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Precious Stones, Black Gold and the Extractive Industries: Accounting for the Institutional Design of Multi-stakeholder Initiatives

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Declaration

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Carola Kantz

Abstract

Why was the Kimberley Process (KP) able to devise a soft law institution 'with teeth' whereas the Extractive Industries Transparency Initiative (EITI) failed? In various policy fields and particularly in the extractive industries, multi-stakeholder initiatives (MSIs) are becoming more important for regulating business behaviour. However, International Relations (IR) has as yet failed to explain why some succeeded in designing a strong international institution whereas others failed.

To answer the research question the thesis first establishes a methodology for assessing strong and weak institutionalisation of MSIs. I argue that functional regime theory is inadequate at assessing MSIs as it does not capture institutional variety within soft law. Based on the Global Governance literature, the thesis establishes four indicators – membership, obligation, monitoring and enforcement, which allow us to evaluate the degree of institutionalisation.

How can we account for institutional variety of MSIs? Mainstream IR theories are not able to explain the differences between the two case studies as they gloss over the differences in normative and material structures assuming that complete rationality and concerns for efficiency are critical when determining institutional design.

I argue that norm entrepreneurs push for strong institutionalisation by the social mechanism of norm diffusion. Succeeding in diffusing the norm by using political strategies such as framing and structural power galvanises support for strong institutionalisation. Nevertheless, norm diffusion can fail when political opportunity structures empower norm opponents rather than norm entrepreneurs. I argue that the impact of norms varies, depending on distinct structural settings. Thus I unveil the circumstances under which new norms do not gain acceptance from the international community. In summary, when accounting for the MSI institutionalisation process, we not only need to pay attention to political strategy and agents, but must include in the analysis normative and material structures as drivers of or constraints to norm diffusion.

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Abbreviations

ATCA	Alien Torts Claims Act
AI	Amnesty International
CNOOC	China National Offshore Oil Corporation
CPI	Corruption Perception Index
CSO	Central Selling Organisation
CSR	Corporate Social Responsibility
DDI	Diamond Development Initiative
DFID	Department for International Development
DRC	Democratic Republic of Congo
DTC	Diamond Trading Company
E&P	Exploration and Production
EC	European Commission
EITI	Extractive Industries Transparency Initiative
EU	European Union
FCO	British Foreign and Commonwealth Office
FDI	Foreign direct investment
FSC	Forest Stewardship Council
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
HRD	High Diamond Council
IAG	International Advisory Board
ICC	International Criminal Court
IDMA	International Diamond Manufacturers' Association
IFIs	International Financial Institutions
ILO	International Labour Organization
IMF	International Monetary Fund
IOC	International oil company
IPE	International Political Economy
IPRs	Intellectual Property Rights
IR	International Relations

KP	Kimberley Process
KPCS	Kimberley Process Certification Scheme
LM-Group	Like-Minded Group
MNC	Multinational Corporation
MoU	Memorandum of Understanding
MPLA	*Movimento Popular para a Libertação de Angola*
MSI	Multi-stakeholder initiative
NGO	Non-governmental Organisation
NOC	National oil company
NSA	Non-State Actor
OECD	Organisation for Economic Co-operation and Development
OGP	International Association of Oil and Gas Producers
OPEC	Organization of the Petroleum Exporting Countries
OSI	Open Society Institute
PAC	Partnership Africa Canada
para.	Paragraph
POS	Political Opportunity Structure
PSA	Production Sharing Agreement
PWYP	Publish What You Pay
RUF	Revolutionary United Front
SOC	Supplier of Choice
SoW	System of Warranty
TI	Transparency International
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNITA	*União Nacional para a Independência Total de Angola*
UNSC	United Nations Security Council
UNSG	United Nations Secretary General
US	United States

US$	United States Dollar
USSR	Union of Soviet Socialist Republics (Soviet Union)
WDC	World Diamond Council
WFDB	World Federation of Diamond Bourses
WGM	Working Group on Monitoring
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization

CHAPTER 1

Precious Stones, Black Gold and Institutional Design

On 1 January 2003 the Kimberley Process Certification Scheme (KPCS) came into effect. Not only was it the first attempt to seriously address the issue of trafficking natural resources but it was also negotiated in a multi-stakeholder initiative (MSI), in which states, non-governmental organisations (NGOs) and the industry negotiated with equal rights. The KPCS is essentially a rough diamond trade regime which came into existence in response to an international NGO campaign against conflict diamonds – these being rough diamonds from Angola, Sierra Leone, the Democratic Republic of Congo (DRC) and Liberia. They are exploited by rebel groups to finance conflicts which are aimed at undermining legitimate governments (Global Witness 1998; Le Billon 2001). Since 2003, every rough diamond that is legally traded has to gain certification that it was mined legally. Although being a soft law agreement, the KPCS has now developed into a rigorous global agreement with strong monitoring and enforcement requirements.

The same year, another MSI came into existence attempting, again, to regulate the operations of the extractive industries. The Extractive Industries Transparency Initiative (EITI) is a revenue transparency regime which uncovers revenue flows from global resource companies to host governments. The initiative aims to decrease corruption and the potential for civil conflict in resource-rich developing countries. Like the KPCS, the EITI is a response to an international NGO campaign, Publish What You Pay (PWYP). However, while the EITI can be considered as a partial success, the agreement that was negotiated is far less rigorous than the KPCS. Given that the EITI was supposed to replicate the success of the Kimberley Process (KP), this variance might come as a surprise.

While MSI are becoming more and more prominent not only in the extractive industries sector but throughout international relations, International Relations (IR) as a discipline has as yet failed to explain why some of these new modes of governance succeed in designing strong international institutions whereas others fail in this endeavour.

This study addresses this research gap by advancing our understanding about the factors accounting for variance in the institutional design of new forms of governance. With the rise of non-state actors (NSAs) in international relations and the increasing importance of private and public-private governance, this question is of crucial importance for both IR scholars and practitioners. If new forms of governance are to stay in global politics, we need to know how to design them in a way that guarantees their policy impact.

The issue of institutional design is not a new one for regime theory, looking at intergovernmental regimes. However, it is novel when addressing new forms of governance – in particular MSIs, a policy field where research is still in its infancy. Given the novelty of this research focus, my research question first requires me to establish a methodology for assessing the institutional design of MSIs. As we see later in this thesis, existing analytical frameworks are inadequate at capturing the institutional variety of soft law mechanisms like MSIs.

Once we have established institutional variety, the more interesting question is, of course, how can we account for it? I argue that norm entrepreneurs push for strong institutionalisation with the help of a social mechanism known as norm diffusion. Success in diffusing the norm by political strategies - such as inciting learning or adaptation processes - galvanises support for strong institutionalisation. However, norm diffusion can fail when political opportunity structures (POS) empower norm opponents rather than norm entrepreneurs. I contend that the impact of norms varies depending on distinct structural settings. Thus, more fundamentally, I unveil the circumstances in which ideas do not become accepted by the international community. When accounting for the institutionalisation process of MSIs, not only do we need to pay attention to political strategy and agents but we must also include in the analysis normative and material structures as drivers of or constraints to norm diffusion. Later in this chapter, we see that conventional IR approaches, focussing either on interests or power, are unsuitable to account for our research puzzle.

Overall, the study contributes to an understanding of international institutions which exceeds the limits of neo-liberal institutionalism by looking at material and normative structures that constrain or inform actor behaviour. Explaining complex social phenomena often requires the use of multiple theories connected within a common framework. Not only does my approach combine two levels of analysis,

POS and the agency-related political strategies to diffuse norms, it also uses concepts from different approaches. We return to this later in the chapter.

As with any academic endeavour, this research is constrained by a number of limitations which ultimately help to maintain the analytical focus and elaborate a parsimonious theoretical account. In this study, I develop and test an approach to account for the variance of institutional design of two MSIs. Therefore, firstly, and conversely to many other norm-related studies, the prime focus of this thesis is not norm adoption. The thesis looks at norm adoption, but it only serves to explain a specific institutional design as I consider it to be a precondition for institutionalisation. Accepting a certain institutional design ultimately gives evidence for having adopted the underlying norm. Opposition to specific institutional design features demonstrates that the underlying norm is still contested. Secondly, the level of analysis is international. I do not examine how the initiatives are implemented at the country level. Domestic politics are only significant for my analysis when helping to shed light on the institutional design preferences of certain stakeholders. Thirdly, as further elaborated on in Chapter 2, the focus is institutional design, not effectiveness or compliance. Moreover, my thesis makes no claims about the accountability of MSIs.[1] Finally, the MSIs studied here consist of a broad range of actors. To give an example, more than 40 countries were involved in the negotiations of the KPCS. For reasons of parsimony, the empirical chapters focus only on actors that were crucial in determining certain institutional design features rather than tracing the preferences of all actors that were involved.

There are six main parts to this introductory chapter. Firstly, it introduces the policy focus of this study, the problem of opacity and the precarious role of the extractive industries in resource-rich developing countries. In this respect, it also sheds light on the increasing importance of the transparency norm put forth by NGOs. The choice of this focus is motivated by the increasing attention of both academics and policy-makers on the consequences of extractive industries operations in host countries and the question of how negative consequences could be averted. The chapter then moves on to the theoretical inquiry of this study. It scrutinises to what extent existing theoretical approaches can help in answering our research puzzle. Subsequently, I introduce my theoretical approach, looking at the interaction

[1] As I mention in Chapter 2, accountability of MSIs is, of course, a crucial issue. With regard to accountability and natural resource extraction, see Newell and Wheeler 2006.

of institutional design, norm diffusion and POS. Given that norms play a crucial role in understanding the institutionalisation process, the fourth sub-chapter discusses my thin rationalist understanding to norms and ideas which constitutes the ontological basis of my research. In the fifth part, I present the methodology on which the study is based. The chapter concludes with an overview of the thesis.

1.1 The Extractive Industries, Conflict and the Transparency Norm

The extractive industries play an ambivalent role in resource-rich countries. On the one hand, they are central to the economic development of Southern countries, and not only because they are the main foreign direct investment (FDI) contributors. Multinational corporations (MNCs) are also vital as they provide jobs and technical know-how. On the other hand, however, research suggests that MNCs, especially the extractive industries, very often have a negative impact on developing countries because they contribute to bad governance. Recently, the role of business in weak zones of governance has been taken up by a flourishing research programme (e.g. Ballentine and Nitzschke 2005; Wenger and Möckli 2003).

Why do global resource companies contribute to bad governance in resource-rich developing countries? First, companies dealing with natural resources have to meet with very specific challenges when operating in host countries. In terms of where they operate, they have no choice, as they must go where the resources are located. Consequently, they very often operate in conflict-ridden countries, such as Angola or Nigeria. Most MNCs claim to adopt a politically neutral position in host countries. Yet, many of them contribute knowingly or unknowingly to armed conflict and corruption. Large oil companies especially have been involved in several high-profile disasters. They have been accused of providing logistical and financial assistance to repressive state security forces (e.g. Manby 1999), contributing to corruption and civil conflicts by trading natural commodities stemming from conflict zones (Smillie 2005c) or by funding war economies through payments to governments (Swanson 2002).

Second, the way they operate contributes to conflict and corruption. Both the (diamond) mining and the oil sector are very opaque businesses in the host countries. In the oil sector, the principle of contract confidentiality ensures that both the

governments and the companies do not disclose the most basic information about revenue flows. Thus, civil society is not able to hold their governments to account over the amount of resources available, their rate of exploitation, the revenues governments receive and how they are used (Karl 2007). Petro-states are *rentier* states[2] and the opacity of the oil industry reinforces this characteristic by enabling corruption. In the case of oil companies, the lack of financial transparency is one of the main enabling factors for corruption and the support of the war economies. Angola serves as a good example of how conflict is linked to natural resources and opaque business procedures. The ruling elite used the oil reserves not only for personal enrichment but also to set up oil-for-arms deals. Thus, government officials and their international business partners benefited from the civil war. The opacity of these arrangements between the oil companies and the government made public scrutiny impossible (Swanson 2002; Hayman and Crossin 2005).

The diamond business also builds on secret traditions and customs. Before the launch of the KPCS, most of the deals were made trough extralegal contracts without providing written records. As the origins of diamonds could easily be concealed, opacity facilitated the trade with illegal goods such as conflict diamonds.
Hence, in both industry sectors, secrecy has become a structural feature.[3] For companies and individual diamond dealers, it represents a possibility to decide how to account for their costs, what profits to report and, to evade taxes. In theory, the regulation of the extractive industries should not raise special problems in the application of international law. Governments should ensure that actors operating within their territory act in accordance with international obligations. Yet, existing political institutions, such as international public law, are weakened by regulatory and political gaps that have arisen through globalisation (Kaul et al. 1999: xxvi ff). A jurisdictional gap arises as states, not MNCs are the addressees of international public law. States, however, have an incentive for free-riding rather than finding collective durable solutions to transnational problems such as the regulation of MNCs operating abroad. Southern governments are reluctant or unable to regulate host companies since the extractive industries play a key role in resource-rich

[2] Rentier states derive all or a substantial portion of their income from the exploitation of natural resources rather than through the taxation of their citizens. The consequences for the governance of states of adopting a rent-seeking behaviour are discussed at length in 6.1.2.
[3] Opacity in the diamond and oil industry is discussed at length in Chapters 4 and 6.

developing countries. Moreover, opacity offers a window of opportunity to governmental agents for personal enrichment. Given the inability to regulate these issues by hard law, only a small number of these initiatives are legally binding treaties, most of which are only binding on states, such as the Alien Torts Claims Act (ATCA) in the United States (US). It authorises civil lawsuits in US courts by foreign persons for torts which violate international or US law (Chesterman 2004). Generally speaking, however, efforts to regulate MNCs through legal regimes have so far failed.

Like most globalised industries, natural resource and energy companies are very vulnerable to public pressure. As a reaction to high profile disasters and the deficiencies of international public regulation, MNCs have become increasingly subject to high-profile activist campaigns since the 1980s. In most industry sectors, NGO activism has contributed to the development of a new regulatory realm outside the traditional intergovernmental mechanisms: In the civil regulation, NGOs are not only crucial drivers but also play an important role as civil regulators (Zadek 2001). Thus, company-NGO relations have evolved rapidly from opponents to partners.[4] As researchers from International Business emphasise, not only NGO pressure, but learning, networking and peer pressure have contributed to the establishment of this new regulatory realm (Braithwaite and Drahos 2000; Spare and La Mure 2003; Warhurst 2001).[5]

While civil regulation has formed mainly around on environmental issues since the 1980s (Bendell 2000), opaque business operations considered as conflict-promoting economic activities have only recently become the focus of NGOs. Hence a new regulatory framework is just about to emerge. According to them, more transparent business operations can be a means to contribute to conflict solution and prevention. Certification regimes for conflict commodities, revenue transparency regimes and codes of conduct for business behaviour in conflict-prone regions have embraced the transparency norm by uncovering business operations and their revenue flows. Of course, the transparency norm is nothing new for business, but

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[4] Chapter 3 examines in more detail the social mechansims of NGOs to engage with MNCs.

[5] Examples for this kind of regulation are the Forest Stewardship Council (FSC) or the Equator Principles which are elaborated on in more detail in the following chapter. While the literature on civil regulation is most instructive on internal (business) and external (NGO pressure) reasons of why MNCs adopt corporate social responsibity (CSR), it does not focus on institution building and institutional design. The literature is therefore not appropriate for answering the research puzzle and does therefore not contribute to the theoretical framework developed in Chapter 3.

after the focus on corruption both within governments and business and the increase of financial reporting due to the scandals of Enron and WorldCom (Florini 2007), the extractive industries constitute the last frontier in terms of business opacity. Recently, one policy response, MSI, has become more prominent in diffusing the transparency norm into the extractive industries. One example is the United Nations (UN) Global Compact which was launched by the UN Secretary General (UNSG) Kofi Annan at the 1999 Davos World Economic Forum. Other examples that specifically address the extractive industries sector in developing countries are the KP to curb trade with conflict diamonds and the EITI to fight bribery and corruption. The aim of the initiatives is to fight business opacity and the potential for conflict by institutionalising more transparency in industry operations. At the end of the 1990s, the NGO Global Witness accused the diamond industry of contributing to the civil wars in Africa as conflict diamonds could easily be traded by rebels to fund their civil wars (Global Witness 1998). States, the diamond industry and NGOs together devised the KPCS to regulate the gemstone trade. Although a trade regime, the KP essentially fosters transparency when trading with diamonds by unveiling the business operations of producer countries and mining companies. According to the KPCS, all rough diamonds that are imported or exported have to be certified. The Scheme is accompanied by an industrial self-regulation which monitors domestic trade. For the very first time in the history of diamond trade, the goods can now be tracked. Given the strong monitoring and enforcement measures, the KP can be considered a comparatively rigid regime.[6]

EITI builds on the research and the experience of the KP. Throughout their research on conflict diamonds in Angola, Global Witness and other NGOs also explored the Angolan oil industry. They found that although the oil sector contributed up to 90 percent of government revenues, a great part of this money was not used to develop the country, but contributed to funding the war economy (Global Witness 1999). The NGOs advocated for mandatory disclosure of the extractive industries' payments to the host governments. Reliable information about natural resource revenues would help civil society and donor agencies to hold governments accountable for their use of revenues. The initiative aims at increasing the transparency of oil and mining revenues in resource-rich countries. Companies have

[6] For a discussion of the requirements of the KPCS, see Chapter 4.

to publish what they pay to governments and governments have to publish what they receive from companies. EITI is a purposeful attempt to replicate the KP. Together with NGOs, oil companies and producing and importing governments, the government of the United Kingdom (UK) wished to design an equally rigid regime that would fight the opacity of the oil industry and their host governments. However, while the EITI can be considered as a partial success, it is very weak in comparison to the KP. [7]

1.2 Accounting for Institutional Design

Why do states or NSAs agree to design an international institution in a specific way? Two theories have been developed to explain the design of institutions: neorealism and neo-liberalism (Kahler 2000). However, other IR theories such as neo-Gramscian and constructivism could also have the potential to explain variation in institutional design. In this sub-chapter, the extent to which the theories are able to explain our research puzzle comes under scrutiny.

Although neo-realism and neo-liberal institutionalism share some basic ontological and methodological assumptions, they are quite distinct from the other with regard to the causal mechanism they draw on to explain the puzzle. Inherent to each of the theories is a methodological individualist ontology and a positivist epistemology. Methodological individualism treats the interests and identities of actors as exogenously given. Integrated in this ontology is the assumption of rational actors with complete information, clear formulated preferences and the cognitive ability and time to make the optimal choice. Their logic of action is based on cost/benefit calculations. Actors strive to maximise their benefits whilst minimising their costs (March and Olson 1998).

Neorealist conceptions of international relations consider international institutions and international law as epiphenomenal. The anarchical structure of the international system and the starting point of every neorealist informed analysis require every state to pursue a policy that secures the state's survival. International institutions are only put in place when powerful actors can impose them (Krasner

[7] For a discussion of the requirements of the EITI, see Chapter 6.

1993: 140). Although main proponents like Waltz say little about international institutions, scholars use the school of thought to explain differences of institutional design with variance of the power (Kahler 2000; Simmons 2002; Waltz 1979). According to this, regime design can be explained in two ways. First, strong institutionalisation is due to the *behemoth*, the altruistically acting hegemonic power that wants to supply public goods (Kindleberger 1983). Secondly, powerful states acting as a *leviathan* impose a certain regime design against the will of weaker actors (Keohane 1980; Krasner 1976). The two cases discussed in this study demonstrate that the power approach is insufficient to explain the outcome. None of the powerful states, most notably the US, had an immediate self-interest to create a strongly institutionalised KP. Instead, a number of middle and regional powers were pushing for strong institutionalisation. With regard to the EITI, the US, along with its oil industry, actually had an interest in preventing the creation of the institution. However, EITI exists, despite the fact that it has reached only a low degree of institutionalisation.[8]

What about other powerful actors such as the MNCs? Do they dominate the design of MSIs? To answer this question, some insights from the Neo-Gramscian versions of historical materialism might be useful. The approach claims to overcome the reductionism of other structural accounts such as Marxism. Neo-Gramscianism concentrates on the formation of a transnational historical bloc and an alliance between state, capitalist forces and civil society (Cox 1987). The hegemony of that bloc is preserved by "material, organizational, and discursive forms of power (...) to project narrow interests as collective concerns and to accommodate challenges to those interests" (Newell and Levy 2006: 173). Insights of the approach were recently applied to explain international environmental governance (e.g. Levy and Egan 2003; Newell and Levy 2005). The aim of this specific approach is to link the macro world of international governance structure with the micro level of corporate behaviour within environmental governance (ibid.). The dominant alliance of states, business and civil society is thought to be contested by social forces in a "war of position", in which MNCs have to reinstate their structural power continuously (Levy and Egan 2003). Overall, the focus of the approach is to analyse the role of firms in

[8] These aspects are elaborated on in Chapters 5 (KP) and 7 (EITI).

environmental policy, rather than the evolution of international institutions. For this reason, Neo-Gramscian insights are not applicable to solve our research puzzle.

The most prominent approach to explaining institutional design is neo-liberal institutionalism. Like neo-realism, it considers the international system anarchical but focuses on the rationalist agent who pursues cooperation with his peers to maximise his own benefits. Keohane (1984) pointed out that international institutions decrease transaction costs, provide information in times of uncertainty and establish stable mutual expectations about others' patterns of behaviour. Actors gain more from cooperation than from defection, but this is hard to achieve given the anarchical and uncertain character of the international system. International institutions decrease uncertainty by mitigating the fear of cheating or free-riding. Overall, neo-liberal institutionalism has been applied to a broad variety of IR questions ranging form regime creation and effectiveness to questions of institutional design. Given the high range of questions, the assumptions and hypothesis of neo-liberal institutionalism are very diverse.[9] In the following, I concentrate on neo-liberal approaches that look specifically at questions of institutional design. Overall, two explanations have been developed. Some neo-liberal institutionalists looking at international regimes argue that the institutional design depends on the constellation of the specific policy problems the stakeholders wish to solve (e.g. Lipson 1991). Collaboration problems suffer from the failure to implement collective action effectively, as actors have more incentives to cheat rather than to collaborate. Hence, we can expect collaboration regimes to be very formalised, minimising the possibilities for cheating (Hasenclever et al. 1997). Derived from this, what would such an approach predict as an outcome for the two cases? Considering that we have the same policy problem, a collaboration problem in an opaque industry sector, we would *not* expect the KP and the EITI to have different institutional designs but rather that they would be similar. In both cases the incentive for cheating is very high as trading conflict diamonds or engaging in bribery are both very profitable. The rational and efficiency-seeking actor would therefore create two very strong international institutions to minimise the problem of defection. Such an approach therefore fails to predict the accurate outcome, so it is obviously not apt to account for our research puzzle. Other proponents looking at the

[9] A good overview of the theory is given by Hasenclever et al. 1997.

degree of legalisation[10] of international institutions explain institutional design by drawing on the benefits and the costs of cooperation (Kahler 2000; Abbott et al. 2000). Governments choose highly institutionalised agreements "when they provide superior net benefits" compared to weaker alternatives (Kahler 2000: 663). One crucial additional perspective to this explanation is the question of behavioural and environmental uncertainty of the specific problem constellation (Scheiber 2006). Governments that know relatively little about a specific policy problem are not prepared to bear the high costs of strong institutions. As we see in the empirical chapters, policy-makers had very little knowledge on both conflict diamonds and revenue opacity. So we cannot explain the variation in the cases by a different problem constellation. With regards to expected benefits and costs, the US having invested the most in the oil industry in Africa and the Caspian Sea region should be interested in a strong EITI as it would gain the most benefits. However, as we see in Chapter 7, the US did not contribute to a strong institutionalisation of the EITI. Overall, neo-liberal institutionalist explanations do not contribute to solving our research question.

Being the most elaborated theory to account for variation in institutional design, why does it fail only in these cases? First, as with neo-realism and neo-Gramscianism, we have to acknowledge that the theory was not devised to explain institutionalisation of MSIs. It is therefore not surprising that the theory is not able to solve our specific research puzzle. Secondly, and more specifically with regard to neo-liberal institutionalism, Hurrell (2005) argues that the theory suffers important weaknesses by over-emphasing the actors' quest for effective solutions to political problems. The choice of negotiators is dictated mostly not by a choice between creating institutions and not creating institutions, but by which institution offers the best trade-off between achieving the common goal and realising self-control (ibid.). In international negotiations, questions of asymmetrical power distribution and different conceptions of norms and values are crucial:

> "[A] great deal of institutionalist writing has been concerned with the creation of institutions within the developed world, there has been a tendency to assume away the fundamental differences in religion, social organization, culture, and moral outlook that may block or, at least, complicate cooperative action" (Hurrell 2005: 35f).

[10] Legalization is looked at in the following chapter in more detail.

