
THE POLYSEMY OF THE TERM “PROTECTED AREA” AND THE CORRESPONDING CBD AND IUCN CONCEPTS

André O. Leite¹

Vilniaus Universitetas (VU) |

ABSTRACT

This study draws on a demonstration of the polysemy of the term ‘protected area’ in Brazilian case law and literature on the protection of the natural environment, in order to discuss the problems stemming from this phenomenon and the possibilities for overcoming them. Based on a literature review, it introduces the Convention on Biological Diversity (CBD) and International Union for Conservation of Nature (IUCN) concepts of protected area and seeks to distinguish one from another regarding their contents and potential uses. It demonstrates that the contents attributed to those concepts have changed over time and that recently both came to comprise the conservation units of Law No. 9,985, of 18 July 2000. Nevertheless, it shows those concepts are characterized by different natures and purposes: while the CBD concept of protected area is of interest to legal and policy research related to that treaty, the IUCN concept of protected area is a scientific instrument and a *tertium comparationis* of national legal regimes of protected areas. As such, it provides a framework for research based on the functional method of comparative law.

Keywords: Brazilian Conservation Units; Comparative law; Convention on Biological Diversity; IUCN; Protected areas.

¹ PhD in Law from the Conservatoire National des Arts et Métiers (CNAM). PhD in Law from the Universidade Federal de Santa Catarina (UFSC). Member of the World Commission on Protected Areas of the International Union for the Conservation of Nature (IUCN). Member of the Société Française pour le Droit de L'Environnement (SFDE). Associate Researcher at VU Law Faculty. ORCID: <https://orcid.org/0000-0002-9250-4753> / email: andre_oleite@hotmail.com

*A POLISSEMIA DO TERMO “ÁREA PROTEGIDA” E OS
CONCEITOS DA CDB E DA UICN*

RESUMO

Partindo de uma demonstração da polissemia que caracteriza o uso do termo “área protegida” na jurisprudência e na literatura científica brasileiras sobre a proteção do ambiente natural, este trabalho discute brevemente os problemas relacionados a esse fenômeno, no âmbito do direito e do campo multidisciplinar das políticas públicas de conservação, e busca oferecer elementos para sua superação. Com essa finalidade, ele apoia-se em uma revisão bibliográfica para discutir os conceitos de área protegida da Convenção sobre Diversidade Biológica (CDB) e da União Internacional para a Conservação da Natureza (UICN), buscando distingui-los quanto a seus conteúdos e potenciais usos. Demonstra-se que os conteúdos atribuídos a esses conceitos conheceram modificações sucessivas e que, embora atualmente ambos compreendam as unidades de conservação da Lei n. 9.985, de 18 de julho de 2000, eles apresentam interesses distintos. Enquanto o conceito de área protegida da CDB concerne a atividade jurisdicional e análises sobre o direito e as políticas públicas brasileiras relacionadas à CDB, o conceito de área protegida da UICN é um instrumento científico e, como tertium comparationis dos regimes jurídicos de áreas protegidas dos direitos nacionais, permite operacionalizar pesquisas que buscam conhece-los por meio do método funcional do direito comparado.

Palavras-chave: *áreas protegidas; Convenção sobre Diversidade Biológica; Direito comparado; UICN; unidades de conservação.*

INTRODUCTION

In recent decades it has become trivial to recognize the role of protected areas in providing environmental services such as clean water and air (DUDLEY; HAMILTON, 2010, p. 39–52); climate regulation, and consequently in the mitigation of global climate change (KEENLEYSIDE et al., 2014, p. 67–78; SOARES-FILHO et al., 2010, p. 10821–10826); nature conservation and, more recently, the conservation of biological diversity (PRATES; IRVING, 2015, p. 27–57; SADELEER, 2009, p. 195–197); and, more generally, the realization of the fundamental right to a quality environment, a right currently recognized by the vast majority of national constitutions (BOYD, 2012, p. 3). Unsurprisingly, in the second decade of the 21st century, the legal provisions of protected areas are present in practically all national constitutions (GILLESPIE, 2007, p. 27), and protect 14.9% of the world’s land surface (an area superior to that of the subcontinent of North America) and 7.3% of the oceans (UNEP-WCMC; IUCN; NGS, 2018, p. 6)².

The remarkable spatial progression of protected areas throughout its history sometimes obscures the fact that it is a recent phenomenon (RODARY; MILIAN, 2008, p. 41), and that, to a large extent, it occurred through the circulation of legal concepts and models, especially through the reception of foreign legal content and international law. And, either by adapting foreign models to local particularities or by gradually integrating new objectives into traditional methods of nature conservation, the few legal models of protected areas existing at the beginning of the 20th century gave rise to an impressive diversity of nomenclatures and legal regimes³.

Historically, this diversification has been accompanied by a difficulty in establishing a terminology capable of accounting for the variety of devices present in national law (PHILLIPS, 2004, p. 5-9) and by an increasing, but not always accurate, use of the term “protected area” to designate them. Brazilian jurisprudence and Brazilian literature related to environmental law and public policies do not escape this phenomenon and allow us to verify a plurality of semantic contents attributed to this same signifier,

² These numbers are from the World Database of Protected Areas. Its data comes mostly from governments and corresponds to the concept of protected area of the Convention on Biological Diversity or to the concept of protected area of the IUCN (UNEP-WCMC; IUCN; NGS, 2018, p. 3, 41).

³ This diversity is illustrated by Gillespie (2007, p. 27), who found, within the scope of national law and international law, around eight hundred nomenclatures of instruments for the protection of natural areas.

showing that the protected area is the object of a polysemy phenomenon⁴.

The epistemological implications of this type of phenomenon in the scope of research in law have been the subject of studies in the field of legal terminology, which reiterate the role of doctrine in the precision of legal concepts in the strict sense, and of those that allow knowing, from an external perspective, the legal phenomenon and aspects such as its structure, functioning, and evolution (DÉAL, 2004, p. 237). And, in the broader perspective of social and human sciences, this same issue has been studied in the fields of the philosophy of science and the epistemology of knowledge. This matter is the subject of methodological prescriptions that highlight the relationship between the precision of the concepts used as units of analysis and the validity of the scientific knowledge produced.

The finding of polysemy in the uses of the term “protected area” (1), invites us to specify the concepts of protected area that interest the community that researches law and public policies for nature conservation, distinguishing them by their content and its potential uses. This work is part of a broader debate about the nomenclatures and comparability of legal regimes for protected areas and contributes to this theme by addressing the uses and contents of two concepts of protected areas, which can allow us to overcome the polysemy that characterizes them: the concept of protected area of the Convention on Biological Diversity (CBD), which is part of objective law and, therefore, matters to jurisdictional activity and the science of law (2), and the concept of protected area of the International Union for Conservation of Nature (IUCN), which has a scientific character and allows to establish functional equivalence relationships between legal devices of different orders, and, consequently, to know them from the comparative law (3).

1 THE POLYSEMY OF THE TERM “PROTECTED AREA”

There are indications that the use of the term “protected area” to designate a specific class of legal regimes for the protection of natural areas, especially in English, dates back to the end of the 19th century, and it was established in the scientific vocabulary as these legal regimes spread

⁴ The definition of the scope of this study implied the intentional separation of other terms and concepts that, potentially, may overlap with the notion of protected area, and be the subject of divergence regarding its content, as is the case of the concept of *specially protected territorial spaces*, of art. 225 of the Brazilian Federal Constitution. See Ganem and Araújo (2006), Braga and Della Nina (2015) and Pereira and Scardua (2008).

throughout the world⁵. This use entered Brazilian legislation even before the CBD, although only in a localized way, and, by that time, it was already consolidated in the jargon of the country's scientific community⁶. With the promulgation of the CBD and the institution of the National Strategic Plan for Protected Areas (PNAP), by Decree No. 5,758, of April 13, 2006, the term became disseminated in many law sources and specialized literature.

However, in line with its use prior to the promulgation of the CBD, along with a phenomenon also noticed in other countries and languages (PHILLIPS, 2004, p. 5-9), the meanings attributed to that term remain varied and referring to a diversity of legal regimes for *in situ* conservation of nature. In other words, a careful analysis of the use of the term “protected area,” in court decisions and the literature related to the protection of the natural environment, shows that it is the object of a polysemy phenomenon.

This is partly because different concepts of protected areas coexist, namely those of the CBD and IUCN, and because their contents have varied over time. But, in addition to them, it is also possible to notice the use of a less scientific notion of *protected area*, closer to its meaning in common language. This, of course, is not equivalent to state that its use is arbitrary, because even the common semantic content of the set formed by the words *area* and *protected* reflects the essential characteristic of any legal device for *in situ* conservation of nature: the *territorialization* of the environmental legal norm for conservation⁷.

