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Privatising Anticipatory Governance? The Biotech Industry Global Compact Initiative for Liability and Redress under the Cartagena Protocol on Biosafety

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| <p style="text-align: center;">Privatizing Anticipatory Governance? The Biotechnology Industry “Global Compact” Initiative for Liability and Redress under the Cartagena Protocol on Biosafety</p> |
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Abstract

This paper analyzes an initiative, called “Global Compact”, presented in March 2008 by a group of six leading agricultural biotechnology companies. The “Global Compact” initiative aims at responding to the international needs for a liability and redress mechanism regarding the potential risks of genetically modified organisms. The aim of this study is to understand to which extent the proposal formulated by these private sector actors might respond to governmental expectations on the issue. In particular, we argue that two factors have been responsible for the failure of the proposal to be integrated into intergovernmental negotiations on liability and redress so far. The first one is linked to its contents and related to several implementation weaknesses regarding its scope and partiality. The second and more crucial factor is related to the lack of representativeness of the proposal in terms of business participation to its formulation. This second point underlines the fragmentation of the business community at the international level.

Keywords Agricultural biotechnology, business actors, Cartagena protocol on Biosafety, international environmental negotiations, liability and redress, Global Compact

Acronyms

CBD Convention on Biological Diversity

COP Conference of the Parties of the Convention on Biological Diversity

| | |
|--------|--|
| COPMOP | Conference of the Parties of the Convention on Biological Diversity serving as the meeting for the Parties to the Cartagena Protocol |
| ENGO | Environmental non governmental organizations |
| GIC | Global Industry Coalition |
| GM | Genetically modified |
| GMO | Genetically modified organisms |
| IGTC | International Grain Trade Coalition |
| WBCSD | World Business Council for Sustainable Development |

Introduction

The global production of genetically modified organisms (GMOs) is increasing worldwide. As a consequence, several regulatory frameworks have been put in place in order to manage the environmental and health risks related to this new technology. However, socio-economic consequences have been poorly regulated and the progress in the culture and commercialization of GMOs is posing increasing dilemma to conventional agriculture and food supplies (Lee & Burrell, 2002). In particular, the risks of gene flows from modified to conventional crops have already resulted in several disputes opposing farmers to biotechnology corporations. A famous case is the one of Percy Schmeiser, a Canadian farmer sued by Monsanto for infringement of its patent for GM Canola seed while these seeds were the results of accidental genetic contamination. Monsanto won the trial, demonstrating that the Canadian farmers knew about the presence of the GM variety in its field. Interestingly, this case demonstrates the difficulty for farmers to invoke liability mechanisms against corporations while the same corporations benefit from strong patent law enforcement (Lee & Burrell, 2002, pp.521-523).

While cases of adverse contamination are meant to multiply in the future, the Cartagena Protocol on Biosafety, adopted in 2001, is currently negotiating an international instrument to establish liability mechanisms in case of damage to biodiversity caused by the release of GMOs. During the international negotiations for such an anticipatory governance system, a group of six leading plant biotech companies presented in March 2008 a contractual compensation mechanism they elaborated for a liability scheme under the Cartagena Protocol of the international Convention on Biodiversity (CBD). According to an explanatory note

circulated by its initiators, this so-called “Global Compact” agreement aims at responding in a measurable way to the question: “if your products are so safe, then why don’t you stand behind them?” (Anonymous, 2008a). The aim of this paper is to evaluate to which extent the “Global Compact” initiative is inclined to respond to the current international discussions on liability and redress for accidental release of GM variety during transboundary movements. It demonstrates how the lack of representativeness of the initiative is the most important factor explaining its failure to be adopted at the international level.

