

- UNFCCC (undated) *Kyoto Protocol*, UNFCCC. Available at: www.unfccc.int/kyoto_protocol/items/2830.php
- Victor, D.G. (2004) *Climate Change: Debating America's Policy Options*. New York, NY: Council on Foreign Relations.
- (2006) "Toward effective international cooperation on climate change: numbers, interests and institutions." *Global Environmental Politics*, 6, 3: 90–103.
- , House, J.C., and Joy, S. (2005) "A Madisonian approach to climate policy." *Science*, 309, 5472: 1820–1821.
- Van Shaik, L. and Egenhofer, C. (2003) *Reform Of The EU Institutions: Implications For The EU's Performance In Climate Negotiations*. Brussels: CEPS. Available at: www.ceps.be/index3.php.
- von Stein, J. (2005a) "Do treaties constrain or screen? Selection bias and treaty compliance." *American Political Science Review*, 99, 4: 611–622.
- (2005b) "Saving the environment? Ratification and compliance in the international climate change regime." *American Political Science Association*, Washington, DC.
- Washington Post (2001) "The warming debate." March 9.
- Weaver, A., McLean, G., and Lonergan, L. (2001) "Bush opens door for Canada." *The Leader-Post*. April 10.
- Weiner, J. (1997) *Designing Markets for International Greenhouse Gas Control*. Resources for the Future. Available at: www.rff.org/rff/Documents/RRF-CCIB-06.pdf
- Wilson, J.Q. (1980) *American Government: Institutions and Policies*. Lexington, MA: D.C. Heath.
- Wirth, T. (1996) Speech at Second Conference of the Parties Framework Convention on Climate Change, Geneva, Switzerland.
- WRI (2004) *CAIT—Climate Analysis Indicators Tool*, World Resources Institute. Available at: <http://cait.wri.org/>.
- (2006) *CAIT—Climate Analysis Indicators Tool Version 4.0*. Washington DC, World Resources Institute. Available at: <http://cait.wri.org/>.
- Yandle, B. (1999) "After Kyoto: a global scramble for advantage." *The Independent Review*, 4, 1: 19–40.
- Zapfel, P. (2006) Personal communication. March 15.

5 The global politics of precaution

Explaining international cooperation on biosafety

Robert Falkner

Introduction¹

America's retreat from environmental leadership has dealt a major blow to global environmental politics. As the world's largest economy and most powerful nation, the United States inevitably plays a crucial role in environmental diplomacy. But whereas in the 1970s and 1980s it led international efforts to combat environmental degradation, most notably against ozone layer depletion, it has more recently objected to important new treaties on biodiversity protection and climate change. The United States is only one of a few countries not to have ratified the 1992 Convention on Biological Diversity (CBD), and in 2001 withdrew from the 1997 Kyoto Protocol to the UN Framework Convention on Climate Change. Hopes for international environmental leadership today rest on European rather than American shoulders (DeSombre 2005; Falkner 2005).

Given America's decisive turn against multilateral environmental policy since the early 1990s, it is somewhat surprising to find that new international treaties have come into existence and international environmental policy-making has continued even in areas where the United States is resistant to taking on new international commitments. The Kyoto Protocol, which entered into force in February 2005, is but one prominent example (see chapter 4 by Busby in this volume). The Cartagena Protocol on Biosafety—the subject of this chapter—is another case in which the United States unsuccessfully opposed the creation of a binding international regime. Despite its status as the world's undisputed hegemon, the United States has failed to prevent such international initiatives creating new, often legally binding, international environmental rules. This experience of non-hegemonic environmental institution-building calls into question conventional theories of hegemonic stability and raises the question of how we can explain instances of international cooperation that run counter to the hegemon's interests and even manage to overcome hegemonic resistance.

The contributions to this book seek answers to this question with the help of specific case studies ranging from small arms to the International

Criminal Court and the Kyoto Protocol. This chapter examines the creation of the Cartagena Protocol on Biosafety, the world's first international treaty regulating the transboundary movement of genetically modified organisms (GMOs).² It was agreed in January 2000 after nearly four years of negotiations between those countries that demanded strict rules on biosafety, chiefly the European Union and the vast majority of developing countries, and a small US-led group of countries that objected to the trade-intrusive nature of international biosafety regulation. The Cartagena Protocol entered into force in September 2003 and is currently being implemented in some of the world's biggest agricultural import markets. As is argued in this chapter, it is a prime example of the recent trend towards non-hegemonic international cooperation in global environmental politics.

The focus in this book, as well as in this chapter, is on the process of agreeing international accords, not their implementation. This is not to say, however, that we are interested in any type of cooperation, whether it is substantive or not. Instances of cooperation that deserve the label "non-hegemonic" need to be significant, in that they "require states to begin or cease practices that are of considerable importance, whether to the national economy or the national security or both" (Stiles, Introduction, p. 4). It is important, therefore, to explain at the outset why the Cartagena Protocol is a substantive cooperative arrangement that is non-trivial, not mere "cheap talk" (Downs *et al.*, 1996).

The Cartagena Protocol's adoption in 2000—against strong US objections—was not simply a case of anti-hegemonic posturing without consequences, but a significant achievement of international cooperation. The United States and most other GMO-exporting nations have so far resisted international pressure to ratify the agreement and are facing political marginalization in the international governance of biosafety. By contrast, a large number of predominantly GMO-importing countries have ratified the agreement. By March 2008, over four years after entry into force, the protocol counted 142 countries and the European Community among its parties. The protocol is being implemented around the world, and particularly in the developing world, in the form of national biosafety frameworks and regulations that are based on the Protocol's risk assessment and management tools (Gupta and Falkner 2006). While much of this implementation process is still ongoing and will not be complete for many years to come, owing largely to capacity constraints in the developing world, there has been a significant impact on biotechnology policy and development around the world. In many developing countries, GMO risk regulation has taken a precautionary turn, as a result of the successful completion of the biosafety negotiations, but also in response to Europe's turn against agricultural biotechnology in the late 1990s (Clapp 2006; Falkner 2006; Paarberg 2001).