It is possible to argue that this characteristic constitutes the fundamental element of a *lato sensu* notion of a protected area, which is often found in decisions of Brazilian courts, where it has been used to designate⁸ legal instruments such as legal reserves (SÃO PAULO, 2015, 2016), the

5 Performing a search for the term “*protected area*” in Google Ngram Viewer, a search engine that maps the frequencies with which words, terms and expressions appear in sources printed in specific languages, shows a usage curve, in English, which shows evident similarity with the survey of the geographical progression of the legal regimes for the protection of natural spaces presented by Rodary and Milian (2008, p. 41).

6 There are numerous examples of the precursor use of the term “protected area” as a synonym for an area for research and conservation. As an illustration of its use in the scientific field, see Magnanini (1971, p. 17), Bruck et al. (1983, p. 26), Ferreira and Valera (1987, p. 5, 11) and Gusmão Câmara (1991, p. 76). As an example of its use in Brazilian legislation, see Decree No. 11,122, 1988, from the Federal District.

7 On the territorialization of the environmental legal norm, that is, the application of protective legal regimes to specific spaces and the consequent production of territories, see Jégouzo (2006, p. 121–126).

8 There are exceptions, such as a decision that uses the term “protected area” as a synonym for specially protected territorial space by art. 225 of the Constitution (SÃO PAULO, 2018).

permanent preservation areas (BRASIL, 2018, 2019b) of the Forest Code; the conservation units of Law No. 9,985, of July 18, 2000 (BRASIL, 2009, 2014); areas listed as natural heritages based on art. 216 of the Constitution (PARÁ, 2013); and, also, specific categories provided for in municipal master plans (SÃO PAULO, 2010; RIO DE JANEIRO, 2019) and state legislation (SÃO PAULO, 2019).

This *lato sensu* notion also frequently appears in the literature on law and public policies for nature conservation, invariably including conservation units. However, unlike its use in court decisions, a considerable part of its use designates heterogeneous sets of devices that include indigenous lands; legal reserves; permanent preservation areas; some of the categories coming from international law, that do not have a normative scope and, therefore, by themselves cannot protect the areas on which they fall; and the already mentioned conservation units⁹.

The problem resulting from polysemic concepts has been addressed in several works in the field of legal terminology, which show that, although this phenomenon can be considered “one of the essential marks of the language of the law” (CORNU, 1990, p. X-XI), the transparency of this language plays a fundamental role in legal certainty and the validity of legal knowledge. On the one hand, the law is characterized by rationality particularly dependent on the separation, categorization, and systematization of objects in order to assign meaning to them, and, thus, the jurisdictional activity involves demonstrations and statements that are articulated through logical categories and expressed through language (GINSBURG; STEPHANOPOULOS, 2017; BAJČIĆ, 2017, p. 16-25). The practicality of the law, therefore, “depends especially on the practicality of its language” (BARRAUD, 2016, p. 6, our translation). On the other hand, this issue matters to the validity of knowledge, since statements that include polysemic terms are less scientific than those that are unequivocal. As the law is a “verbal science that studies verbal sets through other verbal sets” (BARRAUD, 2016, p. 3, our translation), the validity of legal knowledge depends heavily on the accuracy of the terms used (BARRAUD, 2016, pages 8-10; GUTTERIDGE, 1938, pages 411-413).

Furthermore, the problem resulting from polysemic concepts goes beyond the scope of the science of law and concerns the production of

⁹ These uses are numerous and varied. For illustrative purposes, see Medeiros (2004); Brito (2008); Oliveira (2010); Cruz (2015, p. 27); Braga and Della Nina (2015); Dias et al. (2018); and Souza, Leal and Maciel (2019). These uses of the term “protected area” are often arbitrary, in the sense of including certain instruments in this category, while other instruments of the same nature are left out. This is particularly clear with regard to the numerous categories arising from international law.

scientific knowledge in general. A unified conceptual framework has clear advantages in terms of scientificity, communicability, and clarity, which can be enhanced in multidisciplinary fields such as public nature conservation policies (GILLESPIE, 2007, p. 29). The following sections of this paper aim to offer subsidies so that the polysemy of that term can be overcome when dealing with two concepts that concern the law and public policies for nature conservation: first the concept of *CBD protected area concept*, of a legal nature in the strict sense (2), and then, the *IUCN protected area concept*, which expresses the consensus of a large part of the international scientific community (3).

2 THE PROTECTED AREA CONCEPT OF THE CONVENTION ON BIOLOGICAL DIVERSITY

Although the CBD did not initiate the Brazilian external engagement to protect territories with important natural heritage and appears among other programs and international treaties of this type to which Brazil is a party, it is widely recognized as the main international law document regarding nature conservation. This occurs mainly due to the adhesion it was able to gain from the international community and its ambition since it establishes an appropriate framework for increasing goals to be negotiated at successive meetings of its Conference of Parties (COP).

Through the CBD, States Parties sought to establish a common conceptual framework for the protection of biodiversity, which translates into a plurality of definitions, including the *protected area* definition. This definition includes several elements that make up the concept of protected area of the CBD, which will be discussed in this paper. However, before addressing its content (2.2), some comments regarding its nature and the nature of that content are presented below (2.1).

2.1 A legal concept

The concept of protected area of the CBD has an evident legal character, since, when it was signed, ratified, and eventually promulgated, the Convention on Biological Diversity and its concepts entered international and national law. As a legal norm, under the formal point of view, this concept integrates a system of rules for conflict resolution and decision making. However, due to its origin in international law, it has

some peculiarities in relation to other concepts of domestic law.

First, the CBD's definition of a protected area, like the rest of international law, was developed with deference to the *Pacta sunt servanda* principle, and therefore based on the will of the CBD Parties. This is equivalent to saying that this definition was produced in the course of a process specific to international law, which involves negotiation between the Parties to ensure their adherence. While it is true that the initiative for the elaboration of the Convention on Biological Diversity belonged to civil society organizations, and that its initial stages of elaboration involved the participation of scientific organizations, its content, including its definition of a protected area, results essentially from the will of national governments and expresses its consensus¹⁰. Naturally, these States Parties sought to negotiate their content to understand a series of measures that they were already carrying out, resulting in a relatively simple concept that allows for some flexibility in its interpretation. And, secondly, also because of its international origin, it is up to the Parties to define the relationship between this concept and the provisions of their domestic law. However, the CBD is a framework convention and its COP meetings continue to negotiate new commitments, including increasing targets for the creation of protected areas, and thus, States parties may choose not to define exhaustively, especially by law, the exact scope of this concept in relation to their domestic law. As will be seen below, both questions have led to difficulties in identifying the protected areas of Brazilian law.

2.2 Content in Brazilian Law

Art. 2nd of the CBD defines a *protected area* as "a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives" (BRASIL, 1998a). This definition includes precisely three criteria, namely the territorialization of the legal rule, the prediction of specific conservation objectives, and active management seeking to achieve those specific objectives.

¹⁰ The origins of the CBD can be traced back to the 15th IUCN General Assembly, in 1981 (DE KLEMM, 1982, p. 120). On the processing of this proposal within the IUCN, see Cyrille de Klemm (1993, p. 17–19). Once at the United Nations, the future convention was discussed at three meetings of the *ad hoc* working group of experts on biological diversity, between November 1988 and July 1990, and at three meetings of the *ad hoc* working group of legal experts and technicians in biological diversity, between November 1990 and the beginning of July 1991. The last meeting of legal and technical experts, held in Madrid, coincided with the first meeting of the Intergovernmental Committee on the Convention on Biological Diversity, which, in reality, was the third negotiating session between the States Parties. In total, seven negotiation meetings took place. Its text was approved during a conference in May 1992 (CBD, 2020).

When the CBD was promulgated, Brazilian law had a plurality of instruments for *in situ* conservation, as well as some concepts that grouped several of these instruments and could overlap with the CBD's concept of protected area. Naturally, the reception of this concept in domestic law encouraged a debate about it, but developments in the following years have led to a diversity of interpretations in the specialized literature and the documentation related to the Convention.

In other words, from a chronological perspective, the concept of protected area of the CBD is itself polysemic. As this concept has implications for both domestic law (2.2.1) and international law (2.2.2), and the content that is attributed to it results from a dialogue between them, it is necessary to investigate the contents that have been attributed to it in both cases and the developments that led to changes in its interpretation. This will allow us to overcome this polysemy, *i.e.*, to identify the content or possible contents of this concept and the conditions for its reasonable use (2.2.3).

