THE ROLE OF THE PRIVATE SECTOR IN GLOBAL CLIMATE AND ENERGY GOVERNANCE

José Célio Silveira Andrade - jcelio.andrade@gmail.com
Professor, Administration School, Federal University of Bahia, Brazil

José Antônio Puppim de Oliveira - puppim@ias.unu.edu
Assistant Director and Senior Research Fellow, United Nations University - Institute of Advanced Studies (UNU-IAS), Japan

Abstract:

The private sector plays an active role in implementation of mechanisms concerning the mitigation of climate change, including the Kyoto Protocol. In spite of that, the corporate actors play a limited direct role in international arenas when it comes to negotiating the design of climate and energy regime. The climate and energy governance United Nations system remain mostly state-centric, but the active participation of corporate actors in negotiation of climate and energy regimes is essential to increase the effectiveness of the climate and energy governance. Business is not just a subject of a regulatory climate and energy imposed by the state; rather, business is an intrinsic part of the fabric of climate and energy governance, as "rule maker", particularly in the many voluntary regimes. However, the architecture in place should guarantee that the private sector does highjack the decisions and its positions are balanced by other non-governmental actors in the process, such as NGOs, indigenous groups and scientific community. This article analyses the role of the private sector can play in the global climate and energy governance. The focus of this study is an analysis of the ways in which the private sector responds to the agenda of climate change and climate governance. The private sector does not only play a "rule taker" role in the climate change and energy regime, as they are not passive observers as they influence through indirect means. The results suggest that the private sector is able to play a key role in global climate and energy governance based on the principle of multi-stakeholder participation in global decision-making, but the architecture should be able to balance the goods and bads of private direct influence in international regimes.

Key-words: Private Sector; Climate Change; Energy; Governance; Architecture.

Introduction

The global climate and energy governance has been discussed by diplomats, scientists and other stakeholders since the Conference of Rio in 1992, without major progress in the capacity of the international community to decrease the GEE emission. We thus face a paradoxical situation, even though there is a growing institutional, human, financial, and scientific resources devoted to the global climate and energy governance system, GEE emission rate that continues to increase in a dangerous scale (IPCC, 2007). To account for this problem, the literature invokes: a) the lack of implementation and effectiveness of the global climate and energy governance; b) a decision-making process insufficiently open to the participation of others sectors, such as: trade, health, finances, or development who are key for reducing emissions; c) lack of implementation at the national and sub-national levels of government; and d) a state-centric system that doesn't allow the effective inclusion of multiple international actors (including, the private sector). This state-centric system leaves out the major role that the private sector can play and ignores the contemporary context marked by an increasing decentralization of the international governance process. In that light, a strong consensus on the need to reform the global climate and energy governance system, in particular, and the global environmental governance system, in general, has emerged (Andrade & Taravella, 2009).

Any global climate and energy governance 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 global climate and energy governance (Okereke and Bulkeley, 2007). 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 (O'Neill, 2009).

Prisoner of this tension, the global climate and energy governance 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. They were seen as opponents to any environmental regulation in the 1970s and climate change "deniers" in the 1990s, but businesses have become more active in 2000s as "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 global climate and energy governance system.

There is thus a real hiatus between the conceptualization of global climate and energy governance and its actual dynamics. The private sector plays an active role in implementation of mechanisms concerning the mitigation of climate change, including the Kyoto Protocol. In spite of that, the corporate actors play a limited direct role in international arenas when it comes to negotiating the design of climate and energy regime. The climate and energy governance United Nations system remain state-centric, but the active participation of corporate actors in negotiation of climate and energy regimes is essential to increase the efficiency of the climate and energy governance. Business is not just a subject of a regulatory climate and energy imposed by the state; rather, business is an intrinsic part of the fabric of climate and energy governance, as "rule maker". The private sector does not only play a "rule taker" role in the climate change and energy regime, as it does not seem to act as passive observer as business actors remain active in the backstage lobbies and negotiations, as well as influential in national regimes.

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 global climate and energy governance in order to make the governance more transparent and the regime more effective to deliver the changes.

To understand and contribute to reduce this gap, this article analyses the role of the private sector has been played in the global climate and energy governance. The focus of this study is an analysis of the ways in which the corporate actors respond to the agenda of global climate and energy governance and how they are able to play a key role in the changing architecture of global climate and energy governance based on the principle of multi-stakeholder participation in global decision-making.