Furthermore, although the United States³ and other major GMO-exporting nations have not ratified the agreement, they will find themselves in a position where they cannot avoid complying with many of its provisions if they wish

to export GM crops to the large number of parties. This, of course, was one of the reasons why the United States, Canada, and other agricultural export countries fought the trade-restrictive elements of the biosafety treaty in the first place. Unless GMO exporters successfully challenge GMO import rules as trade-discriminatory under the rules of the World Trade Organization (WTO), they will have to provide detailed information about GMO content in international shipments and seek the prior approval of the importing country in line with domestic rules and Protocol provisions. US and Canadian agricultural commodity exporters have had to comply with the EU's import regulations for some time and are now having to deal with similar rules in other key markets, such as China (Falkner 2006).

Thus, despite its many shortcomings as a global biosafety regime, the Cartagena Protocol is a significant case of non-hegemonic cooperation. Opposition by the United States and other GMO-exporters may have weakened the resulting governance system, but has not prevented international norm creation in biosafety. This chapter seeks to provide an explanation for the phenomenon of non-hegemonic cooperation in biosafety, by drawing on the theoretical perspectives discussed in the introduction to this volume. To set the scene for this, the next section provides background information on international biosafety politics, with a focus on the negotiations on the Cartagena Protocol. The subsequent section then engages with theoretical perspectives on international cooperation and identifies three key factors that help explain the successful outcome of regime-building: leadership by the EU and the developing world; the specific issue structure of GMO trade and biosafety; and social and ideational forces that have promoted a precautionary approach to biosafety. The concluding section draws out the main lessons of this case for the broader questions addressed in this volume.

Negotiating the Cartagena Protocol on Biosafety: international diplomacy meets domestic politics

The agreement reached in January 2000 on the creation of the biosafety protocol represents a significant breakthrough in environmental diplomacy in that it establishes the first global framework for assessing and dealing with the potential risks posed by GMOs—despite the fact that until now there has been no serious environmental damage and no clear evidence of harm to humans from GMO releases. Genuine cooperation took place on a number of highly-contested issues, including the design of risk assessment and management and the use of trade restrictions. The largely obstructive role played by the United States underlines the fact that this agreement represents a significant case of non-hegemonic cooperation. Although the United States was actively involved in the negotiation process, it opposed the idea of a binding biosafety regime from the beginning. Throughout the negotiations, the United States orchestrated efforts by a small group of agricultural exporters to water down particularly the trade-related provisions—even at the risk of causing the

collapse of the negotiations as happened in 1999. The US position oscillated between outright opposition and vehement skepticism, and the final round of negotiations reinforced the widespread impression that this agreement was achieved not because of, but despite, US efforts. How did it come to this polarization, and why was it possible to overcome US and other GMO-exporter opposition? A brief review of the biosafety talks is needed before we can determine the factors that help explain this particular case of non-hegemonic cooperation.

When biosafety first emerged on the international agenda in the late 1980s, North-South divisions characterized international discussions on how to regulate newly emerging products of agricultural biotechnology. While developing countries called for explicit and binding safety rules in the run-up to the 1992 United Nations Conference on Environment and Development (UNCED), most industrialized countries, including the United States and leading European countries, rejected such demands. At UNCED, they merely agreed to a provision in the 1992 CBD that obliged them to consider the need for a biosafety treaty at a later stage (Zedan 2002). Even after formal negotiations on a biosafety protocol had started in 1996, the leading biotechnology countries continued to oppose an all-encompassing set of stringent rules. The fact that the developing world managed to speak with one voice on most of the key issues—although of course considerable disagreements existed on specific regulatory proposals—was to play a key role in the successful conclusion of the negotiations.

The EU had initially failed to present a united position and entered the biosafety talks with a dual-track approach of supporting voluntary guidelines while accepting in principle the idea of a binding biosafety protocol (Bail, Decaestecker and Jørgensen 2002: 168–169). But starting in 1998, changes in the domestic political economy of biotechnology in Europe were beginning to have a lasting effect on the negotiation dynamic. They would catapult the final phase of negotiations, from 1999 to 2000, into the limelight of the international trade-environment conflict, pitting the US-led coalition of agricultural exporters (“Miami Group”) on the one hand against the EU and the large group of developing countries (“Like-Minded Group”) on the other.

The United States, the world’s leading biotech country, had established a framework for biotechnology regulation that presumed “substantial equivalence” between conventional and genetically modified food and ruled out new technology-specific regulations (Bernauer 2003: 54–61). In Europe, a comprehensive, horizontal, approach to biotechnology regulation was introduced at the EU level, which handed regulatory authority to the European Commission Directorate-General Environment. The choice of a uniform, process-based and precautionary system of risk assessment and management reflected a compromise between regulatory harmonization in the interest of free trade and the need to reassure an increasingly concerned public of the EU’s newly acquired regulatory authority in environmental protection and food safety (Pollack and Shaffer 2005).

The arrival of the first GMO shipments in Europe in 1996 led to a rapid increase in awareness among Europe’s consumers and provoked a European-wide campaign against GM food. Against the background of heightened concern about food safety—following the outbreak of the BSE or “mad cow” crisis—and national bans on GM crops, the European Commission adopted a *de facto* moratorium on pending and future applications for GMO authorization and imports.⁴ Once biotechnology regulation had become politicized in Europe and anti-GMO protests swept the continent, the biosafety negotiations gained in political salience and became part of a broader transatlantic conflict over the right balance between global environmental governance and trade liberalization.

As the trade dimensions moved center stage in the biosafety negotiations, from 1998 onwards, the interests of the negotiating parties became more closely aligned with the GMO-exporter versus importer perspectives. On the one side was the US-led Miami Group of agricultural exporters (including Argentina, Australia, Canada, Chile, Uruguay), which opposed most forms of trade-restrictive biosafety regulation. On the other side were the EU and the large bloc of developing countries, the Like-Minded Group, which were pushing for more stringent international rules based on the precautionary principle. Developing countries’ pro-regulatory stance reflected the fact that most of them had little or no biotechnology research potential and lacked the capacity to control transboundary GMO flows. Those developing countries with an emerging interest in agricultural biotechnology, such as China and Brazil, kept a low profile in the negotiations but generally sided with the Like-Minded Group. The main exception here was Argentina, the world’s second largest producer of GM crops in the late 1990s, and Uruguay and Chile, who followed the US lead in defending agricultural export interests.

