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Global Standards in Action: Insights from Anti-Money Laundering Regulation

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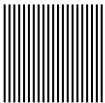
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Abstract. *As organizations have come under the increasing influence of global rules of all sorts, organization scholars have started studying the dynamics of global regulation. The purpose of this article is to identify and evaluate the contribution to this interdisciplinary field by the ‘Stockholm Centre for Organisational Research’. The latter’s key proposition is that while global regulation often consists of voluntary best practice rules it can nevertheless become highly influential under certain conditions. We assess how innovative this approach is using as a benchmark the state of the art in another field of relevance to the study of global regulation, i.e. ‘International Relations’. Our discussion is primarily theoretical but we draw on the case of global anti-money laundering regulation to illustrate our arguments and for inspirations of how to further elaborate the approach.*

Key words. *global governance; international organization; legitimacy; money laundering; regulation; standard*



The seemingly anarchic global world is ordered to a surprising extent by rules. The global rule-making is driven by a multitude of actors, such as states, international organizations and private actors. Given the prominence and the chaotic nature of global regulation, it is hardly surprising that it



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has given rise to a considerable research effort across a wide range of disciplines, ranging from legal studies, to economics and political science. More recently, organization scholars have also become interested in studying global regulation. Especially scholars working in the neo-institutional tradition have identified global rules as important environmental factors shaping modern organizations. Most prominently, the 'world society approach' of the 'Stanford School' argues that organizations and states are increasingly shaped by highly influential world cultural templates (Boli and Thomas, 1999; Drori et al., 2006; Meyer et al., 1997). Other important contributions to the study of global regulation come from a group of scholars that due to their link with the 'Stockholm Centre for Organisational Research' (SCORE) we call here the Stockholm School. The starting point of this approach is the proposition that global governance is characterized by a shift to soft regulation: global regulators of all kind frequently create world order by setting voluntary rules, i.e. standards (e.g. Ahrne and Brunsson, 2004; Brunsson, 1999; Brunsson et al., 2000; Djelic and Sahlin-Andersson, 2006; Mörth, 2004; Tamm Hallström, 2004). While building on key insights of the Stanford School, focus is on the mechanisms of rule-creation and diffusion.

The purpose of this article is foremost to identify and discuss this approach's principal contributions to the study of global regulation. We illustrate our discussion with insights from the global anti-money laundering regulation, as it has developed over the past 20 years. This is an interesting empirical case not only because one would hardly expect voluntary rules here, but also because it allows us to highlight one important aspect of global regulation so far overlooked: the fact that standards seem to follow a life cycle.

Our discussion is structured in the following way. First, we spell out the approach's key propositions regarding global rule-making. In particular, we focus on the crucial role of expertise and 'third party enforcement' for making voluntary rules work. Thereby, we assess how innovative each of the key propositions actually is using as a benchmark the state of the art in the field of International Relations (IR). The reason for this choice is—apart from personal familiarity—that IR-scholars should have considerable experience with global regulation. We then go on to show how standards work in different environments, as this promises to solve one of the major problems the IR-literature on global governance is struggling with: the global governance dilemma. Finally, we summarize our argument and indicate how the organizational approach could be developed further.

Standards on the Rise

According to the Stockholm School, global regulators have a peculiar way of creating global order: they seek to influence other autonomous organizations by stipulating best-practice rules. Such 'standards' are rules that 'give advice



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to many' (Brunsson, 1999). Standards form a category of rules of their own, different from formal legal rules backed up by material sanctions, as well as norms backed up by socialization of actors. Furthermore, this concept of standard differs from the conventional understanding of standards as rules for co-ordination purposes dealing with mostly uncontroversial technical matters such as ensuring technical compatibility, or enhancing market transparency, and set by organizations that have been created specifically for that task. By contrast, the organizational approach sees standards as universal rules that can address any public policy issue and that can be set by any rule-maker.