---

[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.

This paper is structured into three parts. We will first outline the expansion of the participation of the private actors in the global climate and energy governance and describe their evolution as "rule-takers" and the emergence of a new role as "rule-makers". Secondly, we will examine the contribution of business actors to the effectiveness of the global climate and energy governance, analyzing the potential and limits of strengthening the role of the private sector in global climate and energy governance system. By analyzing the place that the global climate and energy governance system grant to the private sector and showing the shortcomings of this system in harnessing the potential role of private actors, the third section of this paper will discuss the type of architecture governance system in order to have a balanced contribution of these actors.

The concluding section suggest that there are ways business actors can play a more positive role as "rule-makers" and this should be considered in any reforms of the global climate and energy governance in a decentralized perspective. However, the architecture in place should guarantee that the corporations and the private sector does highjack the decisions. Its positions should be balanced by other non-governmental actors in the process, such as: a) international governmental organizations (IGOs); b) NGOs, indigenous and other activist groups, global environmental movements; c) scientific community, experts groups and knowledge holders; d) the broader public and individual leaders.

1. The growing engagement of the business actors in the global climate and energy governance

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 were generally 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. It was the dominant political strategy used by the private sector at Stockholm back in 1972 (Porter and Brown, 1996).

The Conference of Rio in 1992 marked the beginning of a change in corporate environmental strategy for some business actors. This change resulted in an increasing 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 global environmental governance: the World Business Council for Sustainable Development (WBSCD) 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 WBCSD 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, and argue that business and environmental interests were compatible through the idea of eco-efficiency (Schmidheiny, 1992). In particular, their political strategy sought to aimed 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 the global climate and energy governance. 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 and hybrid environmental regimes such as carbon offset standards of the voluntary carbon market (Voluntary Carbon Standard - VCS, VER+, The Voluntary Offset Standard – VOS, Chicago Climate Exchange – CCX, The Climate, Community & Biodiversity Standards – CCBS, ISO 14064, WRI/WBCSD GHG Protocol for Project Accounting), and voluntary global climate change reporting system (Carbon Disclosure

Project – CDP), is a clear example of the role of the private sector as “rule-maker” in the global climate and energy governance. These forms of environmental self-regulation are frequently carried out by carbon market actors in partnership with non-governmental organizations (NGOs) and backed by city and national governments and International Organizations (IOs). Private and hybrid governance regimes have become an important component of the global climate change institutional architecture, particularly due to the failure of achieving internationally binding agreements. 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 the global climate and energy governance. Business initiatives have stimulated the debate about the role of the corporate actors in the multilevel global environmental governance and influenced the structure of the global climate and energy governance through the inclusion of market-oriented and 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 (Knox-Hayes and Levy, 2011; Kollmuss, Zink and Polycap, 2008; Clapp, 2005).

Transnational corporate actors also influence the global climate and energy governance through their participation as “rule-makers” in others international forums important to this global environmental policy, such as through the development of voluntary initiatives, as discussed previously. The CDP standards, for example, while initially designed as a voluntary set of standards, are now recognized as legitimate standards by some governments and IOs. Several countries and cities, particularly in North America, Asia and Europe, have supported CDP. It has received funding from various national governments around the world, including the governments of Australia, Canada, France, Germany, Singapore, Spain, Sweden, Denmark, UK and USA. CDP is also supported by various local governments around the world, including Toronto, New York City and London. The IOs, including the EU, OECD and numerous UN bodies on global climate change and energy, have recognized the CDP standards as a legitimate investor (banks, pension funds, asset managers, insurance industry and foundations)-led initiative to accelerate company action on cost-effective carbon reduction activities (CDP, 2012).

Before presenting the main reasons for this change from “rule-takers” to “rule-makers”, we highlight that businesses are not homogeneous in their interests and actions. Indeed, starting in the 1990s, the change in corporate environmental strategy has been observed in only the more progressive segments 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. This change stemmed from for four main reasons: i) the emergence of a “green and low carbon economy” which considers the climate and energy regulations as an opportunity for growth and profit; ii) the progressive awakening by some companies of the risk which global climate change problems could represent to their legitimacy and competiveness; iii) the perception that a strong, effective and efficient global climate and energy governance 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 climate change issues (Le Prestre, 2005).

