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Transnational Arenas in Biodiversity Governance

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Abstract

This article is aimed at the construction of a taxonomy for global governance with an emphasis on the transnational arenas related to biodiversity governance. Firstly, the article presents the main approaches related to transnational arenas. Secondly, we move on to the taxonomy for global governance to finally present the case of biodiversity as we focus on the public-private dimension to analyze the role of non-state actors in the implementation of the biodiversity regulatory framework contemplated by the Convention on Biological Diversity (CBD) and the Nagoya Protocol. Biodiversity is a prominent research object for the environmental politics and governance agenda and sheds light on important issues and concepts that characterizes the ‘new governance mechanisms’ of international relations. Finally, we develop a typology of transnational private institutions aimed at biodiversity governance to empirically demonstrate how the interplay of private actors contributes to the implementation of the biodiversity agenda.

Keywords: global governance, transnational arenas, delegation, implementation, biodiversity.

Introduction

The traditional state-based international system has undergone significant changes especially in the last two decades. This is due to the broadening of governance themes and the multiplicity of non-state actors that do not operate in international and national arenas solely, but also in transnational ones in a context where the public sphere delegates functional roles to private actors, such as companies and nongovernmental organizations (Rosenau, 1992; Mahler, 2000; Ruggie, 2004; Hurrell, 2007; Green, 2010). The cooperation among private actors in transnational arenas is largely based on a recent academic literature on public-private governance (Held and Hale, 2011), global rule-making (Büthe and Mattli, 2011), the theory of 'orchestration' and governance 'triangle' (Abbott and Snidal, 2010) and the non-state market driven (NSMD) governance systems (Cashore, 2002).

Environmental sustainability is a prominent issue within this scenario marked by multilevel and polycentric decision-making arrangements. Essentially, there are at least seven theoretical frameworks that can be applied to a wide range of study cases related to global governance issues in general. 1. Hall and Biersteker (2002) argue that the transnational domain is the arena in which 'private authority' is constructed along with actors and their 'authoritative roles'; 2. transgovernmental governance is mainly characterized by public actors that operate in regulatory networks (Slaughter, 2004); 3. private (non)market rule-making regulation (Büthe and Mattli, 2011); 4. public-private multilevel governance arrangements (Büthe and Mattli, 2011); 5. multistakeholder initiatives (Held and Hale, 2011); 6. non-state market driven (NSMD) governance systems and 7. polycentric and 'authoritative governance' (Cutler, 2002).

This article is aimed at the construction of a taxonomy for global governance with an emphasis on the transnational arenas related to biodiversity governance. First, the article presents the main approaches related to transnational arenas. Secondly, we move on to the taxonomy for global governance to finally present the case of biodiversity as we focus on the public-private dimension to analyze the role of non-state actors in the implementation of the biodiversity regulatory framework contemplated by the Convention on Biological Diversity (CBD) and the Nagoya Protocol. Biodiversity is a prominent research object for the environmental politics and governance agenda and sheds light on important issues and concepts that characterizes the 'new governance mechanisms' of international relations.

1. Methodology

We were inspired by Green (2010) to measure the dynamics of private authority (p. 156). The large N analysis with two levels (treaty and sub-treaty) using delegation from public to private actors in 152 multilateral environmental agreements between 1902 and 2002 is astonishing. The data comes from the database project provided by Ronald Mitchell at the University of Oregon. The findings of 3.6% of policy functions at treaty level delegated to transnational actors and 8.4% at sub-treaty level are evidences of no 'retreat of the state' (p. 157). At the same time, "62% of all instances of delegation to

private actors [treaty level] occurred in the last 12 years of the sample”, and “70% of the sub-treaty level” from 1990 to 2002. At the same time, “the proportion of policy functions delegated to private actors is quite low”. We could go further on this topic and desegregate policy functions using the case of biodiversity.

