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Input and Output Legitimacy of Multi-Stakeholder Initiatives

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INPUT AND OUTPUT LEGITIMACY OF MULTI-STAKEHOLDER INITIATIVES

ABSTRACT

In a globalizing world, governments are not always able or willing to regulate the social and environmental externalities of global business activities. Multi-stakeholder initiatives (MSI), defined as global institutions involving mainly corporations and civil society organizations, are one type of regulatory mechanism that tries to fill this gap by issuing soft law regulation. This conceptual paper examines the conditions of a legitimate transfer of regulatory power from traditional democratic nation-state processes to private regulatory schemes, such as MSIs. Democratic legitimacy is typically concerned with input legitimacy (rule credibility, or the extent to which the regulations are perceived as justified) and output legitimacy (rule effectiveness, or the extent to which the rules effectively solve the issues). In this study, we identify MSI input legitimacy criteria (inclusion, procedural fairness, consensual orientation, and transparency) and those of MSI output legitimacy (rule coverage, efficacy, and enforcement), and discuss their implications for MSI democratic legitimacy.

While markets have expanded globally, the political regulation of business activities has not expanded at the same pace (Habermas, 1998; Hsieh, 2009; Kobrin, 2008). An increasing number of social and environmental issues – from sweatshop working conditions in factories to waste disposal and deforestation – occur along globally stretched processes of value production (Bartley, 2010). Many of those issues remain unregulated or underregulated (Kobrin, 2008). As transnational corporations (TNC) expand their activities, sourcing globally, the negative social and environmental externalities of these activities are increasingly criticized (Scherer & Palazzo, 2011; Waddock, 2008). As a consequence, some TNCs have started to engage in self-regulation, developing and implementing social and environmental standards into their operations. This engagement has been discussed as a political form of corporate social responsibility (CSR) (Kobrin, 2009; Matten & Crane, 2005; Scherer, Palazzo, & Baumann, 2006), because corporations step in, where governments are not willing or not able to play their regulatory role. Some of these activities take place at an individual corporate level; for instance, when Nike developed and imposed a code of conduct on its direct suppliers (Zadek, 2004). However, increasingly, these self-regulatory activities manifest in multi-stakeholder initiatives (MSI), defined as private governance mechanisms involving corporations, civil society organizations, and sometimes other actors, such as governments, academia or unions, to cope with social and environmental challenges across industries and on a global scale (Gilbert & Rasche, 2008; Utting, 2002). Indeed, there is an “emerging institutional infrastructure” of CSR that creates “new rules of the game” for TNCs (Waddock, 2008: 105).

MSIs are attempts to fill global regulatory gaps, primarily by issuing ‘soft law’ standards (Utting, 2002), which are non-binding and voluntary private rules, generally not enforced through governmental mechanisms (Abbott & Snidal, 2000; Gilbert & Rasche, 2008). MSIs represent a key element in the emerging global regulatory order that has been

characterized as private governance or *governance with and without government* (Rosenau & Czempiel, 1992). However, the rise of private governance, as opposed to the traditional understanding of *governance by government*, has raised numerous concerns (Cerny, 1999; de Senarclens & Kazancigil, 2007; Graz & Nölke, 2008; Kingsbury, 1999). Regulation through governmental bodies is ideally embedded in national democratic regimes, where those who make political decisions have been elected to do so¹. Thus, the legitimacy of national hard law, public regulation edicted and enforced by the nation-state, relies on the regime of direct or representative democracy. Private regulatory schemes, such as MSIs, are not embedded in such a context of well-established democratic mechanisms.

The democratic legitimacy of a regulatory body can be understood as the “socially shared belief” that the regulator has the capacity and the authority to impose rules on a community of citizens (Scharpf, 2009: 173). Democratic legitimacy is concerned with two main questions: to what extent regulations are perceived as justified or credible (input legitimacy) and to what extent they effectively solve the issues that they target (output legitimacy) (Risse, 2006; Scharpf, 1997, 1999). The input legitimacy of regulatory institutions concerns the evaluation of the design of political processes (i.e. how rules were developed) (Scharpf, 1997). It represents governance by the people (Scharpf, 1999). Input legitimacy builds on the idea that “political choices should be derived, directly or indirectly, from the *authentic preferences* of citizens and, that, for that reason, governments must be held accountable to the governed” (Scharpf, 1997: 19, emphasis in original). Output legitimacy, in turn, describes “the capacity to solve problems requiring collective solutions” (Scharpf, 1999: 11). Output legitimacy thus refers to the *effectiveness* of regulations: the fact that rules will effectively solve particular problems (Scharpf, 1997, 1999). It represents governance *for* the people, and focuses on the outcomes of regulations (i.e. how these rules are applied) (Easton, 1957; Kitschelt, 1986).

Zürn (2004) emphasized that, in principle, private regulatory initiatives are confronted with the same legitimacy demands as governmental regulation. However, the democratic legitimacy of private governance mechanisms, such as MSIs, is much more complex (Risse, 2004) because it connects to various publics that are geographically dispersed and do not form one institutionalized political container. The input legitimacy of MSIs is often contested because these initiatives involve private firms, which, for some scholars, must not be involved in regulatory activities (Cerny, 1999). MSI output legitimacy has also been criticized because the monitoring (the verification procedures over compliance) of global standards sometimes fails (Kirton & Trebilcock, 2004; Utting, 2002). Overall, MSI regulation is often criticized as mere window-dressing (Cerny, 1999; Kingsbury, 1999; Laufer, 2003).

Despite this critique, more and more MSIs are being created (Bäckstrand, 2006; Bernstein & Cashore, 2007; Börzel & Risse, 2005; Bouslah, M'Zali, Turcotte, & Kooli, 2010). It has been argued that MSIs are of increasing relevance with regard to the regulation of global value chains' negative social and environmental side-effects (Christmann & Taylor, 2006; Fung, 2003; Glasbergen, 2011; Hassel, 2008). As a result, self-regulation moves center stage in the overall debate on corporate responsibility (see e.g. Dahan, Doh, & Guay, 2006; Fransen & Kolk, 2007; Gilbert & Rasche, 2008; Scherer & Palazzo, 2011; Teegen, Doh, & Vachani, 2004; Vogel, 2010; Waddock, 2008), connecting the latter to the debate on global governance in political science (Held & McGrew, 2002; Koenig-Archibugi, 2004; Risse, 2004) and political philosophy (Habermas, 2001; Young, 2006). However, despite the growing relevance of self-regulation, its legitimacy has hardly been studied comprehensively. Extant researches on MSI legitimacy are often focused on selected aspects, such as Risse's (2004) study on MSI input legitimacy (for other studies on MSI legitimacy, see e.g. Bäckstrand, 2006; Beisheim & Dingwerth, 2008; Lövbrand, Rindeljäll, & Nordqvist, 2009; Schäferhoff, Campe, & Kaan, 2009). To our knowledge, no research has looked at a

comprehensive conceptual framework, identifying MSI democratic legitimacy criteria based on democratic theory. How can legitimacy demands developed for national democratic regimes be interpreted and translated for a global context of private regulatory schemes? MSI democratic legitimacy criteria cannot be directly derived from democratic theory, because the latter has the nation-state as a reference point. Instead, in the present study, we examine how criteria developed for the evaluation of governments in the nation-state context can be translated into the debate on global governance. We contribute to the scholarly debate on CSR and private regulation by developing a set of criteria inspired by democratic theory to evaluate the (input and output) legitimacy of MSIs.

We begin by anchoring our analysis in democratic theory in Section 2, where we introduce the three dominant theories of democracy and how the idea of input and output legitimacy is derived from that debate. In Section 3, we examine the emerging global landscape of private regulation. Section 4 elaborates on the characteristics of MSIs as a key actor in this field. In Sections 4 and 5, we propose input and output legitimacy criteria, respectively. Finally, we discuss our results in Section 6 and apply our framework to the example of self-regulation in forest management. We conclude in Section 7 by discussing the research and policy implications of our framework.

