The Convention on Biological Diversity: From Realism to Cosmopolitanism

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Introduction

The decline of biodiversity is without a doubt one of the most important symptoms of what could be called a “global environmental crisis.” Our ability to stop this decline depends on the capacity to implement an effective, collective system of preservation on a global scale. In this paper, I will analyze the Convention on Biological Diversity (CBD), the international agreement that aims at creating this type of global cooperation.

While I consider that cosmopolitan governance is desirable, given the legitimacy of the preservation of global biological diversity, I will not attempt to directly argue for it here. Still, it is worth mentioning some of the reasons that might lead us to adopt this position. First, certain past conservation measures have been harshly criticized as imperialistic. For example, Project Tiger in India, which Western environmentalists often cited as a success, have had a deleterious effect on local populations. The project forced a large number of inhabitants to relocate, abandoning their villages, and also considerably raised the risk of tiger attacks.1 Second, if we follow the declarations of the CBD and accord biodiversity an intrinsic value, then the respect for this value should be seen as a common objective for humanity, and not as the satisfaction of the preferences of a few individuals who have the

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1 For a critique of American (a more generally Western) environmentalism and a description of the problems caused by the tiger reservations in India see R. Guha “Radical American Environmentalism and Wilderness Preservation: A Third World Critique” Environmental Ethics 11 (1989): 71-83.
power to impose their will on the global scale. I believe that the tension between the sovereignty of peoples or states regarding their biological resources and the collective concern to preserve biodiversity can only be resolved in the context of global governance that goes far beyond states promoting their own national interests.

The goal of this paper is to demonstrate that the usual dichotomy between realism and cosmopolitanism is not insurmountable. In the context of the Convention on Biological Diversity we can show that the realist pressures that govern the negotiation and ratification of the treaty are compatible with a full-bloodedly ethical form of cosmopolitanism. It is also possible to glimpse the beginning of a legal cosmopolitanism in the CBD’s mode of implementation. The important role given to NGOs and the scientific community carries the institutional structure of the CBD beyond the realist framework. After establishing this, I will then test the compatibility of realism as a framework for understanding international relations, which accounts for the CBD’s negotiations, and the moral cosmopolitanism that the CBD instantiates despite the logic of the negotiations that gave rise to it. Two principles guide the analysis: the first considers biodiversity to be the common heritage of humankind; the second principle establishes common, but differentiated responsibilities. Finally, I mention certain aspects of the CBD’s institutional structure, which, despite some advantages, remain obstacles for a truly cosmopolitan management of biodiversity.

1. The Protection of Global Biodiversity

The Decline of Global Biodiversity

Biodiversity is the variety and variability of living organisms. In general, three dimensions can be distinguished: 1) genetic diversity, or the variability of genomes within a population or a species; 2) species diversity, which involves the variety of species within a habitat or on the global scale; and finally 3) diversity of ecosystems, or the variety and variability of ecosystems in a region or on a global scale.

Some of these dimensions tend to be easier to evaluate than others. Species diversity lends itself most readily to scientific evaluation and is the one that is most often cited when describing the evolution of biodiversity. Still, it is important to remember that the decline of the
number of species is only one of the phenomena that represent the
decline of biodiversity. Even at the species level, current estimates are
rather uncertain. The total number of species ranges between 13 or
14 million, but some estimates are as low as 7 million or as high as
20 million. Despite this uncertainty, there is a strong consensus in the
scientific community that the present rate of extinction is much higher
than the natural rate of extinction between episodes of massive extinc-
tion. This permits us to rightly speak about a biodiversity crisis,2 with
the causes of the crisis linked to human activity.

Demographic growth is often mentioned as one of these causes, but
it is necessary to qualify the importance of this factor. Modes of pro-
duction and consumption threaten biodiversity above all, not simply
the size of the population. The principal factors that contribute to the
decline of biodiversity are the overexploitation of natural resources,
the cultivation of soil, the introduction of exotic species, pollution,
and climate change.3

The Value of Biodiversity

The decline of biodiversity poses a problem because biodiversity has a
great value for human beings. First, its value comes from the resources
and services it provides.4 Genetic diversity provides many pharma-
ceutical, agricultural, and industrial resources and its value has been
considerably enhanced by the development of genetic engineering.
Species and ecosystem diversity provide resources for hunting, fish-
ing, and gathering, as well as value in terms of tourism, recreation,

2 Many scientists consider the present crisis to be the sixth episode of massive
extinction. See F.S. Chapin et al., “Consequences of Changing Biodiversity,”
3 O. E. Sala et al., “Global Biodiversity Scenarios for the Year 2100,” Science 287
4 P. Pearce and D. Moran, The Economic Value of Biodiversity (London: Earthscan,
1994); R. Costanza et al., “The Value of the World’s Ecosystem Services and
“Economic Valuation of Biodiversity: Sense or Nonsense?” Ecological Economics
aesthetics, and culture. Finally, functional diversity provides humanity with a large number of essential services, such as the regulation of the atmosphere’s composition, the protection of coastal zones, the regulation of the hydrological cycle and of the climate, the production and conservation of fertile soil, the dispersion and decomposition of waste, the pollination of many cultures, and the absorption of pollution.\footnote{United Nations Environment Program, \textit{Global Environmental Outlook} (UNEP, 2002), 120.} We may also attribute an option value to biodiversity. Given that extinction is irreversible, we have a reason to conserve species that have no apparent value at present. Our perception of a species’ usefulness can change over time, so we can give it a potential utility that future discoveries may actualize.