This concept of standards as voluntary best-practice rules is a truly sweeping concept, as it captures a large amount of rule-making activity. The paradigmatic case of the transition in global rule-making to best-practice standards is the International Organization for Standardization (ISO). Formerly mostly involved with defining technical compatibility standards it is now also known for its ISO 9.000 standard for quality management and its ISO 14.000 standard for environmental management. But there are numerous other organizations involved in global standardization, for example the Codex Alimentarius Commission of the World Health Organization's food safety standards (Princen, 2006), the World Intellectual Property Organization's copyright standards, and the Basel Committee for Banking Supervision's safety standards for banks (e.g. Kerwer, 2004). Organizations setting a large number of standards in different issue areas include the OECD and European Union. Examples of private actors defining voluntary best-practice standards are credit rating agencies (Kerwer, 2002) and the Forest Stewardship Council's standards of sustainable forest management (Cashore, 2002).

The organizational approach offers a fresh perspective on global regulation when compared to the status quo in IR. In this field, the dominant metaphor of global rules is 'international law' (Raustiala and Slaughter, 2002; Zürn and Joerges, 2005). The specifics of global regulation are dealt with as deviations from this ideal (Abbott and Snidal, 2000). The dominance of the law metaphor is also reflected in the perspective on rule-making: public actors make the relevant regulation, private actors are only seen as participating in the process (Risse, 2002). The reason for this assumption that global rule-making needs to be about binding rules is not only analytical but also normative. It is a prerequisite for good governance in the public interest (Zürn and Joerges, 2005). However, organization theory suggests that this perspective might not do justice to the realities of global regulation.

In the following, we want to illustrate our discussion of the Stockholm approach with the example of anti-money laundering. This field may be considered a hostile terrain for voluntary standards. Money laundering, i.e. the activity of converting illegal into legal money, is greatly facilitated by the benevolent regulatory environment of some states. In many instances



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such states greatly benefit economically from housing an 'off-shore financial centre'. For this reason, money laundering appears to be a policy problem of the tougher sort. Even if there were a general preference for preventing money laundering among all relevant states, cooperation would be difficult. Since states could benefit from more restrictive regulation elsewhere, the actor constellation is a prisoner's dilemma situation. Therefore, anti-money laundering rules would need to be backed up by material sanctions. Thus, if we were to find voluntary rules in this case it would be a strong case for the significance of voluntary standards in global regulation.

Present anti-money laundering efforts date back to the 1980s. In 1986, the US criminalized money laundering as part of its war against drugs (Helleiner, 1999; Reinicke, 1998: 143; Simmons, 2001: 607; Winer, 2002). Next, it won the support of its G7-partners for an international organization designed to fight money laundering world-wide. In 1989, the G7 established the Financial Action Task Force (FATF).¹ In 1990, it released a set of rules on money laundering, after 9/11 complemented by a set of rules on the finance of terrorism (Rawlings and Unger, 2005: 8; Williams and Baudin-O'Hayon, 2002: 138; Winer and Roule, 2002). These '40 + 9 Recommendations' are standards in the sense of the organization theory featured here. They are designed to motivate states to develop their own national anti-money laundering rules. However, they do not force states to do so. This is the core message of its self-definition:

The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF is therefore a 'policy-making body' created in 1989 that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. The FATF has published 40 + 9 Recommendations in order to meet this objective.²

Admittedly, FATF has backed up its voluntary standards with enforcement mechanisms. Members of the organization that fail to comply have to fear sanctions ranging from mere warning letters to outright expulsion from the organization. Non-members ignoring FATF standards risk being put on a 'black list' that FATF publishes (see below). However, both enforcement mechanisms have remained rather weak. First of all, since the 40 + 9 Recommendations are only broad frameworks they grant considerable leeway in how to comply with them. Second, even in cases in which compliance was problematic, sanctions were hardly ever applied. And finally, since membership in FATF is voluntary, members always have the option of escaping sanctions by leaving the organization. Non-members do not have this option, but the black list was short-lived. Overall, the sanctions attached to anti-money laundering standards are so weak that they are best classified as standards rather than coercive rules.³ To conclude, despite the fact that money laundering is a policy problem that should require binding rules, regulators dealt with it by standards.



Standards in Action

The Stockholm view of global regulation suggests taking seriously the fact that global regulation increasingly consists of standards. This raises the question how such standards can actually work. Especially in the global realm it seems to be rather unlikely that they have an impact. Why should powerful nation-states or multinational companies go through the trouble of following standards if they are only voluntary? In the following, we analyse how it is possible for standard-setters to motivate others to follow their rules. To this end we describe how standards work according to this theoretical framework and illustrate the main mechanisms by referring to the anti-money laundering case. We emphasize the crucial importance of expertise and argue that power is more important here than it might appear.