BETWEEN REPRESENTATION AND DELIBERATION

Democratic legitimacy can be examined along the input and output dimensions of the political decision-making process (Easton, 1957; Scharpf, 1999). Political philosophers have developed three basic understandings of the democratic process with a varying interest in either output or input criteria of legitimacy: liberal, republican, and deliberative. These models of democracy are *ideal* types. Real-world democracies are always hybrids that mix elements of these concepts with a varying focus. Existing democracies, therefore, are inspired by such models, and these ideal types give a framework for understanding real-world

democratic processes and for evaluating them normatively. We briefly outline these three models in the subsequent paragraphs. These models, however, have been elaborated elsewhere. Here, we intend only to give an overview of these models and justify our use of deliberative democracy as a framework for understanding MSI democratic legitimacy.

The liberal view sees politics as a formalized activity of governments, and as national legislative, executive, and judicial organs. The participation of citizens in politics is limited to a system of elections and representation (Elster, 1986). Democratic rights in the liberal sense are negative rights: Citizens have private interests and should be enabled to pursue their interests without too much state interference. As Habermas (1998: 241) argued: “By means of elections, the composition of parliamentary bodies, and the formation of a government, these interests are finally aggregated into a political will that can affect the administration.” Accordingly, the liberal conception of democracy focuses on the *outcomes* of a decision and operates with a rather thin idea of input legitimacy (Habermas, 1998). The latter is tested against two main assumptions: the political actors who govern have been elected in a democratic process and the decisions of governments are linked to debates in the parliament, where representatives of voters from potentially opposing camps can raise their voices and represent the interests and concerns of citizens (Habermas, 1998). As Risse argued, in democratic nation-states, governmental legitimacy is ensured because “the rulers are accountable to their citizens who can participate in rule-making through representation and can punish the rulers by voting them out of office” (Risse, 2006: 185).

In contrast, the republican approach is input-focused. It understands politics as an important activity of the citizens themselves. Their participation in public will-formation represents a fundamental positive right. Republican philosophers have criticized the idea of the unbounded and atomized individual of liberal theory (Sandel, 1982; Taylor, 1989) and underlined the relevance of shared political practices for the solidarity of citizens and the

stability of democracy (Barber, 1984; Bellah, Madsen, Sullivan, Swidler, & Tipton, 1986).

The role of the government is to organize processes of public will-formation, in which citizens can practice political participation and come to decisions for the common good. Here, the legitimacy of laws is strongly tied “to the democratic procedure by which they are generated” (Habermas, 1998: 242).

Given the high complexity of modern political systems, Habermas (1998) criticized the republican idea of a direct and permanent participation of all citizens in politics as unrealistic. In his deliberative concept of democracy, he proposed to understand participation in political deliberation not as a civic duty, but as a right, which citizens might or might not use through their engagement in civil society organizations. The role of the government is to provide and promote arenas and processes of public deliberation in which civil society organizations can interact. These organizations bundle, amplify, and transmit the interests, values, and problems of the citizens. Ideally, their arguments resonate in public debates, and legitimate governmental decisions are those that connect to these public debates (Habermas, 1996). The deliberative interpretation of the democratic process is participatory, but less demanding than the republican view while protecting the liberal idea of privacy and representation. It aligns input and output in one model of democratic legitimacy.

All three ideal types of democracy share the idea of a (national) government as the ultimate point of reference for regulatory decisions: Laws are made by national governmental organs, supposed to represent citizens. However, the process of globalization has led to a situation in which the regulatory power of governments is challenged. Democratic legitimacy has to be innovated and translated into this new political constellation. Our framework is inspired by deliberative democratic thinking and we adapt its core principles to evaluate the legitimacy of MSIs. As we will argue, the deliberative idea of democratic legitimacy seems to be the most appropriate for the understanding of globalizing governance processes.

GOVERNANCE SHIFTS

From National to Global Governance

The three above-mentioned models of democracy apply to nation-state governance. In the 20th century, governance regimes have, however, shifted from a domestic to a global logic (Koenig-Archibugi, 2004; Scholte, 2005). These shifts manifest, for instance, in the increasing importance of soft law, and are, to some extent, reflected in the rise of MSIs as regulatory actors (Ruggie, 2007). Global governance refers to regulatory activities at a global (as opposed to national) level, in which no single government can act as ultimate enforcer of regulations. It describes “the structures and processes of governing beyond the state where there exists no supreme or singular political authority” (Held & McGrew, 2002: 8). In a globalizing world, these regulatory structures and processes are witnessing a fundamental transformation (Habermas, 1998; Scholte, 2005). The increasing mobility and flow of people, goods, and services is rendering borders less relevant, with nation-states increasingly interconnected politically, socially, and economically (Habermas, 1998; Henderson, Dicken, Hess, Coe, & Yeung, 2002), and is causing a denationalization of various political issues (Zürn, 2004).

The rise of the TNC on the global playing field and related global business activities, which increase the complexity of production, have, among others, fuelled social and environmental negative side-effects (Buckley & Ghauri, 2004). Supply chains develop their own expansive dynamics: Suppliers buy from or outsource to other suppliers and can be connected to multiple TNCs (Young, 2006). Indeed, world production is now depicted as a global network, in which various actors are all linked across various supply chain layers (Hassel, 2008; Henderson et al., 2002; Levy, 2008) that “entail the disaggregation and dispersion of economic activities to multiple locations” (Levy, 2008: 944). Globally networked economic activities create globally networked social, political, environmental, and

economic problems that, in turn, require globalized regulatory mechanisms. The Westphalian system, where national governments have supreme authority over their territories, is now partly eroding (Mathews, 1997; Scherer et al., 2006; Scholte, 2005). The mechanisms of global regulation, still linked to the traditional understanding of *governmental* governance, are not always effective. In particular, the regulation of globally expanded corporate activities remains a challenge (Christmann & Taylor, 2006; Haufler, 2003a; Sethi, 2003). National regulatory schemes have failed, for example, to tackle environmental externalities of global markets (Christmann & Taylor, 2001), to ensure that TNCs do not violate human rights in failed states, such as Burma or Sudan (Spar & La Mure, 2003), or to tackle corruption in weak governance states (Misangyi, Weaver, & Elms, 2008).

In the past, corporations were understood as objects of regulation, not as regulators. While this is true in the national context of governmental regulation, it was also the case in earlier processes of international regulation. The United Nations, for instance, traditionally had a quite hostile relationship with TNCs (Thérien & Pouliot, 2006). This changed when Kofi Annan proposed the Global Compact at the World Economic Forum in 1999, inviting corporations to become partners in the definition and implementation of CSR principles (Fritsch, 2008). The Global Compact illustrates the increasing engagement of TNCs in CSR activities to deal with the negative externalities that they create by acting at a global level (Spar & La Mure, 2003). Some TNCs self-regulate their behavior by creating and enforcing codes of conduct for their own operations, and sometimes also for their suppliers' (Arya & Salk, 2006; Sethi, 2003; van Tulder & Kolk, 2001), they set environmental management systems that go beyond state requirements (Christmann & Taylor, 2001), they help to alleviate corruption (Kwok & Tadesse, 2006; Luo, 2006), and they increasingly communicate on such CSR activities, as well as on the values that underlie their engagement in such activities (Hess, 2007; Maignan & Ralston, 2002). TNCs deal with issues such as working

conditions, child labor, health and safety measures for workers and consumers, carbon footprints, and numerous other issues (Scherer & Palazzo, 2011). Increasingly, TNCs imitate their peers in adopting such CSR strategies (Hiss, 2009; Husted & Allen, 2006), and once adopted, constantly adapt to changing societal demands (Kolk & Pinkse, 2008). Peer-pressure thus leads to isomorphism in CSR behavior and taken-for-granted norms of behavioral standards (Vogel, 2010; Waddock, 2008). While some TNCs develop their own approaches to emerging regulatory challenges and societal demands, others have started to engage in MSI (Christmann & Taylor, 2006; Kobrin, 2009; Pies, Hielscher, & Beckmann, 2009).