Biodiversity also has a value for non-human organisms, which according to the supporters of non-anthropocentric approaches should also enter into the sphere of moral considerations. It would then be possible to include the value that biodiversity has for all sentient\footnote{Pathocentricism, represented for example by Singer in a consequentialist framework or by Regan in a deontological framework. See Peter Singer, \textit{Practical Ethics} (Cambridge: Cambridge University Press, 1993) and T. Regan, \textit{The Case for Animal Rights} (Berkeley: University of California Press, 1993).} or living\footnote{Biocentricism, represented for example by Attfield in a consequentialist framework or by Taylor deontologically. See R. Attfield, \textit{The Ethics of the Global Environment} (Edinburgh: Edinburgh University Press, 1999); P.W. Taylor, \textit{Respect for Nature} (Princeton, NJ: Princeton University Press, 1986).} beings. Some authors have also attempted to include complex entities or supra-individuals such as species or ecosystems in the sphere of moral considerations.\footnote{For example, see J.B. Callicott, \textit{Beyond the Land Ethics} (New York: SUNY Press, 1999) and H. Rolston, \textit{Philosophy Gone Wild: Essays in Environmental Ethics} (New York: Prometheus Books, 1986).} From an ecocentric perspective, it is possible to ascribe intrinsic value to biodiversity, irreducible to the benefits it provides for individuals or the complex entities that compose it.

The question of whether or not to enlarge the sphere of moral considerations beyond human beings goes beyond the scope of this paper. For the moment, it is only necessary to agree that biodiversity
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has a value – which may or may not be reduced to its value for human beings – and that this value justifies implementing mechanisms of protection. Later we will return to questions about the intrinsic value of biodiversity in analyzing the concept of “common heritage of humankind.”

The Global Nature of Biodiversity

For purely practical reasons, the response to the present biodiversity crisis requires the elaboration of certain international schemes of cooperation. First, biodiversity is unequally distributed across the globe. For example, though tropical forests cover only 10 per cent of the Earth’s surface, it is estimated that they contain up to 90 per cent of the earth’s species.9 Secondly, habitats that are important for the protection of biodiversity rarely coincide with national frontiers. This is true, for example, of migratory flyways, or of the great rivers, which may cross numerous national frontiers. The increase in the transportation of persons and goods worldwide favours the dispersal of many species, which may become invasive in ecosystems where they arrive with no predators and no competitors. In this context, the protection of a species or an ecosystem in one part of the world necessarily depends on what happens in other regions. Finally, certain global problems, such as climate change or air and soil pollution, cross numerous ecosystems.

Institutional Responses

In order to deal with this situation, multiple international projects for protecting biodiversity have been put in place. A number of these projects deals with specific issues, such as protecting the whales (International Convention for the Regulation of Whaling, 1946), wetlands (RAMSAR, 1971), endangered species (Convention on International Trade in Endangered Species of Wild Fauna and Flowers, 1974), or migratory species (Bonn Convention, 1979). More recently, efforts have focused on the creation of natural parks or

9 UNEP, Global Environment Outlook, 120.
protected territories, for example NATURA 2000 network sites in Europe or UNESCO’s Biosphere Reserve Program throughout the world. But the most important treaty and the only one that deals directly with biodiversity in all its aspects is, without doubt, the Convention on Biological Diversity, elaborated in Rio de Janeiro in 1992. On December 29, 1993, after it received its thirtieth signature, the Convention on Biological Diversity came into effect. By ratifying this treaty, 188 countries, including all the developed nations, with the exception the United States, undertook a triple objective: “the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.” The rest of this paper will focus on this Convention.

2. The Convention on Biological Diversity: Between Realism and Cosmopolitanism

Contemporary realism, as illustrated by Morgenthau in Politics among Nations, considers states’ self-interest to be the basis of international politics: “The main signpost that helps political realism to find its way through the landscape of international politics is the concept of interest defined in terms of power.... It sets politics as an autonomous sphere of action and understanding apart from other spheres, such as economics, ethics and aesthetics.” We can characterize the realist position with the three following propositions: 1) the international sphere is compared to a Hobbesian state of nature or anarchy, in which the only agents are states; 2) in this sphere, states are interested in the maintenance and growth of their power; and 3) political action does not involve moral considerations.

Contemporary cosmopolitans suggests a radically different analysis of international relations: 1) there exist common human objectives that can be pursued within a framework of global governance, instan-

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tiated, for example, by the United Nations’ international institutions; 2) states’ interest in these common human objectives goes beyond the affirmation of their power on the international scene; 3) the definition and pursuit of these common human objectives can be based on universal moral considerations. The last proposition suggests a moral cosmopolitanism that affirms the existence of common human values. The first two add a legal dimension, affirming that these common objectives can be pursued within a framework of global governance, put in place by international institutions.