Expertise

The framework's basic model of standardization consists of an actor constellation in which one autonomous organization, the standard setter, seeks to influence another autonomous organization, the potential standard user. The standard setter is successful, whenever a potential user finds the standards to be incorporating knowledge which is relevant for problem solving (Brunsson and Jacobsson, 2000). If standards are based on such credible expertise, the standard-setter acquires rule-making authority and can routinely inspire other organizations to follow its standards according to the logic of appropriateness. Thus, legitimacy through expertise is the major explanation for how standard-setting works. In fact, the approach claims that it is one of the striking characteristics of standards that more than other types of rules they rely on specialized or expert knowledge. And more than that: standards are even defined as a special form of expertise: 'Standards are expert knowledge stored in the form of rules' (Jacobsson, 2000: 41). Accordingly, standard-setters incorporate expert knowledge by adopting organizational procedures that ensure that experts from various fields participate in the standard setting process (Tamm Hallström, 2004).

But how exactly is expertise doing the trick? How does it create legitimacy? The answer is that users easily accept 'expertise' as relevant and correct. Hence 'the growing importance of standardization is linked to a high degree of legitimacy for those, who are presumed to know more than the rest of us' (Jacobsson, 2000: 41). Two features of expertise are particularly important to understand how it creates legitimacy. First, expertise is a kind of knowledge that claims to be highly relevant for practical purposes. This is due to the nature of the type of knowledge that qualifies as 'expertise'. Expertise is stored in professions and organizations, rather than in academic disciplines. Like scientific knowledge, expertise is general and abstract and thus has a wide field of application. Unlike scientific knowledge, expertise embodies sound practical advice



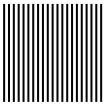
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(Tamm Hallström, 2004), and not just knowledge about the world, which often appears contradictory and hypothetical. This makes expertise useful to the user, reducing her search costs. Rather than searching for a custom-made solution to a problem, users will rely on the standards as guides in problem solving. Second, expertise is a kind of knowledge that claims to be correct. This claim is difficult to challenge for the user. Expertise is knowledge produced and administered by specialists and can only be challenged by specialists. 'Their competence is considered so advanced ... that it cannot be evaluated or controlled by persons without the same education and the same access to research' (Jacobsson, 2000: 42). Expertise introduces an asymmetry between the expert that knows and the layperson that does not. Most of the time the layperson will have to trust the expert. This, too, makes expertise useful to the user, as she can rely on standards to justify her conduct. Following an accepted and widespread standard, for example a standardized environmental management system, will put the user in a strong position when held accountable.

The central role of expertise can be illustrated with the case of anti-money laundering standards. First, expertise had an impact on the standard setting process. Experts constituted a 'transnational policymaking community' with a shared world view, which enabled an agreement on a set of standards in less than a year after its foundation (Helleiner, 2002: 188–89). Second, expertise also promoted rule following among states: 'The FATF process was driven by technocrats from finance ministries, regulators and law enforcement, not by foreign ministries or political figures. Its standards were neutral, and its judgements, initially confidential, were recognized to be fair' (Winer, 2002: 44). Or, to put it differently, expertise endows anti-money laundering rules with legitimacy. For countries not members of FATF it is much easier to accept rules made by experts (even foreign ones) than rules by politicians from foreign countries. Experts are above the state. They represent causes not states. Hence, one can accept their rules in spite of not having participated in the rule-making.

These insights are corroborated by the empirical observation of how FATF works. FATF-members come together for plenary meetings three times a year. This is where the decisions are taken and where the rule-making takes place. Therefore, one would assume this to be a political forum. But, according to the annual reports, plenary meetings are expert-ground: FATF's first annual report, for example, notes that 'more than one hundred and thirty experts from various ministries, law enforcement authorities, and bank supervisory and regulatory agencies, met and worked together' (FATF Annual Report, 1989–1990: 3). And not a single annual report fails to point to the fact that FATF's plenaries are expert-meetings. Similarly, FATF's typology meetings are presented as 'experts' meetings' (FATF Annual Report, 1998–1999: 6), as a 'forum for law enforcement and regulatory experts' (FATF Annual Report, 1998–1999: 48) to discuss recent trends in money laundering-methods and possible countermeasures.



