

**The effect of multi-stakeholder partnerships' regulatory practices: the fragmentation of  
International Environmental Law**

By Claudia Lucía Peñaranda Celis

Supervisor: Dr. Michael Leach

Second reader: Dr. Emily Sipiorski

Tilburg Law School  
Master Thesis  
LLM in International and European Law  
International Law and Global Governance  
2023



Word count: 13.433 excluding summary, table of content, list of abbreviations, citations, and bibliography.

**Summary:**

Climate change and affections to the environment require the implementation of rapid and integral solutions that consider multiple perspectives. Thus, multi-stakeholder partnerships surge in the environmental field as governance models with the capability to overcome the political difficulties of the quest for adoption of environmental regulation by providing spaces for regulation and implementation of actions through the participation of diverse stakeholders. However, as informal law-making mechanisms, the lack of baseline requirements for their actions facilitates regulatory cherry-picking practices, enabling them to select the international commitments and guiding principles that will lead their activities. Thus, MSPs create disparities in the environmental standards to be considered by different industries, despite the importance of equal observation of environmental principles to ensure sustainable development. Therefore, this thesis argues that such regulatory phenomenon contributes to the fragmentation of IEL and, in consequence, MSPs fall behind in addressing systemic issues through policy coherence and the observation of the foundational principles of Agenda 2030, despite MSPs being promoted as champions for sustainability.

**Content:**

The effect of multi-stakeholder partnerships’ regulatory practices: the fragmentation of International Environmental Law ..... 6

Chapter 1: Introduction ..... 6

    1.1 Background and context ..... 6

    1.2 The problem and knowledge gap..... 8

    1.3 Thesis..... 9

    1.4 Research question ..... 10

    1.5 Methodology..... 10

Chapter 2: Multi-stakeholder partnerships as legal diffusers in International Environmental Law and Transnational Theory ..... 12

    2.1 Introduction: ..... 12

    2.2 MSPs as means to achieve international environmental outcomes ..... 12

    2.3 MSPs as collaborative spaces for multiple stakeholders ..... 13

    2.4 MSPs and legal diffusion in Transnational Legal Theory..... 15

        The question of effectiveness and significance of transnational environmental instruments 16

        MSPs in the diffusion of environmental law in a system of global governance. .... 17

        The growing authoritative influence of MSPs and their transnational instruments. .... 18

    2.5 Conclusion ..... 19

Chapter 3: Regulatory cherry-picking practices in environmental MSPs. Case studies: REN21, MSC, and FSC. .... 21

    3.1 Introduction: ..... 21

    3.2 REN21: Diffusing law through knowledge ..... 21

        Regulatory inputs and outputs ..... 21

        Inclusion and diffusion of environmental principles ..... 21

        Acknowledgment of REN21’s role in environmental governance..... 23

    3.3 Standards and ecolabels: on the MSC ..... 24

        The MSC’s regulatory outputs ..... 24

        Diffusion of environmental law and principles ..... 24

        Acknowledgment and support of MSC’s role in sustainable fishing practices ..... 25

    3.4 Standards and ecolabels: on the FSC..... 26

        Inclusion and diffusion of environmental law and principles ..... 26

        Acknowledgment and support of FSC’s role in the protection of forests ..... 30

    3.5 Insights and discussion: ..... 31

        Cherry-picking of environmental principles in the diffusion of environmental principles by MSPs:..... 32

        Diffusion of IEL through transnational instruments and the rise of new environmental authorities ..... 34

3.6	Conclusion: .....	35
Chapter 4: Regulatory cherry-picking in the outcomes of environmental MSPs. ....		36
4.1	Introduction: .....	36
4.2	Environmental norms and regulatory cherry-picking in MSPs' outputs.....	36
4.3	The fragmentation of International Environmental Law .....	37
	Fragmentation of IEL and the need for coherence .....	38
4.4	Conclusion .....	40
Chapter 5: Conclusion.....		41

## **List of abbreviations**

**Agenda 2030** – The 2030 Agenda for Sustainable Development

**ASC** – Aquaculture Stewardship Council

**CBD** – Convention on Biological Diversity

**CITES** – Convention on International Trade in Endangered Species of Wild Fauna and Flora

**FPIC** – Free, Prior and Informed Consent

**FSC** – Forest Stewardship Council

**GEG** – Global Environmental Governance

**HCVs** – High Conservation Values

**IEL** – International Environmental Law

**IL** – International Law

**ILO 169** - Indigenous and Tribal Peoples Convention, 1989 (No. 169)

**ITTA** – International Tropical Timber Agreement

**MSC** – Marine Stewardship Council

**MSPs** – Multi-stakeholder partnerships

**REN21** – Renewable Energy Policy Network for the 21<sup>st</sup> Century

**Rio Declaration** – Rio Declaration on Environment and Development

**RSPO** - Roundtable on Sustainable Palm Oil

**SDGs** – Sustainable Development Goals

**WSSD** – World Summit on Sustainable Development (2002), Johannesburg Summit

# **The effect of multi-stakeholder partnerships' regulatory practices: the fragmentation of International Environmental Law**

## **Chapter 1: Introduction**

### **1.1 Background and context**

Due to the fast environmental changes experienced in the last years, regulation concerning human activities that have impact on the environment must be met with the same speed, being this a requisite to achieve effective international legislation<sup>1</sup>. The environmental situation of the planet is undoubtedly critical. As it has been stated by the IPCC per their thorough reports, the environmental crisis is global, and it cannot be solved through the actions of a single actor. Environmental problems do not know about sovereign borders, thus as being supranational issues, unilateral action cannot offer an appropriate solution<sup>2</sup>. The increasingly clear interconnectedness of the world in this matter and others has led to the constitution of what is called a system of global environmental governance. This system of governance is characterized by a new distribution of power and its forms beyond the state-centered vision of authority, populated by new institutions and actors who participate in the regulation of global issues.

The complexity of the environmental issues requires multiple, elaborated, and stringent policies in different areas of private and public life. Notwithstanding, public authority has failed to overcome the political challenges that come with the institutionalization of such measures, leaving gaps in regulation and legal enforcement pertaining key concerns<sup>3</sup>. In consequence, private initiatives that aim to overcome and succeed in front of the challenges that environmental policy-making poses have emerged from the dissatisfaction with the state of international governance and public environmental law<sup>4</sup>. Actors such as civil organizations, businesses, and the scientific community have taken space in the processes of policy-making at the domestic and international range.

Since the World Summit in Johannesburg in 2002, support between public and private actors has been found as an essential requirement to guarantee the success of environmental protection

---

<sup>1</sup>Benedek, Wolfgang. (2011) 'Multi-Stakeholderism in the Development of International Law', in Ulrich Fastenrath and others (eds), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma*, 201-210, <https://doi.org/10.1093/acprof:oso/9780199588817.003.0015>

<sup>2</sup> Hale, T., & Urpelainen, J. (2015). When and how can unilateral policies promote the international diffusion of environmental policies and clean technology? *Journal of Theoretical Politics*, 27(2), 177–205. <https://doi.org/10.1177/0951629813518128>

<sup>3</sup> Buhmann, K. (2020). Collaborative Regulation: Preventing Regulatory Capture in Multi-stakeholder Processes for Developing Norms for Sustainability Conduct. In V. Mauerhofer, D. Rupo, & L. Tarquinio (Eds.), *Sustainability and Law* (pp. 307-323). Springer. [https://doi.org/10.1007/978-3-030-42630-9\\_16](https://doi.org/10.1007/978-3-030-42630-9_16)

<sup>4</sup> Bäckstrand, K. (2006). Multi-stakeholder partnerships for sustainable development: rethinking legitimacy, accountability and effectiveness. *Eur. Env.*, 16: 290-306, <https://doi.org/10.1002/eet.425>

actions<sup>5</sup>. In this system of global law, legal scholarship has studied the rise of informal sources of international law to supply these demands, due to the lack of consensus to formulate formal international environmental legislation<sup>6</sup> on main concerns, such as natural resources management, forestry, fisheries, tourism, among others<sup>7</sup>. In this scenario, multi-stakeholder partnerships (MSPs) are introduced to fill the legal voids through innovative means<sup>8</sup>.

Informal international lawmaking plays a key role in the environmental quest, since non-state-managed and border-crossing law found in multiple instruments has the capability to transmit and implement environmentally conscious obligations<sup>9</sup>. MSPs have provided guidelines and instruments for the execution of believed fruitful environmental actions<sup>10</sup> in different areas of environmental concern<sup>11</sup> with little to no hard law regulation at the international and domestic level. These new actors and governance models are viewed as exemplary means to overcome the difficulties of traditional public governance<sup>12</sup>. However, their intervention poses questions about their capacity and adequacy to shape the legal framework, and what their participation means for international environmental law.

In view of this phenomenon of innovative governance, transnational law instruments have gained prominence as they are viewed with the capacity to overcome the flaws of public international law<sup>13</sup>, bringing together peoples that have been historically discriminated against, and applying timely effective regulation<sup>14</sup>. Multi-stakeholder partnerships receive particular attention from legal scholars and political scientists due to their decision-making processes<sup>15</sup>, the effectiveness of their

---

<sup>5</sup> International Civil Society Centre. (2014). Multi-Stakeholder Partnerships: Building Blocks for Success. Report. Retrieved from <https://www.partnerschaften2030.de/wp-content/uploads/2022/06/Multi-Stakeholder-Partnerships-Building-Blocks-for-Success.pdf>

<sup>6</sup> Kern, K., Jörgens, H., & Jänicke, M. (2001). The diffusion of environmental policy innovations: a contribution to the globalisation of environmental policy, FS II 01-302.

<sup>7</sup> Biermann, F., Chan, M., Mert, A., & Pattberg, P. H. (2007). Multi-stakeholder partnerships for sustainable development: Does the promise hold? In P. Glasbergen, F. Bierman, & A. P. J. Mol (Eds.), *Partnerships, Governance and Sustainable Development. Reflections on Theory and Practice*, 239-260.

<sup>8</sup> Bäckstrand, K. (2006) (n 4)

<sup>9</sup> Affolder, N. (2018). Looking for Law in Unusual Places: Cross-Border Diffusion of Environmental Norms. *Transnational Environmental Law*, 7(3), 425-449. doi:10.1017/S2047102518000080

<sup>10</sup> Reinicke, W.H., & Deng, F.M. (2000). Critical choices The United Nations, networks, and the future of global governance.

<sup>11</sup> Biermann, F., Chan, M., Mert, A., & Pattberg, P. H. (2007). (n 5)

Multi-stakeholder partnerships for sustainable development: Does the promise hold? In P. Glasbergen, F. Bierman, & A. P. J. Mol (Eds.), *Partnerships, Governance and Sustainable Development. Reflections on Theory and Practice*, 239-260.

<sup>12</sup> Bäckstrand, K. (2006) (n 4)

<sup>13</sup> Affolder, N. (2020). Transnational Law as Unseen Law. In P. Zumbansen (Ed.), *The Many Lives of Transnational Law: Critical Engagements with Jessup's Bold Proposal* (pp. 364-385). Cambridge: Cambridge University Press.

<sup>14</sup> Paiement, P. (2021). Transnational Sustainability Governance and the Law, in Peer Zumbansen (ed.), *The Oxford Handbook of Transnational Law*.

<sup>15</sup> MacDonald, A., Clarke, A. & Huang, L. (2019) Multi-stakeholder Partnerships for Sustainability: Designing Decision-Making Processes for Partnership Capacity. *J Bus Ethics* 160, 409–426. <https://doi.org/10.1007/s10551-018-3885-3>

outputs<sup>16</sup>, and the legitimacy issues that derive from them<sup>17</sup>. These partnerships allow public and private actors to interact and work together outside traditional state control and lawmaking to achieve common goals. In the face of environmental issues, MSPs were thought to be coalitions that could act to make possible international commitments<sup>18</sup>, such as Agenda 2030, the once Millennium Goals<sup>19</sup> and the principles of the Rio Declaration. Furthermore, currently they are viewed by international organisms as an optimal means for change and achievement of the sustainable development goals (SDG) for being a model of multilateral collaboration<sup>20</sup>.

## 1.2 The problem and knowledge gap

Apart from their function as implementation networks, MSPs participate as legal entrepreneurs in the GEG system, with the competence to diffuse across the globe international environmental law contained in international instruments along their own environmental guidelines. MSPs as informal lawmaking mechanisms do not have to conform to specific rules for their functioning, and thus, their normative products are not subjected to baseline standards. However, through their products MSPs have the capability to reach a wide array of actors, territories and, even, impact public policy.

Due to this lack of controls over their normative products, MSPs have the freedom to determine their own internal processes and the scope of their products. This independency to act allows them to “cherry pick” not only their issues of focus, but also the international norms and commitments that will guide their work. More specifically, their regulatory products show a tendency to handpick the principles contained in the Rio Declaration that will be observed in their instruments, despite that those principles are the foundation of the commitments that the MSPs are intended to contribute to achieve. Therefore, such practice contravenes the primary goal of the introduction and promotion of MSPs as a necessary measure for the achievement of international environmental and sustainable goals.

Their role as law disseminators shows the emergence of MSPs as a genre of environmental authority that does not expressly require their regulations to be adopted through a formal legislative<sup>21</sup> process. In such case, multi-stakeholder governance models have a more independent and substantial role in the shaping of the environmental legal framework globally that what is

---

<sup>16</sup> Jastram, S. & Klingenberg, J. (2018). Assessing the Outcome Effectiveness of Multi-Stakeholder Initiatives in the Field of Corporate Social Responsibility – The Example of the United Nations Global Compact. *Journal of Cleaner Production*, 189. 10.1016/j.jclepro.2018.04.005.

<sup>17</sup> Mena, S., & Palazzo, G. (2012). Input and Output Legitimacy of Multi-Stakeholder Initiatives. *Business Ethics Quarterly*, 22(3), 527–556.

<sup>18</sup> United Nations. (2002). Report of the World Summit on Sustainable Development: Johannesburg, South Africa.

<sup>19</sup> Streck, C. (2002). The World Summit on Sustainable Development: Partnerships as New Tools in Environmental Governance. *Yearbook of International Environmental Law*, 13(1), 63–95. <https://doi.org/10.1093/yiel/13.1.63>

<sup>20</sup> Beisheim, M., & Simon, N. (2018). Multistakeholder Partnerships for the SDGs: Actors’ Views on UN Metagovernance. *Global Governance*, 24(4), 497–515.

<sup>21</sup> Dilling, O., & Markus, T. (2018). The Transnationalisation of Environmental Law. *Journal of Environmental Law*, 30(2), 179–206. <https://doi.org/10.1093/jel/eqy008>



commonly thought. For some MSPs, such as the FSC, MSC and RSPO, it is clear their global scale, and the wide array of stakeholders that interact with them. Moreover, it is notorious the increasing reliance of states and local governments on the MSPs work, who introduce their products to domestic law, or encourage local industry and private actors to follow their guidelines. Nonetheless, despite their growing relevance, the role of MSPs as diffusers and legal entrepreneurs has received minimal scholarly attention in regard to their impact in the development of IEL with an analysis that answers to how MSPs' creed of action is aligned with their intended purpose of helping to achieve international environmental commitments.

### **1.3 Thesis**

In consideration of the stated before, this thesis aims at critically examining how MSPs regulatory cherry-picking practices impact their contributions to International Environmental Law as legal entrepreneurs and diffusers. Despite their non-public nature, MSPs have made valuable contributions in the regulation of significant environmental areas, causing the evolution of their role from implementation networks to legal entrepreneurs. MSPs have introduced new concepts to environmental law, such as the High Conservation Values (HCV), which have been adopted by private actors and governments. However, the content of their products displays that in their lawmaking processes they privilege the observance of specific principles of environmental law, while others are completely absent. Therefore, from a larger perspective, the contributions of MSPs to IEL through their transnational products fail to provide policy coherence in environmental initiatives, and, on the contrary, from a larger perspective they contribute to the fragmentation of environmental law.

The differences in the content of their policies causes them to fall short in the accomplishment of their expected objectives, such as the reaching of policy coherence in the system. As a result, recognising the value of the contributions made by MSPs, to enhance their regulatory outputs while at the same time prevent causes of fragmentation of the environmental legal system, is required the establishment of a benchmark based on the principles of environmental law recognized in the Rio Declaration<sup>22</sup>. This to prevent reliance and non-critical support by public authorities on fragmentary regulation, striving for coherence among the MSPs products, despite the disparities in the areas of concern.