Considering that the cases involve a whole range of countries with very different cultural and historic backgrounds, we should be careful not to ignore ideational factors constraining or driving strong institutionalisation. Interest- and power-based theories treat interests and preferences as exogenously given. The approaches therefore fail to explain the formation or a change of interests unless they are seen as a function of new incentive structures. Checkel (2001) emphasises that rationalist approaches treat the role of language and communication in purely strategic and informational terms. Thus, the theories build a black box around the interaction context from which decisions emerge, both at the domestic and international level. This is not to suggest that rationalist approaches do not focus on interaction. In fact, interaction is central, but it is only understood as a strategic exchange among egoistic and self-interested actors. In this regard, the impact of material facts is highly overestimated while social facts and structural settings are not conceptualised at all. Given these constraints, should we not turn to a theory that puts more emphasis on ideational factors? Negotiating institutions and deciding on regime design is, after all, a creative enterprise whereby actors' interests are reconstituted, refined, or reformulated. Constructivist approaches which treat actors' interests as endogenous could be more apt for analysing the reconstitution of interests and preferences in international negotiations. Arguably, constructivism has not as yet been applied to accounting for institutional design. Nevertheless, we could use the insights of this approach by considering negotiations for designing MSIs as a socialisation process. Constructivists would argue that strong institutionalisation occurs in the case of successful normative persuasion and social learning. Actors learn about new norms, internalise them and consider the creation of a strong institution to regulate these issues as the appropriate thing to do. In its most purist sense, socialisation involves changing minds and attitudes in the absence of overtly material considerations and coercion (Johnston 2001). Actors are supposed to switch from instrumentally informed actions to doing what is considered as appropriate by the international community, without questioning the validity of the norms ("taking norms for granted"). Although constructivists contend that persuasion is not devoid of conflict but can involve "pressures, arm-twisting, and sanctions" (Risse and Sikkink 1999: 14) they argue that at the end of the process, socialised actors have internalised the new norms and *want* to behave in the appropriate way.

In theory, this is a very compelling argument which already had serious implications for the practical design of MSIs. The Global Compact, greatly influenced by John G. Ruggie, IR scholar and Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations, adopted the 'learning model' for inducing corporate change instead of a regulatory arrangement with strings attached. Ruggie expects that companies internalise corporate social responsibility (CSR) principles and re-shape their conducts accordingly (Ruggie 2001, 2004; see also Risse 2004).

Considering my research question it would be highly interesting to put Ruggie's hypothesis to test. In fact, the first years of my research project were very much shaped by such constructivist-informed assumptions on MSI. However, this research was challenged by some serious methodological difficulties. How do we know that actors really internalised new norms and did not cooperate because of strategic concerns? (Thies 2003) After all, it is not possible to access the minds of actors participating in negotiations. The assumption that actors alter their behaviour because of a change of preferences therefore poses a significant challenge to the research methods used. The researcher cannot simply deduce a change of preferences from a new behaviour as preferences must be researched directly by interviews and accurate process tracing. Research on socialisation suggests scrutinising the discourses of the concerned actors. If the socialisation process was to be successful, the researcher should be able to diagnose that the socialised actors changed their perception towards the other stakeholders involved in the negotiations (e.g. development of trust) and that a shared understanding of the political issue was created. Overall, the re-constitution of identities and roles through the socialisation process manifests itself in the adoption and reproduction of the discourse and cognitive frameworks of the socialising actors. Yet, as Hooghe (2005: 865) points out, this research method is not only time-consuming but may even be inaccurate because interviewees "may lie, or they may not be able to express their true preferences". I contend that we lack the psychological methodologies in IR to underpin constructivist claims with empirical evidence.

It is therefore not surprising that most studies fail to give evidence for the profound change of motivation for action. As Schimmelfenning, Engert et al. (2006: 258) point out, even the landmark study on socialisation, '*The Power of Human Rights*' (Risse et al. 1999) is not convincing in giving such evidence. The study looks

at a range of country cases in which formerly authoritative governments adopted international human rights norms into domestic practices. Risse et al. (1999) argue that re-constituted identities triggered by an international network promoting human rights norms account for the adoption of norms. It is, however, questionable that this is the central explanatory factor. The scholars contend in their concluding chapter that in each of the cases "a regime change preceded the dramatic improvements of human rights conditions and in many cases brought the domestic human rights network into power" (ibid: 258). It seems that instead of triggering socialisation processes, the human rights network was able to impact power relations in the respective countries and supported the empowerment of key actors sympathetic to international human rights norms.

To sum up, none of the mainstream theories is able to account for the research puzzle. Constructivism may offer interesting insights but the approach has numerous methodological difficulties that cannot easily be resolved. Neo-realism, neo-Gramscianism and neo-liberal institutionalism fail to predict the outcome accurately.

1.3 Institutional Design, Political Opportunity Structures and Norm Diffusion

Given the failure of standard IR theories to account for the variance of institutional design in the KP and the EITI, we need a new approach to explain the outcome. This sub-chapter provides a brief overview of the different components of my theoretical framework. My approach is subject to further elaboration in Chapter 3.

Of all the IR theories mentioned in the above sub-chapter, neo-liberal institutionalism is the most developed with regard to explaining institutional design. Yet, as we noted, it is not able to account for our research puzzle. Its major weakness is its ignorance of the structural settings, conflicts of value and historical dynamics in which institutionalisation takes place. I agree with Hurrell (2005), who contends that neo-liberal institutionalism, by focussing on questions of effectiveness and efficiency, ignores the crucial dimensions of norms and power in international relations. So as to overcome these shortcomings, I propose to pay more attention to

the interaction of norm diffusion as political strategy and the structural settings, including the power distribution, in which the institutionalisation of MSIs take place.

My general argument is that norm entrepreneurs can push for strong institutionalisation by a social mechanism known as norm diffusion. They diffuse their preferred institutional design through political strategies such as framing and structural power. Weak institutionalisation, then, occurs as norm opponents succeed in obstructing norm diffusion. As with norm entrepreneurs, norm opponents try to 'teach' other actors why a weak institutional design should be preferred over a strong one. The most interesting question here is, of course, how can we explain the success or failure of norm diffusion by norm entrepreneurs? I argue that material and normative structures in business and states can operate as POS which mediate between the diffusion of new ideas and policy outcomes (e.g.McAdam et al. 1996; Tarrow 1996). Depending on the existence of such opportunities and the ability of agents to exploit them, POS can drive or constrain the institutionalisation process. By driving, I mean that POS provide entry points thereby facilitating norm diffusion. By constraining, I mean that POS empower norm opponents and ultimately block the successful diffusion of new ideas. This emphasises a crucial aspect ignored by researchers studying POS: they can work in two ways.[11]

My proposition entails three claims. The first is a structuralist claim used mostly by new institutionalists. Such an approach points to the structures, such as institutional environment and cultural beliefs, that shape and constrain the actions of individuals and groups. Institutional structures encompass "organizational characteristics of groups" and the rules and norms which shape actor relations (Ikenberry 1988). According to March and Olson (1984: 735), those structures should be understood as "a collection of institutions, rules of behaviour, norms, roles, physical arrangements, buildings, and archives that are relatively resilient to the idiosyncratic preferences and expectations of individuals".

The second claim is that structural settings are not immovable. Many structuralist explanations treat structures as overly deterministic and thereby risk reducing political processes and their outcomes to the expressions of steady structures. Falkner (2008:13) criticised structural approaches for not being able to

[11] For the research design, see Figure 1 in Section 1.5.

account for variation. Wendt (1987: 362) observed that a " 'structural' analysis explains the possible; 'historical' analysis explains the actual". I argue that agents' preferences are constrained by POS but actors do not passively respond to them. Even though structures matter, agents can create or modify some of them at some point (Prakash 2000). Historical dynamics provide a good example that structures are, indeed, subject to change. Think of historical turning points such as the end of the Cold War which dramatically altered the structure of the international system. Any structure-based analysis, therefore, has to consider how agents interact with it and reproduce it. Therefore, a political analysis has to remain historically grounded and pay attention to the variations in structural circumstances.

The third claim is that agents can seize the political opportunities or let them pass. In this regard, being able to spot political opportunities and exploit them is a form of discursive power. We study this more closely when we discuss norm diffusion. To the extent that political opportunities can be exploited both to strengthen or weaken institutionalisation, norm diffusion should not be considered as a one-way process. Rather, it is an iterative development in which both like-minded and not like-minded actors try to push for their preferred institutional design.

From the above we can see that the theoretical framework encompasses both agency and structures. One of the most difficult tasks social scientists face is to provide an explanation for social phenomena which encompasses both levels of analysis. Constructivism with its emphasis on the "mutual construction" has put forth that structures create agents and vice versa (Wendt 1987; Dessler 1989; Giddens 1979). Ultimately, however, constructivism has as yet not been able to find a satisfactory answer to this issue. Most approaches within constructivism emphasise one side over the other. In this regard, Wendt's conception is structural whereas the epistemic community literature is very much focused on agency (Wendt 1987; Haas 1992).[12] Given the specific research question of this thesis, it is beyond its scope to find a solution to this issue. Rather, I acknowledge the agency-structure problem as one that is inherent to the majority of social science research. The question, then, remains where to start with the analysis. The main argument accounting for the

[12] A more sophisticated solution to the agency-structure problem is provided by the morphogenetic approach which incorporates time to enable the examination of the mutual constitution (Archer 1995; for an empirical application see Sell 2003). But even here, ultimately the researcher has to make a choice where to start with the analysis.

institutional design is that POS provide a setting in which norm diffusion and institutionalisation takes place. Hence, the analytical framework starts at that point.

In summary, this section has briefly laid out the three main components of my theoretical claim by discussing the link between institutional design, POS and norm diffusion. As we have seen, I developed a distinctive approach to accounting for institutional design combining elements from different theoretical traditions such as thin constructivism, new institutionalism and the social movement literature, whilst using a thin rationalist ontology. We turn our attentions to this in the following sub-chapter.

1.4 Ideas, Norms and Multiple Stakeholders

Considering that part of the overall argument focuses on norm diffusion, norms and ideas are the central point of this thesis. We have already noted that NGOs, as norm entrepreneurs, attempted to diffuse the transparency norm in both cases. I argue throughout the thesis that the institutional design of both MSI differ because the norm entrepreneurs were unsuccessful in diffusing the idea to the same extent in the two cases.

This section contributes in two ways to the overall argument of the thesis. First, it lays the basis for a thin rationalist understanding of ideas in International Political Economy (IPE). This is important as we need to understand how norms affect actor behaviour. Secondly, to the extent that I also consider MNCs as targets of norm diffusion, we must discuss in what way MNC behaviour is affected by norms, an aspect widely ignored in IPE (for exceptions see below). [13]

Ideas impacting on state behaviour have become more prominent in IR since the constructivist turn (Katzenstein et al. 1998). For constructivists, ideas take centre-stage. Ideas as intersubjective beliefs are social facts that rest on a collective intentionality (Searle 1995; Wendt 1992). Human beings are only able to experience reality through ideas that interpret the social world. States develop norms that serve

[13] The IPE literature has generated a large research looking at how MNCs generate new standards (e.g. Cutler et al. 1999; Haufler 1999; Levy and Newell 2005). To what extent norms can impact MNC strategies is a question that has so far mostly been neglected.

as organisations of meaning and that help to constitute interests and identities by creating standards of appropriate behaviour (Ruggie 1998). We have already noted that such an understanding of ideas, however, encounters many methodological challenges in the empirical research, as constitutive effects are difficult to research.

Given the significant methodological difficulties, I propose not to abandon the study of ideas altogether, but to return to the approach Goldstein and Keohane (1993) chose when studying the role of ideas and norms in foreign policy. Without doubt, their approach is to date the most systematic and thoughtful attempt at studying the role of ideas in policy from a rationalist perspective. The approach enables me not only to avoid the methodological issues and pitfalls of constructivism, but also to broaden the analytical focus. Whereas constructivists emphasise that ideational facts define material factors in the first place (e.g. Kratochwil 1989; Wendt 1999), thin rationalists do not privilege ideas over interests or vice versa. Interests are informed by ideational factors, but behind every idea there is an interest (Hall 1986; Klotz 1995).[14] Using this angle, Goldstein and Keohane (1993) contend that the focus on ideas can be complemented by scrutinising the role of interests and power:

> "neither that a theory of ideas can stand alone nor that we can understand politics without understanding interests and power, we suggest that policy outcomes can be explained only when interests and power are combined with a rich understanding of human beliefs" (ibid. pg. 13).

Goldstein and Keohane (ibid.) distinguish three ways in which ideas impact in a causal way on policy. First, ideas may serve as road maps to define preferences and to establish causal relationships of their preferences and different political strategies. Second, they may serve as focal points in situations with multiple equilibria in order to select the best option. Third, by mediating between institutions and policy outcomes, they constrain public policy.

Critics of this approach contend that although it intends to "challenge both rationalist and reflectivist approaches" (ibid. 1993: 6), it remains in the rational-choice camp, as it is still based on the positive assumption of exogenous interest

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[14] In some cases the boundaries between rationalists and constructivists are very marginal. Finnemore and Sikkink (1998: 272), for instance, agree with giving equal weight to both ideas and interests by conceding that "arguments about whether behaviour is norm-based or interest-based miss the point that norm-conformance can often be self-interested, depending on how one specifies interests and the nature of the norm". While some constructivists recognise a basic comparability with such an understanding (Fearon and Wendt 2002; Klotz 1995), others distance themselves from all strands of rational choice (e.g. Ruggie 1998).

formation based on material concerns (Wiener 2003). This criticism stems from the fact that rationalism is commonly misunderstood in one significant way. Rationalism does not prefer material motivated preference formation over the ideational one. As Wendt and Fearon (2005: 59) stress, the theory "is strictly speaking agnostic on this question". Whereas thick rationalism makes assumptions on the content of interests such as self-interest and complete information about preferences (Ferejohn 1991), the thin approach does not entail any substantive proposition. Goldstein and Keohane (1993: 13) adopt such a thin approach when they argue that

> "people's preferences for particular policy outcomes are not given but *acquired.* World views and principled beliefs structure people's views about the fundamental nature of human life and the morality of practices and choices. (...)To understand the formation of preferences, we need to understand what ideas are available and how people choose among them" (own emphasis).

Such a preference formation is especially important in cases of uncertainty when ideas can act as road maps. Constructivists may criticise that ideas are then treated as auxiliary variables in the unlikely event of uncertainty. This is far from being so. Modern economic theory has long abandoned the assumptions of rational behaviour. As early as the 1950s, the concept of bounded rationality was developed, stressing that

> "the capacity of the human mind for formulating and solving complex problems is very small compared with the size of problems whose solutions is required for objectively rational behaviour in the real world" (Simon 1957: 198).

Given time constraints and the vast amount of accessible data, actors are actually not able to absorb and process all the information available. Bounded rationality, widely used in modern economics and foreign policy analysis, acknowledges that human beings cannot assess all the consequences of their actions and they cannot imagine all possible options available (for insights of psychology in public policy see Gowda and Fox 2002; for foreign policy see Hill 2003). The issue of uncertainty is much more common than constructivists assume. In fact, it is a key issue in daily political life.[15] Take for instance the issue area of international environmental politics. The politics attempting to regulate the production of chlorofluorocarbons were heavily influenced both by the lack of complete knowledge and the emergence of new scientific evidence (Litfin 1994). Currently, we are witnessing the same mechanisms with respect to greenhouse gases and the global climate regime. Bounded rationality

[15] The economic sociology literature looks at bounded rationality of firms and their social embbededness (see e.g. Smelser and Swedberg 2005). I discuss this literature in 3.2.2.

enables processes such as emulation, adaptation and learning to influence decision-making of actors. In light of new evidence or alternative interpretations, actors may revise their assessment of policies and strategies.

This brings us to the question of how MNCs are affected by ideational facts. Like states, MNCs are boundedly rational. Therefore, providing guidance in times of uncertainty is one of the most crucial ways in which ideational facts impact on MNCs. However, while the study of norms and ideas has become an important component for IPE, MNCs were largely neglected. In IPE, transnational advocacy groups have been identified as norm entrepreneurs raising awareness of and fostering norms in policy processes (Keck and Sikkink 1998; Finnemore and Sikkink 1998; O'Brien et al. 2000). The research programme remained largely limited to studying their impact on state behaviour (e.g. Risse et al. 1999). Only recently, IPE turned to studying the impact of civil society on the behaviour of MNCs (Gereffi et al. 2001; Florini 2000; Wapner 1996). MNCs are increasingly targeted by transnational advocacy networks, yet social scientists have rarely acknowledged that business is receptive to norms or even promotes norms themselves. This neglect stems from the fact that companies are often considered to be purely profit-driven. Sell and Prakash (2004) criticise the distinction between normatively motivated advocacy groups and materially oriented corporate actors. They contend that business actors can also be motivated by normative considerations by looking at the normative foundations that guide the actions of the pharmaceutical industry (see also Rochefort and Cobb 1994; Prakash 2000). Not only do MNCs accept and implement new norms, they are also actively engaged in the development and setting of norms (Flohr et al. 2007). With regard to MSIs, the significance of norms for MNCs is twofold.

First, MNCs are "norm consumers" (ibid.), as they learn about new norms using ideational facts as road maps or focal points when they have difficulties deciding on a new strategy. MNCs often experience uncertainty regarding what behaviour might be the best strategy to pursue their goals. For instance, with regard to CSR, companies face particular uncertainties as to what strategies they should adopt. The emergence of CSR can be considered as one of the biggest structural changes for business since the emergence of globalisation. What CSR entails is not as yet set in stone, but is rather a "discursive and material struggle about business practice; it represents a politicization of the social content of the institutions that

govern private economic activity" (Ougaard 2006: 236). Looking more specifically at the extractive industries sector, companies operate in hugely complex political and social conditions which they do not fully understand (Litvin 2003). Ibeanu and Luckham (2007) analyse how Shell was at first was unable to understand the extend of the political and social conflicts in the Niger Delta. It required Shell to become embroiled in the political crisis in order for the full extent of that conflict to be understood.[16] As we see from the case studies later in this thesis, especially in times of crisis, ideas can have crucial impacts on the strategies companies adopt.

Secondly, MNCs act as norm entrepreneurs when setting their own norms or further developing existing norms. With regard to creating self-regulatory regimes, there are numerous examples (e.g. Börzel et al. 2007; Haufler 2001b). However, MNCs also invoke norms so as to legitimise their interests and impact public perceptions (Sell and Prakash 2004; Fuchs 2005). As I argue later in this thesis, MNCs act as normative agents attempting to 'teach' other actors about their regime of truth. With regard to the institutionalisation of a MSI this can be crucial, as they can either assist norm entrepreneurs in spreading the norm or invoke other norms to fight that norm diffusion.

In summary, this sub-chapter served to underpin the ontological understanding of how norms affect actor behaviour by putting forth a thin rationalist understanding. Norms inform actor behaviour by serving as road maps or focal points in times of uncertainty. Given that all agents, states and MNCs are boundedly rational, ideational facts are crucial for understanding actor behaviour.

1.5 Methodology

The central theoretical puzzle of this study is how to account for the institutional variance of MSIs. The prime hypothesis on which the inquiry is based is that successful norm diffusion by norm entrepreneurs leads to a strongly institutionalised design whereas failed norm diffusion can account for weak institutionalisation. To answer the research question therefore, we first have to assess the institutional design of MSIs. From a research design perspective, the institutional design of the MSI is

[16] We will look more closely at Shell in the Niger Delta in Chapters 6 and 7.

the dependent variable (DV), with successful or failed norm diffusion being the independent variable (IV). POS facilitate or constrain norm diffusion and are therefore conceptualised as intervening variables (IntV) (van Evera 1997). Figure 1 illustrates the research design.

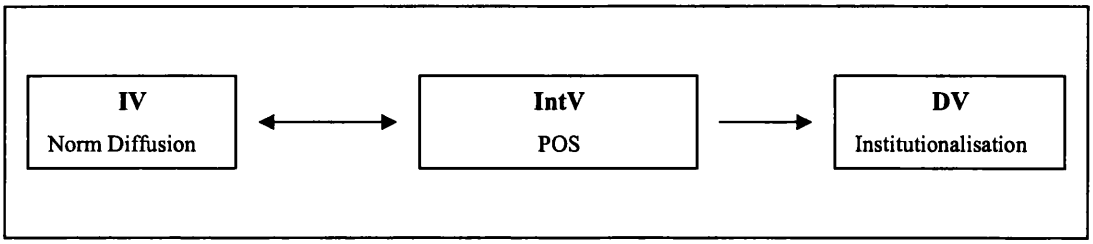

Figure 1 Research Design

By answering the puzzle, the aim of the thesis is to identify causal processes rather than to test hypotheses. As McKeown (2004) states, testing a set of hypotheses is an appropriate research task in situations where more than one substantive theory exists. The analysis of MSI institutionalisation and their institutional design features is still at a very early stage of theory building. Therefore, the contribution of this study cannot be a definite conclusion on the validity of the hypotheses. In a limited sense, the study nonetheless uses qualitative hypothesis testing which is considered as a repeating process that enables theory refinement (Munck 2004). Moreover, the thesis does not claim to identify *all* causal processes that can account for the explanation of the research question. Rather, it wants to establish one first approach to answer this question and, thus, also serve as guidance for future research on governance in MSIs.

The novelty of both the problem and the theory makes the use of quantitative methods impossible (Ragin et al. 1998). Hence, the methodological approach of the thesis is based on case-studies. More specifically, the study is based on 'structured, focused comparison' (George 1979). As George and Bennett (2005) explain, the comparison is 'structured' since the same research questions will be asked in each case, enabling the researcher to accumulate standardised data and consequently to make a systematic comparison. Furthermore, the comparison is 'focused' as it deals only with certain empirical aspects of the cases. The KP and the EITI are cases that are under-researched and would benefit from analysis from very different perspectives. However, for the sake of clarity and feasibility of a doctoral thesis, aspects that do not touch upon the research question are excluded from the analysis.

As to the within-case analysis, the study uses process tracing, which aims at setting up causal chains. This offers the possibility of exploring the causal mechanisms of independent, interdependent and dependent variables (George and Bennett 2005).

One problem that is often associated with 'small-n' research is that the case study design is not based on random samples. Rather, the cases are chosen intentionally so that they match with the research objective. However, this can make research more prone to selection bias. The case study selection is based on two deliberations which aim at minimising this issue. Firstly, the cases are selected across a range of values of the dependent variable (King et al. 1994: 141). In this regard, an MSI with a rigid institutional design (KP) is contrasted with a very soft initiative (EITI). Secondly, the case studies were selected in the same issue area (regulation of conflict-sensitive business practices with policy issue of opacity) in order to achieve a uniform character in their background conditions (van Evera 1997).

Although this thesis concentrates on the regulation of the extractive industries, the two specific sectors that are compared stand out as being unique among any other industry sectors. Sceptics might therefore object that the differences in the characteristics of the products, diamonds and oil, explain the research puzzle. After all, diamonds are a luxury product and therefore the industry would do anything to protect its reputation. In contrast, oil in a very literal sense fuels the world economy. Surely, the oil industry is less susceptible to consumer perception? I do not object that different product characteristics provide different opportunities for norm entrepreneurs to engage in norm diffusion, but as I explain in more detail in Chapters 5,7 and 8, the product characteristics provide different windows of opportunities.[17] Ultimately, however, it was the unique setup of the industry structure at the time institutionalisation occurred that increased the importance of the product characteristics of oil.

Another question concerns the substantial content of both MSIs. At first sight the KP and EITI seem to be very different regarding their objectives and means. The KP is a trade regime regulating the import and export of diamonds whereas the EITI is a revenue transparency regime. Thus, the question arises of whether it is possible

[17] As explained in depth in Chapters 7 and 8, the oil industry is not 'immune' to consumer pressure. For instance, during the consumer boycott of Shell in Germany as a response to the company's plan to dump Brent Spar into the North Sea, Shell's sales dropped significantly (Neale 1997).

to compare these two cases. The selection of these two cases was guided by the following considerations. The ultimate goals of both the KP and the EITI are the same: both intend to decrease the possibility of conflict and corruption by increasing industry transparency. The fact that a commodity tracking regime will be contrasted with a transparency revenue regime does not hamper the 'structured, focused comparison' since it is not the *substance* of the requirements (e.g. are the certificates forgery-proof?) that is subject to scrutiny but the *properties* of the MSIs (institutional design). Most of the indicators elaborated in Chapter 2 are universal, so that the analytical framework could as well be the basis of comparison across different policy issues such as labour rights or environmental degradation.

Other aspects of the EITI and the KP appear to render a comparative approach more difficult. Whereas the KP focuses on one industry sector, the diamond industry, the EITI encompasses all extractive industries (oil, gas, and mining). However, the wider scope of the EITI does not rule out the initiative as a case study since in the first phase of creation and implementation, the EITI was still limited to oil companies (Williams 2004). As a recent report concluded, the greater influence of the oil and gas industry can be seen as the EITI, more suited to regulate the oil industry, was still lacking the institutional features necessary to address the specific challenges of the mining sector (EITI 2006a). As the focus on mining was added later, the thesis only discusses the EITI with reference to the oil industry.