2.2.1 Its evolution in the sources of domestic law

Given its importance within the scope of public law and public policies for nature conservation, it is natural that many authors have dealt, directly or indirectly, with the concept of protected area of the CBD. It is necessary to recognize, however, that the debate about it remains little pronounced, mainly due to the flexibility of this concept within the scope of the international obligations assumed by Brazil and the nature of the PNAP content, which is restricted to declaring objectives and establishing principles and guidelines. For the same reason, the Brazilian judiciary has rarely had the opportunity to contribute to this debate¹¹.

Two distinct interpretations of the CBD protected area concept are most commonly identifiable in doctrine and, more generally, in specialized literature. First, for a group of authors, the protected areas of the CBD would be restricted only to the conservation units of Law No. 9,985, of July 18, 2000, known as the SNUC Law (RIOS, 2004, p. 78; SANTILLI, 2005, p. 78-81; GANEM; ARAÚJO, 2006, p. 73; FIGUEIREDO, 2015, p. 15). And, secondly, for other authors, the concept of protected area of the CBD would include, in addition to conservation units, indigenous lands and lands occupied by remnants of quilombo communities (LEUZINGER,

¹¹ Decisions involving the PNAP appear to refer only to conservation units, for example the Iguaçu National Park (BRASIL, 2013b).

2007, p. 122; PEREIRA; SCARDUA, 2008, p. 85; ABI-EÇAB, 2011, p. 2; PRATES; IRVING, 2015, p. 41, 44; ASSUNÇÃO, 2016, p. 282). For reasons that will become evident throughout this study, these interpretations must be considered from a chronological perspective.

Although detailed arguments justifying the attribution of these contents are presented only occasionally, in general, these two currents prioritize different matters in their interpretations. The first one, which attributes a more restricted content to the concept of protected area of the CBD, tends to highlight the content of the term "protected area" in the scientific community, that is, its technical sense in the multidisciplinary field of nature conservation. This interpretation was particularly widespread until the edition of the PNAP Decree, which brought new elements to this debate. Nevertheless, it has also been used more recently. The second current, which gives the CBD concept of a protected area a broader meaning, invariably refers to the PNAP Decree.

This last current meets Resolution CONABIO No. 3, of December 21, 2006, which provides for the National Biodiversity Goals for 2010, corresponding to the global goals of the CBD Strategic Plan for 2010 (Decision VI/26 of COP 6). Its goal No. 2.2, related to the "promotion of the conservation of the biological diversity of ecosystems, habitats, and biomes," deals specifically with the "SNUC Units, Indigenous Lands and Quilombola Territories" (BRASIL, 2006a). In addition, it is in line with the opinion of the PNAP proponent himself, the Ministry of the Environment. Following the institution of the Plan, this organization published a document that states that the PNAP "focuses primarily" on conservation units, indigenous lands, and lands occupied by remnants of quilombola communities (BRASIL, 2006b, p. 38), and, therefore, it suggests that these are instruments of CBD protected areas.

The edition of the regulatory decree establishing the PNAP in 2006 offered the Brazilian Executive Branch a good opportunity to shed light on the scope of this concept in Brazilian law, and, consequently, about its relationship with existing *in situ* conservation instruments. However, the Decree or Plan never directly addresses this issue, and the latter is ambiguous when referring to protected areas.

First, the initial chapter of PNAP, which deals with its principles and guidelines, indicates multiple times that protected areas would comprise conservation units and also other instruments¹². Then, this same chapter

12 "Appreciation of the importance and complementarity of all *categories of conservation units*

seems to exclude from the list of protected areas the areas of permanent preservation and legal reserves of the Forest Code, considering them as elements that integrate the landscape¹³, as well as indigenous lands, and lands occupied by remnants of quilombo communities¹⁴. Judging by these principles and guidelines, the CBD protected area concept would include conservation units and at least some other legal device, but not permanent preservation areas, legal reserves, indigenous lands, or lands occupied by remnants of quilombo communities.

However, the following chapters of the PNAP, which define objectives and strategies for protected areas and the thematic axes around which they are organized, contradict this interpretation. First, the “Thematic Axes” chapter and the following two chapters, which contain “General Objectives, Specific Objectives and Strategies,” expressly provide for the National System of Nature Conservation Units (SNUC), indigenous lands, and lands occupied by remnants of quilombo communities. And, secondly, the final chapter, “From National Strategies to Areas with International Recognition,” establishes objectives and strategies for “areas of international recognition” (BRASIL, 2006c, appendix, items 2; 3-7; 8). These chapters of the PNAP, therefore, contradict its principles and guidelines, and indicate that the CBD’s concept of protected area would include SNUC, indigenous lands and lands occupied by remnants of quilombo communities, and possibly the aforementioned “areas of international recognition.”

Furthermore, these provisions raise some questions. First, despite the content of Arts. 7, 8, and 14 of Law No. 9,985, of July 18, 2000, and due to its art. 41, a minority doctrinal current, but worth noting, consider the biosphere reserves as part of the SNUC, together with the twelve categories of conservation units “for Sustainable Use” and “for Integral Protection.” Thus, even if it is understood that the protected area concept of the CBD includes only the SNUC, by this line of reasoning the biosphere reserves would also be included. And, secondly, the areas of “international

and other protected areas [...] (item 1.1, VIII); the “recognition of the importance of territorial consolidation of *conservation units and other protected areas*” (item 1.1, XXIII); “Facilitate the gene flow between *conservation units, other protected areas* and their interstice areas” (item 1.2, VII); and “the planning for the establishment of new *conservation units*, as well as for their specific and collaborative management with the *other protected areas [...]*” (item 1.2, VIII) (BRASIL, 2006c, appendix, emphasis added).

13 The “recognition of the *integrating elements of the landscape, especially the areas of permanent preservation and legal reserves*, as fundamental in the conservation of biodiversity” (BRASIL, 2006c, appendix, item 1.1, XI, emphasis added).

14 The “articulation of management actions for *protected areas, indigenous lands and lands occupied by remnants of quilombo communities* with public policies [...]

 (BRASIL, 2006c, appendix, item 1.1, XIX, emphasis added).

recognition” deserve additional considerations since this “recognition” is subsequent to their impact. In other words, this recognition does not have legal effects in terms of protecting the areas on which it affects, and, therefore, there is no need to speak of it as an instrument for creating protected areas. However, typically these “internationally recognized” areas are made up of conservation units and, theoretically, they can also consist of areas protected by other devices, such as their listing as a natural heritage, according to Decree-Law No. 25, of November 30, 1937. In these exceptional cases, therefore, these other instruments, because of their specific use, could serve as instruments of protected areas of the CBD.

Given these issues regarding the content of the PNAP and the existence of a division in the specialized literature, it is useful to investigate the use of the concept of protected area within the scope of Brazilian commitments to the CBD. This analysis will show that the content attributed to it has responded to new developments in domestic and international law.

2.2.2 Its evolution under the CBD and the concept of other effective conservation measures based on areas

The States parties have committed themselves to periodically presenting information on the measures adopted for the implementation of the CBD, and so far the Brazilian government has submitted six such reports to the Convention Secretariat. These documents indirectly provide information about the scope of the protected area concept in their sections on the spatial coverage of Brazilian protected areas. Since calculating this coverage data is a particularly laborious process and implies methodological precision and the availability of data, these documents mention only the legal provisions whose coverage is significant and possible to be measured. Probably because of this, lands occupied by remnants of quilombola communities are not taken into account.

The interpretation given by the Brazilian Executive to the definition of protected area of the CBD, within the scope of these reports, has varied considerably over the years, initially due to a lack of definition as to the classification of indigenous lands, then due to the edition of PNAP, and, later, due to the emergence of the notion of *other effective area-based conservation measures* within the scope of the Aichi Targets. Explaining in greater detail, these reports initially included conservation units and indigenous lands in the computation of Brazilian protected areas (BRASIL,

1998b, p. 66)¹⁵, but, later, they began to include only conservation units (BRASIL, 2004, pages 48-49, 2006d, pages 77-87). With the enactment of the PNAP Decree, indigenous lands were once again included (BRASIL, 2011, p. 67, 70). More recently, the 2016 report¹⁶ informs, when addressing Aichi Target 11 and the corresponding national target, that the calculation of the area covered by protective regimes would now include “other areas that also contribute to the protection of nature, although in a different way,” namely “the areas of permanent preservation and the legal reserves in private properties the indigenous lands that contain native vegetation” (BRASIL, 2016, p. 114-115). The inclusion of data related to permanent preservation areas and legal reserves would be possible through the implementation of the Rural Environmental Registry of Law No. 12,651, of May 25, 2012.