Even though legal scholarship has not formally studied the role of MSPs as legal diffusers, for the purposes of this thesis, MSPs will be considered diffusers of environmental law, considering the general recognition of their law-making capabilities, their purpose of filling legal lacunas in

---

<sup>22</sup> United Nations General Assembly. (1992). Rio Declaration on Environment and Development. Report of the United Nations Conference on Environment and Development.

different regions, and the recorded influence in the content of domestic legal instruments<sup>23</sup>. Therefore, this thesis does not aim at extensively exploring such role.

#### 1.4 Research question

Therefore, the purpose of this thesis is to analyze the contribution of MSPs to IEL through their role as legal diffusers and entrepreneurs. Particularly, this research aims to determine the impact of MSPs outcomes, that deliberately choose the observation of particular principles of environmental law, in the diffusion and implementation of environmental law and the achievement of international commitments. This will be achieved through the identification of the principles of environmental law that are incorporated in the actions and products of MSPs, and the insight on how the outputs of MSPs are being transferred, adopted by actors, or introduced in other normative bodies. For this reason, the research question that will fundamentally guide these research efforts is: What effect do the normative practices and outcomes of MSPs have on transnational and International Environmental Law?

To deepen in this subject, the following sub questions will guide the research:

- What kind of contribution do MSPs make to the formulation of transnational environmental law in the global environmental governance system through the incorporation and diffusion of IEL?
- How MSPs such as the FSC, MSC and REN21 participate in the diffusion and fragmentation of IEL through regulatory cherry-picking?
- How does regulatory cherry-picking practices in the introduction of general principles of IEL in the outcomes of MSPs contribute to the fragmentation of IEL?

#### 1.5 Methodology

This study will be achieved through the examination of the norms being diffused by MSPs through their products, their conformance to international environmental regulation, and the form of state support to these products. To demonstrate this practice and increasing state reliance, the thesis will compare the diffused outputs of three MSPs: Forest Stewardship Council (FSC), Marine Stewardship Council (MSC), and Renewable Energy Policy Network for the 21st Century (REN21). The study will consider their observance of the following general principles of environmental law contemplated in the Rio Declaration: polluter pays principle, precautionary principle, intergenerational equity, and the participation of indigenous peoples<sup>24</sup>. This research has been restricted to said principles based on their potential capability to be applied in different actions and projects undertaken by MSPs, and for being commonly considered by legal

---

<sup>23</sup> Lambin, E. F., & Thorlakson, T. (2018). Sustainability Standards: Interactions Between Private Actors, Civil Society, and Governments. *Annual Review of Environment and Resources*, 43(1), 369-393.

<sup>24</sup> Sands, P., Peel, J., Fabra, A., & MacKenzie, R. (2018). General Principles and Rules. In *Principles of International Environmental Law* (pp. 197-251). Cambridge: Cambridge University Press.  
doi:10.1017/9781108355728.011

environmental scholarship as the main principles of environmental law. This, jointly with a revision of the MSPs congruence with some of the main treaties in environmental law: Convention on Biological Diversity, Ramsar Convention, and Convention on International Trade in Endangered Species of Wild Fauna and Flora.

In order to explore and assess the case studies, the research will rely on the examination of the MSPs reports, voluntary standards, information provided by them in their websites, and communications. Also, it will include the study of policies, policy briefs, government statements, and communications available from governmental institutions, alongside related studies on these instruments. To establish the forms of state reliance in MSPs products, the analysis aims to recognize pointers of direct and indirect presence of MSPs outputs in states norms and policies, along mediums of support from public institutions to their outputs.

In light of the preceding, this research does not intend to analyze the contribution of MSPs in the overall achievement of the SDGs, their interactions with all the actors in the global governance system, nor does it aim to provide statistical information on the factors of influence of MSPs in international and domestic public policy. The study will rely on information made available directly by the MSPs and governments, thus, the research does not aim nor has the tools to question and challenge the veracity of the information provided in them.

## **Chapter 2: Multi-stakeholder partnerships as legal diffusers in International Environmental Law and Transnational Theory**

### **2.1 Introduction:**

The purpose of this chapter is to uncover and analyze the role of MSPs in the development of IEL and the achievement of environmental commitments. Thus, it explores the foundations of multi-stakeholder participation in the environmental endeavor, and the contributions they make through their regulatory outputs. Also, it analyzes MSP-based forms of soft law and transnational institutions shape IEL, and it explores scholars' arguments about the questionable effectiveness of such instruments. This chapter attempts to highlight the contributions of MSPs to the global development of environmental law and the significance of closer analysis to their work as non-state-controlled institutions and informal lawmaking mechanisms.

### **2.2 MSPs as means to achieve international environmental outcomes**

New processes and policy instruments have been created to fill the lack of satisfactory rules. They are born as efforts to address the limits in scope, actors' perspectives, and knowledge derived from formal ways of making the law<sup>25</sup>. With these goals in mind, multi-stakeholder partnerships are introduced as collaborative sustainability arrangements capable to achieve success where public authorities failed, they have the capability to implement laws and fill the regulatory lacunas<sup>26</sup>. Under this idea, MSPs are introduced in the World Summit on Sustainable Development (WSSD) in 2002 to the global environmental governance system, being recognized as an outcome of the summit to assist in the execution of the Agenda 21 and the Millenium Development Goals.<sup>27</sup> The Johannesburg Declaration stated the importance of multilateral institutions to achieve sustainability<sup>28</sup>, and the importance to implement the Agenda 21 is restated in the Plan of Implementation of the WSSD<sup>29</sup>. They were presented as action-driven alliances that could bridge the gap between policy goals and concrete action at a local level, as expressed by the Chairman of the Preparatory Committee<sup>30</sup>.

---

<sup>25</sup> Affolder, N. (2020). (n 13)

<sup>26</sup> McIntyre, O. (2018). Transnational environmental regulation and the normativisation of global environmental governance standards: The promise of order from chaos? *Journal of Property, Planning and Environmental Law*, 10(2), 105.

<sup>27</sup> Berman, A., et al. (2023). Introduction: Rethinking Stakeholder Participation in Global Governance. In Pauwelyn, J., et al. (Eds.), *Rethinking Participation in Global Governance: Voice and Influence after Stakeholder Reforms in Global Finance and Health* (Online ed.). Oxford, UK: Oxford Academic.

<sup>28</sup> Johannesburg Declaration on Sustainable Development. (2002). Adopted at the 17th plenary meeting of the World Summit on Sustainable Development, on 4 September 2002. Article 31 and 32.

<sup>29</sup> United Nations (2002). Plan of Implementation of the World Summit on Sustainable Development. Para 160 D.

<sup>30</sup> Wilson, M. (2005). The New Frontier in Sustainable Development: World Summit on Sustainable Development Type II Partnerships. *Victoria University of Wellington Law Review*, 36(2), 389.

In light that these catalysts for action were meant to enact the Agenda 21, MSPs were expected to comply with the principles contained in the Rio Declaration of 1992, since they were meant to be followed for the execution of the agenda<sup>31</sup>. The observance of the Rio Declaration was also suggested in the agenda for the development of guidelines and codes of conduct that were “environmentally sound”<sup>32</sup>. The conception of MSPs as vital elements in the achievement of global sustainability persists till today, being that they are recognized in Agenda 2030 as one of the most significant means of implementation. The recognition of their importance was highlighted since Johannesburg, and in the Agenda 2030 they are not only necessary to achieve the SDGs but are recognized as a goal on their own<sup>33</sup>. In this context, MSPs are required to address systemic issues by sharing expertise, technology, and funds to bolster the attainment of the SDGs<sup>34</sup>. As foundations of this new Agenda are recognized the WSSD and the Rio Declaration, confirming all the principles contained in the latter as the shared principles of this new journey<sup>35</sup>. This shows the wide approval and recognition of the Rio Declaration as a primordial guiding framework for environmentally sustainable actions.

### **2.3 MSPs as collaborative spaces for multiple stakeholders**

MSPs work is mainly about the development of a productive conversation between stakeholders. Through these communicative exercises stakeholders undergo a learning process about the conditions of fellow stakeholders and the components of the matter. Stakeholders use the recently acquired insight for the generation of new knowledge in the form of policies, voluntary standards, other regulatory instruments, statistics, and tools for furthering comprehension over the matter at hand for policy-makers. As a result of the collaborative practices, MSPs overcome learning gaps<sup>36</sup> providing their network with information previously unknown for the parties<sup>37</sup>.

Government officials, accustomed to the politics of policy-making, tend to have smaller roles in MSPs, as they are mostly focused on financing the work without executing a decisive role in the productive process of the partnership<sup>38</sup>. They provide funding for the exercise of ordinary activities for the proper functioning of the MSP<sup>39</sup>. Contrarily, civil society, NGOs, and other civil

---

<sup>31</sup> United Nations. (1992). Agenda 21: Earth Summit - The United Nations Programme of Action from Rio.

<sup>32</sup> United Nations. (1992). (n 34) Article 31.10.a

<sup>33</sup> United Nations General Assembly. (2015). Resolution adopted by the General Assembly on 25 September 2015, 70/1. Transforming our world: the 2030 Agenda for Sustainable Development. 26-27.

<sup>34</sup> United Nations General Assembly. (2015). (n 35) para 17.16

<sup>35</sup> United Nations General Assembly. (2015). (n 35) para 12

<sup>36</sup> Pinkse, J., & Kolk, A. (2012). Addressing the Climate Change—Sustainable Development Nexus: The Role of Multistakeholder Partnerships. *Business & Society*, 51(1), 176–210. <https://doi.org/10.1177/0007650311427426>

<sup>37</sup> Hardy C., Phillips N., Lawrence T. B. (2003). Resources, knowledge and influence: The organizational effects of interorganizational collaboration. *Journal of Management Studies*, 40, 321-347, 325

<sup>38</sup> Bitzer, V., Francken, M., & Glasbergen, P. (2008). Intersectoral partnerships for a sustainable coffee chain: Really addressing sustainability or just picking (coffee) cherries? *Global Environmental Change*, 18(2), 271-284. <https://doi.org/10.1016/j.gloenvcha.2008.01.002>

<sup>39</sup> Kolk, A., Levy, D., & Pinkse, J. (2008). Corporate responses in an emerging climate regime: The institutionalization and commensuration of carbon disclosure. *European Accounting Review*, 17, 719-745.

organizations offer local knowledge, diversity of perspectives, and support the internal process of the MSPs<sup>40</sup>. They present an understanding on how policy decisions affect local communities. Businesses, on the other hand, bring expertise and knowledge on market practices which offers a better understanding of the industry<sup>41</sup>. Societal expectations and changes in the regulation of private activity have motivated businesses to participate in regulation discussions, offering their insight for the drafting of policies aware of their stance. Businesses illustrate the causes for the resistance of the market to the implementation of policies. The collaboration of actors in the MSPs enriches the comprehension of the intricacies of the issue at hand.

Additionally, the operation of MSPs is instinctively informal, their structure for internal action and their outputs vary according to the capacity of the actors involved and the goals established by the parties. There is no fixed formula for their performance. MSPs offer solutions to local problems through different strategies, among which the academic literature has identified standard-setting, knowledge and technology spread, and capacity building<sup>42</sup>.

The cooperative spirit of these institutions promotes the constitution of networks that decentralize authority and reach different jurisdictions, fostering the dissemination across territories of their legal products and knowledge. The growth of the network depends on the existence of recipient actors that adopt their products<sup>43</sup>. Policy decisions are constantly echoed in other jurisdictions and MSPs play an essential role in the dissemination of the knowledge and the instruments created to address certain issues. The pre-existent environmental norms are introduced by the MSPs in their objectives, activities, and products, being diffused to whoever uptakes them.

Therefore, MSPs exercise the role of legal entrepreneurs. MSPs through their work circumvent the difficulties posed by international politics to make it possible for the application of international law in a domestic context. They conduct useful information beyond state barriers. In this way, as it will be illustrated later, international commitments can be adopted by private parties despite the states' willingness or readiness to comply. Also, MSPs promote policy adaptation. Through their policy analyses, assessments, and discussion spaces, they give room to the comparison and evaluation on the effectiveness of such, promoting the formulation of enhanced policies<sup>44</sup>.

---

<sup>40</sup> Pinkse, J., & Kolk, A. (2012) (n 38)

<sup>41</sup> Pinkse, J., & Kolk, A. (2012) (n 38)

<sup>42</sup> Frenova, S. (2016). Understanding modalities of climate partnerships and their contribution to climate governance. Institute for Environmental Studies (IVM), VU University Amsterdam.

<sup>43</sup> Heyvaert, V. (2017). The Transnationalization of Law: Rethinking Law through Transnational Environmental Regulation. *Transnational Environmental Law*, 6(2), 205-236. doi:10.1017/S2047102516000388

<sup>44</sup> McIntyre, O. (2018). (n 28)

The phenomenon of norm dispersion is notable mainly in those focused on standard-setting and the creation of knowledge where their activities and interaction with different actors facilitate the distribution and adoption of said regulations. According to what has been stated before, it is possible to argue that the MSPs execute a role of norm diffusers. Even though they were conceived as implementation networks that can assist in the achievement of international commitments on a local level, as stated during the WSSD<sup>45</sup>, this very ability to reach local actors and diverse stakeholders allows them to transcend their normative products. In alternative terms, from a theoretical perspective, their products such as voluntary standards, policy recommendations or certifications can be found in any place depending on the location of actors that adopt or contribute to the production of regulatory outputs, without being conditioned to the acceptance of the respective states. Due to the fact that the success of their work relies on the implementation of their output by businesses and civil parties, they surmount the limits posed by traditional forms of policy making. Moreover, MSPs and their products go beyond the territorial limits of the jurisdiction of states.

## **2.4 MSPs and legal diffusion in Transnational Legal Theory.**

Transnational activities are one of the sources of environmental concerns for states. The interconnectedness of the global environment causes transnational activities to have damaging effects on territories in different jurisdictions. The transferability of damaging results calls for global cooperation in the adoption of measures in favor of the environment in foreign territories. Due to their formation, MSPs can address complex challenges impossible to be approached by one single sector<sup>46</sup>. Considering the multiplicity of factors and variables that contribute to the well-being or worsening of the environmental state of the planet, the labor of MSPs is adequate to engage in the production of comprehensive environmental solutions.

Considering that transnational activities are a cause for concern regarding the environmental crisis, transnational mechanisms play a key role in its resolution. Thus, mechanisms whose applicability crosses borders are of interest to present the pertaining solutions. MSPs contribution to governance has started to be recognized, being even classified as pivotal forms of transnational governance<sup>47</sup>. MSPs' products have the capability to travel across jurisdictions interacting with other than public actors<sup>48</sup>. Understanding transnational law as the normative outputs developed by non-state agents, in transnational relations with private actors or with the capability to be applied across different jurisdictions<sup>49</sup>, MSP-established regulations qualify in the very debated concept of transnational

---

<sup>45</sup> Wilson, M. (2005). (n 32)

<sup>46</sup> Austin J. E. (2000b). Strategic collaboration between nonprofits and business. *Nonprofit and Voluntary Sector Quarterly*, 29(1), 69-97.

<sup>47</sup> Paiement, P. (2021). (n 14)

<sup>48</sup> Pattberg, P., & Widerberg, O. (2016). Transnational multistakeholder partnerships for sustainable development: Conditions for success. *Ambio*, 45, 42-51. doi: 10.1007/s13280-015-0684-2

<sup>49</sup> Cotterrell, R. (2012). What Is Transnational Law? *Law & Social Inquiry*, 37, 500-524. doi: 10.1111/j.1747-4469.2012.01306.x

law. Regulatory products such as standards, certification schemes, and guidelines make part of the instruments that integrate the categorization of transnational law.

With the variability of instruments and interveners for the implementation of environmental rules in transnational settings, tools of transnational law are commonly characterized by their innovation and flexibility. Thus, they are expected to address the structural shortcomings of international governance, such as limited participation, regulation, and stakeholder's consensus<sup>50</sup>. The engagement of various players in the rule-making process of subjects linked to them entrenches a feeling of responsibility in relation to the established compromises. Thus, MSPs' regulations are considered appropriate to address environmental issues, since a turn away from the view of states' participation and consent prevents the establishment of environmental norms through time-demanding and overly complicated proceedings<sup>51</sup>.

