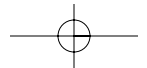
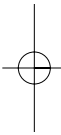
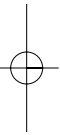


PART III

ACTORS, INSTITUTIONS AND GLOBAL GOVERNANCE



11 Emerging patterns of global governance: the new interplay between the state, business and civil society

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Introduction

According to the traditional distinction between domestic and international politics, governing within the state was conceived as a hierarchical 'command and control' process. Only governments were authorized to take collectively binding decisions. In contrast, the political space beyond the state lacked the central political authority of a world government and was consequently described either as an anarchical system (Waltz 1977) governed by self-help and power politics, or as a society of states (Bull 1977) governed by horizontal arrangements, such as treaty-based relationships which regulated the peaceful coexistence between nation-states. In both spheres, the national and the international, governing functions were reserved to public actors, that is to national governments or the intergovernmental institutions created by them. The main difference existed in the prevalence of a one-way or an interactive model of governing.

This traditional domestic–international distinction has been completely overturned by the growing governance demands. In the interdependent world of today, collective action problems cover an ever-increasing number of issue areas other than national security, such as environmental matters, social and economic human rights. These problems straddle the existing territorial boundaries of political units and call for the extension of public policy beyond the state. Economic globalization creates challenges for political steering which exceed the capabilities of any single state. It has produced a growing need (and claim) to make use of the problem-solving potential of non-state actors in order to master these challenges more effectively. As a consequence, these new demands have also blurred the dividing lines between the national and the international sphere, and, increasingly so, those between the public and the private sectors. They call for 'social–political governance' in the sense of 'arrangements in which public as well as private actors aim at solving societal problems or create opportunities, and aim at the care for the societal institutions within which these governing activities take place' (Kooiman 2000, p. 139).

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The challenges emerging from this process of de-nationalization brought together public and private 'governors' in multistakeholder, multilevel and multimode sectoral governing arrangements which add up to the complex interaction patterns of 'global governance'. This new political agenda also made it obsolete to keep the analytical tool-kits of the different subdisciplines of political science separate from each other any longer: on the one hand, public policy research and normative political theory were both unfamiliar with the context beyond the state to which their core research issues, such as effective problem solving or democratic legitimacy, respectively, were emigrating; on the other hand, the study of international relations was likewise unprepared to deal with these new questions.¹ Today, the need to integrate the different analytical perspectives is no longer seriously questioned because of the obvious drain of economic, social and political processes into the sphere beyond the state.

In the next section I shall deal with the emergence of the new social-political forms of public-private governance patterns beyond the state. In many ways the new interplay between the state, business and civil society in global governance resembles the process of political modernization changes which could be observed in the domestic sphere and is associated with terms such as 'de-hierarchization' (Scharpf 1991) or 'de-governmentalization' (Zürn 1998; Wolf 1999).² The following section analyses the implications of the new modes of governance on the actors involved. With their involvement in new governance arrangements, the roles of governments, international organizations, civil society and the private sector are shifting. All of these actors are still in the process of redefining their traditional roles, identities and functions in the light of the regulatory demands to which they are exposed. The subsequent section deals with the new interplay between the state, business and civil society. Compared to its predecessor, that is treaty-based intergovernmentalism, global governance is a patchwork of different modes of governance, consisting of actors from different environments who are equipped with very different resources, and who are used to quite different compliance mechanisms. Some of these mechanisms presume that actors follow the interest-based logic of consequences, whereas others are based on the assumption that political actors follow the logic of appropriateness.³ To achieve a better understanding of these new modes of governance I shall suggest some categories for the way they correspond with certain actors' constellations and the way they function. The final section takes up normative considerations about the desirability of a the privatization of world politics and evaluate the regulatory potential as well as limits of the new governing relations.

Political modernization: re-organizing political regulation in the domestic context and beyond the state

The emergence of new governing relations in the sphere beyond the state is best conceived of as the international follow-up of the domestic political modernization process which took place within most of the OECD countries before. Domestically and at the international level, it resulted from market failure and the failure of the traditional media of political steering – that is, regulative law and financial incentives – to correct them. The ‘limitations of traditional public command-and-control as a governing mechanism’ (Kooiman 2000, p. 139) became obvious with the regulatory overstretch of the modern welfare state. When the promises of national governments to provide public goods or to prevent public bads in such fields as macroeconomic planning or social safety entered the turbulent waters of globalization, they were confronted with a new collective action problem: they met challenges the causes of which – and the resources needed to meet them – were beyond the command of any single government, or even beyond the world of states as a whole.

Among the numerous strategies employed by national governments to increase their problem-solving capability, the more direct involvement of the former societal addressees of public regulation into the governance process was one. This step towards societal participation was not primarily motivated by democratic concerns, but rather followed the rationale to increase problem-solving effectiveness by utilizing the knowledge and other resources that only private actors could provide, and to increase the support and acceptance of political decisions by co-opting the former addressees as partners in decision making.

