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The biodiversity offsets as market-based instruments in global governance: Origins, success and controversies

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ABSTRACT

The recent surge in the popularity of biodiversity offsets is particularly interesting since the idea of compensation with respect to biodiversity can be traced as far back as the 1970s in Europe and the United States, as part of the Ramsar Convention (1972), which recommended compensation for damage to biodiversity. The view of compensation has nevertheless evolved since the turn of the century, and new programs of biodiversity compensation have developed through a mechanism called “biodiversity offsets”. Compensation mechanisms have thus undergone a ‘renovation’ on both the international and national environmental policy scenes. In this article, we use the term ‘renovation’ to represent the active modification and adaptation of existing mechanisms as market-based instruments to facilitate their implementation in different contexts. What is the origin of this renovation? How has it been disseminated? And what actors have precipitated it? We put forward the hypothesis that this renovation could be explained by the convergence between old national dynamics focused on the original definition of compensation mechanisms and more recent transnational dynamics that follow the 1990s appearance of dialog centered on the “market-based instrument” concept.

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1. Introduction

At both the international and national scales, since the 1990s, the international environmental community has been increasingly interested in market-based instruments (MBIs) as mechanisms for environmental progress (OECD, 1993, 1995, 1997). MBI development occurred later in the biodiversity sector (OECD, 1996, 1999, 2001, 2003, 2004), but the advent of the ecosystem service concept in the Millennium Ecosystem Assessment (MA) in 2005 highlighted the economic value of biodiversity and the value of ecosystem services. MA encouraged, in this way, the introduction of market mechanisms in biodiversity sector (Pesche et al., 2013). Though there are no agreed definitions of “market based instruments” (Pirard, 2012, Karsenty and Ezzine de Blas, 2014) and several established list of their constituent elements (European Commission, 2011, Pirard, 2012, OECD, 2003, Sterner, 2003), proponents of MBIs assume that environmental problems are best conceptualized as externalities. In this way, payment for environmental services instruments became an emblematic market based instruments for ecosystem services (Gómez-Baggethun et al., 2010, Pesche et al., 2013) and few years later, ‘biodiversity offsets’ were also presented as instruments which

rapidly became an indispensable policy solution to meet the challenges of maintaining biodiversity.

The recent surge in the popularity of biodiversity offsets is particularly interesting since the idea of compensation with respect to biodiversity can be traced as far back as the 1970s and as part of the Ramsar Convention (1972), which recommended compensation for damage to biodiversity. The compensation aspect was only considered as the final step in an environmental damage management process. The first steps were to prevent damage or, when unavoidable, to limit damage resulting from human interventions, such as avoiding or limiting the impact of infrastructure on sensitive ecosystems. Compensation, as a final step, was generally integrated into regulations requiring permits for development initiatives that could have an environmental impact. Compensation was achieved through action by the developers themselves or relegated to specialized third parties. However, these regulatory devices were non-binding and seldom applied. The view of compensation has nevertheless evolved since the turn of the century, and new programs of biodiversity compensation have been developed and called ‘biodiversity offsets’. These mechanisms were immediately considered as market based instruments by national and international actors. However, MBIs constitute an extremely heterogeneous group that makes little sense from an economic theory perspective. These instruments do not share many characteristics and show a very loose relation to markets as defined by standard economic

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theory. MBIs as a category look more like an asylum country for all tools with a price component (Pirard, 2012; Boisvert et al., 2013). Despite this, the promoters of biodiversity offset (Hartig and Drechsler, 2009; Jenkins et al., 2004; Whitten et al., 2003) as their detractors, who see them as a commodification of nature (Maris et al., 2010; Robertson and Hayden, 2008; Robertson and Mikota, 2007; Robertson, 2004; Walker et al., 2009), consider “Biodiversity Offsets” such as market based instruments. Furthermore, biodiversity offsets have often been defined as a unified umbrella category of market-based instruments under which different mechanisms, variously named by scholars, decision-makers and practitioners, e.g. compensatory mitigation, new kinds of in-kind compensation, mitigation banking, habitat banking, species banking, wetlands mitigation, etc., would fall. In total, even though they have emerged from different contexts, been promoted by different actors, concern different subjects (biodiversity, species, habitat, wetland, fishes, etc.) and operate on different scales and with a variety of forms (regulatory, voluntary, etc.), in discourses all schemes related to biodiversity compensation are most often theoretically grouped into one homogeneous category of policy instruments called ‘biodiversity offsets’, and defined as a particular MBI.