### *The question of effectiveness and significance of transnational environmental instruments*

However, scholarship questions the existence of transnational law for the potential of such instruments to operate as effective law<sup>52</sup>. Normative products unattached to public bodies face the issue of having the necessary mechanisms to guarantee the enforcement of their laws<sup>53</sup>. Dilling and Markus challenge the view of state-independent sources of law with the capability to shape global law and recognize as an imperative necessity that those must be integrated in international and national law<sup>54</sup>. Despite recognizing the possibility of the emergence of transnational regulatory mechanisms, scholars doubt their capacity to act as law without traditional state support<sup>55</sup>. From this perspective, the diffusion and application of non-state-based norms transnationally does not entail transnational law, but a phenomenon of transnationalisation of law<sup>56</sup>. This phenomenon is possible not based on a perception of the regulatory sources as authority, but on persuasion<sup>57</sup>.

Nonetheless, as part of the critique to the conceptualization of transnational law, they recognize the increasing authoritative role acquired by organizational norms and their institutions, which are even "treated as public institutions"<sup>58</sup>. Furthermore, it is stated their capacity to shape law, even though they lack legal force. However, in terms of Dilling and Markus, authority is only recognized

---

<sup>50</sup> Okitasari, Mahesti, Prabowo, Mochammad Hendro and Santono, Hamong, (2021). Multi-Stakeholder Partnerships: A Tangible Instrument to Support the Implementation of the 2030 Agenda at the Local Level. *Social Development Issues*, 42(3), 61-86.

<sup>51</sup> Bodansky, D. M. (1999). *The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?* University of Georgia School of Law.

<sup>52</sup> Bodansky, D. M. (1999). (n 53) Ibid

<sup>53</sup> Wiener, J. B. (2001). Something Borrowed for Something Blue: Legal Transplants and the Evolution of Global Environmental Law. *Ecology Law Quarterly*, 27(4), 1295–1371. <http://www.jstor.org/stable/24114060>

<sup>54</sup> Dilling, O., & Markus, T. (2018). (n 21)

<sup>55</sup> Dilling, O., & Markus, T. (2018). (n 21)

<sup>56</sup> Dilling, O., & Markus, T. (2018). (n 21)

<sup>57</sup> Dilling, O., & Markus, T. (2018). (n 21)

<sup>58</sup> Dilling, O., & Markus, T. (2018). (n 21) 198



with respect to those that are legitimately concerned with the protection of public goods. As stated by scholarship before, MSPs emerge due to the dissatisfaction with the current state of politics regarding the environment, and, in consequence, they aim at the application of appropriate norms, claiming then their interest in the safeguard of public goods.

From a theoretical perspective, MSPs' capacity to diffuse norms through rational persuasion provides them with a base for legitimacy to regulate in these matters<sup>59</sup>. The stimuli that entice compliance from non-state actors with transnational environmentally sound standards are found customarily in global markets<sup>60</sup>. Non-traditional-forms of regulation institutions in the GEG system focus on markets to achieve their sustainability and conservation goals, which allows them to directly integrate the parties that are substantially the main source of concern. Reliance on a good organized market guarantees the observance of their regulatory outputs, working similarly to hard law<sup>61</sup>, transforming it into the compliance mechanism of informal lawmaking.

Transnational law in the global governance scheme does not only bring up policy products through private law and soft instruments, but it also promotes the diffusion of international commitments. Private actors overcome state objections to the acceptance of international obligations by voluntarily complying with them, integrating them into the market. In this way, it is clear that global regulation processes led outside of state captaincy show new fields of productive legal activity worth exploring.

*MSPs in the diffusion of environmental law in a system of global governance.*

As stated before, MSPs transnational norms have tools that promote their respect and observance, despite not having the autonomous mechanisms of public authorities. Furthermore, they have the tools to contribute to the global legal coordination of action through the diffusion of environmental law. The diffusion of policies is a means that answers to the political needs of the climate crisis. Some theorists question the theory of the diffusion of laws and their outcomes with the mirror thesis<sup>62</sup>, which states that laws are the reflection of the society where they apply. However, the transnational aspect of the issues at hand, the “globalized localisms”<sup>63</sup> that interlink today's society, causes the surge of similar rules aimed at common objectives. Kern & Jorgens accurately offer that the demand for solutions to national problems is one of the drivers of the diffusion and adoption of environmental law in the domestic scope<sup>64</sup>. A more connected society, or, in other

---

<sup>59</sup> Bodansky, D. M. (1999). (n 53)

<sup>60</sup> Paiement, P. (2021). (n 14)

<sup>61</sup> Weber, R. H. (2011). Shift of legislative powers and multi-stakeholder governance. *International Journal of Public Law and Policy*, 1(1), 4-22.

<sup>62</sup> Tamanaha, B. Z. (2001). Against the Mirror Thesis. In *A General Jurisprudence of Law and Society*, Oxford Socio-Legal Studies (Online ed.). Oxford, UK: Oxford Academic. 107-132.  
<https://doi.org/10.1093/acprof:oso/9780199244676.003.0005>

<sup>63</sup> Tamanaha, B. Z. (2001) (n 65)

<sup>64</sup> Kern, K., Jorgens, H., & Jänicke, M. (2001) (n 6)

words, Sassen's concept of the expansion of the international society<sup>65</sup>, naturally moves towards a more uniform set of laws.

Environmental law dissemination benefits the rapid response to the climate crisis. The enactment of policies adopted in a different jurisdiction provides policy-makers with more information, experiences, credibility on their effectiveness, and it adds persuasive reasoning for its embracement. In this way, the adoption of foreign policies helps policy makers to access case studies, impact evaluations, success indicators statistics, clear policy plans and other types of knowledge that serve as an aid in the policy-making process. Successful policies may be imitated, if they are adapted to the conditions of the receiving jurisdiction, or they may inspire new policies content in case of incongruity<sup>66</sup>. Contrarily, adverse results from foreign policies permits jurisdictions to avoid policy mistakes made by others and adopt better measures.

MSPs' products, as transnational legal instruments, have the capability to transfer laws beyond state control. MPS's regulatory instruments are adopted directly by the stakeholders, private sector individuals, industry organizations and corporations, independently of the involvement of state officials. From this standpoint, transferring environmental norms through different policy products particularly facilitates and bolsters their integration and execution, since these norms directly reach the interested actors that have the capacity to follow them. From a conceptual outlook, through the direct transfer of law to stakeholders it is possible to overcome the political barriers inherent in conventional legislative processes at the international and national level, surmounting not only the deficits in regulation, but also in execution. This diffusion fosters the integration of all the actors located in the multi-level system of global governance<sup>67</sup>. The normativity disseminated has different problem-solving capacities according to the capabilities and scope of action of the actors that adopt it.

MSPs centered in the establishment of standards, and knowledge dissemination for future policy-making introduce duties contained in international instruments, developed international soft law, environmental principles, and, based on that preexisting framework, craft their own rules. As MSPs tend to focus on specific issues of concern in particular industries, they aim to diffuse and achieve the uniform standardization of the rules among all the actors of interest in the industry.

*The growing authoritative influence of MSPs and their transnational instruments.*

In the adoption of MSPs instruments, despite being transnational instruments out of non-traditional forms of regulation, in their diffusion capability and enforceability it is identifiable a growing perception of MSPs as a type of soft environmental authority in the GEG system. Political

---

<sup>65</sup> Tamanaha, B. Z. (2001) (n 65)

<sup>66</sup> Kern, K., Jörgens, H., & Jänicke, M. (2001). (n 6)

<sup>67</sup> Jänicke, M. (2017). The Multi-level System of Global Climate Governance – the Model and its Current State. *Environmental Policy and Governance*, 27, 108-121. doi: 10.1002/eet.1747.

incentives, as proven successful environmental proposals to push political campaigns<sup>68</sup>, and the market have increasingly made MSPs products into essential means to achieve sustainability. Market regulation in some nations requires compliance with specific sustainability standards for the development of legal commercial activities in the state. In the EU, the Timber Regulation establishes that the placement in the market of illegal wood, wood produced in contravention of the national policies of the place of origin, is prohibited<sup>69</sup>. In a similar line, the General Services Administration office of the U.S. advises the lessors of new governmental installations to use forest products certified for their sustainable production and commercialization<sup>70</sup>. Also, consumers are increasingly taking into account the impact of their purchase decisions on the environment, as was shown by the survey carried by the European Consumer Organisation on consumer perceptions of sustainable production of food<sup>71</sup>. In consequence, consumer influences have enlarged the demand for sustainably produced goods. As a result, the market has taken a more sustainable approach to answer to such demands by promoting the institution of sustainable practices in the industry and qualifying for third-party certification. Nowadays, in the wood market, more than 159.000.000 hectares of forest have been certified by the FSC alone<sup>72</sup>.

## 2.5 Conclusion

MSPs are considered a necessary form of collaboration to achieve international commitments in the climate enterprise. Nowadays, they are a requirement in themselves to accomplish sustainable development, whose additional goals are built on previous acknowledged commitments as the Agenda 21 and Rio Declaration. These mechanisms allow the joint work of different stakeholder to achieve goals established by them in particular areas of interest. Some of them focus on the creation of knowledge and the crafting of sustainability standards that address their particular concerns. As informal law-making institutions, MSPs products reach different levels of governance and stakeholders without the implementation of traditional policy processes. Notwithstanding, despite their capacity to diffuse environmental norms, the scholar debate over the significance of transnational environmental law still questions the efficacy of such instruments to achieve real effects in the legal panorama of environmental law. However, the explored reach

---

<sup>68</sup> Linos, K. (2013). A Theory of Diffusion Through Democratic Mechanisms. In *The Democratic Foundations of Policy Diffusion: How Health, Family, and Employment Laws Spread Across Countries*, 13-35. New York: Oxford Academic. <https://doi.org/10.1093/acprof:oso/9780199967865.003.0002>

<sup>69</sup> European Parliament and Council. (2010). Regulation (EU) No 995/2010 of the European Parliament and of the Council: Laying down the obligations of operators who place timber and timber products on the market. *Official Journal of the European Union*, L 295, 23.

<sup>70</sup> U.S. General Services Administration. (2008). Solicitation for Offers manual. Section 7.4 Wood Products.

<sup>71</sup> European Consumer Association. (2020). *One Bite at a Time: Consumers and the Transition to Sustainable Food: Analysis of a survey of European consumers on attitudes towards sustainable food*. Also: Seafood TIP. (2022). *Exporting certified sustainable seafood to Europe. Study conducted on behalf of CBI*. Retrieved from: <https://www.cbi.eu/market-information/fish-seafood/certified-sustainable-seafood#what-makes-europe-an-interesting-market-for-certified-sustainable-seafood>

<sup>72</sup> Forest Stewardship Council (FSC). (n.d.). *Facts & Figures*. FSC Connect. Retrieved from <https://connect.fsc.org/impact/facts-figures>

of MSPs products and the increasing state reliance in them provide insight in their significance for their capacity to shape legal frameworks. Thus, even though MSPs products consist in transnational instruments of voluntary nature, their reach and impact expose them as new sources of environmental law worth studying.

## **Chapter 3: Regulatory cherry-picking practices in environmental MSPs. Case studies: REN21, MSC, and FSC.**

### **3.1 Introduction:**

This chapter studies the contributions of REN21, MSC, and FSC as environmentally driven MSPs with global reach. It aims to delve into the different outputs of these MSPs, how they contribute to the development of IEL, and the forms in which regulatory cherry-picking is expressed in said MSP-instruments. As a result, it shows how some MSPs focus on the application of certain principles of environmental law, and this is reflected in their outputs. Furthermore, it explores support practices of public authorities to these products and organizations, to represent how the essence of these instruments acquires “harder” forms of regulation that shape environmental measures beyond private spheres.

### **3.2 REN21: Diffusing law through knowledge**

REN21 is an MSP focused on promoting the adoption of renewable energy. It is integrated by stakeholders from the scientific community, NGOs, governments, and industry. Its mandate since its foundation consists in the collection, consolidation, and synthesis of data on renewable energy, supplying this knowledge in a continuous and timely manner. It functions as a knowledge enabler, so their approach to achieving the global shift to renewables consists in the creation and dispersion of knowledge in this area. It does this through spaces of dialogue and debate between the stakeholders, the reception and sharing of information from such stakeholders, and independent continuous research on the matter.

#### *Regulatory inputs and outputs*

REN21 prepares events to foster the engagement of stakeholders. First, it organizes the International Renewable Energy Conference (IREC) in which it invites different stakeholders to participate, discuss policies and share their experiences. Additionally, to promote collaboration between stakeholders towards the design of strategies for furthering the adoption of a renewables-based system, it hosts the REN21 Academy.

Besides the forums of discussions, REN21 provides knowledge through reports, in which it shares and analyzes developments worldwide on the adoption of renewables, providing information on the current state of the issue policy-wise and the markets. Through the Global Futures Report, it shares the opinions of experts on how to address different challenges in the renewables enterprise. It provides different reports focused on regions and particular thematics through the support of the experts part of the community. REN21 is considered a reliable source of data on renewables, their reports are available to the public, and these are used to guide policy-makers and private actors on the journey to instituting a system based on renewable energy.

#### *Inclusion and diffusion of environmental principles*

In its reports and events, REN21 allows for the diffusion of application of principles of environmental law. It often analyzes policies and provides advice on regulation while employing the bases of such principles. REN21's enterprise aims at the application of the principle of preventive action, focused on the prevention of harm caused by other activities through the transition to renewable energy. In a report regarding heating and cooling, it insisted on the negative impact of fossil fuels on human health and the environment, which in consequence increases the costs of healthcare due to air pollution<sup>73</sup>. In the same report, it indicated that a transition that made cooling systems available in Africa could prevent the waste of 4 billion worth of food<sup>74</sup>. In a similar line, it discouraged the implementation of fossil fuels subsidies because they divert funds that could be invested into "more sustainable and effective solutions"<sup>75</sup>. Overall, it promotes electrification based on renewables and supports policies that comprise financial measures that increase the demand on renewables, fiscal incentives, and research.

It also advocates for the application of the polluter-pays principle through the implementation of fiscal measures. In one of its proposals, it indicates that fiscal policies must aim at the sanction of actors by their emissions, requiring them to pay a tax in proportion to it. The establishment of policies of this nature is, according to REN21, crucial in the journey to a renewables-based system<sup>76</sup>. However, noting the possible social effects of carbon tax policies, it also advises prudent examination of this type of measures considering the effects on social and equity issues<sup>77</sup>.

In respect to the social impacts of renewable energy policies, REN21 advocates for the inclusion of the perspectives and opinions of minorities, indigenous peoples, and local communities. In alignment with the Rio Declaration, it recognizes the role of indigenous and local communities, their knowledge and practices in the environment. Regarding renewables, the participation of such stakeholders in decision-making is particularly important due to their presence in territories where such sources are located<sup>78</sup>. For this reason, it advises the design of policies led by the communities, with the aim of empowering citizens and preventing conflict<sup>79</sup>. Their integration also promotes local sustainable development, while supporting their self-determination and control over their land. To make such policies possible, REN21 advocates for the respect of free, prior, and informed consent of the communities, which requires understanding of the community context to guarantee proper representation. This includes the representation of minorities and more vulnerable members within, such as women<sup>80</sup>. Also, to guarantee proper participation, it insists on the observation of the people's institutions and respect for their decision-making mechanisms. As a recommendation in the proper implementation of such a mechanism, it suggests the application of the Akwé: Kon guidelines from the Convention on Biological Diversity, which offers instruments to make impact assessments on traditionally occupied sites<sup>81</sup>.

---

<sup>73</sup> IRENA, IEA, & REN21. (2020). Renewable Energy Policies in a Time of Transition: Heating and Cooling.

<sup>74</sup> IRENA, IEA, & REN21. (2020). (n 188) 11

<sup>75</sup> IRENA, IEA, & REN21. (2020). (n 188) 26

<sup>76</sup> IRENA, IEA, & REN21. (2020). (n 188)

<sup>77</sup> IRENA, IEA, & REN21. (2020). (n 188) 38

<sup>78</sup> REN21. (2017). Renewable Energy Tenders and Community [Em]power[ment]: Latin America and the Caribbean. Paris: REN21 Secretariat.

<sup>79</sup> REN21. (2017). (n 193)

<sup>80</sup> REN21. (2017). (n 193)

<sup>81</sup> REN21. (2017). (n 193) 25

Even though the precautionary principle is pivotal in environmental law, as of today its implementation in relation to renewables has not been addressed by REN21. However, it is established to be addressed on its future report to provide a thorough analysis regarding renewable energy<sup>82</sup>.

### *Acknowledgment of REN21's role in environmental governance*

The REN21 reports have gained a positive global reputation. Governments, public entities, and private parties rely on the information and recommendations shared by REN21 in the designing of policies, being often referenced in the policy briefs that support renewables policies. In a study aimed at providing guidance to policymakers in Morocco for the creation of a development plan of the solar energy sector, REN21 is constantly referred to as a provider of technical data in the matter<sup>83</sup>. Additionally, information regarding policies in neighboring countries and analyses on the effectiveness and expected outcomes from REN21 are used to support the approaches to the policies in that study<sup>84</sup>.

