

National Governments, Transnational Actors, and Their Roles in the Creation of the North American Environmental Agreements and Institutions

Gobiernos nacionales, actores transnacionales y su papel en la creación de acuerdos e instituciones ambientalistas en Norteamérica

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ABSTRACT

Most theoretical accounts in the current literature on North American integration consider the implementation of side and parallel environmental agreements to the North American Free Trade Agreement (NAFTA) and their corresponding institutions either a side-effect of the national governments' pursuit of their economic interests or the result of successful pressure by non-governmental organizations to include their socio-environmental demands in the treaty. These opposite explanations closely resemble liberal intergovernmentalist and transnational-focused accounts used to explain the occurrence and progression of regional integration in Europe. This article reviews and challenges both accounts and argues that they both assess inadequately the interests of governmental and transnational actors and their roles and relative influence in determining the outcome of the negotiations of the NAFTA side and parallel agreements on the environment. It proposes that a revised liberal intergovernmentalist account that considers the non-economic national interests of nation-states would explain better the pursuit and negotiation of NAFTA's environmental side and parallel agreements and the institutional structure that resulted from them.

Key words: North American environment, regional integration, NAFTA, liberal intergovernmentalism, transnationalism.

RESUMEN

La mayoría de las explicaciones teóricas en la literatura actual sobre integración en América del Norte consideran que la implementación de los tratados ambientales complementarios y paralelos al Tratado de Libre Comercio de América del Norte (TLCAN), y sus instituciones correspondientes, es un efecto colateral de la búsqueda de los intereses económicos de los gobiernos nacionales, o el resultado exitoso de la presión ejercida por las organizaciones no gubernamentales (ONG) para incorporar sus demandas socioambientales a la negociación del TLCAN. Estas

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explicaciones, opuestas en naturaleza, se asemejan a las teorías intergubernamental liberal y transnacionalistas utilizadas para explicar la incidencia y el progreso de la integración regional en Europa. Este artículo examina y desafía ambas explicaciones teóricas y argumenta que ambas evalúan inadecuadamente los intereses de los actores gubernamentales y transnacionales, y sus roles e influencia relativos en la determinación del resultado de las negociaciones de los tratados complementarios y paralelos al TLCAN sobre el medio ambiente. Propone que una teoría intergubernamentalista liberal revisada, que tome en consideración los intereses nacionales no económicos de los Estados-nación, explicaría mejor la búsqueda y negociación de los acuerdos complementarios y paralelos al TLCAN sobre el medio ambiente, y la estructura institucional que resultó de ellos.

Palabras clave: medio ambiente en América del Norte, integración regional, TLCAN, intergubernamentalismo liberal, transnacionalismo.

INTRODUCTION

In January 1994, two side and parallel environmental agreements between Canada, the United States, and Mexico came into effect along with the North American Free Trade Agreement (NAFTA): the North American Agreement on Environmental Cooperation and the U.S.-Mexico Border Environment Cooperation Agreement. To administer them, the governments established three regional institutions: the (North American) Commission for Environmental Cooperation (CEC), the North American Development Bank, and the (U.S.-Mexico) Border Environment Cooperation Commission. The agreements' implementation and the creation of these institutions, aimed at protecting and enhancing the North American environment, made the three countries' domestic environmental policies trilaterally interdependent.¹

To date, most accounts in the current literature on North American integration consider the agreements' implementation and the creation of these institutions as either a side-effect of the pursuit of national governments' economic interests or the result of successful pressure by non-governmental organizations to include their demands in NAFTA's negotiations. On the one hand, most North America-focused scholars argue that national governments –most prominently, the U.S.– dominate this integration process (Wise, 1998; Appendini and Bislev, 1999; Cameron and Tomlin, 2000; Weintraub, 2004; Studer Noguez and Wise, 2007; Clarkson, 2008; MacDonald,

¹ Following Gilardi (2014), interdependence is defined as the influence the decisions and actions that a given nation-state takes in the pursuit of its national interests have on the policy choices of other nation-states. This pursuit imposes or produces significant constraints, costs, and/or benefits for other states, and vice versa. Should this influence be mutual, it can be argued that the nation-states in question are interdependent.

2008; Ayres and Macdonald, 2012; Duina, 2016). In their view, transnational actors and/or regional institutions either exercise very limited influence on this process or none at all (Cameron and Tomlin, 2000; Clarkson, 2008; Hale and Blank, 2010; Ayres and MacDonald, 2012; McKinney, 2015). According to these scholars, the occurrence and progression –or lack thereof– of North American integration, including the implementation of NAFTA’s environmental agreements, is satisfactorily explained by theoretical accounts based on the analysis of national governments’ interests, positions, and actions. I argue that these explanations closely resemble liberal intergovernmentalist accounts of the occurrence and progression of European regional integration.

On the other hand, a smaller number of scholars highlight the influence of transnational actors in determining the extent of this process, even if not its current pace or direction. According to these scholars, society-oriented, labor, and environmental civil society organizations in the three countries, and especially in the U.S., pressed the national governments into negotiating and implementing environmental and labor agreements alongside NAFTA as a condition to its approval in their corresponding domestic legislatures (Raustiala, 1996, 2003, 2004; Bugada, 1998; Kibel, 2001; Markell, 2004, 2005; Knox and Markell, eds., 2003). In these accounts, transnational actors significantly influenced the negotiation and implementation of NAFTA by broadening the scope of the overall bargain to incorporate and establish environmental and labor side and parallel accords to the main agreement, which the Canadian, U.S., and Mexican governments did not originally pursue.² This explanation, then, closely resembles recent “transnational”-centered theoretical approaches that emphasize the role of transnational actors (that is, neither governments nor regional institutions) to explain the occurrence and development of European integration (Hurrelmann, 2009; 2011).

