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Innovations in Globalized Regulation

Opportunities and Challenges

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Abstract

This paper lays out a comparative framework for assessing the potential, limitations and challenges of a variety of emerging institutional innovations in globalized regulation. The framework highlights two dimensions of effectiveness—the *comprehensiveness* of coverage, and the *credibility* of the regulatory regime. Performance in relation to these two dimensions is assessed for three distinctive approaches to globalized regulation: i) *Government-centric approaches,* including treaties, extra-territorial regulation and government networks—seven examples are assessed in the paper. ii) *Civil regulation,* including both joint initiatives by private firms and civil society, and wholly private self-regulatory approaches —with eight examples assessed. iii) *Hybrid approaches,* involving multiple governmental and non-governmental stakeholders—with three examples assessed. Overall, the assessment points to an abundance of innovation—but a seeming failure of the many innovations to deliver more than, at best, partial successes in meeting the credibility and comprehensiveness criteria for effectiveness. The paper concludes by suggesting ways in which the distinct elements of different approaches might be combined so that the whole can be more, rather than less, than the sum of its parts. The way forward is likely to be incremental and cumulative, bottom-up as well as top down – transcending a too neat, and ultimately unhelpful, bifurcation between civil society advocacy and technocratic rule-making.

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Produced by the Research Support Team

Innovations in Globalized Regulation: Opportunities and Challenges

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ANALYTICAL OVERVIEW

Purpose and Approach

In recent decades, there has been a growing trend towards globalized approaches to economic regulation – i.e. approaches that provide a global framework of rules and/or standards as a platform for country-specific action. The trend has been very far-reaching. Examples run the gamut of sectors from financial regulation, to regulation of carbon emissions, other environmental regulation, regulation of competition, labor standards, global anti-corruption initiatives – and many others.

The rapid expansion of these approaches has been accompanied by correspondingly rapid institutional innovation. The process has been driven from the bottom-up: practitioners have experimented with a diverse array of initiatives, with different combinations of participants, and diverse approaches to rulemaking, monitoring and enforcement – but generally with little awareness of the variety of potential approaches, of ways in which their specific initiative fits into a broader whole. This paper aims to fill this gap by assessing comparatively the effectiveness of a variety of emerging institutional innovations in globalized regulation. Its objectives are:

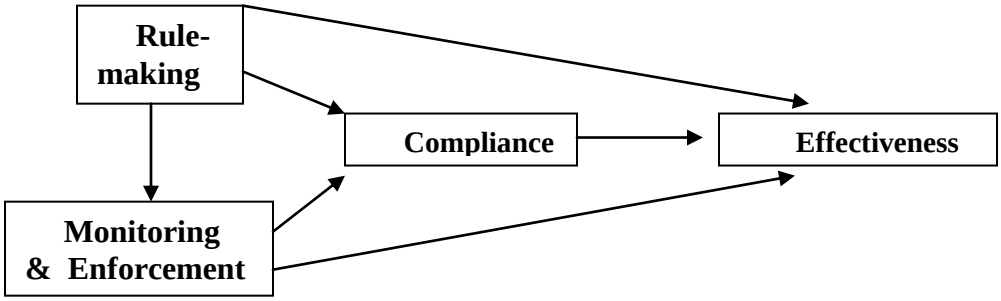
- To provide a broad comparative framework within which different approaches to globalized regulation can be situated, and their potential, limitations and challenges assessed.
- To examine the interactions among different types of globalized regulation – with the intent of identifying a variety of institutional options for globalized regulatory reform that may not otherwise be evident.

The paper focuses on two dimensions through which rulemaking, monitoring and enforcement influence the effectiveness of globalized regulation: the *comprehensiveness* of coverage, and the *credibility* of compliance with the regulatory regime:

- *Rule comprehensiveness* influences effectiveness via the extent to which the globalized rules cover those countries and companies that significantly affect the outcome that is being regulated.
- *Rule credibility* influences effectiveness via the extent to which the *institutional arrangements* for rulemaking, monitoring and enforcement provide incentives for compliance (and/or disincentives for noncompliance) among those that fall within the regulatory net.

Comprehensiveness and, especially, credibility depend upon the quality of regulatory governance structures. These structures are built around three sets of functions – rule-making, monitoring, and enforcement. Figure 1 overleaf illustrates the channels that link each of these functions to regulatory effectiveness.

Figure 1: Channels of Regulatory Effectiveness



Of special interest for the present exercise is that each of the rulemaking, monitoring and enforcement functions can be undertaken via a variety of mechanisms -- wholly public, wholly private or along a spectrum that combines these, at both global and national level. The paper assesses performance in relation to both comprehensiveness and credibility for three distinctive approaches to globalized regulation:

- *Government-centric approaches,* including treaties, extra-territorial regulation and government networks.

- *Civil regulation,* including both joint initiatives by private firms and civil society, and wholly private self-regulatory approaches.

- *Hybrid approaches* -- involving multiple governmental and non-governmental stakeholders, as well as approaches where important responsibility for some combination of design, monitoring and enforcement lies principally in the hands of a transnational body.

The body of the paper provides detailed comparative assessments of effectiveness for each of eighteen specific globalized regulatory initiatives – distributed across the three approaches, and across five distinct content areas (environment; anti-corruption; finance; labor; and oil/mining). This executive summary highlights the key patterns that were evident from the assessment – plus some implications as to ways forward to enhance the effectiveness of globalized regulatory efforts.

Government-centric Approaches: Patterns, Challenges and Opportunities

Seven examples of government-centric approaches to globalized regulation are discussed in the paper: (i) the Montreal Protocol (environment/CFC emissions reduction); (ii) & (iii) the Basel Accords and the Financial Stability Board (global banking regulation); (iv)-(vi) the United Nations Convention Against Corruption; the OECD Anti-Bribery Convention; and the United States Foreign Corrupt Practices ACT; and (vii) the Core Principles of the International Labor

Office. Though very different from one another, they all share the following process characteristics:

- The rules are negotiated by government officials, and then promulgated as laws (or administrative 'codes') by national governments.
- Enforcement is the responsibility of national governments.
- Monitoring is the responsibility of official, public bodies – national and globalized, with the balance varying across the initiatives.

Four propositions as to the extent to which government-centric approaches to globalized regulation address the challenges of comprehensiveness and credibility emerge from the comparative assessment of the seven examples.

First, government-centric approaches offer a potentially straightforward route to achieving *comprehensiveness*: The Montreal Protocol, UNCAC and the ILO Core Principles, all have been signed by the overwhelming majority of countries.

Second, *credibility* requires more than signing on to a set of rules -- and the credibility of government-centric approaches has been mixed. Rules need to have sufficient specificity to make them capable of being monitored and enforced; there needs to be both good-quality monitoring and a sanction for non-compliance. For government-centric regulation, much of this is expected to happen at the national level – via the translation of global agreements into national statutes or administrative regulations, that are then enforced domestically. In practice:

- The Montreal Protocol has achieved strong credibility, with rulemaking, monitoring and enforcement all robust.
- The OECD Anti-Bribery Convention and the ILO Core Principles generally have been incorporated effectively into national laws, and have been monitored systematically at a global level, but national-level enforcement has been uneven. And
- The UN Convention Against Corruption has been incorporated into national law but, until recently, has not had any systematic credibility-enhancing arrangements in place for monitoring.

Third, even though enforcement is at the national level, globalized monitoring can readily be incorporated into government-centric approaches, and has the potential to buttress credibility. As the difficult interactions between the OECD's anti-corruption compliance monitoring program and the British authorities showed, robust monitoring does not translate directly into enforcement. But that same example also demonstrates that peer pressure, anchored in prior endorsement of globalized rules and robust, transparent globalized monitoring can have an impact, even on the actions of sovereign, national governments.

Fourth, in a world where robust treaty-making and implementation is more the exception than the rule, semi-formalized government-networks comprise a promising alternative way of engaging governments on global challenges, but with some significant risks. As the examples of the Basel Committee and the Financial Stability Board illustrate, the benefits of government-network approaches are:

- They offer a low-cost, pragmatic entry point – organized around technical interactions, including the development of good practice principles, that support the harmonization of national regulations.
- They are scaleable -- an initial group of like-minded countries can come together, agree on a joint approach for addressing some specific issue, and then invite other countries to join in.
- They leverage the professionalism and desire for mutual respect among technical peers as an informal 'reputation-based' means of enforcement.

The risk is that of the false comfort of having acted but without addressing adequately either comprehensiveness or credibility -- of becoming a comfortable insiders club that fails to reach out to other countries, even though their participation is key to achieving the global goal; and of being unwilling to rock the boat by monitoring closely whether the affirmations of participants indeed are translating into law and practice on the ground.

Civil Regulation – Patterns, Challenges and Opportunities

Civil regulation is defined as comprising non-statutory processes through which diverse combinations of private firms and civil society organizations jointly set and monitor rules governing the actions of participating transnational firms. Globalized civil regulation differs starkly from 'government-centric' approaches across the three dimensions highlighted earlier:

- Rules are negotiated and agreed upon entirely by non-state actors.
- Monitoring, insofar as it is incorporated into the regulatory arrangements, is the responsibility of non-state actors.
- Enforcement is reputation-, not statute- based.

Eight examples of civil regulation are discussed in the paper: (i) the Forest Stewardship Council; (ii)-(iv) civil anti-corruption initiatives (the Transparency International Business Principles; the World Economic Forum Partnership Against Corruption Initiative; the International Chamber of Commerce Rules of Conduct); (v)-(viii) labor standards initiatives (the Fair Labor Association; Social Accountability International; Nike's Code of Conduct; and the Worldwide Responsible Accredited Production). Three propositions as to the extent to which globalized civil regulation addresses the challenges of comprehensiveness and credibility emerge from the comparative assessment of these examples.

First, civil regulations -- being wholly voluntary 'clubs' of firms, nongovernmental organizations and associated stakeholders (e.g. consumers and shareholders) committed to going beyond a minimalist approach to global environmental, ethical and social practices -- cannot in their nature address effectively the *comprehensiveness* dimension of globalized regulatory performance.

Second, civil regulation can be highly *credible* – exemplified most vividly in the robust, multi-stakeholder arrangements for rulemaking and monitoring adopted by the Forest Stewardship Council, Social Accountability International, and other robust standards organizations that have affiliated with one another by creating the ISEAL Alliance.

Third, peer reputation comprises the critical enforcement mechanism through which civil regulation assures credibility – but the incentives of key actors vis-à-vis reputational enforcement are mixed. Reputational enforcement operates via signals from markets (consumers, shareholders etc), or from individual and organizational standing with peers; the incentives can be positive or negative. All actors have a clear incentive to signal their good intent. Ambiguity as to follow-through may offer the benefits of seeming responsive, but at limited cost. To achieve credibility, reputation-based enforcement thus needs to overcome a wall of skepticism. Investment in the credibility of the regulatory arrangements (how the rules are made; how they are monitored) becomes key.

Hybrid Approaches to Globalized Regulation – Patterns, Challenges and Opportunities

Hybrid approaches -- -- involving multiple governmental and non-governmental stakeholders, as well as approaches where important responsibility for some combination of design, monitoring and enforcement lies principally in the hands of a transnational body -- comprise yet another recent institutional innovation in globalized regulation. The key defining feature of these hybrid approaches is a process of rulemaking that involves both governmental and non-governmental stakeholders. Monitoring generally has a strong global dimension; enforcement depends in part on reputation.