In Colombia, REN21 is referenced as a source in the policy brief of a couple of policy proposals in the senate, which try to address the challenges of achieving a “just and equitable” transition<sup>85</sup>, and that pursue government support for the use of non-conventional energy sources<sup>86</sup>. In these policies it is promoted the democratic participation of the citizens in the decision-making, which is aligned with the precepts in renewable policy advocated by REN21. In a similar way, REN21's data has been used in Mexico to support policy proposals. In a proposal to reform the Energy Transition Law, the MSP's reports are used to compare targets in policies from different countries, based on distinct types of technologies<sup>87</sup>, and to show the general growth in the use of renewable energies globally<sup>88</sup>, which was utilized to back a proposal for the reform of regulations about electric industry, energy transition and cooperative companies<sup>89</sup>. Moreover, REN21's reports are

---

<sup>82</sup> REN21. (2022). Renewable Energy and Sustainability Report 2023: Are Renewables Sustainable? REN21's Key Role as Knowledge Broker. Retrieved from <https://www.ren21.net/renewable-energy-and-sustainability-report-2023/>

<sup>83</sup> Vidican, G., Böhning, M., Burger, G., de Siqueira Regueira, E., Müller, S., & Wendt, S. (2013). Achieving Inclusive Competitiveness in the Emerging Solar Energy Sector in Morocco. German Development Institute Study 79.

<sup>84</sup> Vidican, G., Böhning, M., Burger, G., de Siqueira Regueira, E., Müller, S., & Wendt, S. (2013). (n 86)

<sup>85</sup> Gaceta del Congreso. (2021). Proyecto de Ley. Por medio del cual se determinan medidas para reducir la pobreza energética rural y promover la generación de energías renovables por parte de las comunidades y empresas mypimes con el fin de fomentar una transición energética justa para la mitigación del Cambio Climático [Bill]. 195. Rama Legislativa del Poder Público, Cámara de Representantes. República de Colombia. 17

[http://www.secretariassenado.gov.co/legibus/legibus/gacetas/2021/GC\\_0195\\_2021.pdf](http://www.secretariassenado.gov.co/legibus/legibus/gacetas/2021/GC_0195_2021.pdf) Translation by the author.

<sup>86</sup> Gaceta del Congreso. (2013). Informe de Ponencia para Segundo Debate en Plenaria de Senado al Proyecto de Ley Número 278 de 2013. 978. [Congress Gazette].

[http://leyes.senado.gov.co/proyectos/imagenes/documentos/Textos%20Radicados/Ponencias/2013/gaceta\\_978.pdf](http://leyes.senado.gov.co/proyectos/imagenes/documentos/Textos%20Radicados/Ponencias/2013/gaceta_978.pdf)

<sup>87</sup> Gaceta del Senado. (2020). Iniciativa con proyecto de decreto por el que se reforma el artículo transitorio tercero del Decreto por el que se expide la Ley de Transición Energética. LXIV/3PPO-10-2695/111987. Estados Unidos Mexicanos. Retrieved from [https://www.senado.gob.mx/65/gaceta\\_del\\_senado/documento/111987](https://www.senado.gob.mx/65/gaceta_del_senado/documento/111987)

<sup>88</sup> Partido Morena. (2023). Iniciativa con proyecto de decreto por el que se adiciona el artículo 7 de la Ley de Desarrollo Rural Sustentable, en materia de uso de energías renovables. Senado. Estados Unidos Mexicanos. Retrieved from

[http://sil.gobernacion.gob.mx/Archivos/Documentos/2023/03/asun\\_4515314\\_20230315\\_1677084884.pdf](http://sil.gobernacion.gob.mx/Archivos/Documentos/2023/03/asun_4515314_20230315_1677084884.pdf)

<sup>89</sup> Rogelio Israel Zamora Guzmán (PVEM). (2019). Iniciativa con proyecto de decreto por el que se reforman y adicionan diversas disposiciones de la Ley de la Industria Eléctrica, de la Ley de Transición Energética, y de la Ley

also used to bring investments into countries. In India, the government uses the data provided by REN21 on global status and the country's own performance to present to investors the current situation in India and promote investments in the country<sup>90</sup>.

Other States have shown the trust in the effects of the work of REN21 through the support in the realization of events for the sharing of knowledge in renewable energy. States such as Spain, South Korea, México, and South Africa have allied themselves with REN21 to host the IREC, welcoming in their countries experts, policy makers, representatives of industries from all over the world to discuss how to push forward the renewable transition. Additionally, the EU has acknowledged the capacity of the MSP to influence and create change globally towards the use of renewable energy. For this reason, the EU granted funding to REN21 with the purpose of providing support for the expansion of its activities around the globe, with focus in emerging markets, strengthening its reach, organizing new events for the discussion of policies, sharing of updated information for policy-making decisions and providing training and capacity building<sup>91</sup>.

### **3.3 Standards and ecolabels: on the MSC**

The primary objective of the Marine Stewardship Council (MSC) is the protection of the oceans through the establishment of a sustainable seafood market. For this reason, its approach to work is market-based. It focuses its work on fisheries, retailers, supply chain, restaurants, and aims at the integration of consumers to change the market demand. It achieves this through the use of the MSC's ecolabel and certification program, which rewards sustainable fishing practices and drives a shift towards more sustainable food habits of consumers.

#### *The MSC's regulatory outputs*

The focus of all MSC's strategy is in the implementation of sustainable fishery practices, which are framed through their standards, and certified, or made known to the market, by means of the use of their ecolabel. Its programs are based on the application of the sustainable development principle. MSC's main practical targets are the prevention of overfishing, which is the first principle of the standard, and the reduction of fishing goal stock to meet the maximum sustainable yield (MSY)<sup>92</sup>, which refers to the maximum number of species that can be caught without irreparably depleting the fish population. Also, it commits to the conservation of the biodiversity of species through controls over the environmental impact of fishery activities, being this objective its second principle.

#### *Diffusion of environmental law and principles*

---

General de Sociedades Cooperativas. Gaceta del Senado, 2PPO-60-2543. <https://vlex.com.mx/vid/proyecto-decreto-reforman-adicionan-846613125>

<sup>90</sup> Invest India. (2023). Creating a Sustainable World. Retrieved from <https://www.investindia.gov.in/sector/renewable-energy>

<sup>91</sup> CORDIS EU. (2021). Support to REN21. Grant agreement ID: 101033714. Funded under Societal Challenges - Secure, clean and efficient energy. Coordinated by Renewable Energy Policy Network for the 21st Century EV (REN21). doi: 10.3030/101033714.

<sup>92</sup> Marine Stewardship Council (2022) MSC Fisheries Standard version 3.0. Retrieved from [https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-standard-v3-0.pdf?sfvrsn=53623a3\\_21](https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-standard-v3-0.pdf?sfvrsn=53623a3_21)



In order to attain these objectives, the MSC establishes the use of the precautionary approach in the certification process. Specifically, it requires caution regarding uncertain information, and also, indicates that conservation measures cannot be postponed due to the absence of sufficient scientific information in the assessment of compliance with the governance and policy requirements of the standard<sup>93</sup>. Moreover, the use of the precautionary principle is a scoring element regarding the conformity of decision-making processes with the achievement of the fishery sustainable objectives<sup>94</sup>. In general, the precautionary principle is integrated in every aspect of the standard, and it is intended to guide fisheries in their activities. Thus, the MSC rewards fisheries when scoring if these ones have applied the precautionary principle in situations of uncertainty.

Through its work on the implementation of its certification program for the implementation of sustainable fishery practices, it has built trust and gained recognition as a reliable sustainable initiative from leaders and entities in both the public and private spheres. The UN recognised the MSC's global standards on sustainable food as a scientific approach to quantifying the efforts to reverse the decline of global biodiversity<sup>95</sup>. In alignment with the precepts of the CBD, through the collaboration of Conformity Assessments Bodies (CABs), the MSC considers the institution of mechanisms to prevent the introduction of alien species and take the correspondent measures to prevent ecosystem harm, in case it happens<sup>96</sup>, being this one of the obligations of contracting parties to the CBD. Additionally, the MSC certification promotes conservation in-situ through the creation of marine protected areas (MPAs), contained as an obligation in article 8 of the CBD, which must be implemented in hand with sustainable practices to effectively contribute to reduce overfishing concerns. For this reason, it recognises that the establishment of MPAs is not sufficient to the conduct of sustainable fishery, but it can contribute to this aim<sup>97</sup>.

#### *Acknowledgment and support of MSC's role in sustainable fishing practices*

Its endeavor on the propagation and adoption of sustainable fishing practices has provided the MSC with international recognition as a reliable indicator of sustainable marine practices. Thus, in countries such as Australia certification by the MSC is used to portray the state's commitment with sustainability practices. The Australian Fisheries Management Authority (AFMA), which is in charge of effective fisheries administration ensuring conservation, provides data on stocks and "achievements" such as MSC's certifications<sup>98</sup> by the fisheries in the commonwealth. The Australian government promotes the acquisition of MSC's certification by their fisheries since it is cataloged as "the most recognisable and creditable" sustainable certification program<sup>99</sup>. In

---

<sup>93</sup> Marine Stewardship Council (2022) (n 94) para SA4.5.2

<sup>94</sup> Marine Stewardship Council (2022) (n 94) para SA4.8

<sup>95</sup> Marine Stewardship Council (MSC). (2022). MSC recognized by the UN as a global indicator for action on biodiversity loss [Press release]. Retrieved from <https://www.msc.org/media-centre/press-releases/press-release/msc-recognised-by-the-un-as-a-global-indicator-for-action-on-biodiversity-loss>

<sup>96</sup> Marine Stewardship Council (2022) (n 94)

<sup>97</sup> Marine Stewardship Council (2022) (n 94)

<sup>98</sup> Australian National Audit Office. (2021). Auditor-General Report No.45 2020–21: Management of Commonwealth Fisheries. Commonwealth of Australia. 44 Retrieved from [https://www.anao.gov.au/sites/default/files/Auditor-General\\_Report\\_2020-2021\\_45.pdf](https://www.anao.gov.au/sites/default/files/Auditor-General_Report_2020-2021_45.pdf)

<sup>99</sup> Department of Primary Industries and Regional Development. (2012). Third party certifier chosen for WA fisheries. Government of Western Australia. Retrieved from [https://www.fish.wa.gov.au/Pages/media\\_archive/Third-party-certifier-chosen-for-WA-fisheries.aspx](https://www.fish.wa.gov.au/Pages/media_archive/Third-party-certifier-chosen-for-WA-fisheries.aspx)

consequence, it has funded the expenses of each commercial fishery in the country to go through different assessments to achieve certification<sup>100</sup>. The support provided by the Australian government has shown the embracement of third-party initiatives and the acknowledgment for contributing to the sustainability efforts. The Australian government so far has contributed to the certification by the MSC of 12 fisheries<sup>101</sup>.

Similar trust in the MSC is observed in Europe, particularly in the Northern countries where MSC's certification is required for products to enter these markets<sup>102</sup>. Notwithstanding, the impact of the MSC is also political. In Finland, the MSC contributed to put pressure on the use of the MYS in the determination of the total allowable catch (TAC)<sup>103</sup>. Despite that the decision process of the TAC requires scientific advice, this can be trumped by political interests and thus allows for the establishment of unsuitable limits. However, since the MYS is required for obtaining and holding the MSC certification, stakeholders support sustainable practices to not risk losing the certification<sup>104</sup>. Additionally, Germany has recommended the MSC' principles for sustainable fishing as basic conditions for fishery ecolabels<sup>105</sup>. Credibility and dependence on MSC certification have grown to change markets radically, providing countries such as South Africa with a revenue of US\$300 million due to the access to new markets granted by the MSC's certification<sup>106</sup>.

### **3.4 Standards and ecolabels: on the FSC**

The FSC is the biggest MSP on sustainable forestry management. It recognizes the importance of forests for communities, the environment, and the growth of the economy. Due to this, NGOs, forest product and retail companies, scholars, activists, local and indigenous communities make part of it as members. Its action plan focuses on the implementation of practical strategies with effective results in sustainability, which is achieved through its standards and certification program. Its standards focus on providing solutions in favor of zero deforestation, ensuring the protection of endangered species, and conservation of biodiversity. Moreover, it also takes into consideration the protection of rights of indigenous peoples, local communities, and labor rights.

#### *Inclusion and diffusion of environmental law and principles*

The FSC's philosophy and standards are aligned with some of the main principles of international

---

<sup>100</sup> Department of Primary Industries and Regional Development. (2012). (n 101)

<sup>101</sup> Department of Primary Industries and Regional Development. (2022). Third-party sustainability certification. Government of Western Australia.

<sup>102</sup> Aranda, M., Ulrich, C., Le Gallic, B., Borges, L., Metz, S., Prellezo, R., Santurtún, M. (2019) Research for PECH Committee — EU fisheries policy – latest developments and future challenges, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels.

<sup>103</sup> Pappila, M., & Tynkkynen, M. (2022). The Role of MSC Marine Certification in Fisheries Governance in Finland. Sustainability, 14(12), 7178. MDPI AG.

<sup>104</sup> Pappila, M., & Tynkkynen, M. (2022). (n 105)

<sup>105</sup> Kalfagianni, A., & Pattberg, P. (2013). Global fisheries governance beyond the State: unraveling the effectiveness of the Marine Stewardship Council. Journal of Environmental Studies and Sciences, 3, 184-193. <https://doi.org/10.1007/s13412-013-0118-z>

<sup>106</sup> ISEAL Alliance. (2017). Sustainability standards and the SDGs: Evidence of ISEAL members' contribution. Retrieved from [https://www.isealalliance.org/sites/default/files/resource/2019-05/Sustainability\\_Standards\\_and\\_SDGs\\_full\\_report\\_2017\\_0.pdf](https://www.isealalliance.org/sites/default/files/resource/2019-05/Sustainability_Standards_and_SDGs_full_report_2017_0.pdf)

environmental law, and they are advanced through the application of its certification processes in the supply chain and specific projects. The precautionary principle is embedded in the purpose of the ninth principle of the standards, which establishes the maintenance of the High Conservation Values (HCVs). The HCV approach consists in the conservation, and, if possible, the enhancement of six values of biological, ecological, social, and cultural pivotal importance as an indicator of effective forestry administration<sup>107</sup>. Such values are comprised of: species diversity, landscape-level ecosystems, mosaics and intact forest landscapes, ecosystems and habitats, ecosystem services, community needs, and cultural values<sup>108</sup>. For their conservation, the precautionary principle must be applied in management decisions when it is thought that an HCV is present, thus, effective measures must be taken to prevent causing harm to the HCV even if the information available is not conclusive<sup>109</sup>. The incorporation of this principle into the practices of managers is crucial for the certification by the FSC, since it strives for the achievement of adaptive management that readjusts when more information is available, which requires periodic monitoring to assess the status of the HCV, and the adequacy of the management strategies<sup>110</sup>.

The application of such principle is also observed in the Chain of Custody certified organizations. The due diligence system for this kind of organization aims at preventing the use of wood material from unacceptable sources, and in consequence, demands oversight of the supply chain. The organization has a duty to ensure that the information provided about the supplied species regarding their harvesting, type, and quality, and means of transportation by the supplier are congruent with the reality<sup>111</sup>. In case of doubt over the reliability of the declarations of the supplier, the organization must apply the precautionary approach to reduce and avoid any harm that can be caused to the environment and people derived from the inaccuracy of such assertions. In this case, the FSC goes further in the utilization of the precautionary principle by requiring its application in respect to the reliability of the information provided by a supplier, and not the lack of scientific evidence.

The polluter-pays principle, and general doctrine of taking responsibility for the impact of one's activities and making reparation for the harm done is taken into account in the certification of the FSC. It has established a remedy framework that merges the Policy for Association Remediation Framework and the Conversion Remedy Procedure. It applies to non-conforming organizations which have been dissociated of the FSC for violating the requirements of the policy for association, their association candidacy has been rejected, and to companies that have a past of conversion<sup>112</sup>. Non-conforming organizations are determined based on their engagement on unacceptable activities, which encompass conversion of natural forest cover (deforestation), destruction of HCV, illegal logging, and illegal trade of timber<sup>113</sup>, human and traditional rights violations,

---

<sup>107</sup> Brown, E., & Senior, M. J. M. (2014). Common Guidance for the Management and Monitoring of High Conservation Values. HCV Resource Network.