We start with the Green’s approach on the state authority of Parties at the United Nations to track down different sub-levels in order to identify the role of non-state actors in the implementation of the principles contemplated by the Convention on Biological Diversity that dates back to 1992. We have collected all the official final reports from the biodiversity intergovernmental multilateral agenda discussed in the Conference of the Parties (COPs) from 1992 to 2014 to perform a series of textual analysis by counting the following keywords: ‘private sector’, ‘NGOs’, ‘governance’, ‘regulation’ and ‘transnational’. Then we developed an analytical explanation for the variations in order to have a picture of private participation in the evolution of the biodiversity agenda. The terms have been chosen in accordance to what the literature considers being a trend in the recent agenda of global governance, such as the regulatory processes carried out by transnational private actors.

Then, we develop a typology of transnational private institutions based on ‘transnational arenas’ aimed at biodiversity governance to empirically demonstrate how the interplay of private actors contributes to the implementation of the biodiversity agenda. The taxonomy for global governance is built on the literature review and the case of biodiversity is analyzed through case studies. Two dependent variables are considered: 1. non-state actors as policy executors and 2. the policy itself (Green, 2010) disaggregated functionally. We look for evidences to answer the research questions: what functional role do non-state actors play in implementation of biodiversity agreements? What are the implications for public and private actors and (transnational) arenas? We take actors, arenas, legal status, mechanisms and outcomes as the independent variables to verify the variations of the dependent variables.

2. Defining Transnational Arenas

We consider ‘transnational arenas’ as a political process where a deliberative decision-making is under way involving at least two actors from different countries. What kind of actors? How do they recognize each other? Which are the political instruments available? What do they do? States and formal international organizations are part of the ‘transnational’ domain? In order to answer this questions, it’s important to move forward in conceptualizing the ‘transnational’ as an arena to understand the functional role of private actors in the biodiversity agenda. We use the academic synthesis provided by Christer Jönsson (2010). Firstly, the ‘transnational’ is about the flow of people, beliefs, goods and assets outside the state or the international system [of states] (Aron, 1967). Secondly, ‘transnational actors’ can be considered if we go through an empirical analysis to shed some light on the role [and influence] of non-state actors (Wolfers, 1962). Thirdly, ‘transnational’ can also be a political process (Kaiser, 1969) ‘between governments of nation-states and/or the transnational society and governments that are initiated by interactions in transnational arenas’ which means that the public authority of states is part of the

'transnational' domain with 'horizontal' and 'vertical' linkages with actors (Jönsson and Tallberg, 2010).

In order to clarify the jurisdiction of the 'transnational', this transcendent arena includes all laws that regulate actions and events, a soft territorial conception of Law (Jessup, 1956). In fact, norms and rules can be created in 'transnational arenas' as outcomes of political processes involving state and non-state actors. These interactions are not controlled by any central authority, government or international organization. Huntington (1973) argues for a 'cross-borders' scope of operations by any relatively centralized, functionally-specific, bureaucratic organization'. The idea of this 'operational' transnational movement is to reinforce the capacity of the non-state actors to 'penetrate' different arenas. These movements can be viewed as a top-down changing of power in nature where states 'delegate' or 'recognize' the rise of non-state actors; or a bottom-up phenomena in which firms, NGOs and networks promote achievements upon the state domain (Steffek, 2010).

Considering this last approach, NGOs and companies have the ability to act as enforcers as they develop an expertise through 'best practices' that are applied to 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. In this context, Cashore (2002) has introduced a terminology to describe this process, namely the NSMDs. The non-state market driven governance systems are influenced by market incentives and enforcement mechanisms provided by NGOs and companies.