I review both accounts and argue that they both inadequately assess the interests of governmental and transnational actors, and their roles and relative influence in determining the outcome of the negotiations of NAFTA’s side and parallel agreements on the environment. I argue that both “purely” liberal intergovernmentalist- and transactionalist-like accounts of this process overlook significant features of the NAFTA deal and its institutional outcome that reveal national governments’ non-economic interests and the very limited capacity of transnational actors to act as a cohesive group with coherent demands. I propose, then, to review and reassess more adequately, even if briefly, the origins and occurrence of North American integration better than currently dominant accounts do. In doing so, I also aim at demonstrating the relevance

² Given the focus of this article, I do not discuss further the NAFTA’s side agreement on labor, i.e. the North American Agreement on Labour Cooperation (NAALC).

of European integration theories to the North American case, through the comparative use of the liberal intergovernmentalist and transnationalist approaches. I argue that this kind of revised account would better explain the original and current extent, pace, and direction of North American integration, including its expansion toward “non-economic” policy areas.

To do so, I first briefly describe and discuss the emergence of environmental cross-border rules and regional institutions in North America. Then, I summarize the liberal intergovernmentalist- and transnationalist-like accounts often used to explain the emergence and development of North American integration. I argue that although the theorization of this process has been very limited, the accounts that are currently provided to explain it closely resemble those used to explain the emergence and development of European integration. I discuss and analyze the relevant policy and institutional developments in the region and the roles of governmental and transnational actors. Finally, I review the current explanations for the emergence of this process and show their ability to more adequately explain the extent, pace, and direction of this process. I argue that doing so will contribute to demonstrate the relevance of (European) integration theories to the study of the North American case.

THE EMERGENCE OF ENVIRONMENTAL CROSS-BORDER RULES AND REGIONAL INSTITUTIONS IN NORTH AMERICA

Canadian, Mexican, and U.S. cooperation on environmental issues was very limited before the implementation of NAFTA and NAAEC in the 1990s. Although trilateral consultation among these countries on related matters dates as far back as the late nineteenth century, no trilateral cross-border rules existed prior to these agreements.³ Prior to NAFTA, these issues had not been raised in the negotiation or functioning of bilateral, trilateral, or multilateral agreements between the North American countries, including the Canada-U.S. Free Trade Agreement (CUSFTA). When the Canadian, Mexican, and U.S. governments started to negotiate NAFTA at the beginning of the 1990s, they

³ Before NAFTA and NAAEC, trilateral intergovernmental engagements between the North American governments were limited in both scope and frequency, and, for the most part, took place in multilateral fora. Although government officials from all three countries had been calling for dealing with environmental issues in a trilateral and institutionalized form since the 1890s, the national governments opted to maintain separate consultative bilateral mechanisms, burdened by significant obstacles to cooperation, well into the 1990s. These high-level bilateral consultations between the U.S. and Mexican and the U.S. and Canadian governments were usually circumscribed to the discussion of single issues (for example, distributing water in bodies located along their common borders or countering pollution in the areas surrounding them). Due to their remedial focus, however, these consultative mechanisms commonly failed to prevent, identify, or effectively address cross-border environmental problems.

did not expect existing environmental issues to affect its negotiations (Knox and Markell, eds., 2003).

By the early 1990s, however, intra-regional trade and foreign direct investment among the three countries had already been growing significantly. When the NAFTA negotiations started, civil society groups in the three countries raised concerns about the social and environmental impact that increased cross-border economic exchanges would have in their communities. Most of these groups argued that such exchanges would impact negatively on the three countries' environment by prompting a "race to the bottom" for trade and investment.⁴ They said that firms and investors would seek to take advantage of the uneven economic development and enforcement of environmental laws in North America, which were claimed to be especially low and weak in Mexico (Weintraub, 1990; Shrybman, 1993; Husted and Logsdon, 1997). In their view, NAFTA should incorporate explicit means of enforcement (such as trade sanctions) to ensure that its implementation would not lead to environmental degradation in their countries or the rest of North America. In response, government officials in the three countries committed to not downgrade or weaken domestic environmental laws and standards owing to the implementation of NAFTA. They rejected, however, creating enforcement mechanisms (including trade penalties) in cases of failure to enforce environmental laws, arguing that doing so would generate trade distortions that would hinder the gains expected from implementing the agreement. At the same time, they acknowledged that rejecting such proposals outright could lead to continued (and, possibly, growing) opposition from civil society groups. To avoid obstacles in passing NAFTA in their legislatures, the three governments then resolved to negotiate and implement the NAAEC as a side agreement to NAFTA.⁵ Meanwhile, to address the specific needs of the area along their shared border, the U.S. and Mexico resolved to also negotiate and implement the BECA as a parallel agreement to NAFTA, as Canada expressed no interest in taking part in it.

⁴ These groups' concerns varied considerably and were at times even conflicting. Some, for instance, argued that the increased cross-border trade resulting from NAFTA would lead to environmental degradation in their communities, especially in those located along the U.S.-Mexico border. Others argued that the liberalization of foreign direct investment in North America would result in a region-wide race to the bottom, as environmental standards would be reduced—or further reduced—to attract investment and jobs. It was said that this phenomenon would especially affect the U.S. and Canada, as environmental regulations were purportedly stricter in these countries than in Mexico (Bugada, 1998: 1592; Scott, 2003: 1). Finally, others argued that liberalized trade and investment would result in the relocation of environmentally-harmful foreign companies from the U.S. and Canada to Mexico, where they would allegedly benefit from laxer environmental regulations.

⁵ The NAFTA side agreements (NAAEC and NAALC) are not part of the main bargain. They are, instead, trilateral agreements entered into by Canada, Mexico, and the U.S. to address labor and environmental issues and concerns related to the effects of the implementation of NAFTA. As a parallel agreement, BECA is not part of NAFTA itself either.

