adapted from Van Tulder and Maas (2012).

Natura is a case of CSP with a multilevel institutional framework where the local intervention is the 'social issue' to be measured. There is an income increase as families complement their domestic budget with the payment from collecting seeds and/or producing oil. There are also environmental externalities because with the net benefit in welfare, individuals halt illegal logging.

The Partnership Monitoring and Evaluation Framework are addressed with more rigorous and stricter methodology in the two proposed dimensions: 1) "an impact value chain that documents real steps of the partnership from issue definition through to impact" and 2) "an effectiveness assessment approach that assesses the fit and value added of the partnership to the actual societal problem" (Van Tulder et. al. 2015, p. 9).

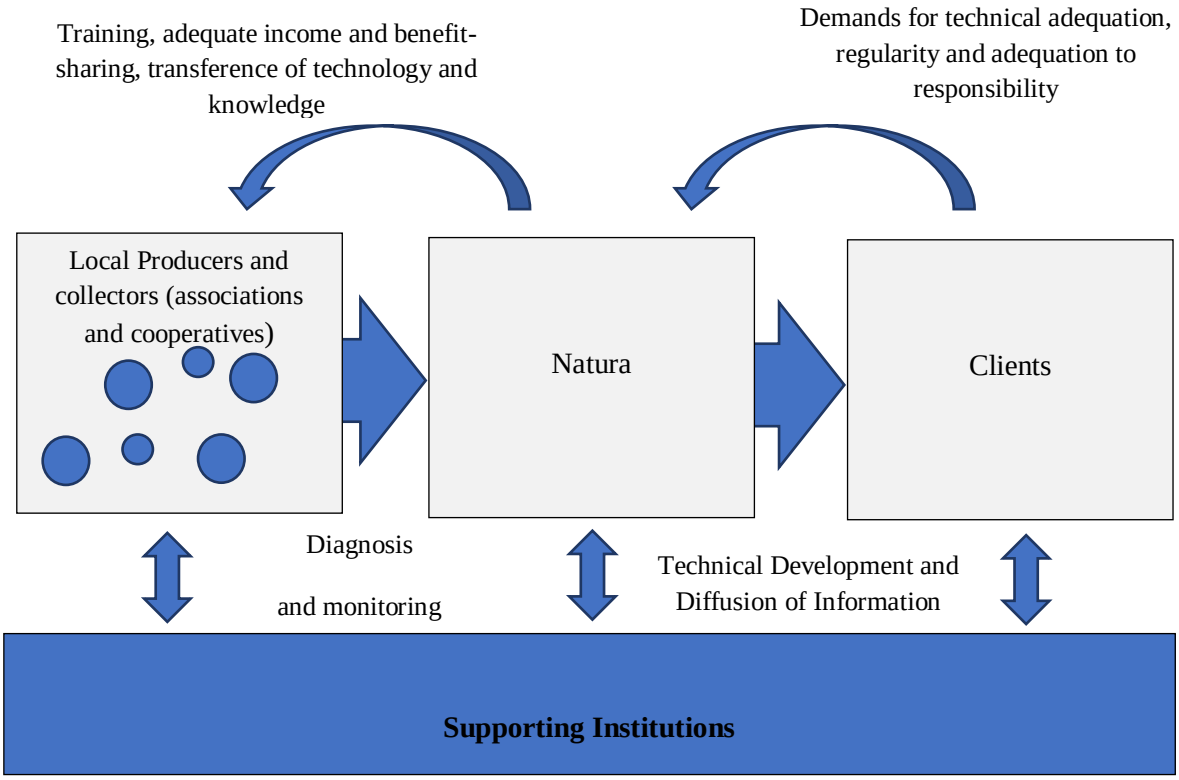
Table 4 - Application

Issue	Increase the income of local communities with the collection of NTFPs
Mission	Promote business and social-driven CSPs
Input	Local institutional arrangements; certification schemes; semi-verticalized value chain and governance mechanisms
Output (deliverables)	Welfare; ABS
Impact	Direct and intended: increase in income; strengthening of local institutions; leadership Indirect: environmental externality at the local level Unintended: consumption of industrialized products

Source: adapted from Van Tulder and Maas (2012).

Communities with more income decrease hunting, logging and stop illegal extraction of timber. Social and environmental interdependence with positive externalities intersect public policies with sustainable gains at the local level.

Figure 2 – CSPs as a 'Global-Local' Network



Source: elaborated by the author.