Three examples of hybrid approaches are considered in the paper: (i) the Extractive Industries Transparency Initiative (EITI); (ii) the Kimberley Process Certification Scheme (KPCS) to end the flow of 'conflict diamonds' into the world maket; and (iii) the International Labor Office/International Finance Corporation's Better Work program. Three conclusions as to the extent to which hybrid approaches address the challenges of comprehensiveness and credibility emerge from the analysis.

First, hybrid approaches have the potential to be comprehensive. The KPCS was able to incorporate all the major players in the world diamond market. The EITI, though not as comprehensive, has been embraced by a large number of governmental and non-governmental actors, and official international organizations -- and continues to engage with potential new participants.

Second, hybrid approaches have the potential to be credible. Both the KPCS and EITI have put in place effective arrangements for monitoring (as has the Better Work program, so far on a smaller scale). Both have invested successfully in the legitimacy of their rulemaking and monitoring process. This, in turn, provides a strong platform for effective peer-reputation-based enforcement. Especially noteworthy, given the involvement of many official/government players, is that the approaches through which both have built credibility are more 'civil' than 'government-centric: partnerships with multiple stakeholders; transparent monitoring, contracted to non-governmental actors.

Third, though, each of the three hybrid approaches focus single- mindedly on one narrow goal: keeping 'conflict diamonds' out of the international marketplace (KPCS); assuring that accurate audited information on payments between governments and international oil and mining

companies is transparently made available, including to civil society groups (EITI); and providing consolidated, accurate, transparent information on factory-level labor standards ('Better Work'). It remains uncertain whether the simple, consensual rules that are the foundation of the three hybrid examples are sufficiently robust and demanding to achieve more than modest globalized regulatory objectives.

Enhancing the Effectiveness of Globalized Regulation

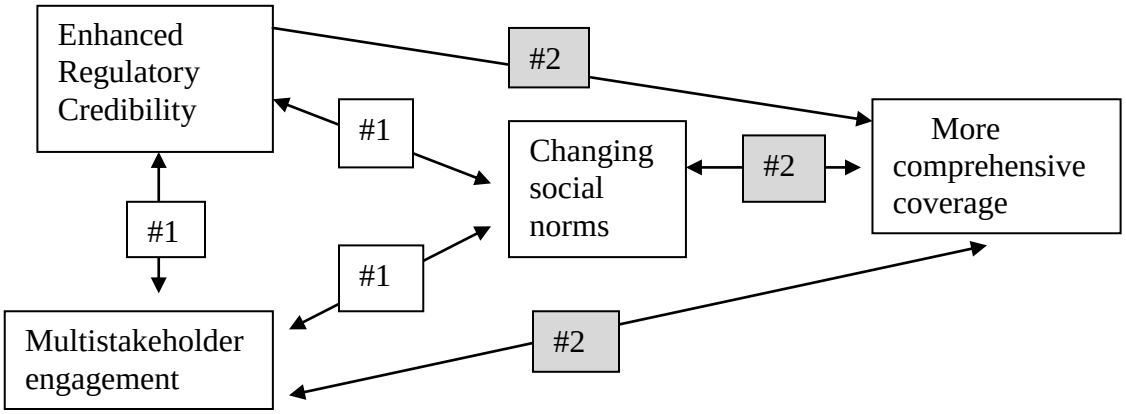
Overall, the comparative assessment points to an abundance of innovation – but a seeming failure of these many innovations to deliver more than, at best, partial successes in meeting the credibility and comprehensiveness criteria for effectiveness:

- Only three of the eighteen regulatory initiatives that were analyzed -- the Montreal Protocol, the Extractive Industries Transparency Initiative and the Kimberley Process -- meet both criteria. Each of the three was benchmarked as'highly effective' for at least some of the comprehensiveness, rulemaking, monitoring and enforcement criteria – and as 'moderately effective' for all of the remainder.
- Two more (the Forest Stewardship Council and Social Accountability International) are strong on the credibility, but weak on the comprehensiveness dimension.
- A further two (the UN Convention Against Corruption and the ILO Core Principles) have comprehensive coverage but limited credibility.

All of the others achieve middling or worse performance across the two dimensions.

These systematic differences in performance suggest that there might be potential synergies between the different types of regulatory forms. A well-designed and implemented treaty, for example, remains potentially the most effective of the regulatory forms considered – capable in principle of addressing both comprehensiveness and credibility. Long experience has, however, confirmed that treaties – especially genuinely binding ones – are enormously difficult to negotiate and implement. Other regulatory forms can add value as alternatives where treaties are infeasible – and, perhaps, as entry points for cumulative processes of change that may, on occasion, culminate in an international treaty. Figure 2 suggests how a more systematic effort to capture these synergies might work.

Figure 2: Globalized Regulatory Effectiveness -- From Credibility to Comprehensiveness



The figure highlights interactions among four variables. The first two are credibility and comprehensiveness, discussed earlier. The third comprises multistakeholder engagement which, as detailed in the paper, is central to many civil and hybrid globalized approaches. The fourth comprises changes in social norms of consumers, citizens and investors (specifically, in the context of this paper, in relation to the social, environmental and ethical dimensions of production, consumption and trade).

Two potential feedback loops among these four variables are especially relevant:

- *Feedback loop #1:* A credibility-enhancing feedback loop: a mutually-reinforcing interaction between multistakeholder engagement and credibility, with enhanced multi-stakeholder engagement creating pressure for improved credibility and gains in credibility spurring enhanced engagement. Together, the two spur changes in social norms which, in turn, further fuel the positive feedback loop. And
- *Feedback loop #2:* A comprehensiveness-expanding loop – as changing social norms, strengthened credibility, and enhanced engagement build pressures for additional actors to participate in the globalized regulatory platform, thereby helping to expand comprehensiveness and, in turn, pressuring others not yet involved to participate in the globalized processes.

The main text of the paper suggests ways in which protagonists of globalized regulation might pro-actively leverage these feedback loops – with special potential for enhancing the effectiveness of globalized efforts to address corruption, labor standards and (though this has not been a main focus of the paper) carbon emissions reduction.

Realizing this potential for virtuous spirals would require a profound shift in approach. Civil and government-centric approaches to global regulation generally have been viewed as entirely separate from one another, involving different players, different cultures and much mutual suspicion. The approach here calls on the protagonists of different regulatory forms to come to terms with their preferred forms' limitations – and the potential contribution of other forms. To put it differently: progress in globalized regulation is not likely to come through some sudden top-down breakthrough. Rather, the way forward is likely to be incremental and cumulative, engaging and monitoring across borders, bottom-up as well as top down – transcending a too neat, and ultimately unhelpful, bifurcation between civil society advocacy and technocratic rule-making.

Innovations in Globalized Regulation: Opportunities and Challenges

Brian Levy

I: INTRODUCTION AND APPROACH

Purpose. In recent decades, there has been a growing trend towards globalized approaches to economic regulation – i.e. approaches that provide a global framework of rules and/or standards as a platform for country-specific action. The trend has been very far-reaching. Examples run the gamut of sectors from financial regulation, to regulation of carbon emissions, other environmental regulation, regulation of competition, labor standards, global anti-corruption initiatives – and many others.

The underlying reason for the rise of globalized regulation is the surge in global trade, investment and financial flows – and the new incentives, opportunities and challenges that have resulted for corporations, consumer-citizens, and governments in both developed and developing countries:

- The acceleration of globalization – and of the global level of economic activity more broadly – has raised the profile and risks associated with a variety of global public goods (or, rather, bads): e.g. infectious diseases, global warming, financial market contagion.
- Globalized trade and investment has disrupted the regulatory expectations of citizens and consumers in northern countries – domestic regulations had been painstakingly developed for domestic markets over many decades -- that the goods and services being consumed locally, and the companies that produced these goods, met civic environmental social and ethical expectations vis-à-vis these product, production process, and corporate conduct characteristics.
- Globalized trade and investment has generated new imperatives among firms for improving productivity via enhanced supply chain management, with accompanying pressures for harmonization of production systems, standards and norms – both within firms, and across firms that are part of inter-connected supply chains.

The rapid expansion of globalized approaches to regulation in response to these drivers has been accompanied by correspondingly rapid innovation in their institutional forms. The process has been driven from the bottom-up: practitioners have experimented with a diverse array of initiatives, with different combinations of participants, and diverse approaches to rulemaking, monitoring and enforcement. Practitioners generally work within a specific regulatory arena, often with little awareness of the variety of potential approaches, of ways in which their specific initiative fits into a broader whole – or even that what they are doing might usefully be understood as contributing to an emerging quilt of globalized regulation.

This paper aims to fill this gap by assessing comparatively the effectiveness of a variety of emerging institutional innovations in globalized regulation. Its objectives are:

- To provide a broad comparative framework within which different approaches to globalized regulation can be situated, and their potential, limitations and challenges assessed.
- To examine the interactions among different types of globalized regulation – with the intent of identifying a variety of institutional options for globalized regulatory reform that may not otherwise be evident.

Approach. The principal focus of this paper is on the institutional arrangements for globalized regulation – and their effectiveness in achieving their intended purposes, whatever these may be. This is not the only approach. An alternative would be to focus on the normative challenge – the putative gap between market and socially-preferred outcomes (the classic welfare economics rationale for economic regulation). Box 1 overleaf summarizes this perspective.

For institutional analysis of globalized regulation, a useful point of departure is the work of Oliver Williamson. Following Coase (1960), Williamson and others have underscored that regulatory institutions designed to align collective and private interests can be conceived of as governance structures. Governance structures generally are built around three sets of functions – rule-making, monitoring, and enforcement. Of special interest for the present exercise is that each of these functions can be undertaken via a variety of mechanisms -- wholly public, wholly private or along a spectrum that combines these, at both global and national level. Table 1 illustrates by differentiating between two poles along the spectrum -- public and private mechanisms.

Table 1: Regulatory Institutions -- Public and Private Approaches

	Public/Statutory	**Private/Voluntary**
RULE-MAKING	Parliament/Administrative regulations/global treaty	Collaborative standards initiatives
MONITORING	Public sector;	Peer monitoring 3rd party verification
ENFORCEMENT	Justice system/trade restraints	Market reputation (vis-à-vis customers, shareholders, and other stakeholders)

Rulemaking, monitoring and enforcement influence the effectiveness of globalized regulation via the ***content*** of the rules, via the ***comprehensiveness*** of coverage, and via the ***credibility*** of compliance with the regulatory regime. Figure 1 highlights the key channels.

Box 1: Why globalized regulation? – a normative perspective

Welfare economics provides the appropriate point of departure for clarifying the purpose of globalized regulation. By definition, the aim is to produce a result that is different from what would otherwise have been the laissez faire outcome. Box Table 1 identifies four distinct possible purposes for regulating at a globalized level, and summarizes their relative importance for six regulatory content area (the five considered in this paper, plus food safety and quality).