In order to do so, the argument is developed into two steps. Firstly, we describe the debate related to business actors’ participation to international environmental regimes. This helps us to anchor the research question in a broader theoretical framework on the influence of business in environmental governance. This part reveals how environmental non governmental organizations (ENGOS) have often been perceived as the main countervailing forces to business influence at the international level. However, we argue that the issue of the unity of the private sector at the international level is a stronger factor to understand business overall power in environmental governance. Secondly, as an illustration of this conceptual claim, we focus on the case of the Global Compact initiative under the Cartagena Protocol on Biosafety. The initiative initially appears as an adequate answer to an intergovernmental institutional dead-end. Though, the proposal is also the subject of increasing criticisms formulated by ENGOS and partially shared by governmental actors. Interestingly, the lack of representativeness of the initiative is presented by national delegates as the main weakness of the Global Compact proposal. A more detailed analysis of the category of actors at the origin of the Global Compact indeed reveals the strong specialization of the actors it represents as well as the limits for the acceptance of the initiative by other economic actors.

Theoretical Background: Business Power in Environmental Governance

Industries have predominantly been considered as a unified group of actors opposed to environmental governance, especially when facing the threat of potential regulations. The field of biodiversity governance is no exception to this conceptualization of the influence of business actors (Andrée, 2005; Burgiel, 2007; Clapp, 2007). Therefore, the literature often makes the methodological choice to centre on a limited number of business coalitions in order to picture the trends, positions and strategies of the entire business community. These studies seem to signal that the organizational structure of business at the international level is highly integrated and fundamentally opposed to environmental measures. Though, for these authors

the strong organizational capacities of business actors do not mean that business preferences are always dominant in environmental governance. Environmental negotiations gather indeed a wide variety of international actors and mostly environmental non governmental organizations that are active in advocating strong environmental regulations. ENGOs and civil society organizations are therefore perceived as the main countervailing forces to business power in environmental governance (Levy & Newell, 2005). Recently, authors have demonstrated how these groups benefit from business actors' poor discursive and reputation resources in environmental governance (Fuchs, 2007).

While giving strong importance to ENGOs, these studies neglect the issue of business transnational collective action by postulating the unity of the business community. These scholars sometimes signal that lobbying styles can be of relevance in the construction of business political positions and actions (Levy, 2005; Coen 2005, p.211). However, these organizational differences do not impede private actors to find common interests for alliances and common international actions. Though, several recent studies recognize that the so called private sector may include a wide variety of actors, whose interests diverge when facing different issues. For some authors, the network of social relations that take place within the corporation, across different corporations or between corporations and governments, determinates business positions and comprises a broad range of political behaviors (Amoore 2000). For others, three factors are determinant for understanding firms' strategies in environmental governance: (i) their position in the commercial supply chain, (ii) their origin and in particular the level of internationalization of their activities, (iii) their involvement in new environmental products and technologies (Falkner, 2008). By emphasizing the diversity of business interests and positions constituting the so called business community, these studies aim at underlying the possible difficulty for business to engage in transnational collective action.

Our study precisely aims at reinforcing these last studies of potential business conflicts in environmental governance. In particular, we argue that the lack of unity inside the business community related to GMOs' liability and redress issues is the most important factor explaining the failure of the "Global Compact" initiative. First of all, the disparities among private sector actors have an impact on the content of the proposal that is still rather general. Secondly, governments are not likely to accept private sector proposals that do not encompass a broad variety of business actors. In particular, the development of industries in developing countries as well as the competition between different industrial sectors create some countervailing forces to multinational agro biotechnology corporations.

In order to illustrate this conceptual choice, this paper analyses the consequences of the “Global Compact” on the international negotiations on liability and redress under the Cartagena protocol. The initiative initially appears as an adequate answer to the current stagnation of intergovernmental negotiations. Though, the proposal is also the subject of increasing criticisms formulated by ENGOs and partially shared by governmental actors. Interestingly, the lack of representativeness of the initiative is presented by national delegates as the main weakness of the Global Compact proposal. A more detailed analysis of the category of actors at the origin of the Global Compact indeed reveals their strong specialization. This specialization in turn explains the limit for the acceptance of the initiative by governmental representatives as well as other economic actors. The study relies on an extended literature review on the topic, documentation on the Convention on Biodiversity negotiations, fieldwork observations during several working groups of the CBD including the third and fourth Conference of the Parties to the Cartagena Protocol (COPMOP3 and COPMOP4), interviews with key actors of the negotiation and implementation process and archival material on the negotiation period.