5.4. Background Analysis: Comaru and Camtauá Cooperatives in Amapá and Pará

5.4.1. Comaru[158]

Comaru is a Cooperative that sits on the shores of the Jarí River and supplies Natura with Brazilian nuts and the so-called *breu branco*[159]. Comaru has approximately 39 families as members, out of which around 29 are committed with the collection of Brazilian nuts and *breu branco*. The trees from which Brazilian nuts and *breu branco* are collected and extracted are located at Reserva de Desenvolvimento Sustentável do Rio Iratapurú in the state of Amapá. The collection and extraction system take place for around two months per year. Members of the cooperative are responsible for collection and extraction.

When taken to the cooperative facility, Brazilian nuts and *breu branco* are processed before being shipped to Natura. The cooperative has a facility to store and manufacture Brazilian nuts and deliver a raw processed oil to Natura. The Cooperative adds value to the natural resource and delivers a semi-manufactured product to Natura which generates income for households and helps to share the benefits arising from the utilization of biodiversity inputs (ABS). Instead of concentrating all the processing at Natura's facility in Belém, the company provides incentives for smallholders to become producers of the raw oil which is at least ten times the income they get with unprocessed Brazilian nuts.

The relationship between Natura and Comaru goes beyond that fostered by the UEBT membership and certification. Natura and Comaru are connected through the corporate Amazon Program which has ensured support to capacity-building for the interaction with local authorities as well as improvement of infrastructures for education and health care. Access and benefit-sharing agreements are signed for *breu branco* and resources reinvested in the community for schools and health care. The collection of Brazilian nuts follows an informal property right regime. In this system, there are informal rules developed by users (individuals and cooperatives) to access the resources under the formal regulatory regime provided by Amapá within the Reserve. This means collection areas are not formally defined, but collectors are customarily aware of the sites where each individual/family can collect.

[158] Cooperativa Mista dos Produtores e Extrativistas do Rio Iratapurú (Laranjal do Jarí, Amapá).

[159]The tree known as 'Almecegueira' (*Protium heptaphyllum*), which can be found in the Amazon region and in the Cerrado, produces a resin called 'breu branco'. It is used as expectorant, healer, anti-inflammatory, immunestimulant.

GRAS registers all collectors from new supplier communities. The team of experts looks into the cooperative to see its legality, registry with the local *Cartório* as well as whether landowners are paying taxes or not. GRAS then visits collection areas and provides a training on UEBT standards. Cooperative members learn about the 'best practices' of collection, local biodiversity, labor standards, and so on. The team also develops monitoring mechanisms over the areas that are integrated in the system. Each year, a sample of properties is randomly chosen to be audited by IBD, the third-party authority which applies the checklist.

When a new community is contacted to collaborate with Natura, GRAS checks all aspects (legal, economic and property rights). Once all is set, GRAS approaches the new community through the local cooperative (collective action). The team visits areas and bargains the needed amount of natural resources and assures cooperatives are able to deliver. Sometimes collectors are not members of the cooperative. To avoid risks, GRAS requires the commitment with UEBT's standards and asks for the invoice with the delivered amount and the price paid.

In Comaru, with the definition and certification of the IMS, Natura introduced a new level of control in the system of Brazilian nut collection. Internal monitoring is done by some of Comaru's cooperative members who hire workers to help during the collection season which over 3-4 months. This sort of 'private outsourced regulation' is a positive externality of the system. Cooperative members and hired workers act as agents of the cooperative in tandem with Natura and check some aspects directly related to collection: quality, health and safety in the forest, garbage disposal, use of timber products, forced and child labor, etc. Groups are isolated for weeks before bringing the nuts to the river, loading the boats and taking them to the facility in Comaru.

Since the UEBT certification, UEBT principles have influenced many aspects of collection by paying closer attention to environmental degradation in the form of deforestation. Besides this internal monitoring, there is a double external auditing process. As mentioned, one is done by GRAS and another one is done by IBD. The whole system is meant to contribute to the country's efforts towards conservation of the forest and to assure traceability and quality of biodiversity inputs. The system has been supported by trainings offered to cooperative members.

However, the setting up and the functioning of the assurance system have come with some unintended effects. Initially, families and leaders had complaints about the control of the system as proposed by Natura due to its rigidity and scarce applicability to the local context as well as because it was considered expensive. The IBD 'checklist', currently used for the external auditing, is more accepted as it is considered more compatible with, and adapted to,

the environmental context of operation. Moreover, Natura has invested in training cooperative members and this has increased their abilities to work according to what is required, which is directly influenced by UEBT standards.

The assurance system has generated some benefits too. The verification system has helped Natura strengthen the relationship with the community. Other positive effects include:

1. Overall increase in the welfare of families: more robust brick-made houses with bathrooms; consumer goods more accessible with motorcycles, vehicles, and canoes with engines. The cooperative maintains an office in Laranjal do Jarí that serves as a space for students who are members of the community and attend classes at the local High School and on the University campus. The house was bought with resources from benefit-sharing;
2. The oil facility provides employment for the families and learning skills that add value to the community in terms of knowledge, learning processes and entrepreneurship. The minimum wage is the base line and some members earn more than R$ 2.000,00 in the months of high production;
3. Knowledge of certain topics, such as forest conservation, is acquired through trainings offered to cooperative members.

