



**University of
Zurich^{UZH}**

Department of Business Administration

**UZH Business Working Paper Series
(ISSN 2296-0422)**

Working Paper No. 320

This paper also appeared as
NCCR Working Paper No 2012/21 | June 2012

**Private Business Firms, Human Rights,
and Global Governance Issues:
An Organizational Implementation Perspective**

Anselm Schneider and Andreas Georg Scherer

05 November 2012

University of Zurich, Plattenstrasse 14, CH-8053 Zurich,
<http://www.business.uzh.ch/forschung/wps.html>

UZH Business Working Paper Series

Contact Details

Anselm Schneider

NCCR Trade Regulation &

CCRS / University of Zurich

anselm.schneider@ccrs.uzh.ch

Andreas Georg Scherer

Department of Business Administration / University of Zurich

andreas.scherer@business.uzh.ch

PRIVATE BUSINESS FIRMS, HUMAN RIGHTS,
AND GLOBAL GOVERNANCE ISSUES:
AN ORGANIZATIONAL IMPLEMENTATION PERSPECTIVE

ABSTRACT

We analyse the increasing engagement of business in the creation and application of self-regulatory standards in the area of human rights in the light of an emerging framework of transnational human rights initiatives. The voluntariness of most of these approaches leads to problems that are characteristic of organizational self-regulation initiatives. Our analysis will show that these issues cannot be resolved simply by designing organizational structures. Rather, we argue that organizations need to acquire additional moral, communicative and collaborative capabilities to successfully contribute to the protection of human rights.

Keywords: human rights, global governance, self-regulation, voluntary standards

INTRODUCTION

Human rights are codified in the United Nations Universal Declaration of Human Rights of 1948, which in turn is integrated into international law by means of several treaties, the international human rights instruments. Hence, '[t]he whole human rights system has been based on the responsibility of states' (Clapham, 2006, p.25). In contrast, private actors are subject only to national legislation. However, this distribution of roles has inter alia become doubtful due to the increasing reach and power of transnational corporations (Ruggie, 2007). Such firms operate globally through intricate networks of subsidiaries, often in countries with poor human rights records, and potentially either benefit from these conditions, be it directly or indirectly, or negatively affect human rights through their operations (e.g. through cooperation with undemocratic governments or through environmental pollution, which damages health) (Kinley & Nolan, 2008). Furthermore, they have considerable bargaining power, often resulting in limited capacity or willingness of home and host countries to hold

them liable for human rights violations. As a way to tackle such problems, it is suggested that businesses be treated 'as having responsibilities under the international law of human rights' (Clapham, 2006, p. 270; see also Gatto, 2011). In addition, emerging regimes of 'soft law' are discussed as complements to or even substitutes for state-based 'hard law' (Scherer & Palazzo, 2011). In contrast to 'hard law', that is, legal obligations which are legally binding, precise, and delegate authority, 'soft law' lacks one or more of these features (Abbott & Snidal, 2000). One distinctive feature of 'soft law' regimes is their lack of legal bindingness (Shelton, 2000). Instead, firms conforming with 'soft law' do this mainly on a voluntary basis (Scherer & Palazzo, 2011).

At first glance, this development contradicts the basic assumptions of established theories of economics and management. In the neoclassical conceptualization of the division of labour between political and economic actors, the latter need to orient themselves to unambiguous rules created by the former (Scherer & Palazzo, 2008). Apart from that, they can – and even should (Friedman, 1970) – concentrate on the generation of value to contribute to the maximization of societal welfare (Jensen, 2002; Sundaram & Inkpen, 2004). However, business firms increasingly engage in self-regulation and in corporate citizenship (Matten & Crane, 2005), that is, they even act as authors of regulation rather than being mere objects of regulation. This is exemplified by corporate engagement in self-regulation by means of codes of conduct, e.g. concerning social and environmental standards (Scherer & Smid, 2000), child labour (Kolk & van Tulder, 2004) or corruption (Gordon & Miyake, 2001) as well as by initiatives such as the ISO 26000, in which corporate actors along with civil society groups create a standard for responsible corporate behaviour (Mueckenberger & Jastram, 2010). Such developments render the assumption of a clear-cut division of labour between private and public actors increasingly questionable.

This shift can be explained as resulting from the following developments. Compared to the pre-globalization era, firms in general, and multinational firms in particular, are confronted with a much more complex environment, with regard to societal demands as well as with regard to competitive pressures and legal requirements. Globally active multinational corporations frequently operate in failed or failing states under conditions of weak or absent legislation and legal enforcement mechanisms or even in countries governed by regimes deliberately breaching internationally accepted moral rules and thus undermining human rights. Under such circumstances, the probability of corporations being involved in the

violation of such rules rises considerably. For instance, examples of conflict between business and human rights are ample, be it directly, as in the case of foreign direct investments, or indirectly through economic exchange and cooperation in complex global supply chains (Lim & Phillips, 2008; Locke & Romis, 2007). The picture becomes more complicated because globally active firms are confronted with the huge heterogeneity of values and moral demands (Palazzo & Scherer, 2006) at the place of operation as well as in the global markets. There they are confronted with diverse expectations and preferences on the one side and the need to compete with global competitors on the other side.

The problem resulting from this situation is threefold: (1) Firms have increased latitude: in many cases they have the potential to decide which norms to apply and enforce. This is illustrated by the practice of forum shopping (Bell, 2003), i.e. an ‘individual petitioner's strategic choice to litigate her claims in one of several available adjudicatory fora’ (Helfer, 1999: 290) and thus to minimize costs. However, in the absence of generally applicable values and laws, orientation is becoming increasingly difficult, potentially resulting in increased transaction costs. (2) Firms are confronted with increased pressures resulting from global competition. This pressure often leads to the exploitation of regulatory gaps at the expense of human rights, social standards, and the environment (Scherer & Smid, 2000). (3) Owing to increased sensitivity of civil society, with individual consumers (Neilson, 2010) and non-governmental organizations (NGOs) (den Hond & de Bakker, 2007) exerting pressure on firms to take on responsibilities transcending their legal obligations, firms are often either forced to change their pattern of behaviour as a reaction to protests and boycotts, or preventively seek to avoid such conflicts (Zadek, 2004).

One strategy adopted by firms to respond to such demands is the increasing engagement in self-regulation initiatives aimed at remedying such problems from the operational level up to the level of global governance (Abbott & Snidal, 2009). By the acceptance of soft-law instruments (Abbott & Snidal, 2000) such as the SA 8000 standard or the emerging ISO 26000 norm for social responsibility, firms try to solve the described problems. Particularly in the area of human rights, the emergence of a number of approaches such as the United Nations Global Compact, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Corporations and the United Nations ‘Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’ point in the direction of a consistent framework aimed harnessing corporate

self-regulation for the protection of human rights. Such approaches offer some orientation for firms in complex and ambiguous settings. They also have the potential to generate a level playing field, mitigating excessive races to the bottom (Scherer & Smid, 2000). Furthermore, they are a means to display responsible corporate conduct to customers, regulators and civil society. Thus it becomes possible to reduce the pressure from civil society or even to generate competitive advantage in markets with a preference for goods produced in a socially or environmentally acceptable way.

Acknowledging the increasing power of private actors in global governance, the self-regulation of business that is aiming at the reconciliation of efficiency of economic activity with the observance of basic rights and standards needs to be regarded as one element available for shaping the future of global regulatory frameworks. In addition, due to its greater responsiveness, private regulation is even being discussed as a potential prototype for national and international regulation (Porter, 2005). However, despite global governance being characterized by a deep entanglement of the macro-level of governance with the meso-level of organizations, in most of the research on these issues – global governance and private self-regulation – they are analysed separately. Current discussions of global business regulation in general and of self-regulation in particular do not systematically take into account the implications of the organizational specifics of private business firms for the viability (i.e. the aptitude to attain a particular goal in a generally acceptable way) of regulation. Conversely, in the study of organizations the confrontation of business firms with multiple regulatory environments and a shift in the division of power and labour between private and public actors are hardly reflected. Therefore, in this paper the issue of standard-setting and following by private actors in the area of human rights will be analysed from an organization theory perspective, linking the macro-perspective of the global-governance debate with the organizational (meso-) and the individual (micro-) perspective, both being subject to organization theory. The aim of these considerations is twofold: firstly, in practical terms, gaps in macro-level approaches to (self-)regulation will be revealed, highlighting the necessity for additional measures to assure the viability of such approaches. Secondly, in theoretical terms, our paper aims at questioning the established political assumptions underlying many organizational theories, highlighting some relevant and fruitful avenues for further research.

In section two, we show that multinational corporations (MNCs) have acquired a dominant role with a decisive impact on human rights worldwide. Macro-level approaches to regulating MNCs by international organizations will be described with the aim of illustrating the strengths and limitations of such measures. In section three, we describe the emergence of self-regulation as an alternative to deterrence-based legal approaches to regulation, and introduce the maintenance of the licence to operate as one of the main rationales for the self-regulation of business. With the analysis of these issues we wish to shed some light on organizational self-regulation from a meso-level of analysis perspective. In section four, we will firstly advocate a forward-looking conception of responsibility, which is helpful for the analysis of measures aimed at meeting the demands of maintaining a licence to operate for business firms. Secondly, we describe how the regulatory setting for business firms has changed in the course of globalization, and show that these developments potentially exacerbate problematic aspects of the social control of organizations, such as the creation of socially acceptable façades while perpetuating controversial conduct. In part five, we will suggest organizational capabilities crucial for addressing the problems identified in section four. Finally, section six concludes with a short summary and describes directions for further research.

BUSINESS AND HUMAN RIGHTS: THERE IS A PROBLEM!

The violation of human rights by business firms is illustrated by a multiplicity of examples: the alleged complicity of fifty firms - including IBM and Ford Motor Company – with the Apartheid Regime in South Africa until the 1990s (Jenkins, 2009), the hazardous working conditions of Chinese labourers producing components for major electronics brands (China Labor Watch, 2011), the ongoing involvement of Shell in human rights violations in Nigeria (Wheeler et al., 2002), or the issuance of personal data of dissidents to the Chinese government by Yahoo (Sinn, 2007). The following questions emerge from these cases: who is responsible for human rights violations involving globally active business firms as well as their home and host countries in varying constellations? And how can such violations be avoided?

Common to these cases is their global nature. Due to the globality of business activity colliding with the confinement of binding human rights legislation to the level of nation states – with the exemption of ‘very few legal obligations that bind corporations operating

transnationally in terms of human rights' (Kinley & Nolan, 2008: 348) – attempts to protect human rights by means of law are increasingly proving futile. In the following, we firstly analyse the reasons for this growing ineffectiveness of human rights legislation by contrasting the legal protection of human rights in the pre-globalization era and the altered conditions for such protection in a globalized economy. Subsequently, we sketch emerging approaches aimed at countering the negative impacts of business on human rights.

Human rights in the globalized economy

Human rights traditionally are the domain of international law. The main bodies of codification comprise the United Nations Universal Declaration of Human Rights of 1948 together with international treaties translating the Universal Declaration into national laws. As part of international law, the protection of human rights is not considered in the responsibility of private actors such as individuals or corporations. Direct relevance of these laws for non-state actors only emerges with the transformation into national legislation and the enforcement mechanisms of national governance. However, this division of competence is becoming increasingly ineffective in the light of a shift of power between nation-states and business firms. The immense impact of business firms on human rights in general and of transnational corporations in particular is acknowledged in the literature (Arnold, 2010; Williams & Conley, 2005; Kinley & Nolan, 2008). Examples of corporate involvement in the violation of human rights abound. Firstly, there is immediate impact. Ranging from payment of low wages to the destruction of indigenous communities, complicity with violent regimes and to the supply of goods used to violate human rights, corporations directly benefit from human rights abuses, or at least have no incentive to modify business decisions with regard to human rights. Secondly, business is also involved in structures that lead to the violation of human rights more indirectly. According to the concept of 'structural injustice' coined by Young (2004; 2006), actors are responsible for harm caused even if no direct causality between corporate action and injustice can be substantiated. This is the case for much of global value creation, connecting firms, workers and consumers from affluent and developing countries as well as from functioning democracies and autocratic states through complex supply chains. Indeed, it is argued that in many cases competitive pressures potentially lead to the deterioration of human rights conditions (Scherer & Smid, 2000).

