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ISEAL Alliance and the Administrative Governance of Transnational Sustainability Standards

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Abstract

This article concerns the role of the ISEAL Alliance in formulating and enforcing administrative governance principles and procedures among sustainability standard-setting bodies. By utilizing the frameworks of meta-regulation and global administrative law, this article assesses whether ISEAL has been able to develop a regulatory capacity in practice. After first categorizing administrative governance norms found in these codes as ‘participatory’, ‘transparency’, or ‘reasoned decision-making’, this article offers an empirical analysis of the experiences of ISEAL’s members with respect to participation drivers, code compliance, their roles in writing the codes, and concerns about the future developments in ISEAL. In light of this empirical analysis, it is suggested that ISEAL’s regulatory capacities have been overstated. Finally, a growing emphasis on the impacts of sustainability standards is discussed in relation to problems it raises for the future significance of administrative governance principles and the accountability of sustainability standard-setting bodies.

Keywords

administrative governance – standard setting – ISEAL Alliance – meta-regulation – global administrative law

1 Introduction

In recent years, the number of voluntary sustainability standards (vss)¹ certifying the social and environmental consequences of producing consumer products has erupted. One index maintains records of more than 450 separate vss.² Consumers in North America and Europe routinely find products on supermarket shelves claiming their accordance with ‘responsible’, ‘ethical’, ‘sustainable’, ‘fair’, ‘organic’, or ‘biodynamic’ standards. In short, the ‘world of standards’ has become a daily reality for consumers, particularly in the Global North.³ A number of new legal problems and concerns emerge from the expanded role of sustainability standards, among which is the question of how the hundreds of independent and private organizations that create, monitor, and enforce the use of social and environmental sustainability standards can be kept accountable to the broader public. While these standards seek to provide clarity and insight into the products that consumers purchase, it proves challenging for consumers to determine whether the organizations initiating this governance work are themselves credible. Particularly in a time when the certifications of sustainability have begun to compete with one another—with multiple organizations making claims about the sustainability of paper products, or tea, or coffee—it is essential to examine the credibility and accountability of these organizations, including how, and through whom, their accountability and credibility is established and governed.⁴

The ISEAL Alliance (henceforth referred to as ‘ISEAL’) has emerged in the past decade as the sole governance actor specifically targeting the credibility and accountability of voluntary sustainability standards-setting bodies. While the International Organization for Standardization (ISO) also provides influential guidance to vss bodies, ISEAL has tailored ISO norms specifically for the field of vss and managed to attract the participation of the largest and oldest vss bodies, including the Forest Stewardship Council, Marine Stewardship Council, and Fairtrade International, making it an essential actor in governing vss bodies. Through its three Codes of Good Practice, ISEAL has attempted to

1 For the purposes of this article, the term ‘voluntary sustainability standards’ refers to social and/or environmental sustainability standards created and maintained by private organizations without formal affiliations to state governments or public international organizations.

2 Ecolabel Index <<http://www.ecolabelindex.com>> accessed 11 April 2016.

3 Nils Brunsson and Bengt Jacobsson (eds.), *A World of Standards* (Oxford University Press 2000).

4 Juliane Reinecke, Stephan Manning and Oliver von Hagen, ‘The Emergence of a Standards Market: Multiplicity of Sustainability Standards in the Global Coffee Industry’ (2012) 33 *Organization Studies* 791.

construct norms for how vss bodies set standards, monitor compliance, and evaluate the impact of their standards on the sustainability of their respective industries. This article focuses on the role that ISEAL has played in governing the creation and use of accountable and credible voluntary sustainability standards for the modern global economy.

In particular, the article primarily addresses the question as to how ISEAL has facilitated the development of a particular administrative governance model that is now common among the largest sustainability standard-setting bodies and aims to guarantee a level of credibility and accountability among its member vss bodies. This primary question is pursued through three sub-questions, namely: What administrative governance principles and tools are included in its codes? What is the experience of participating members of ISEAL (including why they joined, the effects of compliance, their role in creating the codes, and their frustrations with ISEAL)? Lastly, what do recent developments in ISEAL tell us about the future of the administrative governance of vss bodies?

After providing an introduction to ISEAL (section 2), a review of transnational private (meta-)regulation and Global Administrative Law (GAL) literature is undertaken (section 3). These two bodies of literature constitute the most fully developed attempts to theorize the role which private and hybrid public-private actors—such as ISEAL Alliance—have in transnational and global governance, and hence provide a strong framework against which to measure the empirical findings of this article. The first sub-question is addressed through a descriptive assessment of the administrative governance principles and procedures found in ISEAL's codes, presented by categorizing them as 'reason-giving', 'transparency', and 'participatory' principles (section 4). Next, this article addresses the second sub-question by empirically evaluating the experiences of vss bodies that are either current, former, or prospective ISEAL members to shed light on the reasons they have for joining ISEAL, the effects the compliance has had on their organization's standards, the role they have in producing the Codes of Good Practice, and their concerns and frustrations with ISEAL's governance role (section 5). Finally, by focusing on recent developments within ISEAL, the article closes with the third sub-question by assessing future trajectories in the administrative governance of sustainability standards (section 6).

2 Background: Sustainability Standards and Their Governance Challenges

Technical standards set by private or semi-private organizations for products have been a common form of regulation since the mid-20th Century. These

standards have dealt with issues ranging from consumer electronics, automobile parts, and plumbing equipment to auditing and accounting practices. For the most part, however, technical standards were traditionally created, maintained, and enforced by organizations operating in domestic spaces. For example, the American National Standards Institute has historically been the most prevalent standard-writing body in the United States; this is also true for the *Nederlands Normalisatie Instituut* in the Netherlands, and the *Deutsches Institut für Normung* in Germany. All three of these organizations are examples of ‘national standards bodies’ which are organized together under the organizational umbrella of the International Organization for Standardization (ISO). The administration of these national standards bodies has traditionally been governed by an overlap of domestic administrative and private law, the ISO itself, and Annex 3 to the World Trade Organization’s 1995 Agreement on Technical Barriers to Trade.⁵ Within the European context, the European Union’s ‘New Approach’ to standardization and standard-setting bodies has further institutionalized the role of national standard-setting bodies and imposed governance requirements on their administrative structures and processes.⁶

While the governance structure of national standards bodies has been thoroughly developed and evolved with the expansion of standardization, its design is not compatible with the vss bodies discussed in this article. Instead of developing standards for use in a domestic context, vss are utilized throughout supply chains that transcend domestic contexts; instead of being developed by organizations whose standards are later incorporated into legislation or administrative rules, vss remain formally voluntary and are not generally recognized by public authorities. The rise of transnationally operating standards has been driven by consumer concerns about the production of products whose origins are dispersed and distanced from sites of consumption. Historically, national standards bodies have not proficiently engaged with setting standards that also follow products through extensive global value chains, giving cause for a transnational vss. Moreover, numerous types of organizations produce vss. These organizations can be led primarily by industry leaders, scientific experts, non-governmental organizations and activists, or multi-stakeholder

5 The most recent comprehensive discussion of the governance of these bodies is Harm Schepel, *The Constitution of Private Governance: Product Standards in the Regulation of Integrating Markets* (Hart 2005).

