17.02.04

Transnational Governance and Legitimacy

by

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1. Introduction

Governance beyond the nation-state provides an excellent laboratory for probing a host of issues related to concepts of concern to political scientists, such as legitimacy, accountability, and the participatory quality of various governance arrangements.[1] There is no (world) state in the international system with a legitimate monopoly over the use of force and the capacity of authoritative rule enforcement. As a result, if we move beyond the European Union (EU) to the global system, there is no "shadow of hierarchy" available to which governance arrangements involving private actors at the domestic level can refer and can be made to work. This implies that the governance problematique beyond the nation-state is not only about complementing or temporarily replacing some functions of the modern nation-state in the provision of common goods. Governance beyond the nation-state is about seeking functional equivalents to nation-states in terms of providing political order and common goods in the international realm. In other words, there is no fall-back option to the nation-state, if international governance does not work. In the international system, there is either "governance without government" (Czempiel and Rosenau 1992), or there is no rule-making at all. This also means that rule enforcement has to rely on incentives and sanctions, on the one hand, or on voluntary compliance resulting from the norm's perceived legitimacy, on the other (for a discussion see Hurd 1999). In sum, governance in the global system is about creating social and political order in the absence of modern statehood.

This reasoning also implies that there is no global "demos" available in terms of a world community of citizens in whose names governance could take place. At best, governance beyond the nation-state relies on a rather "thin" layer of collective cosmopolitan identity of "world citizens." As to territorial loyalty, people still identify mostly with their local communities and their nation-state, maybe with their world region (particularly in Europe, see Herrmann, Brewer, and Risse forthcoming), while solidarity with the global community is restricted to particular issue-specific publics organized in transnational networks of like-minded peoples. It follows that democratic governance beyond the nation-state faces serious hurdles. At least, we cannot simply transpose mechanisms to enhance democratic legitimacy from the domestic level unto the international. The main problem of transnational governance concerns the lack of congruence between those who are being governed and those to whom the governing bodies are accountable.

[1] I thank Tanja A. Börzel and Diana Panke for critical comments to the draft.

Does that mean that democratic governance beyond the nation-state is an illusion and that transnational governance needs to solely rely on "output legitimacy", i.e. effective problem-solving, as some have argued (Scharpf 1998, 1999)? I do not think so. Yet, ensuring input legitimacy as the participatory quality of transnational governance requires different mechanisms from those known in domestic polities.

This chapter tries to tackle two issues. First, I attempt to map the problematique of transnational governance in the global system. What is meant if we talk about "new modes of governance" beyond the nation-state? Second, I discuss the legitimacy problematique of transnational governance and critically evaluate various solutions.

2. 'Transnational Governance' and the New Modes of Governance Debate

There is quite some confusion in the debate over global and/or transnational governance that needs to be clarified before one can discuss its repercussions for democracy and legitimacy.[2] "Global governance" in particular is often used simultaneously as an analytical concept and a normative prescription for how global problems should be handled (on the latter see World Commission on Environment and Development 1987). But even as an analytical concept, the term "governance" has become such a catchword in the social sciences that it connotes a whole variety of things (Pierre and Peters 2000; Kooiman 1993). In the broadest possible definition, "governance" relates to any form of creating or maintaining political order and providing common goods for a given political community on whatever level (Williamson 1975). A more narrow view has been promoted by international relations scholars, such as James N. Rosenau and Ernst-Otto Czempiel (Czempiel and Rosenau 1992). Accordingly, "governance without government" refers to political arrangements which rely primarily on non-hierarchical forms of steering (see the excellent reviews by Mayntz 1998, 2002). In other words, governance beyond the nation-state means creating political order in the absence of a state with a legitimate monopoly over the use of force and the capacity to authoritatively enforce the law and other rules. Of course, there is no state or world government in the global realm, even though the United Nations Security Council has limited authority to impose world order and peace. To the extent that the international system contains rule structures and institutional settings, it constitutes "governance without government" by definition.

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[2] This part of the chapter builds on Risse 2004. See also Börzel and Risse forthcoming.

But why do we need to use the language of ‘governance,’ if we can talk about international institutions, such as International Organizations (IOs) or international regimes? While IOs are inter-state institutions “with a street address,” international regimes are defined as international institutions based on explicit principles, norms, and rules, that is, international legal arrangements agreed upon by national governments (Keohane 1989). The Nuclear Non-Proliferation regime, the world trade order, the regime to prevent global climate change, or the various human rights treaties all constitute international regimes, i.e. form part of global “governance without government.” These regimes have in common that they are based on voluntary agreements by states and that there is no supreme authority in the international system capable of enforcing these rules. Hence the elaborate schemes to monitor and verify compliance with the rules and regulations of international regimes!