Human rights and business: problems and potential solutions

These developments challenge the existing human rights framework. There are several reasons for this. Firstly, many states often lack the capacities to enforce the observance of human rights even if they are formally implemented into national legislation. The reasons for this lack of implementation are limited resources, corruption and weak governance structures or legal enforcement bodies characteristic of many developing countries (World Bank, 2009). Secondly, several states deliberately allow, facilitate or even perpetrate the violation of human rights. The motivation for such behaviour is often economic, since low human rights standards and forced labour under certain conditions may lower costs and therefore contribute to the comparative advantage of a country (Busse, 2002) as well as to the wealth of powerful elites (Bales, 1999).

This problematic constellation is acknowledged by a wide range of actors. On the one hand, since the 1970s several international organizations have formulated voluntary guidelines with the aim of regulating the activities of business firms (Kinley & Tadaki, 2003). Organizations such as the United Nations and the OECD aim to foster corporate responsibility for human rights, as the explicit inclusion of the topic of human rights in the OECD Guidelines for Multinational Enterprises and the appointment of a Special Representative of the Secretary General on human rights for transnational corporations and other business enterprises in the United Nations show. On the other hand, initiatives by business pursue similar goals. In the following, both these types of initiatives will be described briefly not only to illustrate the potential of novel approaches to creating business responsibility for human rights, but also to shed light on the problems inherent to the expansion of the responsibility for human rights from state actors to business firms.

In 1976, the OECD issued the ‘Guidelines for Multinational Corporations’, aimed at facilitating responsible conduct of business firms, as an annex to the OECD Declaration on International Investment and Multinational Enterprises. In 2011, in a revised version, human rights became a centrepiece of these guidelines. It is explicitly stated that corporations should respect human rights, that is, they should prevent adverse impacts on human rights ‘that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts’ (OECD, 2011: 29).

In 2003, the United Nations Sub-Commission on the Promotion and Protection of Human Rights approved the ‘Norms on the Responsibilities of Transnational Corporations and Other

Business Enterprises with Regard to Human Rights’ (Human Rights Council, 2008) (‘Norms’) under the guidance of John Ruggie. Being endorsed by the United Nations Human Rights Council in 2011 within the ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (Human Rights Council, 2011), this framework defines the state duty to protect human rights, the corporate responsibility to respect human rights, and the necessity of remedy mechanisms for the victims of human rights violations.

Further, on the level of the United Nations, the United Nations Global Compact (UNGC) has been founded as a voluntary initiative aimed at promoting human rights, labour rights, concern for the environment and measures against corruption (Williams, 2004). Business firms can voluntarily subscribe to the principles of the UNGC. ‘The Global Compact is not designed as a code of conduct. Instead, it is meant to serve as a framework of reference and dialogue to stimulate best practices and to bring about convergence in corporate practices around universally shared values’ (Kell & Ruggie, 1999: 104). Becoming a signatory includes making the commitment to deliver a report about the implementation of the principles of the UNGC in the operations of the firm. Failure to communicate will result in a change in participant status and possible expulsion (United Nations Global Compact, 2011).

The fact that human rights became an explicit focus of the ‘Guidelines for Multinational Corporations’ as well as the increasing linkage between these guidelines, the UNGC and the ‘Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’ point towards the emergence of a consistent international regulatory matrix aimed at facilitating business firms’ respect for human rights. In addition to these approaches, located at the level of international organizations, are purely private initiatives aimed at the protection of human rights by business firms. Such initiatives either exclusively consist of business firms, such as the Business Social Compliance Initiative (Egels-Zandén & Wahlquist, 2007), or are based on the cooperation of firms and NGOs, as in the case of the Fair Labor Association (FLA) (for a comprehensive overview of different constellations of actors see Abbott & Snidal, 2009). The emergence of such private approaches to human rights violations by business firms is particularly interesting because they add a new facet to the analysis of self-regulation. The ‘Norms on the Responsibilities of Transnational Corporations’, the OECD Guidelines for Multinational Corporations and the UNGC originate on the level of international organizations and to some extent resemble

national legislation (even if there are considerable difference with regard to bindingness and precision). In such cases, business firms remain the objects of regulation. In contrast, in private initiatives business firms act as authors of regulation.

		OECD guidelines	UNGC	'Norms'	BSCI
date of institution		1976	2000	2003	2002
predominant actors		states	states	states	firms
explicit focus on human rights		since 2011	yes	yes	yes
level of obligation		low	low	low	low
enforcement mechanisms		weak; complaints at national contact points of the OECD	weak; expulsion of participants if they fail to communicate progress ('delisting')	no	weak; expulsion of participants
level of precision	material precision	low	medium	medium	medium
	procedural precision	high	medium	high	medium
level of delegation		medium	low	low	low

Table 1: Comparison of state-led and private-led governance institutions aimed at the protection of human rights

However, despite their differences with regard to the involvement of private actors in the process of rule creation, both types of initiative can be identified as 'soft law' (Abbott & Snidal, 2000). On the one hand, they exhibit a varying degree of precision (with respect to the content of rules as well as with respect to procedures) and delegation. 'Precision means that rules unambiguously define the conduct they require, authorize, or proscribe. Delegation means that third parties have been granted authority to implement, interpret, and apply the rules; to resolve disputes; and (possibly) to make further rules' (Abbott et al., 2000: 401). On the other hand, they have in common a low degree of obligation. That is, they are 'not intended to create legally binding obligations' (Abbott et al., 2000) and therefore work on a

voluntary basis. Accordingly, there are only weak or even no enforcement mechanisms in place (see Table 1, with the BSCI as one example of a private-led regulatory initiative).

Instead of a high degree of obligation, alternative mechanisms such as market pressures are intended to encourage compliance with the rules. For example, the corporate responsibility to respect human rights in the Ruggie framework is justified by the fact that failure ‘to meet this responsibility can subject companies to the courts of public opinion – comprising employees, communities, consumers, civil society, as well as investors – and occasionally to charges in actual courts. Whereas governments define the scope of legal compliance, the broader scope of the responsibility to respect is also defined by social expectations – as part of what is sometimes called a company’s social license to operate’ (UN, 2008). However, taking into account that the effectiveness of such forces for attaining regulatory objectives is limited, the outcomes of voluntary approaches to regulation are difficult to predict (Abbott & Snidal, 2009).

To sum up, the emergence of a new form of regulation can be observed, in which private actors engage in the regulation of transnational business (Abbott & Snidal, 2009). The principle of voluntariness underlying the approaches described, on the level of international organizations as well as on the level of private initiatives, is illustrative for all initiatives in global governance in general and for those initiatives aimed at assuring the observance of human rights by business actors in particular. This shift from legal compliance to voluntariness poses two problems. First, it clashes with the assumption of a strict division of labour between political and economic actors and the resulting hierarchical modes of rule setting and observance. Secondly, thus far, the implications of this shift to voluntariness are mainly analyzed with respect to the macro-perspective of governance institutions. Intra-organizational specifics and processes are only addressed in general terms, leaving unresolved problems of implementation. Both problems will be addressed successively in the following sections.

MULTINATIONAL CORPORATIONS IN THE GLOBAL SETTING: THE EMERGENCE OF SELF-REGULATION

'In its broadest sense social control is the process by which individuals, groups and organizations attempt to make performance, the behaviour and operations of other groups, organizations and individuals, conform to standards of behaviour and normative preferences' (Zald, 1978: 83). With the globalization of economic activity and the concomitant shift of power from public to private actors (Cutler, 2001) the conditions under which such control is exercised have changed considerably. Whereas, in the pre-globalization era, corporate conduct to a large extent was regulated by law, in the contemporary globalized economy a shift towards more informal rules, 'soft law' and self-regulation can be observed (Scherer & Palazzo, 2011).

In the following we describe the changing contextual conditions under which self-regulation is occurring as an alternative to legal deterrence-based approaches. Subsequently, we will argue that the eventual aim of organizational self-regulation is the maintenance of societal acceptance as a basis for the 'licence to operate', being a precondition for organizational survival.

The development of self-regulation, which is increasingly supplementing and even replacing state-led regulation, can be regarded as rooted in two distinct developments: firstly, from the 1970s on, governments increasingly withdrew from the provision of public goods and services. Instead, they resorted to the regulation of the private provision of these goods. Whereas regulation was originally seen as a function of states and the law, increasingly the thinking has prevailed that there are more efficient and effective means of regulating social practices (Gunningham & Rees, 1997). '[F]acilitating activity in markets and civil society to help accomplish public policy objectives' (Parker & Braithwaite, 2003: 141) and therewith engaging in 'meta regulation' is regarded as leveraging governmental resources. This 'New Governance' model (Abbott & Snidal, 2009) is characterized by a changing role of the state, purposefully moving away from direct action towards more of a moderating role with the aim of increasing the efficiency of the economy by correcting market failure such as monopoly, imperfect information, and negative externalities (Majone, 1994). This 'changing role of the state raises new conceptual and practical issues that are still poorly understood, let alone resolved' (Majone, 1994: 98).

Still more complex problems result from the second development, namely the shift of power between political and economic actors beyond processes of delegation that are characteristic for New Governance. The New Governance state has been conceived to operate within functioning regulatory frameworks, which ultimately guarantee the binding nature of self-regulation (Abbott & Snidal, 2009). Accordingly, self-regulation took place within the ‘shadow of hierarchy’ (Héritier & Eckert, 2008; Scherer & Palazzo, 2011) with the threat of governmental regulation being imminent. Regulatory aims were formulated by regulatory bodies and implemented by means of organizational rules. In the course of globalization the power of (particularly multinational) corporations increasingly transcends the sphere of influence of single states. National attempts to comprehensively control or regulate corporate action actually or potentially are becoming increasingly futile (Crouch, 2004). In this ‘post-national constellation’ (Habermas, 2001), soft law regimes and corporate self-regulation increasingly complement and even replace state legislation and control as well as previous regulatory attempts (see Table 2).

	state governance	new governance	global governance
roles of state and private actors	separated	overlapping	overlapping
distribution of private and public roles	strict separation of economic and political roles	delegated	spontaneous
national regulatory instruments	hard law	hard law; regulation	hard law; regulation; soft law; voluntary initiatives
international regulatory instruments	international treaties	international treaties	international treaties; soft law governance institutions; soft law; voluntary initiatives
regulatory context	hierarchy	‘shadow of hierarchy’	heterarchy

Table 2: Alternative concepts of governance

In the course of this process, corporations engage in rule-making through corporate citizenship, participating in the formulation of a vast array of non-binding standards as well as

corporate political activities such as lobbying (Crouch, 2011). On the organizational level, compliance-based rules are increasingly complemented by codes of conduct. To be effective, such codes need to be part of a ‘much larger system of cultural commitments, values, accountability, actions, and continual improvement’ (Bondy et al., 2007: 179). By these means the individual capacity to behave responsibly and thereby to compensate for the inherent incompleteness of codes of conduct is promoted. These developments illustrate that the hierarchical top-down processes of regulation characteristic of the pre-globalization era are replaced by an intricate multiplicity of feedback-loops constituted by heterarchic structures of decision making (Hedlund, 1986) and network structures (Detomasi, 2007) (see Figure 1).