But the increasing involvement of the private sector in global environmental governance has increased 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 global environmental governance. In the end of 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 contribute 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 2007).

Annan was also key to propose the creation of the UN Global Compact during the World Economic Forum of Davos in January 1999. It is a voluntary initiative target mainly on the business sector worldwide with two main objectives: Mainstreaming social and environmental issues defined in the ten general principles in business activities and bringing businesses to support UN goals and actions (UN Global Compact, 2012). The Global Compact is based largely on five international documents: The Universal Declaration of Human Rights, The International Labour Organization's Declaration on Fundamental Principles and Rights at Work, The Rio Declaration on Environment and Development and The United Nations Convention against Corruption, but implementation is voluntary.

There have been several criticisms on the Global Compact (Ruggie, 2004). The fact of it is voluntary makes difficult to get a hold in the more problematic companies, which in general do not participate in those initiatives. The lack of accountability is another limitation. Reports are generally made by companies. There is little monitoring of the reports, particularly the veracity of the actions. Indeed, some studies demonstrate that very few companies report properly, and most of the reports look like promotion material and less like a detailed report. Finally, the use of the UN symbol is viewed as a “Blue-Wash” mechanism to serve more to blue marketing for companies and promote themselves than to promote the principles (Bruno, 2002). However, the criticisms have been rebated. The introduction of compulsory mechanisms to monitor companies would be difficult to get wide support from some countries, and would take a long time, if ever, to get the support for the Global Compact from the UN members. Finally, any global regulation would be opposed by most of the business.

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 (Multilateral Environmental Agreements) Secretariats. 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 and information booths. 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, as well as funding scientific projects. Analyzing multinational corporations' political strategy on climate change, Kolk and Pinkse (2007) show that their type of political activities can be characterized as information strategies 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 climate change and energy problems, such as the substitution of fossil fuels for renewable ones, and for directly influencing the global climate change 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 global environmental governance 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 global environmental regimes.

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 for the 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 and market-oriented 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 global environmental governance system were key to the implementation of international environmental regimes and essential to increasing the effectiveness of MEAs. 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.

2. The contribution of business actors to the effectiveness of the global climate and energy governance

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 the global climate and energy governance. Rather than analyzing the "problem" of business actors, this section examines the "potential and limits" for the private sector to strengthen global climate and energy governance and work towards sustainable development.

2.1 The potential for business actors to strengthen the global climate and energy governance

Why is strengthening private sector's role an acceptable first step toward effective global climate and energy governance? Essentially because, it could contribute to addressing some dimensions of ineffectiveness of the global climate and energy governance. The first dimension is the implementation of mechanisms concerning the mitigation of climate change by economic incentives to participate in and comply with global climate agreements, including the Kyoto Protocol. A second dimension of ineffectiveness lies in a global climate and energy governance decision-making process insufficiently open to the participation of others sectors. An increasing number of important decisions affecting global climate and energy governance 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 climate change considerations into economic decisions and to ensure meaningful coherence between climate change and other global policy spheres. 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 the global climate and energy governance through private regimes and public-private partnerships, such as the CDP (Carbon Disclosure Project), Voluntary Carbon Markets, etc (Kollmuss; Zink and Polycap, 2008).

Indeed, four major elements suggest the potential positive role businesses can have to help the global climate and energy governance become more effective. Firstly, 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).

Secondly, business should take part in all phases of negotiating treaties that will affect them directly, because this will ensure greater compliance later on (Clapp and Dauvergne, 2005). Further, the active participation of stakeholders in the global climate and energy governance process is believed to lead to more effective regulation and higher compliance, thus helping to increase the implementation rate of agreements (Streck, 2004). If a global climate agreement cannot be crafted that gains the consent of major affected industries, there will likely be no agreement at all. Indeed, no climate regime can likely succeed politically without support of major corporate players (Newell, 2000). In short, more political participation is believed to lead to more effective problem solving and support of the decisions (Bäckstrand, 2006). But, as business can sometimes exercise the veto-coalition role, the relationship between participation and effectiveness depends on who is participating.