Besides the experienced positive effects, some are still to come:

1. Trust and stability in the relations with communities have not been fully achieved. There are families that are not members of the cooperative and prefer to sell biodiversity inputs to the regional dealer if the price paid by the cooperative is lower than the market. The idea is to incentivize all families to sell to the local cooperative because it increases employment at the local level and gains are shared amongst members. The problem is that the dealer occasionally pays 100% in advance as opposed to Natura's 30% in-advance payment. Market changes have stressed Comaru members. The risk of market volatility can destroy trust and relations;
2. Traceability is reduced when suppliers change continuously. Random suppliers, who are called partners, provide an invoice and acquire training skills from GRAS and cooperative leaders. However, they will only be available for auditing in the year after their delivery. The invoice and training are guaranteed, but for some time Natura runs the risk of violating some of the UEBT standards;

3. Discussions on the recommendations deriving from audits and implementation of action plans is not done consistently. Moreover, the skills, expertise and maturity of community/cooperative leaders are not assessed by GRAS. It is proven necessary to develop an impact assessment system within communities in order to produce knowledge on the changes brought by the regional institutional arrangement fostered by Natura according to the concept of territorial development of the Amazon Program. The company generates a knowledge system that should be recognized by stakeholders, the civil society, and consumers.

5.4.2. Camtauá[160]

Camtauá is a cooperative in Santo Antonio do Tauá, Pará, that supplies Natura with murumuru and andiroba seeds. Over 200 families live in the community. 35 are members of the cooperative. Around 25 of them are involved in the collection of andiroba and murumuru seeds. However, the number varies depending on the requested volumes. Once the order is placed, the leaderships of the cooperative decide on the members to be involved. The others perform different activities related to small-scale agriculture and services. In the case of an outstanding demand, other collectors living in the nearby communities might be called in to support collection. Non-members give the invoice and get the training from cooperative members and GRAS team. Non-members can collect and sell the seeds to Natura as long as the individual is registered in the system and information about the property is given. This is an intelligent system to avoid free riding since non-members could simply deliver the amount collected to a member.

The collection of seeds takes place in the forest and lasts between 4 and 6 months. The harvest is dried in solar driers, and then taken to and stored in the facilities of Camtauá. Seeds are passed on to Natura without being processed. No value is added at the cooperative. Impacts on income generation is less significant in Camtauá when compared to Comaru where members process the Brazilian nut and deliver the extracted oil to Natura. The cooperative was set up in 2010 to promote the commercialization of NTFPs. In the same year, Natura started interacting with Camtauá to supply NTFPs over time.

[160] Cooperativa Mista Agroextrativista de Santo Antônio do Tauá (Santo Antônio do Tauá, Pará).

Even before the UEBT membership and certification, Natura had been working with the Camtauá cooperative to ensure the sustainable sourcing of andiroba and murumuru. Actions have been implemented with respect to social and economic aspects of sustainability. Actions on safety have been required as the collection of murumuru in the forest can be dangerous. Safety equipment and appropriate trainings have been provided to the cooperative by Natura over the years.

Other positive effects derive from the broader relations between Natura and Camtauá – within and beyond the UEBT programs. These include:

1. Actions to improve the living conditions of the community by increasing the added value of the products they supply. The company supported Camtauá in getting a grant from Banco do Brasil (a public Brazilian bank) to buy a sun drier for the collected seeds to be shared with other cooperatives in the region. Drying seeds is strategic for the cooperative because it increases the amount of delivered seeds (and the amount of financial resources available for the cooperative and its members);
2. The company has ensured that the cooperative would pay at least the minimum wage to collectors. Each year prices are negotiated with the cooperative taking into consideration harvesting conditions and the observation of working and environmental requirements;
3. With the membership and certification process, a monitoring system for the community and an assurance system for the implementation of good practices have been set up. The monitoring system implies that families with a member registered in the cooperative are visited by the GRAS team. An inventory of information about each property is developed with volumes, storage conditions, and family members involved in harvesting as well as social and environmental standards. The legal aspects of the areas are screened with the analysis of documents. As far as the assurance system is concerned, a first assessment is done by cooperative members. The compliance with the ingredient-certification system is done through audits carried out by Natura on a regular basis in the cases when the community needs to provide seeds collected by other communities to meet the company's seasonal demand;
4. The verification system has helped Natura with the traceability of biodiversity inputs, an important part of the supply chain. The verification system has helped Natura strengthen the relation with the community through auditing;

5. Other actions that Natura has implemented with the Camtauá cooperative have contributed to increasing institutional capacities and improving living and working conditions in the communities which are linked to a work of institutional empowerment that Natura has done with the Camtauá cooperative. On the other hand, cooperative members get at least a minimum wage for the activities associated with andiroba and murumuru. This activity, along with many others, constitutes a basis for their living. Safety at work is increased trough proper equipment and instructions;
6. The setting-up of the verification system in Camtauá has been fostered by training sessions offered to community members so they would be familiarized with the system's practices.

