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Meta-governance as a challenge

An analysis of global private governance for sustainable development

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Abstract

The number of books and papers bearing the term ‘global private governance’ has grown exponentially in the last decade. This paper studies NGO-business initiated transnational regulations. The main purpose is to explore what meanings may be attached to this relatively new form of governance, particularly related to issues of sustainable development, and how the implications may be assessed. After the introduction, the discussion is divided in six parts and a conclusion. Sections two and three examine the potential disadvantages and advantages. It is observed that they are based on different interpretations of liberal democracy and often mirror each other. After a short reflection on the arguments in section four, the fifth section considers meta-governance to be the most important current challenge and the sixth discusses private and public mechanisms of meta-governance. The paper argues that the capabilities of private meta-governance have been a neglected and undervalued topic in research. Taking private meta-governance mechanisms as a starting point the paper also defines a specific meta-governance role of states. The final section draws together the strands of the discussion.

1. Introduction

In the last decade a new set of transformations has taken place in global governance. One of the main characteristics is that governments are not the sole institutions for governing anymore.¹ Non-state actors have become part of global governance structures and have developed various forms of regulation in areas that used to be regarded as the domain of formal public institutions. These private forms of regulation have been initiated by businesses, NGOs, or through collaborations between them. Businesses have felt a growing public pressure to adopt corporate social responsibility agendas and increasingly seek the engagement of stakeholders from civil society. This has coincided with a shift in strategies of nongovernmental organizations, from mainly confrontational to more collaborative, working in partnerships with companies next to campaigning against them. Many of these new initiatives aim to change markets by setting their own rules for sustainable practices. This ‘private regulation of public affairs’ has taken four institutional forms: 1) The business community developed its own proactive rule-systems in new social arrangements (intrasectoral partnerships) aimed at the promotion of sustainable business models; 2) The NGO community formed transnational networks (intrasectoral partnerships) creating rules for alternative markets of sustainable products and processes; 3) Private intersectoral partnerships (strategic alliances between civil society and business) were formed to interfere

¹ Cutler, Haufler, and Porter 1999; Ronit and Schneider 2000; Hall and Biersteker 2002; Pattberg 2007a; Abbott and Snidal 2009.

in markets and direct them in a sustainable way; 4) Public-private intersectoral partnerships (strategic alliances between governments and business and/or civil society) were formed for the same reason. Type 1 and 2 can be understood as emerging from already vested contacts. For various reasons the participants enlarge the domain within which they cooperate. These intrasectoral partnerships are based on a common discursive framework and long established institutional and individual contacts. Type 3 and 4 are intersectoral forms of cooperation between formerly opposed segments of society. Though some of these relatively new institutional arrangements seem to be designed merely to benefit their own membership, many of them have a wider public dimension and attempt to create a sustainability agenda that transcends sovereign territories.² In this paper we mainly focus on the type 3 regulations, which may be seen as the ideal type of private regulation, combining the core logics of businesses and NGOs.³ These regulations (can) comprise voluntary standards, codes of conduct, or certification schemes and they often organize monitoring of performance by accredited auditors. Though these private regulations lack the rules of power of formal governmental policies, they nevertheless have become sources of (moral) authority in global governance. Many of them connect North and South and exert influence on widely separated locations throughout the globe, directly addressing specific markets. Private actors from business and civil society are not only the initiators, but also seen as the main target groups of the schemes: i.e. the producer, the retailer and ultimately, the consumer.

The discussion will be illustrated with examples of leading private regulations related to various crucial sustainability topics: among them the Fair Labor Association (FLA) from the field of social issues; the International Federation of Organic Agriculture Movements (IFOAM) from sustainable agriculture; the Forest Stewardship Council (FSC) from the field of biodiversity protection; and the Global Reporting Initiative (GRI) from the field of promoting conditions for the transparent and reliable exchange of sustainability information.

2. Objections to global private governance

There are many kinds of criticisms which could be leveled at private global governance. These criticisms are mainly based on a specific interpretation of the role of states in liberal democracies and take on a defense of the constitutional rule of law. According to this rule, states are the ultimate and exclusive authoritative agents in public affairs. In the traditional government setting, decisions are made by democratically elected officials. Through the mechanism of elections, all citizens can express their policy preferences. In a private governance system, however, market parties and/or civil society organizations are able to influence policy outcomes even though their representatives have not been elected democratically by society at large. We shall consider three lines of argumentation in this realm.

² Glasbergen 2007.

³ Waddell 2005.