Soft Law Regulation

As mentioned previously, MSIs partly build on a soft law approach (Kerwer, 2005), and consequently produce rules under the form of standards, as opposed to traditional hard law, namely laws written in codes and constitutions (Abbott & Snidal, 2000; Gilbert & Rasche, 2008). The argument here is not that traditional national regulation is disappearing. On the contrary, it is expanding (Zürn, 2004). However, national laws have, as we argued, only a limited influence on the social and environmental externalities produced in globally stretched production processes. New forms of regulation, such as soft law standards, are stepping in (Kerwer, 2005). For example, the certification of sustainable forest management is highly regulated by private regulatory standards: The certification of forests worldwide went from 0 ha in 1993 to 124 million ha in 2002 (Rametsteiner & Simula, 2003) to 323 million ha in 2008 (Cubbage & Moore, 2008), and there are more than 50 co-existing forest certification schemes (Domask, 2003; Schepers, 2010). Forestry is not the only example of this standardization trend. Similar schemes of private regulation can be found in various other industries, such as the apparel and mining industries.

Soft law is characterized by the fact that it does not create legally binding obligations, but rather “derives its normative force through recognition of social expectations” (Ruggie,

2007: 14). It relies on voluntary compliance, rather than on sanctions that can be authoritatively and legally applied, as is the case in traditional governance (Gilbert & Rasche, 2008). While a firm's decision to engage in a soft law initiative is voluntary, once it commits to a specific standard, it is expected to comply (Waddock, 2008). If it does not comply, the company is not granted any type of certification or approval, and is often publicly exposed as a non-compliant actor (Vogel, 2010). In this sense, a standard is either enforced or the corporation drops out of the initiative. The enforcement of voluntary rules is often monitored by independent organizations (Cassel, 2001; Christmann & Taylor, 2006), such as NGOs, or by audit companies, such as PriceWaterhouseCoopers (PWC) (Gereffi, Garcia-Johnson, & Sasser, 2001). The assumption that the legitimacy of soft law standards depends on the democratic control of third-parties and the ability of the MSI to impose formal or informal sanctions seems to be widely shared (O'Rourke, 2003). NGOs acting as third-party control entities can decide to use "positive incentives and negative sanctions to entice actors into compliance with norms and rules" (Risse, 2006: 184).

As these initiatives do not unfold under the shadow of national democratic processes, they operate in a space with several democratic shortcomings (Hassel, 2008). The Habermasian idea of translating political participation into the interaction between multitude of civil society organizations has been picked up in the debate on global governance as a possible model for the examination of democratic legitimacy beyond the nation-state (Gilbert & Rasche, 2007; Palazzo & Scherer, 2006; Scherer & Palazzo, 2007), and MSIs might represent one promising manifestation of that idea.

MULTI-STAKEHOLDER INITIATIVES

Governance with and without governments has been discussed under a wide range of names, such as MSIs (Koenig-Archibugi, 2004; O'Rourke, 2006; Utting, 2002), non-state market-driven governance (Cashore, 2002), international certifiable standards (Christmann &

Taylor, 2006), global public policy networks (Witte, Benner, & Streck, 2005), transnational private regulation (Bartley, 2007, 2010; Graz & Nölke, 2008), global action networks (Waddell, 2003), or public-private partnerships (Börzel & Risse, 2005). This scholarly debate refers to the mushrooming of those private regulatory initiatives in the last decade for which we use MSI as the umbrella term. Well-known examples of MSIs include the Forest Stewardship Council (FSC), one of the leading schemes in sustainable forest management; the Fair Labor Association (FLA), which tries to impose fair labor conditions throughout the world; and the Global Reporting Initiative (GRI), which establishes reporting guidelines for corporate sustainability reports. Other examples can be found in several issues, such as sustainable fishing, the mining industry, fair trade, finance, and human rights. Table 1 gives an overview of the existing MSIs, indicating their field, date of creation, rule-targets, as well as the stakeholders who are active in their regulatory processes.

Insert Table 1 about here

Although these initiatives and labels differ, their definitions converge on at least one criterion: They result from the cooperation of at least two of the three following actors: Governments, corporations, and civil society (generally represented by NGOs and humanitarian organizations). While all MSIs are established with regard to regulatory challenges, not all are rule-setting initiatives. Four levels of increasing engagement have been differentiated (Palazzo & Scherer, 2010): (1) MSIs provide learning platforms where organizations can exchange experiences, signal their commitment, and learn from each other. The UN Global Compact is an example of such a learning platform. (2) MSIs develop behavioral standards, in the form of codes of conduct, rules, recommendations, or guidelines, regarding rule-targets' behavior and consequent activities. Rule-targets are expected to enforce and respect such rules. (3) MSIs develop mechanisms of auditing and compliance of

the rules. Such mechanisms can be more or less independent, and involve accreditation of third-party organizations with regard to the monitoring of the rules. (4) Finally, MSIs can issue labels and certifications for those organizations that comply with its standards.

While initiatives such as the UN Global Compact and the CSR guidance principles of ISO26000 are also challenged with regard to their legitimacy, they are not in the focus of our analysis. Only when they attempt to create rules do MSIs take on a state-like function, as they issue regulations replacing or adding to the existing public rules. Moreover, our legitimacy analysis can only be applied to such MSIs, as democratic legitimacy is concerned with the capacity and authority of a regulatory body to issue and enforce rules. Accordingly, we have focused on initiatives that take a state-like function at a global level, and are therefore at least considered as being at the second of the above-listed four levels.

As corporations participate in the establishment and commit to the voluntary implementation of MSI standards (Kerwer, 2005), the role of MSIs has been criticized (see e.g. Cerny, 1999; Graz & Nölke, 2008), but also acclaimed (see e.g. Bäckstrand, 2006; Ronit & Schneider, 1999). Most authors agree that MSIs are still not fully developed and need further refinement to be seen as legitimate mechanisms setting global rules (Beisheim & Dingwerth, 2008; Bernstein & Cashore, 2007; Black, 2008; Börzel & Risse, 2005). The legitimacy criteria for MSIs, which we have proposed, are inspired by the Habermasian idea of deliberative democracy, which tries to align input and output criteria.

MSIs need to be perceived as legitimate from the input perspective in two different contexts (Risse, 2006). First, those governed by the initiative are the corporations abiding by the MSI's rules: internal accountability refers to the fact that the participating firms must accept the MSI as having a rightful authority over them (Nanz, 2006). Second, external accountability must ensure that stakeholders who are not a part of the MSI's processes, such as activist NGOs, governments, and consumers targeted by labels and certifications, will also

grant the MSI legitimacy on the basis of how they perceive the initiative as having a right to regulate (Bernstein & Cashore, 2007; Black, 2008). This implies that input legitimacy is influenced by (a) stakeholder *inclusion*; (b) *procedural fairness* of deliberations; (c) promotion of a *consensual orientation*, and (d) *transparency* of an MSI's structures and processes.

Output legitimacy relates to the capacity of governance mechanisms to effectively take a regulatory role (Nanz, 2006; Risse, 2006). One challenge is to overcome the non-binding character of standards (Vogel, 2007), which creates free-rider issues, as less-visible and less-criticized corporations can take advantage of not participating in MSI regulations (Graz & Nölke, 2008). MSIs, however, can create “a more level-playing field,” by triggering isomorphic behavior across industries (Vogel, 2010: 78). Accordingly, to enhance output legitimacy, MSIs thus have to ensure high (a) *coverage* and (b) *efficacy*, as well as (c) guarantee a good *enforcement* and monitoring of their rules.