At the center of the international process was the triangular bargaining relationship between the Miami Group, the Like-Minded Group and the EU. On many of the key issues, the US-led Miami Group faced a united front of European and developing countries. This was the case with regard to the application of the precautionary principle; the question of whether, and how, to identify GMOs in agricultural commodity trade; and the relationship between the protocol and WTO rules. On other issues, particularly the scope of the agreement and the creation of liability rules, international bargaining followed more closely a North-South divide.

On the question of what scope the biosafety protocol should have, the lines of conflict were less clearly drawn than on other issues. From the beginning of the biosafety talks, developing countries were keenest to define the scope as broadly as possible, covering domestic GMO use and all products derived from biotechnology. Most industrialized countries, including the United States and the leading European countries, rejected such a wide definition. But whereas the United States simply denied the need for a binding international regime, the EU accepted a narrower focus on the transboundary movement of GMOs and their risk to the environment and human health. This issue

proved to be contentious throughout the biosafety talks, and resurfaced again at the final round of negotiations in January 2000, when the EU and the United States rejected developing country demands for inclusion of GMOs used as pharmaceuticals and products derived from GMOs (referred to as "products thereof"; see Marquard 2002: 297–298).

Likewise, both the EU and the United States opposed the creation of a binding international regime on liability and redress, a key demand by the Like-Minded Group. Developing countries had argued from the beginning that exporters of GMOs should be held liable if their products, once released into the environment or entering the food chain, caused harm to the environment or human health. They reiterated this demand until the very end of the negotiations, declaring it to be a "make or break" issue. But faced with opposition from the Miami Group and skepticism among leading European countries, the Like-Minded Group had to accept a postponement of a decision on whether or not such a liability regime should be elaborated. The leading biotechnology countries argued that the conceptual and legal difficulties surrounding liability stood in the way of binding rules. The problems of defining and quantifying environmental harm (for example, to biological diversity), establishing causal links (especially long after the transboundary movement of GMOs has taken place), and identifying those that could be held liable (states or private actors, GMO producers or traders) continue to plague discussions on a future liability regime. But even if these issues could be resolved, the leading biotechnology in Europe and North America are fearful that a binding liability regime would impede their industry and undermine incentives for international trade.

On the other core issues (precautionary principle, identification of GMOs in commodity trade, and relationship between the protocol and WTO rules), the EU and the Like-minded Group largely pulled in the same direction, arguing for more stringent biosafety rules than the Miami Group was willing to accept. The precautionary principle proved to be one of the key sticking points in the negotiations. In line with its domestic regulatory framework, the EU argued that importing nations should be allowed to take trade-restrictive measures if GMOs are suspected of causing harm, but without conclusive scientific proof. Having initially qualified its support for the precautionary principle with references to "cost-effectiveness" and the "reasonable period of time" required for the provision of further scientific evidence, the EU adopted a more hard-line position on precaution after it had lost a WTO dispute over its ban on hormone-treated beef imports from North America (Andr e 2005: 32–33). Both the EU and the Like-Minded Group felt that the difficulties surrounding research on the long-term effects of GMO releases warranted an approach that was different from the narrow interpretation of precaution in the WTO's Sanitary and Phytosanitary Measures (SPS) Agreement (see Charnovitz 2002). A wider concept of precaution would give importing nations greater leeway in a potential trade conflict with GMO exporters, a point that gained greater importance as US trade diplomats threatened to bring a WTO

case against the EU's de facto GMO moratorium. The prospect of a future WTO dispute weighed also on the minds of developing country negotiators, who saw the precautionary principle as strengthening national sovereignty against WTO disciplines.

The thorniest issue in the negotiations proved to be the question of how to treat GMOs used as food or feed, or for processing (also known as agricultural commodities). These GMOs are not intended for release into the environment, and exporter groups argued that they should therefore not be subjected to the same level of regulation as GM seeds. With the growing commercialization of GM crops in the second half of the 1990s, it became clear that such commodities would soon make up the vast majority of worldwide movements of GMOs, and precautionary trade restrictions could undermine trade in those products. On the other hand, developing countries and the EU were keen to ensure that GM commodities were not excluded from the protocol's regulatory provisions. The former argued that in a developing country context, where commodity imports are sold and reused as seeds, the distinction between GMOs intended for release into the environment and GM commodities was untenable. The latter was under domestic pressure to ensure that all GMO trade, including GM commodities imported from the United States, was covered by the biosafety treaty (see EU Council 1999, point 12).

Underlying these disagreements over the content of the biosafety protocol was the fundamental question of how this treaty should relate to the potentially conflicting rules and obligations under other international agreements, especially those of the WTO. At issue was the demand by the Miami Group to insert a "savings clause," according to which WTO disciplines would apply in a future conflict over GMO trade restrictions. In contrast, both the EU and the Like-Minded Group argued that because the biosafety treaty deals with a more specific subject matter under the auspices of the CBD it should take precedence over existing international agreements (see EU Council 1999, point 15). They were keen to ensure that their use of the protocol's GMO import restrictions could not be challenged in a WTO dispute settlement procedure. Unsurprisingly, given the high stakes involved in the transatlantic GMO conflict, the savings clause became one of the core issues in the final negotiations.

The conflict came to a head at the 1999 Extraordinary Meeting of the Conference of the Parties (EXCOP) in Cartagena, which was meant to adopt the protocol after six meetings of the Biosafety Working Group. After the Miami Group rejected a compromise proposal by the EU, the meeting collapsed amidst acrimony and mutual recriminations. The negotiating parties nevertheless promised to continue working on a compromise and met again during 1999 and for the resumed EXCOP meeting in Montreal in January 2000, when a deal was hammered out in bi- or trilateral talks between the Miami Group, the EU and the Like-Minded Group. Faced with a united front of European and developing countries, the United States came to accept the need to reach some agreement, even if it ran counter to its interests. The US

delegation knew that domestic ratification of the treaty was unlikely, but nevertheless engaged in intense bargaining to achieve a more favorable outcome.