Thus, since 2016 only conservation units have been counted. This new modification of the content attributed to the concept of protected area must be understood in the light of two questions. First, a “tacit agreement” between the CBD and the IUCN, that their notions of protected areas “are equivalent” (LOPOUKHINE; DIAS, 2012, p. 5, our translation), and the approval, by UINC, of a new definition of protected area, in 2008, emphasizing that the conservation objectives of protected areas are a priority, that is, that they constitute the primary purpose of the legal regime of the protected area. And, secondly, this question answers Decision X/2 of the 10th COP, which gave Aichi Target 11 the following content:

By 2020, at least 17 per cent of terrestrial and inland water areas, and 10 per cent of coastal and marine areas [...] are conserved through [...] systems of protected areas and *other effective area-based conservation measures* (CBD, 2011, p. 119)¹⁷.

Although the main focus here is not to address in detail the debate that followed the mention of “other measures,” it is worth mentioning that it led to a series of questions about its content and its relationship with other concepts previously recognized in the framework of the CBD. There was a fear that this concept would be interpreted in such a way as to allow, in national calculations of protected surfaces, instruments that contribute only vaguely to the protection of biodiversity (JONAS et al., 2017, p. 63-64;

¹⁵ Note that in the 1998 report the term “conservation unit” refers to a diversity of legal regimes that was partially covered by the SNUC Law.

¹⁶ And, in the same vein, the 2019 report. See the “National Target 11” section in Brazil (2019a).

¹⁷ These “other effective conservation measures based on areas” are called “other categories of officially protected areas” by CONABIO Resolution No. 06, of September 3, 2013 and by the National Biodiversity Strategy and Action Plan (BRASIL, 2017, p. 75, 90).

LOPOUKHINE; DIAS, 2012, p. 6). These questions were accompanied by incursions seeking to shed light on their content. Among other possibilities, it was suggested that this concept would have been introduced as a means of giving recognition to private conservation initiatives or focusing on specific types of sustainable development, or to territories and areas governed by indigenous populations and local communities (JONAS et al., 2014, pp. 112-113). For others, while protected areas have the fundamental objective of conserving biodiversity, in other effective area-based conservation measures this objective would be secondary or implemented as a result of other objectives (MACKINNON et al., 2015, p. 3559-3581). These proposals were contemplated by the 14th COP in 2018, which in its decision 14/8 adopted the following definition of *other effective area-based conservation measure*:

A geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in situ conservation of biodiversity, with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values (CBD, 2018, § 2).

This notion is defined in opposition to the notion of protected area. While a protected area is “destined, or regulated” to conserve biodiversity, another effective area-based conservation measure is “governed and managed in ways that achieve positive and sustained long-term outcomes.” This distinction implies that in the latter the conservation of biodiversity is not necessarily its primary objective, and it may be a secondary objective or a result of the achievement of other objectives¹⁸.

In practical terms, this new concept allowed the Brazilian government to include in its calculations areas that historically had difficulty classifying as protected areas of the CBD, but whose territorial extent cannot be ignored. His interpretation that “areas of permanent preservation and legal reserves in private properties and indigenous lands that contain native vegetation” constitute “other areas that also contribute to the protection of nature, although in a different way” meets the debates around this new concept of the CBD and the definition later adopted.

¹⁸ Decision 14/8 of the 14th COP (CBD, 2018, § 9) invited IUCN and other scientific bodies to assist the Parties in identifying their other *effective area-based conservation measures*. A guide released by IUCN during the 24th meeting of the Subsidiary Body of Scientific, Technical and Technological Advice of the CBD states that the criterion that distinguishes protected areas from other effective area-based conservation measures is that the former have a “primary conservation objective,” while the latter “delivers the effective in situ conservation of biodiversity, regardless of its objectives” (IUCN, 2019, p. 3)

2.2.3 Elements for overcoming polysemy

The CBD protected area concept is unique. It serves as a parameter for States parties to identify or create new corresponding legal models in their national law. However, its use in international law serves broader objectives and is constantly changing. Because of this mutability of the objectives of the CBD, it may be in the interest of the Parties to keep the relations between the concepts of international law and their concepts of domestic law relatively flexible, and one of the devices that can be used in these cases is ambiguity. It is known that this artifice allows the legislator to extend the pertinence of the law, since, by avoiding unambiguous definitions, it can allow its text to regulate objects and situations that may be subject to changes. Ambiguity, therefore, is common in law and can be used positively (DÉAL, 2004, p. 247).

Given this, an analysis of the PNAP text suggests that its ambiguity may be purposeful. This finding is reinforced by the document published by the proponent of that plan, the Ministry of the Environment, which, although it deals with conservation units, indigenous lands, and lands occupied by remnants of quilombo communities as being protected areas, it never does so in a definitive manner, and instead chooses to say that the decree “focuses primarily” on these legal provisions. This last issue, in particular, seems to have been recognized by the specialized literature (LEUZINGER, 2007, p. 122).

As a consequence of the lack of a precise definition, the PNAP provisions regarding protected areas should be considered in light of further developments within the CBD, notably the emergence of the concept of other effective conservation measures based on areas or “other categories of officially protected areas” (BRASIL, 2013a, 2017, p. 75, 90), which allows other *in situ* conservation instruments that contribute in their way to the objectives of the convention to be considered and valued, although they do not constitute protected areas.

This is precisely the case with indigenous lands, lands occupied by remnants of quilombo communities, legal reserves, and areas of permanent preservation of Brazilian law, which, although they play an evident role in the conservation of biodiversity, they do so in an indirect way, subordinated to other values and objectives: the protection of the way of life of the indigenous and quilombola populations, the sustained forest production, and the geological and water resources stability. Legal reserves and

permanent preservation areas, moreover, do not have active management equivalent to the management of protected areas. This interpretation is in line with what Decree No. 8,505, of August 20, 2015, modified by Decree No. 10,140, of November 28, 2019, related to the Amazon Region Protected Areas Programme. This program, which concerns the Amazon region, concerns only the federal and state conservation units of the SNUC Law.

Having analyzed the content and uses of the CBD protected area concept, it is appropriate to address the IUCN protected area concept, aiming to identify its scope in relation to the instruments of *in situ* conservation and its interest. As will be shown, this concept represents the scientific consensus regarding what really matters for a protected area to be effective, and, consequently, it allows establishing functional equivalence relationships between legal regimes of different orders, and, consequently, knowing the law through comparisons.

3 THE PROTECTED AREA CONCEPT OF THE INTERNATIONAL UNION FOR CONSERVATION OF NATURE

Widely cited, but rarely explained in relation to its purpose, the concept of protected area of the International Union for Conservation of Nature, referred to the institution that developed and maintain it updated¹⁹, was conceived in the context of the rapid internationalization of conservationism, and, more precisely, in response to the spread of legal models for the protection of natural spaces.

The increasing difficulty in establishing terminology and criteria capable of understanding the diversity of variations that these models started to present when received by national law, is a phenomenon that has important practical implications, especially because the protection of the natural environment requires joint and complementary efforts by the actors of the international community. It has been noticed since at least the first half of the twentieth century, but the idea of creating a transnational conceptual framework only gained momentum after the Second World War, with the emergence of intergovernmental organizations and

¹⁹ This entity was created at the initiative of UNESCO and about twenty national governments. At the time of its creation, these governments chose to create it as a private-law body - and not as part of the United Nations, as initially envisaged - as this condition would give it greater independence from national governments. Its legal nature has been defined as *sui generis*, but in fact it is one of the first *non-governmental organizations organized by governments*. The IUCN brings together thousands of conservation experts in its commissions, and throughout its history it has played a prominent role in providing technical advice to national governments and international organizations, and in shaping environmental law. On this last point, see Olivier (2005), Robinson (2005) and Dillon (2004).

conservation organizations of worldwide scope (PHILLIPS, 2004, p. 6). This rearrangement led to the need for scientific criteria (3.1) that, through its content (3.2), allowed the identification of equivalent legal instruments. These criteria, therefore, constitute an instrument for knowing these instruments and their results in a comparative perspective (3.3).