The International Negotiations for Liability and Redress: from Anticipatory Governance to Real Risks Management

The first draft for a biosafety protocol, presented by the Ethiopian government, was formulated at the third Conference of the Parties to the CDB (COP3) in 1996. At that time, the draft included an article aiming at defining the liability and redress mechanisms to be used in case of damage to biodiversity caused by GMOs’ release into the environment (Damena, 2002, p.362). In contrast with other negotiated points, progress was difficult on the topic of liability. The difficulty to resolve the question was due to the de facto preventive character of the measures to be taken. In 1996, the development of agricultural biotechnology was still recent and no accident had happen in relation to GMOs’ use (Cook, 2002, p.366). During the international discussions on a possible draft several industries proposed the elaboration of a multilateral found on the basis of financial contributions. However, the initiative was perceived to be in competition with the project for an intergovernmental protocol and was rejected (Cook, 2002, p.375). After arduous discussions, the final version of the Cartagena Protocol adopted in 2000, contains an article –article 27- dealing with liability and redress. This article states that “the Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, adopt a process with respect to the appropriate

elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms, analyzing and taking due account of the ongoing processes in international law on these matters, and shall endeavor to complete this process within four years” (Convention on Biological Diversity, 1992, art.27). The negotiations for a liability and redress mechanism under the Cartagena Protocol were therefore postponed and meant to be over by 2008.

The negotiations on the issue were going to be influenced as several cases of damage caused by GMOs were to be publicized. The first international contamination by a transgenic variety –the Starlink corn- was communicated in Canada in 2001, just after the adoption of the protocol’s text. This genetically modified (GM) variety was approved by the United States government for animal consumption and industrial uses but forbidden for human consumption. In Canada, none of these uses was authorized. Though, traces of Starlink corn seeds were found in several food products sold in North American fast foods and several cases of allergies and health troubles linked to the GM variety were declared (Dufault, 2006, p.116). At the intergovernmental level, a working group was mandated by the COPMOP1 in 2004 in order to consider the elaboration of an international instrument on liability and redress for GMOs accidental release. The working group met for the first time in 2005. The negotiation procedure chosen by the two co-chairs of the working group was inductive: all possible elements of the agreement were listed in order to try to combine them into an international regime. The first working group considered the major points enumerated in article 27 and the second meeting elaborated a 60-pages draft on the different possible options for the regime. The expert group was progressing slowly when in mid 2006 another case of transnational GMO contamination was made public, accelerating the negotiation process.

In August 2006, the United States Department for Agriculture announced that American rice exports were contaminated with the LL601 or Liberty Link rice, an herbicide resistant variety elaborated by the multinational corporation Bayer CropScience. The contamination was discovered five years after its accidental release that occurred during the field tests of the variety. The authorization to commercialize the Liberty Link rice had never been granted to Bayer. As the incident became public, a study made by an American consultancy office mandated by Greenpeace International estimated that 63% of American exports were concerned as well as the activities of thousands of firms. The total cost of the incident was evaluated between 741 and 1285 millions dollars (Greenpeace International, n.d.). Several trials were initiated by farmers in order to obtain compensation against Bayer CropScience LP, Riceland Foods and Producer Rice Mill that were the three firms linked to

the dissemination of the GM variety. Three months after the incident, the United States authorities decided to authorize on November 28th the Liberty Link rice for commercialization and tried to negotiate the sale of new American rice harvests. To the contrary, the USA Rice Federation, representing the American rice industry announced its opposition in principle to GMO Rice due to the strong economic impacts of the controversy (USA Rice Federation, n.d.). By 2007 the potential risks of GMOs contamination were starting to become a reality and the intergovernmental discussions on liability and redress for GMOs accidental release were accelerated.

The Liability and Redress Negotiations: the Global Compact Initiative as a Solution to an Institutional Deadlock?

