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Private Regimes and Global Environmental Governance: Soft Law as an Instrument to Address Common Environmental Issues

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Abstract

The complexity of common environmental conflicts emphasizes the utmost need for unity and cooperation among various international actors. Global Environmental Governance allows non-state actors to address global issues and promote global sustainability agendas. This multi-actor engagement leads to the creation of soft law norms and the establishment of private regimes, essential for building a sustainable international community. This article aims to study the role of private soft law in addressing common environmental issues and to demonstrate how private regimes are crucial for promoting humanity's sustainable development. This is an exploratory research, elaborated through a bibliographical and documentary survey to study the role of soft law in facing international environmental problems.

Keywords

Private Regimes, Global Governance, Soft Law

1. Introduction

The liquidity of postmodern society, a term coined by Bauman (2021), presents daily challenges for humanity. The multiple environmental conflicts arising from postmodern socio-economic behavior elevate global actors' need to unite and cooperate in diagnosing, confronting, and, if possible, remedying and pre-

venting these common problems.

Achieving sustainable development by humanity is a significant challenge of the postmodern era. The dynamics of postmodern risks demand the participation of all global actors and a metamorphosis (radical transformation) in the international legal and political architecture. Global Environmental Governance creates an environment of cooperation and collaboration among actors, enabling the effectiveness of the global sustainable development agenda (Rei & Granziera, 2015).

International Environmental Law (IEL) departs from traditional International Law. It is an autonomous branch of law developed from the needs and challenges of the contemporary world. It is the law of metamorphosis that draws from scientific consensus and technology and is driven by pragmatism. It represents "an independent branch of legal science, as it encompasses a distinct and specific set of rules and principles addressing the relations among subjects of international law and new actors" (Rei, 2018).

International cooperation is a foundational principle of IEL, involving cooperation between states and among all international actors. IEL legitimizes and strengthens governance systems by allowing various actors, state or non-state, to manage common environmental conflicts (Lima, 2020).

Addressing environmental conflicts and global sustainability demands a systemic perspective. The causes and effects of these issues require shared management that encompasses diverse viewpoints, knowledge, and practical experience. Given the complexity of environmental problems, more significant efforts and diverse participation of various international actors are needed.

Global environmental governance fosters an environment for multi-actor engagement toward consensus-building to tackle global environmental conflicts. Based on multilateral treaties, multiple international authorities are strengthened by initiatives emerging from infra and transnational levels and by actors yet to formally part of the international legal system (Rei & Granziera, 2015).

Since the beginning of this century, UN Secretaries-General have promoted the inclusion of new actors in sustainability agendas. Kofi Annan's creation of the Global Compact, Ban Ki-moon's Agenda 2030, and António Guterres's actions on climate and anti-corruption efforts are examples (Pereira, 2021).

While countries remain the main subjects in traditional international law, a growing number of non-governmental organizations (NGOs), social movements, and other private actors are reshaping the international legal administrative system concerning common human problems (Beyerlin & Marauhn, 2011).

The governance processes seen in recent decades have demonstrated new forms of cooperation beyond traditional intergovernmental negotiations in international law. Non-state actors have become increasingly involved in UN institutions, influencing and creating mechanisms for defining norms (Beyerlin & Marauhn, 2011). This context gives rise to soft law norms.

Therefore, this article aims to study the role of private soft law in addressing common environmental issues. Private soft law has the same advantages as

state-generated, and its creation is faster (Shelton, 2009: p. 16). With a global governance perspective, it will discuss the definition of private regimes and their importance in the effectiveness of sustainable development agendas.

2. International Environmental Regimes: Formation and Dynamics

Global conflicts demand organized and cooperative actions for confrontation. There is only one way to solve a problem that affects everyone with the proper joint efforts of those directly or indirectly involved. There are various forms and methods for resolving or confronting global problems. One of these ways is through the construction of International Regimes.

Regimes can be defined as "principles, norms, explicit or implicit rules, and decision-making procedures in a specific area of international relations around which the expectations of actors converge" (Krasner, 1995). Principles and norms are the fundamental foundations of regimes; therefore, they cannot be modified, as it would change the Regime itself, altering its essence. On the other hand, changing rules and decision-making procedures only leads to internal changes within the regimes, not in their core.

