Engaging the public and the private in global sustainability governance

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Negotiators preparing for Rio+20 are missing an important opportunity. Reforming the institutional framework for sustainable development is a central part of the conference agenda. In the run-up to Rio+20, negotiators have extensively discussed institutional reforms, but are focusing almost exclusively on intergovernmental organizations such as the United Nations Environment Programme (UNEP) and the United Nations Commission on Sustainable Development (UNCSD). At the same time, however, private sustainability governance is flourishing. Since 1992 numerous organizations created by business, civil society groups, multi-stakeholder coalitions and other private actors, as well as diverse public–private partnerships, have adopted important regulatory standards and implemented significant operational programmes, covering financing, project support and information dissemination. Rio+20 negotiators remain almost wholly disengaged from these innovations.

This public–private engagement gap is both puzzling and troubling.[1] Private sustainability governance (PSG) has arisen primarily in response to the inadequacies of interstate negotiations, institutions and policies; it provides momentum on many environmental and development issues when interstate negotiations are stalled. Embracing PSG would bring this valuable engine of activity into the international system. Indeed, supportive public engagement with these private initiatives could enhance the ability of PSG—and thus of the international system—to address the daunting challenges of sustainability.

This article begins by contrasting the interstate focus of Rio+20 preparations (in the first section) with the growth of PSG (in the second). The third section examines the public–private engagement gap in practice and scholarship. The fourth section considers why the interstate system has been loath to engage with

[1] The public–private distinction is problematic. It describes neither where governance authority is located nor where it should be. Tony Porter has noted that private and public authority are deeply 'entangled' (Tony Porter, 'Global governance as configurations of state/non-state activity', in J. Whitman, ed., *Palgrave advances in global governance*, Basingstoke: Palgrave Macmillan, 2009)—and this article suggests even greater entanglement. Nonetheless, 'the distinction between public and private is a crucial ordering device in social life and it continues to shape much of the current debates' (Philipp Pattberg and Johannes Stripple, 'Beyond the public and private divide: remapping transnational climate governance in the 21st century', *International Environmental Agreements: Politics, Law and Economics* 84: 4, 2008, pp. 367–88). I draw the distinction in terms of actors: states, international organizations and interstate arrangements on the one hand; individuals, civil society organizations and business groups on the other.

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PSG, and the fifth identifies a number of benefits that public engagement could achieve. The sixth and final section outlines workable mechanisms for public engagement, especially by international organizations, moving towards truly global sustainability governance.

The interstate focus of current policy debates

A major theme of the 2012 United Nations Conference on Sustainable Development (Rio+20) is enhancing the institutional framework for sustainable development (IFSD).[2] The IFSD agenda grows out of the 2002 Johannesburg World Summit on Sustainable Development (WSSD). The Johannesburg Plan of Implementation (JPOI) set ambitious goals for improving the IFSD (paras 137–70), including strengthening institutions and governance practices at international, regional, national and local levels.[3] The IFSD agenda also has a broad substantive scope, encompassing the economic, social and environmental 'pillars' of sustainable development recognized at Johannesburg (para. 139(b)).

The JPOI focused heavily on state-based institutions. It recommended strengthening the UN General Assembly, ECOSOC, UNCSD, UNEP, UNDP and other interstate bodies, and enhancing coordination among UN agencies, the Bretton Woods organizations, the WTO and regional institutions. To be sure, consistent with the participatory nature of the WSSD, the JPOI also called for participation by civil society, business and other stakeholders, especially those defined as the 'major groups' (e.g. JPOI paras 139(g), 140(f), 164, 168–70). Nonetheless, those provisions were secondary to the focus on state-based institutions.

Preparations for Rio+20 have maintained this focus.[4] Consultations on international environmental governance (IEG) reform began as early as 2006;[5] UNEP promptly implemented some early recommendations. In 2009 UNEP initiated ministerial consultations on IEG; these first identified functional objectives, such as 'developing a global authoritative and responsive voice for environmental sustainability', and then considered institutional options for achieving them. In 2011, the UNEP Governing Council agreed to focus on three options: enhancing UNEP; establishing a specialized agency such as a world environment organization; and reforming and streamlining present structures. At that point, many states concluded that further discussions should proceed within the larger IFSD context.

[2] UN General Assembly Resolution 64/236, 31 March 2010. The second theme is the green economy. See http://www.uncsd2012.org/rio20/index.php?menu=61, accessed 22 Feb. 2012.

[3] Johannesburg Plan of Implementation, http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm, accessed 22 Feb. 2012.

[4] For a review of options considered, see Steven Bernstein with Jutta Brunnée, 'Options for broader reform of the Institutional Framework for Sustainable Development (IFSD): structural, legal, and financial aspects', background paper for UN Conference on Sustainable Development, 2012, http://www.uncsd2012.org/rio20/index.php?menu=63, accessed 22 Feb. 2012.

[5] For a summary of the consultations, see 'High Level Dialogue on strengthening the Institutional Framework for Sustainable Development' (discussion paper), Solo, Indonesia, 19–21 July 2011, pp. 8–12, http://www.uncsd2012.org/rio20/content/documents/SOLO%20DISCUSSION%20PAPER_TEXT.pdf, accessed 22 Feb. 2012.

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Consideration of IFSD thus moved to centre stage, although discussion of specific reforms has only recently begun.[6] At the initial Rio+20 preparatory committee meetings, the 'vision on IFSD was still blurred'.[7] That focus was sharpened by the July 2011 High-level Dialogue on IFSD in Solo, Indonesia, attended by representatives of states, intergovernmental organizations (IGOs) and major groups. The Rio+20 secretariat suggested a range of options for consideration,[8] concentrating on state-based institutions. The options included:

- for the environment, strengthening UNEP or creating a new international environmental organization;
- for sustainable development, strengthening the UNCSD, elevating it to a high-level segment of ECOSOC, or establishing a new organization such as a UN Sustainable Development Council; and
- for the UN system, creating an interagency committee to coordinate the work of UN agencies, the Bretton Woods institutions and the WTO.

The 'Solo Message', the operative portion of the chair's summary of the Dialogue, noted several areas of agreement: a need to strengthen UNEP (with growing interest in converting it into a specialized agency); a need for an organization to integrate the three pillars of sustainable development (with growing interest in a Sustainable Development Council); and a strong need to coordinate international support for national sustainable development plans.[9] While the chair noted generally that participants supported engagement between governments and major groups, the Solo Message itself did not address this issue.

The January 2012 'zero draft' of the Rio+20 outcome document incorporates these approaches.[10] It calls for the General Assembly to integrate sustainable development as part of the overarching framework for UN activities, and for ECOSOC to integrate the three pillars of sustainable development, monitor their implementation and mainstream them in UN programmes. It presents as alternatives (a) strengthening the UNCSD or transforming it into a Sustainable Development Council, and (b) strengthening UNEP or establishing a specialized agency for the environment based on UNEP. It calls on the Bretton Woods organizations, regional development banks, WTO and UNCTAD to support sustainable development, and urges coherence among these bodies and with the UN, as well as coordination among multilateral environmental agreements. And it provides for consideration of an international ombudsperson or High Commissioner for Future Generations. The zero draft does recognize the importance of

[6] Jan-Gustav Strandenaes, 'Sustainable development governance towards Rio+20: framing the debate', http://www.uncsd2012.org/rio20/content/documents/SD%20Governance%20-%20JG%20Standenaes.pdf, accessed 22 Feb. 2012.