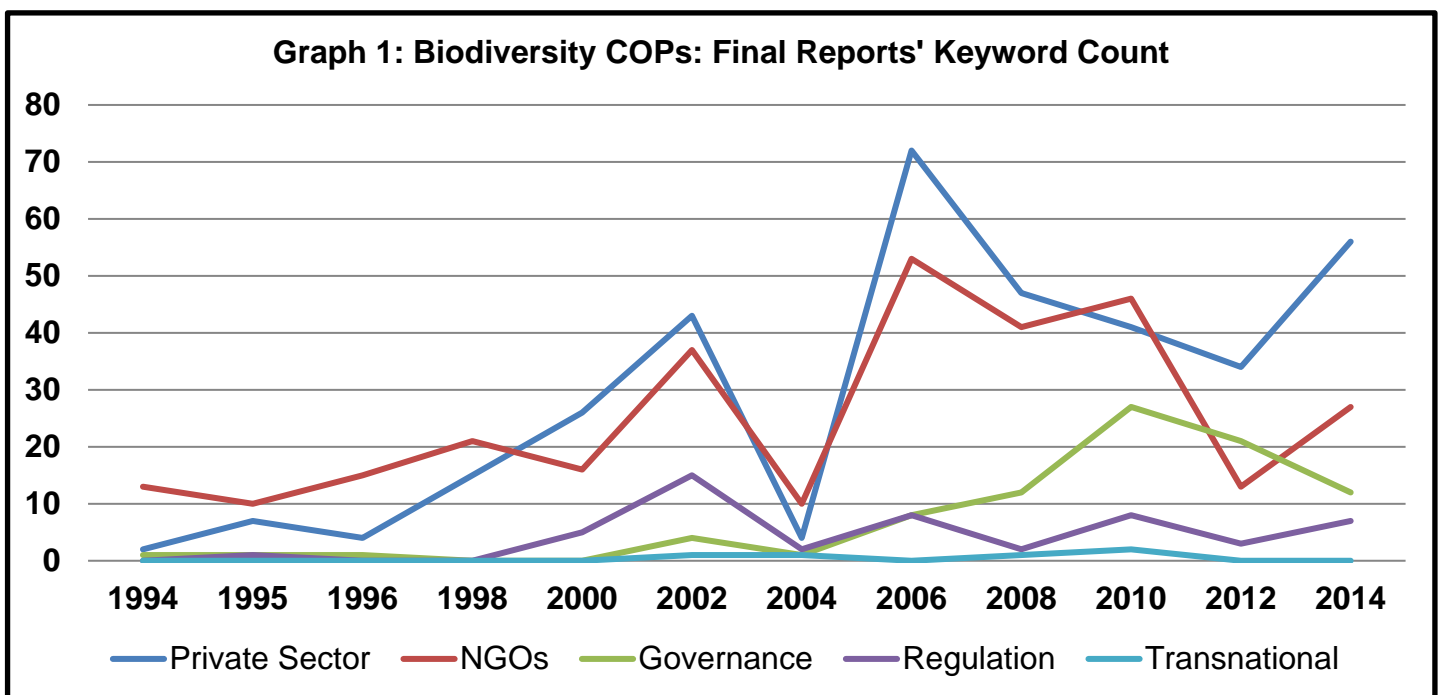
Another explanation for transnational arenas comes from the authors of 'private authority'. The rise of private authority highlights market and social forces shaping the political process of convergence and expectations (Hall and Biersteker, 2002, Cutler, 2003, Büthe, 2010, Green, 2010). The term 'authoritative' is used to design a diffuse and hybrid authority, informally recognized by public and private actors in the process of scaling down or up (Hall and Biersteker, 2002). The recognition of rules by different actors in multilevel governance depends on the 'authoritative' mechanism. It is a way of NGOs to appropriate the intergovernmental multilateral public regulation to scale it down to firms that implement the rules at the national level under the state regulation.

A different set of explanations comes from orchestration and transnational governance (Pattberg, 2007, Held and Hale, 2011, Abbott and Snidal, 2010, Büthe and Mattli, 2011). Embedded in the international relations theories of cooperation, the approaches argue that the public-private arrangements are the best solution to increase legitimacy, provide expertise and keep the state not as the traditional authority, but a supplier of public goods through regulation and the provision of information. This is a major positive scenario where public-private partnerships fill the gap of purely intergovernmental agendas in which states and international organizations transfer competencies to private actors (Green, 2010; Büthe and Mattli).

3. Public-Private Delegation in the Intergovernmental Multilateral Agreement

As mentioned previously, we have adopted the two dependent variables analyzed by Green (2010) to examine the delegation process observed in the final report of each Biodiversity Conference on the Parties (COPs) from 1994 to 2014. In other to do so, a keyword count was carried out so that it would be possible to measure how many times the terms 'private sector', 'NGOs', 'governance', 'regulation' and 'transnational' were mentioned in the official documents. The objective is to correlate the terms to the delegation process to non-state actors in order to explain 1. the actors as policy executors (implementation) and 2. the policy itself. The table with the detailed count was placed in the appendix.

