

Mark A. Pollack and Gregory C. Shaffer. ***When Cooperation Fails: The International Law and Politics of Genetically Modified Foods***. New York: Oxford University Press, 2009. Pp. 456. \$29.95. ISBN: 9780199237289.

This book presents an engaging and thorough study of a seemingly intractable international trade dispute, primarily between the United States and Europe, over the dissemination of genetically engineered foods. The United States and several other countries have increasingly approved transgenic (also known as 'genetically modified' or 'GM') foods for public consumption, while the European Community (EC) has strongly resisted the introduction of this new technology. From 1998 to 2004, the EC imposed a moratorium on approvals for the marketing of transgenic foods in the EC. It continues to approve new marketing requests desultorily and to pursue an effective moratorium on the cultivation of transgenic species today, despite losing a challenge before the WTO Dispute Settlement Body brought by the United States.

The multiple layers of this dispute provide the basis for an edifying study of the causes, dynamics, and consequences of international regulatory conflict. The United States and Europe have demonstrated unequal levels of trust in corporate ethics, the government's regulatory rigour, and the completeness and accuracy of scientific information on the health and environmental consequences of GM foods. Differing tort liability rules also provide dissimilar incentives for agribusinesses in the United States and Europe to take strong precautions against any health, safety, or environmental risks posed by their products or production methods. Different media events relating to food safety and technology have affected cultural expectations about biotechnology in the two regions. There are, moreover, multiple treaty and institutional regimes mediating the dispute, including *inter alia* the World Trade Organization (WTO), the Convention on Biological Diversity and Cartagena Protocol on Biosafety, the World

Health Organization, the Food and Agriculture Organization, and the Codex Alimentarius Commission (formed by the WHO and FAO). Add to the mix considerable intra-EC political conflict; the Commission and European Food Safety Authority have found themselves opposed to the Council, Parliament, and Member States because of their differing constituencies and roles in EC governance.

When Cooperation Fails seeks to answer five key questions regarding US–EC trade negotiations over the domestic regulation of GM foods: What are the domestic sources of international disputes? What are the obstacles to cooperation and deliberation at the bilateral level? What are the obstacles to cooperation at the multilateral level? What role can the WTO play when cooperation fails? What influence do international political, legal, and market pressures have on the domestic laws and policies of each side to the dispute? The book builds on Pollack's earlier studies of risk regulation and of political economy in the EC, on Shaffer's previous work on the WTO and transatlantic trade, and on their joint work on transatlantic governance regimes. The result is an assiduously researched, theoretically rich, and carefully reasoned study of the failed US and EC negotiations in the GM foods dispute.

Of course, no book could answer all five questions in the abstract; there is no single answer. But the answers in the context of the specific fact configuration which gives rise to the GM foods dispute could either substantiate and illustrate pre-existing theories of international relations or else generate new theories. This book performs primarily the former function. The authors deftly weave regime theory, game theory, constructivism, and other theoretical frameworks into their analysis of the conflict over international regulation of transgenic organisms and their byproducts. They conclude that multiple factors – political, economic, institutional, legal, historical, and cultural – have combined in a manner which undermines incentives to cooperate and to deliberate rationally to the maximum mutually beneficial extent. Not least of these factors are tensions within the EC itself, which pit the Commission and Euro-

pean Food Safety Authority against certain Member States highly resistant to concessions on the culturally inflammatory issue of GM foods. The authors also conclude, consistently with accepted IR theory, that multilateral regimes can assist international cooperation but may not provide the impetus to overcome distributive conflicts or other divisive factors. International pressures to cooperate may prove insufficient to overcome some configurations of domestic interests.

The book does offer several original and useful insights into the dynamics of how hard law and 'soft law' regimes can interact to produce outcomes not predicted by current IR theory, and how power can be strategically shifted between fragmented international regimes. One of Pollack and Shaffer's key general conclusions is that states may respond to political pressures to interpret international legal obligations in a manner favourable to domestic interests by disengaging from fora unfavourable to the state's position and rallying support in more receptive fora.

The complexity of the GM foods dispute does in some ways limit the generalizability of Pollack and Shaffer's analysis. Although the authors assert that the GM foods conflict is 'emblematic of issues that will arise in the future', due in part to the proliferation of international organizations and regimes with overlapping jurisdiction, this specific dispute's fact configuration – largely bilateral (although gradually becoming less so) and polarized between actors of roughly comparable economic and political power – is unlikely to generate a theory which can predict outcomes under very different circumstances. International cooperation may fail for many reasons, and these may differ in a more complex or varied universe of actors and interests. That said, it is quite possible that this specific case is emblematic of a particular type of dispute which may well be expected to recur frequently.

In this specific configuration of facts, some of Pollack and Shaffer's analytical conclusions are unsurprising in light of existing regime theory and the well understood limits of international trade law. Parties to the dispute are

expected to try to channel the dispute into fora and regimes which favour their views and interests, and the US and EC have done precisely that. The US, for example, has sought to obtain favourable rulings before WTO panels using the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), while the EC has tried to shift evaluation of GM food regulation into the ambit of the Cartagena Biosafety Protocol. But the study also offers much that is unexpected and original, and nothing ill-considered. Perhaps the most important theoretical conclusion is that, in international relations (as in domestic politics), deliberative decision-making – in the sense of a reasoned determination of the most mutually beneficial policy outcome based on evidence established by objective methods – occurs only in exceptionally rare circumstances. Indeed, even the fulfilment of those conditions identified by IR theorists may prove insufficient to overcome the politicization of a culturally sensitive issue like transgenic foods. Consequently, although Canada and the EC agreed to settle *inter se* the WTO dispute over GM food regulation after the publication of *When Cooperation Fails*, Pollack and Shaffer's study offers relatively little hope that either party will make sufficient concessions to forge a lasting and mutually satisfying compromise.

Regarding the WTO dispute, Pollack and Shaffer evaluate the potential outcomes of WTO panel approaches beyond that actually adopted in the US–EC dispute using several methodologies. Their comparative institutional analysis offers new and important insights into the consequences of what might superficially seem to be a typical question of exegesis of international treaties. The book ably reveals the potentially weighty political and institutional consequences of choosing one seemingly technical legal interpretation of a treaty over another, and of the choice of treaties identified as those relevant to the dispute. The WTO panel's decision to treat the EC's moratorium as a problem of 'undue delay' in assessing the risk of GM foods under Article 8 of the SPS Agreement, for example, forced the parties to resolve the question whether the EC's methods of risk assessment are scientifically

based, proportional, and otherwise compliant with the SPS Agreement's substantive legal requirements without the assistance of the WTO's hard law dispute resolution process.

This discussion may be more enlightening from a theoretical perspective than a pragmatic one. A comparative institutional analysis presupposes a political value set which would be best advanced by the candidate institutions, and it is not clear that any given WTO panel will identify and pursue a value set universally acceptable to all affected WTO members. Moreover, such an approach would sacrifice many of the attractions of the Dispute Settlement Body itself as a politically impartial adjudicator and developer of technical trade jurisprudence. But the fact that scholars are free to adopt analytical methodologies which may be unavailable to legal actors in no way undermines the educational value of such methodologies, which in the present case are considerable.

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