6 See Jacques Pelkmans, ‘The New Approach to Technical Harmonization and Standardization’ (1987) 25 *Journal of Common Market Studies* 249; and for more recent developments, Harm Schepel, ‘The New Approach to the New Approach: The Juridification of Harmonized Standards in EU Law’ (2013) 12 *Maastricht Journal of European and Comparative Law* 521.

combinations of actors,⁷ and there is even competition among different organizations that each seek to offer vss for the same types of products.⁸ In short, there are fundamental differences in the organizational structure and types of standards that this new genus of vss bodies creates, which at least partially excludes their work from the traditional governance structure of national standards bodies. It is this mismatch with traditional standard-setting bodies that gives rise to the governance challenge of the administration of vss as it develops outside of the accountability structure that has been developed for national bodies.

The ISEAL Alliance has developed to serve as the principal solution to this governance challenge for vss bodies. Founded in 2002 as a private non-governmental organization, 'ISEAL' initially served as an acronym for International Social and Environmental Accreditation and Labelling. The founding members included some of the largest vss bodies, such as the Forest Stewardship Council, Fairtrade International, the Marine Stewardship Council, and the International Federation of Organic Agriculture Movements. ISEAL's mission is to strengthen sustainability standards by defining good practices, developing and increasing the impact of standards, increasing the effectiveness and efficiency of standards, defining what makes standards regimes credible, and promoting learning between standard-setting regimes.⁹ ISEAL pursues its goals through the creation and maintenance of three Codes of Good Practice pertaining to: standard-setting processes (Standard-Setting Code), monitoring and evaluation planning (Impacts Code), and enforcement strategies and techniques (Assurance Code). While members of ISEAL must comply with its codes, membership is voluntary for vss bodies, and thus so are its codes. In addition, ISEAL has conducted a Global Consensus survey and established a list of Credibility Principles 'that represent the core values upon which effective standards are built.'¹⁰ Lastly, ISEAL provides a platform for the exchange of experiences, knowledge, and perspectives among broad groups of

7 See Fabrizio Cafaggi, 'New Foundations of Transnational Private Regulation' (2011) 38 *Journal of Law and Society* 20. This article is concerned primarily with multi-stakeholder organizations.

8 See (n 4). The most famous example is the Forest Stewardship Council and the Sustainable Forestry Initiative, two vss bodies that each produce standards for the forestry and paper products industries. The former's governance is characterized as 'multi-stakeholder', and the latter—although initially industry-led—is gradually evolving towards a multi-stakeholder governance structure.

9 ISEAL Alliance, 'What We Do' <<http://www.isealalliance.org/about-us/what-we-do>> accessed 11 April 2016.

10 ISEAL Alliance, 'Credibility Principles' <<http://www.isealalliance.org/our-work/defining-credibility/credibility-principles>> accessed 11 April 2016.

stakeholders involved in sustainability standard-setting. This includes training and consulting services, email exchange lists, working groups, collaborative projects, and joint advocacy projects.

ISEAL's membership is comprised of two categories: Full Members and Associate Members. Full Members are VSS organizations that have established full compliance with all three of ISEAL's Codes of Good Practice (Standard-Setting, Assurance, and Impacts). Associate Members are VSS organizations that have only established compliance with a core minimum of the requirements in the three codes, and are in the process of achieving full compliance.¹¹ ISEAL's Board of Directors consists of nine representatives from its Full Members, where three of these representatives—including the Executive Director—make up the Executive Committee. As the highest decision-making authority, the Board is primarily tasked with approving the annual budget, membership applications, and membership fees. It is *not* involved in creating or approving ISEAL's codes.¹² As the Board is only required to meet in person twice a year, ISEAL's Secretariat is responsible for daily management.

Underneath the Board of Directors, a number of committees are involved in various aspects of the organization: a Membership Committee oversees and recommends applications for membership to the Board; a Finance Committee provides budget recommendations to the Board; and an autonomous Technical Committee develops and approves ISEAL's codes.¹³ In addition, the Stakeholder Council provides strategic advice and input to the Board.¹⁴ The Stakeholder Council and Technical Committee both include representatives from outside of ISEAL's Full and Associate Members.

In summary, ISEAL has quickly established itself as a principal governance actor among VSS due to its role in developing and monitoring participation, auditing, and effectiveness norms for VSS bodies. In doing so, ISEAL is becoming the *de facto* authoritative source for determining the accountability and credibility of VSS bodies at a global scale, despite lacking any formal public authority.¹⁵ ISEAL's influence, as a *private organization*, in inserting the *public*

11 As of 11 April 2016, there are 22 Full Members and 0 Associate Members.

12 ISEAL Alliance, 'Our Board' <<http://www.isealalliance.org/about-us/our-governance/our-board>> accessed 11 April 2016.

13 Ibid.

14 ISEAL Alliance, 'Our Stakeholder Council' <<http://www.isealalliance.org/about-us/our-governance/our-stakeholder-council>> accessed 11 April 2016.

15 For a related discussion on the development of public authority out of private law instruments see the chapter on 'Public Authority through Private Law Instruments?' in Armin von Bogdandy, Rüdiger Wolfrum, Jochen von Bernstoff, Philipp Dann, and Matthias Goldmann (eds.), *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (Springer 2010).

interest in accountability among private VSS bodies presents the core puzzle of this article. This ISEAL puzzle constitutes an essential case study for the field of global sustainability governance not only for theoretical accounts of global governance and administrative law discussed in the next section, but more importantly for empirical accounts of the contours of transnational private regulatory capacities.