3.1 A scientific concept

The IUCN protected area concept was developed as an expression of the technical standards considered most appropriate by the scientific community interested in public nature conservation policies, and its central objective is itself scientific, therefore, allowing comparisons and data processing of protected areas of the countries. Its content expresses knowledge from several disciplines, including law, since part of the effectiveness of protected areas goes through appropriate legal arrangements, and also because this content was designed to understand a diversity of elements present in legal regimes for *in situ* conservation of national law.

It is worth mentioning the number of occasions in which the scientific prestige of the IUCN protected area concept and its Management Category System has been recognized. First, during the CBD's 7th COP, States Parties recognized "the value of a single international classification system for protected areas and the benefit of providing information that is comparable across countries and regions" and, congratulating the IUCN's efforts to refine it, they encouraged national governments and other stakeholders to use it (CBD, 2004, decision VII/28, § 31). Also, the IUCN criteria are used in the preparation of the United Nations List of Protected Areas and the World Database on Protected Areas (DEGUIGNET et al., 2014, p. 3; DUDLEY; STOLTON, 2008, p. 21), and they have known a significant use in the legislative plan and the formulation of public policies (BISHOP et al., 2004, p. 55-79). The scientific prestige with which these technical standards are applied is decisive for their increasing use and authorizes them to be characterized as part of what doctrine has defined as soft law (DUPUY, 1990).

3.2 Content in Brazilian Law

The origins of the IUCN protected area concept can be traced back to the notion of "national parks and equivalent reserves," mentioned in the 1950s in a decision by the United Nations Economic and Social Council,

which identified them as important for the rational use of natural resources (PHILLIPS, 2004, p. 12). This decision was endorsed by the 17th United Nations General Assembly, which entrusted the IUCN with the task of registering these areas²⁰ (OLIVIER, 2005, p. 154). This survey confronted its authors with the need for appropriate criteria (PHILLIPS, 2004, p. 4-14).

Although it is not possible to detail its elaboration process here, it should be noted that its content has varied over time. In 1969 the IUCN adopted a definition of a *national park* (IUCN, 1970, p. 22, 156), and shortly afterward decided to abandon that term, "overloaded with emotional connotations and legal definitions of national scope," in favor of the term *protected area* (DASMANN, 1974, pp. 390-391). A new definition emerged in 1994 (IUCN-CNPPA; UNEP-WCMC, 1994, p. 7) and was substantially modified in 2008. In all cases, these changes resulted from comprehensive consultation and discussion processes involving national governments and the scientific community, to build consensus. Since 2008, an IUCN protected area has been defined as "A clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values" (DUDLEY, 2008, p. 8).

This concept seeks to account for the diversity of variables present in the different laws, and the identification of protected areas occurs through its application to their management objectives (its legal regimes), and not to their actual situations (MCNEELY, 1993, p. 49; IUCN-CNPPA; UNEP-WCMC, 1994, p. 8; DUDLEY; STOLTON, 2008, p. 10). Interpreted in the light of Brazilian law²¹, these criteria are the individual effect of the area in question, through an act of the Public Power that specifies its specific limits; the conservation of biodiversity as a fundamental objective; active management seeking to make this objective effective; and a legal regime that establishes sanctions and the permanence of the affectation²².

The analysis of these elements shows that, under Brazilian law, only the nature conservation units of Law No. 9,985, of July 2000, are protected areas in the sense assigned to that term by IUCN. This finding is in line with at least one source that addressed this issue (SANTILLI, 2005, p. 78-81) and the technical use of the term *conservation unit* in Brazil (GANEM;

20 This census would give rise to the United Nations List of Protected Areas (PHILLIPS, 2004, p. 12).

21 As this definition was designed to be applied worldwide, it includes possibilities that are foreign to the Brazilian reality. For example, in customary law or where custom is a prevalent source of law, the recognition of a protected area and the definition of its objectives can be achieved by this means..

22 This analysis also considered the clarifications presented by Dudley (2008, p. 8-9).

ARAÚJO, 2006, p. 73).

This is to say that, for one reason or another, the other Brazilian legal provisions for *in situ* conservation do not fit this concept. This is the case, for example, of indigenous lands and lands occupied by remnants of quilombo communities, for reasons already mentioned, and of legal reserves and permanent preservation areas, which, moreover, are not affected individually and by the specific act. The same applies to biosphere reserves, which, although they are *recognized*, do not in themselves protect the areas on which they fall and, therefore, do not in themselves provide *effective means* or *allow* conservation.

The application of the content of this concept to the instruments of Brazilian law allows a glimpse of its scientific use that is of interest to this work, that is, as a methodological instrument of comparative law. As the elements present in the IUCN's definition of a protected area make it possible to select legal instruments that are designed to respond to the same set of specific problems, they allow the identification of legal instruments that play an equivalent role in their respective legal systems, regardless of their nomenclatures and the context in which they are, and which, consequently, have *functional equivalence*. Put differently, this concept of protected area allows making pertinent legal comparisons operational.

3.3 A comparative tool

The IUCN concept of protected area was developed with the clear objective of allowing comparisons²³ and, although the limits and possibilities of the comparative method exceed the limits of this work, the understanding of their interest and the conditions for their use requires explaining their place in study framed by this method.

The most widespread aspect of the method of comparative law, known as the functionalist, takes the form of a set of postulates that allows to carry out “the construction of relations of similarity and dissimilarity between different matters of fact” and, as a consequence of these constructions, to know the *comparanda*, that is, the compared laws (JANSEN, 2008, p. 339). Its concern with matters of fact results from the observation that

²³ Among the reasons that guided the creation of the IUCN concept of protected area and management categories are “to reduce the confusion around the use of many different terms to describe protected areas,” “to provide international standards for global and regional accounting and comparisons between countries,” “using a common framework for the collection, handling and dissemination of protected areas data,” and “to improve communication and understanding between all those engaged in conservation” (IUCN-CNPPA; UNEP-WCMC, 1994, p. 5).

similar institutes (institutions, rules, provisions and legal tools, among others) often have fundamental differences regarding their objectives and the roles they play in their respective systems. In other words, similar legal institutes often perform different *functions*, and only matters of fact make it possible to identify legal institutes that have *functional equivalence*.²⁴

This focus on matters of fact allows us to understand some fundamentals and implications of the functionalist aspect of the method of comparative law. First, it considers law from its functional relationship with society, based on the premises that the law responds to human needs and problems, that different laws deal with similar needs and problems, and that the same problem or need may know different answers in different laws. Second, although the objects to be compared need not be identical, they need to have one or more common functions for their comparison to be relevant. Hence to say that the comparability of these objects is confused with their *tertium comparationis*, their common denominator that, within the functionalist aspect of the method of comparative law, corresponds to the function or set of functions that the compared legal objects share (ÖRÜCÜ, 2012, p 561). Finally, another consequence of the functionalist aspect of the method of comparative law is that potentially the *tertium comparationis* can be used to evaluate the compared objects (MICHAELS, 2008, p. 342). In other words, once the common function of *comparanda* has been identified, it can be used to assess the effectiveness with which each of them performs it. This is particularly applicable when *tertium comparationis* are identified externally to *comparanda* and take the form of idealized constructions.

The UICN protected area concept is exclusive, that is, only objects that correspond to each of its characteristics can be considered protected areas in the sense that IUCN attributes to the term. As such, it reflects what there is in common between objects that it does not exclude, and can serve as its *tertium comparationis*. Besides, this concept expresses in its definition a broader number of functions than that of the CBD concept²⁵, and

²⁴ According to Örüçü (2012, p. 561), the functionalist approach of the method of comparative law "answers the question 'Which institutes in system B play a function equivalent to that under analysis in system A?'. From the answer to this question, the concept of 'functional equivalence' emerges. Professionals of this area search for institutes that have the same role, i.e., that have 'functional comparability' or solve the same problem, i.e., 'solution similarity.'"

²⁵ The CBD's concept of protected area is also a *tertium comparationis* of national law, but it results from a political process of negotiation between the Parties and not so clearly from scientific consensus regarding the problems and needs of protected areas. Then, its definition is not very precise and its scope in relation to domestic law is often the subject of official definitions, concerned more with the results of the implementation of the CBD than with the comparability of the legal instruments used for this purpose. Essentially, comparisons based on this concept are relevant within the framework of the CBD itself.

although the *comparanda* must have at least one function in common for their comparison to have any relevance, it is evident that their comparability grows as more functions are shared, as they address a wider number of common problems or needs.