At first glance, these agreements resemble other international, intergovernmental instruments aimed at protecting the environment. The NAAEC's main objectives are

- fostering the protection and improvement of the domestic environment in the three countries;
- increasing trilateral cooperation for the conservation, protection, and enhancement of North America's environment; and
- enhancing compliance with and enforcement of domestic environmental laws, policies, and regulations throughout the region.

To accomplish these three objectives, the NAAEC recognizes each country's *right* to determine its own level of environmental protection, set its own environmental policies and priorities, and adopt or modify its laws and regulations accordingly. At the same time, however, the NAAEC creates *obligations* for the national governments to ensure that their domestic laws and regulations provide for high levels of environmental protection; enforce such safeguards; and aim at continually improving them. This combination of national governments' rights and obligations constitutes NAAEC's *raison d'être*: ensuring the effective enforcement of *domestic* environmental laws in North America through the implementation of a *regional* agreement that sets *cross-border* rules.

To ensure fulfillment of these obligations, the NAAEC mandated the establishment of the (North American) Commission for Environmental Cooperation (CEC).⁶ This institution oversees the agreement's implementation, facilitates collaboration among the national governments, and fosters public participation for the conservation, protection, and enhancement of the North American environment. This last provision is especially important. First, it enables the North American public, i.e. individuals and NGOs in any of the three countries, to protect and enhance the region's environment even beyond the borders of their own countries. And second, it gives the CEC jurisdiction to address "almost any environmental issue that might arise in the continent" and that the public might bring to its attention through the Submission on Enforcement Matters (SEM) process (Knox and Markell, 2003: 11). The Border Environmental Cooperation Agreement (BECA), meanwhile, aims at strengthening cooperation between the U.S. and Mexico on environmental issues and preventing

⁶ The CEC's institutional structure resembles that of other international bodies. It is made of a Council, a Secretariat, and a Joint Public Advisory Committee (JPAC). The Council is the CEC's governing body and is made up of the environmental ministers of each country. The Secretariat conducts most of the CEC's day-to-day work and assists the Council in fulfilling its responsibilities. It is also responsible for managing and considering, in the first instance, citizen submissions on enforcement matters. Finally, the JPAC fosters public participation in the CEC's work, aims at ensuring transparency in CEC activities, and advises the Council and Secretariat on environmental priorities and issues of concern to the North American public.

damage to the environment in the area along their common border, resulting from the operation of NAFTA. To fulfill these aims, the BECA established two bi-national institutions: the Border Environment Cooperation Commission (BECC) and the North American Development Bank (NADB). They are both charged with evaluating and providing administrative and financial support and resources for developing and improving environmental infrastructure in the area.⁷ To fulfill their mandates, they have quasi-independent budgets whose allocation is not subject to changes by national or sub-national administrations.⁸ Along with the trilateral CEC, the BECC and NADB constitute North America's regional environmental institutions.

THEORISING NORTH AMERICAN INTEGRATION

Do Liberal Intergovernmentalism or Transnationalism explain the Pursuit, Negotiation, and Implementation of NAFTA's Environmental Agreements?

To date, most of the academic and non-academic literature on North America is still focused primarily on the study of NAFTA and its effects on the economies –and, to a lesser extent, societies– of Canada, the U.S., and Mexico. The nature, functioning, and effects of the operation of NAFTA's side and parallel agreements on labor and environment are far less discussed and studied. This is due to the seeming consensus among academic and non-academic analysts of North American integration that the process is limited only to the functioning of trade and investment agreements among the three countries over the past fifty years.⁹ Such an interpretation leads most scholars and commentators to conclude that the process does not involve “non-economic” policy issues. Most of them argue that the Canadian, Mexican, and U.S. national governments –and especially the latter– dominate this integration process, and largely or entirely determine its scope, pace, and direction. In their view, the process is restricted

⁷ The BECC and NADB are complementary. The BECC reviews and certifies the technical, environmental, and social viability, impact, and expected benefits of environmental projects applying for NADB funding. If the project's positive impact and long-term financial sustainability are ensured for the sponsor, investors, and intended beneficiaries, the NADB finances it. Initially, the NADB financed only water supply, wastewater, and solid waste treatment projects.

⁸ Although their budgets cannot be altered unilaterally, the institutions can and have been affected by underfunding. In past years, the U.S. administrations of Presidents Barack Obama and Donald Trump have failed to provide the institutions with their corresponding national contributions to their budgets. In practice, these failures have compromised their capacity and power to fulfil their mandates adequately, even if, in principle, their budgets remain unchanged (Mosbrucker, 2016).

⁹ Starting with the U.S.-Canada Auto Pact in 1965; continuing with the CUSFTA in 1988 and NAFTA in 1994; and peaking with the defunct Security and Prosperity Partnership of North America in 2005.

to the operation of a handful of intergovernmental agreements whose negotiation and implementation enabled governments to achieve their common economic interests, while maintaining their own political sovereignty and policy-making powers. Their accounts, consequently, focus on national governments' interests, positions, and actions to explain the occurrence and progression –or lack thereof– of North American integration. In their view, the existence and operation of regional institutions involving environmental and labor issues do not change the primarily economic and intergovernmental nature of this process, as the institutions were allocated with very limited responsibilities and very constrained capacities to meet them.¹⁰