The final agreement that was adopted in January 2000 included several compromises between GMO-exporting and -importing nations. The EU was able to claim victory on key elements of its negotiation position, and the biosafety treaty broadly reflected the EU's own regulatory system for GMOs. Developing countries celebrated the fact that their demand for an international biosafety treaty had been fulfilled, although they had failed to realize some of their key objectives, particularly on the protocol's scope and the creation of a liability regime. On the question of the scope of the protocol, the developing countries were unable to have pharmaceutical GMOs and "products thereof" included, and on the question of liability and redress reluctantly agreed to include an enabling provision in Article 27 that mandates the Conference of the Parties to consider a liability regime in the future. This process has now been started, but whether it will lead to any substantial outcome remains uncertain (Falkner and Gupta 2004: 10–11).

A key success for both the EU and the Like-Minded Group was the inclusion of precautionary language in the Cartagena Protocol's key regulatory mechanism, the advance informed agreement (AIA) procedure, which requires GMO exporters to provide detailed information on the organism in question and to seek the importing nation's prior approval before any transboundary movement takes place. Importing nations are to carry out risk assessment before reaching a decision, and in doing so can invoke the precautionary approach (Cartagena Protocol, Article 10.6). On the treatment of commodities trade, so-called GMOs used as food, feed, or for processing, the EU and the Like-Minded Group had to accept a compromise. The Miami Group succeeded in having commodities excluded from the AIA procedure, and instead a simplified procedure was agreed that would be less trade-intrusive. This procedure creates an obligation on parties to inform other parties of decisions to authorize domestic use of GMOs that may be subject to transboundary movement. This information is communicated through the Biosafety Clearing-House, an internet-based information sharing instrument. Based on this information, importing parties take a decision on whether or not to allow the import of such commodities. Critically for exporters, the case-by-case prior approval requirement for every shipment does not automatically apply, unless importing parties decide to subject commodities trade to a domestic AIA procedure (Article 11).

The issue that proved most difficult in this context, and that nearly derailed the resumed ExCOP meeting in January 2000, was the question of how GM content in commodity shipments is to be identified. The compromise reached in the final hours of the conference stipulates that commodities shipments state that they "may contain" GMOs (Article 18.2(a)), without specifying the type of GMO and the level of GMO presence in the shipment. This outcome fell well below the expectations of both the EU and the Like-Minded Group, but it was agreed that this provision would be reviewed once the treaty has entered into force.

Finally, the relationship between the protocol and other international agreements could not be resolved except by inclusion of preambular text that restates the opposing positions while emphasizing the mutual supportiveness of the protocol and other agreements:

Recognizing that trade and environment agreements should be mutually supportive with a view to achieving sustainable development,

Emphasizing that this protocol shall not be interpreted as implying a change in the rights and obligations of a Party under any existing international agreements,

Understanding that the above recital is not intended to subordinate this protocol to other international agreement (. . .)

(Cartagena Protocol, Preamble)

Thus, by way of classic diplomatic fudge, the parties defused this contentious issue and left the door open for conflicting interpretations on whether WTO disciplines could potentially overrule protocol provisions.⁵ As so often in international negotiations, the parties had to agree to disagree in order to reach an accord.

Explaining biosafety regime-building

As the above account of international biosafety politics suggests, the creation of the Cartagena Protocol was non-trivial. It entailed genuine cooperation and involved more than just "cheap talk." The rapid growth in trade in genetically modified crops in the second half of the 1990s raised the political and commercial stakes in biosafety politics and complicated the search for a compromise on international biosafety rules. Leading biotechnology countries, and the United States in particular, strongly opposed any international treaty that would depart from existing trade obligations under the WTO. Had their preferences been followed, only weak and possibly non-binding international safety rules would have come into existence. This was indeed the preferred option of most leading biotechnology in the first half of the 1990s, when the US and several European countries promoted the creation of the 1995 United Nations Environment Programme UNEP International Technical Guidelines for Safety in Biotechnology, a set of voluntary safety guidelines. But thanks to the determined efforts by a large majority of countries, led by the Like-Minded Group of developing countries and the EU in the late 1990s, an innovative and precautionary system of biosafety governance was created. The Cartagena Protocol allows trade restrictions to be imposed on the basis of a broader definition of precautionary action, one that goes beyond the WTO's narrow rationale for precaution. To be sure, the final compromise reached in 2000 includes concessions on both sides, but the fact that as of today (March 2008) most major GMO-exporting nations (USA, Canada, Argentina) have refused to ratify the agreement underlines the controversial nature of the final agreement.

In seeking an explanation for this outcome, we need to look beyond conventional theories of cooperation. Power-based theories are of only limited value here. To be sure, states were the key actors in the creation of the Cartagena Protocol, and the more powerful players in the international system played a key role in the negotiations. Their interests were clearly defined by the time the negotiations entered the final stage; and coalition building between states, and groups of states, characterized the bargaining that underpinned the end phase of the talks. But state interests in biosafety were not simply “given,” they did not derive from a country’s position within the larger structures of the international political and economic system. Many countries underwent a lengthy process of interest formation that domestic and transnational societal actors sought to shape. They also defined their bargaining position in the context of wider discursive battles over the construction of GMO risk and the desirability of precautionary action. In other words, state interests were more fluid and open to domestic contestation than is usually assumed in power theories, and the international balance of power was a poor indicator of the likely outcome of the international regime-building process.

Among power-based theories, hegemonic theory in particular serves as a poor guide to international biosafety politics. This is for the simple reason that the United States, the world’s leading biotechnology country and GMO exporter, not only opposed the creation of a global biosafety regime but also was unable to prevent this from happening. A small, US-led group of agricultural exporter countries consistently rejected demands for strong international biosafety rules and favoured the application of WTO disciplines to GMO trade. Rather than providing hegemonic leadership in favour of international regulation, the United States sought to water down the Treaty’s provisions. The case of biosafety governance thus echoes the general theme of this book and the findings in other chapters, namely that international cooperation has now firmly entered a non-hegemonic phase.

This raises two important questions: first, why was it possible for a large group of developing countries and the EU to create a more or less united front that pushed for binding biosafety rules against US interests? Second, which forces—political, economic, and social—promoted the emergence of a precautionary approach in biosafety politics, one that stood in sharp contrast to the WTO’s more restrictive approach to environmentally-motivated trade restrictions? The former question requires closer analysis of political-economic power and interest structures in international GMO trade, while the latter calls for closer analysis of ideational and social forces in the making of global governance. Only the two together can provide a comprehensive explanation of the emergence of the global biosafety regime.