<sup>108</sup> Brown, E., & Senior, M. J. M. (2014). (n 109)

<sup>109</sup> Brown, E., & Senior, M. J. M. (2014). (n 109)

<sup>110</sup> Forest Stewardship Council. (2023). FSC Principles and Criteria for Forest Stewardship (FSC-STD-01-001 V5-3)

<sup>111</sup> Forest Stewardship Council. (2021). Chain of Custody Certification (FSC-STD-40-004 V3-1 EN). Performance and Standards Unit.

<sup>112</sup> Being "conversion" understood as the repurpose of forests to plantations and non-forest use of the land.

<sup>113</sup> In 2019 the FSC disassociated from the Brazilian Jari Group after an investigation by independent experts that provided proof of engagement in illegal logging. See in Forest Stewardship Council. (2019). FSC disassociates from Jari Group [Communication]. Retrieved from [https://fsc.org/sites/default/files/2019-08/FSC%20disassociates%20from%20Jari\\_29-04-2019\\_Final\\_clean.pdf](https://fsc.org/sites/default/files/2019-08/FSC%20disassociates%20from%20Jari_29-04-2019_Final_clean.pdf)

worker's rights violations, and use of genetically modified organisms<sup>114</sup>. The goal of the Remedy Framework is to establish effective and permanent measures to remedy environmental and social harm caused by unacceptable activities. As a first step, it requires the application of preventive measures such as the institution of human rights and environmental due diligence frameworks<sup>115</sup>, which operate as foundational systems. Furthermore, it includes trust measures such as the mitigation of risks and payment of fines. The FSC oversees the remediation plan, and it suggests amendments in its design. These processes can take a long time since they require multiple steps to guarantee thorough and effective remedy, taking into account the dimension of the harm caused and the input of rights holders and stakeholders affected by such. In the case of the Asia Pulp and Paper (APP), the APP was dissociated in 2007 for being involved in destructive forestry practices and since 2012 has been involved in a remedy process<sup>116</sup> which has been the subject of multiple amendments<sup>117</sup> and it is expected to be implemented later this year.

The FSC has also integrated the principle of intergenerational equity in its campaigns and standards. In its mission it affirms the importance of using forest products in a form that does not compromise forests for future generations<sup>118</sup>. Thus, its work promotes the inclusion of every actor, from citizens to corporations, in actions towards the protection of forests for future generations. The actions can range from financing forestry projects to shopping sustainably<sup>119</sup>, including clearly the acquisition of the FSC certification. Such principle has recently been included as an organizational value of the FSC, showing its commitment to sharing the benefits of the forests with the generations to come<sup>120</sup>.

Likewise, the FSC has stated its pledge to protect and respect the rights of indigenous peoples, including the observance of the principle to Free, Prior and Informed Consent (FPIC). As part of its organizational values, the FSC introduced equity, meaning the promotion of equitable access to decision-making processes by Indigenous Peoples, and the realization of indigenous communities' rights<sup>121</sup>. The FSC's program requires organizations, through the third principle of the standards, to respect Indigenous Peoples ownership rights over their land and resources, which could be harmed by management activities. This calls for the uptake of multiple activities

---

<sup>114</sup> Forest Stewardship Council. (2022). Policy for Association: FSC Global Development - Dispute Management (FSC-POL-01-004 V3-0). Retrieved from <https://connect.fsc.org/document-centre/documents/retrieve/1498bfa-fa1a-4c49-b66c-3bbf0317dcbc?mode=view#viewer.action=download>

<sup>115</sup> Forest Stewardship Council. (2023). FSC Remedy Framework: Enabling certification and association. Governed by the Policy to Address Conversion V1-0 and the Policy for the Association of Organizations with FSC V2-0. Retrieved from <https://connect.fsc.org/document-centre/documents/retrieve/9688dcee-28cd-4e80-9400-1c1f1b2cf33c?mode=view#viewer.action=download>

<sup>116</sup> Forest Stewardship Council. (2023). Actions and Outcomes. Asian Pulp Association. Retrieved from <https://connect.fsc.org/actions-and-outcomes/current-cases/asia-pulp-and-paper-app>

<sup>117</sup> FSC. (2017). Status update #5 on the disassociation of FSC from Asia Pulp and Paper. Retrieved from [https://connect.fsc.org/sites/default/files/2019-06/FSC\\_Update%20%235%20-%20Status%20of%20disassociation%20from%20APP\\_2017-04-05\\_FINAL\\_1.pdf#viewer.action=download](https://connect.fsc.org/sites/default/files/2019-06/FSC_Update%20%235%20-%20Status%20of%20disassociation%20from%20APP_2017-04-05_FINAL_1.pdf#viewer.action=download)

<sup>118</sup> Forest Stewardship Council United States. (n.d.). Mission and vision: Protecting forests for future generations. Retrieved from <https://us.fsc.org/en-us/what-we-do/mission-and-vision>

<sup>119</sup> Forest Stewardship Council. (n.d.). FSC stories 2021: What do the FSC labels on a product mean? [Blog post]. Retrieved from <https://annual-reports.fsc.org/2022/08/13/what-do-the-fsc-labels-on-a-product-mean/>

<sup>120</sup> Forest Stewardship Council. (2022). FSC strategic framework on diversity and gender. Retrieved from [https://fsc.org/sites/default/files/2023-03/FSC%20Strategic%20Framework%20on%20Diversity%20and%20Gender\\_V2.pdf](https://fsc.org/sites/default/files/2023-03/FSC%20Strategic%20Framework%20on%20Diversity%20and%20Gender_V2.pdf)

<sup>121</sup> Forest Stewardship Council. (2022). (n 122)

consisting essentially in engaging with the indigenous communities, recognizing their customary rights, identifying and protecting their sites of special significance, and the utilization, and corresponding compensation, of their practices and knowledge. These actions require the operation of the FPIC as a right of the Indigenous Peoples, for which the FSC established a framework for the use of the organizations. Through this mechanism, the FSC promotes and guarantees the observation of their rights and interests when management activities may affect them as right holders. The consent, if provided, does not represent a free pass for management activities, but it requires continuous monitoring, conservation, and confirmation<sup>122</sup>.

Additionally, the FSC has taken further action to protect the rights of the Indigenous Peoples by the launch of different initiatives. Among them is the Permanent Indigenous People's Committee (PIPC), created to ensure the representation and input of this group in the FSC's decision-making. The FSC Indigenous Foundation (FSC-IF) is another initiative which focuses on enabling communities to build and lead the sustainable management of their territories, through the inclusion of their knowledge and traditional practices<sup>123</sup>. Thus, the FSC's standards and these actions are consistent with the principle 22 of the Rio Declaration by virtue of requiring the acknowledgement of indigenous identities, culture, contributions, and, in consequence, pushing for their participation in forestry protection processes.

However, the FSC pushes forward the protection and recognition of Indigenous Peoples by the express requirement of respecting their rights under the definitions of the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention 169 in the principle 3 of the standards. In light of this mention, any organization that pursues certification of the FSC, irrespective of their country of operation, must take into consideration ILO 169. Despite it not being as extensively ratified as environmental treaties, only 24 States have ratified it, the FSC advances the convention's application globally through the certified organizations. The extensive reach of the FSC's standards in the protection of indigenous and local communities is observed in countries such as Indonesia, where the rights of local communities are overlooked in many cases, and, contrarily, the FSC instructs their consultation and active involvement in processes that affect their livelihoods<sup>124</sup>. In Perú, the rights of such communities, including the FPIC, are recognized, but a framework on the matter is absent<sup>125</sup>. In this situation, the FSC's FPIC framework provides a comprehensive roadmap for its application.

Besides ILO 169, FSC promotes compliance with treaties such as the CBD, CITES, ITTA and the UNFCCC. The glossary of terms used by the FSC is based on internationally accepted definitions, taking as one of its sources the CBD<sup>126</sup>. It has also addressed the importance of distinguishing and assessing the value of forests to promote the implementation of international policies such as the

---

<sup>122</sup> Forest Stewardship Council. (2021). (n 113)

<sup>123</sup> Forest Stewardship Council. (n.d.). Indigenous Peoples. Retrieved from <https://fsc.org/en/indigenous-peoples>

<sup>124</sup> Savilaakso, S., Cerutti, P., Montoya-Zumaeta, J. G., & Ruslandi, R. (2016). Conserving biodiversity and improving human livelihoods through interaction between public regulation and forest management certification. *IUCN Policy Matters*, 75-92.

<sup>125</sup> Savilaakso, S., Cerutti, P., Montoya-Zumaeta, J. G., & Ruslandi, R. (2016). (n 126)

<sup>126</sup> FSC Board of Directors. (2017). Guidance for Standard Development Groups: Developing National High Conservation Value Frameworks (FSC-GUI-60 009 V1-0 D1-2 EN).

CBD, the UNFCCC, and the SDGs<sup>127</sup>. In addition to that, the FSC also stipulates compliance with CITES by explicitly requiring in its standards the provision of valid certificates under CITES when required<sup>128</sup>. In this way, the FSC has demonstrated its capacity to advance compliance with environmental treaties, while promoting its own approach to sustainability. Its extensive and thorough guidance provided organizations with frameworks that are stricter than domestic policies to address environmental issues. To illustrate, in Perú, Cameroon and Indonesia there is no clear commitment to long-term sustainability and the concept of HCVs is completely absent<sup>129</sup>.

### *Acknowledgment and support of FSC's role in the protection of forests*

The efforts of the FSC have earned it international recognition by institutions, companies, the public and governments. So far, the FSC has certified more than 157 million hectares globally, having issued around 55.000 certificates in 89 countries<sup>130</sup>. Its leadership in forestry sustainability has been recognised by states which have endorsed its programs and even embraced them to integrate in their policy. The Colombian government has acknowledged the increasing demand for sustainable wood in the market, and in consequence, the state's necessity to meet these requirements<sup>131</sup>. As a proposal it studies the introduction of the certification principles to the country's Forest Management Plan<sup>132</sup>, and it advises final consumers to acquire certified forestry products to tackle illegal trade of wood<sup>133</sup>. Similarly, the Argentinian government praises that 40% of the country's surface is certified and, thus, the country can strive to provide wood to countries and organizations with strict sustainability requirements<sup>134</sup>. For this reason, the Argentinian Forestry Strategic Plan seeks that national forest practices and projects implement the principles of forest certification systems such as the FSC<sup>135</sup>. Additionally, Argentinian local government in Chaco has signed an agreement with the FSC for capacity building, to provide assistance in certification processes to small producers<sup>136</sup>, and the creation of a forest certification scheme

---

<sup>127</sup> Forest Stewardship Council (FSC). (2021). FSC Focus Forests Green Paper Summary. Retrieved from [https://fsc.org/sites/default/files/2021-08/Focus%20Forests%20Green%20Paper\\_EN.pdf](https://fsc.org/sites/default/files/2021-08/Focus%20Forests%20Green%20Paper_EN.pdf)

<sup>128</sup> Forest Stewardship Council (FSC). (2017). Requirements for Sourcing FSC Controlled Wood (FSC-STD-40-005 V3-1 EN). FSC Board of Directors, para 2.5.2.a - 2.6. Retrieved from <https://connect.fsc.org/document-centre/documents/retrieve/3f838e51-be01-46a2-91dc-3ea8b1ddcaa4?mode=view#viewer.action=download>

<sup>129</sup> Savilaakso, S., Cerutti, P., Montoya-Zumaeta, J. G., & Ruslandi, R. (2016). (n 126)

<sup>130</sup> Forest Stewardship Council (FSC). (n.d.). Facts & Figures. FSC Connect. Retrieved from <https://connect.fsc.org/impact/facts-figures>

<sup>131</sup> World Bank Group. (2016). Colombia - Potential for commercial reforestation: diagnosis: Colombia - Potencial de reforestación comercial: diagnóstico (Spanish). Washington, D.C. Retrieved from <http://documents.worldbank.org/curated/en/239641467991950710/Colombia-Potencial-de-reforestación-comercial-diagnóstico>

<sup>132</sup> World Bank Group. (2016). (n 133)

<sup>133</sup> Rueda Tocarruncho, A. M., Moreno Orjuela, R. D., & Zúñiga Gallego, J. K. (2016). Guía de Compra y Consumo Responsable de Madera en Colombia. GIZ. Retrieved from <https://www.minambiente.gov.co/wp-content/uploads/2021/10/Gui%CC%81a-de-Compra-y-Consumo-Responsable-de-Madera-en-Colombia.pdf>

<sup>134</sup> DIPROSE & Dirección Nacional de Desarrollo Foresto Industrial en Argentina. (2020). Plan Estratégico Forestal y Foresto-Industrial Argentina 2030. Retrieved from [https://www.argentina.gob.ar/sites/default/files/2021/04/plan\\_estrategico\\_foresto\\_industrial\\_2030.pdf](https://www.argentina.gob.ar/sites/default/files/2021/04/plan_estrategico_foresto_industrial_2030.pdf)

<sup>135</sup> DIPROSE & Dirección Nacional de Desarrollo Foresto Industrial en Argentina. (2020). (n 136)

<sup>136</sup> Subsecretaría de Recursos Naturales de la Provincia de Chaco. (2021). Chaco suscribió convenio con FSC Argentina [Governmental communication]. Retrieved from <http://rnaturaleschaco.gob.ar/tag/fsc/>

tailored to the local conditions<sup>137</sup>.

In Brazil and Bolivia, the FSC's standards have strongly influenced public policy and law. The FSC's concept of High Conservation Value Forest (HCVF) is used in the designation of protected areas and planning by the Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis<sup>138</sup>. In Bolivia, their Forest Code is based on the FSC standard, being the criteria for sustainable forest an emulation of the FSC guidelines<sup>139</sup>.

### 3.5 Insights and discussion:

Considering the previous analysis, the following chart summarizes the main characteristics of cherry-picking practices of the analyzed MSPs and how they reflect in their outcomes:

	<i>Multi-stakeholder partnerships</i>		
	<b>REN21</b>	<b>MSC</b>	<b>FSC</b>
<b>Environmental concern</b>	Renewable energy (RE)	Sustainable management of fisheries for sustainable seafood market	Sustainable management of forests
<b>Outputs</b>	<ul style="list-style-type: none"> <li>• Diffusion of knowledge through reports and discussion forums</li> <li>• Analysis of global policies in RE</li> </ul>	<ul style="list-style-type: none"> <li>• Sustainable standards</li> <li>• Certification program and ecolabel</li> <li>• Capacity building programs</li> </ul>	<ul style="list-style-type: none"> <li>• Sustainable standards</li> <li>• Certification program and ecolabel</li> <li>• Capacity building programs</li> </ul>
<b>Observed environmental norms</b>	<ul style="list-style-type: none"> <li>• Preventive action</li> <li>• Polluter-pays principle</li> <li>• Protection of Indigenous Peoples</li> <li>• Akwé Kon guidelines (CBD)</li> </ul>	<ul style="list-style-type: none"> <li>• Precautionary principle</li> <li>• CBD's treatment to alien species and creation of MPAs</li> </ul>	<ul style="list-style-type: none"> <li>• Precautionary principle</li> <li>• Polluter-pays principle</li> <li>• Protection of Indigenous Peoples</li> <li>• Preventive action</li> <li>• Intergenerational equity</li> </ul>

<sup>137</sup> Gobernación de Chaco. (2022). El gobierno y una organización internacional gestionan certificaciones para productos foresto-industriales chaqueños [Governmental communication]. Retrieved from <https://chaco.gob.ar/noticia/70433/el-gobierno-y-una-organizacion-internacional-gestionan-certificaciones-para-productos-forestoindustriales-chaquenos>

<sup>138</sup> Lambin, E. F., & Thorlakson, T. (2018) (n 25)

<sup>139</sup> Lambin, E. F., & Thorlakson, T. (2018) (n 25)

			<ul style="list-style-type: none"> <li>• Consideration of CBD, CITES, ITTA, UNFCCC, ILO 169.</li> </ul>
<b>Unacknowledged environmental norms</b>	<ul style="list-style-type: none"> <li>• Precautionary principle</li> <li>• Intergenerational equity</li> </ul>	<ul style="list-style-type: none"> <li>• Preventive action</li> <li>• Polluter-pays principle</li> <li>• Protection of Indigenous Peoples</li> <li>• Intergenerational equity</li> </ul>	
<b>Form of governmental reliance</b>	<ul style="list-style-type: none"> <li>• As support in policy briefs.</li> <li>• As providers of data to support projects and investments.</li> <li>• Funding from governments to REN21.</li> </ul>	<ul style="list-style-type: none"> <li>• Public promotion and financial support to fisheries to acquire MSC's certification</li> <li>• MSC's certification as a policy requirement to access markets.</li> <li>• Introduction of MSC's regulation into policies.</li> </ul>	<ul style="list-style-type: none"> <li>• Introduction of FSC's regulation into policies.</li> <li>• Public promotion and financial support to businesses to acquire FSC's certification</li> </ul>

The analysis of the case studies regarding the outputs of REN21, the MSC, and the FSC, and their cherry-picking practices of environmental norms provides the following findings: (i) through their outputs they facilitate compliance with obligations contained in international treaties in territories where these have not been ratified and the observation of environmental principles, diffusing such obligations; however, there is inconsistency in the environmental norms integrated and observed in their practices; (ii) there is an increasing reliance on the part of states in the intervention of MSPs in environmental governance and their regulatory outputs; (iii) thus, the extended distribution and acceptance of their inconsistent outputs contributes to the fragmentation of the environmental legal regime, which contravenes the internationally recognized need of policy coherence to accomplish sustainable development.