The argument of erosion of state authority

The evolution of private regulations is often understood to be stimulated by the lack of regulatory capacity at intergovernmental level. The rise of private actors developing their own regulations is then closely interlinked with frustrations about the execution of state power.⁴ The argument on the critical side assumes that private regulations may also be seen as the cause of declining power of the state. This argument speculates about the effects of private governance arrangements on the factual performance as well as the perceived legitimacy of the state. This often goes hand-in-hand with a critique of the neo-liberal agenda and the market mechanism as an instrument to address the underlying causes of unsustainable developments. The main argument is that private governance legitimizes and sustains the neoliberal agenda. Reasoning takes place at several levels of abstraction. A most general argument is that having transnational private governance in place may legitimize the retreat of the state or at least its unwillingness to tackle certain issues by intergovernmental regulation.⁵ Some authors raise the fundamental question whether public interests and values like equity and justice can ever be compatible with private interests and values of free entrepreneurship, raising profits and rewarding shareholders. They particularly fear the risk of commodification of public interests. Saurin, for example, observes a process of private capture of public goods in which basic production functions (i.e. how nature is transformed) have been systematically rendered non-political. He holds the view that in the global sphere private authorities have been able to simultaneously strengthen their own position while dismantling the authority and self-determining capacity of public bodies.⁶ Richter criticizes partnerships with companies as possibly resulting in private capture of what should be a public affair; a process in which other organizations risk the subordination of their mission and values to commercial trade, investment and finance rules.⁷ Utting, in this context, suggests that NGO-business partnerships can be part and parcel of a process of incorporation or co-optation, in which critical positions of public officials and activists are increasingly diluted.⁸ Falkner observes that, because private schemes are closely interlinked with the self-regulatory economy, private actors can promote a more managerial perspective on global environmental issues, which rules out a more fundamental critique of the global economy being the cause of many ecological problems.⁹

The argument of democratic shortcomings

From the constitutional perspective of classical liberal democracy private regulations fall short of the norms of representation and accountability. Representation and accountability are

⁴ Pattberg 2007b.

⁵ Graz and Nölke 2008, 21.

⁶ Saurin 2001.

⁷ Richter 2002, 2003.

⁸ Utting 2000.

⁹ Falkner 2003, 81-82.

two sides of the same coin. Because it is not clear whom parties in a private regulation represent, it is also unclear to whom the parties are accountable. The question of representation regards both businesses and NGOs. Private regulations can easily be understood as a competitive corporate strategy to preserve reputation and protect market positions in the face of globalizing markets. Private regulation by NGOs might be interpreted as the result of rent-seeking by NGOs that recognize new opportunities for funding now that they have the opportunity to organize more globally than ever before. This risk is smaller related to NGO-business regulations than with self-regulatory schemes of businesses; because collaboration will only take place if there is a relative balance of power between the two societal spheres. Nonetheless, there are at least four reasons why representation is also problematic with them. First, private regulations are mainly the initiative of actors that have their institutional bases, members, and sponsors in the North; thus they represent Northern interests. As such they reflect an imbalance in power, as many of the implications of the schemes are felt in the South where local producers will be affected by the issue that is regulated. Second, the participants are also unlikely to be internally democratic. Businesses are not run on democratic lines and some NGOs have rather dubious democratic credentials; leadership change within NGOs often takes place by cooptation.¹⁰ Third, the ideology of the actors involved in the arrangements might be a restricted one. Often the NGOs with a more pragmatic strategy towards sustainability and with more process-oriented perspectives on partnerships as governance mechanisms are involved. The NGOs with more inclusive views on sustainability and more output-oriented approaches do not become involved or leave partnerships due to the perceived lack of progress.¹¹ Fourth, the collaborations may be focused on selective topics and discourses in the potential field of sustainability issues. Private regulations are only possible if NGOs can find the leverage to push firms into the acceptance of a broader social responsibility. This is mainly the case if consequences of corporate behavior are highly visible to the general public, particularly concerning firms with well-known brands that directly relate to consumers, as these are most vulnerable to NGO pressure.¹² As a consequence of these representation characteristics, so the argument runs, the accountability of the regulations is also restricted to the particular constituencies of businesses and NGOs who delegated power to them, or the more diffused general public opinion.

The argument of fragmentation

The high level of fragmentation of global sustainability governance, because of the many public and private actors involved in different forms of regulation, may also be evaluated as problematic. Different layers and clusters of rule making and rule implementation construct an intricate system, where responsibilities are distributed among a large number of different actors and institutions at different levels on the basis of different backgrounds and political

¹⁰ Meadowcroft 2007, 197.

¹¹ Visseren-Hamakers, Arts, and Glasbergen 2007.

¹² Haufler 2002, 11.

cultures.¹³ Rosenau compares the dynamics of global governance with a Möbius web, which neither begins nor culminates at any level or at any point in time. He is rather pessimistic about the chances to form such configurations into effective rule systems, as the coordination needed seems unlikely to surmount the disaggregated authority structures.¹⁴ The emerging private regulations are an important source of further fragmentation with several adverse effects. For example, they could lead to different levels of 'good practice', which open up the possibility for states or companies to pick the regulations that suit them best, and avoid the most stringent regulations. Some weak private regulations are just a reaction on more stringent private regulations; they have been developed with the sole aim of protecting a part of the market from deep sustainable change.¹⁵ According to Ensui, private systems tend to appeal to the best producers or just good producers; seldom offering incentives for bad producers to be certified.¹⁶ From an analysis of twelve of the most important private and public-private sustainability regulations in the coffee chain it became clear that the regulations only cover a small section of the global coffee trade and are often localized in their effects. The lack of a generally accepted definition of sustainable coffee results in considerable competition among the partnerships. At present there is substantial confusion among both producers and consumers in terms of the standards' meaning and stringency.¹⁷ As also indicated by research on fair trade experiences, partnerships in commodity chains seem most of time to induce a modest drive for change; they create more sustainable niche markets, but do not seem able yet to change a market as a whole in a more sustainable way.¹⁸

3. Advantages of global private governance

Positive appraisals of private governance take a different interpretation of the role of the state in liberal democracies. Instead of concentrating on the rule of law, they are based on a broad interpretation of the constitution of democratic governance. It is assumed that global governance is unlikely to result in a single framework of international law applied through a unified global authority. More likely is a multilayered process of interaction among different forms of authority and different forms of regulation. This shift in the configuration of actors in global governance is interpreted as a reflection of increased societal complexity and differentiation of world politics, which, as a consequence, has created a complex matrix of institutional practices. This new reality is unavoidable and might be regarded as strengthening the vitality of democracy and problem-solving capacities at the global level

¹³ Biermann and Pattberg 2008.

