

3

Global Corporations

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Global corporations have been key players in the development of global environmental governance. The significance of these actors has not always been acknowledged in the academic literature but recent scholarship has produced a wealth of studies on the theoretical and empirical dimensions of business involvement in international environmental politics (for overviews of this literature, see Levy and Newell 2005b; Falkner 2008). This shift in the literature is partly a reflection of the rapid proliferation and growth of global corporations. At the dawn of the global environmental movement in the early 1970s, there were a mere seven thousand parent enterprises (Clapp 2005). By 2005 there were estimated to be more than ten times that number (United Nations Conference on Trade and Development [UNCTAD] 2006, annex table A.I.6), and recent waves of mergers and acquisitions have led to the creation of ever larger transnational corporate conglomerates. Moreover, and more important, scholars have recognized that global corporations have also become more actively engaged in global environmental governance since the 1970s. They not only seek to shape international diplomatic efforts to create global environmental treaties but have also become sources of authority and providers of environmental governance functions in their own right. As in other areas of global governance, business has become a “pivotal political actor” (Fuchs 2007, 4) in the environmental arena.

This chapter aims to summarize the main findings of recent work on global corporations carried out by researchers in the Global Governance Project. The next section conceptualizes and introduces the topic. Following this, three specific examples of how global corporations have engaged in the negotiation and implementation of international environmental regimes are presented. The fourth section draws on these experiences in a discussion about the different dimensions, as well as the

limitations, of corporate power. The chapter concludes with recommendations for future research.

Conceptualization

In the realm of global environmental governance, corporations can be thought of as having multiple identities. On the one hand, they can be seen as creators of environmental problems. Corporations are responsible for a significant percentage of global energy usage, for the depletion of much of the planet's stocks of natural resources, and for a large portion of annual releases of toxic chemicals and emissions into the environment (Elliott 1998). Furthermore, global corporations are relentless promoters of (over)consumption, which is increasingly recognized as a root cause of many (if not all) environmental problems (Dauvergne 2008). On the other hand, the actions of corporations are often critical to the success of environmental protection efforts. Global corporations have substantial capacity to conduct research and are key drivers of the social and technological change that is required to address environmental problems (Levy and Newell 2005a).

In the not-so-distant past, the majority of global corporations could have been expected to react to environmental measures in much the same way. Responses typically fell within a limited range from the skeptical and dismissive through to the outright hostile. The accepted ideology among corporate actors pitted environmental protection against economic success. Today, corporations are generally much more nuanced and diverse in their approach to environmental issues (Falkner 2008). This is not to say that one no longer finds individual corporations using old adversarial tactics. Exxon's continued funding of initiatives devoted to undermining the scientific evidence on climate change is a prime example (Adam 2009). In addition, corporations do still play the jobs-versus-environment card, which can be particularly effective in an economic crisis. For the most part, however, the modern global corporation is likely to agree that some action on environmental issues at the global level is necessary. Additionally, it may even acknowledge that "win-win" solutions to environmental problems are possible and that acting as a leader on environmental issues can be beneficial from an economic perspective, the so-called business case for environmentally responsible behavior. According to Braithwaite and Drahos (2000, 268), "the change in business leaders' attitudes on this issue is unmistakable. Many more now believe that green is lean and profitable." Nevertheless, as

Gunningham (2009, 221) points out, it remains unclear how much of this change in attitudes reflects empty rhetoric and to what extent corporations are actually “walking the talk.”

How can one explain the shift in posture adopted by global corporations? To a large extent, it is purely strategic. It soon became obvious to corporate actors that taking a hostile stance on environmental issues was ineffective; the environmental movement grew substantially in size and influence in spite of continual attempts to undercut the emerging environmental agenda. Furthermore, despite fears (and corporate threats) of industrial flight to pollution havens, leading industrialized countries have steadily strengthened and expanded environmental regulation since the 1970s (Neumayer 2001).

The role of nongovernmental organizations (NGOs) must also be recognized. Organized boycotts of specific corporations and products have fundamentally altered the playing field. As Shell learned in the conflict over the disposal of its oil platform Brent Spar, the ability of NGOs to mobilize the public on environmental issues can result in serious damage to brand identity and a company’s bottom line. Campaign groups have developed sophisticated strategies to cajole or pressure global corporations into more environmentally friendly behavior, giving rise to a new form of “world civic politics” (Wapner 1996) or “civil regulation” of business (Newell 2001).

