Institut EDS
Institut Hydro-Québec en environnement, développement et société de l'Université Laval

Les Cahiers de l'Institut EDS

Volume 1, numéro 8, avril 2009

The Role of the Private Sector in Global Environmental Governance: from "rule-taker" to "rule-maker"?

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Résumé

La place accordée au secteur privé dans la gouvernance internationale de l'environnement (GIE) lancée depuis quelques années sous l'égide de l'Organisation des Nations unies est marginale. Ces acteurs sont ignorés ou, dans le meilleur des cas, laissés à leur rôle actuel de « *rule-takers* », c'est-à-dire d'« observateurs » et de metteurs en œuvre passifs des accords multilatéraux de l'environnement. Cette perspective nous apparaît très réductrice puisque nous voyons dans une participation accrue des acteurs privés comme « *rule-makers* », c'est-à-dire participants actifs à la formulation des normes, un des puissants leviers pour une GIE effective. Pour défendre ce point de vue, nous mettons en lumière les principaux facteurs qui sous-tendent cette situation, avant d'envisager les motifs qui poussent à la dépasser et les moyens à mettre en œuvre.

Mots-clés
gouvernance internationale de l'environnement; secteur privé; accords multilatéraux de l'environnement, activité politique des entreprises.

Abstract

The place granted to the private sector in the Global Environmental Governance (GEG) United Nations (UN) system has heretofore been marginal. These actors are largely confined to a role of "rule-taker", e.g. as "observers" and passive players in the implementation of Multilateral Environmental Agreements (MEAs). However, an increased participation of business actors as "rule-makers", e.g. as active players in the formulation of global environmental regimes, would be a powerful lever toward an effective GEG. This paper reviews the principal factors that explain this situation and presents arguments in favour of moving actively beyond it.

Keywords
global environmental governance; private sector; multilateral environmental agreements, corporate political activity.

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The Role of the Private Sector in Global Environmental Governance: from "rule-taker" to "rule-maker"? *

Introduction

Global Environmental Governance (GEG) has been discussed by international diplomats since the 1972 Stockholm Conference, without major progress in the capacity of the international community to decrease the growth-rate of environmental degradation. We thus face a paradoxical situation: instead of growing institutional, human, financial, and scientific resources devoted to the GEG system, it is the degradation of natural resources that continues (Millennium Ecosystem Assessement, 2005). To account for this problem, the literature invokes: a) the excessive proliferation of MEAs and fragmentation of the GEG; b) non-cooperation and non-coordination between international organizations; c) the lack of implementation and effectiveness of the GEG; d) an inefficient use of limited resources; e) a decision-making process insufficiently open to the participation of others sectors, such as: trade, health, finances, or development; f) a state-centric system that does not allow the effective inclusion of multiple international actors (including, the private sector). In that light, a strong consensus on the need to reform the GEG system has emerged (Najam, Papa and Taiyab, 2006).

Discussions of GEG reform have recently taken place along four parallel pathways: (i) the implementation of the reforms adopted in 2002 by the Governing Council of the United Nations Environment Programme (UNEP); (ii) the follow-up to the report of the High Level Panel on UN-wide Coherence in the fields of development, humanitarian assistance and environmental protection; (iii) informal consultations on GEG in 2006 and 2007; and (iv) the European initiative, headed by France, consisting in upgrading UNEP to the status of a UN Agency to become the United Nations Environmental Organization (UNEO) (Le Prestre, 2008).

These processes have been able to diagnose the main dysfunctions of the current GEG system. This evaluation has concentrated around two poles. On one hand, observers have underlined the recurring economic and political difficulties of UNEP. These difficulties are not new. They go back to the creation of this organization at Stockholm (DeSombre, 2006). But they have grown in importance since the UN Conference on Environment and Development (UNCED, Rio 1992) and the emergence of what must be called the International Governance of Sustainable Development. The emergence of sustainable development multiplied the type and number of actors as well as the fora of discussion. On the other hand, the increasing complexity of the international environmental agenda engenders keen criticisms. More specifically, researchers have underlined the negative consequences of the increasing institutional and policy fragmentation of the GEG system, such as overlapping of mandates, waste of resources, difficulties of coordination, and conflicts among institutions (Ivanova and Roy, 2007). The multiplication of conferences and meetings related to GEG marginalizes the poorest states, which do not have the human resources necessary to take an active part in negotiations that concern them.

To answer the challenge facing an effective GEG, which Najam (2003) describes as a victim of its own success, some reform proposals have emerged. Among them, the most important are strengthening UNEP; the creation of an UNEO; and the integration of the UN environmental institutions into clusters in order to improve coordination and synergies among various entities within the GEG system. Yet, these solutions all leave out the major role that the private sector can play and ignores the contemporary context marked by an increasing decentralization of the international governance processes.

* Ce texte a été présenté à la *Business and Global Governance for Sustainable Development Conference* (Oslo, avril 2008) et a bénéficié des commentaires du professeur Peter Newell de la University of East Anglia (Grande-Bretagne).

Any GEG reform should also account for the role that corporate actors play in international environmental politics. This challenge also applies to the theoretical frameworks used to conceptualize, analyze, and understand GEG. International Relations (IR) as a discipline has largely neglected the role of corporate actors in making global public policy. The dominance of the state-centric paradigm has meant that the influence of business has been little explored in the study of international politics.

Prisoner of this tension, the reform process of the GEG and the conceptual frameworks used to investigate global environmental politics have accorded only marginal attention to business actors. However, the business world is increasingly engaged in international environmental politics. Seen as opponents to any environmental regulation in the 1970s, they have become since 2002 "global partners" in international environmental politics through the development of private and hybrid (public-private) governance regimes. In spite of this encouraging evolution, the private sector is still confined mainly to the role of "rule-taker"[1] in the GEG system.

There is thus a real hiatus between the conceptualization of GEG and its actual dynamics. This hiatus poses a three-fold problem. First, it prevents us from fully comprehending the evolution of the role of companies from "rule-takers" to "rule-makers". Secondly, it makes it impossible to appreciate the emergence of the innovative role of the private sector as "rule-maker". Thirdly, it is very difficult to learn from this phenomenon in order to strengthen the place of the private sector in the GEG in order to make it stronger and more effective.