[7] 'Rio+20: making it happen', *Newsletter of the United Nations Conference on Sustainable Development* 2: 14, 29 July 2011, p. 1.

[8] 'High Level Dialogue on strengthening the Institutional Framework for Sustainable Development'.

[9] 'Chair's summary, High Level Dialogue on Institutional Framework for Sustainable Development', http://www.uncsd2012.org/rio20/content/documents/Chairs%20Summary%20from%20Solo%20meeting.pdf, accessed 22 Feb. 2012.

[10] http://www.uncsd2012.org/rio20/content/documents/370The%20Future%20We%20Want%2010Jan%20clean%20_no%20brackets.pdf, accessed 22 Feb. 2012.

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major group participation in sustainability policy, especially domestically. In its treatment of global governance, however, little remains of the WSSD's emphasis on private participation.

The rise of private sustainability governance

In sharp contrast to the state-centric focus of Rio+20, the practice of environmental governance has been dramatically reshaped since 1992 by an explosion of PSG, part of a broader 'transnationalization' of environmental governance.[11] The field of climate change illustrates the extent and diversity of PSG.[12]

Private norms and institutions

Private actors have established numerous organizations to address climate change; these operate with little if any direct participation by states, IGOs or other public authorities.

- Many *business* firms have voluntarily committed to reduce their carbon footprints and adopt good environmental practices. Business associations are also active. For example, the International Emissions Trading Association collaborated with the World Economic Forum, World Business Council for Sustainable Development (WBCSD) and The Climate Group to develop the Verified Carbon Standard (VCS) for offset credits. The Global Sustainable Electricity Partnership (GSEP), an association of electricity companies, promotes sustainable energy projects and capacity-building.
- *Civil society groups* operate schemes such as the Gold Standard, which like the VCS certifies offset credits for voluntary and compliance carbon markets.[13] The William J. Clinton Foundation's Climate Initiative funds demonstration projects and convenes stakeholders to develop new approaches.
- Many significant schemes are *business–civil society collaborations*. For example, the World Resources Institute and WBCSD developed the Greenhouse Gas Protocol, the leading carbon accounting standard. A consortium of business and environmental organizations founded the Climate Disclosure Standards Board, which works to harmonize and strengthen carbon-reporting standards.

PSG schemes also address other sustainability issues. Best known is the multi-stakeholder Forest Stewardship Council (FSC), founded after Rio 1992, which sets standards for sustainable forest management.[14] Its principles and criteria promote

[11] Pattberg and Stripple, 'Beyond the public and private divide', p. 368; Liliana Andonova, Michele Betsill and Harriet Bulkeley, 'Transnational climate governance', *Global Environmental Politics* 9: 2, 2009, pp. 52–73.

[12] Kenneth W. Abbott, 'The transnational regime complex for climate change', forthcoming in *Environment and Planning C: Government and Policy*; Matthew Hoffmann, *Climate governance at the crossroads: experimenting with a global response after Kyoto* (Oxford: Oxford University Press, 2011).

[13] William Boyd and James Salzman, 'The curious case of greening in carbon markets', *Environmental Law* 41: 1, 2011, pp. 73–94.

[14] Benjamin Cashore, Graeme Auld and Deanna Newsom, *Governing through markets: forest certification and the emergence of non-state authority* (New Haven, CT: Yale University Press, 2004); Lars H. Gulbrandsen, *Transnational environmental governance: the emergence and effects of the certification of forests and fisheries* (Cheltenham,

environmental benefits (e.g. biodiversity and ecological values), social benefits (e.g. well-being of workers, indigenous peoples and communities), economic viability and diversification. It recently adopted a specific strategy on climate change mitigation.[15]

The participating actors in PSG schemes are important influences on performance, as actors of different types contribute characteristic strengths and weaknesses.[16] Business, for example, contributes material resources, managerial authority and expertise. However, self-regulatory business standards are typically less demanding than those emanating from civil society bodies or public authorities. NGOs, in contrast, are independent of business, but have other problems of representativeness and legitimacy; they contribute fewer material resources. NGO standards are typically more demanding, but must offer sufficient benefits to induce firms to adhere.

PSG schemes take on widely varying governance tasks:

- Some promulgate regulatory standards,[17] especially for business. PSG standards are formally voluntary, but are often backed by economic or social incentives. Most climate change standards, including the VCS and the Gold Standard, regulate offset credits. Several of these schemes, such as the Climate, Community and Biodiversity Alliance, promote offset projects that generate social and environmental co-benefits.
- Other schemes sponsor operational programmes. The Asian Cities Climate Change Resilience Network (ACRN), a Rockefeller Foundation project, seeks to 'test and demonstrate a range of actions to build climate change resilience in cities; build a replicable base of lessons learned, successes and failures; and assist cities in the development and implementation of a climate change resilience-building process'.[18] The Chicago Climate Exchange (CCX) operated a carbon exchange until 2010.
- Numerous organizations share information and support member activities: examples include the International Emissions Trading Association and ACRN. Their impact is difficult to assess, although some play significant roles in disseminating knowledge and promoting effective action. The Carbon Disclosure Project (CDP) gathers emissions data from firms and other organizations, and disseminates it to investors and the public.

UK, and Northampton, MA: Edward Elgar, 2010); Philipp Pattberg, 'What role for private rule-making in global environmental governance? Analyzing the Forest Stewardship Council', *International Environmental Agreements: Politics, Law and Economics* 5: 2, 2005, pp. 175–89.

[15] http://www.fsc.org/fileadmin/web-data/public/document_center/publications/Climate_change/FSC_Strategy_Climate_Change_Engagement_-.pdf, accessed 22 Feb. 2012.

[16] Kenneth W. Abbott and Duncan Snidal, 'The governance triangle: regulatory standards institutions and the shadow of the state', in Walter Mattli and Ngaire Woods, eds, *The politics of global regulation* (Princeton, NJ: Princeton University Press, 2009).

[17] Abbott and Snidal, 'Governance triangle'; Kenneth W. Abbott and Duncan Snidal, 'Strengthening international regulation through transnational new governance: overcoming the orchestration deficit', *Vanderbilt Journal of Transnational Law* 42: 2, 2009, pp. 501–78.

[18] http://www.rockefellerfoundation.org/what-we-do/current-work/developing-climate-change-resilience/asian-cities-climate-change-resilience, accessed 22 Feb. 2012.

Public–private partnerships

Public–private partnerships (PPPs) involve direct participation by public agencies, but are still important elements in PSG: through PPPs, 'the political authority of nonstate actors has been extended. Instead of influencing global governance through lobbying, nonstate actors are directly involved in political steering, and co-govern along with state actors.' As PPPs have proliferated, moreover, they 'have become a central research topic for the discipline of International Relations (IR) . . . [as] an expression of the ongoing reconfiguration of authority in world politics'.[19]

The rise of international PPPs was part of a fundamental shift in relations between the UN and private actors beginning in the 1990s. The best-known sustainability PPPs are the 'Type II' partnerships created around the WSSD.[20] Nearly 350 Type II partnerships have registered with the UNCSD; many are PPPs.[21] Type II partnerships are intended to focus on implementing Agenda 21, JPOI and related norms;[22] most therefore engage in informational and operational activities rather than standard-setting.[23] For example, the Renewable Energy and Energy Efficiency Partnership (REEEP) promotes appropriate regulations and business models in developing countries, convenes policy networks and disseminates information.[24]

The UN Global Compact (UNGC), although formally governed by UN agencies, operates as a PPP: signatory firms participate in governance, and collaborate on projects and learning activities with stakeholders and UN officials. Under the UNGC Caring for Climate initiative, co-sponsored by the WBCSD, firms agree to act against climate change and cooperate with governments and civil society on low-carbon policies.