In addition to being confronted with the need to at least appear to be concerned about the environment in order to maintain a favorable image in the eyes of conscientious consumers and ever-vigilant activists, corporations have also been inundated with accounts from academics, consultants, and other business experts of how (at least some) environmental practices can produce cost savings, reduce risk, and open up new green markets (see, e.g., Esty and Winston 2006). When leading corporate actors take up these practices, it creates pressure for others to follow suit (Gunningham 2009).

Finally, corporations have undoubtedly been appeased by government movements away from command-and-control style regulation at the domestic level and the lack of corporate accountability mechanisms at the global level (see Hajer 1995 for a discussion of this in the context of the broader shift to “ecological modernization” as the dominant discourse in environmental politics). As Utting (2002, 1) explains:

The confrontational politics of earlier decades, which had pitted a pro-regulation and redistributive lobby against [transnational corporations], lost momentum as governments, business and multilateral organizations alike, as well as an

increasing number of NGOs, embraced ideas of “partnership” and “co-regulation” in which different actors or “stakeholders” would work together to find ways of minimizing the environmental cost of economic growth and modernization. The hands-on regulatory role of the state ceded ground to “corporate self-regulation” and “voluntary initiatives” as the best approach for promoting the adoption of instruments and processes associated with corporate environmental responsibility.

In other words, although global corporations have changed their behavior, to some extent, as a result of being pushed (e.g., through boycotts) and pulled (e.g., by green markets), this is not the whole story. Other actors have also changed their expectations for corporations and have altered the way that they approach and interact with them. This has made it easier for corporations to engage in environmental governance. Although some observers would view this finding of common ground as laudable, others decry the cooptation or marketization of the environmental agenda (Newell 2008).

Regardless of the position that one takes on this issue, it is clear that the new role, or more aptly new roles, adopted by global corporations in global environmental governance are significant and deserve attention from scholars. It is worth briefly outlining the key roles played by corporations that have been identified to date (generally Falkner 2008; Fuchs 2007; Clapp 2005).

The most commonly accepted and extensively studied role is that of *lobbyist*. Although there is nothing new in itself about corporations lobbying domestically and even in some cases gaining official representation in government delegations to international meetings, it has been observed that, increasingly, corporate actors are also looking for their own seat at the international table (Elliott 1998; Clapp 2005). At intergovernmental meetings, they participate as observers, organize side events, and meet in the corridors with other key players. Corporations have also learned to coordinate their efforts at the global level and are now often represented by larger bodies such as the World Business Council for Sustainable Development or International Chamber of Commerce at negotiations (Orsini 2011). As is the case with intergovernmental bureaucracies, such bodies can have significant influence in governance outcomes (Bauer, Andresen, and Biermann, this book, chapter 2).

Once a multilateral environmental agreement has been signed and ratified, governments will take steps to implement it in their jurisdiction. In this process, global corporations may be subjected to new regulations. How global corporations respond to the implementation of

multilateral environmental agreements—whether they take on the role of *supporter*, *acceptor*, or *challenger*—will have a strong impact on the effectiveness of global environmental governance. Technology may also be crucial to the implementation of a multilateral environmental agreement, and global corporations have tremendous resources to devote to research and development. Thus, global corporations can also take on the important role of *innovator*, using their technological prowess to shape the direction and effectiveness of environmental governance (Falkner 2005).

Another role adopted by global corporations that influences the development and the implementation of environmental measures is that of *communicator*. By influencing the language used in official documents and framing debates in the public sphere, corporations help to shape norms and ideas that in turn affect the direction of policy. According to Fuchs (2007, 154) “discursive power appears to be a particularly strong source of potential influence for business.”

A final role that global corporations have recently assumed is that of *regulator*. Instead of simply passively accepting or trying to influence regulations by governments, global corporations are actively developing standards for themselves or cooperating with other private actors (e.g., NGOs) to do so. Examples of this form of private governance include reporting schemes (e.g., the Global Reporting Initiative), certification and labeling schemes (e.g., the Forest Stewardship Council), and sets of voluntary principles (e.g., the International Chamber of Commerce Business Charter for Sustainable Development) (Cutler, Hauffer, and Porter 1999; Hall and Biersteker 2002; Falkner 2003; Pattberg 2007 and this book, chapter 5). These private initiatives are not only relevant in terms of how they affect corporate behavior with respect to the environment, but also in terms of how they influence the way in which environmental issues are dealt with in more traditional state-led forums.

Experiences

In this section, we employ three examples to illustrate how corporations shape the development of multilateral environmental agreements through lobbying and how they affect the implementation of multilateral environmental agreements once they have been ratified. This limited focus is taken due to considerations of space and is not reflective of our views on the importance of other dimensions of corporate agency and power, including discursive power (a topic that has been of increasing interest

to scholars; see Fuchs 2007) or private governance, a subject that is more fully explored in part II of this book.