We will see how these apparently irreconcilable analyses converge in the Convention on Biological Diversity. While the process of negotiation and ratification of the treaty seems to correspond to realist principles, later measures of implementation are not incompatible with a moral and legal cosmopolitan conception of international institutions.

The Realist Analysis of the CBD Negotiations

The attitude of the governmental delegations during the negotiation and ratification of the CBD can be described as promoting the interests of their respective states in the international sphere.

The United States took part in the negotiations with the intention of promoting the conservation of nature, especially through networks of protected zones. The American administration did not expect that representatives from poorer countries would unduly influence the negotiations, taking advantage of the Convention to promote property rights over their genetic patrimony. The Bush administration eventually refused to sign the Convention in 1992, essentially due to the limits that it imposed regarding intellectual property. A few months later, the Clinton administration finally signed, adding that the ratification would be accompanied by a “statement of interpretation, seeking to tone down articles that may seem to put restrictions on the biotechnology industry.”

Senate, under the administration of George W. Bush, finally refused to ratify the CBD. This attitude squarely fits the realist model; since the CBD imposed limits on the freedom of their biotechnology industries, the United States calculated that it was not in their interest to ratify the Convention.

As we shall see in more detail in the third part of this paper, other countries’ decisions to sign were also generally motivated by the need to promote their own interests. Developing nations, mostly due to their differential obligations, had an economic interest in participating. What is more, the Convention put in place environmental protection mechanisms that were desirable, but nationally inaccessible because of other priorities, especially socioeconomic ones. This gave them an ecological reason to participate. Finally, since the participation of a large number of countries was necessary for effective cooperation, their participation also involved a diplomatic interest in terms of international credibility.

Except for the United States, all liberal democracies ratified the CBD. The growing pressure from civil society concerning global environmental protection partly explains why it was in their interest to do so. Among other things, democratic states must maintain their power by responding to citizens’ expectations. The emergence of environmental concerns can play an important role in domestic politics, especially during elections.

The signature of other countries whose electorate expressed less interest in the protection of biodiversity can be explained by appealing to their credibility in international relations. For example, though Poland was initially reluctant to sign the treaty, its desire to enter the European Union eventually led to its participation.

The realist analysis also allows us to explain the relative power of countries to influence the negotiations. Once again, moral considerations do not appear to be the fundamental motivation. The countries with the most power of negotiation are those with the most force regarding the collective action considered, which is often directly linked to economic power. The rich countries, having the luxury of refusing to cooperate, can more effectively promote their interests. The attitude of the United States is representative in that believing that the treaty was not in their interest, they withdrew, knowing that their economic power relieves them from other international pres-
sures. However, in the context of the CBD, economic power is not the only factor in the balance of national powers. Biodiversity is very unevenly distributed around the world. From the point of view of collective action, it is therefore very important to ensure the participation of countries enjoying a high level of biodiversity. This wealth of biodiversity gives them a very important power in the negotiation process, independent of their economic weight. This can be referred to as "ecological power."

Still, even if the play of national interests is the principal driving force behind the negotiations and ratification of the CBD, this balance of powers gave rise to a text that explicitly and implicitly refers to moral concepts. The first sentence in the preamble mentions that the parties are "conscious of the intrinsic value of biological diversity."  

The first article refers to the "sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources." The expression "sustainable use" also implies moral considerations, since it is defined in article 2 as "the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations." Articles 5 to 11 and 14 all mention measures that should be implemented "as far as possible and as appropriate," where the term "appropriate" involves considerations of equity, such as the "fair and most favourable terms" or a "fair and equitable basis."

It is therefore necessary to examine the meaning of these terms and to see how far they can be interpreted in a framework that goes beyond realism, revealing a moral and cosmopolitan dimension.

13 UNEP, Convention on Biological Diversity, Preamble.
14 UNEP, Convention on Biological Diversity, Article 1.
15 UNEP, Convention on Biological Diversity, Article 2.
16 UNEP, Convention on Biological Diversity, Articles 5, 6, 7, 8, 9, 10, 11, and 14.
17 UNEP, Convention on Biological Diversity, Articles 16, 2.
18 UNEP, Convention on Biological Diversity, Articles 19, 2.
The Cosmopolitan Analysis of the CBD’s Moral Concepts

Political rationality (in which state representatives or negotiators aim at power) can be distinguished from moral rationality (in which private individuals aim for the good), without denying that certain moral values can emerge in the field of politics. If a government, in the context of international negotiations, is also interested in gaining public support in the domestic sphere, then it may be politically rational to promote the moral values of its citizens.

These moral values can be cosmopolitan values. The appearance of environmental values in liberal societies may have more to do with a cosmopolitan perspective than with well-defined national values or interests. In his 1997 article, “The Structuring of a World Environmental Regime,” J. W. Meyer analyzes the evolution of environmental institutions over the last 150 years. He shows that environmental activities are often institutionalized on the international scale before they are accepted on a national scale. While the first international treaties and NGOs began to appear in 1880, the first national environmental ministries were not formed before the 1970s. It is therefore possible that the recognition of our common interests on the international scale has influenced the way in which environmental questions are framed on the domestic sphere.

