

# The Convention on Biological Diversity or the international construction of a contentious global common<sup>1</sup>

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During the 1980s and 1990s many environmental NGOs and the scientific community have stressed the idea of global commons that were in risk, which was considered the case of the main environmental problems: loss of biological diversity, climate change, loss of the ozone layer, and degradation of the marine environment (Wood 2000, 3). Ecologists declared that species extinction has greatly increased due to human activities

and interventions into the nature. This was portrayed dramatically as the ‘sixth mass extinction’ of life forms in Earth (Wilson cited in Boisvert and Vivien 2005: 463).

The problems of the global commons are understood as ‘problems whose manifestation might be local or national but whose consequences would be global in scale’. As a result, ‘the costs of inaction would be global in scope so the responsi-

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bility for addressing the problems – even if its manifestation was highly localized – should be borne by the global community’ (Wood 2000, 3). In this perspective, local environmental problems are presented as essentially transboundary that require the development of ‘global science’ to be analysed, international institutions to manage them and the prescription of ‘global solutions’ (Goldman 1998: 3-4).

The idea of biodiversity as a global common implies the conception of a ‘new’ discourse based on the macro-scale of the environmental problems but, more important, it also involves the creation of new authorities, new forms of valuation and appropriation. As Saurin highlights, the environmental crisis

(...) is primarily a social crisis rather than a natural crisis, in the sense that what is at stake are the forms and particular processes of accumulation and social reproduction, albeit now on a global scale. More specifically this means that both the processes of environmental change and the explanations one provides of those changes need to be understood as part of a larger recomposition of social and economic relations, and of the reconfiguration of political and economic relations on a global scale. (2001: 65-6)

This perspective may help to understand the diverse aspects and non evident economic and political implications that surround multilateral environmental agreements, such as the Convention on Biological Diversity (CBD) that was signed at the United Nations Conference on

Environment and Development held in Rio de Janeiro in 1992.

The underlying terms of the CBD are those of ‘ecological modernisation’, expressed by Hajer (1995). They are the expression of different state and non-state actors with a wide array of different interests and ideological, political and economic commitments in the global economy that claim to have authority over the global commons. Such actors are industrialised states, states ‘rich’ in biodiversity or so-called megadiverse, environmental NGOs, scientific communities, biotechnological and natural resource-based industries, indigenous and local communities, among others. The big failure of ecological modernisation as an environmental discourse is that it ‘does not call for any structural change but is, in this respect, basically a modernist and technocratic approach to the environment that suggests that there is a techno-institutional fix for the present problems.’ (Hajer 1995: 32)

This essay is a critique of the construction of the concept of global commons, which fits into the discourse of ecological modernisation, by using the example of biodiversity and the Convention on Biological Diversity. The understanding of biological diversity as a global common is very problematic and supposes, with dubious assumptions, to have a solution of the environmental problems through the commoditization of biological resources. In order to do so,

a legal international framework has been created. The Convention on Biological Diversity is an attempt to: i) re-shape state sovereignty and global authority over the multiple forms of biological diversity including genetic resources and allow to some actors gain power and authority; and ii) facilitate the recognition of biological and genetic material as valuable resources for a wider incorporation of them into the global economy. Although the Convention calls for the preservation of the biosphere, it also set a framework for a wider appropriation of nature, a mix that has proved to be highly contradictory and conflicting.

In words of Hajer: 'the discourse of ecological modernization puts the meaning of the ecological crisis upside-down: what first appeared a threat to the system now becomes a vehicle for its innovation.' (Hajer 1995: 32). Moreover, it opens the door to more adventurous incursions from other international regimes and their institutions, for instance world trade and development, now with more 'authority' on environmental issues. This has been notoriously the case of the last decade.