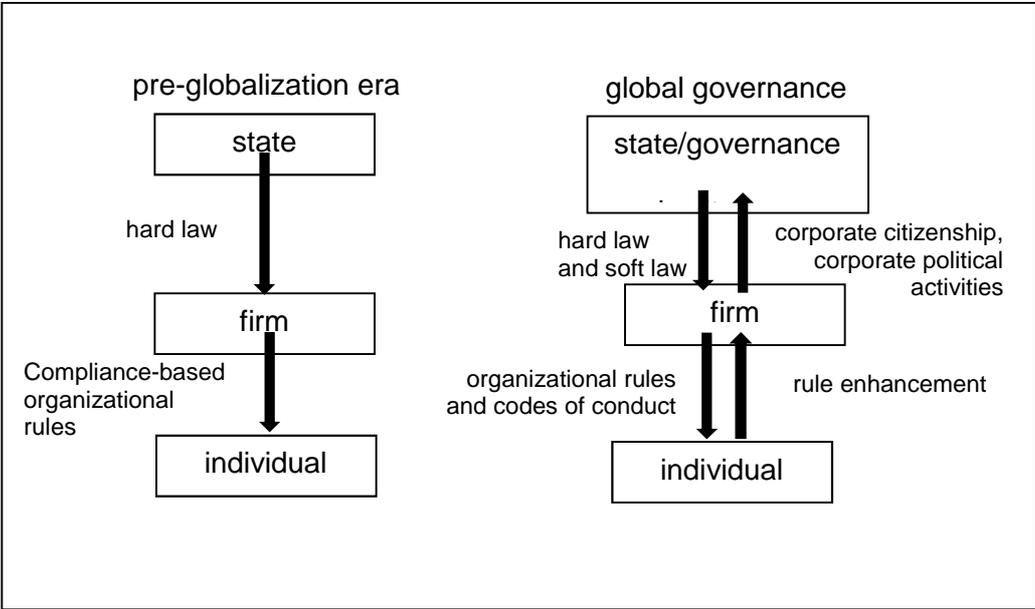


Figure 1: Contrasting pre-globalization and global governance modes of rule-generation and -observance

This increasing complexity of regulatory dynamics renders the analysis of corporate self-regulation challenging. Building on a framework proposed by Zald (1978), this changed setting can be described as follows: (1) Norms of behaviour are becoming increasingly heterogeneous and negotiable. Formal norms range from traditional law to voluntary standards. Informal rules (morals and values), being relatively stable in national contexts, differ widely on a global scale, increasing the requirements for business firms to identify such norms and ensure compliance. Furthermore, processes of individualization, even on the

national level, increase the heterogeneity of norms and expectations relevant for business firms (Palazzo & Scherer, 2006). (2) The structural context in which regulation occurs is changing decisively. It is becoming less hierarchic and more heterarchic, that is, the number of ‘organizations or individuals attempting to determine the output of target objects’ (Zald, 1978: 97) is increasing. (3) Surveillance as well as sanctions for non-observance of given rules is becoming more and more ambiguous. This is due both to the decreasing capacity of state actors to supervise and sanction the behaviour of business firms and to the temporal and spatial indirectness of the implications of corporate actions. However, new mechanisms of surveillance (e.g. NGOs) and sanctioning (e.g. ‘naming and shaming’) are emerging.

In this situation the motivation of business firms to conform with given rules is changing. Instead of primarily avoiding sanctions resulting from an unambiguous set of rules, firms increasingly need to engage in self-regulation to ensure conformance with societal expectations (at least to a certain degree). Such conformance can be regarded as a precondition for the ‘licence to operate’. The ‘licence to operate’ refers to the societal acceptance of the operations of a firm (Scherer & Palazzo, 2011). It ranges from official formal licences resulting from observance of the law to the legitimacy of corporate behaviour. Legitimacy can be understood as ‘a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions’ (Suchman, 1995: 574) attributed to a firm by all stakeholders and the whole of society (Kostova & Zaheer, 1999). The licence to operate can be threatened by legal accusations as well as by a breach of moral norms. The ‘licence to operate’ can be regarded as a necessary condition for the survival of a business firm, since firms require a certain level of legitimacy to secure their supply of resources (Meyer & Rowan, 1977). As observed by Stone, firms’ conformance with societal moral expectations cannot be safeguarded by means of law alone (Stone, 1975). With the decreasing regulatory power of nation states and with self-regulation increasingly supplementing or even replacing legal mechanisms, these considerations are gaining importance.

In the location in which a business firm operates, the firm’s acceptance needs to be guaranteed. A striking example of the violent refusal of the licence to operate is the futile attempt of Tata Motors to produce their Tata Nano car in a factory to be built on land unlawfully granted to Tata by the government of the Indian state of West Bengal (Keohane, 2008). It is apparent that, due to increased sensitivity of civil society and improved

communication, violations of moral norms potentially damage the reputation and acceptance of firms and also their competitiveness on a global scale. As numerous examples show, boycotts and negative media exposure can significantly harm the reputation of a company. Proactive measures to avoid such problems may be regarded as sound risk management or even as a struggle to compete in specific market segments, e.g. in the market for fair trade products.

Furthermore, the requirement to obtain and maintain the 'licence to operate' essentially transcends the unambiguous legal and relatively homogeneous moral setting prevailing in national contexts. Whereas in functioning regulatory settings, firms had to adapt to unequivocal conditions and had only limited latitude, in a global setting the picture is much more ambiguous. As a result, under these circumstances, firms are increasingly confronted with demands to take on responsibilities which were originally the domain of national states but cannot be adequately addressed by them due to a shifting balance of power between economic and political actors. Examples are the protection of human rights (Hsieh, 2004), and economic development (Prahalad, 2004). Adding to the complexity of this setting is the dynamic inherent to rule-creation on the global level due to the emergence of structures of global governance. Regulations change, new initiatives emerge and the application of local laws on global issues is becoming more and more relevant (Maxwell et al., 2000), as the examples of the Alien Torts Claim Act (ATCA) (McBarnet & Schmidt, 2007), the development of the OECD guidelines for multinational enterprises, and the emerging 'Guiding Principles on Business and Human Rights' illustrate. This ongoing change of regulation poses considerable risk for firms, necessitates individual strategies and potentially leads to substantial additional expenses.

To sum up, due to operating in increasingly heterogeneous cultural and moral environments and to the growing complexity of regulatory environments, business is confronted with a multiplicity of demands and responsibilities, which transcend their original purely economic role. The puzzle is to what extent current approaches aimed at ensuring the respect for human rights by business firms suffice to safeguard such respect and how firms, which still largely operate in a mode adapted to less complex conditions, can appropriately respond to these novel demands.

THE NATURE AND LIMITS OF CURRENT SELF-REGULATORY APPROACHES

The debate about new forms of governance in a globalized setting mainly takes place in the areas of political science (international relations) and international law. However, many of the decisive actors in global governance are private business firms. For this reason, bridging disciplinary gaps is necessary for understanding the phenomenon of global governance and its various actors and institutions (Brown et al., 2010) and for finding viable approaches to self-regulation. In particular, this is relevant for the area of human rights, in which self-regulation is becoming more and more central. The perspective of organizational theory seems indispensable in identifying particular dynamics stemming from the characteristics of private organizations such as business firms and for finding ways to solve the resulting problems in an appropriate manner. To contribute to the analysis and to eventually help identify preconditions for successful self-regulation, in the following we firstly carve out an evaluation criterion appropriate to the intricate nature of processes of private self-regulation in the complex and dynamic setting of global economic activity. We therefore scrutinize the concept of liability as a yardstick for self-regulatory endeavours. Secondly we will analyse the particularities of the situation in which self-regulation occurs and the peculiarities of private organizations crucial for the viability of self-regulatory measures.

To properly analyse the conditions necessary for successful self-regulation of business firms under conditions of insufficient legal regulation and global economic exchange, it is important to find a suitable evaluation criterion for such measures as well as to specify factors decisive for the viability of self-regulation. In this section we first critically analyse the notion of liability, which is currently the dominant criterion for evaluating the success of self-regulation in the existing literature. We argue that this concept is not appropriate to the complex causal interdependencies seen in current global business relationships. Therefore, we suggest switching to the notion of social connectedness as a more comprehensive and thus more suitable yardstick for the evaluation of the self-regulation of business. Based on these considerations, we then analyse to what extent self-regulatory initiatives enable firms and individuals to avoid the violation of human rights under conditions of complex and ambiguous relationships characteristic of economic exchange in a globalized setting. We discuss five problems considered in organizational research, which need to be taken into account when the viability of self-regulatory approaches is to be judged. Firstly, from the perspective of new institutionalism, we suggest that the potential emergence of compliance organizations often does not sufficiently address the critical practices that need to be

considered (*problem of effectiveness*). Second, seen from a psychological perspective, we think that control-centred approaches to coordination of behaviour in organizations often lead to unanticipated consequences or even to outcomes opposite to the goals aspired to (*problem of efficiency*). Third, the problem of a likely misfit between the potentially unlimited complexity of social circumstances and the relative simplicity of standards illustrate that voluntary standards alone may not be sufficient for the attainment of the goals of self-regulation, such as the avoidance of negative social and ecological effects of corporate activity (*problem of responsiveness*). Fourth, the application of standards in a top-down manner carries the danger of illegitimacy in the eyes of employees subject to such standards as well as in the eyes of the (third) parties and individuals the standards are aimed to protect (*problem of legitimacy*). Fifth, there is a potential for irresolvable contradictions between the particular way business firms are involved in value creation and the objectives of self-regulation. In the case of such contradictions, self-regulation might be an unsuitable approach to reconciling public and economic objectives (*problem of coherence*). Based on these considerations, we will describe the problems of self-regulation as the result of the mismatch between organizational capabilities adapted to the regulatory setting of the pre-globalization era and the new regulatory setting of the post-national constellation and its challenges.

Towards a new logic of responsibility (liability vs. social connectedness)

To grasp the implications of the fact that self-regulation is gaining importance for the protection of human rights, we draw on the concept of social connectedness (Young, 2004; 2006), which is increasingly regarded as a necessary complement (Young, 2006) or even as a fruitful successor (Scherer & Palazzo, 2011) to the concept of legal liability with regard to global governance issues and the discussion on organizational responsibilities. The liability model, which ‘assigns responsibility to a particular agent (or agents) whose actions can be shown to be causally connected to the circumstances’ (Young, 2006: 116), is the paradigm upon which the majority of current self-regulatory initiatives of business are based. For instance, in the 2008 version of the ‘Guiding Principles on Business and Human Rights’ responsibility is defined by the ‘sphere of influence’-conception. From this perspective, responsibility is directly linked to the causal connection that is characteristic of the liability model. However, in the 2011 document, the potentially misleading concept of ‘sphere of influence’ gave way to a broader reference to the responsibility of business firms to avoid ‘adverse human rights impacts that are directly linked to their operations, products or services

by their business relationships, even if they have not contributed to those impacts' (Human Rights Council, 2011: 14). Using similar wording, the 2011 version of the OECD Guidelines attempts to outline the responsibilities of business firms.

In essence, the concept of social connectedness claims that injustice such as exploitative labour conditions can better be conceived of as the results of structural injustice and not as the outcome of particular wrongdoing of a person or an institution. Accordingly, no single wrongdoer can be identified. Rather, injustice can be regarded as the result of the participation 'of thousands or millions of people in institutions and practices that produce unjust results' (Young, 2006, p. 120).

In addition to the application in social contexts, the concept of connectedness can also be applied to technical domains. Modern industrial production involves a myriad of individual physical parts and procedural steps, applied and accomplished by a multiplicity of actors in various constellations such as hierarchies and cooperative relationships. Thus, liability often cannot be assigned to a specific actor due to the complexity of technical processes, the inextricable connection between technology and its application in social contexts, as well as of the unpredictability of technological effects, side- and after-effects (Beck, 1992). An illustrative example is the oil spill in the Gulf of Mexico in summer 2010. According to a government commission report, the failure to use certain parts cannot be unequivocally regarded as the direct cause for the blowoff (National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, 2011: 115). Instead, the disaster can be regarded to have been caused by a chain of flawed management and design processes and poor communication between decisive actors.