Box Table A: The Motivations for globalized regulation

Sector/type of activity	**MOTIVATION**			
	Global public goods/bads & externalities	**National public goods/ bads & externalities**	**Other merit goods**	**Quality/product characteristics and cost**
Environment	***	***	**	*
Finance	***	*		**
Corruption	**	***	**	
Oil, mining	*	**	***	
Labor conditions	*		***	*
Food safety and quality	*			***

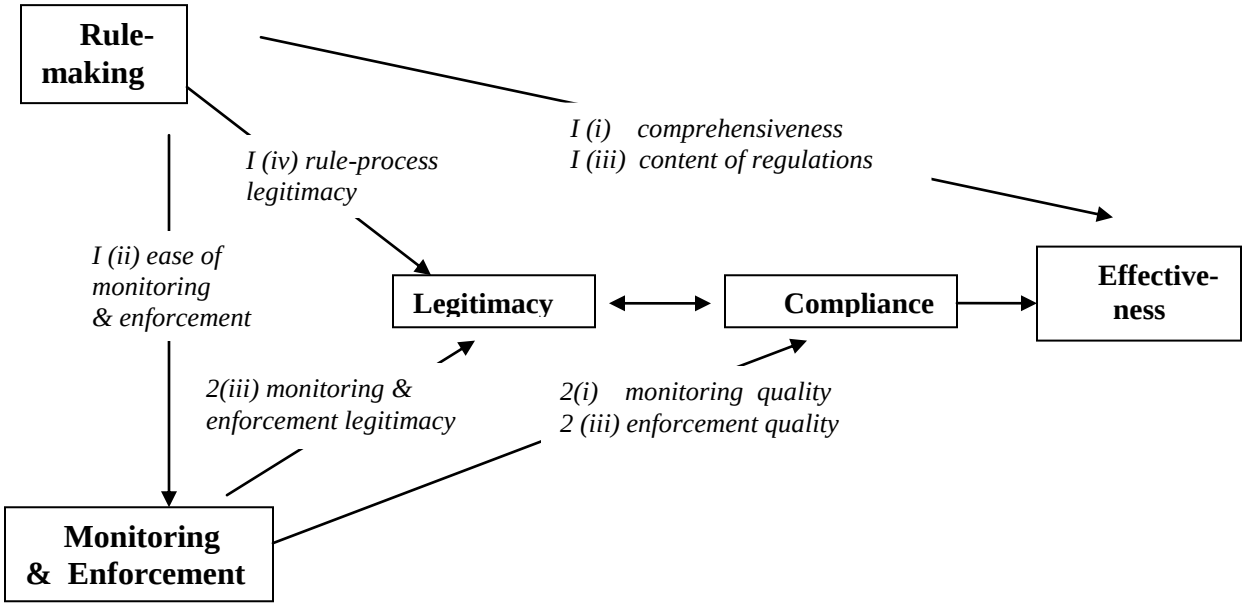
*** = most relevant; ** = somewhat relevant; * = marginally relevant; zero stars = not relevant

As the table summarizes, the purposes are:

- Provision of global public goods/positive externalities – and/or the mitigation of negative externalities. This is, of course, the classic market failure which regulation is intended to address. Environnmental regulation is the classic example with, as the table shows, externalities at both global and national levels. A second example in the table is the global public bad of contagion from financial sector collapse. The corrosion as a result of corruption of ethical norms – which are both a good in themselves, and reduce transactions costs – is a third example.
- Provision of national public goods/externalities [note, though, that efforts by high-income countries to mitigate national-level negative externalities in their low-income counterparts are a form of 'merit good' provision.] National level negative environmental externalities, or externalities from financial market failure are two clear examples. Corruption comprises a third example – insofar as it has corrosive effects on the public sector, on justice, and on other market institutions.
- The provision of 'merit goods'/reduction of 'demerit bads' – may, in the context of globalized regulation be thought of as 'conscience' goods. For example, 'northern' consumers and citizens may seek assurance that the business practices of private firms from their countries meet minimum social, environmental and ethical standards, that production overseas meets minimum environmental standards, that both contracting and rent sharing in the oil and gas sectors are transparent and do not undermine public institutions in weak states, and that worker conditions are acceptable.
- The regulation of quality/product characteristics and cost. Globalized harmonization of regulations around common standards reduces transactions costs. Further, consumers in northern countries may seek 'northern' standards of quality and safety in imported products (e.g. food). Regulation at source – minimum food quality/safety standards ("pesticide free"; "organic" etc.) which can be internalized within the global supply chains, and 'branding' of individual companies – is one way of achieving this goal.

Rule content influences effectiveness via (a) the extent to which the rules are able to align (regulated) private incentives and social value added; and (b) the extent to which rule design facilitates monitoring and enforcement – or, alternatively, adds to their complexity. These channels are illustrated as channels I(i) & I(ii) in Figure 1 below. The remainder of this paper does not consider further this content dimension: assessment of the efficiency and effectiveness of the content of specific rules is best done using a narrowly-focused, in-depth empirical methodology, not the broadly comparative approach adopted here.

Figure 1: Channels of Regulatory Effectiveness



Rule comprehensiveness influences effectiveness via the extent to which the globalized rules cover those countries and companies that significantly affect the outcome that is being regulated (channel I(iii) in Figure 1).

Rule credibility influences effectiveness via the extent to which the *institutional arrangements* for rulemaking, monitoring and enforcement provide incentives for compliance (and/or disincentives for noncompliance) among those that fall within the regulatory net. For globalized regulation, four channels are especially key to credibility:

- *Rule-process legitimacy:* The extent to which the process proceeds in such a way as to strengthen the perceived legitimacy of the globalized rulemaking effort among the full range of relevant stakeholders (channel I(iv) in Figure 1).
- *Monitoring quality.* Credible and cost effective (both financial and transactions costs) observation of whether those who have agreed to abide by the rules are indeed following through on their commitments is a necessary condition for effective contracting (channel 2(i)). Monitoring can be at country or global levels – though some global information-sharing is likely to be a necessary condition for building credibility transnationally.

- *Enforcement quality.* Enforcement influences effectiveness directly insofar as credible costs of noncompliance create a credible incentive for compliance (channel 2(ii)). Transnational enforcement seemingly conflicts with the principle of national sovereignty – suggesting that enforcement poses distinctive challenges for globalized regulatory initiatives.
- *Monitoring and enforcement legitimacy.* Credible monitoring and enforcement enhance the perceived legitimacy of regulation – strengthening the incentive for self-enforcement, and thereby both reducing transactions costs of compliance, and extending voluntary participation and hence regulatory reach (channel 2(iii) in Figure 1). Gains in voluntary participation and self-enforcement are likely to have special relevance for globalized regulation insofar as more punitive approaches are less feasible at the global level.

Section II will consider how comprehensiveness and credibility influence regulatory effectiveness within each of a variety of globalized regulatory initiatives. Section III considers more broadly some potential complementarities, conflicts and synergies among the different approaches to globalized regulation – and how insight into these can broaden the toolkit of options available to practitioners.

II: THE VARIETIES OF GLOBALIZED REGULATION, AND THEIR EFFECTIVENESS

This section explores the relevance of the framework laid out above in explaining the effectiveness of 20 specific globalized regulatory initiatives listed in Table 2. The table groups the 20 initiatives across two dimensions. The first comprises the five content areas that are considered in this paper: environment; anti-corruption; finance; labor; and oil/mining. The second dimension comprises the institutional arrangements, with three distinctive approaches highlighted:

- *Government-centric approaches*, including treaties, extra-territorial regulation and government networks.

- *Civil regulation*, including both collaborative initiatives by private firms and civil society, and wholly private self-regulatory approaches.

- *Hybrid approaches* -- involving multiple governmental and non-governmental stakeholders, as well as approaches where important responsibility for some combination of design, monitoring and enforcement lies principally in the hands of a transnational body.

Section IIA examines government-centric approaches to globalized regulation. Section IIB explores civil regulation. Section IIC examines hybrid approaches.

Table 2: Varieties of Globalized Regulation

	Government-centric approaches			***Civil Regulation***		***Hybrid Approaches***
	Treaty	**Extra-territorial**	**Government Network**	**Collaborative**	**Wholly Private**	
Environment/ Carbon emissions reduction	Montreal Protocol			Forest Stewardship Council;		
Finance			Basel Accords; Financial Stability Board			
Corruption	United Nations Convention on Anti-Corruption; OECD Anti-Bribery Convention	US Foreign Corrupt Practices Act		Transparency International Business Principles	World Economic Forum Partnership Against Corruption Initiative; International Chamber of Commerce Rules of Conduct	
Labor	International Labor Organization's Core Principles			Fair Labor Association; Social Accountability International	Nike's Code of Conduct; Worldwide Responsible Accredited Production	ILO/IFC Better Work
Oil, mining						Extractive Industries Transparency Initiative; Kimberley Process

As the analysis in the sub-sections which follow will show, for all the variety of institutional innovation, the most traditional of all approaches to globalized regulation-- a well-designed and implemented treaty -- remains potentially the most effective of the regulatory forms considered. Long experience has, however, confirmed that treaties – especially genuinely binding ones – are enormously difficult to negotiate and implement. An exclusively treaty-oriented approach is thus inadequate to address the accelerating regulatory challenges that have accompanied globalization.

Other regulatory forms thus emerge as value adding alternatives. They can add value in two ways – as alternatives where treaties are infeasible, and (as Section III will examine further) as entry points for cumulative processes of change that may, on occasion, culminate in an international treaty. Making progress in addressing the challenges of globalized regulation will require that the protagonists of different regulatory forms come to terms with their preferred forms' limitations – and thereby leverage more effectively the constrained, but nonetheless very real, contributions each can make to an emerging globalized regulatory architecture.

IIA: Government-centric Approaches to Globalized Regulation

As per Table 2, this sub-section describes and assesses the effectiveness of government-centric approaches to globalized regulation via a focus on:

- The Montreal Protocol, a best-practice example of a treaty;
- The United Nations Convention Against Corruption, the OECD Anti-Bribery Convention, the United States Foreign Corrupt Practices Act, plus other globalized anti-corruption initiatives; and
- The Basel Committee for Banking Supervision, and the Financial Stability Board – as key parts of the globalized regime for banking regulation.

Though these specific regulatory initiatives are very different from one another in content area, in performance and in institutional details, they all share the following process characteristics:

- The rules are negotiated by government officials, and then promulgated as laws (or administrative 'codes') by national governments.
- Enforcement is the responsibility of national governments.
- Monitoring is the responsibility of official, public bodies – national and globalized, with the balance varying across the initiatives.

Table 3 previews the discussion with an ordinal, qualitative benchmark of the effectiveness of each initiative vis-à-vis the five channels. The criteria used for each of the benchmarks are laid out in Annex A, with the rationales for each assessment laid out in the text throughout this paper.

Table 3: The Effectiveness of Government-centric Globalized regulations

	Comprehensive-ness	Rule-Process Legitimacy	Monitoring Quality	Enforce-ment Quality	Monitoring & Enforcement Legitimacy
Treaties - Montreal Protocol	***	***	***	***	***
- UN Convention Against Corruption	***	**	*/**	*	*
OECD Anti-Bribery Convention	**	**	**/***	*	*/**
Extra-territorial -Foreign Corrupt Practices Act	*/**	*	**	**	*/**
Government networks - Basel	**[1/]	*/**[1/]	*[1/]	*[1/]	*[1/]
- Financial Stability Forum/Board	**	**	**	Too soon to tell	Too soon to tell

*** = highly effective; ** = moderately effective; * = minimally effective
1/ As of 2008

Treaties: The Montreal Protocol. Scientific research conducted in the 1970s hypothesized that the release of hydrocarbons would result in a breakdown of the atmosphere's ozone layer, with major health hazards (including skin cancer) to humans. Scientific observation, in 1985, of an ozone hole, confirmed the hypothesis. Two years later, the Montreal Protocol to cut the use of chlorofluorocarbons (CFCs) chemicals was ratified by almost every country on earth.[2] Over the past twenty years, the abundance of ozone-destroying gases in the lower atmosphere has been declining, and the Antarctic ozone hole is predicted to disappear by the mid-21st century.