Thus, it is important to understand how international regimes are formed.

2.1. The Formation of international Environmental Regimes

The formation of International Regimes aims at cooperation, primarily among nation-states, to solve problems of common interest. It involves a durable institutional construction on a specific international interest agenda (Gonçalves & Costa, 2011). Its purpose is to facilitate international agreements to confront or solve common global problems. There are three basic assumptions for the formation of a regime: specificity, interstate character, and institutional dimension (Granziera et al., 2016).

The Classical Theory of International Regimes is based on the premise that Regimes are primarily constructed by sovereign states with international recognition for treaty adherence. Thus, the sources of Regimes are exclusively those originating from acts between states, as outlined in Article 38 of the Statute of the International Court of Justice, which serves as a reference for the formal sources of International Law.

International Law was built for and by sovereign states and now encompasses a community of human beings (Pastor Ridruejo, 1996). The classical notion that only states are responsible for creating and forming regimes is gradually losing strength as the contribution of international organizations, new actors, and other international bodies in this process of institutional arrangement becomes evident (Accioly, Silva, & Casella, 2012).

International Regimes are one of the ways to promote global governance. Not all governance actions are limited to regimes, but those that currently exist are the results of global governance actions (Gonçalves & Costa, 2011). Therefore, some scholars argue that regimes are "sets of governance arrangements that in-

clude networks of rules, norms, and procedures that regulate actors' behaviors and control their effects" (Keohane & Nye, 1978).

While states are the legitimate founding members of regimes, this does not mean that non-state actors do not play a role in their formation and maintenance. The dynamic functioning of regimes allows for the participation of other global actors in the processes that lead to the final decisions of states. An example of active participation by global actors is the preparatory meetings of climate Conferences of the Parties (COPs). It is undeniable that the operational structure of Regimes includes governance actions.

While governance encompasses all ways in which everyday problems are managed, regimes are one of the possible ways to promote global governance. Therefore, governance is a broader concept, whereas regimes are a specific manifestation. Governance is broad and open, unlike regimes of principles, norms, rules, and decision-making procedures for specific issues/themes. Regimes are concrete, objective forms of interest articulation and problem-solving (Gonçalves & Costa, 2011).

International Environmental Regimes of the late 20th century are outcomes of extensive global governance processes. Negotiation processes, based on dialogue, characterize their formation to build consensus on specific common problems. The legal-political and institutional architecture of the most important environmental regimes is a consequence of governance processes. The dynamics of these regimes' functioning ensure spaces for governance actions (Gonçalves & Costa, 2011).

Environmental conflicts are increasingly complex in their trajectories and effects, with a growing temporal and spatial scope. As a result, Regimes need to adapt to these fluid changes in their institutional dynamics. To survive the new situations of the 21st century, Regimes must be dynamic and possess institutional mechanisms capable of adapting to changes (Young, 2010). As their problem areas undergo metamorphosis, they must also be prepared for radical transformations in their modes of operation.

Moreover, they must be robust, requiring diligent institutional systems to review and monitor their actions. COPs are mechanisms for permanent institutional change. They provide resilience and robustness to the Regime by pursuing the effectiveness of the objectives and principles of the International Regime (Young, 2010).

2.2. The Dynamics and Effectiveness of International Environmental Regimes

There is always a question about the effectiveness of International Regimes. While it is important to question this, reflecting on what would happen without them is also necessary. Failure to solve a problem does not necessarily mean the Regime had no effect. Without it, the problem might have worsened (Young, 2010).

Regimes constitute forms of management and confrontation of common

global problems. The structure of each Regime constitutes a different "design" for solving the targeted issue. Thus, the formation of a regime represents the diagnostic phase of the conflict, involving mapping its constitutive elements for the construction of institutional consensus. This phase is a moment of governance, where various global actors contribute to identifying problems and possible solutions through dialogues, such as epistemological communities. Cooperation facilitated by regimes is based on consensus values and knowledge. With knowledge about the topic, clear objectives for confronting common problems can be determined (Hasenclever, Mayer, & Rittberg, 2004).