The public–private engagement gap

PSG has emerged in a decentralized fashion, as groups of actors create specific schemes with limited state involvement. In many cases, moreover, the founders of these initiatives are motivated primarily by failures of public governance. A variety of interactions do cross the public–private boundary, but these are largely ad hoc.

[19] Marco Schäferhoff, Sabine Campe and Christopher Kaan, 'Transnational public–private partnerships in international relations: making sense of concepts, research frameworks, and results', *International Studies Review* 11: 3, 2009, pp. 451–74 at 452–3.

[20] Liliana Andonova and Marc Levy, 'Franchising global governance: making sense of the Johannesburg Type II partnerships', *Yearbook of International Cooperation on Environment and Development* (London: Earthscan, 2003).

[21] http://webapps01.un.org/dsd/partnerships/public/welcome.do, accessed 24 Feb. 2012

[22] ECOSOC Res 2003/61, 25 July 2003. Agenda 21, adopted at the 1992 United Nations Conference on Environment and Development, laid out a comprehensive framework for the implementation of sustainable development. Like the JPOI, it called for institutional innovations, including creation of the CSD.

[23] 'Partnerships for sustainable development: report of the Secretary-General', E/CN.17/2006/1, 2 March 2006, p. 11, http://www.un.org/esa/dsd/resources/res_docucsd_14.shtml , accessed 24 Feb. 2012.

[24] http://www.reeep.org/513/what-we-do.htm; http://www.reeep.org/2850/diplomatic-activities.htm, accessed 22 Feb. 2012.

Private authority

Private actors have gained substantial agency through PSG: they have increasing influence on outcomes, even on global issues such as climate change. To a large extent, moreover, their agency exists 'beyond the state and its international organizations'.[25] Private actors and schemes have also gained substantial authority: public and private actors alike increasingly defer to their claims to a right to govern, participating in, adhering to or ratifying their standards and programmes.[26]

IR scholarship both reflects and reinforces the growing gap between private authority and interstate governance. Most IR scholars focus on interstate developments, producing a vast literature on international environmental politics and governance. A growing number of scholars now study PSG—but mainly as a distinct phenomenon. Most such studies analyse specific PSG schemes, classes of schemes such as PPPs or market-based certification programmes,[27] or schemes within an issue area.[28]

Some scholars are deeply concerned about the nature and consequences of the shift to private authority, especially the role of business. In most issue areas, business dominates PSG—certainly if individual firm commitments are included. Business can dominate because of its 'go-it-alone power': business expertise, resources and managerial authority allow firms and industry associations to adopt and implement business-friendly standards, pre-empt stricter public or private regulation and respond to strong standards with moderate alternatives. The same capabilities give business 'inclusion power': other actors find it difficult to organize effective schemes without business participation.[29]

Many scholars view business as driving PSG, leading it to emphasize market-based approaches and self-regulation in areas that can produce 'win–win' outcomes.[30] Even where PSG is collaborative, business offsets the influence of 'green' participants, limiting contributions to sustainability.[31] Neo-Gramscian scholars see PSG as part of a broad ideological shift towards the market, structured and legitimized by a 'global framework of domination' led by elites from business, civil society and government.[32] To others, however, PSG merely manifests the longstanding power of business in new forms.[33]

[25] Pattberg and Stripple, 'Beyond the public and private divide', pp. 373–4.

[26] Philipp Pattberg, *Private institutions, global governance: the new politics of environmental sustainability* (Cheltenham, UK, and Northampton, MA: Edward Elgar, 2007).

[27] Karin Bäckstrand, 'Accountability of networked climate governance: the rise of transnational climate partnerships', *Global Environmental Politics* 8: 3, 2008, pp. 74–102; Philipp Pattberg, 'Public–private partnerships in global climate governance', *WIREs Climate Change*, 1: 2, 2010, pp. 279–87; Schäferhoff et al., 'Transnational public–private partnerships'; Gulbrandsen, *Transnational environmental governance*.

[28] Abbott, 'Transnational regime complex'; Hoffmann, *Climate governance*.

[29] Abbott and Snidal, 'Governance triangle'.

[30] Robert Falkner, 'Private environmental governance and international relations: exploring the links', *Global Environmental Politics* 3: 2, 2003, pp. 72–87.

[31] Jens Newig and Oliver Fritsch, 'Environmental governance: participatory, multi-level—and effective?', *Environmental Policy and Governance* 19: 3, 2009, pp. 197–214.

[32] David Levy and Peter Newell, 'Business strategy and international environmental governance: toward a neo-Gramscian synthesis', *Global Environmental Politics* 2: 4, 2002, pp. 84–101 at p. 84; Doris Fuchs and Agni Kalfagianni, 'The causes and consequences of private food governance', *Business and Politics* 12: 3, 2010, article 5.

[33] Tim Büthe, 'Global private politics: a research agenda', *Business and Politics* 12: 3, 2010, article 12; Falkner, 'Private environmental governance'.

Business is the most common target of private standards as well as their most common sponsor. The need to attract voluntary business adherents imposes great pressure on civil society and multi-stakeholder schemes. Voluntary schemes can succeed only if they offer sufficient benefits to target firms,[34] helping them to distinguish themselves from competitors, gain access to markets, reduce transactions costs or pre-empt regulation. The need to provide such benefits puts in question whether PSG can expand to the scale necessary to address the challenging problems of sustainability. At the same time, however, PSG schemes must gain legitimacy from public and private 'legitimacy communities' whose support may be required; these include civil society groups active on similar issues (as well as their members and donors), state agencies with authority to adopt or endorse private norms, and other organizations able to assist with implementation.[35] While business can influence the perceptions of these audiences, so too can civil society: for example, by publicly 'benchmarking' competing schemes, NGOs can generate a ratcheting dynamic that leads all schemes to become more strongly oriented towards the public interest.[36]

Public–private interactions

PSG is frequently a response to inadequacies of public governance. In forestry and greenhouse gas accounting, for example, advocates for regulatory action, operating as 'norm entrepreneurs', turned to the creation of PSG schemes because interstate action had failed; in fisheries, they did so because of the weakness of interstate and IGO rules.[37] In these cases, moreover, private actors exercised 'entrepreneurial authority', free of direct governmental involvement.[38]

Yet many fear that the shift to private authority may weaken public governance: undercutting public authority, reducing pressure for public regulation and threatening traditional notions of democracy.[39] To be sure, these effects are not certain, and may even run in the opposite direction: for example, PSG may strengthen public authority by helping states address difficult transnational problems. Especially where business dominates, however, it remains an open question whether PSG alone can serve the public interest, or whether it must be more strongly embedded in public authority.[40]

[34] Büthe, 'Global private politics'; Jessica Green, 'Private standards in the climate regime: the Greenhouse Gas Protocol', *Business and Politics* 12: 3, 10, article 3.

[35] Julia Black, 'Legitimacy and the competition for regulatory share', LSE Law, Society and Economy Working Papers 14/2009, available at http://www.lse.ac.uk/collections/law/wps/WPS2009-14_Black.pdf, accessed 24 Feb. 2012.