The negative consequences of the two cases of GMO contamination detailed above were soon discussed during the negotiations of the CBD. The third working group on liability and redress elaborated a 76 pages document specifying the possible approaches and delimitating the different instruments for liability and redress¹. The fourth meeting of the working group then put in place a first contact group on the definition of ‘incident’ as well as a second contact group on a civil or administrative approach to the international regime². The fifth meeting of the working group maintained four possible options for the regime. (i) One international private law agreement combined with a non binding instrument for civil liability. (ii) A binding agreement based on an administrative approach and a non binding instrument for civil liability. (iii) A modification of national laws asking the importing country to ensure the incidents. (iv) A binding agreement with an administrative or civil liability approach and a collective compensation mechanism open to Parties implementing the agreement. During the fifth meeting of the working group, the negotiation environment became much tensed. A

¹ The different approaches are State liability, civil liability (trials) and the administrative approach (elaboration a specialized agency responsible for sanctions). The points to be decided by the working group are the scope of the regime (transboundary movements, time, geography), the delimitation of the notion of ‘incident’ (definition, explanation, strict liability or fault-based liability), the establishment of a primary compensatory mechanism, and/or the creation of one complementary compensatory mechanism and/or a system of complaints.

² Different negotiation groups are formed during the international negotiations of the Cartagena Protocol according to the level of consensus and precision of the questions to be resolved. General issues are dealt with in working groups. Contact groups then gather a smaller number of negotiators and aim at resolving more specific questions. “Friends of the chair” groups can then sometimes be formed when issues discussed in contact groups fail to attain consensus. “Friends of the chair” groups gather a handful of negotiators.

controversy emerged from the fact that the co-chairs of the working group elaborated a draft and announced its adoption before its presentation to the Parties.

Just as the intergovernmental discussions were evolving towards an institutional dead-end a group of multinational companies presented an initiative called “Global Compact”. They believed this initiative could have resolved the international controversy on liability for biosafety. At the beginning of the second week of negotiations for the fifth working group, the president of the meeting gave the floor to CropLife International. The organization, representing companies engaged in agricultural biotechnology, presented to the Parties a contractual system proposed by Monsanto, BASF, Syngenta, Dow AgroSciences, Dupont/Pioneer and Bayer Cropscience to cover the hypothetical damages caused by their products. For these companies, the “Global Compact” agreement aimed at responding in a measurable way to the question: “if your products are so safe, then why don’t you stand behind them?” (Anonymous, 2008a). The initiative was positively welcomed by the president of the working group who asked for applause (Friends of the Earth, 2008). Despite this apparent consensus, the negotiations went on in contact groups and in “friends of the chair” groups, without reaching any agreement. The “friends of the chair” gathered three days before COPMOP4 without being successful. This confirmed the willingness of CropLife International to have its proposal detailed and discussed precisely at COPMOP4.

The Global Compact under Civil Society Scrutiny: a classical NGO/Business confrontation?

The industries at the origin of the Global Compact circulated a document containing several questions and answers concerning their proposal. The main aim of the project is to show that these firms are able to take their own responsibilities regarding their products (Anonymous, 2008a). The industries taking part to the compact also organized a side event in parallel to the negotiations in order to discuss their proposal. During this side event, CropLife International explained that the compact is a written agreement between states and enterprises regarding the damages caused to biodiversity by unauthorized genetically modified organisms. In case of litigation, the plaintiff is responsible for providing a fully documented submission detailing the litigation. A technical committee constituted under the compact then gathers and decides of the compensation to be distributed to the plaintiff. Table 1 details the main points of the “Global Compact” proposal.

Table 1 Detail of the Main Points of the Global Compact Initiative

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| <p>Scope</p> <p>Coverage for damage to biological diversity that need to be measured and assessed.</p> |
| <p>Causation</p> <p>Release of a LMO as direct and proximate cause. Strict liability to the authorization holder. Several exceptions for defenses (misuse, force majeure, etc.)</p> |
| <p>Recourse</p> <p>Remediation rather than compensation is favored. If remediation is not possible, compensation will be given with financial limitations.</p> |
| <p>Processing of claim</p> <p>Only individual States can submit a claim consisting in a fully documented submission. The submission is examined by the technical committee (experts in biological diversity). When the claim is deemed complete there are some first settlement discussions or mediation. After 90 days an assessment process is conducted by the Permanent Court of Arbitration of the compact.</p> |

Source : (CropLife International, 2008).