Besides the experienced positive effects, some challenges are still faced:

1. The implementation of the verification system has come with some unintended effects that have been challenging the process. The monitoring of cooperative members is a real challenge for the governance of regional institutional arrangements as Natura needs to guarantee that the local cooperative complies with the verification system's standards. Given the remoteness of the community, Natura relies on periodical auditing processes to ensure the monitoring of activities in the community/cooperative.

Besides the experienced positive effects, some are still to come:

1. Awareness of environmental issues and actions connected with conserving and using the biodiversity have still to be strengthened. Leaders of Camtauá reported some difficulties regarding the compliance with the Forest Code as they were not aware of the rules and received no training about it. The leaders have not worked with reforestation yet, but they would like to get more involved and learn more about it. The next steps would be to raise the awareness of the community regarding the Forest Code and conservation practices.

5.5. Findings

Factors fostering the implementation of Natura's actions for sustainability along the UEBT IMS definition and certification process:

Among UEBT-related factors, there are:

1. The UEBT audits of the ESS in the context of the membership requirements. Attention has been given to non-conformities with respect to some social and environmental principles associated with the work on sustainable sourcing;
2. ESS risk assessment has highlighted the need for a verification system. The definition of the verification system is the main change that Natura has been implementing along the membership and IMS definition and certification process;
3. UEBT tools and procedures stimulated the re-organization of existing ways of operating, which had the form of centralized decision-making processes. The adoption and certification of an IMS fostered more horizontal processes that took the form of collaborations between different departments (e.g. GRAS, sustainability, innovation, regulatory, and marketing departments);
4. UEBT trainings, advisory services and day-to-day support have been used to understand the UEBT system and standards and to implement what is relevant to Natura's sustainability commitment. The day-to-day support has been instrumental to define the Natura standard which was inspired upon UEBT's. Trainings have been used to prepare Natura's staff at GRAS in setting up the verification and traceability systems as well as train auditors;
5. UEBT standards guided the definition of Natura's own standards. Aspects have been taken into consideration, such as the sustainable use of biodiversity and ensuring fair labor and safety conditions for those involved in the sourcing and production of biodiversity ingredients. UEBT standards have also allowed some flexibility to adapt guiding principles and criteria, making the company's standard relevant and adequate for the verification of its supply chains;
6. The UEBT Barometer is a tool developed by UEBT that has been used to convey to clients and final consumers the idea of the inseparable relation between the use of the natural resources and the promotion of social welfare. The interest of clients

and consumers have in turn stimulated the implementation of Natura's sustainable sourcing strategy;

7. Consumer's demands for traceability have fostered the verification system and auditing systems;
8. The Brazilian regulation on ABS demanded actions to ensure compliance while sourcing natural ingredients from the Brazilian biodiversity. This resulted in the creation of a division within Natura to deal with ABS-related aspects and in some changes in the resources used for research activities to ensure forest conservation;
9. An increasing demand for biodiversity inputs has required the reorganization of processes to make them more effective and engage more Natura's departments concerned with biodiversity-related issues;
10. Having committed people in leading positions was crucial to initiate the process and continue the actions toward sustainable sourcing pursuant to UEBT's standards. Their commitment has been particularly relevant when the market fluctuates or does not respond to Natura's commitment;
11. Having systems/tools/departments that could be adapted to fulfill actions for sustainability. Most of what Natura and the suppliers put in place to comply with the sustainable sourcing strategy and UEBT's requirements has been built on existing departments, systems, and procedures. This concerned the innovation department and the departments working with communities. They have been re-organized, tasked with new activities, provided with new tools concerning the verification and traceability system as well as compliance with the ABS regulation. Existing staff – mostly from the innovation and sustainability departments - worked on integrating what already existed and defining new tools and approaches. The same staff was in some cases relocated to the department responsible for verification and traceability;
12. Availability of resources to be invested in sustainability actions has been important to carry on the work needed with respect to verification and traceability. The workload increased both for Natura and suppliers because of the adjustments required by UEBT. Resources have been invested in new departments and staff, new tools, procedures as well as trainings;
13. Holding trainings and other forms of support have been instrumental to monitor the implementation of sustainability actions. Staff from the innovation department and

GRAS has been trained to conduct audits. Cooperative members have also been trained to work and comply with the system set up by Natura.