¹⁴ Rosenau 2005, 36.

¹⁵ Visseren-Hamakers and Glasbergen 2007.

¹⁶ Ensui 2002.

¹⁷ Bitzer et al. 2008.

¹⁸ Becchetti and Huybrechts 2008.

instead of reducing it. At least three major elements can be recognized in the debate. They more or less mirror the critical evaluations.

The argument of compensation for the loss of state capacity

Positive appraisals assume that private regulations are beneficial to states in leaving the burden of implementation of public policies-on-paper in the hands of the private sector.¹⁹ In these cases, states are saved from the often complex task of negotiating international standards and do not pay the costs of implementation and compliance.²⁰ This argument refers to the gap between state authority and state capacity. It is assumed that this gap has been created by economic globalization and advanced through neo-liberal policies of privatization, liberalization and deregulation. Consequently, the state no longer has the resources to monitor and regulate the increasingly complex society. Private actors can compensate for this loss in several ways. While cooperating with civil society, businesses have a financial and reputational incentive to adhere to policies that they themselves helped to create. Gains for companies include, for example, an environmentally friendly image which might entice consumers to choose their products over their competitors. The parties that represent civil society in the governance deal fulfill a monitoring function that enforces the agreement. In case of non-compliance, the NGOs can withdraw their support and publicize the failure of the company, resulting in reputational damage for the business. Similar, private governance agreements can be convenient for the state, as most private regulations are rooted in state generated norms and values, which they operationalize and to which they add new implementation capacities. Private inspection of chain actors, because of the greater legitimacy of regulations of the sector itself, can also be better ensured than if this were a task of public inspectors working with externally enforced regulations with a less fundamental legitimacy base.

The argument of broadening democracy

Private regulation can also be seen as an expression of a new form of democratic governance; here the main argument turns to empowerment in a process of deliberative democracy. The inclusion of private actors in global politics creates new political spaces for civil society and business actors to influence global policy making through new channels outside the state system, which provides them with much larger opportunities to exact environmental standards. NGO- Business interactions can only be successful if a fundamental norm of democracy - equality of the actors in a collaborative process - can be realized. It is also assumed that environmental pressure from NGOs directed at the corporate sector in such collaborative frameworks is potentially more effective than lobbying states to establish international environmental regulation.²¹ In this way, private schemes contribute to civil

¹⁹ Ronit and Schneider 1999; Murphy and Bendell 1999.

²⁰ Falkner 2003.

²¹ Falkner 2003.

society regaining control over market forces, which has been lost in the wake of globalization.²² In this view, representation is less important and accountability is evaluated from a different perspective. Instead of exporting domestic models of democratic accountability to the global level, which lacks a supranational authority, it should be redefined to fit the elusive character of networked and hybrid governance structures.²³ Meadowcroft mentions several forms of accountability that operate in this context. First, individual participants are accountable to the groups from which they come. They must explain their actions and the orientation adopted by the partnership to their sponsoring organization. Second, beyond these groups broader communities of interest operate from which the participating organizations have sprung. In a well-constituted arrangement, each member has both an organized group, and underlying constituencies to which lines of accountability can be established. Third, there is a form of collective accountability. Each participant is accountable to the partnership as a whole. Finally, the partnership as a whole is in some sense accountable before the bar of public opinion, and the judgments of representative political processes.²⁴

The argument of variety inducing innovation

Opposing the argument of fragmentation as a problem in global governance is the argument of variety as a source of innovation. It is important to separate the fragmentation of norms and regulations from institutional fragmentation. Institutional fragmentation may be a consequence of growing worry about the issue and taking it up in a lot of organizations shows some mainstreaming of concern. Fragmentation of norms and regulations indicates that there is still an absence of consensus on priorities and principles. This fragmentation, however, may promote collective learning because it allows to experiment with a variety of solutions to a specific problem.²⁵ Thus variety in regulations may create competition and this is a generally recognized factor in innovation. Private regulations activate several mechanisms that might have this effect. First, they may inspire the societal debate. NGOs and businesses broaden the information base on which traditional government policies are based; they bring in types of professional knowledge states often lack, for example, on local circumstances, applicable technical standards, and implementation conditions in a sector of industry. The regulation itself may, as a new norm, stimulate thinking and debate about a new morality in cases where usually moral arguments are not taken into account. This argument refers to the specific form of power of private regulations. As Petschow puts it: “The central hypothesis is that these actors (non-government actors PG) by shaping and disseminating politically relevant values, norms, theories and stories, also determine the behavior of states and other participants in the global arena and thereby exercise discursive

²² Dingwerth and Pattberg 2006.