There is one emerging realm of international institutions which is not covered by the language of international inter-state regimes or organizations as commonly used in the international relations literature. The Internet Corporation for Assigned Names and Number (ICANN) regulates the internet, but is a non-governmental institution. Private rating agencies claim authoritative, consensual, and therefore legitimate knowledge about the credit worthiness of companies and even states and, thus, play an enormous role in international financial markets. The UN Global Compact consists of firms voluntarily agreeing to comply with international human rights and environmental norms. Thus, we observe the emergence of governance structures in international life which are based on private authority, private regimes, or some mix of public and private actors (see Hall and Biersteker 2002; Cutler, Haufler, and Porter 1999; Haufler 1993; Reinicke 1998; Reinicke and Deng 2000; see also chapters by Klaus Dieter Wolf and Tanja Brühl in this volume). In particular, there seems to be an increasing number of “public private partnerships” (PPPs) in international life, some which are concerned with international rule-setting. Other PPPs – the Global Compact, for example – focus on rule implementation or service provision (Rosenau 2000; Börzel and Risse forthcoming).

“Transnational governance” refers to those governance arrangements beyond the nation-state in which private actors are systematically involved.[3] Moreover, we should clearly distinguish between lobbying or influence-seeking activities of private actors – firms and non-governmental organizations ([I]NGOs) -, on the one hand, and their direct involvement in rule-setting, rule implementation

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[3] For the classic definition of transnational relations see Keohane and Nye 1971; also Risse 2002.

and service providing activities, on the other. Only if and when non-state actors have a say in the decision-making bodies of global governance, should we speak of "transnational governance".[4]

Transnational governance as 'new modes of governance' are "distinct from the hierarchical control model characterizing the interventionist state. Governance is the type of regulation typical of the cooperative state, where state and non-state actors participate in mixed public/private policy networks" (Mayntz 2002, 21). Thus, 'new modes of global governance' refers to those institutional arrangements beyond the nation-state that are characterized by two features (see figure 1):

- the inclusion of non-state actors, such as firms, private interest groups, or non-governmental organizations (NGOs) in governance arrangements (actor dimension);
- an emphasis on non-hierarchical modes of steering (steering modes).

Figure 1: The Realm of New Modes of Global Governance

Actors involved *Steering Modes*	*Public Actors only*	*Public and Private Actors*	*Private Actors only*
Hierarchical: Top- down; (Threat of) sanctions	• traditional nation-state; • supranational institutions (EU, partly WTO)	• Contracting out and Out-Sourcing of public functions to private actors	• corporate hierarchies
Non-Hierarchical: Positive incentives; bargaining; non-manipulative persuasion (learning, arguing etc.)	• international regimes • international organizations	• corporatism • public-private networks and partnerships • bench-marking	• private interest government/private regimes • private-private partnerships (NGOs-companies)

(Shaded area = new modes of governance)

Most of the literature on "new modes of governance" is concerned with the actor dimension and, thus, with the inclusion of private actors in global governance. But we must also look at the steering modes. Modes of political steering concern both rule-setting and rule-implementation processes including ensuring compliance with international norms. Hierarchical steering refers to classic statehood in the Weberian or Eastonian sense (politics as the "authoritative allocation of values for a

[4] See also table 2 in Klaus Dieter Wolf's contribution to this volume. I refer the term "transnational governance" to those contributions of private actors whose autonomy reaches at least "middle levels."

given society") and connotes the ultimate ability of states to enforce the law through sanctions and the threat of force, if need be (Weber 1921/1980, 29). Hierarchical steering is notably absent in the international system except, for example, in supranational organizations such as the European Union (EU) where European law constitutes the "law of the land" and, thus, some elements of hierarchy are present.

However, no modern state relies solely on coercion and hierarchy to enforce the law. The main difference between modern states and global governance is not that non-hierarchical modes of steering do not exist in the former. The main difference is that global governance – whether through interstate regimes or PPPs - has to rely *solely* on non-hierarchical modes of steering in the absence of a world government. As to these non-hierarchical modes, we can further distinguish between two forms which rely on different modes of social action and social control.

First, non-hierarchical steering can use positive incentives and negative sanctions to entice actors into compliance with norms and rules. The point is to use incentives and sanctions to manipulate the cost-benefit calculations of actors so as to convince them that rule compliance is in their best interest. As to rule-setting, 'bargaining' during which self-interested actors try to hammer out agreements of give-and-take based on fixed identities and interests has to be mentioned here, too. This mode of steering essentially follows a logic of instrumental rationality as theorized by rational choice. Actors are seen as egoistic utility maximizers or optimizers who agree to rules, because they are in their own interests. Voluntary compliance follows from self-interested behavior in this case.