3 Approaching ISEAL as a Form of Meta-Regulation

Despite its rising prominence, ISEAL has received limited attention from researchers. Dingwerth and Pattberg emphasize ISEAL as a stage for ‘mimetic processes’ among VSS organizations that can facilitate micro-dynamics of horizontal diffusion and convergence of models for transnational rule making.¹⁶ From a similar perspective of regulatory competition and convergence, Reinecke *et al.* describe ISEAL’s codes as examples of ‘meta-standardization’ that regulate competition between the multitudes of VSS organizations operating in the ‘standards market,’ acting as a ‘competition watchdog’ to ensure that ‘competition is embedded in and limited by a shared, long-term orientation towards common values.’¹⁷

Other perceptions of ISEAL focus on its role in securing the legitimacy, or credibility, of sustainability standards. Bernstein notes how ISEAL helps its members, who work in a complex environment of hierarchical legal and political organizations, by informing them how to ‘navigate this environment so their standards will be recognized as legitimate.’¹⁸ Loconto & Fueilleux assess how ISEAL acts as an ‘agenda-setter’ and an ‘institutional entrepreneur’ within the ‘organizational field’ of sustainability standards through its use of meta-standards to create a definition of ‘procedural sustainability,’ and its efforts to improve the external legitimacy of sustainability certification by ‘entangling’ strategic actors, such as research communities, public organizations, and multi-national corporations.¹⁹

16 Klaus Dingwerth and Philipp Pattberg, ‘World Politics and Organizational Fields: The Case of Transnational Sustainability Governance’ (2009) 15 *European Journal of International Relations* 707. The seminal text on mimetic isomorphism is Paul DiMaggio and Walter Powell, ‘The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields’ (1983) 48 *American Sociological Review* 147.

17 See (n 4) 807.

18 Steven Bernstein, ‘Legitimacy in Intergovernmental and Non-State Global Governance’ (2011) 18 *Review of International Political Economy* 17, 39.

19 Allison Loconto and Eve Fueilleux, ‘Politics of Private Regulation: ISEAL and the Shaping of Transnational Sustainability Governance’ (2014) 8 *Regulation & Governance* 166.

From a legal perspective, Meidinger describes ISEAL's Standard-Setting Code as part of a broader attempt to foster consensus decision-making among certification regimes, with the underlying assumption that better and more legitimate standards arise when they reflect the will of interested parties.²⁰ Concerning the origins of the rules in ISEAL's codes, he notes that, '[e]xcept for the multiple comment period requirements, the guidelines could have been taken directly from the US Administrative Procedure Act (APA), and no doubt those of other countries as well.'²¹ Until now, this brief comparison to the US APA has marked the limit to which the activities of the organization have been analyzed for their potential function as administrative procedure setting for the 'global civil law-making' institutions that their members constitute.²² Meidinger's observations suggest the need to address the regulatory role that ISEAL's codes might have vis-à-vis its members—that is to say, its role as a 'meta-regulator' among transnational private regulators. Morgan defines meta-regulation as consisting of,

Any set of institutions and processes that embed regulatory review mechanisms on a systemic basis into the every-day routines of governmental policy making, such that a particular form of economic rationality becomes part of the taken-for-granted ways of policymaking.²³

This definition initially served as an attractive concept for describing governmental actions aimed towards steering and incentivizing different forms of self-regulation among corporate bodies and independent regulatory authorities.²⁴ The reassertion of public interest in self-regulation is presumably the priority of these actions.²⁵

20 Errol Meidinger, 'The Administrative Law of Global Private-Public Regulation: The Case of Forestry' (2006) 17 *European Journal of International Law* 47.

21 Ibid 69.

22 Errol Meidinger, 'Forest Certification as Environmental Law Making by Global Civil Society' in Errol Meidinger, Chris Elliott and Gerhard Oesten (eds.), *Social and Political Dimensions of Forest Certification* (Forstbuch 2002).

23 Bronwen Morgan, 'The Economization of Politics: Meta-Regulation as a Form of Nonjudicial Legality' (2003) 12 *Social & Legal Studies* 489, 490.

24 Christine Parker sums up that meta-regulation is 'the regulation of self-regulation'. For meta-regulation in the context of national public authorities see: Christine Parker, *The Open Corporation: Effective Self-Regulation and Democracy* (Cambridge University Press 2002); Cary Coglianese and Evan Mendelson, 'Meta-Regulation and Self-Regulation' in Robert Baldwin, Martin Cave and Martin Lodge (eds.), *The Oxford Handbook of Regulation* (Oxford University Press 2010) 146–168.

25 Ibid Coglianese and Mendelson 163; Bettina Lange, 'Regulatory Spaces and Interactions: An Introduction' (2003) 12 *Social & Legal Studies* 411, 413.

However, researchers working in fields of transnational private regulation have also found traction in this concept of meta-regulation to explain how private (or non-governmental) regulatory bodies establish meta-roles in steering and influencing other private regulators. Scott describes meta-regulation in a more functional and abstracted manner, namely as a ‘technique of identifying capacities for control and then attempting to steer them.’²⁶ As this type of meta-regulator does not necessarily possess the formal, hierarchical authority of governmental officials, they instead assert their meta-regulatory influence through competitive or communal processes, or by design features that make non-compliance with their meta-regulatory goals impossible.²⁷ This privatized understanding of meta-regulation has since been utilized by Verbruggen and Havinga to study structures of regulatory interactions among transnational private regulators in the fields of food safety and advertising standards.²⁸

The privatization of meta-regulatory cases demonstrates notable similarity to the growing body of GAL literature. The GAL project has sought to provide thorough descriptions of the ‘mechanisms, principles, practices, and supporting social understandings that promote or otherwise affect the accountability of global administrative bodies,’ particularly in relation to standards of transparency, participation, reasoned decision-making, legality, and effective review procedures.²⁹ Although focused on institutions and organizations operating transnationally and globally, the cases described via GAL often implicitly describe examples of meta-regulation with respect to more localized or regionalized regulators. Remarkably, in one of the foundational GAL texts, Kingsbury notes the role of ISEAL in elucidating a series of global administrative norms and processes for sustainability governance.³⁰

Ultimately, this short review of previous research on ISEAL and the theoretical framework of meta-regulation revolves around the question of control and

26 Colin Scott, ‘Self-Regulation and the Meta-Regulatory State’ in Fabrizio Cafaggi (ed.), *Reframing Self-Regulation in European Private Law* (Kluwer Law International 2006).

27 Ibid; Colin Scott, ‘Speaking Softly Without Big Sticks: Meta-Regulation and Public Sector Audit’ (2003) 25 *Law & Policy* 203, 205.

28 Paul Verbruggen and Tetty Havinga, ‘The Rise of Private Meta-Regulators’ in this issue; more generally see Fabrizio Cafaggi, ‘A Comparative Analysis of Transnational Private Regulation: Legitimacy, Quality, Effectiveness and Enforcement’ (2014) EUI Department of Law Research Paper No. 2014/145, 27–29, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2530516> accessed 11 April 2016.

29 Benedict Kingsbury, Nico Krisch and Richard B. Stewart, ‘The Emergence of Global Administrative Law’ (2005) 68 *Law and Contemporary Problems* 15, 17.