As our paper aims at opening a debate for the evaluation of the legitimacy of global regulatory schemes, the criteria that we have proposed might not be the only ones, and future research might complete them with further insights. However, as we will show, the debate on global regulation already revolves around those criteria, which are summarized in Table 2. Moreover, as shown in Table 3, MSI generally publish these criteria on their websites to justify and legitimate their actions and governance principles. The criteria we have identified are inspired by and reflect, in varying degrees, core principles associated with deliberative democracy. We next define the four criteria of input legitimacy and the three criteria of output legitimacy and discuss how they stem from deliberative democracy.

Insert Table 2 about here

Insert Table 3 about here

MSI INPUT LEGITIMACY

Inclusion

Representative inclusion of stakeholders in political processes is necessary to enhance the legitimacy of rules (see e.g. Habermas, 1998; Risse, 2004; Scharpf, 1999; Young, 2000). Indeed, legitimate decision-making processes over rules include “all those who will be affected by them” (Young, 2000: 11). In the context of the (democratic) nation-state, inclusion is guaranteed either by procedures of direct democratic decision-making or by the election of representatives by citizens, who will then defend citizens’ interests in political decisions (Habermas, 1998).

In MSIs, democratic representation and election are not possible. Rather, inclusion is defined as the involvement of stakeholders affected by the issue, where affected means “that decisions and policies significantly condition a person’s options for action” (Young, 2000: 23). As for any democratic polity, the way in which an MSI includes different stakeholders is important to its input legitimacy (Black, 2008), as “even if they disagree with an outcome, political actors must accept the legitimacy of a decision if it was arrived at through an inclusive process of public discussion” (Young, 2000: 52). This means that even if an MSI includes a large number of stakeholders, its legitimacy might be low, because it does not involve the relevant ones. For example, the EU Water Initiative, in efforts to provide water in Sub-Saharan Africa, involves European actors, but insufficiently involves African actors, especially countries most touched by water deprivation (Water Aid & Tearfund, 2005). However, struggles over which stakeholders are affected will certainly be raised. For instance, the FSC is criticized by NGOs for insufficiently including indigenous communities living in the forests. This criticism is put forward by activist NGOs, such as The Rainforest Foundation or the FSC-Watch. Moreover, the forest certification field in general is criticized for ignoring

developing countries' interests, as certified forests and companies come mainly from developed countries (Pattberg, 2005; Rametsteiner & Simula, 2003; Ronit & Schneider, 1999). Another example of such criticism is found in the fight against money laundering. The Wolfsberg Process, a privately-led MSI, involving banks, as well as a few NGOs and academic representatives, has been much more criticized than its more inclusive competitors, such as Partnering Against Corruption Initiative (Pieth, 2007).

Procedural Fairness

The legitimacy of a democratic decision-making process depends on how the included stakeholders are able to influence this process (Young, 2000). Thus, legitimate rules are those that allow the affected stakeholders to have a voice in the deliberations that led to them. On the other hand, inclusion refers to stakeholder involvement in the activities, structures, and processes of MSIs, and the fairness of deliberations relates to the right that these stakeholders have been given to influence the decisions made. In other words, stakeholders could have been included in the MSI, but marginalized in the decision-making process. As such, the procedural quality of deliberations is a key element of legitimate political processes (Habermas, 1998; Risse, 2004; Young, 2000).

To be fair, deliberations must be structured in such a way that power relations between stakeholders are neutralized. For example, the FLA and the Ethical Trading Initiative (ETI) include an even number of representatives on their respective Board of Directors from three different kinds of stakeholders: Academics, corporations and NGOs for the FLA and trade unions, as well as NGOs and corporations for the ETI. In contrast, the Kimberley Process involves corporations and civil society organizations in its processes, but only in consultation rounds. They thus have no voice in decision-making. Here (often non-democratic or even repressive), governments take decisions upon rules alone. MSIs are expected to build their decision-making processes in a way that power differences between the various actors

involved are neutralized, which is generally expected from a deliberative democratic point of view (Habermas, 1998). For example, TNCs may abuse a multi-stakeholder forum by advocating standards that might be too costly for small firms, thus creating an entry barrier into the MSI for (smaller) competitors (Raines, 2003; Witte et al., 2005).

Consensual Orientation

Deliberative democracy, as a philosophical concept, is inspired by the Habermasian idea of an ideal discourse, which should guide participants through the unforced “force of the better argument” toward a consensus (Habermas, 1990: 185). Such a consensus is important, because it signals the ability and willingness of the involved actors to change their position on the basis of convincing reasons. If participants are willing to potentially change their position, they would show that they are motivated to cooperate for the common ground. Consensual decisions, therefore, are considered to be more reasonable (i.e. reason-based) and more legitimate (Young, 2000). However, it has been argued that in real political discourses, democrats “act in a wide range of suboptimal circumstances” (Fung, 2005: 400; see also Scherer & Palazzo, 2007) that make a consensus highly unlikely. MSIs operate in a normatively fragmented landscape, bringing together a multitude of actors from various cultural and ideological backgrounds and with conflicting moral, economic, and political objectives. A standard-setting initiative might not achieve consensual solutions for most of the challenges it is dealing with. Under the condition of modern pluralism, a dissensus is much more probable than a consensus. Therefore, it might be more important to examine the conditions under which a disagreement might be described as reasonable (Gutmann & Thompson, 1996; Moon, 2003). It is neither realistic nor desirable for the corporations and NGOs participating in an MSI to collaborate without any consideration of their particular interests. However, an MSI can operate with a public-spirited culture of cooperation despite

dissenting positions, or it can operate as an institutionalized forum for bargaining and negotiating irreconcilable particular interests.

Transparency

Transparency demands for governments, corporations, and international institutions are continuously increasing (Florini, 1998). For example, the World Trade Organization struggled with regard to NGO criticism toward its total lack of transparency, which it then improved (Nanz & Steffek, 2004). In the context of global governance, “an institution is transparent if it makes its behavior and motives readily knowable to interested parties” (Hale, 2008: 75). Also, the transparency of political non-state actors is crucial to their legitimacy (Elms & Phillips, 2009; Nanz & Steffek, 2004). The more transparent they are, the more external stakeholders will be able to evaluate the activities of the MSI (Hale, 2008), and more stakeholders can assess whether their preferences are respected (Scharpf, 1999).

The transparency of the political process of rule-setting is an important criterion to evaluate the legitimacy of this rule, according to deliberative democrats. If a political process is more transparent, then more citizens can judge whether their preferences have been respected (Young, 2000). Transparency is thus also crucial to the legitimacy of MSIs because if a political process is more transparent, then stakeholders will obtain more information on this process (Black, 2008; O'Rourke, 2006; Witte et al., 2005). If decision-making processes, such as the elaboration of a standard, the voting procedures, or the repartition of power, are disclosed, legitimacy will be higher, as people can assess how a rule was decided upon and judge its appropriateness (Bernstein & Cashore, 2007; Risse, 2004).

MSI OUTPUT LEGITIMACY

Coverage

Coverage measures the number of corporate actors bound by an MSI rule, and, as such, is directed toward the quantity of actors involved in standard implementation.

Effectiveness must ensure that the rules bind as many actors as possible, as long as these actors are concerned with the regulated issue (Beisheim & Dingwerth, 2008). Coverage drives output legitimacy, because the more the firms are bound by the rules, the more it will attract other companies that will perceive non-participation as a competitive disadvantage (Husted & Allen, 2006; Waddell & Khagram, 2007). As such, in the first phase, firms follow a utilitarian logic and “must perceive the costs of [MSI] governance to be less than current or potential economic benefits” (Bernstein & Cashore, 2007: 356). The challenge is thus to extend coverage to non-complying firms (Marx, 2008). While deliberative democracy in the nation-state implies a national coverage, under which few trespassers can free-ride and avoid sanctions, MSI regulation suffers from much more problems in these regards.