*Cherry-picking of environmental principles in the diffusion of environmental principles by MSPs:*

In the study of the regulatory outputs of MSPs it was possible to identify that some environmental treaties and principles of environmental law were present in their standards and operational approach. However, it is noticeable the lack of consistency of the principles being followed by the MSPs studied. This is significant due to the purpose of the environmental principles, which are intended to be applied to guide in the making of environmental decisions in respect to any issue, not being framed to any specific environmental or climate circumstance. Thus, the principles could and should be applied to steer any decision in a different range of topics by every actor, including MSPs, not distinguishing their area of focus. Such inconsistencies in the principles being applied make evident irregularities in the fundamentals of action of MSPs. After all, in the environmental



endeavor MSPs are expected to apply environmental principles as they are part of the foundation of sustainable development<sup>140</sup>.

The lack of integration of certain principles can indicate the level of stringency of the standards and reveal underlying interests in the operational strategies of every MSPs. Particularly, in regards to the MSC, it is appreciable an imbalance in the observance of the principles of preventive action and the polluter-pays principle. As a consequence, the MSC shows in its standards a focus in guaranteeing that fisheries do not cause an irreversible harm and the prevention of it, but it does not establish expressly the mechanisms to address the harm caused, and the specific duties of fisheries in this regard. On the contrary, the FSC has a comprehensive set of standards that contemplate most of the principles contained in the Rio Declaration, making them mindful of the role of the participation of stakeholders, and adaptive to conservation needs to achieve sustainability goals. Thus, by the unequal observation of environmental principles by MSPs, through their products they create variations in the responsibilities of actors across different industries. In this way, the FSC establishes a stringent system for forest enterprises, but the MSC creates a more flexible standard for fisheries.

Moreover, it is observable at least in the case of the FSC, their capacity and interest in the observation of other environmental treaties that can contribute to their work, such as ILO 169. However, in this case it is made evident the capacity of MSPs outputs to go beyond jurisdictional barriers without requiring state approbation. By the inclusion of compliance with ILO 169 in the standards, the FSCs transforms every certified body in a vehicle for the implementation of ILO 169, even if their state of operation is not interested or has actively avoided a ratification of the treaty<sup>141</sup>. Thus, the forestry industry can apply the treaty in territories not party to it.

Overall, from a surface-level standpoint MSPs have the capacity to diffuse transnationally environmental law and policy instruments that abide by environmental principles. In some cases, their standards are directly adopted and introduced to domestic legislation, as happened in Bolivia and the Forestry Code<sup>142</sup>. In others, certified stakeholders make possible the application of international law in foreign territories that have not consented to it, as ILO 169. Additionally, through the standards MSPs build on international obligations. In consequence, they address the implementation and regulation deficits by the establishment of clearer rules to achieve international commitments and the enactment of regulatory measures to deal with issues in the regulatory gap.

---

<sup>140</sup> United Nations General Assembly. (2015). Resolution adopted by the General Assembly on 25 September 2015, 70/1. Transforming our world: the 2030 Agenda for Sustainable Development.

<sup>141</sup> Forest Stewardship Council (FSC). (2017). Requirements for Sourcing FSC Controlled Wood (FSC-STD-40-005 V3-1 EN). FSC Board of Directors. Retrieved from <https://connect.fsc.org/document-centre/documents/retrieve/3f838e51-be01-46a2-91dc-3ea8b1ddcaa4?mode=view#viewer.action=download>

<sup>142</sup> Lambin, E. F., & Thorlakson, T. (2018). (n 25)

However, an analysis on their regulatory outputs identifies inconsistencies in the principles being applied. There are cherry picking practices that enable MSPs to focus on the development and execution of activities under specific principles. As a result, there is an imbalance in the consideration of issues necessary for the implementation of integral sustainable policies. Thus, although certification programs and diverse MSPs' outputs are promoted as model recommendations for the regulation of specific practices, they lack a holistic overview that allows them to be sustainable in concordance to international commitments such as the Rio Declaration.

*Diffusion of IEL through transnational instruments and the rise of new environmental authorities*

Despite MSPs not being public organisms or sources of international hard law, the unevenness in the norms observed in MSPs outputs requires special attention for their reach of diverse levels of governance and societal sectors<sup>143</sup>. MSPs have relied on the market to propagate and guarantee the compliance with their standards. Industries and private actors have increasingly been compelled to adopt sustainable practices motivated by social pressure and market needs. This same pressure has been felt by governments which are increasingly supporting MSPs initiatives. In this study it was possible to identify a reliance coming from states in the work of MSPs, where their support to the MSPs initiatives was portrayed as sustainability accomplishments, as witnessed in Australia and the MSC. This trust can also be observed in the funding provided by states to MSPs' campaigns and the support provided to help enterprises acquire sustainability certifications.

In the development and diffusion of their standards MSPs shape environmental law by introducing new concepts, such as the HCVs in the case of the FSC, that are increasingly being adopted by national jurisdictions<sup>144</sup>. These effects in national and transnational environmental legal frameworks represent a growing perception of some MSPs as environmental authorities. All things considered, from a functionalist viewpoint, their authority has been recognized through the embracement and endorsement provided by states for their collaborative roles in environmental regulation, beside the recognition of their contributions in UN resolutions, and the acceptance received from industries and the market. The approval received from these actors has helped MSPs to apply environmental norms overcoming the lack of regulatory environmental frameworks, and states' willingness or capacity to implement environmental policies, pushing forward the environmental endeavor.

This phenomenon represents the slow shift of states from regulators towards a role of facilitators<sup>145</sup>. Thus, a type of orchestration relationships are built among public authorities and MSPs, which pursues the achievement of environmental goals through the endeavors of private initiatives. In Partiti's theory, this collaboration among public and private entities legitimises

---

<sup>143</sup> Jänicke, M. (2017). (n 69)

<sup>144</sup> Lambin, E. F., & Thorlakson, T. (2018). (n 25)

<sup>145</sup> Partiti, E. (2019). Orchestration as a form of public action: The EU engagement with voluntary sustainability standards. *European Law Journal*, 25, 94-117. <https://doi.org/10.1111/eulj.12299>

transnational regulation<sup>146</sup>, since the work of MSPs is endorsed under the idea that it is beneficial to the state, which is consistent with Schuman’s concept of legitimacy, regarding a conception that an action is desirable and appropriate under a system of values<sup>147</sup>.

In consequence, MSPs as legal entrepreneurs create rules and establish their own regulatory mechanisms that oversee compliance with them, to which private actors subject themselves voluntarily. The forms in which their projects have received acceptance from sovereign states can be summarized in: (i) the encouragement and support provided to companies on the part of states to acquire sustainable certification; (ii) and the integration of their rules in domestic regulation. Thus, MSPs have the capabilities to create authoritative rules in the transnational scope, having “factual efficacy”<sup>148</sup>, even without public independent compliance instruments, in contrast to Dilling and Markus’ theory

### **3.6 Conclusion:**

Although MSPs contribute to fill regulatory gaps through their instruments and represent progress in the implementation of environmentally conscious norms, it is required more coordination among them and the establishment of baseline rules that are present across the different regulations. So far, the differences found in the instruments of the MSPs studied create unmerited discrepancies in the environmental rules that apply in diverse fields. These disparities can solidify due to the widespread acceptance of MSPs’ products by private and public actors, despite being transnational instruments without independent compliance mechanisms, which challenges transnational theories that question the significance of such instruments to the international environmental legal framework. As a result, while MSPs have contributed to the formulation of sustainability standards, their narrow approach in the application of environmental laws inadvertently leads to the fragmentation of IEL. Thus, a joint analysis of the work of MSPs to the environmental framework is important to comprehend integrally the impact of their contribution.

---

<sup>146</sup> Partiti, E. (2019). (n 148)

<sup>147</sup> Cashore, B. (2002). Legitimacy and the privatization of environmental governance: How non-state market-driven (NSMD) governance systems gain rule-making authority. *Governance*, 15(4), 503-529.  
<https://doi.org/10.1111/1468-0491.00199>

<sup>148</sup> Dilling, O., & Markus, T. (2018). (n 21) 183

## **Chapter 4: Regulatory cherry-picking in the outcomes of environmental MSPs.**

### **4.1 Introduction:**

This chapter develops a theoretical understanding of the regulatory cherry-picking practices identified in the case studies and explores the fragmentation risks for IEL in this scenario. First, it delves into the legal contributions and expectations in relation to MSPs contributions, and it explores the regulatory cherry-picking phenomenon. Afterwards, this section focuses on the fragmentation effects of the observation of MSP-selected environmental principles in their products, introducing a new source of fragmentation to IEL beyond the scholarly known concern derived from inconsistent legal interpretation among different judicial organisms. Furthermore, it elaborates on how this practice represents the failure of MSPs to provide coherence to the international legal system, despite being introduced as a means to address systemic issues.

### **4.2 Environmental norms and regulatory cherry-picking in MSPs' outputs**

Due to its flexible nature and lack of strict regulatory content<sup>149</sup>, the principles of environmental law are easily included in the work of the MSPs that can be transferred and adopted by the participants. These are contemplated in its majority in the Rio Declaration, which is indicated as part of the foundation of the Agenda 2030<sup>150</sup>. The principles give space to the creative political formulation that allows their application through different contexts, which is why, due to their characteristics, they are fluently transmittable in various settings. However, due to their versatility, in order for them to have a legal role and impact in the application of regulations, they must have a defined operating context<sup>151</sup>. In this sense, the MSPs introduce the application of different principles of environmental law to guide their activities in their specific issue of concern.

As non-state organisms, MSPs may choose freely the type of norms to be incorporated into their organizations. Nonetheless, those interested in the creation of products such as certifications and ecolabels are limited by the domestic laws of the actors they reach. For this reason, a common condition in the sustainability standards of MSPs is the respect for domestic law. As a result, their certification requirements must be adjusted to the legal panorama that the actors are subjected to. This entails that they will have to observe the duties contemplated in the international instruments ratified by the state. At a first glance, such stipulation works as a baseline for the work of MSPs. However, the environmental legal regime is extensively conformed by soft-law instruments that, even though they are not legally binding, guide and make possible the articulation of distinct

---

<sup>149</sup> Scotford, E. (2019). Environmental Principles Across Jurisdictions: Legal Connectors and Catalysts. In E. Lees & J. E. Viñuales (Eds.), *The Oxford Handbook of Comparative Environmental Law* (Oxford Handbooks). Oxford Academic. doi: 10.1093/law/9780198790952.003.0029.

<sup>150</sup> United Nations General Assembly. (2015). Resolution adopted by the General Assembly on 25 September 2015, 70/1. Transforming our world: the 2030 Agenda for Sustainable Development.

<sup>151</sup> Scotford, E. (2019). (n 151)

policies under a set of standards. In a corresponding standing is positioned the Rio Declaration and its principles, which are often invoked as the foundation and guide of environmental projects.

Despite the consideration of environmental MSPs for the observance of some principles of environmental law in their regulatory products, MSPs often fail to introduce main principles of environmental law in their outcomes. The practice of regulatory cherry-picking in this context consists in the strategic selection of international environmental norms that will be factored in in their activities. Through this selection MSPs can reduce the scope of their action to achieve precise objectives. Thus, to illustrate, MSPs may promote sustainable development through the responsible consumption of resources, while overlooking the input of local communities, minorities, or the provision of remedies. By narrowing their scope of action, they compromise the adoption of a comprehensive approach that address integrally different focus of concern. More significantly, as a consequence, they do not achieve sustainability.

Therefore, in light of cherry-picking regulatory practices, and in contempt of the advantageous results of multi-stakeholder participation in law-making, MSPs outcomes are potentially myopic environmental regulations, falling short when attempting to contribute to the realization of recognized environmental commitments and guiding instruments as the principles of environmental law. Therefore, although MSPs are considered to have theoretically the tools to overcome traditional political barriers that have impeded states to implement effective environmental policy, the cherry-picking phenomenon may expose that even these institutions struggle to fully commit to the climate and environmental protection enterprise. In that sense, some MSPs may face similar criticisms as those directed at states and be inefficient in the achievement of their environmental goals.

### **4.3 The fragmentation of International Environmental Law**

The significance of the cherry-picking Due to the multivalent and advisory nature of the principles of environmental law, they are susceptible to diverse interpretations in the benefit of particular objectives, and even, to their complete disregard. Amidst this situation is encountered the problem of the fragmentation of IEL. Fragmentation of international law consists of the problems that arise from incoherences in legal instruments and interpretations, overlapping and contradictory regulations, and the work of uncoordinated institutions. Even though the interconnectedness of the world nowadays drives to the uniformization of global society, fragmentation is a paradoxical symptom of globalization caused by an increasing number of participants and values<sup>152</sup>. The creation of self-contained and specialized regimes with their own rules caused a shift away from

---

<sup>152</sup> United Nations General Assembly. (2006). Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law. Report of the Study Group of the International Law Commission. A/CN.4/L.702.

customary international law as the principal vehicle for international regulation<sup>153</sup>, representing the loss of a universal legislator for multiple specialized ones.

Inefficacies in the application of rules, contradictory regulations and overall lack of cooperation are contingencies attributable to the fragmentation of IEL<sup>154</sup>. In a fragmented system, contradictory rules co-exist and enable the presence of voids that affect the duly observance of certain rules<sup>155</sup>. In opposition to this vision, some scholars find that the diversification in rules and regulatory bodies is a healthy symptom of the quick adaptation and response of the global system to solve its governance needs<sup>156</sup>. Nonetheless, issues derived from the fragmentation of the system such as forum shopping<sup>157</sup>, discrepancies in jurisprudence<sup>158</sup>, and the loss of legitimacy of pre-existent institutions<sup>159</sup> are ongoing anxieties addressed by scholarship to find plausible solutions.

In the case of IEL, fragmentation entails possible conflicts in the interpretation of applicable laws to specific behaviors that may arise from differences in the environmental rules of a regime or the consideration of specialized bodies that decide on the matter<sup>160</sup>, as human rights courts and trade institutions. However, in the GEG system, MSPs contribute to the fragmentation through the uneven compliance with principles of environmental law in their outcomes. The global deployment of patchy and inconsistent frameworks implies a passive acceptance of exceptions to the application of specific principles to particular supervised activities. It allows industries to disregard a different range of matters and measures, while from a technical point of view being in line with the pertinent guidelines. Furthermore, such acceptance becomes express when advisory in regulation and irregular guidelines are introduced to domestic law.

### *Fragmentation of IEL and the need for coherence*

Due to this capacity of MSPs to disseminate environmental norms and the acknowledgement of their outputs to guide environmental efforts in the private and public spheres, it is necessary a diligent examination of the principles and legal ideas being dispersed, beyond the impact on particular environmental actions. The analysis of the laws and principles adopted and propagated by the MSPs displayed inconsistencies in the policy guidelines, making it possible for MSPs to

---

<sup>153</sup> Trachtman, J. P. (2011). Fragmentation, Coherence and Synergy in International Law. *Transnational Legal Theory*, 2(4), 505-536. <https://doi.org/10.5235/TLT.2.4.505>

<sup>154</sup> Roch, P., & Perrez, F. (2005). International environmental governance: Striving for a comprehensive, coherent, effective and efficient international environmental regime. *Colorado Journal of International Environmental Law and Policy*, 16, 1-25.