30 Benedict Kingsbury, ‘The Concept of ‘Law’ in Global Administrative Law’ (2009) 20 *European Journal of International Law* 23, 36–37; see also Meidinger (n 20).

influence. These two bodies of literature are complementary in this concern, in so far that the meta-regulation—and transnational private regulation—literature starts from the position of private regulatory tools which develop public interest effects, while the GAL literature starts from the perspective of organizations providing public interest governance, which at times include private organizations like ISEAL. Hence, they overlap on a similar interest in the role that private organizations may have in constraining private actors in accordance to public interest.³¹ More specifically, the review concerns the type and extent of control and influence that ISEAL and other meta-regulating bodies have over their regulatory targets. While previous studies point to ISEAL's role in facilitating 'mimetic isomorphism', the organizational practice of imitating other organizations that perceived to be successful, this degree of influence is considerably less than the control via communal and competitive processes that is emphasized by meta-regulation, which in turn, is arguably less authoritative than global administrative legal norms are made out to be by GAL and 'meta-regulation' literature.

The question of control is, in some sense, a reincarnation of the descriptive-normative dichotomy in legal theory: are the principles and procedures in ISEAL's codes descriptions of previous practices, or are they normative standards that *ought* to be aspired towards in future behavior? This question relates to Auld, Renckens, and Cashore's insight that transnational private governance bodies manifest both empowering and controlling logics in their governance work.³² That is to say, vss bodies can work to empower the interests or particular groups that are deemed positive and underrepresented, or they can work to control the interests or groups deemed to be negative and overly influential. While they contended that a governance body would either manifest one logic or the other, this current study proceeds with the alternative proposition that a single governance body manifests both logics. One body may empower some groups through coordinating their interests, while controlling others through the regulation of their behaviors and interests. Calliess and Zumbansen have similarly noted that this distinction between regulating and coordinating

31 As Cafaggi states, 'TPR regimes [including meta-TPR regimes] are characterized as private regimes in the public interest, to differentiate them from those that aim to produce purely private benefits for the regulated.' In this work, Cafaggi also provides ISEAL Alliance as an example of private meta-regulation. See Fabrizio Cafaggi, 'Transnational Private Regulation: Regulating private regulators' in Sabino Cassese (ed.), *Research Handbook on Global Administrative Law* (Edward Elgar 2016) 212–242.

32 Graeme Auld, Stefan Renckens and Benjamin Cashore, 'Transnational private governance between the logics of empowerment and control' (2015) 9 *Regulation & Governance* 108.

reflects a more fundamental feature of the development of legal and regulatory relationships in transnational contexts.³³

Exploring the extent of ISEAL regulatory capacities to introduce public interests—in a strong sense—among private regulatory bodies, and thereby to assert new normative understandings of credibility and accountability in the field of vss bodies is a necessary next step for meta-regulation and GAL research. This can only be accomplished by distinguishing between ‘when’ and ‘towards whom’ ISEAL operates in coordinative or regulatory logics. In other words, the forthcoming analysis of ISEAL must interrogate the distinction between the coordination of the private interests of its members and the regulation of its members in the name of ‘the broader global public interest’ of the meta-regulatory and GAL prepositions. Furthermore, it requires the avoidance of strictly institutional descriptions so that focus shifts to the ‘meta-norms’ that ISEAL has codified, as well as the experiences of regulated parties. This approach gauges the practical regulatory capacities that ISEAL and its codes possess.³⁴ It will also provide a new form of comparison through which to identify how different meta-regulatory actors establish norms related to transparency, reasoned decision-making, and participation—the focal categories of administrative principles and procedures in this special issue—in heterogeneous manners.³⁵

4 Administrative Principles and Procedures in ISEAL’s ‘Setting Social and Environmental Standards’ Code

ISEAL’s Standard-Setting Code serves as a starting point for understanding the extent of ISEAL’s regulatory capacity. In order to measure the influence

33 Graf-Peter Calliess and Peer Zumbansen, *Rough Consensus and Running Code* (Hart 2010) ch 2. This is notably also reflected in Gunther Teubner’s theory of societal constitutionalism in which transnational regimes are understood to simultaneously both empower and limit their regulatory fields. See Gunther Teubner, *Constitutional Fragments: Societal Constitutionalism and Globalization* (Oxford University Press 2012).

34 One of the few meta-regulation studies which avoids institutional focus and instead emphasizes the role of norms is Jacco Bomhoff and Anne Meuwese, ‘The Meta-regulation of Transnational Private Regulation’ (2011) 38 *Journal of Law and Society* 138.

35 For example, this approach is useful for comparing norms used by ISEAL with those found in Global G.A.P. and the Global Food Safety Initiative, dealt with by Verbruggen & Havinga in this issue, or with those found in International Accreditation Forum and the World Standards Services Network, both of which are active participants in the governance of sustainability standards.

ISEAL has among its members and vss bodies in general, it is first necessary to understand the particular construction of credibility and accountability as told by the concrete administrative governance rules in ISEAL's codes. The Standard-Setting Code is the most significant to the administrative governance of vss bodies insofar as it establishes requirements for institutional organization and decision-making procedures. It is primarily focused on establishing standardized procedures for the setting and revision of sustainability standards, including participation and decision-making mechanisms, and institutional features to ensure a transparent and accountable procedure. In addition, it is both ISEAL's original and most widely recognized code.³⁶

4.1 *Participation*

The Standard-Setting Code establishes a number of provisions that govern the participatory possibilities in vss bodies. 'Participation', for the purposes of this article, concerns the abilities of both internal and external actors to take part in governance positions and decision-making procedures in a vss body. A general requirement, for example, is that an ISEAL member must contact and seek the input of organizations responsible for similar or overlapping sustainability standards on cross-referencing issues (4.2.1).³⁷ The majority of the participatory requirements in the code concern the process of developing a new standard, or revising an established one. These requirements include: the use of a 60 day public comment period, with a second 30 day period required for new standards (5.4.1); a consultation open to all stakeholders that attempts to gain a balance of input across stakeholders from different geographic and subject matter perspectives (5.4.2); providing 'appropriate opportunities', including written or face-to-face consultation opportunities, if necessary, rather than email or electronic venues (5.4.3); and identifying and proactively seeking the comments of underrepresented groups. Finally, ISEAL's code requires that the governance organs of vss bodies be open to all stakeholders and constituted by a 'reasonable balance' (5.6.1), and if formal membership in the vss body is a requirement for a governance position, that the membership procedure be non-discriminatory and transparent (5.6.2).

From these specific rules, both negative and positive obligations regarding participation of external actors can be identified. ISEAL requires more than

36 This is according to ISEAL's own account. See ISEAL Alliance, 'Standard-Setting Code' <<http://www.isealalliance.org/our-work/defining-credibility/codes-of-good-practice/standard-setting-code>> accessed 11 April 2016.