MSIs must attain a critical level in coverage to attract other companies and not be perceived as a competitive disadvantage (Bernstein & Cashore, 2007; Waddell & Khagram, 2007). However, MSIs can benefit from cascading effects of coverage: The more buying firms of a supplier participate in an MSI, the more this supplier will be asked to engage and comply with the same standards (Clausen, Ankele, & Petschow, 2005). Having highly visible participating TNCs will increase coverage: Their suppliers and competitors will be more likely to engage (Vogel, 2010). The more the corporations from an industry are involved in an MSI, the more likely their competitors will engage so that others will not have a competitive advantage (Bernstein & Cashore, 2007; Husted & Allen, 2006). MSI coverage thus depends partly on first-movers with certain structural or cultural characteristics to attract competitors with the same characteristics. For example, if a small and medium enterprise (SME) engages in an MSI, competing SMEs are more likely to engage in turn, as opposed to competing TNCs.

Efficacy

We define rule efficacy as the extent to which the rules fit the problem at hand, and are relevant for solving it effectively (Rucht, 2005). A standard might not provide an efficacious solution for the problem(s) at hand, either because it does not require enough corporate efforts (its level of requirement is too low or does not correspond to the rule-targets) (Raines, 2003; Sethi, 2003), or because even if it addresses the problem correctly, it creates additional negative externalities (Dupuy, 1991). According to deliberative democrats, a political institution has to define rules that follow citizens' will and are translated into enforceable laws (Habermas, 1996). The extent to which rules correspond to citizens' will, in general, will define its efficacy.

Soft law regulation has been heavily criticized as a blue- or green-washing tool for corporations (Spar & La Mure, 2003), because it “addresses the ‘low hanging fruit’, i.e. the easiest and least costly changes to behavior” (Haufler, 2003b: 244). Some NGOs, for instance, have criticized SA8000, a standard regulating labor conditions, for not bringing real change to factories (see e.g. Labour Rights in China, 1999).

While the standards might be inefficacious with regard to the problem at hand, they can also be inefficacious with regard to the rule-targets. For instance, as Vogel noted, standards are mainly elaborated for developed Western brands. Small firms and producers from developing countries might have difficulties in following these standards due to the high costs involved. Indeed, a negative externality of Western standards is that “many firms in developing countries have developed an adversarial relationship with private inspectors responsible for certifying their compliance with civil regulations and often seek to deceive them” (Vogel, 2010: 81). Therefore, several categories of participating firms might have different processes and need accordingly adapted standards (Raines, 2003). The FLA, for example, divides its participating firms into categories, each of which is required to abide by the same code of conduct, but using different implementation guidelines and a different tool.

Enforcement

Enforcement, understood as the ability of an MSI to ensure that the rules that they establish are followed and applied in practice (Fransen & Kolk, 2007), plays a key role in the evaluation of the output legitimacy of private regulation. The effectiveness of MSIs “depends on the capacities of the association to control and sanction non-compliance and on a functioning background control by the public and NGOs” (Clausen et al., 2005: 179). While Habermas (1996) emphasized the challenges of translating citizens’ decisions into applicable and enforceable laws in national democratic regimes, this core principle of deliberative democracy is even more stringent in MSI regulation. Global soft law regulation is difficult to enforce due to deterritorialization and the fact that executive and judicial organs such as nation-states do not exist at a global level (Marx, 2008).

MSIs often develop highly sophisticated monitoring procedures to control for standard compliance. Monitoring is probably the most important organizational challenge for MSIs. It is expensive, and firms and suppliers that are monitored multiple times might become overcontrolled, creating monitoring fatigue. Moreover, monitoring practices vary according to industries and even companies, making it difficult to compare (Locke, Qin, & Brause, 2007).

At least four types of monitoring can be differentiated: *Self-monitoring* refers to the fact that the companies that apply an MSI standard control their own compliance. However, this kind of monitoring signals low output legitimacy as firms have possibilities to cheat, report falsely on compliance, and compliance cannot be verified (Marx, 2008; O'Rourke, 2006). Several other types of monitoring have been described (see e.g. Gereffi et al., 2001; Marx, 2008; O'Rourke, 2006; van Tulder & Kolk, 2001): *First-party* monitoring is done by the MSI itself or one of its parties; *second-party* monitoring is paid for and done by an external audit company (e.g. PWC); and *third-party* is done by independent (accredited or not) civil society or governmental organizations. External third-party monitoring is expected

to provide more compliance than the other forms of monitoring (Marx, 2008; O'Rourke, 2006). Independence is the key to show that there is no cheating or window-dressing (as second-party monitoring is paid for, it provides less independence than third-party) (Fransen & Kolk, 2007; van Tulder & Kolk, 2001). Through third-party monitoring, the MSI tries to adhere to the idea of a separation of political powers, separating standard-setting and standard enforcement.

SUSTAINABLE FOREST MANAGEMENT AS AN ILLUSTRATION

One of the first domains in which MSI regulation emerged is sustainable forest management. Today, protection of the world's forests is largely developed on soft law regulation. Extensive academic research has addressed this issue. In the following, we demonstrate how our input and output legitimacy criteria can be applied to this issue.

In the wake of the UN Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992, the goal of which was to “help governments rethink economic development and find ways to halt the destruction of irreplaceable natural resources and pollution of the planet” (United Nations, 1997), several MSIs were created. As governments were only able to issue vague recommendations, a parallel NGO forum, together with private firms, answered this governance gap by launching a global scheme for the sustainable management of forests: the FSC (Pattberg, 2005). As a reaction to the lack of governmental resolution, the FSC decided not to involve governments in its structure, as opposed to the Sustainable Forestry Initiative (SFI), an MSI founded after the 1992 UNCED by the American Forest & Paper Association. Both of the MSIs develop standards for sustainable forest management and accredit independent certification bodies that verify the implementation of the respective standards. Examination of the democratic legitimacy of these two self-regulatory schemes with our criteria led to the following results.

The highest decision-making body of the SFI is the Board of Directors composed of 18 representatives from the social, economic, and environmental sectors. In the FSC, the highest decision-making organ is its General Assembly, composed of all FSC members. While the SFI has the advantage of including governmental representatives in its Board of Directors, the FSC has greater *inclusion*, as its decision-making body involves all its members.

The interests of all FSC members are certainly greater than those represented by the SFI Board. Both the decision-making organs are governed by three chambers equally (in terms of vote) representing the social, economic, and environmental sectors, and their *procedural fairness* is rather high. The FSC has an additional restriction to power differences: Each of the three chambers is equally divided into North and South interests. However, as Dingwerth (2008) noted, the *procedures* and structures in place in the FSC for allowing different stakeholders a voice in decision-making processes do not always translate into effectively equal decisions. As such, the FSC's *procedural fairness* might be assessed as more or less equal to that of the SFI.

As the SFI was founded by the private sector only, it signals a lower *consensual orientation* than the FSC. Indeed, the industry-led SFI will be less ready to accept inputs from other stakeholders in the internal process of developing rules (Bouslah et al., 2010; Schepers, 2010). "Since the firms supply compliance reports privately to the industry association" (Gereffi et al., 2001: 61), the *transparency* of the SFI is lower than that of the FSC, which publicly reports compliance. Moreover, the FSC also publishes the audit results of its certification bodies. The SFI has however been heavily criticized by NGOs, such as the Rainforest Action Network or Greenpeace, for its shortcomings in consensual orientation and transparency (Gereffi et al., 2001). As such, the SFI changed its structures and processes, and now nearly matches the FSC in these regards (Schepers, 2010). For example, since 2010, the

SFI standard includes a transparency principle, which states that the audit results of certified companies must be publicly disclosed. Overall, the input legitimacy of the FSC might be assessed as slightly higher than that of the SFI, but it is only after approximately 10 years of existence that the SFI matched the FSC.

On the output side, as of the beginning of 2011, the *coverage* of the FSC is 131 million ha of forests, whereas that of the SFI is only 72 million ha. Moreover, the SFI focuses mainly on the USA (certifying more forests and producers in the USA than the FSC), while the FSC attempts to be more global (Schepers, 2010). This would point to the fact that the FSC has to include more interests than the SFI.