### **BIODIVERSITY AS A GLOBAL COMMON**

Biological diversity or biodiversity is a very broad term that includes all living things on the Earth, from the genetic level to ecosystems. Moreover, concepts such as ecosystems or genetic material are not easy

to define and are challenged by constant scientific debates. Flitner declares that the term has been used since the 1980s thanks to a series of publications and events with heterogeneous messages and contradictory statements from different ethical, conservation, development aid and economics perspectives (1998: 145-6). In addition, economics discussions on conservation were attached to the debate. 'The new importance attributed to market forces in *Biodiversity* [one of the most influential publication on this topic; Wilson 1988] reflects both the general ideological shift in the 1980s and its material-scientific realization- the new technical possibilities through genetic engineering.' (1998: 147). Simultaneously, this publication brings different aspects of society-nature relations such as 'traditional knowledge' of indigenous people in the biodiversity discourse (1998: 147).

Later, in the 1990s, leading environmental organisations and the World Bank 'translated' the discourse into policy papers that elevated the industry, the World Bank and international conservation organisations as the main actors in preserving biological resources (1998: 148). Now the biodiversity discourse is dominated by policy experts and economists that clearly expressed a bias towards markets considerations and suggests that the core of the problem of biodiversity loss is due to an inadequate management of these resources from developing countries. In words of Swanson (1997):

It is possible to source biodiversity's decline in a single, very broadly stated problem: the failure to appreciate and to appropriate the values of biological diversity. Although many different forms of life are endangered in the current phase of decline, and many different causes are at work, the problem at base remains the same. (1997: 42)

'(...) the problem remains that developing countries do not see these [biological resources] to be resources on which to build a developed economy. It is this perception of "investment unworthiness" that is the ultimate cause of biodiversity's decline, (...)' (1997: 43)

Moreover, those experts argue that the solutions for the biodiversity problem are in the benefits expected from bioprospecting. The development of the market for genetic resources was 'presented as the pragmatic solution to biodiversity conservation.' (Boisvert and Vivien 2005: 466).

But in which respects is this discourse intermingled with the one of global commons and is reflected in the Convention on Biological Diversity?

'Global commons' is a term that is widely used in the environmental policy literature in order to categorise different types of environmental problems. However, it is not always clearly defined and explained by its users causing confusion when different environmental problems with distinct characteristics are qualified under the same term. Then, what are the 'global commons' and its components? Pearce defines it in the following way

(1995: 3): 'One of the features of many environmental problems is that they occur in context where there are no owners, or where there are owners who have only limited "security of tenure".' Then, he continues, 'so it is with *global resources* like the atmosphere, the stratosphere, the oceans, and *many of the world's forests and rangelands*.' (emphasis added). Next he adds, 'Lack of ownership, or "property rights", gives rise to neglect and over-use.'

The above examples and statements are very contentious and especially for the case of biological diversity they seem not to apply at all. Why considers this author many forests and rangelands as global resources without owners or 'limited security of tenure'? Unlike the atmosphere, the stratosphere and the high seas; forests and rangelands are localised in specific jurisdictions of states under different property rights regimes and even in 'remote' areas they might be inhabited by indigenous and rural communities. Then, if this is the case, the last statement, probably inspired in the Coase' theorem and Hardin's a-historical abstractions, does not apply either. Even though this inherent contradictions, the global commons discourse has been used in approaching biodiversity issues.

The assumption that environmental problems are problems of the property structure is recurrent when global commons are mentioned. According to Görg and Brand, 'is the view of the market radicals that the problems connected with the loss of diversity are caused by

imperfect or politically distorted price formation’ (2000: 380) based on a model with problematic suppositions: ‘first, the assumption that biodiversity in fact does not belong to anybody; and second, the allegation that it is being destroyed because it does not belong to anybody.’ (2000: 381). This is an expression of

other facet of the ‘global commons’ in which property rights are presented at the centre of the problem and thus require a reinterpretation for a solution. Based on different study cases, Goldman (1998) identifies and synthesises the main features and consequences of the global commons discourse (see Table 1.)