²³ Bäckstrand 2006.

²⁴ Meadowcroft 2007, 201.

²⁵ Le Pestre and Martimort-Asso 2004, 17.

power”.²⁶ Second, fragmentation can also promote the fairness and legitimacy of the system of regulations as a whole by providing multiple points of participation and influence.²⁷ Private regulations may bring many new actors in their schemes. This regards not only the obvious formal stakeholders, but also the general public as consumers. Most schemes do not react to strong consumer demand, but aim to create a new demand for a more sustainable product. Thus they induce a broader societal change than is implied with acceptance of the standards by a category of firms. Third, schemes may reinforce and complement each other. Regarding private regulations of fair labor, O’Rourke observed that the different models are effective at different aspects of regulation and he assumes that connecting these initiatives might help to overcome the challenges of access, scope, and credibility.²⁸ Last, the segmentation of global governance may lead to essential discussions on political and institutional reform in the entire governance system, including innovations of policies, technologies, procedures, and ideas.²⁹

4. Short reflection on the arguments

Based on different normative frames, research on global private governance has evoked a lot of often contrasting interpretations of reality. For most of these arguments authors found some evidence in various cases. From our own cases, covering systems of international principles and standards that cross boundaries, not all arguments seem to be fully valid in the same way.

The critical arguments on state authority seem to be most speculative, as they are partly based on a fundamental critique on global governance and express a preference for a different world order. Empirically it is difficult to prove what states might have done without private regulations and that the mere existence of private regulations hollows out the role of the state. Moreover, if we look at our cases there is much more evidence that they are based on generally accepted international norms of behavior and add implementation capacity to government policies. For example, the FLA is primarily based on norms and recommendations of the International Labor Organization (ILO). This UN organization, however, is ill-equipped to implement and enforce its norms. IFOAM is generally regarded as one of the organizations that induced the development of government policies on organic agriculture.³⁰ The FSC stepped into the gap when the 1992 UN Conference on Environment and Development failed to produce a binding convention on deforestation.³¹ GRI and the UN Global Compact are now seen and promoted as complementary. The first defines values and

²⁶ Petschow 2005, 50.

²⁷ Le Pestre and Martimort-Asso 2004, 17.

²⁸ O’Rourke 2003, 240; 2006.

²⁹ Biermann and Pattberg 2008, 14-9.

³⁰ Glasbergen 2009.

³¹ Eden 2009.

operational principles for sustainable development; the latter a disclosure framework that provides organizations a practical basis to discriminate their sustainability reporting.³² In that way they all contribute to an improved functioning of the public sector.

If we look from the argument of democracy we indeed observe that they are all initiated by Northern interests. However, it seems to be a step too far to refer to international sustainability standards as reflecting values that might be labeled as middle class. Also the effects stipulated above seem to be speculative. In their operational decision-making procedures all our cases incorporate and safeguard the influence of relevant stakeholders involved in the issue. The FLA has a governing board with representatives from the categories of industry, labor/NGO, and university, and an independent Chair, although it faces problems to bring labor representatives and representatives from developing countries in.³³ IFOAM has a multiform membership encompassing traders, consultants, governments, farmers' organizations, and fair-trade organizations.³⁴ The internal democracy regulations of the FSC have been taken as an example for many other schemes and survived because of its broad constituency base and participatory approach.³⁵ The GRI popularized the multi-stakeholder approach.³⁶ All these cases in some way involve scientists in the development of their standards. Moreover, the standards have been developed in a rather transparent way and are revised regularly. Regarding the argument of democracy, an interesting rather new development is that instead of the classical value conflict between businesses and NGOs, a new type of conflict has emerged. This is the value conflict between the collaborative NGOs and the campaigning NGOs. A risk of collaborating NGOs might be that critical movements are marginalized. However, the last ones more and more seem to take the role of keeping the collaborative NGOs sharp in their collaborations with business.

The last line of argumentation referred to fragmentation and its consequences. Fragmentation is indeed a basic feature of the fields in which our cases are active. Private regulations expand ad hoc and even the best developed private regulations are only able to cover a small share of the global market. Moreover, they need to face competition with similar schemes in the same issue field. The complexity becomes even greater if we take into account the many governmental regulations that address the same issues or aspects of them. We give two illustrating examples. The FLA has to compete with many fair labor codes, among them the Clean Clothes Campaign; Ethical Trading Initiative, Fair Wear Foundation; Social Accountability International; and the Workers Rights Consortium. Hundreds of private certification schemes with a light CSR methodology may be added, which shows that the field is very fragmented. All initiatives together only cover a small share of the market. Moreover, there is much duplication; some factories delivering to several brands have to deal with several certifiers. IFOAM has played a vital role in clarifying what an 'organic' claim

³² Kell 2006.

³³ Glasbergen 2009.

³⁴ IFOAM structures overview 2008.

³⁵ Humphreys 2006.