[36] Christine Overdevest, 'Comparing forest certification schemes: the case of ratcheting standards in the forest sector', *Socio-Economic Review* 8: 1, 2010, pp. 47–76. For discussion of alternative conceptions of the 'public interest', see Walter Mattli and Ngaire Woods, 'In whose benefit? Explaining regulatory change in global politics,' in Mattli and Woods, eds, *The politics of global regulation*.

[37] Gulbrandsen, *Transnational environmental governance*.

[38] Green, 'Private standards'. The state may provide significant background support, e.g. by chartering non-profit organizations.

[39] Büthe, 'Global private politics'; Tim Büthe, 'Private regulation in the global economy: a (p)review', *Business and Politics* 12: 3, 2010, article 2; Porter, 'Global governance'.

[40] Steven Bernstein, Michele Betsill, Matthew Hoffmann and Matthew Paterson, 'A tale of two Copenhagens: carbon markets and climate governance', *Millennium: Journal of International Studies* 39: 1, 2010, pp. 161–73.

There exist a number of concrete links between public authorities and private schemes. PPPs, most obviously, are hybrid public–private organizations.[41] Even apart from PPPs, Falkner argues that much PSG is not 'purely' private, but instead is 'mixed'.[42] At one extreme, states sometimes codify private standards (e.g. ISO 14000 environmental management standards). States and IGOs sometimes delegate authority to private schemes: the WTO Technical Barriers to Trade Agreement incorporates ISO technical standards. And public authorities sometimes allow actors to satisfy regulatory requirements through PSG: under its Timber Regulation the EU accepts certification by schemes such as FSC as evidence of 'due diligence' in controlling illegal logging; several European states accept such certification as evidence that bidders meet sustainability requirements for public procurement.[43] At the other extreme, public authorities 'tolerate, and even encourage' private standard-setting, which relieves them of regulatory burdens.[44] Private schemes often base their standards on public norms, with public authorities playing largely passive roles.[45]

More recent interactions fall between the extremes of delegation and mere toleration. Some IGOs convene, endorse, finance and otherwise support private and public–private sustainability schemes, without delegating authority or ratifying their standards.[46] UN bodies have actively supported Type II partnerships. UNEP, acting primarily through its Division of Technology, Industry and Economics (DTIE), helped create and supports the UNGC and its sustainability offshoots such as Caring for Climate, as well as other PSG schemes. The World Bank has also initiated collaborations with private actors.[47]

New governance theory views such arrangements as largely desirable because they reallocate elements of governance authority to the actors best able to exercise them. In addition, these arrangements draw on the resources and capacities of private actors, reducing the burden on the state. In this view, decentralization need not constitute a retreat by the state; instead, it allows the state to enlist private partners in the pursuit of public goals, while enhancing stakeholder participation.[48]

[41] Tanja Börzel and Thomas Risse, 'Public–private partnerships: effective and legitimate tools of transnational governance?', in Edgar Grande and Louis Pauly, eds, *Complex sovereignty: reconstituting political authority in the twenty-first century* (Toronto: University of Toronto Press, 2005).

[42] Falkner, 'Private environmental governance', p. 76.

[43] Christine Overdevest and Jonathan Zeitlin, 'Assembling an experimentalist regime: EU FLEGT and transnational governance interactions in the forest sector', GR:EEN working paper 2 (Warwick: Centre for Globalisation and Regionalisation, 2011), http://www2.warwick.ac.uk/fac/soc/csgr/green/workingpapers/, accessed 22 Feb. 2012; Gulbrandsen, *Transnational environmental governance*, pp. 68–70.

[44] Falkner, 'Private environmental governance', p. 76.

[45] For example, the Marine Stewardship Council (MSC) followed the FAO Code of Conduct for Responsible Fisheries: Gulbrandsen, *Transnational environmental governance*, p. 122.

[46] Kenneth W. Abbott and Duncan Snidal, 'International regulation without international government: improving IO performance through orchestration', *Review of International Organizations* 5: 3, 2010, pp. 315–44.

[47] Robert Marschinski and Steffen Behrle, 'The World Bank: making the business case for the environment', in Frank Biermann and Bernd Siebenhüner, eds, *Managers of global change: the influence of international environmental bureaucracies* (Cambridge, MA: MIT Press, 2009).

[48] Abbott and Snidal, 'Strengthening international regulation'; Ian Ayres and John Braithwaite, *Responsive regulation: transcending the deregulation debate* (New York and Oxford: Oxford University Press, 1992); Jody Freeman, 'Collaborative governance in the administrative state', *UCLA Law Review* 45: 1, 1997–8, pp. 1–98; Jody Freeman, 'Extending public law norms through privatization', *Harvard Law Review* 116: 5, 2003, pp. 1285–352.

The public–private engagement gap

Although public–private interactions are significant, there remains a substantial gap between the Rio+20 preparations—and other areas of international policy-making—and PSG. Scholars have begun to highlight this gap,[49] often finding PSG relatively more successful than its public counterpart. This perspective is captured in the 'tale of two Copenhagens', which compares the contentious, unproductive interstate negotiations at the Bella Center with the cooperative, business-like meetings of private carbon market participants nearby.[50] Cole's view is even more dramatic: 'participants in the global roving cocktail party known as the "COP" [Conference of the Parties] seem to be under the misapprehension that they alone make climate policy', ignoring other forms of governance.[51]

Yet scholars simultaneously call for governance approaches that widen the public–private gap, or at least render it more difficult to bridge. Many scholars now recommend the deployment of multiple, distinct agreements and institutions, public and private, to deal with complex issues such as climate change. Keohane and Victor argue that multiple (public) regimes can better address the varied sub-issues within climate change and respond to the differing interests of states than can a comprehensive international agreement.[52] Hulme recommends a bottom-up approach relying on freestanding national initiatives.[53] Falkner, Stephan and Vogler call for a climate regime to be assembled from institutional 'building blocks', with only a modest degree of coordination.[54] Orts argues for multiple 'climate contracts', ranging from treaties and national regulations to PPPs and private schemes.[55] Cole calls for multiple centres of authority, public and private, at different scales.[56] To the extent that these recommendations would further separate public and private governance, they would widen the engagement gap; to the extent that they would decentralize governance on either side, they would increase the difficulty of bridging it.

Scholars rarely focus sharply, however, on ways to enhance the effectiveness of a highly decentralized system, especially a mixed public–private system. Gulbrandsen argues that properly structured private schemes can fill gaps in public governance, but suggests no way to promote appropriate schemes.[57] Falkner, Stephan and Vogler merely express hope that embedding partial agreements in some political

[49] Daniel Cole, 'From global to polycentric climate governance', Working Paper 2011/30 (Florence: European University Institute, Robert Schuman Centre for Advanced Studies Global Governance Programme 2011/30, 2011), http://ssrn.com/abstract=1858852, accessed 22 Feb. 2012; Hoffmann, *Climate governance*.

[50] Bernstein et al., 'Tale of two Copenhagens'; Hoffmann, *Climate governance*.

[51] Cole, 'From global to polycentric', p. 16.

[52] Robert O. Keohane and David Victor, 'The regime complex for climate change', *Perspectives on Politics* 9: 1, 2011, pp. 7–23.

[53] Mike Hulme, 'Moving beyond climate change', *Environment* 52: 3, 2010, pp. 15–19.

[54] Robert Falkner, Hannes Stephan and John Vogler, 'International climate policy after Copenhagen: towards a "building blocks" approach', *Global Policy* 1: 3, Oct. 2010, pp. 252–62.