Influencing Regime Creation, Shaping Regime Evolution: Global Business in Ozone Politics

The international regime to combat stratospheric ozone-layer depletion is widely considered the greatest success in the history of international environmental policy making. It is also seen by many analysts as a clear example of the pervasive influence that global corporations have on environmental negotiations. A number of scholars have provided detailed accounts of the efforts by leading chemical firms to influence the creation of the 1987 Montreal Protocol (Levy 1997; Litfin 1994; Oye and Maxwell 1995). More recently, the focus has shifted to the role that business has played in shaping the evolution of the ozone regime after 1987, with greater attention being paid to other industrial sectors—from aerosol manufacturers to refrigeration and air-conditioning industries—and how they have helped to advance or hinder the international effort to phase out ozone-depleting substances such as chlorofluorocarbons (CFCs) (Falkner 2005).

The different roles played by corporations in international environmental governance have been evident in ozone politics. From the beginning of the ozone crisis in the mid-1970s, global corporations were actively involved as lobbyists of governments in an effort to influence the creation of national and international regulations to combat ozone-layer depletion. Initially, the business community was united in its opposition to any regulatory action. Led by the producers of CFCs and other ozone-depleting substances, business representatives in Europe and North America questioned the science that implicated CFCs in ozone depletion and argued that restricting their use would cause economic havoc. The small group of chemical firms (DuPont, Allied Chemical, ICI, Atochem, and Hoechst) that controlled the global market for CFC production provided the main impetus for the business community's lobbying campaign against the internationalization of ozone politics.

The first divisions within the business community emerged when certain CFC-using industries came under pressure by activist groups and regulators to reduce their reliance on ozone-depleting substances. The aerosol industry in the United States was the first to react to the growing controversy surrounding CFCs. By the late 1970s, US manufacturers of aerosol products had completely phased out the use of what was once described as a "miracle chemical." Their European competitors were also

making efforts to reduce reliance on CFCs, but faced with much weaker public and regulatory pressure in Europe, they were able to continue using the controversial chemicals well into the late 1980s (Falkner 2008).

Growing business conflict—between CFC producers and users, and between US and European industries—was to play an important role in subsequent international negotiations. DuPont was the first chemical company in 1986 to advocate global restrictions on the production of ozone-depleting chemicals. It had closely followed the scientific debate on ozone depletion and recognized that new scientific discoveries were gradually strengthening the link between CFC emissions and ozone depletion. The company was also concerned about the growing imbalance between different national CFC restrictions, with European competitors enjoying a competitive advantage due to weaker regulations in Europe. The fact that the world's largest CFC producer was now backing an international regime undermined the anti-regulatory business front and boosted the chances of reaching an international accord in 1987. For a second time in 1988, DuPont broke rank with the rest of the chemical industry and announced its support for the eventual elimination of all CFC production and replacement with environmentally friendly substitute chemicals, provided this would apply to all major economies worldwide (Glas 1988; Falkner 2008).

Business conflict thus weakened the anti-regulatory business lobby and created political space for negotiators to agree on the Montreal Protocol. Divisions between and within industrial sectors also helped to shape the implementing and renegotiating of the ozone regime. After 1987, some CFC-using industries (e.g., aerosols and electronics) moved faster than others (e.g., air conditioning and refrigeration) in replacing ozone-depleting substances with safer alternatives. Although most user industries had been hostile toward any CFC restrictions until well after the Montreal Protocol was signed, rapid technological breakthroughs allowed some of them to move ahead of the internationally agreed CFC phase-out schedule. This in turn enabled negotiators to tighten the Montreal Protocol in several rounds of treaty revisions and bring forward deadlines for the phase-out of the various ozone-depleting substances.

In their role as innovators, certain CFC producers and users came to shape regime evolution and helped to speed up the phase-out of ozone-depleting substances. At the same time, other industrial sectors were either unable or unwilling to engage in radical product and process changes to replace CFCs. The air-conditioning and refrigeration industries, for example, adopted substitute chemicals that either were classified

as transitional substances (hydrochlorofluorocarbons [HCFCs]) or had negative side effects due to their substantial contribution to global warming (hydrofluorocarbons [HFCs]). Together with the chemical industry that had backed hydrochlorofluorocarbons and hydrofluorocarbons solutions, the air-conditioning and refrigeration sectors fought to retain the right to use these substitute chemicals, rejecting calls by scientists and environmentalists for their early phase-out. The compromises reached in the post-1987 ozone negotiations largely reflected the innovation and investment decisions taken by different CFC-using industries (Falkner 2008).