Most of the current explanations of North American integration, then, strongly resemble the Liberal Intergovernmentalist (LI) accounts provided for the existence and progression of integration in Europe. In LI accounts, national governments play the foremost role in the integration process, and their economic interests are termed “the more intense, certain, and institutionally represented” of all their corresponding national interests (Moravcsik, 1998: 47; 2006; Schimmelfennig, 2015: 727). The pursuit of regional integration by states results, then, from their interest in reaping the economic benefits of cross-border trade and investment through policy coordination. To achieve coordination, states engage in careful intergovernmental bargaining, and then secure agreements by establishing limited cross-border rules and weak regional institutions whose sole purpose is to ease their interactions. Given their constrained nature, such rules or institutions do not challenge the states' ultimate policy-making authority. Instead, they reinforce it by enabling them to pursue their shared primary economic interests. Following LI claims, it could be argued that the U.S., Mexican, and Canadian governments sought, negotiated, and implemented NAFTA's side and parallel environmental agreements in pursuit of their economic interests. To support this argument, it could be noted that, by the start of the 1990s, increasing economic exchanges between these countries in the form of rising intra-regional trade and foreign direct investment had created considerable economic interdependence among them.¹¹ As these exchanges became increasingly important to their domestic economies, incentives emerged for the three national governments to purposely expand them.

However, the negotiation and proposed implementation of a trilateral free trade and investment agreement faced noticeable opposition from civil society organizations.

¹⁰ The dominant assumption in the current literature is that North American integration is an intergovernmental process centred on trade and investment issues. I discuss and review the impact of this assumption on the study of this process in Fariás Pelcastre (2017).

¹¹ The U.S. accounted for almost three quarters of Canadian and Mexican trade with the world, while trade with Canada and Mexico accounted for one quarter of overall U.S. trade (author's calculations based on data from North American Transportation Statistics [2012], Statistics Canada [2013], and U.S. Census Bureau [2013]).

This could jeopardize the passing of NAFTA in the national legislatures. The national governments therefore addressed this risk by proposing, negotiating, and implementing environmental agreements, enabling them to pursue and secure the passing of NAFTA in their respective legislatures. In these accounts, the creation of the CEC, BECC, and NADB would have merely served to lock in and enhance the credibility of the mutual commitments among national governments. Their proponents argue that to ensure that these institutions not gain any relevance in domestic policy-making, the governments charged them with limited responsibilities and allocated them minimal resources and powers to carry out their duties. Should this account be accurate, it would support the LI view of institutions as passive actors that are created and exist only to enhance the credibility of intergovernmental commitments (Moravcsik, 2006: 292). It would also explain adequately the preferences of the Canadian, Mexican, and U.S. governments for promoting limited intergovernmental cooperation on the protection of the North American environment, rather than creating region-wide environmental laws and standards backed by concrete means of enforcement. Following the LI premises, the environmental agreements would have been mere instruments for securing NAFTA.

There are, nonetheless, “transnational” accounts of the creation and implementation of these agreements. These argue that civil society organizations’ very visible opposition to the negotiation and implementation of NAFTA did influence the decisions of the North American governments to propose and negotiate the NAAEC and BECA. The claim that the implementation of these agreements resulted partly –or entirely– from pressures exerted on national governments by the civil societies, non-governmental organizations, and some state, provincial, and local authorities in the three countries is not uncommon in the current academic literature (Bugeda, 1998; Mumme, 1999; Knox and Markell, eds., 2003; Varady, 2009). Disagreement exists, however, over the extent that they did. Some scholars argue that the opposition to NAFTA significantly altered the bargain and its result. For instance, Varady argues that the Mexican, Canadian, and U.S. governments *agreed* to implement agreements and create regional institutions on the environment to “placate this influential sector of civil society” (that is, environmental groups, especially in the U.S.), who demanded the states create rules and institutions to protect “the continent’s environment and especially the fragile ... U.S.-Mexico border region” (2009: 1). Meanwhile, Knox and Markell go further and argue that civil society groups *pressured* the national governments into negotiating these agreements –hence, making of NAFTA a “significantly different [agreement than that which these governments] had originally envisaged” (2003: 2). Finally, Mumme argues that “NAFTA’s critics,” that is, civil society organizations, “*forced* [the governments into establishing these] institutions and programs”

to ensure the protection of the North American environment from trade-induced degradation (1999). Transnational-focused accounts of North American integration, then, emphasize the role of transnational actors, namely, interest groups, in shaping the outcome of the NAFTA bargain, much in the way that transnationalist accounts of European integration do in its own regional context.

In the European context, scholars argue that transnational actors influenced the integration process “not at the expense of, but in addition to, the role of national governments” (Gehler and Kaiser, 2001: 775). According to these accounts, the extent, pace, and direction of European integration are both determined by “a multilateral bargaining process driven by clear-cut national (economic) interests” and the interactions between actors operating below the governmental level and across national borders (Gehler and Kaiser, 2001: 798). It follows that transnational actors contribute to developing and furthering European integration by engaging “knowingly and intentionally” in cross-border transactions (that is, exchanges of goods, services, and ideas) (Hurrelmann, 2009: 10). These activities contribute to establishing and maintaining linkages between countries, and, when aggregated, are said to exert significant and direct influence in domestic decision-making processes, in turn shaping regional policy outcomes.

In the North American context, however, “purely” liberal intergovernmental or transnationalist accounts are problematic. On the one hand, the accounts focused on governmental actors overstate the economic interests of the North American nation-states, and especially those of the U.S., in pursuing and securing NAFTA, at the expense of their non-economic interests. They assume that national governments were –almost– entirely focused on securing the economic benefits that increased cross-border trade and investment that NAFTA would promote, but did not consider, or simply disregarded, the social and environmental impact and externalities of increased exchanges on their populations and territories. Should national governments have truly ignored (or overlooked) these concerns, it is unlikely that individuals or civil society organizations would have managed to push for the creation of environmental agreements and instruments, or subsequently, for making changes to such instruments. On the other hand, should civil society organizations and individuals in the three countries have decisively influenced governments and shaped the resulting agreements, it is unlikely that the agreements or the institutions they established would have lacked enforcement powers.¹² Finally, the emphasis on the

¹² In fact, some transnational actors were so patently dissatisfied with the proposed environmental side and parallel agreements and institutions that they continued expressing their opposition to the NAFTA bargain even after its signing and implementation (Johnson and Beaulieu, 1996: 34).

concerns of civil society organizations as grounds for the establishment of environmental agreements does not adequately explain the different positions of the three national governments regarding such agreements. For instance, these accounts cannot adequately explain why Canada participated in NAAEC, but not in BECA, as originally proposed; or why the U.S. initially proposed creating a stronger regional environmental institution that could potentially bring into question its sovereign policy-making decisions, policies, and practices on this issue/area. I argue that these interests and differences in positions can only be explained by looking *simultaneously* at the economic and non-economic interests that the three governments had in pursuing, negotiating, and implementing –or not– NAAEC and BECA.