To understand and reduce this gap, this paper will be structured into three parts. We will first outline the expansion of the participation of the private actors in the GEG and describe their evolution as "rule-takers" and the emergence of a new role as "rule-makers". Secondly, we will describe the place the principal theoretical frameworks used to study the GEG grant to the private sector and underline the shortcomings of these theoretical frameworks in understanding the role of private actors in GEG. Lastly, we will analyze the potential and limits of strengthening the role of the private sector in GEG system. The concluding section will defend the role of "rule-maker" as one of the promising ways to reform the GEG in a decentralized perspective.

1. The growing engagement of the business actors in the GEG

1.1 The evolution as "rule-taker"

Historically, business actors positioned themselves in opposition to any national and international environmental policies, seen as true threats to their competitiveness. The additional and constraining environmental regulations are considered additional production costs. To quell the adoption of these regulations, the business actors first privileged forms of indirect action, taking advantage of their influence among national decision-makers/parliamentarians to oppose or weaken new global environmental regimes. This political action rests on an intense lobbying activity (Porter and Brown, 1996). It was the dominant political strategy used by the private sector at Stockholm in 1972.

The Conference of Rio in 1992 marked the beginning of a change in corporate strategy for some business actors. This change resulted in an increased and more direct participation of the private sector in international environmental conferences. This change was aimed at better representing their interests in the international arena. Maurice Strong, organizer of the Rio Summit and former business leader, played a key role in welcoming two private sector institutions in GEG: the Business Council for Sustainable Development (BSCD) and the International Chamber of Commerce (ICC). Thus, using an interpretation of sustainable development centered on the reconciliation of economic and socio-environmental interests, the BCSD and the ICC lobbied governmental delegations directly in Rio de Janeiro. Their objective was simple: to promote the idea of a partnership among the private sector, environmentalists and the international community in finding common solutions to global environmental problems. In particular, their political strategy sought to support certain specific types of governance mechanisms, such as market-oriented and industry-based self-regulation instruments. On the basis of these two guiding principles, these two institutions produced a voluntary environmental code of conduct: the ICC Business Charter for Sustainable Development. This industry-based standard opened the doors, in the 1990s, to the growth of private environmental regimes in GEG. While interest in private environmental governance has grown recently, the active involvement of corporate actors in shaping private environmental regimes is not entirely new. For example, the US Chemical Manufacturers Association, together with its Canadian counterpart, developed the Responsible Care program in the 1980s to promote environmental and safety principles and codes of management practice within the global chemical industry (Falkner, 2003; Garcia-Johnson, 2000).

1.2 The initiatives of "rule-maker"

The construction of private environmental regimes such as certification standards (International Organization for Standardization - ISO 14000, Forest Stewardship Council - FSC, Marine Stewardship Council - MSC), and codes of conduct (Coalition for Environmentally Responsible Economics - CERES Principles), is a clear example of the role of the private sector as "rule-maker" in the GEG. These private forms of environmental self-regulation are frequently carried out in partnership with non-governmental organizations (NGOs) and backed by States and International Organizations (IOs). These private governance regimes have become an important component of the global environmental institutional architecture. They clearly indicate the capacity and the ability of business actors, organized in transnational networks, to create their own environmental regimes, which in turn affect the overall structures of GEG. These business initiatives have stimulated the debate about Corporate Environmental Responsibility (CER) and influenced the structure of GEG through the inclusion of soft industry-based self-regulation instruments. They are seen, by private actors, as the only environmental regulation mechanisms able to respond to the shortcomings of traditional command and control state-based regulations (Clapp, 2005; Falkner, 2003).

Transnational corporate actors also influence GEG through their participation as "rule-makers" in other international forums important to global environmental policy, such as through the development of industry-based initiatives, as discussed previously. The ISO 14000 environmental management standards, for example, while initially designed as a voluntary set of standards, are now recognized as legitimate standards by States and IGOs (Clapp and Dauvergne, 2005). Several countries, particularly in East Asia and Europe, have adopted ISO 14000 as their official standards; governments are expected to incorporate them into their procurement; and international bodies, such as the World Trade Organization (WTO), have recognized the ISO standards as international standards under the WTO system and as being consistent with the Technical Barriers to Trade Agreement (Falkner, 2003; Haufler, 2001). These standards can be seen as an international regime of governance, as they follow a set principles, norms, rules, and decision-making procedures for environmental managements systems (Krasner, 1983).

For Newell (2003), the participation of business as "rule-maker" in diverse arenas (such as global trade rules/standards or intellectual property rights) has a huge impact on the effectiveness of environmental regimes. But when conflicts emerge between trade, intellectual property rights and environmental regimes, industry coalitions, active in both regimes, play a crucial role in lobbying in favour of minimizing restrictions on trade. This is quite clear, for example, in the debate on the extent to which the Biosafety Protocol should be subordinated to, or should override, the WTO and World Intellectual Property Organization (WIPO) rules.

Before presenting the main reasons for this change from "rule-takers" to "rule-makers", it is important to keep in mind that business is not homogeneous. Indeed, starting in the 90s, the change in corporate environmental strategy has been observed in only a segment of the private sector. A few companies decided to replace their traditionally defensive and critical posture with a proactive strategy that sought to deliver innovative responses to the challenges posed by global environmental regimes. Le Prestre argues that this change stemmed from for four main reasons: i) the emergence of a "green industry" which considers the new international environmental regulations as an opportunity for growth and profit; ii) the progressive awakening by some companies to the risks which environmental problems could represent to their legitimacy and competiveness; iii) the perception that a strong, effective and efficient GEG is central to the development of the business world since it guarantees a clear and stable institutional environment; iv) the incentives given by IGOs and States for a more active role of private actors in finding solutions to global environmental issues (Le Prestre, 2005).

But the increasing involvement of the private sector in GEG has gone way beyond Rio de Janeiro. The arrival of Kofi Annan as UN Secretary-General marked a new stage in the history of the industry's involvement in GEG. In the 1990s, he began to seek close cooperation with business and industry as an integral part of UN reform. Private actors were perceived as part of the solution rather than as a problem to regulate. Then, they were officially invited as observers as well as contributors to debates at global conferences which have served to shape the environmental agenda of the UN. This new "observer" status allowed them to be present during the discussions, to make statements at the beginning of negotiation sessions, to distribute informative documents outside the plenary, to have a formal voice on advisory technical committees, etc (Ivanova, Gordon and Roy, 2007; Bled, 2007b).

