Rules that Many Use: Standards and Global Regulation

DIETER KERWER*

Global regulation increasingly relies on alternatives to legal rules, variously termed “soft law,” “best-practice rules,” or “standards.” Such voluntary best-practice rules can be highly effective. Standards influence users by virtue of the expertise on which they are based and because of their enforcement by public and private actors. Standards globally proliferate because they are more compatible with regulatory autonomy of states than binding directives. When global standards are effective, the question of how to subject them to democratic control often arises. The prospects for holding global standard setters accountable largely depend on how decisions on standards are made. These insights are illustrated by examples of the global regulation of financial markets. The preliminary evidence suggests that standards need to be taken more seriously by students of global regulation.

INTRODUCTION

In the last decade, the Russians have had to cope with all kinds of transitions. This year, they are facing yet another one: The Russian state carrier, Aeroflot, has banned smoking on all flights. Given the huge distances in the country, modest fares, and the popularity of a smoke, this decision will affect many citizens. Why this transition in Russia? With its smoking ban, Aeroflot risks losing customers to new private domestic carriers. Also, smoking in Russia is still socially acceptable. What has been more powerful than national mores and the market? A flight attendant gives an answer after the safety instructions: global standards. “In accord with the standards set by the International Air Transport Association, smoking on this flight is not allowed.” By implementing this standard, the website adds, “Aeroflot . . . is taking part in the global drive to preserve the health of people on the planet.” Even without conclusive evidence of the number of lives to be saved by banning smoking on flights, smokers are convinced. A modest personal sample suggests that complaints are rare.

Global standards, such as the ban on in-flight smoking, can be defined as voluntary best-practice rules. In contrast to formal law, standards seek to convince rather than to coerce (Brunsson 1999). More often than not,
they do so successfully. Global standards have become an increasingly prominent justification to explain why things are done. Technological devices such as cell phones, video recorders, and computers have to be designed in accordance with global standards so as to be compatible with each other. Furthermore, global standards shape the way firms manage their financial risks and seek to avoid damage to the natural environment, the way schools and universities seek to educate. Some of the domains affected were hitherto thought to be the prerogative of national political decision making. For example, members of the European Union (EU) find that their social policy is increasingly affected by what is defined as best practice at the European level (Héritier 2002).

The proliferation of global standardization is an indication of the fact that standards can acquire a minimum level of effectiveness. This is a puzzle yet to be sufficiently addressed by the social sciences. Given the different legacies of national regulatory traditions and the principle of external sovereignty, why should global standards even have a remote chance of becoming rules of any significance?

The increasing importance of global standards raises another issue that has thus far been addressed even less than the question of how standards actually become effective. If it is true that standards are mainly expert recommendations that are voluntarily followed, why is it that, in the past, political conflicts about standards have arisen? In such conflicts, it often turns out to be much more difficult to hold standard setters accountable for their rules than regulators. An analysis of why standards pose a problem of legitimacy and how this problem is resolved is the main question addressed in this article.

Presently, political science is ill-equipped to deal with this question. Political scientists have come to think of global regulation as closely analogous to national law (e.g., Abbott, Keohane, Moravcsik, Slaughter, and Snidal 2000; Braithwaite and Drahos 2000; Reinicke 1998; Scharpf 1999; Vogel 1995; Zürn 1998). They presuppose that effective rules ultimately have to take the shape of binding law, backed up by the authority of the cooperating states or formal dispute settlements in international courtlike settings. Compared to binding rules, standards only play a marginal role in global regulation. They mostly address technical issues such as the design of products or the organization of production processes (Abbott and Snidal 2001; Werle 1995).

In order to come to terms with the phenomenon of governance by standardization, this article introduces a framework based on neo-institutional organization theory (Brunsson and Jacobsson 2000). This framework explains how it is possible that standards become effective rules in their own right. Furthermore, it shows that the very mechanisms that make standards work also raise serious issues of democratic accountability. Standards are contested because of how they become effective.

While compelling in its general formulations, the neo-institutional framework cannot yet come to terms with the significant empirical vari-
ation of the legitimacy problems raised. For this purpose, the article identifies different standardization modes. Such a typology is a precondi-
tion for comparative research on the legitimacy issues concerning glo-
bal governance. Yet, it is beyond the scope of an agenda-setting article such as this to exhaustively demonstrate the analytical scope of the framework or to rigorously test hypotheses that can be derived from it. As a second-best solution, examples from financial-market regulation are used in order to illustrate the fruitfulness of the analytical approach and to conduct a plausibility test of the major propositions of the framework.

The argument will proceed as follows. The following section gives an overview of the role of standards in the regulation of global financial markets (second section). This example is used in subsequent sections to illustrate the major theoretical points. In order to come to terms with the rising significance of standards, the article presents a framework based on organization theory (third section). This perspective is used to gain access to the problem of the democratic accountability of standard setting (fourth section). The article concludes by summarizing the ground covered and by pointing out issues for future research (fifth section).