The importance of the innovator role of business to the functioning of the ozone regime underlined the technological power of major corporations in global environmental governance. Leading industrial experts from a wide range of sectors were invited to join the Montreal Protocol's influential technology assessment panels, thus helping to direct the emerging discourse on the feasibility of CFC-replacement strategies and phase-out schedules. Business decisions on technological innovation and investment, by CFC producers and users alike, set important parameters for what other actors perceived as technologically feasible regulations. In this sense, corporations used their technological power to frame the knowledge structure within which the ozone regime evolved (Falkner 2005).

To be sure, corporations did not control, in a strict sense of the word, the process of technological change, nor did they determine the outcome of the international negotiation. Corporate power often found its match in the agency and power of other actors. States and environmental campaign groups created pressures and incentives for the CFC industries to address the ozone-depletion problem. They also exploited competitive dynamics between individual firms and benefited from the potential for business conflict to divide the initially united business front that had delayed regulatory action in the early days of the ozone controversy. To understand, therefore, the role and influence of global corporations in environmental governance, we need to focus not only on the sources of corporate power but also on the potential for disunity and conflict within the business community. The next section delves further into this topic in the area of biodiversity politics.

Coalitions, Conflicts, and the Limits of Lobbying Power: Global Business in Biodiversity Politics

The history of corporate engagement in the biodiversity regime holds important lessons for our understanding of the role of global corpora-

tions as lobbyists. Since its adoption in 1992, the Convention on Biological Diversity has been the framework for one of the most dynamic, though not necessarily most effective, regimes in the environmental field. Global corporations have actively engaged in negotiations taking place within the regime, in particular on biosafety and access and benefit sharing.

In 2000, the parties to the biodiversity convention adopted the Cartagena Protocol on Biosafety to regulate the transboundary movements of genetically modified organisms (GMOs), which are crops created by biotechnological manipulation (see Gupta et al., this book, chapter 4; Busch, Gupta, and Falkner, this book, chapter 9). The protocol regulates the international trade in GMOs by establishing the rules for importer decision making based on the precautionary principle. The Cartagena Protocol has had an appreciable impact on biotechnology companies, grain traders, and food retailers worldwide because it forces these private actors to follow precise procedures regarding GMO transport and handling (Andrée 2005; Falkner 2008).

In 2002, the parties to the biodiversity convention adopted international guidelines that regulate the conditions of access to natural genetic resources (known as the access and benefit-sharing objective). These genetic resources are used for innovative purposes by a broad range of corporations particularly in the pharmaceutical, biotech, and cosmetics sectors. Moreover, in October 2010 the parties to the biodiversity negotiations adopted a binding international agreement to improve the transparency of genetic resources supply chains, known as the Nagoya Protocol.

Global corporations were involved in the negotiations of the Cartagena Protocol and the Nagoya Protocol, and the importance of their lobbying activities has been emphasized in the literature to date (Andrée 2005; Clapp 2007; Tully 2003). This section, conversely, draws attention to the limits of corporate power in these negotiations. One indication of such limits is the constant adaptation of corporate lobbying strategies.

In terms of the negotiations for the Cartagena Protocol, the most active biotechnology companies were initially focused on trying to influence the process through their alliance with the US delegation. As the United States is not party to the biodiversity convention, however, it soon became a priority for these firms to shift their focus to other delegations with a direct role in the negotiations (Bled 2008). In pursuit of wider influence, these biotechnology firms created a new business lobbying coalition in 1998—the Global Industry Coalition—that lobbied

forcefully in favor of nonbinding international regulations of biotechnology applications.

Despite its dynamism, the Global Industry Coalition suffered a major setback when the binding Cartagena Protocol was adopted in 2000. At the time, the coalition was facing internal as well as external difficulties. Internally, the Global Industry Coalition was far from unified (Falkner 2008; Orsini 2011). In particular, divisions emerged between pharmaceutical companies and agricultural biotechnology firms because agricultural products were meant to be released into the wider environment whereas pharmaceuticals were used in confined laboratories and were consequently supposed to have less impact on biodiversity. Divisions also evolved between biotechnology developers and grain traders in response to European consumers' request for GMO labeling. Moreover, the coalition developed a very obstructionist stance that gave the impression that the biotechnology companies wanted to dictate international decisions on GMOs. As a result, the Global Industry Coalition was excluded from coordination meetings organized by the European Union and developing countries (Bled 2008).