In the traditional pluralist model of domestic policy making and interest intermediation, societal lobbying groups were competing for access to and influence on public policy decisions. At the domestic level, this model was first challenged when big corporate actors were integrated and allowed to participate in consensual corporatist policy formulation and implementation. In their new roles, however, they were still dependent on the recognition of the state (Schmitter and Lehbruch 1979). But the next step of political modernization even left these corporatist patterns of interest intermediation behind and promoted a further de-hierarchization of the relations between public and private actors. Increasingly bypassing the traditional political institutions, horizontal decision-making structures emerged which operated according to the modes of bargaining and arguing. On the one hand, the state had to respond to ‘societal actors claiming participation in the political process, while, on the other hand, cooperation with these actors offers the state the opportunity to obtain informational resources and can improve the acceptance of certain political decisions’ (Mayntz 1993, p. 41,

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Table 11.1 Changing forms of political regulation within the state: from government to governance

Organizational form	Pluralist	Corporatist	Partnership
Relationship of the state with business and civil society	Different societal lobbies compete to influence public policy decisions taken by the state	Institutionalized ('incorporated') participation by major associations in consensual formulation and implementation of public policy decisions	Various forms of horizontal deliberative cooperation in governance networks

Source: Bressel and Wolf (2005, p. 188).

own translation). In the domestic context the traditional notion of hierarchical state–society relations gave way to the idea of the negotiating, enabling or cooperative state. Even this stage of political modernization in the domestic context still counts – and depends – on the state, but it does so in terms of a new functional division of labour and authority between public and non-state actors from which additional problem-solving resources are expected (Ronit and Schneider 2000). Table 11.1 summarizes the emergence of the new governing relations within the state.

The limitations of hierarchical governing mechanisms become particularly obvious when we employ Jan Kooiman’s (2000, pp. 154–61) distinction between first-, second- and third-order or ‘meta’ governing.⁴ The demand for such a new division of labour is strongest at the levels of meta and first-order governing. With regard to the creation of normative standards (meta governing), the command-and-control approach is unlikely to meet the high demand of normative consensus which can only be achieved in the public exchange of good reasons; with regard to finding solutions for concrete day-to-day problems (first-order governing), it cannot provide resources, such as factual knowledge, which depend on the involvement of professional expertise.

International governance

In the political space beyond the state, horizontal governance – however as a purely intergovernmental enterprise – had always been the rule because of the lack of the central authority of a world state. The world of states took its first step out of its original stage of anarchy when national governments entered into voluntary self-commitments as sovereign subjects of

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international law. By institutionalizing international relations with the creation of international organizations and regimes, they transferred sectoral governance functions from the domestic to the intergovernmental public sphere. In terms of political modernization, the treaty-based institutionalization of the society of states is a remarkable achievement because it established the rule of law against the original right of self-help, which included the arbitrary use of violence. While this process of legalization was more or less effective in civilizing the interaction among states, its problem-solving capacity came under severe criticism in the face of challenges that did not originate from the world of states. On the one hand, the legitimacy of internationalizing political decision-making processes was questioned because it strengthened the role of the national executives *vis-à-vis* parliamentary control (Wolf 1999); on the other hand, the economic, social and environmental challenges of globalization resulted in regulatory and implementation gaps which individual governments, as well as the intergovernmental institutions created by them, were unwilling or unable to close effectively. In the face of growing world market competition, for example, neither the International Labour Organization nor the World Trade Organization had succeeded in generating, proliferating and enforcing minimum legal standards effectively with regard to business activities involving abuses of human rights, compulsory labour or child labour. In a similar fashion, the change of the global climate raised the challenge of re-programming economic systems in accordance with excessive demands of sustainable economic development which the heads of the leading industrial nations who coordinate their policies in the G-8 are reluctant or unable to meet. As a consequence, 'private actors increasingly engaged in authoritative decision-making that was previously the prerogative of sovereign states' (Cutler et al. 1999b, p. 16), thus reflecting the transition of the society of states into a 'world society'.

Beyond international governance

Domestic de-regulation and the delegation of authority to non-state actors is 'increasingly . . . creeping into the international sphere' (ibid., p. 15). Today there seems to be a general belief that – very similar to what had previously been experienced in the national realm – intergovernmental regimes and organizations are inadequate political instruments for solving the collective action problems emanating from 'de-nationalized' economic, social and environmental processes. To regard 'states as the sole providers of public goods has become an increasingly inappropriate over-simplification' because technological and commercial forces, notably the market-driven diffusion of information technology, 'alter the relative capabilities of different types of actors to solve . . . collective action problems, in particular increasing the

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capacity of non-state actors relative to states' (Florini 2000, pp. 15, 21). The former Secretary-General of the United Nations, Kofi Annan, accurately described the need to overcome the limits of international governance in order to cope with the fundamental problems in world society when he stated that 'peace and prosperity cannot be achieved without partnerships involving Governments, international organisations, the business community and civil society. In today's world, we depend on each other' (Annan 1998). Following this course, the political modernization of international governance has given rise to various new kinds of transnational governance arrangements in which public and private actors pool resources, share responsibilities – and re-define themselves.

