Introduction

IN THE PAST DECADE, most major multinational corporations (MNCs)—and many smaller ones—have rushed to develop new codes of conduct that set standards for their behavior on issues that top the international agenda. These issues include everything from the use of sweatshop labor to the level of carbon emissions from their factories. In a turnabout from the past, many companies now actively seek out their critics in the nonprofit world as partners for new social and environmental programs. Some dismiss this new approach as a public relations ploy designed to ward off government regulation and make the companies look good to consumers. Proponents argue that these voluntary standards have a significant positive influence on the behavior of companies and are more flexible and easier to implement than traditional industry regulation. All sides view industry self-regulation as a potential new source of *global governance*, that is, mechanisms to reach collective decisions about transnational problems with or without government participation. What they do not agree on is whether this is a legitimate and effective means to achieve public policy goals.

Globalization has made the regulation of MNCs one of the most contentious issues in relations among states and within societies. Competing states have not been able to negotiate comprehensive rules regarding corporate rights and responsibilities, as demonstrated by the failure of the recent negotiations over a Multilateral Agreement on Investment (MAI).[1] At the national level, most industrialized and many developing countries are moving toward a more market friendly system of regulation, in which governments often delegate numerous responsibilities to the private sector (Aman 1999). Businesses are being pushed and pulled to adopt voluntary standards by their fear of ill-conceived international rules and transnational activist pressure, of heightened competition in a world in which reputation matters, and of the spread of new ideas within the business world about how to achieve long-term profitable growth. Governments are interested in legitimizing these efforts in the hope that they can protect society from the negative side effects of corporate activities in a flexible way that maintains national competitiveness.

The problem that governments and publics have with these voluntary initiatives is precisely that they are voluntary, with often-weak enforcement mechanisms. Few people trust business to implement higher standards and stick by them. This is further complicated by the fact that most of these initiatives are fundamentally about the activities of a corporation *in other countries*. Governments and publics in the industrialized countries, in which regulatory systems are strong and well developed, want the private sector to raise standards in developing countries. Many critics fear that the ability of international investors to move easily from country to country will lead to a "race to the bottom" as companies seek out sources of low-cost production, which often means countries with weak regulatory systems.[2] Industry self-regulation may be one way to raise standards, but because those standards are voluntary and unenforceable, they lack credibility. Even more troubling for many, however, is the issue of accountability. If these efforts are an indirect means for public goals to be met by private interests, then how does the public influence their content? How can the public make sure the private sector upholds its end of this one-sided bargain? Without the public having a voice, these new forms of regulation appear to be undemocratic and illegitimate.

This book addresses three overarching questions raised by the trend of industry self-regulation. First, why would industry go beyond what is required by national and international regulation and put significant constraints on its own behavior? Second, how do the participants in self-regulation deal with issues of enforcement, accountability, transparency, and credibility? Third, how should governments and publics view these industry activities?

To answer these questions, this book begins with an overview of the current state of play in industry self-regulation and the context in which it is developing. The discussion in subsequent chapters then moves to three policy arenas in which debates over industry self-regulation are most prominent: environment, labor, and privacy. These are all cases in which one of the main points of contention is the behavior of business in global markets. All three areas raise questions about how multinational corporations should handle overseas production and exchange relations. Under what conditions would we expect to see more industry self-regulation? As will be demonstrated in the following chapters, the most potent confluence of factors is a high risk of government regulation at the national or international level; relatively low economic competition but high asset specificity; high probability of transnational activist pressure; reputation as a key asset of the company or industry involved; and high levels of information exchange, learning, and consensus within the industry. This particular confluence is rare, and the three cases are each quite different in this regard. Yet, in every case, industry self-regulation has become a key element of the policy debate.

Given these expectations about the conditions that lead companies to choose to self-regulate, the next step is to explore exactly how they do it and what concerns are raised by their initiatives. There is a surprising variety of programs: from corporate codes to monitoring systems to elaborate partnerships with nongovernmental organizations (NGOs) or governments in a form of co-regulation. Many of these programs seek to assure some sort of credibility and accountability for the voluntary initiatives, and use what might be called "soft enforcement," that is, reputation and transparency to leverage public pressure to ensure the commitments made by the firm are upheld.