In addition, as we sought to show, the IUCN concept of protected area was developed as an expression of the technical standards considered most appropriate by the scientific community involved in nature conservation, and taking into account the diversity of characteristics of legal regimes for the protection of natural spaces under national law. From this, it follows, first, that the elements present in the protected area definition of IUCN are specific functions identified by the scientific community as necessary to comply with the general function of the protected areas. In other words, the functions present in this definition address specific problems and needs that the scientific community, including the legal community, considers necessary to be addressed to protected areas to fulfill their role. And, secondly, it can be inferred that the elements present in the IUCN's definition of a protected area are *tertium comparationis* of much of the national legal regimes for the protection of natural territories. As a consequence of its dual nature, the legal provisions that fall within it share legal functions, i.e., legal responses to concrete problems of nature conservation.

As a *tertium comparationis* of legal instruments for the protection of natural areas, the IUCN's concept of protected area allows the elimination of arbitrariness present in research involving institutes whose comparability is only apparent. This does not mean, of course, that comparisons that do not refer to this concept are necessarily arbitrary, as different research objectives imply different comparative frameworks and demonstrations of the comparability of the chosen objects. Likewise, recognizing that the IUCN protected area concept makes it possible to identify legal regimes that fulfill common functions is not the same as saying that the IUCN protected area concept will suffice for any comparison. Although it allows identifying legal regimes that share a diversity of functions, it is unlikely that these legal regimes will share all of their functions. Consequently, the characteristics of the research undertaken must determine the methodological requirements for their relevance, including the degree of comparability between the *comparanda*. In other words, depending on the object and objectives of the research to be carried out, the IUCN's concept of protected area can only serve as a starting point so that, from other functions, the researcher can go further in identifying legal regimes that perform equivalent functions.

FINAL REMARKS

The use of the term “protected area,” in the context of technical literature and decisions of Brazilian courts, is characterized by a phenomenon of polysemy, that is, the attribution of a plurality of meanings to the same signifier. This finding offers an opportunity to seek to identify concepts that contribute to overcoming this phenomenon, and this work deals with two concepts that matter to the community that is interested in the law and public policies for nature conservation: the concept of protected area of the Convention on Biological Diversity (CBD), which matters to jurisdictional activity and research in law in the strict sense, and the concept of protected area of the International Union for Conservation of Nature (IUCN), which allows the establishment of functional equivalence relationships between legal instruments of different orders, and, consequently, to know them from a comparative perspective.

With regard to the concept of protected area of the CBD, we sought to demonstrate that the content attributed to it has varied over time, and due to developments in Brazilian and international law. In particular, this work innovates by introducing the debate on the concept of *other effective area-based conservation measures*, originating from Aichi Target 11, whose content has been established as opposed to the protected area. In particular, it has been shown that while biodiversity conservation is the fundamental objective of a protected area, in other effective area-based conservation measures, biodiversity conservation constitutes an indirect objective or that results from the achievement of other objectives. As a consequence, the interpretation of the Brazilian government with the CBD has correctly understood that only the conservation units of Law No. 9,985, of July 2000 are protected areas within the scope of the CBD.

As for the IUCN concept of protected area, at first, it was sought to present it and highlight its scientific aspect, and then to deal with its content and correspondence in Brazilian law. This work innovates by detailing the role that this concept can play in comparative research, that is, as a methodological instrument that allows to identify and compare functionally equivalent legal regimes. In detail, it has been shown that legal regimes that fall within the IUCN’s definition of a protected area share legal functions, that is, responses of the law to concrete problems. As a *tertium comparationis* of national legal regimes for the protection of natural areas, this concept allows eliminating the arbitrariness present in studies that concern institutes whose comparability is only apparent.

REFERENCES

- ABI-EÇAB, P. C. Principais ameaças ao meio ambiente em terras indígenas. *Planeta Amazônia*, Macapá, v. 3, p. 1-17, 2011.
- ASSUNÇÃO, L. O. Unidades de conservação, terras indígenas e quilombolas no estado do Amapá: como desenvolver um estado cujo território está 70% protegido por leis? *Revista Brasileira de Políticas Públicas*, Brasília, DF, v. 6, n. 3, p. 290-309, 2016.
- BAJČIĆ, M. Terms, concepts and other conundrums. In: BAJČIĆ, M. *New Insights into the Semantics of Legal Concepts and the Legal Dictionary*. Amsterdam: John Benjamins, 2017. p. 7-26.
- BARRAUD, B. La science et la doctrine juridiques à l'épreuve de la polysémie des concepts. *Revue Interdisciplinaire d'Etudes Juridiques*, Bruxelles, v. 76, p. 5-47, 2016.
- BISHOP, K. et al. (ed.). *Speaking a Common Language: Uses and performance of the IUCN System of Management Categories for Protected Areas*. Cardiff: Cardiff University; IUCN; UNEP-WCMC, 2004.
- BOYD, D. R. The constitutional right to a healthy environment. *Environment: Science and Policy for Sustainable Development*, Washington, v. 54, n. 4, p. 3-15, 2012.
- BRAGA, A. S.; DELLA NINA, R. I. Áreas protegidas: mudança de paradigma no contexto das alterações climáticas? In: LEUZINGER, M. D.; TELES DA SILVA, S.; CUREAU, S. (orgs.). *Espaços territoriais especialmente protegidos: extensão, limites e oportunidades*. Brasília, DF: UniCEUB, 2015. p. 165-178.
- BRASIL. Decreto n. 2.519, de 16 de março de 1998. Promulga a Convenção sobre Diversidade Biológica, assinada no Rio de Janeiro, em 5 de junho de 1992. *Diário Oficial da União*: seção 1, Brasília, DF, p. 1, 17 de março de 1998a.
- BRASIL. Ministério do Meio Ambiente. *Primeiro Relatório Nacional para a Convenção sobre Diversidade Biológica: Brasil*. Brasília, DF: MMA, 1998b.
- BRASIL. Ministério do Meio Ambiente. Diretoria do Programa Nacional

de Conservação da Biodiversidade. *Segundo Relatório Nacional para a Convenção sobre Diversidade Biológica: Brasil*. Brasília, DF: MMA, 2004.

BRASIL. CONABIO. *Resolução CONABIO n. 03, de 21 de dezembro de 2006*. Dispõe sobre as Metas Nacionais de Biodiversidade para 2010. Brasília, DF: MMA, 2006a. Available from: <https://www.mma.gov.br/biodiversidade/comissao-nacional-de-biodiversidade/resolucoes>. Access on: Mar. 1, 2019.

BRASIL. Ministério do Meio Ambiente. Secretaria de Biodiversidade e Florestas. Diretoria de Áreas Protegidas. *Plano Estratégico Nacional de Áreas Protegidas – PNAP: Decreto n. 5.758, de 13 de abril de 2006*. Brasília, DF: MMA, 2006b.

BRASIL. Decreto n. 5.758, de 13 de abril de 2006. Institui o Plano Estratégico Nacional de Áreas Protegidas - PNAP, seus princípios, diretrizes, objetivos e estratégias. *Diário Oficial da União*: seção 1, Brasília, DF, p. 1, 17 de abril de 2006c.

BRASIL. Ministério do Meio Ambiente. Secretaria de Biodiversidade e Florestas. *Terceiro Relatório Nacional para a Convenção sobre Diversidade Biológica*. Brasília, DF: MMA, 2006d.

BRASIL. Superior Tribunal de Justiça (2ª Turma). *Recurso especial n. 1.071.741-SP (2008/0146043-5)*. Recorrente: Min. Púb. SP. Recorridos: Fazenda do Estado de São Paulo e outros. Relator: Min. Herman Benjamin., 24 mar. 2009. Available from: <https://ww2.stj.jus.br/processo/revista/>. Access on: Feb. 19, 2020.

BRASIL. Ministério do Meio Ambiente. *Quarto Relatório Nacional para a Convenção sobre Diversidade Biológica: Brasil*. Brasília, DF: MMA, 2011.

BRASIL. CONABIO. *Resolução CONABIO n. 06, de 3 de setembro de 2013*. Dispõe sobre as Metas Nacionais de Biodiversidade para 2020. Brasília, DF: MMA, 2013a. Available from: <https://www.mma.gov.br/biodiversidade/comissao-nacional-de-biodiversidade/resolucoes>. Access on: Mar. 1, 2020.

BRASIL. Tribunal Regional Federal da 4ª Região (2ª Seção). *Embargos Infringentes n. 5000970-08.2011.404.7007/PR*. Embargante: Min. Púb.

Fed. Embargado: Agência Nacional de Águas e outros. Relator: Cândido Alfredo Silva Leal Junior, 14 nov. 2013b. Available from: <https://jurisprudencia.trf4.jus.br/pesquisa/pesquisa.php>. Access on: Feb. 27, 2020.