This reflects, in a sense, a top-down history, in which the rise of universalistic discourse and organization rather belatedly construct nation-states’ aims and responsibilities more than the bottom-up political processes of power and interest that are mentioned more often.

This analysis helps us understand the appearance of the concept of biodiversity at the heart of the CBD. The social concerns regarding the biodiversity crisis are essentially the product of two interdependent and international discourses. First, the recognition and evaluation of the biodiversity crisis is the work of the international scientific community. Though even the theoretical questions connected to the defi-
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nition of biodiversity are not entirely free from controversy, the scientific community has developed a common understanding of the issues that goes beyond cultural differences. The ecosystem approach allows them to scientifically establish the interdependence of regions that do not correspond to already existing political entities, which ultimately leads to global interdependence.

At the same time, a global environmental community plays a parallel role, notably through the activities of the large NGOs such as the International Union for Conservation of Nature (IUCN), the Global Conservation Organization (WWF), or Greenpeace. These organizations provide a bridge between scientific discourse and civil society. The social reception of the decline of biodiversity therefore has its origin in a global framework, based on the emergence of global environmental values. If, in ratifying the CBD, liberal democratic governments wanted to echo these environmental values, the treaty would emphasize certain cosmopolitan moral values.

However, the fact that the biodiversity crisis presents itself as a common moral problem in some liberal democracies is insufficient to guarantee the expression of cosmopolitan environmental values in international relations. First, not all societies are equally supportive of cosmopolitan environmental values. Second, the visibility and importance of international relations in the domestic sphere, especially in terms of electoral issues, is not the same in all democracies. Finally, not all the countries that signed the treaty are democracies. It would thus be a mistake to base the cosmopolitan character of the CBD on the simple fact that the protection of biodiversity is, in certain contexts, considered to be a common, human moral objective.

Still, the presence of moral norms in the text and the Convention’s structure of decision-making and implementation can, independently of democratic pressure, favour a specifically cosmopolitan form of collective action. If we distinguish the process of ratifying the text, which lends itself to a realist description, from the measures of implementation after the Convention comes into effect, one sees how a cosmopolitan legal framework might arise.

We have seen that the CBD text includes a number of moral terms (intrinsic value, fair and equitable basis, etc.). Therefore the ratification of the Convention should be seen as an agreement between contracting parties. If the countries that agree upon a just and equitable divi-
dition of the benefits of biodiversity define the notion of “just and equitable” as meaning “in my own interests,” it would be very difficult to reach a consensus on how it should be applied. In order to determine if a country respects its commitments, it is first necessary that these commitments be understood by all. Moreover, if we are to determine how certain resources are to be allocated, common standards must be established. If unanimity is not reached, we can seriously question the legitimacy of the treaty. In effect, given the asymmetry of power between the contracting parties, it is necessary to implement measures to ensure that the text is not simply a tool that licenses the exploitation and coercion of less powerful states by more powerful ones. The CBD is formulated as an agreement without a fixed or unequivocally verifiable objective. We will see that the structure that it puts in place avoids, at least in part, this form of exploitation.

The precise commitments and the distribution of resources are established and revised during the Conference of the Parties, which forms the CBD’s organ of governance. These meetings took place every year until 2000 and every two years thereafter, though Conferences of the Parties can also be called for extraordinary reasons, such as the signing the Cartagena Protocol on Biosafety in January 2000. Even though only the contracting parties have the power to make decisions during the conferences, article 23 of the CBD stipulates that “any other body or agency, whether governmental or non-governmental, qualified in fields relating to conservation and sustainable use of biological diversity, which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object.” This observer status has mostly been used by NGO environmentalists or representatives from minority communities, who attend and participate in the Conferences. Even though they do not have the power to make decisions, their participation is an important factor in the discussions. This participation significantly mitigates the realist character of the Conferences of the Parties, since it permits other voices and interests to enter into deliberations. This arrangement highlights an essential element of legal cosmopolitanism: the existence of interna-

tional political actors that are independent of the state. In a democratic country, the elected government represents the majority, whereas the political minority is represented by the opposition party. In the international sphere, while the balance of powers is between states, each country only represents the majority of its citizens. National minorities are therefore totally excluded from international deliberation. This is particularly true of women who may have little or no political representation in their respective countries. The CBD therefore affirms “the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation.”

The CBD also recognizes “the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources.” In order to facilitate their political representation, the CBD encourages the participation of NGOs, stressing “the importance of, and the need to promote, international, regional and global cooperation among States and intergovernmental organization and the non-governmental structure.”

The other resolutely cosmopolitan aspect of the CBD’s institutional architecture lies in its Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA). This subsidiary has the role of “providing assessments of the status of biological diversity; assessments of the types of measures taken in accordance with the provisions of the Convention; and respond to questions that the COP may put to the body.” Apart from the consideration linked to the organization of future Conferences of the Parties and the secretariat’s funding, as well as questions about the Global Environment Facility managed by the World Bank, the most important decisions taken during the Conference of the Parties come from the SBSTTA’s recommendations. The research teams, which are essentially multidisciplinary and international, do not correspond to traditional structures of international relations.