A second type of non-hierarchical steering focusses on increasing the moral legitimacy of the rules and norms in question. The idea is that actors will comply voluntarily with norms and rules, the more they are convinced of the legitimacy of the rule (see Hurd 1999). The legitimacy of a rule can result from beliefs in the moral validity of the norm itself, but it can also result from beliefs in the validity of the procedure by which the rule had been worked out. Voluntary rule compliance is based on the acceptance of a particular logic of appropriateness (March and Olsen 1989, 1998). But how do actors come to accept a new logic of appropriateness? They acquire the social knowledge to function appropriately in a given society or they start believing in the moral validity of the norms and rules in question. In either case, the micro-mechanism underlying this type of social steering involves learning and persuasion based on arguing.

Arguing implies that actors try to challenge the validity claims inherent in any causal or normative statement and to seek a communicative consensus about their understanding of a situation as well as justifications for the principles and norms guiding their action. Argumentative rationality also means that the participants in a discourse are open to be persuaded by the better argument and that relationships of power and social hierarchies recede in the background (Habermas 1981; Risse 2000a). Argumentative and deliberative behavior is as goal-oriented as strategic interactions, but the goal is not to attain one's fixed preferences, but to seek a reasoned consensus. Actors' interests, preferences, and the perceptions of the situation are no longer fixed, but subject to discursive challenges. Where argumentative rationality prevails, actors do not seek to maximize or to satisfy their given interests and preferences, but to challenge and to justify the validity claims inherent in them – *and* are prepared to change their views of the world or even their interests in light of the better argument. In other words, argumentative and discursive processes challenge the truth claims which are inherent in identities, interests, and norms.

To summarize the analysis so far, "global governance" refers to international regimes and international (inter-state) organizations, on the one hand, and to transnational arrangements, on the other, which involve non-state actors directly in rule-setting, -implementation, and service provision. Both inter-state and public-private governance beyond the nation-state must rely on non-hierarchical modes of steering, be it via incentives and sanctions or be it via learning and persuasion. Both types of arrangements pose challenges to democracy, accountability, and legitimacy. In the following, however, I concentrate on transnational governance involving non-state actors.

3. Transnational Governance and the Challenges to Accountability and Legitimacy

Can there be democratic governance beyond the nation-state? The answer to this question is by no means self-evident. As mentioned above, many argue that democratic governance beyond the nation-state is impossible because there is no global "demos" based on a collective and cosmopolitan identity of world citizens including a common sense of purpose. If this is the case, then the familiar mechanism of liberal states does not work in the global system, namely that democratic processes and procedures guarantee the legitimacy of laws and norms and, thus, induce voluntary compliance with those rules even if they are costly for the citizens (this follows Max Weber's definition of legitimacy in Weber 1921/1980, 16). In democratic systems, a social order is legitimate, because the rulers are accountable to their citizens who can participate in rule-making through representations and can punish the rulers by voting them out of office. This implies a congruence between the rulers and the ruled through mechanisms of representation. These mechanisms are mostly absent beyond the nation-state. As a result, transnational governance faces legitimacy problems.

We can pinpoint the problem further by using the concept of *accountability*. Following Keohane who also builds upon Weber, accountability refers to a principal-agent relationship "in which an individual, group or other entity makes demands on an agent to report on his or her activities, and has the ability to impose costs on the agent" (Keohane 2004, ms., 12; see Weber 1921/1980, 25). Keohane then distinguishes between internal and external accountability. "Internal" accountability refers to authorization and support by principals to agents who are institutionally linked to one another. Democratic governments are accountable to their citizens who elect them and provide political support. Firms are accountable to their shareholders who provide financial resources. "External" accountability refers to people or groups outside the acting entity who are nevertheless affected by it. U.S. foreign policy affects people across the globe who have no means to elect or otherwise influence the U.S. government. Yet, U.S. foreign policy is not accountable to those members of the international community. Investment decisions by multinational corporations directly influence the lives of many groups and people who also have little input in those choices. The concept of accountability is useful because of its actor-centeredness. It allows to identify particular responsibilities of corporate actors involved in transnational governance. Moreover, accountability as a concept avoids problems which the concept of democracy faces in a political space without a demos or a nation (see Benz 1998 on this point). Conduct the following thought experiment: If the actors involved in transnational governance were fully accountable internally and externally, would we still face a legitimacy problem beyond the nation-state?