BRASIL. Superior Tribunal de Justiça (2ª Turma). *Recurso Especial n. 1406139-CE (2013/0325756-4)*. Recorrente: Min. Púb. Federal. Recorrido: F. C. de Souza. Relator: Min. Herman Benjamin, 5 ago. 2014. Available from: <https://ww2.stj.jus.br/processo/revista/>. Access on: Feb. 19, 2020.

BRASIL. Ministério do Meio Ambiente. *5º Relatório Nacional para a Convenção sobre Diversidade Biológica*. Brasília, DF: MMA, 2016.

BRASIL. Ministério do Meio Ambiente. *Estratégia e Plano de Ação Nacionais para a Biodiversidade - EPANB: 2016-2020*. Brasília, DF: MMA, 2017.

BRASIL. Superior Tribunal de Justiça (5ª Turma). *Agravo Regimental em Recurso Especial n. 1675032 / RJ (2017/0131655-5)*. Agravantes: P. J. Fontanezi e L. R. A. Souza. Agravado: Min. Púb. Federal. Relator: Min. Jorge Mussi, 25 set. 2018. Available from: <https://ww2.stj.jus.br/processo/revista/>. Access on: Feb. 19, 2020.

BRASIL. Ministério do Meio Ambiente. *Brazil: 6th National Report to the Convention on Biological Diversity*. Brasília, DF: MMA, 2019a.

BRASIL. Superior Tribunal de Justiça (2ª Turma). *Agravo interno no agravo em recurso especial 1248039 - SP (2018/0033494-3)*. Agravante: Min. Púb. SP. Agravado: Cond. Resid. Ilha de Bali. Relator: Min. Francisco Falcão, 5 dez. 2019b. Available from: <https://ww2.stj.jus.br/processo/revista/>. Access on: Feb. 19, 2020.

BRITO, D. M. C. Conflitos em unidades de conservação. *PRACS*, Macapá, v. 1, n. 1, 2008.

BRUCK, E. C. et al. Unidades de conservação. *Revista do Serviço Público*, Brasília, DF, v. 40, n. 4, p. 21-27, 1983.

CBD. *History of the Convention*. Available from: <https://www.cbd.int/history/>. Access on: Feb. 10, 2020.

CBD. COP 7. *Decisions adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting (UNEP/CBD/COP/7/21)*. CDB, 2004.

CBD. COP 10. *Report of the Tenth Meeting of the Conference of the Parties to the Convention on Biological Diversity* (UNEP/CBD/COP/10/27). [s.l.]: CDB, 2011.

CBD. COP 14. *Decision adopted by the Conference of the Parties to the Convention on Biological Diversity: 14/8. Protected areas and other effective area-based conservation measures* (CBD/COP/DEC/14/8). [s.l.]: CDB, 2018.

CORNU, G. *Linguistique juridique*. Paris: Montchrestien, 1990.

CRUZ, D. O. *Desenvolvimento e Preservação em Espaços Especialmente Protegidos – Estudo de Caso Parque Estadual Gruta da Lagoa Azul em MT*. Monografia (Especialidade em Direito Agroambiental e Sustentabilidade) — Universidade de Brasília, Cuiabá, 2015.

DASMANN, R. F. Development of a Classification System for Protected Natural and Cultural Areas. In: ELLIOT, H. (ed.). *Second World Conference on National Parks*, Morges: IUCN; National Parks Centennial Commission, 1974. v. II, p. 388-396.

DE KLEMM, C. Other International Developments. *Environmental Policy and Law*, [s.l.], vol. 9, n. 4, p. 117-128, 1982.

DE KLEMM, C.; SHINE, C. *Biological Diversity Conservation and the Law: Legal Mechanisms for Conserving Species and Ecosystems*. Gland; Cambridge: IUCN, 1993.

DÉAL, É. Langue du droit et doctrine : la linguistique juridique au service de l'accessibilité internationalisée des contributions doctrinales. *Revue générale de droit*, Sarbruque, v. 34, n. 2, p. 233-265, 2004.

DEGUIGNET, M. et al. *2014 United Nations List of Protected Areas*. Cambridge: UNEP-WCMC, 2014.

DIAS, R. B. et al. Cadastro ambiental rural como ferramenta de gestão do território, *Planeta Amazônia*, Macapá, v. 30, n. 3, p. 47-55, 2018.

DILLON, B. The use of the categories in national and international legislation and policy. *Parks*, [s.l.], v. 14, n. 3, p. 15-22, 2004.

DISTRITO FEDERAL. Decreto n. 11.122, de 10 de junho de 1988, cria o Conselho Supervisor das Unidades de Conservação e Áreas Protegidas administradas pelo Distrito Federal. *Diário Oficial do Distrito Federal*: Brasília, DF, p. 4, 13 jun. 1988.

DUDLEY, N. (ed.). *Guidelines for Applying Protected Area Management Categories*. Gland: IUCN, 2008.

DUDLEY, N.; HAMILTON, L. Running Pure: Protected Areas Maintaining Purity and Quantity of Urban Water Supplies. In: DUDLEY, N.; STOLTON, S. (ed.). *Arguments for protected areas*. London: Earthscan, 2010. p. 39-52.

DUDLEY, N.; STOLTON, S. (ed.). *Defining protected areas: an international conference in Almeria, Spain, May 2007*. Gland: IUCN, 2008.

DUPUY, P.-M. Soft Law and the International Law of the Environment. *Michigan Journal of International Law*, Ann Arbor, v. 12, n. 2, p. 420-435, 1990.

FERREIRA, M.; VALERA, F. P. Instituições ligadas à conservação genética “in situ”. *Revista IPEF (atual Scientia Forestalis)*, Piracicaba, n. 35, p. 21-27, 1987.

FIGUEIREDO, M. F. As Reservas da Biosfera no Brasil. In: PORTANOVA, R. S.; LEITE, A. O.; FIGUEIREDO, M. F. (ed.). *Os 15 anos da Lei n. 9.985, de 18 de julho de 2000: Anais do II Congresso de Direito Ambiental das Áreas Protegidas*. São Paulo: Ixtlan, 2015. p. 76-107.

GANEM, R. S.; ARAÚJO, S. V. G. DE. Reflexões acerca do conceito de espaços territoriais especialmente protegidos. *Cadernos ASLEGIS*, Brasília, DF, v. 8, n. 28, p. 63-82, 2006.

GILLESPIE, A. Definitions. In: GILLESPIE, A. *Protected Areas and International Environmental Law*. Leiden; Boston: Martinus Nijhoff, 2007. p. 27-46.

GINSBURG, T.; STEPHANOPOULOS, N. The Concepts of Law. *The University of Chicago Law Review*, Chicago, v. 84, n. 1, p. 147-175, 2017.

GUSMÃO CÂMARA, I. O papel das organizações não governamentais no cenário ambiental brasileiro, *Revista da Escola Superior de Guerra*, Rio de Janeiro, n. 17, p. 69-77, 1991.

GUTTERIDGE, H. C. The Comparative Aspects of Legal Terminology. *Tulane Law Review*, Nova Orleans, v. 12, p. 401-411, 1938.

IUCN. *Tenth General Assembly: Vigyan Bhavan, New Delhi, 24 November - 1 December, 1969*. Morges: IUCN; Unesco, 1970. (Proceedings and Summary of Business, v. II).

IUCN. WCPA Task Force on OECMs. *Recognising and reporting other effective area-based conservation measures*. Gland: IUCN, 2019.

IUCN-CNPPA; UNEP-WCMC. *Guidelines for Protected Area Management Categories*. Gland; Cambridge: IUCN, 1994.

JANSEN, N. Comparative Law and Comparative Knowledge. In: REIMANN, M.; ZIMMERMAN, R. (ed.). *The Oxford Handbook of Comparative Law*. Nova Iorque: Oxford University Press, 2008. p. 305-337.

JÉGOUZO, Y. Existe-t-il un territoire pertinent? In: FOUCHER, K.; ROMI, R. (org.). *La décentralisation de l'environnement : territoires et gouvernance*. Aix-en-Provence: PUAM, 2006, p. 121-126.

JONAS, H. et al. New Steps of Change: Looking Beyond Protected Areas to Consider Other Effective Area-Based Conservation Measures. *Parks*, [s.l.], v. 20, n. 2, p. 111-128, 2014.

JONAS, H. et al. Will "other effective area-based conservation measures" increase recognition and support for ICCAs? *Parks*, [s.l.], v. 23, n. 2, p. 63-78, 2017.