³⁶ Brown, de Jong and Levy 2009.

on a product means and has developed an outstanding system of third-party certification. However, the organic market is still confronted with hundreds of private-sector standards and governmental regulations, and a host of conformity assessment and accreditation systems. Mutual recognition and equivalence among these systems is still limited. This diversity forms an obstacle to rapid development of the sector, as the standards are competing and do not present a coherent operational philosophy. Producers in developing countries face the additional problem of high costs of access to export markets, because of the need to require multiple certifications.³⁷ Likewise FSC and GRI are confronted with many competing schemes.³⁸ This all indeed creates a lot of overlap, duplication and competition among the private regulations.

5. The concept of meta-governance

Our cases aim to bring about a progressive change in terms of sustainable development. This raises the question whether private regulations as such must be regarded a problem, or the sheer complexity of such arrangements around sustainability issues. One answer, from a neoliberal perspective, might be that the ‘market’ of regulations will do its own work; selecting out the weakest ones and strengthening the most promising ones. However, from the perspective of sustainable change this seems to be a very uncertain prospect. A more realistic stance would be to consider current global governance as in a transition state. Private regulations have become important, sometimes they oppose, compete, and challenge governmental regulations, sometimes they sustain and complement them. In this transition stage there is need of a new search for the relationships between public and private responsibilities and some new ordering in the field of global governance seems to be inevitable. To strengthen the governance systems as a whole this implies bringing more selectivity in global governance through strategic interventions. This is grasped with the concept of meta-governance, defined as ‘the organization of self-organization’³⁹ and similar, as the ‘regulation of self-regulation’.⁴⁰

Meta-governance draws attention to the process of structuration of the interactions and relationships between classical governmental rule-systems and private and public-private regulations. Meta-governance is a rather new topic in governance literature and has particularly been studied related to rather well delimited networks around local issues. For example, Bell and Park⁴¹ studied meta-governance related to catchment-based water planning in New South Wales; Whitehead studied meta-governance related to the West Midlands

³⁷ Glasbergen 2009.

³⁸ Ozinga 2001; <http://www.enviroreporting.com/>.

³⁹ Jessop 1998.

⁴⁰ Sørensen 2006.

⁴¹ Bell and Park 2006.

Region of England⁴²; and Parkins analyzed institutional adaptation to the Mountain Pine Beetle Epidemic in British Columbia.⁴³ All define meta-governance as a solution to coordination problems in networks and bring the state back in as the responsible agent. According to Bell and Park, meta-governance implies that the state should play a key role in the oversight, steering and coordination of governance arrangements, and that it takes prime carriage of legitimacy and accountability issues. Governments need to reserve the ability to set the agenda by defining the key issues and terms of debate; determine what interests or stakeholders are involved; allocate resources (including information) to the network; and (in their view perhaps most important) decide on how much power or authority is to be shared with non-government parties and how this relationship is to be managed. In the same way, Whitehead takes hierarchy and an almost classical role of governments as the basic perspective. According to his view, meta-governance stresses the persistent influence of a hierarchical form of power in political activity. Though he recognizes the role of self-organizational forms of action, his main concern is about the hierarchical structures they are supposed to be embedded in. Parkins characterizes the institutional innovations he studied as meta-governance, because collaboration and negotiated decision making are realized in the context of bureaucratic hierarchy and the extension of state power. In a theoretical study, Peters confirms this line of thought while positioning meta-governance as attributing central direction and policy guidance to private actions by actors from the public sector. His thoughts are based on the assertion that the new arrangements tend to make decisions and perform services with a rather narrow perspective on and consideration of the goals of society. Though performed in the name of the public, he states that their decisions are often self-serving, and made with little regard for the public interest. From these evaluative propositions, meta-governance almost necessarily becomes something like setting the frame for private action.⁴⁴ Last, Sørensen and Torfing, in a study of the democratic anchorage of governance networks, conceive meta-governance as structuring the conditions for the interactions of autonomous actors in order to ensure conformity with some generally defined objectives. In their view elected officials need to ‘control’ and thereby democratically sanction what goes on in self-regulating networks.⁴⁵ Different from the other authors is Kooiman and Jentoft’s recent attempt to define the values, norms, and principles underpinning governance systems as a form of meta-governance. They particularly stress the process of interactive learning as a basis for meta-governance.⁴⁶

Though meta-governance certainly induces a reflection on the roles of states versus private roles, these studies rely in the end on the centrality of states. However, it is doubtful whether such a position is possible in global networks. First, the problems are very complex which makes a central steering role for states very unlikely. Second, there is no supranational

⁴² Whitehead 2003.

⁴³ Parkins (2008

⁴⁴ Peters 2009.

⁴⁵ Sørensen and Torfing 2005.

⁴⁶ Kooiman and Jentoft 2009.

authority that could set central parameters. Third, no one can restrict or prevent the emergence of regulations based on private initiative, be it from the market or civil society. Fourth, one might doubt the validity of the assumption of self-serving activities of private governance arrangements. What is missing here is that some of the private regulations in the field of sustainable development are frontrunners. They operationalize what states have formulated in their memoranda's as necessary to do, but are in practice not able or willing to implement. Instead of creating diminishing governing capacity, as Peters assumes, they more often strengthen the governing capacity of systems by creating a progressive dynamic in the field of sustainability governance. As a consequence, governments cannot take the initiative because they lack behind. These factors clearly inhibit the opportunity to create hierarchy in policy networks.