An important starting point in explaining regime-creation in this case is the political economy of biotechnology and biosafety. In line with rationalist approaches, it can be argued that a country’s role in the production and trade of biotechnological products proved to be of critical importance in determining its stance in international negotiations, and the distribution of interests in turn

shaped the potential for a successful international outcome. Whether countries exported or imported GMOs, or saw themselves primarily as future exporters or importers, was indeed the key dividing line between proponents and opponents of the Cartagena Protocol. This straightforward economic rationale produced fairly consistent preferences for the leading GMO-exporting countries and the majority of developing countries without any significant biotechnological capacity. Countries carefully weighed the impacts of different regulatory options on their underlying economic interests, and the potential implications of regulatory choices in biosafety for other international issues areas. In the case of the EU, however, the story of preference formation is more complex and involves a transformative process in which European negotiators gradually came to support the position of the large majority of developing countries, despite a comparatively strong biotechnology base in Europe (Falkner 2007a).

Throughout the 1990s, US opposition to binding international biosafety rules was intimately tied up with the country’s position as the world’s leading biotechnology country and exporter of GM crops. The United States was highly critical of most of the demands made by developing and EU countries well until the end of the talks, and although it gradually came to accept the legitimacy of an international biosafety treaty in the mid-1990s, the US delegation fought hard to make the protocol conform with existing WTO obligations. Of course, the United States never expected to ratify the biosafety protocol, as it had failed to become a party to the CBD. In the end, the United States was able to signal its support for the protocol—and put pressure on the Canadian delegation to follow suit—knowing that it was not going to be directly bound by the agreement. If anything, it would have taken an even more hard-line position in the negotiations had it been able to accede to the accord.

Most developing countries approached the negotiations from an importer perspective and argued for trade-restrictive biosafety rules. During the 1990s, virtually all developing countries were either trying to develop domestic biotechnology capacity or were unlikely ever to become a major player in the development of GM crops. Apart from a few larger countries, such as China, India, South Africa, Brazil, and Argentina, few developing countries expected to develop a stake in the GMO export business and were thus more concerned with the impact that GMO imports might have on local biodiversity, human health and agricultural systems. The fact that the biosafety talks were held under the auspices of the CBD meant that in most cases, environmental ministers and their teams represented developing countries. This allowed them to marginalize their usually more influential counterparts from trade or commerce ministries, who traditionally opposed environmental trade restrictions in the WTO context (see Tussie 2000). The fact that the group of developing countries was able to sustain a more or less united front in the negotiations was also due to the charisma and negotiation skills of a few key delegates, most notably Ethiopia’s Tewolde Egzabhier, who came to represent the

Like-Minded Group in the final stages of the negotiations. Tewolde was later awarded the 2000 Right Livelihood Award in recognition of his central role in the creation of the biosafety treaty.

In contrast to the United States and the developing countries, the EU's position changed dramatically during the course of the negotiations. Having only reluctantly agreed to support the idea of a binding biosafety regime in the early 1990s, the EU came out in support of stringent biosafety rules in the late-1990s and provided critical leadership in the final phase of the talks. Underlying this transformation was a shift in the domestic political economy of European biotechnology, which forced the EU to prioritize the importer perspective over potential, future, exporter interests. This shift was far from inevitable, however. For much of the 1980s and 1990s, the EU sought to promote biotechnology and catch up with the technological leaders, the United States and Japan. But a deterioration of public trust in European food regulation and rising anti-GMO sentiment among European consumers caused the EU to go slow in the commercialization of GM crops. This shift in the EU's balance of interests was complete by the end of the 1990s: the EU had emerged as a leading proponent of precautionary GMO regulation from an importer perspective, much more in line with most developing countries than the leading biotechnology producers (Falkner 2007a).

The convergence of interests between the developing world and the EU provided the critical condition for a successful conclusion to the biosafety talks. It gave rise to a broad-based coalition of countries spanning the North-South divide that pushed for a strong biosafety regime. As liberal theory would predict, the emergence of a large group of second-tier actors working in consort ("k-group") is likely to be able to overcome collective action problems and push for the creation of a global regime. In the biosafety case, such non-hegemonic leadership was made possible by two critical factors.

First, the nature of the issue area and of the proposed regime design favoured importer countries. Rather than seeking to establish a demanding and politically controversial "global biosafety standard," which would provide for a centralized and harmonized safety evaluation of GMOs, the Like-Minded Group and the EU argued for an enabling regime that merely strengthened national prerogative to subject GMO imports to risk assessment and potential trade restrictions. Whereas a global biosafety standard would have required the cooperation of the leading biotechnology countries, such as the United States, the Cartagena Protocol's decentralized regulatory regime could be created without their approval. Thus, even if the hegemon refused to accede to the accord, those that ratify it would still benefit from its existence. They would be entitled to receive capacity-building and would gain legitimacy, and to some extent legal cover, for their national biosafety policies even where these depart from existing rights and obligations under the WTO. Unlike environmental treaties that only work if the major producers of environmental risk or harm support them (such as the Montreal Protocol on ozone layer depletion), the Cartagena Protocol can be effective without the approval of

the major GMO exporters. In this sense, therefore, the protocol does not have a strict "public good" character and is more likely to work effectively without hegemonic support than other environmental treaties. It follows more the "critical mass" model of regime building (similar to the ICC) than the "weakest link" situation (e.g. ban on landmines) that require the participation of all major players (see Stiles, Introduction, p. 12).

Second, the EU was willing to provide non-hegemonic leadership to compensate for the absence of US support. It led through example in the field of precautionary biosafety regulation and was willing to provide the financial resources to make the regime's capacity-building elements work. The burden of such non-hegemonic leadership was not too heavy, though. Capacity-building under the protocol involves the funding of comparatively small-scale efforts to build scientific, regulatory, and administrative capacity, and is shared between multilateral, bilateral, and private sources. It is estimated that all international biosafety capacity-building in the first five years since 2000 amounted to ca. \$150 million, with the EU having provided only a portion of this sum.⁶

To sum up the argument so far, two factors facilitated cooperation on international biosafety governance despite the absence of hegemonic support: first, the existence of a broad-based coalition of countries from North and South in support of a strong biosafety regime, and the critical role played by the EU in providing non-hegemonic leadership; and second, the design of the Cartagena Protocol as a decentralized regulatory system that strengthens importer countries' regulatory powers. A combination of rationalist arguments, therefore, relating to power and interest structures, regime design and the nature of the issue area, goes a long way in explaining non-hegemonic cooperation on biosafety. But this account alone cannot fully explain the process and outcome of the biosafety negotiations, for it ignores the role of non-state actors and the complex interplay between state preferences, ideas and discursive power in the international process. In line with other contributions to this volume, this chapter supports the case for combining rationalist with constructivist insights in the study of international cooperation.