In this way, compensation mechanisms have thus undergone a ‘renovation’ on both the international and national environmental policy scenes. In this article, we use the term ‘renovation’ to represent the active modification and adaptation of existing mechanisms as market-based instruments to facilitate their implementation in different contexts. We address the following questions. What is the origin of this renovation? How has it been disseminated? And what actors have precipitated it? We put forward the hypothesis that this renovation could be explained by the convergence between old national dynamics focused on the original definition of compensation mechanisms and more recent transnational dynamics that follow the 1990s appearance of dialog centered on the MBI concept. At the interface between these flows of thought, compensation mechanisms evolved through this renovation process and emerged as MBIs or regulatory mechanisms, or as various hybrids. Beyond the type of instruments used, the article is based on a political analysis of the diffusion process of compensation mechanism renovation.

The first section presents the theoretical background on policy transfer to analyze the renovation and diffusion of ‘compensation mechanisms’ and some methodological elements. The second section deals with the origins of compensation mechanism renovation in the US and with some policy entrepreneurs who promoted compensation mechanisms renovation as market-based instruments at the international level. The last section analyses the success of compensation mechanisms in the scientific landscape and in global biodiversity governance and also the recent controversies on the use of biodiversity offsets.

2. Policy transfer to analyze the diffusion of biodiversity offsets as market-based instruments: some theoretical and methodological elements

The rise of globalization and centralized regional bodies led to a growing body of literature on policy transfer (Dolowitz and Marsh, 2012; Benson and Jordan, 2011; Dumoulin and Saurugger, 2010). According to Dolowitz and Marsh, policy transfer is a process by which: “knowledge about policies, administrative arrangements, institutions and ideas in one political setting (past or present) are used in development of policies, administrative arrangements, institutions and ideas in another political setting” (Dolowitz et al., 2000). Policy transfer studies are organized around six questions: Who Transfers Policy? Why Engage in Policy Transfer? What Elements of Policy are Transferred? Are There Different

Degrees of Transfer? From where are Policies Transferred? What Factors Enable and Constrain Transfer? Concerning biodiversity conservation policies, compensation mechanisms have been subject of a worldwide diffusion process over the last decade and could be analyzed through the following question: who transfers compensation policy renovation? This question is just one of the set of questions in the transfer literature, which is why our article does not deal with elements which are transferred in different countries and with the factors which enable or constrain transfers. We decided to focus only on policy entrepreneurs who favored the diffusion of compensation renovation. To answer to the first ‘Who transfers’ question, policy transfer studies originally identified six types of actor that could potentially engage in transfer activities: ‘elected officials; political parties; bureaucrats/civil servants; pressure groups; policy entrepreneurs/experts; and supra-national institutions’. The first four types had, they claimed, already been widely discussed, so they focused on the role of policy entrepreneurs, i.e. “public entrepreneurs who, from outside the formal government, introduce, translate and help implement new ideas into public practice” (Roberts and King, 1991). In this way, policy transfer studies place emphasis on actors that enable, facilitate or implement the transfer, as well as the reception of the transfer. PTS show that non-state actors aiming to impose, promote or facilitate the import–export of specific solutions can be supranational structures such as the European Union (EU), international organizations (international financial institutions, United Nations organizations), transnational enterprises (banks in particular), consultancy agencies, or non-governmental organizations (Evans, 2004). There are also collective less institutionalized actors, but which are structured in networks, such as epistemic communities (Haas, 1992), advocacy coalitions (Keck and Sikkink, 1998) or global public policy networks (Stone, 2008).

We used two different methods to identify these different kinds of actors. First, since 1996, we systematically collected and analyzed publications on compensation mechanisms, biodiversity offsets and mitigation banking published by global actors (Organisation for Economic Co-operation and Development (OECD), Convention on biological diversity (CBD), NGOs, etc.). We analyzed these publications through a large database based on the authors’ names, year and title of the publication, and the use or not of a market-based approach. This constructivist and historical method allows identification of the genesis and renovation period of compensation mechanisms and the main organizations involved in the diffusion. Second, via this method, we interviewed some key individuals from these organizations, especially from OECD, Business and Biodiversity Offsets Program (BBOP), Forest Trends, The Nature Conservancy, ECOROPA, International Union for the nature conservation (IUCN), Friends of the Earth (FOE), World wildlife fund (WWF) and CBD. Two American and French government representatives were interviewed and two business representatives also accepted to be interviewed. Finally, more than 15 ecology, economics and law specialists were contacted. Through this empirical framework, we analyzed some policy entrepreneurs involved in the compensation mechanism renovation process.

3. Historical analysis of compensation mechanisms renovation: global dynamics in favor of MBIs and policy entrepreneurs

Historical analysis of compensation mechanism renovation primarily concerns the United States. We will show the connection between compensation mechanism renovation and the success of market-based instruments in US. Then, some policy entrepreneurs, and especially OECD and few years later, BBOP, subsequently promoted this trend in global arenas.

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