Another way in which expertise matters is the implementation procedure. To ensure that its members actually implement and apply the standards, FATF conducts so-called mutual evaluations. This is a monitoring mechanism through which FATF-members evaluate each other. The literature praises this peer review for having been extremely efficient in securing FATF-members' compliance (Levi and Gilmore, 2002; Sansonetti, 2000). It, too, is expert ground. FATF's annual reports describe the evaluation teams as consisting of 'three or four selected experts, drawn from legal, financial and law enforcement fields of other members' (FATF Annual Report, 1998–1999: 9). This job is done by experts because they are seen as a guarantee for objective monitoring. One annual report explains: 'The purpose of this exercise is to provide a comprehensive and *objective* assessment of the extent to which the country in question has moved forward in implementing effective measures to counter money laundering' (FATF Annual Report, 1998–1999: 9, emphasis added). And the academic literature, too, considers 'objectivity' a main feature of the mutual evaluations (Sansonetti, 2000: 224). Thus, the mutual evaluation-mechanism 'holds out the promise of greater legitimation and 'buy in' potential than measures that are simply imposed' (Levi and Gilmore, 2002: 95).

Both the plenary meetings as well as the mutual evaluations regard FATF members. However, the expertise base is also a signal to non-members that FATF is an impartial regulator. The legitimacy of its measures is based on the fact that they are backed by experts. And with a view to the evaluation of non-members' regulation, the internal evaluations' objectivity should dilute fears among non-members of being evaluated in an unfair manner. FATF constructs mutual evaluations as a process where expertise, not power and politics matters. Overall, numerous procedural features of the anti-money laundering regime make it plausible that expertise is at least one important explanatory factor for rule-following.

This emphasis on expertise is reminiscent of the constructivist paradigm in IR, which identifies experts as important in shaping or creating the world view of co-operating states (e.g. Adler and Haas, 1992). However, there is a crucial difference in the understanding of how expertise works. It is probably fair to say that in IR the intuition dominates that experts are influential to the extent that they present arguments that persuade. This becomes especially clear, when the process of arguing is conceptualized as a Habermasian discourse (Müller, 1994; Risse, 2000). Organizational theory suggests a different mechanism by which expertise becomes important. Standard setters qualify their knowledge as expertise to avoid argument. They build their legitimacy by exploiting the asymmetry between experts and laypersons. The incorporation of expertise signals the rules' effectiveness. In a nutshell, standard setters acquire rule-making authority if users believe that standards embody high quality expertise.



Third Party Enforcement

Expertise, while important, is not the only way in which standards become compelling. Another important mechanism for explaining rule-following is enforcement (Brunsson and Jacobsson, 2000: 134–137; Kerwer, 2005: 618–619). However, it is not standard setters themselves but rather other interested actors that make standards more compulsory. In fact, states, international organizations or private actors such as banks or individual firms by endorsing standards greatly boost their chances of success. For example, the European Union more recently adopted the accounting standards of the International Accounting Standards Board and by doing so has turned formerly voluntary standards into obligatory rules for many firms of its member states. Another example of enforcement is a multinational company that requires its suppliers to follow ISO quality management standards. If ‘third parties’ enforce standards in this way, the likelihood that standards are being followed greatly increases.

The mechanism of ‘third party enforcement’ is an ingenious way of re-introducing considerations of power in global regulation, making specific suggestions on how power matters. First, the concept of third party enforcement sees only a limited role for the use of power. Third party enforcement is considered an amplifier of a standard-setting arrangement that is already working. But third party enforcement cannot replace the standard-setting arrangement itself. It is limited to standards that already have achieved a certain level of technocratic legitimacy. Second, the conceptualization of third party enforcement puts limits on who may exert power. Thus, power is limited to enforcement by actors who are neither standard-setters nor standard-users. Most importantly, this conceptualization of power as third party enforcement excludes that standard-setters themselves resort to force. This is highly plausible as the use of power would be an outright contradiction to the technocratic legitimacy that standard-setters seek to attain. If these propositions are true, we should be able to observe that if power is institutionalized as third party enforcement, the scope of standard-setting should be enhanced; if on the contrary, powerful actors seek to enforce standards which are not recognized, or if standard setters themselves seek to resort to force, then standard-setting should be weakened.