Thirdly, 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 Prototype 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 26 companies, including Hydro-Québec, Daimler-Chrysler, Shell-Canada, BP-Amoco, and numerous Japanese firms. The voluntary GHG emissions cap-and-trade schemes, for example, the Chicago Climate Exchange (CCX) opened in October 2003 with 22 members, including American Electric Power, DuPont Motorola and Ford. From October 2003 through July 2010 CCX operated as a cap-and-trade program with an offsets component. In 2011 CCX launched the Chicago Climate Exchange Offsets Registry Program to register Verified Emission Reductions (VER) based on a set of established protocols. (Levy and Jones, 2008; Kollmuss; Zink and Polycap, 2008; ICE, 2012). 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).

Fourthly, concrete, result-driven collaborations with business can, in turn, lead to a strengthened the global climate and energy governance system through: i) effective partnership that deliver results at the local level; ii) improved economic and technical expertise within the global climate and energy governance system when business is engaged as a knowledge-broker; iii) an increased authority for the global climate and energy governance 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 UNFCCC (United Nations Framework Convention on Climate Change) (Ivanova, Gordon and Roy, 2007).

2.2 Concerns and limits to the role of business actors as elements of a stronger the global climate and energy governance

It is clear from the literature that there is no consensus on whether business involvement is a bane or a boon to Global Environmental Governance and more particularly to the global climate and energy governance. Most of the questions that have been raised regarding the role of the private sector in the global climate and energy governance concern its legitimacy and effectiveness. From a critical perspective, an increasing and more direct participation of the private sector actors in the global climate and energy governance decision-making can be problematic because of their lack of legitimacy, since their participation is not the product of elections or have any political legitimacy. 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 the global climate and energy governance 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 this author, because of the broad range of actors involved, accountability mechanisms need be pluralistic and the traditional hierarchical accountability mechanisms may have to be replaced with non-hierarchical ones. The voluntary offset market in particular has been criticized for its lack of transparency. For example, several groups have in the past criticized CCX for its general lack of transparency. CCX has responded to this criticism by making its rule book and many of the methodologies available on its website (Kollmuss; Zink and Polycap, 2008).

Representation in private regimes of governance may equally pose problems of legitimacy. For example, Clapp (2005) argues that the private regimes of governance represent a privatization of global environmental governance and the legitimacy of the corporate actors to establish global norms for climate change is questioned, especially if the standard setting process is dominated by energy industry, with only minor inputs from governments and environmental groups. Moreover, private climate change standards could have potentially negative implications for developing countries that do not have as much representation as industrialized countries in organizations as the WBCSD or the ICC. The decision-making process around the private regimes of governance 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) argue that one of the commercial drivers of private forms of self-regulation, such as carbon reduction labels, 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. For example, the Carbon Trust Standard certifies the companies or product carbon footprint and supply chain emissions with a carbon reduction label in order to offer a way for the companies to communicate this market differentiation of its products/services and to make businesses thrive in a low carbon economy (Carbon Trust, 2012). As a result, private, hybrid private-public or "mixed" regimes of governance are perhaps more significant as a barrier against competition from smaller companies, than as a framework for improving environmental performance.

The weak commitment of the broader corporate world represents another obstacle to a stronger participation of the private sector in the global climate and energy governance. The increasing engagement of business actors in the global climate and energy governance is a reality difficult to deny. In the past two decades, businesses have even claiming 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 climate change forums (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 climate change 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 (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 global environmental governance, how could business become more engaged in the process of developing climate change and energy 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 global climate and energy governance 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. The literature mentions four main obstacles. Firstly, as stressed by Kolk and Hoffmann (2007), the complexities, uncertainties, and fragmentation of current global climate change and energy policy seem to be major factors that impede more pro-active business responses. Another important obstacle resides in the current conflicts within the business world’s responses to the agenda of global climate change and energy politics. The business world is not a monolithic entity and some of its responses sometimes conflict with the global climate change and energy governance 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 or do in a positive way. Business conflict arises in the global climate change and energy politics because of the different effects that international regulatory measures may pose 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. For example, large oil firms like Shell and BP, are actively involved in climate change discussions and rule setting, but more national oriented firms, such as China's Sinopec are less active, as also it is controlled by the Chinese government.

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 Pinkse and Kolk (2009) highlighted, in some cases, climate change and energy 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. For example, Brazil's oil company Petrobras is keen to promote first-generation biofuels for mitigating climate change as Brazil has some leading technologies and geographical advantages in biofuels.

Another source of business conflict is differences in lobbying styles. A dividing line exists between American and European firms. Levy & Newell (2000) and Levy & 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 conflicts are an important feature of business involvement in global climate change and energy politics, and result from of 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 2007).