With this evolution, advocacy groups such as the WBCSD and the ICC have increased the visibility and influence of business in international forums. These groups, so-called Businesses and Industry NGO (BINGO), play a prominent role in multilateral environmental negotiations for several reasons. Initially, BINGO membership is the means by which companies gain physical access to the multilateral negotiations. In order to attend and participate in international negotiations, a company must be member of a BINGO registered with the MEA Secretariat. In addition to physical access, the BINGO also provide various logistical services to their member companies during the negotiations, such as information exchange and networking, sites for the negotiation of "position papers", organization of side events, information booths, etc. A second more important function of BINGOs is to negotiate a consensus among their member organisations and project a united front in international environmental forums. Finally, the third role of BINGOs in multilateral environmental negotiations is to channel the input of their members into the political process. This important function facilitates the implementation of various private-sector political strategies in the negotiations process, such as preparation of newsletters, position papers and reports, co-operation with national delegations, conventional lobbying activity through formal and informal channels, etc. (Pulver, 2005).

In fact, Levy and Newell (2005) underline that an examination of a firm as a global political actor needs to extend beyond traditional political strategy, such as lobbying and financial donations, and election campaigns. According to these authors, in the negotiation of many international regimes, business actors have a formal voice on advisory technical panels and in the process of production and revision of scientific reports. These actors also play a role of knowledge-broker, providing technological and economic information in the form of technical papers and constructing what is and is not policy-relevant knowledge. Analyzing multinational corporations' political strategy on climate change, for example, Kolk and Pinkse (2007) show that their type of political activities can be characterized as an information strategy to influence policy makers toward market-based solutions, rather than withholding action on emission reduction.

Then, business uses a range of political strategies to influence directly or indirectly the formation, maintenance, and disintegration of global environmental regimes. They are indeed recognized for using their technological know-how and innovative expertise to find solutions to specific environmental problems, such as substitutes for ozone-depleting chlorofluorocarbons (CFCs), and for directly influencing the global ozone regime. Influence can also be indirect through the structural power of large corporations in the economy or the implicit threat of relocation (Levy and Newell, 2005). This refers to the ability of multinational corporations to influence the formation and functioning of governance through their dominant position in the global economy, which allows them to shape mainstream ideology and state-policy formation. Clapp and Dauvergne (2005) stress that in the current era of increasing global economic competition, many states pursue domestic policy outcomes acceptable to corporations in order to keep or attract investment in their country. In other words, the indirect influence that private actors have on the formation of broader ideological norms may in fact lead the state to open more direct channels of influence over governance.

Begun in the 1990s, the transition of the private sector from the role of "rule-taker" to that of "rule-maker", continued in the following decade. It appeared forcefully during the 2002 UN Conference on Sustainable Development in Johannesburg, where discussions about GEG system reform focused on two aspects: international institutional architecture and the role of the various international actors (States, IGOs, NGOs, private sector, etc). The UN Corporate Accountability Convention at this conference sparked the debate about the appropriate role of firms at global environmental summits, and the need for a strong participation of corporate actors in order to increase the efficiency and effectiveness of GEG.

The UN Under Secretary-General Nitin Desai welcomed ex-Shell Chairman Mark Moody-Stuart as head of BASD (Business Action for Sustainable Development). The BASD, a coalition of business groups designed in 2001 by WBCSD and ICC to be the main corporate voice in Johannesburg, played a large role in the Summit, claiming that industry was part of the solution rather than a threat to the environment and a problem to regulate (Bruno, 2002). Corporate actors again played a key role in promoting voluntary self-regulation initiatives, rather than outside regulation of multinational companies. They tried to keep the focus on voluntary corporate responsibility that includes environmental awareness, their preferred way of addressing environmental issues (Clapp and Dauvergne, 2005).

Indeed, Johannesburg proposed to improve cooperation with the corporate sector, through a new type of governance built on "public-private partnerships" designed to translate global environmental principles into local sustainable development projects. It stressed that the inclusion and the active involvement of legitimate corporate actors in the GEG system were key to the implementation of international environmental regimes and essential to increasing the effectiveness of MEAs.

The highest profile example of hybrid private-public or "mixed" regime of governance is the Global Compact (GC). The GC is a pact between the UN and global businesses on corporate behaviour. Proposed by UN Secretary-General Kofi Annan in January 1999, in his address to the World Economic Forum, the pact was officially launched in 2000. It is a voluntary self-regulation instrument for CER. This GEG initiative asks corporations to promise to become responsible corporate citizens by integrating within their environmental management system (EMS) internationally agreed principles in support to socio-environmental sustainability, human rights, labour standards, and the fight against corruption (Clapp, 2005; Morgera, 2006).

This kind of hybrid regime of governance has generated controversy. It has been seen by some as part of a broader process of privatization of the UN system, where private actors are increasingly carrying out the work of the UN while benefiting from the good reputation of the organization. This concern reached its height over an aborted proposal by UNDP (United Nations Development Programme) to establish a Global Sustainable Development Facility (GSDF). The GSDF was a public-private partnership that brought together leading global corporations and the UNDP, to define and implement jointly a new facility to eradicate poverty, create sustainable economic growth and allow the private sector to prosper through the inclusion of two billion new people in the global market economy. The first of its kind in 1998, this initiative would bring UNDP's universal character, its 40 years of development experience and its network of offices in developing countries together with the knowledge and resources of the private sector (Bruno, 2002; Karliner *et al.*, 1999; Lee, Humphreys and Pugh, 1998).