There are two main reasons why an explanation based solely on a rationalist logic is inadequate, and these will be familiar to those well-versed in recent international relations debates on bridging rationalism with constructivism (Zürn and Checkel 2005; see also Busby and Heckel in this volume). For one, the emergence of a global biosafety agenda is rooted in discursive shifts within the scientific community and global civil society at large. The very fact that GMOs came to be defined as risky speaks more to the social and discursive power of environmentalists than the political-economic realities of global biotechnology. Before states could define their interest with regard to biosafety regulation, a discursive transformation had to occur through which "biosafety" was created as an area of concern. In this way, socially defined understandings of risk and precaution preceded, and thus shaped, interest formation in

international biosafety politics. Indeed, when the biosafety talks started in July 1996, many government delegations were still unclear about how they should define their national interest in this area. The first few Biosafety Working Group meetings did not involve actual bargaining but merely allowed delegates to put various regulatory options on the table, by creating a kind of wishlist. Some countries, such as the United States, were consistent in their opposition to a framing of GMOs as inherently risky, but many others, particularly in the developing world, were still engaged in constructing their interest in a global biosafety regime.

Furthermore, the transformation in the EU's negotiation position from indifference in the mid-1990s to international leadership in the late-1990s is in itself the result of a discursive shift in European regulatory politics towards a more pronounced precautionary approach (Falkner 2007a). This shift was not predetermined by political-economic interests, but grew out of the agency of epistemic and activist groups that helped to raise the salience of GMO risks on the political agenda in Europe. To be sure, economic shifts in biotechnology in the second half of the 1990s made it easier for the EU to arrive at its new position. Against the background of rising anti-GMO sentiment and stricter European regulations, European agricultural biotechnology saw a decline in its size and importance relative to its US competitors and Europe's medical biotechnology sector, which was keen to distance its business from the social and political risk of GM food (on the role of business in European biosafety policy, see Falkner 2008, chapter 5). By setting the discursive environment in which these corporate changes occurred, European environmental and consumer campaigners had an important, albeit indirect, impact on the international dynamic in biosafety politics. In this way, social actors became a key source of the emergence of a global consensus among GMO-importing countries in favour of precautionary biosafety governance.

The emergence of global biosafety concern was of central importance to the creation of the Cartagena Protocol. For unlike most other environmental treaties, which were created in response to some observable environmental degradation (despite pervasive uncertainty regarding the causalities involved), the Cartagena Protocol is an entirely precautionary instrument that seeks to protect the environment and humans from potential future harm. As to date, no directly attributable harm to biodiversity or human health has been caused by the release of GMOs into the environment, GMO risk had to be "constructed" in scientific and social discourses, in order to give rise to a global biosafety agenda. Opponents of international biosafety regulation, including the US Government, repeatedly contested this construction of GMO risk by arguing that GMOs were "substantially equivalent" to other living organisms and therefore required no additional, technology-based form of regulation. It is this discursive construction of GMO risk that we can now identify as a major contribution that scientific, environmental, and consumer groups made to the success of the international biosafety politics. The discursive power of these

non-state actors both helped to create a global biosafety agenda and provided a major impetus for non-hegemonic cooperation.

Finally, in order to arrive at a fuller understanding of the reasons for successful regime-creation in this case, we should also take into account the specific historical circumstances that shaped the negotiation process. We may even wish to ask whether the agreement would have been possible at any other point in recent history, though inevitably no definite answer can be found to such conjectural questions. It may suffice simply to note at this point that the second half of the 1990s provided a particularly opportune moment for the creation of global biosafety governance—one that did not exist before and that probably does not exist now. Shortly after the negotiations started in 1996, Europe became engulfed in an increasingly heated debate about the safety of GMOs and GM food (Bauer, Gaskell, and Durant 2002). This debate had been going on for some time, in Europe and elsewhere, but the strength of anti-GMO sentiment that erupted after 1997/1998 had a clear impact on the biosafety talks. It catapulted the EU into a leadership position and raised the political stakes involved in the talks, both for states and non-state actors. With the rise of a parallel anti-globalization movement, which contributed in rather spectacular fashion to the collapse of the 1999 WTO Ministerial Conference in Seattle, the late-1990s experienced a sudden eruption of popular unease about the speed with which globalization was progressing, and the apparent failure of international institutions to catch up with global economic integration. Observers and participants on all sides of the biosafety talks have commented that in the wake of what became known as the "Seattle debacle" of 1999, delegates in the biosafety talks showed a renewed determination to seek a compromise at the January 2000 Montreal conference (Bail, Decaestecker and Jørgensen 2002: 180; Mayr 2002: 225). At the height of the global debate on globalization, governments were keen to demonstrate that they were still able to guide and govern the forces driving the globalization process. The Cartagena Protocol may be one of the main beneficiaries of this particular moment in late-twentieth century history.

Conclusion

In understanding international biosafety politics, it is clear that non-hegemonic cooperation has played a critical role in regime creation. The United States, the world's leading biotechnology country, opposed precautionary rules on GMO trade, but was ultimately unable to block the adoption of the Cartagena Protocol in 2000. Faced with a united front of developing and European countries, the US-led Miami Group reluctantly agreed to a compromise deal. Having entered into force in 2003, the protocol is now shaping GMO importer practices around the world—against the preferences of the United States and other GMO exporters. The United States may not be a party to the biosafety treaty, but it is faced with a growing list of agricultural import markets that

are governed by the precautionary GMO risk assessment procedures that have been legitimized in the treaty.