The Montreal Protocol illustrates powerfully the institutional arrangements that underpin an effective global treaty. For centuries, treaties have formed the cornerstone of international law. Under the traditional practice of treaty creation, different states negotiate very precise, unambiguous rules by consensus. The international legal principle of state sovereignty precludes one state compelling another to join a treaty. However, by signing a treaty a state indicates its intent to implement the treaty's rules through appropriate domestic legislation; in some countries a treaty automatically becomes domestic law. International treaties derive their authority directly from legislative mandates of sovereign states – and so inherently achieve legitimacy insofar as signatory governments reflect the will of their populations.

Key to the success of the Montreal Protocol has been an approach to design and implementation that, as Scott Barrett shows in his landmark analysis,[3] addresses very effectively

[2] As of late 2006, only five countries did not participate: Andorra, Iraq, San Marino, Timor Leste, and the Vatican.

[3] Scott Barrett, *Why Co-operate: The Incentive to Supply Global Public Goods*, (New York: Oxford University Press, 2007), p.84. It is worth noting that Barrett very carefully lays out why the robust rulemaking, monitoring and enforcement arrangements of the Montreal Protocol cannot be directly applied to global efforts to reduce carbon emissions; key is that the benefit-cost ratio is far less favorable for carbon than CFCs.

all of the institutional challenges highlighted in Figure 1 and Table 3. Four interrelated features are especially key:

- The monitoring and enforcement arrangements for the treaty are directly tied to trade. Signatories agreed that, once the treaty came into effect, they would bar the imports of both substances controlled by the treaty (i.e. CFCs), and of products (e.g. refrigerators and air conditioners) that contained those substances.
- The treaty skillfully incorporated a highly credible incentive for participation and compliance. Signatories agreed that the treaty would only come into effect once it had been signed by countries representing two-thirds of global consumption. This created clear incentives to sign: there was no cost to being an early signatory (the two-thirds rule meant that no early signatory would have its competitiveness hurt by a cost-increasing trade restriction); once the two-thirds tipping point had been reached, market access would be enhanced, not restricted, by participating.
- Compliance could readily be monitored, since whether or not a product contained CFCs could straightforwardly be detected.
- The legitimacy of the rule-making process was enhanced by a commitment by industrialized countries to cover the entire incremental cost to developing countries of implementing the protocol, with almost $3 billion committed to support implementation.

Taken together, these features result in the Montreal Protocol receiving the highest benchmark score in Table 3 among all the comparators. Consistent with this benchmark, Barrett concludes that "the gap between what is being done and the maximum possible effort is very, very small".

Anti-corruption regulation. As a contrast to the Montreal Protocol, the examples of the United Nations Convention Against Corruption (UNCAC), and the OECD Anti-Bribery Convention illustrate some of the challenges and limitations that can arise with the treaty form of globalized regulation. There has been rapid evolution over the past two decades in understanding both the costs of corruption for economic development, and what needs to be done to combat it. The discourse has evolved from a narrowly moral issue (countered commonly by the pseudo-wisdom of defending corruption as efficiency-enhancing 'grease'); to an understanding of corruption as both a symptom and cause of pervasive institutional weakness within developing countries; to recognition that it is a global problem that requires a global response – with bribe givers and bribe takers equally culpable.

Both the OECD and the United Nations conventions are striking examples of international momentum to globalize the fight against corruption.

- The 1997 OECD Anti-Bribery Convention criminalizes bribery of foreign public officials and laundering the proceeds of bribery – and lays out in detail obligations of signatories for implementation. The Convention has the same standing in international law as a treaty, implying that all signatories must implement domestic law which reflects the intent of the Convention. It has been joined by all 30 OECD member countries, plus 8 non-members.
- UNCAC lays out comprehensive programs of action at the national and global levels -- and in principle commits its signatories to promulgate and implement them. It was adopted by the General Assembly of the United Nations in 2003; as of 2009, it had been ratified by 140 countries.

As Table 3 suggests, coverage is thus comprehensive for UNCAC, but less so -- by definition, given its more restrictive membership -- for the OECD Convention; for both, the rule-making process is broadly legitimate.

The difficulty, however, is that corruption thrives in the shadows of economic life – and its purveyors have as much incentive to sign on (deceitfully) to promises of virtue as do genuine champions of ethical practice. For any anti-corruption initiative to be credible, it thus needs to pay special attention to monitoring and enforcement – even as monitoring of purposefully concealed activity is inherently difficult. As Table 3 signals, this been challenging for both conventions – though the OECD has made some especially striking efforts on the monitoring front:

- UNCAC initially delegated responsibility for monitoring and enforcement entirely to the individual signatories themselves, but has subsequently committed to a more intensive effort: Participants at a 2009 Doha conference of parties to UNCAC agreed that all countries would monitor and report on a five-yearly basis – a combination of self-reporting plus peer review, with executive summaries of the country reports made public.
- The OECD has put in place an elaborate mechanism for compliance monitoring, based on peer reviews, and supported by the OECD's 18-staffperson anti-corruption division. In a first phase, each signatory's laws are reviewed for consistency with the Convention's standards. A second phase involves intensive on-the-ground review of how well anti-bribery policies are actually being implemented, plus an elaborate multi-year process to follow up on how weaknesses identified in the course of the review are being addressed.
- For both UNCAC and the OECD Convention, enforcement is wholly at the country level – with informed peer pressure the sole international recourse. Both the limitations and how they might be at least partially addressed are evident in the refusal in 2006 of the British authorities to pursue a corruption investigation of British Aerospace (BAe) on national security grounds; the subsequent intensive pressure put on the United Kingdom authorities by the OECD Working Group on bribery (including the publication in 2008 of a highly critical special review of the UK government's record in fighting corruption abroad); and, most recently, an announcement in October 2009 by the UK's Serious Fraud Office that it intends to seek permission to prosecute BAe.

Two non-treaty based approaches to addressing the monitoring and enforcement predicament of globalized anti-corruption initiatives round out this (partial) view of globalized anti-corruption initiatives. The first comprises the extra-territorial enforcement of the United States Foreign Corrupt Practices Act (FCPA). The FCPA was promulgated by Congress in 1977 after a series of international corruption scandals involving U.S. companies. The FCPA criminalizes the bribing of foreign officials by a US citizen or the agent of a US firm, even if the act occurs abroad. US corporations are held liable for actions by all their agents, as well as subsidiaries, and must institute due diligence to ensure against corruption. In the first two decades following the passage of the FCPA, the Department of Justice (DoJ) brought a total of 37 cases. But subsequent to the Enron scandal and the passage of the Sarbanes-Oxley legislation, implementation accelerated, with 29 cases brought since 2000. The DoJ's definition of its jurisdiction has been expansive, and includes activities by non-U.S. headquartered companies that are listed on U.S stock exchanges, or whose illicit transactions are funneled through U.S. banks. Using these criteria, DoJ prosecutions have been mounted against the Swiss power

company, AGG, the German engineering company Siemens, and the Norwegian oil company Statoil. Of course, as Table 3 signals, the weakness of extra-territorial approaches to globalized regulation is its unilateral character, and associated limitations on both comprehensiveness, and rule-process legitimacy beyond the country's borders.[4]

The second non-treaty-based globalized approach to anti-corruption comprises wholly 'civil' initiatives. Civil initiatives (discussed further in Section IIB) are especially relevant in this area because ultimately, as Figure 1 signals, the effectiveness of all law and regulation – especially those focused on as inherently hidden an activity as corruption – depends ultimately on the legitimacy of the endeavor. Building a global norm that systematically condemns corruption as unacceptable has been challenging. [On the contrary, at least until very recently it has been officially condoned as 'shrewd' business practice; in Germany, until 1999, corrupt side-payments were tax deductible.] Transforming social norms is thus perhaps the crucial long-run challenge in the fight against corruption – which is where the 'civil regulation' efforts discussed in Box 2 and considered further later in this paper, can play an especially crucial role.

Box 2: Civil anti-corruption initiatives

A variety of non-governmental initiatives to combat corruption have emerged – driven by a combination of a strong sense of mission, a sense of a disconnect between marketplace realities and official anti-corruption conventions and treaties, and a desire to signal the commitment of private firms to a corporate governance 'race to the top'. Examples include:

- The International Chamber of Commerce, founded in 1919 and the world's largest organization representing business interests, issued a voluntary set of principles in 1977 which companies could adopt to prevent corruption. The rules were updated in 2005 to align them more closely with the evolving international consensus in the area.
- The World Economic Forum's Partnering Against Corruption Initiative (PACI) is an ethical standard for private companies developed in 2004, and with 140 signatories, all large-scale global companies.. All participating companies agree to self-monitor, although PACI recommends third party verification that the anti-corruption program has been implemented – a step which about 40% of signatories have taken.
- Transparency International, a global civil society organization combating corruption with a network of 90 national chapters, issued its Business Principles for Combating Bribery in 2002, and updated them in 2009 to harmonize with the ICC and PACI principles. The principles are intended as a resource to guide interested companies. TI also has sponsored 'integrity pacts' – which define mutual commitments to transparency between government and private firms for specific large-scale procurement contracts, and include an independent monitor.

Table 4 in Section IIB benchmarks these civil regulatory initiatives against the credibility and comprehensiveness criteria laid out in Figure 1.

Globalized regulation of banking through government networks. The globalized regulation of banking is an example of an increasingly ubiquitous -- government-centric but not-treaty-based -- approach to globalized regulation. The use of government networks as a tool for globalized regulation has been analyzed in depth by Anne-Marie Slaughter in her 2005 book,

[4] It is worth noting in this context that an important impetus for the OECD Anti-Bribery Convention was pressure from the United States – which perceived that, with it being the only country enforcing anti-bribery legislation for actions outside its borders, US companies were not operating on a level playing field.

The New World Order. She describes the role of these networks, and their place in the international order, as follows:[5]

> *"Global networks build trust and establish relationships among their participants that then create incentives to establish a good reputation and avoid a bad one….They exchange regular information about their activities and develop databases of best practices…They offer technical assistance and professional socialization to members from [other countries]….[They] are created and sustained by the valuable exchange of ideas, techniques, experiences and problems….They promote convergence, compliance with international agreements, and improved cooperation among nations on a wide range of regulatory and judicial issues."*

As a tool for intergovernmental engagement, government networks thus facilitate (i) peer-to-peer learning and alignment, in the form of shared diagnosis of problems and options for addressing them; (ii) sometimes the development of general principles which all participants agree to follow; and (iii) peer-reputation-based commitment to acting on that shared learning.

The evolution of globalized regulation of banking illustrates how government-networks function. Banking regulation is a vast and complex topic. The extent to which financial markets should be regulated globally – and, within that, the desirability of the Basel approach to defining risk and capital adequacy – continue to be enormously controversial subjects that go well beyond the scope of this paper.[6] The discussion here focuses narrowly on a small subset of the larger topic -- the globalized institutional arrangements, their comprehensiveness, and their credibility.