The concepts of accountability and legitimacy are related, but need to be distinguished. While accountability focusses on a particular relationship among actors, legitimacy refers to the particular quality of the social and political order. Institutions and rules are legitimate, not actors.[5] A legitimate order induces certain behavior of actors, namely voluntary compliance with costly rules. We can then use Fritz Scharpf's familiar distinctions between "input" and "output" legitimacy which refers to its respective sources (Scharpf 1999). "Input" legitimacy concerns the participatory quality of the decision-making process leading to laws and rules. Those who have to comply with the rules ought to have an input in rule-making processes. "Output" legitimacy refers to the problem-solving

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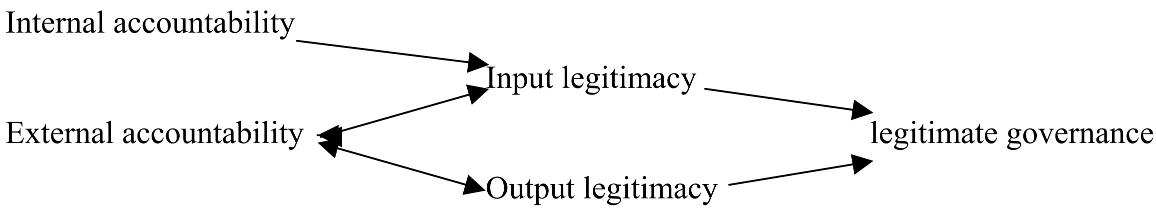
[5] Even though the legitimacy of an order might rest on the charismatic qualities of a leader, see Weber 1921/1980, 124.

quality of laws and rules. In democratic systems, both sources together insure the legitimacy of the political order.

One way to combine the two concepts of accountability and legitimacy would be to refer to "input legitimacy" as consisting of both internal and external accountability (see figure 2). If the agents involved in governance arrangements are both internally accountable to their "clients" – be it shareholders of firms or citizens of governments – and externally accountable to those who are affected by their decisions – the various "stakeholders" -, input legitimacy should be insured. At the same time, external accountability also affects output legitimacy. If the governing actors feel responsible to and have to justify their decisions toward those who are affected by them, this is likely to enhance the perceived problem-solving capacity of governance arrangements. However, improving accountability as such does not insure the effectiveness of governance arrangements. It is not clear per se that the environment becomes cleaner, that human rights are insured, because governing actors – both public and private – feel responsibility toward an imagined global community. Accountability might enhance compliance with costly rules, but output legitimacy is more about effectiveness in problem-solving capacity. Compliance is a necessary condition for effectiveness, of course, but it is not sufficient (on these distinctions see Börzel 2002; Raustiala and Slaughter 2002). One can have perfect compliance with the global climate change regime, even though this regime is probably rather ineffective in tackling the problem itself.

Figure 2: Accountability and Legitimacy



Let me now discuss how the transnational governance – public-private partnerships and private regimes – might score with regard to accountability and legitimacy and what the specific problems are.

Internal and External Accountability

As accountability is a property of actors involved in governance, the following discussion concentrates on states, international organizations, (multinational) firms, and (I)NGOs.

States

As to states, we need to distinguish between democracies and autocratic regimes. The former are internally accountable to their citizens and their elected representatives who can sanction governments through the normal mechanisms of liberal systems, while the latter have an internal accountability gap by definition. To the extent then that international *intergovernmental* regimes are based on bargains between democratically elected governments (as has been mostly the case in trade regimes, human rights regimes, less so in the environmental realm or in arms control), internal accountability should not be regarded as the main problem of international regimes. While national governments might use international arrangements to increase their autonomy vis-à-vis society through "cutting slack" (Putnam 1988), they can still be held accountable for their actions.

Rather, if there is a participatory gap, it concerns *external* accountability. The more powerful states are, the more they can resist demands to make them externally responsible for their actions and the more they can avoid to deal with the negative externalities that their behavior creates. The U.S. is a case in point (see Keohane 2004). Moreover, while the structure of international negotiations usually allows for "two level games" and, thus, questions of internal accountability to raise to the fore, there are few mechanisms to insure that those who are potentially affected by the international norms have a say in the making of these rules. In fact, the constitutive institution of the inter-state system – national sovereignty – works as a powerful norm *against* external accountability (Krasner 1999).

There are several strategies to make states more accountable externally. First, multilateral institutions based on diffuse reciprocity provide at least one mechanism to increase the external accountability of states vis-à-vis each other (Ruggie 1992). The more states are embedded in multilateralism, the more they internalize these rules, the more they can be held accountable externally for their behavior. One does not have to be a fan of Robert Kagan to acknowledge that institutionalizing multilateralism serves the interests of weaker states to influence the more powerful (Kagan 2003). However, while multilateralism might increase the mutual external accountability in a society of states, it does not necessarily affect their responsibilities toward citizens. Multilateralism is still confined to a state-centered world.