At a base level, political-economic structures and interests explain the underlying conflict formation in biosafety. Different rates of biotechnological development and commercialization led to the emergence of distinctive exporter and importer perspectives. The United States, which continues to lead the commercial exploitation of genetic engineering, has argued consistently against precautionary trade restrictions on GMOs. In contrast, most developing countries with weak or non-existent biotechnology capacity have emphasized the need for importers to strengthen their regulatory authority, even if this departs from existing trade obligations. They were joined in the late-1990s by the European Union, which came to view the Cartagena Protocol as an extension of its own regulatory approach and as a plank in its defence against US criticism and legal threats aimed at opening the European market to GM food products from the US.

Based on this rationalist interpretation of the preference structure in biosafety politics, it is possible to identify the key factors behind the successful completion of the biosafety negotiations: non-hegemonic leadership and regime design. First, while the group of developing countries successfully pushed for an international process of regime creation and demanded the most stringent biosafety rules, it was the EU that provided critical support and leadership in the last phase of the talks. Not only did European GMO laws provide a model for precautionary regulation at international level, but the EU was also willing and able to stand up against bilateral US pressure and defend regulatory autonomy. Second, the enabling character of the Cartagena Protocol, which strengthens the political autonomy of importing countries, boosted the position of the EU and the Like-Minded Group. It allowed them to create a regime with sufficient, even if reduced, effectiveness despite the absence of hegemonic support. The fact that the protocol was likely to be a meaningful regulatory instrument even without the hegemon's participation served to blunt the hegemon's opposition to the protocol.

This rationalist explanation, combining modified leadership theory with institutionalist insights, cannot fully explain the case of biosafety cooperation, however. By treating state preferences as given and non-state actors as marginal, it fails to account for the important discursive shift that underlies international biosafety politics. For as discussed above, societal actors and scientific groups played a central role in creating concern for biosafety and in constructing GMO risk. This discursive transformation was important in at least two respects: it gave rise to a global biosafety agenda in the first place, and it helped to shift the EU from a laggard to a leadership position in the late-1990s. In this sense, constructivist theory—in both its sociological and ideational variants—is relevant to this case. Combined with rationalist interest analysis, it provides a fuller explanation of non-hegemonic cooperation in biosafety.

Notes

- 1 This chapter is based on an earlier version that was presented at the Annual Convention of the International Studies Association in San Diego, 22–25 March 2006, and Falkner 2007b. Thanks are due to the editors, two anonymous reviewers, as well as the other project participants for their helpful comments and suggestions. The usual disclaimers apply.
- 2 The protocol speaks of living modified organisms (LMOs), but the more commonly used term GMOs is used here in this chapter.
- 3 The United States never ratified the Convention on Biological Diversity (CBD) and is unlikely to do so in the near future. It is thus prohibited from becoming a member of the Cartagena Protocol to the CBD.
- 4 US farm exporters, who claimed annual losses of up to \$300 million from the European GMO moratorium, urged their government to initiate WTO dispute settlement proceedings against the EU, which were eventually launched in May 2003 (Brack, Falkner, and Goll 2003). The United States won the WTO case in February 2006 (Financial Times 2006).
- 5 The continuing divergence of perspectives on the “relationship” issue in the protocol can be seen in two contrasting interpretations by members of the EU and US delegations: Afonso (2002) and Safrin (2002).
- 6 Estimates by UNU/ISA, available at <http://www.ias.unu.edu/about/details.cfm/articleID/669>.

References

- Afonso, M. (2002). “The relationship with other international agreements: an EU perspective.” *The Cartagena Protocol on Biosafety: Reconciling Trade in Biotechnology with Environment and Development?* edited by C. Bail, R. Falkner, and H. Marquard. London: RIIA/Earthscan, pp. 423–437.
- André, P. (2005). “The Cartagena Protocol on Biosafety and shifts in the discourse of precaution.” *Global Environmental Politics* 5, 4: 25–46.
- Bail, C., J.P. Decaestecker, and M. Jørgensen (2002). “European Union.” *The Cartagena Protocol on Biosafety: Reconciling Trade in Biotechnology with Environment and Development?* edited by C. Bail, R. Falkner, and H. Marquard. London: RIIA/Earthscan, pp. 166–185.
- Bauer, M.W., G. Gaskell, and J. Durant (eds) (2002). *Biotechnology: The Making of a Global Controversy*. Cambridge: Cambridge University Press.
- Bernauer, T. (2003). *Genes, Trade, and Regulation: The Seeds of Conflict in Food Biotechnology*. Princeton: Princeton University Press.
- Charnovitz, S. (2002). “Improving the agreement on sanitary and phytosanitary standards.” *Trade, Environment, and the Millennium*, 2nd edition, edited by G.P. Sampson and W.B. Chambers. Tokyo: United Nations University Press.
- Clapp, J. (2006). “Unplanned exposure to genetically modified organisms: divergent responses in the global south.” *Journal of Environment and Development* 15, 1: 3–21.
- DeSombre, E.R. (2005). “Understanding United States unilateralism: domestic sources of US international environmental policy.” *The Global Environment: Institutions, Law, and Policy*, edited by R.S. Axelrod, D.L. Downie, and N.J. Vig. Washington, DC: CQ Press.
- Downs, G.W., D.M. Roocke, and P.N. Barsom (1996). “Is the good news about compliance good news about cooperation?” *International Organization* 50, 3: 379–406.