In terms of *efficacy*, it has been argued that the FSC induces more social change than the SFI, for example, by consulting more with communities and organizing more stakeholder meetings (Cubbage & Moore, 2008: 32). In the same vein, the FSC also brings more changes to the environmental aspect of forest management, whereas the SFI is more focused on economic and managerial improvements (Cubbage & Moore, 2008). According to Bouslah et al. (2010: 554), this is because the FSC is a performance-based standard focusing on the condition of the forest, whereas the SFI is a management-based standard focusing on management responsibilities and processes. The FSC standards are also better adapted to different forests and producers, with, for example, a dedicated program for forest smallholders. However, the SFI has only one umbrella standard.

With regard to *enforcement*, the FSC has an elaborate accreditation system of independent NGOs. These certification bodies are then allowed to certify companies in the forest industry. The FSC also has a method for controlling each step of wood production (so-called chain of custody), allowing certification of forests and wood end-products. However, the FSC has reached a critical size. It faces criticism from activists that monitoring is left to organizations that are not reliable and do not respect its principles (The Rainforest

Foundation, 2002). The SFI has also been criticized for its monitoring methods. During the beginning of its existence, the SFI relied on self-monitoring, but now, it also accredits independent certification bodies to control the implementation of its standard (Dingwerth, 2008). However, third-party monitoring is still optional in the SFI (Bouslah et al., 2010). Accordingly, the output legitimacy of the SFI might be assessed as lower than that of the FSC, with the latter having a high output legitimacy. Table 4 details the input and output dimensions of legitimacy of the FSC and SFI.

Insert Table 4 about here

The FSC has grown to become one of the largest MSIs in the forestry sector (Visseren-Hamakers & Glasbergen, 2007), and although it has raised criticism, the FSC is generally considered as the most effective and credible scheme in this sector (Bartley, 2010; Dingwerth, 2008; Schepers, 2010). It not only certifies highly visible companies, such as IKEA and Home Depot, but also the whole wood supply chain, and is supported by NGOs such as the World Wildlife Fund (WWF). On the other hand, the SFI, although lagging behind the FSC in some aspects, is also considered as a credible and effective competitor, at least in the USA, whereas other initiatives, such as the African Timber Organization (ATO) or the national initiative of Indonesia, the Indonesian Ecolabelling Institute (LEI), have not reached this level of credibility and effectiveness (Bouslah et al., 2010; Rametsteiner & Simula, 2003). The ATO, for example, only includes governments in its standard-setting procedures, whereas LEI’s monitoring is not independent.

This example further illustrates how our framework allows for an evaluation of the democratic legitimacy of MSIs along two benchmarks. First, we see our framework as a benchmark for competing initiatives in a certain field. However, it is hard to prioritize one criterion over another, and MSIs can be compared along each of these criteria and the

dimensions of democratic legitimacy, as we have shown in the above-mentioned example. We argue that our framework would allow for a comprehensive picture of the legitimacy of soft law in a field, if all MSIs were analyzed. Comparing the legitimacy of several MSIs would allow to better understand criticism toward certain MSIs by NGOs, as well as the areas of improvement for these initiatives. MSIs could also strive to enhance their relative performance on these criteria, as was done by the SFI.

Second, MSIs can be benchmarked against the ideal of democratic legitimacy, because ideally, these self-regulatory initiatives should be high on input and output criteria of democratic legitimacy. This ideal should be understood as the normative point of reference toward which MSIs should develop. While the FSC, for instance, is considered highly legitimate both from an input and output point of view, it has nonetheless been criticized, and in reaction, it has tried to improve its structure and processes. We suggest a dynamic interpretation of MSI legitimacy, understanding it as a process of constant improvement. “Legitimacy cannot be considered an all-or-nothing proposition” (Scharpf, 1999: 26): An MSI cannot be democratically legitimate only by being highly legitimate from *either* an input *or* output side (Scharpf, 1999). Indeed, the input and output sides of political processes are closely interrelated and both influence how their democratic legitimacy would be perceived (Easton, 1957; Kitschelt, 1986; Scharpf, 1999).

As the discussion between philosophers in the three theoretical camps of liberalism, republicanism, and deliberative democracy shows, the ideal criteria of the different approaches can collide. This is not only true for a government-based understanding of democracy, but applies as well to private regulation. For example, inclusion could have a negative effect on output legitimacy. By enhancing the diversity of stakeholders in an MSI’s processes (inclusion), it is probable that divergent views will arise in deliberations. As such, it will be more difficult to achieve mutual agreements and rules might be less efficacious, thus

reducing MSI effectiveness. For example, the FLA, in its preliminary discussions in the 1990s over its Code of Conduct, included corporations, NGOs, unions, and universities. However, these stakeholders did not come to a consensus on living wages and freedom of association in China, leading unions and some NGOs to leave the dialogue (Sethi, 2003). Another example of input and output legitimacy interplay relates to the impact of transparency on enforcement. Transparency enhances access of the public to corporate information and thus augments the chance that corporations will efficaciously enforce the standards (Clausen et al., 2005; Vogel, 2010; Waddock, 2008). Indeed, “when codes do not reveal compliance mechanisms, the probability of compliance by companies and their business partners decreases, thus also lowering codes’ credibility” (van Tulder & Kolk, 2001: 276), which was the case of the SFI in the past (Gereffi et al., 2001). However, the interplay between democratic legitimacy, its dimensions, and criteria needs further research to adequately identify their relationships, directions, effects, and causes.

IMPLICATIONS

Research Implications

Our framework allows for multiple avenues of future theoretical and empirical research. First, we believe that the criteria and their impact on MSI legitimacy can be measured and tested empirically. Table 5 complements Table 2 with details for operationalization of each criterion.

Insert Table 5 about here

The dependent variable, democratic legitimacy, could be measured by several reputation indices, such as Gardberg and Fombrun’s reputation quotient (2002), and Janis and Fadner’s coefficient of imbalance (1965), or its adaptation by Deephouse, the coefficient of media endorsement (1996). Further exploratory qualitative and quantitative studies would

also be needed to build propositions and hypotheses as to the aforementioned interplay between the criteria. It would be possible, for example, for the weights of the criteria to change according to the industry, area, and issue. Inclusion could be more important in highly fragmented industries with complex and long supply chains. In-depth case studies of MSIs would prove useful to examine in detail how these criteria unfold in existing MSIs, and to develop hypotheses. Exploratory quantitative analysis (post-hoc investigations) of the model and correlations between the criteria described earlier would also help in this regard.

Our paper takes the MSI as the unit of analysis and does not consider legitimacy challenges at the level of individual actors who participate in the initiative. There is, for instance, a difference between the legitimacy of an MSI and that of its participants. Whether or not there is an impact of the legitimacy of the MSI on that of the participating corporations and NGOs, and whether or not there is a link between the participation in an MSI and the financial performance of a corporation, are relevant questions. The impact of free-riding and non-adherent firms on MSI legitimacy also needs to be examined. However, these aspects are beyond the scope of our paper, which intends to shed light on the condition of legitimacy in the emerging domain of private regulation.

Finally, the paper also allows for several theoretical investigations, which could be addressed by conceptual and empirical analyses. For example, the conflict between profit and non-profit organizations within an MSI would need further investigation. Future research could also include quantitative and qualitative analyses on the salience of the criteria of input and output legitimacy in the existing MSIs, their dynamics, and evolution through the MSI lifetime.

Policy Implications

We also believe that our framework has multiple policy implications. First, we deem that the success of MSIs depends on their democratic legitimacy as private regulatory

initiatives at a transnational level, which is being highly credible and effective in taking a state-like function at a transnational level. We believe that our findings can be useful for the design of the structures and processes of the existing and future MSIs. We would advise MSI administrators to pay attention to issues such as the independence of monitoring or the inclusion of all the affected stakeholders.