The lines represented in the following graph behave in the same way as the literature on the role of non-state actors predicts. The private sector and the NGOs gain more emphasis in the early 1990s, but only in the 2000s is that these actors notoriously assume a major role in the biodiversity agenda.



Source: elaborated by the authors based on the COPs final reports available at www.cbd.int, access in February, 2016.

Green (2010) points out that delegation to non-state actors has mainly occurred in the last twelve years (62%), considering the time series from 1990 to 2002. The lines in the graph clearly represent this trend. There is an upward tendency that precedes the peak between 1996 and 2002. From 1994 to 1998, seven programs to address the conservation of specific ecosystems were at the COPs' agenda with progressive involvement of the private sector and NGOs (Chasek, 2006). The COP's decision to negotiate a Protocol on biosafety is explained on the basis of Article 19.3 of the CBD - Handling of Biotechnology and Distribution of its Benefits – whose scope goes from the provision of natural

resources to biotechnology purposes to sharing benefits from the production and the use of the biotechnology by developing and developed countries. The biosafety Protocol was negotiated in six meetings from 1996 to 1999 and the time series help to explain the movements of non-state actors to push the agenda from 1996 (Chasek, 2006).

In 1999, a coalition of European countries and environmental NGOs called for a moratorium on the import of genetically modified food which ended in 2004 in spite of the fact that the Cartagena Protocol was adopted in January, 2000 (and entered into force in September, 2003). After this period, the upward tendency returns and the private sector skyrockets along with NGOs. A few years later and after a few decrease trends, the engagement of the private sector is formally recognized during COP 10 in 2010 according to the decision document X/21 'Business Engagement'. The effects can be perceived in the next COP's final report in 2012 when both the private sector and NGOs lines start to increase again. Simultaneously, the terms 'governance' and 'regulation' start to increase and the term 'transnational' remains low with very little variation.

All the COPs have a specific document named "Cooperation with other conventions and international organizations and initiatives" that also refers to non-state actors, namely the private sector and NGOs, as "implementation organizations". Similarly, this a pattern observed in most of the final reports with the corresponding variations throughout the years. What are the implications of these findings? To what extent the delegation process take place?

The private sector and NGOs have played a major role in the biodiversity agenda. These actors operate transnationally through a network of stakeholders ranging from private bodies to public institutions. In this sense, delegation sometimes may be replaced by the opposite movement, that is, the non-state actors start to influence the agenda-setting of public bodies.

As discussed previously, governance entails a process that evokes many actors shaping the global agenda. The term is commonly used, but given its broad definition, new terms have been introduced in order to increase specificity when it comes to certain agendas, such as the biodiversity. In this context, the terms 'regulation' and 'transnational' have shown that governance is not only the political process and decision-making, but it is also the way in which actors converge in a given agenda and regulate an issue. Furthermore, the newly-introduced arena known as 'transnational' has gained more attention recently. It is a diffuse term that overlaps the international, the domestic and the local arenas in an attempt to explain the interplay of actors that orbit in various domains of international relations (Gulbrandsen, 2010).

4. A Taxonomy for Biodiversity

The taxonomy was done in accordance to the characteristics of the arrangements in each of the classification presented in the following table. Besides, we have considered the transnational criteria to select the cases, that is, there should at least be two actors from different countries involved in the deliberative process of decision-making so that it would be possible to empirically test the cases in a transnational context. In this sense, we have defined three categories that involve non-state actors and one that involves state actors. The idea is to complement Green's public-private delegation

analysis with the functional distribution of policy design and implementation. Green (2010) set up the delegation from public to private. Here we work with autonomous private actors in order to disclose their functional roles. There are 18 cases constituted in transnational decision-making processes that result in different combinations of functional attributes.