Shifting roles: new identities of states, business and civil society as political agents

Statehood in transition

The traditional role of the state is most severely affected by its interplay with private actors in governing processes. However, 'it is generally more appropriate to speak of *shifting* roles of government rather than of *shrinking* roles of government as part of such changing relationships' (Kooiman 2000, p. 139, original emphasis). Governmental retreat from the classical command-and-control governing mechanism in the course of the de-hierarchization of state–society relations may of course not only be described as 'political modernization', as I did in the previous section. This description follows what may be called a 'policy-for-problem-solving' paradigm of political steering and governance. From the perspective of political realism, for instance, the role shift of governments would rather be conceptualized as a 'power shift', as a 'relative decline of states and the rise of nonstate actors' (Mathews 1997, p. 51; see also Strange 1996; Reinalda and Verbeek 2001). However, 'sharing powers' does not necessarily make the state 'weaker' as a provider of public goods than its interventionist elder brother. The shadow of hierarchy is still present; the whip is still in the window. But the negotiating, enabling or cooperative state is less keen on running things 'from above' than on regulating and monitoring self-regulation. The new regulatory state is interested in reducing its governance contributions to functions which can exclusively, or most effectively, be provided by the public sector: establishing operational meta rules, setting the legal framework for private governance contributions and regulating externalities. Political modernization thus still counts – and depends – on the state, but it does so in terms of a new functional division of labour and authority between public and non-state actors.

With regard to domestic governance, Christoph Knill and Dirk Lehmkuhl (2002) have distinguished certain circumstances under which

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governments change their role from providers to enablers of public goods. According to them, the assumed distribution of problem-solving resources among the public and private sectors determines which role the state will take up *vis-à-vis* private actors. If public problem-solving capabilities are high and private capabilities are low, we are likely to observe the traditional 'hierarchical' state; high capabilities on both sides favour the role model of the 'cooperative' state; the 'complementary' state will be the result of low public and high private capabilities; if the capabilities of public and private actors are low, the state is likely to act as an 'intervening' state.

Although these role models have been developed for describing the changing role of the state in the course of domestic political modernization, these categories may also be helpful to describe public-private interaction patterns in governance beyond the state. However, one crucial difference has to be taken into account: national governments lose their unique qualities as holders of *public* authority as soon as they want to exercise power over actors not belonging to the domestic realm. At the global level, national governments are no longer automatically 'in authority' due to their quality as public actors (Wolf 2006, p. 212). Rather, they have to arrange themselves with private actors making equally legitimate claims to 'market' or 'moral' authority based on 'normative, uncoerced consent or recognition' (Hall and Biersteker 2002, p. 5).

The new roles of civil society

Paul Wapner's definition of civil society as a 'domain of associational life situated above the individual and below the state' (Wapner 1997, p. 65) is still valid. In domestic societies, as well as in world society, this domain is populated by civic groups who are private in form, because – unlike governments – they are not and do not want to become part of the state apparatus, but public in purpose, because – unlike companies – they understand their activities not as commercial but as value oriented and as direct contributions to the provision of public goods (Reinalda 2001). This has contributed to shaping their image as 'the better half of world society' (Take 2000). The broad range of increasingly important roles (Mathews 1997) which actors from civil society have played is reflected in a number of labels (see among others Princen and Finger 1994; Keck and Sikkink 1998; Scholte 2000): 'activists', 'transnational social movement organizations', 'grassroots organizations' or 'advocacy groups, coalitions or networks'. Jan Aart Scholte (2000, p. 177) summed up these different appearances as follows: 'In sum, civil society exists whenever people mobilize through voluntary associations in initiatives to shape social order'.

The general importance of civil society participation in global governance has been under dispute time and again in the academic debate.⁵

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However, civic groups do matter. They can provide access to otherwise restricted information and thereby contribute to the equal regard of outsiders' interests otherwise not represented; or they can provide a channel of accountability (Buchanan and Keohane 2006, p. 436). Furthermore, they can 'help states and multilateral institutions to formulate, implement, monitor and enforce policies' (Scholte 2000, p. 174).

As agenda setters, civic groups originally acted as external agents, most memorably in the streets of Seattle in 1999. Many of them still prefer confrontational tactics in order to mobilize public support for policy alternatives, keen on not losing their independence by being co-opted or by cooperating too closely with public authorities or market actors. Others try to affect decision-making processes by making their way into the institutions which have so far been dominated by governments: as lobbyists, as consultants to national delegations, or as observers to international organizations and conferences.

With regard to implementation, actors from civil society can either play a more cooperative role, for example when they fulfil operative functions (such as carrying out projects or being instrumental as monitoring agencies) delegated to them by public actors, or act as independent watchdogs by criticizing public or business actors who do not implement or comply with certain legal or voluntary commitments. In this watchdog function, civil society actors may enter into unofficial coalitions with like-minded national governments or international agencies against norm-violating states, as is typically the case in the field of human rights, and thereby contribute significantly to strengthening the status of international norms.

Civil society actors possess political influence to the extent that they can muster widespread support and consent to their authority, which stems from their role as credible providers of expert advice or from the moral authority accorded to them. They act as epistemic actors whose basic political resource is information. Civil society actors can initiate deliberative processes in order to promote certain standards of appropriateness, to reframe certain issues and/or to change the preferences of other actors. They may also use normative reasoning strategically in order to impose social costs on other actors by shaming them in the eyes of the general public. They may even switch between deliberative and strategic modes of interaction according to the institutional environment.⁶

With their interaction with intergovernmental institutions increasing, actors from civil society have also changed their roles, behaviour and sometimes identities. One may dispute whether this identity shift has been caused primarily by external or internal dynamics (Martens 2005); however, there is little doubt that external pressures and expectations are increasingly raised *vis-à-vis* civil society actors, for example by invitations to collaborate

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in UN-sponsored initiatives like the Global Compact. If one takes a closer look both at the different functions in which different non-governmental organizations perceive themselves, and at the mode of interaction which prevails in the global governance institutions to which they relate, it would be inaccurate to generalize their role shift in terms of 'from outside spectators to official participants'. In fact, civic groups have shown very different responses to such invitations, often as part of a strategic division of labour among them.