Factors hampering the implementation of the company's actions for sustainability along UEBT's certification process:

There are some unintended effects that hamper the implementation of actions. As for the stimulating factors, some of them are more specific to the UEBT membership and certification process, others can be attributed to a broader dynamic related to Natura's commitment to sustainability, its suppliers and their contexts of operation. Hampering factors include:

1. Difficulty in coming up with agreements that tackle the increasing demand for resources. Given that the traceability and verification systems are very expensive, a discussion among Natura's departments was triggered to define how to share the costs, which had been taken for granted to some extent;
2. Staff resistance. The redefinition and reallocation of tasks were perceived as a downgrade of their competencies until some of their previous tasks were reincorporated;
3. Rigidity of the system and inadequacy of requirements. UEBT standards and procedures in some cases turned out to be too complex, and in some cases, inadequate for the context of the operation. Some flexibility has been allowed so that Natura would adapt the system in accordance to its needs and the needs of its suppliers. Moreover, Natura's system does not allow for the verification and traceability of natural ingredients provided by one-off suppliers in the face of demand fluctuation;
4. Suppliers resistance. Some suppliers showed some resistance to the complexity of the verification system proposed by the company. In some cases, the local verification system managed by IBD is preferred.

Some of the perceived benefits concern strategy, supply chain, management, market and networking.

1. Strategy. Critical thinking has been brought by UEBT's standards with regards to the use of biodiversity and the equitable sharing of benefits. Standards have fostered a corporate culture that brings legal security for the company and communities;
2. Company and supply chain management. Risks are identified and constantly monitored. A process of continuous learning and improvement is in place with inputs coming from internal and external audits. Information exchange results in identifying effective ways to approach controversial matters. Moreover, Natura adopts a transversal approach to different departments and fosters horizontal relations among departments and with suppliers. This approach is very successful in achieving results. Overall conditions for people and biodiversity have been enhanced. The empowerment of communities is key. Community people have become agents of social change in education, labor standards, environmental conservation. This has provided communities with the ability to trade with Natura and other sectors. A reduction in the mobility of young people has been noticed, which can potentially prevent the youth from being marginalized as a result of moving to urban areas and not finding adequate living conditions;
3. Adding value to products whose traceability can be ensured and certified in the face of increasing demand for certified products in the market by savvy consumers;
4. Stakeholders better understand and increase compliance with relevant ABS legislation.

Some other positive effects are mentioned in the interviews as something to come:

1. Networking. The company's management expects networking with other cosmetics companies. This might come from the spread of the IMS-based approach amongst other companies. The company's managers participate in conferences, seminars and workshops along with Latin American companies to exchange experiences about the verification system;
2. Improved and expanded traceability. This will come through building new inventories and expanding the verification system to include ingredients and cooperatives that are not regular suppliers and are used to deal with supply and demand fluctuation;

3. Ensuring full benefits to cooperative members by increasing the transparency of the payment system from Natura to cooperative leaders, and then on to members. To this end, the trustfulness of the leaders can be improved;
4. Natura's and suppliers' actions for people and biodiversity is not being properly communicated to consumers. Natura's decision to bring the UEBT certification logo to the Ekos line is a landmark. Consumers are now becoming more aware of the use of natural resources by Natura;
5. Competitive positioning improves along with brand valuation and marketing.

Some adjustments can be introduced to offset unintended and hampering factors as well as ensure that sustainable sourcing continues and generates the expected positive effects.

1. As Natura expands sourcing areas, there is a need to adopt more management tools, instruments and mechanisms of monitoring. GRAS shall be strengthened with more auditors. More transparency in the relations with cooperatives is needed.
2. The company is going through a constant adjustment of the verification system to bring it closer to the context where it should work. The company plans to expand its relations to other suppliers of raw materials, which requires a huge investment. The company is also planning to follow up with the verification process after non-conformities are noted.
3. Measuring impacts through indicators is still a challenge. There have been major investments in management and tools, but the company could still go further in impact assessment at least to provide reliable information for communication purposes.
4. Communicate further about the UEBT-Natura partnership. Concepts, activities and projects that are jointly developed shall be integrated in communication and marketing. Communication with stakeholders and consumers shall be intensified. Visibility shall be given through labelling. Environmentalists and NGOs with critical concerns about the market use of biodiversity are mobilized. The innovation in certification is aligned with the idea of transmitting the amount of investment in the IMS directly to the final consumer. From now on the consumers of Ekos know and recognize the efforts to manipulate biodiversity inputs in a sustainable way. The new certification is a project financed by the sustainability and marketing department and will be part of the UEBT certification for ethical sourcing.