As a consequence of the Global Industry Coalition's failure to prevent the adoption of the Cartagena Protocol, corporate lobbying activities evolved in two directions. On the one hand, the Global Industry Coalition lost some of its allies when pharmaceutical companies left the negotiations after obtaining the elimination of pharmaceuticals from the scope of the protocol and when the grain traders decided to create a competing lobbying group—the International Grain Trade Coalition—that was less adverse to the adoption of rules on GMOs. On the other hand, the biotechnology firms decided to establish a steering committee for the Global Industry Coalition, charged with controlling internal decisions (Orsini 2011). In order to improve their reputation, these biotechnology firms also created CropLife International, a business NGO, enlisted with the task of communicating to society the benefits of biotechnology, and developed strong links with a transnational scientific organization, the Public Research and Regulation Initiative, to reinforce their expertise on biotechnology applications. Despite all of these efforts, recent developments in the negotiations reveal that the main biotechnology firms continue to face difficulties in their attempts to shape biodiversity governance (Bled 2010). In 2006, the parties to the Cartagena Protocol adopted mandatory rules on the documentation of GMO shipments, despite strong opposition to such labeling expressed by the Global Industry Coalition.

As in the Cartagena negotiations, global corporations involved in the access and benefit-sharing negotiations initially focused on exerting pressure on governments through their participation in national coordination meetings and national delegations. In particular, pharmaceutical companies developed strong links with the Swiss and German governments. In this instance, global corporations have had measured success in their lobbying efforts because voluntary international guidelines on access and benefit sharing were adopted in 2002. The guidelines were soon challenged, however, by several governments, mainly countries rich in biodiversity as well as Sweden. These governments asked for the negotiation of a mandatory regime on access and benefit sharing to be completed by 2010 (Bled 2010).

When the negotiations of this mandatory agreement began, corporations involved in the process adopted two different lobbying stances. On the one hand, the biggest pharmaceutical companies, which had been active in networking with governments during the negotiation of the voluntary guidelines, continued their efforts to influence the process. These efforts remained focused on lobbying national delegations, although they additionally increased their efforts to network with other private-sector actors under the auspices of the International Chamber of Commerce (Orsini 2011). On the other hand, several nationally based corporations such as the Brazilian company Natura took a proactive position on access to genetic resources and created strong links with their governments. Although the first category of business actors has had a limited influence on the process, mainly because of its obstructionist stance, the second has been successful in advocating a binding international regime on access and benefit sharing (Bled 2009).

The Cartagena Protocol and Nagoya Protocol negotiations indicate that there are limits to corporate influence in the biodiversity regime. As in the ozone regime, global corporations have been successful in certain instances—for example, initially restricting progress on access and benefit sharing to only voluntary measures—but overall they have been plagued by a lack of unity within specific coalitions and more generally between different sectors. Corporations have been forced to change tactics repeatedly in order to respond to these conflicts and the evolving dynamics of the negotiations. Additionally, when coalitions have fallen apart, energy has been expended to form new lobbying organizations and to restructure old ones. In sum, business conflict and corporate obstructionism have undermined the ability of global corporations to maintain a pervasive influence on the Cartagena Protocol and the Nagoya Protocol.

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Challenging the Implementation of Environmental Regimes: Global Business and Investment Arbitration

The previous two sections have focused on how global corporations can shape the development of international environmental regimes. Empirical work in this area is critical to understanding the broader influence of corporations in global environmental governance. The story does not end there, however. As noted previously, global corporations can also play an important role in supporting, accepting, or challenging the implementation of environmental regimes at the domestic level. Global corporations have significant resources at their disposal and access to new technologies; their acceptance of or support for a regime can therefore be crucial to its success. Conversely, if global corporations oppose a particular regime it can become politically and financially costly for a government to implement it. This section looks at one instance in which a global corporation acted as a challenger to the implementation of a multilateral environmental agreement and examines the mechanism—investment arbitration—that it employed to facilitate its challenge.

The corporation in question is S. D. Myers—an international waste treatment company headquartered in Ohio—which had sought to import polychlorinated biphenyls (PCBs) and PCB wastes from Canada for processing in the United States in the early 1990s. The firm was (temporarily) thwarted by a 1995 Canadian government ban on the movement of these substances across the Canada–United States border. PCBs are highly toxic substances that have been the subject of increasingly strict regulation in Canada and the United States since the 1970s, including restrictions on imports and exports. Furthermore, Canada had ratified in 1992 the Basel Convention on the Transboundary Movement of Hazardous Wastes, a multilateral environmental agreement that prohibits the export and import of hazardous wastes (including PCBs) to and from nonparties (such as the United States) unless an agreement exists between the party and nonparty that is as stringent as the convention (article 11). Although there is a bilateral agreement (the 1986 Agreement Concerning the Transboundary Movement of Hazardous Waste) between Canada and the United States, it was unclear to the Canadian government at the time that it implemented the ban whether this agreement actually covered PCBs (which were not classified by the United States as hazardous waste) and met the requirements of article 11 of the Basel convention.