This expansion of perspective implies a re-conceptualization of the notion of responsibility. In non-complex relations responsibility can be traced retrospectively to a particular culprit in terms of liability. In such a situation, pre-defined rules and structures are appropriate to attain particular outcomes and avoid undesired ones, to identify cause-and-effect relationships and to single out misdeeds and the irresponsible actors. In complex structural contexts however, the applicability of such a backward-looking concept seems to be limited. This is because new challenges can be inferred from prior experiences only to a limited extent. Avoiding liability therefore does not suffice to avoid problems indirectly caused by actors in complex cause-effect relationships. Instead of ascribing guilt to a specific actor, a redefinition of responsibility as a forward-looking concept is proposed, aimed at changing and avoiding

structural injustice and technical risks (Young, 2006) and finding productive solutions for such problems (see Table 3).

	liability	social connectedness
temporal orientation	backward	forward
focus	guilt	solution
type of relationships between actors	simple	complex
source of injustice	individual action	structure
knowledge about causal relationships	complete	incomplete

Table 3: Differences between the concepts of liability and social connectedness

Considering the changed operating conditions for business in a globalized world and the resulting implications for the notion of responsibility, it seems appropriate to determine the suitability of self-regulatory measures for business according to their capacity to permit firms to shift from a liability-type of responsibility to a connectedness-type of responsibility and in this way constructively contribute to tackling the roots of problems instead of fighting only their symptoms.

Determinants for the viability of self-regulation in the post-national constellation

To sum up, it has become obvious that the success of self-regulatory measures is potentially inhibited by a number of problems. To find ways to effectively counter such problems, it is necessary to find their causes. In the following we argue that organizations developed certain capabilities to cope with the regulative setting of the pre-globalization era, which have continued to exist in many business firms up to now. Whereas such capabilities were already effective only to a limited extent in the pre-globalization-era (Stone, 1975), the increasing mismatch between such capabilities prevailing to date in most business firms and the novel

conditions of the post-national constellation will be shown as a major obstacle for the effectiveness of self-regulation. Based on these considerations, in the next section we describe the capabilities at the micro-, meso- and macro-level that are necessary to attain a fit between organizational capabilities and the regulatory setting.

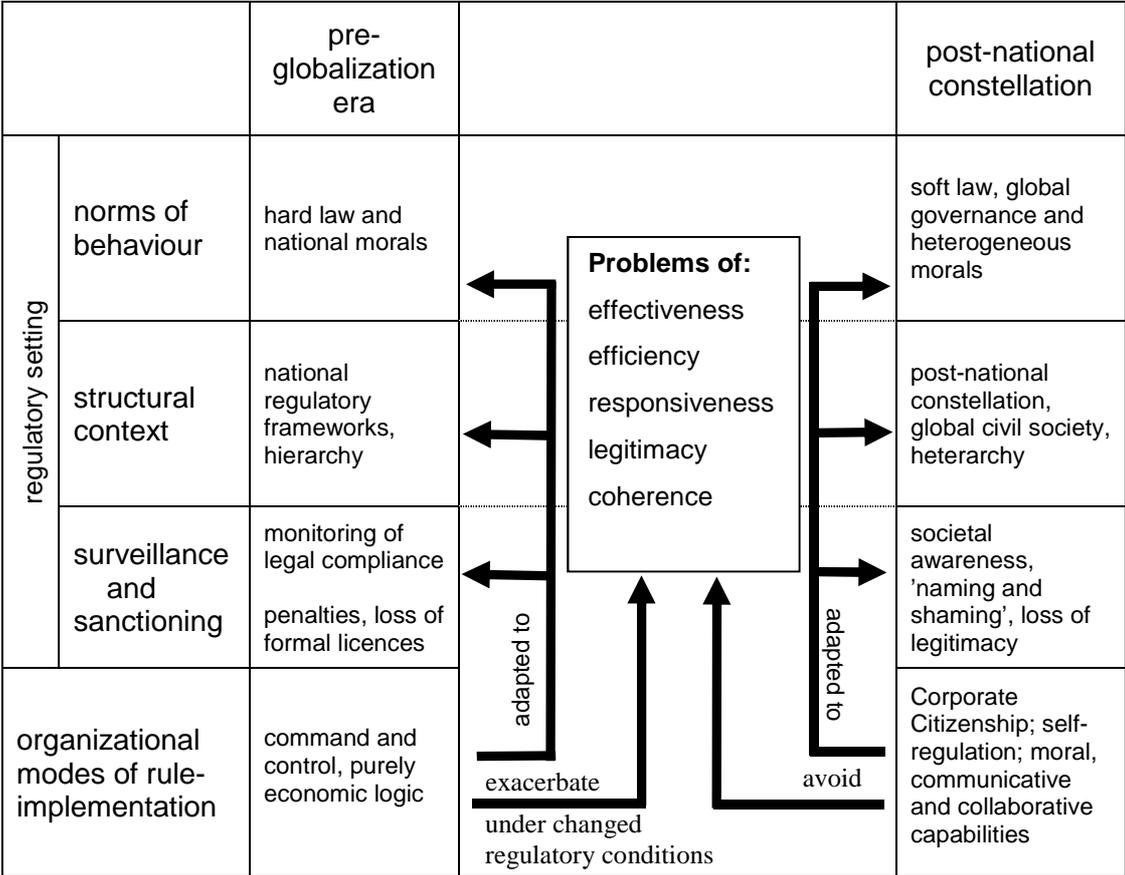


Figure 2: Regulatory contexts and resulting organizational modes of rule-implementation

In the pre-globalization era, the regulatory setting for firms was characterized as follows (see Figure 2): (1) The relevant norms for business firms were formal rules codified in the form of hard law. Business firms, however, had to orient to informal rules in the form of morals, mainly applying on the level of national or cultural communities. (2) The structural context of regulation was organized in a strictly hierarchical manner. Ideally, governments set the ‘rules of the game’, which need to be followed by business firms. (3) Surveillance of norm-observation was conducted by designated control agents within a democratically legitimated

regulatory framework. Sanctioning of non-observance was accordingly exercised with recourse to legally entitled sanctioning power.

This means, that in the pre-globalization era, rules for business regulation were designed on the macro-level of (national) society and its democratic and legal institutions. They were applied in a top-down fashion to individual business firms on the organizational (meso-) level and transformed into organizational rules applying to the members of the organization (micro-level). In this situation, firms could be regarded as mainly passive recipients of rules created by public authorities and the surrounding moral communities. Similarly, members of regulated organizations are regarded as passive followers of organizational and legal rules. The direction of effects was strictly top-down. From this perspective compliance with rules on the meso- as well as on the micro-level was regarded as the only necessary precondition for conformance with societal rules and expectations transcending the economic function of business firms. Although changes of formal regulation (new law) as well as of informal regulation (changing norms and values) occur, such changes were relatively slow and foreseeable. Therefore, firms had sufficient time to reorient and to adapt to a changing regulatory setting.

In contrast, in the post-national constellation this picture becomes decidedly more complex and dynamic due to two interrelated developments. On the one hand, the regulatory setting is changing in the following ways: (1) norms of behaviour are becoming more and more heterogeneous and dynamic due to the globalization of economic activity. (2) Mechanisms of surveillance and sanctioning are multiplying and becoming more ambiguous as a consequence of the diminishing regulatory power of nation states and increasing reliance on alternative mechanisms for societal coordination. (3) The structural context of regulation is changing from strict hierarchies of the nation-states to the heterarchy of global governance with public and private actors involved in a network-like fashion. On the other hand, business firms are more and more actively involved in regulatory processes, becoming regulators as well as still being subject to regulation.

Under these circumstances, the boundary conditions for the regulation of corporations are changing decisively. We argue that the organizational structures and processes (as well as organizational theories), which are still predominantly adapted to the regulatory setting of the pre-globalization era, tend to exacerbate problems associated with the regulation of organizations (effectiveness, efficiency, responsiveness, legitimacy, and coherence). In the

following, we will describe the effect of a change to the regulatory setting on these problems. On this basis, in the subsequent section, we will suggest three capabilities on the level of organizations as necessary for the success of private self-regulation in the context of global governance.

Effectiveness problems: The potential decoupling of structure and activity

One problem in the context of corporate self-regulation is the propensity of organizations to adopt socially expected patterns of behaviour in a superficial manner without changing their actual behaviour. As discussed in new institutional theory, organizations tend to adopt socially expected formal structures to secure their legitimacy (DiMaggio & Powell, 1983) and therewith their continuity and success (Ashforth & Gibbs, 1990) but decouple the expected structures from the actual activities (Behnam & MacLean, 2011; Christmann & Taylor, 2006; Meyer & Rowan, 1977; Weaver et al., 1999). This in effect leads to the firm appearing to comply with a specific standard. Obviously, such problems exist even within functioning regulatory frameworks and under conditions of homogeneous moral norms. Under these circumstances, firms have developed significant capacities to create the formally required façade with the aim of avoiding contradictions and maintaining activities running counter to external requirements (Boiral, 2007). However, in global governance with voluntary regulation by means of standards complementing or even replacing binding regulation, firms are gaining more room for manoeuvre: standards that are often primarily concentrated on uniformity in presentation allow for latitude in the implementation (Brunsson, 2000: 146) and make ‘creative compliance’ possible (McBarnet & Whelan, 1997). Beyond superficial compliance aimed at warding off criticism (Gatto, 2011) it is not unlikely that the problems actually addressed by self-regulation could remain unsolved. Furthermore, as discussed by Catterji and Levine (2006), external control of organizational conduct according to principles of responsibility might either distract attention from more serious issues or cause diversion to other practices beyond the focus of actual control. Finally, due to intricate cause and effect relationships characteristic of global economic activity, monitoring of corporate compliance with standards becomes difficult (Locke et al., 2009; O’Rourke, 2003) or even impossible, as the abovementioned case of the oil spill in the Gulf of Mexico demonstrates. With regard to sanctioning mechanisms, a shift from formal mechanisms applied in hierarchical structures (penalties, withdrawal of formal licences) towards more informal and indirect market-based

mechanisms potentially increases corporations' capacity to influence judgement processes to their advantage, e.g. by means of marketing and public relations (Laufer, 2003).

This means that the effectiveness of self-regulatory approaches is by no means an easy to gauge fact. Even if certain self-regulatory measures are taken, their ability to contribute to the avoidance or to the solution of targeted problems has to be analysed carefully and comprehensively. If not, an impressive array of self-regulatory measures, prima facie appearing to be comprehensive and sufficient, might prove ineffective.

These considerations are of particular relevance in the area of human rights. Whereas the actual impact of corporate activity is difficult to measure (e.g. due to the remoteness of factories and the complexity of global supply chains), formal instruments such as the certification with a specific standard, are relatively easily accessible. There is thus the risk that formal features might be used to infer the actual human rights record of a firm.

Efficiency problems: The shortcomings of control-centred approaches

In the wake of the move of the regulatory setting away from national legal systems towards global governance regimes, new approaches emerged with the aim of preventing organizational misconduct. Among these approaches are codes of conduct, as well as management systems aimed at enforcing these codes (Locke et al., 2009: 320). Such systems are either values-based or compliance-based. Whereas the former aim at increasing the commitment of employees to a set of ethical ideals, the latter are 'oriented toward rule-compliance and threats of punishment for noncompliance' (Weaver & Trevino, 1999). A grave problem of compliance-based programmes, which are far more prevalent than values-based programmes (Locke et al., 2009), is their limited capacity to avoid unlawful or unethical conduct in complex social systems such as firms. Compliance-based approaches, if taken in a manner completely reliant on technical feasibility and bureaucratic practicability, are potentially subject to problems widely discussed in management literature.

First, control-centred approaches potentially trigger defensive routines, that is, 'policies or actions that prevent the organization from experiencing pain or threat' (Argyris, 1986: 541). Such routines in turn lead to a distortion of organizational communication (Argyris, 1976) and 'prevent learning how to correct the causes of the threat in the first place' (Argyris, 1986: 541). This is a fortiori the case if self-regulatory initiatives are perceived as aiming at

protecting top management from blame (Treviño et al., 1999). In situations necessitating quick responses, be it on the operational or on the strategic level, such communicational distortions need to be regarded as a major impediment to the effective modification of action.