23 Ibid.

24 Ibid.

The CBD therefore offers, through its institutional structure, an alternative model for the management and governance of global biodiversity, in which the principal actors are not restricted to states. NGOs and the global scientific community also participate in the application of the CBD’s objectives, and we can reasonably expect that the interests they promote reflect cosmopolitan considerations. In this sense, we can consider the institutional structure set up by the CBD as an outline of cosmopolitan governance that goes largely beyond the realist framework.

The Compatibility of Realism in the Negotiations and their Cosmopolitan Implementation

The negotiation and ratification of the CBD can therefore be considered, from a realistic point of view, as the free play of states’ interests and powers. All the same, this free play has given rise to a treaty that affirms moral values and puts into place an institutional structure for managing global biodiversity. This structure, especially due to the fundamental place it gives to NGOs and the international scientific community, is compatible with global governance that goes beyond the realist framework. An institution like the CBD can promote the emergence of a global scientific and moral community. This does not guarantee that this will always be the case, and national interests can at any moment take control, since states retain the power to make decisions. Still, nothing prevents a lasting convergence between realist political action and cosmopolitan ends, in the framework of a global government, when it is based on a common, human objective.

In the next section, we will examine this possible compatibility by focussing on two concepts, beginning with biodiversity as the common heritage of humankind, and then discussing the common but differentiated obligations with respect to that heritage. We will see that the rejection of the former and the acceptance of the latter can be analyzed independently from the point of view of the negotiations (i.e., according to realist principles), and from a moral point of view (i.e., from cosmopolitan principles).
3. Analysis of Two Concepts

A Concept Rejected by the CBD: Biodiversity as the Common Heritage of Humankind

Before 1992, global biodiversity, more or less explicitly, was considered the common heritage of humankind. In article 2 of UNESCO’s World Heritage Convention, “natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty” are our natural global heritage. This is also how genetic resources were originally seen. Since the use of seeds was neither exclusive, nor rival, there was no need for them to be regulated or protected. Now that biotechnological expansion has blurred the difference between natural and industrial products, biotech industries have sought to protect their inventions with patents just like other technological innovations. The International Convention for the Protection of New Varieties of Plants, adopted in Paris in 1961, created an international regime of intellectual property for new plants. In the context of the protection of global biodiversity, questions about the ownership of organisms arise once again. Even though the notion of common heritage was discussed in the negotiations, the CBD failed to mention it and dedicates its third article to the sovereignty of states regarding their genetic resources. It is recognized that “states have, in accordance with the Charter of the United Nations and the principle of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies.”

This rejection of the concept of a common human heritage in favour of national sovereignty can easily be explained in terms of national interests and power relations. Agronomic and pharmaceutical industries have made large profits by patenting their inventions. Since many of these inventions relied on bioprospecting in poorer countries, developing countries have adopted the notion of a common human heritage of humankind in order to claim part of the profits. But the industrialized countries rejected their request since it was not com-

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27 UNEP, Convention on Biological Diversity, Article 3.
patible with their own patent legislation. Developing countries then changed their strategy:

Third World governments abandoned the claim for an all-embracing common heritage regime and turned the argument around. Their new line of argumentation was to claim national sovereignty over their genetic heritage, regarding it as a national asset along lines of other natural resources, like oil and minerals.28

Among those developing countries, those who placed the most emphasis on their sovereignty were also those with sufficient ecological weight to swing the negotiations in their favour. In this respect, the process of negotiation and ratification seems to support the realist thesis where each state promotes its own interests in a series of power struggles. Given the ecological power of some of their members, the change in developing countries’ negotiation strategy can be explained by prudence.

The rejection of the notion of a common heritage can also be analyzed in terms of the moral status of biodiversity. From the point of view of negotiations, the controversy surrounding the notion of common heritage was over the ownership of genetic resources, as states clearly preferred to maintain their sovereignty. But the moral status of biodiversity in the text takes another form. Rather than focusing on our common human heritage, the various benefits of biodiversity, or on questions about the ownership of biological resources, the text gives biodiversity an “intrinsic value.”29 Its value is not that of a possession, but rather the “common concern of humankind.”30 Respect for the intrinsic value of biodiversity can be considered a common human objective, which depends on moral considerations, and is supported by cosmopolitan analysis. Unfortunately, a detailed analysis of the moral plausibility of the intrinsic value of biodiversity goes beyond the scope of this paper.31 Still, it is worth mentioning that

28 Rosendal, “The Convention on Biodiversity.”
29 UNEP, Convention on Biological Diversity, Preamble.
30 Ibid.
31 In a few words, we can say that such an attribution of intrinsic value is possible only if we define biodiversity in a more refined way than it usually is. Seen as a
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if biodiversity has an intrinsic value, then respect for it can be considered in the cosmopolitan framework as a common human objective, independent of national or cultural disparities.

If biodiversity has intrinsic value, then we all share responsibility for its protection. We will see how these responsibilities, while common, are established in the CBD as differentiated responsibilities. While this principle can be explained in terms of the struggle of power and interests in the negotiation process, it also lends itself to a cosmopolitan moral analysis.