The most significant role change occurred with regard to the more direct involvement of transnational civic actors in the core of regulatory functions: originally their role had focused either on the input phases of the political process, that is agenda setting, norm generation, programme development or, further down the output side of the political process, on norm implementation or the evaluation of policies. Now their involvement is shifting from these peripheries to the actual centre of decision making within public-private or multi-stakeholder self-regulation.

The new role of business: once problem causers, now problem solvers?

Since the 1990s the scholarly debate on the role of transnational actors in world politics⁷ seems to have primarily dealt with transnational civil society. However, transnational corporations have a much longer history of academic interest, and had appeared in the role of political actors in world politics already as early as in the mid-16th century, particularly in colonial areas to which today's governance would refer as 'areas with limited statehood' (Risse and Lehmkuhl 2006). Historians rightly point to the important role that chartered private merchandising companies played right until the end of the 19th century when they ran commercial and trading empires which covered vast territories (Griffiths 1974; Keay 1993). The Hudson's Bay Company, for example, originally operated on the basis of a Royal Charter by King Charles II in 1670, which granted the company 'absolute power to establish and enforce laws . . . as well as have its own soldiers, maintain a navy and make peace – or war' (Andra-Warner 2003, p. 37).

In the meantime, business went through a number of stages as a highly disputed object of political and scholarly debates. In most cases, transnational corporations were subject to scrutiny as originators of regulatory problems rather than as problem solvers, as addressees of public legal regulation rather than as private regulators or partners in public-private governance arrangements (see, among others, Baade 1980; Fikentscher 1980). The major innovation of the present political and academic debate about the role of corporations in world politics lies in their rediscovery as political actors through the lens of global governance. Instead of continuing to look at them solely as economic actors in globalizing markets who have

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outgrown the regulatory capabilities of each individual state, their regulatory potential and the limits to it are investigated once again (Cutler et al. 1999a; Graz and Nölke 2007). Corporate responsibility, corporate social responsibility, or corporate citizenship (see, among others, Ruggie 2002; Matten and Crane 2005; Scherer and Palazzo 2007) are used as concepts to re-define the role of business *vis-à-vis* the state and civil society and to readjust the distribution of rights and obligations among the three sectors in the face of state failure as well as market failure. Notions associated with these concepts may vary widely, but they all go beyond the traditional understanding of corporations as actors who are private in form *and* private, that is commercial, in purpose. Understandings are quite different, however, with regard to the voluntary nature of corporate contributions to the provision of public goods. The philanthropic 'charity' view of 'doing good' after work differs substantially from the self-commitments expected by the UN Global Compact from 'corporate citizens' (Global Compact Office 2004) as part of their core business activities. Even more far-reaching is the understanding of corporate responsibility as norm entrepreneurship in the sense of commitments not only to support and enact certain core values when doing their business, which would 'only' blur the traditional boundaries between business and civil society, but also to actively engage in self-regulatory activities of norm generation and implementation, which of course also blurs the boundaries between the private sector and the state.

All of these notions seem to contradict conventional wisdom, which starts out from the actor-centred assumption that the prime motivation for business actors is, and has to be, profit maximization. Survival in the marketplace rules out norm-oriented behaviour, and whenever companies enter into individual or collective self-commitments, no such codes of conduct would ultimately be capable of setting constraining limits to this logic of action. However, this assumption and the consequences derived from it are an inappropriate oversimplification. They neglect the fact that the marketplace is not the only environment which makes demands on business. Rational business actors have to take into account the challenges posed by globalized markets, but also those emanating from the world of states and transnational civil society. The interaction of the three worlds of market, state and civil society makes up a normatively enriched environment, so that 'market rationalism' may acquire a different meaning under these altering context conditions. In the face of public pressure or the threat of state regulation, 'doing good' may even be the most rational strategy to evade the risks associated with adverse campaigning or public regulation (Conzelmann and Wolf 2007).

Such rationalist conceptualizations still rely on fear of coercion and self-interest as the only drivers for business contributions to global governance.

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In contrast to them, constructivists employ the assumptions of the logic of appropriateness and point to the emergence of a global epistemic community made up of like-minded corporate leaders, scientists and public regulators that have defined certain standards of appropriate behaviour for firms (Haufler 1999, p. 215).

On the basis of these considerations, and in trying to define its new role *vis-à-vis* the public sector and transnational civil society, business actors have to make their choice among three ideal-type role models: they can follow a 'narrow' market rationalism, a 'complex' market rationalism, or an intrinsically norm-oriented behaviour. While 'narrow' market rationalism would consider societal and political forces as influential only in so far as they can be translated into short-term risks and opportunities in the marketplace, 'complex' market rationality would anticipate reputational and political costs in the cost-benefit calculations of business actors. Finally, the existence of a normatively textured environment may also give rise to an increased reflection on corporate responsibility and to the recognition of certain values as guiding principles for business conduct. The result may be an 'intrinsic' motivation of business to observe and implement ethical principles even where there is no clear economic or political incentive to do so. In the light of the choices described here, and without giving up the notion that corporations still are and will remain 'private in form and private in purpose', the potential of business actors to contribute to the provision of public goods in the context of global governance should not be underestimated.