The CropLife International side event took place in a tense atmosphere³. Several critics were formulated against the initiative and in particular the fact that the proposed Compact only covered unauthorized products. The question of the link between the initiative and the negotiation process of the CBD was also raised by a participant and lead to a rather unclear conclusion of the debates by one representative of CropLife International:

“- How do you link the compact to the negotiations? Is it a supplementary source of financing? Primary?”

- I do not understand the difference between complementary and primary. There are no legal links between the two. The compact applies only to the Parties to the Protocol because it is linked to the Protocol. Thanks to all of you”.

One representative of the CBD Secretariat confides to us: “I do not understand the logic: it has institutionally nothing to do with the Protocol but only Parties can participate...” (interview with the CBD Secretariat, 13/05/2008).

The question of the link between the Global Compact and the Protocol was not the only controversial point of the initiative. Soon, several critics were formulated by NGOs reinforcing the apparent controversies during the CropLife side event. One ENGO

³ Several NGO members expressed their will to film the presentation but the companies at the origin of the compact refuse. The industry representatives ask the CBD secretariat business focal point to help them manage the possible excesses from civil society organizations.

representative signals that the weaknesses of the Global Compact are at least threefold: (i) damages have to be proven for a period of at least twenty five years which is far too long; (ii) authorized products are not covered by the contract; (iii) the compact is not linked to any other compensation system (interview with Ecopora, 13/05/2008). A common statement of position was circulated by thirteen NGOs stating that the main risk of the proposal is to see industry becoming the judge of its own trials as signatory companies designate the commission entitled with the evaluation of the damages. Moreover, the text presents too many exemptions to compensation, a restrictive definition of ‘incident’, an unclear procedure, as well as no possibility for farmers, consumers, indigenous and local communities to have access to justice as the agreement is meant to be signed by states. For ENGOs, the Global Compact initiative is worth an “empty gesture” (Friends of the Earth et al., 2008).

Table 2: NGO main critics against the Global Compact initiative

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| <p>Scope</p> <p>Too numerous exclusions from liability coverage.</p> <p>Narrow definition of damage.</p> <p>Only unauthorized products are covered.</p> |
| <p>Causation</p> <p>Damages have to be proven for a period of 25 years.</p> |
| <p>Recourse</p> <p>When asking damage under the Global Compact procedure state renounce to other modes of recourse.</p> <p>No institutional link to the Protocol leading to the privatization of liability and redress instruments.</p> |
| <p>Procedure of claims</p> <p>No possibility for farmers, indigenous and local communities and consumers to ask for compensation.</p> <p>Lack of transparency in the decision-making process: technical committee as experts appointed by members. No participation of the public</p> |

Source: (Friends of the Earth International, et al., 2008)

The presentation made by business actors of their initiative as well as the critics formulated by environmental NGOs are crucial to understand the way the proposal is framed by different categories of actors. Moreover, the information circulated by these groups do have an impact on negotiators that are usually taking part to side event presentations and gathering all existing information of the topics to be negotiated. The implementation weaknesses of the Global Compact proposal regarding its scope and partiality are determinant factors in its adoption by states. However, the intergovernmental discussions surrounding the

proposal did only partially reflect this debate. According to governmental representatives, the main weakness of the initiative was its lack of representativeness.

Intergovernmental Discussions on the CropLife Initiative: How Global are the Firms involved in the “Global Compact”?

The Global Compact initiative was potentially relevant for governments as the proposal implied private actors' liability for their own activities. Indeed, “states have been reluctant to establish liability regimes, which provide for state liability for transboundary environmental damage caused by private activities under their jurisdiction or control” (Mackenzie, 2006: 219). Despite this positive element, the proposal was not approved by governmental officials. Firstly, the critics on the structure of the compact evidenced by the NGO community were perceived by numerous delegations as a problem for its adoption. Secondly and more importantly, the representativeness of the Global Compact proposal was at the centre of the intergovernmental discussions on the initiative.