This formation stage is crucial as it lays the foundation for a resolute and transformative confrontation of the common problem. The effectiveness of regimes is often questioned based on the criterion of results, i.e., resolving the problem they aimed to solve. Effectiveness is related to the contributions of the created institutions (principles, norms, rules, and procedures) to confront common problems that led actors to establish the Regime (Gonçalves & Costa 2011).

On the international stage, it is evident that some regimes have achieved more satisfactory results than others. However, it is essential to consider the object each Regime aimed to confront. Some regimes have more complex objects than others. For instance, the Climate Change Regime has a more complex object than the Ozone Layer Regime.

Therefore, to criticize effectiveness, it is always prudent to conduct a systemic analysis of the Regime and assess its product/object of work, degree of influence, and impact on problem resolution. An effective regime, like the one protecting the ozone layer, can change the behavior of key actors with little or no specific rule commitment (Levy, Young, & Zuern, 1995).

There is no regime more important than another. A regime's existence demonstrates its object's relevance to the international community. Certain regimes stand out more due to their functional performance in their institutional architecture or openness to greater internal governance processes.

There is no single international regime for global environmental protection due to the complexity and infeasibility of creating one, given the scale of the object to be confronted. For these reasons, under the logic of proper and effective management, multiple environmental regimes exist, each with specific themes. For instance, Ozone Layer Protection (Vienna Convention, 1985), Climate Change (UN Framework Convention on Climate Change, 1992), and Biodiversity (Convention on Biological Diversity, 1992).

Environmental regimes constitute the global environmental governance system for protecting and preserving the planet's environment while promoting global sustainable development. Currently, the effectiveness of environmental regimes is contingent upon their capacity to interact with each other and to open up to broad participation by interested international actors.

Thus, at some point, the object confronted by one Regime will intersect with the object of another regime. This is referred to as interlinkages between re-

gimes. Institutional interlinkages are connections between two or more international regimes' processes, rules, norms, and principles. Regimes and their provisions cannot be understood in isolation from the broader normative context in which they exist (Zelli, Gupta, & Asselt, 2012).

Pursuing global sustainable development requires integrated and systemic management of environmental problems and the combined efforts of existing mechanisms, arrangements, and institutional forms. This also pertains to environmental regimes. The institutional mechanisms for confronting one Regime can have ramifications in another regime.

Thus, in a preliminary analysis, the climate change and biodiversity regimes would work cooperatively. Climate change has negative impacts on various ecosystems and species. However, the rules of the Kyoto Protocol on sinks did not sufficiently safeguard biodiversity. Hence, there is a need for strategic dialogue between environmental regimes to effectively protect common environmental problems (Zelli, Gupta, & Asselt, 2012).

Just as environmental elements communicate to create a biome, environmental regimes should also communicate to promote global sustainable development. Since 1972, numerous environmental treaties have been implemented, yet each was created independently, lacking coherence as a system, i.e., interrelation (Chambers, 2004).

The essence of the environmental theme lies in the need for connection, multidisciplinarity, and cooperation. Similar to how environmental elements correlate to form ecosystems, environmental treaties also possess a strong potential for unity in the pursuit of effectiveness and efficacy.

Dialogue between regimes can occur through creating synergies regarding institutions, funding, and joint action implementation. Hence, enhancing governance actions to access public and private financing and promote interaction with other international organizations and global actors is essential. Additionally, there should be closer engagement with non-state actors in pursuing local management of shared environmental problems.

3. The Role of Soft Law in the Dynamics of Global Environmental Governance and International Environmental Law

The exact timeframe of the emergence of soft law is uncertain, although the term was initially used by McNair in 1930 to refer to abstract principles as opposed to concrete law (Oliveira & Bertoldi, 2010). However, the topic gained momentum with the rise of public and private multilateral organizations, which began to appear more frequently on the international stage in the early 20th century (Oliveira & Bertoldi, 2010).