New modes of governance between the state, business and civil society

The underlying key question of this chapter regards the conditions under which non-state actors can be expected to make meaningful contributions to global governance, for example by acceding to and complying with codes of conduct. To answer this question at the actor level, the motivations of these non-state actors have to be discussed; on a structural level, however, the environmental conditions under which they act have also to be taken into account.⁸

The transition from international to global governance has increased the degree of complexity of governance beyond the state substantially. Hierarchical governing modes dominated by the public sector (or taking place in the strong shadow of hierarchy cast by it), public-private co-governing, private self-governing, and all kinds of hybrid mixtures of these ideal types add up to an irritating patchwork of sectoral regulatory mechanisms. The multidimensionality of this complex global governance patchwork – perfectly described as '*komplexes Weltregieren*' by Zürn (1998) – results from the amalgamation of the different political *resources* brought

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in by different actors from different playing fields: originally coming from the domestic political–institutional setting, the national governments have the monopoly of the legal authority to set collectively binding rules and to implement these rules with coercive power. Business corporations are equipped with the economic and technological know-how and the financial resources necessary to be successful competitors on the market. Actors from civil society, finally, often have moral authority and factual knowledge at their disposal as politically relevant resources.

In addition, in their original environments all of these actors have been socialized into specific modes of interaction: hierarchical legal or administrative regulation is the traditional way of governing by the state. Horizontal bargaining and arguing characterize interactions in the market or in public discourse, respectively. Making the interplay between them even more complex, each of these modes of interaction relies on a specific causal mechanism for achieving compliance. The compliance mechanism characteristic of interactions dominated by the state is fear of sanctions. Compliance in market relations, on the other hand, primarily rests on material or non-material cost–benefit expectations and follows the interest-based logic of consequences. Making things even more complicated, the compliance mechanism characteristic of the sphere of public discourse presupposes actors whose behaviour is guided by a logic of appropriateness rather than by rationalist cost–benefit calculations. In this realm, actors are expected to comply only if they are convinced of the normative appropriateness of rules which they first internalize and then obey. Table 11.2 illustrates the different dimensions of context-specific traditions which have to be reconciled when the state, business and civil society enter into in to collective governing activities.

Given this variety of resources, context-specific logics and rationalities which govern the behaviour of the different actors in their respective spheres, their interaction inevitably must produce hybrid forms of governance which

Table 11.2 Contextual backgrounds of the state, business and civil society

	State	Business	Civil society
Resources	Legal authority Coercive power	Money Technical expertise	Moral and factual authority
Sphere	Political institutions	Market	Public discourse
Mode of interaction	Hierarchical	Bargaining	Information, arguing
Compliance mechanism	Fear of coercion	Self-interest	Belief in appropriateness

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are characterized by the mixture of different resources, interaction modes and compliance mechanisms, often combining elements which may not be compatible or which may neutralize each other's impact. Conditions which facilitate governance in the mode of bargaining may be detrimental to those under which arguing can be effective. For example, the relevance of trust or mistrust, transparency or secrecy, alters dramatically according to the respective modes of interaction.

New actors' constellations

At a first and very elementary descriptive level, the new modes of governance resulting from the interplay between the state, business and civil society can be distinguished according to different actors' constellations: governance arrangements beyond the state which involve private actors can:

1. still be initiated, sponsored, or even dominated by the public sector. In this category the shadow of (public) hierarchy is still present, but the darkness of the shade may vary. In this kind of publicly embedded self-regulation the degree of de-governmentalization would still be low;
2. consist of multistakeholder initiatives, where more horizontal patterns of interaction prevail and the state, civic groups and corporations meet on an equal footing; and
3. be pure instances of private self-regulation with no direct public sector involvement, neither by the state nor by intergovernmental organizations, neither in a hierarchical manner nor in any other way as 'equals'. Here of course the highest degree of de-governmentalization can be observed.

In Table 11.3, some empirical examples are given of global governance initiatives representing the three different types of actors' constellations. They also show that all types can be found in the main issue areas of global governance.

New modes of interaction

The fact that accession to and compliance with these self-regulatory initiatives are voluntary gives rise to the suspicion that they are only symbolic and serve to 'greenwash' business and take off the pressure from governments to put in place an effective and forceful regulation (Conzelmann and Wolf 2007). This widespread criticism starts out from a certain notion of how compliance mechanisms should operate in order to be effective. At least implicitly, it still favours public intervention by administrative law, backed by the coercive power of the state, over soft and horizontal modes

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Table 11.3 Public, multistakeholder and private self-regulation in different policy areas

	Environment	Security and human rights	Corruption and organized crime
With public sector participation	Global Compact	Kimberley Process	United Nations Convention Against Corruption
Multistakeholder governance initiatives	Forest Stewardship Council	Voluntary Principles on Security and Human Rights	Business Principles for Countering Bribery
Private self-regulation	Responsible Care	Antwerp Resolution of the World Diamond Council	Wolfsberg Principles

of governance. However, this traditional hierarchical mode of public governance by government, has lost part of its significance in the course of the domestic political modernization processes discussed above. For governance *beyond* the state, it was never appropriate as a model. Global governance institutions – very much like the above-mentioned intergovernmental institutions characteristic of the period of international governance – are typically based on compromise or consent rather than on fear of coercion, simply because there is no Leviathan available in an international system consisting of sovereign territorial states. Given these conditions, in the international sphere even national governments perform their regulatory functions best, not if they can impose norms, but because of consent, that is, if the norms and rules they generate and try to implement are regarded as legitimate and/or as serving the self-interest of those who are subject to those rules (see also Buchanan and Keohane 2006, pp. 409–10). In that sense, it becomes important to go beyond the fear of coercion as compliance mechanism and to discuss alternative conduits by which non-state actors may contribute to the provision of public goods.