The three case studies explore the factors that appear to drive firms toward self-regulation, the variety of commitments those firms undertake, and the tensions that arise between public and private interests. Each chapter examines codes adopted by individual firms; those adopted through industrywide negotiation; and those either developed through a partnership among business and other entities, or developed by NGOs, intergovernmental organizations, and states and presented to the private sector for adoption. Each chapter describes the systems of management implementation, monitoring, and transparency being developed. Finally, each explores the degree to which these voluntary programs might meet public expectations. The data for these cases were current as of March 2001; these are dynamic arenas, though, where continued change is inevitable.

Voluntary standard setting by firms is a logical response to the ambiguities and uncertainties of the current global system. It responds to societal pressure, while avoiding rigid government interference. It is voluntary and therefore can be applied in a flexible manner. It is potentially global in scope, and if adopted widely, would reduce costs, increase efficiency, and prevent other corporations from gaining competitive advantage. Governments seeking to find some way to provide social protections to the public—at home and abroad—while strengthening national economic competitiveness look on corporate social responsibility as an element of the "third way" between socialism and capitalism.[3] Political interests on the left and right are becoming more interested in exploring and supporting corporate voluntary initiatives to deal with the backlash against globalization and to maintain open markets. Private sector self-regulation appears to its supporters as a way to balance the interests of business and society without expanding government intervention in the economy.

Nevertheless, three questions arise repeatedly in evaluating these efforts: How are these voluntary measures enforced, if at all? How credible are business commitments, given the lack of strong enforcement? And how accountable is business to the wider public when adopting these nondemocratic standards? Harrison, in a review of purely national programs in the United States and Canada, comes to mixed conclusions about the effectiveness of corporate environmental self-regulation (Harrison 1999). Gordon, however, argues in a recent paper that nonbinding agreements (such as industry self-regulatory commitments) have an important role to play in experimenting with new rules and creating consensus for eventual public regulation (Gordon 1999; see also Chayes and Chayes 1998).

If the kind of standard-setting activity represented in these three cases becomes widespread, then it will present new challenges for all the participants. The concluding chapter in this book addresses self-regulation in light of arguments about corporate power and discusses the challenge that such corporate action presents to governments and NGOs. It also presents a broader view of the results of industry self-regulation and what it means for global governance.

Governments will have to consider how industry self-regulation affects domestic regulatory capacity, because it can compete with or supplement national regulatory norms, even though applied to industry activities abroad. On the one hand, relying on voluntary initiatives certainly lowers the cost of influencing and monitoring business behavior. In fact, the existence of such initiatives challenges governments to develop new institutional incentives for the private sector to expand these activities. On the other hand, these initiatives probably will not relieve the pressure on governments to intervene, because in many cases the implementation of these codes is weak. Nevertheless, the industrialized countries may view these voluntary private sector initiatives as a way to resolve the tensions between promoting both foreign investment and high standards at the same time. Some may argue that these initiatives simply reflect the decreasing capacity of these governments to regulate domestically or to negotiate international agreements about the behavior of MNCs.[4] The international integration of markets has changed the ability and willingness of states to intervene in economic affairs, or at least, in the affairs of MNCs. These initiatives could ultimately increase the backlash against globalization, if they appear to be an abdication to the private sector of government responsibility.

Private sector standard setting also poses new challenges for NGOs. To the degree that voluntary initiatives actually raise standards, the business sector will expect less criticism from these groups. NGOs will need to publicize good behavior, instead of concentrating all their attention on the bad. But the level of trust between many NGOs and the business community is quite low, and many activists simply do not accept the legitimacy of the corporate community on any level. Some organizations may be willing to engage in dialogue and form partnerships with business for specific projects, but they may not be able to sustain a long-term relationship. Because the standards embodied in corporate initiatives will never meet the criteria of all the diverse groups watching the private sector, and because implementation systems are weak, the perceived failures of these exercises will tempt many NGOs to turn their backs on industry and concentrate on highlighting the violations of business and lobbying for strict regulation.

Richard Newton, director of BP Europe, noted recently: "If people *think* you have power, then—to some degree at least—you do" (Buchan 1998). Both the perception and reality of corporate power in a global economy have made the role of the private sector in international affairs a source of constant contention. The shift in power away from governments portends a future in which the relationship between business and society may be very different from what we see today.