Discussion

Since 2000, Natura has worked with local communities to produce and source ingredients for its products. The company has developed a unique relationship model with more than 30 supplier communities which involves the creation or the supporting of a local cooperative. The communities are mostly located in Northern/Northeastern Brazil, and face similar socioeconomic challenges, such as low educational levels, poor access to health services and remote locations. The extraction of NTFPs helps families thrive, not to mention the environmental benefits, such as the significant reduction of timber extraction or the overexploitation of one product. The relations of Natura with supplier communities has taken the form of a process of building long-term partnership informed by the fulfilling of sustainability commitment in its three components – social, economic and environmental.

The company has been providing trainings for producers and workers. Trainings concern socio-environmental best practices that can be adopted in the communities' daily work. Moreover, cooperative leaders are trained on labor, safety and environmental legislation. Some members of the cooperatives are instructed to supervise and check if the work done in the field for the production fulfill the requirements set by the company. The requirements include quality, social, working and environmental conditions as well as volumes to be extracted and delivered.

Another form of support from Natura to the communities exists in ensuring access to equipment necessary for the production and provision of ingredients and for the safety of workers. In some cases, Natura ensures the required equipment. In other cases, Natura supports the access to funding opportunities through which communities can buy the required equipment.

Moreover, Natura has been facilitating the set-up of collaborations between the communities and other industries and clients. The oil facility in the Amapá community was only possible thanks to the relation with the company. The facility provides employment for families and learning skills that add value to the community in terms of knowledge, learning processes and entrepreneurship. The company does not demand exclusivity in delivery and encourages the cooperative to sell to other clients. Natura has a long-term practice of adequate payments. The company anticipates part of the payments so that producers can cover some of the costs. Moreover, increased payments are provided to those producers who also take care of early processing procedures (e.g. drying and breaking seeds). In all cases, workers get at least the minimum wage.

Furthermore, Natura has been promoting projects with communities to foster sustainable local development, such as the one that involves the payment of ecosystem services through a carbon offset project. Families who participate in this project receive an extra income for their effort to combat deforestation. The Amazon Program, which was launched in 2011, has provided a huge boost to the relations between Natura and the communities in the Amazon. It proposes a territorial approach to sustainable development focused on regional institutional arrangements. Natura's involvement in the process of setting up and certifying an IMS with UEBT implied some interventions in the relations within supplying communities. These interventions are nested in, and have been facilitated by, long-term partnerships. As an example, most of the communities involved in the Amazon Program are also the suppliers of natural ingredients used in the products that carry the Ekos label.

With regards to suppliers in general, the main implication of the UEBT membership and certification process for the relations between Natura and the communities concern the implementation of the IMS. Some of the interventions specific to the certification of the IMS include introducing sustainability aspects in the contracts with suppliers. Contracts for collectors include conditions concerning quality, health and safety in the forest, garbage disposal, use of timber products, child labor, etc.

There are guidelines for verification and traceability procedures. Products are delivered to Natura along with information about collecting conditions, date, place, name of collector, area of collection, and seeds are tagged in bags (see Annex II). Annual audits take place in a sample of communities as well as collection areas. Depending on the number of non-conformities, communities are moved to a quarantine list and are given an amount of time to correct the deficiencies verified by the auditors.

The presence of Natura's staff from GRAS in the communities are meant to facilitate trainings and verification as well as traceability procedures. 'The company agent' is a sort of leader of relationship that help the cooperative with management, administrative skills, the training of families and the guaranteeing of UEBT's 'best practices' and standards in the field. The actions due to the implementation of the IMS come with some unintended effects that challenged their implementation. The verification and traceability systems are considered too complex and resource demanding by communities. This generates resistance and opposition and reduce the negotiation power of Natura. Market fluctuations worsen this situation especially in a context where cooperatives are not completely satisfied with their relationship with Natura. They might decide to sell to other clients for higher prices even if they are random buyers that do not invest in community development. In other cases, consolidated suppliers of

Natura are not able to provide the amount required and the company needs to turn to other suppliers that cannot be fully traced and verified as addressed before.

However, the introduction of the IMS comes with some positive effects too. Natura got more involved with local communities and cooperatives. They started being considered as partners rather than purely commercial counterparts, and Natura's agents have been empowered by their presence on the field and constant interactions with the communities. The management of the supply chains improved thanks to the systematization of the traceability and verification systems. Quality assurance increases along with the improvement of traceability. Community leaders even play an active role in the verification and traceability system by passing on information.