Fear of public regulation

In the context of transnational private self-regulation, even the potential threat of governments imposing binding legal regulation in the case of voluntary self-commitments failing to show the expected effects may improve the robustness, reliability and sustainability of self-regulation among private actors. This expectation rests on the assumption that private self-regulation,

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which typically falls into the category of 'soft' and voluntary modes of norm generation and implementation, is driven by business' intention to avoid state intervention in the market. In order to achieve this goal, they are doomed to success. But this embeddedness in pending public regulation could have yet another impact on private efforts trying to anticipate them: even if, at a later stage, public regulation would follow, its substance would already be pre-shaped by the norms and rules of private self-regulation. These expectations as to the potential impact of a pending fear of coercion on private self-regulation go along with the suspicion that in the absence of this 'whip in the window' the reliability of voluntary self-commitments would suffer. Private self-regulation, in order to meet certain demands on political regulation, would therefore always depend on the capability and the willingness of public actors to intervene.

Material market incentives

How far can private self-regulation contribute to the provision of public goods, if market forces are the only mechanism to secure compliance? In this case, in a narrow cost-benefit calculation, 'doing good' is only rational if and as long as it helps companies to 'do well', for example, by improving the image of a certain brand in relation to competitors. This causal mechanism rests on a rationalist background according to which rules are obeyed when they are in line with the self-interest of rule followers to maximize individual benefits and to minimize individual costs. However, as Buchanan and Keohane (2006, p. 410) rightly point out, support for an institution 'based on reasons other than self-interest or the fear of coercion . . . may be more stable'.

Social costs by public shaming

The threat of intervention by legally binding public regulation is not the only environmental factor which can potentially raise the quality of the contributions that private self-regulation can make to the provision of public goods. Another factor originates from the embeddedness of self-regulation in a societal environment in which civic groups are vigilant and strong enough to raise public attention concerning the conduct of businesses. In this case, the underlying assumption is that the reputational costs associated with public shaming will increase the likelihood that voluntary unilateral or multilateral self-commitments of companies come into existence and that their rules are actually implemented. Even if companies proclaim normative self-commitments only for strategic reasons, without actually being convinced of their appropriateness, the importance of the societal environment lies in securing rule-consistent behaviour by helping the logic of 'rhetorical self-entrapment' to unfold.⁹ This consideration leads

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us to a fourth causal mechanism with which we leave the theoretical background of rationalism behind and employ basic assumptions of social constructivism.

Legitimacy assumptions and moral obligations

Apart from fear of coercion and self-interest (in its narrow and its more complex meaning), rule following may also be caused by the legitimacy assumptions which the subjects of regulation attribute to global governance institutions and by the sense of appropriateness attached to their rules. Such legitimacy assumptions can grow on the basis of moral reasons, but also on factual knowledge about how an institution works and about the degree to which it contributes to the provision of public goods without committing serious injustices, such as violating human rights (Buchanan and Keohane 2006, p. 420). As the author of this chapter has pointed out elsewhere (Conzelmann and Wolf 2007), any public order, domestic or beyond the state that rested exclusively on sanctions and deterrence of potential transgressors would demand enormous resources. Therefore, the weight on these 'hard' compliance mechanisms is usually sought to be lightened by creating moral obligations to follow norms, for example, by appealing to collective identities or by highlighting the legitimacy of these norms.

As a consequence, the binding force of regulations may actually originate from several sources: the sense of obligation created by the norms and rules on which they are based; actors' rational calculation of the gains they can expect from rule compliance; and the subordination by the threat or use of force. With regard to global governance arrangements which are characterized by the interplay among states, business and civic groups, the political challenge is not necessarily to increase the regulatory and sanctioning capacity of public bodies at the international level, but rather to increase the legitimacy of global governance institutions so that compliance with their rules can also count as appropriate conduct.

All institutional designs and compliance mechanisms discussed in this section have their specific strengths and weaknesses as far as their effectiveness, the likelihood of operating in the general interest and the validity of assumptions made about the motives of actors are concerned. As most of the governance arrangements which are already based on role shifts of the participating actors are still new, we do not have enough empirical evidence to substantiate generalizing judgements. In so far, and unlike regulatory initiatives that rely exclusively on the logic of sanctions and deterrence or material market incentives, they have the privilege of not yet having had the opportunity to reveal their weaknesses. However, some general remarks can be made that are based on the compatibility of certain compliance mechanisms with the different regulatory challenges that have

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to be met at the levels of meta, second- and first-order governing: It is very likely that shared legitimacy assumption will result in a stronger commitment to the normative standards established at the meta level of governing. This means that the shadow of state hierarchy is a negligible factor in this context and that 'voice' is more important than 'vote' here. The availability of the unique coercive instruments of the state may, however, become of crucial importance for issues of second-order governing, in particular when it comes to safeguarding by legally binding rules the institutional conditions under which first-order problem solving can take place with full and equal stakeholder participation. At the level of first-order governing, finally, the availability of a broad range of problem-solving resources and a public which can set into motion shaming mechanisms speaks in favour of multistakeholder arrangements and compliance mechanisms which rely on factual expertise on the input side of the political process, on transparency on the throughput phase, and on public monitoring of implementation measures.