Second, a potential side-effect of control-based approaches is the occurrence of adverse motivational effects. The problem here lies in the fact that control-measures to some extent implicitly take the effect of an allegation (McGregor, 1960), diminishing intrinsic motivation of employees to contribute to the solution of problems occurring in the operations of a firm. The potentially 'indoctrinary' nature of corporate compliance- and ethics-programmes (Stansbury & Barry, 2007) may lead either to rejection of such programmes or to the restriction of individual capacity for moral decision-making and initiative. Both reactions harbour the danger of inadequate action, in particular in non-routine situations where ready-made solutions are not available. As argued above, the majority of ethically problematic situations belong to exactly this type of non-routine situations. Hence, compliance programmes exclusively relying on the logic of control and compliance need to be regarded as insufficient to render firms more responsible in situations of conflict between the goals of a firm and the means to achieve these goals (Paine, 1994). The fact that the implementation of compliance programmes is costly and leads to significant effort (Locke et al., 2009), but is only limitedly successful and often generates unintended and counterproductive outcomes illustrates a second critical aspect of organizational self-regulation: efficiency.

Responsiveness problems: The limits to responding to organizational specifics and environmental peculiarities

A further problem of self-regulatory approaches is that such approaches – implicitly or explicitly – suggest that the compliance with the relevant standard alone indicates that the problem being addressed is therefore solved. This issue has two facets: the first is that, from the perspective of a business firm, self-regulatory approaches are regarded as appropriate to enhance 'the capacity and motivation of entities to regulate themselves' (Parker, 2007: 3) and thus to be responsive to the specific challenges of business firms (Ayres & Braithwaite, 1992). The second is that, from the perspective of the problems addressed, self-regulation is regarded to harness the capacity of self-regulating entities to adapt to context-specific conditions (Fung, 2003), bringing in their expertise and their skills to design economically and ethically viable solutions (Peters et al., 2009). However, this view fails to take into account that each problem

has its own specifics and that there is never only a right or a wrong answer (Santoro, 2003). Rather, every time a standard is applied ‘fresh judgement’ is necessary (Rasche, 2010). Further, it must be borne in mind that a certain level of generality (with regard to self-regulating entities as well as with regard to environmental conditions, i.e. the object of regulation) cannot be avoided without impeding the efficiency of the regulated structures and processes. Since firms need to reduce environmental complexity to be able to operate in a purposeful way (Schreyögg & Steinmann, 1987), there is an essential trade-off between the firm-perspective and the problem-perspective of organizational self-regulation. In the pre-globalization-era, processes of rule-making to some extent remained independent from considerations of firm-level efficiency. In contrast, in the case of organizational self-regulation, the trade-off between organizational efficiency and regulatory responsiveness becomes immediate. This firstly materializes in a limited capacity of standards to a priori comprehensively address the complexity of organizations as well as that of the heterogeneous and dynamic nature of the context conditions of corporate action. This is particularly so in the context of human rights problems, where there are different personal, cultural, and moral viewpoints involved. This situation sharply contrasts with situations in which functioning and comprehensive legal frameworks, as well as homogeneous moral demands, provided an unambiguous point of reference for business firms.

Secondly, the measurability of the adequacy and success of self-regulation is subject to the same restrictions as the process of rule-application itself, implying limits of evaluation, beyond which the survival of a firm is essentially threatened due to the immense effort necessary for the process of evaluation. Accordingly, we suggest responsiveness as a third factor that needs to be observed in the analysis as well as in the design of self-regulatory initiatives of business.

Legitimacy and accountability problems of self-regulation

In the pre-globalization era, business firms almost exclusively acted as rule followers within the confines of functioning regulatory frameworks. They derived their legitimacy, i.e. their societal acceptance, from following rules implemented by legitimate actors as well as by fulfilling their economic role in the market (Peter, 2004). According to this view, corporate accountability, that is, the obligation of an agent to report on his or her activities to an entity which has the ability to impose costs on the agent (Keohane, 2003), is restricted to the owners

of corporate shares (Peters et al., 2009) and to legal entities. This is justified by the assumption that all other parties affected by corporate activities are protected by the terms of the contract with the firm and by the legal system enforcing contracts and the law (Jensen & Meckling, 1976; Sundaram & Inkpen, 2004). As soon as business firms operate as role-creators beyond the reach of the rule of law of democratically legitimated nation states and without authorization by such states, questions of legitimacy and accountability arise (Haufler, 2001; Wolf, 2005). This is because self-regulatory standards aiming at the restriction of corporate misbehaviour and at the protection of individuals and groups, potentially affected by this misbehaviour can be regarded as the unilateral exercise of power.

Therefore it is necessary to scrutinize the legitimacy and accountability of self-regulatory approaches, in particular in the light of the limitations described above. Legitimacy as well as accountability can be regarded as a precondition for the acceptance of a standard (Buchanan & Keohane, 2006) as well as of the standard-setting entity (Peters et al., 2009). Acceptance is critical from an extra-organizational perspective as well as from an intra-organizational perspective: on the one hand, a self-regulatory standard needs to be regarded as legitimate within the social context it is applied. On the other hand, employees of a company applying a standard need to regard it as legitimate. Otherwise the probability of lasting effectivity of the standard is low.

From the perspective of the interaction of a firm with its environment, the legitimacy of a firm depends on the adequacy of the standards, which the firm applies, since ideally the actions of a firm subject to the standards are to some extent guided by these standards. The tension between the generality of a standard and the uniqueness of the situations in which a standard is to be applied (see above) carries the danger of a mismatch. If a firm acts in a way that is not compliant with the expectations in the host environment, it runs the risk of illegitimacy and its consequences, ranging from censorship in the media to direct attacks (Kostova & Zaheer, 1999). As argued in the earlier section, such non-compliance is particularly likely in the area of human rights due to the highly subjective and culture-specific nature of human rights-related issues.

In addition, and closely related to the argumentation concerning the shortcomings of control-centred approaches, the acceptance of a standard by the individuals who are expected to apply it – most often the employees of the standard-setting firm – is crucial for its effectiveness. Whereas it can be argued that legitimacy constitutes an element of the effectiveness of self-

regulatory initiatives (compare the concept of pragmatic legitimacy by Suchman, 1995), we suggest that at a given point in time a self-regulatory measure can be effective and still be perceived as illegitimate, and vice versa. This is firstly due to the multiplicity of individual perspectives involved in processes of self-regulation and secondly to the dynamic nature of such processes. Thus, legitimacy can be regarded as a fourth critical aspect of organizational self-regulation.

Coherence problems: Contradictions between the formal purpose of a firm and regulatory objectives

A final problem of self-regulation is the potential incoherence between a regulatory objective and a firm's operations, since regulation often threatens profit (Abbott & Snidal, 2009). This problem is relevant firstly on a fundamental level regarding the nature of capitalist organizations in general. Secondly, the particular features of specific firms potentially contradict regulatory objectives. Both these aspects are discussed below.

In general, in cases where the aim is to limit negative external effects resulting from the operation of a business, regulation tends to indirectly oppose the formal purpose of a firm. Since the externalization of cost increases the efficiency of firms, the criterion which is applied to judge organizations (Perrow, 2002), there is a fundamental tension between regulation of business conduct and the maximization of profit – the formal objective of capitalist organizations in the majority of economic theories. Due to the increasing incongruence of national regulatory frameworks and corporate power, human rights are particularly prone to being affected by negative externalities of corporate activities. Further, since the acceptance of such externalities often materializes as a competitive advantage for host countries of multinational corporations, potentially there is a fundamental trade-off between successful self-regulation and prevalent conceptions of economic development.

With respect to individual firms, a contradiction between the characteristics of a firm and specific regulatory objectives might occur. Here the example of the conflict between a mining corporation and an indigenous community is illustrative (Banerjee, 2008). In this case, the mere operation of the corporation in the area of the community is perceived as intolerable by this community. Thus no form of self-regulation whatsoever is suitable to reconcile the completely different interests. Assuming that regulation in general is aimed at improving

societal welfare, the regulation of a business whose operations innately harm society, e.g. the tobacco industry (Palazzo & Richter, 2005), is doomed to limited effectiveness as long as the *raison d'être* of the business being regulated is not questioned. As a result, a fifth generic problem of organizational self-regulation can be identified: coherence. In the pre-globalization era, this problem – despite not being completely resolvable – was addressed by regulation executed by national states: the internalization of negative externalities could be enforced by legal mechanisms, leaving limited leeway for corporations and simultaneously providing a level playing field for competing corporations. In contrast, in the contemporary global economy the exploitation of regulatory gaps potentially contributes to the competitive advantage of a firm, thus creating an incentive for competitors to behave similarly (Scherer & Smid, 2000). One means to avoid conflicts between the aim of profit maximization and societal expectations is the decoupling of corporate activities and structures aimed at evoking the impression of corporate responsibility (McLean & Behnam, 2010), as discussed above.

REQUIREMENTS FOR THE VIABILITY OF PRIVATE STANDARD-SETTING AND APPLICATION

To sum up, it has become apparent that current regulatory measures alone constitute only one step towards safeguarding effective corporate respect for human rights. Due to their macro-perspective and the predominance of the principle of voluntariness, they fall short of taking into account the crucial characteristics of organizations and their specific reactions to the complex and ambiguous conditions under which self-regulation often takes place.

In particular, three features can be identified which characterize the new regulatory setting and potentially exacerbate the problems described above (see Table 1). Firstly, due to the increased dynamics of the process of rule making, the inertia of processes of formal rule making, and to the increasing ability of firms to evade governmental regulation, gaps in formal regulation (which already existed in the pre-globalization era) have widened. This means that additional mechanisms are needed to fill (partly temporary and partly permanent) voids in formal rules in an appropriate and legitimate manner. Secondly, increased room for manoeuvre for corporations increases the complexity and ambiguity of organizational decision making. Finally, besides contributing to problems of legitimacy of regulation due to a shifting (and often unclear) balance of power between private and public actors, increased complexity of regulatory processes in general and corporate involvement in governance

processes in particular increases resource requirements. This is because relatively stable and efficient fora for decision making are increasingly being replaced by changing coalitions and multiple fora.

Macro-level self-regulatory approaches can contribute to meeting these challenges only to a limited extent. They are necessary but insufficient for the attainment of regulatory objectives. Such initiatives can indeed provide valuable guidance in the complex operations of firms, such as foreign direct investment or involvement in complex global supply chains. However, they must not be ‘instrumentalist management tool[s] for managing troublesome groups in service of conventional economic goals; [they] must become an integrated part of the company’s approach to strategy formulation and implementation and the development of competencies consistent with that strategy’ (Wheeler et al., 2002). In addition it is necessary to take into account the specifics of organizations as complex social systems as well as the characteristics of the novel situation in which firms are active globally and only partially controllable by regulatory frameworks.

To render organizations capable of contributing to the effectiveness of the emerging matrix of human rights standards, requirements on the individual level as well as on the organizational level need to be met. In the following we argue that on the individual level *moral capabilities* are a necessary complement to formal rules. Commitment of the members of an organization to a shared goal together with the alignment of incentives, and open communication are regarded as suitable means to sustainably improve social conditions (Locke et al., 2009). By these means, the necessary voids in formal regulation can be filled. Further, to address the increased complexity of their regulatory environments, availability of appropriate information as well as the capacity to process this information is crucial. Therefore, firms need the capability to acquire and process relevant information, and to engage in communicative processes with stakeholders to find legitimate solutions to problems that result from corporate activities. Arguably, such *communicative capability* needs to be anchored on the individual level, on the organizational (structural) level, and also on the (macro) level of the design of relationships between various actors engaged in processes of rule-setting and application. Finally, in global governance, firms, together with NGOs and international organizations, collectively address challenges such as the protection of human rights, often assuming the role of rule-creators besides their traditional role as rule-followers.