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 she 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 global climate change and energy governance. 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 forums 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 can 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 UN global environmental governance system. Although the UN has begun incorporating business actors into the global environmental governance system through access to policy-making forums and partnerships, the current state-centric nature of global environmental governance in the decisions does not offer sufficient room for business actors to express their full potential. The global environmental governance 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 global environmental governance system does not let corporate actors take a central place in shaping the rules of the game directly, what leave them to play the role of influencing the process for whatever means are available, such as lobbying and blocking implementation at the national level. 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 global climate change and energy policy-making. This active participation of legitimate corporate actors as “rule-makers” in negotiating international environmental regimes is essential to strengthening the global climate change and energy governance 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 global climate change and energy governance. Then, the limited institutional space for observers that is accorded business actors by the UN global environmental governance 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 climate change and implies working hard towards sustainable development.

3. Architecture to have a balanced contribution of business in climate discussions

Effectiveness of multilateral agreements is linked to the negotiation processes, but how these links would evolve with more direct business participation to shape both negotiation and implementation are still unclear. Business actors affected by the agreement have interest in shaping the negotiation outcomes, but they can also provide valuable information to the negotiation process. Moreover, they could be more willing to cooperate if they participate in the decision process. The challenge is to find a balance in the architecture between the benefits of business participation with good information on the best way to achieve the results and the risks that may involve.

The architecture should take into consideration how to smooth the power and influence of businesses if they are included. There are some models already in place for quite a long time, such as the negotiation model of the International Labor Organization (ILO). ILO brings together governments, employees and employers in a tri-partite discussion to develop its initiatives. The power and interests of the employers are counter-balanced by employees (many times representatives of labor unions). The agreements reached have been discussed by all interested parts, which will also help in legitimize the implementation. For international environmental agreements, the inclusion of business directly in the negotiation would have to come with the inclusion of counter-forces such as environmental groups. The later could restrain business from having a disproportional weight in the negotiations. There are some experiences in national and sub-national commissions on the environment (Puppim de Oliveira, 2005).

The representation of businesses in the discussions should also be an important point in the architecture. Who would represent who? The UN has had experience with the stakeholder or major groups discussions during the different UN meetings, such as UNFCCC COPs. Relying in representatives of international BINGOs, such as WBCSD, has been a common practice. However, if direct participation is allowed, probably new groups would claim themselves as representatives. Thus, establishing a set of criteria to represent businesses in the discussions should be defined clearly.

New architectures should also include businesses beyond the large multinationals, as those generally participate in the meetings because they have the resources and expertise to be present. Actors in networks at the international level not always have the same values, power and interests as the networks of the same actors at the national or local level. For example, the companies that participate in the international negotiations are generally large MNCs, but often Smalll and Medium Enterprises (SMEs) are more important to have an effective implementation at the local level in many cases. Those actors are often unaware of the international discussions and implementation efforts and lack the capacity to make the necessary changes to address the issues. Local actors have different priorities for policy actions than the objectives of many international agreements and their implementation (Pinto and Puppim de Oliveira, 2008). Particularly in the environmental area the mismatch can be huge. For example, local governments, businesses and population in the many parts of the Amazon depend on the timber industry and agriculture to collect economic benefits from the forested land in the short-term. Climate change has a much larger and diffuse impact, but the locals are just marginally benefiting on those in the long term. The need to balance the local interest in the global agenda is key to get support for implementation at the local level.

The flip side for having business participation is that there is a need to increase their accountability in the architecture. Businesses are not keen in having international regulation as a way to solve the problem, and prefer voluntary or market-based mechanisms. However, regimes with voluntary implementation, such as the UN Global Compact, are criticized because of lack of accountability. Businesses do not lose much when they do not implement their commitments. Thus, representation of business should imply making them more accountable for the decisions made and agreed. Even though the level of accountability in the commitments at the UN is low, as no country is penalized for not ratifying or implementing an agreement, the creation of more rigid enforcement and accountability for businesses participating in the negotiations would make business more committed to the decisions and negotiations. On the other hand, larger accountability could scare some business groups from the negotiations. Thus, the architecture should increase accountability without creating barrier for participation of less progressive businesses.