37 In this section, the numbers in parentheses refer to the location of these rules within ISEAL's Standard-Setting Code.

formal openness to participation by stakeholders; in some instances, ISEAL members must also take on the positive obligation of actively pursuing the participation of certain (underrepresented) stakeholders. In addition, the requirements reflect an image of regulatory fields constituted by diverse and (semi-)conflicting interests. As such, the participation requirements repeatedly mention the need to aspire towards a 'balance' of interests in decision-making, although not necessarily in formal or institutional positions.

4.2 *Reasoned Decision-making*

ISEAL's Standard-Setting Code also introduces a number of requirements for its member vss bodies that concern the principle of reason-giving in decision-making processes. These requirements all share a common foundation in protecting against arbitrary decisions and uncertainty about the rationale for a vss body's actions. For example, there are general requirements that the standard development process follows a documented procedure (4.1.1), which itself is regularly reviewed on the basis of stakeholder comments (4.1.2). When beginning the standard development process, ISEAL members must explicitly justify the need for the new, proposed standards through the construction of 'terms of reference'. The terms of reference include an impact assessment outlining the social, environmental, and economic goals the standard seeks to achieve, and how it will do so, as well as a risk assessment outlining risks associated with the new standard, and how they will be mitigated (5.1.1). Furthermore, following the aforementioned public comment periods, members must compile the comments into a synopsis and communicate this to the commenting parties, as well as make it publicly available (5.4.5). Finally, they are required to conduct *ex post* assessments of standards every five years to determine the continued relevance and effectiveness of the standards (5.8.1); in doing so, they must document and take into account comments made in a public comment period (5.8.4).

In light of these specific requirements, it is clear that ISEAL's code is aimed at introducing procedures to curb arbitrariness and the misuse of sustainability standards. This is primarily achieved by introducing accountability mechanisms whereby the standard development and procedures must account for how they have utilized input from stakeholders and the broader public. It requires them to be explicit and open about the specific goals (combining social, environmental, and economic elements) they seek to achieve through standards, allowing for the broader public to subsequently review the legitimacy of these goals and the means chosen to pursue them. As such, these reasoned decision-making rules bind together the previous category of participation rules with the next category, transparency rules.

4.3 *Transparency*

The final category contains any rules that deal with the transparency of ISEAL members' operations. In general, ISEAL members are required to make their standard development procedures publicly available (4.1.1), and to annually release an account of the currently ongoing development and revision processes (4.2.2). At the outset of the development of a standard they must make the following available: the 'terms of reference' for the proposed standard; a timeline of the development process, including participation moments for stakeholders; and an account of the proposed standard's decision-making procedure that includes how decisions will be made and who will make them (5.3.1). All standards in operation must be made freely available in electronic format (5.7.1) and at 'reasonable administrative costs' for hard copies (5.7.2). Regarding the review of a standard, members must publicize and write into existing standards the date of the subsequent review (5.8.2), and publicize the process by which proposals can be made with regards to upcoming revisions (5.8.3). When finished with a review, members must inform their stakeholders of the revised standard, including their associated auditors and their certified producers when practically feasible (5.10).

In review, these transparency rules primarily provide information about the development and revision procedures so that stakeholders are informed about when and how they can influence the development of a standard to best meet their interests. Their input in these processes is then theoretically protected and valued by the reasoned decision-making rules discussed above. What is striking, however, is that these transparency rules do not address a number of issues, such as the financing of a standard or the vss body in general, or meeting minutes of governance organs discussing the development or revision of standards. In this sense, the transparency rules are more oriented towards facilitating participation than safeguarding organizational independence.

While this section has focused on the Standard-Setting Code, ISEAL's Assurance Code and Impacts Code also play limited roles in setting administrative governance principles for its members. The Impacts Code contains requirements that revolve around the introduction and use of systems to monitor and evaluate the impacts that a standard has in relation to the social and environmental goals it sets out to achieve. The Assurance Code contains requirements for the institutional relationship that vss bodies have with auditors, and basic requirements for auditing practices in the sustainability sector. The incorporation of administrative governance principles in these two codes follows an overall approach established in the Standard-Setting Code.

With this account of the ISEAL's administrative governance principles and procedures, it is possible to make better sense of its supposed meta-regulatory

role, at least as it exists on paper. The rules in its Standard-Setting Code illustrate attempts to infuse vss bodies with public interests vis-à-vis the substantive and meaningful participation of stakeholders, made possible due to transparency of procedures, and protected by reason-giving and accountability mechanisms in decision-making. In theory then, the rules in this code, as well as comparable rules in its other two codes, constitute the 'meta-norms' or 'global administrative laws' of vss bodies operating transnationally around the world. The pressing question which remains, however, is the extent to which ISEAL's members experience these codes, as well as their membership in general, in the regulatory and controlling fashion that they appear on paper, or whether some or all of its members are empowered through the coordination of overlapping interests within ISEAL's membership ranks. In order to answer this question, it is necessary to transition to an empirical analysis of its members' experiences.

5 The Regulatory and Coordinative Experiences of ISEAL's Members

The following empirical analysis investigates four dimensions of ISEAL members' experiences: the reasons why organizations join ISEAL, the effects that ISEAL's codes have on the members' operations, member involvement in the writing and re-writing of ISEAL's codes, and the content of disputes or frustrations with ISEAL. Through these dimensions the analysis evaluates when, and which groups of vss bodies, ISEAL has been capable of leveraging a regulatory capacity to introduce external public interests into their work, and in contrast, when, and with whom, ISEAL instead is facilitating coordination and empowerment among its members. The underlying purpose of such an analysis is to test the formal appearance of ISEAL's codes' regulatory function, as they read on paper. In other words, while there is a clear governance goal in ISEAL's codes, the question remains as to how they operate in practice, including why organizations opt to comply with them despite their voluntary status, and what practical consequences compliance has on the accountability of vss bodies. A conflict-of-interest risk arises out of ISEAL's membership format, which contradicts more optimistic accounts of its meta-regulatory function. The risk concerns the ability of ISEAL members to determine the rules that are meant to govern them, including the limitation of their internal powers at the expense of the empowerment of affected stakeholders. This is a modern manifestation of the classic problem: *Quis custodiet ipsos custodias?* It is the tension between coordination and regulation that must be evaluated in practice in order to further our understanding of the *actual* impact and role of

global administrative governance and meta-regulatory bodies like ISEAL, seen from the perspectives of its regulatory targets.

The empirical data arises primarily from seventeen semi-structured interviews with staff from former, current, and prospective ISEAL's member organizations and ISEAL's Secretariat.³⁸ In addition, publicly available institutional documents from ISEAL, and participation in a number of web-based seminars with ISEAL's Secretariat, members, and other third parties are used as secondary data sources. This approach allows for the analysis of ISEAL's codes in-action, as well as the experience of ISEAL from the perspective of its members, rather than merely a formal and institutional analysis of the ISEAL organization and its codes.