Because of its status as a foreign investor, S. D. Myers could use an arbitration clause in chapter 11 of the North American Free Trade Agreement (NAFTA) to initiate a special legal proceeding against the Canadian

government challenging the ban. International investment arbitration is a rapidly growing field. Arbitration clauses are found in investor-state contracts, bilateral investment treaties (now at over 2,600; see UNCTAD 2009), and trade agreements like NAFTA. At least 390 cases of treaty-based, investor-state disputes had reached arbitration by the end of 2010 (UNCTAD 2011). An increasing number of these cases concern environmental regulation (for summaries of recent cases see Tienhaara 2011a).

In the *S. D. Myers* case, the arbitral tribunal determined that Canada had, in imposing the ban on the transborder movement of PCBs, breached some of the provisions of NAFTA chapter 11 and should pay *S. D. Myers* nearly Can\$7 million dollars in damages and costs (Tribunal 2002a, 2002b). With regard to the Basel convention, the tribunal determined that article 11 clearly permitted crossborder movement of hazardous waste under the terms of the bilateral transboundary agreement. It also noted, however, “Even if the Basel convention were to have been ratified by NAFTA Parties, *it should not be presumed that Canada would have been able to use it to justify the breach of a specific NAFTA provision*” (Tribunal 2000, paragraph 215, emphasis added). The tribunal concluded that “where a state can achieve its chosen level of environmental protection through a variety of equally effective and reasonable means, it is obliged to adopt the alternative that is *most consistent with open trade*” (Tribunal 2000, paragraph 221, emphasis added).

Regardless of what one makes of the particular facts of this case, the tribunal has sent regulators a disturbing message that the commitments they have made to protect global corporations (vague and ill-defined as they are) trump those that they have made in multilateral environmental agreements. This gives global corporations a powerful tool to challenge the implementation of environmental agreements. Although arbitrators typically award only compensation to investors, rather than requiring the state to overturn a regulatory measure, there is understandable concern that arbitration or the threat of arbitration may cause “regulatory chill” (Mann 2001; Neumayer 2001; Tienhaara 2011b). In other words, governments may maintain the status quo in environmental regulation and even fail to implement multilateral environmental agreements (which generally lack strong enforcement mechanisms) because they fear the costs of breaching investment agreements. Moreover, even when governments do not refrain entirely from regulating, they are likely to employ those regulatory tools that are least likely to be challenged, rather than those that are most likely to be effective.

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Although most investor-state disputes resolved to date have not concerned measures taken to implement multilateral agreements, there is a concern that global corporations will increasingly turn to arbitration as international environmental obligations become more onerous. A dispute that emerged in 2009 between the Swedish energy company Vattenfall and the government of Germany appears to give credence to this fear as well as to concerns about regulatory chill. Using the investment chapter of the Energy Charter Treaty, the firm, which invested in a proposed multibillion-Euro coal-fired power plant, challenged measures that the German government claimed were taken by state officials in order to comply with the requirements of the European Union's Water Framework Directive. Given that Vattenfall's investment was in the energy sector, this case also raised questions about the potential for disputes to arise over the implementation of state commitments in a future climate regime. As Bernasconi (2009, 6) noted, "With future measures on climate change soon to be agreed at the international level, one must wonder if this is a prelude to the arbitration of measures not just in Germany but any state that takes the measures necessary to implement new global standards and targets." In August 2010, the parties in the Vattenfall dispute reached a negotiated settlement. Although no details of the settlement have been released, media reports have suggested that local water-use restrictions, which would have prevented the completed plant from operating at full capacity, may have been eased to placate the company (Peterson 2010).

Finally, it is worth noting that although the *S. D. Myers* and *Vattenfall* cases both concern environmental measures adopted in developed countries, the potential for global corporations to use investment arbitration in developing countries is actually much greater. The majority of international investment agreements are signed between a developed and developing country. Although these agreements are reciprocal, global investment flows are currently highly asymmetrical (many investors from the North operate in the South, but less so the reverse) and thus in most instances only the developing country party faces significant exposure to arbitration claims. Furthermore, developing countries often lack the resources and expertise to mount an effective defense in arbitral proceedings as well as the funds to pay investors compensation (which can reach the range of several hundred million US dollars) and are therefore more likely to capitulate to corporate demands in order to avoid arbitration (Tienhaara 2009). From a global environmental governance perspective, this is a serious problem, especially when one considers that developing

countries are likely to be expected to take on more binding targets in international treaties in the near future.