To address these issues, I put forward an alternative to purely intergovernmentalist- and transnationalist-like accounts, for the proposal, negotiation, and implementation of the North American environmental agreements. I claim that, if this account is accurate, it would better explain the pace, extent, and direction of North American integration.

An Alternative Explanation of North American Integration

In opposition to current accounts, I submit that these agreements resulted from the pursuit of the corresponding *economic and non-economic* interests of the Canadian, Mexican, and U.S. governments, which, at the outset of this process, were only marginally influenced by the concerns of civil society organizations on the environmental impact of NAFTA. In this alternative explanation, the governments had two sets of interests in pursuing and achieving the environmental agreements:

- a primary, common economic interest in securing the passage of NAFTA in the three national legislatures to create and implement cross-border rules on trade and foreign investment in North America; and,
- a secondary, asymmetrical socio-environmental interest in protecting their own populations from (further) environmental degradation.

In the face of civil society organizations' opposition to NAFTA, the Canadian, U.S., and Mexican national governments resolved to negotiate and implement environmental agreements, which secured the passing of the trade and investment agreement, *while* addressing several environmental externalities resulting from the current and expected economic exchanges among them. Given that such externalities could not be solved effectively through domestic decision- and policy-making, these countries

required entering into intergovernmental agreements. In these, the three governments consistently pursued and mostly achieved their common economic interests. Their distinct socio-environmental interests, however, resulted in the signing and implementation of two separate agreements that established three institutions with dissimilar jurisdictions, responsibilities, and powers to accomplish them. The current institutional framework for protecting and enhancing the North American environment is a direct result of these interests.

At its outset, North American integration was a manifestly intergovernmental, but not exclusively economic, process. Over the past 23 years, however, its nature has changed as the cross-border rules and regional institutions have become increasingly complex and influential, a circumstance that the national governments did not originally intend or anticipate. The creation of cross-border rules enabled transnational actors to *demand* national and sub-national governments address environmental issues and externalities resulting from increased cross-border economic exchanges among their countries by creating regional institutions. These institutions have proactively and purposely sought ways and means to foster the participation of transnational actors in protecting the region's environment. This *demand-and-response* dynamic has resulted in changes to the domestic policies, practices, and decisions of national and sub-national governments that would not have otherwise occurred. In fact, at times, these changes have been manifestly opposed by governmental actors.

To reassess and reinterpret the emergence and development of cross-border rules for the protection of the North American environment and the roles of governmental, regional, and transnational actors in prompting –or hindering– these institutional developments in a better manner than current accounts do, I assume that all these actors make rational choices. That is, their positions and decisions on a given policy issue and their behavior within a given institutional context are determined through the evaluation of a range of possible outcomes and alternatives available to pursue them. Through this evaluation, the actors determine and rank their preferred outcomes and, in turn, choose the best course of action to achieve them. Just like governmental actors, transnational actors (that is, individuals and civil society organizations) and regional institutions have goals and preferred outcomes and means to achieve them. Moreover, actors taking part in an integration process also aim at bolstering their position *vis-à-vis* other actors. For instance, as the institutions *respond* to demands from transnational actors, that is, using, applying, interpreting, and even modifying the existing rules, their actions result in institutional changes that progressively expand and advance their scope and significance.

REINTERPRETING THE NATIONAL INTERESTS AND POSITIONS IN NAFTA'S ENVIRONMENTAL AGREEMENTS

Current interpretations of the North American integration emphasize to different extents the roles of various actors in the process. Depending on the account under review, it is argued that either national governments or transnational actors played a decisive role in shaping its institutional outcomes. Both intergovernmentalist and transnational accounts acknowledge that from the moment it was proposed, NAFTA faced strong opposition from environmental groups—especially, but not exclusively, in the U.S. The disagreement between these accounts lies in the extent to which such opposition shaped the outcome of the NAFTA bargain. A reinterpretation and reassessment of the proposal, negotiation, and securing of the agreement confirm its decidedly intergovernmental, but not solely economic, nature as it is commonly argued.

First, civil society organizations did not constitute a cohesive group with well-defined demands or comparable access or influence in their own domestic political systems. For instance, even before the terms of the agreement were determined, many organizations in the U.S. had already expressed their resolute opposition to NAFTA. They claimed that free and increased trade between the U.S. and its neighbors—particularly Mexico—would impact negatively on the environment in their communities. In the U.S., these groups opposed the agreement but did not engage with policymakers to advance and look for representation of their positions on the national agenda. Some other groups, meanwhile, sought and secured support from legislators in Congress to prevent the agreement's approval and implementation. In general, U.S. legislators conveyed and expressed this dissatisfaction at the lack of environmental safeguards in NAFTA. Many of them, however, partially favored the agreement's negotiation and implementation. Therefore, they only conditioned their support to the inclusion of provisions and mechanisms that protected their communities—especially those located along the U.S.-Mexico border—from (further) environmental degradation. To ensure the inclusion of such safeguards, the U.S. Congress passed the NAFTA Implementation Act of 1993, which outlined the conditions sent to the executive for approving the agreement's negotiation and entry into force (U.S. GPO, 1993). Nonetheless, the Clinton administration estimated that only some groups opposing NAFTA had enough political clout to disrupt the congressional vote and prevent the agreement from being passed. Therefore, the executive focused only on meeting the demands of those key groups and concluded that by making some changes, NAFTA would gather enough support to pass Congress. To fulfill these demands, the executive pursued and secured the negotiation and implementation of both NAAEC and BECA. The former would contribute to preventing trade-induced damage to the North American environment and

the weakening of U.S. environmental laws and standards. The latter would address the specific demands of communities along the U.S.-Mexico border for restoring and improving the environmental conditions in their areas (McFadyen, 1998).