Second, including non-state actors in global governance is also meant to increase the external accountability of states. Trisectoral public policy networks and global public private partnerships are precisely meant to close the participatory gap identified by critics of international regimes (Reinicke 1998; Reinicke and Deng 2000; Kaul, Grunberg, and Stern 1999). Proponents of these networks argue that they increase input legitimacy by assuring that those affected by the rules have a say in making them. Increasing input legitimacy through increasing external accountability would then lead to better rule compliance. Yet, it is unclear whether simply including non-state actors – firms and the non-profit sector – in transnational governance arrangements closes the accountability gap per se, since these actors face their own accountability problems (see below). Moreover, including the "stakeholders" as a means to increasing external accountability in transnational governance mechanisms is easier said than done. Who decides about exclusion and inclusion and, thus, who the "stakeholders" are concerning a particular problem? There is no universally acknowledged mechanism of representation in the international system. As a result, other mechanisms need to be added, such as improving public transparency or the deliberative quality of the governance process (see below).

Finally, an additional mechanism to increase external accountability of (democratic) states concerns transnational social mobilization. Transnational social movement organizations, advocacy networks, and epistemic communities serve to transmit otherwise silenced voices into the democratic polities of liberal states (Boli and Thomas 1999; Smith, Chatfield, and Pagnucco 1997; Keck and Sikkink 1998; Haas 1992). Transnational social mobilization linking the local with the global public provides one way of influencing democratic governments to take the views of a wider audience into account. Many international regimes, including the climate change regime, the treaty banning landmines, and the treaty setting up the International Criminal Court (ICC) would not have been possible without the agenda-setting function of transnational social movements reminding governments of their responsibility toward the the Global Commons.

International Organizations

While much of the current criticism of global governance and economic globalization is directed at international (intergovernmental) organizations (IOs), IOs might actually face less accountability problems these days than either states or private actors. First, IOs are internally accountable to the states who fund them and authorize their policies. To the extent that the most powerful states in the current global system are liberal democracies, a direct line of authority exists from the citizens of democratic states to the IOs, such as the United Nations (UN), the International Monetary Fund (IMF), the World Bank, or the World Trade Organization (WTO).

Second, the problem, once again, is external accountability. Of course, many more people are directly affected by the policies of the World Bank, the IMF, or the WTO than those who can influence them via lines of internal accountability. Yet, IOs seem have a much better track record in responding to this criticism than either states or multinational corporations. The UN and the World Bank in particular have greatly increased their responsiveness to these concerns by, e.g., incorporating (I)NGOs into their decision-making processes – sometimes to the dismay of their principals, the states (see for O'Brien et al. 2000; concerning the UN, see Martens 2003). In fact, NGO pressure misses its targets in many cases, if directed solely against IOs rather than their principals, powerful states hiding behind the allegedly “unaccountable” international organizations (see Keohane 2004 on this point).

Why are IOs more sensitive to external accountability problems than other actors in transnational governance? Take the UN and its organizations. These IOs gain their legitimacy because they claim to be oriented toward the world’s common good rather than to the egoistic interests of the principals to whom they are internally accountable. In the case of the UN, this has resulted in a situation in which the foreign policy of its member states in the military realm is only considered legitimate if it has the stamp of approval by the UN and its security council. If IOs are providers of legitimacy in the world system, however, this also increases their power vis-à-vis their principals in terms of agent autonomy.

(Multinational) Corporations

Multinational corporations (MNCs) usually do not face an internal accountability problem, since their boards of directors and management are accountable to the shareholders. The main issue here is external accountability, since investment decisions of big firms have huge consequences for people around the world. Until recently and in contrast to both states and IOs, big corporations have been almost immune against criticism that they lack external accountability. Most transnational social movement campaigns on human rights and international environmental issues have been directed against states and IOs, not against MNCs even though the latter face huge responsibilities in these policy areas.

This picture has dramatically changed during the 1990s. Transnational campaigns have been conducted against child labor in sweat shops owned by the sportswear industry (e.g. the Nike campaign) and their suppliers or against oil companies such as Royal Dutch Shell (e.g. the Brent Spar oil platform or Shell's behavior in Nigeria). These campaigns have set the agenda for the emergence of a new transnational norm governing the behavior of firms, namely "corporate social responsibility." While the idea itself is much older than these campaigns, it has been filled with new content, namely that big firms should integrate international human, social, and gender rights as well as environmental norms into their corporate practices. "Corporate social responsibility" is precisely about increasing the external accountability of MNCs and other firms. The emergence of this new transnational norm appears to follow the norm life cycle suggested by Finnemore and Sikkink for international norms in general (Finnemore and Sikkink 1998). Many new global governance arrangements and trisectoral public policy networks have sprung up to increase corporate social responsibility including, e.g., the UN's Global Compact (Ruggie 2002), the Global Reporting Initiative, the Dow Jones Sustainability Index, and others. While their effectiveness remains to be seen, these arrangements reflect the growing awareness that firms face an external accountability problem in a globalized economy (see the contribution by Tanja Brühl in this volume; also Lipschutz and Fogel 2002).