Institutional demands for the legitimacy of transnational global governance

In this chapter we first described the emergence of new modes of governance beyond the state; then dealt with the role shifts of actors that went along with this process; subsequently, taking into account different assumptions about actors' motivations, I analysed the conditions under which private actors might be expected to provide meaningful contributions to global governance in the interplay among the state, business and civil society. The following final section takes up again the issue of strengths and weaknesses, but places it in the broader context of the general desirability and limitations of the privatization of governance beyond the state. This normative discussion will result in some considerations about institutional demands for the legitimacy of transnational global governance.

Theoretical perspectives on the legitimacy of global governance institutions may be distinguished according to their state-centredness and the degree to which they adhere to, or transcend, the normative demands derived from the ideal type of the parliamentary democracy of the territorially based nation-state. A very basic first distinction stems from different constitutional assumptions about the international system: is it desirable to establish democratic statehood at the supranational level, as envisaged by cosmopolitan approaches (Held 2005), or do we conceive of the political space beyond the state as a non-state polity characterized by functional self-regulation, that is by horizontal modes and sectoral scopes of policy making? Leaving state-centrism behind, a second cluster of distinctions refers to the way in which certain governance functions should be assigned to certain levels within a multilevel governance setting in order to achieve

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maximum legitimacy. In his search for a political constitution for a pluralist world society, Habermas, for example, allocates juridical functions to the supranational level and political functions to the level of horizontal self-coordination (Habermas 2005). Lastly, the public–private axis of distinction picks out as a central theme of the implications of the new interplay among the state, international institutions and private actors for the legitimacy of governance. Obviously these are of particular interest here. In what follows I shall therefore concentrate on the public–private dimension of the legitimacy issue by linking it with Kooiman's (2000) functional distinction between first-order, second-order and meta governing which has already been introduced.

Despite the general lack of a commonly agreed-upon set of positive normative criteria for the legitimacy of global governance institutions, there is at least some agreement on 'the unrealistic view that legitimacy for these institutions requires the same democratic standards that are now applied to states' (Buchanan and Keohane 2006, p. 405). Rather, institutional designs should take the specific contexts of governance beyond the state more seriously and venture into 'context-adequate' standards of legitimacy (Wolf 2002, 2006). With regard to the inclusion of private actors, in particular, there seems to be no fundamental contradiction between the privatization of governance beyond the state and the provision of public goods, because none of the three types of actors dealt with above pursues a genuine public interest in this sphere. In fact, the boundaries between what is public and what is private, and hence which actors act in the public interest, are much less clear in the political space beyond the state. In this context even (national) governments follow 'private', that is particularistic, purposes of their own (namely, their 'national interest'). Public and private actors turn out to be much more similar units in the international sphere than this general distinction would suggest. In fact, some (private) actors from civil society may be the most likely candidates as protagonists of what is generally perceived to be the common good.

How far does the new interplay between the state, business and civil society affect legitimacy, and what kind of legitimacy standards should be applied to transnational global governance? A first answer to these questions could be the objection against applying any legitimacy standards to this sphere which go beyond certain demands of output effectiveness with regard to the provision of public goods in the general interest. This argument could be based on the voluntary nature of self-regulation which does not produce any necessity for maintaining self-determination, nor for checks and balances to control power and maintain the rule of law. Where no one exerts power, there is no need to control it. Following Max Weber's (1921 [1976]) concept of legitimacy as the legitimate authority to use power

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in order to enforce collectively binding decisions, one could conclude: where we have no collective subordination by coercion, there is no need for legitimacy either; where no one rules, there is no need to legitimize anyone's right to rule.

The functional bias of the more output-oriented governance debate tends to support this view (Mayntz 2006, p. 12). Under the governance paradigm, the notion of the nature of politics has shifted from 'exerting power' to 'solving collective problems'. Rather than treating these two notions as separate, the following considerations are based on the assumption of a functional linkage between effectiveness and legitimacy, according to which an institution's right to rule is accepted and its rules are obeyed as being binding because they are regarded as legitimate. This view provides us with a better understanding of the reflexivity and interconnectedness of effectiveness demands and the normative demands of legitimacy derived from democratic theory. From both perspectives, participation plays a crucial role.

However, criteria for inclusion differ: effectiveness (or output legitimacy) demands procedural mechanisms which respond to factual knowledge problems and guarantee a meaningful participation by those affected by rules. At the level of first-order governing, these demands of output legitimacy can be met, for example, by the inclusion of experts or specialists because they can contribute knowledge-based problem-solving resources, the lack of which would otherwise hinder effectiveness. Those affected by rules also have to be included because their cooptation is likely to facilitate the success of rule implementation. In both cases, inclusion means 'voice' rather than 'vote' because matters of neither self-determination nor power control are primarily at stake here. Thus, the day-to-day routines of formulating and implementing concrete sectoral problem-solving policies leave abundant space for private involvement, with the effect of mobilizing additional sources of output legitimacy, as long as practical solutions are in accordance with the standards of appropriateness established at the level of meta governing. At that level, similar legitimacy gains can be achieved by including private actors in the discourse about the normative standards by which the appropriateness of certain approaches to problem solving is to be judged, as long as these actors find recognition as being "an authority" in the sense of holding the expertise of a scholar or an expert or specialist' (Cutler et al. 1999c, p. 367) and accept the rule of impartial reasoning. In sum, the inclusion of the argumentative and knowledge-based authority of private actors from business and civil society can improve the output legitimacy of governance processes at both levels by their substantial contributions, based on factual expertise (at the level of first-order governing) or on moral credibility (at the level of meta governing). However, the recognition