Besides securing the approval of NAFTA, however, the U.S. government had a secondary socio-environmental interest in pursuing NAAEC and BECA to address problems affecting U.S. communities, most urgently, those located in the area along the border with Mexico.¹³ Various U.S. national and sub-national governments and their administrations had previously attempted to address environmental issues affecting this area. However, the continuous growth in population, trade, and industry there; the vast economic differential between the two countries; and the lack of investment in environmental infrastructure on both sides of the border had prevented them from achieving long-term, effective solutions. The government (particularly, the Clinton administration), then, had a strong interest in pursuing and achieving NAAEC and BECA to protect its population from (further) environmental degradation resulting from increased economic exchanges (Carmona Lara, 1993: 299-302).¹⁴

The U.S. government was not the only one with a two-fold set of national interests in pursuing the North American environmental agreements. It is widely assumed that Mexico's position as the economically weakest partner significantly (or entirely) determined its interest in pursuing NAFTA's environmental agreements. According to some scholars, Mexico regarded the negotiation and implementation of NAAEC and BECA as only prerequisites to attaining the main trade and investment agreement and, in turn, gaining and securing improved access to the U.S. market (Vega Cánovas, 2003; Clarkson, 2008: 120). According to their accounts, the administration of Mexican President Carlos Salinas de Gortari was very concerned about potential hold-ups to the negotiation and ratification of the agreement. To ensure the attainment of NAFTA, Mexico was willing to agree to any demands from their trading partners, namely, the U.S. Hence, it pursued the environmental agreements. These accounts are simplistic and inadequate. Instead, I argue that Mexico had a set of primary economic and secondary environmental interests, comparable to that of the U.S.

¹³ During the 1960s, some areas along the U.S.-Canada border faced problems like those experienced on the U.S.-Mexico border in the 1990s, including severe damage to shared bodies of water, extreme air pollution, and rain acidification.

¹⁴ For instance, then-Governor Clinton criticised President George Bush, Sr.'s approach to the NAFTA negotiations claiming that the "agreement appears to be lacking substantive provisions on ... environmental clean-up in Mexico" and protection of the environment in the U.S.-Mexico border area (*The New York Times*, 1992). As president, Clinton then instructed his administration to include these objectives in the NAFTA negotiations. The U.S. Department of State instructed its negotiators to achieve two objectives: first, ensuring that the growth in trade generated by NAFTA "is accompanied by increased cooperation between ... governments on environmental issues; [and, second,] protecting the U.S. and its citizens from environmental degradation" (1998: 98).

I claim that Mexico's interests went well beyond securing the agreement. First, the country had an *economic* interest in carefully shaping the *environmental* agreements and their institutions to prevent their use as tools for "disguised protectionism" by the U.S. and Canada (Cameron and Tomlin, 2000: 185). The Mexican government opposed the creation of a strong regional institution to enforce region-wide environmental regulations, as it considered that such an institution could potentially reduce the free flows of trade and foreign direct investment to the country. Furthermore, the U.S. and Canada could use such an institution as an instrument to protect their markets from Mexican competition by setting non-tariff barriers (Carmona Lara, 1993). Mexico then rejected the Clinton administration proposal to establish a regional institution with power to enforce the countries' own *domestic* environmental laws, as it deemed it inadmissible (Cameron and Tomlin, 2000: 184). It was willing, however, to help the U.S. improve the prospects of passing the NAFTA Implementation Act in the U.S. Congress, while ensuring that neither the U.S. nor Canada would gain a competitive advantage over Mexico. To meet both objectives, it proposed establishing regional environmental agreements and institutions with weaker mandates and enforcement powers than those originally proposed by the U.S., but strong enough to help the U.S. executive to meet the requirements of the NAFTA Implementation Act.

The Mexican government had a secondary interest in securing funding for building and improving its environmental infrastructure and enhancing the well-being of its population, especially in communities along its 3 145 km-long border with the U.S. By the beginning of the 1990s, industrial and population growth, the sustained rise in trade and manufacturing, deficient sanitation infrastructure, and a lack of investment in public services had severely degraded the environment in the U.S.-Mexico border area. On the Mexican side, the limited or complete absence of municipal or state funding to address these problems, along with the reluctance of the federal government to allocate funds to the area, further complicated this situation.¹⁵ When NAFTA negotiations began and the need for committing to an environmental agreement became increasingly evident, Mexico seized the opportunity to secure financial support to address its infrastructure deficiencies (BECC, 2009). When the U.S. proposed establishing a regional institution charged with overseeing and enforcing environmental laws across North America, the Mexican government proposed setting up a North American development fund that would help address infrastructure deficiencies (including, but not limited to, environmental ones) in Mexico, through

¹⁵ The federal government was reluctant to invest public funds in an area that was purportedly becoming one of the wealthiest in the country and that was then allegedly able to fund the development and enhancement of its own infrastructure.