(International) Non-Governmental Organizations (INGOs)

Interestingly enough, INGOs appear to face the opposite problem as firms and states when it comes to accountability. Many accuse INGOs for lacking legitimacy (see e.g. Brühl et al. 2001). Yet, what is meant here is probably internal accountability. This point is not new. Karl Kaiser argued more than thirty years ago that the increasing relevance of transnational actors in world politics seriously hampered democratic accountability in international affairs (Kaiser 1971). Most transnationally operating NGOs – the "conscience of the world" (Willetts 1996) – are internally accountable to a rather small group of members and to those who fund them, mostly middle class publics in Western societies, private foundations, and often public agencies (Smith 1997). Large membership organizations such as Amnesty International are the exception to the rule, but even Amnesty's "principals" are relatively wealthy people in Western societies. Thus, if we compare (I)NGOs to democratic states, they certainly lack internal accountability. As a result, many public agencies, such as the

European Commission, now demand that NGOs comply with certain internal accountability rules including transparency and democratic governance as a pre-condition for their public funding.

Yet, this emphasis on internal accountability probably misses the mark. Compared to states, IOs, and MNCs, NGOs lack material resources. All they have to wield influence in world politics is moral authority and expert knowledge in their respective issue-area of concern. (I)NGOs' moral authority, however, is directly linked to claims that they represent the common good in global affairs as well as the "voices of the weak and powerless." In other words, their moral authority implies a high degree of external accountability in a similar way as IOs (see above). At the same time, moral authority is not enough, it has to be combined with authoritative knowledge in the particular issue area. Moral authority and consensual knowledge of rights violations has made Amnesty International the widely recognized giant among the human rights INGOs (Risse 2000b). Yet, moral authority and claims to authoritative and consensual knowledge are highly vulnerable to reputational problems. INGOs claiming to represent the global common good can loose their reputation within very short periods of time, if they are found to be manipulated by states or firms, or if they are themselves found guilty of manipulating knowledge. This is what happened to Greenpeace after it became public that the INGO had made up data during the Brent Spar campaign against the Shell company. While nobody believed Shell's data as "objective," Greenpeace's reputation was hurt enormously when journalists found out about their behavior. In sum, INGO's influence in world politics is directly linked to their external accountability and legitimacy. Their vulnerability to threats to their reputation serves as a powerful control mechanism to keep them honest.

Figure 3 summarizes the discussion so far. It demonstrates that – except for the (I)NGO community – internal accountability is a lesser problem for the actors involved in transnational governance. The main issue of concern here is external accountability. If there is a lack of input legitimacy in global governance, it results from deficits in external accountability of the actors involved. It is no wonder, therefore, that most critics of a "legitimacy deficit" in global governance demand higher transparency and public accountability as a pre-condition for democratic governance in international affairs (e.g. Reinicke and Deng 2000; Wolf 2000; see also Klaus Dieter Wolf's contribution to this volume).

Figure 3: The Accountability Score

	Accountability	
	Internal	*External*
(Democratic) States	High	Low
International Organizations	High	Middle (increasing)
Multinational Corporations	High	Low (increasing
(I)NGOs	Low	High

But what else can be done to compensate for the lack of external accountability in transnational governance? There are two remedies discussed in the literature to which I will now turn,

- Increasing output legitimacy;
- Deliberative democracy as a functional equivalent to democratic representation.

Output Legitimacy

Particularly Fritz Scharpf has argued with regard to the EU that it lacks input legitimacy, because there is no European demos and little collective European identity which he sees as the pre-condition for an effective participatory democracy on the European level (Scharpf 1999). As a result, the EU should tackle its legitimacy problem by focussing on the enhancement of output legitimacy in terms of developing effective problem-solving capacities. If Scharpf's argument holds true for a supranational polity, it should be all the more valid with regard to global governance which neither consists of supranational institutions nor can rely on a global cosmopolitan identity of "world citizens." If global governance arrangements – be it international inter-state regimes or public-private partnerships – can be made effective in tackling the world's problems in international security, the globalized economy, international development, in human rights and the international environment, this increase in output legitimacy could compensate for a perceived lack of participatory input by those affected by the rules. More precisely then, if the problem of global governance regarding input legitimacy concerns primarily the lack of external accountability of the actors involved, then enhancing output legitimacy might help indeed. If global governance were effectively dealing with the problems of the global commons and providing global public goods

(Ostrom 1990; Kaul, Grunberg, and Stern 1999), this could indeed compensate for reduced external accountability.