KEENLEYSIDE, K. et al. Realizing the potential of protected areas as natural solutions for climate change adaptation. *Parks*, [s.l.], v. 20, n. 1, p. 67-78, mar. 2014.

LEUZINGER, M. D. *Natureza e cultura: direito ao meio ambiente equilibrado e direitos culturais diante da criação de unidades de conservação de proteção integral e domínio público habitadas por populações tradicionais*. Tese (Doutorado em Desenvolvimento Sustentável) — Universidade de Brasília, Brasília, DF, 2007.

LOPOUKHINE, N.; DIAS, B. F. S. Editorial: What Does Target 11 Really Mean? *Parks*, [s.l.], v. 18, n. 1, p. 5-8, 2012.

MACKINNON, D. et al. Canada and Aichi Biodiversity Target 11. *Biodiversity and Conservation*, [s.l.], v. 24, n. 14, p. 3559-3581, dez. 2015.

MAGNANINI, A. O pinheiro brasileiro, a ecologia e a necessidade de uma reserva biológica. *Floresta*, Curitiba, v. 3, n. 1, p. 17-20, 1971.

MCNEELY, J. A. (ed.). *Parks for Life: Report of the IVth World Congress on National Parks and Protected Areas, 10-21 February 1992*. Gland: IUCN, 1993.

MEDEIROS, R.; IRVING, M.; GARAY, I. A proteção da natureza no Brasil: Evolução e conflitos de um modelo em construção. *Revista de Desenvolvimento Econômico*, Salvador, v. 6, n. 9, p. 83-93, 2004.

MICHAELS, R. The Functional Method of Comparative Law. In: REIMANN, M.; ZIMMERMAN, R. (ed.). *The Oxford Handbook of Comparative Law*. Nova Iorque: Oxford University Press, 2008. p. 339-382.

OLIVEIRA, L. J. D. Regularização fundiária de unidades de conservação. *Boletim Científico ESMPU*, Brasília, DF, v. 9, n. 32/33, p. 143-176, 2010.

OLIVIER, J. Le rôle de l'UICN dans la formation du droit de l'environnement. In: OLIVIER, J. *L'Union mondiale pour la nature (UICN): une organisation singulière au service du droit de l'environnement*. Bruxelas: Bruylant, 2005. p. 149-222.

ÖRÜCÜ, E. Methodology of Comparative Law. In: SMITS, J. M. (ed.). *Elgar Encyclopedia of Comparative Law*. 2. ed. Cheltenham: Edward Elgar Publishing, 2012. p. 560-576.

PARÁ. Tribunal de Justiça (1ª Câmara Cível Isolada). *Agravo de instrumento*, n. 2012.3.003780-1. Agravante: F. W. P. de Souza. Agravado: Ponte Participações Ltda. Relator: Des. Marneide T. P. Merabet. *Diário da Justiça do Estado do Pará*, ed. 5285, Belém, p. 57, 17 de junho de 2013.

PEREIRA, P. F.; SCARDUA, F. P. Espaços territoriais especialmente protegidos: conceito e implicações jurídicas. *Ambiente & Sociedade*, São Paulo. v. XI, n. 1, p. 81-97, 2008.

PHILLIPS, A. The history of the international system of protected area management categories. *Parks*, [s.l.], v. 14, n. 3, p. 4-14, 2004.

PRATES, A. P. L.; IRVING, M. DE A. Conservação da biodiversidade e políticas públicas para as áreas protegidas no Brasil: desafios e tendências da origem da CDB às metas de Aichi. *Revista Brasileira de Políticas Públicas*, Brasília, DF, v. 5, n. 1, p. 27-57, 14 jun. 2015.

RIO DE JANEIRO. Tribunal de Justiça (10ª Câm. Cível). *Agravo de instrumento 0024449-90.2018.8.19.0000*. Agravante: A. A. Rocha. Agravado: Mun. Angra dos Reis. Relator: Des. José Carlos Varanda dos Santos, 21 ago. 2019. Available from: <http://www4.tjrj.jus.br/ejuris/ConsultarJurisprudencia.aspx>. Access on: Feb. 19, 2020

RIOS, A. V. V. Populações tradicionais em áreas protegidas. In: RICARDO,

F. (ed.). *Terras Indígenas & Unidades de Conservação da natureza: o desafio das sobreposições*. São Paulo: Instituto Socioambiental, 2004. p. 78-84.

ROBINSON, N. A. IUCN as Catalyst for a Law of the Biosphere: Acting Globally and Locally. *Environmental Law*, Portland, n. 249, 2005.

RODARY, E.; MILIAN, J. Extension et diversification des aires protégées : rupture ou continuité ? In: AUBERTIN, C.; RODARY, E. (ed.). *Aires protégées: espaces durables?* Marseille: IRD, 2008. p. 33-54.

SADELEER, N. DE. La protection de la nature et de la biodiversité. In: PETIT, Y. (ed.). *Droit et politiques de l'environnement*. Paris: La documentation Française, 2009. p. 187-199.

SANTILLI, J. A lei 9.985/2000, que instituiu o sistema nacional de unidades de conservação da natureza (SNUC): uma abordagem socioambiental. *Revista de Direito Ambiental*, São Paulo, v. 40, p. 78-110, out. 2005.

SÃO PAULO. Tribunal de Justiça (1ª Câm. Res. Meio Ambiente). *Apelação cível n. AC 0000980-58.2010.8.26.0563* (n. reg. 2019.0000604011). Apelante: S.E.R.R.A Sociedade Pro educação. Apelados: J. E. P. Gerevini e L. C. Gerevini. Relator: Des. Torres de Carvalho, 1 ago. 2019. Available from: <https://esaj.tjsp.jus.br/>. Access on: Feb. 19, 2020

SÃO PAULO. Tribunal de Justiça (1ª Câm. Res. Meio Ambiente). *Embargos infringentes n. 994.07.150004-3/50002*. Embargante: Fazenda do Estado de São Paulo. Embargados: Prefeitura de São Paulo e outros. Relator: Des. Lineu Peinado, 18 fev. 2010. Available from: <https://esaj.tjsp.jus.br/>. Access on: Feb. 28, 2020

SÃO PAULO. Tribunal de Justiça (2ª Câm. Res. Meio Ambiente). *Apelação cível n. 0001446-10.2011.8.26.0210*. Apelante/apelado: Min. Púb. SP. Apelantes/apelados: Espolio de J. C. Ferreira e A. D. Ferreira Botelho. Relator: Des. Alvaro Passos, 18 jun. 2015. Available from: <https://esaj.tjsp.jus.br/>. Access on: Feb. 19, 2020

SÃO PAULO. Tribunal de Justiça (2ª Câm. Res. Meio Ambiente). *Apelação em Ação Civil Pública, n. 00024550720118260210* (Registro 2016.0000890433). Apelantes: M. C. N. L. Nicolliello e outra. Apelado: Min. Púb. SP. Relator: Des. Roberto Maia, 1 dez. 2016. Available from: <https://esaj.tjsp.jus.br/>. Access on: Feb. 19, 2020

SÃO PAULO. Tribunal de Justiça (2ª Câm. Res. Meio Ambiente). *Remessa Necessária n. 0002946-04.2014.8.26.0244*. Recorrente: 2ª Vara de Iguape. Recorrido: Min. Pub. SP. Relator: Paulo Ayrosa, 13 dez. 2018. Available from: <https://esaj.tjsp.jus.br/>. Access on: Feb. 19, 2020

SOARES-FILHO, B. et al. Role of Brazilian Amazon protected areas in climate change mitigation. *Proceedings of the National Academy of Sciences*, [s.l.], v. 107, n. 24, p. 10821-10826, 26 maio 2010.

SOUZA, R.; LEAL, G. F.; MACIEL, F. M. Participação em áreas protegidas. *Veredas do Direito*, Belo Horizonte, v. 16, n. 35, p. 403-426, 2019.

UNEP-WCMC; IUCN; NGS. *Protected Planet Report 2018*. Cambridge; Gland; Washington: UNEP-WCMC; IUCN, 2018.

Article received on: 03/17/2020.

Article accepted on: 10/23/2020.

How to cite this article (ABNT):

LEITE, A. O. The polysemy of the term “protected area” and the corresponding CBD and IUCN concepts. *Veredas do Direito*, Belo Horizonte, v. 17, n. 39, p. 195-225, sep./dec. 2020. Available from: <http://www.domhelder.edu.br/revista/index.php/veredas/article/view/1807>. Access on: Month. day, year.