**Table 1. Story-lines of the global commons**

a. Environmental problems are global	The world is portrayed as highly interconnected and local impacts to the environment have also global consequences. Different perspectives nurture these ideas.
b. At the centre of environmental problems are the property rights over nature and/or the lack of management and inappropriate use of natural resources	One that is rooted in utilitarian tradition and the idea of the ‘tragedy of the commons’ that considers that open access regimes to natural resources encourage their depletion and thus, private rights regimes or strong state interventions are needed. Other, encouraged by developing experts and ‘global resource managers’ (international development organisations, northern states think-tanks, international NGOs, etc.) propose a centralised management of resources, for example through international agreements.
c. It is necessary to develop a ‘global science’ and count on ‘global experts’	Certain knowledge is privileged over other and it is assumed that science is independent, progressive, value-free and all-knowing. The ‘local’ is a site for data collection and the ‘global’ is a site for knowledge production and dissemination.
d. Global institutions are required	For instance, the creation of multilateral environmental agreements, the involvement of the UN and its agencies, the participation of financial institutions and the creation of international environmental funds, is necessary.

Source: author based on Goldman 1998: 1-53.

Various issues of the Convention on Biological Diversity are central to the global commons' discourse. First, on its preamble, the CBD recognises biological diversity as a 'common concern of humankind' that implies a global responsibility to conserve it (Kiss and Shelton 2004: 34). In the same vein, the preamble of the Convention stresses 'the importance of biological diversity for evolution and for maintaining life sustaining systems in the biosphere'. However, originally the term proposed in the CBD was the concept of 'common heritage of mankind' which was criticised and rejected by some states because the belief that it conveys the idea that benefits derived from biological diversity should be shared with others (Kiss and Shelton 2004: 36). Second, the Convention establishes the states' sovereign right to exploit their own biological and genetic resources (Article 3 and 15). Third, the CBD has three main objectives; two of them are concerned on economic and distributional issues. The objectives are: i) The conservation of biological diversity; ii) The sustainable use of its components and; iii) The fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.

Therefore, 'while states have formal sovereignty over the portion of biodiversity within their jurisdictions, there is the countervailing perception that all biodiversity is a part of the common heritage of mankind.' (Miller 1998: 181). The objectives of the Convention and the

statement about sovereignty, all together, imply various transformations: a transition from a regime of open access to one in which the access to genetic resources, within the boundaries of states, is determined by states regulations; the valuation of the components of biodiversity not only in terms of intrinsic value (conservation activities) but in monetary and market values (sustainable use) and; the distribution of benefits of the use of genetic resources. In addition to be an attempt to regulate the environmental dimension of biodiversity, the Convention deals with critical political and economic issues and the re-shaping of property regimes over biodiversity. As Flitner described,

(...) the new legal framework can be seen as a materialization of some of the central elements of the biodiversity discourse. It pretends a positive correlation among the conservation of biodiversity, the growth of the bio-tech industry, and the acceleration of capitalization and integration into the world market of "traditional societies" with their "undervalued resources". (1998: 156)

Following the main story-line of the global commons discourse the CBD can be considered as a centralising effort to regulate the public policies related with biodiversity. Swanson (1999) states that the CBD is over all an attempt to centralise the management of global land use planning. This author considers that 'there is a need for a division of functions across the globe, between lands used primarily

for production and those set aside for a diversity of other functions (research and development, recreation and leisure, knowledge and information).’ (1999: 308). The questions that arise are: whose need is the one that Swanson mentioned? Who will be benefited from this division of functions and who will be affected from this global centralisation of land use planning? This questions lead to the issues of sovereignty and global authority in the context of the CBD.