The need for international cooperation to address common environmental problems led to the rise of international institutions and the increasing use of non-binding legal instruments, known as soft law (Friedrich, 2013: p. 19). Thus, the formation and utilization of soft law norms have been advancing nationally

and internationally. The dynamics of global environmental problems have brought about a true transformation in the process of international law formation, with the inclusion of non-binding norms, leading to a discussion of the sources of this law (Nasser, 2005).

As Dinah Shelton (2009) asserts, soft law is a type of "social and non-legal norm" that usually "refers to any international written instrument other than a treaty, containing principles, norms, standards, or statements about expected behavior." It is typically associated with non-binding norms based on the autonomy of will and the good faith typical of conventional agreements, rooted in mutual consent to address a particular problem.

To understand soft law norms, it is essential to replace the traditional rule-based legal reasoning with a perspective in which reason, rather than rules, takes center stage for legal debate between parties (Westerman et al., 2018). In other words, comprehending the logic of soft law requires an open analysis beyond the formal validity understanding adopted by legal positivists.

In the realm of positivist legal conceptions, soft law is not officially recognized as legally valid norms, as they were not created through a legally constituted and formally valid legislative process. However, this does not undermine the effectiveness of soft law norms; on the contrary, they can be even more dynamic than hard law norms. The application of soft law norms is more objective, evolving as complex societal relationships and common problems progress.

As previously mentioned, soft law is associated with non-binding norms. What sets them apart from hard law norms is the nature of their binding effect. Norms of hard law are legally binding within the normative framework, and non-compliance with them results in legal consequences and levels of responsibility. On the other hand, soft law norms, being non-binding, derive their strength from the materiality of what they aim to regulate as voluntary international norms defined by consensus (Beyerlin & Marauhn, 2011).

Even though they are not codified, soft law norms also bring about specific binding effects, considering that recipients are expected to behave in the prescribed manner. By voluntarily adopting "soft" rules, there is a moral and ethical responsibility for their compliance or responsible conformity.

Flexibility is a striking characteristic of non-binding norms. Soft law norms are designed for a specific purpose, allowing dynamics to adjust and modify to achieve their creation objectives. Soft law norms' creative and resilient nature enables more suitable and effective outcomes in addressing global environmental problems (Friedrich, 2013). This is especially true when technical and scientific knowledge is crucial for managing global environmental issues.

The "soft" norm should not be treated as weak or less effective simply because it did not go through the traditional positivist norm creation and validity system. Non-binding status does not mean that interested global actors, such as states and companies, are exempt from moral or political pressure among themselves. Some challenging law norms are less effective than soft law norms. A universe of international environmental regimes is established through international con-

ventions, many of which need to demonstrate significant effectiveness.

Binding normative criteria do not equate to efficacy. Soft law norms serve a role beyond positive imposition; they provide effective solutions for common societal needs. The formation process of soft law norms is collaborative and voluntary, and this nature brings about the genuine commitment of those who participated in their creation. Sustainability Agendas, like the Sustainable Development Goals (SDGs), are more efficient in addressing common global problems due to their cooperative and multi-stakeholder collaborative development process.

While violations of hard law norms may have sanctioning consequences, there can be non-legal constraints that encourage global actors, such as states and companies, to comply with soft law norms more effectively (LI, 2013). Their characteristics of greater flexibility and adaptability are crucial for a swift response to the complex issues of this century and their stakeholders (Abbott & Snidal, 2000).

On the international stage, soft law norms are gaining traction in addressing common environmental problems and are demonstrating effectiveness and acceptance among global actors. This is particularly true when dealing with issues that entail scientific uncertainties. Soft law norms are significant in the context of a precautionary approach.

Exemplifying soft law norms are: the Rio Declaration (1992), Agenda 21, the Johannesburg Declaration (2002), the Millennium Development Goals (MDGs), and the Sustainable Development Goals (SDGs). Additionally, in recent decades of the 21st century, international corporate standards have gained strength, as seen in the case of ISO (International Organization for Standardization) technical standards.

Furthermore, according to their various functions, legally non-binding agreements between states can be divided into programs of political action; political declarations on existing or emerging environmental principles and rules; codes of conduct that replace legally binding international rules; and agreements on provisional treaty implementation (Beyerlin & Marauhn, 2012).