STANDARDS IN FINANCIAL MARKETS

Contrary to what the state of the art in political science would suggest, standards are conspicuously on the rise in global regulation in general. One suitable field for an empirical pretest is the regulation of financial markets by global standards. First, there can be no doubt that financial markets pose a significant challenge to global regulation. Even free-mar-
ket liberals are now likely to admit that the integration of financial mar-
kets over the last two decades or so has caused severe problems that cannot be solved without global regulation. In a recent survey on global finance, the Economist diagnosed “recurring financial calamity; sovereign debt default; capital flight; currency crisis; bank failure; stock market crash” that “have an unmatched capacity for projecting their effects right across the domestic economy, and in the worst cases far beyond that, across the region and even across the world.” It also argued that “finance must be intelligently regulated, at home as well as internationally, in ways that ordinary commerce does not require” (The Economist, Survey on Global Finance, May 1, 2003). Second, in certain respects, global financial regulation is at least likely and therefore a “crucial case” showing the significance of standards as a mode of regulation. In an environment characterized by highly competitive pressures and long national tradi-
tions of regulation by directives, standards are not likely to thrive as voluntary rules. However, contrary to these expectations, standards now play an increasingly important role in the regulation of financial markets.
The Increasing Significance of Standards

In the last three decades, it has been possible to discern a clear trend in financial regulation. Global financial standards have become increasingly important (e.g., Kapstein 1994; Porter 1993). Their function is to define best-practice rules for national regulators and market participants such as banks or borrowing firms. By this, they integrate national regulatory regimes into a global regulatory network without having to rely on a global regulatory authority.

The first step toward global standards—understood as rules for a global regulatory network—was taken soon after the demise of the Bretton Woods postwar economic order. The breakdown of the system of fixed exchange rates and the increasing liberalization of capital markets suddenly created a strong interdependence between national macroeconomic policies and financial risk regulation. In this situation, the International Monetary Fund (IMF) acquired a new function: it began “multilateral surveillance” of macroeconomic policies in order to mitigate potentially harmful effects on the exchange-rate stability by national policy makers. In order to do this, the first task of the IMF was to develop a set of policy standards for national macroeconomic policy: its task was to “exercise firm surveillance over the exchange rate policies of members, and . . . adopt specific principles for the guidance of all members with respect to those policies” (Pauly 1997, 105). The set of principles that developed is now called the “Washington consensus” (121–122).

More recently, in light of the financial crises of the second half of the 1990s, standards have been at the center of the regulatory reforms. The “new financial architecture” is largely defined by global standards. Global standards are seen to be essential to the safety of the global financial markets (Eichengreen 1999). Minimal standards of corporate governance such as accounting and auditing standards and standards of financial reporting for countries—so runs the argument—will mitigate the volatility of capital flows, reduce the probability of bankruptcies, and ultimately decrease systemic risk. The Financial Stability Forum identifies the following set of standards as “key for sound financial systems” (http://www.fsforum.org; see Table 1):

This list gives a good overview of the most important standards presently supported by international organizations, such as the World Bank (WB) or the IMF. The individual entries in Table 1 do not refer to single standards; rather, they designate a complete issue area of standardization. “Corporate governance” and “accounting” comprise several dozen rules, and the new set of recommendations regarding banking supervision has been laid down in a document of 500 pages (BCBS 2001). The list is not even comprehensive because there seems to be a bias in favor of standards set by public actors. Although some private standard setters are included, less obvious ones, such as rating agencies, which specify the condition of access to financial markets, are not included.
Why Standards Proliferate

Coping with the systemic risk by erecting financial standards seems to be the second-best strategy, falling behind binding international directives. Regulation based on standards is usually not as well coordinated, and its effectiveness is not guaranteed (Brunsson and Jacobsson 2000; Genschel 1997). So why is global regulation increasingly based on standards?

A plausible explanation for the proliferation of standards rests on their comparative advantages over binding law (Brunsson and Jacobsson 2000, ch. 2). In general, because of the fact that experts formulate standards,
they are more likely to provide a relevant solution to a problem. More specifically, standards are better adapted to a world of increasing interdependence than binding law. Standards cross national boundaries more easily than laws because unlike national laws, their effectiveness is not formally restricted to national jurisdictions. They have a much greater chance of motivating compliance wherever the expertise they embody is deemed to be relevant. Furthermore, the voluntary nature of standards is more compatible with the principle of national sovereignty, because the users of standards retain autonomy over how standards are used. And finally, setting standards at the international level is less likely to fall prey to decision-making deadlocks than the creation of an international law. States have less reason to resist standards because following them is voluntary. Also, in the case of deadlocks, there are more possibilities to shift the forum of decision making, because standard setting is usually less well organized than law making, and a plurality of forums exists that deals with similar standards (Genschel 1997).