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as being 'an authority' provides a sufficient source for the legitimacy of private actors' claims to inclusion in policy processes of voluntary and horizontal self-regulation, but not in the context of coercive subordination and command models of political obligation which still depend on legal (public) authority.¹⁰

In contrast, democratic (input and throughput) legitimacy demands procedural mechanisms for participation which are not directly geared at increasing the concrete problem-solving capability of global governance institutions or the quality of the exchange of moral reasons, but which primarily aim at controlling the use of power. In order to achieve this goal, the institutional architecture of transnational governance arrangements must guarantee a certain transparency of the political process; furthermore, it needs participation mechanisms that are 'vote' rather than 'voice' oriented and guarantee formal equality. It is only under these conditions that the subjects of regulation and those affected by it can be provided with the necessary information and leverage to hold institutional agents accountable and to attach costs if they fail to provide certain public goods; in other words, and reiterating the interconnectedness of input and output concerns: those affected by regulation must have the means to evaluate the performance of a global governance institution and, if necessary, to initiate institutional reforms.

If and by how far such means are at hand, depends on decisions at the level of second-order governing, which deals exactly with the shaping of institutional settings within which governing at the two other levels can take place. There is still little evidence as to what extent and at what costs private actors can be expected to provide, maintain and protect the constitutional framework within which they operate, whether they are capable of allocating institutional capabilities effectively, securing formal equality and protecting the weak against the power of the strong. All these second-order governing functions may require enforcement and subordination. Although some of the private and multistakeholder governance initiatives listed in Table 11.3 operate as most interesting 'governance laboratories' in that respect as well, notably the Forest Stewardship Council (Pattberg 2005, 2006), non-state standard setting and implementation still seems to depend on its complementary relationship with state or interstate public regulation. Even the most prominent functional equivalents to the checks and balances institutionalized *within* the political systems of democratic states, such as functioning market mechanisms and effective access to open public discourses as prerequisites for securing the accountability of privately dominated global governance networks, cannot be provided by private actors alone. Therefore, the overall legitimacy of global governance arrangements has to rely on some kind of public sector participation – at least on its

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visibility as the 'whip in the window', capable of intervening with legally binding regulation at the national or intergovernmental level in case voluntary private self-regulation fails to operate and provide public goods in accordance with the meta rules established at the level of meta governing.

Notes

1. The research on international regimes is a good example to illustrate this: originally, private regimes (Haufier 1993) or regime consequences (Breitmeier and Wolf 1993) were still only an appendix to the mainstream of regime analysis (see Rittberger and Mayer 1993). The North American mandarins only recently took up the normative turn seriously by seeking support in political theory (see Buchanan and Keohane 2006).
2. Governance beyond the state does of course still take place with the participation of governments, but it is de-governmentalized in more than one sense now: it inherited the predominantly horizontal modes of interaction from the former intergovernmentalism which also lacked the shadow of hierarchy that the existence of a (world) state could provide; but furthermore, it is also de-nationalized in that political processes have dispersed over several levels of policy-making, of which the national level is only one, and the national governments share responsibilities with international organizations and private actors from business and civil society (see also Reinicke 1998).
3. According to the 'logic of appropriateness' (see March and Olsen 1984, 1989) the normative environment may lead to processes of reorientation and learning, and is potentially able to change identities and interests of business actors.
4. According to Kooiman's (2000, p. 154) typology, '[f]irst-order governing aims to solve problems directly Second-order governing attempts to influence the conditions under which first-order problem-solving or opportunity creation takes place'. Third-order, or meta governing, deals with the creation of the normative standards by which the appropriateness and legitimacy of concrete policy programmes and the demands on an enabling institutional setting can be evaluated.
5. Virginia Haufier does not even regard civil society actors as strong enough to have a serious impact as independent agents: 'Either they will be used as instruments of state policy, or they will "use" states to implement their own goals' (Haufier 1993, p. 106).
6. The establishment of the International Criminal Court shows how civil society can even combine both strategies by acting as norm-entrepreneurs who strategically prepare the conditions under which new norms can be generated in deliberative processes (see Deitelhoff 2006).
7. For an excellent and well-balanced overview, see Risse (2002).
8. With the exception of some alterations, this passage follows Conzelmann and Wolf (2007).
9. For the role of shaming, see Finnemore and Sikkink (1998) or Keck and Sikkink (1998); Risse et. al (1999). For rhetorical self-entrapment, see Schimmelfennig (2001). The basic argument claims a causal mechanism by which – under the conditions of a functioning public sphere and an already existing reputation sensitivity – initial opportunistic and strategically motivated commitments to certain norms offer a starting-point for shaming, and in the long run can change actors' behaviour and even become internalized.
10. This conceptualization of the legitimacy of private authority in contrast to the legal authority carried by the state is reminiscent of Weber's distinction between the legitimacy sources of legal and charismatic authority (Weber 1921 [1976], pp. 124–30, 140–44).

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