Soft law norms can originate from public or private sources, and their main difference lies in the source of authority (Vogel, 2006). When emanating from state authority or international organizations, they are considered public, and being soft law, they are similarly non-binding and lack sanctions for non-compliance (Lima & Rei, 2018).

On the other hand, private soft law norms are those created by private actors, regardless of the will of states (Matias, 2015). Their construction and evolution stem from private processes, which may or may not involve state actors and international organizations in the context of cooperative governance to address common problems (Lima & Rei, 2018). This is a dynamic in which actors perform "alongside or around the State, rather than through it" (Vogel, 2006). It is global governance in action.

Pragmatism and purpose are distinctive characteristics of private norms. They

are created to address global demand. Their function is not to conflict with or surpass existing legal norms or global agreements but to serve as a foundation or reference for constructing such norms (Vogel, 2006).

Private soft law norms do not aim to replace existing public norms; on the contrary, as Luciana Lima and Fernando Rei (2018: p. 862) state, "they are capable of expanding their scope and creating effective procedures, mechanisms, and tools for implementing rules and conduct that seek to solve global problems and conflicts."

International environmental law, intended for solutions rather than problems, is an autonomous branch of law "designed to regulate the coexistence, cooperation, and interdependence, institutionalized or not, among various international actors, with the objective of international environmental protection" (Rei & Granziera, 2015).

Global environmental governance nurtures international environmental law by allowing different ways of addressing environmental problems to coexist in a complementary dynamic (Rei & Graziera, 2015). Thus, international environmental law is a legal branch in which soft law has become legitimate (Rei, 2017). Pure legality and the rigidity of decision-making processes through traditional legal positivist formalism are not sustainable for addressing global environmental problems.

The nature of soft law norms allows for greater dynamism and creativity in managing and addressing common global challenges. The effective resolution of global environmental problems requires an integrated and collaborative approach. Environmental and sustainability issues require multidisciplinary, interdisciplinary, and cross-cutting efforts. Therefore, tackling challenges should involve dialogue, collaborative negotiation, and other conflict resolution methods.

In certain situations, especially with sensitive and complex issues like international environmental matters, soft law norms can be more effective than hard law treaties. Non-binding norms are more conducive to building an atmosphere of mutual trust, stimulating dialogue and consensus, offering flexibility in development and implementation, fostering broad participation, and ultimately mitigating the risk of failure and deterioration of international relations (Hillgenberg, 1999). Resolving or addressing common issues through dialogue and negotiation strengthens unity, collaboration, and international relations. Voluntary engagement promotes a greater interest in contributing to the addressed agenda.

Pragmatism, scientific consensus, and a focus on problem-solving breathe life into international environmental law, and its efficacy is achieved through the broad participation of global actors and the use of all available mechanisms. Soft law norms contribute to international environmental practice and align with international environmental law.

The characteristics of liquidity and flexibility of non-binding norms make

them especially valuable for addressing environmental problems. Adding soft law to the sources of International Law listed in Article 38 of the Vienna Convention may need to be revised and could even erode its dynamic qualities.

Norms with private regulatory structures and procedures emerge from a global demand to achieve and address a specific theme. They are pragmatic and goal-oriented norms with concentrated control in the private sphere, creating procedures, conduct, and practices that do not aim to conflict with or surpass existing legal norms or established global agreements (Vogel, 2006).

Private soft law norms are part of the dynamics of global environmental governance and contribute to strengthening international environmental law's goals. They create forms of implementation and practices that enable the concrete and effective achievement of certain global environmental objectives (Lima & Rei, 2018).

Their role is to help shape international political opinion about the need for action concerning a common problem, fostering consensus that can lead to negotiations of hard law or non-hard law treaties. Staying within the realm of soft criteria may prove more effective than levels of accountability and hard sanctions.

Sustainability agendas, such as the Millennium Development Goals (MDGs) and the Sustainable Development Goals (SDGs), are examples of experiences in the realm of international public soft law that involve private participation. These structured and elaborated documents recommend (but do not obligate) the fulfillment of global objectives and goals for promoting multi-level sustainable development.