The comparative advantages of standards over regulation in an international context also seem to be the bases for the relative success of financial standards. Global financial standards are also based on professional expertise. For example, global accounting standards have been designed by a private association of accountants, and the safety standards for banks have been developed by experts who regularly convene in the Basel Committee on Banking Supervision’s (BCBS) numerous subcommittees. Furthermore, standards are more easily adapted to changing circumstances than international directives. The latter have to be decided upon in multilateral negotiations between national governments. Standard setters produce a steady flow of new standards and amendments to old ones. But the example of the BCBS also shows how politicization can slow down the process of standard setting. The present reform of the capital-adequacy standard has been delayed on a number of occasions. Still, standard setting is more flexible than global directives that have resulted from multilateral negotiations.

The second advantage of standards over regulation—their respect of policy autonomy—also contributes to the success of standards in the regulation of international finance. The reason for this shift to standards was primarily political. The negotiations on the revision of the IMF treaty reveal that they were seen as able to manage complexities that arose with the new interdependence while still preserving national policy autonomy (Pauly 1997). The same reasons were advanced to explain why the risk regulation of the “new financial architecture” is primarily based on standards. Models that aim to centralize regulatory competencies at the global level and to create a global regulatory authority, for example, a “world financial authority” (Eatwell and Taylor 2000), that would have the power to set directives, are politically unacceptable in a world in which there is basic disagreement about what such standards should look like (Eichengreen 1999).
The financial market regulation illustrates well the comparative advantage of standards in global regulation. The relative success of financial market standards in a sector in which one would expect binding regulation raises the question of why voluntary standards can be a substitute for binding rules. How do standards work? How do standards, as voluntary rules, become effective? And why should we expect that rules with a wider political significance, which are set by experts, be considered legitimate to those affected by them?

SETTING STANDARDS EFFECTIVELY

Global finance is one area in which standards are a more significant phenomenon than the state-of-the-art political science work would suggest. In order to better capture standards as a mode of global regulation, a look beyond the disciplinary boundary is useful. This section presents an alternative conceptual framework that opens new perspectives of the phenomenon of standardization. This alternative framework is based on neo-institutionalist organization theory (Brunsson and Jacobsson 2000; Powell and DiMaggio 1991). It develops a much wider perspective of the standard-setting phenomenon. Furthermore, it offers a theory that can explain both the success and the failure of standards to influence actors. This can be illustrated by examples of financial market standards. The next section will demonstrate that the framework also offers an interesting view of an even more intriguing problem: why the legitimacy of global standards can be problematic.

An Organization-Theory Perspective on Standards

International political economy scholars claim that standards, such as “statements of principles, guidelines, understandings, model laws and codes, and declarations,” are at the basis of increasingly salient private authorities, which are “not traceable to the command . . . or, necessarily, to the sanction of the state” (Cutler, Haufler, and Porter 1999, 367). Global performance measures that can be termed “world best practice” have been an instrument employed by the global capitalist elite to reform national polities and the economic sectors so as to integrate them into the capitalist system (Sklair 2001, ch. 5). In a similar vein, the Stanford School sees globalization basically as the diffusion of best-practice models (Meyer, Boli, Thomas, and Ramirez 1997).

More recently, these concepts of global standards have been further developed in the realm of organization theory. For the context of global regulation, two forms of regulation may be distinguished: regulation by directives and regulation by standards (Brunsson 1999; Brunsson and Jacobsson 2000). Directives work, for example, within organizations or nation-states, if the accepted procedures invest those who issue them with the authority to do so. Directives are acceptable if they originate in accord
with the procedures enshrined in the constitution and other types of law. Standards, on the contrary, become binding by virtue of their expertise, not by virtue of formal authority. A necessary (but not always sufficient) precondition for the effectiveness of standards is that the expertise on which they are based is convincing. Autonomous actors have to accept standards as appropriate solutions to certain problems in order to adopt them. They do not adopt them primarily because of the threat of sanctions.

The expertise embedded in a standard does not merely achieve validity because of the general reputation of the standard setter. For a standard to become influential, other preconditions need to be fulfilled. Standard setters are keen to organize their decision-making procedures such that they can claim to have included all relevant experts and such that the outcomes are neutral and thus acceptable to anyone (Schmidt and Werle 1998). Furthermore, standard setters need to claim that their standards contribute to an advancement of universal values, such as the protection of human rights (see, e.g., Keck and Sikkink 1998) or technological efficiency (Loya and Boli 1999).

Proposition 1. Although standards are by definition voluntary, they can be highly influential if they incorporate expertise that is convincing to users.