Notwithstanding the rapid globalization of finance over the past half century – and the seemingly strong incentive to provide common regulatory rules, and a common regulatory enforcement umbrella across jurisdictions -- no official global institutional arrangements have emerged that parallel the World Trade Organization (or even the earlier, less robust General Agreement on Tariffs and Trade). Instead, regulatory harmonization has evolved through the seemingly ad hoc proliferation of inter-governmental committees, many housed in the Basel-based Bank for International Settlements. Key steps included:

- The creation in 1974 of the Basel Committee on Banking Supervision (BCBS) by the Central Bank Governors of ten leading financial centers to close gaps in the supervision of international banks, promulgate standards for bank supervision, and formulate capital adequacy standards; and the issuance in 1975 of a concordat on the sharing of regulatory responsibilities between a bank's home and host countries.
- The issuance by the BCBS in 1988 of the Basel 1 principles on minimum capital adequacy standards for banks; in 1997 of core principles for effective supervision of banks by regulators; and, in 2004, after difficult negotiations, of Basel II, which laid out a new risk-based approach to setting capital reserves for banks; guidance for supervisors on assessing reserves and related issues; and disclosure rules for banks.

[5] Anne-Marie Slaughter, *The New World Order*, (Princeton: Princeton University Press, 2005). Quotes are from pp. 3-4; 51; 261.

[6] For a discussion of the merits and limitations of alternative approaches, see James R. Barth, Gerard Caprio Jr, and Ross Levine, *Rethinking Bank Regulation: Till Angels Govern* (New York: Cambridge University Press, 2006); Daniel K. Tarullo, *Banking on Basel* (Washington, DC: Peterson Institute for International Economics, 2008); and Dani Rodrik, "Economics Focus: A Plan B for global finance", The Economist, March 14, 2009.

- The establishment in 2009, by the G20 heads of state, in the wake of the global financial crisis, of the Financial Stability Board (as a successor to the less formal Financial Stability Forum) with a broad mandate to "address vulnerabilities and to develop and implement strong regulatory, supervisory and other policies in the interests of financial stability."
- The release by the BCBS in December 2009, within the context of a broad financial sector reform framework set by the G20 heads of state (via the FSB), of consultative proposals for strengthening capital standards of banks.

Over time, then, the reach of the BCBS – and of government-centric globalized institutions focused on banking regulation – has progressively expanded. The BCBS initially was established as an exclusive club of ten financial centers. Prior to 2009 – when twelve additional members were added following a call from G20 leaders for standard setting bodies to review their membership -- membership expanded gradually, with coverage lagging the expansion of globalized finance. So overall, as per Table 3, the comprehensiveness of coverage of the BCBS-anchored and government-networked approach to globalized banking regulation has been mixed.

Turning to credibility, for the BCBS (and, by extension and as discussed by Slaughter, government networks more broadly), it derives principally from actions at the national level. The BCBS is explicit that it "*does not possess any formal supranational supervisory authority, and its conclusions do not, and were never intended to, have legal force. Rather, it formulates broad supervisory standards and guidelines and recommends statements of best practice in the expectation that individual authorities will take steps to implement them through detailed arrangements - statutory or otherwise - which are best suited to their own national systems. In this way, the Committee encourages convergence towards common approaches and common standards without attempting detailed harmonization of member countries' supervisory techniques*."[7] As this quote underscores, BCBS principles thus achieve their legitimacy via their incorporation at the national level into statute or administrative regulation). The inter-governmental process is wholly technocratically driven without the high-level imprimatur of a global treaty, an upper bound on rule-process legitimacy.

Monitoring and enforcement of follow-through by national governments on BCBS principles was limited for most of the 25 years of the BCBS system, and is designated as such in Table 3. While the BCBS system included an "accord implementation" working group for Basel II, there was neither any independent review of implementation, nor any expectation of systematic self-reporting on implementation by BCBS participants – although in practice the wholly voluntary Financial Sector Assessment Program, run jointly by the IMF and the World Bank, provided a window into country level implementation. In early 2010, the FSB announced plans to initiate single country and thematic peer reviews among FSB members – including expert monitoring of national implementation by FSB members of G20/FSB recommendations. [8]

Government-centric approaches to globalized regulation – patterns, challenges and opportunities. The examples of Montreal, anti-corruption and banking regulation illustrate how

[7] Quoted from the official history of the BCBS and its membership at http://www.bis.org/bcbs/history.htm.

[8] Financial Stability Board, "FSB Framework for Strengthening Adherence to Financial Standards", January 9, 2010. http://www.financialstabilityboard.org/publications/r_100109a.pdf

the two key drivers of the effectiveness of globalized regulation that are the focus of this paper -- comprehensiveness and credibility -- play out in relation to government-centric approaches. Four patterns are noteworthy.

First, government-centric approaches offer a potentially straightforward route to achieving comprehensiveness: The Montreal Protocol, UNCAC and, as discussed further below, the ILO Core Principles, all have been signed by the overwhelming majority of countries.

Second, credibility requires more than signing on to a set of rules -- and the credibility of government-centric approaches has been mixed. Rules need to have sufficient specificity to make them capable of being monitored and enforced; there needs to be both good-quality monitoring and a sanction for non-compliance. For government-centric regulation, much of this is expected to happen at the national level – via the translation of global agreements into national statutes or administrative regulations that are then enforced domestically. In practice:

- The Montreal Protocol has achieved strong credibility, with rulemaking, monitoring and enforcement all robust.
- The OECD Anti-Bribery Convention generally has been incorporated effectively into national laws, and has been monitored systematically at a global level, but national-level enforcement has been uneven. [As discussed in Section IIB below, this combination of seeming national acceptance of the globalized rules, and quite effective global monitoring, but a lack of enforcement at the country level also is evident for another government-centric example, the ILO Core Principles].
- The UN Convention Against Corruption has been incorporated into national law but, until recently, has not had any systematic credibility-enhancing arrangements in place for monitoring.

Third, even though enforcement is at the national level, globalized monitoring can readily be incorporated into government-centric approaches, and has the potential to buttress credibility. As the difficult interactions between the OECD's anti-corruption compliance monitoring program and the British authorities showed, robust monitoring does not translate directly into enforcement. But that same example also demonstrates that peer pressure, anchored in prior endorsement of globalized rules and robust, transparent globalized monitoring can have an impact, even on the actions of sovereign, national governments.[9]

Fourth, in a world where robust treaty-making and implementation is more the exception than the rule, the government-network approach analyzed by Slaughter, and illustrated here by the Basel Committee and the Financial Stability Board, comprises a promising alternative way of engaging governments on global challenges, but with some significant risks. The benefits of government-network approaches are:

- They offer a low-cost, pragmatic entry point – organized around technical interactions, including the development of good practice principles, that support the harmonization of national regulations.

[9] For a general discussion of the role of transparent monitoring as a regulatory tool (focused principally on domestic examples in the United States, but including also some international examples), see Archon Fung, Mary Graham and David Weil, *Full Disclosure: The Perils and Promise of Transparency* (New York, Cambridge University Press, 2007).

- They are scaleable -- an initial group of like-minded countries can come together, agree on a joint approach for addressing some specific issue, and then invite other countries to join in.
- They leverage the professionalism and desire for mutual respect among technical peers as an informal 'reputation-based' means of enforcement.

The risk is that of the false comfort of having acted but without addressing adequately either comprehensiveness or credibility -- of becoming a comfortable insiders club that fails to reach out to other countries, even though their participation is key to achieving the global goal; and of being unwilling to rock the boat by monitoring closely whether the affirmations of participants indeed are translating into law and practice on the ground.

IIB: Civil Regulation

This section examines the efficacy of globalized civil regulation. Civil regulation is defined as comprising non-statutory processes through which diverse combinations of private firms and civil society organizations jointly set and monitor rules governing the actions of participating transnational firms. The forces that have given rise to civil regulation are similar to the overall drivers of globalized regulation noted at the beginning of this paper, with a few distinctive features: (i) an effort by civil society actors to narrow the disconnect between burgeoning civic activism on the one hand, and a laissez faire/neo-liberal orientation among many governments on the other; (ii) an increasing awareness by global corporations of the reputational risks associated with environmental, social and ethical conduct that was unacceptable to key stakeholders; and (iii) the surge in information and communication technologies that communicated corporate practices instantaneously across the globe – and that (together with increasingly robust supply chain management) provided enhanced means for monitoring and improving corporate practices.[10]

Civil regulation differs starkly from 'government-centric' approaches to globalized regulation across all three dimensions highlighted earlier:

- Rules are negotiated and agreed upon entirely by non-state actors.
- Monitoring, insofar as it is incorporated into the regulatory arrangements, is the responsibility of non-state actors.
- Enforcement is reputation-, not statute- based.

Tables 4 and 5 list eight examples of globalized civil regulation. As the tables signal, these examples group into two broad categories -- collaborative approaches involving both private firms and civil society, and approaches undertaken exclusively among private firms, with no civil society engagement.

While the examples of civil regulation considered here are very varied, one overarching limitation is worth noting up front: Civil regulations -- being wholly voluntary 'clubs' of firms, nongovernmental organizations and associated stakeholders (e.g. consumers and shareholders) committed to going beyond a minimalist approach to global environmental, ethical and social practices -- cannot in their nature address effectively the *comprehensiveness* dimension of globalized regulatory performance that was highlighted earlier. This does not render them

[10] For broad overviews, see Vogel (2005, 2006), Ruggie (2002) and Zadek (2006).

irrelevant –some examples benchmark well against the *credibility* dimension of effectiveness -- but, as Section III will explore in detail, it does suggest that their contribution to globalized regulation is best understood as part of a broader globalized regulatory whole.

The ISEAL approach to collaborative regulation. Both civil society and corporate actors have championed civil regulation. But their motivations and incentives have been different. As a result, one key question has come to center stage: On what basis can stakeholders assess whether the claims made as to the quality of corporate practices are indeed true? To illustrate how civil regulation emerges, and how the question posed above has been addressed, consider the example of the Forest Stewardship Council (FSC).

Table 4: The Effectiveness of Civil Regulation

	Comprehen-siveness	**Rule-Process Legitimacy**	**Monitoring Quality**	**Enforce-ment Quality**	**Monitoring & Enforcement Legitimacy**
Collaborative Regulations					
- Forest Stewardship Council	*	***	**/***	**	**
- Social Accountability International[1/]	*	***	**/***	**	**
- Transparency International Business Principles	*	**	*	*	*
Wholly private					
- WEF Partnership Against Corruption Initiative	*/**	*	*/**	*	*
- International Chamber of Commerce Rules of Conduct	*	*	*	*	*

1/ SAI is included in both Tables 4 & 5 since SAI is both a member of the ISEAL alliance, and focuses on labor standards.

The FSC was created by a coalition of firms and NGOs in the wake of the failure of the 1992 Earth Summit to address effectively the challenge of sustainable forest management and protection. Using multi-stakeholder governance arrangements, it has delineated principles for sustainable forestry to which participating firms must adhere. It also has accredited private auditing agencies to monitor and certify firms' compliance. Compliant firms can use the FSC seal, differentiating their products among buyers and potentially creating a small price premium. Among developing countries, its largest presence is in South Africa, where FSC-certified wood comprises over 70% of the sales of that country's forestry industry (an industry that overwhelmingly is organized around large-scale [temperate] plantations, ideally suited for the FSC approach). The FSC's largest aggregate coverage is in Brazil – but, given the vastness of the country's forests, FSC-certified products account for less than 10% of the country's annual wood sales.