In addressing global environmental problems, global governance becomes a fundamental mechanism, especially when it incorporates dynamic and creative soft law instruments, means, and tools, ideally with the participation of all actors, including the private sector.

The partnership between corporate sectors and governmental institutions towards the effectiveness of global sustainability agendas has never been more necessary. Corporate knowledge is essential for disseminating and implementing best practices on a multi-level scale. Thus, in face of this performance of the private actors, in the creation of private soft law to face the international environmental problems, the private environmental regimes appear, as a phenomenon of post-modernity.

4. Private Environmental Regimes as a Characteristic of Postmodernity: An Action of Global Environmental Governance

The new always generates suspicion and resistance. The features of International Environmental Law (IEL) focused on scientific consensus, solucionatics, and pragmatism have never been well-received by traditional internationalists in Public International Law. Such a stance made them question whether IEL was a

science of law due to its fluid and dynamic nature based on technical and scientific resolution.

Similarly, there are questions about the terminology "Private Regimes." Traditional internationalists, just as they view IEL with resistance, also do not embrace the term private regimes for transnational rules created by non-state actors. It's worth noting that states are no longer the sole actors responsible for governing global environmental issues (Green, 2015: p. 165). The complexity and dynamics of global environmental issues mean that other global actors are also part of the confrontation process. Confronting means acting actively and not passively in the face of conflicts. This also includes regulating and managing global environmental conflicts.

Global actors, such as companies and non-governmental organizations, have a relevant role not only as subjects subject to many regulations but also as pressure groups in implementing and operating regimes and in creating formal and informal normative structures (Newell, 2005).

To understand the dynamics of confronting common environmental problems, it is essential to go beyond the standard repertoire of international relations and classical international law, based on intergovernmental cooperation and diplomacy (O'Neill, 2009). Increasingly, private regimes, which are transnational rules created by non-state actors, are managing global, regional, and local environmental issues (Green, 2015: p. 165). And they are producing substantive law without the state, national legislation, or international treaties (Young, 1994). In other words, private actors produce material laws to regulate their duties to society primarily.

Analogous to the concept of international regimes, private environmental regimes can be defined as implicit or explicit norms, rules, and decision-making procedures in a specific area of international private relations around which the expectations of private actors converge. Private actors have interests and expectations about certain areas of private relations. Therefore, they develop norms to regulate their actions toward society and to address common global environmental problems.

There is resistance to calling the transnational rules created by non-state actors regimes, as the international Regime is a state-centric concept. In the realm of internationalist doctrine, there are already authors who advocate the term private regimes. At the same time, there is another part that prefers to name the production of rules and norms outside the scope of the state as "private governance and regulation" (Büthe & Mattli, 2011), or civil regulation or private institutional arrangements (Pattberg, 2012). The concept of private Regime breaks with the state-centrism present in classical approaches to international regimes (Veiga & Zacareli, 2015: p. 314). Hence, they are vulnerable to legitimacy criticism, as they are not products of state authority creation, considered legitimate lawmakers (Bernstein & Cashore, 2007).

Private regimes or transnational private rules and norms are an action of governance. They are one way to promote corporate global environmental gover-

nance. The scientific and technological knowledge of private actors, not to mention their economic power, is increasingly necessary for global governance (Matias, 2015).

Private norms are conceived as soft law instruments, as they are voluntary and flexible (Lima & Rei, 2018). Voluntary private regimes are important instruments of global environmental governance and allow virtuous action of environmental management in the private sphere towards the path of sustainable development (Vogel, 2005).

There are various types of private environmental rules and norms. Examples of private norms include environmental labeling and certifications; codes of conduct; and information-based standards. These norms are created to promote sustainability in the private sphere. Business participation in global environmental governance allows the private sector to promote its practices in the realm of global sustainability (Green, 2015). After all, the private sector has always efficiently adopted and created programs, standards, norms, and socio-environmental responsibility guidelines.