Yet, while expertise is the primary motivational mechanism, it is not the only one. Enforcement is one of the fundamental secondary motivational mechanisms. Standards can be enforced in many ways. One of the most important ways is through directives. For example, the EU relies heavily on standard-setting bodies to produce the uniform rules necessary to reduce trade barriers (Joerges, Schepel, and Vos 1999). European framework directives and national regulation that refer to them enforce these standards.

Besides directives, there are further important enforcement mechanisms, that are especially relevant for international standard setting. First, there are private firms, which by auditing and certifying compliance with a certain standard, act as a deliberately designed monitoring structure (Power 1997). Second, some market players will demand that certain standards be observed before they agree to enter into a transaction. For example, institutional investors will only consider investing in firms that observe certain minimal standards of corporate governance. Finally, another important category of standard-setting actors consists of nongovernmental organizations (NGOs). These often play an important role as watchdogs, which, by various strategies such as “naming and shaming” or provoking consumer boycotts, can force firms and even states to observe certain social and environmental standards (Cashore 2002). The effect of all of these types of enforcement, which together can result in complex, unplanned control structures, is that standards can become much less voluntary than in their initial form.
Proposition 2. The influence of standards can be enhanced if a public or private third party enforces them.

Setting Effective Financial Standards: Expertise and Enforcement

A financial standard that clearly shows how standards work is the global safety standard for banks set by the BCBS. The BCBS is a club in which the countries with an internationally significant banking sector coordinate their national banking regulation. Each country is represented by a member of its central bank and by a member of the banking supervisory authority. The main task of the BCBS is to prevent the risk of bank failures and the resulting risk for financial systems from possible bank crises. Formerly, this was the exclusive task of national bank regulators. However, the globalization of financial markets has undermined the effectiveness of national regulation. Banks can escape national regulators by relocating to the least-demanding jurisdiction and by so doing trigger a race to the bottom in regulatory standards. At the same time, as national regulation becomes less effective, the problem of bank crises becomes more severe: The possibility that there will be such global repercussions has dramatically increased with the liberalization of capital markets and the increasing number of global banking operations.

Because it operates outside international law, the BCBS is not a classical multilateral organization. It has no founding treaty, and it does not issue binding regulation. Rather, its main function is to act as an informal forum to find policy solutions and to promulgate standards. The fact that this regulatory body is not in the business of issuing binding directives is not often acknowledged, but it is an essential part of the self-description of the BCBS (www.bis.org/bcbs/aboutbcbs.htm).

During its history, the BCBS has issued a host of standards regarding different aspects of banking supervision. The most important has been the capital-adequacy standard issued in 1988 (presently under revision). This standard specified the minimum amount of capital reserves that any internationally active bank needed to retain in order to be safe from short-term liquidity stress or even bankruptcy.

When compared to other ventures in international rule making, the BCBS’s capital-adequacy standard is often considered one of the biggest success stories of global regulation. The standard was addressed not to all banks the world over, but to a more specific subset: those banks of the member countries of the BCBS that were internationally active. The use of the standard among these banks was very high. There is probably no bank of international importance now that does not follow the standard. What is more, the standard has been successful even beyond the target group. In some of the member countries, all banks follow the standard, not only those that are internationally active. Finally, and most surprisingly, even banks located in countries that are not members of the BCBS at least proclaim to follow the capital-adequacy standard. The remarkable success is also underlined by a WB survey in which 90% of all countries
report to be adhering to the BCBS capital-adequacy standard; noncompliant states like Burundi, Kenya, or the Philippines are hardly important international banking centers (Ho 2002).

We have identified two major factors that make standards work: expertise and third-party enforcement (propositions 1 and 2). The greater success of the banking standard seems to be entirely based on how it is enforced. Indeed, for many banks in the Organisation for Economic Co-operation and Development (OECD) world, the banking standard has become compulsory because of public enforcement by law. Other banks adopted the capital-adequacy standard because institutional investors and rating agencies put these banks under pressure to do so (Genschel and Plümper 1997). Thus, enforcement seems to be the decisive factor for the success of the capital-adequacy standard. However, the role of expertise is important as well. Compared to other standards, the BCBS has an uncontested authority for setting a bank’s safety standards. In fact, whereas there is only one safety standard for banks, there are at least three major standards for sustainable forest management (Cashore 2002). This leads to a comparatively weaker authority base for the standard setter, the Forest Stewardship Council, and a lower reach for the standard.

HOLDING STANDARD SETTERS ACCOUNTABLE

The rise of global standards raises the question of how voluntary rules can acquire influence. The previous section has analytically dealt with this question, trying to establish the mechanisms that motivate actors to use standards. This section deals with the question of how standards work in a normative perspective. It seeks to establish how standard setters can acquire the legitimacy needed to establish themselves as rule makers.