U.S.- and Canada-funded grants. The U.S. and Canada recognized the need to help Mexico in developing its infrastructure. While the U.S. found the proposal politically contentious, Canada dismissed it entirely and refused to participate (Zamora, 2008: 121). In response, Mexico scaled down its proposal. The fund would only provide financial support for improving environmental infrastructure along the U.S.-Mexico border. The U.S. accepted this revised proposal, but Canada still expressed no interest in participating. Mexico and the U.S. agreed then to pursue and implement the Border Environmental Cooperation Agreement (BECA) as a bilateral agreement to be signed and implemented parallel to NAFTA. In other words, the agreement would be negotiated alongside NAFTA, but signed and entered separately by the two countries only.

It can be argued that Canada's interest in negotiating NAAEC but staying out of BECA resulted from its own pursuit of economic and socio-environmental interests, comparable to those of the U.S. and Mexico. Canada's federal government had two primary economic interests in pursuing and achieving these agreements. First and foremost, attaining NAFTA was a way of securing the trade advantages it had made through CUSFTA. It is worth recalling that Canada originally joined the then-bilateral negotiation of the U.S.-Mexico free trade agreement to protect its own FTA with the U.S. Faced with the prospect of a bilateral trade agreement between these two countries, Canada sought and secured access to the deal. Comparatively, then, for Canada, negotiating and entering into environmental agreements was only "a minor" –if controversial– condition for realizing NAFTA (Cameron and Tomlin, 2000: 206). Second, Canada aimed at preventing U.S. protectionism through trade sanctions for non-trade issues, including environmental ones (Cameron and Tomlin, 2000: 188-200; Clarkson, 2009: 15). In this regard, the Canadian government supported the creation of a regional environmental institution, but found the idea of establishing an independent commission with sanctioning powers "particularly difficult to accept" (Knox and Markell, 2003: 8). Canada deemed such an institution a possible risk to the trade gains already made under CUSFTA and those expected from NAFTA, as the U.S. could use it to hinder trade.¹⁶ Up until the end of the negotiations, then, Canada opposed creating a regional institution with enforcement powers.

Notwithstanding this strong opposition to granting enforcement powers to the proposed (North American) Commission for Environmental Cooperation (CEC), Canada also had a secondary socio-environmental interest in negotiating and entering

¹⁶ During the NAFTA negotiations, a Canadian representative argued that implementing trade sanctions for violations of environmental laws and regulations was "overkill, dangerous for the U.S. and Mexico and totally unacceptable for Canada" (Clarkson, 2009: 15). Prime Minister Kim Campbell made a similar remark when she intervened directly in the NAFTA negotiations and declared that Canada "did not support the use of trade sanctions for non-trade issues" (Cameron and Tomlin, 2000: 198).

the NAAEC. Namely, it aimed at preventing degradation of its environment resulting from downward competition for jobs and investments both with the U.S. and Mexico and among its own provinces. Canada also aimed at preventing “the anticipated widespread negative outcomes (i.e., race to the bottom, pollution havens) [that might] emerge as an outcome of the economic integration of North America” (Environment Canada, 2007: 23). At the domestic level, the Canadian federal government sought to prevent its provincial and local governments from competing with those of the U.S. and Mexico by lowering environmental laws, standards, or slackening their enforcement. For Canada, the simultaneous negotiation of NAFTA and NAAEC was therefore advantageous as it brought together its interests in protecting its domestic environment while securing the gains achieved through CUSFTA (Environment Canada, 2007: 19). On this same basis, Canada also declined to participate in the creation of an environmental fund for Mexico, or the U.S.-Mexico border area. Although the Clinton administration proposed that Canada contribute to the fund, the country saw little connection between the clean-up and improvement of the environment in the U.S.-Mexico border area and the facilitation of trade or expansion of economic opportunities throughout North America. Arguing that the proposed fund reflected bi-national concerns over the degradation of the environment along the U.S.-Mexico border, Canada expressed no interest in participating in it (Gantz, 1996: 1028). The agreement was hence negotiated between the U.S. and Mexico only, and the resulting institutions, the NADB and BECC, were created parallel to NAFTA.

This description of the negotiations shows that all three countries pursued two sets of interests: a primarily economic interest in attaining NAFTA to reap the benefits of freer and increased trade and investment in North America and secondary, differentiated socio-environmental interests. The combination of these interests resulted in diverging positions and strategies that shaped the NAAEC and BECC accords and their institutional outcomes.¹⁷ For instance, the U.S. pursued and entered trilateral and bilateral environmental side and parallel agreements to NAFTA to address the environmental problems of communities located along its border area with Mexico. Similarly, Mexico entered the agreements to secure trade advantages *and* funding for creating or improving environmental infrastructure in its border area with the U.S. Moreover, Mexico had an interest in shaping NAAEC to ensure that the U.S. would not use this agreement’s rules for protectionist purposes. Finally, the connection –and lack thereof– between the economic and environmental interests and goals of the North American governments in the NAAEC negotiations is even more evident in

¹⁷ McKinney (2000), Knox and Markell, eds. (2003), and Knox (2004) describe the NAAEC negotiations in more detail and analyze how they shaped the authority and functions of the CEC.

Canada's case. For Canada, its participation in NAAEC contributed to consolidating the federal government's economic and environmental agenda. It protected the gains made in CUSFTA while ensuring that the provincial governments would not engage in downward competition for jobs and investments with the U.S. and Mexico. Given that Canada also had a secondary interest in protecting its territory and population from possible environmental degradation, it had incentives to participate in the trilateral North American Agreement on Environmental Cooperation (NAAEC). Nonetheless, given that it shared no border with Mexico and the dissimilarity in the socio-economic conditions of the U.S.-Canada and U.S.-Mexico border areas, the Canadian government had no incentive to participate in the bilateral BECA, which had been originally proposed as a trilateral accord for promoting development and improvement of (environmental) infrastructure throughout Mexico.