Such arrangements are regarded as a means to pool resources and competencies. They are also regarded as being able to enhance the legitimacy of potential solutions by means of combining (public) legitimacy and (private) problem solving capacities. Therefore, firms need to acquire the *capability to collaborate* with a multiplicity of different actors in different constellations. These capabilities and their contribution to the viability of organizational self-regulation are summarized in Table 4.

features	challenges	potential solution	capabilities
incompleteness of formal regulation, inertia of rule-creation and adaptation	need to fill voids in formal regulation; lack of legitimacy	enhanced individual problem-solving; deliberation	moral
complexity and dynamism of regulatory requirements; weakening regulatory frameworks	ambiguity and uncertainty; lack of legitimacy	enhanced acquisition and processing of information; transparency; deliberation	communicative
firms are subject to regulation and simultaneously act as regulators	lack of legitimacy and resources	cooperation of different actors, pooling of resources and sources of legitimacy	collaborative

Table 4: Features of self-regulation in the post-national regulatory context, resulting challenges, and capacities for appropriate problem-solving

Consequently, it is necessary to complement minimal coercive control mechanisms, which are still necessary to some extent, with the capacity to self-regulate (Parker & Braithwaite, 2003). Arguably, such capacity is located on the (micro) level of individuals, on the organizational (meso) level, with regard to intra-organizational processes, and on the (macro) level of governance emerging from the interaction of various actors engaged in regulatory processes. In the subsequent sections, the organizational foundations of the capacity to successfully self-regulate will be described in detail.

Moral capabilities

In the following, we show that the viability of corporate self-regulation in the area of human rights depends firstly on the capacity of the individual members to make ethically sound decisions. Conflicts of corporations with human rights are manifold and therefore cannot be appropriately managed by predefined structures and strict rules alone. Hence, as a complement to organizational structures and rules, individual members of an organization need to be able to make appropriate decisions when faced with unforeseeable situations and ethical dilemmas, putting into effect formally predetermined rules. Secondly, as noted above, ethical organizational decision-making cannot be enforced by applying pressure at the individual level. Rather, individuals need to be sensitized regarding potential human rights dilemmas and an ‘organizational climate that encourages exemplary conduct’ (Paine, 1994: 117) needs to be established throughout an organization in general and on the level of top-management in particular.

On the operational level, all employees need to be able to act in a morally sound way. Due to the complexity of organizational contexts and the idiosyncratic nature of individual situations, the individual member of an organization needs firstly to be able to identify potential negative impacts of corporate activities on human rights; secondly, to be able to make appropriate decisions, and, thirdly, to disseminate decisive information within an organization to facilitate the change of structures, processes, and strategies if necessary.

The requirements for ethically considered decision-making need to be met on the level of top management. In general, the implementation of structures necessary (but not sufficient) to facilitate the viability of self-regulation depend to a large extent on the commitment of top managers to the aims of self-regulation (Baumann, 2009). In particular, as shown by Weaver et al. (1999), the commitment from top management is crucial for the effective implementation of corporate ethics programmes.

Appropriate moral capabilities throughout an organization are a precondition for the effective enactment of self-regulatory rules based on sound individual decision-making. Further, by these means efficiency problems can be addressed: moral commitment is conducive to fair solutions for problems as well as to avoiding information barriers and the resultant biased decision making. With respect to the problem of responsiveness, moral capabilities and the resulting awareness of individual employees function as a complement to organizational rules.

Thereby, firstly the incompleteness of formal rules can be balanced. In this way, problems unforeseen in organizational rules can be resolved and negative effects on the organization and its stakeholders can be avoided. Secondly, based on individual experiences, rules can be adapted and advanced. With regard to organizational legitimacy, the moral capabilities of individual employees and managers (Voegtlin et al., 2011) can be regarded as one important precondition for the attainment of legitimacy through avoidance of organizational misconduct and the engagement in processes of problem solving on the operational level as well as on the strategic level. Further, since individual decisions decisively influence the selection of corporate strategies as well as the selection of means for the implementation of the strategies, the observance of moral criteria in these processes is conducive to the avoidance of clashes between corporate and societal goals.

Communicative capabilities

As shown in strategic management theory (Ansoff, 1984; Schreyögg & Steinmann, 1987), an increased capacity to collect and process information is a prerequisite for organizations to survive in complex and dynamic environments. This also applies to the orientation of firms in the new regulatory setting of the post-national constellation, which is characterized by feedback-loops comprising the individual and the organizational level as well as the macro-level of governance. Communication can be regarded as the way in which information about organizational environments is acquired and processed. Accordingly, communicative capabilities are necessary to successful engagement in self-regulation, taking the problems described above. In the following the necessity for the firm to have appropriate internal communication as well as the necessity for appropriate communicative processes between an organization and its environment for successful self-regulation will be outlined.

As soon as communication becomes biased towards retaining information either about threats or about opportunities, organizational decision-making becomes inappropriate (Argyris, 1976). In this case, the problems of organizational self-regulation cannot be taken into account and an appropriate strategy becomes unlikely. Therefore, with respect to intra-organizational communication, an undistorted flow of communication is of the utmost importance to the ability of an organization to efficiently process information and thereby guarantee the effective application of self-regulatory standards.

However, even if intra-organizational communication works properly, it is also necessary to allow for communicative processes between the organization and its environment. Open

communication with organizational stakeholders is firstly conducive to transparency of corporate activities, as exemplified by non-financial reporting. In this way the effectiveness of organizational self-regulation can be scrutinized by all parties concerned, contributing to the accountability of the corporation as well as to the accountability of the respective standard (Gilbert et al., 2011). Further, as argued by Fung for the case of labour standards (2003), deliberation and thus communication is a suitable means to enhance the legitimacy of such standards. By means of undistorted communication it becomes possible to continuously consider the appropriateness of organizational rules and to increase responsiveness to environmental conditions. Based on the application of the theory of deliberative democracy (Habermas, 1996) on economic organizations in general (Palazzo & Scherer, 2006; Scherer & Palazzo, 2007) and on the subject of standards in particular (Gilbert & Rasche, 2007), it is argued that organizations require communicative capabilities to engage in discursive problem-solving. In particular, regarding the application of standards, such capabilities are necessary to deal with cultural diversity and to adapt abstract standards to local circumstances (Gilbert & Rasche, 2007) and eventually lead to the generation of legitimacy (Palazzo & Scherer, 2006). With respect to incoherence between economic and societal goals, the corporate capacity to engage in communicative processes with the organizational environment, e.g. with non-profit organizations, has the potential to improve the informational basis for organizational decision-making and eventually to engage in more profitable and simultaneously societally acceptable activities (Rondinelli & London, 2003). Organizational communicative capabilities are exemplified by the integration of various organizational stakeholders into corporate governance (Gomez & Korine, 2005) as well as by departments specialized in stakeholder communication and the application of self-regulatory standards.

Collaborative capabilities

According to Gray, collaboration can be defined as ‘the pooling and appreciation of tangible resources, e.g. information, money, labor, etc. by two or more stakeholders to solve a set of problems which neither can solve individually’ (Gray, 1985: 912). Furthermore, the capacity to cooperate with various actors can be regarded as a major requirement for organizational learning (Simonin, 1997). Only in sustained relationships between different actors is appropriate communication likely to take place, facilitating organizational responsiveness to problems addressed by self-regulation. In the case of organizational self-regulation

cooperation with various actors involved in governance is a precondition for the success of (self-)regulation.

With regard to tackling problems of effectiveness, the cooperation of business firms with multiple organizations such as auditing bodies (Mutersbaugh, 2005) and partnering firms in global supply chains (Fichter & Sydow, 2002) is seen as conducive to organizational self-regulation. As soon as such collaboration between different actors takes place, a change of institutional logics becomes possible. Orientations pursued on the macro-level are likely to resonate on the individual and organizational level, enhancing the efficiency of self-regulatory processes due to motivational effects on the individual level and structural changes on the organizational level. Such a constellation potentially triggers a self-reinforcing process moving towards responsibility and cooperation. A further effect of the capacity to cooperate is the positive effect on information acquisition and transfer, both on the level of governance institutions – as illustrated by the learning platform of the UNGC (Ruggie, 2001) – and on the operational level. As shown by Locke and Romis (2007) for the improvement of working conditions as well as by Vachon and Klassen (2007) who focused on the improvement of environmental management, collaboration among different supply chain members increases the flow of information between the firms concerned and potentially contributes to the creation of rules which are responsive to the specifics of the firms involved as well as to context-specific conditions. With regard to legitimacy problems of organizational self-regulation, involvement of business firms in governance initiatives is one means to safeguard the legitimacy of self-regulatory standards. Whereas creation and application of unilateral standards by business firms carries the danger of illegitimacy, corporate engagement in multiple-stakeholder standards is conducive to the legitimacy of standards (Bernstein & Cashore, 2007; Peters et al., 2009). In such cases, the legitimacy of one participant in a multiple stakeholder standard initiative potentially spills over to participants with lower legitimacy. Finally, cooperation on the level of governance institutions is conducive to safeguarding the coherence of corporate and societal goals. Whereas uncoordinated self-regulation by single actors potentially impedes competitiveness, collective self-commitment is regarded as an appropriate means to avoid a race to the bottom (Kell and Ruggie, 1999) by aligning the goals of different corporations on the level of economy as well as economic and societal goals on the level of society.

Since governance schemes involving states, inter-governmental organizations, civil society and business are regarded to be the best way to ‘assemble all essential competencies and a range of motives approximating the public interest’ (Abbott & Snidal, 2009: 550), firms require the capacity to cooperate with these actors. Therefore, besides the capacity to cooperate with various actors on the level of standard-application, the capacity to collaborate is crucial on the level of standard-creation as well, to guarantee the viability of a self-regulatory standard. This is illustrated by the example of the Global Reporting Initiative (GRI), a voluntary tool aimed at facilitating the disclosure of information on the social and environmental performance of companies. The viability of such a tool depends to a large extent on its legitimacy in the governance setting. To secure the legitimacy of standards and render them effective, the process of standard-creation needs to be guided by deliberative practices (Beisheim & Dingwerth, 2008), which can only emerge in collaborative relationships. Therefore the capacity to collaborate can be regarded as decisive for the success of self-regulation on the level of standard-application as well as on the level of standard-creation. To sum up, on the organizational level we regard moral, communicative, and collaborative capabilities as necessary prerequisites for the success of self-regulation in general and for the success of such endeavours in the area of human rights in particular. These capabilities can be regarded as conditions for the avoidance and resolution of problems of effectiveness, efficiency, responsiveness, legitimacy, and coherence (see Table 5).