Explanations

As these three examples have shown, it is unquestionable that global corporations are increasingly involved in global environmental governance. The influence of firms is felt at the stages of regime formation and implementation. Although the overall picture of business participation is clear, these experiences also point to the fact that the consequences of corporate engagement are varied. Greater involvement of global corporations cannot be considered either unequivocally positive or negative in terms of creating effective global environmental governance. Even within a specific issue area, corporations behave in obstructive and constructive ways. As a group, corporations are diverse; individually, they can be mercurial. It is therefore inadvisable to generalize about their impact on global environmental governance. Nevertheless, some specific findings can be drawn out from our research.

One finding is that although it is important to acknowledge that multiple interest groups endeavor to influence global environmental politics, it must be recognized that global corporations occupy a privileged position in the international hierarchy. Although this argument has been made by others, the focus has often been on the structural economic power that global corporations wield (see references for Clapp 2005 and Fuchs 2007, chapter 5). That is to say that because global corporations are a major provider of employment, contribute significantly to economic growth, and can credibly threaten to exit a given jurisdiction, national governments are more sensitive to their concerns than to those, for example, of NGOs. Our research and the cases discussed in this chapter, however, highlight some additional sources of power that can be drawn on by global corporations.

One, illustrated in the discussion of the ozone regime, is technological power. As a result of their predominant role in research and development, global corporations are able not only to provide solutions to environmental problems, but also to define the boundaries of what policy options are considered technologically and economically feasible (Falkner 2005; see also Beck 2002). Many global environmental problems require societies to make fundamental changes to industrial and technological systems, for example, with regard to the use of energy and natural resources or the production and disposal of toxic substances. In this regard, global

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corporations play a critical role. They shape the direction and speed of processes of technological change. Their investments in industrial infrastructure and technological innovation give them a powerful and indeed privileged position in global debates on how to bring about change toward greater environmental sustainability.

A second source, particularly evident in the biodiversity regime, is organizational power. Firms have the financial and material capacities to establish and maintain diverse alliances inside the business community (in international lobbying coalitions and business NGOs) as well as externally (with governments and environmental NGOs). With regard to the Cartagena Protocol on Biosafety, the Global Industry Coalition has been very successful in networking with the main grain-exporting states, which have decided not to ratify the final agreement. In the access and benefit-sharing negotiations, several pharmaceutical companies have been very active in advising the Swiss and German governments for the elaboration of international voluntary guidelines on the issue. The Brazilian company Natura has also developed strong links with the Brazilian government to push for the adoption of the Nagoya Protocol. Although the need to continually change tactics indicates that there are limits to corporate power, the capacity of firms to adapt their strategies in order to achieve greater influence is noteworthy (Bled 2008; Levy and Newell 2005a).

A third source, exemplified in the use of investment arbitration by global corporations, is institutional power. The landscape of global governance is of course not populated solely by environmentally focused institutions; global corporations have been actively involved in lobbying for and shaping the development of what Levy and Egan (1998) call “enabling institutions,” designed to facilitate economic processes such as trade and investment. Although often (legally) isolated from one another at the international level, regulatory and enabling institutions can overlap and come into conflict at the stage of implementation. These types of conflicts have been extensively studied in the context of the trade-environment debate (Esty 1994; O’Neill and Burns 2005). Investment agreements, however, have been given less attention by scholars even though they allow for a more active role for global corporations. These agreements provide global corporations with leverage in national and international politics that other actors cannot attain. As access to investment arbitration is exclusive to foreign investors, only global corporations and not domestic firms (let alone nonbusiness actors) can use this mechanism to challenge environmental regulation. Thus,

international investment agreements in effect elevate global corporations to a level of recognition in international law not usually afforded to nonstate actors. Sornarajah (2006) points out that, ironically, although international investment agreements give foreign investors standing in international law, efforts to create responsibilities on the part of global corporations have been resisted on the grounds of the absence of international legal personality.

Although we argue that global corporations, as a broad group, occupy a privileged position in global politics, clearly the extent to which individual firms can draw on technological, organizational, and institutional power will vary. As the experiences discussed in the previous section indicate, there is in fact a wide array of views and strategies that global corporations adopt in response to global environmental governance. It is perhaps unsurprising that corporations do not collectively comprise a monolithic entity that speaks with a single voice on environmental issues. It is after all well recognized that environmental regulation creates winners and losers. The level of dissonance among corporate actors, however, appears to surpass that which would occur if only this basic win-lose dichotomy was in operation. Even within a group of purported winners or losers, there may be rifts and renegades, and such divisions are of eminent political significance in international processes of regime building and implementation.