The case of anti-money laundering offers an excellent illustration of how this specific form of global rule-making involves a specific institutionalization of power. FATF understood that compliance of its own members alone would not be enough. Money-launderers could easily escape anti-money laundering-rules in the OECD-world by shifting their activities to less regulated countries. Therefore, FATF needed to secure compliance of non-members, in effect global compliance, if it wanted to rule out money laundering (Sharman, 2006: 14). But why should non-members comply with these rules, given that they had not participated in the rule-making process? For most observers, the reason is quite obvious: non-members comply because of force. In this understanding, FATF’s rules



are voluntary only on paper. And indeed, there is evidence that supports this interpretation: in 1999, FATF decided to evaluate non-members' anti-money laundering-performance and, if necessary, take countermeasures against countries unwilling to co-operate. This more aggressive stance resulted in the publication of a black-list of 'Non-Cooperative Countries and Territories' (NCCT) in 2000.⁴ Should blacklisted countries fail to set up and implement anti-money laundering-policies, FATF threatened to encourage its members to apply sanctions, in particular to deny access to their financial systems (Kern, 2001: 243; Winer, 2002: 45). And coercion worked: when the black-list was first published, 15 countries were named and shamed, and another eight were added later. Most affected countries reacted quickly and adopted measures in line with FATF-standards. In 2006, the last two countries remaining on the list, Myanmar and Nigeria, were removed. FATF finds that 'overall, the NCCTs exercise has proved to be a very useful and very efficient tool to improve worldwide implementation of the FATF 40 Recommendations' (FATF, 2005). Adherence to the anti-money laundering-rules seems to follow the logic of power politics, with non-FATF-members having little other choice than taking over FATF's standards, as FATF-members' combined economic power by far outweighs that of non-members'. Non-members, to put it in a paradox, are forced to comply voluntarily. This explanation is prevalent in the literature (Drezner, 2005: 850–853; Kern, 2001: 243; Winer, 2002: 45).

But is compulsory power the whole story? The evidence looks certainly impressive: 21 countries on the black-list in 2001, with none remaining on the list today makes for a significant correlation between coercion and compliance. And there appears to be a causal relation between the two as well: black-listing changes a country's calculation of self-interest by increasing the costs of non-compliance. Hence one cannot deny that the black-list has enhanced compliance considerably. However, we would argue that it has only been an episode in the history of anti-money laundering, which is hardly typical for how FATF works. Not only did it arrive rather late on the scene (ten years after FATF's foundation), but also before long, it was abolished again. In 2002, only three years after its initiation, FATF decided to discontinue the practice of black-listing. The reason for this is that it threatened the legitimacy of FATF as a global regulator. Affected countries could argue that FATF as an exclusive club cannot legitimately interfere into their internal affairs in this direct way (Sharman, 2003: 8). This is an effective challenge to the mechanism because 'even coercive strategies like blacklisting and sanctions indirectly rely on third parties judging that such penalties and threats are fair and legitimate in order to be effective' (Sharman, 2003: 11). The IMF and the World Bank, with which the FATF had planned to co-operate (Holder, 2003: 378–379; Schott, 2003: X2–X6), were such doubtful third parties. Both demanded a suspension of the black-list as a precondition for becoming engaged in the fight against money laundering (Sharman, 2006: 21).



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Thus, there is evidence for the fact that the choice to institutionalize rule-making as standard-setting allows for using power but also puts limits on possible ways of coercion. This is what the institutionalization of power means in a very classical sense: by subjecting power to certain rules, it becomes more limited but at the same time more effective. At least, the anti-money laundering standards should be more effective than gunboat diplomacy in the case of non-compliance.

Overall, the so far little regarded mechanism of third party enforcement is an interesting contribution to a research concern in the field of global regulation. As an antidote to an overly cosy image of global rule making as co-operative problem-solving exercises, in IR there has been a revival of interest in how power shapes global regulation (Barnett and Duvall, 2005; Millennium, 2005). One problematic tendency of this literature is to regard global regulation mostly as an instrument in the hands of powerful states. The organizational approach, in contrast, shows how in standard-setting the use of soft rules matters but is also limited. In this perspective, global regulation continues to be a relevant object of study and not just an epiphenomenon of power.