Despite some differences, the EITI constitutes a very good contrasting case to the KP for two reasons. On the one hand, as both initiatives try to regulate an industry which is said to be highly opaque as to their business operations in developing countries, we can control for the policy issue (Dufresne 2004; GAO 2002). On the other hand, both cases are linked, firstly, because the Like-Minded Group (LM-Group) pushing for strong institutionalisation was roughly the same.[18] Secondly, policymakers, when designing the EITI, purposefully set about replicating the success of the KP. The interesting question therefore is why this was not successful. Given those important similar dimensions and the dissimilar outcome, both cases are ideal for the purposes of comparison.

[18] In both cases the same NGOs started to campaign for a global solution to the issue and were afterwards included in the MSI. Moreover, the UK was in both cases one of the most important of the key players pushing for strong institutionalisation. I come back to this aspect later in the thesis.

The study draws from a wide range of sources. Both cases remain as yet not well researched.[19] My empirical data also consists of semi-academic writings, newspaper reports, and documents produced by governments, staff of international organisations, NGOs, firms and business associations. With regard to the sources, two crucial limitations have to be mentioned. First, concerning primary sources from the corporate sector, no relevant business documents regarding the developing of an industry strategy have been released for academic research. A great number of public speeches at the negotiations of both the KP and the EITI exist, helping to shed light on corporate preference formation. Secondly, it was possible to interview representatives in the two cases from each stakeholder group (governments, industry, NGOs). Yet, with one notable exception no interviewee was available from resource-rich countries, most notably those countries that opposed strong institutionalisation such as India and Russia in the case of the KP or South Africa and Angola in the case EITI. In those cases, I had to rely extensively on secondary sources and secondary or circumstantial evidence to trace preference formation.

The interviewees were identified and selected based on written sources (list of participants of conferences, meetings or hearings), relevant contacts on the websites of the KP and EITI as well as on cross-referrals by other interviewees. The interviews are semi-structured for two reasons. Firstly, in order to undertake a 'focused, structured comparison' the same data has to be available for both cases. Secondly, semi-structured interviews are particularly useful when exploring a new issue in detail and constructing a theory (Esterberg 2002). This method also limits the possibility of omitting explanatory variables as the interviews allowed for a certain extent of flexibility. Interview material remains unattributed in this thesis, but Appendix 1 lists the interviewees along with their professional affiliation and the date of the interview.

1.6 Overview of the Thesis

[19] Most academic accounts of the KP and the EITI focus on why they came into existence but do not trace the specific preferences of the stakeholders to explain why the institutions were designed in that specific way (Price 2003; Feldman 2003; Grant and Taylor 2004; Schefer 2005; Tamm 2002; Schumacher 2004; Williams 2004). The notable exception is Scheiber (2006) who looks at institutional design with regard to the KP but does not compare it with the EITI.

The study consists of three parts. Part one develops the theoretical framework and operationalises the dependent and independent variables. Subsequently, the theoretical framework is applied to the two cases. Part three provides a summary, the conclusions and an outlook.

Chapter 2 addresses the dependent variable, the institutional design of MSIs. The review of the literature on MSIs establishes the relevance of this thesis' research question. Furthermore, I discuss why I chose institutional design to operationalise policy impact rather than other concepts such as regime effectiveness or compliance. Subsequently, the chapter introduces the concept of institutional design in the context of MSIs. It critically discusses existing analytical frameworks in light of their applicability to soft law mechanisms such as MSIs. I conclude the chapter by establishing my own framework for assessing the institutional design of MSIs.

Chapter 3 elaborates the main theoretical argument of the thesis – how we can account for strong or weak institutionalisation of MSI. Since Chapter 1 already provided a review of existing institutional design theories, I directly elaborate on the link between POS and successful norm diffusion so as to achieve strong institutionalisation.

In the second part, the thesis turns to the case studies. I analyse the KP and the EITI, each in two chapters. Chapters 4 and 6 begin with an overview of the context of the case, introducing the policy issue, a detailed analysis of the industry structure and a narrative of how the initiative evolved. The chapters conclude by defining the dependent variable by applying the analytical framework established in Chapter 2 to assess the institutional design.

Chapters 5 and 7 account for the variation in institutional design by looking at the negotiation dynamics of the KP (5) and the EITI (7). By looking at different opportunity structures that empowered either norm entrepreneurs or opponents to diffuse or constrain the new norm, the chapters apply the explanatory framework set up in the third chapter.

The concluding Chapter 8 summarises the findings of the four empirical chapters and assesses the strengths and weaknesses of the approach adopted. The chapter also broadens the debate by discussing the wider implications that derive from this research for MSIs and the study of norms in global governance.

CHAPTER 2

The Institutional Design of Multi-stakeholder Initiatives

International institutions are traditionally a central topic in IR, but with globalisation and the growing importance of NSAs in global politics the features of international institutions begin to change. MSIs are the latest addition to the so-called new forms of governance in which NSAs – with or without the state – create institutions to find solutions to global policy issues.[20] As we explore later in this chapter, MSIs are hybrid institutions in which states allocate important participation and decision-making rights to NSAs. Since MSIs become a more popular tool for policy-makers, practitioners and academics alike need to know how to design strong MSIs.

This chapter is dedicated to the dependent variable of the thesis, MSIs and their institutional design. The overall aim of this chapter is to develop a framework which helps to assess whether MSIs are successful in solving the given policy issue. MSIs are a relatively new governance phenomenon, so we introduce these forms of governance to the reader in the first sub-chapter. A literature review defines MSIs and sums up the main research insights. We conclude that so far, the question of why some MSIs develop into strong institutions and others do not, remains highly under-researched. The first sub-chapter then turns to scrutinising what concept could be used to measure whether an MSI is strong or weak. I argue that the concept of institutional design is the appropriate one. The second sub-chapter then scrutinises more profoundly that concept, in particular in light of its applicability to soft law institutions. Finally, the third sub-chapter establishes a framework for assessing the institutional design of MSIs on the basis of the concept of legalization and existing literature on new forms of governance. I contend that the institutional design of MSIs can be assessed by analysing their levels of membership, obligation, monitoring and enforcement. The framework hence allows categorising MSIs in strongly or weakly institutionalised initiatives.

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[20] For an overview of the different new forms of governance, see Haufler (2006) or Hall and Biersteker (2002).

2.1 Measuring the Impact of MSIs in International Relations

The role of international institutions has been a central research topic in IR at least since the end of World War II. We have already noted neorealist and neo-liberal institutionalist conceptions of international institutions in the previous chapter. Since the recent turn of IR towards constructivist and sociological conceptions of world politics, the role of international institutions has been emphasised even more strongly. Constructivists reject the notion that states are self-interested utility maximisers. States shape international institutions as much as they are shaped by them (Wendt and Duvall 1989; Kratochwil and Ruggie 1986).

With increasing globalisation, international institutions flourish in manifold forms, ranging from traditional intergovernmental regimes to private governance. That international institutions fulfil crucial roles in global governance is now undeniable. Theoretically, the discussion has turned to focussing on the impact of international institutions. Why is it that some international institutions yield more policy impact than others? As to intergovernmental institutions, regime theory has produced a large range of literature (the literature is too vast to cite adequately at this point, two good reviews are Young 2002 and Zürn 1998). With regard to new forms of governance, this kind of research is still in its infancy (see section 2.3 for a discussion of the existing literature). Yet, with the growing importance of governance forms such as MSIs, we need to know why some initiatives are more successful in producing policy outcome than others.

This sub-chapter addresses the question by scrutinising what approach could be useful for measuring success or failure of MSIs. As we see from section 2.1.2, regime theory has produced three approaches addressing this question. The sub-chapter thereby contributes to defining the dependent variable in this thesis. However, before we proceed to defining the dependent variable, we first need to make sense of MSIs as international institutions. Therefore, to begin with, we turn to defining MSIs and reviewing current research on these institutions. It is important to analyse the current research on MSI to establish whether our research question is practically and theoretically relevant.

2.1.1 Old Wine in New Bottles?

This section serves as a literature review to define MSIs within IR and to scrutinise whether or not our research question is relevant. In Chapter 1, we noted that MSIs have only recently gained significance in international relations. So, what do we actually know about them and to what extent are MSIs different from other new forms of governance? Research on MSIs is still in its infancy, as scholars have only recently started to study this form of governance in detail. Overall, we can identify three research topics:

- What are MSIs, why are they created and what functions do they fulfil in global politics?
- Do MSIs increase the legitimacy and accountability of global governance?
- What are the motivations and objectives for the different stakeholders to be engaged in MSIs?

I first turn briefly to each of the three topics and then address the important research lacuna concerning the policy impact of MSIs. As we can see from the below, the main criticism is that MSI research is still at a very sketchy stage. A small number of comparative or theoretical studies exist, but overall, a combination of the two – comparative case studies grounded in a robust theoretical framework – is still missing. Research has been very policy-driven (e.g. Nelson 2000; Utting and Zammit 2006; Reinicke et al. 2000) whilst ignoring IR theory, notably regime theory. However, these theories can provide a useful framework for rigorous comparative research.

Early research was mainly descriptive. As with all new forms of governance, MSIs were created on a global scale due to increasing globalisation and the growing authority of NSAs. As a response to the rising significance of NSAs,[21] the Global Governance literature distinguished three different but interacting governance spheres: intergovernmental governance, private governance (e.g. Cutler et al. 1999) and world civic politics (Wapner 1995). MSIs transcend the intergovernmental-transnational boundaries by including NSAs as equal partners in their decision-making processes. As Haufler (2006) rightly points out, a common label for this

[21] A good overview on NSA scholarship provide Josselin and Wallace (2001a)

governance phenomenon is still missing. In the literature, one can find the terms "global public policy network" (Reinicke et al. 2000), "public-private partnerships" (Börzel and Risse 2005) or MSI (Haufler 2006). In addition to this, a common definition of these collaborative initiatives has as yet to be found. One group of scholars refers to public-private partnerships as institutionalised cooperation that involves public actors, business and civil society (Nelson 2002a: 46; Utting and Zammit 2006:1; Börzel and Risse 2005: 198). In contrast, the second group of scholars has a narrow understanding of public-private partnerships, referring only to the institutionalised cooperation of public actors and business (Bull and McNeill 2007: 6; Broadwater and Kaul 2005). I chose the term MSIs for those modes of governance that involve national and intergovernmental bodies, private actors and NGOs in order to avoid misunderstanding and because the term best reflects the trisectoral nature of the governance arrangement.

For one part, MSIs can be considered as international regimes since they generate "norms, rules, principles and decision-making procedures around which actor's expectations converge in a given area of international relations" (Krasner 1983: 2). Thus, they share the properties of intergovernmental soft law agreements which are politically but not legally binding. I elaborate on this later in this chapter. States or other public actors are crucial in the initiatives since they provide the legal and institutional framework, but they differ from traditional intergovernmental regimes as NSAs are able to directly influence agenda-setting and the negotiation of regulations.[22] Corporations are able to shape the norms and standards of behaviour as they are given a lot of weight through self-regulatory and co-regulatory mechanisms.[23] To some extent, market actors have the right to shape their own technical standards and codes of conduct. In other parts, business has to cooperate with other actors. MSIs differ from co-regulatory mechanisms as they integrate the third dimension of governance, world civic politics. NGOs usually ally in transnational advocacy networks so as to campaign against state or corporate behaviour (Keck and Sikkink 1998). Increasingly, however, NGOs have striven to gain political influence by cooperating with the actors they had once campaigned

[22] Of course, NSAs could always exert leverage in intergovernmental regimes to some extent by lobbying. But being integrated into the negotiation process as an equal participant dramatically transforms the power to set agendas and shape the outcome (Fuchs 2005).
[23] Co-regulation involves both public actors and private actors. This tool of governance combines public regulatory aims with private sector efficiency (Haufler 2006).

against. Thus, they establish norms and standards of behaviour, and monitor and enforce compliance in alliance with states and companies. Yet, as I demonstrate in Chapter 3, their techniques of exerting political influence have remained the same, as their most important assets are still moral authority, the ability to mobilise globally and their knowledge.

As MSIs incorporate public actors, private actors and NGOs, they should be conceptualised as hybrid institutions at the intersection of intergovernmental governance, private governance and world civic politics. In this regard, they are unique among the new modes of governance as they are neither public nor private. Although MSIs share the characteristics of the three types of governance to some extent, they should not be considered as the sum of the three forms. Rather, the merging of the different spheres forms a new tool of governance with distinctive properties. The cooperation of diplomats, activists and businessmen creates new ways of negotiation and governance, a "multistakeholder diplomacy" (Ballentine and Nitzschke 2005) which neither of the before-mentioned governance forms can fully conceptualise.

How important are MSIs empirically, though? Public-private partnerships and MSIs have long played a role in domestic politics (Rosenau 2000). It is only recently that MSIs have gained relevance in global public policy. Broadwater and Kaul (2005) count at least 400 partnerships that address a diverse range of topics such as the spread of communicable diseases, climate change or poverty.[24] The reasons for this increase are manifold. One reason is the changing international political environment of the post-Cold War era coupled with increasing globalisation. It provides opportunities for new roles for NSAs and multilateral institutions. However, one should not go as far as foreseeing the 'retreat of the state' (Stange 1996). Börzel and Risse (2005) rightly refute the view that conceptualises MSIs and the emerging role of other forms of private governance as zero-sum games between states and NSAs. Rather, we should adopt the perspective of transformationalists (Held et al. 1999), who contend that the state *per se* is neither dominating the international system nor disappearing. It is still the major actor, but globalisation has led to a reconfiguration of political power and authority. The policy-making capacity of the

[24] In some issue areas partnerships are increasing more than in others. The health sector especially has produced a large number of partnerships (Utting and Zammit 2006: 14). This can be contrasted with numbers from the 1980s, where only 50 partnerships were counted (Broadwater and Kaul 2005:6).

state has become fragmented, permeated by NSAs and transnational networks on both the domestic and the international level (Cutler et al. 1999; Keck and Sikkink 1998; Slaughter 2004). This transformation leads to a new "public global domain" which is "a more inclusive arena" for all societal actors (Ruggie 2004: 503).

Another crucial factor for the proliferation of MSIs is seen in the recent turn of the UN from anti-business to pro-business which occurred with the appointment of Kofi Annan as UNSG (Coleman 2003). Several initiatives were launched: the Global Compact in 1999, the Millennium Declaration which dedicated Goal 9 to the creation of a global partnership for development; in summer 2000 the UNSG issued the UN Guidelines for Cooperation with the Business Community; and in the following years the UN General Assembly (UNGA) issued three resolutions regarding partnerships with the private sector (A/RES/55/215, A/RES/56/76, A/RES/68/129). The trend was not restricted to the UNSG and UNGA, but continued at the International Conference of Financing for Development in Monterrey, Mexico, in 2002, which stressed the need for more cooperation between the public and private sector to overcome the gaps in development finance. The World Summit on Sustainable Development (WSSD) in Johannesburg in September 2002 not only launched the EITI (see chapter 6) but also 200 partnerships (most of which have not continued to the present day). This trend was followed by launching other MSIs outside the UN, such as the Global Reporting Initiative (1997) or the broad number of MSIs in the extractive industries.

Next to defining MSIs and observing a new trend, early research also took stock of what types of partnership existed. There exist various typologies of partnerships that emphasise different aspects (see e.g. Tesner and Kell 2000; UN General Assembly 2003, 2005). The following typology draws from Witte et al. (2003) and Bull and McNeill (2007). They propose a categorisation into four ideal models according to their function. *Implementation partnerships* are created in the aftermath of intergovernmental agreements. The Clean Development Mechanisms are an example which are supposed to facilitate the implementation of the Kyoto Protocol. *Coordination Networks* such as the Roll Back Malaria Initiative pool actors from the different sectors so as to coordinate their action strategies. The networks facilitate broad-based knowledge exchange between national and intergovernmental bodies, NGOs and the corporate sector (Witte et al. 2003). *Financing Networks* mobilise funds and distribute financial aid in order to realise specific goals. Financial

resources stem from either direct fundraising at public and private bodies or by promoting and facilitating FDI flows to developing countries. Of crucial importance is the private sector as it contributes its significant expertise in funding and technical expertise (Bull and McNeill 2007). An example is the Global Fund to Fight Aids, Malaria, and Tuberculosis which was established in 2001. Finally, *negotiation networks* fulfil the most difficult and contentious tasks by setting norms and standards to solve global and complex issues. Examples are the case studies of this thesis, the KP and the EITI.

With regard to negotiation networks, a more analytical question came to the centre of academic attention focussing on whether these initiatives increase legitimacy and accountability in global governance. Approaches focusing on 'cosmopolitan democracy' and 'transnational civil society' advocate that through NSA involvement the legitimacy of decision-making processes is considerably increased (Held 1995; Wapner 1996). In this regard, MSIs are considered as a means that contribute to democracy on the global level. However, as pointed out by various scholars, the capability of MSIs to increase accountability is also limited (Dingwerth 2007; Koenig-Archibugi 2004; Ottaway 2001). First, some scholars doubt that NSAs can contribute to accountability as these actors are very often unaccountable themselves (Nelson 2002b). Second, these initiatives often lack adequate monitoring (Ruggie 2002; McIntosh et al. 2004). Some scholars even consider the inclusion of private actors as a danger to legitimacy and accountability (Cerny 1999; Paul 2001). Especially, it is feared that the inclusion of market actors leads to a "de-governmentalization" and "commercialisation" of international politics (Börzel and Risse 2005; Brühl et al. 2001). In the worst case, partnerships will not promote good global governance but deepen the North-South divide. This has led to researching the unintended side effects of MSIs, such as the fragmentation of global politics and the intergovernmental organisations' disempowerment (e.g. Richter 2003, Zammit 2003, Utting 2003). The WSSD, for instance, is criticised for supporting a "multilateralism à la carte in a global multistakeholder bazaar" where business chooses the arrangements that suit its interests best whilst public actors are no longer pressured to set up binding regulation (Hale and Mauzerall 2004: 223; Pallemaerts 2003: 286). An example of this was the "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights" by the UN Sub-Commission on the Promotion and Protection of Human Rights. Companies

had lobbied against the adoption arguing that the Norms were unnecessary due to the establishment of voluntary initiatives (Utting 2005; Utting and Zammit 2006).

Linked to the question of legitimacy and accountability is the question of why the different stakeholders engage in MSIs. As to the national and intergovernmental bodies' motivation to support these cooperative arrangements, functionalist informed research puts emphasis on the demand-side perspective (Reinicke et al. 2000). According to this view, MSIs arise due to the new needs posed by the new challenges of globalisation. In times of economic liberalisation, rapid technological change and political 'regulatory chill' states realise the need to integrate societal and corporate actors in order to provide public goods (Kaul 2003). With states more prepared to integrate NSAs into public-policy making, NGOs are also increasingly willing to cooperate with other actors. Arguably, a large number of NGOs, such as Amnesty International (AI), Greenpeace and Human Rights Watch, still use the confrontational strategies of 'naming and shaming' companies or states. However, at the same time these NGOs also devote a large amount of their financial and human resources to cooperative projects with states and MNCs, believing that both cooperation and confrontation are different strategies for reaching the same goal. The cooperative attitude of these NGOs does not, of course, go unchallenged, as they are accused by some of their peers of loosing credibility and helping the culprits' greenwash (Kuper 2004; Winston 2002). With regard to the corporate side of MSIs, research in IR and International Business could contribute to a better understanding of this question by highlighting corporate incentives in becoming involved. The motivations for business to be engaged depend on various factors but a crucial one is the aim of the initiative. Some partnerships aim at creating new or deepening existing markets. For the companies, this opens the possibility of broadening the sources of profit. MNCs are reluctant to engage in these markets alone due to transaction costs, or political and commercial risks. By cooperating with public actors and NGOs, these risks can be alleviated (Reinicke et al. 2000). Related to this, some companies consider cooperation as a competitive advantage over their rivals. MSIs can provide new business opportunities by creating new market entry barriers. For instance, imposing higher standards of corporate conduct is supported by those companies that are able to comply with them. Especially larger companies consider stricter regulation as a comparative advantage (Bernauer and Caduff 2004; Martin 2002). Moreover, cooperation can be explained by the companies' public policy strategies.

Launching regulation together with public bodies and NGOs can prevent stricter public regulation. Thus, companies are able to shape the regulation according to their needs instead of being on the recipient of regulation. Moreover, participating in MSIs can improve relationships with the other stakeholders. This is especially important for the extractive industries whose operations are dependent on the 'license to operate'. As the extraction of natural resources is accompanied by negative environmental consequences, maintaining good relations with local communities is essential. If the extractive industries operate in conflict- or corruption-prone regions, cooperation in MSIs can be part of their risk and crisis management. Business engagement can also increase brand value and reputation. This can be crucial especially when the companies have come under public pressure by public bodies or NGOs (Zandvliet 2005; Yakovleva 2005). Using a neo-Gramscian approach, some scholars suggest that partnerships provide business with the opportunity to secure a capitalist hegemony (Blowfield 2005; Utting 2002). Corporate leaders consider it as a political strategy that can reconcile the demands from the anti-globalisation movement with their interest to maintain a business-friendly international system. Finally, the personal values of individual executives can play a crucial role, too. In the context of market failures or changed political and economic circumstances in the post-Cold War world, some managers see it as their responsibility not only to increase business performance, but also to make a contribution to society (Spar and La Mure 2003; Hemingway and Maclagan 2004). In some cases, especially when various companies participate, it can be difficult to ascertain one specific motivation, as managers might have different reasons for cooperation.

While these research findings are very important for the understanding of MSIs in global governance, another question has been raised more recently regarding their policy impact. Considering that a great number of MSIs are created across different policy fields, scholars and practitioners are left with the question of whether and (if so) why they matter in global politics.[25] Two questions can be derived from this. First, do MSIs have more impact than intergovernemental regimes and second, what constitutes a successful MSI in contrast to a failed one? The first question is difficult to answer as we would have to analyse an intergovernmental regime and an MSI regulating the same policy field. Empirically, such a comparison is as yet hard

[25] This question is increasingly looked at with regards to private governance as well (Pattberg 2007).

to find, so it is not surprising that research on this issue remains rare (for exceptions see Dingwerth 2004; Reinicke et al. 2000). Nevertheless, the question is discussed in a controversial way on a theoretical level. The functional approach emphasises the high problem-solving capacity of MSIs due to the comparative advantage to normal intergovernmental governance of a variety of stakeholder getting together to solve global issues. Constructivist approaches highlight the possibility of higher compliance rates in MSIs as they can induce social learning and socialisation processes (Dingwerth 2004; Dubash et al. 2001; Ruggie 2001). Moreover, since the norm-targets negotiate the norms in the first place, the stakeholders could develop a perception of ownership of the standards which might lead to more effective regulation and stronger compliance (Brinkerhoff 2002a; Bernstein 2005). In contrast, some researchers fear that including a large number of stakeholders will only lead to standard setting at the lowest common denominator (Börzel and Risse 2005).

The second question is both empirically manageable and of the utmost empirical and theoretical significance. If this form of governance is to remain in international relations, policy-makers and scholars alike should know what constitutes a successful MSI in contrast to one that is unable to make a significant impact. Only a few research outcomes could be generated in this issue so far. The most extensive research by Reinicke et al. (2000) looked at a number of MSIs from a functional point of view and came to the conclusion that those initiatives have a comparative advantage for solving global issues. Börzel and Risse (2005: 208) criticise the work of Reinicke et al. for their focus on successful cases rather than including failures. Another issue is the question of how to measure the impact of MSIs. Dingwerth (2004) rightly points out that specific criteria must be established which enable an objective assessment. However, as the research of the effectiveness of international regimes demonstrates, this is not an easy exercise. The remainder of the chapter will therefore look more closely at what could be the elements of an analytical framework for assessing the impact of MSIs.

2.1.2 Measuring Institutions: Effectiveness, Compliance and Institutional Design

Before being able to establish such an analytical framework, we have to know how to measure 'political impact' in the first place. That this is not an easy task can be demonstrated by taking a look at regime theory in the past decades. Three approaches exist attempting to measure institutional impact in a different way: effectiveness, compliance and institutional design. This section will discuss each of them in the light of applicability to measuring the impact of our two case studies. I conclude that both effectiveness and compliance are not appropriate for assessing the impact of MSIs. Institutional design is therefore more suitable, as it focuses more on the *potential* impact.

The most intuitive way of measuring institutions is to enquire about their effectiveness. Yet, when researching regime effectiveness, the first challenge is to define effectiveness. The literature uses many complementing and competing definitions. We can conceptualise effectiveness by measuring political impact. Did the regime have the ability to solve the issue? However, research on environmental regimes suggests that this conceptualisation raises two difficulties. First, even the most effective regime will not be able to immediately eliminate the problem it was designed for. Issues may endure even if all regime regulations are implemented because of other social practices that cannot easily be eliminated (Levy 1996). Second, there are also other influencing factors that aggravate a political or environmental problem, such as biological or social ones, which cannot be influenced by the rules of the regimes. Therefore, researchers often refer to regime effectiveness as 'problem-solving *capacity*' (Levy 1996). Scholars do not look at whether the regime solves the problem for the reasons mentioned above, but analyse whether the measures agreed upon are appropriate to effectively address the problem.