Essentially, the diversity of corporate responses to global environmental governance reflects the inherent diversity of the business community. As noted, corporations vary in terms of the strength of their technological, organizational, and institutional power. It is also the case that incentives to act will vary (Gunningham 2009). Certain business sectors and individual corporations are more susceptible to negative media exposure and NGO campaigns and are therefore more likely to want at least to appear to be playing a positive role in global environmental governance (Lock 2006). Whether a corporation is owned publicly or privately may also affect its willingness (and ability) to adopt approaches that are less focused on short-term profit maximization. Corporations are also differentiated by the location of their headquarters. Strong home state regulation may trigger a global corporation's involvement in the establishment of an international regime, particularly if it is highly exposed to competition in foreign markets (Falkner 2008). Additionally, the stage at which a corporation becomes involved in the negotiation and implementation of a multilateral environmental agreement will affect how invested it will be in the outcome of that process and how well it understands the

underlying issues. A corporation that has been active since the emergence of a regime would possibly be more in tune with what points various actors are likely to compromise on and might also better predict when the tide is about to turn against its position. Corporations that are completely uninvolved with the negotiation of a multilateral environmental agreement may be more likely to challenge its implementation, for example, through investment arbitration.

The reasons for heterogeneity will obviously vary from case to case. What is common across different areas of global environmental governance, however, is the fact that divisions that emerge within coalitions of business actors are a significant factor in limiting corporate influence. As was clearly illustrated in the discussion of the ozone and biodiversity regimes, business conflict can severely impede efforts on the part of global corporations to prevent the creation of environmental regimes or to shape their development. Given the increasing complexity of environmental issues and the increasing number of businesses with divergent interests being affected by global environmental governance, it seems unlikely that global corporate unity will emerge in the near future.

Another significant factor limiting corporate influence is the existence of countervailing forces. NGOs can play an especially important role in this respect. In the case of biotechnology applications, NGOs have had a strong impact on governments as well as on industries (demonstrated by the position adopted by the grain traders during negotiations) (Arts and Mack 2003). On access and benefit-sharing issues, NGOs have continually sought more proactive participation from corporations in access and benefit-sharing legislation, with some degree of success (Miller 2006). Even in the area of investment arbitration, NGOs can influence corporate behavior (e.g., convincing them to drop an investor-state dispute) through negative media campaigns and can additionally influence arbitrators through the submission of *amicus curiae* (friend of the court) briefs (Tienhaara 2007, 2009).

In sum, corporations are increasingly involved in global environmental governance in a variety of ways. Outcomes that are favorable to business and detrimental to environmental progress, however, are only intermittent. Although global corporations have significant power advantages relative to other interest groups, such as technological power, organizational power, and access to enabling institutions, they also face limitations. In order to achieve greater influence in global environmental governance, global corporations will first have to over-

come the obstacles to reaching greater consensus within the business community.

Conclusions and Outlook

Although many authors, particularly in the popular literature, have portrayed global corporations as a one-dimensional and homogenous group, we have argued in this chapter that in reality, these actors are complex and their relationships with each other are often contentious. Global corporations do not have one role to play in global environmental governance, but many. As lobbyists, communicators, and regulators they can be either obstructive or constructive in the development of international environmental regimes. Subsequently, as innovators, supporters, acceptors, or challengers they can facilitate or impede the implementation of these regimes.

Global corporations have received greater attention from environmental scholars in recent years but significant gaps in our knowledge remain. Whereas a considerable amount of work has been done on the role that global corporations have played in the climate regime (e.g., Levy and Egan 2003; Falkner 2010; Vormedal 2008), there are other areas that have not been studied sufficiently, such as the emerging regimes on persistent organic pollutants and nanotechnology. Another worthwhile endeavor would be to examine more closely the determinants of corporate positions on specific environmental issues. Falkner (2008) has developed an analytical framework to explain corporate behavior (using parameters such as firm size, supply chain position, and technological capacity) that could be used in future research. There is also room for further inquiry on issues that we have only briefly touched on here, such as the discursive power of business. On this and other issues, it could be helpful to look outside the field of environmental policy to other areas of global governance (e.g., labor, human rights, trade, and security) for comparison. Finally, it is important to remember that global environmental governance is not insulated from major developments in other areas of global politics. For example, the financial crisis that erupted in 2008 and the global economic downturn that ensued have likely had a significant impact on the way that global corporations and states respond to demands for environmental protection. It would be interesting to investigate in future research whether the crisis has also had an impact on the influence of business in global environmental governance.

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