The legitimacy problem of global standard setters is hardly ever identified as an issue. This is not to argue that the question of legitimacy of global rule makers has been entirely neglected. On the contrary, over the last decade or so, an intense debate has sought to determine whether global regulators can be subject to democratic control or whether it is inevitable that they should escape the reach of any meaningful form of democracy. However, this debate was strictly limited to coercive global regulators—mostly international organizations setting binding directives. This seems to be justified by the intuition that without coercion, there is no authority in need of legitimacy.

This section addresses the present lacuna regarding the legitimacy of global standard setters. It shows that the organization-theory framework presented in the previous section also offers an intriguing conceptualization of the specific legitimacy problem that standard setters encounter. The very mechanisms that turn voluntary standards into influential rules, that is, expertise and external enforcement, also make it hard for users to hold standard setters accountable. However, the framework falls short of dealing with the empirical variety that can be encountered when dealing
with standardization. This is true even if one only looks at standard setting in the field of finance. In order to be able to grasp the empirical variation of the basic legitimacy problem, the basic framework needs to be extended. Therefore, this section introduces a typology of standard-setting arrangements that pose different possibilities and limits for actors seeking to hold standard setters accountable.

The Accountability of Global Regulators

There are good reasons to assume that democracy reaches its limits when it seeks to control global regulation. Even in the most favorable case, in which the global regulator is a multilateral organization, the control exercised by the national executives of its member-states is too far removed from the national public for their rules to become democratically legitimate (Dahl 1999). A democratic deficit at the global level seems to be inevitable.

One conclusion that can be drawn from this global democratic deficit is that more radical reforms are necessary to allow global democratic governance. Some propose supplementing national forms of democracy with “cosmopolitan democracy,” a form of democracy in which a political community of universal membership would legitimate a global rule of law, and which would tackle problems of global reach (Held 1995). Another radical alternative is “transnational democracy,” a democratic form in which an international civil society is mainly constituted by internationally active NGOs, which control global regulation by framing the relevant policy discourse (Dryzek 1999).

Radical views of global democracy have been widely appreciated for their bold visions of how to bring control back to democratic rule making; yet, more often than not, they appear to be too far removed from empirical reality to be implemented any time soon (e.g., Holden 2000). These critics often advocate adapting national democracies to a new context of globalization by enhancing national rule-making autonomy (Streeck 1998). But because it will be hard to deal with a number of global problems that do need global regulation, this would at best allow for a limited rescue of democracy.

A pragmatic way out of this impasse seems to enjoy rather a wide support. Global regulation is here to stay and should be subject, as much as possible, to democratic control, that is, so that global regulators are accountable for their actions (McGrew 2002, 217–218). The question following from this is how this accountability can be attained. The old mechanisms for accountability do not work anymore. Even when states delegate rule-making authority to multilateral institutions, control by mechanisms of vertical accountability, such as staff appointments, reporting requirements, budgetary control, etc., is not enough. Such measures need to be supplemented by an increase in horizontal accountability, that is, by an increase in the influence of the addressees of global regula-
tion. This can be carried out by making regulators more transparent and by forcing them to publicly justify rules (Habermas 1998; Keohane 2002; Majone 2001; Verweij and Josling 2003).

Although there are many disagreements in the debate, it is clear that this debate refers to the making of binding rules. Like the functioning of global regulation, the normative questions of democracy are also mostly discussed with reference to directives. However, in the case of democracy, the implicit focus seems to be more justified. Why should standard setters be held accountable for rules that are voluntary? Indeed, as long as standards remain voluntary, their control remains unproblematic. If standards are no longer seen to be relevant, the number of users will diminish. The mechanism of choice will be “exit,” not “voice” (see Hirschman 1970). Standard setters will then have to react by modifying past standards or creating new ones. If, however, a third-party enforcement can create a de facto obligation to use a standard, then voice becomes important as a mode of control. This raises the question whether and how it is possible to enhance the accountability of global standard setters. The following section analyzes why accountability is an issue for standard setting. The subsequent section will investigate the factors that account for the empirical variety in the accountability problem.

Accountability: Standards and Directives Compared

As the starting point for an understanding of how an accountability problem arises with respect to standards, it is helpful to distinguish between primary and secondary motivational mechanisms, as has been done in the previous section (Brunsson and Jacobsson 2000, ch. 3). The fact that following expertise-based standards is voluntary usually means that users will first be blamed if something goes wrong. Why did the user prefer one standard over another? Did he or she properly implement it? Yet, enforcement can be so strong that standards lose their voluntary character. Still, this does not change the original status of the standard as voluntary. The consequence is that even once standards are no longer voluntary, it is difficult to attribute blame: it will be hard to hold standard setters accountable because they will deny any responsibility for the fact that their standards have become compulsory. Standard setters avoid straying beyond narrow technocratic issues, because politics runs the risk of undermining the basis of decision making, that is, expert knowledge becomes the basis for consensus (e.g., Schmidt and Werle 1998).