Standards in Context

More recently, the Stockholm framework on standardization has been extended by a consideration of how environmental factors can influence standard-setting strategies. Comparing the International Standard Organisation (ISO) and the International Accountancy Standards Committee (IASC), Tamm Hallström (2004) has shown that the two standard setters use quite different strategies to promote their standards. Both, the ISO and the IASC rely heavily on the quality of their standards and try to secure the quality not least by incorporating experts (output legitimacy). However, the IASC in addition continually demonstrates that the standards were also made in the correct way (input legitimacy).⁵ Why is it that one standard-setter can do without participation of the standards' users, while the other standard-setter tries to enhance its legitimacy by allowing for participation? The answer given in Tamm Hallström's study is that this is an effect of different environments. While ISO standards address new issues, the IASC operates in a field with a long tradition of rule making by different actors. ISO operates in a 'technical environment' and IASC in an 'institutional environment'. While organizations operating in technical environments can legitimize themselves by their output only, institutionalized environments consist of norms that organizations also need to conform to (Powell and DiMaggio, 1991). Similarly, Tamm Hallström (2004) shows that standard-setters in a technical environment need to show *what* they do, while in an institutionalized environment they also need to show *how* they do it.

What are the consequences of this finding? The case of a standard-setter in a technical environment is rather unproblematic. It can focus on making its rules effective through expertise as it does not have to put up with demands



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as to greater participation. However, standard setters in institutionalized environments find themselves in a contradictory situation (Tamm Hallström, 2004). On the one hand, they face the requirement to increase user participation. On the other hand, they have to secure the high quality of their standards by incorporating expertise. The two tasks, however, may be in conflict, as it cannot be expected that every user affected by standards will have the capability to design good standards. Standard-setters facing such a contradictory situation need to find ways to manage it, they need in one way or another balance between input- and output-legitimacy.

The money-laundering case serves as a good illustration for both these observations: it shows how standard-setters can escape the dilemma of global governance by choosing non-binding rules, but it also illustrates how—in some environments—they fail to do so. In an initial phase, the rule-makers did indeed operate in a technical environment. When established in 1989, FATF entered a field which did not exist before. Therefore, it was possible that only a small number of experts from a limited number of states drafted and published the 40 Recommendations designed to eradicate the practice. FATF as a rule-maker almost exclusively relied on output legitimacy, i.e. on the high problem-solving capacity of its rules.

However, in the mid-1990s, the environment of anti money laundering began to change. As more and more actors—private and public, national, transnational and international—populated the field of anti-money laundering, the context in which regulation took place was no longer purely technical. Rather, it showed signs of an institutional environment. And, much like the organizational approach would expect, FATF did adapt its rule-making style to the changing context. Instead of relying on expertise alone, it tried to enhance the participation of the various actors now active in the field. Regarding private actors, FATF, in 1996, initiated the Financial Services Forum, in which regulators consult with the affected financial industry (Reinicke, 1998: 160; Simmons, 2000: 255, Fn. 32). Also, during the latest review of the 40 Recommendations (2001–2003) the private sector was asked to contribute (FATF Annual Report, 2000–2001: 17) and FATF prides itself with having incorporated many suggestions from the financial industry into the final text of the revised Recommendations. (FATF 2002–2003: 4).

Regarding public actors, an exclusive FATF faced increasing dissatisfaction of the many countries which were not members of FATF and therefore could not participate in the making of the global anti-money laundering standards, but were still asked to comply. In order to mitigate its all too obvious legitimacy problem, FATF backed down from its highly exclusive membership-policy, according to which only OECD-countries were eligible to become members. In 1998, FATF decided ‘to bring into FATF some additional strategically important countries’ (FATF Annual Report, 1997–1998: 9). Since then, four new members—Argentina, Brazil, South Africa and Russia—have been accepted. Also, China and South Korea have been granted observer status, allowing them to participate at FATF’s



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plenary meetings. Both countries are expected to become full members in the near future. And recently, India has applied for membership as well. Eventually then, the rule-making in the anti-money laundering field will be considerably more democratic than it used to be, as a far larger part of the world population will have a (theoretical) influence on the making of the rules they are affected by, e. g. when opening a bank account and asked for personal details. Still, the majority of states remains outside FATF and hence is not involved in the making of the standards. Yet FATF has taken measures for enhancing the participation of these countries as well. It supported the creation of autonomous regional anti-money laundering organizations called 'FATF-Style Regional Bodies' (FSRBs). Though the first of these FSRBs had been established already in the early 1990s, it was only in the new millennium that FATF took up this strategy again and pushed regions around the world to follow these early examples. This led to the establishment of several new FSRBs. Most recently, in June 2006, GIABA has been recognized as West Africa's anti-money laundering body, raising the total number of FSRBs to eight. The function of these regional anti-money laundering organizations is to devise local implementation strategies for FATF's money laundering standards through mechanisms such as self-assessments and peer reviews.