As a way of further buttressing credibility, the FSC has joined with other robust collaborative standards initiatives – including Social Accountability International (discussed in the next subsection), Fairtrade Labelling Organizations International, the Marine Stewardship Council, and the Rainforest Alliance – under the umbrella of the ISEAL Alliance. Full membership of the

alliance is given only to organizations that meet all of ISEAL's standards requirements, including:[11]

- For rule-setting, compliance with ISEAL's *Code of Good Practice for Setting Environmental and Social Standards*, which includes requirements for: involving, and reflecting a balance of interests among, all parties concerned with or directly affected by the standard; a multi-stage review process with opportunities for comment by interested parties, and feedback on how the comments are addressed; prompt publication, and periodic review, of the finalized standard.
- For offering certitication that producers meet a standard: assurance that certifying organizations are in compliance with the International Standards Organization, ISO's standard for certification bodies (ISO 17021, Guide 65) or equivalent.
- For processes of accrediting certifiers: assurance that the accrediting organizations are in compliance with ISO/IEC 17011:2004.

Based on the robustness of these criteria, the FSC and SAI benchmark high in Table 4 for both rule-process legitimacy and for the quality of monitoring. Robust rule-setting and monitoring provide, in turn, a strong signal to consumers and other stakeholders that certified producers indeed are in compliance with a stringent standard of environmental and social practice, enhancing reputational enforcement.

Regulating labor standards. Of all the regulatory areas considered in this paper, labor comprises the one with the longest track record of globalized approaches, through the International Labor Organization (ILO). The ILO was established in 1919. Currently, it has 183 member states. Each has four representatives: two from government, one representing employers, and one representing workers. Over the course of its ninety year existence, it has adopted almost 200 conventions. In 1998, the ILO adopted a "*Declaration on Fundamental Principles and Rights at Work",* which highlighted four core principles: freedom of association and collective bargaining; elimination of forced and compulsory labor; elimination of discrimination in the workplace; and elimination of child labor;[12] signing on to the Declaration became a requirement for ILO membership. ILO committees (the *Governing Body Committee on the Freedom of Association*, and the *Conference Committee on the Application of Standards and Recommendations*) provide a substantial platform for monitoring the extent of compliance. However, as Table 5 suggests, the ILO generally has not been able to systematically translate the formal commitments laid out in its convention into actions on the ground.[13]

Over the past decade, notwithstanding the presence of the ILO, the highest profile globalized initiatives have been civil rather than official. The process was fuelled by a combination of civil society activism, and revelations about labor practices that risked damaging corporate reputations

[11] For details, see the detailed presentation and discussion of standards tools at www.isealalliance.org. Associate members are organizations that are in the process of complying with the standards.

[12] It is perhaps worth noting that compliance with these core labor standards was endorsed in the World Bank's 1995 World Development Report, *Workers in an Integrating World.*

[13] See Hagen (2003).

and brands. The result was a proliferation of labor standards initiatives that ran the gamut from multi-stakeholder to firm-specific initiatives, including examples[14] in Table 5:

- Social Accountability International (an ISEAL member), established in 1997 by a multi-stakeholder civil society and private sector coalition to develop what became the SA8000 standard of good labor practices. In 2007 SAI spun off an independent company to accredit auditing agencies to certify factories' compliance with SA8000 standards. As of 2008, over 2,000 factories, with 1.1 million employees, were certified as SA8000 compliant.

Table 5: Regulating Labor Standards

	Compreh-ensiveness	**Rule-Process Legitimacy**	**Monitoring Quality**	**Enforce-ment Quality**	**Monitoring & Enforcement Legitimacy**
Official transnational ILO Core Principles	***	*/**	**	*	*
Collaborative Regulations - Social Accountability International[1/]	*	***	**/***	**	**
- Fair Labor Association	*	**	**	*/**	*/**
Private self-regulation - Worldwide Responsible Accredited Production	*	*	*/**	*	*
- Nike's Code of Conduct	*	*	*/**	*/**	*
Hybrid ILO/IFC Better Work Program	*	***	***	Too soon to tell	**

1/ SAI is included in both Tables 4 & % since SAI is both a member of the ISEAL alliance, and focuses on labor standards.

- The multi-stakeholder Fair Labor Association (FLA), an outgrowth of an Apparel Industry Partnership convened by President Clinton in 1996. Thirty major global high-visibility-brand companies (e.g. Nike, Liz Claiborne, H&M) have committed to abide by the FLA Code of Conduct throughout their supply chain; nine have been accredited as fully complying with the Code. Taken together the 30 brands source from about 5,000 factories worldwide, employing over 4 million workers. Independent monitors visit, unannounced, a random selection of 120 factories each year. Details of each affiliated company's labor standards commitments, and the findings of the unannounced visits, are posted on the FLA web site.
- Nike's Code of Conduct, a best practice example of in-house, self-managed corporate practice (there are many others of similar quality). Nike has 90 full-time compliance staff. In addition to participation in the FLA program, Nike has two internal monitoring programs that are conducted for all factories from which it sources its production: one-

[14] In addition to those listed in Table 5, other noteworthy examples include the multi-stakeholder Ethical Trading Initiative and the non-private-sector Workers Rights Consortium.

day overview audits that give a broad assessment of a factory's labor, environmental, safety and health standards; and in-depth management and working conditions audits, undertaken over several days. Independent research has shown that there is considerable variation among Nike's suppliers in the extent of their compliance with its code of conduct, even after repeat audits; the best performers, with clear evidence of improvement over time, are those that have been designated by Nike as 'strategic partners'.[15]

- The Worldwide Responsible Accreditation Production (WRAP) program is a non-profit non-governmental organization created by an apparel manufacturing association. WRAP's principles were developed by manufacturers in consultation with other stakeholders. Factories seeking WRAP certification conduct a self-assessment, and pay an accredited third party auditor to monitor their behavior. Over 600 facilities have been certified as meeting the WRAP principles.

As these examples illustrate, the terrain of civil labor standards is thus complex and varied: Some initiatives invest heavily in building consensus among stakeholders on minimum standards; others develop their codes more unilaterally. Many initiatives put significant effort into monitoring –some give priority to providing detailed, objective assurance of compliance over time, others focus on an initial snapshot, supplemented by support for building factory-based capacity for code implementation.

One consequence of this complexity has been a proliferation of factory-specific auditing requirements, imposing high transactions costs on factories. A hybrid initiative (more on hybrids below) -- the 'Better Work' program, -- aims to address this problem directly. The Better Work program is a joint initiative of the ILO and the World Bank Group's private sector investment arm the International Finance Corporation. Its origins lie in a 1999 trade agreement between the United States and Cambodian government that gave garment exports from Cambodia preferential access to the U.S. market in exchange for a commitment to raise labor standards, and linked that commitment to an innovative approach to monitoring. Based on the success of the Cambodia program, it is being scaled up in four additional countries (Jordan, Vietnam, Lesotho and Haiti), with many more intended to follow. At the heart of the program is a unified platform of factory-level assessments, with the data made available to buyers and other stakeholders; based on the credibility of the data, buyers then agree to forego their separate assessments. The data also provide a platform for assurance of compliance with national labor regulations, without relying on public sector inspectorates. The concrete result is a radical streamlining of administrative demands on participating factories.

Civil approaches to globalized regulation – patterns, challenges and opportunities. The illustrations above highlight how civil regulation plays out in relation to the two key institutional drivers of the effectiveness of globalized regulation -- comprehensive and credibility. Five themes are noteworthy.

[15] Richard Locke, Fei Qin and Alberto Brause, "Does Monitoring Improve Labor Standards? Lessons from Nike", Corporate Social Responsibility Initiative, Working Paper number 24, Kennedy School of Government, Harvard University, 2006.

First, as noted at the outset of this section, given their voluntary, bottom-up character, civil regulatory initiatives cannot in their nature address effectively the *comprehensiveness* dimension of globalized regulatory performance.

Second, civil regulation can be highly credible – exemplified most vividly in the robust, multi-stakeholder arrangements for rulemaking and monitoring adopted by full members of the ISEAL Alliance.

Third, peer reputation comprises the critical enforcement mechanism through which civil regulation assures credibility – but the incentives of key actors vis-à-vis reputational enforcement are mixed. Reputational enforcement operates via signals from markets (consumers, shareholders etc.), or from individual and organizational standing with peers; the incentives can be positive or negative. Many consumers are willing to pay a significant premium for 'sustainability', if it is credible. (See Box 3.) All actors thus have a clear incentive to signal their good intent. However, ambiguity as to follow-through may offer the benefits of seeming responsive, but at limited cost. To achieve credibility, reputation-based enforcement thus needs to overcome a wall of skepticism. Investment in the credibility of the regulatory arrangements (how the rules are made; how they are monitored) becomes key.

Box 3: The growth of 'fair trade'

The rapid growth of products certified as 'fair trade' signals that consumers respond to a credible signal on social, environmental and ethical standards. The principle of ethical purchasing is a longstanding one, dating back at least to various nineteenth century religious organizations and, more recently, co-operative producer and consumer movements, with Oxfam's 1965 'helping by selling' program an important precursor.

The collapse of the International Coffee Agreement in 1989 spurred efforts to find an alternative way of protect the livelihoods of small-scale coffee producers. This resulted in the emergence of a variety of initiatives to provide a credible 'fair trade' signal in the marketplace – not as a unique product/brand but as label that could be adopted, in selected product markets, by producers and distributors that credibly commit to meet 'fair trade' standards. In 1997, these initiatives came together to form the umbrella Fair Trade Labeling Organization (a member of the ISEAL Alliance). Sales growth of 'fairtrade' labeled products has been rapid:

- In 2000, global sales amounted to about $300 million. In the subsequent seven years, global sales rose over ten-fold – an almost 50 percent average annual growth rate -- to reach $4 billion in 2008, including 22 percent year-on-year growth for 2008, despite the global economic crisis.
- The market is overwhelmingly in North America and Western Europe, largest in the United States and the United Kingdom. The Japanese market, though still small, grew at 44% in 2008.
- Coffee is the largest 'fairtrade' labeled product, with 2008 sales amounting to $1.8 billion, Bananas (at over $550 million, mostly in Europe), are the second largest fair-trade seller. Tea, cocoa, cotton, sugar and flower each had 2008 fair trade sales in excess of $250 million. The US fair-trade labeling organization recently has introduced a fair-trade labor standard for cotton garments, covering the conditions of both cotton production, and cut-and-trim sewing operations.

A recent large-scale survey found that the proportion of U.S. consumers reporting that they rewarded companies for being socially responsible has risen from 46% in 1999 to 59% in 2009.

*Sources: Global Fairtrade Foundation, "*Global Fairtrade sales increase by 22%", press release, June 8, 2009. *Wikipedia, Transfair USA*, "Fair trade thriving in tough U.S. economy", press release, April 16, 2009.

IIC: Hybrid Approaches to Globalized Regulation

Hybrid approaches -- -- involving multiple governmental and non-governmental stakeholders, as well as approaches where important responsibility for some combination of design, monitoring and enforcement lies principally in the hands of a transnational body -- comprise yet another recent institutional innovation in globalized regulation. The key defining feature of these hybrid approaches is a process of rulemaking that involves both governmental and non-governmental stakeholders. Monitoring generally has a strong global dimension; enforcement depends in part on reputation.

The two illustrative hybrid examples considered here are the Extractive Industries Transparency Initiative (EITI) and the Kimberley Process Certification Scheme (KPCS). (A third example, the ILO/IFC Better Work program was discussed earlier.) Both programs have been widely acclaimed as innovative initiatives to combat the corrosive effects on governance in institutionally weak and collapsed states of corruption and illegality associated with the exploitation of natural resource rents. Both have addressed rulemaking, monitoring and enforcement in innovative ways.