With regard to the independent variable (*why* the regime is effective), the most prominent approach is a functional one which points to the nature of the issue being regulated (Brown Weiss and Jacobson 1998; Miles et al. 2002). Given that we control the policy issue in our case studies, such an approach would predict that the KP and the EITI would be equally effective. Yet the empirical analysis contradicts such a prediction. Overall, research on regime effectiveness has produced a broad range of definitions and explanatory variables, but these different approaches are

highly inconsistent and come to contradictory conclusions. Using this concept for measuring the impact of MSIs is therefore methodologically problematic. As to the context of MSIs in the given policy field, measuring regime effectiveness is even more difficult. Firstly, this inquiry looks at institutions that were set up only recently.[26] It is difficult to assess their effectiveness given the short time of their operation. In addition to this, another issue arises solely concerning regimes in the field of illegal economic activities. It is very difficult to assess the quantity of illegally-traded commodities and corruption. Up until now, the data available has been extremely poor in terms of availability and quality. Although several datasets exist for measuring corruption and the flow of illegal diamonds for individual countries, no research has been undertaken on a global level.[27] Producing the data myself would be academically and financially unfeasible given the limited scope of the thesis. Due to the manifold difficulties, regime effectiveness offers no theoretical framework for assessing the political impact of the KP and the EITI.

Another way to measure the impact is to scrutinise their behavioural effects. Compliance is defined as "rule consistent behaviour" (Young 1979; Victor et al. 1998; Mitchell 1994a).[28] There are mainly three approaches to explain compliance. Rational approaches conceptualise actors as self-interested utility maximisers who have well-defined interests. The actors behave in an instrumental-rational way by calculating the costs and benefits of their behaviour (March and Olson 1998). Institutions impact the actors by changing their cost-benefit calculations through (positive) incentives and (negative) sanctions (Keohane 1984; Victor et al. 1998). Given the absence of pre-existing bodies that strengthen the participants' commitments, states must ensure that "illegitimate behaviour" and "procedures to discourage cheating" are specified by the institution (Hasenclever et al. 1997: 188). Monitoring and sanctions mechanisms are therefore crucial to ensure compliance as they increase transparency and limit the possibility of free-riding. Managerial approaches put the emphasis on the role of positive incentives that contribute to compliance. Overall, states wish to comply with international norms. Cases of non-

[26] The KP began in 2000 and the certification scheme was set up in 2003. Discussions about the EITI began in 2001 and implementation of the EITI criteria and principles started in 2005. For more details about the development of the two initiatives see Chapters 4 and 6.
[27] In the case of goods which can be traded both legally and illegally one can analyse whether the amount of the legal trade has risen since the establishment of the regime.
[28] Pattberg (2007) looks at the influence of private governance by measuring behavioural changes.

compliance are mostly non-intentional and due to the incapacity of states to implement and enforce the norms as well as misunderstandings of the norms in question (Chayes and Chayes 1993, 1995). Institutions play a significant role in assuring compliance not so much because they give positive or negative incentives, but because they assist those states which lack the necessary resources for norm implementation (e.g. through financial and technical assistance, legal expertise). Finally, constructivist approaches have different assumptions about the motivation of action. Institutions shape the identities and preferences of their members and induce socialisation and learning processes. Over time, actors will internalise the new norms and compliance will be taken for granted (Caporaso and Jupille 2001; March and Olson 1998). While measuring compliance is a feasible endeavour for a doctoral thesis, it is not a reliable indicator of whether or not institutions have a substantial impact. The compliance rates of the regime may be high, but the requirements the participants have to comply with do not reflect what *should* be done in order to address the issue, but only the lowest common denominator of the different bargaining positions when the institution was set up (Downs et al. 1996). In addition, measuring compliance rates is difficult given the short time of operation of the KPCS and the EITI. We must therefore look for another possibility to measure impact.

The final option is to examine the institutional arrangements. It is assumed that specific institutional arrangements shape the impact of the institution. In the last two decades, along with the awareness of the proliferation and growing importance of international institutions, scholars have begun scrutinising institutional differences across international institutions. In addition, a number of approaches have crystallised to assess and describe the differences of the *institutional design* of international regimes.[29] The underlying rationale of this endeavour is that "specific institutional features (...) may account for variation in institutional effect" (Bernauer 1995: 361; Mitchell 1994b). The hypothesis, derived rather from intuition than from rigorous research, is that a strong institution will be more successful in managing political issues than a weak one (Bernauer 1995: 362). The important question, however, is: what constitutes a *strong* institution? Proponents of functional regime theory took the first steps towards defining *strong* and *weak* institutions albeit without adding a normative claim. They mainly distinguished between formal and

[29] I review the literature specific to institutional design in detail in the following sub-chapter.

informal institutions (Lipson 1991; Abbott and Snidal 1998; Morrow 2000). A more recent framework builds on this dichotomy in a more elaborate fashion by integrating insights from International Law into functional regime theory (Krasner 2000). The concept of *legalization* has attracted great academic attention in recent times and distinguishes international institutions according to their degree of legalization assuming that a hard law agreement is a stronger institution than a soft law agreement (Abbott et al. 2000). The advantage of this approach to measuring institutions is that one can compare relatively new international agreements, as the focus is the institution itself and not its effects. It is therefore also appropriate to measure the fight against illegal economic activity. One can say that the approach measures the potential for success or failure of a given institution. The next sub-chapter presents an in-depth discussion of the literature of institutional design.

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To sum up this sub-chapter, I defined MSI as international institutions incorporating states, NGOs and MNCs. MSIs have gained empirical significance since the end of the last decade both because of the rise of NSAs in general and because of the emergence of a more favourable climate for the establishment of such initiatives. By reviewing current research of MSIs in IR, we found a crucial research lacuna, the issue of policy impact. Whether MSIs are just a current trend or remain in international relations for the long run is difficult to predict. However, if such initiatives are more than a trend, it is crucial to know whether or not MSIs have policy impact. Therefore, the research question of this thesis, why are some MSIs more successful than others, has both practical and theoretical relevance. It is practically relevant, as decision-makers should know the success factors of MSIs before they continue designing such institutions. It is theoretically relevant as by reviewing the literature, no scholar has addressed this question by overcoming the selection bias. It is therefore high time that successful and failed MSIs are compared and reasons for success and failure established. The sub-chapter then turned to identify a possible framework for measuring policy impact. We concluded that both regime effectiveness and compliance were inappropriate for measuring the impact of the KP and the EITI. While institutional design is only a proxy by not measuring actual but potential impact, we found that such an approach would be more suitable

in the given context. We therefore now proceed by looking at the approach in more detail.

2.2 The Institutional Design of International Institutions

After having defined the dependent variable of this thesis as institutional design, we now need to establish a methodology by which we can assess the institutional design features of the MSI. This sub-chapter serves to discuss two prominent approaches to institutional design in light of its applicability to MSIs. I conclude that while both approaches offer important insights into how a methodology should look, the substantive content of both approaches is not suitable for assessing the design of MSIs. The sub-chapter therefore reveals the necessity of establishing an analytical framework for new forms of governance when addressing the question of policy impact.

2.2.1 Theories of Institutional Design

Two approaches to measuring institutional design have so far been developed. The 'Rational Design of International Institutions' (Koremenos et al. 2001) identifies multiple aspects that are significant for assessing institutional design: membership rules, scope of issues covered, centralisation of tasks, rules for controlling the institution, flexibility of arrangements. The approach follows a neo-liberal institutionalist logic whereby the design is explained according to the type of policy problem and number of participants, but the approach makes no judgments about the degree of institutionalisation.

The more prominent approach however fuses insights of IR with International Law. The so-called legalization approach distinguishes between two concepts of law, legally binding law – so-called *hard* law – and non-legally binding but politically committing law – *soft* law. As Kirton and Trebilcock (2004: 8) stress, there are a number of different definitions of both concepts in the literature. According to Chinkin (1989: 851)

> "Soft law instruments range from treaties, but which include only soft obligations ("legal soft law"), to non-binding or voluntary resolutions and codes of conduct formulated and accepted by international and regional organisations ("non-legal soft law"), to statements prepared by individuals in a non-governmental capacity, but which purport to lay down international principles"

Soft law may prescribe a set of vague or imprecise international minimal standards, leaving much of its content to the discretion of the participating states (Chinkin 2000; 1989: 862). Soft law arrangements essentially consist of two instruments, voluntary standards and informal institutions "that depend on the voluntarily supplied participation, resources and consensual actions of their members" (Kirton and Trebilcock 2004: 4). Participating states specifically articulate the non-binding character ('*politically* binding') in soft law agreements. Although they miss strong surveillance and enforcement mechanisms offered by hard law, soft law can entail provisions for monitoring and enforcement as well (Chinkin 1989: 862). In contrast to soft law, hard law is said to have a high credibility due to its possibilities of adjudication.

How can we operationalise the differences between hard law and soft law? The concept of legalization combined the discussion in International Law with functional regime theory in IR. Abbott et al. (2000) define the degree of legalization of a specific institution along three dimensions. The first one, obligation, describes the degree by which states are bound by their commitments. A hard law agreement must specify the exact obligations undertaken or rights granted. Non-implementation or violation of these obligations by one or more state parties opens the possibility for judicial means of reparation by the other state parties. Precision refers to the ability to develop a clear-cut and unambiguous set of requirements and action-plans. Compliance theory points to the lack of precision as one of the main reasons for non-compliance (Chayes and Chayes 1995). Thus, the increasing vagueness of an institution's rules result in an increased loss of its credibility. The last dimension is delegation, the extent to which the authority of rule implementation, interpretation, application and dispute settlement is referred to third parties. The concept of legalization specifically addresses institutions made by states.
The concept enables us to grasp the continuum of different forms of international law as indicated in Figure 2.

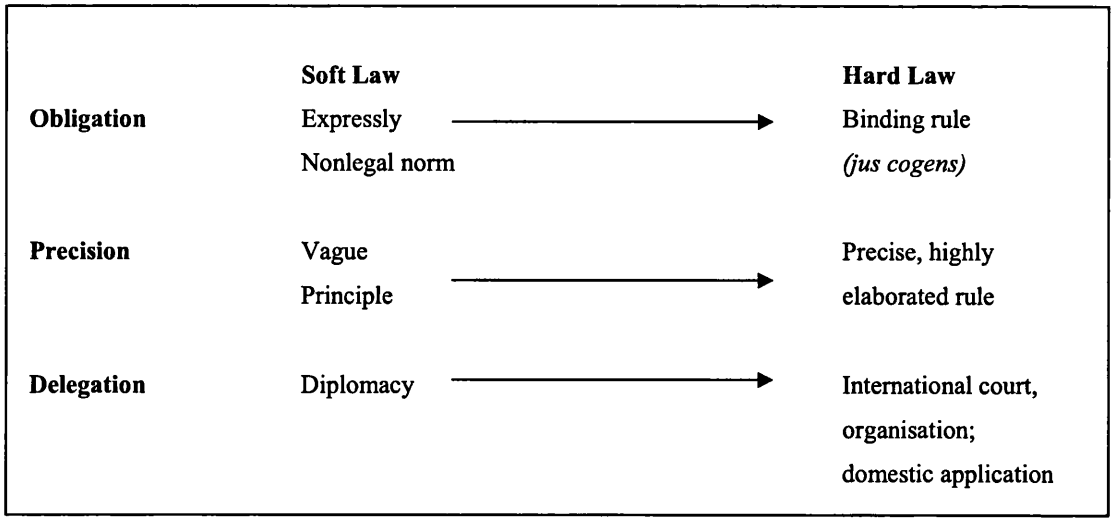

Figure 2 The Dimensions of legalization (Abbott et al. 2000: 404)

In sum, two approaches for measuring institutional design exist. The approach by Koremenos et al. (2001) simply offers a description and an explanation of the development of specific institutional designs, whereas the legalization approach also makes judgements about the degree of institutionalisation, categorising institutions as hard and soft law agreements.

2.2.2 The Variety of Soft Law, MSI and the Extractive Industries

The concept of legalization demonstrates that international institutions exist in many forms, but we can not only distinguish between hard law and soft law. In this section I argue that soft law itself can be found in a variety of forms, a phenomenon which is under-emphasised by the legalisation approach. Soft law differs with regard to its form, language, subject matter, participants, addressees, purposes, requirements, follow-up and monitoring processes. Whereas the legalization approach focuses on the variety of international law along the duality of hard law/soft law, by comparing the institutional design of two MSIs, I concentrate on the variety *within* soft law. Soft law is sometimes referred to as "non-law" (Weil 1983) or as second best solution (Schachter 1977: 305) by international lawyers, but we see from this section that soft law is in some industry sectors a crucial component to their governance.

Before laying out the crucial variances of soft law, we have to link the discussion of soft law to MSIs. We have already noted the increase in numbers of MSIs and – more generally – new forms of governance due to expanding

globalisation. Most of these initiatives that enable governance on a global scale do not fit into the traditional conception of intergovernmental-based, formal international hard law. First, we can observe that to a considerable extent these new forms of governance are not usually recognised as sources of international law. Many rules and practices are performed outside the traditional intergovernmental structure yet, hybrid public-private or purely private institutions are crucial in generating new rules and practices.

Let us examine the extractive industries to demonstrate the importance of soft law in governing the sector. As Table 1 shows, the only possibility of holding MNCs accountable by hard law is the ATCA. The act authorises civil lawsuits in US courts by foreign persons for torts which violate international or US law. International lawyers argue that although this is an important measure on a national level, acts like this are insufficient to regulate MNCs (Chesterman 2004; Jägers 1999). First of all, bringing MNCs to court in the US is a very costly endeavour which plaintiffs from developing countries will not be able to afford. Secondly, as the structure of MNCs is very complicated, it might be difficult to establish whether the parent company is responsible for the activities of other companies in the group. There are a few public international legal standards that attempt to govern the regulatory vacuum, such as the Organisation of Economic Co-operation and Development's (OECD) 'Guidelines for Multinational Enterprises' or the International Labour Organization's (ILO) 'Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy' (see e.g. Weissbrodt 2004). However, these guidelines are purely voluntary – hence soft law. Most notably, as pointed out by industry officials the standards are formulated in very vague terms and only set out criteria for operating in weak zones of governance lacking any mechanisms for dealing with non-compliance.[30]

[30] See http://www.unglobalcompact.org/docs/issues_doc/7.7/7.7.3/sp_oferrall070305.pdf, last accessed on 1 December 2006.

Form of Governance	Voluntary (Soft Law)	Sanction Binding (Hard Law)
Self-regulation (companies)		
Across industries		
Industry Level	• Anti-Corruption Task Force • OGP • The Wolfsberg Principles • The Global Mining Initiative's Mining Minerals and Sustainable Development Project	
Company Level	• Company Codes of Conduct, e.g. Shell's General Business Principles	
MSI (States, IGOs, NGOs, companies)	• UN Global Compact • Voluntary Principles on Security and Human Rights • Chad-Cameroon Development and Pipeline Project • EITI • KP	
Public Regulation (States, IGOs)	• OECD Guidelines for Multinational Enterprises • ILO 'Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy'	• UN Security Council Sanctions • US ATCA

Table 1 **International Regulation of the Extractive Industry in Resource-Rich Developing Countries (adapted and abridged from Ballentine 2004)**

Table 1 also lists the important private and public-private initiatives in the policy field. As one can see, the initiatives that have arisen can take several forms. A great number of the initiatives are self-regulatory industrial initiatives. Self-regulation is mainly exerted in two forms. Almost all companies dealing with natural resources in Africa, Asia and Latin America have launched company codes of conduct. These codes of conduct are mostly created, implemented and interpreted by the company's own legal staff (Cragg 2004). Although not being the rule, most major MNCs have published their Codes of Conduct. The codes vary greatly from company to company. They rely mostly on self-reporting while lacking compliance assessment by third-parties. Examples include Shell's General Business Principles (Royal Dutch Shell plc 2005). In addition to that, industry-wide codes of conduct exist, which are also voluntary in character, and are monitored internally. However, since these codes of conduct apply to a wider range of companies, they were adopted after some form of public consultation with, for instance, NGOs. Examples are the Anti-Corruption Task Force of the International Association of Oil and Gas Producers (OGP) which

was created because its members were operating in some of the most corruption-prone areas in the world (OGP 2002).

Other initiatives incorporate the private sector, national or intergovernmental bodies and NGOs. The most prominent example in this category is the Global Compact. It is not limited to MNC operations in developing countries, but sets up a wide range of environmental, social, and other good-governance standards. The Chad-Cameroon Development and Pipeline Project addresses this policy issue more specifically.[31] Chapters 6 and 7 elaborate on this initiative in more detail. The Voluntary Principles on Security and Human Rights (in the following the Voluntary Principles) were established in cooperation with the governments of the US and UK, a number of large oil and mining companies, and some human rights NGOs such as AI. The Voluntary Principles are supposed to provide guidance for companies to maintain the safety and security of their operations while respecting the human rights and fundamental freedoms of the communities affected by company operations.[32] Finally, the KP and the EITI were created so as to fight corruption in resource-rich countries and to curb trade in conflict diamonds. I discuss these initiatives in great detail in Chapters 4 to 7.

What do we learn from this? We can see that a variety of soft law institutions have developed whereas hard law seems to be the exception in this policy field. In fact, the significance of soft law as the predominant form of governance is no exception in the extractive industries'. Across industry sectors, businesses and civil society have long cooperated by agreeing on soft law arrangements which have contributed to the creation of 'privatized soft law' (Abbott 2005: 24). Kirton and Trebilcock (2004) stress, however, that in recent decades business and global civil society have begun to devise codes of conduct that extend from their primary commercial interests by embracing issues that touch upon environmental and social concerns. These private soft law agreements coalesce with the growing hybrid public-private regulations and international public law. Thus, we can witness the emergence of a

> "brave new world of international law" where 'transnational actors, sources of law, allocation of decision functions and modes of regulation have all mutated into fascinating hybrid forms. International law now comprises a complex blend of customary, positive, declarative and soft law" (Koh 1995: ix).

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[31] See www.worldbank.org/afr/ccproj, last accessed on 1 December 2006.
[32] See http://www.voluntaryprinciples.org/, last accessed on 24 April 2007.

Global governance not only promotes the emergence of soft law but also transforms the dichotomy of the two competing law concepts (soft law and hard law) into completing and reinforcing mechanisms (Brütsch and Lehmkuhl 2007).

As the above analysis suggests soft law exists in a variety of forms. The legalization approach, simply distinguishing between hard law and soft law, underestimates this variety. Before laying out the crucial variances of soft law, it is imperative to take into account a number of important commonalities. One important characteristic across the diverse range of soft law instruments is their voluntary nature. As Kirton and Trebilcock (2004: 9) stress, any participant is free to leave at any time, without invoking international judicial institutions. Ending participation of soft law agreements may, however, deprive the leaving party of certain benefits or involve other costs, such as loss of reputation. Soft law therefore plays an "informative and educative role" (Chinkin 1989: 862). Due to the lack of dispute settlement mechanisms or international adjudication, there is a strong emphasis on consensus-based decision-making (Kirton and Trebilcock 2004). Derived from this we can identify the third commonality, which is the informality by which governance comes about. Since the participants rely on consensus rather than ratified or codified charters, soft law agreements rarely involve the creation of intergovernmental bureaucracies with their own resources.

As to the differences in soft law, one important aspect concerns its form. As we can see from Table 1, soft law instruments range from treaties, which include only soft regulations, and non-binding and voluntary resolutions or codes of conduct to certification schemes as well as transparency obligations on the part of the government.

Soft law agreements can be found in nearly any subject matter of international relations. This form of regulation specifically proliferates in the issue areas of the environment (e.g. the Forest Stewardship Council (FSC), Equator Principles) and conduct of businesses in host countries (e.g. OECD Guidelines for Multinational Enterprises).

With regard to the participants in and addressees of soft law, government actors or intergovernmental organisations can either be included in or excluded in soft law agreements as both participants and addressees. In cases where they are included in the institutional design and operation, they contribute their authority towards regulation but without dominating the regime. In the Voluntary Principles,

for instance, the governments of the UK and the US, although not being the addressees of the agreement, are adding legitimacy to the code of conduct. The reputation of the Global Compact relies to a significant extent on the involvement and soft power of the UN. In the Wolfsberg Principles, which are relevant to the extractive industries as banks regulate their lending activities accordingly, no governmental or intergovernmental agencies are involved. The Group is made up of 12 global banks which came together in 2000 to publish a set of principles and guidelines concerning the fight against money laundering and the promotion of transparency (Pieth and Aiolfi 2003; Turner 2006).

As to the requirements or obligations, soft law can come in a very general form, leaving much of the actual design of implementation to the discretion of the participants. Soft law can be described as a set of minimum requirements which the participants should implement, thus allowing more progressive participants to move ahead. The OECD Guidelines for Multinational Enterprises is one example which gives only very general recommendations for business conduct in host countries. For instance, Principle II.2 recommends that firms "respect the human rights of those affected by their activities consistent with the host government's obligations and commitments" (OECD 2000).

Finally, soft law agreements significantly differ with regard to their follow-up, monitoring and enforcement instruments. Since international dispute resolution procedures are not applicable to soft law, these agreements have put increasing emphasis on this part of the agreement. Third party monitoring and watchdog bodies especially can contribute to assuring compliance with soft law agreements.

Overall, this section has argued that by dichotomising hard law and soft law, the legalization approach is unable to capture the broad variety within soft law. In fact, in many industry sectors such as the extractive industries, soft law in its manifold forms is a crucial component of governance. By reviewing some of the soft law initiatives, I alluded to different degrees of institutionalisation, concerning for instance their degree of membership or monitoring requirements. The next section scrutinises to what extent this finding has an impact on the framework we chose to measure the impact of MSIs.

2.2.3 Theories of Institutional Design and MSI

In the previous section we noted that soft law is an important component of governance of the extractive industries. By reviewing some of the initiatives, we realised that soft law exists in a variety of forms. This conclusion has crucial consequences for our analytical framework to the dependent variable, institutional design. Only very recently, Beisheim, Liese and Ulbert (2007) measured the degree of institutionalisation of MSIs by using the legalization framework. Nevertheless, I argue that existing approaches are incapable of capturing the variety within soft law.

As to the first framework, the concept of legalization (Abbott et al. 2000) cannot be fully applied since it concentrates on the dichotomy of hard law versus soft law. Some aspects of the framework are not applicable as they characterise the distinction between soft law and hard law and therefore cannot assess variety *within* soft law. The first aspect is 'precision'. It scrutinises whether a rule is specified "clearly and unambiguously" (Abbott et al. 2000: 412) or leaves scope for considerable interpretation. Since soft law mechanisms are all rather imprecise and leave specification and interpretation to the discretion of the participants, this aspect cannot be used to assess the variety of MSIs.

The second aspect is 'delegation', which refers to the right granted to third parties, especially courts, arbitrators, and administrative organisations, to "implement, interpret, and apply the rules" (Abbott et al. 2000: 401). As mentioned above, adjudication is not an instrument of enforcement open to soft law.[33] New modes of governance, especially MSIs, are based on consensus. Disputes are settled informally by political bargaining and not by legal justification. Therefore, to what extent dispute settlement mechanisms are set up formally or informally is not a question that applies to soft law mechanisms.

'Obligation' is the last element of the approach. Although the legalization approach argues that soft law is devoid of obligation, I argue in the final sub-chapter that obligation can be created in different ways and therefore it should be one element according to which MSIs are to be assessed.

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[33] Finnemore and Toope (2001:747) argue that delegation should not even be conceptualised as an important characteristic of hard law, since many legally binding agreements lack the aspect of delegation especially in the context of human rights commitments.

With regard to the framework by Koremenos, Lipson and Snidal (2001), most of the indicators helping to differentiate the institutional design cannot be used for an analysis focussing on soft law either. Scope, centralisation, control and flexibility are not applicable to soft law agreements and therefore should be excluded from the framework. As explained earlier, flexibility is one of the great advantages of soft law in general. As it is not a feature that allows for the analysis of variance within soft law, it cannot be part of the framework. The same applies for centralisation and control. Soft law in general is characterised by low levels of centralisation and control due to its informal nature. Therefore, these aspects cannot be used for assessing the variety of soft law. Scope could be used to measure the impact of MSIs. Some MSIs, such as the Global Compact are very broad in scope, covering all industry sectors and a vast range of policy issues ranging from the environment and HIV/Aids to corruption. Others, like the Voluntary Principles, focus on the protection of human rights in the extractive industries. How useful is it, though, to include scope in our framework given that we maintain the focus on one policy issue? I therefore chose not to include scope as an indicator. The last component of the framework, membership, is important for assessing differences in institutional design. I elaborate on membership in greater detail below.

In summary, while membership and obligation are crucial indicators for assessing the institutional design of MSIs, the majority of the components of the two frameworks cannot be applied when analysing soft law mechanisms. By using existing frameworks as a starting point, I establish my own framework of analysis in the following sub-chapter.

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This sub-chapter discussed different approaches to measuring institutional design. Overall, two approaches exist, both categorising international institutions in hard law or soft law. We then conceptualised MSIs as soft law institutions. By reviewing existing institutions in the extractive industries, we noted that with the notable exception of the ATCA, all other institutions were soft law. We concluded that soft law can exist in a broad variety of forms, a fact that the hard law/soft law dichotomy ignores. Therefore, the existing frameworks for assessing the institutional design cannot be applied for the given case studies. We therefore turn to establishing our

own analytical framework using Abbott et al.'s (2000) and Koremenos et al.'s (2001) approach as a starting point.

