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Governing Biodiversity through Public-Private Institutional Arrangements: The Case of  
the Union for Ethical BioTrade in the Brazilian Amazon

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This working paper is originally a chapter from a doctoral dissertation from the Institute of International Relations at the University of São Paulo, Brazil. The main goal is to contribute to the literature that discusses transnational environmental regulation and governance by analyzing the Union for Ethical BioTrade (UEBT) as a global governor and/or a standard-setter in biodiversity governance. In order to achieve this, interviews were conducted during UEBT's 2018 "Beauty of Sourcing with Respect Conference" in Paris, France. Besides, documents available online were analyzed so that the case study could be done. The major contribution to the literature in 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 of functional roles from the Convention on Biological Diversity to UEBT.

## **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 (BTFFP), 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<sup>1</sup>. 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<sup>2</sup>) between CBD and UEBT. The delegation theory (Green, 2014) 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). 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”<sup>3</sup>. “Implementation” here means a generic designation for the provision of information that supports the achievement of biodiversity goals. UEBT also

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<sup>1</sup> PowerPoint presentation of UEBT by the Executive Director Rik Lojenga. Source: [www.cbd.int](http://www.cbd.int). Access: 2<sup>nd</sup> May, 2019.

<sup>2</sup> Memorandum of Understanding (MoU). Signed on August 18, 2011. Source: [www.cbd.int](http://www.cbd.int). Access: 2<sup>nd</sup> May, 2019.

<sup>3</sup> Art. I of MoU, see [www.cbd.int](http://www.cbd.int). Access May, 02, 2019.

provides updated information through its Biodiversity Barometer<sup>4</sup>, the monitoring instrument used to evaluate business engagement with ‘sourcing with respect’, as well as measure such impacts<sup>5</sup>. 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 [...]” <sup>6</sup>
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).

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

<sup>4</sup> “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).

<sup>5</sup>Art. 2 of MoU, see [www.cbd.int](http://www.cbd.int) Access May 02, 2019.

<sup>6</sup>Art. 2 of MoU, see [www.cbd.int](http://www.cbd.int) Access May 02, 2019.

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**

<b>Global Regulation</b>	<b>Institutional Setting</b>	
<b>Selection Mechanism</b>	<b>Public</b>	<b>Private</b>
<b>Non-Market</b>	CBD, Nagoya Protocol	UEBT, ISO, IASB, IEC
<b>Market</b>	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 al., 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 (Caffaggi, 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.

Caffaggi (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 Caffaggi'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<sup>7</sup>; 3. reflect concerns on “[...] social and ecological dimensions of international trade [...]”]; and “4. [...] point to new forms of global

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<sup>7</sup>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).

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 information to 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 consumers do not have information about production in Global Value Chains. Standards can help promote “[...] compatibility between diverse actors within the chain [...]”, organize the linkages among them, reduce costs associated with governance 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 niches or club 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-setting is more private than public or is the result of public-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’s membership 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<sup>8</sup>. 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 by trading 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 and focus on 1. “[...] 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).

PRINCIPLES AND CRITERIA - ETHICAL BIOTRADE STANDARD (2012)
<p style="text-align: center;"><b>1. Conservation of Biodiversity</b></p> <p>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.</p>
<p style="text-align: center;"><b>2. Sustainable Use of Biodiversity</b></p> <p>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</p>

<sup>8</sup> “Every Five years UEBT revises its standard”, and a new revision procedure is open for public consultation. The first period was open from May 1st, 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.

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 UEBS document 'Ethical BioTrade Standard' (2012).

One of the pillars of the UEBS 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 UEBS 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. UEBS 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 specific public regulation was created to govern the access to and the use of genetic resources worldwide and the fair and equitable sharing of benefits with local communities – the Nagoya Protocol, which entered into force in 2014. This means that the legal uncertainty would be reduced as both providers and users of genetic resources could be connected. The Convention ought to create enforcing and monitoring mechanisms through the

Protocol in order to guarantee implementation by member countries. Some challenges have arisen: 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. The Clearing-House is the mechanism through which the Nagoya Protocol is able to monitor 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 the 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 (Burriss 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.