6. Mechanisms of meta-governance

Meta-governance as discussed so far fits into the public governance discussion and the discourse on the future of the welfare state in the form of networked public services.⁴⁷ The discussions on meta-governance are placed in the debate on the move away from state and market, the recognition of networks as a new form of public organization, and the governance problems these create from the viewpoint of ultimate responsibilities of the state. Thus meta-governance overlaps with the governance of networks. As a consequence, there is a strong focus on the development of public umbrella regulatory frameworks. However, on the global level meta-governance must be less seen as a once-and-for-all technical administrative design, but more as an endeavor to conditionally create and stimulate processes of change. This perspective comes close to Jessop's most recent view on meta-governance, in which he stipulates the organization of the conditions of self-organization, an institutionalized permanent reflection about the nature of problems in a changing world, and a modification of the balance among different modes of governance (market, hierarchies and networks). Instead of relying on a central steering role, Jessop recognizes meta-governance as an attempt to develop a flexible repertoire of responses that can be deployed on different scales.⁴⁸ Though his approach seems to be more suited for meta-governance at the global level, it is still very abstract, and leaves us with the question of the mechanisms to induce meta-governance and the balance between private and public tasks.

Private meta-governance roles

One obvious first question is whether meta-governance initiatives necessarily need to originate from the state, as the authors mentioned above assume. Sørensen is one of the few authors addressing this question, although related to local governance and the role of local politicians. According to her view, meta-governance can potentially be exercised by any

⁴⁷ Koch and Buser 2006.

⁴⁸ Jessop 2009.

resourceful actor – public or private. All it takes is resources and a desire to influence activities performed by self-governing actors.⁴⁹ If seen as an empirical observation and not only as a normative claim, this statement indeed covers part of reality – also at the global level. Recently, several private meta-governance roles have been developed successfully. First, meta-governance takes place by setting the terms of the debate. All our cases have developed in such a way that any debate and any new private or public regulation on the issue are discussed with a reference to the way they framed it before. For example, any discussion on sustainable forestry is strongly influenced by the standards developed by the FSC.⁵⁰ IFOAM developed a standard that is regarded the ‘gold standard’ in its field; the norm for trade in its issue field all other regulations refer to. The FLA is the outcome of a debate on initiative of the Clinton Administration, constituting the Apparel Industry Partnership (AIP), linking all relevant sectors of the USA apparel industry, NGOs and labor unions. The AIP was set out to develop credible and operational universal standards for fair labor, which FLA further developed and implemented.⁵¹ The GRI plays a dominant role in creating a platform for a broadly participative societal dialog on what constitutes sustainability performance by companies and other organizations.⁵² Next to the content, some of the cases also set the norm for the regulatory form of private global governance. Particularly the FSC organizational structure has become a role model. It has been replicated in other Stewardship Councils and stimulated the Roundtables on palm oil, soy, etc. However, though setting the terms of the debate on the content of sustainable products and the organizational form to realize the products, none of the regulations succeeded yet in unifying their issue field around their own set of standards and practices.

Second, meta-governance takes place by networking. Bartley observed that private regulations have become central nodes in an increasingly growing field of corporate social responsibility, which barely existed a decade ago but now produces a plethora of policy documents, conferences, consultants etc.⁵³ Some of the private regulations developed as an umbrella organization for all private and public initiatives in their issue field. IFOAM is an example of such a networking organization. IFOAM has around 700 members in 110 countries. Nearly 50% of the members are located in developing countries. Its multiform membership encompasses traders, consultants, governments, farmers’ organizations, and fair-trade organizations. IFOAM may be regarded as the focal global meeting point for organic agriculture. This primacy is expressed in its wide scope: the advocacy and networking qualities of its headquarters in Bonn (Germany); its ongoing contacts with many governments, multinationals, UNCTAD, FAO; and its consultative status at the UN.⁵⁴ FLA cooperated with four other multi-stakeholder private regulations in its issue field and an

⁴⁹ Sørensen 2006, 103.

⁵⁰ Pattberg 2007b; Visseren and Glasbergen 2007.

⁵¹ Bobrowsky, n.y.

⁵² Brown, de Jong and Levy 2009.

⁵³ Bartley 2007, 303.

⁵⁴ Glasbergen 2009.

issue-specific NGO in the Joint Initiative for Corporate Accountability and Workers Rights (JO-IN). This Initiative developed a common code based on even the highest denominator between their individual codes. The Initiative then set out to implement its program in an experimental implementation project in Turkey. Though the project was not as successful as envisioned, it shows a pull for convergence based on networking among the upper level of voluntary standards in this issue field.⁵⁵ The FSC explicitly built an internally heterogeneous network to seek robustness for its standards and industrial support for its implementation, successfully built up external networks with governments, some of which adapted their policies according to the FSC standards, and also contributed to the empowerment of formerly marginalized actors in policy debates and decision making at national and local levels.⁵⁶ The GRI as a multi-stakeholder organization has built up a worldwide network, bringing together business leaders, NGOs, labor organizations and academics in a consensus-seeking dialogue.⁵⁷ A specific form of networking may be the result of the participation of the same NGO or business in various private regulations addressing the same issue area; the coffee chain is an example of this overlapping membership.⁵⁸ A positive effect seems to be the diffusion of knowledge and practical experiences among a large field of stakeholders. Third, meta-governance takes place by mainstreaming a specific private regulation. This is the case when a strong private regulation is recommended, urged or prescribed by other private regulations, governments or international organizations. For example, the World Bank moved to require all forest harvesting and management operations financed by the organization to be monitored through independent assessment and certification. Some governments do the same, because world trade regulations hamper them to introduce restrictions to trade on their own, and they regard private regulations as functional equivalents for state regulation.⁵⁹ The EU (among others) is on its way to finalize a more binding norm on sustainable logging. UNEP has partnered with GRI from the start and GRI synchronizes with the UN Global Compact and the OECD Guideliness for Multinational Enterprises, while some governments advice or commit to report using GRI standards.⁶⁰ The EU (among others) based its norms on organic agriculture on IFOAM standards. A Task Force of IFOAM, UNCTAD and the FAO recently worked on harmonization and equivalence in organic agriculture regulations.