Although these problems may not be novel, they can be exacerbated by the features of the post-national constellation (i.e. declining regulatory power of states and international organizations) and the features of self-regulatory initiatives (i.e. voluntariness and low precision), which address the problems resulting from this new context. Only if these capabilities are acquired by business firms is the emerging matrix of human rights standards likely to become effective. That is, to achieve this goal, the development of new regulatory mechanisms on the macro-level of regulation needs to be accompanied by complementary changes on the organizational level.

problems	the contribution of organizational capabilities to the solution of problems of self-regulation		
	moral capabilities	communicative capabilities	collaborative capabilities
effectiveness	rule enactment (sound individual decision making)	transparency (financial and non-financial reporting)	transparency (GRI; audits: SA 8000, ...)
efficiency	motivation; information acquisition	information processing	motivational effects and change of institutional logics through participation in governance initiatives
responsiveness	rule enhancement; information acquisition and processing (individual awareness)	information acquisition (interfaces and fora devoted to collecting relevant information)	information acquisition (governance initiatives; UNGC learning platform; multi-stakeholder fora)
legitimacy	problem solving on the operational level; selection of appropriate strategies	transparency; deliberation (interfaces and intra-organizational fora devoted to finding legitimate solutions)	legitimacy spillovers
coherence	observance of regulatory goals in strategic and operational planning	information acquisition (feed-in of relevant information into organizational decision-making)	goal adjustment within governance initiatives

Table 5: Contribution of moral, communicative and collaborative capabilities to the solution of problems of organizational self-regulation in the post-national regulatory environment

CONCLUSION, DIRECTIONS FOR FURTHER RESEARCH, AND PRACTICAL IMPLICATIONS

In this paper we argue firstly that current approaches to the protection of human rights by business firms with their focus on voluntary compliance with standards are necessary but insufficient responses to the complexity and power imbalances of contemporary global economic exchange relations. The emerging matrix of human rights standards provides a valuable orientation for corporations in a regulatory setting, in which corporate power in many instances transcends the regulatory power of the nation states. However, since instruments such as the OECD Guidelines for Multinational Corporations, the ‘Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’, and the UN Global Compact are based on voluntariness and in the absence of formal sanctioning mechanisms, the demands for corporations to successfully self-regulate are rising considerably. We show that the current debate on self-regulation does not sufficiently take into account the characteristics of organizations, in particular in the light of the more demanding criterion of social connectedness. Five problems are identified which potentially threaten the viability of self-regulation of business: (1) the propensity of organizations to decouple organizational structures and activities, in particular concerning ethical issues; (2) the dysfunctionalities of control-centred approaches; (3) the trade-off between generality of rules and individuality of problems; (4) legitimacy problems resulting from corporate engagement in activities originally and ideally exercised by democratically controlled governments, without corporations being legitimated to do so; (5) contradictions between the formal purpose of a firm and regulatory objectives. From these issues, five problem-areas of self-regulation are distilled: effectiveness, efficiency, responsiveness, legitimacy, and coherence.

To avoid such problems, organizational capabilities are proposed which render organizations capable of successfully engaging in self-regulatory endeavours and safeguard the ability of business to interact with society in a mutually beneficial way. These are:

- *moral capabilities* enabling members of business firms to compensate for limitations of structural arrangements and the incompleteness of standards;
- *communicative capabilities* enhancing the capacity of organizations to collect and process environmental information, to avoid problems by detecting them at an early stage of development, and to discursively tackle novel problems;

- *collaborative capabilities* enabling organizations to cooperate with partners in governance-processes (such as national governments, international organizations or NGOs) as well as with individuals and groups affected by corporate action.

Seemingly, only if these requirements are met, can the governance of corporations be accomplished in a way appropriate to the increased complexity resulting from the global operation of multinational enterprises, the decline of state power, and the increasing power of private actors. Only then is the emerging matrix of human rights standards likely to become an effective successor to the framework of human rights centred on the nation state as the sole relevant actor. If these requirements are disregarded, however, self-regulation of business potentially remains a façade, while corporate action potentially jeopardizes social and environmental stability.

From the theoretical viewpoint, our considerations imply that research on regulation in the field of political science and law needs to engage with organizational theory and take into account the specifics of organizations, which act simultaneously as public and as private actors. At the same time, organizational and management theory has to acknowledge the political aspects of their objects of study. This has implications for diverse areas such as strategy, corporate governance, and organization design. In these areas, current research is focused on efficiency and value generation while disregarding other corporate objectives (such as the observance of social and ecological goals). However, with increasing involvement of business firms in public policy, the traditional concentration of many organizational theories on the objective of profit generation has to be replaced by a much wider conception of the role of business in society if these theories are to be relevant (Scherer & Palazzo, 2007; 2011).

Further, our considerations have practical implications on the (meso-)level of business firms as well as on the (macro-)level of regulatory initiatives. On the organizational level, the observance of moral capabilities as an explicit element of human resources policies seems to be one suitable measure to contribute to the success of self-regulatory initiatives. With respect to communicative and collaborative capabilities, an appropriate structuring of organizations (e.g. implementation of fora for discussions) and the participation in governance initiatives are first steps towards processes of sustainable learning and self-commitment which would lead to the effective self-regulation of business firms. On the level of regulatory initiatives, arrangements are needed which promote the acquisition of the capabilities described above

and complement them with effective enforcement mechanisms. Additionally, instead of tacitly assuming the compatibility of economic competition and voluntary self-regulation, potential conflicts between these spheres need to be made explicit. This should include the critical assessment of traditional concepts such as growth and welfare. However, the reconciliation of economic and societal objectives on a voluntary basis is unlikely to succeed within the established paradigms.

REFERENCES

- Abbott, K.W., Keohane, R. O., Moravcsik, A., Slaughter, A.-M., & Snidal, D. 2000. The concept of legalization. *International Organization*, 54: 401-419.
- Abbott, K.W., & Snidal, D. 2000. Hard and soft law in international governance. *International Organization*, 54: 421-456.
- Abbott, K.W., & Snidal, D. 2009. Strengthening international regulation through Transnational New Governance: Overcoming the orchestration deficit. *Vanderbilt Journal of Transnational Law*, 42: 501-577.
- Ansoff, H. I. 1976. Managing strategic surprise by response to weak signals. *California Management Review*. 20 (2), 21-33.
- Argyris, C. 1976. Single-loop and double-loop models in research on decision making. *Administrative Science Quarterly*, 21(3): 363-375.
- Argyris, C. 1986. Reinforcing organizational defensive routines: An unintended human resources activity. *Human Resources Management*, 25 (4): 541-555.
- Arnold, D.G. 2010. Transnational corporations and the duty to respect basic human rights. *Business Ethics Quarterly*, 20 (3): 371-199.

- Ashforth, B. E., & Gibbs, B. W. 1990. The double-edge of organizational legitimation. *Organization Science*, 1: 177–194.
- Ayres, I. & Braithwaite, J. 1992. *Responsive regulation: Transcending the deregulation debate*. Oxford: University Press.
- Bales, K. 1999. *Disposable people*. Berkeley: University of California Press.
- Banerjee, S. B. 2008. Corporate social responsibility: The good, the bad and the ugly. *Critical Sociology*, 34 (1): 51-79.
- Baumann, D. 2009. *Global rules – Private actors. The role of multinational corporations in global governance*. PhD Thesis, University of Zurich (publication forthcoming).
- Beck, U. 1992. *Risk society. Towards a new modernity*. London: Sage.
- Behnam, M., & MacLean, T. L. 2011. Where is the accountability in international accountability standards?: A decoupling perspective. *Business Ethics Quarterly*, 21 (1): 45-72.
- Beisheim, M., & Dingwerth, K. 2008. *Procedural legitimacy and private transnational governance. Are the good ones doing better?*, SFB-Governance Working Paper Series, No. 14, Research Center (SFB) 700, Berlin, June 2008.
- Bell, A.S. 2003. *Forum shopping and venue in transnational litigation*. Oxford: Oxford University Press.
- Bernstein, S., & Cashore, B. 2007. Can non-state global governance be legitimate? An analytical framework. *Regulation & Governance*, 1: 1–25.
- Boiral, O. 2007. Corporate greening through ISO 14001: A rational myth? *Organization Science*, 18 (1): 127–146.

- Braithwaite, J., & Drahos, P. 2000. *Global business regulation*. Cambridge: Cambridge University Press.
- Brown, D. L., Vetterlein, A. & Roemer-Mahler, A. (2010). Theorizing transnational corporations as social actors: An analysis of corporate motivation. *Business and Politics*, 12 (1), 1-36.
- Brunsson, N. 2000. Standardization and uniformity. In: N. Brunsson, & B. Jacobsson (Eds.): *A world of standards*: 138-168. Oxford: Oxford University Press.
- Buchanan, A., & Keohane, R.O. 2006. The legitimacy of global governance institutions. *Ethics & International Affairs*, 20: 405-437.
- Busse, M. 2002. Do labor standards affect comparative advantage in developing countries? *World Development*, 30 (11): 1921-1932.
- Chatterji, A., & Levine, D. 2006. Breaking down the wall of codes. *California Management Review*, 48 (2): 29-51.
- China Labor Watch. 2011. *Tragedies of globalization: The truth behind electronics sweatshops*. <http://chinalaborwatch.org/pdf/20110712.pdf> (Date of access: 2011-08-09).
- Christmann, P., & Taylor, G. 2006. Firm self-regulation through international certifiable standards: Determinants of symbolic versus substantive implementation. *Journal of International Business Studies*, 37 (6): 863-878.
- Crouch, C. 2004. *Post-democracy*. Cambridge: Polity Press.
- Crouch, C. 2011. *The strange non-death of neoliberalism*. Cambridge: Polity Press.
- Cutler, C. 2001. Critical reflections on the Westphalian assumptions of international law and organization: a crisis of legitimacy. *Review of International Studies*, 27: 133-150.
- Detomasi, D. A. 2007. The multinational corporation and global governance: modelling

- global public policy networks. *Journal of Business Ethics*, 71: 321–34.
- DiMaggio, P.J., & Powell, W.W. 1983. The iron cage revisited: Institutionalize isomorphism and collective rationality in organizational fields. *American Sociological Review*, 48: 147-160.
- Egels-Zandén, N. & Wahlquist, E. 2007. Post-Partnership Strategies for Defining Corporate Responsibility: The Business Social Compliance Initiative. *Journal of Business Ethics*, 70:175–189.
- Fichter, M., & Sydow, J. 2002. Using networks towards global labor standards? Organizing social responsibility in global production chains. *Industrielle Beziehungen*, 9 (4): 357-380.
- Friedman, M. 1970. The social responsibility of business is to increase its profits. *New York Times*, September 13, 1970, Section 6 (Magazine): 32-33.
- Fung, A. 2003. Deliberative democracy and international labor standards. *Governance*, 16: 51–71
- Gatto, A. 2011. *Multinational enterprises and human rights. Obligations under EU law and international law*. Cheltenham: Edward Elgar.
- Gilbert, D. U., & Rasche, A. 2007. Discourse ethics and social accountability – The ethics of SA 8000. *Business Ethics Quarterly*, 17: 187-216.
- Gilbert, D.U., Rasche, A., & Waddock, S. 2011. Accountability in a global economy: The emergence of international accountability standards. *Business Ethics Quarterly*, 21 (1): 23-44.
- Gomez, P.-Y., and Korine, H. 2005. Democracy and the evolution of corporat governance, *Corporate Governance: An International Review*, 13 (6): 739-752.

- Gordon, K., & Miyake, M. 2001. Business approaches to combating bribery: A study of codes of conduct. *Journal of Business Ethics*, 34: 161-173.
- Gray, B. 1985. Conditions facilitating interorganizational collaboration. *Human Relations*, 38 (10): 911-936.
- Gunningham, N., & Rees, J. 1997. Industry self-regulation: An institutional perspective. *Law & Policy*, 19 (4): 363-413.
- Habermas, J. 1996. *Between facts and norms*. Cambridge, MA: MIT Press.
- Habermas, J. 2001. The postnational constellation and the future of democracy. In: J. Habermas. *The postnational constellation*: 58-112. Cambridge, Mass.: MIT Press.
- Haufler, V. 2001. *A public role for the private sector*. Industry self-regulation in a global economy. Washington, D.C.: Carnegie Endowment for International Peace.
- Hedlund, G. 1986. The hypermodern MNC – A heterarchy? *Human Resource Management*, 25 (1): 9-35.
- Helfer, L.R. 1999. Forum Shopping for Human Rights. *University of Pennsylvania Law Review*, 148(2): 285-400.
- Héritier, A. and Eckert, S. 2008. New modes of governance in the shadow of hierarchy: self-regulation by industry in Europe. *Journal of Public Policy*, 28: 113–38.
- Hond, F., & de Bakker, F. G. A. 2007. Ideologically motivated activism: How activist groups influence corporate social change activities, *Academy of Management Review* 32 (3): 901-924.
- Hsieh, N. 2004. The obligations of transnational corporations: Rawlsian justice and the duty of assistance. *Business Ethics Quarterly*, 14: 643–61.

Human Rights Council. 2008. Protect, respect and remedy: A framework for business and human rights. <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf> (Date of access: 2011-18-10).

Human Rights Council. 2011. Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework. <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf> (Date of access: 2011-18-10).