The problem of holding standard setters accountable is aggravated when third parties enforce the standards. It will be hard to hold enforcement agencies accountable for the fact that they are enforcing rules that others have defined as best practice. In such a situation of strong enforcement, standard setters can acquire considerable power without responsibility.
Holding standard setters accountable is even more difficult if the enforcement arena is decoupled from the standard-setting arena. This can happen in two ways. First, if standard setting and enforcement involve different actors, we can speak of “social decoupling.” Second, if enforcement only starts after the standard-setting process has kicked in, decoupling is “temporal.” This decoupling and enforcement of standard setting, and the ensuing hybrid-motivational mechanisms are the reasons that standards can often be seen as binding directives, which, however, have no mechanisms of accountability in place.

It is, thus, generally more difficult to attribute responsibility to standard setters than to hierarchical decision makers. For hierarchies and their accountability mechanisms (delegation and elections), there is a highly developed control structure, primarily based on judicial review. No comparable structure exists for standards. Especially in the public enforcement by directives, the judicial control of firms tends to break down because there are no clear criteria for what the correct implementation of a standard is (Kieser, Spindler, and Walgenbach 2000).

Proposition 3. If third parties enforce standards, it will be especially difficult for the standard users to hold the standard setters accountable for the consequences of those standards.

The irony behind the accountability problem is that standards, as an increasingly popular mode of control, turn out to be beyond control themselves. As has been discussed, in principal, this problem has been noticed for some time, and institutional remedies have been tried as well. In cases in which standards are enforced by directives, procedural safeguards have been put in place to ensure expert deliberation and broader participation (see, e.g., Voelzkow 1996). However, this type of regulation only works if the regulatory capacity exists to carry this out wherever standards are sponsored by directives.

If standards are set at the global level, procedural safeguards cannot easily be used to enhance accountability. Standard setting and enforcement are decoupled even more. There are considerable differences in the national institutional legacies of standardization: for example, there is the market-led fragmented system of decentralized standardization in the U.S. versus the unitary state-led systems in continental Europe and the EU (Mattli 2001). Also, there will be a different mixture of directives and standards in each country. Thus, it will be hard to centralize the framing of voluntary standard setting at the global level in order to achieve the same type of procedural framing. In fact, the legal framing of standard setting at the global level will have to test yet untried ways (Teubner 2004).

Furthermore, legal directives are not the only enforcement mechanisms used. As has been mentioned, private actors, firms, and NGOs can be agents of enforcement as well. These are much less stable: Their influence can wax and wane. This raises even more questions about the
viability of the “national solution” to the accountability problem of global standards.

**Holding Financial Standard Setters Accountable**

Although it might be desirable from a normative point of view that those affected by binding decisions should also be able to hold decision makers accountable, this can be hard in the case of financial standard setters. Credit-rating agencies, such as Moody’s or Standard and Poor’s, provide an extreme example of the accountability problem of global standard setters. Credit-rating agencies are financial service firms that evaluate the creditworthiness of borrowers all over the world, be they firms, universities, local governments, or even entire states (Sinclair 1994). By globally defining the criteria of creditworthiness, they set a standard for access to international capital markets (Kerwer 2002).

Credit-rating agencies play a unique gatekeeping role because, in the U.S. and other countries, directives enforce the private standard of creditworthiness defined by the agencies. Public regulators require some investors to limit their investment decisions to borrowers with high ratings, for example, so as to limit the financial risk for pension funds. This gives rise to the accountability problem (proposition 3; Kerwer 2005). On the one hand, the decisions by rating agencies can effectively cut borrowers off from financial markets and, as a consequence, trigger mass layoffs or even precipitate an economic crisis. On the other hand, it is difficult for any borrower to hold rating agencies accountable in cases of misjudgments or outright errors. Neither court cases nor parliamentary investigations have yet forced rating agencies to correct past ratings. Furthermore, although they gain their position by public enforcement, there is no effective public supervision of their activities. Rating agencies argue that they cannot be held responsible for the adverse effects of downgrades because they do not entail any advice to investors on how to react to the change in creditworthiness that these changes signal. They dismiss as journalistic hyperbole the view that rating agencies are “bloodhounds of the electronic herd” (Friedman 1999) that trigger damaging stampedes of international investors.

**Varieties of Accountability: Modes of Standardization Compared**

So far, the characteristics of global standards have been specified by contrasting standards with directives. The main conclusion—that is, that decoupling rule making and enforcement is the key to the accountability deficit of standards—does not preclude empirical variation. In fact, different modes of standard setting can be distinguished. These also pose accountability problems to varying degrees.