Controversies concerning the category of actors at the origin of the proposal started during the COPMOP4 meeting when the Dutch co-chair to the liability and redress working group proposed to integrate a reference to the Global Compact into the negotiated documents. The phrasing used by the co-chair was as follows: “the COP-MOP welcomes the private sector initiative to provide for a contractual compensation mechanism covering in the event of damage to biodiversity caused by living modified organisms”. The reactions of Parties were immediate, starting from Peru: “the private sector you are talking about in your draft does not represent the whole private sector. It is about six big transnational companies that are all part of the biotechnology sector. Your proposal goes beyond the understanding we have of the situation. We have to integrate the fact that it is just one initiative from one type of private sector”. The European Union reinforced Peru's intervention by confirming that the initiative did not involve “the whole range of private sectors in the whole world”. India, Ethiopia, Japan, Malaysia and Palau supported the declaration of Peru and Ethiopia concluded: “most importantly, we could welcome the initiative if the private sector was responding to its obligations...” In that context Colombia and New Zealand that recognized the positive step forward represented by the Global Compact were defeated. In order to clarify the overall impression on the Global Compact the Brazilian government proposed a synthesis: “we agree on the fact that the initiative has to be recognized but the wording ‘to welcome’ in the United Nations language means to agree with its context and its format. It is something we haven't

discussed in an appropriate way. We have been preoccupied in our case by the way this contract can be connected to the development of small enterprises in different developing countries. How can these companies be involved? How do these ideas work with regard to the diversity of actors involved in industrial activities? These points have to be examined. How does all this integrate in the exercise we are currently conducting? The terms of our discussions are not very clear”. However, even the synthesis formulated by Brazil was opposed by several governments such as Palau that added: “Palau refuses to make reference to the initiative. I have read the compact and the text contains more holes than a Swiss cheese. This does in no way reflect what we have been doing until now”⁴. At the end of the debate, Switzerland signaled that non state actors had been asked by Parties to participate in the negotiations and formulate proposals. According to Switzerland, the drafting was consequently about welcoming the effort that industries made in elaborating a proposal, not welcoming its content. The European Union proposed that the compact possibly served as a complementary financial mechanism in the case of double compensation. A reference independent to the negotiated texts was drafted but, until now, no precise elements of the Global Compact initiative have been included in the agreement negotiated on responsibility and redress, therefore demonstrating the failure of the proposal to convince governments.

The governmental discussions surrounding the Global Compact initiative demonstrate that lack of representativeness of the private sector actors linked the proposal is the main reason for its failure to convince governments. The problem raised by Brazil and shared by several other governments concerns the participation of small companies in the Global Compact instrument. CropLife International indeed signals that potential members of the initiative will have to meet several conditions of membership such as “financial capacity, stewardship and rigorous risk assessment” (Anonymous, 2008a). An analysis of the way the initiative has been formulated and its potential extension to other companies and/or industrial sectors reveals the strong specialization of the actors it represents as well as the limits for the acceptance of the initiative by other economic actors.

Perspectives for the “Global Compact” to become a Global Business Initiative

⁴ After several interventions Switzerland took the floor to react to Palau’s comments: “I have just been stirred up by Palau’s remark concerning Swiss cheese. Swiss cheese can happen to be very tasty, in particular if it is served with a bottle of wine”. However Palau reiterated its will to abandon the Global Compact proposal: “there is no wine in the compact”.

Our last section aims at considering the possibility for the Global Compact to include more companies in order to reinforce the representativeness of the initiative. An alliance can be built between companies originating from the same sector as well as from firms developing activities in different domains. One of the most obvious industrial sectors concerned with liability and redress for damages caused by GMOs would be represented by insurance companies. However, given the high level of indeterminacy of GMOs risks and associated compensation levels, insurance firms have always been reluctant to ensure those risks (Spaeter, 2004). Two alternatives are therefore possible for the six multinational biotechnology companies: bridging alliances with other biotechnology companies or with companies operating along the supply chains of their products.