#### **THE SIGNIFICANCE OF THE CONVENTION IN SOVEREIGNTY AND GLOBAL AUTHORITY**

The ‘battle’ for the global commons is over power and control of natural resources. In words of Goldman:

Different social actors fighting for different property rights: resource-dependant communities for sustenance and culturally meaningful practices, corporations for commodity and surplus-value production and state agencies for tax revenues and increased jurisdiction – all are fighting for rights to environments on which their power depends. (1998: 2)

The global commons discourse does not oppose to the idea of major territorial sovereignty because it supports the further appropriation of natural resources in order to avoid the suppose lack of management and property. As Sand pointed out for the UN Convention on the Law of the Sea in

1982, it ‘formally extended the sovereign rights of coastal states to the vast new area of “exclusive economic zones”, estimated to contain 25 percent of global primary production and 90 percent of the world’s fish catch.’ (IWCO cited in Sand 2004: 47). Ten years later the Convention on Biological Diversity ‘in article 15 extended sovereign rights to the even vaster range of plant and animal genetic resources, thereby enclosing access to another major chunk of what had once been considered “heritage of mankind”.’ (Sands 2004: 47-48).

However, in the case of the CBD the main sovereignty concern was from the developing countries that considered that the conditions of ‘free-access’ in which many northern-based industries use their biodiversity was not equal. In this sense, the gain in sovereignty was particularly important for countries with high levels of biodiversity, which in a great majority are developing countries. As described by Conca, authority over the control of natural resources has been historically important for state legitimacy:

‘Historically, the ability to control rules of access to the environment and natural resources – to define who may alter, and to what extent, which specific natural materials, systems, and processes – has been a central component of state authority and legitimacy. Thus the full effects of international environmental pressures on state sovereignty as a collective institution cannot be understood without examining this inward-looking dimension. This is particularly so for much of the South, given the

legacy of colonialism and the orientation of so many Third World political economies toward commodity exports.’ (1994: 707)

Even more significant for developing countries is the fact that the Convention ‘link access to genetic resources to the equitable sharing of benefits related to those resources.’ (Diaz cited in ICTSD 2006: 1). ‘The CBD proposes a mechanism for access to valuable biological resources on fair grounds, that is, on “mutually agreed terms” and subject to the “prior informed consent” of the country of origin.’ (ICTSD 2006: 1). In addition, the facilitation of transfer of technology is stressed in the Convention (Article 16). In similar terms, it should be noted that the Article 15 also implies ‘(...) to create conditions to *facilitate access to genetic resources* (...)’ (emphasis added). The general idea seems that there is now sovereignty over genetic resources but it also implies a responsibility and the condition to facilitate access to genetic resources. ‘Thus, although some phrases in the convention seem to oppose extensive IPR [intellectual property rights] protection on “living material”, the CBD favours this approach as it balances IPRs one the one hand and rights to biodiversity on the other.’ (Flitner 1998: 156).

However, this set of new rights was not well accepted by transnational corporations. For instance, ‘(...) biotechnology interests vetoed US support of the CBD on the grounds that its IPR [intellectual property rights] language was not strong

enough and that its provisions for transfer of biotechnology might threaten their commercial interests.’ (various authors cited in McAfee 2003: 211). Now, more than a decade after the signature of the CDB, it is evident that coalitions of industrialised countries and transnational corporations gain power and authority through other international regime, the trade regime, minimizing and even threatening the ‘gains’ of the CBD for developing and rich-biodiversity countries. ‘(...) what the TRIPS agreement in particular, but the GATT-94 and GATS-94 agreement in general, signify is that “[c]arried to its logical conclusion, it promises the trade-based dismantling of three decades of global environmental rule-making and the selling of important dimensions of the global commons”.’ (Conca cited in Saurin 2001: 79).

Contrary to expectations, ‘the (...) “green gold” rush did not take place and the timelines of basing biodiversity conservation policies on a contractual approach as initially planned should be reconsidered.’ (Koo and Wight cited in Boisvert and Vivien 2005: 466). Different reasons explained why this ‘promise’ have not been realised. Boisvert and Vivien mentioned, among other causes, that the pharmaceutical industry, which used to be the main bioprospecting industry, explored different paths in research and did not show great interest in bioprospecting the plants of Southern countries in the last decade (2005: 467). Moreover, the



play-ground of the CBD makes developing countries and communities who hold valuable genetic resources to compete with each other, 'while on the demand side the multinational companies are in oligopoly positions.' (Boisvert and Vivien 2005: 467). It can be inferred from this competition and marked asymmetry that, in one hand, coalitions of industry and developed countries can and are possible in the international arena; on the other hand, a developing countries coalition, united by their condition of 'megadiverse', is fragile because these countries are competitors. In Fact, ecosystems and biological resources are shared transboundary, for example, in terms of ecoregions, the Amazon, the Orinoco basin or the Andes are shared by various states.