Conclusion

Companies know better than almost anyone else how and what can and cannot be done in their own production processes to achieve certain environmental outcomes. However, they can be powerful actors in the international and national policy arenas to shape international agreements and national legislation for their own interest, besides lobbying and financing studies that show evidences backing their own position. In the case of the Ozone Depleting Substances (ODS) control, CFC producing companies, which were skeptical in the beginning, became very active in responding to legislators and trying to deny the relation between CFCs and the ozone hole. They were also active in trying to influence the discussions in the Montreal Protocol. However, when science was clear, they started to cooperate and became active in influencing the implementation to phase out the CFCs (Benedict, 1998).

Companies can also influence agreements to make them weaker, so implementation will not regulate their business directly. Businesses are actively participating in shaping international regimes and their implementation depends on business' interests in moving the agenda ahead, and generally they lobby heavily against any form of regulation. A heavier business regulation at the international level would be difficult to get approval from the business communities or the parties, and its enforcement as a hard law would be prohibitively expensive. Thus, businesses can be an influential force to shape both negotiations and implementation. Business inputs in negotiation process should be mediated to have the right balance between getting the right information for shaping the negotiations to have more effective implementation and avoiding the process of being captured by business interests. Thus, the challenges are in creating an architecture in climate change and energy governance that include the valuable information and resources businesses have for making any international environmental regime effective and avoid that their interests influence negatively the outcomes of the regime.

References

Andrade, J. C. S. & Taravella, R. (2009) Les oubliés de la réforme de la gouvernance internationale de l'environnement. *Critique Internationale*, v.45, p.119 - 139.

Bäckstrand, K. (2006). Multi-Stakeholder Partnerships for Sustainable Development: Rethinking Legitimacy, Accountability and Effectiveness. *European Environment*, 16, 290-306.

Benedick, R.E. (1998). Ozone Diplomacy. *New Directions in safeguarding the Planet*. Cambridge, USA, Harvard University Press.

Bled, A. (2007). Global Environmental Politics: regulation for or against the private sector? The case of the Cartagena Protocol on Biosafety. *Political Perspectives,* 1(5).

Brühl, T. (2002). The Privatisation of International Climate Governance. In Biermann, F., Brohm, R. & Dingwerth, K. (Eds.) *Proceedings of the 2001 Berlin Conference on the*

Human Dimensions of Global Environmental Change "Global Environmental Change and the Nation State". (pp. 371-380) Potsdam: Potsdam Institute for Climate Impact Research.

Bruno, K. (2002) *Greenwash +10: The UN's Global Compact, Corporate Accountability and the Johannesburg Earth Summit*. California: CorpWatch.

Carbon Trust (2012). Carbon Footprint Certification. Available at: http://www.carbontrust.com/client-services/footprinting/footprint-certification. Accessed October 31, 2012

CDP (2012). *Members & Signatories*. Available at: <https://www.cdproject.net/en-US/Pages/HomePage.aspx>. Accessed October 27, 2012.

Clapp, J. & Dauvergne, P. (2005) *Paths to a Green World: the Political Economy of the Global Environment.* Cambridge, Mass.: MIT Press.

Clapp, J. (2005). Global environmental governance for corporate responsibility and accountability. *Global Environmental Politics,* 5(3), 23-34.

Dunn, S. (2005). Down to business on climate change: an overview of corporate strategies. In K. Begg, F. Woerd & D. L. Levy (Eds.), *The business of climate change*: *corporate responses to Kyoto* (pp. 31-46). Sheffield, UK: Greenleaf Pub.

Falkner, R. (2003). Private environmental governance and international relations: exploring the links. *Global Environmental Politics,* 3(2), 72-87.

Falkner, R. (2007) *Business Power and Conflict in International Environmental Politics.* Basingstoke, UK: Palgrave Macmillan.

Garcia-Johnson, R. *Exporting Environmentalism: US Multinational Chemical Corporations in Brazil and Mexico*. Cambridge, MA: MIT Press, June 2000.

ICE (2012). Chicago Climate Exchange. Available at: https://www.theice.com/ccx.jhtml. Accessed October 31, 2012.

IPCC (2007). Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, Pachauri, R.K and Reisinger, A.(eds.)]. Geneva, Switzerland: IPCC.

Ivanova, M., Gordon, D. & Roy, J. (2007). Towards institutional symbiosis: business and the United Nations in environmental governance. *RECIEL*, 16(2), 123-134.