NGOs criticized the GSDF for being funded by multinational corporations that activists considered leading polluters and violators of human rights, including such prominent global players as Dow Chemical, Rio Tinto and Shell. They accused them of corporate environmental propaganda akin to "green-washing[2]" and labelled industry's new coziness with the UN "blue-wash".[3] In 1999, Corpwatch, an affiliate organization of Friends of the Earth International, based in San Francisco-California, released a comprehensive critique of the GSDF and called on the UNDP to reconsider its approach to the UN-Corporate Partnership. The UNDP dropped the planned partnership with corporations following an international campaign led by Corpwatch, the so-called "Alliance for a Corporate-Free UN" (CorpWatch, 2002)

Indeed, particularly in the environmental field grass-roots and multinational campaigns by activist groups have undermined the legitimacy of multinational firms and induced change in corporate accountability (Falkner, 2007) For that reason, an increasing number of businesses have begun issuing environment/sustainable development reports as part of their corporate social responsibilities programs. Until 2003, up to 10,000 corporations published environmental reports, including 45% of the 250 largest companies in the world. To create a standard for high-quality reporting, a coalition of NGOs, business and IGOs has created the Global Reporting Initiative (GRI) which has developed a set of internationally recognized sustainability reporting guidelines (Najam, Papa and Taiyab, 2006.)

2. Victims of not-so-benign neglect?

2.1 Business and regime theory

Regime[4] theory has established itself as the principal theoretical framework for the study of GEG. It can be conceived as a system of thought based on the understanding of the mechanisms by which nation states, in the absence of a world government, seek to regulate a given problem in international relations. Regime theory is not monolithic. Its three main paradigms are neorealism, neoliberalism, and constructivism (Battistella, 2006). Each explains the formation of international regimes. Neorealism stresses the capacity of a particular nation state to impose its will and its vision on other actors. Neoliberalism emphasizes the interest of state actors to initiate collective action in order to resolve a problem which they deem unsolvable through individual actions. For constructivism, a regime will be formed when there is collective knowledge or understanding of the nature of a common problem and of what needs to be done by the states and other actors to achieve a solution.

For Okereke and Bulkeley (2007), despite their apparently quite different outlooks on the dynamics of regimes, these three paradigms converge around two points. Firstly, in general terms, they see the nation state as a self-sufficing and territorially-bounded entity. It thus appears quite difficult for these approaches to deal with the complexity of the role of business actors.

Secondly, most of them establish a border between the international and national scales. This separation is particularly problematic when studying the role of business actors whose strength lies precisely in making co-operative arrangements across multiple governance levels (local, national and international). Indeed, these actors who act on a local scale frequently set up national coalitions in order to increase their negotiating power on an international scale.

To respond to the shortcomings of a state-centered regime theory, new approaches have emerged. Two in particular can be identified. First, the notion of a "two-level game" (domestic and international) offers the possibility of overcoming the division between national and international levels. For this strand, states define their preferences at the national level by public consultations and then try to carry these preferences to the international level. Second, the "transnationalist" approach concentrates on the formation of transnational coalitions of interest that take the form of strategic alliances among various actors, state and non-state, on particular issues. For some scholars, these two approaches are better suited to generating insights into the role of business in GEG (Levy and Newell, 2005)

In spite of the unquestionable interest that they generally exhibit towards non-state actors and business in particular, these two approaches, however, fail to pin-point the role of the latter. Indeed, according to them, the role of business is limited to influencing states which remain the central players of the game (Bulkeley, 2005; Newell, 2000). As Okereke and Bulkeley (2007) have recently argued, this limitation must be connected to the two fundamental premises on which the regime theory rests and which these innovative approaches continue to share. First, states remain central. In spite of the larger space left to non-state actors, the effectiveness of GEG depends basically on the implementation of international environmental policies by the states. Secondly, power is seen as zero-sum game where an enhanced corporate role would reduce the role of the state actors. By associating these two premises, we can understand all the difficulty which these approaches encounter when trying to conceptualize or account for the role of business actors in GEG.

2.2 The neo-Gramscian approach to the role of business actors

The critical neo-Gramscian perspective is considered the principal approach to studying the influence of the business actors in GEG. Indeed, this approach attaches particular importance to the study of the relationship between state and non-state actors in international environmental politics. This relation is perceived in a very dialectical way. Non-state actors can be seen both as extensions of the state and counter-hegemonic actors. This dialectical relation emphasizes the strategies used by non-state actors to defy the hegemony exerted by the dominant classes. The role of non-state actors, and in particular of the private sector, is explained by their relationship with the state and their position within the global socio-economic structural forces. The neo-Gramscian framework makes a clear distinction between those non-state actors that hold great resources of power and are close to the states, and counter-hegemonic actors who violently oppose the dominant classes. This approach assumes the existence of an intimate relationship between capital and the state. From a neo-Gramscian perspective, the proliferation and increasing involvement of multinational corporations in GEG is fully compatible with the interest of the states and does not represent a threat to governmental authority. For the neo-Gramscian approach, power is a function of the specific alignment of social and structural forces over time. In this view, power is implied in social relations and it is not conceptualized as a zero-sum. Thus, a radical change of the GEG status quo by non-state counter-hegemonic actors requires fundamental transformations in the current matrices of socio-economic structural forces (Levy and Newell, 2005).

Notwithstanding the insights offered by neo-Gramscians ideas to understanding the role of business actors in GEG, the approach does have some drawbacks. As discussed by Okereke and Bulkeley (2007), despite acknowledging the role of non-state actors, the neo-Gramscian approach has great difficulty in ridding itself of a structurally deterministic reading of IR. It grants a dominant space to "top-down" governance. Accordingly, GEG is seen as a passive struggle, played in advance, where dominant classes ultimately triumph over the actors with fewer resources Moreover, the neo-Gramscian approach describes the relation between business and state actors as immediate, intimate, and naturally coordinated. For example, it will be incapable of understanding the evolution of the position and strategies of some innovative American companies favourable to the climate change regime against the will of the hegemonic United States government. Some companies have dramatically transformed their attitudes and reactions towards climate change compared since 1997, thus opening up a debate about interests of capital-in-general and the specific fractions of capital (Kolk and Hoffmann, 2007). Indeed, Bled (2007b) highlights that business actors' relations with governments might not always be as easy and straightforward as the neo-Gramscian approach assumes them to be. Finally, neo-Gramscians tend to consider business actors as inherently political actors. For Pulver (2005), this premise overestimates the real political role of the private sector in GEG because, as Bled stresses, corporations might not be aware of the potential impacts that issues raised in environmental forums may have on their activities. Additionally, political action requires skills and resources that the business sector might not possess to deal with international negotiations, such as a good understanding of the politics discussed, an elaborated view on these politics, some flexibility as well as good abilities for collective work (Bled, 2007a). This critique, however, assumes that businesses do most of their lobbying themselves directly, whereas many hire public relations and lobbying firms to do it for them. They do not necessarily need to have the skills and understanding of the process themselves; they can buy it from those that do.