Second, corporations should also pay attention to the democratic legitimacy of the MSIs they engage in. By engaging in a legitimate MSI, they are likely to preempt some of the civil society's attacks (Vogel, 2010). Indeed, by participating in MSIs, "companies also hope to reduce the demands they are facing from multiple stakeholders (particularly critical NGOs), customers (including corporate customers), and social investors, among others" (Waddock, 2008: 105). This would also mean that corporations should not try to manipulate the processes of standard-setting, and be ready to accept other stakeholders' inputs, which would, in the end, enhance the legitimacy of the MSI in which they engage. As corporations increasingly take a political role in a globalizing world, engagement in legitimate MSIs will foster this role and certainly increase their legitimacy as a political actor (Scherer & Palazzo, 2007, 2011).

Third, the role of governments in transnational private regulation is also important. While our paper demonstrates the growing relevance of soft law regulation, we do not want to deny the superior regulatory power of hard law regulation by democratically elected governments. The challenge for governments is in finding ways of evaluating MSIs and connecting to them to better align their own national regulatory activities with those of private actors on the global playing field. Our framework also offers governments and intergovernmental agencies criteria to judge the legitimacy of MSIs prior to participating in them or promoting them. As soft law takes on increasing importance globally, governments might also consider how to collaborate and increase synergies with private regulatory bodies,

for example, in “recogniz[ing] the legitimacy of the most viable regulations by further incorporating them as participants in formal political decision-making processes” (Glasbergen, 2011: 22). Moreover, some governments have decided to embed soft law in their national hard law, such as Denmark and Sweden, for state-owned companies that are required to report according to GRI principles (CSR Europe, 2010).

CONCLUSION

There are a number of important further steps and challenges for transnational private regulation and the implementation of MSI legitimacy criteria. It will be important to find ways to embed such voluntary standards in democratic and government structures (Vogel, 2010). In a globalizing world with increasingly expanding economic activities and related social and environmental externalities, MSIs could be a way to deal with these externalities in a democratic way (Scherer & Palazzo, 2008). As TNCs realize that they cannot ignore or solve these issues alone, they engage in MSIs. We believe that as the role of corporations in society is increasingly under watch by activists, NGOs, and the wider public, corporations can increase their commitment to responsible behavior by participating in democratically legitimate MSIs. As CSR increasingly involves the private regulation of business (Kobrin, 2009; Matten & Crane, 2005; Scherer & Palazzo, 2011; Scherer et al., 2006; Waddock, 2008), the legitimacy of such regulation will be increasingly important, at least for as long as a global nexus of public governance is neither available, nor effective and credible.

However, these new mechanisms face numerous input and output legitimacy problems. This paper has contributed to the debate on MSI regulation of TNC activities by highlighting the criteria and challenges in defining and evaluating the democratic legitimacy of private regulatory regimes. It has also contributed to the CSR literature by examining these new mechanisms, whereby corporate engagement signals an increasing political role. By outlining a framework for evaluating the legitimacy of MSIs, the paper has contributed to

research on private regulation and its role in a globalizing world, where governmental regulation is not always available. We argue that this role can only be successfully fulfilled if MSIs meet some basic requirements of credibility and effectiveness criteria. Specifically, this paper has described the democratic embeddedness of MSIs as the result of their input and output legitimacy. By building on insights from normative democratic theory, and translating it to the global level, this paper has identified criteria of both forms of legitimacy. While further research is needed, this paper has outlined avenues for MSIs to enhance their input legitimacy and effectiveness, so that sustainable regulations for governance in a global world can be worthwhile.

FOOTNOTES

ⁱ Throughout the paper, when we speak about governments or nation-states, we include all national governmental organs of the state apparatus, i.e. judicial, executive, legislative organs. These organs are, in general, believed to represent citizens' will in a democratic national regime, and translate this will into applicable laws.

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TABLE 1

An Overview of Different Multi-Stakeholder Initiatives

Multi-stakeholder initiative	Creation date	Issue	Rule-targets	Stakeholders in governance ^a				
				Corporations	Governments ^b	NGOs	Trade unions ^c	Academia
Responsible Care	1985	Sustainability of the chemical industry	Corporations	√	(√)	(√)	(√)	
African Timber Organization	1993	Sustainable forest management	Corporations	(√)	√			
Forest Stewardship Council	1993	Sustainable forest management	Corporations	√		√		
Sustainable Forestry Initiative	1995	Sustainable forest management	Corporations	√	(√)	(√)		
Canadian Standards Association	1996	Sustainable forest management	Corporations	√	(√)			
Global Reporting Initiative	1997	Sustainable reporting	Corporations	√	(√)	√		√
Social Accountability	1997	Labor conditions	Corporations	√	√	√	√	

International (SA8000)								
World Commission on Dams	1997	Dam building	Corporations Governments	√	√	√		√
Ethical Trading Initiative	1998	Fair trade	Corporations	√		√	√	
AccountAbility (AA1000)	1999	Sustainability (stakeholder engagement, accountability, information)	Corporations Governments NGOs	√		√		√
Fair Labor Association	1999	Labor conditions	Corporations	√		√		√
Global Compact	1999	Global sustainability principles	Corporations	√	√	√	√	
ISEAL Alliance	1999	Standardization schemes synergies	MSIs			√		
Marine Stewardship Council	1999	Sustainable fishing	Corporations	√		√		
Indonesian Ecolabelling Institute (LEI)	2000	Sustainable forest management	Corporations	√		√		
Voluntary Principles on	2000	Human rights	Corporations	√	√	√		

Security + Human Rights								
Wolfsberg Process	2000	Anti-money laundering	Banks	√		√		√
Worldwide Responsible Apparel Production Initiative	2000	Labor conditions	Corporations	√		√		√
EU Water Initiative	2002	Water supply	Governments	(√)	√	(√)		
Extractive Industry Transparency Initiative	2002	Transparency of money transfers between governments and corporations	Governments	√	√	√		
IUCN-ICMM Mining Dialogue	2002	Biodiversity in mining areas	Corporations	√	√	√		
Kimberley Process	2002	Mining (diamond)	Governments	(√)	√	(√)		
Equator Principles	2003	Project financing	Corporations	√	(√)	(√)		
Sustainable Coffee Partnership	2003	Sustainability in the coffee sector	Corporations	√	√	√		
Partnering Against Corruption Initiative	2004	Corruption	Corporations	√	√	√		√

Roundtable on Sustainable Palm Oil	2004	Sustainability of the palm oil supply chain	Corporations	√		√		
Better Cotton Initiative	2005	Sustainability of the cotton supply chain	Corporations	√	√	√	√	
4C Association	2006	Sustainability of the coffee supply chain	Corporations	√		√	√	
Roundtable on Responsible Soy	2006	Sustainability of the soy supply chain	Corporations	√	(√)	√		(√)
Better Work	2007	Labor conditions	Corporations	√	√		√	√
Bonsucro Better Sugarcane Initiative	2007	Sustainability of sugar cane production	Corporations	√		√		
Water Footprint Network	2008	Sustainable use of water resources	Corporations Governments	√	√	√		
GoodWeave	2009	Child labor	Corporations	√	√	√		
World Banana Forum	2009	Sustainability of the banana supply chain	Corporations	√	√	√	√	
Aquaculture Stewardship	2009	Responsible aquaculture	Corporations	√	√	√		√

Council								
ISO 26000	2010	Social responsibility	Corporations	√	√	√		
			Governments					
Roundtable on Sustainable Bio-fuels	2010	Sustainability of biofuels production and processing	Corporations	√	√	√	√	

^a ‘√’ signifies that the stakeholder category is fully involved in governance processes of the MSI; ‘(√)’ signifies that the stakeholder category is only consulted or is not given enough power to influence decisions.

^b The ‘Governments’ category also includes international institutions.

^c Trade unions are sometimes included in civil society or NGOs. If trade unions are not specifically mentioned, they are not included for the purpose of the table.