Rulemaking. The role of non-governmental stakeholders was decisive in the genesis of both programs. A key precursor to the EITI was the release in 1999, by the international NGO Global Witness, of the study "A Crude Awakening", which documented the links between oil, banking and corruption in Angola. Immediately thereafter Global Witness, together with the Open Society Institute, Oxfam, Transparency International, Save the Children and other NGOs launched a campaign to pressure global oil and mining companies to "Publish What You Pay". The then British Prime Minister, Tony Blair announced the multi-stakeholder EITI initiative at the 2002 World Summit on Sustainable Development; the EITI was launched the following year.

The antecedents of the Kimberley Process were strikingly similar: a 1999 campaign, also initiated by Global Witness, to expose the role of diamond revenues in fuelling conflict; by November 2000, the United Nations General Assembly had passed a resolution supporting the creation of an international certification scheme for rough diamonds; within two years, governments, the private sector and civil society actors had agreed on the KPCS.

As benchmarked in Table 6, the KPCS is more comprehensive in its coverage than is the EITI. The KPCS has 75 member country governments – both diamond-exporting and diamond-importing countries; together these members account for 99 percent of the world diamond trade. The EITI distinguishes between 'implementing' and 'supporting' countries. As of late 2010, thirty three country governments (32 natural resource exporting developing countries plus Norway) had signed up as 'candidate' countries for EITI implementation; five of these (Liberia; Azerbaijan; Timor Leste; Mongolia; and Ghana) had been validated (as per criteria discussed further below) as compliant with the EITI criteria. All of the G-7 members are among the EITI's 17 'supporting' countries. But some major oil exporting countries (e.g. Angola, Sudan) currently are not part of the EITI process; and none of the BRICS countries have signed up as either supporters or members.

Table 6: Hybrid Approaches to Globalized Regulation of Extractive Industries

	Comprehensive-ness	Rule-Process Legitimacy	Monitoring Quality	Enforce-ment Quality	Monitoring & Enforcement Legitimacy
Kimberley Process	***	**/***	**	**	**
Extractive Industries Transparency Initiative	**	***	***	**	***

Both civil society and the private sector play a role in the ongoing governance of the two programs – with their role more extensive in EITI. Membership of EITI's twenty person board is distributed among each of the four categories of implementing countries, supporting countries, civil society organizations, and the private sector. By contrast, the KPCS is an organization of member states. In addition, two civil society organizations -- Global Witness and Partnership Africa Canada -- have a semi-official status as 'observers', as does the private sector, through the World Diamond Council. Even though the KPCS is thus less participatory than the EITI, the combination of its antecedents in a civil society campaign and the continuing role in governance of these non-governmental organizations suggest that, together with EITI, it appropriately can be benchmarked in Table 6 as being at least moderately effective in the legitimacy of its rule-processes.

Monitoring and enforcement. Monitoring lies at the heart of the missions of both the EITI and KPCS. The KPCS monitors the source of rough diamonds sold on the international marketplace. This largely is achieved through in-built incentives to police the system on the part of key stakeholders. Two commitments are key:

- A requirement that all shipments of diamonds be accompanied by a certificate, issued by the seller, guaranteeing that they are conflict-free. And
- An agreement by participants in the KPCS (which included all major importers) that they would not engage in trade in rough diamonds with non-participant countries.

The diamond trade has long been tightly-controlled by a narrow group of dominant companies and countries; diamonds from new sources – including conflict countries – threatened to destabilize this equilibrium. Viewed from that perspective, the KPCS was a 'win-win': The tightly managed supply meant that the World Diamond Council and its principal members could straightforwardly implement the certification scheme. The fact that this kept diamonds from a subset of emerging competitors off the market was –again from the perspective of the established exporters -- only to the good. Hence the KPCS's relatively robust effectiveness benchmarking against the Table 6 monitoring and enforcement criteria.

Note, though, that the KPCS's incentive for self-enforcement only works insofar as it focuses narrowly on diamonds from non-participant conflict countries. Any effort to impose standards through the KPCS on the business practices of participant countries is less incentive-compatible, and hence more likely to meet with opposition – as has been evident in a continuing unwillingness of the KPCS to exclude Zimbabwe, despite allegations of flagrant human rights abuses by senior military officers who had been given control over some of the country's diamond-digging areas.

For the EITI, the in-built incentives for self-regulation were fewer. To be sure, international oil and mining companies subject to legal prohibitions against corruption at home or abroad, and vulnerable to shareholder activism, had a clear incentive to promote the EITI as a way of avoiding a no-win (for them) 'race to the bottom' with international companies less restrained by such strictures. But the incentives for exporting country governments were less clear. In the short-run, a combination of principled leadership and encouragement by donors has proven sufficient to induce an initial round of exporting countries to sign-up. Signing up, however, does not in itself equate to credible commitment. More robust institutional arrangements were needed to lock-in incentives for enhanced transparency and oversight over oil revenues. Three sets of rules aim to help the EITI achieve these latter goals:

- Rules that focus on financial transfers between governments and energy and mining companies. The rules require governments to provide information, audited according to international standards, as to what payments they have received from these companies, with parallel information from the companies themselves, also audited according to international standards, as to what payments they have made.[16] Further, the rules require that an organization be contracted to reconcile these figures – and that the report containing the various sources of data, any discrepancies uncovered, and their reconciliation, be made public.
- Rules that mandate the establishment at country level of a multi-stakeholder group, with 'adequate representation' of major civil society, private sector, government and other stakeholders, to oversee the country's EITI implementation. Beyond this multi-stakeholder group, the rules also require that civil society more broadly be actively engaged in the process.
- Rules that require an external validator, selected from a list of validators accredited by EITI, to assess whether an EITI 'candidate' country has met all the EITI criteria and so is EITI compliant. The validator's report needs to be viewed as broadly acceptable by the country level multi-stakeholder group – with the final decision on compliance made by the global EITI Board. All candidate countries are required to conduct a validation exercise within two years of having signed-up (and hence having met the sign-up criteria) for EITI, else their candidacy will be suspended.

As per Table 6, these rules provide a robust, and legitimate, framework for monitoring and enforcement. It remains to be seen, however, to what extent signatory country government indeed will prove willing to abide by these EITI rules for involving non-governmental stakeholders in oversight. While ten countries had achieved compliant status by mid-2011, others had failed to meet the initial deadlines for achieving full compliance and were granted extensions.

Hybrid approaches – patterns, challenges and opportunities. Three patterns are noteworthy as to how hybrid approaches to globalized regulation address the institutional challenges of comprehensiveness and credibility.

[16] Note that all oil and mining companies active in countries that have joined the EITI are obligated to provide this information, regardless of whether they themselves are formally affiliated (as supporters) with the EITI. Corporate supporters are not, however, required to provide this information for payments made in non-EITI countries.

First, hybrid approaches have the potential to be comprehensive. The KPCS was able to incorporate all the major players in the world diamond market. The EITI, though not as comprehensive, has been embraced by a large number of governmental and non-governmental actors, and official international organizations -- and continues to engage with potential new participants.

Second, hybrid approaches have the potential to be credible. Both the KPCS and EITI have put in place effective arrangements for monitoring (as has the Better Work program, so far on a smaller scale). Both have invested successfully in the legitimacy of their rulemaking and monitoring process. This, in turn, provides a strong platform for effective peer-reputation-based enforcement. Especially noteworthy, given the involvement of many official/government players, is that the approaches through which both have built credibility are more 'civil' than 'government-centric: partnerships with multiple stakeholders; transparent monitoring, contracted to non-governmental actors.

Third, though, it remains uncertain whether the simple, consensual rules that are the foundation of the two hybrid examples are sufficiently robust and demanding to achieve more than modest globalized regulatory objectives. Both the KPCS and the EITI focus single-mindedly on one narrow goal: keeping 'conflict diamonds' out of the international marketplace (KPCS); and assuring that accurate audited information on payments between governments and international oil and mining companies is transparently made available, including to civil society groups (EITI). While the KPCS ambitions do not go beyond its immediate purpose, the vision of the EITI potentially is broader. The hope is that transparency and civil society engagement can be a springboard for broader accountability over how public resources are used, and hence gains in both governance and poverty reduction. Whether these dynamics will play out along the lines hoped by the EITI in more than a modest number of countries remains uncertain.

III: ENHANCING THE EFFECTIVENESS OF GLOBALIZED REGULATION

As Section II has detailed, government-centric, civil and hybrid approaches to globalized regulation each have distinctive strengths and weaknesses. Overall, there appears to be an abundance of innovation – but a seeming failure of these many innovations to deliver more than, at best, partial successes in meeting both the credibility and comprehensiveness criteria for effectiveness:

- Only three of the eighteen regulatory initiatives that were analyzed -- the Montreal Protocol, the Extractive Industries Transparency Initiative and the Kimberley Process -- met both criteria. Each of the three was benchmarked as 'highly effective' for at least some of the comprehensiveness, rulemaking, monitoring and enforcement criteria – and as 'moderately effective' for all of the remainder.
- Two more (the Forest Stewardship Council and Social Accountability International) are strong on the credibility, but weak on the comprehensiveness dimension.
- A further two (the UN Convention Against Corruption and the ILO Core Principles) have comprehensive coverage but more limited credibility.

All of the others achieve middling or worse performance across the two dimensions.

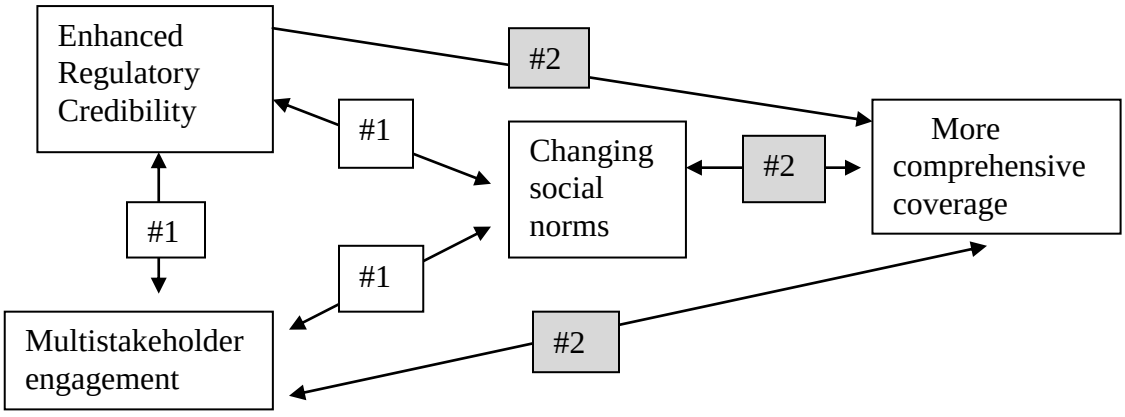
This final section explores what might be the prospects for combining the distinct elements of the different approaches so that the whole can be more, rather than less, than the sum of its parts. Specifically, might it be possible to strengthen the synergies between, on the one hand, the credibility-enhancing characteristics of civil and hybrid regulation and, on the other, the opportunity for comprehensiveness offered by more government-centric approaches? Figure 2 suggests one possible answer.