Despite such critique, for Levy and Newell (2005), the neo-Gramscian framework offers a flexible approach to understanding: a) the contested and contingent nature of business power; b) the multiple levels of this contestation (regional, national, international); c) the complex processes of alliance building and accommodation; d) the key role of civil society in establishing legitimacy; and e) the multiple dimensions of business power (economic, material, discursive and organizational). It is an approach that steers between, on one extreme, overly rigid structural accounts that adduce overarching power of multinational capital or dominant states, and, on the other end, pluralist approaches that assume a rough equivalence among actors and neglect the systematic asymmetries that flow from wider political economic structures (Levy and Newell, 2005).

Notwithstanding theoretical advances in structuralist approaches that seek to overcome the deterministic tendency of historical materialism, Newell highlights that the application of Gramscian thought to understanding the role of business actors in GEG faces challenges, such as: a) appreciating the material basis of governance arrangements without being over-deterministic; b) connecting macro and micro governance practices without reifying either; and c) being alert to distinct formations that state-market-civil society complexes take in different parts of the world (Newell, 2008).

2.3 The role of business actors according to global governance theory[5]

Approaches to global governance theory, as developed by James Rosenau (1999), Frank Biermann (2006) and others, highlight the rise of private actors in the global arena. The Global Governance approach stems in part from regime theory, but is to some extent also a reaction against the state-centrism of regime theory, which is seen as unable to capture the observable increase in the influence of private actors (Biermann, 2006). This approach is basically different from regime theory in that it gives no particular emphasis to state actors. Instead, the global governance framework stresses the activity of non-state actors, GEG being more than international environmental regimes. The designers and operators of international environmental policies can also be non-state actors acting inside or beyond the borders of the State-Nations. Non-state actors, bereft of formal authority, are seen as an intrinsic part of the fabric of GEG, as "rule-makers", and often "rule-enforcers". According to this vision, GEG is a phenomenon much more fragmented, chaotic and disordered than the mainstream of the regimes theory conceives it. Thus, the various activities of the non-states actors across local, national, and international scales can legitimately be recognized as acts of multi-level governance. According to the global governance framework, the GEG is a process of high level co-operation between state and non-sate actors in order to solve a collective problem (Okereke and Bulkeley, 2007).

For Paterson, Humphreys and Pettiford (2003), this approach makes room for the role of civil society and business actors in the GEG but it depoliticizes the concept of governance. In other words, the global governance literature displays a general lack of attention to the basis of the emergence and rising influence of non-state actors in GEG and what these mean for power and authority in the international arena. This general lack of attention would be explained by the fact that the focus of the literature is much too empirical and descriptive rather than analytical and interpretative. For Okereke and Bulkeley (2007), this gap could be explained by the resistance of mainstream IR scholars to apply unorthodox theories in explaining the phenomenon of the growing role of non-state actors in the GEG. Additionally, these IR scholars attach great importance to preserving a single, clear-cut and general theoretical framework in order to understand and explain the complexity of GEG.

3. The contribution of business actors to the effectiveness of GEG

Corporations are now considered critical players in solving global environmental problems as they exert an impact both on the environment and on environmental governance (Morgera, 2006). An active cooperation of corporate actors as "rule-makers" is key to the effectiveness of GEG. Rather than analyzing the "problem" of business actors, this section examines the "potential and limits" for the private sector to strengthen GEG and work towards sustainable development.

3.1 The potential for business actors to strengthen GEG

Why is strengthening private sector's role an acceptable first step toward effective GEG? Essentially because it could contribute to addressing some dimensions of ineffectiveness of GEG. The first one is the implementation deficit of the GEG whereby the GEG system has turned into a "negotiating system" obsessed with continuing negotiations rather than implementing existing agreements. A second dimension of ineffectiveness lies in a GEG decision-making process insufficiently open to the participation of others sectors. An increasing number of important decisions affecting GEG have taken place outside the environmental arena, in areas such trade, investment and international development, where business actors have played a growing role as "rule-makers". For the governance system as a whole to be effective, it needs to find ways to mainstream environmental considerations into economic decisions and to ensure meaningful coherence between environment and other global policy spheres. According to Campbell (2004), several factors are important for developing effective environmental governance structures: the capacity to link the environment with other issue areas, particularly trade and investment; binding dispute resolution and enforcement mechanisms; and economic incentives to participate in and comply with environmental agreements. A third dimension of ineffectiveness stems from the inability of the state-centric UN system to allow for the more active and direct participation of business actors in all phases of policy-making. At the same time, the private sector is becoming increasingly engaged as a "rule-maker" in GEG through private regimes and public-private partnerships (Najam, Papa and Taiyab, 2006).

Indeed, four major elements suggest why business can help GEG become more effective. First, business controls key resources – financial, technological and organizational – that play a critical role in determining the effectiveness of international environmental regimes. Their central role in directing investments and the pace of innovation is bound to give them a prominent position in international environmental politics (Falkner, 2007).

Second, business should take part in all phases of negotiating treaties that will affect them directly, because this will ensure greater compliance later (Clapp and Dauvergne, 2005). Further, the active participation of stakeholders in the GEG process is believed to lead to more effective regulation and higher compliance, thus helping to overcome the implementation gap (Streck, 2004). As stressed by Newell (2008), "if an agreement cannot be crafted that gains the consent of major affected industries, there will likely be no agreement at all." Indeed, he argues that "no regime can succeed (politically) without support of major corporate players." In short, more political participation is believed to lead to more effective problem solving (Bäckstrand, 2006). But, as business can sometimes exercise a *de facto* veto on the approval of new binding international arrangements, the relationship between participation and effectiveness depends on who is participating.