TABLE 2**Criteria of MSI Democratic Legitimacy**

Dimension	Criterion	Definition	Key questions
Input	Inclusion	Involvement of stakeholders affected by the issue in the structures and processes of the MSI	Are the involved stakeholders representative for the issue at stake? Are important stakeholders excluded from the process?
	Procedural fairness	Neutralization of power differences in decision-making structures	Does each of these categories of stakeholder have a valid voice in decision-making processes?
	Consensual orientation	Culture of cooperation and reasonable disagreement	To what extent does the MSI promote mutual agreement among participants?
	Transparency	Transparency of structures, processes and results	To what extent are decision-making and standard-setting processes transparent? To what extent are the performance of the participating corporations and the evaluation of that performance transparent?
Output	Coverage	Number of rule-targets following the rules	How many rule-targets are complying with the

			rules?
	Efficacy	Fit of the rules to the issue	To what extent do the rules address the issue at hand?
	Enforcement	Practical implementation of the rules and their verification procedures	Is compliance verified and non-compliance sanctioned?

TABLE 3

Support for Criteria from Existing MSIs

MSI	Quote	Illustrated criteria
Sustainable Coffee Partnership	<p>“The Partnership will be guided by a few basic principles including:</p> <ul style="list-style-type: none"> • Build upon and across existing initiatives and institutions—modify existing infra-structures before setting up new infra-structure • Place priority on concrete projects and collaborations • Promote coherence and shared understandings • Emphasize support for small producers and the most vulnerable actors in the coffee sector. • Draw upon public-private partnerships both at the project and policy levels wherever possible • Ensure transparent multi-stakeholder representation and decision making • Activities and policy should be developed on a global scale, but must consider regional and sectorial realities and dynamics.” - <p>http://www.iisd.org/pdf/2004/sci_schematic_structure_draft.pdf</p>	<p>Consensual orientation</p> <p>Procedural fairness</p> <p>Transparency</p> <p>Inclusion</p> <p>Efficacy</p>

<p>International Seafood Sustainability Foundation</p>	<p>“Our coalition’s approach is deliberate and collaborative, which can require a bit of extra time but generally leads to the best result. Instead of one stakeholder making up some of the rules, all stakeholders make up all the rules.” - http://iss-foundation.org/about-us/our-approach/frequently-asked-questions/</p>	<p>Procedural fairness</p>
<p>Round Table on Responsible Soy</p>	<p>“The Round Table on Responsible Soy (RTRS) is the global platform composed of the main soy value chain stakeholders with the common objective of promoting the responsible soy production through collaboration, dialogue and consensus finding among the involved sectors in order to foster a economical, social and environmental sustainability.” - http://www.responsiblesoy.org/</p>	<p>Consensual orientation Inclusion</p>
<p>Roundtable on Sustainable Biofuels</p>	<p>“The RSB has developed a third-party certification system for biofuels sustainability standards, encompassing environmental, social and economic principles and criteria through an open, transparent, and multi-stakeholder process. Participation in the RSB is open to any organization working in a field relevant to biofuels sustainability.” - http://rsb.epfl.ch/</p>	<p>Enforcement Efficacy Transparency Inclusion</p>
<p>Aquaculture Stewardship Council</p>	<p>“More than a standards holding body, the ASC will be a global transformation system for aquaculture, that will achieve:</p>	<p>Inclusion Transparency</p>

	<p>Credibility: the standards are developed according to ISEAL guidelines, multi-stakeholder, open and transparent, science-based performance metrics.</p> <p>Effectiveness: minimising the environmental and social footprint of commercial aquaculture by addressing key impacts.</p> <p>Added value: connecting the farm to the marketplace by promoting responsible practices through a consumer label.” -</p> <p>http://www.ascworldwide.org/index.cfm?act=tekst.item&iid=2&lng=1</p>	<p>Efficacy</p> <p>Enforcement</p>
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TABLE 4**Comparison between the FSC and the SFI^a**

Criterion	FSC	SFI
Inclusion	<ul style="list-style-type: none"> • General Assembly including all FSC members • Divided into three chambers: economic, social, environmental • Split into sub-chambers North and South • No governments included 	<ul style="list-style-type: none"> • Board of Directors of 18 representatives (two consecutive three year-term maximum) • Divided into three chambers: economic, social, environmental • Only body that can modify the standard
Procedural fairness	<ul style="list-style-type: none"> • Equal vote and power between chambers • Votes from North and South organizations equally weighted • Code of Good Practice for setting standards (ISEAL accreditation) 	<ul style="list-style-type: none"> • Public review process of standard-setting • Board decisions must be approved by at least 80% of those present, which must include at least two representatives from each sector
Consensual orientation	<ul style="list-style-type: none"> • NGO-initiated • Dispute Resolution System 	<ul style="list-style-type: none"> • Corporation-initiated initiative
Transparency	<ul style="list-style-type: none"> • Detailed standard-setting procedure, initiated by a motion of the General Assembly 	<ul style="list-style-type: none"> • Standard-setting includes public consultation. Developed by multi- stakeholder resources committee, approval by the

	<ul style="list-style-type: none"> • Clear weighting of votes • Publication of audit results • Publication of accreditation results (of certification bodies) 	<p>Board Reviewed by independent SFI External Review Panel.</p> <ul style="list-style-type: none"> • Publication of audit results
Coverage	<ul style="list-style-type: none"> • 131 mios ha 	<ul style="list-style-type: none"> • 72 mios ha
Efficacy	<ul style="list-style-type: none"> • Forest management certification (program for smallholders) • Chain of custody certification • FSC controlled wood (end products) • Performance-based • Focus on environmental and social challenges 	<ul style="list-style-type: none"> • One global standard • Chain of custody certification • Fiber sourcing certification • Management-system based • Focus on economic and managerial challenges
Enforcement	<ul style="list-style-type: none"> • Third-party monitoring • Independent certification bodies • Accreditation by Accreditation Services International (control of certification bodies, in line with ISO) 	<ul style="list-style-type: none"> • First-, second-, and third-party monitoring (latter optional) • Independent certification bodies • Accreditation by American National Standards Institute, National Accreditation Board, and/or Standards Council of Canada

^a Sources: www.fsc.org; www.sfiprogram.org; Bartley, 2007, 2010; Bass & Simula, 1999; Bouslah et al., 2010; Cabbage & Moore, 2008;

Dingwerth, 2008; Gereffi et al., 2001; Rametsteiner & Simula, 2003; Schepers, 2010; The Rainforest Foundation, 2002; Visseren-Hamakers & Glasbergen, 2007.

TABLE 5**Criteria Operationalization**

Dimension	Criterion	Operationalization
Input	Inclusion	<ul style="list-style-type: none"> • Number of different stakeholders represented in the highest decision-making body • Number of criticisms regarding exclusion of stakeholder category
	Procedural fairness	<ul style="list-style-type: none"> • Percentage of stakeholders having the right to vote in the highest decision-making body • Percentage of stakeholders having a veto right • Balance/weighting of votes
	Consensual orientation	<ul style="list-style-type: none"> • In minutes of Board meetings, working groups, and General Assemblies, how many times have stakeholders changed their mind following an argument raised by another stakeholder? • In these minutes, how many stakeholders show signs of cooperation (e.g. by disclosing confidential information)?
	Transparency	<ul style="list-style-type: none"> • Are decision-making processes in the Board/GA publicly disclosed (i.e. website)? • Is the elaboration of a rule clearly defined? • Are monitoring results publicly disclosed?
Output	Coverage	<ul style="list-style-type: none"> • Percentage of firms per industry/region abiding to the rules

		<ul style="list-style-type: none"> • Percentage of production covered
	Efficacy	<ul style="list-style-type: none"> • Does the level of requirement lie below/above other MSIs? • Does the level of requirement lie below the requirements formulated by independent experts? • Quantity and quality of negative side-effects created by the rules • Does the problem, targeted by the rule change/improve?
	Enforcement	<ul style="list-style-type: none"> • Which kind of monitoring is used by the MSI (none/1st/2nd/3rd party)? • Are external organizations certified to monitor/accredit rule-targets? • Is there a set of sanctions in case of non-compliance? • Has cheating been observed and does the MSI react to these incidents?