2.3 The Institutional Design of MSIs

Against the background of the previous discussion, I now turn to establishing the analytical framework for assessing the institutional design of MSIs. When measuring forms of soft law, the institutional setting becomes very crucial, as it is considered to be intimately linked to the regime's impact. As mentioned earlier, research on MSIs has largely ignored the insights of IR theory. However, some studies refer to the importance of institutional design when scrutinising the impact of partnerships and self-regulatory agreements (Rodriguez-Garavito 2005; O'Rourke 2003, 2006; Kolk and van Tulder 2006). This sub-chapter identifies the mechanisms and institutional settings that contribute to strong or weak MSIs. This is an important precondition for proceeding to answer the research question as it ultimately defines the dependent variable of our study.

As to the literature on new modes of governance, very little research exists on institutional design. Most of the scholars focus on the design of monitoring provisions (Rodriguez-Garavito 2005, O'Rourke 2003, O'Rourke 2006). However, precise performance criteria and enforcement in cases of non-compliance are also mentioned (e.g. Rodriguez-Garavito 2005). The most rigorous model is the one by Kolk and van Tulder (2005), who compare the effectiveness of different industrial labour codes of conduct. The model includes provisions for monitoring, sanctions and financial and management commitments. However, the framework is very issue specific (labour codes of conduct). Beisheim, Liese and Ulbert's (2007) approach was already mentioned.

My analytical framework builds on this literature, integrating insights from institutional design theory discussed in the previous sub-chapter. Overall, I suggest a framework looking at the level of membership, obligation, monitoring and enforcement so as to assess the degree of institutionalisation. The remainder of the sub-chapter discusses and operationalises each of the indicators.

2.3.1 Membership

The first aspect concerns the question of participation in the initiative. I have already noted that the prime focus of this thesis is not norm adoption but institutional design. However, both are linked in one aspect. Endorsing specific institutional design features is a precondition for norm adoption. If the strongest institutional design is not accepted, it is not worth the paper it is written on. In this regard, we have to scrutinise norm adoption as one aspect of institutional design by examining how many participants are included in the agreement. Is membership open to any interested parties or is it restricted? It is crucial to examine the procedures of becoming a member. In some initiatives, such as the Equator Principles, it suffices to sign up for the initiative. No implementation measures are tied to being accepted as a participant (Wright and Rwabizambuga 2006). In other regulatory systems, membership is conditional on the implementation of certain requirements which are subject to monitoring. The FSC, for instance, prescribes a detailed procedure which must be followed in order to become a member (Meidinger 2006). The candidate first has to submit an application explaining his operations and what changes would have to be made in order to fulfil the certification requirements. Before the candidate is admitted as a participant, an on-ground field assessment is conducted by independent specialists in order to ensure that all the necessary requirements are fulfilled. The admission of the candidate is subject to this introductory assessment. Furthermore, O'Rourke (2003) points to the issue of free-riders. Are all concerned countries participating, or is there a significant number of free-riders who refrain from cooperation? In order to illustrate this, let us take the example of agreements combating climate change. If major greenhouse gas emitters are not members of the international regime, this will have negative consequences both on the agreement's credibility and on its capacity to fight climate change.

Ignored by most of the literature that deals with the question of membership is a difficult trade off: is it more desirable to have a large number of participants or low levels of inclusion? As Steets (2005) discusses, a high level of inclusion makes the governance of the agreement unwieldy. The more stakeholders join the more difficult it becomes to balance the different interests. The decision-making process is negatively impacted, especially when it is an informal and consensus-based initiative. Stakeholder consultations can develop into extensive projects which

demand a high financial and organisational capacity. Yet, despite the costs of a high level of inclusion, there are significant advantages linked to the functional argument of pooling resources in MSIs, the creation of obligation and to the possibilities of enforcement. In the norm creation phase, while a large number of participants might make the decision-making process more difficult, including a large number of stakeholders enables the involvement the "necessary technical, regional, social, and political information" (Brinkerhoff 2002b: 1301) . As to the norm implementation phase, the more stakeholders that are participating in the initiative and the more countries that sign up for it, the greater the credibility and legitimacy of the initiative (O'Rourke 2003). Hence, in general, all countries and NSAs that are involved in the policy issue should participate in the MSIs. Figure 3 sums up the important indicators for assessing membership.

Membership

- Open or restricted membership?
- What are the procedures for becoming a member?
- High or low level of inclusion (exclusion of free-riders)?

Figure 3 Indicators for Assessing 'Membership'

2.3.2 Obligation

Obligation is an aspect ignored by the literature on new modes of governance, mainly for the reason that soft law does not contain any contractual obligation. Yet, even if these forms of regulation are not legally-binding, they should not be looked at only from their contractual aspect. If soft law does not entail legally binding obligations, does this mean that the concept of obligation is completely alien to the concept of soft law? The legalization approach assumes that when commitments are not legally enforceable, for instance by international courts, states might not feel obliged to meet the commitments (Abbott et al. 2000; Abbott and Snidal 2000). As Reus-Smit (2004) correctly observes, obligation is the centrepiece in this approach in differentiating hard law from soft law, as "legal obligations bring into play the established norms, procedures, and forms of discourse of the international legal system" (Abbott and Snidal 2000: 409). States feel obliged because obligation alters

the structure of incentives and constraints that determine actor behaviour. However, limiting our understanding of law to constraints only underestimates the effects of law in social life (Finnemore and Toope 2001). As Keohane (1997) points out, international lawyers have long argued that the legitimacy of norms and their persuasive power can be a cause for compliance (see e.g. Trimble 1990). Hence, in a more constructivist understanding of law, it not only delimits acceptable behaviour, but also "constitutes relationships" (Finnemore and Toope 2001: 745; Slaughter et al. 1998). Law should be seen as a process rather than a product whereby actors are not only constrained but also constituted by defining socially acceptable behaviour. Law therefore has an authoritative and transformative character, as it defines authority in the first place. Contrary to Finnemore and Toope (2001), however, I do not wish to contest the usefulness of the concept of obligation as such, but wish to demonstrate that obligation can be created in different ways.[34] Obligation understood in a constructivist sense does not derive from its sanctioning power but from its "normative force through recognition of social expectations" by other actors (UN Human Rights Council 2007: 14). In this regard, soft law is not devoid of obligation. Like any other law, it creates the expectation that it will be respected (Davidow and Chiles 1978; Gruchalla-Wesierski 1984). Non-legally binding rules and practices should therefore be considered as mechanisms for the creation of new international norms. As pointed out by Krisch and Kingsbury (2006), such non-binding rules and practices may in many cases be relevant material for decision-making by an international legal tribunal. Shelton (2000:4) notes that the fact that soft law commitments are increasingly included in hard agreements shows that "both form and content are relevant to the sense of legal obligation". Obligation, thus, should not be equalised with the contractual character of an agreement, as "some soft law instruments may have a specific normative content that is 'harder' than the hard law commitment in treaties". Even if non-binding instruments were never supposed to have a normative effect, they might serve as a catalyst for further legal action.

By recognising the authority constituting character of the law, we can conclude that obligation can take different forms and that it is also created by soft law, even if it is not legally enforceable. The emphasis of the constructivist approach on obligation and international law should not be understood as an argument for the

[34] On the coexistence of two approaches to the creation of obligation in international law from an IR perspective, see also Keohane (1997).

supremacy of this approach. Rather, the aim is to stress that there exist two optics of international law (an instrumental one and a constructivist one) which have different assumptions on the creation of obligation. To understand international law both optics are needed (Keohane 1997).

To measure the degree of obligation in MSIs, we must consider two issues. First of all, it is important to understand how the initiative creates obligation. How is the conception of obligation created in the absence of contractual obligation? Finnemore and Toope (2001: 748) refer to the notion of the legitimacy of law which does not only create obligation in a formal sense but also in a "felt sense":[35]

> "Law is legitimate only to the extent that it produces rules that are generally applicable, exhibit clarity or determinacy, are coherent with other rules, are publicized (so that people know what they are), seek to avoid retroactivity, are relatively constant over time, are possible to perform, and are congruent with official action (...) Legal legitimacy also depends on agents in the system why the rules are necessary".

According to Finnemore and Toope (ibid.), law that adheres to the abovementioned values will generate a sense of obligation and behavioural changes. As stated above, the level of inclusion is linked to the legitimacy of the agreement since a higher level of inclusion boosts the credibility and legitimacy of the initiative.

MSIs create obligation through their rule-making function. In general, one has to distinguish between two kinds of rules generated by MSIs. The constitutive rules define and constitute the institution as a whole whereas the regulative rules refer to the procedural, structural, and substantive rules, such as certain product standards (Giddens 1984). Thus, constitutive rules are prerequisites for public-private cooperation whereas regulative rules refer to the governance output of the institution (Pattberg 2004a). Social obligation is created by the interaction of the legitimacy of both the constitutive and the regulative rules.

As to the regulative rules, MSIs can differ with regard to their standard-setting capabilities, which is defined as the making of voluntary, expertise-based structural, procedural or substantive regulation (Kerwer 2002: 298). The standards can take the form of certification schemes, labelling or general codes of conduct. The benchmarks for the standards can be very specific or describe certain minimal standards.

Second, the content of the obligation, i.e. the regulatory rules, should be subject to scrutiny. What types of requirements must the participants fulfil?

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[35] On the question of legitimacy of partnerships, see Dingwerth (2007).

Figure 4 sums up the important indicators for assessing obligation.

Creation of the sense of obligation	How is the sense of obligation created? • General applicability? • Clarity of the established benchmarks? • Coherence with other rules? • Public availability? • Performance possible (technical assistance available)? • Notion of necessity?
Content of obligation	• What are the participants required to do (benchmarks)?

Figure 4 Indicators for Assessing 'Obligation'

2.3.3 Monitoring

Although MSIs are voluntary in nature, some degree of compliance is necessary in order for them to qualify as public-private regulation (for a similar observation regarding private governance, see Pattberg 2004a). The regulative rules of the initiative define what counts as compliance. As mentioned before, most of the institutional design literature on new forms of governance emphasises the significance of monitoring.

The techniques and the actors involved in monitoring can vary significantly using the whole spectrum of international practices. Ideally, one can distinguish between three instances in the conduct of monitoring (Pattberg 2004a; Wolfrum 1998; O'Rourke 2006). First-party monitoring is a self-assessment exercise where the addressees of the rules assess their own compliance and generate reports. Second-party monitoring involves other participants of the initiative who work together and report compliance. In both cases, the participating NGOs and the secretariat or chair of the initiative play a crucial role in ensuring that monitoring is correctly undertaken. Finally, third party monitoring involves an independent instance which undertakes monitoring and generates the report on behalf of the institution. This can

be performed by an outside individual, a commission or an international organisation.

In addition, the techniques used for monitoring vary. Broadly, one can distinguish between two techniques (Wolfrum 1998). The first one is onsite inspection, the second one being reporting systems.

Depending on the elaborateness of the monitoring, we can distinguish between strong and weak institutions. Soft law institutions vary widely with regard to their monitoring requirements. At one end of the scale, the Equator Principles do not contain any monitoring requirements at all (Wright and Rwabizambuga 2006). At the other extreme, the FSC, as mentioned earlier, elaborated rather strict rules on monitoring, as it scrutinised the implementation of the FSC requirements before admitting applicants to the scheme. Monitoring, however, is not limited to the admission of new members, but undertaken systematically and continuously throughout the membership (Rodriguez-Garavito 2005, O'Rourke 2003, O'Rourke 2006). Annual follow-up audits by third parties ensure that all participants meet the standards of the FSC (Meidinger 2006). Between these two extremes, there is much leeway for a variety of informal agreements on monitoring. Another important element to improve monitoring is transparency (Rodriguez-Garavito 2005). For instance, the Global Compact does not formally contain rules on monitoring, yet, it relies on enlisted NGOs that gather and disseminate information about the behaviour of participating companies (Winston 2002; Hurd 2003). Information is publicised by groups as powerful as AI. As Hurd (2003) argues, it is expected that the wider public is interested in this information and will either punish non-compliant or reward compliant participants through the marketplace. Figure 5 sums up the important indicators for the assessment of monitoring.

Monitoring

- Is compliance monitored?
- Is monitoring mandatory or voluntary?
- How often is monitoring conducted?
- Who carries out monitoring (self-assessment, second-party or third-party monitoring)?
- Is monitoring systematic and continuous?
- Is monitoring transparent (e.g. are reports published)?

Figure 5 Indicators for Assessing 'Monitoring'

2.3.4 Enforcement

Linked to the question of monitoring is the issue of enforcement. Monitoring tells us whether participants are compliant or not. Enforcement concerns the political consequences of non-compliance. An enforcement problem arises when participants prefer defection with short-term benefits over cooperation with long-term benefits (Koremenos et al. 2001).

Soft law agreements are voluntary. Therefore, they differ from hard law agreements with regard to the mechanisms. However, despite the lack of formal enforcement mechanisms, it would be wrong to assume that the notion of enforcement cannot be included in soft law agreements. In fact, soft law agreements vary significantly with respect to their enforcement mechanisms. Generally, there are two approaches to enforcement in the research on MSIs. Constructivists point to soft instruments like legitimacy and social learning which ensure compliance of the participants (Ruggie 2002). As the case study on the World Commission on Dams shows, one can concur with constructivists and proponents of the managerial approach to compliance theory who expect high compliance rates when the norm-targets participate in the decision-making processes in the norm creation phase (Brinkerhoff 2002a; Bernstein 2005). Another example is the Global Compact which is designed as a 'learning network'. The founders of the Compact explicitly rejected the inclusion of the possibility for sanctions when it was created.[36] It is argued that the combination of universal legitimacy and self-interest of the Global Compact induces a strong compliance pull (Hurd 2003). Since the participants are convinced that the norms promoted by the initiative are legitimate and necessary, they will comply with it. One could say that there is a mechanism of 'self-enforcement' in place.

The other approach criticises the reliance on self-enforcement through persuasion and legitimacy by pointing to the necessity of a sanctioning mechanism for non-compliant behaviour. Nolan (2005: 459) argues that since the Global Compact overemphasises the value of the voluntary approach to the detriment of

[36] It has to be noted that the Global Compact does not have the legal capability for a sanctioning mechanisms since the UN "has power only over its member states, not firms, and can only apply coercive sanctions when there is a threat to 'international peace and security'" (Hurd 2003: 108).

clear performance criteria or benchmarks according to which compliance can be assessed, it risks losing its credibility.

There are various elements the designer of soft law initiatives can draw on to include enforcement in the agreement. Initiatives that make membership subject to compliance retain the possibility of sanctioning non-compliance with exclusion or membership limitation. Depending on how crucial membership is in order to conduct business (both for participating countries and firms), exclusion or the limiting of membership benefits can be a very effective means of enforcing compliant behaviour. For instance, in well-controlled product chains which require the use of certified commodities, such as the forestry sector, exclusion from the initiative is accompanied with a loss of business (Meidinger 2006).

Exclusion, or 'naming and shaming' non-compliant members in public, in plenaries or the initiatives' website, can be accompanied with loss of reputation. The example of forest campaigners demonstrates the power of activists who regularly scan forestry products and make non-compliance public. The more dependent the participant is on international cooperation, the more powerful this sanction is.

As far as enforcing compliance of countries is concerned, international financial institutions (IFIs) can play a crucial role. They can mainstream the requirement of participation in and compliance with the initiative by making it a condition of their financial support for developing countries.

Figure 6 sums up the important indicators for assessing membership.

Enforcement

- Is compliance enforced?
- Can non-compliant members be excluded or restricted in their membership benefits?
- Is exclusion from the initiative accompanied with exclusion from the product chain?
- Are naming and shaming practices used? How dependent are members on the reputational benefits of the initiative?
- Do IFIs make participation in and compliance with the initiative mandatory?

Figure 6 Indicators for Assessing 'Enforcement'

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This sub-chapter established an analytical framework for assessing the institutional design of MSIs based on both existing approaches and on insights derived from the Global Governance literature. To conclude, I focussed on four indicators, looking at membership, obligation, monitoring and compliance. Figure 7 sums up the analytical framework. It is important to note that it presents the two extremes of a continuum (weak MSI – strong MSI) leaving much leeway for many forms of institutionalisation in between.

Weak ~~~~~~> Strong

Membership States & Non-state stakeholders	• Open membership, no application procedures • Limited membership (free-riders)	• Restricted membership, applicants have to fulfil certain requirements • Global, no free-riders
Obligation	• Purely voluntary: no benchmarks • No creation of a conception of obligation	• Performance obligation: participants have to fulfil certain requirements • Creation of a strong conception of obligation (general applicability, clarity, coherence with other rules, technical assistance, necessity for compliance).
Monitoring	• No provisions on monitoring	• Mandatory monitoring on a regular basis (systematic & continuous, not self-assessment, transparent process)
Enforcement & Sanctions	• No provisions for enforcement & sanctions	• Enforcement measures (membership sanctions, exclusion from product chain, 'naming & shaming', IFI mainstreaming)

Figure 7 The Different Nuances of Soft Law: Assessing the Institutional Design of MSIs

Derived from this, I define a strongly institutionalised MSI as one that has high levels of membership, a high level of obligation and strong monitoring and enforcement measures. A very weakly institutionalised MSI is characterised by a low membership, no obligation as well as no monitoring or enforcement mechanisms.

2.4 Conclusion

MSIs are the most recent addition to new forms of governance in world politics. Although they are a relatively new phenomenon, many MSIs have been created since 2000, and their attractiveness among policy makers continues to grow. Despite their popularity among practitioners, there is still a dearth of theoretical considerations on MSIs. From the literature review in this chapter, we see that IR theories of international institutions have only rarely been applied to MSI research. This is a crucial neglect of current MSI scholarship. In this chapter, I argued that MSIs are best conceptualised as international institutions belonging to the realm of soft law. The research question of why some MSIs are more successful than others is crucial both for IR scholars and practitioners. As the literature review found, we lack theoretically informed studies on the conditions of success of MSIs. IR theory, especially functional regime theory, has produced a number of approaches to establish whether a given institution is successful in dealing with the policy issue or not. However, given a number of methodological issues, we concluded that regime effectiveness and compliance are not appropriate for assessing the extent of MSIs' success. The theory of institutional design appeared to be a more appropriate approach to this issue. Yet, by looking in more detail at the two existing approaches to institutional design, we noted that they could not be applied to assessing the institutional design of MSIs. As the two approaches concentrated on the hard law/soft law dichotomy, we had to adapt the analytical framework so as to be able to assess the variety of institutional design within soft law. Although the assessment of the institutional design of new forms of governance remains underdeveloped, there are some interesting findings incorporated into the framework, mainly on questions of membership, monitoring, and enforcement. I concluded the chapter by suggesting four indicators for assessing the institutional design of MSI: membership, the level of obligation, degrees of monitoring and enforcement mechanisms. The discussion now

turns to the independent variable of the thesis: how we can account for the institutional design of MSIs.

CHAPTER 3

Norm Diffusion and Political Opportunity Structures: An Alternative Approach to Institutional Design

The previous chapter introduced MSIs as new forms of governance and located them as international institutions in IR. Based on this, we established a framework that enables us to capture the differences in the institutional design of these particular forms of governance. We now turn to the main question of how we can account for these differences.

Institutional design depends on the collective choice over institutions. The collective choice consists of the individual strategies of actors during the institutionalisation process, but is not just the sum of those individual strategies. During the institutionalisation process conflict arises between those favouring strong institutionalisation and those that prefer a low degree of institutionalisation. In this chapter, I argue that norm entrepreneurs push for strong institutionalisation through a social mechanism called norm diffusion. In IR, norm diffusion has been traditionally looked at with respect to states as targets, but when looking at norm diffusion during the negotiations to an MSI, we also have to study norm diffusion in the private sector. Norm diffusion impacts the collective institutional choice by shaping the strategies of the stakeholders. I identify two political strategies by which norm diffusion can occur: framing and structural power. Succeeding to diffuse the norm can account for strong institutionalisation as it galvanises support for it. I explain a weak institutional design by the failure of the norm entrepreneurs to diffuse the new norm and the resilience of competing norms put forth by not like-minded actors which I call norm *opponents* [37]. This brings us to an observation often ignored by researchers looking at the impact of ideational facts in IR: new ideas sometimes do not make their way through.

What, then, explains the prevention of successful norm diffusion? I argue that ideas can have a diverging impact in different structural settings. In this regard, the

[37] The term norm opponent does not refer to agents generally refusing the validity of norms but those who oppose the new norm put forth by norm entrepreneurs.

focus of the analysis shifts from agents to structures. Ideas can become constrained by existing normative and material structures. When analysing the role of norm entrepreneurs in the decision-making process of institutional design we therefore have to acknowledge that norm entrepreneurs may not be successful in every structural setting. The main argument runs as follows: Material and normative structures in business and states can operate as POS which mediate between the diffusion of new ideas by norm entrepreneurs and policy outcomes (the institutional design). POS therefore have an impact on negotiations in which the design of new institutions is decided. In terms of research design, they act as intervening variables between dependent and independent variables.

Looking at the material and normative structures in which new ideas are diffused does not entail neglecting the agents and their targets of diffusion. Rather, the stakeholders and norm entrepreneurs need to be located within the competitive dynamics of particular industry structures as well as within the institutions and ideologies of the political economy. I argue that being able to spot and exploit opportunities to foster norm diffusion is a form of discursive power. This is not a new observation. POS have long been scrutinised by social movement theorists. However, what has been ignored in the literature is that POS can work in *two* ways. To the same extent that they can provide opportunities for norm entrepreneurs pushing for strong institutionalisation, they can also empower norm opponents when constraining norm diffusion. They can therefore provide an explanation of why norm diffusion in some cases is *not* successful.

In summary, my approach combines elements from different traditions. It adopts an understanding of discursive power and framing from (thin) constructivism while using a thin rationalist ontology as previously emphasised.[38] The concept of norm diffusion derives from new institutionalism. Moreover, by borrowing the concept using POS, I make use of insights from social movement theories. However, as elaborated later, I depart from the original understanding of POS in a significant way.

Such a multi-dimensional framework offers the chance to overcome the several shortcomings of existing theories on institutional design. On the one hand, we noted in Chapter 1 that the main weakness of neo-liberal institutionalism is to

[38] I demonstrated the compatibility of thin rationalism and thin constructivism in Chapter 1.

underestimate the role of power as well as structural differences in such divergence in values when setting up international institutions. The inability to account for the variance of the institutional design of the KP and the EITI stems from the fact that neo-liberal institutionalism focuses on questions of efficiency by assuming complete rationality of actors and structural homogeneity. On the other hand, power-based theories cannot explain first, why powerful countries became involved in both initiatives in the first place and secondly, why the KP was able to produce a strong design without US leadership.

Incorporating a structural account into the framework helps us to understand structural opportunities or constraints to norm diffusion of norm entrepreneurs. In contrast to many structural approaches in IPE, emphasising the significance of structures does not mean that they are immovable and thereby over-determine agency (Prakash 2000). I am stressing throughout this chapter that structural factors do not overshadow but constrain or drive agents. Explaining complex social phenomena often requires the use of multiple theories connected within a common framework. Given the limitations of mainstream theories such as neorealism, neo-liberal institutionalism and constructivism to account for the research puzzle, social science has to take into account more the complex and multi-dimensional character of the social world. I therefore combine two levels of analysis, agents (political strategy) and POS.

The chapter elaborates the theoretical framework in four parts. The following two parts discuss POS that account for the variation in norm diffusion by focussing first on governments and then on business. Although traditionally, social movements theory has looked at POS only with regard to the states (with the notable exception of Schurman 2004), we also need to discuss this concept with regards to MNCs when analysing the institutionalisation of MSIs. The reason for this is, of course, that both states and MNCs are targets of norm diffusion when institutionalising MSIs. In the third part, an analysis focussing on the role of norm entrepreneurs and the two political strategies to diffuse norms, framing and structural power, is be embedded into this structuralist framework. The conclusion summarises the approach and discusses its added value in light of existing theories of institutional design.

3.1 Political Opportunity Structures: The State

The chapter begins by turning to the first level of analysis, POS. We identified structural conditions as mediators between norm entrepreneurs and policy outcomes during norm diffusion. I chose to start with the structural aspect of the framework as it provides the setting in which norm diffusion takes place.

POS are widely used by social movement theorists. The concept was a crucial addition to the flourishing research on social movements that had mostly looked at internal aspects such as movement structure or financial resources as an explanation for their success. POS became prominent in the 1980s when research on social movements suggested that their success depends mostly on the external environment (this body of research is very extensive, see e.g. Tarrow 1996; Kitschelt 1986; McAdam et al. 1996; Tilly 1978; Useem and Zald 1982). POS are defined as "a set of formal and informal political conditions that encourage, discourage, channel, and otherwise affect movement activity" (Campbell 2005: 44). Overall, movement theorists have looked at four aspects providing political opportunities: (1) the relative openness/closure of the institutionalised political system, (2) the stability/instability of elite alignments that undergird a policy, (3) the presence/absence of elite allies, (4) the state's capacity or propensity for repression. Moreover, POS not only derive from inherent properties of the interacting units but also from historic events on the international level. In that case, POS resemble what Sell and Prakash (2004: 145) termed as "policy crisis".[39] Examples for this could be the outbreak of civil wars, the assassination of a politician or any other single, crucial event. So as to take those historical dynamics into account, the study must remain historically grounded. In both cases, POS do not directly influence the policy outcomes but mediate between the agents and the outcome.