Fourth, collaboration between private regulations manifests itself in the development of new institutions with an explicit meta-governance role. Such an institution is the ISEAL Alliance, which works as a global hub for social and environmental standards. The mission of ISEAL is to strengthen credible and accessible voluntary standards and to promote them as effective policy instruments. As a global network it facilitates the development of a Code of Good

⁵⁵ Kaan 2008.

⁵⁶ Eden 2009; Pattberg, 2007a, 139.

⁵⁷ www.globalreporting.org.

⁵⁸ Bitzer, Francken and Glasbergen 2008.

⁵⁹ Bartley 2007.

⁶⁰ Brown, de Jong and Levy 2009.

Practice to strengthen the credibility of social and environmental standards, to which many private regulations in various issue areas already comply. ISEAL has 8 full members, among them the Rainforest Alliance (RA), the Stewardship Councils, IFOAM, the Marine Aquarium Council (MAC), the Fairtrade Labeling Organizations (FLO), and International Social Accountability International (SAI). 8 Associate members are in the process of meeting the requirements of the Code and 9 affiliate members subscribe to the Code and are interested to participate for information sharing and awareness raising.⁶¹

Last, private arrangements may fulfill a meta-governance role because they have become respected professional organizations. Many of them resemble classical government organizations, both in their structure and the type of regulations. All private schemes we focused on in this paper are striking examples. They are based on a broader constituency than many governments are able or even wish to realize. They often strive for incorporation of equal representation of all relevant stakeholder groups from the North as well as the South, they try to secure equal decision-making power to economic, social and environmental stakeholders, and the standards are based on thorough scientific research. The regulations themselves resemble state law; most private regulations have a built-in process for producing a successive generation of standards and they create sub-sector-specific guidelines. Last but not least, the compliance of the regulations is fairly strictly monitored and enforcement independently assured; something state policies often lack, which is as we have seen one of the *raison d'être*s of the regulations. This is not to say that these regulations do not face their own problems. For example, the FLA still lacks representation of all categories of stakeholders it would like to involve in its board; IFOAM has to face a fragmented internal organization; the FSC seems to have difficulty to secure representatives from the social sector and up to now most of its forestry management certificates are issued in the North; and the GRI particularly appeals to larger global companies, financial institutions and international business management consultancies.

From these observations some crucial determinants of successful private meta-governance roles can be derived. The most successful arrangements are (1) inclusive, in the sense that they bring in the most important stakeholders in the issue field from civil society and business as well as from the North and the South; (2) they create legitimacy through a balanced, open and accountable decision-making process; (3) they keep an open line to scientists working in the issue field and involve them in the development of standards; and (4) they base their activities on strategic thinking, which among others includes a strong feeling for networking and the active development of working relationships with relevant governments at all levels.

Public meta-governance roles

Though growing in importance, these private meta-governance roles still cover only a small part of the potential markets and issue areas and need to face a lot of competition of both

⁶¹ <http://www.isealalliance.org/>

private, public-private and public regulations. From the viewpoint of sustainable progress at least some government involvement seems to be necessary. However, on the global level meta-governance by governments will probably imply other activities than the somewhat classical government-alike measures as suggested by most of the public administration and political science theorists discussed above. In the new configuration of global governance NGOs have been deliberately involved in global political decision-making processes. Simultaneously it has been recognized that, next to their private role, corporations also need to play a public role and therefore bear public responsibilities. Accepting this new configuration of what might be called ‘partners in regulation’, in which NGO-business regulatory standards logically fit, turns the attention away from the final contextual framing, the capacity of governments to control, to the various ways the relationships between the private and public institutional arrangements can be improved. In other words, instead of setting the parameters of the frame within which private regulations may develop, the focus should change to mechanisms to stimulate the use of the potentials of the private spheres for public objectives. In the context of public meta-governance, this might be understood as interaction management, defined as deliberate efforts by participants in the governance of specific issue fields to improve the effectiveness of the governance of the field as a whole. Thus, interaction management implies a systemic approach of the relationships between private regulations and public regulations, recognizing that these interactions can have a positive, neutral or negative influence on their functioning.⁶² Oberthür defined three modes of interaction management that are of relevance here: (1) cognitive interplay management, focused on offering knowledge and information; (2) regulatory interplay management, or the development of norms and rules; and (3) capacitating interplay management, or developing an enabling framework for actors to pursue interaction management activities.⁶³