It cannot be denied that this trend towards more participation has its limits. Private actors may offer their views in the Financial Services Forum and comment on revised standards, but they do not have decision-making power. Similarly, non-member states' participation is limited in many respects: access to membership is restricted to a few countries deemed 'strategically important' and FATF emphasizes its intention to remain an exclusive organization (FATF Annual Report, 2003–2004: Annex p. 2). Moreover, the autonomy of the regional anti-money laundering organizations is limited. The FSRBs are formally independent international organizations, yet FATF heavily influences their operation by providing vital financial and technical assistance (for an example see Reinicke, 1998: 164). It pushes the FSRBs to endorse the 40 Recommendations rather than developing their own standards and ascertains that the FSRB's mutual evaluation mechanisms are in line with its own procedures (FATF Annual Report, 1996–1997: 23).

Against this background, the increased participation looks like mere window dressing, introduced by FATF to avoid the impression of riding roughshod over the autonomy of firms and the sovereignty of states. However, this interpretation is overblown: it neglects that chances for participation did increase over the course of FATF's existence. What is more, it neglects that enhanced participation does not only aim to increase input legitimacy (participation of those affected by rule-making) but also output legitimacy (participation by experts of all kinds). For example, the increasing participation of private actors will increase the chance that the rules become more effective. Also, states participating in the FSRBs are



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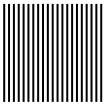
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more likely to comply with and implement rules. From the perspective of the organizational approach featured here, the limitation of participation does make sense, as FATF tries to avoid a decision-making deadlock. By allowing for participation, but not for too much of it, FATF balances between input and output legitimacy.

While it appears as if FATF has actually found a balance between legitimacy and effectiveness, the very latest developments are perhaps indicative of FATF beginning to lose balance. FATF may soon count three more members—China, India and South Korea. Also, FATF has granted some FSRBs associate membership. This could in the future make it harder for FATF to agree on those standards experts suggest to be the most effective. FATF, it seems to us, will become a more political organization in the future, characterized by political bargaining and lowest common denominator solutions. Expertise will be considerably less important. The balance between effectiveness and legitimacy could be lost.

Tamm Hallström's extension of the original model of standardization addresses a topical issue in IR. One major problem observed by students of IR is that rule-making beyond the nation-state is becoming increasingly difficult. International rule-setters such as the UN, the WTO or the EU have difficulties revising old and making new rules. This problem is attributed to a governance dilemma (see e.g. Grande and Pauly, 2005). Usually, sovereign states are only willing to get involved in international rule-making, if they can veto any rules they dislike. In order that unanimity decision-making does not lead to decision-making deadlocks, multilateral institutions have had a small and homogenous membership. In short, they have been organized as exclusive 'clubs' (Keohane and Nye, 2002). However, the clubs have had difficulties in keeping their doors shut. In a shrinking world, more countries are likely to be affected by global problems and/or by the rules of the global rule-makers. Invoking the norm of democracy, which holds that those affected by a rule have a right in participating in the making of it, they demand access to international rule-making. But a larger and more heterogeneous membership jeopardizes the capacity of making rules. Overall, international rule-makers are thus confronted with a formidable dilemma: if they chose to remain exclusive clubs, they will be undemocratic, if they chose to become inclusive forums, they will be ineffective (see Dahl, 1994; Scharpf, 1999).