But what about the problem-solving capacity of global governance arrangements? While I cannot survey the effectiveness of global governance in general, it is probably safe to argue that international regimes are better at solving coordination rather than collaboration problems (on the distinction see Stein 1983), at dealing with regulatory rather than distributive issues. Yet, most global problems in the areas of social rights, public health, development, and international environment require both collaboration and tackling distributive questions including fairness issues (on the latter see Albin 2001; Steffek 2002). Moreover and leaving the difficult question of measuring the problem-solving effectiveness of global governance arrangements aside for a moment, a pre-condition for effectiveness is compliance with international norms and rules. Most scholars agree that global governance including international regimes probably do not face compliance problems that are much worse than compliance with domestic law (Zürn and Joerges forthcoming; see also Raustiala and Slaughter 2002). Yet, many scholars also agree that many international regimes face a gap between almost universal norm recognition and compliance with these norms (overview in Börzel and Risse 2002). We have reached the stage of cascading norms in the human rights and environmental issue-areas in that there are very few states who are not partners to any treaty in these areas (see Finnemore and Sikkink 1998). But being partner to an international treaty does not necessarily mean that one automatically complies with the rules.

Interestingly enough, many international organizations including the UN, its various organizations, and the World Bank, have long recognized the gap between universal norm recognition in many issue-areas of global governance and compliance with these rules. To enhance compliance with international regimes and, thus, to increase the effectiveness with these regimes, they have suggested to include the rule adressees in both norm-generating and norm implementation processes. The increasing trend toward “new modes of governance” in international affairs including public-private partnerships or even private regimes is partially meant to address the compliance gap. The reasoning behind these proposals is that the more those affected by global governance are included in rule-making and –implementation, the better compliance will be and, as a result, the more effective global governance. Moreover, non-state actors – firms, INGOs, and expert communities –command resources such as information and knowledge which states and IOs require to improve compliance.

At this point, however, we are back at square one. Calls for public-private partnerships or even private regulation of international issues ("de-governmentalization" of governance, see contribution by Klaus Dieter Wolf) are trying to improve output legitimacy through increased input legitimacy. Yet, the starting point was that output legitimacy might compensate for a lack of input legitimacy including external accountability of many international actors. This brings me to a final set of proposals which suggest to tackle both input and output legitimacy through deliberative democracy.

Deliberation as a Remedy for the Legitimacy Gap?

Proponents of deliberative democracy claim that deliberation constitutes a significant means to increase the democratic legitimacy of governance mechanisms, particularly in situations in which democratic representation and/or voting mechanisms are not available options (see see particularly Held 1995; Wolf 2000; Bohman and Regh 1997; Elster 1998; Joerges and Neyer 1997; for the following see Risse 2004). Deliberation is based on arguing and persuasion as non-hierarchical means of steering to achieve a reasoned consensus rather than a bargaining compromise. The general idea of this literature is that democracy is ultimately about involving the stake-holders, i.e., those concerned by a particular social rule, in a deliberative process of mutual persuasion about the normative validity of particular rules. Once actors reach a reasoned consensus, this should greatly enhance the legitimacy of the rule thus ensuring a high degree of voluntary compliance in the absence of sanctions. As Ian Hurd put it, "(w)hen an actor believes a rule is legitimate, compliance is no longer motivated by the simple fear of retribution, or by a calculation of self-interest, but instead by an internal sense of moral obligation…" (Hurd 1999, 387). Such an internal sense of moral obligation that accepts the logic of appropriateness behind a given norm requires some measure or moral persuasion. Advocates of deliberative democracy argue, therefore, that deliberation and arguing not only tackle the participatory deficit of global governance (input legitimacy), but also increase voluntary compliance with inconvenient rules by closing the legitimacy gap. Thus, deliberative democracy is meant to strengthen both input and output legitimacy.

However, institutional solutions in transnational governance to increase the deliberative quality of decision-making face major obstacles which need to be addressed. There are several trade-offs between deliberation, accountability, and legitimacy to be considered. First, selecting the relevant stake-holders for transnational rule-setting processes is difficult. It is often unclear who the stakeholders are and whom they actually represent. While the actors involved in trisectoral networks rarely face serious internal accountability problems (see above), external accountability remains an issue. Deliberation requires participation of those in the policy-making process that are potentially affected by the rules. Take the World Commission on Dams, for example, a trisectoral body designed to develop rules for the construction of large dams. It was set up institutionally by the World Bank as a deliberative body to maximize arguing and learning. It produced a policy report, but there is little agreement in the literature and the policy world alike whether it actually achieved its goal of reaching a reasoned consensus that would allow the World Bank to construct a sustainable policy toward large dams without antagonizing the various stakeholders (See, e.g., Khagram 2000; Dingwerth 2003).