On this basis, I argue that in the negotiations of the North American environmental agreements, the national governments achieved their separate economic and environmental interests. During the negotiations phase, the nation-states—specifically their heads of government—were primarily in control of the integration process. Given that the outcome of these negotiations was the signing of intergovernmental agreements, some scholars argue that the nature of the process itself is intergovernmental. Their accounts partially support, then, the LI arguments, which claim that nation-states can efficiently pursue and secure their interests in negotiations. According to the LI approach, states define their national interests through domestic contention between interest groups within the nation-state over a given set of preferences. Once determined, such preferences become national interests and, in turn, intergovernmental bargaining objectives. However, a “purely” liberal intergovernmentalist account, based only on the examination of states' economic national interests, would fail to adequately account for the proposal, negotiation, and outcomes of the trilateral NAAEC and the bilateral BECA.

The three governments regarded NAAEC as a requirement for securing NAFTA to purposely expand their economic exchanges and address the environmental externalities of such increased interactions. This was not the case of BECA. Had transnational actors been the key force shaping the development and outcome of the negotiations, as transnationalist-like theorists of North American integration claim, the NAAEC would have been significantly stronger, characterized by strict and enforceable regional rules on environmental protection and backed by trade sanctions in cases of non-compliance. Similarly, had transnational actors had as much influence over the negotiations and their outcome as is commonly argued, it is likely that a trilateral fund to improve and enhance the region's environment, especially Mexico's, would have been created. The LI approach only partly explains, then, the interests of the U.S., Canadian, and Mexican governments in negotiating and entering into these agreements. A *revised*

liberal intergovernmentalist account that considers nation-states' non-economic national interests would explain better than transnationalist-like accounts do the pursuit and negotiation of NAFTA's environmental side and parallel agreements, as well as the institutional structure that resulted from them.

CONCLUSION: ONCE INTERGOVERNMENTAL, ALWAYS INTERGOVERNMENTAL?

Although it could be argued that LI-like accounts of North American integration might adequately explain the origins of this process, they do not satisfactorily explain its overall development to date. The everyday use of the cross-border rules and the actions of transnational actors (including individuals, communities, activists, and non-governmental organizations) and regional institutions have changed the original intergovernmental nature of the process, even if in a limited manner and only in the environmental policy arena.

The implementation of NAAEC and BECA and the creation of CEC, BECC, and NADB are innovations in the environmental policy area in North America. Cross-border rules on environmental protection did not exist in North America before the implementation of NAFTA's side and parallel agreements (NAAEC and BECA) in 1994. Although bilateral collaboration and cooperation on environmental issues between Canada, the U.S., and Mexico go back to the early twentieth century, the governments did not engage each other trilaterally until the implementation of these agreements. Before them, there were bilateral and bi-national but not *regional* agreements or institutions on these issues. Their implementation and operation over the past 23 years filled a gap in the institutional framework for the conservation, protection, and enhancement of the region's environment by addressing some of the socio-economic and environment-related concerns of individuals, non-governmental organizations, and border communities on the implementation of NAFTA. During and after the negotiations of this trade agreement, various individuals, non-governmental organizations, and other civil society groups in the three countries argued that its implementation would result in a rapid degradation of the North American environment, especially in the U.S.-Mexico border area.

Purely liberal intergovernmentalist or transnational accounts of North American integration cannot adequately explain why and how transnational actors have used the cross-border rules, which were created by, agreed among, and purportedly suited to the interests of national governments. To date, these rules have been used to pursue changes to environmental practices, policies, and legislations throughout the three North American countries with moderate to significant success. Moreover, they cannot adequately explain the entrepreneurial nature that the regional institutions

have displayed when addressing demands raised by North American citizens through the institutional mechanisms for public participation created by NAFTA's side and parallel environmental agreements.

It should also be underscored that the CEC, BECC, and NADB are not supranational institutions. Consequently, none of them possesses ample powers, autonomy, or human or material resources to push for the use, development, and improvement of cross-border rules. They have, however, been venturesome in expanding their competencies by broadly interpreting their mandates. At times, this proactive behavior has enabled them to modify the provisions of the intergovernmental agreements in ways that the national governments had not intended. The demands of transnational actors and the responses of regional institutions to them contributed to increasing the relevance of cross-border rules to policy-making and policy implementation in the region. Transnational actors could not have achieved these outcomes without the active engagement of the regional institutions on the policy issues that they raised. Despite their constrained resources and power, over more than 24 years of operation, the three institutions have worked to expand their jurisdictions and mandates. During this time, they have transformed themselves into the most important institutions for environmental protection in North America at the regional level, even surpassing in importance long-standing bilateral and bi-national institutions that have historically dealt with environmental issues.¹⁸ Contrary to the rigid, reactive bi-national institutions that predated them, the new regional institutions have contributed to reviewing, reaffirming, and advancing the rules in ways that both addressed the demands of transnational actors and expanded their jurisdictions and mandates and strengthened their own capacities. I argue that these policy developments have significantly increased the degree of environmental policy interdependence among the three countries.

These policy developments, often disregarded in the current literature on North American integration, indicate that the process is more complex and extensive than is generally acknowledged. The substantive change from the non-existence of cross-border rules to their creation by national governments is an important development in the integration process. The increasingly important role of transnational actors and, most importantly, regional institutions indicates that even a revised liberal intergovernmentalist might have difficulties explaining the current state of North American integration, especially in the environmental policy area. An approach that takes into account the *combined* actions of transnational actors and regional institutions is likely to explain better the most recent institutional and policy developments in this arena.

¹⁸ Namely, the International Boundary and Water Commission (IBWC), established in 1889 between the U.S. and Mexico, and the International Joint Commission (IJC), established in 1909 between the U.S. and Canada.

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