I depart from the traditional understanding of POS by using it as an umbrella term for structural factors impacting the success of political strategy. I propose two key POS that impact on norm diffusion, which have as yet been ignored by the social movements literature – the constructivist-inspired notion of 'normative match' and the realist-informed power distribution. As we see from the empirical chapters, both structures present political opportunities for norm entrepreneurs to impact other

[39] I focus on this more in Section 3.3.2.

actors. The added value of framing them as political opportunities is that it enables us to stress their case-specific nature. As with POS, these structural factors can change throughout history, an aspect that is emphasised by the social movement literature.

In the following, we first study the relationship between the new norms that are promoted and domestic established norms. We then look at the extent to which international power structures can provide either entry points or constraints for new ideas.

3.1.1 Normative Match

I contend that the first POS we need to consider is normative match. The compatibility between already-established norms and new ideational facts has been stressed by constructivists (e.g. Checkel 1999a; Risse-Kappen 1994; Cortell and Davis 2000).

Normative match as a political opportunity structure is crucial as new norms are not transmitted in an ideational vacuum (Risse-Kappen 1994), but rather, they have to compete with already-established normative frameworks. The adoption of new norms is likely to be successful if they resonate with the accepted normative frameworks. For instance, resonance with shared ethical traditions (Lumsdaine 1993) or accepted democratic processes (Payne 2001a, 2001b) can be a crucial facilitator for norm recognition. Constructivists usually contend that the normative match can be explained by the agents' desire to resonate their internalised identities with new ideational facts. As Hurrell (2005: 49) argues,

> "[m]any international norms (...) are powerful precisely because of the way in which they relate to the transnational structures within which all states are embedded and to the broad social forces (...)."

I contend that the normative match can also be explained within a thin rationalist framework. Given the challenge of poor information and uncertainty, the match is particularly crucial for driving norm diffusion. As we noted before, boundedly rational actors lack the necessary information to understand all the far-reaching consequences of their behaviour. Therefore, actors are reluctant to change. Accepting or learning about new norms that match already-accepted normative frameworks help us not to completely abandon familiar ground in which actors are more capable of assessing the consequences of their behaviour.

Linked to the notion of the normative match is the cultural match. Here, the focus shifts from the specific norm that is diffused to a broader set of values to which both the target and norm entrepreneurs adhere. Constructivists usually point to culture as a factor in politics, mainly in the field of foreign policy analysis (see e.g. Barnett 1999). In IPE, although cultural factors are extremely important, they are in the most part ignored (Simmons and Elkins 2004). Culture, however, is a political opportunity driving or constraining norm diffusion. Being the target of norm diffusion drives that process significantly, as does adherence to the same culture as the norm entrepreneurs. Research on Chinese financial liberalisation suggests that China adopted politics close to the Japanese model because the two countries share a similar culture and history (Cargill and Parker 2001).[40] As Simmons and Elkins (2004) emphasise, such a conjecture is sustained by a large literature on norm diffusion which found that agents sharing similar cultural attributes tend to adopt the same practices. The phenomenon can be explained by the challenge of uncertainty and incomplete information. Targets of norm diffusion find norm entrepreneurs adhering to the same culture and values as a more reliable guide for their actions.

Normative match can be an opportunity that is 'just there'. However, in most cases the opportunity needs to be created by norm entrepreneurs. We return to this in Section 3.3.2.

3.1.2 Power Relations and Material Changes in the International Political Economy

If normative match is crucial, how can we account for norm acceptance in instances where the new norm did *not* match the established institutional framework? In global trade politics, we can take the example of the adoption of intellectual property rights (IPRs) by developing countries during the Uruguay Round. Whereas the fast and widespread acceptance of IPRs in the developed world can be explained by the long established practice of protecting intellectual property domestically, to most of the developing countries this was a new concept. The answer to this question points to norm diffusion – not through learning but via adaptation, a mechanism which we

[40] As stressed by Simmons and Elkins (2004), the argument about cultural differences or similarities as political opportunities in driving norm diffusion refutes the conception that policy-makers absorb an expanding world culture (e.g. Boli and Thomas 1999).

discuss in 3.4. The answer also emphasises the fact that, although ideational facts can have powerful effects on agents, they are nevertheless very fragile. Many good ideas will never succeed whereas a lot of bad ideas have guided policy-making for decades. Successful ideas are the ideas of those in power, as the example of IPRs suggests. Hence, political opportunities to diffuse a new norm can also arise from the power relations in the international system. We have to scrutinise whether the new norm matches the normative frameworks of those in power.

Historical dynamics that involve material changes of power relations can either provide opportunities or constraints for new ideas to become accepted. Changes to power relations can involve shifts due to growing financial capability, technological knowledge or military power. Such changes not only alter significantly the constellation of the main players in the international system, they also have an impact on which normative framework dominates.

How likely are power shifts in the international political economy? Using a structural realist interpretation, in the international political economy we can distinguish between unipolar, multipolar and bipolar structures (e.g. Waltz 1979). Certainly, since the end of the Cold War, the economic Anglo-American system has looked reasonalby stable. Yet, both constructivists and neorealists agree that the structure can change.[41] In fact, looking at the impact of the next wave of globalisation, we can see that the unipolar economic system is changing into a multipolar one. Currently we are witnessing dramatic changes in the structure of international political economy. The rise of emerging economies such as Brazil, Russia, India and China (so-called BRICs, Wilson and Purushothaman 2003) can be compared with major tectonic shifts in the international structure. This is not to suggest that Western economies will be dominated by Asian ones in the near future. Rather, the shift leads to a multipolar era in the international political economy (Drezner 2007b). Hurrell and Narlikar (2006) argue that the post-Cold War era led emerging economies from conversion to confrontation of established economic ideas and policies. This can lead to normative changes on a global scale. Examples such as the current Doha Development Round – where emancipated emerging economies want to actively shape the rules of the global economy – provide a 'taster' of such a

[41] According to Waltz (1979), the structure changes with a re-distribution of the capabilities. Constructivists assert that agency and structure are mutually co-constitutive, so structure can change if agents allow it to do so (Wendt 1992).

multipolar economic system (Moon 2004; Hurrell and Narlikar 2006). Overall, the impact of the shift on power relations in the international political economy should not be underestimated but might have the same effects as the rise of Germany in the 19th century or the US in the early 20th century.

Deriving from this, I argue that we have to consider the unique historical circumstances when institutions are built to understand the way in which they are institutionalised. We need to take into account that material changes could potentially provide political opportunities or constraints for the acceptance of new norms.

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In summay, POS have an impact on whether or not norm diffusion is successful. By focussing on the governments, we identified two POS whilst departing from the traditional understanding in the social movements literature. Normative match fosters diffusion as boundedly rational actors are more likely to adopt new norms similar to already-accepted ones. However, as we can see from a number of examples, successful international norms are always the norms of those in power. Therefore, when looking at the match between new and accepted norms, we must always include an analysis of the current power relations. More specifically, current shifts in power relations may provide either opportunities or constraints to norm diffusion.

3.2 Industry Opportunity Structures: The Companies

We now turn to analysing POS for norm diffusion within the industry. Although POS are widely accepted among social movement theorists, this aspect has been mostly ignored when looking at the impact of norm entrepreneurs on business behaviour. One crucial exception to this is Schurman (2004), who transferred the concept of POS to the corporate sector, thereby establishing a first approach to "industry opportunity structures". According to Schurman (2004: 248), "'industry structures' confer particular strategic openings and closures on social movements and render firms and industries more or less vulnerable (...)". Applying the concept to our framework, we can say that industry opportunity structures provide entry points or constraints for norm diffusion. They, therefore, contribute either to strengthening or

weakening the institutional design. Using POS in the context of the corporate sector is crucial for our theoretical framework, as in MSIs, MNCs are, of course, also targets of norm diffusion.

Schurman (2004) proposes four types of industry opportunity structures. The first arises from the economic and competitive behaviour of firms in an industry. For instance, efforts to maintain the stability of markets as well as brand and reputational risk management can provide entry points for norm diffusion. Second, the relations and dependencies of companies in the organisational network are crucial. Sectors in which companies are dependent on a small number of buyers offer more possibilities for norm diffusion than well-diversified industry sectors. The last two industry structures concern the institutional and normative frameworks in which individual companies as well as the industry sector are embedded.

Building on Schurman, I propose two industry opportunity structures looking at the two categories mentioned in the introduction of this chapter. Normative structures (3.2.2) concern the established normative frameworks both at an individual company level and at sector level. They correspond to what Schurman (2004: 250f) labelled as "corporate" and "individual firm cultures" and to the normative match discussed in 3.1.2.

Departing from Schurman's framework, I introduce another, power relations. As discussed in the preceding sub-chapter, accepted norms are the norms of those in power. Hence we also have to consider power relations or changes thereof as being crucial (3.2.3).

This sub-chapter discusses under what circumstances business is vulnerable or immune to norm diffusion. Yet, given its financial capability, many scholars would consider business as privileged among other interests groups, thereby contesting the existence of industry opportunity structures for norm diffusion. Therefore, I first have to engage with this wider debate on business in the international political economy, setting the theoretical context before establishing the industry opportunity structures.

3.2.1 A Pluralist Conception of Business

There is little doubt that mainstream IPE considers business as an important agent shaping global economic and environmental politics (see e.g. May 2006; Levy and Newell 2005). However, the questions about the sources of business power as well as its relations to other interest groups have been highly debated in the last decades. Are companies "privileged" over other NSA (Lindblom 1977)? Two competing perspectives have evolved, either emphasising the Gramscian-informed view of structural dominance or the more pluralist perspective on companies as privileged, but not dominating agents.

We have already noted the Neo-Gramscian approach for studying MNCs. Particularly with regard to environmental governance, this approach has become prominent (Levy and Newell 2002). With respect to our discussion on industry structures and norm diffusion, the Neo-Gramscian approach would hold that given their structural power, companies are able to dominate the negotiations on institutional design. Yet, in Chapter 1, I have already demonstrated that such a view cannot account for the variance in the institutional design of the KP and the EITI, as we would expect the diamond industry to be able to block strong institutionalisation. Neo-Gamscianism has as yet not established a theoretical account of why in some cases MNCs might *not* be able to dominate negotiations.

Pluralist approaches do not attribute structural power to MNCs but rather explain their significance by pointing to expertise and resources. Like other interest groups, companies seek to influence policy-making. The fact that companies compete with other societal groups ensures that no actor exerts hegemony in the long run. The study of MSIs is very illustrative for this point, as business has to negotiate both with NGOs and states to reach an agreement. We see from the case studies that NGOs and MNCs are equally able to make an impact on institutional design. However, in contrast to what pluralist conceptions would predict, we can discern that the influence of the stakeholders varies across different stages of the MSIs. While NGOs exert discursive power primarily at the beginning of the negotiations, MNCs are more successful in shaping the technical details of the institution. This is not an expression of structural power but rather stems from the unique expertise companies possess in their industry sector. From this we can see that MNCs are actually more

privileged than other interest groups as their impact increases at the more critical stages of institutional design.

The neo-pluralist approach has recently put a corrective to lumping together MNCs with other societal groups by maintaining that business is in a privileged yet not dominating position (Skidmore 1996; Skidmore-Hess 1996; Falkner 2008). Cleavages among different business groups can prevent private actors from dictating their policy preferences. Taking the neo-pluralist approach as a model contributes to a better understanding of MNCs in MSIs, as it emphasises that the business community is not a unitary actor, but can be split over political strategy. Thus, the neo-pluralist model disagrees with functional approaches to MSIs which lump business actors together, pursuing a unitary material interest (Reinicke et al. 2000). Whether or not companies have conflicting interests can stem from structural preconditions that determine business interests, such as those preferences formulated on the basis of the material structure of gains and losses from international trade (Rogowski 1989), their location in the supply chain (Falkner 2005b), or domestic normative structures (Skjærseth and Skodvin 2003).

In this thesis, the neo-pluralist approach serves as an analytical tool for conceptualising competition with NGOs over policy impact and for disaggregating diverging interests within the business community. Drawing from this insight, we have to be aware that different companies or groups of firms pursue divergent strategies when it comes to designing MSIs.

3.2.2 Normative Match

The first industry opportunity structure driving or constraining norm diffusion is related to preferences within corporations. Opportunities arise from a match between those preferences and new norms. Yet, before we can transfer the hypothesis of the normative match from state to MNC preference formation, we first have to reflect on how companies formulate their preferences.

Preference formation is crucial for analysing the political strategy of MNCs. In IPE, we can find two strands theorising business interests. The first conceptualises companies as undifferentiated global actors being driven only by the desire to maximise profits (e.g. Steger 1993; Reich 1990). So as to account for variation in

business behaviour this neoclassical, economic framework uses as explanatory variables differences in external pressures and structural differences in firm operational characteristics (Rogowski 1989; Frieden 1988).

However, a growing number of researchers acknowledge the complex rationality of firms. The main thesis of this research agenda is that material returns cannot fully account for the firm's motivations and preferences (e.g. Fort and Schipani 2004; Smelser and Swedberg 2005). Firms are complex organisations embedded in socio-cultural and domestic political-institutional settings, so they have to interact with these structural preconditions (Granovetter 1985; Fligstein 2002). In particular, new institutionalism argues that social networks constitute firm interests through a process of shared understandings and values (DiMaggio and Powell 1991). Such a conceptualisation offers a deep understanding of company preference formation as it can account for differences even if MNCs are exposed to the same market incentives and pressures (Pulver 2007).

Domestic normative structures impact MNCs in two ways. First, the domestic 'base' constitutes a major determinant of MNC behaviour as the prevalent attitudes and culture in the companies are shaped (Sally 1995; Doremus et al. 1990). Thus, to a great extent, domestic political and normative perceptions are reproduced within the companies. Therefore, differences in MNC behaviour (including the question of why a norm was adopted or not) can be explained by the embeddedness in different national or regional political economies. On the individual level, despite the multinational character of many of today's firms, the leading executives are often of the home country's nationality and live in the home country where the company's headquarters are based. On the company level, MNCs, having developed their own institutional structures over time, maintain relationships with governmental and non-governmental domestic institutions that constitute drivers and veto-players for the political economic decisions the MNCs take. This insight provides an important corrective to simplistic rational choice conceptions of the firm mentioned above, as companies do not only learn from competition in the marketplace but also from interactions with other agents and their ideas.

Second, domestic normative structures impact on MNCs behaviour in the form of social demand (e.g. Kempton and Craig 1993; Skjærseth and Skodvin 2003). Here, the key focus shifts from the normative conceptions of the managers to the question of how consumer behaviour affects corporate strategies. Skjærseth and

Skodvin (2003) emphasise that social demand provides both business opportunities and risk. If consumers favour certain business practices such as fair trade in the manufacturing sector or environmentally friendly energy, they are more willing to pay higher prices for the goods and services. However, social demand can also lead to consumer campaigns and social pressure forcing companies to adopt strategies they would not otherwise have chosen. An example for this is the great divide of climate change strategies between Anglo-Dutch and US oil firms (Rowlands 2000; Skjærseth and Skodvin 2003; Kempton and Craig 1993).

To what extent are different domestic normative frameworks still relevant for preference formation in the era of globalisation? Structuralists argue that with increasing economic globalisation, different domestic normative positions lose importance as MNC preferences come to be dominated by economic considerations. This appears to be especially true in a time where MNCs merge on a global scale. With dwindling national identities, the strategies taken by the corporate actors converge (Levy and Newell 2000: 16). The increasingly common institutional and economic business environments in the European Union (EU) and the US provide evidence for such a convergence. I argue that it is the greater convergence of normative and political factors in the Western hemisphere that accounts for that change rather than the decline of national identity. For instance, we can explain the expansion of environmental concerns with more scientific evidence and the increasing activity of NGOs in the EU and the US. If we take into account the corporate strategies of companies located in other regions such as China, India or Russia, where the normative and political-institutional settings profoundly differ from those adopted in the West, the hypothesis of domestic normative structures regains explanatory value. Therefore, case studies, such as the EITI – which include countries and companies from very different normative and political-institutional settings – are very valuable in revealing processes of normative conversion and diversion.

Against this background, I propose accepted domestic normative frameworks as entry points or constraints for norm diffusion. The normative structures are crucial, "because they affect how firms perceive, interpret, and respond to changes in the larger social and political environment" (Schurman 2004: 250). The closer the normative framework of the company matches the new norms, the more successful the norm is. Nevertheless, the argument about a match between societal normative

structures in the 'boardroom and on the barricades' (Bendell 2004), should not conceal the fact that in some cases such an opportunity or constraint is not straightforward. We should not conceptualise firm behaviour as a direct function of domestic normative structures. I argue that the importance of such a match for successful norm diffusion also depends on the openness of the companies towards societal demand. For instance, firms that actively engage in managing their brand are characterised by a close producer-consumer relationship. Such a relationship can offer political opportunities for norm diffusion as the companies that invest in their brand management obviously have an interest in protecting it. Societal pressure constitutes a risk to those investments. The more companies invest in their brand management, the more intense the relationship between consumers and producers becomes.

Close producer-consumer relations can arise at individual company level as well as at the industry sector level. In the manufacturing sector, for instance, big clothing companies such as Gap or Nike have an especially close consumer relationship, as the value of their brand (and thus their profits) relies on the appreciation by its consumers (Klein 1999). Companies such as Woolworth and C&A sell non-branded products and therefore have a less close relationship with consumers. Due to the specific producer-consumer relationship, big brands like Gap or Nike are very susceptible to consumer and activist pressure. If a whole industry sector has very little contact with consumers, it is also much removed from societal pressure. One example for this is the highly fragmented logging industry. If anything, branding occurs at the very end of the supply chain in the manufacturing sector. Societal demand has to be translated upstream on the supply chain.

In conclusion, direct contact with consumers increases the need for the producers to protect themselves against business risks by incorporating societal values into the production and marketing process.

3.2.3 Power Relations: Material Shifts in the Market

Material shifts in the power relations of an industry sector can also provide political opportunities for or constraints on the successful diffusion of ideas. A change of the power constellations within the industry accounts for the fluid moments in history

where structure transforms. I argue that the rise of new powerful actors in an industry sector can change who dominates in the corporate discourse. In this regard, Fligstein (2002) distinguishes between market participants as incumbents and as challengers. Industry incumbents are large firms that seek to protect or enhance their market positions. Challenger firms are usually smaller and are looking for ways to gain a bigger market share at the expense of the incumbents.[42] Depending on the institutional embeddedness of the challengers, a political opportunity can arise for norm entrepreneurs to diffuse their new norm. For instance, a change in the power relations can empower those companies or parts of the industry sector which are, with regard to their accepted normative frameworks, more amenable to norm diffusion. Challengers might consider strong MSI as a market niche (Schurman 2004). However, the rise of challengers might also provide constraints on norm diffusion and the strong institutionalisation of an MSI to the extent that their accepted normative framework is incompatible with the new norm. In that case, the challenged incumbents might also abstain from accepting new norms, fearing it would contribute to endangering their market position. The argument about historical dynamics in the market therefore provides links to the previously discussed normative match.

Just how important, though, are structural shifts in the market? With regard to the industry, Fligstein (2002) reminds us that structural changes in markets occur due to the power struggles between challengers and incumbents. These are particularly important when the changes empower business with different normative frameworks. For instance, when devising new industry regulation, an important issue is whether European or US firms dominate the discourse, as they come from different regulatory traditions. The current rise of MNCs from emerging economies can also trigger a change in the power relations, thereby having a crucial impact on which normative discourse dominates globally (Goldstein 2007; The Economist 2008a).

Whether changes in the material structure affect institutionalisation has to be looked at on a case-by-case basis. I argue that major material shifts in markets can have a direct impact on the design of new institutions – particularly when the

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[42] With the recent structural changes in the oil industry we can see that industry challengers can sometimes be bigger than industry incumbents. Major private oil companies have to stand their ground against national oil companies (NOCs), which have recently become global players. This is discussed in greater detail in Chapter 6.

industry challengers adhere to very different normative frameworks than do incumbents.

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To sum up, industry opportunity structures provide entry points for or constraints to norm diffusion. They can thereby explain why norm diffusion is sometimes successful and sometimes not. In contrast to POS looking at external factors for the success of social movements addressing states, industry opportunity structures have long been ignored in the literature with the notable exception of Schurman (2004). In this sub-chapter we identified two opportunity structures. Firstly, the match between established domestic socio-cultural structures and new norms facilitates norm diffusion. Secondly, material power shifts empower companies which either sympathise with new norms or whose normative frameworks are very different from the new norms.

3.3 The Power of Norm Diffusion

After having identified the POS, we now turn to examining the political strategies of actors who whish to exploit those opportunities so as to foster strong or weak institutionalisation.

Although the main argument of the thesis supports a predominantly structural-based framework, we must to pay attention to agents, as they are the ones that incite norm diffusion processes. Structure may constrain or drive agents but structural conditions do not determine agency. This is a subtle but crucial distinction.

Earlier in this chapter, we identified successful norm diffusion as the cause for reaching a strong institutional design. Generally speaking, diffusion provides an explanation for why states, or other agents on the international level, "choose similar institutions" (Simmons and Elkins 2005: 34). To put it differently, this social mechanism explains why distinct actors develop the same choices about institutional design. Simmons and Elkins (ibid.) stress that diffusion is a very broad concept used in very diverse research designs with very different meanings. While the concept is mainly used to analyse uncoordinated diffusion, I transfer this approach to the setting of international negotiations, hence coordinated diffusion. I consider norm diffusion as a social mechanism for norm entrepreneurs by which they can impact other

agents' institutional design preferences. However, so as to successfully incite norm diffusion, norm entrepreneurs must employ political strategies such as framing and structural power.

In IR, norm diffusion has traditionally been looked at with respect to states as targets so as to be able to explain the institutional design. We have already discussed to what extent MNCs behaviour can also be affected by norm diffusion in Chapter 1.

As previously mentioned, the sub-chapter outlines two political strategies by which norm diffusion can occur: framing (3.3.2) and structural power (3.3.3). Framing has been referred to at the beginning of this chapter as a strategy by which to make new norms match to established frameworks. As boundedly rational actors need to find solutions to policy problems under considerable time pressure and great uncertainty, framing provides openings for norm entrepreneurs to incite learning processes. In contrast to framing and learning, exerting structural power is a political strategy that alters behaviour in order to adjust to a changed political environment without rethinking existing values or ultimate goals.

Norm diffusion has mainly been looked at within a neo-liberal institutional framework (e.g. Simmons and Elkins 2005, 2004), but as with the whole approach, norm diffusion lacks an appreciation of power. With regard to the first political strategy, framing and inciting learning processes is characterised by an unequal distribution of discursive power. Regarding the latter, so as to make an actor adapt to a new political environment, other actors have to exert power to change the political environment in the first place. Additionally, they can employ structural power to reinforce adaptation. From this we see that power is a crucial underpinning of the political strategies. Before analysing them in greater detail, we therefore first have to make sense of the complex concept of power.

3.3.1 Power in International Relations

Power has always been one of the core concepts in the social sciences. Most researchers use as a starting point Max Weber's understanding of power defined as "jede Chance, innerhalb einer sozialen Beziehung den eigenen Willen auch gegen Widerstreben durchzusetzen, gleichviel worauf dies Chance beruht" (Weber 1980:

28).[43] In the literature, power is mainly conceptualised as being relational, structural and discursive.[44] Relational approaches to power are close to Max Weber's concept and focus on instrumental causality where "A has power over B to the extent that he can get B to do something that B would not otherwise do" (Dahl 1957: 201f). Such approaches are closest to the traditional understanding of power (Morgenthau 1953; Waltz 1979). By adopting an outcome-oriented perspective, it analyses power as a measurable phenomenon.

Structural approaches to power reveal the "hidden faces of power" (Falkner 2008: 19). Bachrach and Baratz (1962) focus on the power of non-decisions in cases where behavioural options are pre-determined, thus looking at the input-side of power. Structural approaches were most prominent in IPE in the 1970s and 1980s when scholars turned their focus towards material power structures (e.g. Cox 1987).

With the rise of constructivism, IR theory has begun to emphasise the constitutive effect of normative structures for actors' identities and interests. What has been ignored, however, is the fact that these constitutive effects are expressions of power (Barnett and Duvall 2005: 41). Recently, scholars have started to pay more attention to constructivist dimensions of power (Guzzini 2005; Holzscheiter 2005). Discursive power conceptualises the ability to shape perceptions by framing policy problems and solutions. More specifically,

> "A may exercise power over B by getting him to do what he does not want to do, but he also exercises power over him by influencing, shaping or determining his very wants." (Lukes 1974: 27).