<sup>155</sup> United Nations General Assembly. (2006). (n 154)

<sup>156</sup> Koskenniemi, M., & Leino, P. (2002). Fragmentation of International Law? Postmodern Anxieties. *Leiden Journal of International Law*, 15(3), 553-579. doi:10.1017/S0922156502000262

<sup>157</sup> Trachtman, J. P. (2011). (n 155)

<sup>158</sup> United Nations General Assembly. (2006). (n 154)

<sup>159</sup> Koskenniemi, M., & Leino, P. (2002). (n 158)

<sup>160</sup> Stephens, T. (2009). Fragmentation of international environmental law. In *International Courts and Environmental Protection (Cambridge Studies in International and Comparative Law*, pp. 304-344). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511576034.012

create standards that are not integrally guided towards sustainability and environmental protection, while branding them as model environmental regulations. The disjointedness among MSPs in regard to the principles observed in their regulations enable the fragmentation of the environmental legal regime, forming divergences among industries with respect to environmental frameworks meant to be applied uniformly.

Furthermore, such approach inhibits MSPs from meeting one of the expectations of their current role in the environmental enterprise: the achievement of policy coherence for sustainable development, a specific target of the SDGs. MSPs aim at the distribution of their regulatory products to achieve uniformity in the set of sustainability rules followed by an industry, addressing every source of concern. This is a vertical vision of coherence, which concentrates only in a specific group of actors. Such constrained scope in their actions causes unjustifiable disparities in the applicable rules among industries. From this perspective, MSPs may fail to effectively achieve their environmental commitments in a comprehensive manner and comply with the goals stipulated by the international community, such as Agenda 2030.

Given these circumstances, MSPs focused on sustainability must comply with a baseline framework built, at a minimum, upon the environmental principles contained in the Rio Declaration, before they receive endorsement on the part of states. This should be a measure, as suggested by Pattberg<sup>161</sup>, to check the conduciveness of actions by MSPs. Fragmentation as a systemic issue is prevented through the advancement of coherent environmental frameworks by every actor in the system. The international legal system demonstrates its natural drive towards coherence through the reiteration of certain principles, values, and ideas in its diverse instruments<sup>162</sup>.

However, there are tangible aspects beyond a risk to the conceptual idea of coherence of the environmental legal regime<sup>163</sup>. As MSPs regulatory outputs and compliance mechanisms rely heavily on the market, the deliberate selection of principles may be motivated in the prioritization of private interests. In multi-stakeholder governance, power imbalances among participants are a source of concern for the risk of regulatory capture<sup>164</sup>. Thus, as legal scholarship has found that fragmentation of IL in the jurisdictional field is caused by an attempt at realization of different institutions to portray their interests as law<sup>165</sup>, in the case of IEL and informal law-making actors as MSPs, differences in regulation among industries may be caused by personal agendas. Scholars and stakeholders around the world have noted these shortcomings, and, as a result, have started campaigns requiring stringency in the standards provided by MSPs, as it has happened with the MSC<sup>166</sup>. Demanding changes in the standards and operation framework of MSPs work as an acknowledgment of the increasing power that they withhold, along with the importance of reforms to actually provide sustainable standards and products.

---

<sup>161</sup> Pattberg, P., & Widerberg, O. (2016). (n 50)

<sup>162</sup> United Nations General Assembly. (2006). (n 160)

<sup>163</sup> Koskenniemi, M., & Leino, P. (2002). (n 164)

<sup>164</sup> Buhmann, K. (2020). (n 3)

<sup>165</sup> Koskenniemi, M., & Leino, P. (2002). (n 164)

<sup>166</sup> Christian, C., Ainley, D., Bailey, M., Dayton, P., Hocevar, J., LeVine, M., Nikoloyuk, J., Nouvian, C., Velarde, E., Werner, R., & Jacquet, J. (2013). A review of formal objections to Marine Stewardship Council fisheries certifications. *Biological Conservation*, 161, 10-17. <https://doi.org/10.1016/j.biocon.2013.01.002>

## 4.4 Conclusion

In light of the discussions in this chapter, fragmentation is a concern of IEL in an era of globalization. Even though in an interconnected system rules tend to align, the emergence of diverse authorities and regulators hinders coordination among them, and as a result, they contribute to the legal and organizational fragmentation of the environmental regime. This is noticeable in the analysis of MSP's regulatory products, which display discrepancies in the principles and regulatory goals included in them. Although some MSPs observe environmental principles in their outcome, they fail to do it in a uniform and holistic manner. MSPs become into enclosed regimes with their own set of rules to resolve precise concerns, which are often concentrated in particular industries. This is possible due to their informal law-making nature, which brings benefits in the diffusion of norms, while at the same time liberates them of any strict control on their content. As a result, private actors and states end up supporting the implementation of rules that selectively observe the application of environmental principles, despite the disposition of the latter to be adopted across a wide range of contexts to effectively respect and protect the integrity of the environment, and thus, achieve sustainability<sup>167</sup>. As a result, setting a benchmark based on the environmental principles to be implemented in MSPs regulatory outputs, such as policy analysis, recommendations, and standards, will contribute to the strengthening of the environmental legal system and the effectivity of its rules through a coherent system.

---

<sup>167</sup> United Nations General Assembly. (1992). (n 24)



## Chapter 5: Conclusion

This research had as an aim to analyze how the regulatory outputs of MSPs display the selective observance of environmental principles and how the diffusion of such outputs contributes to the fragmentation of the environmental legal system. In chapter 1 it was exposed how MSPs are proposed as instruments of governance capable of surmounting the implementation challenges of international law. As implementation coalitions, they were expected to be able to bring together diverse stakeholders in local settings to act towards the achievement of environmental goals such as Agenda 2030, which finds its foundation in the Rio principles. As part of their work mechanism, MSPs create and participate in the establishment of normative transnational products that diffuse international law. In the second chapter, it was discussed, and other risks to the fragmentation of IEL by scholarship.

Having this theoretical background, the study of REN21, MSC, and FSC to act as legal diffusers of environmental law in chapter 2 provided insight on the environmental principles considered in their outputs and the reach of their capacity to diffuse these ones in the system. In this analysis, it is possible to conclude that MSPs as globally extended as the ones in the case study participate in the diffusion of environmental law and they have increasingly received support from public authorities, showing their growing recognition as authorities of environmental law.

As informal lawmaking institutions, the flexibility in the adoption of their regulatory outputs facilitate the traveling of such products, without requiring the application of traditional legislative procedures. This is noticed through the implementation of their standards, certifications, and the private and public support provided to their outputs and programs. Therefore, MSPs have the capability to diffuse norms beyond jurisdictional borders, offering in this way a solution to address environmental challenges in unwilling and incapable states. However, the study of the principles of environmental law being propagated demonstrated inconsistencies in the baselines of the regulatory outputs. Thus, despite the extensive diffusion and acceptance by public and private actors of the products of REN21, MSC and FSC as sustainable, there are disparities in their frameworks. FSC's standards consider most principles of IEL, which implies the conformity of the standards with Agenda 2030's foundation, better adapted policies, and more rule-abiding of IEL. On the contrary, MSC's standards and REN21 outputs reveal a deficiency in addressing necessary policy measures for comprehensive environmental action.

Thus, chapter 3 delves into how regulatory cherry-picking can be identified within the regulatory outputs of MSPs through the principles of environmental law incorporated in them. More importantly, as part of the analysis, it was assessed the contribution of this phenomenon to the fragmentation of the environmental legal system. Despite MSPs having the capability to contribute to global environmental governance by filling regulatory and participation gaps, MSPs indirectly enable the presence of discrepancies in the environmental rules applied to diverse industries, furthering the fragmentation of IEL by admitting irregular compliance with general principles of environmental law. In consequence, it surges the necessity to subject MSPs to compliance with minimum standards to achieve coherence in the system, proposing here as such the principles prescribed in the Rio Declaration.

Based on these conclusions, to have an enhanced comprehension of the impact that contributions

of MSPs can have in IEL, it is advisable to pursue further research on the legal contributions of local MSPs to IEL, since this research was focused on MSPs with global reach. Additionally, it is advised to analyze the causes behind regulatory cherry-picking, considering power imbalances among the stakeholders. Finally, research on possible disparities among the regulatory outputs of MSPs with similar focus, such as the MSC and the ASC, can provide a deeper understanding of this issue of regulatory fragmentation.

Despite the positive contributions of informal law-making and new forms of governance in the environmental quest for sustainability, such as MSPs, this research explores one of its shortcomings: the fragmentation of the environmental legal regime by the unbalanced observation of environmental rules. Due to the growing influence of these mechanisms, societal stakeholders must adopt a critical standpoint, while continuing their supporting stance, to achieve satisfactory legal instruments to tackle the environmental crisis.

## **Bibliography:**

- Affolder, N. (2018). Looking for Law in Unusual Places: Cross-Border Diffusion of Environmental Norms. *Transnational Environmental Law*, 7(3), 425-449. doi:10.1017/S2047102518000080
- Affolder, N. (2020). Transnational Law as Unseen Law. In P. Zumbansen (Ed.), *The Many Lives of Transnational Law: Critical Engagements with Jessup's Bold Proposal* (pp. 364-385). Cambridge: Cambridge University Press.
- Aranda, M., Ulrich, C., Le Gallic, B., Borges, L., Metz, S., Prellezo, R., Santurtún, M. (2019) Research for PECH Committee — EU fisheries policy – latest developments and future challenges, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels.
- Austin J. E. (2000b). Strategic collaboration between nonprofits and business. *Nonprofit and Voluntary Sector Quarterly*, 29(1), 69-97.
- Australian National Audit Office. (2021). Auditor-General Report No.45 2020–21: Management of Commonwealth Fisheries. Commonwealth of Australia. 44 Retrieved from [https://www.anao.gov.au/sites/default/files/Auditor-General\\_Report\\_2020-2021\\_45.pdf](https://www.anao.gov.au/sites/default/files/Auditor-General_Report_2020-2021_45.pdf)
- Bäckstrand, K. (2006), Multi-stakeholder partnerships for sustainable development: rethinking legitimacy, accountability and effectiveness. *Eur. Env.*, 16: 290-306, <https://doi.org/10.1002/eet.425>
- Beisheim, M., & Simon, N. (2018). Multistakeholder Partnerships for the SDGs: Actors' Views on UN Metagovernance. *Global Governance*, 24(4), 497–515.
- Benedek, Wolfgang. (2011) 'Multi-Stakeholderism in the Development of International Law', in Ulrich Fastenrath and others (eds), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma*, 201-210, <https://doi.org/10.1093/acprof:oso/9780199588817.003.0015>
- Berman, A., et al. (2023). Introduction: Rethinking Stakeholder Participation in Global Governance. In Pauwelyn, J., et al. (Eds.), *Rethinking Participation in Global Governance: Voice and Influence after Stakeholder Reforms in Global Finance and Health* (Online ed.). Oxford, UK: Oxford Academic.
- Biermann, F., Chan, M., Mert, A., & Pattberg, P. H. (2007). Multi-stakeholder partnerships for sustainable development: Does the promise hold? In P. Glasbergen, F. Bierman, & A. P. J. Mol (Eds.), *Partnerships, Governance and Sustainable Development. Reflections on Theory and Practice*, 239-260.
- Bitzer, V., Francken, M., & Glasbergen, P. (2008). Intersectoral partnerships for a sustainable coffee chain: Really addressing sustainability or just picking (coffee) cherries? *Global Environmental Change*, 18(2), 271-284. <https://doi.org/10.1016/j.gloenvcha.2008.01.002>
- Bodansky, D. M. (1999). *The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?* University of Georgia School of Law.
- Brown, E., & Senior, M. J. M. (2014). *Common Guidance for the Management and Monitoring of High Conservation Values*. HCV Resource Network.
- Buhmann, K. (2020). Collaborative Regulation: Preventing Regulatory Capture in Multi-stakeholder Processes for Developing Norms for Sustainability Conduct. In V. Mauerhofer, D. Rupo, & L.

- Tarquinio (Eds.), *Sustainability and Law* (pp. 307-323). Springer. [https://doi.org/10.1007/978-3-030-42630-9\\_16](https://doi.org/10.1007/978-3-030-42630-9_16)
- Cashore, B. (2002). Legitimacy and the privatization of environmental governance: How non-state market-driven (NSMD) governance systems gain rule-making authority. *Governance*, 15(4), 503-529. <https://doi.org/10.1111/1468-0491.00199>
- Christian, C., Ainley, D., Bailey, M., Dayton, P., Hocevar, J., LeVine, M., Nikoloyuk, J., Nouvian, C., Velarde, E., Werner, R., & Jacquet, J. (2013). A review of formal objections to Marine Stewardship Council fisheries certifications. *Biological Conservation*, 161, 10-17. <https://doi.org/10.1016/j.biocon.2013.01.002>
- CORDIS EU. (2021). Support to REN21. Grant agreement ID: 101033714. Funded under Societal Challenges - Secure, clean and efficient energy. Coordinated by Renewable Energy Policy Network for the 21st Century EV (REN21). doi: 10.3030/101033714.
- Cotterrell, R. (2012). What Is Transnational Law? *Law & Social Inquiry*, 37, 500-524. doi: 10.1111/j.1747-4469.2012.01306.x
- Department of Primary Industries and Regional Development. (2012). Third party certifier chosen for WA fisheries. Government of Western Australia. Retrieved from [https://www.fish.wa.gov.au/Pages/media\\_archive/Third-party-certifier-chosen-for-WA-fisheries.aspx](https://www.fish.wa.gov.au/Pages/media_archive/Third-party-certifier-chosen-for-WA-fisheries.aspx)
- Department of Primary Industries and Regional Development. (2022). Third-party sustainability certification. Government of Western Australia.
- Dilling, O., & Markus, T. (2018). The Transnationalisation of Environmental Law. *Journal of Environmental Law*, 30(2), 179–206. <https://doi.org/10.1093/jel/eqy008>
- DIPROSE & Dirección Nacional de Desarrollo Foresto Industrial en Argentina. (2020). Plan Estratégico Forestal y Foresto-Industrial Argentina 2030. Retrieved from [https://www.argentina.gov.ar/sites/default/files/2021/04/plan\\_estrategico\\_foresto\\_industrial\\_2030.pdf](https://www.argentina.gov.ar/sites/default/files/2021/04/plan_estrategico_foresto_industrial_2030.pdf)
- European Consumer Association. (2020). One Bite at a Time: Consumers and the Transition to Sustainable Food: Analysis of a survey of European consumers on attitudes towards sustainable food.
- Seafood TIP. (2022). Exporting certified sustainable seafood to Europe. Study conducted on behalf of CBI. Retrieved from: <https://www.cbi.eu/market-information/fish-seafood/certified-sustainable-seafood#what-makes-europe-an-interesting-market-for-certified-sustainable-seafood>
- European Parliament and Council. (2010). Regulation (EU) No 995/2010 of the European Parliament and of the Council: Laying down the obligations of operators who place timber and timber products on the market. *Official Journal of the European Union*, L 295, 23.
- Forest Stewardship Council (FSC). (2017). Requirements for Sourcing FSC Controlled Wood (FSC-STD-40-005 V3-1 EN). FSC Board of Directors. Retrieved from <https://connect.fsc.org/document-centre/documents/retrieve/3f838e51-be01-46a2-91dc-3ea8b1ddcaa4?mode=view#viewer.action=download>

- Forest Stewardship Council (FSC). (2021). FSC Focus Forests Green Paper Summary. Retrieved from [https://fsc.org/sites/default/files/2021-08/Focus%20Forests%20Green%20Paper\\_EN.pdf](https://fsc.org/sites/default/files/2021-08/Focus%20Forests%20Green%20Paper_EN.pdf)
- Forest Stewardship Council (FSC). (n.d.). Facts & Figures. FSC Connect. Retrieved from <https://connect.fsc.org/impact/facts-figures>
- Forest Stewardship Council United States. (n.d.). Mission and vision: Protecting forests for future generations. Retrieved from <https://us.fsc.org/en-us/what-we-do/mission-and-vision>
- Forest Stewardship Council. (2021). Chain of Custody Certification (FSC-STD-40-004 V3-1 EN). Performance and Standards Unit.
- Forest Stewardship Council. (2022). FSC strategic framework on diversity and gender. Retrieved from [https://fsc.org/sites/default/files/2023-03/FSC%20Strategic%20Framework%20on%20Diversity%20and%20Gender\\_V2.pdf](https://fsc.org/sites/default/files/2023-03/FSC%20Strategic%20Framework%20on%20Diversity%20and%20Gender_V2.pdf)
- Forest Stewardship Council. (2022). Policy for Association: FSC Global Development - Dispute Management (FSC-POL-01-004 V3-0). Retrieved from <https://connect.fsc.org/document-centre/documents/retrieve/1498befa-fa1a-4c49-b66c-3bbf0317dcbc?mode=view#viewer.action=download>
- Forest Stewardship Council. (2023). Actions and Outcomes. Asian Pulp Association. Retrieved from <https://connect.fsc.org/actions-and-outcomes/current-cases/asia-pulp-and-paper-app>
- Forest Stewardship Council. (2023). FSC Principles and Criteria for Forest Stewardship (FSC-STD-01-001 V5-3)
- Forest Stewardship Council. (2023). FSC Remedy Framework: Enabling certification and association. Governed by the Policy to Address Conversion V1-0 and the Policy for the Association of Organizations with FSC V2-0. Retrieved from <https://connect.fsc.org/document-centre/documents/retrieve/9688dcee-28cd-4e80-9400-1c1f1b2cf33c?mode=view#viewer.action=download>
- Forest Stewardship Council. (n.d.). FSC stories 2021: What do the FSC labels on a product mean? [Blog post]. Retrieved from <https://annual-reports.fsc.org/2022/08/13/what-do-the-fsc-labels-on-a-product-mean/>
- Forest Stewardship Council. (n.d.). Indigenous Peoples. Retrieved from <https://fsc.org/en/indigenous-peoples>
- Frenova, S. (2016). Understanding modalities of climate partnerships and their contribution to climate governance. Institute for Environmental Studies (IVM), VU University Amsterdam.
- FSC Board of Directors. (2017). Guidance for Standard Development Groups: Developing National High Conservation Value Frameworks (FSC-GUI-60 009 V1-0 D1-2 EN).
- FSC. (2017). Status update #5 on the disassociation of FSC from Asia Pulp and Paper. Retrieved from [https://connect.fsc.org/sites/default/files/2019-06/FSC\\_Update%20%235%20-%20Status%20of%20disassociation%20from%20APP\\_2017-04-05\\_FINAL\\_1.pdf#viewer.action=download](https://connect.fsc.org/sites/default/files/2019-06/FSC_Update%20%235%20-%20Status%20of%20disassociation%20from%20APP_2017-04-05_FINAL_1.pdf#viewer.action=download)
- Gaceta del Congreso. (2013). Informe de Ponencia para Segundo Debate en Plenaria de Senado al Proyecto de Ley Número 278 de 2013. 978. [Congress Gazette].