NGO-NGO	NGO-Business	Business to Business	Public-Private Networks
Rongead	Aquaculture Stewardship Council (ASC)		Naturaserve.org
Sustainable Agriculture Network (SAN)	Marine Stewardship Council (MSC)	Biodiversity in Good Company	Conservation International (CI)
Rainforest Alliance	Forest Stewardship Council (FSC)	Natural Research Stewardship Circle	International Union for Conservation of Nature (IUCN)
Friends of Earth	Union for Ethical BioTrade (UEBT)	PhytoTrade Africa	International Forestry Resources and Institutions (IFRI)
Greenpeace	World Wide Fund for Nature (WWF)		International Coral Reef Initiative (ICRI)

Source: elaborated by the authors based on information available at www.ethicalbiotrade.org, access on March 3rd, 2016.

We collected information from organizations according to 1. the 'transnational arenas'; and 2. the focus on biodiversity and conservation issues. The classification was done according to the following criteria (Table 2): 1. NGO-NGO: actors that are non-profit and not directly involved with business partnerships; 2. NGO-Business: non-profit NGOs that develop projects with business; 3. Business-Business: transnational business cooperation; 4. Public-Private Networks: a more diffuse network of stakeholders that must involve NGO-Business partnerships with governments and international organizations. The five dimensions below are part of the functionalist arrangement that involves the actors listed in Table 1. The aim is to analyze the role of the set of actors in Table 1 in each dimension represented in the first column of Table 2.

Table 2: Functional Classification of Biodiversity's Key Stakeholders

Dimensions	NGO-NGO	NGO-Business	Business-Business	Public-Private Networks
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	Indexes Indicators Reports Certification	Indexes Indicators Reports Certification
SANCTIONING	Moral	Removal Moral	Removal Moral	Legal Removal Moral

Source: elaborated by the authors, adapted from Green (2010).

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).

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. 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' noncompliers which are also transferred to a removal list as long as commitments are not fully fulfilled in accordance to principles and standards.

The Business-Business functional arrangement is mainly formed by private actors, such as companies and banks. Besides the nature of the actor, what differentiate this arrangement from the former one are 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.

The Public-Private Networks typology involves a wider range of private and public actors. This is the case of national governments that create agencies to support companies to sustainably use biodiversity resources or banks that are derived from an international organization, for instance. For this reason, 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.

5. Findings

We have attributed 0 or 1 for each function based on information of key documents available at websites. In the case of enforcement the scores were added for each multilateral agreement mentioned in the documents. It is still a preliminary study, but the idea is to code the various functions and run a quantitative analysis to make it more accurate and inferential.

Rule-making	1
Enforcement	2 (IUCN and ICRI, Agenda 21)
Implementation	3
Monitoring/Information	4
Sanctioning	0

Public and private networks mobilize complex interactions with multiples outcomes (Table 3). The most prominent outcome highlights the monitoring efforts and the provision of information. Naturereserve is comprised of 25 agencies, 19 companies, 36 non-profit foundations and 1 university. International Conservation (IC) is a business-NGO-governmental alliance that promotes different projects on biodiversity conservation. International Union for Conservation of Nature (IUCN) and ICRI are the only ones that explicitly support UN Conventions (Climate Change and Biodiversity) and Agenda 21. IUCN also manages the Red List of Endangered Species without sanctioning. International Forestry Resources Institutions (IFRI) accounts for research centers mixing foundations, governmental agencies and international organizations. The International Coral Reef Initiative (ICRI) is a voluntary network of governments, NGOs and private sector without any governance structure or policy-making body. Transnational collaboration is related to scientific research and the declared goal is to implement chapter 17 of Agenda 21 regarding marine ecosystems (Dimitrov, 2011).

Rule-making	3
Enforcement	5 (CBD and Indigenous Conventions, Nagoya Protocol)
Implementation	3
Monitoring/Information	2
Sanctioning	0