A Concept Accepted by the CBD: Common but Differentiated Responsibilities

The concept of common, but differentiated responsibilities has appeared in international law in the last twenty years to address the necessity of global cooperation for certain (usually environmental) problems where states do not necessarily play the same role. The first explicit formulation is in the 1992 United Nations Framework Convention on Climate Change,32 but it has appeared in a number of other treaties as well. In 1982, the UN Convention on the Law of the Sea mentions “the special interests and needs of developing countries.” The Montreal Protocol (which concerns the reduction of CFCs causing the depletion of the ozone layer) or the Kyoto Protocol (which deals with the reduction of greenhouse gases) also established a list of rich countries with more demanding obligations.

The CBD also calls for differentiated responsibilities. Not every country or individual has the same obligations. Rather, they are determined in a complex manner that goes beyond economics. We can distinguish three criteria for differentiated responsibilities. First, just like in the previously mentioned treaties, the CBD establishes economic

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32 “The Parties should protect the climate system ... on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities” (FCCC 1992, article 3, 1).
differences between parties. Regarding financial resources, article 20 stipulates that “the developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfill the obligations of this Convention.” The funds are to be managed by the Global Environmental Fund.

Secondly, article 20 also mentions an ecological difference. The Contracting Parties should take into consideration “the special conditions resulting from the dependence on, distribution and location of, biological diversity within developing country Parties, in particular small island States” as well as “the special situation of developing countries, including those that are most environmentally vulnerable, such as those with arid and semi-arid zones, coastal and mountainous areas.”

Finally, there are differences involving communities, which try to take into account the role of indigenous and local communities as well as women in the CBD. In the preamble, the Contracting Parties recognize “the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources” as well as “the vital role that women play in conservation and sustainable use of biological diversity.”

In the framework of the negotiations, differentiated obligations can be explained in terms of interests and power. From the perspective of rich countries, if their interest is to conserve global biodiversity, especially in response to domestic pressures, there are many reasons for them to adopt differentiated responsibilities. First, by creating an economic incentive for the poorer countries, they guarantee more participation, something which is needed to protect biodiversity. Moreover, greater participation can be obtained, due to differentiated responsibilities, by going beyond the smallest common denomi-

33 UNEP, Convention on Biological Diversity, Article 20, 2.
34 UNEP, Convention on Biological Diversity, Article 20, 6.
35 UNEP, Convention on Biological Diversity, Article 20, 7.
36 UNEP, Convention on Biological Diversity, Preamble.
37 Ibid.
ator and encouraging all parties to contribute as much as they can. Differentiated responsibilities also significantly increase the efficiency of conservation. On the one hand, after a certain number of domestic measures, the cost-benefit relation favours external investment, justifying the economic differentiation. On the other hand, some areas have more ecological value, meaning that their protection will be more efficient from the point of view of conservation, justifying ecological differentiation.

Poorer countries can also view differential responsibilities to be an advantage, as they permit the realization of their socioeconomic priorities on an international scale. The CBD mentions that financial measures should take into account “the fact that economical and social development and eradication of poverty are the first and overriding priorities of the developing country Parties.” The recognition of indigenous and local communities is also a means for them to realize the contribution of their community in protecting wild diversity and furthering the growth of domestic diversity. Finally, the CBD also provides poorer countries with economic profits, thanks to the Global Environmental Fund, and credibility on the international scene.

Independent of strategic motivations, differentiated responsibilities can also be analyzed and justified from a moral point of view. We have seen how many measures should be taken “as far as possible and as appropriate” or on a “fair and equitable basis.” It is therefore worthwhile to examine the moral sense of these conditions of justice or equality.

By signing the CBD, the Contracting Parties recognize “the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values.” In doing so, they explicitly distinguish between intrinsic and instrumental value of biodiversity.

We will first analyze the issues of distributive justice linked to the instrumental value of biodiversity. The CBD refers to this instrumental value when addressing the problem of the distribution of biological resources. These are defined as including “genetic resources,
organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.” Regarding biological resources, biodiversity can be considered as a good maximized by cooperation. For this reason, it is necessary to determine how this good is distributed. In his “Common but differentiated responsibilities in international law,” C. D. Stone describes three possible versions of Common but Differentiated Responsibilities (CDR) in international agreements. First, “rational bargaining CDR” correspond to the realist analysis carried out above. Some types of differentiation are acceptable to Contracting Parties since they allow them to obtain Pareto-improving results: “They leave at least one party better off and no party worse off than at the status quo’s no-agreement point.” The second version involves “equitable CDR.” This involves introducing constraints of equality on “rational bargaining,” with the aim of distinguishing between different Pareto-improving results using criteria of justice. Finally, a third possible version of CDR is what Stone calls “inefficient CDR,” which consists of using differential obligations in some treaties (in our case, the CBD) to redress inequalities that go beyond or are independent of the efficiency of the result. Since the CBD makes explicit references to criteria of justice, it is important to determine which version of differential obligations they represent. Many principles of equality can be cited, in complementary or conflicting ways, depending on whether they’re based on responsibilities, needs, or capacities. Similarly, we can distinguish the part that is subject to distribution, examining whether it is limited to or in excess of a cooperative surplus.