[http://leyes.senado.gov.co/proyectos/images/documentos/Textos%20Radicados/Ponencias/2013/gaceta\\_978.pdf](http://leyes.senado.gov.co/proyectos/images/documentos/Textos%20Radicados/Ponencias/2013/gaceta_978.pdf)

Gaceta del Congreso. (2021). Proyecto de Ley. Por medio del cual se determinan medidas para reducir la pobreza energética rural y promover la generación de energías renovables por parte de las comunidades y empresas mypimes con el fin de fomentar una transición energética justa para la mitigación del Cambio Climático [Bill]. 195. Rama Legislativa del Poder Público, Cámara de Representantes. República de Colombia. 17  
[http://www.secretariasenado.gov.co/legibus/legibus/gacetas/2021/GC\\_0195\\_2021.pdf](http://www.secretariasenado.gov.co/legibus/legibus/gacetas/2021/GC_0195_2021.pdf)  
Translation by the author.

Gaceta del Senado. (2020). Iniciativa con proyecto de decreto por el que se reforma el artículo transitorio tercero del Decreto por el que se expide la Ley de Transición Energética. LXIV/3PPO-10-2695/111987. Estados Unidos Mexicanos. Retrieved from  
[https://www.senado.gob.mx/65/gaceta\\_del\\_senado/documento/111987](https://www.senado.gob.mx/65/gaceta_del_senado/documento/111987)

Gobernación de Chaco. (2022). El gobierno y una organización internacional gestionan certificaciones para productos foresto-industriales chaqueños [Governmental communication]. Retrieved from  
<https://chaco.gob.ar/noticia/70433/el-gobierno-y-una-organizacion-internacional-gestionan-certificaciones-para-productos-forestoindustriales-chaquenos>

Hale, T., & Urpelainen, J. (2015). When and how can unilateral policies promote the international diffusion of environmental policies and clean technology? *Journal of Theoretical Politics*, 27(2), 177–205. <https://doi.org/10.1177/0951629813518128>

Hardy C., Phillips N., Lawrence T. B. (2003). Resources, knowledge and influence: The organizational effects of interorganizational collaboration. *Journal of Management Studies*, 40, 321-347, 325

Heyvaert, V. (2017). The Transnationalization of Law: Rethinking Law through Transnational Environmental Regulation. *Transnational Environmental Law*, 6(2), 205-236. doi:10.1017/S2047102516000388

Forest Stewardship Council. (2019). FSC disassociates from Jari Group [Communication]. Retrieved from [https://fsc.org/sites/default/files/2019-08/FSC%20disassociates%20from%20Jari\\_29-04-2019\\_Final\\_clean.pdf](https://fsc.org/sites/default/files/2019-08/FSC%20disassociates%20from%20Jari_29-04-2019_Final_clean.pdf)

International Civil Society Centre. (2014). Multi-Stakeholder Partnerships: Building Blocks for Success. Report. Retrieved from <https://www.partnerschaften2030.de/wp-content/uploads/2022/06/Multi-Stakeholder-Partnerships-Building-Blocks-for-Success.pdf>

Invest India. (2023). Creating a Sustainable World. Retrieved from <https://www.investindia.gov.in/sector/renewable-energy>

IRENA, IEA, & REN21. (2020). Renewable Energy Policies in a Time of Transition: Heating and Cooling.

ISEAL Alliance. (2017). Sustainability standards and the SDGs: Evidence of ISEAL members' contribution. Retrieved from [https://www.isealalliance.org/sites/default/files/resource/2019-05/Sustainability\\_Standards\\_and\\_SDGs\\_full\\_report\\_2017\\_0.pdf](https://www.isealalliance.org/sites/default/files/resource/2019-05/Sustainability_Standards_and_SDGs_full_report_2017_0.pdf)

Jänicke, M. (2017). The Multi-level System of Global Climate Governance – the Model and its Current State. *Environmental Policy and Governance*, 27, 108-121. doi: 10.1002/eet.1747.

- Jastram, S. & Klingenberg, J. (2018). Assessing the Outcome Effectiveness of Multi-Stakeholder Initiatives in the Field of Corporate Social Responsibility – The Example of the United Nations Global Compact. *Journal of Cleaner Production*, 189. 10.1016/j.jclepro.2018.04.005.
- Johannesburg Declaration on Sustainable Development. (2002). Adopted at the 17th plenary meeting of the World Summit on Sustainable Development, on 4 September 2002. Article 31 and 32.
- Kalfagianni, A., & Pattberg, P. (2013). Global fisheries governance beyond the State: unraveling the effectiveness of the Marine Stewardship Council. *Journal of Environmental Studies and Sciences*, 3, 184-193. <https://doi.org/10.1007/s13412-013-0118-z>
- Kern, K., Jörgens, H., & Jänicke, M. (2001). The diffusion of environmental policy innovations: a contribution to the globalisation of environmental policy, FS II 01-302.
- Kolk, A., Levy, D., & Pinkse, J. (2008). Corporate responses in an emerging climate regime: The institutionalization and commensuration of carbon disclosure. *European Accounting Review*, 17, 719-745.
- Koskenniemi, M., & Leino, P. (2002). Fragmentation of International Law? Postmodern Anxieties. *Leiden Journal of International Law*, 15(3), 553-579. doi:10.1017/S0922156502000262
- Lambin, E. F., & Thorlakson, T. (2018). Sustainability Standards: Interactions Between Private Actors, Civil Society, and Governments. *Annual Review of Environment and Resources*, 43(1), 369-393.
- Linos, K. (2013). A Theory of Diffusion Through Democratic Mechanisms. In *The Democratic Foundations of Policy Diffusion: How Health, Family, and Employment Laws Spread Across Countries*, 13-35. New York: Oxford Academic. <https://doi.org/10.1093/acprof:oso/9780199967865.003.0002>
- MacDonald, A., Clarke, A. & Huang, L. (2019) Multi-stakeholder Partnerships for Sustainability: Designing Decision-Making Processes for Partnership Capacity. *J Bus Ethics* 160, 409–426. <https://doi.org/10.1007/s10551-018-3885-3>
- Marine Stewardship Council (2022) MSC Fisheries Standard version 3.0. Retrieved from [https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-standard-v3-0.pdf?sfvrsn=53623a3\\_21](https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-standard-v3-0.pdf?sfvrsn=53623a3_21)
- Marine Stewardship Council (MSC). (2022). MSC recognized by the UN as a global indicator for action on biodiversity loss [Press release]. Retrieved from <https://www.msc.org/media-centre/press-releases/press-release/msc-recognised-by-the-un-as-a-global-indicator-for-action-on-biodiversity-loss>
- McIntyre, O. (2018). Transnational environmental regulation and the normativisation of global environmental governance standards: The promise of order from chaos? *Journal of Property, Planning and Environmental Law*, 10(2), 105.
- Mena, S., & Palazzo, G. (2012). Input and Output Legitimacy of Multi-Stakeholder Initiatives. *Business Ethics Quarterly*, 22(3), 527–556.
- Multi-stakeholder partnerships for sustainable development: Does the promise hold? In P. Glasbergen, F. Bierman, & A. P. J. Mol (Eds.), *Partnerships, Governance and Sustainable Development. Reflections on Theory and Practice*, 239-260.

- Okitasari, Mahesti, Prabowo, Mochammad Hendro and Santono, Hamong, (2021). Multi-Stakeholder Partnerships: A Tangible Instrument to Support the Implementation of the 2030 Agenda at the Local Level. *Social Development Issues*, 42(3), 61-86.
- Paiement, P. (2021). Transnational Sustainability Governance and the Law, in Peer Zumbansen (ed.), *The Oxford Handbook of Transnational Law*.
- Pappila, M., & Tynkkynen, M. (2022). The Role of MSC Marine Certification in Fisheries Governance in Finland. *Sustainability*, 14(12), 7178. MDPI AG.
- Partido Morena. (2023). Iniciativa con proyecto de decreto por el que se adiciona el artículo 7 de la Ley de Desarrollo Rural Sustentable, en materia de uso de energías renovables. Senado. Estados Unidos Mexicanos. Retrieved from [http://sil.gobernacion.gob.mx/Archivos/Documentos/2023/03/asun\\_4515314\\_20230315\\_1677084884.pdf](http://sil.gobernacion.gob.mx/Archivos/Documentos/2023/03/asun_4515314_20230315_1677084884.pdf)
- Partiti, E. (2019). Orchestration as a form of public action: The EU engagement with voluntary sustainability standards. *European Law Journal*, 25, 94-117. <https://doi.org/10.1111/eulj.12299>
- Pattberg, P., & Widerberg, O. (2016). Transnational multistakeholder partnerships for sustainable development: Conditions for success. *Ambio*, 45, 42-51. doi: 10.1007/s13280-015-0684-2
- Pinkse, J., & Kolk, A. (2012). Addressing the Climate Change—Sustainable Development Nexus: The Role of Multistakeholder Partnerships. *Business & Society*, 51(1), 176–210. <https://doi.org/10.1177/0007650311427426>
- Reinicke, W.H., & Deng, F.M. (2000). Critical choices The United Nations, networks, and the future of global governance.
- REN21. (2017). *Renewable Energy Tenders and Community [Em]power[ment]: Latin America and the Caribbean*. Paris: REN21 Secretariat.
- REN21. (2022). *Renewable Energy and Sustainability Report 2023: Are Renewables Sustainable? REN21's Key Role as Knowledge Broker*. Retrieved from <https://www.ren21.net/renewable-energy-and-sustainability-report-2023/>
- Roch, P., & Perrez, F. (2005). International environmental governance: Striving for a comprehensive, coherent, effective and efficient international environmental regime. *Colorado Journal of International Environmental Law and Policy*, 16, 1-25.
- Rogelio Israel Zamora Guzmán (PVEM). (2019). Iniciativa con proyecto de decreto por el que se reforman y adicionan diversas disposiciones de la Ley de la Industria Eléctrica, de la Ley de Transición Energética, y de la Ley General de Sociedades Cooperativas. *Gaceta del Senado*, 2PPO-60-2543. <https://vlex.com.mx/vid/proyecto-decreto-reforman-adicionan-846613125>
- Rueda Tocarruncho, A. M., Moreno Orjuela, R. D., & Zúñiga Gallego, J. K. (2016). *Guía de Compra y Consumo Responsable de Madera en Colombia*. GIZ. Retrieved from <https://www.minambiente.gov.co/wp-content/uploads/2021/10/Gui%CC%81a-de-Compra-y-Consumo-Responsable-de-Madera-en-Colombia.pdf>
- Sands, P., Peel, J., Fabra, A., & MacKenzie, R. (2018). General Principles and Rules. In *Principles of International Environmental Law* (pp. 197-251). Cambridge: Cambridge University Press. doi:10.1017/9781108355728.011



- Savilaakso, S., Cerutti, P., Montoya-Zumaeta, J. G., & Ruslandi, R. (2016). Conserving biodiversity and improving human livelihoods through interaction between public regulation and forest management certification. *IUCN Policy Matters*, 75-92.
- Scotford, E. (2019). Environmental Principles Across Jurisdictions: Legal Connectors and Catalysts. In E. Lees & J. E. Viñuales (Eds.), *The Oxford Handbook of Comparative Environmental Law* (Oxford Handbooks). Oxford Academic. doi: 10.1093/law/9780198790952.003.0029.
- Stephens, T. (2009). Fragmentation of international environmental law. In *International Courts and Environmental Protection* (Cambridge Studies in International and Comparative Law, pp. 304-344). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511576034.012
- Streck, C. (2002). The World Summit on Sustainable Development: Partnerships as New Tools in Environmental Governance. *Yearbook of International Environmental Law*, 13(1), 63–95. <https://doi.org/10.1093/yiel/13.1.63>
- Subsecretaría de Recursos Naturales de la Provincia de Chaco. (2021). Chaco suscribió convenio con FSC Argentina [Governmental communication]. Retrieved from <http://rnaturaleschaco.gob.ar/tag/fsc/>
- Tamanaha, B. Z. (2001). Against the Mirror Thesis. In *A General Jurisprudence of Law and Society*, Oxford Socio-Legal Studies (Online ed.). Oxford, UK: Oxford Academic. 107-132. <https://doi.org/10.1093/acprof:oso/9780199244676.003.0005>
- Trachtman, J. P. (2011). Fragmentation, Coherence and Synergy in International Law. *Transnational Legal Theory*, 2(4), 505-536. <https://doi.org/10.5235/TLT.2.4.505>
- U.S. General Services Administration. (2008). Solicitation for Offers manual. Section 7.4 Wood Products.
- United Nations (2002). Plan of Implementation of the World Summit on Sustainable Development. Para 160 D.
- United Nations General Assembly. (1992). Rio Declaration on Environment and Development. Report of the United Nations Conference on Environment and Development.
- United Nations General Assembly. (2006). Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law. Report of the Study Group of the International Law Commission. A/CN.4/L.702.
- United Nations General Assembly. (2015). Resolution adopted by the General Assembly on 25 September 2015, 70/1. Transforming our world: the 2030 Agenda for Sustainable Development. 26-27.
- United Nations. (1992). Agenda 21: Earth Summit - The United Nations Programme of Action from Rio.
- United Nations. (2002). Report of the World Summit on Sustainable Development: Johannesburg, South Africa.
- Vidican, G., Böhning, M., Burger, G., de Siqueira Regueira, E., Müller, S., & Wendt, S. (2013). Achieving Inclusive Competitiveness in the Emerging Solar Energy Sector in Morocco. German Development Institute Study 79.
- Weber, R. H. (2011). Shift of legislative powers and multi-stakeholder governance. *International Journal of Public Law and Policy*, 1(1), 4-22.

- Wiener, J. B. (2001). Something Borrowed for Something Blue: Legal Transplants and the Evolution of Global Environmental Law. *Ecology Law Quarterly*, 27(4), 1295–1371. <http://www.jstor.org/stable/24114060>
- Wilson, M. (2005). The New Frontier in Sustainable Development: World Summit on Sustainable Development Type II Partnerships. *Victoria University of Wellington Law Review*, 36(2), 389.
- World Bank Group. (2016). Colombia - Potential for commercial reforestation: diagnosis: Colombia - Potencial de reforestación comercial: diagnóstico (Spanish). Washington, D.C. Retrieved from <http://documents.worldbank.org/curated/en/239641467991950710/Colombia-Potencial-de-reforestación-commercial-diagnóstico>