[55] Eric Orts, 'Climate contracts', University of Pennsylvania Institute of Law and Economics research paper 11–31, 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1814504, accessed 22 Feb. 2012.

[56] Cole, 'From global to polycentric'.

[57] Lars H. Gulbrandsen, 'Overlapping public and private governance: can forest certification fill the gaps in the global forest regime?', *Global Environmental Politics* 4: 2, 2004, pp. 75–99.

framework will lead to a coherent architecture; Orts suggests coordinating decentralized initiatives only as challenges arise; Hoffman merely calls for 'leadership'. I return to this issue in the final main section of the article below.

Barriers to bridging

Why are public authorities so reluctant to engage with PSG? I speculate on possible explanations under two headings: why *states*—and interstate negotiations like those on IFSD—might not engage with PSG, and why *IGOs* might not do so.

States

Interstate processes are constrained by path dependence: the long history of interstate negotiations leading to interstate commitments narrows the interstate agenda. To be sure, in recent decades negotiations on sustainability have been opened to civil society to a dramatic extent, yet civil society input is external and advisory; political decisions remain the province of states.[58] Even if states did consider PSG, it would be difficult for them to authorize increased engagement: state interests are now so strongly divided—especially on sustainable development, where there is 'little evidence of a shared vision'—that agreement would be difficult to reach.[59]

States also have reason to be suspicious of increased engagement. PSG is led by private actors and directly addresses private targets, albeit through voluntary norms. PSG thus has the capacity to bypass state control of social and economic activities within national borders, creating 'sovereignty costs'.[60] In addition, PSG advocacy, standard-setting and other activities increase political, societal and cognitive pressures on governments, if only indirectly. Support for PSG from international actors such as UNEP and the World Bank would strengthen both effects.

IGOs

IGOs have limited autonomy; they are agents of state principals.[61] Nonetheless, IGO secretariats and other organs possess some leeway for action. States often grant IGOs modest autonomy to enable the latter to perform the functions the former wish to see exercised.[62] IGO secretariats gain further influence from their legal authority, expertise, and focal position in particular issue areas.[63] And

[58] Kenneth W. Abbott and David Gartner, 'Reimagining participation in international institutions", *Journal of International Law and International Relations*, forthcoming.

[59] Bernstein with Brunnée, 'Options for broader reform', p. 45.

[60] Some states have resisted private schemes that might threaten sovereign prerogatives; for example, Nordic countries opposed the creation of the MSC. See Gulbrandsen, *Transnational environmental governance*, pp. 127–8.

[61] Darren Hawkins, David Lake, Daniel Nielson and Michael Tierney, eds, *Delegation and agency in international organizations* (Cambridge: Cambridge University Press, 2006).

[62] Kenneth W. Abbott and Duncan Snidal, 'Why states act through formal international organizations', *Journal of Conflict Resolution* 42: 1, 1998, pp. 3–32.

[63] Kenneth W. Abbott, Philipp Genschel, Duncan Snidal and Bernhard Zangl, 'International organizations as orchestrators', paper presented at annual meeting of the International Studies Association, Montreal, March

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multiple principals—including multiple states—cannot collectively monitor and discipline every action of their shared agents. Strong interest disparities among states make collective oversight even more difficult: it is now as challenging for states to block IGO engagement with PSG as to approve it.

Some IGOs already engage supportively with PSG; UNEP is a leading example, as discussed further below. But UNEP support has been led by DTIE, which—located in Paris, not Nairobi—maintains some autonomy from other UNEP organs. Such independence raises troublesome issues: IGOs have well-known 'pathologies', including pursuit of organizational goals rather than substantive missions,[64] and a variety of 'democratic deficits'.

Advantages of engagement

Notwithstanding these barriers to action, I argue that states and especially IGOs should more actively support and steer PSG. In this section I consider six potential benefits of public engagement. In the next section I discuss how these benefits might be realized.

Pursuing sustainability missions

Engaging with PSG enables IGOs to carry out their sustainable development missions more effectively. Even when political support from member states is strong, IGOs possess only modest governance tools: virtually no IGOs are authorized to adopt regulations binding states without their consent, or any rules binding private targets. PSG schemes can act as 'force multipliers' by administering complementary standards and programmes.[65] In climate change, for example, PSG schemes provide the regulatory, financial and operational infrastructure for voluntary (and some mandatory) carbon markets, as well as administering pilot projects, informational programmes and other activities that support the work of IGOs and help states fulfil their commitments. Public support would amplify these effects.

Engagement is equally beneficial for IGOs when dissension among governments undercuts action by and support from member states. IGOs such as UNEP and the FAO have been assigned long-term systemic mandates and granted indefinite organizational lives. As a result, they have independent responsibilities to promote sustainable development within the terms of their charters; those responsibilities continue even when governments fail to authorize specific IGO programmes or to act on their own. In these situations, the capacity to support and steer PSG schemes is an essential tool. While IGO engagement can create sovereignty costs for states, these costs are far smaller than those resulting from more aggressive international efforts to regulate states or private actors. States may even welcome

2011; Michael Barnett and Martha Finnemore, *Rules for the world: international organizations in global politics* (Ithaca, NY: Cornell University Press, 2004); Biermann and Siebenhüner, eds, *Managers of global change*.

[64] Barnett and Finnemore, *Rules for the world*.

[65] Abbott and Snidal, 'Strengthening international regulation', p. 575.

IGO engagement, recognizing that sustainability is in their long-term interest even if political exigencies currently constrain their overt support for moves to this end.

Finally, engagement with PSG helps keep IGOs attuned to their sustainability missions, even when internal bureaucracies, member states or others seek to divert them. Interacting with PSG schemes and their participants embeds IGOs in a social context of committed actors. These relationships discipline IGOs, constraining organizational aggrandizement and other institutional pathologies. Similarly, these relationships help offset efforts by private interest groups or member states, northern or southern, to 'capture' IGOs and use them to promote narrow interests—and PSG provides a governance alternative should capture take place.[66] Finally, interactions with PSG schemes increase transparency and thus accountability.

Improving the distribution of PSG

PSG has undergone a 'Cambrian explosion':[67] a 'proliferation of organizations, rules, implementation mechanisms, financing arrangements and operational activities'.[68] Most schemes have been created on a decentralized basis; PSG as a system has evolved with little central oversight. The resulting array of organizations is highly diverse. Some are private, others are PPPs; each group includes varied constellations of actors. PSG schemes pursue diverse activities and take diverse forms, from loose networks to formal organizations, and from simple decision-making procedures to complex representative structures.

One way to assess the resulting distribution of schemes is to consider the motivations for their creation. In the IR literature, 'demand-side' explanations suggest that PSG schemes take the forms they do because they are purposively designed to address specific policy problems. However, scholars have found that many Type II partnerships do not address areas with significant governance gaps,[69] casting doubt on the assumption that PSG schemes are problem-driven. A related approach argues that PSG schemes require specific 'competencies' to deal with particular problems. Expertise, operational capabilities, resources and other competencies are in the first instance contributed by participating actors. This explains why actors pool their competencies in collaborative schemes and suggests the superiority of such arrangements over schemes created and managed by a single type of actor, such as business or civil society.[70] In most areas, however,

[66] Norm entrepreneurs determined to create FSC in part because the International Tropical Timber Organization, heavily influenced by industry and tropical developing country governments, refused to act on tropical forest protection: Gulbrandsen, *Transnational environmental governance*, p. 52.