The hypothesis developed so far is that the accountability problem varies with the degree to which rule making and enforcement are decoupled. We can distinguish between four modes of global standardization
according to the way the standardizing arenas—standard setting, standard using, and standard enforcement—are related.

Private standardization occurs whenever a private actor, a firm, a watchdog, or another type of actor sets standards that are subsequently adopted by other actors. Standards will crop up in a population of potential users, primarily depending on the readiness of organizations to absorb new standards (Brunsson and Jacobsson 2000, chs. 10 and 11). There is no ex ante cooperation between standard setters and users, for example, as to the shape of the standard or the rate of innovation. The only feedback that standard setters will react to is the absorption rate of their standard. For example, they are often willing to reduce the rate at which new standards are introduced. This pattern may then also be influenced by enforcement mechanisms. In the case of private standardization, standard setting, adoption, and enforcement are only loosely coupled, especially when global standards are enforced in various national realms. As the case of rating agencies illustrates, it is improbable that standard setters will be held accountable under such circumstances.

Committee standardization is an intermediate form of standardization between private and multilateral international standardization. Committee standardization here refers to standards that are set by committees that bring together administrators of a specific issue area from different countries. Such transnational government networks have become increasingly important for setting standards in the areas of antitrust, the environment, and—probably most visibly—in the area of international banking (Slaughter 1997). Committee standardization aims at coordinating international standard setting and (predominantly national public) enforcement: “[T]he basic paradigm for global regulatory processes is the promulgation of performance standards, codes of best practices, and other aspirational models based on compiled comparative information, together with national legislation taking account of global practice but tailored to individual national circumstance…” (Slaughter n.d., 29). Transnational committees of this kind create a specific accountability problem: these emerging transnational bureaucracies are beyond the control of the national democratic processes (Slaughter n.d.). Little is known about the specificities of the accountability problem that arises or how it could be solved. There is an open debate about whether such rule making can exclusively rely on technocratic legitimacy—for example, by deliberation among the expert members of the committees (Joerges and Neyer 1997).

One proposition is that the accountability problem can be circumvented if the affected parties are tied into a transnational standardization network (Dorf and Sabel 1998; Sabel, O’Rourke, and Fung 2000). This would change the logic of rule making altogether. Standards are locally developed in a joint effort between public and private actors, and transnational committees assume the task of supervising the process. A system of benchmarks for such local best-practice rules allows their comparative
evaluation and puts peer pressure on local public–private standard setters to implement the best solutions. Standardization networks, thus, coordinate standard setting, enforcement, and standard users in an integrated fashion. To the extent that all stakeholders are included in the standard-setting process, the accountability problem is circumvented because the opposition between rule makers and users vanishes. The yet unresolved question is how stable this type of standardization regime can be, because it relies on the close coordination of many components.

*Standardization within organizations* by states, by contrast, can produce standards for the members. A good example is the OECD (Salzman 2000). Here, the members who negotiated the standards usually enforce them at the national level, and the enforcement is therefore already taken into consideration during the negotiations. In this type of setting, political “voice” (see Hirschman 1970) will have the same characteristics as in international regulation based on directives. Members can articulate their interest within the decision-making process, and a consensus will often be the aim. The difference is that conflict will be less intense, because agreements are not legally binding.

The theory thus far suggests that the accountability problem should considerably vary according to different modes of rule making. Not every

<table>
<thead>
<tr>
<th>Modes of Global Standard Setting</th>
<th>Actors</th>
<th>Addressee</th>
<th>Enforcement</th>
<th>Accountability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private standardizing</td>
<td>Standard setters, standard users, enforcement agents</td>
<td>Best practice for many: “to whom it may concern”</td>
<td>Legal, market exit, evaluation by information intermediaries</td>
<td>Low</td>
</tr>
<tr>
<td>Committee standardizing</td>
<td>Transnational committee of regulators, private lobbying, and consulting</td>
<td>Best practice for public administration</td>
<td>Peer review, market pressure</td>
<td>Medium</td>
</tr>
<tr>
<td>Network standardizing</td>
<td>Transnational committee of regulators supervising national self-regulation of public and private actors</td>
<td>Identity of regulator and regulatee: rolling best-practice rules for the regulators</td>
<td>Peer review</td>
<td>High</td>
</tr>
<tr>
<td>Organizational standardizing</td>
<td>Decision making supervised by members</td>
<td>Standards for members</td>
<td>Compulsory for members</td>
<td>High, similar to directives</td>
</tr>
</tbody>
</table>
form of standardization will be afflicted by the accountability problem to the same degree as private standard setting.

Proposition 4. The accountability problem associated with standardization varies with the structure of decision making.