Thus, power is reflected in the norms, ideas and societal institutions that shape international social activity. This links to what we noted earlier in this chapter: accepted norms are those of the actors in power. By globally institutionalising their own norms, powerful actors do not need to directly impose a certain political

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[43] "The probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests"(translated by Fuchs and Lederer 2007).

[44] A different conceptualisation of power is provided by Barnett and Duvall (2005) who distinguish between compulsory, institutional, structural and productive power. There seems to be an emerging consensus that scholars should draw on the various conceptualisations of power rather than sticking to one school of thought in order to give a more encompassing analysis than earlier studies did (Barnett and Duvall 2005; Fuchs 2005; for applications see Fuchs and Lederer 2007). Studying power with such pragmatism means that different actors can draw on the same facets of power. It is the context in which the actors use their power and not the properties of actors that is significant here. As Sell and Prakash (2004) note, both NGOs and MNCs can draw on discursive power.

strategy. Exercising power by dominating the global normative discourse is more advantageous as it is less costly than direct imposition (Hurrell 2005).

3.3.2 Framing and Learning

New norms diffuse because actors learn about them and find them useful or necessary to reach certain policy goals. The political strategy to diffuse norms by inciting learning processes is framing. As Sell and Prakash (2004: 144) contend, such a political strategy involves using ideas strategically to graft the "preferred policy goals onto debates as solutions to pressing policy problems". We elaborate framing and learning later in this section. At this point, it is important to distinguish such an approach from others used to conceptualise international negotiations. On the one hand, there is a neo-liberal institutionalist perspective in which self-interested and completely informed actors hammer out agreements on a give-and-take basis. The aim of such a bargain is to offer tangible incentives such as financial, technical, or economic assistance or other benefits in exchange for cooperation or the adoption of certain rules (Keohane 2001; Jönsson 2002). On the other hand, constructivists emphasise that norm creation in negotiations should not be understood solely as a bargaining process. Instead, they draw attention to negotiations as communicative forums where persuasion and internalisation are significant (Risse 2000; Ruggie 2002). Actors become entrapped in argumentative discourses over different regimes of truth and, ultimately, become persuaded by the better argument. In this reading, actors prefer a certain institutional design because they are convinced of its necessity.

Both approaches blur the crucial role power plays in international politics (Hurrell 2005). Examples such as the Uruguay Round demonstrate that new ideas, such as IPRs, were fostered and adopted by the powerful actors whereas weaker states did not have the political and financial resources to challenge this idea (Sell 2003). Another example is the flourishing research on transnational advocacy networks under a constructivist banner (e.g. Finnemore and Sikkink 1998; Keck and Sikkink 1998). While the cases are supposed to demonstrate the role of persuasion and internalisation, they actually capture the same processes of pressure and cost/benefit calculations a standard rationalist model would propose. Transnational

advocacy networks diffuse norms by socially sanctioning bad behaviour and by allocating reputational benefits to norm conforming behaviour (for a similar critique see Checkel 1999b). In their 'naming and shaming' campaigns they exert instrumental power in that they make actors behave in a way they have not chosen themselves. However, in order to exercise instrumental power, transnational advocacy networks must draw on prestige, moral authority and legitimacy (see Josselin and Wallace 2001b).[45]

Knowledge-based theories of regimes – of which the concept of epistemic communities is the most widely known (Haas 1992; Litfin 1994) – capture the middle ground of constructivism and neo-liberal institutionalism by linking regime formation through learning to the notion of knowledge as a disposition of political power. The approach emphasises that knowledge is not just a body of objective facts that is 'out there' (Litfin 1994). New ideas do not float freely in the political space but have to be constructed by agents. Whether they can be used to teach other actors depends on their persuasiveness.[46] To make knowledge policy-relevant it must be framed or interpreted in such a way that it can exploit POS. New knowledge or new ideas therefore have to be grounded on the structural conditions. Knowledge, then, is not an exogenous or value-free factor, but can be used and shaped by actors to maximise its impact. I consider the ability to initiate learning processes as a form of discursive power. To exert this form of power, agents have to employ normative frames. New ideas are framed strategically so that they resonate with already-accepted normative frameworks (Keck and Sikkink 1998). Framing is a concept developed by social movement theorists which describes the creation of meaning. Frames are not ideas, but "ways of packaging and presenting ideas" (Khagram et al. 2002: 12). Overall, framing is a political strategy that increases the likelihood of a normative match.

Whether norm entrepreneurs can successfully initiate a learning process by framing the preferred institutional design depends ultimately on two factors. They have to relate to the underlying power positions as well as to the normative

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[45] In this respect, Hurrell (2005: 49) is right when he observes that mainstream rational approaches do not have the "intellectual tools to comprehend adequately" the sources of power in global governance.
[46] Note that I use the concept of learning rather than persuasion as the latter is a constructivist term linked to Habermasian theories of communicative action (e.g. Risse 2000; Deitelhoff and Müller 2005). Persuasion involves changing what people value and what they think is appropriate (March and Olson 1998). As I contended in Chapter 1, IR lacks as yet the psychological methodologies to demonstrate the empirical validity of such a theory.

frameworks that provide the circumstances for shaping global politics. Hence, they must exploit the POS described earlier in this chapter. Norm entrepreneurs can maximise their impact by intervening in particularly fluid moments of the policy processes when decision-makers are searching for new policy solutions. They need to capitalise on those policy crises as they constitute turning points in which uncertainties concerning behavioural options and unhappiness with past or current definitions of preferences provide openings for re-thinking. However, what constitutes a policy crisis and what it means for the policy process depends on framing (Sell and Prakash 2004). Hence, those turning points can be created intentionally by norm entrepreneurs when launching a pressure campaign.[47] In those circumstances the diffusion of new ideas not only incites instrumental reactions (adaptation) but can open pathways for learning:

> "(...) learning that is triggered by social movements or interest groups is a form of involuntary learning. It takes place because the organisation is confronted with problems it has not chosen to deal with and, in order to cope, must develop competences it would not have developed without being forced to" (Kädtler 2001: 221).

In order to be successful, framing has to involve a certain amount of pressure, as this increases the likelihood of being heard.

Norm entrepreneurs can change the minds of their targets, but it is the practical value of the ideas at that particular moment of time that gives them the force to change. Mapping or constructing political opportunities that have the potential to foster the diffusion of a specific idea, and then exploiting them, is a form of discursive power. By looking at the emergence of the welfare state in the post war era, Ikenberry (1993: 84) stresses this point when he concludes that the welfare state did not come about just because the idea simply emerged. In fact, many good ideas never find an audience and many bad ideas are around for decades. Ideas matter because they provide opportunities for elites to pursue their interests in a more effective way and because they are promoted by norm entrepreneurs who know when and how to seize the moment. Framing is the political strategy to make new ideas look valuable and useful to other actors.

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[47] As an example, disasters such as the Exxon Valdez spill and the chemical disaster in Bhopal, India incited far-reaching environmental regulations which were, of course, not created. But using a perceived loss of US competitiveness as a political crisis to enforce IPRs in developing countries, technology firms were able to frame the agenda for the construction of what later became the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). At the time the US administration was not as yet aware of the importance of IPRs to the competitiveness of its companies (Sell and Prakash 2004).

Throughout this chapter we noted that POS can work in two ways. Likewise, what we said in the above about framing and learning concerns norm opponents who want to prevent the widespread diffusion of a specific norm. My approach therefore also speaks to the pluralist-structuralist debate introduced in Section 3.2.1. Is business more privileged in being able to frame ideas the way we discussed above because of its access to financial resources? I contend that it is not, but to the extent that access to appropriate information is vital for successful framing strategies, MNCs and NGOs might be privileged in framing different issues. For instance, where more technical knowledge about industry operations is needed, MNCs might have a competitive advantage as they hold the technological expertise. When it comes to designing the technical details of MSIs, MNCs might therefore, indeed, be privileged – yet not, as structuralists would assume, because of their financial power. Overall, norm opponents exert discursive power in the same way as norm entrepreneurs. They frame their resistance to new norms by exploiting the POS and thereby constrain norm diffusion. For negotiations on the design of MSIs this means that norm diffusion is not a 'one-way-street'. It is a contest between norm entrepreneurs and opponents over discourse domination.

We can therefore conclude that framing to incite learning processes is a powerful social strategy for norm diffusion, but in order to exert such power, the relevant ideas must be formulated in conjunction with the specific POS. This concerns both norm entrepreneurs and norm opponents.

3.3.3 The Power of the Tipping Point: Structural Power

Norm diffusion is successful when the new norm becomes a globalised norm. Although this thesis is not primarily about norm adoption, we have already considered norm adoption as a precondition when choosing a specific institutional design. The previous section suggests that norm diffusion only occurs in cases where norm entrepreneurs match the right strategy (framing) to the right moment (POS). Multilateral and multi-stakeholder negotiations are complex to analyse because a broad range of actors with different backgrounds participate in them. Therefore, we should not expect every actor to support a specific institutional design simply because framing strategies were successful and because they had learned to prefer

the design. Such an understanding of norm diffusion would ignore the unique situations actors find themselves in and ultimately would render the structural part of this framework obsolete.[48] The notion of POS contributes to the explanatory value of the framework. For, where those structures are not as favourable, framing and inciting learning processes might not be the political strategy that is successful in diffusing the new norm. Norm entrepreneurs then have to count on structural power to push for their preferred institutional design.

Exerting structural power successfully forces actors to adapt because "the decisions taken by others alter the value of the policy for others" (Simmons and Elkins 2005: 39). Norm entrepreneurs exercise structural power when they alter the political environment of norm opponents. It is important to emphasise that structural power does not equal coercion (which, of course, would be instrumental power). Norm entrepreneurs do not simply impose certain behaviour on norm opponents. Coercion, unless it is a hegemonic imposition, is difficult in global politics – especially when it comes to creating voluntary MSIs. Exerting structural power is much more subtle than instrumental power. Actors who previously opposed a new norm must re-evaluate their political options and goals in light of a changed political environment. As a result of this process, they will adapt their behaviour to the new political environment. To give some examples, norm entrepreneurs can make the material incentives and constraints of cooperation and non-cooperation more visible for norm opponents. The strategy could also entail using discursive power by 'naming and shaming' or allocating reputational benefits to persuade other actors to endorse specific political goals.[49]

Borrowing from Finnemore and Sikkink's (1998) norm life cycle, I argue that the tipping point is crucial to successfully exert structural power. The tipping point is reached when a critical mass of actors supports a specific institutional design. Constructivists paint a picture of the tipping point in which adapting actors are eager and willing followers of new international trends and not 'victims' becoming marginalised or even isolated in the international community (Finnemore 1996a,

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[48] It would be obsolete because we would then return to assuming uniform structural preconditions in which interaction takes place.

[49] An example for this is the way in which IFIs 'motivate' developing and emerging countries to introduce good governance reforms. The IFIs exert discursive power as Woods (2006) points out. However, through the scope and content of conditionality, IFIs are also able to exert structural power by allocating both material and reputational benefits.

1996b; Finnemore and Sikkink 1998). According to this view, actors genuinely commit to new standards and norms rather than complying begrudgingly with outside demands. They change their goals and not only their approach to problem-solving. However, when looking more closely at why actors adopt certain strategies after a tipping point has been reached, we find that consequentialist-motivated adaptation to a new political environment is in most cases a better explanation than internalisation of a new norm by political elites (see also Checkel 1999b). Particularly, when powerful actors set the standards for new behaviour and appropriate action, norm opponents may have little choice but to adapt to the new political environment. The political power of the group of like-minded actors does not stem from brute force and coercion but from authoritative control. The more actors adopt the norm during and after the tipping point, the more not like-minded actors become marginalised. Exerting structural power by marginalising norm opponents intentionally raises the costs of non-cooperation both in material and social terms.

The tipping point is crucial as it creates a political opportunity for successful norm diffusion through structural power. The more actors with a crucial reputation actively endorse a specific institutional design, the more norm opponents may feel marginalised. Hence, it not only matters how many states adopt the norm, but also which states are already members, as "some states are critical to a norm's adoption; others are less so" (Finnemore and Sikkink 1998: 901).

Finally, we can also discern another adaptation after having reached the tipping point. Regime evolution has been identified by many regime theorists as a crucial development after an initiative has been created. Participants adapt to the new requirements by slowly strengthening the regime. This can be explained by the goal of regime participants to exclude any free-riders. Those who bear the costs of compliance want to ensure that only those who really comply with the regime enjoy the benefits. This is a question of evolution rather than political strategy, and therefore should be distinguished analytically from adapting to structural power.

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This sub-chapter examined norm diffusion as a social mechanism for pushing a certain institutional preference. I argued that norm diffusion could be brought about

by two political strategies: framing and structural power. Framing and thereby initiating learning processes is the ability to make one's own institutional preference fit to the demand of the crucial decision-makers. Exerting structural power is a strategy in which norm opponents are marginalised from the international community, both in social and material terms. So as not to suffer reputational or financial costs, they must adjust their behaviour to the new political environment.

In summary, the sub-chapter provided the link between institutional design as outcome and POS and norm diffusion as causal mechanisms. Successful norm diffusion depends on the confluence of the right POS and the ability to spot and seize the right moment. Hence, for ideas to matter, timing and circumstances are crucial:

> "(...) the role of ideas in politics appears to be both powerful and fragile: powerful in shaping the definition of interests at particular historical junctures – Max Weber's switchman role – and fragile in that the conditions that allow for the play of these ideas are so highly dependent on an array of enabling circumstances" (Ikenberry 1993: 85).

3.4 Revisiting Institutional Design: Political Opportunity Structures and Norm Diffusion

To conclude, it is helpful to summarise both the main points of my framework and to emphasise to what extent my approach differs from existing institutional design theories. In this chapter, I proposed a distinctive framework to account for the institutional design of MSIs. As we saw from Chapter 1, a reconsideration of mainstream institutional design theories was needed since they failed to account for the institutional variance of the KP and the EITI. In particular, the assumptions of complete rationality, structural homogeneity and the underestimation of power contribute to the explanatory weakness of neo-liberal institutionalism. Power-based theories could not explain why powerful countries became involved in both initiatives in the first place, and why the KP was able to produce a strong design without the lead of the US.

I propose to examine the emergence of a specific institutional design by looking at norm diffusion and POS as causal mechanisms. The advantage of such an approach is twofold. First, it takes into account both power relations and the cultural and normative diversity in the social world. MSIs are very complex institutions as they involve a broad range of stakeholders from a wide variety of normative,

institutional and political backgrounds. The assumption that considerations of efficiency determine institutional choice glosses over the crucial role that power asymmetries and differences in beliefs play in the international political economy. Second, its explanatory value is increased by combining two levels of analysis as it emphasises the complex link between structure (political opportunities) and agency-based political strategy (norm diffusion through framing and structural power).

My framework explains strong institutionalisation by the confluence of favourable POS and powerful norm entrepreneurs who are able to map and exploit the circumstances to their advantage. In cases where norm opponents are easily accessible and the new norm matches their established normative framework, norm entrepreneurs can frame new norms accordingly and thereby incite learning processes to gain support for strong institutionalisation. However, given the high complexity of multi-stakeholder negotiations, we should not expect that norm entrepreneurs will always be able to gain support for strong institutionalisation by such a strategy. In cases where the opportunity structures are not so favourable, norm opponents come to support a strong institution because they have become marginalised by their peers and therefore need to adapt to a new political environment. Structural power is particularly successful in instances where powerful actors have previously endorsed a strong MSI.

Weak institutionalisation is explained by the failed attempt to diffuse the new norm and the resilience of competing norms. In such a case, the POS constrain the success of the political strategies of norm entrepreneurs. Instead, they can be exploited by the norm opponents to water down the new institution as much as possible and legitimise their preferred competing norms. By conceptualising norm diffusion as a two-way process, I emphasise that even in the event of the downfall of new ideas there is no such thing as a norm-free space.

This chapter concludes the theoretical part of the thesis before turning to the empirical analysis. I developed a framework emphasising that under some circumstances, ideas do not make their way through. Ideational facts are powerful as they can shape actor behaviour, but in certain structural settings or if norm entrepreneurs are simply unable to use opportunity structures for their own advantage, ideas remain simply ideas.

CHAPTER 4

Regulating Trade in Diamonds

After establishing the theoretical framework, we now turn to the empirical analysis. As mentioned in Chapter 1, the two case studies are each examined in two chapters, first looking at the policy issue and scrutinising the particular institutional design, then accounting for the specific outcome and the variance across the cases.

We begin the empirical analysis by examining the KP and the trade of diamonds. Precious stones have always inspired mankind. Long before diamonds were discovered in Africa, the gems, mainly originating from India, were very scarce and treated as a symbol of strength, fortitude and courage. Their geological background, however, is less fancy. The stones consist of pure carbon and were formed and compressed at 3,600 degrees Celsius at the earth's core thousands of years ago. The stones are carried to the surface by volcanic eruptions along so-called kimberlite pipes. Amongst other gemstones, diamonds have unique properties. Being very hard and resistant to chemicals, they can serve for important industrial purposes. Yet, it is their rarity, purity and durability which have made them so precious, being a universal token for love and a symbol for luxury.

Politically and economically speaking, diamonds provide a more diverse picture. In countries like Botswana they provide the bedrock for economic development and political stability. In recent times, however, diamonds have acquired an additional reputation. Since the 1990s, the glittering stones are strongly associated with civil conflicts and the atrocities of rebel armies in Angola or Sierra Leone.

This chapter introduces the first case study, the KP. The MSI aims at curbing trade with conflict diamonds which are said to have fuelled the civil wars in Angola, Sierra Leone and the DRC. The KPCS is essentially a trade regime for rough diamonds. Participating countries are committed to only sell or purchase gems which have been certified by an official authority. By doing this, the negotiating parties wanted to ensure that diamonds mined by rebels could no longer enter the legal trade.

Attached to the KPCS is a self-regulatory scheme of the industry, the System of Warranty (SoW). The industry thereby ensures that diamonds, once they are cut and polished, come from legal sources. Central to the issue of conflict diamonds is the opaque character of the diamond industry. The KPCS is designed to make trade with diamonds more transparent.

The chapter provides the empirical and analytical background for the consecutive main analytical chapter. We first turn to exploring why the KP was created by scrutinising the link between the civil wars in Africa and trade in diamonds. So as to make the subsequent analysis more accessible for the reader, I then provide a brief narrative about the KP highlighting the most crucial events. As a next step, the chapter provides an analysis of the main players and the properties of the industry structure. As mentioned before, the opaque structure of the diamond industry was said to facilitate trade in conflict diamonds. We therefore analyse industry opacity as a structural feature of the sector. Finally, we turn the focus to the KP again by assessing its institutional design and thereby defining the dependent variable of this case. I argue that the KP is a highly institutionalised MSI with regard to its levels of membership, obligation, monitoring and enforcement.

4.1 Beauty and the Beasts: Diamonds, Civil War, and Illegal Trade

Before analysing and accounting for the institutional design of the KPCS, it is necessary to understand why policy-makers saw a need for creating such an institution in the first place. We have already noted in Chapter 1 that participants of the KP wanted to create a diamond trade regime to curb trade with conflict diamonds which allegedly financed the civil wars in various parts of Africa. This sub-chapter provides a more detailed background to the policy issue of conflict diamonds and civil war as well as discussing briefly other intergovernmental initiatives that were instigated to deal with the issue.

Diamonds appear to have always been worth fighting for. Centuries ago, diamond wars ravaged India. In the 1970s and 1980s, both sides of the Lebanese Civil War financed themselves through trading and smuggling diamonds from Sierra Leone (Cockburn 2002). However, although diamond wars are not a new phenomenon, the link between conflict diamonds and civil wars has been neglected

for a long time. It is only since the mid-1990s that the issue has gained more international attention.

4.1.1 Exploring the Link between Conflict Diamonds and Civil War in Africa

The UN defines conflict diamonds as diamonds "that originate from areas controlled by forces or factions opposed to legitimate and internationally recognized governments, and are used to fund military action in opposition to those governments".[50] The term was coined for diamonds originating in Angola, Sierra Leone, and the DRC. However, the issue was not limited to these countries since the diamonds were often smuggled through countries such as Liberia, the Central African Republic, and the Republic of Congo (GAO 2002). The illegal diamond trade was estimated to account for about US$ 300 million per year, which translates to three to fifteen percent of the annual global diamond output.[51] Although this percentage was relatively low, the diamond trade generated huge revenues for purchasing weapons and funding drug deals (Price 2003).

The issue of conflict fuelled by the diamond trade only emerged on the international political and academic agenda in the 1990s when the civil wars in Angola, Sierra Leone, the DRC and Liberia peaked. The conflicts were characterised by a high degree of violence against the civilian population over a very long time. Since then, an impressive amount of research has been produced scrutinising the 'political economy of war' and its link to conflict diamonds (e.g. Collier and Hoeffler 1998; Ballentine and Sherman 2003; Berdal and Malone 2000).[52] Research has not only established the 'paradox of the plenty' according to which natural resource-rich countries are more likely to suffer from civil conflict, but has also moved on to identify the causal mechanisms that link the two. Given that a number of diamond

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[50] Press Release, UN General Assembly, General Assembly Urges States to Implement Measures to Weaken Link between Diamond Trade and Weapons for Rebel Movements, UN Doc. GA/9839 (1 December 2000), available at http://www.un.org/News/Press/docs/2000/20001201.ga9839.doc.html, last accessed on 15 June 2008.

[51] This percentage is only an estimate. Due to the clandestine nature of the issue it is very difficult to give an exact account of the actual amount (Smillie et al. 2000).

[52] More recently, international attention has turned to so-called 'dirty diamonds' which might provide sources for terrorist financing (Farah 2001) and illicit mining where artisanal miners work without the protection of any legal framework (see the Diamond Development Initiative at www.ddiglobal.org, last accessed on 16 June 2008).

producing countries have remained peaceful, such as Botswana or Namibia, research suggests that natural resources provide political opportunities for conflict rather than being a cause for conflict (Humphreys 2005).

As the case studies below demonstrate, diamonds serve as means of financing rebel groups. They therefore provide commercial opportunities to continue already existing conflicts. Even in the absence of military victories on either side, belligerents are able to continue a protracted war against their governments. Particularly with diamonds being so small and highly valuable at the same time, they are ideal financial resources as they can easily be smuggled across borders.[53] Lootable natural resources also alter incentives for peace-making (Keen 2000). Rebel groups might actually be able to gain more by waging war than they would in times of peace. Thus, economic considerations impact the interests and behaviour of the opposing parties. The war provides financial opportunities for engaging in illicit but highly profitable economic activities, such as smuggling diamonds. Rebels therefore might lose interest in negotiating compromises on the political roots of the conflict.

The case of Angola serves as a prototype of the extent to which natural resources can change the nature of a civil war. The conflict broke out during the period of de-colonialisation (1961-1974) in which the rebel group *União Nacional para a Independência Total de Angola* (UNITA) struggled for political control against the government troops of the *Movimento Popular para a Libertação de Angola* (MPLA). The conflict then transformed into a Cold War proxy conflict (Cater 2003). The two forces were sustained by financial assistance from abroad as the Union of Soviet Socialist Republics (USSR) and Cuba supported MPLA whereas the US and South Africa funded UNITA (Price 2003). The peace accords of 1992, in which the UN supervised democratic elections, led to the victory of MPLA supporting Eduardo Dos Santos. Since the end of the Cold War had drained financial funding of the superpowers, Dos Santos' opponent UNITA had to raise alternative financial resources. From 1992 to 2002, the conflict therefore transformed into a resource-based civil war (Cater 2003). Whereas the government funded the war through its oil production, UNITA retreated to the diamond fields of the country. Global Witness (1998) estimated that UNITA controlled up to 60 to 70 percent of the country's diamond production, which translated into revenue of US$ 3 to 4 billion

[53] Another lootable resource are drugs which serve to prolong the civil war in Colombia (see e.g. Guaqueta 2003).

for the period of 1992 to 2000 (Le Billon 2001). After breaking numerous peace talks, Angola could finally be pacified after the death of UNITA leader Jonas Savimbi in February 2002.[54]

Independence was also the origin of the civil conflict in the DRC. The US supported the highly oppressive regime of Joseph Mobutu, which was challenged by a series of rebellions between 1967 and 1978. Mobutu was able to survive those rebellions, but the end of the Cold War coupled with widespread human rights abuses and the economic collapse of the country precipitated his downfall. The rebel leader, Laurent Kabila, and the *Alliance des Forces Démocratiques pour la Liberation du Congo* (AFDL) benefited from the power vacuum following Mobutu's downfall and seized the capital Kinshasa in May 1997. The group was mainly supported by Uganda and Rwanda as well as the mining company American Mineral Fields, which wanted to protect its concessions (Cater 2003). In the DRC, diamonds were only one natural resource among coltan, gold and timber which fuelled the civil conflict (Montague 2002). The conflict was finally ended militarily by Zimbabwean, Angolan and Namibian troops which led to the Lusaka Peace accord in July 1999.