All the positive effects add up to other positive effects that are connected with broader actions that the company has been carrying out at the community level, even before the UEBT membership and certification process. The socio-economic conditions of the workers benefit from the achievement of adequate working conditions that derive from stabilizing and diversifying income generation as well as ensuring safety. Awareness of sustainability topics increases thanks to trainings and other forms of activities involving different actors in the supply chain.

Living conditions in the communities have improved too: access to (better) housing, durable goods and services as a result of income stabilization and diversification as well as broader development projects promoted by Natura's Amazon Program. Natura provides leaderships with the opportunity to connect innovation and science with the governance of value chains from biodiversity in order to strengthen and build institutional arrangements as that guide collective action efforts. Actually, linkages between communities, the market and other economic activities strengthens territorial sustainable development in the region.

Conclusion

This chapter presented the findings of a study aimed at understanding the actions implemented within the company, and along its supply chains to fulfill the systemic approach to sourcing with respect to people and biodiversity contemplated by UEBT's standards. The chapter shows, through qualitative findings based on the perceptions of relevant people both at the company, supply chain and community levels, that the main actions taken to systematize sustainable sourcing concern the definition or improvement of tools to ensure a systemic

approach for: control, risks assessment, verification and corrective actions in case of risks and non-conformities with Ethical BioTrade principles.

The company has been successful in complying the certification system. The transition was very important and smooth, and happened in a rather fast pace given that Natura, since the very beginning, took steps towards what is known as the sourcing of biodiversity inputs with respect. UEBT's standard has played a vital role in redefining, organizing and creating processes and stimulating the reconfiguration of sectors within the company that deals with biodiversity. A major advancement in the relation with communities was achieved through the IMS.

Moreover, IMS fostered the creation and organization of a horizontal relation amongst sectors so that they would all be equally engaged in the sourcing with respect agenda. A few challenges along the supply chains ought to be addressed, such as the monitoring of 'outsourced' communities. However, the company has been able to devise internal mechanisms and tools that complement the UEBT standard as to make sure certification requirements are fulfilled along supply chains, and that non-conformities are corrected.

It is important to highlight that Natura already had a structure and processes that related to the current IMS prior to their implementation. These were responsible for organizing and triggering management processes that were mostly in place, but required improvements. This system – which combine pre-commitment with sustainability and commitment with the UEBT membership and certification. These relations go beyond purchasing; they become partnerships. The leaders of the cooperative of suppliers play a huge role in the interrelation with the company and in the interpretation of its guiding sustainability principles at the community level. They support the company in the monitoring, traceability and assurance. They are the interface in the case of price negotiation, definition and implementation of social projects and any other issue.

While social and economic issues had always been under attention in the work of Natura with communities, environmental aspects have required increasing attention within the frame of UEBT. Natura's actions at the community level increased community capacity to interact with institutions and to conduct their work according to the requirements. Moreover, the living conditions improved with better access to infrastructure for education. However, relationships are still highly influenced by markets and fluctuate with it.