The conceptual framework so far suggests that committee standardization and especially network standardization can effectively mitigate the accountability problems associated with standardization. The classification of different standardization modes presented so far suggests the following propositions:

Proposition 5. Committee standardization will be less affected by an accountability deficit than private standardization because there is some public control of global standard setting.

Proposition 6. If network standardization includes the major stakeholders in the decision-making process, it will not be affected by an accountability deficit. Such inclusion will overcome the divide between decision makers and decision takers.

But is it true? Is public participation in international standardizing really the key to more accountability?

Financial Standardization Modes Compared

The case of rating agencies shows that problems of accountability regarding financial standards can be quite substantial. Yet, the standards set by the BCBS corroborate the fact that the accountability problem of standard setters is not universal, but varies with the decision-making structure (proposition 4). The risk-management proposals by the BCBS raise a host of problems. The way the minimum capital is calculated, for example, leads to disadvantages in some countries, especially Germany (e.g., Hofmann 2001). This has repercussions on the competitive position of banks, but also on the bank-based system of finance that is at the center of a specific style of capitalism, and it is the precondition for certain efforts of regional redistribution.

In spite of the redistributive impact of the Capital Adequacy Standard, the BCBS has been highly successful in securing its legitimacy. Only in an initial period did some adversely affected member-states question the basic approach of the BCBS. Ever since, the discussion has centered on the fair treatment of financial risk in specific countries. One of the primary reasons for this success has been the openness of the BCBS for revisions, but another has been the fact that, because of the reforms, banks themselves have been closely involved in developing the rules they are supposed to follow. Compared to the case of private standard setting by rating agencies, standard setting by networks is characterized by a relatively tight coupling between standard setting and usage. It could well be that this can explain the fact that, in the case of banking standards, the
diffuse resentment against credit-rating agencies is conspicuously absent (proposition 6).

While network standardization fares well in a comparative perspective, the BCBS also provides some empirical evidence that, in practice, network standardization does not fully realize the potential that the theory would suggest. In the past, nonmembers were forced to adopt the BCBS’s first capital-adequacy standard to attract rich foreign investors. Likewise, nonmembers will also have to adopt the BCBS’s new capital-adequacy standard. Bank regulators in China and India are concerned that, as a consequence, bank lending will become much more expensive, which in turn could lead to a general unwillingness of foreign banks to engage in any further lending (China und Indien, 2003). However, as nonmember countries, China and India can only rely on external lobbying to make themselves heard. Furthermore, there is no easy remedy in sight, because including all potentially affected countries would most probably lead to a breakdown in the already overburdened decision-making process. The BCBS suggests that, because network standardization is subject to a limit in its membership, it cannot always be fully inclusive. In this respect, the theoretical framework will probably need to be revised (see especially proposition 6).

CONCLUSION

This article claims that without an in-depth treatment of soft regulation, any analysis of global governance will remain incomplete. It presents an analytical framework adopted from organization theory that casts a new perspective on the phenomenon of voluntary regulation. In this perspective, standards are defined as best-practice rules based on expertise. This is the starting point for an understanding of how global standards work—despite the fact that they are voluntary. Global standards quite often do become influential, and as a consequence also raise questions of democratic accountability.

The major objective of this article is to demonstrate the fruitfulness of the new analytical framework and by this to question the priorities of the political science research agenda. However, the article goes beyond mere demonstration. Adopting the framework from organization theory and applying it to this issue also require that it be adapted. In the original theoretical framework, it is close to impossible to hold standard setters accountable. Global standards, thus, seem to entail the risk of a global technocracy. The modified version presented here includes a typology of different modes of standard setting. This typology shows that the accountability challenges vary considerably across the various modes. Thus, some modes are more likely to lead to a transnational technocracy than others. This suggests that standard setters’ decision-making structures are more important than is acknowledged in the original framework.
A theoretical aspect that still needs further clarification concerns the relationship between formal binding directives and voluntary standards. An important difference between the two, which was neglected here, is that standards are much less susceptible to judicial review, although they are enforced by binding directives because it is difficult for courts to establish what the content of such enforcing directives actually is (Kieser et al. 2000). If this turns out to be true, global standardization could actually undermine attempts to base global conflict resolution on formal dispute-settlement mechanisms.

The role that standards play in the regulation of financial markets confirms the impression that standards are important in internationalizing sectors. This is not to deny that the empirical evidence presented in support of the propositions on standardization is scarce. Of course, more systematic evidence for the financial and other sectors is needed. And this empirical evidence is indeed likely to reveal some unresolved problems in the analytical framework. Probably, the neo-institutional framework presented here would not only need to distinguish between different institutional structures that produce standards, but it would also need to classify standards according to the different functions they fulfill (e.g., Abbott and Snidal 2001).

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