The six enterprises of the Global Compact have been discussing during 18 months the modalities of the contract without reaching any agreement on the concrete details of the proposal (interview with representative of the World Business Council for Sustainable Development, 13/05/2008, Anonymous, 2008b). The difficulties in elaborating the text illustrate the diversity of positions among the industries that were taking part to the initiative. Moreover, no attempt was made to include other biotechnology companies developing or using GMOs. In spite of the sponsorship of CropLife International, the proposal was not presented nor adopted by the broad range of enterprises members of the organization (interview with CropLife representative, 13/05/2008). The Global Compact initiative was again not presented to the Global Industry Coalition, the main lobby coalition concerned with the negotiations of the Cartagena Protocol. Even some representatives of the firms involved in the Global Compact totally disagree with the initiative. Despite the participation of Syngenta to the initiative, one representative of the firm representing a Brazilian subsidiary and taking part to the World Business Council for Sustainable Development was not consulted before the presentation of the proposal and discovered the contract just as any other stakeholder, that is during the announce made during the working group: “when you are a transnational firm you do not ask your developing countries subsidiary companies about their opinion. Decisions are made at the level of the direction, without any consultation either with public affairs managers nor governmental affairs or regulation specialists. *You are not protesting?* Yes but the threat is to loose my job” (interview with WBCSD representative, 13/05/2008). Several members of the International Chamber of Commerce such as Dupont have some subsidiary firms in developing countries but for them these companies do not have the necessary resources to be involved in international decision making (interview with Dupont representative, 29/03/2006). According to the Brazilian representative from Syngenta, two main critics can be formulated

against the Global Compact. The first one concerns the timing of the proposal (“it is not the right moment”), and the second one the definition of damages as damages to biodiversity, a definition that hides the socio-economic problems related to the broader objective of sustainable development. This business representative concludes: “there are going to be some problems and industry people will have to find an answer to them. It is not just the risk of GMO flows but also the dangers of monocultures. These persons have consulted neither with Brazil nor with other countries. They will have these kinds of problems anyway” (interview WBCSD representative, 13/05/2008). This testimony as well as the lack of communication of the initiative among the biotechnology sector renders difficult a possible acceptance of the Global Compact by business actors.

The firms at the initiative of the compact could also try to develop alliances with enterprises working along the GM variety supply chain. The next step following GM seed production is their transport and transformation for further use in food supply chains. Transport companies in international biodiversity negotiations are gathered under the banner of the International Grain Trade Coalition (IGTC). Though, the IGTC is not currently taking part to the Global Compact initiative. The organization has studied the text of the Global Compact and could agree with some of its points. However, no formal agreement has been reached between the two categories of companies: “our lawyers did not seat around the same table in order to see what would be possible” (interview with IGTC representative, 14/05/2008). This testimony illustrates that a possible agreement between biotechnology and grain traders is not evident and will probably include some economic bargaining. A more detailed analysis of the category of actors at the origin of the Global Compact consequently reveals the strong specialization of the actors it represents as well as the limits for the acceptance of the initiative by other economic actors.

Conclusion

Our analysis of the international discussions of a private sector companies’ initiative for liability and redress issues linked to GMOs –the Global Compact initiative- reveals its failure to be adopted at the intergovernmental level. In spite of the critics formulated by ENGOs and related to the clauses of the contract, the lack of representativeness of the initiative is the first factor at the origin of its abandon by the Parties to the Cartagena protocol.

In term of theoretical results, the case study illustrates the difficulty to consider the private sector as a unitary actor at the international level. Since the adoption of the Cartagena protocol on biosafety, three transnational industrial coalitions are visible in the negotiation of

the international agreement: the Global Industry Coalition, the International Grain Trade Coalition and the World Business Council for Sustainable Development. The presentation of the initiative reveals that it has been formulated by a handful of biotechnology corporations that did not, so far, succeed in obtaining a larger support from any of the three over mentioned business coalitions. At the intergovernmental level, far from being considered as an ideal solution, the Global Compact initiative raises the issue of the integration of small companies to this international effort. The argument of the lack of representativeness of the initiative developed by national delegations to the negotiations of the Cartagena protocol sheds some light on the raising importance of developing countries' emerging industries. These industries, as well as big grain traders and insurance companies, create some countervailing forces to multinational agro biotechnology corporations.

Practically, the analysis reveals that private sector initiatives are promising solutions to deal with risks that are difficult for governments to handle. However, in order to be efficient, these instruments will have to include a broader variety of private sector actors. In this process of alliance bridging, multinational companies will have to accommodate their positions to other categories of economic actors.

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