Second and related to the first problem, decisions about selection of members in deliberative bodies with policy-making authority are about inclusion and exclusion. Whom to include, whom to exclude and who actually decides about inclusion and exclusion represent, therefore, most contentious processes in the establishment of trisectoral public policy networks of global governance. This problem is exacerbated by the fact that specific stakeholder interests can usually be organized and represented much easier than diffuse stakeholder interests.

Third, once the stakeholders have been selected, how can deliberation and arguing be insured so as to improve the quality of the negotiations? Specific institutional settings are required that enable actors to engage in the reflexive processes of arguing. These settings must provide incentives for actors to critically evaluate their own interests and preferences, if the arguing process is supposed to go beyond simply mutual information and explicating one's preferences to others. At this point, a tradeoff between transparency and argumentative effectiveness in deliberative settings has to be considered. Many negotiation systems show that arguing and persuasion work particularly well behind closed doors, i.e., outside the public sphere (see Checkel 2001). A reasoned consensus might be achievable more easily if secrecy of the deliberations prevails and actors are not required to justify their change of position and the like in front of critical audiences. Behind closed doors, negotiators can freely exchange ideas and thoughts more easily than in the public sphere where they have to stick to their guns. Yet, transparency is usually regarded as a necessary ingredient for increasing the democratic legitimacy of transnational governance. If we can only improve the deliberative quality of global governance by decreasing the transparency of the process even further, the overall gain for legitimacy and external accountability might not be worth the effort.

This leads to a final point, namely potential tensions between accountability and deliberation. Negotiators – be it diplomats or private actors in trisectoral networks – usually have a mandate from their principals to represent the interests of their organizations and are accountable to whoever sent them to the negotiating body. As a result, there are limits in the extent to which they are allowed to engage in freewheeling deliberation. What if negotiators change sides in the course of negotiations because they have been persuaded by the better argument?[6] Of course, it makes no sense to consider negotiators as nothing but transmission belts of their principals' preferences with no leeway at all. But it does raise issues of accountability, if negotiators are so persuaded by the arguments of their counterparts that they change sides. At least, one would have to require that they engage in a process of "two level arguing," i.e., of trying to persuade their principals that they should change their preferences, too.[7] It is not enough to institutionalize deliberative processes in multilateral negotiations including trisectoral public policy networks. There needs to be a communicative feedback loop into the domestic and other environments to which negotiating agents are accountable. Otherwise, one would sacrifice accountability and legitimacy for efficiency. "Two level arguing" might also be necessary to overcome the tension between effectiveness of deliberation in secrecy, on the one hand, and ensuring the transparency of the process, on the other.

Conclusions

This chapter tried to unpack the concepts of accountability and legitimacy in order to get an analytical handle on the problem of democracy in global governance. In particular, I have

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[6] A famous story regarding the World Commission on Dams concerns a representative of construction companies who "switched sides." As a result, the consortium of dam construction companies did not accept the Commission report as valid.

[7] "Two level arguing" is analogous to Putnam's "two level games," see Putnam 1988. I thank Mathias Koenig-Archibugi and David Held for alerting me to this point.

argued that democratic accountability is strongly related to the concept of input legitimacy. Yet, the main problem of transnational governance is not so much the internal accountability of the actors involved – be they states, international organizations, firms, or (I)NGOs. The problem for legitimate governance beyond the nation-state is to improve on external accountability, i.e., to make sure that the various governance bodies – from international regimes to public-private partnerships and cooperative arrangements among non-state actors – can be held responsible by those who are affected by their decisions and rules. Enhancing output legitimacy in terms of the problem-solving effectiveness of global governance is not an easy way out, either. Most scholars and practicioners alike have long realized that the effectiveness of governance is directly related to the participatory quality of the decision-making process. As a result, transnational governance arrangements ought to include "external stakeholders" as a way of improving both their participatory quality and their effectiveness. At this point, the various mechanisms proposed by advocates of deliberative democracy have to be considered as a means to enhance external accountability. Yet, deliberative democracy does not constitute a ready-made solution to the legitimacy problems of global governance, because important trade-offs between deliberation, accountability, and output legitimacy have to be considered.

In sum then, there is no easy solution to the legitimacy problems of global governance. From a normative standpoint, the various trade-offs have to be weighed against each other. However, it makes little sense to hold the 'new modes of governance' which include non-state actors in rule-making and –implementation to such high standards that neither our domestic democracies nor international regimes among states nor international organizations are able to meet. Rather, we must measure these governance arrangements comparatively in order to weigh their advantages and disadvantages.

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