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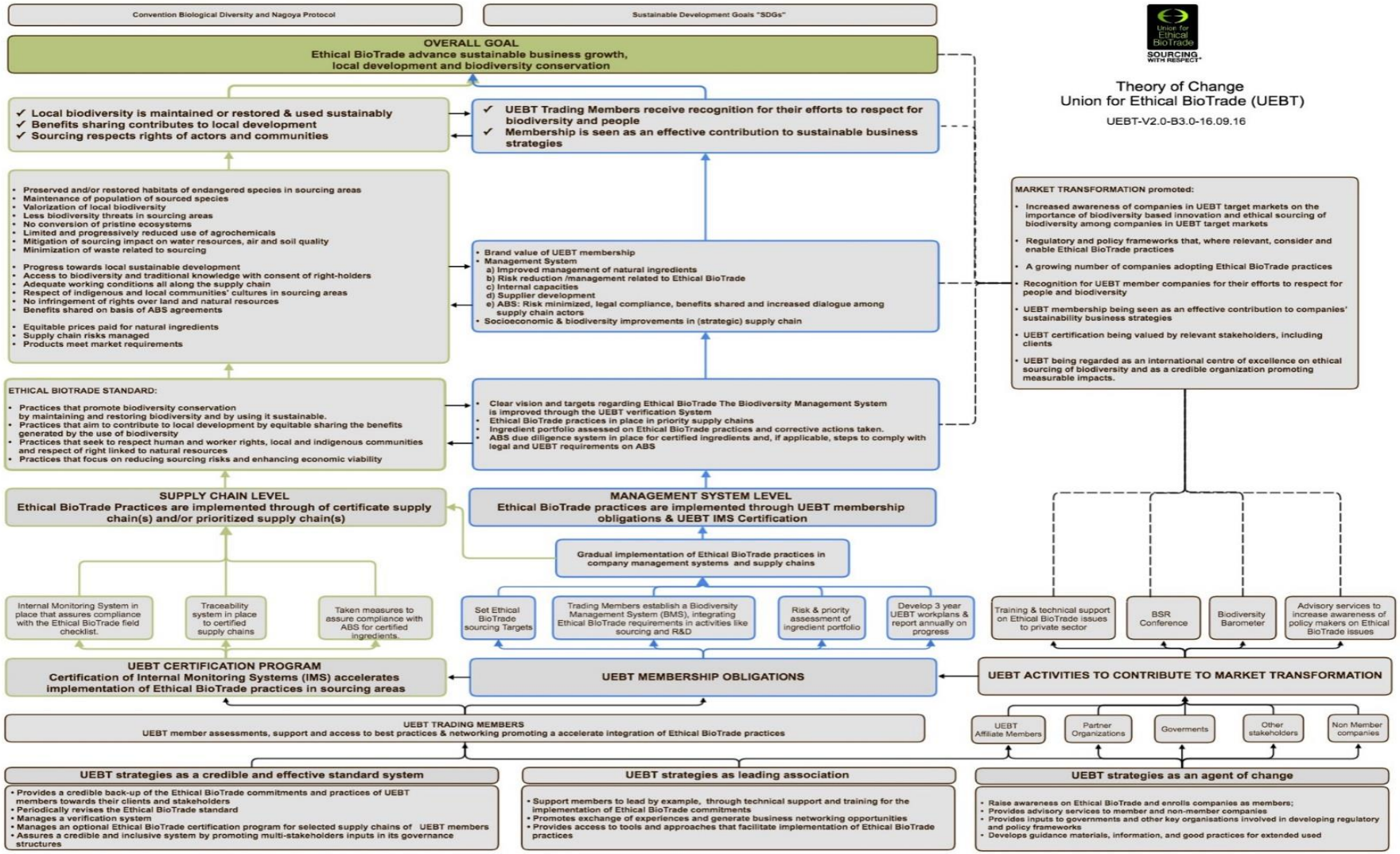
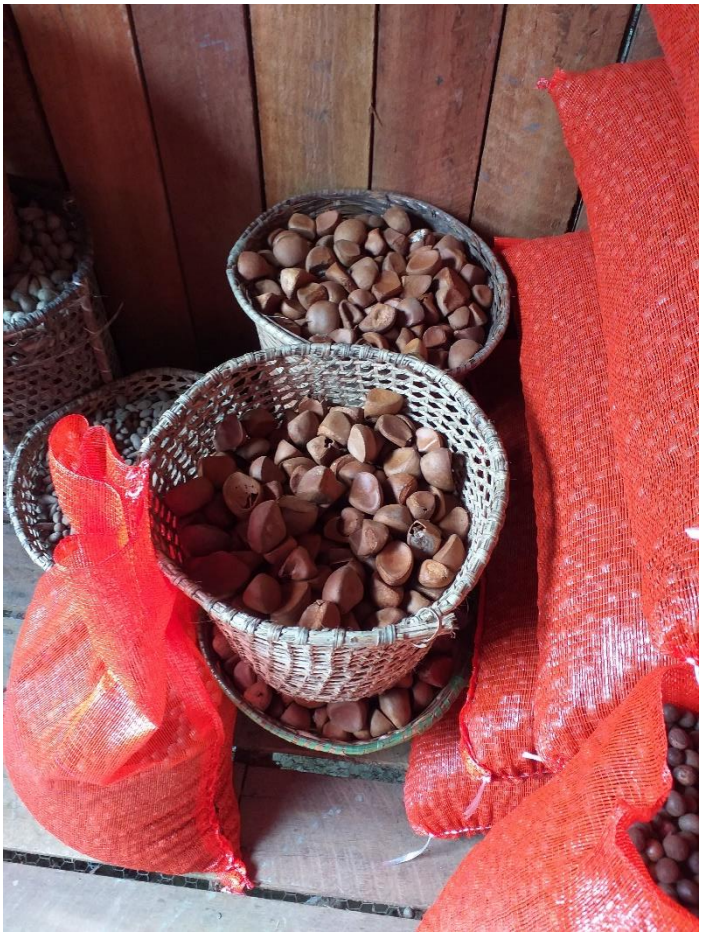
Annex I – UEBT Theory of Change (ToC)



Annex II - Pictures




DATA 13/03/2019
LOTE: 01
NOME DO PRODUTOR:
Maria do Socorro Valente Alves
ESPÉCIE:
ANDIROBA ( ) MURUMURU ( ) PATAUÁ ( ) UCUÚBA (X)