The interviews were thematically analyzed to generate the following analytic categories: that ISEAL members join the organization primarily for learning and collaborative purposes and only secondarily for credibility purposes; that the effects of compliance with ISEAL's codes have been minimal, and where changes have occurred they have been in line with what the members always desired for their organizations; that the creation of ISEAL's codes was heavily influenced by prior practices of its original members; and that ISEAL is currently leading a transition away from input credibility, but emphasizing output credibility in the form of the impacts of vss organizations.³⁹ For the purposes of this article, input credibility is understood as organizational credibility premised upon democratic and inclusive decision-making procedures, while output credibility is understood as organizational credibility premised upon the substantive results and consequences of the organization's actions.⁴⁰

38 At the time of interview, 8 interviewees worked for full members of ISEAL, 4 for associate members, 1 for vss bodies in the process of becoming an associate member, 2 for vss bodies considering membership, 1 as a consultant for various members and non-members, and 1 as a staff member of ISEAL's Secretariat. The individual identities and organizational affiliations of the interviewees are kept anonymous for the purposes of this publication.

39 The interviews were coded using a hybrid-approach with both inductive and deductive codes. See Richard E. Boyatzis, *Transforming Qualitative Information: Thematic Analysis and Code Development* (SAGE 1998).

40 For further discussion on this distinction see: Daniel Bodansky, 'The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?' (1999) 93 *The American Journal of International Law* 596; Regina Kreide, 'The Ambivalence of Juridification: On legitimate governance in the international context' (2009) 2 *Global Justice: Theory Practice Rhetoric* 18; Sigrid Quack, 'Law, expertise and legitimacy in transnational economic governance: an introduction' (2009) 8 *Socio-Economic Review* 3. The author has also discussed the differences between these two concepts of credibility (or legitimacy) in Phillip Paiement, 'Paradox and Legitimacy in Transnational Legal Pluralism' (2013) 4 *Transnational Legal Theory* 197.

5.1 *Seeking Opportunities to Learn and Collaborate*

The reasons that standard-setting organizations have for joining ISEAL Alliance and submitting themselves to compliance with ISEAL's codes are not self-evident. Most often, these organizations are looking for learning opportunities among their peers. This holds for both mature and newly emerging standard-setting organizations, and runs through the entire history of the organization. This learning component, as a reason for participation, has taken on a more utilitarian dimension as ISEAL has developed its codes. Recently, particularly among new start-up VSS bodies, ISEAL's codes are understood to hold vital knowledge about how to run a VSS body. One interviewee noted the attraction to ISEAL from a learner's perspective:

And then there's some basics, some building blocks about standards development procedures which I suppose have kind of been formalized in the ISEAL codes of practice now. But they hadn't been six years ago, seven years ago. So just passing on, here's how you set about a writing standard, here's the process you need to go through. Here's learning about certification and accreditation, assessors, what your options are and what the implications of those options are.⁴¹

Ironically, while this type of technical learning experience drives participation in ISEAL, the public availability of ISEAL codes also results in a number of potential members never pursuing membership because they already have access to the information that they need.

While peer learning exchanges are the primary driver of participation, a secondary driver might be the concern for credibility in the eyes of external audiences. Notably, very few of the interviewees reported being explicitly asked to join ISEAL by stakeholders. Thus, joining ISEAL for credibility reasons was more frequently chosen as a preemptive approach to provide a guarantee of insurance or stability in respect of future clients who might be skeptical of the organization. An interviewee expressed this preventative approach concisely in stating that, '[c]ompanies don't like the uncertainty, they want to know what will happen, when changes will be introduced. They want to know this ahead of time. ISEAL membership gives them the reassurance they are looking for.'⁴² The concern with stability is particularly present as ISEAL members attempt to expand their standards usage among new producers and in new regions where their work is less well known, and thus this credibility concern is entangled with a priority of growth and expansion of their standards.

41 Interviewee E.

42 Interviewee Q.

5.2 *The (Minimal) Impacts of ISEAL's Codes*

Formal compliance with ISEAL's codes was predominantly reported to have minimal effects on members' organizations, or merely add a new degree of formalization and proceduralization of the activities they were already conducting. This is partially explained by the fact that nearly all of the interviewees reported that their organization began taking ISEAL's codes into effect at a very early stage in their organizational development.⁴³ When it came time to actually demonstrate compliance with ISEAL's codes as a requirement of membership, they had already long been in compliance.

There were two instances in which interviewees noted that their organizations introduced major changes to their governance structures to allow for guaranteed voting positions for external stakeholders in their primary governance boards. These, however, are certainly outliers to the general experience in which the norms of ISEAL's codes are quickly integrated through mimetic and peer learning processes during early stages in organizational development, before formal compliance becomes necessary.

With regards to the Impacts Code, however, a significantly different finding prevails. None of the interviewees reported having systematic Measuring & Evaluation (M&E) systems (the core requirement of the Impacts Code) in place before the Impacts Code was written by ISEAL. Despite the lack of an original model from which to learn, the experiences described by interviewees concerning their development of M&E systems was that ISEAL provided a helpful platform for peer learning and exchanges throughout a process that each member organization was facing. In this case, there was a strong effect of ISEAL's Impacts Code in that it resulted in the creation of M&E systems in all of ISEAL's member organizations. However, the interviewees themselves were reluctant to conclude that the Impacts Code caused them to create M&E systems. Instead, they frequently hypothesized that they would have eventually developed M&E systems with or without the Impacts Code.

Interviewees frequently described how the effects of compliance have been internalized by the organization and now coincide with its own desires for itself and its development. One interviewee explains this pattern in detail:

And I do think that ISEAL has contributed to that [prioritization of resources to develop M&E systems] by putting it on the agenda, by forcing this, the Impacts Code, and then the members do start to look at this issue and realize how important this is. It then becomes a self-generating, or how do you call it, it becomes something that everyone realizes they

43 This confirms previous claims of ISEAL's role in facilitating mimetic isomorphism among VSS bodies. See (n 16).

need to do with or without ISEAL. I think if we would drop the code now, we would say, well, now [that] this code is not necessary, all the standards organizations are working on impacts, we are going to continue working on impacts. So they have internalized that this is something that is significant.⁴⁴

Other interviewees frequently stated this point—that they had always wanted a better understanding of their impacts but that it was given little priority in the daily allocation of institutional limited resources. As such, they portray compliance with ISEAL’s Impacts Code as a process by which they were forced to reach their organization’s own overlapping goals.