Among the CBD’s three objectives, the second two directly concern biological resources. It is a question of the “sustainable use” of the elements of biodiversity, as well as the “fair and equitable sharing of the benefits arising out of the utilization of genetic resources.” The concept of sustainable use in the second objective raises ques-

40 UNEP, Convention on Biological Diversity, Article 2.
42 UNEP, Convention on Biological Diversity, Article 1.
43 Ibid.
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tions of intergenerational distribution that will not be dealt with here. The concept of just and equitable sharing brings up questions about international distribution. Genetic resources are a good example of the instrumental value of biodiversity. Article 15 deals with genetic resources, which are generally discussed in terms of profit-sharing. The differential sharing of the profits of biodiversity can be justified according to different moral principles, whether equity is defined in terms of responsibilities or in terms of needs.

A principle of equity based on responsibility should first define the legitimate owner of the biological resources, and then determine the legitimate transactions. The CBD answers these questions by affirming that regarding “the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.”\(^{44}\) When it is given, access to resources should be “on mutually agreed terms”\(^{45}\) as well as “subject to prior informed consent of the Contracting Party providing such resources.”\(^{46}\) There is nothing particularly cosmopolitan in this framework, since the sovereignty of states and mutual benefit clearly support the realist perspective. Still, the same article stipulates that the Contracting Parties should also put in place mechanisms “with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from commercial and other utilization of genetic resources.”\(^{47}\) Thus this sharing should address the particular responsibility of indigenous and local communities in the conservation and selection of domestic species. We can also note that the CBD contains mechanisms for representing political minorities. Perhaps domestic cultural differences – even though minority groups are poorly represented by their political leaders – can provide a means of mitigating national sovereignty. By realizing the interests of those who have a large responsibility in conservation, we might move beyond narrow national interests. This

\(^{44}\) UNEP, *Convention on Biological Diversity*, Article 15, 1.

\(^{45}\) UNEP, *Convention on Biological Diversity*, Article 15, 4.

\(^{46}\) UNEP, *Convention on Biological Diversity*, Article 15, 5.

\(^{47}\) UNEP, *Convention on Biological Diversity*, Article 15, 7.
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does not prevent conflicts between the principle of sovereignty and the principle of differentiation between communities, but the second principle tempers national interest in a non-negligible way.

A principle of equality based on need is less concerned with questions of the legitimate transaction of goods but takes its point of departure from the current distribution of goods and needs in the world. This cosmopolitan approach affirms the equality of all human beings, independent of the network of contracts or ownership that links them. Faced with considerable global socioeconomic inequalities, a need-based principle of equality would attempt to identify and redress them. According to this principle, it would follow that the richer countries assume a greater proportion of the costs and the poorer countries receive more benefits. This would justify the economic differences.

The CBD recognizes that “economic and social development and poverty eradication are the first and overriding priorities of developing countries.” This affirmation may be interpreted in terms of a moral hierarchy, where fundamental human needs take precedence over the protection of biodiversity. But if this priority is justified on the national level, why would it not also apply internationally? Why should the global community not also attempt to eradicate poverty before worrying about protecting biodiversity? The position of the CBD is ambiguous in this respect. It recognizes that

… the extent to which developing country Parties will effectively implement their commitments under this Convention will depend on the effective implementation by developed country Parties of their commitments related to financial resources and transfer of technology and will take fully into account the fact that economic and social development and eradication of poverty are the first and overriding priorities of the developing country parties

If the elimination of poverty is a moral priority that takes precedence over the protection of biodiversity, this article could be interpreted as a strong equality clause, in which the principle of justice should trump

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48 UNEP, Convention on Biological Diversity, Preamble.

49 UNEP, Convention on Biological Diversity, Article 20, 4.
the principle of efficiency and obligate the distribution of resources beyond the cooperative surplus.

A version of “inefficient CDR” can perhaps be established following a criterion of responsibility or need. From the point of view of responsibilities, the demand for compensation obligates the richest countries to re-distribute their resources more than they did before the agreement, especially in the goal of compensating poorer countries for the environmental pressures that the Occidental way of life has and continues to impose on their ecosystems. From the point of view of needs, we can imagine a distribution that redresses global socio-economic injustices that go beyond the cooperative surplus linked to the exploitation of genetic resources.

But enlarging the scope of distribution is morally problematic. If we consider that the treaty should also serve as a means for a fairer distribution of global riches, there is the risk that environmental and social justice will conflict, thus prejudicing social equality. Assuming that the Global Environmental Fund can act as a tool for redressing the inequality in wealth between rich and poor countries, we risk discriminating between countries on an arbitrary basis of social justice, by favouring aid for countries possessing great biological diversity. In the context of the instrumental value of biodiversity, differential obligations should therefore deal essentially with the cooperative surplus. It is likely that there are other common human objectives and that these may conflict with the protection of biodiversity in the framework of global governance. It is also possible that these issues take moral priority over issues of conservation. However, in no way could an international biodiversity protection mechanism become a fair tool for redressing international socio-economic inequalities. The best it could do is to couple economic inequalities with ecological inequalities, discriminating arbitrarily between beneficiaries on the basis of their ecological richness.