The organizational approach, by virtue of highlighting the prevalence of voluntary rules, questions whether the dilemma is relevant to all global regulators. A global governance dilemma only arises for regulators thriving for binding rules. Only under this condition will rule takers find it harder to ignore them and therefore demand more participation. If regulators use standards, rule-takers can more easily evade them and are therefore less likely to demand participation. One important implication of this approach is thus that standards are a way for regulators to avoid the dilemma of global governance. At the same it also alerts us that the viability of this escape route



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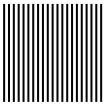
depends on the environments in which regulators operate. In institutionalized environments, regulators using standards are likely to encounter the same dilemma as regulators using hard law.

Standards in Demise?

As we are witnessing a transformation of governance beyond the state, the Stockholm School helps us understand what exactly is going on. Most importantly, it teaches us that voluntary rules are characteristic of the new form of global governance and it explains how such rules can become consequential despite their voluntary nature.

The approach challenges the status quo of the IR perspective on global rule-making in a number of ways. By suggesting that the trend towards voluntarism is a shift to a form of governance in its own right it challenges the common view in IR that voluntary rules are only a derivative of binding rule-making by law. By arguing that the influence of standards is due to expertise, it challenges IR's ideas about compliance: not so much the force of material sanctions (as rationalist approaches would have it) and not the better argument (the constructivist view) make rule-takers follow the rules, but the incorporation of expertise. At first glance, this might look like an approach that ignores the role of power, a reason why IR-scholars would most likely dismiss it as being irrelevant for studying global politics. However, we have shown that the opposite is true. In fact, this organizational approach enables us to see the smart ways by which power is being played out in the global realm. It is not just the use of rather unsophisticated means of coercion such as threats or material sanctions we encounter in global rule-making; power is also exerted in a disciplined way. Lastly, this also questions whether the global governance dilemma, taken pretty much as a given by students of IR, really exists. In fact, it suggests there is a solution to this dilemma. Due to the voluntary nature of standards, it is possible to keep decision-making exclusive or to structure participation in such a way as to avoid decision-making deadlocks. Yet, we will argue below that this may not be the end of the story.

To illustrate our theoretical argument we have referred to the international efforts to combat money laundering. This is a good example with which to show that non-binding rules are all but a marginal phenomenon, because from an IR-perspective one would expect this to be a highly securitized issue where only binding rules can be successful. Yet, beyond providing us with some empirical flesh, the money laundering case has proven highly interesting for another reason: it not only shows that organizational theory takes us a long way to understanding global governance and thus challenges conventional approaches in IR, but it also confronts the organizational approach with a considerable challenge: our empirical evidence suggests that perhaps the solution to the governance dilemma offered by the Stockholm School is not very sustainable. It may be a viable strategy in the short term to simply make voluntary rather than



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binding rules, but it seems that in the long term the global governance dilemma strikes back. FATF started out as an exclusive club in order to establish strong standards. Once these standards have become widespread, users demanded more participation. This forced the standard-setter to balance between input and output legitimacy. While it appears that FATF for some time has managed to keep the balance, latest developments indicate that the balance will eventually tip towards input legitimacy.

Should this impression be confirmed by future developments, the framework of the Stockholm School needs to be extended. We suggest conceptualizing standards as following a life cycle: they start out as highly effective rules based on expertise, then become more legitimate by allowing for a limited degree of standard user participation while retaining their earlier effectiveness, until finally participation will increase to an extent where the standards' quality goes down and effectiveness decreases. Such an extension would certainly be useful for IR-scholars, as they would then understand not only why international regulators increasingly rely on voluntary rules, but also why this strategy may fail.

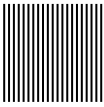
Notes

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- 1 For general accounts of FATF see, for example, Kern (2001), Johnston and Lim (2002), and Tranøy (2002); for a political science approach to anti-money laundering see Helleiner (2002), Simmons (2000), Williams and Baudin-O'Hayon (2002).
- 2 <http://www.fatf-gafi.org> (accessed March 15, 2007).
- 3 With respect to FATF members, FATF's rule-making activities should be analysed within a theory of meta-organizations rather than standard-setting (see Ahrne and Brunsson, 2005).
- 4 For an overview of the NCCT-process see FATF's NCCT-website: http://www.fatf-gafi.org/pages/0,2966,en_32250379_32236992_1_1_1_1_1,00.html (accessed March 15, 2007). This site gives a general description of the process and provides access to the NCCT-reports.
- 5 For the distinction between input and output legitimacy see Scharpf (1999).

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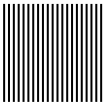
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