Third, business participation and cooperation are central, for example, to the implementation and functioning of the Kyoto Protocol's key mechanisms. Companies are central actors in the governance of the global carbon economy (emissions trading, joint implementation, prototype carbon fund) and played a key role in the creation of the Clean Development Mechanism (CDM). Companies take on many different roles in the CDM project cycle, and businesses with potential to participate in the CDM include not only project developers and investors but companies engaged in activities as diverse as technology development, contract negotiation, brokerage and trading (Streck, 2004). In practice, the CDM relies heavily on the private sector, with non-state actors both implementing and supervising projects (Kulovesi, 2007). Several private initiatives have been established to create carbon-trading systems among participating companies. The World Bank Proto-type Carbon Fund (PCF) was established in 2000 as a public-private partnership between a few national governments, including the Netherlands, Sweden, Japan, and Canada, and twenty-six companies, including Hydro-Québec, Daimler-Chrysler, Shell-Canada, BP-Amoco, and numerous Japanese firms. The Chicago Climate Exchange opened in October 2003 with twenty-two members, including American Electric Power and Ford (Levy and Jones, 2008). Thus, the effectiveness of the climate change treaty seems closely linked to the results of private sector involvement, and the active role for private actors in the CDM could be seen as a new ingredient in the climate regime, purposely included by state actors to increase its effectiveness (Brühl, 2002).

Fourth, concrete, result-driven collaborations with business can, in turn, lead to a strengthened GEG system through: i) effective partnership that delivers results at the local level; ii) improved economic and technical expertise within the GEG system when business is engaged as a knowledge-broker; iii) an increased authority for the GEG system as a result of wide participation and effectiveness. Partnership with business is said to bring technology, investment, or organizational and managerial skills. The involvement of business in the system promises to offer new supply networks, new monetary resources, and new sources of legitimacy to UN environmental agencies (Ivanova, Gordon and Roy, 2007).

3.2 Limits to the role of business actors as elements of a stronger GEG

It is clear from the literature that there is no consensus on whether business involvement is a bane or a boon to GEG. Most of the questions that have been raised regarding the role of the private sector in GEG concern its legitimacy and effectiveness. From a critical perspective, an increased and more direct participation of the private sector actors in GEG decision-making can be problematic because of their lack of legitimacy, since their participation is not the product of elections. To be sure, neither are NGOs, but it is easier for the latter to claim that they represent the public interest, whereas companies are mainly driven by profit and possess strong economic resources that they use to enhance their political position (Brühl, 2002). In addition, an expanded influence of corporate actors in GEG might trigger a shift away from international environmental regulations in favour of economic goals (Clapp and Dauvergne, 2005).

The accountability of hybrid regimes of governance may also pose problems of legitimacy. As Bäckstrand (2006) emphasized, how can these global governance structures be accountable if the actors themselves are not accountable? However, as she also argued, it is problematic to use criteria stemming from an ideal-type national democracy in order to evaluate the legitimacy and accountability of, for example, transnational public-private networks, in an environment devoid of a supranational authority. According to Bäckstrand, because of the broad range of actors involved, accountability mechanisms need to be pluralistic and the traditional hierarchical accountability mechanisms may have to be replaced with non-hierarchical ones.

Representation in private regimes of governance may equally pose problems of legitimacy. For example, Clapp (1998) argues that the ISO 14000 standards represent a privatization of GEG and the legitimacy of the ISO to establish global norms for environmental behaviour is questioned, especially since the standards setting process has been dominated by industry, with only minor inputs from governments and environmental groups. Moreover, ISO 14000 standards have potentially negative implications for developing countries that do not have as much representation as industrialized countries in organizations as the ISO. The decision-making process around ISO environmental management systems is dominated by concerns of the better represented multinational companies that attend the bodies' meetings, rather than those of the far more numerous, but less mobilized, small and medium enterprise sector. Equally, northern-based enterprises are much better represented than southern ones. Levy and Newell (2005) and Clapp (1998) argue that one of the commercial drivers of private forms of self-regulation, such as ISO 14001 standards, is the desire to keep smaller firms out of profitable markets by raising the barrier to entry and increasing the costs of compliance with standards. As a result, ISO environmental standards are perhaps more significant as a barrier against competition from smaller companies from the South, than as a framework for improving environmental performance.

The use of ISO 14001 as an example of legitimate standards accepted by states and IGOs has also been criticized. According to the Lloyd's Register Quality Assurance – LRQA (2004), ISO 14001 is beginning to develop a negative reputation because of its failure to guarantee compliance with environmental regulation. It is a standard dealing with environmental management systems, not with compliance. In Mexico, for example, the government has proposed a competing certification standard that ensures actual compliance with environmental standards. The certification is voluntary; however, once a firm certifies with the Clean Industry Program, failure to remedy shortcomings brings upon the firm the full weight of the regulatory enforcement apparatus of the Mexican government. This may be another example of a hybrid private-public or "mixed" regime of governance, similar to the Global Compact, but with even a greater level of public intervention in cases where a firm fails to change behaviour (California Environmental Protection Agency, 2003).

The weak commitment of the broader corporate world represents another obstacle to a stronger participation of the private sector in GEG. The increasing engagement of business actors in GEG is a reality difficult to deny. In the past two decades, businesses have even demanded leadership roles in the creation and realization of environmental regimes. However, despite this contemporary tendency, the vast majority of companies remains unengaged and absent from the main international environmental fora (Ivanova, Gordon and Roy, 2007). They tend to overestimate the adaptation costs to new environmental rules and to underestimate opportunity costs, which encourages a defensive and passive "rule-taker" strategy in the international environmental regulation process. It is clear that some firms and sectors are far more engaged in the global politics of decision making on environmental issues than others. Obviously, larger, multinational firms are more closely involved in crafting environmental policies than smaller and medium-sized companies that are less well-organized politically and underrepresented in global forums. The example of the climate change regime is very representative of this situation. Three large multinational companies (Dupont, BP and Shell) assumed a leading role in shaping global climate policies by developing a more proactive "rule-maker" strategy. They sought competitive advantages by contributing to shaping the rules of the game, as institutional entrepreneurs, whereas many other companies, thinking the climate issue too complex, found it easier to adopt a defensive or wait-and-see "rule-taker" attitude (DiMaggio and Powell, 1983; Dunn, 2005).