Knox-Hayes, J. & Levy, D. (2011) The Politics of Carbon Disclosure as Climate Governance. *Strategic Organization*, 9(1): 91-99.

Kolk, A. & Hoffmann, V. (2007) Business, Climate Change and Emissions Trading: taking stock and looking ahead. *European Management Journal*, 25(6), 411-414.

Kolk, A. & Pinkse, J. (2007) Multinationals' Political Activities on Climate Change. *Business & Society*. 46(2), 201-228.

Kollmuss, A.; Zink, H. & Polycap, C. (2008) *Making Sense of the Voluntary Carbon Market: A Comparison of Carbon Offset Standards.* Germany: WWF.

Kulovesi, K. (2007). The Private Sector and the Implementation of the Kyoto Protocol: Experiences, Challenges and Prospects. *RECIEL*, 16(2), 145-157.

Le Prestre, P. (2005). *Protection de l'environnement et relations internationales: les défis de l'écopolitique mondiale.* Armand Colin: Paris.

Levy, D. L. & Jones, C. A. (2008). *Business strategies and climate change, United States*. In Encyclopedia of Earth. Available at. <http://www.eoearth.org/article/Business_strategies_and_climate_change,_United_States>. Accessed September 21, 2009.

Levy, D. L. & Kolk, A. (2002). Strategic responses to global climate change: conflicting pressures on multinationals in the oil industry. *Business and Politics*, 4(3), 275-300.

Levy, D. L. & Newell, P. J. (2000). Oceans apart? Business responses to global environmental issues in Europe and the United States. *Environment*. 42(9), 8-20.

Levy, D. L. & Newell, P. J. (ed.) (2005). *The business of global environmental governance*. Cambridge, Mass.: MIT Press.

Morgera, E. (2006). The UN and corporate environmental responsibility: between international regulation and partnerships. *RECIEL*, 15(1), 93-109.

Najam, A., Papa, M. & Taiyab, N. (2006). *Global Environmental Governance: a reform agenda*. Winnipeg, Manitoba: IDDRI.

Newell, P. (2000). *Climate Change: Non-State actors and the Politics of the Greenhouse*. Cambridge: Cambridge University Press.

O'Neill, K. (2009) *The Environment and International Relations.* UK: Cambridge University Press.

Okereke, C. & Bulkeley, H. (2007). *Conceptualizing climate change governance beyond the international regime: a review of four theoretical approaches.* Tyndall Centre Working Paper 112.

Pinkse, J. & Kolk, A. (2009) *International Business and Global Climate Change*. London: Routledge.

Pinto, R. & Puppim de Oliveira, J. (2008). Implementation Challenges in Protecting the Global Environmental Commons: The Case of Climate Change Policies in Brazil. *Public Administration and Development,* 28(5), p. 340-350.

Porter, G. & Brown, J. W. (1996). *Global Environmental Politics*. 2nd ed. Boulder, Colorado: Westview Press.

Pulver, S. (2005). Organising Business: industry NGOs in the Climate Debates. In K. Begg, F. Woerd & D. L. Levy (Eds.), *The business of climate change*: *corporate responses to Kyoto* (pp. 47-60). Sheffield, UK: Greenleaf Pub.

Puppim de Oliveira, J. (2005). Enforcing Protected Area Guidelines in Brazil: What Explains Participation in the Implementation Process? *Journal of Planning Education and Research - JPER*, 24(4), p. 420-436.

Ruggie, J. G. (2002). The Theory and Practice of Learning Networks: Corporate Social Responsibility and the Global Compact, *Journal of Corporate Citizenship*, 5, p. 27-36.

Schmidheiny, S. (1992) *Changing Course: A Global Business Perspective on Development and the Environment*. Cambridge, MA, USA: The MIT Press.

Schreuder, Y. (2009) *The Corporate Greenhouse: Climate Change Policy in a Globalizing World*. London: Zed Books.

Streck, C. (2004). New Partnerships in Global Environmental Policy: the Clean Development Mechanism. *The Journal of Environmental Development*, 13, p. 295-322.

Sullivan, R. (ed.) (2008). *Corporate Responses to Climate Change.* UK: Greenleaf Publishing.

United Nations Global Compact (2012). *Global Compact Governance.* Available at: www.unglobalcompact.org. Accessed November 10, 2012.