[67] Keohane and Victor, 'Regime complex'; Charles Sabel and Jonathan Zeitlin, 'Learning from difference: the new architecture of experimentalist governance in the EU', *European Law Journal* 14: 3, 2008, pp. 271–327.

[68] Abbott, 'Transnational regime complex', p. 1.

[69] Liliana Andonova, 'Globalization, agency and institutional innovation: the rise and fall of public–private partnerships in global governance', Goldfarb Center working paper 2006–004 (Waterville, ME: Goldfarb Center, 2006); Andonova and Levy, 'Franchising global governance'.

[70] Abbott and Snidal, 'Governance triangle', 'International regulation without international government'; Wolfgang Reinicke and Francis Deng, *Critical choices: the United Nations, networks, and the future of global governance* (Ottawa: International Development Research Centre, 2000).

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schemes involving a single actor type (especially industry schemes) or even a single actor (e.g. company codes), are more numerous than collaborative schemes.[71]

Similarly, scholars note that 'situation structures' such as the Prisoner's Dilemma and Coordination call for different forms of cooperation, leading to institutional variation.[72] Keohane and Victor likewise argue that issue-specific problems—such as, for climate change, mitigation, adaptation, financial transfers and scientific assessment—have distinctive features, administrative problems and political constituencies, and so require appropriate institutions.[73] PSG schemes deal with an equally broad range of issues; however, even schemes dealing with the same problem—e.g. certifying offset credits—involve very different actor constellations, weakening support for this analysis.

Supply-side approaches, in contrast, suggest that PSG institutions are established to serve their founders' interests. Keohane and Victor argue that the interests of disparate actors naturally lead to the creation of diverse institutions; the relative power of the various actors helps determine which ones are actually formed. Andonova and Levy find that Type II partnerships are aligned more closely with the interests of donor countries and IGOs (both leading participants) than with governance needs.[74] In general, then, supply-side theories suggest that a set of actors will create a PSG scheme when each sees participation as producing benefits for itself.

Actor interests may be public-oriented: an IGO may initiate a PPP to enlist private actors in pursuit of its public mission; an NGO may collaborate with industry on a sustainability standard to gain business buy-in and wider adherence. However, actor interests may instead be private-oriented: IGOs may participate to justify expansion of their budgets; NGOs to gain public attention that may lead to donations; business firms to create socially responsible images; and technical experts to institutionalize opportunities for consulting relationships.[75]

Abbott and Snidal view the creation of private schemes as moves in a bargaining game, with actors seeking to control the 'regulatory space' in line with their private or public interests and values.[76] For example, a business group may establish a self-regulatory scheme to pre-empt public regulation or create a lower-cost alternative to a strong private scheme. An NGO may establish a demanding scheme not only to attract progressive firms, but also to influence the regulatory discourse, set a benchmark for competing schemes or enhance its own reputation. Both may join a collaborative scheme to gain greater business support and legitimacy than either could achieve alone. For better or worse, such motives influence the creation, and thus the distribution, of PSG schemes.

[71] Transactions costs and bargaining problems also impede collaboration.

[72] Schäferhoff et al., 'Transnational public–private partnerships'. In Prisoner's Dilemma situations, actors share a common interest in cooperation, but that interest is often defeated by individual incentives to reject cooperation or violate agreed norms; as a result, successful cooperation frequently requires robust institutions. In Coordination situations, in contrast, the common interest in cooperation overwhelms any conflicting individual interests; as a result, robust institutions are less essential.

[73] Keohane and Victor, 'Regime complex'.

[74] Andonova and Levy, 'Franchising global governance'.

[75] Büthe, 'Private regulation'.

[76] Abbott and Snidal, 'Governance triangle'.

Analysis in terms of interests strongly suggests that PSG schemes are suboptimally distributed. If nothing else, business-dominated schemes are almost certainly more numerous than is desirable, collaborative schemes less so. In addition, schemes formed to further private interests may not address the most pressing issues. Public engagement could begin to address these problems.

Strengthening the shadow of the state

The IR literature identifies the 'shadow of the state' as a major driving force behind PSG. Collective action theory and considerable evidence suggest that many private actors are unlikely to provide collective goods such as rules, demonstration projects or financing without the state's shadow. In particular, only if business believes that 'the state' (including IGOs and interstate arrangements) may act will they have sufficient incentive to cooperate or to comply with voluntary rules.[77]

However, private governance does emerge in 'areas of limited statehood',[78] and also in transnational contexts where the shadow of the state is faint. On many issues, demand from consumers, retailers or other market actors provides an alternative impetus. 'Non-state market-driven' governance is designed to respond to such market demand.[79] Certification and labelling programmes such as Fairtrade and FSC communicate to consumers and/or market actors that producers, and often their suppliers, comply with recognized production standards. Carbon offset schemes such as the Gold Standard similarly communicate that offsets derive from high-quality projects. In other areas, broad public expectations—for example, that firms should 'go green'—are also influential.

Both forces, however, have serious reliability problems. Consumers, market actors and the public must typically be 'activated' to demand particular behaviours: they must be made aware of an issue, the actors involved, and the mechanisms for demanding change. The involvement of NGOs or other norm entrepreneurs is thus essential: NGO campaigns targeting firms and industries, and NGO alliances with market actors, have been major factors inducing participation in PSG.[80]

Even so, NGO pressure, like consumer and public demand, is often uneven. NGOs pursuing organizational interests emphasize high-profile issues and target vulnerable firms; consumers focus on appealing issues and familiar industries. NGO, consumer and public attention can be fleeting, frequently moving to new issues. Because the public and consumers are diffuse and disorganized, their demands are often very general ('go green'), leaving firms substantial leeway to design self-serving responses.[81] Some voluntary schemes also find it difficult to shape or satisfy public and consumer demand.[82]

[77] Tanja Börzel and Thomas Risse, 'Governance without a state: can it work?', *Regulation and Governance* 4: 2, 2010, pp. 113–34; Büthe, 'Private regulation'.
[78] Börzel and Risse, 'Governance without a state'.
[79] Cashore et al., *Governing through markets*.
[80] Erika Sasser, Aseem Prakash, Benjamin Cashore and Graeme Auld, 'Direct targeting as an NGO political strategy: examining private authority regimes in the forestry sector', *Business and Politics* 8: 3, 2006, pp. 1–32; Gulbrandsen, *Transnational environmental governance*, p. 139.
[81] Büthe, 'Private regulation', 'Global private politics'.
[82] Frederick Mayer and Gary Gereffi, 'Regulation and economic globalization: prospects and limits of private

In sum, creating and sustaining strong and focused consumer, public and civil society pressure pose challenging collective action problems. In a decentralized system, this problem seriously limits the potential of PSG. Public engagement, however, could enhance and focus public and consumer pressure, while casting a stronger direct shadow.

Managing fragmentation

The proliferation of PSG schemes has produced a decentralized and fragmented 'governance complex'. The governance complex for sustainability creates certain widely recognized problems, but also presents significant opportunities.

The decentralized establishment of PSG schemes has produced gaps and overlaps in issue and industry coverage: numerous schemes focus on brand-based consumer sectors, where NGOs have leverage and firms are concerned for their reputations, but more utilitarian industries attract less attention. Idiosyncratic NGO, firm and public interests have a similar effect: multiple schemes certify carbon offsets, but relatively few address adaptation.