Viewed instrumentally, biodiversity is not very different from other problems of international distribution. It is necessary to emphasize the legal status of certain natural entities which have not yet been placed under a regime of property, but once this question is resolved, the distribution of biological resources can be addressed within the traditional framework of distributive justice. All theories of distributive justice attempt to establish the legitimate owners of a resource,
its protection and exploitation. The CBD affirms the sovereignty of nation states regarding their genetic patrimony and the access to genetic resources based on parties’ mutual consent and the fair sharing of profits.

This being said, we have also seen that the CBD also gives biodiversity an intrinsic value, and the first objective is the “conservation of biological diversity.” From this perspective, cooperation does not aim at maximizing a good, but rather at the common respect for a value. Thus, if we admit that biodiversity has an intrinsic value, it is not simply the profits or the costs linked to the loss of biodiversity that should be redistributed, but the costs of conservation itself. The cosmopolitan dimension of the protection of biodiversity rests on exactly this intrinsic value being a common human concern. If we universally recognize the intrinsic value of biodiversity and share a common concern for its protection, then we globally share the burden of conservation. The question is no longer “What benefits does biodiversity represent?” or “What costs are entailed by a loss of biodiversity and how should they be shared?”, but rather “What are the costs of conserving biodiversity and how should they be shared?” In this context we go beyond a cooperative surplus, since we protect a value independently of its actual or potential utility for human beings. The objective is no longer the efficiency of the production of goods, even if this is limited by a principle of justice, but the efficiency of conservation itself, independent of any profits. The economic differentiation in this context is important. The industrialized countries have superior financial and structural capacities and therefore legitimately take on a greater burden in the conservation effort, especially by creating international scientific networks and subsidizing the Global Environmental Fund. It seems that the most appropriate moral justification for this differentiation is a principle based on capacity; if conservation is a global goal, those who have the strongest capacity to ensure its protection should be those who bear the greatest responsibilities.

Even if the analysis of the distribution of biological resources seems to favour an interpretation dealing exclusively with the cooperative surplus, two elements mitigate a narrow scope of distribution. First,

50 UNEP, Convention on Biological Diversity, Article 1.
there is an indirect reason, since the line between social issues and environmental problems is difficult to draw, poverty being an indirect cause of the decline in biodiversity. Second, conservation in the name of its intrinsic value, by definition, goes beyond the questions of benefits, giving us a direct reason to act. In this context, we can legitimize a principle of differentiation based on the better capacities of richer countries to maximize the efficiency of conservation, independently of its cooperative surplus.

Conclusion

Despite this paper’s optimistic tone, it is clear that the cosmopolitan legal dimension of the CBD is still very limited. First, even if the participation of minority communities is encouraged, they do not have the means to organize and represent themselves on the international scene in the actual framework of the CBD. This disadvantage might still be overcome by putting mechanisms into place that facilitate their representation. Another limitation is that political representation is collective, based on states or community groups, and their power of negotiation is not weighted by the number of individuals represented. In this sense, the governance that the CBD proposes is far from a model of global democracy. Finally, given the importance of economic issues, the funding of the Global Environmental Fund is a critical issue for the CBD. Thus, without direct taxation, the part subject to redistribution rests upon the good will of the donors. These problems can only be overcome by a radical structural change in the CBD, and it is unlikely that this change will converge with the interests of nation-states.

Another problem involves compliance. Since countries are sovereign on their own territory, there is no way of guaranteeing that their international commitments are implemented in their national policies, even though many mechanisms encourage or obligate a country to respect its commitments. On the national scale, institutional or legal structures can be created to implement the CBD’s measures, either through the Ministry of the Environment or through the creation of national institutions of biodiversity, as in France. It is also possible to use internal social pressures, where international engagements can become a tool for social commitment. We can, for example, cite the government of Quebec’s decision to abandon the Suroît project.
Public opinion, which was opposed to this project, appealed to its incompatibility with the Kyoto Protocol. It is also possible for other Contracting Parties to apply external pressures, for example, in the context of the European Union. Finally, the CBD lays out a procedure for conflict resolution, where as a last resort a complaint can be placed in the International Court of Justice.

In this text, we have dwelled exclusively on the protection of biodiversity. We have seen how if respect for its intrinsic value is considered to be a common human objective, then the protection of global biodiversity can be representative of a cosmopolitan moral approach. As well, the institutional architecture of the CBD offers a useful framework for a certain legal cosmopolitanism. While this is not a necessary aspect of this structure, it seems, in part, compatible with it. It is still necessary to fill the gaps left empty by the play of national powers in order to refine and reaffirm the cosmopolitan dimension of the protection of biodiversity. To do this, the participation of philosophers, scientists, and NGOs is critical. There is a great deal of work left: the elaboration of a rational and universal theory of the intrinsic value of biodiversity and the description and moral analysis of the criteria of justice that should govern the sharing of costs and benefits linked to conservation are among the paths that need exploring. But since the situation is urgent and the institutional structures are favourable, it is reasonable to hope that the management of this crisis offers a good example of global governance.

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