- EU Council (1999). Council of the European Union. Draft Council conclusions on the Biosafety Protocol. Report No. 13344/99 ENV 409. 6 December. Available online at www.gene.ch.
- Falkner, R. (2005). "American hegemony and the global environment." *International Studies Review* 7, 4: 585–599.
- (2006). "International sources of domestic environmental policy change in China: the case of genetically-modified food." *The Pacific Review* 19, 4: 473–494.
- (2007a). "The political economy of 'normative power' Europe: EU environmental leadership in international biotechnology regulation." *Journal of European Public Policy* 14, 4: 507–526.
- (2007b). "International cooperation against the hegemon: the Cartagena Protocol on Biosafety." *The International Politics of Genetically Modified Food: Diplomacy, International Trade and Environmental Law*, ed. by R. Falkner (Basingstoke: Palgrave), pp. 15–33.
- (2008). *Business Power and Conflict in International Environmental Politics*. Basingstoke: Palgrave Macmillan.
- and A. Gupta (2004). *Implementing the Biosafety Protocol: key challenges*. Chatham House Briefing Paper No. 4 (London: Chatham House).
- Financial Times (2006). "WTO rules against Europe in GM food case." *The Financial Times*, 8 February.
- Gupta, A. and R. Falkner (2006). "Implementing the Cartagena Protocol: comparing Mexico, China and South Africa." *Global Environmental Politics* 6, 4: 23–55.
- Marquard, H. (2002). "Scope." *The Cartagena Protocol on Biosafety: Reconciling Trade in Biotechnology with Environment and Development?* edited by C. Bail, R. Falkner and H. Marquard. London: RIIA/Earthscan, pp. 289–298.
- Mayr, J. (2002). "Colombia." *The Cartagena Protocol on Biosafety: Reconciling Trade in Biotechnology with Environment and Development?* edited by C. Bail, R. Falkner and H. Marquard. London: RIIA/Earthscan, pp. 218–229.
- Paarlberg, R.L. (2001). *The Politics of Precaution: Genetically Modified Crops in Developing Countries*. Baltimore: The Johns Hopkins University Press.
- Pollack, M.A. and G.C. Shaffer (2005). "Biotechnology Policy." *Policy-Making in the European Union*, edited by H. Wallace, W. Wallace, and M. A. Pollack. Oxford: Oxford University Press, pp. 329–351.
- Safin, S. (2002). "The relationship with other agreements: much ado about a savings clause." *The Cartagena Protocol on Biosafety: Reconciling Trade in Biotechnology with Environment and Development?* edited by C. Bail, R. Falkner, and H. Marquard. London: RIIA/Earthscan, pp. 438–454.
- Tussie, D. (ed.) (2000). *The Environment and International Trade Negotiations: Developing Country Stakes*. Basingstoke: Macmillan.
- Zedan, H. (2002). "The road to a Biosafety Protocol." *The Cartagena Protocol on Biosafety: Reconciling Trade in Biotechnology with Environment and Development?* edited by C. Bail, R. Falkner and H. Marquard. London: RIIA/Earthscan, pp. 23–33.
- Zürn, M. and J.T. Checkel (2005). "Getting socialized to build bridges: constructivism and rationalism, Europe and the Nation-state." *International Organization* 59, 4: 1045–1079.

6 The Anti-Personnel Landmine Ban Convention

A non-hegemonic regime

Kenneth R. Rutherford

No other issue in recent times has mobilized such a broad and diverse coalition of countries, governments and non-governmental organizations (NGOs). Much of this momentum has been the result of the tremendous efforts made by NGOs to advance the cause to ban AP mines. Their commitment and dedication have contributed to the emergence of a truly global partnership.

(Canadian Foreign Minister, Lloyd Axworthy, 1997)

Introduction: Canada and the NGO role

NGOs proved instrumental in changing state behavior and gathering support for an international landmine prohibition capulated in the Anti-Personnel Land Mine Ban Convention (APLBC).¹ It is the "first time, the majority of the nations of the world agreed to ban a weapon which has been in military use by almost every country in the world."² It also did not have the support of many major powers, which is contrary to most multilateral disarmament agreements.³ On December 2, 1997, 122 states signed the APLBC, which as of June 2006 has had 154 signatories/accessions and 151 ratifications or accessions. When it entered into force March 1, 1999, it became the fastest major international agreement to enter into force in history (Rutherford 1999). The role of non-governmental organizations (NGOs) in initiating and controlling the landmine issue on the international political agenda is an innovative model for the future conduct of international politics. Even the Nobel Committee recognized this unique NGO contribution by awarding the International Campaign to Ban Landmines (ICBL) and its coordinator Jody Williams the 1997 Nobel Peace Prize, in part for helping create a fresh form of diplomacy.⁴

The APLBC also marks the first time in history⁵ that a majority of states have agreed to ban a weapon that "has been in military use by almost every country in the world."⁶ The APLBC is also notable because, contrary to most multilateral disarmament agreements, it did not have the support of hegemonic powers, such as China, Russia, and the United States and, most important, it was initiated by a coalition of NGOs calling themselves the International

Cooperating Without America

Theories and case studies of
non-hegemonic regimes

**Edited by Stefan Brem
and Kendall Stiles**

Contents

<i>List of illustrations</i>	vii
<i>Notes on contributors</i>	viii
<i>Acknowledgments</i>	xi
<i>List of abbreviations</i>	xii

1 Introduction: Theories of non-hegemonic cooperation <i>Kendall Stiles</i>	1
--	---

2 Negotiating with a reluctant hegemon: the case of the small arms and light weapons regime <i>Simone Wisotzki</i>	21
---	----

3 The campaign to end the use of child soldiers <i>Heather Heckel</i>	44
--	----

4 The hardest problem in the world: leadership in the climate regime <i>Josh Busby</i>	73
---	----

5 The global politics of precaution: explaining international cooperation on biosafety <i>Robert Falkner</i>	105
---	-----

6 The Anti-Personnel Landmine Ban Convention: a non-hegemonic regime <i>Kenneth R. Rutherford</i>	123
--	-----

7 Isolated hegemon: the creation of the International Criminal Court (ICC) <i>Nicole Deitelhoff</i>	147
--	-----

First published 2009
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN
Simultaneously published in the USA and Canada
by Routledge
270 Madison Avenue, New York, NY 10016

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2009 Stefan Brem and Kendall Stiles for selection and editorial matter; individual chapters, the contributors

Typeset in Times New Roman by
Florence Production Ltd, Stoodleigh, Devon
Printed and bound in Great Britain by
TJ International, Padstow, Cornwall

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloguing in Publication Data

Co-operating without America: theories and case studies of non-hegemonic regimes/edited Stefan Brem and Kendall Stiles.

p. cm.

Includes index.
1. Hegemony—United States. 2. International relations. 3. International cooperation. 4. World politics—21st century. I. Brem, Stefan. II. Stiles, Kendall W.

JZ1312.C67 2008

327.101—dc22

2008029219

ISBN10: 0-415-77726-7 (hbk)

ISBN10: 0-415-77727-5 (pbk)

ISBN10: 0-203-88404-3 (ebk)

ISBN13: 978-0-415-77726-1 (hbk)

ISBN13: 978-0-415-77727-8 (pbk)

ISBN13: 978-0-203-88404-1 (ebk)