The private self-regulatory system runs parallel to national and international regulatory processes, presenting a certain mobilization of the sector for the adequacy and compliance with existing public norms or the supply of legal gaps due to the difficulty of a global response to complex environmental risks and issues (Lima, 2020: p. 174).

Authors like Gunther Teubner (2004) argue that "the dominant sources of law are now at the peripheries of law, at the borders with other sectors of world society that are successfully engaging in regional competition with existing legislative centers." Influenced by stakeholders or strategic necessity, global actors increasingly behave spontaneously, without being forced, persuaded, or funded by state actors to address global environmental issues.

The dynamics of globalization have brought new challenges to the international scene, crossing the boundaries of nation-states' control. Confronting the challenges of globalization and controlling processes that cross state boundaries have focused on the realm of global governance and regulation produced through cooperation between NGOs and the private sector. Non-state actors play a crucial role in allowing global environmental themes to evolve in a complementary or even substantive manner to policies contemplated on an intergovernmental level (Veiga & Zacareli, 2015: p. 312). Below are some examples of international standards with private or mixed characteristics.

Global Governance in Action: Examples of Private or Mixed Regimes

There is no denying that the regulation promoted by non-state actors, such as NGOs and companies, creates incentives for cooperation. Active and multilevel participation of private actors promotes the creation of strategic institutional arrangements to address environmental issues. Driven by the processes and effects of globalization, through global governance, non-state actors have identified

their transformative role in the global context.

As João Paulo Veiga and Murilo Zacareli (2015: p. 312) affirm, "[...] the increasing participation of non-state actors is a fact and is linked to new forms of governance beyond the hierarchical structures of states." Thus, it is possible to deduce that there is a decline in the exclusive regulatory capacity of states, given the visible shift from intergovernmental matters to public-private transnational matters (Pattberg, 2007).

In the pursuit of effective sustainability agendas, multilateral intergovernmental arenas have begun to make room for cooperation between state and non-state actors, referred to as public-private transnational arenas. The Agenda 21 itself, a soft law document launched at the Conference on Development and Environment in 1992 (Rio-92), proclaimed the need for complementarity of government policies with actions and programs of companies and NGOs for the effectiveness of the global sustainable development principle (Veiga & Zacareli, 2015: p. 312).

Later, the United Nations itself promoted institutionalized spaces for the effective participation of actors in the context of addressing global environmental issues and achieving the objectives and goals of sustainability agendas, an example being the creation of the UN Global Compact in the early 2000s.

One of the most notable characteristics of contemporary international relations is the composition of transnational (Risse-Kappen, 1995) arenas, made up of non-state actors in decision-making processes involving the regulation and governance of issues where state actors cannot promote consensus for the implementation of rules and norms on a global scale (Veiga & Zacareli, 2015: p. 315).

The phenomenon of global governance has led to the emergence of hybrid (public-private) or purely private transnational arenas. The new global agendas require a multi-level polycentric cooperation. In this sense, this new situation calls into question the concept of international regimes, due to the significant role of private actors in the international scene. In a literal analysis of the concept of international regimes, given the complexity of decision-making processes among state and non-state actors in transnational arenas, it can even be said that it needs reformulation (Veiga & Zacareli, 2015).

However, is it necessary to reformulate the concept of international regimes in light of this significant involvement of non-state actors on the international scene? Or is global governance already a concept ahead of its time, encompassing all dynamics and metamorphoses of contemporaneity?

One thing is certain, polycentric multi-level cooperation is essential for addressing global environmental issues. Public-private partnership is a necessity and proves successful in some international contexts. Within International Regimes, there are mechanisms to promote global governance, for example, Conferences of the Parties (COPs).

The involvement and support of companies to govern globally have never been more necessary (Matias, 2015). Look at the context of the COVID-19 pan-

demic, the joint action of all actors was crucial in creating protocols, rules, and procedures to combat the virus, and even better, financial, technical, and scientific support for vaccine development.