The sheer number of PSG schemes also creates problems. Multiple schemes increase information and compliance costs for target producers. In areas such as food production, many producers are small firms or farmers in developing countries, for whom such costs are material; large producers may garner most of the benefits from PSG.[83] Such costs can also heighten trade barriers, as developing countries have complained in the WTO. Multiple schemes create confusion among consumers and the public, weakening consumer and public demand for adherence and compliance. Finally, overlapping schemes (many business-led) allow firms to 'forum shop', forcing schemes to compete for adherents.

At the same time, multiplicity and diversity can yield significant benefits. PSG schemes supplement traditional international regulation, notably by targeting private actors rather than states; their cumulative effect exceeds that of either approach alone. Diverse PSG schemes can be fine-tuned for specific sectors or issues more easily than uniform international norms. Because barriers to entry are low, concerned actors can easily experiment and develop new approaches to persistent problems.

Studies of 'regime complexity'—which focus primarily on interstate regimes—suggest other potential benefits. Alter and Meunier note that the existence of multiple regimes enables cross-institutional learning and reduces the adverse effect of failure by any one institution.[84] Keohane and Victor argue that fragmented systems with low barriers to entry allow actors favouring strong rules to move forward on their own, without having to persuade less enthusiastic actors to join them. Fragmented regimes may be more flexible over time, as conditions

governance', *Business and Politics* 12: 3, 2010, article 11.

[83] Fuchs and Kalfagianni, 'Causes and consequences'.

[84] Karen Alter and Sophie Meunier, 'The politics of international regime complexity', *Perspectives on Politics* 7: 1, 2009, pp. 13–24.

and knowledge change.[85] Public engagement could enhance these benefits while reducing the costs.

Promoting experimentation

A particular strength of a fragmented, diverse governance complex is its potential for experimentation and learning. Experimentalist governance is 'a recursive process of provisional goal-setting and revision based on learning from comparison of alternative approaches to advancing these goals in different contexts'.[86] In an institutionalized experimentalist system, 'central' authorities set initial goals (in consultation with 'local' units and stakeholders), authorize local units (which can include private organizations or PPPs) to pursue those goals as they see fit, and require local units periodically to report on progress and engage in structured peer review. In its recursive phase, the authorities consider the resulting information, and reframe their goals and approaches for the next period based on lessons learned.[87]

Some benefits of experimentalism can be realized with far less formalization. For sustainable development, instruments including Agenda 21 and JPOI have already set systemic goals. PSG schemes, along with other public and private authorities, act as 'local' units, introducing and testing diverse governance approaches. Even without structured reporting or peer reviews, stakeholders and scholars publicly 'benchmark' competing schemes,[88] while schemes criticize and learn from one another. These processes have helped 'ratchet up' standards in sectors such as forestry.[89] Participatory conferences such as Rio+20 provide periodic opportunities for states and stakeholders to rethink goals and approaches. Nonetheless, 'the most successful [experimentalist] arrangements combine the advantages of decentralized local experimentation with those of centralized coordination'.[90] Thus, public engagement could strengthen experimentalism.

Enhancing participation and democracy

PSG provides unprecedented opportunities for societal participation in sustainability governance, advancing the development of global democracy. To be sure, this claim is the 'most vexing normative implication' of private governance,[91] largely because participation in PSG does not conform to accepted notions of

[85] Keohane and Victor, 'Regime complex'.
[86] Overdevest and Zeitlin, 'Assembling an experimentalist regime'.
[87] Charles Sabel and Jonathan Zeitlin, 'Experimentalism in transnational governance: emergent pathways and diffusion mechanisms', paper presented at annual meeting of the International Studies Association, Montreal, March 2011.
[88] Overdevest, 'Comparing forest certification schemes'.
[89] Benjamin Cashore, Graeme Auld, Steven Bernstein and C. McDermott, 'Can non-state governance "ratchet up" global environmental standards? Lessons from the forest sector', *Review of European Community and International Environmental Law* 16: 2, 2007, pp. 158–72.
[90] Sabel and Zeitlin, 'Learning from difference', p. 275.
[91] Errol Meidinger, 'Beyond Westphalia: competitive legalization in emerging transnational regulatory systems', in Christian Brutsch and Dirk Lehmkuhl, eds, *Law and legalization in transnational relations* (Abingdon: Routledge, 2007), p. 140.

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representative democracy. A more appropriate framework is that of deliberative democracy.

For individual schemes, input legitimacy in a deliberative framework depends primarily on stakeholder participation in deliberation and decision-making, along with transparency and accountability.[92] PSG schemes provide significant opportunities for societal engagement, yet participation remains uneven. At one extreme lies the inclusive structure of the Roundtable on Sustainable Biofuels, with membership chambers representing actors along the supply chain (e.g. farmers, retailers), NGOs with different substantive concerns (e.g. environment, labour rights, indigenous peoples), governments and IGOs;[93] at the other extreme lie exclusive individual firm schemes. Schemes also vary widely in their incorporation of southern voices.

Considering sustainability governance as a system, Dryzek and Stevenson argue that deliberative democracy requires (a) a public space where diverse views interact; (b) empowered spaces where authoritative decisions are made; (c) channels through which discourse in the public space can influence empowered spaces; (d) a realistic opportunity for deliberation to affect outcomes; and (e) mechanisms for transparency and accountability.[94]

The public space for sustainable development has long been open and diverse; PSG further enriches that space, attracting new participants, engaging consumers and the public in new ways, and providing new fora for discourse. PSG also creates new empowered spaces: private and public–private institutions that engage in standard-setting and other governance activities. Many (though not all) PSG schemes are highly transparent; some (though not all) have meaningful procedures for internal and external accountability. However, PSG schemes are not equally participatory or deliberative, or equally consequential for outcomes. Public engagement could promote deliberative and accountable schemes, increase their impact, and forge stronger links with the increasingly diverse public space.

Towards global sustainability governance

Strengthening engagement between public institutions—especially IGOs—and the expanding universe of PSG could significantly enhance sustainability governance. As states are unlikely to grant IGOs strong hierarchical authority, what is needed are 'light coordination mechanisms'.[95] Two such mechanisms are especially promising:[96]

[92] Karin Bäckstrand, 'Democratizing global environmental governance? Stakeholder democracy after the WSSD', *European Journal of International Relations* 12: 4, 2006, pp. 467–98; Steven Bernstein, 'Legitimacy in intergovernmental and non-state global governance', *Review of International Political Economy* 18: 1, 2011, pp. 17–51.

[93] http://rsb.epfl.ch/page-24931-en.html, accessed 22 Feb. 2012.

[94] John Dryzek and Hayley Stevenson, 'Global democracy and earth system governance', *Ecological Economics* 70: 11, 2011, pp. 1865–74.

[95] Pattberg, 'Public–private partnerships'.

[96] Abbott et al., 'International organizations as orchestrators'.

- 'regulatory cooperation', in which IGOs engage directly with business firms, industry groups or other private 'targets' to influence their behaviour; and
- 'orchestration', in which IGOs engage with intermediaries—e.g. multi-stakeholder PSG schemes—to help them influence the behaviour of the ultimate targets.

Regulatory cooperation

Regulatory cooperation allows IGOs to draw on the competencies of business, realize the economies of self-regulation,[97] and reinforce social responsibility norms, while addressing business's inherent conflicts of interest. A leader among IGOs, UNEP has engaged in regulatory cooperation since the 1980s.[98] It urges companies to adopt sustainability codes of conduct, and periodically 'benchmarks' corporate environmental reports to promote continuous improvement. It sponsors dialogues with business leaders to encourage high-level environmental commitments. And it cooperates with industry groups to develop sector-specific standards, such as the Finance and Tour Operators Initiatives. These mechanisms have made largely overlooked contributions to sustainability governance.