Additionally, national institutions and legal frameworks as well as technical capacities to operate nationally the mandates of the CDB in many developing countries are still not in operation. Governments should make legitimate this process for locals such as indigenous peoples and peasants which are now considered 'stakeholders'. These locals do not use the categories of 'genetic resources' in their day-to-day and the significance of biological resources is more than economic value. These locals in rich-biodiversity countries rely on natural resources for their subsistence; and ecosystems are attached to social and cultural values. 'With the concentration of political efforts to regulate the global environmental problem of "loss

of biodiversity" on the management of the global commons, traditional forms of use and claims are ignored or even accused of contributing to the erosion of diversity.' (Görg and Brand 2000: 384). This appears to be a paradox, because the CBD and its Decisions recognize other values of biodiversity and ways of living from locals and encourage governments to protect 'traditional knowledge', as it is stated on the article 8 (j). However, in practice governments should make these rights operational and exercise legitimacy and authority with communities that not always recognise this authority or that have conflict situations unresolved.

All the circumstances mentioned above illustrate how sovereignty is extended 'on the paper' but the reality constrains its exercise. In this respect, Conca stresses that sovereignty should not just be considered as a 'norm' but also a 'fact' based on material and organisational capabilities of states: '(...) sovereignty looks inward as well as outward. It finds its basis not only in autonomy relative to external actors, but also in the state's jurisdictional power over civil society.' (1994: 707). Therefore, 'sovereignty demands 'some minimal level of social recognition of the state's legitimacy' as well as 'a complex bundle of state capabilities.' (1994: 707). Thus, sovereignty should be understood dynamically: '(...) we cannot describe in universal terms either the processes rendering states sovereign or the way in which they may be changing as a result of

ecological interdependence. Sovereignty as a global institution changes because of what happens to different states over time, at different rates and in different ways.' (Conca 1994: 706)

On the other hand, some non-state actors and international organisations gained authority and influence with the global commons and biodiversity discourse. The issue of conservation of biological resources was tackled by environmental NGOs since the 1950s and many of them were involved in trying to shape a world strategy for biodiversity (Miller 1995: 121). As it was explained before, some NGOs helped to construct the discourse of biodiversity and global commons. Moreover, they have been very active supporting the creation of the CBD and its implementation. As scientific and international authorities, some NGOs advised the World Bank in relation with the Global Environment Facility (Flitner 1998: 159), the international found that supports the operation of the CBD and paid thousands of projects and initiatives around the globe. They are part of the 'global experts' that with the institutions, material capacities and resources help to reinforce the discourse of biodiversity.

## CONCLUSION

The discourse of the 'global commons' underlies the terms of the Convention on Biological Diversity, however, it implies wrong explanations and assump-

tions about biodiversity and has a strong bias to market solutions. This discourse, in one of its main story-lines, justifies an expansion of the control over biological resources and the commodification of biodiversity. Thus, the Convention on Biological Diversity can be understood as an attempt to re-shape state sovereignty and global authority over the multiple forms of biological resources, and facilitate the recognition and valuation of these resources for a wider incorporation into the global economy. The CBD set a mix and contradictory legal framework that calls for the preservation of biodiversity and its wider appropriation.

While the global commons discourse of the CBD gives more authority to some actors such as international NGOs and international organisations, the gains in terms of state sovereignty are controversial. The extension of sovereignty over genetic resources, as a 'norm' has proved difficult to turn into a real 'fact'. On the other hand, local communities that depend on biodiversity are relegated in this discourse, even though their rights seem to be recognised 'on the paper', they have to adopt the categories and assumptions of the global commons discourse.

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