Jenkins, C. 2009. The Jurisprudence of Truth? Litigating Apartheid in US Courts. *Journal of Comparative Law*, 4(2): 110-132.

Jensen, M. J. 2002. Value maximization, stakeholder theory, and the corporate objective function. *Business Ethics Quarterly* 12/2: 235-256.

Jensen, Michael J., and William H. Meckling. 1976. Theory of the firm: Managerial behavior, agency costs and ownership structure. *Journal of Financial Economics* 3 (4): 305-360.

Kell, G., & Ruggie, J.G. 1999. Global markets and social legitimacy: The case for the 'Global Compact'. *Transnational Corporations*, 8 (3): 101-120.

Keohane, E. 2008. Tata quits Nano factory. <http://www.autocar.co.uk/News/NewsArticle/AllCars/235270/> (Date of access: 2010-11-01).

Keohane, R. O. 2003. Global governance and democratic accountability. In *Taming globalization. Frontiers of governance*. D. Held, & M. Koenig-Archibugi (eds), 130-158. Cambridge: Polity Press.

- Kinley, D., & Nolan, J. 2008. Human rights, corporations and the global economy: an international law perspective. In *Handbook of research on global corporate citizenship*. A.G. Scherer, and G. Palazzo (eds), London: Edward Elgar.
- Kinley, D., & Tadaki, J. 2003. From talk to walk: The emergence of human rights responsibilities for corporations at international law. *Virginia Journal of International Law*, 44 (4): 931-1024.
- Kolk, A., & van Tulder, R. 2004. Ethics in international business: multinational approaches to child labor. *Journal of World Business*, 39: 49-60.
- Kostova, T., & Zaheer, S. 1999. Organizational legitimacy under conditions of complexity: The case of the multinational enterprise. *Academy of Management Review*, 24(1): 64–81.
- Laufer, W. S. 2003. Social accountability and corporate greenwashing. *Journal of Business Ethics*, 43: 253–261,
- Lim, S. J., and J. Phillips. 2007. Embedding CSR values: The global footwear industry's evolving governance structure," *Journal of Business Ethics*, 81:143-56.
- Locke, R., & Romis, M. 2007. Improving work conditions in a global supply chain. *MIT Sloan Management Review*, 48 (2): 53-62.
- Locke, R., Amengual, M., & Mangla, A. 2009. Virtue out of necessity? Compliance, commitment, and the improvement of labor conditions in global supply chains. *Politics & Society*, 37: 319-351.
- MacLean, T.L., & Behnam, M. 2010. The dangers of decoupling. The relationship between compliance programs, legitimacy perceptions, and institutionalized misconduct. *Academy of Management Journal*, 53 (6): 1499–1520.

- Majone, G. 1994. The rise of the regulatory state in Europe. *West European Politics*, 17 (3): 77-101.
- Matten, D., & Crane, A. 2005. Corporate Citizenship: Toward an extended conceptualization. *Academy of Management Review*, 30 (1): 366-379.
- Maxwell, J.W., Lyon, T.P., & Hackett, S.C. 2000. Self-Regulation and Social Welfare: The Political Economy of Corporate Environmentalism. *Journal of Law and Economics*, 43 (2):. 583-618.
- McBarnet, D., & Whelan, C. J. 1997. Creative compliance and the defeat of legal control: The magic of the orphan subsidiary. In: K. Hawkins. *The human face of law. Essays in honour of Donald Harris*: 177-199. Oxford: Clarendon Press.
- McBarnet, D. & Schmidt, P. 2007. Corporate accountability through creative enforcement: Human rights, the Alien Torts Claim Act and the limits of legal impunity. In: D. McBarnet, A. Voiculescu, & T, Campbell. *The new accountability. Corporate social responsibility and the law*. Cambridge: Cambridge University Press.
- McGregor, D. 1960. *The human side of enterprise*. New York : McGraw-Hill.
- Meyer, J.W., & Rowan, B. 1977. Institutionalized organizations: Formal structure as myth and ceremony. *The American Journal of Sociology*, 83(2): 340-363.
- Mueckenberger, U., & Jastram, S. 2010. Transnational Norm-Building Networks and the Legitimacy of Corporate Social Responsibility Standards. *Journal of Business Ethics*, 97: 223–239.
- Mutersbaugh, T. 2005. Fighting standards with standards: Harmonization, rents, and social accountability in certified agrofood networks. *Environment and Planning A*, 37: 2033-2051.

- National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling. 2011. Deep Water. The Gulf Oil Disaster and the Future of Offshore Drilling. https://s3.amazonaws.com/pdf_final/DEEPWATER_ReporttothePresident_FINAL.pdf (Date of access: 2011-01-11).
- OECD. 2011. OECD Guidelines for Multinational Enterprises recommendations for responsible business conduct in a global context. <http://www.oecd.org/dataoecd/43/29/48004323.pdf> (Date of access: 2011-06-26).
- O'Rourke, D. 2003. Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring. *The Policy Studies Journal*, 32 (1): 1-29.
- Paine, L.S. 1994. Managing for organizational integrity. *Harvard Business Review*, 72: 106-117.
- Palazzo, G., & Richter, U. 2005. CSR business as usual? The case of the tobacco industry. *Journal of Business Ethics*, 61: 387-401.
- Palazzo, G., & Scherer, A.G. 2006. Corporate legitimacy as deliberation: A communicative framework. *Journal of Business Ethics*, 66: 71-88.
- Parker, C. 2007. *Self-regulation and the Not-for-Profit Sector*. Report prepared for the State Services Authority. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1337278. (Date of access: 2011-08-08).
- Parker, C. & Braithwaite, J. 2003. Regulation. In Cane, P. and Tushnet, M. (Eds.), *The Oxford handbook of legal studies*: 119-145. Oxford: Oxford University Press.
- Perrrow, C. 2002. *Organizing America. Wealth, power, and the origins of corporate capitalism*. Princeton: Princeton University Press.
- Peter, F. 2004. Choice, consent, and the legitimacy of market transactions. *Economics and Philosophy* 20(1): 1-18.

- Peters, A., Förster, T., & Köchlin, L. 2009. Towards non-state actors as effective, legitimate, and accountable standard-setters. In: A. Peters, L. Köchlin, T. Förster, T., & G. Fenner. *Non-State actors as standard setters*: 544-584. Cambridge: University Press.
- Porter, T. 2005. The private production of public goods: Private and public norms in global governance, In L. Pauly, & E. Grande (Eds.). *Complex sovereignty: The reconstitution of political authority in the 21st century*: 217-37. Toronto: University of Toronto Press.
- Prahalad, C.K. 2004. *The fortune at the bottom of the pyramid: eradicating poverty through profits*. New York: Wharton School Publishing.
- Rasche, A. 2010. The limits of corporate responsibility standards. *Business Ethics: A European Review*, 19 (3): 280-291.
- Rondinelli, D.A., and London, T. (2003) 'How Corporations and Environmental Groups Cooperate: Assessing Cross-Sector Alliances and Collaborations', *Academy of Management Executive* 17(1): 61-76.
- Ruggie, J. G. 2001. Global_governance.net: The Global Compact as a learning network. *Global Governance*, 7: 371-378.
- Santoro, M. 2003. Beyond codes of conduct and monitoring: An organizational integrity approach to global labor practices. *Human Rights Quarterly*. 12(2): 407-424.
- Scherer, A.G., & Smid, M. 2000. The downward spiral and the U.S. Model Business Principles – Why MNEs should take responsibility for the improvement of world-wide social and environmental conditions. *Management International Review*, 40 (4): 351-371.

- Scherer, A.G., & Palazzo, G. 2007. Toward a political conception of corporate responsibility: Business and society seen from a habermasian perspective. *Academy of Management Review*, 32(4): 1096–1120.
- Scherer, A.G., & Palazzo, G. 2008. Globalization and corporate social responsibility. In: A. Crane, A. McWilliams, D. Matten, J. Moon, & D. Siegel (eds.): *The Oxford handbook of Corporate social responsibility*: 413-431. Oxford: Oxford University Press.
- Scherer, A.G., & Palazzo, G. 2011. The new political role of business in a globalized world – A review of a new perspective on CSR and its implications for the firm, governance, and democracy. *Journal of Management Studies*, 48: forthcoming.
- Schreyögg, G., & Steinmann, H. 1987. Strategic control: A new perspective. *Academy of Management Review* 12 (1): 91-103.
- Shelton, D. (Ed.) (2000). *Commitment and compliance: The role of non-binding norms in the international legal system*. Cambridge: Cambridge University Press.
- Simonin, B.L. 1997. The importance of collaborative know-how: An empirical test of the learning organization. *Academy of Management Journal*, 40 (5): 1150-1174.
- Sinn, D. 2007. Jailed Chinese reporter joins Yahoo suit. The Washington Post. <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/10/AR2007061000827.html> (Date of access: 2011-08-09).
- Stansbury, J., & Barry, B. 2007. Ethics programs and the paradox of control. *Business Ethics Quarterly*, 17(2): 239-261.
- Stone, C. 1975- *Where the law ends: The social control of corporate behaviour*. New York: Harper and Row.

- Suchman, M.C. 1995. Managing legitimacy: Strategic and institutional approaches. *Academy of Management Review*, 20(3): 571–610.
- Sundaram, A.K., & Inkpen, A.C. 2004. The corporate objective revisited. *Organization Science*, 15(3): 350–363.
- Treviño, L. K., Weaver, G. R., Gibson, D. G., & Toffler, B. L. 1999. Managing ethics and legal compliance: What works and what hurts. *California Management Review*, 41(2): 131-51.
- United Nations Global Compact. 2011.
<http://www.unglobalcompact.org/AboutTheGC/index.html> (Date of access: 2011-08-19).
- Vachon, S., & Klassen, R.D. 2007. Environmental management and manufacturing performance: The role of collaboration in the supply chain. *International Journal of Production Economics*, 111 (2): 299-315.
- Voegtlin, C., Patzer, M., & Scherer, A.G. 2011. Responsible Leadership in Global Business: A New Approach to Leadership and Its Multi-Level Outcomes. *Journal of Business Ethics*, forthcoming.
- Weaver, G. R., Treviño, L. K. 1999. Compliance and values oriented ethics programs: Influences on employees' attitudes and behaviour. *Business Ethics Quarterly*, 9 (2): 315-335.
- Weaver, G. R., Treviño, L. K., & Cochran, P. L. 1999. Integrated and decoupled corporate social performance: Management commitments, external pressures, and corporate practices. *Academy of Management Review*, 42 (5): 535-552.

- Weisbrodt, D., & Kruger, M. 2003. Norms on the responsibilities of transnational corporations and other businesses with regard to human rights. *The American Journal of International Law*, 97 (4): 901-922.
- Wheeler, D., Fabig, H. & Boele, R. 2002. Paradoxes and dilemmas for stakeholder responsive firms in the extractive industry: Lessons from the case of Shell and the Ogoni. *Journal of Business Ethics*, 39: 297-318.
- Williams, O.F. 2004. The United Nations Global Compact: The challenge and the promise. *Business Ethics Quarterly*, 14 (4): 755–774.
- Wolf, K. D. (2005). Private actors and the legitimacy of governance beyond the state: conceptual outlines and empirical explorations. In Benz, A. and Papadopoulos, I. (Eds), *Governance and Democratic Legitimacy*. London: Routledge, 200–27.
- World Bank. 2009. The Worldwide Governance Indicators (WGI) project. <http://info.worldbank.org/governance/wgi/index.asp> (Date of access: 2011-08-09).
- Young, I. M. 2004. Responsibility and global labor justice. *Journal of Political Philosophy*, 12: 365–388.
- Young, I.M. 2006. Responsibility and global justice. A social connectedness model. *Social Philosophy and Policy*, 23 : 102-130.
- Zadek, S. 2004. The path to corporate responsibility. *Harvard Business Review*, 82: 125-132.
- Zald, M.N. 1978. On the social control of industries. *Social Forces*, 57 (1): 79-102.