Through the UNGC—'the largest voluntary corporate responsibility initiative in the world'[99]—UNEP, the Secretary General and other UN agencies engage in regulatory cooperation with thousands of companies and other entities. Participants must accept (at CEO level) the UNGC principles—drawn from widely adopted international instruments addressing the environment, human rights, labour and corruption—agreeing to make them an integral part of company strategy, decision-making and culture. Participants also pledge to contribute to achievement of the Millennium Development Goals, advocate social responsibility and report annually on implementation, for example in public sustainability reports.

Civil society groups often criticize UNGC as toothless. It eschews regulation and enforcement, seeking instead to change business practices 'through transparency, dialogue and stakeholder vetting'.[100] UNGC provides management resources to help (sincere) firms assess and improve implementation. It emphasizes management innovation and learning from participants, stakeholders and UN bodies. It also offers opportunities for collaboration, including local networks and initiatives like Caring for Climate. UNGC provides modest incentives for implementation by authorizing participants in good standing to display its logo and singling out exceptional performers.

Some IGOs have greater leverage and so can demand more concrete results. For example, the International Finance Corporation (IFC) finances private firms in developing countries. As a condition of financing, recipient firms must accept its performance standards, which require environmental management systems,

[97] Ayres and Braithwaite, *Responsive regulation*.
[98] http://www.unep.fr/scp/business/vi/about.htm, accessed 22 Feb. 2012.
[99] http://www.unglobalcompact.org/AboutTheGC/, accessed 22 Feb. 2012.
[100] http://www.unglobalcompact.org/AboutTheGC/.

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environmental and social impact assessments, and public reports. Non-financial IGOs rarely have equivalent leverage, but can enhance their influence by creating programmes that promise market benefits. For example, the EU's Eco-Management and Audit System (EMAS) allows participating firms to distinguish themselves in the marketplace by displaying the EMAS logo, on condition of maintaining verified environmental management systems and issuing public reports.

Regulatory cooperation offers IGOs an additional tool with which to pursue their missions: promoting self-regulation to complement traditional governance mechanisms. IGOs that possess (or construct) sufficient leverage can strengthen the 'shadow of the state', demanding more stringent self-regulation. By publicizing programmes such as UNGC and EMAS, IGOs can promote the underlying norms, while stimulating and focusing public and market demand.

Yet most IGOs fail to realize the full benefits of regulatory cooperation. Few IGOs explicitly address governance gaps and overlaps, for example by steering business schemes to address overlooked issues. Few attempt to reduce excessive fragmentation, for example by promoting industry standards rather than individual company commitments. Few involve civil society in regulatory cooperation procedures—although the UNGC increasingly relies on NGOs to review company performance. And few push firms to participate in collaborative schemes, where civil society can contribute competencies, promote deliberation and offset private company interests.

Orchestration

Orchestration allows IGOs to draw on (and enhance) the competencies of NGOs, other private actors, civil society and multi-stakeholder PSG schemes, PPPs and other organizations in pursuit of their missions.[101] In orchestration, IGOs work through intermediaries, catalysing new schemes or supporting existing ones that advance public goals. Support can range from convening stakeholders and facilitating scheme formation to public endorsement and material assistance; even the limited powers of IGOs are normally sufficient for these purposes. By making their support conditional, IGOs can steer intermediaries to adopt appropriate goals, structures and policies. Orchestration cumulates IGO and intermediary influence, each working through different channels. While orchestration produces some sovereignty costs, it generates less resistance than stronger actions; states may welcome it as a low-cost strategy.

UNEP has also engaged in orchestration. UNEP helped found the Global Reporting Initiative (GRI), working with civil society actors. GRI adopts and promotes 'Sustainability Reporting Guidelines', standards and disclosure frameworks under which firms and other organizations can measure and report their sustainability performance. As GRI became an independent, multi-stakeholder organization,[102] UNEP publicly endorsed it, encouraged governments to support

[101] Abbott et al., 'International organizations as orchestrators'.
[102] Abbott and Snidal, 'International regulation without international government'.

it and designated it a 'collaborating center'. The UN, WSSD, UNGC and G8 also endorsed GRI. These actions have established GRI's Guidelines as international standards, reducing fragmentation. UNEP and other IGOs also make modest financial contributions.

Prior to Rio 1992, UNEP worked with major banks (and later insurers) to form the UNEP Finance Initiative (FI). UNEP subsequently worked through the FI to develop financial industry standards, including a specialized reporting protocol for GRI. UNEP and UNGC also convened leading investment firms to establish the Principles for Responsible Investment (PRI). Similarly, the IFC convened and guided major banks in adopting the Equator Principles for project finance, which follow IFC performance standards.

Orchestration allows IGOs to improve the distribution of PSG schemes, for example by catalysing the formation of schemes that take desired forms (the multi-stakeholder GRI) or fill governance gaps (PRI and Equator). Endorsing and supporting high-quality schemes can also reduce fragmentation (GRI). But IGOs must take care not to sacrifice the benefits of multiplicity. For example, many UN agencies endorse only UNGC, although other schemes with parallel goals are at least as effective. This exclusive focus risks reducing benefits such as innovation, flexibility and learning. IGOs should instead endorse and support all those schemes that meet criteria for public-interest orientation and programme quality, initiating a race to the top.

In addition, IGOs can catalyse, support and otherwise steer PSG schemes to adopt appropriate internal structures and procedures, such as participatory decision-making, transparency and deliberation. FAO guidelines for eco-labelling of wild-caught fish, for example, call for transparent processes, stakeholder consultations, and independent accreditation and complaint procedures.[103] In this way, IGOs create new 'empowered spaces', increase the influence of those spaces on outcomes, and enhance their accountability and legitimacy. It is worth noting that the forms of support and steering discussed here were virtually absent from the Type II partnership process, contributing to its well-documented weaknesses.

Finally, both orchestration and regulatory cooperation allow IGOs to strengthen experimentalism by providing the 'centralized coordination' now largely lacking. Current governance 'experiments' are decentralized and ad hoc. IGOs could orchestrate more directed experiments, promoting innovative actions in issue areas, institutional forms, and locations or scales where PSG and international governance are weak. IGOs could provide structured opportunities for evaluation and learning, for example conducting interscheme comparisons and sponsoring voluntary peer reviews. In the recursive phase, IGOs could engage private actors and PSG schemes in redefining sustainability goals, laying the groundwork for continued complementarity and engagement.

To be sure, not all IGOs will choose to engage in regulatory collaboration or orchestration, because of limited autonomy, lack of needed skills, member state opposition or—at the worst—capture. In the latter two circumstances IGOs are

[103] Gulbrandsen, *Transnational environmental governance*, p. 128.

likely to oppose PSG. If captured, IGOs (or state agencies) attempt to pursue regulatory cooperation or orchestration; however, committed PSG schemes should be able to retain their independence, as both relationships are wholly voluntary.

Conclusion

Public engagement with private sustainability governance remains almost wholly off the political agenda for Rio+20. This represents a missed opportunity. PSG is rapidly coming of age, and provides much-needed dynamism in the international system. Modest and feasible forms of engagement, based on orchestration and regulatory cooperation, can enhance both PSG and the larger system of sustainability governance. The essential first step, for policy-makers and scholars alike, is to recognize that PSG is not a distinct and isolated phenomenon, but an essential component of global sustainability governance.