If the weak commitment of the broader corporate world represents one of the obstacles to a stronger participation of the private sector in the GEG, how could business become more engaged in the process of developing international environmental regimes? If it is quite clear that a direct participation of the private sector as "rule-maker" is very important for the effectiveness of the GEG system, what are the main constraints that prevent business actors from realizing their full potential?

Major constraints can be found outside and within the business world. Four main obstacles invoked by the GEG literature will be mentioned. First, the institutional fragmentation and duplication of the GEG system act as obstacles in the effort to involve effectively the business community in shaping and implementing global environmental regimes. For example, as stressed by Kolk and Hoffmann (2007), the complexities, uncertainties, and fragmentation of current climate policy seem to be major factors that impede more pro-active business responses. The ICC (2007) has recognized the overall need to improve coherence and efficiency by reducing fragmentation and duplication of efforts that are currently limiting the ability of business and the GEG system to engage with each other. To the chagrin of business, the gaps, overlaps and organizational multiplicity lead to operational inefficiency and inconsistencies (Ivanova, Gordon and Roy, 2007).

Another important obstacle resides in the current conflicts within the business world's responses to the agenda of international environmental politics. The business world is not a monolithic entity and its responses sometimes conflict with GEG objectives. Not all business actors are engaged in international politics; not all of those that are share the same interest; and not all of those that seek to influence international politics succeed. Business conflict arises in international environmental politics because of the differential effects that international regulatory measures have on individual companies and industries.

According to Falkner (2007), several forms of business inter-sector or/and intra-sector conflicts can be identified with regard to international regulation, norm setting, and regime building. First, a basic dividing line exists between international and national firms. This divide can be seen in the politics of ozone layer protection, where the highly globalized chemical industry was the first sector to support international restrictions on ozone-depleting substances, while many domestic industries that used these substances remained opposed to international restrictions. A second form of business conflict can arise between technological leaders and laggards in the same industry or economic sector. In this case, the dividing line is found between competitors in a given market segment that are likely to experience differential effects of regulation due to their uneven ability to comply with new standards. As Porter and van der Linde (1995) highlighted, in some cases, regulation can lead to new commercially viable products, and technological leaders can therefore use regulatory politics to create new business models and achieve competitive advantage. A third form of business conflict can arise between companies that operate in different economic sectors along supply chains. The important point to note is that regulation is likely to have differential effects on the companies that operate along the production chain, leading to divisions and competition between them. While companies operating at the consumer end of the chain may support higher regulatory standards as part of their strategy to maintain consumer confidence or enhance their reputation, companies providing raw material inputs or intermediary products further down the chain may end up facing higher production costs without gaining any reputational benefits.

Another source of business conflict is differences in lobbying styles. A dividing line exists between American and European firms. Levy and Newell (2000) and Levy and Kolk (2002) have noted the more adversarial style of business lobbying in the United States as opposed to Europe where the approach is focused on dialogue and corridor lobbying. This reflects broader differences in corporate strategy. Firms in the United States have been able to contest the scientific rationales for environmental action more openly and directly, while in Europe such positions are unacceptable (Levy and Newell, 2005).

In sum, business conflict is an important feature of business involvement in international environmental politics, and results from an absence of consensus regarding the best strategic response to influence multilateral environmental negotiations. Thus, these conflicts weaken the capacity of the private sector to speak with a unified voice and to argue for a specific policy direction when engaging in environmental politics. For example, the conflicts of interests and the trans-Atlantic differences in lobbying styles within the Global Climate Coalition (GCC) led this BINGO to lose members (who went on to create the Pew Center on Global Climate Change as an alternative to the GCC in 1998) and, by 2002, withdraw from the international climate change arena (Ivanova, Gordon and Roy, 2007; Dunn, 2005; Bled, 2007a).

The clash of political styles was central to the downfall of the United States-based GCC. Beyond policy disagreements over appropriate action to be adopted in the face of climate change, BP and Shell rejected the GCC's aggressive lobbying tactics and the negative press it generated. Pulver (2005) attributes the failure of the GCC to attempts to export an American model of politics to the international arena, which alienated its European members. An American-style model refers to adversarial politics where regulation is the product of interest groups activities, and business wields influence through the action of lobbying groups in Washington, DC. In contrast, the European model relies on a more consultative process based on a clear division of responsibilities. Government sets the regulatory agenda and turns to relevant interest groups for advice.

Thirdly, as Pulver also argues, the "anti-politics" function of the BINGOs represents another crucial obstacle to the ability of business to migrate from the role of "rule-taker" to that of "rule-maker" in GEG. Companies that have easy access to governments tend to wield political influence out of the public eye. For these companies it is more rational to play a political role outside the public fora and project a non-political identity inside the official negotiation arenas. Then, they remove themselves from direct intervention in the political process and prefer not to appear as political actors in the international and national consultations, leaving this role to BINGOs. Clapp and Dauvergne (2005) highlight that companies make fewer public interventions than environmental NGOs (for example, in plenary sessions and smaller meetings), but they are active in the corridors, lobbying and shaping the positions of states. Business representatives also end up on national delegations.

Thus, BINGOs play an "anti-politics" role in establishing distance between their member companies and the political process. However, in the context of the international environmental negotiations, the "anti-politics" function imposed on BINGOs has become a major obstacle to the development of the private sector as "rule-maker". It exacerbates conflicts among the member companies and makes it difficult for BINGOs to organize consensus and project a united front in environmental debates (Pulver, 2005).

Finally, one of the last obstacles to the participation of the private sector as "rule-maker" resides in the institutional architecture of the GEG. Although the UN has begun incorporating business actors into the GEG system through access to policy-making forums and partnerships, the current state-centric nature of GEG does not offer sufficient room for business actors to express their full potential. The GEG system locks up the business actors in the role of implementing MEAs and offers them only a marginal institutional place to design global environmental regimes. The current state-centric model of the GEG system does not let corporate actors take a central place in shaping the rules of the game. It expresses a traditional separation between "rule-makers" (the state actors) and "rule-takers" (the non-state actors) that needs to be changed in order to grant the private sector a stronger role as an "engine" of international environmental policy-making. This active participation of legitimate corporate actors as "rule-makers" in negotiating global environmental regimes is essential to strengthening the GEG system (Najan, Papa and Taiyab, 2006).