The figure highlights interactions among four variables: credibility and comprehensiveness, plus multi-stakeholder engagement and changes in social norms. Two potential feedback loops are noteworthy:

- *Feedback loop #1:* A credibility-enhancing feedback loop: with enhanced multi-stakeholder engagement creating pressure for improved credibility; gains in credibility spurring enhanced engagement; and both spurring changes in social norms which, in turn, further fuel the positive feedback loop. And
- *Feedback loop #2:* A comprehensiveness-expanding loop – as changing social norms, strengthened credibility, and enhanced engagement build pressures for additional actors to participate in the globalized regulatory platform, thereby helping to expand comprehensiveness and, in turn, pressuring others not yet involved to participate in the globalized processes.

The evolution of the EITI and the Kimberley Process from civil society to multi-stakeholder initiative -- with sign up by a a large and, for EITI, growing number of governments – illustrate how these feedback loops can interact with one another. So, too, does the rapid growth of 'fair trade' certified products.

Figure 2: Globalized Regulatory Effectiveness -- From Credibility to Comprehensiveness

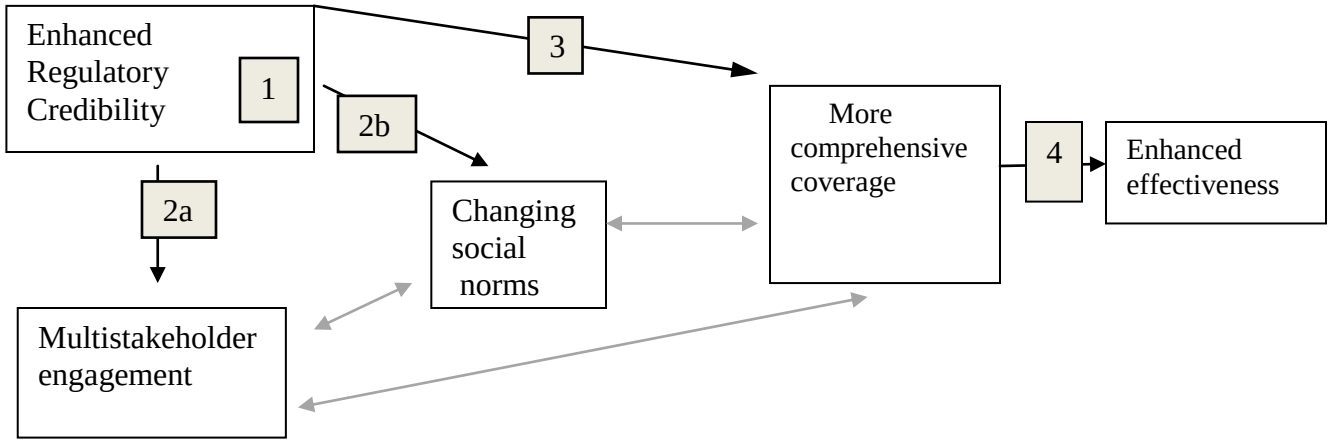


What are the opportunities for pro-actively leveraging these feedback loops as a way of enhancing effectiveness in other areas? A full answer would require more in-depth work than is feasible here. For now, what will have to suffice are some initial guideposts to what might be ways forward for more in-depth work in each of three areas -- anti-corruption, labor standards, and carbon emissions reduction.

For anti-corruption, the challenge is to complement the comprehensiveness provided by UNCAC with enhanced credibility. Anti-corruption efforts by non-governmental stakeholders have focused principally on high-profile advocacy, with only limited effort – at least until recently[17] – to invest in a mechanism capable of credibly communicating the commitment of participating firms to ethical business practices. The Figure 3 framework suggests one possible way in which better alignment of government and civil regulatory initiatives could set in motion a virtuous spiral of change:

- A first step could be to scale-up investment in the credibility of civil anti-corruption initiatives (designated by the "1" in Figure 3).
- Stronger credibility on the part of civil regulatory initiatives could, in turn, strengthen the social norm against corruption, and generate a further round of multi-stakeholder effort (channels 2a and 2b in Figure 3).
- In addition, a stronger credibility signal could create new opportunities for enhancing the effectiveness of the more comprehensive government-centric approaches (channel 3) -- by, say, creatively linking credible private commitments to ethical practices to low-transactions cost access to large-scale public procurement (along the lines pioneered by Transparency International's 'integrity pact' initiatives in countries ranging from Colombia to Korea).[18]
- Strengthening these multiple channels could bring added momentum to both feedback loops, thereby enhancing the overall effectiveness of globalized anti-corruption efforts. (channel 4)

Figure 3: Enhancing the Effectiveness of Globalized anti-Corruption Regulation



For labor standards, the prevailing pattern is paradoxical. On the one hand, both comprehensiveness and credibility are strong – however they are disconnected from one another. The (government-centric) ILO's various codes parallel UNCAC in their (comprehensiveness)

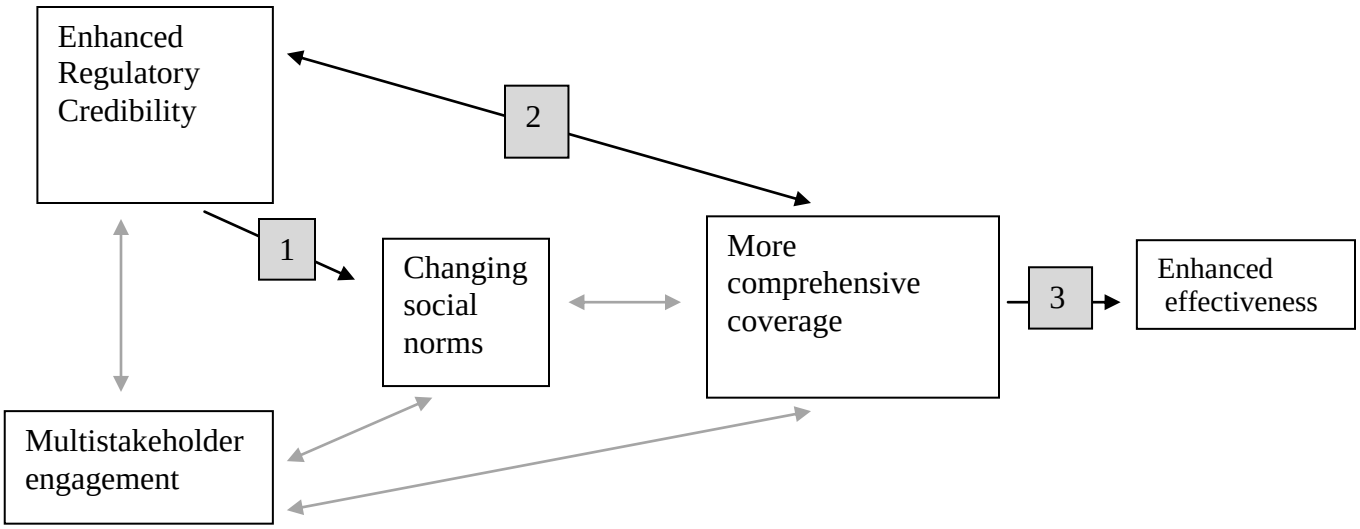
[17] Both the World Economic Forum's Partnership Against Corruption Initiative and Transparency International (vis-à-vis its Business Principles for Combating Bribery) are developing tools to facilitate external verification of the quality of corporate anti-corruption programs.

[18] See Transparency International (2002).

strengths, and (credibility) limitations. Civil regulation, by contrast, has gone further for labor standards than for anti-corruption in addressing credibility through rulemaking and monitoring. But the proliferation of civil labor codes and certification options has meant that no single, unequivocal signal is communicated to stakeholders, limiting any momentum to reshape social norms. As Figure 4 illustrates, convergence around a common approach could set in motion a cumulative spiral of improvement:

- A more unified approach to credibility could accelerate the adoption of social norms that further de-legitimize contravention of the ILO's core labor standards (channel 1 in Figure 4).
- A better alignment of government-centric and civil labor standards initiatives could also enhance the credibility of the former and the comprehensiveness of coverage of the latter (channel 2 in Figure 4) – the ILO/IFC Better Work informational platform seems to provide an ideal opportunity.
- Closing the comprehensiveness-credibility gap could, in turn result in added momentum for both feedback loops, with rapid possible gains in effectiveness (channel 3 in Figure 4)

Figure 4: Enhancing the Effectiveness of Globalized Labor Standards



Though an assessment of global initiatives to foster carbon emissions reduction is a vast subject in itself, the approach adopted in this paper highlights one theme in particular for further analysis -- namely a striking seeming disconnect between, on the one hand, vibrant civil society engagement with the challenges of climate change and, on the other, a pre-occupation with seeking solutions exclusively in the official, government-centric realm. From a government-centric perspective, the relatively narrow focus of the 2009 Copenhagen Accord – on targets and monitoring – can be perceived as a step backwards from more ambitious aspirations for a global treaty. But from the perspective laid out in this paper, the challenges at Copenhagen point to the need to invest in credibility (and the positive feedback loops it offers on social norms, and hence

citizen expectations vis-à-vis their national governments) as a necessary complement to comprehensive official global action.

All three of the above examples suggest ways of catalyzing virtuous spirals by leveraging interactions between credibility-enhancing and comprehensiveness-expanding initiatives. Realizing this potential for virtuous spirals would require a profound shift in approach. Civil and government-centric approaches to global regulation generally have been viewed as entirely separate from one another, involving different players, different cultures and much mutual suspicion. The approach here calls on the protagonists of different regulatory forms to come to terms with their preferred forms' limitations – and the potential contribution of other forms, in a complementary, mutually-reinforcing process. To put it differently: progress in globalized regulation is not likely to come through some sudden top-down breakthrough. Rather, the way forward is likely to be incremental and cumulative, engaging and monitoring across borders, bottom-up as well as top down – transcending a too neat, and ultimately unhelpful, bifurcation between civil society advocacy and technocratic rule-making.

Annex A: The Criteria for Benchmarking Globalized Regulatory Effectiveness

(*Note: The benchmarks assess comprehensiveness and credibility from a globalized perspective, with no necessary implication as to the quality of country-level government rule-making, monitoring and enforcement)*

Comprehensiveness

*** Near universal coverage; includes all major stakeholders with influence on outcome

** Includes a substantial number of major stakeholders with influence on outcome

* Some coverage, includes some stakeholders with influence on outcome

Rule process legitimacy

*** Included/affected stakeholders fully accept legitimacy & good faith of rule-making body

** Included/affected stakeholders acknowledge the good faith of the rule-makers efforts, but with some skepticism as to whether the rules bind their signatories.

* Affected stakeholders do not acknowledge the right of rule-makers to set rules, and/or the good faith of their efforts, and/or that the rules impose any binding obligations.

Monitoring quality

*** The arrangements for independent monitoring of compliance with the rules are robust.

** Partial arrangements for independent monitoring are in place.

* There are no credible arrangements in place for independent monitoring of compliance.

Enforcement quality

*** Clear, costly and credible sanctions for non-compliance with the rules are in place

** There are some clear potential costs to non-compliance, but their deterrent effect is limited (e.g. limited probability of detection and/or peer reputational impact)

* There are no credible sanctions for non-compliance.

Monitoring and enforcement legitimacy

*** Included/affected stakeholders fully accept the role of independent monitors, and have confidence in the robustness of their efforts; and fully accept the authority of enforcement bodies to follow-through with agreed-upon sanctions.

** Included/affected stakeholders accept the desirability of monitoring and enforcement, and are hopeful, but somewhat uncertain, that credible arrangements are in place, or are being developed.

* Included/affected stakeholders lack confidence in the robustness of monitoring efforts or the sanctions regime, and do not acknowledge the right of any actor to impose sanctions.

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