In light of the participation reasoning found among ISEAL members, it is not surprising that the predominantly expressed benefits of ISEAL membership highlight the peer and mimetic learning opportunities that ISEAL facilitates. This is particularly reflective of the experience that new members of ISEAL, typically being younger standard-setting organizations, go through. The learning opportunities that ISEAL provides new VSS organizations is premised on the belief that VSS organizations face common challenges and goals:

Understanding what others do, what works, where the challenges are, what the benefits are, etc. Like everybody else we are trying to get a representative system that also is one that is efficient in its operations, and you know every multi-stakeholder standard initiative has its governance challenges.⁴⁵

Learning the common experiences that all of ISEAL’s members share as multi-stakeholder sustainability standard-setting organizations is thus, in itself, considered to be the most prevalent benefit of ISEAL membership.

5.3 *Customs Formalized into ISEAL’s Codes*

The finding that ISEAL members did not experience significant changes to their operations as a result of complying with the Standard-Setting and Assurance Codes is associated with the finding that much of the early code development was a process of codifying the previous practices of ISEAL’s initial “founding” members. One interviewee explains how a founding member of ISEAL experienced this codification of their practices into the Standard-Setting and Assurance Codes:

44 Interviewee J.

45 Interviewee L.

I don't think there was anything that [the organization] did because it was in the code...the code [has] been through a few revisions, and I think that may no longer be the case. I've got a conflict of course, other people may disagree because I was in charge of [the organization's] standards at the time, but I would say that it was more a case of some of the things [the organization] was doing being standardized and put in the code. And yes when you do that you might say well, we're not perfect at this, but I don't think there was anything significant that was in the code that we thought oh gosh, we better meet it. It was an externalization and a validation of what we were already doing, I would say. And I would say ditto on the Assurance Code, which came much later.⁴⁶

Given such a process of codifying practices, it is not surprising that ISEAL members experience minimal effects in complying with these two codes—the members either were already in accordance, or developed their organization to abide by the codes' norms from a very early stage. This suggests that ISEAL's Standard-Setting and Assurance Codes are a reflection of the practices of mature sustainability standard setters that founded ISEAL—and thus code compliance takes on a character of formalized peer learning.⁴⁷

5.4 *Transitioning towards Output Credibility*

The combination of why organizations participate in ISEAL, what effects and benefits they experience, and the relationship between practice and codified norms, results in an emphasis on output credibility. The interviewees emphasize ISEAL's role in providing enabling norms and solutions to help its member organizations expand their operations, and to facilitate the expansion of sustainability standards into new fields by creating awareness, developing markets for sustainably sourced products, and developing interoperability among systems.

There is a shared wariness of ISEAL's codes becoming increasingly more stringent over time. For one interviewee it raises the following questions:

If we do head towards a best practice level, a very high demanding code of practice, how long do people have to modify their own systems to

46 Interviewee E. The institutional affiliation of the interviewee has been removed from the excerpt to preserve anonymity.

47 It is important to note that ISEAL does review and revise its codes and that both of these codes have included revisions in the past. Some younger members have also participated in the process to help accommodate aspects of their particular VSS model into ISEAL's codes.

comply with that? And that linked in with a big ISEAL discussion about its membership. Is membership reserved for only the people that meet its now rather high demanding grounds, or can you join ISEAL with a view towards working together because you aspire to that and you are on track to do that but you haven't been able to do that yet?⁴⁸

The prevalent view among the interviewees is that ISEAL should, instead, be aiming to expand standards usage. Rather than maintain stringent requirements, ISEAL should utilize flexible or less stringent approaches towards code compliance that allow for innovation in sustainability standards and for membership of organizations working among industries new to sustainability standards.

ISEAL members further believe that the impact of an organization's standard should take priority in the assessment of its credibility. Interviewees felt that different approaches to standard-setting have their strengths and weaknesses and, as such, ISEAL's codes should not limit the members to a single approach. For instance, 'high level' standards can have an extensive impact on a smaller group while 'entry level' standards might have a shallower impact on wide segments of producers. In short, their position is that the credibility of a standard-setting organization should rest on its impact, and there are different ways to impact the sustainability of production in a given industry.

By emphasizing impacts, ISEAL is able to remain open and flexible towards different approaches to sustainability standards, while still guaranteeing their credibility. Although this is challenging because, as one interviewee states, '[t] here is no current external proof that ISEAL's codes actually comprise the best governance of sustainability standards. All we have is that we believe it is the best practice, but is it actually the best? I have no idea.'⁴⁹ With this insecurity mind, ISEAL has set out, through the Impacts Code, to find ways to demonstrate whether standards developed by ISEAL members have stronger impacts than non-ISEAL member standards. In this manner, ISEAL's governance role in maintaining the standards of credibility among vss bodies is simultaneously emphasizing a particular output or impacts-based conception of credibility, and de-emphasizing participatory or transparency aspects. This may come as a surprise given its strong emphasis on multi-stakeholder organizational structures and consensual decision-making processes.

There are two notable obstacles to the conception of input credibility (or legitimacy) found in ISEAL's codes that came to light during the interviews. First,

48 Interviewee E.

49 Interviewee C.

there is a concern that ISEAL might *over-code* the requirements that members must meet in the codes, making them overly stringent or cumbersome so that their organizations become ineffective or inflexible.⁵⁰ Secondly, there is a real concern of so-called ‘stakeholder fatigue’, rooted in the experience that resource-limited stakeholders are incapable of meeting the expanding multi-stakeholder participatory expectations of ISEAL’s codes. Between over-coding and ‘stakeholder fatigue’, there is a sense of disillusionment with the view that organizational credibility could arise from stringent codes and an over-emphasis on participation. Furthermore, this disillusionment was contrasted with the more promising developments of monitoring and evaluating impacts.

6 The Future of Administrative Governance in Transnational Sustainability Standards

Following from the previous analysis, we can better evaluate the extent to which ISEAL Alliance is successfully ‘infusing public law norms’—to borrow a phrase from Victor Ramraj—into the private governance work of vss bodies, and more importantly, the dynamics and drivers that facilitate their success in doing so.⁵¹ On paper, there is a noticeable affinity between the administrative procedures that ISEAL requires of its members and those introduced by administrative procedure acts in national legal systems.⁵² It is also clear from the empirical analysis above that ISEAL codes have leveraged immense influence on younger and smaller vss bodies that have developed in the period since ISEAL was founded; many vss bodies are implementing ISEAL’s codes despite their disinterest in, or financial inability to, pursue ISEAL membership. The ‘mimetic isomorphism’ that ISEAL’s activities provide for its members, and vss bodies in general, appears to be one of its most influential contributions to the GAL or ‘meta-regulation’ of transnational sustainability governance.⁵³ This also presents an important contribution to the scholarship on accountability in global governance, namely that formal participation in governance regimes such as ISEAL is not necessary for the uptake of norms.

