The owl of Minerva takes its flight only when the shades of night are gathering.

Hegel, *Philosophy of Right*, preface

**Introduction**

Rarely had international environmental fairness been given so much hope, and generated so much despair, as anxiety over the acceptance of a new multilateral agreement, the Nagoya Protocol on Access and Benefit Sharing (the ABS Protocol), reached the highest point in the final hours of negotiations at the tenth meeting of the Convention on Biological Diversity's (CBD) Conference of the Parties (COP 10) held in Japan’s Nagoya, during October 18–29, 2010. Despite the preceding two weeks of intense negotiations between CBD parties, it remained uncertain until the very end of the overnight plenary session whether the new Protocol would pass the consensus-based approval of an UN meeting. Negotiations resembled an emotional roller-coaster, as positions between the biodiversity rich Global South and the financially rich Global North over the Protocol’s scope, genetic derivatives, and compliance mechanisms remained wide apart. Besides the Protocol, the approval of the plenary session was needed for two other crucially important documents, each contingent upon one another for acceptance – a new Strategic Plan containing conservation targets for 2020 and a new Resource Mobilization Strategy for meeting these targets. It
appeared that developing countries, collectively owning more than 80 percent of the world’s biological diversity, had a bargaining leverage over the industrially developed world and therefore were unwilling to accept new conservation targets unless the ABS Protocol was also accepted and more finances were made available. Given that all three documents came as a package deal, *troika*, the prospects of failing the entire COP 10 loomed large. Therefore, it appeared as a political miracle when the new international agreement was finally born, at 1:30 in the morning in the plenary hall of Nagoya Congress Centre, packed with the delegations of 179 countries, causing “standing ovations, tears of joy and a great feeling of relief” (ENB 2010a, p. 26).

Why did Nagoya produce an impressive package of new documents, including a new multilateral agreement on environmental equity, the ABS Protocol, despite the current tendency of multilateral environmental negotiations to yield sub-optimal results, as exemplified by the recent COP meetings of the UN Framework Convention on Climate Change? And how did negotiating parties manage to bridge seemingly irreconcilable differences that persisted for a decade during preparatory negotiations prior to the meeting in Nagoya?

The classical Realist perspective – the strongest does what he wants – fails to explain the creation of this new international regime, whose main objective is to benefit the weak, including “the poorest of the poor” in the developing world, indigenous and local communities (ILCs) (World Bank 2010). Another variation of the Realist approach, that major powers participate in institution building to counter-balance the US as a hegemon, is also unconvincing: the Minervian players, in this case it was Japan, the EU, and Norway, went against their immediate self-interest in helping to create the new treaty, whereas the more conventional US rivals, China and Russia, remained disinterested in either helping or blocking this new regime. When a hegemon abandons its role – the US essentially stood alone vis-à-vis other nations in its choice to not ratify the CBD – the formation of a new international treaty follows a somewhat different pattern.

The Constructivist approach, with its focus on the impact of global civil society in shaping new environmental regimes (Wapner 1996; Lifitn 1998; Haas 1990; Newell 2000), is not a very good fit for explaining this case either. Although environmental NGOs (ENGOs) and indigenous organizations played a significant role in popularizing and shaping the discourse on access and benefit sharing, their input during the crucial negotiations in Nagoya was rather limited and did not replicate the 1992 Earth Summit in Rio, where NGOs played a significant role in