Regarding cognitive interplay the exchange of information could be strengthened to facilitate ‘public contestation’.⁶⁴ Governments should provide the indicators and the data to form judgments and inspire the public and political debate about the relative success of various public and private regulations in the same issue area. The UN Global Compact (GC) already fulfills more or less such a role, which could be improved. The Global Compact has been constituted as a learning forum where participants from business and civil society, who adhere to ten universal principles in the fields of human rights, labor standards, environment, and anti-corruption, share their experiences and good practices. Up to now, this takes place without much engagement; the normative guidelines are vague, the companies are free in deciding how to address them, and the Global Compact does not assess the performance of firms, nor does it seek to prescribe a certain standard of behavior.⁶⁵ Although the Global Compact is not designed to monitor or measure participants’ performance, it could transform into an organization with a stronger coordinating role, like its relationship with the GRI, by

⁶² Oberthür and Gehring 2006.

⁶³ Oberthür 2008.

⁶⁴ Sørensen and Torfing 2005, 2009.

⁶⁵ Conzelmann and Wolf 2008.

scrutinizing private regulatory schemes, relating them to the GC norms, and recommending the most promising and viable ones.

Regarding regulatory interplay generally applicable principles and procedures could be developed derived from public law in areas such as transparency and accountability. Such an institutional benchmark should enable the assessment of the credibility of certification initiatives. Principles suggested by Marx are: they should be multi-stakeholder initiatives; stipulate precise standards and methods for measurement; have an elaborated monitoring system; and a system of sanctioning geared towards generating learning effects.⁶⁶ Other authors particularly focus on institutional safeguards of input legitimacy based on criteria such as: responsiveness, assuring that the regulation is regardful of people's demands; self-determination, which assures congruence between those who can take part in the decision-making and those who are affected by it; and control of power, which assures that private actors may be called to account for their governance activities.⁶⁷ Additional requirements could stipulate the disclosure of information. Governments could formally approve the schemes that meet such requirements. Moreover, governments could develop an overall monitoring and evaluation strategy and in that way also improve the public visibility and accountability of private regulations.

Regarding capacity interplay management the focus could be on creating complementarity, both among state regulations and private regulations and private regulations themselves. The first kind of complementarity could be stimulated by a more stringent thinking about the logical place of private regulations in government policies in a specific issue area, something that is almost lacking in current global politics. The UN partnership program is an example, as with fulfillment of some basic criteria all partnerships are accepted in the program, even if there is duplication of efforts. Such an activity encompasses the development of government policies to sustain the most promising private regulations or even taking the measures to ensure that private regulations can ever be effective. Some private regulations can only be successful if governments fulfill their traditional government role. For example, standards on sustainable forestry will only work if governments fight illegal logging, something the EU recently decided to require, and with helping developing countries to put a sound system of land use planning in place. The development of procurement policies also fits into this category of activities. In some sectors, public institutions are big purchasers that can set a trend for a more sustainable market. A softer mechanism would be to symbolically recognize the legitimacy of the most viable regulations by further incorporating them as participants in formal political decision-making processes. The second kind of complementarity might entail encouragement and sustenance of harmonization processes and the creation of linkages among private regulations through forms of coalition building. A more general mechanism would be creating a level playing field among the regulations, sustaining only those regulations that are fully open for scrutinizing by the general public, that take into account all relevant stakeholders, and that accept joint decision-making procedures.

⁶⁶ Marx 2008.

⁶⁷ Conzelmann and Wolf 2008, 101.

7. Conclusion

Global governance has become more fragmented than ever before; various forms of public and private regulation exist next to each other, sometimes sustaining each other, and sometimes in conflict with each other. The emergence of private regulation opens up possibilities for both positive evaluations and more critical views. As we have seen, the benefits and risks often mirror each other; a benefit can often be reformulated as a risk, dependent on the view on liberal democracy and the role of the state. The arguments suggest that we are still in the midst of a process of change in global governance and the evaluation of that process is far from being completed. The outcomes in terms of a new ordering - in a kind of hierarchy, complementary to each other, piling up on each other, or even replacing each other - are still uncertain. However, there is no doubt that some private regulations are important system innovators and have become indispensable for sustainable progress. Some recent trends towards forms of meta-governance as a new device to streamline and direct global governance have become visible. Meta-governance is a rather new term in governance literature. Moreover, the interpretations are mostly restricted to a stronger steering role of governments and in that way meta-governance almost equals traditional control strategies. The paper observed that this narrow perspective on meta-governance neglects that many meta-governance roles have been initiated in the private sphere. Next to the characterization of private meta-governance roles, the paper redefined the meta-governance roles of states. As a starting point it took the concept of interaction management, which recognizes the potentials of the private actors. Instead of drawing clear demarcation lines between public and private it is suggested to connect private and public responsibilities. It is assumed that private actors are well able to fulfill public roles, while public actors are sometimes inclined to protect particularistic interests. Meta-governance as interaction management by governments has an additional vast repertoire of governance mechanisms available, which can make use of the potentials of the private sphere. However, mechanisms of meta-governance are not neutral, technical tools. Meta-governance is also a highly political process, in highly complicated networks. This makes it interesting to further focus the study on the politics of private and public meta-governance mechanisms and, more particularly, their complex interrelationships.

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