50 Interviewees often described what the author calls ‘over-coding’ in terms of ‘comprehensiveness’, ‘unmanageable’ requirements, and ‘gold’ or ‘platinum’ codes. Each of these expressions reflect a concern about the stringency of ISEAL’s codes, particularly in relation to the degree in which they must include multi-stakeholder participation and institutional transparency.

51 See Ramraj’s contribution to this special issue.

52 This confirms the passing observation made by Errol Meidinger; see (n 21).

53 On mimetic isomorphism and ISEAL Alliance, see (n 16).

It is, however, equally important to consider the limitations of ISEAL's meta-regulatory capacities as identified in light of the above analysis. Exploring the rationale for why vss bodies pursue membership, it is evident that they do not feel pressured—through either economic or civil society forces—into doing so. In other words, ISEAL does not generate a regulatory role in a systematic manner on the basis of communal or competitive pressures, as Colin Scott's theory presupposes.⁵⁴ The strong reliance on the pre-existing practices of ISEAL's founding members in the creation of the Standard-Setting and Assurance Codes further suggests that ISEAL does not serve a substantial regulatory role with respect to well-established members. To return to the research question of this article, it is therefore possible to conclude that while a robust and thorough set of accountability principles exist on paper, the consequences of compliance are differentiated among members and informal compliance exists among non-members. More importantly, there is no strong empirical evidence that ISEAL would be capable of inserting accountability norms that explicitly operate contrary to the perceived self-interests of its member organizations, which constitutes a very important finding on the limitations of using private meta-regulation to pursue public interests.

There is then a risk that ISEAL could instead be used as a platform to monopolize claims to credibility in accordance with a narrow understanding of how vss bodies ought to be administrated, thereby forcing new and smaller vss bodies to adapt to the norms set by larger and more prominent vss bodies. Furthermore, it is troubling that, while the affected stakeholders and sustainability concerns of vss bodies are overwhelmingly rooted in the Global South, all but one of the ISEAL members' maintain head offices in the Global North: primarily in Bonn, Geneva, Amsterdam, London, New York and Washington D.C.⁵⁵ In light of this pattern, it seems essential that ISEAL gradually develops a stronger regulatory capacity towards its members in order to prevent misuse of its position as a credibility gatekeeper and prevent exclusionary dynamics, particularly towards financially strapped vss bodies based in the Global South.

54 Scott (n 26); Scott (n 27). There were only three instances found in which nominal forms of communal or competitive pressure were placed on vss bodies to pursue ISEAL membership. This also runs contrary to the comparable societal constitutionalism theory of Gunther Teubner, which presupposes that transnational regimes generate governance power through economic forces. See Teubner (n 33).

55 The only ISEAL member body based in the Global South is the Sustainable Agriculture Network, although this too is partially owned by the Rainforest Alliance (another ISEAL member), which is based in the United States.

The Impacts Code offers the most pressing counter-argument here, as the effect it has had on introducing M&E Systems among ISEAL's members is extensive. However, it remains troubling that prior to the introduction of M&E, members had routinely discussed these changes as goals they always wanted to achieve, regardless of ISEAL. While isolating the causal variables in these situations goes beyond the scope of this article, it can be summarized that ISEAL's members actively make claims to suggest that ISEAL does not hold a regulatory capacity in a substantial sense. In other words, there is no evidence to suggest that ISEAL has the capacity to introduce behavioral changes serving the broader public interest if the changes run contrary to the self-identified private interests of its members. Instead, ISEAL merely coordinates and empowers the interests of its member organizations so that they can better achieve their organizational goals, albeit in a highly effective manner. Meta-regulation and GAL scholars must therefore reflect on the significance of situations where governance actors are unable to generate substantial controlling and regulatory dynamics, through communal pressures, competitive pressures, or otherwise.

The above analysis has also illustrated that the administrative governance created by ISEAL's codes addresses transparency, reasoned decision-making, and participation through a particular lens. For instance, its participatory norms are aimed at achieving broad participation by civil society in comment procedures more than instituting balanced representation of interests in formal governance positions in VSS bodies. Likewise, with regard to transparency, the Standard-Setting Code is more concerned with procedural transparency than it is with the institutional or financial transparency of VSS bodies. Moving forward, it is imperative that GAL research considers the contextual functionality and appropriateness of the particular formulation of administrative principles and procedures being implemented by global governance and transnational regulatory actors. While these principles and procedures arose out of particular historical and national administrative environments, their contextualized pasts apparently disappear when transplanting them to global and transnational forums.⁵⁶

Finally, the trend towards impacts and output legitimacy within ISEAL raises a number of red flags for meta-regulatory and GAL interpretations of its governance role. To begin with, the GAL framework has been firmly interested in principles, norms, and procedures—regulatory impacts have certainly not

⁵⁶ This argument has been previously suggested in Peer Zumbansen, 'Administrative law's global dream: navigating regulatory spaces between "national" and "international"' (2013) 11 *International Journal of Constitutional Law* 506.

been emphasized. Given the GAL focus on input and throughput legitimacy, if ISEAL remains focused on output understandings of legitimacy, it might raise questions about the continued role of the administrative governance principles and procedures.⁵⁷ The tension between input and throughput approaches could certainly reach a crisis point if evidence emerged suggesting that greater 'positive' impacts on social and economic sustainability were achieved through less participatory, less transparent, and less reasoned forms of decision-making. In such a situation, it would seem that impacts-driven governance without procedural forms of accountability would be both legitimate, yet also precisely the kind of governance that global administrative principles and procedures ought to be constraining. In response to Ramraj's contribution to this issue, the administrative governance principles in ISEAL's codes may hold less significance for judges and lawmakers reviewing the regulatory roles of sustainability standards if the effectiveness of VSS bodies continues to rise in importance.

7 Conclusion

This article has explored the role of ISEAL Alliance in establishing and enforcing general principles and procedures of administrative governance among VSS bodies. While ISEAL's Codes of Good Practice appear remarkably similar to the procedural rules in national administrative law on paper, in practice it seems that ISEAL has been largely unable to develop a controlling and regulatory capacity with regard to its members. It is therefore questionable whether ISEAL is capable of steering the governance actions of sustainability standards towards broader public interests when such interests are at odds with the private interests manifested within the standards. The article posed a number of questions confronting what ISEAL's questionable regulatory capacity means for meta-regulatory and GAL readings of ISEAL's governance role and other examples were general administrative governance concepts are mobilized by private meta-regulators. Finally, the results suggested a growing emphasis on output forms of credibility and an uncertain future significance of proceduralism, transparency, and participation in the administrative governance of sustainability standards.

57 For the concept of 'throughput legitimacy' see Quack (n 40) 7. For a thorough review of 'input legitimacy' see Daniel Bodansky, "The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?" (1999) 93 *The American Journal of International Law* 596. For more on the concept of legitimacy in transnational law and governance, see Paiement (n 40).