It's rather difficult to find truly transnational business organizations dedicated to biodiversity; we found three. The Natural Resources Stewardship Council (NRSC) is a business transnational coalition that "implements good practices and responsible sourcing for the beauty industry" (www.nrsc.fr, access in March, 2016). Affiliation is taken at personal bases and 22 company founders are registered. Seven 'best practices' are set up based on the interpretation of Nagoya Protocol, CBD Convention and UN Declaration on the Rights of Indigenous Peoples. The second transnational business association is the PhytoTrade Africa (Southern African Natural Products Trade Association) joining 9 African countries committed with organic and fair trade natural resources. There are 26 trading members and 11 accredited partners. They provide information and monitoring reports for impact measurement. Biodiversity in Good Company is a business association whose target is to protect biodiversity and the sustainable use of natural resources. Membership accounts 25 private companies worldwide and there are connections with EU Business and Biodiversity Platform, Fundación Biodiversidad (governmental

agency from Spain) and India Business & Biodiversity Initiative (IBBI). The objective is to set up measurable indicators, provide information to suppliers and cooperate with scientific institutions and NGOs. All the business transnational platforms explicitly manifest support for CBD Convention and Nagoya Protocol. Actually they comply with the objectives and participate in the negotiation process, interpret the main objectives and develop 'best practices' to implement the CBD Convention and Protocol.

Rule-making	6
Enforcement	0
Implementation	6
Monitoring/Information	1
Sanctioning	1

The Business-NGOs transnational organizations are explicitly rule-making and standard-setters. Most of them work on labelling and certification schemes. There is a truly concern on supply chains and consumer behavior and awareness. Those work as rule-makers on the interpretation of public law and regulation on biodiversity and climate change. However, they also create norms and rules and go further on the issues. Different projects, programs, actions and policies are led to the biodiversity agenda at global/local scale. Business developed expertise and acknowledge implementing 'best practices' and measuring impacts and results. The Union for Ethical BioTrade is to only one that has a moral sanctioning instrument.

Rule-making	5
Enforcement	0
Implementation	5
Monitoring/Information	5
Sanctioning	2

Transnational NGOs are mostly global/regional ones with thousand/millions of members and donors (and supported by foundations and public agencies). Rule-making provides the burden of the creation of norms and rules, expertise and know how. No one enforces the UN Environmental Conventions and Protocols. At the same time, they are good suppliers of information by monitoring efforts with concern to results and impact verification. Friends of Earth and Greenpeace also work as sanctioning bodies with 'moral' penalties. Rongead is the only regional NGO which works in African countries with Non-Timber Forest Products (NTFPs).

6. Preliminary Conclusions

It may sound paradoxal, but the business transnational organizations are the most committed to intergovernmental multilateral agreements and treaties. Companies behave as rule-takers in transnational arenas. At the same time, those behave as rule-makers when articulated with NGOs to promote best practices and show the way to a future private or public regulation. As

mentioned by Johan Verburg, a private sector coordinator of Oxfam/Novib, “today’s best practices may become tomorrow’s norm” (www.eco-business.com, access in March, 2016). The Business-NGOs cooperation seems to provide legitimacy that companies themselves would not have, and therefore are prone to move from rule-takers to rule-makers. NGOs are concerned about implementing projects, policies and actions to combat biodiversity loss as well as provide information in the form of indicators. When NGOs are articulated with governments and companies, the result appears to be the same.

This article sought to test the dependent variables assumed by Green (2010). The results have shown that the public-private delegation does occur, but when it comes to the functional role of the actors, the transnational business actors play a prominent role in the biodiversity agenda. These actors can either be rule-takers and rule-makers, but as discussed, there seems to be a shift in terms of policy making as business transnational organizations have increasingly participated as standard-setters and thus as rule-makers. This scenario causes major consequences to the public-private dimension of the biodiversity agenda as non-state private actors act as policy executors which is one of the dependent variables investigated in this article. This also affects the way policy is designed and shows a strong relation between the transnational private actors and the policy itself, what contributed to the validation of the second dependent variable.

These findings are clearly expressed in the cases addressed in the article to reach a broader understanding of the way public-private delegation takes place in terms of implementation and cooperation among diverse actors in the biodiversity agenda. Public actors – states and international organizations – pursue enforcement mechanisms to implement the regulation, but due to the lack of effective mechanisms, delegation takes place and other processes arise from this context. This is where the private interplay takes the form of a transnational regulatory system that affects the functional role of governance organizations.

The official documents of the Convention on International Trade in Endangered Species (CITES) and of the International Tropical Timber Organization (ITTO) will be analyzed in the forthcoming versions of this working paper as an attempt to include new controlling variables to the research.

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