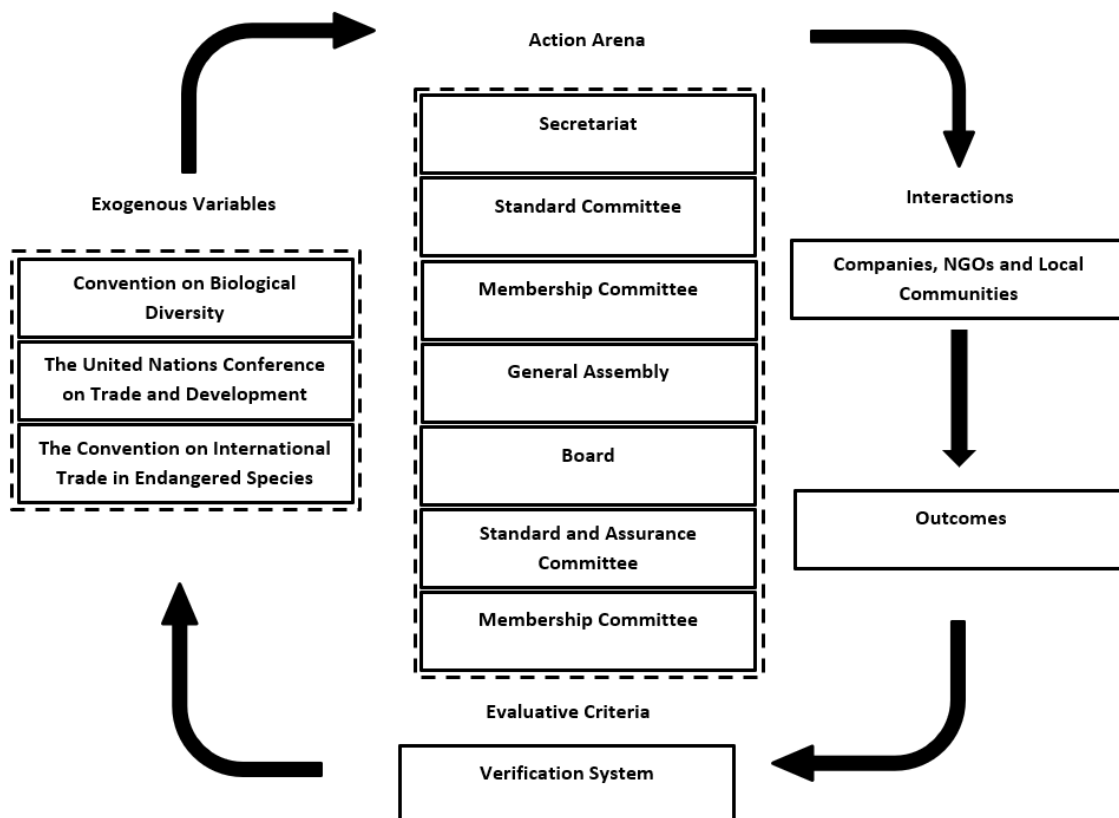
Before specifically addressing these, it is necessary to further the understanding of legitimacy in environmental affairs as it is intimately related to democracy which is portrayed as the fundamental principal in contemporary world politics and justifies authority (Held, 1995). While world politics 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 of its 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 Pool 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, Bütte 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 Bütte 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, Reynolds, 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 3: Functional Classification of Key Stakeholders in CSPs**

<b>Dimensions</b>	<b>NGO-NGO</b>	<b>NGO-Business</b>	<b>Business-Business</b>	<b>Trisector</b>
<b>Rule-Making</b>	Principles and criteria	Principles and criteria Corporate 'Best Practices'	Principles and criteria Corporate 'Best Practices'	Principles Criteria Corporate Best Practices Treaties/Protocols
<b>Enforcement</b>	Commitment	Commitment	Commitment	Commitment Binding
<b>Implementation</b>	Voluntary	Voluntary	Voluntary	Voluntary Binding
<b>Monitoring/ Information</b>	Indexes Indicators Reports	Indexes Indicators Reports Certification	Indexes Indicators Reports Certification	Indexes Indicators Reports Certification
<b>Sanctioning</b>	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 differentiates 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 of 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<sup>9</sup>. 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

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<sup>9</sup> 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.

(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 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.

We 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.

## **Final Remarks**

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, overflowed political boundaries and reached the international arena by scaling up to levels above the domestic realm of states.

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