To address the effects of the COVID-19 pandemic, it was necessary to develop mechanisms of multi-level and multi-actor international cooperation and collaboration. The union of efforts was the only way to solve the problem of global economic paralysis and social isolation. The ways of dealing with the scourge of the coronavirus went beyond traditional mechanisms. Global governance proved to be alive in the pandemic; all global actors joined forces to combat COVID-19. The private sector participated in decision-making processes and financing of the important international cooperation network for combating COVID-19, led by the World Health Organization (WHO), called the "Access to COVID-19 Tools Accelerator (ACT)."

For example, during the pandemic, ISO (International Organization for Standardization) created 30 (thirty) technical standards to assist international actors in the fight against covid-19 (ISO, 2022). ISO technical standards are soft. And since then, ISO has been developing several private norms for socio-environmental regulation. This demonstrates the materialization of private regimes for global sustainability issues.

Achieving sustainability depends on public and private actions. Any metamorphosis in the existing mechanisms, forms, theories, and concepts of the science of International Law that are beneficial for addressing global problems should be embraced and worked on with the ideal of inclusion, not exclusion. Governance systems guided by private actors are a reality and are fundamental for the effectiveness of Global Sustainability Agendas, especially for the effectiveness of the Sustainable Development Goals (SDGs) Agenda 2030.

This research demonstrated that private soft laws and private regimes area reality. Several international scholars recognize its existence. Multi-actor actions are necessary for the effectiveness of international sustainability agendas. For example, ISO technical standards are private soft laws, which together with other standards form private regimes for sustainability. The Covid-19 pandemic demonstrated the unity of efforts to combat the virus. And the complex environmental problems of post-modernity demand from humanity the use of all possible types of instruments and technical-legal mechanisms to promote global sustainable development.

5. Conclusion

Through global governance, international actors (companies, NGOs, and others) began to participate and engage in international sustainable development agendas and initiate a voluntary process of norm creation in response to global sustainability movements. The dynamism of global environmental problems brought about a true transformation in the formation process of international law, with the incorporation of non-binding norms, referred to as soft law.

Soft law is associated with non-binding norms. What sets them apart from

hard law norms is the nature of their binding effect. Norms of a hard law nature are legally binding, and their non-compliance leads to legal consequences at various levels of responsibility.

To understand the logic of soft law, it's important to have an open analysis beyond the formal validity understanding adopted by legal positivists. Soft law is not officially recognized as legally valid norms, as they were not created through a legally established and formally valid legislative process. However, this does not detract from the effectiveness of soft law norms; on the contrary, they are even more dynamic than hard law norms. The application of soft law norms is more objective, and they evolve as complex societal relations and common problem progress.

Soft law norms can have a public or private origin. Private actors create private ones. Their purpose is not to replace general norms; they contribute by expanding the scope of procedures, tools, and mechanisms for addressing common environmental issues. Pragmatism and purpose are defining features of private norms. They are created to address global demands, thus fitting within the context of global environmental governance and the dynamics of International Environmental Law.

Private actors have interests and expectations regarding certain areas of private relations. Therefore, they develop norms to regulate their actions towards society and to address shared global environmental problems. There is resistance to using the terminology "private regimes". However, it is necessary to recognize that private actors are producing substantive law that contributes to resolving and addressing common environmental problems.

The nature of soft law norms allows for greater dynamism and broader creativity in managing and addressing common human problems. Solving global environmental problems is only effective when approached and implemented in an integrated and collaborative manner. Working on environmental sustainability requires a multidisciplinary, interdisciplinary, and cross-cutting approach. Thus, tackling actions should be done through dialogue, collaborative negotiation, and other conflict resolution methods.

The liquidity and flexibility characteristics of non-binding norms make them particularly valuable for addressing environmental problems because they are more dynamic, creative, and tend to be more effective. This is due to the fact that the actors who cooperated in creating such norms did so voluntarily, which makes them committed and engaged in ensuring the norm's effectiveness.

There's no denying that the regulation promoted by non-state actors, such as NGOs and companies, generates incentives for cooperation. The active and multilevel participation of private actors fosters the creation of strategic institutional arrangements to address environmental problems. Examples include ISO norms and the dynamics of global sustainability agendas, such as the Millennium Development Goals (MDGs) and the Sustainable Development Goals (SDGs).

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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