This change is fundamental because the current situation induces a dangerous perverse effect that has to be resisted. Attending multilateral negotiations as observers and not as political decision-makers, corporate actors do not have to clarify to the public their policy positions and their contribution to the effectiveness of GEG. Then, the limited institutional space for observers that is accorded business actors by the GEG system seems much more comfortable to them as opposed to the status of political decision-makers. Indeed, the "rule-maker" role entails taking real responsibility regarding the solution of global environmental problems and implies working hard towards sustainable development.

Conclusion

Neither the GEG system, nor the main theoretical approaches to GEG grant an important place to business actors. However, as we have shown, business actors cannot be considered just a "subject" of a regulatory system imposed by an omnipotent, omnipresent and omniscient "actor": the state. We have insisted on the fact that business actors must be understood for what they are: a key partner actor of the GEG system, not just its "subject". In other words, as Levy and Newell (2005) have argued, corporate actors should not be perceived only as producers of environmental problems to be regulated, culprits of environmental degradation and opponents of the environmental regulation process. In fact, they play many essential roles in GEG. This paper has sought to clarify these various roles. Firms, in the roles of investors, innovators, economic and technological experts, knowledge-brokers, manufacturers, producers of goods and services, "motors" of private environmental regimes, and partners in private-public socio-environmental regimes and projects, are critical players in developing the architecture of GEG. They are also able to use a range of political strategies to influence the direction of multilateral environmental negotiations. Finally, they play a key role in the implementation of MEAs.

Thus, there is a major gap between the conceptualization of the role of business as reflected in the theoretical approaches to GEG, and an empirical reality characterized by a growing engagement of business actors in GEG. While business is increasingly becoming a key actor of GEG, this phenomenon does not resonate in global environmental politics, which overlooks the tremendous contribution and increasing involvement of the private sector in international environmental policy-making and continues to employ a state-centric model of interstate bargaining in its analysis. This article is intended to contribute to the reduction of this gap. In order to benefit from the full potential of business actors, the debates on the reform of GEG must offer firms a central place in both its diagnosis and its proposals. More precisely, we have stressed that this new approach cannot be visualized by considering the role of business only as "rule-taker". It must also mobilize and stimulate its "rule-maker" potential in order to guarantee a strong, effective and efficient GEG system. But, as Najam, Papa and Tayab (2006, p. 66) highlighted: "there are no silver bullets. Neither NGOs nor private sector are substitutes for government action." There are limits to voluntary/self-regulation actions and market-oriented mechanisms by the private sector in the absence of government regulation. In this context, the effectiveness of the GEG system will be enhanced not by undermining but by strengthening states' ability to determine, in concert with others actors, their common environmental destinies. To put it simply, the question is: what is the most effective mix of public mandatory and private voluntary regulations to achieve improved environmental performance by business around the world?

In short, without denying the crucial role played by the state actors in the GEG, this new approach of GEG reform has to be based on a decentralized, pluralist and holistic model of governance.

A few guiding principles should be adhered to in elaborating this new GEG UN system reform approach. This paper proposes six of them:

i) New platforms for interaction between state and non-state actors, which support a multiactors dialogue and engender a collective learning process;

ii) A small non-hierarchical institutional architecture that encourages the mobilization of different actors' experiences;

iii) Collective processes of production of global environmental regimes, integrating non-state actors as "rule-makers".

These three principles reinforce two of the most important determinants of GEG effectiveness: inclusiveness and learning. In other words, they contribute to increasing the GEG capacity to mobilize all relevant international actors and to embody the perspective and experience of different cultural and linguistic areas and integrate them into international discussions (Le Prestre, 2001). Because, as highlighted by Najam, Papa and Taiyab (2006), the inclusion of non-state actors into intergovernmental GEG institutions has generally happened on an ad-hoc basis, the GEG UN system should provide ample space and opportunities for non-state actors to interact with governments, formally and informally. Indeed, these principles also contribute to learning and knowledge production within the GEG system.

iv) Incentive measures for appropriation by non-state actors of new policy-making spaces which are open to them;

v) Mechanisms to support the handling of differentiated responsibility that are clearly expressed and assumed.

These two principles reinforce one of the most important preconditions of GEG effectiveness: legitimacy, including accountability/transparency, participation and representation of different actors in all phases of policy-making and implementation. In fact, to involve non-state actors in a more holistic fashion, the way forward is to strengthen the mechanisms and institutions for multilateral environmental cooperation..

vi) Hybrid public-private processes developed at various levels, from the local to the international.

This principle reinforces vertical (between the global and the local) and horizontal (across regimes) integration and non-state actors' ability of forming transnational partnerships, non-hierarchical multicultural mechanisms and global policy networking that bring together all relevant actors (state, market and civil society) in order to facilitate coordination.

Notes

[1] Throughout this paper, the term "rule-taker" will be used to refer to an actor who follows, sometimes against his own will, a set of rules established by another actor. A "rule-maker", by contrast, chooses to take part directly in the construction of the rules of the game.

[2] A phenomenon where a company tries to convince consumers and stakeholders that it is environmentally responsible, where the purpose is more about image than substance. See Clapp and Dauvergne (2005).

[3] Efforts by corporations to be perceived as part of the world humanitarian community through voluntary association with the United Nations, without provisions for accountability. See Bruno (2002).

[4] Throughout this paper, regimes are defined as *"sets of implicit principles, norms, rules, and decision-making procedures around which actors expectations converge in a given area of international relations."* See Krasner (1983, p. 6).

[5] This section looks at the concept of "global governance" as a theoretical perspective and considers the extent to which it serves as a corrective to the regime approach and reviews its limitations. The recent proliferation of a body of work on "global governance" reflects a certain dissatisfaction with the regime approach and represents an effort to conceptualize governance beyond the regime. It is rather unsatisfactory to use the term "global governance" to describe both a phenomenon in world politics and the theoretical approach used to analyze it, but it is commonly done. See Okereke and Bulkeley (2007), Biermann (2006), and Rosenau (1999). We do not break with that convention here.

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