

Multilevel Institutional Interaction in Biosafety Governance

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Biototechnology remains one of the most contentious governance challenges on the multilateral negotiating agenda. This makes developments within the newest global regime in this area – the Cartagena Protocol on Biosafety, regulating trade in genetically modified organisms (GMOs) – especially important for scholars of regime effectiveness and institutional interplay. Since its adoption in January 2000, the protocol has been the subject of sustained analysis. Despite this, it remains unclear how this global regime will affect national-level governance of biosafety and how its relationship to the world trade regime will evolve. This is partly because treaty implementation is only just beginning, and partly because of its contentious nature, which results in unusual negotiating dynamics as was evident at the recent meeting of the parties to the protocol in Kuala Lumpur, Malaysia, in February 2004. This commentary takes stock of this evolving regime and points to a number of issues that merit further scholarly attention.

Negotiating Dynamics and Treaty Evolution

Perhaps the most striking feature of the Kuala Lumpur meeting was that potential GMO importers (and particularly the European Union) were in the driving seat of treaty evolution during this session. Parties to the protocol do not yet include any major agricultural exporter (no member of the so-called Miami Group of GMO producers, including the United States, Canada, Argentina, Australia, Uruguay, and Chile, has ratified the protocol). In Kuala Lumpur, these countries therefore did not have equal voice in treaty evolution, as they had during creation of the regime. This is a key element to consider in analyses of regime effectiveness and institutional interplay in this case.

Some consequences were evident in shifting alliances at the meeting. With no major GMO exporter a party to the protocol, the task of opposing proposals for stringent biosafety rules fell to those parties

who shared some but certainly not all the concerns of GMO exporters, such as Brazil and Mexico. In one striking example, the European Union, a major supporter of more stringent regulation, pushed for greater documentation requirements for the transgenic commodity trade. This was supported by most developing countries and hence by most current parties to the protocol. If accepted, the proposal would have substantially altered the conditions for the commodity grain trade. However, the proposal was watered down and prevented from becoming binding law only because of initial opposition from Brazil and finally by a dramatic last minute intervention by Mexico (presumably under pressure from its NAFTA trading partners). The geo-political implications for Brazil and Mexico in assuming such an oppositional role are important to consider.

This negotiating dynamic also made clear the dilemma facing GMO-exporting countries: should they ratify the protocol in order to participate more fully in treaty evolution in the future? To do so would, however, require immediate compliance with its obligations and could also mean being at a competitive disadvantage with agricultural exporting competi-



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tors who decide to remain outside the regime (the US, for example, cannot become a party to the protocol because it has not yet ratified the parent Convention on Biological Diversity).

Inter-Regime Conflicts: How Real a Concern?

This dilemma about whether to join the biosafety regime is also related to the long-standing concern among GMO exporters that the protocol may conflict with world trade rules. This has been the subject of much scholarly attention yet the issue remains in flux. Importantly, however, the protocol's approach is similar to the WTO in its privileging of science-based national choices about GMO imports, which are to be directly related to ecological and human health impacts. This largely excludes social and food security dimensions of biotechnology trade, such as possible disruption of non-GM commodity exports if adequate segregation or traceability systems are not in place. Such factors might legitimately give pause to developing countries in permitting GM imports, yet these factors have no place in the current global governance architecture. This suggests that the consequences of inter-regime similarities (rather than only conflicts) merit some attention as well.

A certain ambiguity about how much policy autonomy the protocol will allow developing countries may also shed light on the nature of the compliance debates in Kuala Lumpur. Intuitively, it could be assumed that supporters of a regime would also desire strong compliance with it. Yet in Kuala Lumpur, most developing countries argued for weak and non-punitive compliance mechanisms, despite having pushed for the protocol. This can be partly explained by developing country concerns about their own potential (capacity-related) non-compliance. It may also, however, point to continuing lack of clarity about who will benefit from the protocol and hence from compliance with it.

This turns on how the protocol will impact on

transnational transfers of GMOs. Will it stymie such transfers or instead facilitate transnational flows of biotech products? This depends, in turn, on the kinds of domestic biosafety frameworks that are being put into place to implement the protocol. This process is now well underway and seemingly uncontroversial. The capacity building initiatives promoted by the protocol to develop domestic biosafety frameworks are intended to be country-driven processes of adopting and adapting models from elsewhere. But the question remains: will the protocol serve to spread similar biosafety frameworks across the globe and hence make trade in GMOs easier (as exporters would desire) or will diverse country-specific frameworks emerge that augment national autonomy and importer choice? The jury is still out.

Global - National Interactions

To analyze this question, empirical understanding of whether and how global regimes are influencing national-level institutional and political change – i.e. a focus on global-national institutional linkages – is urgently needed. With support from a MacArthur Foundation Research and Writing Grant, a collaborative project is currently underway, which is analyzing the influence of the evolving global governance architecture for biotechnology in Mexico, China, South Africa, and India. The aim is to understand, also through using a comparative lens across these countries, the extent to which policy-making within the developing world about appropriate use of a powerful new technology is facilitated or constrained by different components of a global governance architecture.

Note:

More information about the MacArthur project, undertaken jointly with Robert Falkner, is available at: <http://www.sls.wau.nl/tad/staff/Staffsub/AartiGupta.htm>.

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