In contrast to the preceding cases, Sierra Leone's civil war is not rooted in the country's independence from the UK in 1961 (Cater 2003). Although the regimes following independence were highly unpopular, being very corrupt and coercive, the conflict was instigated by the outbreak of civil war in neighbouring Liberia. In March 1991, the Revolutionary United Front (RUF), supported by the Liberian warlord Charles Taylor, initiated an invasion Sierra Leone. The UN Panel of Experts' Report (S/2000/1195) found that since 1995, RUF had conquered the diamond rich fields of Kono and Tongo. The UN estimated that RUF generated an annual income of between US$ 25 million and US$ 125 million. The civil war in Sierra Leone gained international attention as RUF became widely known for horrific atrocities. Overall, the war had caused 75,000 deaths and resulted in 500,000 people becoming refugees (Cater 2003: 24).

From the three cases we see that diamonds can prolong civil conflicts. International initiatives cutting off rebels from their financial resources can therefore be very helpful but have to be complemented by more traditional means of pacification, as it happened in Angola, Sierra Leone and the DRC.

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[54] For a short summary of the phases of war in Angola, see Global Witness (1998).

4.1.2 Overview of International Initiatives Dealing with Conflict Diamonds

Against the background of the atrocities committed in the African civil wars, the international community repeatedly tried to intervene in order to bring the conflicts to an end. As the attention of policy-makers and scholars had moved from political to the economic motives for the civil wars, so the strategy was adjusted for dealing with the atrocities. Instead of just sending troops into the complex conflicts, the UN adopted economic sanctions in order to cut off rebel groups from their revenue source. With a view to protecting the legal diamond trade in the countries concerned, national certification schemes were set up.

The UN Security Council (UNSC) issued the first embargo for Angola in June 1998. Resolution 1173 embargoed, among others, all imports of diamonds which were not certified by the Angolan government (S/RES/1173). Subsequently, the same was applied to Sierra Leone (S/RES/1306). Nevertheless, the sanctions proved ineffective in keeping illicitly mined diamonds out of the global diamond pipeline (Cortright and Lopez 2000; Global Witness 1998). In fact, military intervention was responsible for the pacification of the civil wars rather than the UN sanctions (Le Billon 2003). As the UN Panel of Experts' Report ('Fowler Report') pointed out, the effectiveness of the national certification schemes was very limited due to widespread corruption (S/2000/203). Moreover, most of the governments concerned were incapable of preventing diamonds being smuggled into neighbouring countries where the diamonds could be laundered. Some governments in neighbouring countries, such as Liberia or Burkina Faso, were not only willing to tolerate these practices but also supported them since they provided additional revenue. However, major powers and the UNSC were also unwilling to monitor and enforce the sanctions more rigorously.

In light of the inefficiencies of the UN sanctions for conflict diamonds, the international community was looking for ways to more effectively prevent conflict diamonds entering the legal trade. Prior to the KPCS, there were only a few certification regimes in place regulating trade in, for instance, endangered species (CITES) or hazardous waste (Basel Convention) (Reeve 2002; Krueger 1999). Certainly, regarding the regulating of trade in conflict commodities, the KPCS was the first of its kind.

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Overall, having understood the link between trade in diamonds and civil wars in Africa, the international community saw a need to find an international solution that would cut off warlords from their revenue sources. However, given that all existing sanctions had proven to be inefficient, uncertainty as to how to design such a global regime was very high. Against this background, the KP evolved, and it is this to which we now turn.

4.2 Negotiating and Implementing the Global Diamond Trade Regime

In this sub-chapter, I provide a brief description of how the KP evolved. I first revise how the issues reached the international agenda in 2000. Subsequently, I explain how the Process evolved and what issues were contested during the negotiations. In the final section I study the implementation of the KPCS and the SoW as well as the Three Year Review in November 2006.

4.2.1 From the Campaign against Conflict Diamonds to the KP

Having studied the link between the opaque diamonds trade and the civil conflicts in Africa, the London-based NGO Global Witness brought the issue of conflict diamonds to public attention at the end of the nineties. It published a report about the inefficiencies of the economic and political sanctions by the UNSC on UNITA in Angola (see Global Witness 1998). [55] At the same time, the UNSC Sanctions Committee on Angola, chaired by Robert Fowler, commissioned an Expert Panel to assess the effectiveness of the sanctions regime. In March 2000, the Fowler Report concluded that the trafficking of conflict diamonds was facilitated by certain actors in the diamond industry as well as weapon dealers and certain heads of state.

By the year 2000, other NGOs had already joined Global Witness in their Conflict Diamonds Campaign. In 2000, a Canadian NGO, Partnership Africa Canada (PAC), published a report on conflict diamonds in Sierra Leone concluding that RUF

[55] This section only briefly reviews the NGO campaign. I analyse NGO action in detail in Chapter 5.1.

was financing its rebellion largely by smuggling diamonds into Liberia (Smillie et al. 2000).

Between 1999 and 2000, the Conflict Diamonds Campaign exerted immense pressure on both governments and the industry. With regard to the latter, NGOs accused the industry of facilitating trade in conflict diamonds by virtue of their opaque trading traditions.[56] As a reaction to the mounting pressure, an international policy response to the issue began to evolve. South Africa invited all the stakeholders to a 'technical forum' in Kimberley, South Africa, in May 2000. A follow-up working group meeting was organised only a month later in Luanda, Angola. The outcome of this meeting was the recommendation of a new global system that would prohibit the importation of rough diamonds without a certificate of origin. The industry discussed the issue at the meeting of the World Diamond Congress in July 2000, which created the World Diamond Council (WDC) to take part in the KP meetings.

In the following thirteen KP meetings, the stakeholders designed the certification scheme and supported the creation of an industrial self-regulatory system. As we shall see in Chapter 5, members of the LM-Group, such as the UK, Canada and the NGOs pushed for strong institutionalisation from the beginning on. Although UK diplomats were crucial to the negotiations until the KPCS launch, the European Commission (EC) took a lead as soon as the focus on trade regulation was determined. The working group meetings and interministerial meetings were accompanied by several conferences hosted by academic institutions where stakeholders were invited to express their opinions on the ongoing process. Despite the multi-stakeholder character of the negotiations, the KP was also backed by several multilateral institutions. Two G8 summits, at Okinawa, Japan, in 2000 and Kananaskis, Canada, in 2002, supported the creation of a commodity tracking system to curb trade in conflict diamonds (Smillie 2005c). Moreover, the UN endorsed the KP in its resolution 55/56. The subsequent meetings of the process with an increasing number of participants were labelled the 'enlarged KP' (Beffert and Benner 2005).

[56] The opaque trading traditions are analysed in the subsequent sub-chapter.

A meeting in Botswana in November 2001 failed to result in a final agreement. The KPCS was adopted by consensus by both governments and NSAs at November 2002 in Interlaken, Switzerland.

4.2.2 Issues of Contention

The second meeting after the technical forum in Kimberley, a working group meeting in Luanda, Angola in 2000, had already produced final recommendations which essentially outlined all the elements of the final agreement ratified in November 2002. It was estimated that an international certification scheme could be set up within a few months. However, during the negotiations, a number of issues of contention arose so that it took 40 months to finalise the agreement. The main issues of contention were the following:

- Identification of origin and certification of diamonds
- NGOs' participation in the negotiations
- The role of the diamond industry in the conflicts
- Compatibility of the KPCS with WTO obligations
- Compliance requirements
- Industrial self-regulation
- Disclosure of statistics
- Taiwan

Most of the contested issues were directly linked with the design of the certification scheme and the regulation of the diamond trade. One of the most contested issues was how to differentiate between illegally and legally mined diamonds. As the subsequent chapter explains in more detail, NGOs aimed for a technological solution by marking diamonds with lasers, whereas diamond-producing countries and the industry preferred the more cost-effective alternative, forgery-proof certificates.

Another keenly contested issue was the role of the industry in the civil conflicts. For a long time, the industry did not want to bear a share of responsibility in the atrocities of Angola, Sierra Leone, and the DRC. I elaborate further on this issue in Chapter 5.

As to the governments, some countries, such as Russia, China, and Japan, blocked the negotiations as they questioned the attendance and participation of

NGOs. However, over time, these countries began to see the advantages that arose from civil society participation.

Another issue was the question of whether the KPCS would be compatible with the obligations of the World Trade Organization (WTO). As explained in more detail in the following sub-chapter, the KPCS prohibits trading diamonds with non-participants. The inclusion of this provision created considerable controversy among the participating states. Some states, notably the US, Canada, and Japan, had expressed their concerns that the KPCS might violate WTO obligations. This group of states refused to endorse any international agreement which would infringe the global trade regime. The issue could not be resolved by a KP working group which issued a report in advance of the Ottawa meeting in March 2002, concluding that import and export bans on rough diamonds would not interfere with WTO requirements provided that the bans were necessary for credible reasons (Kimberley Process 2002; Partnership Africa Canada 2002). The US, Canada, Japan, Sierra Leone and several other countries sought for a WTO waiver which was granted based on human security considerations in May 2003 (Partnership Africa Canada 2003; WTO 2003).

The thorniest issues of contention were monitoring and the disclosure of statistics. As discussed in greater detail in Chapter 5, the final agreement of November 2002 was endorsed without significant monitoring requirements. Notably, Israel and China rejected extensive provisions. Both countries gave up their reservations during the first year of operation. Subsequently, the compliance mechanism was significantly strengthened. As to industrial self-regulation, the diamond industry agreed to set up the SoW at the Luanda meeting in the summer 2000. However, it took more than two years to agree on the details of industrial self-regulation. The two contested issues were whether the SoW would be voluntary or mandatory and whether it should be subject to independent auditing. As with the compliance mechanisms, this issue could be resolved soon after the implementation of the scheme.

As with the issue of monitoring, the disclosure of statistics could only be agreed upon after the KPCS was launched. In order to regulate illicit trade in diamonds effectively, it is important that a central authority knows who exports what amounts of commodities to whom. However, most diamond-producing countries consider the commodity as a strategic mineral, hence for reasons of trade security

and commercial confidentiality, states and the industry alike were reluctant to agree to lay open their trade and stockpiling statistics.

Other issues that delayed the launch of the Scheme were only indirectly linked to the issue of conflict diamonds. For instance, the issue of Taiwan considerably delayed the adoption of the KPCS. The stakeholders had intended to launch the KPCS on 1 January 2002. At the last meeting in December 2001, the Chinese delegation stalled the negotiations as the KPCS had identified Taiwan as a participant. In the end, Taiwan was removed from the list of participants by including a note that "the rough diamond-trading entity of Chinese Taipei has also met the minimum requirements of the KPCS".[57]

4.2.3 Implementing the KP (2003-2006)

The KPCS sets up a minimum of international standards for national certification schemes. Since January 2003, all KP participating states have passed national laws to establish export and import controls. One problem in this context is that national legislation differs across countries. Several countries, including some African countries and Brazil, have extremely weak internal controls. Others, like the countries of the EC, have taken a tough approach (Wexler 2006). The disclosure of statistics remains an important issue as a significant number of countries are either tardy with their submittal of data or submit incomplete data. The implementation of the SoW is still a work in progress. Whereas large mining companies such as De Beers are fully compliant with the SoW, the retail sector especially falls short of implementing the requirements of self-regulation (Interview 16).

Very recently, the KP gained new momentum. A Three Year Review of the KPCS and the SoW took place at a meeting in Gaborone, Botswana on 6 and 7 November 2006. Based on the views[58] of the KP participants, Global Witness, PAC, the WDC, as well as the World Bank and the International Monetary Fund (IMF), 43 recommendations were formulated which addressed issues ranging from the current conflict diamond situation in Côte d'Ivoire to the non-compliance of Venezuela and

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[57] See http://www.kimberleyprocess.com/structure/participants_world_map_en.html, last accessed on 16 June 2008.
[58] See http://www.kimberleyprocess.com/documents/third_year_view_en.html, last accessed on 16 June 2008.

the disclosure of statistics. The review coincided with the making of a Warner Bros. Pictures movie 'Blood Diamond' which again catapulted the issue of conflict diamonds into the sphere of public awareness.[59] The diamond industry in particular was very concerned about the public image the movie could create and wanted to use the Three Year Review as an opportunity to strengthen the diamond trade regime (Interviews 6 and 7).

Overall, the Three Year Review was so successful that even PAC, the most critical NGO involved, commended the KP for its efforts (Partnership Africa Canada 2006). The Review had formulated 43 recommendations to further strengthen the regime, all of which of them were accepted at the Plenary.

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This sub-chapter provided a brief narrative of how the KP evolved. This facilitates the in-depth analysis of the negotiation dynamics in the subsequent chapter. Overall, the stakeholders could create an international certification regime in a comparatively swift time. As already mentioned, the diamond industry's opacity was seen as facilitating trade in conflict diamonds. Given the crucial role of the diamond industry in designing the KPCS, the chapter therefore now turns to analysing the sector by introducing the key players and scrutinising trade opacity.

4.3 The Key Players in the Global Diamond Market

Diamonds are unique among the world's minerals. Contrary to other extractive sectors, such as oil or gas, diamonds have no strategic importance in the global economy. Diamonds are usually classified into two groups, gem quality diamonds and industrial diamonds, which include brown and black diamonds. As the latter are used for the manufacture of instruments, these stones might have some significance for the global economy. Diamond mining and distribution companies trade both

[59] The movie tells the story of a South African mercenary smuggling diamonds from Sierra Leone in the 1990s. As a response to the blockbuster movie in which the KP is only mentioned briefly at the beginning and at the end, the diamond industry launched a website explaining conflict diamonds in great detail while also highlighting the significant role diamonds play in the economies of African countries (see www.Diamondfacts.org, last accessed on 16 June 2008).

categories of diamonds, but in contrast to industrial diamonds, gem quality diamonds are very rare and account for only about 17 percent of the total production. However, the gems yield more than 80 percent of the value of global diamond output (Yakovleva 2005). Thus, economically speaking, industrial diamonds have always been insignificant for the industry. Moreover, industrial diamonds are becoming even less significant as they are now being replaced by artificial diamonds.

Managed by a powerful cartel, the industry was, for a long time, as unique as its product. This sub-chapter introduces the main players and their power relations in the industry which were crucial for setting up new regulations. It also draws attention to important structural changes in the industry which became crucial political opportunities when negotiating the KP. Thus, this sub-chapter contributes to the overall argument of the thesis by deepening the understanding of the industry, an important precondition for being able to understand the negotiation dynamics during the KP. Relevant for analysing the KP are the producing countries and the mining companies, the manufacturing centres with their cutters and polishers, as well as the retail sector and consumer countries. In contrast to other extractive industries where vertically integrated companies cover the whole production process, this industry is very fragmented with very little contact between mining, manufacturing and retail. Finally, the sub-chapter elaborates on why opacity as a structural feature enabled conflict diamonds to enter the legal trade.

4.3.1 Upstream: The Producing Countries and the Mining Companies

Diamonds are carbon atoms which where formed by heat and pressure 120 miles below the earth's surface in kimberlite pipes (Campbell 2004). With the exception of Antarctica, kimberlite pipes are found all over the world. However, not all of them contain diamonds. The top diamond-producing countries are: Botswana, South Africa and Namibia, which mine an estimated 41 percent of world production. Russia, Australia and Canada produce another 33 percent (Goreux 2001). Table 2 depicts the productions in 1999 and 2003.

Country	1999	2003
Angola	3,360	4,770
Australia	13,403	14,900
Botswana	17,200	22,800
Canada[a]	2,429	11,200
DRC	4,120	5,400
Liberia	120	36
Namibia	1,630	1,650
Russia[b]	11,500	12,000
Sierra Leone	7	214
South Africa	4,000	5,070
Other	2,883	2,910
Total	60,600	80,900

[a] *Total production. Several figures for industrial diamonds not available.*

[b] *The data of 1999 is based on estimates, with output believed to be 50% gem and 50% industrial*

Table 2 **World Rough Gem and Near-gem Diamond Production by Country for 1999 and 2003 (in Thousands of Carats)[60] (adapted from Shor 2005b: 204)**

Sub-Saharan countries are especially dependent on the diamonds trade. The economies of Botswana and Namibia rely almost exclusively on the trade in diamonds. Namdeb, Namibia's half state-owned mining company, is the country's largest taxpayer and foreign exchange generator. In Botswana, approximately 85 percent of government revenue is derived from diamonds (Hazleton 2002). In South Africa, the role of diamonds in the economy is significantly smaller,[61] but the industry is important for international exports as South African diamonds are of high value. For other African countries too, diamonds play a vital part in generating economic growth and development. In most of these countries, the industry represents one of very few sustained and profitable export sectors (Ng and Yeats 2002). While the sector has been very stable in the past, most of the African diamond producers would be very vulnerable to a collapse of the global diamond market. The

[60] Generally, the diamond trade is recorded in carats per year (1 carat equals 200 milligrams). The value of a rough diamond does not only depend on its weight but also on its quality. For instance, the DRC produced 22 million carats of diamonds with a value of only US$725 million (Goreux 2001).
[61] The industry contributes 0.88 percent of the South African GDP (Hazleton 2002).

sector creates enormous wealth in some countries, yet diamonds play only a very limited role in the global economy. In contrast to other natural resource markets, the diamond industry is comparatively small. Upstream, the overall annual world production accounts for more than 250 million carats (US$ 7 billion per year) (Schefer 2005).[62]

Mining companies play a crucial, but not always a key role in the industry. Approximately 25 percent of the global annual diamond output stems from Western and Central Africa as well as Latin America. Diamonds coming from these regions are mostly found in riverbeds. Mining techniques, so-called alluvial mining, are very simple and require only rudimentary technological skills. The diamonds are collected by small-sized companies and artisans. The mining sites are mostly not secured and controls were formerly loose and mostly ineffective (Goreux 2001). The stones are mostly sold through middlemen on the open market. In Botswana, Namibia, South Africa, Russia, Canada and Australia, diamonds are extracted from kimberlite formations (Partnership Africa Canada 2006). So-called kimberlite mining requires very technological and mechanised extraction techniques. Big mining firms are dominating in this field.

Up until the end of the last millennium, one mining company, De Beers, was of central importance in the industry. The company has regulated the market since the late 1800s when Cecil Rhodes arrived in South Africa in the midst of the African Diamond rush.[63] Today, the corporate structure of De Beers is very complex. Since June 2001 the Group has been privately owned by Anglo American plc (45 percent), the Central Holdings Group (40 percent), and the government of Botswana (15 percent) (see Figure 8). De Beers Consolidated Mines Ltd. manages the arrangements with major diamond exporting countries, namely South Africa, Namibia and Botswana. The Diamond Trading Company (DTC, former Central

[62] To put the annual diamond production into perspective, let us take a brief look into other natural commodity sectors. For instance, in the timber industry, the gross production accounted for US$ 160 billion world-wide in 1998, representing 0.4 percent of value-added in the global economy (Brack et al. 2002; OECD 2001).

[63] Rhodes had found the first diamond mine near Kimberley on an area purchased from the farmers Johannes and Diedrich De Beers. In 1888, De Beers Consolidated Mines was founded by merging two of the biggest mines in South Africa, De Beers and Kimberley. This marked the beginning of the De Beers cartel (Hart 2003).

Selling Organization, CSO) sells and markets the diamonds. The subsequent section will look more closely at the DTC.[64]

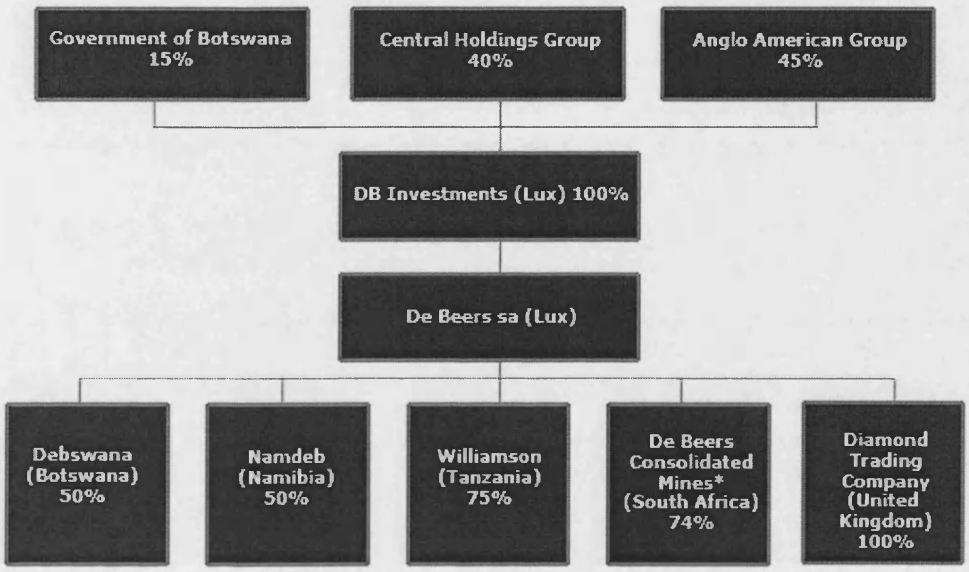

Figure 8 The Structure of the De Beers Group (taken from www.debeersgroup.com)

De Beers established a very powerful position in Southern Africa, as it largely controls the industries of Botswana, Namibia and South Africa (Hazleton 2002; Spar 1994: 77). The group formerly mined 70 percent of the world's diamonds itself in Botswana, Namibia and South Africa (Bream 2005). It still manages 18 mines in Africa that cover the whole range of mining processes – everything from huge open pits to underground operations and from beach mining to underwater mining (Voss 1998). In Botswana, De Beers mines all diamonds in partnership with the government (Debswana). In Namibia, again, in partnership with the government (Namdeb), De Beers is responsible for 80 percent of the diamond mining and market. In South Africa, De Beers produces through its sister corporation Anglo-American nearly 95 percent of the diamonds.[65]

Since the end of the 1990s, just shortly before the start of the Conflict Diamonds Campaign, however, the industry sector has gone through significant

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[64] For more details see www.debeersgroup.com, last accessed on 15 June 2008.
[65] Historically, another crucial diamond supplier was the USSR. In the USSR, government agencies had controlled the diamond operations. Through intermediaries, USSR diamonds were sold to the CSO (see Spar 1994; Bergenstock 2004).

structural changes. New discoveries in Canada led to a diversification in the market and generated major diamond supplies. De Beers did not develop into a major player in Canada because the company historically had never been present in North America (Hart 2003). With the new discoveries, new players gained significance upstream. For BHP Billiton and Rio Tinto, the discoveries constituted a crucial window of opportunity to become involved in the diamond mining business. The Canadian mines are now the first major operations that are producing and marketing outside the De Beers Group. Canada is now the third largest diamond producer by value (Even-Zohar 2005; Shor 2005b).

De Beers is also challenged by one of its former clients, the diamond dealer Lev Leviev. By using windows of opportunities he could take away significant business from De Beers in Russia and Angola. In Russia, his company LLD formed a joint-venture with Alrosa for diamond manufacturing operations which allowed Leviev to gain access to rough diamond resources (Shor 2005b). Due to the Conflict Diamonds Campaign, De Beers was forced to withdraw its operations in Angola.[66] Subsequently, Leviev took this window of opportunity to also gain access to the Angolan diamond production.

In summary, the upstream diamond industry is dominated by the producing countries and De Beers. However, just when the Conflict Diamonds Campaign hit the industry, the sector underwent significant changes which decreased the structural power of De Beers by empowering new players such as traditional mining companies and diamond dealer Leviev. The structural changes upstream also had significant consequences for the downstream sector to which the sub-chapter now turns.

4.3.2 Downstream: From a Cartel to the 'Supplier of Choice'

We have already noted the crucial role of De Beers upstream. However, before the structural changes in the industry, it was through the downstream sector that the company exerted its strong relational and discursive power. The downstream sector consists of sorting and selling the rough diamonds. The gems are then cut, polished and manufactured in one of the world's diamond centres. Looking at this stage in the

[66] For De Beers withdrawing from Angola, see Chapter 5.1.

diamond industry, we can understand the sector's truly global character. Cutting and polishing centres are mainly located in South Africa, Botswana, Russia, China, Sri Lanka, Thailand, Vietnam and Mauritius, whereas manufacturing centres are located in Israel, Belgium, India and New York (Even-Zohar 2002).

More than any other industry, the diamond sector is very fragmented. In particular, the retail sector is very removed from mining. Given that diamonds are re-sold numerous times through middlemen, the manufacturing sector also has few links to the upstream part of the industry.

The fragmentation is reinforced by the fact that there are no fully integrated companies as with other resource sectors. Even De Beers, until very recently, did not cover the whole supply chain. Apart from mining the stones, the Group also covered transporting, sorting and selling. However, in the diamond business the biggest returns are made further downstream in the retail sector. Therefore, in early 2001, the Group announced the launch of its own jewellery brand, the Forevermark™ in a joint venture with Moët Hennessy Louis Vuitton.[67]

De Beers has been able to acquire strong power in the industry mainly for two reasons. Firstly, in comparison to other cartels, De Beers has been exceptionally successful in controlling prices and the market, thus maintaining a high price level over the decades. De Beers was able to control prices by regulating and manipulating the supply of the gems, stockpiling its mined goods. Thus, the company could maintain the rarity of diamonds artificially even in times of abundance.[68] The DTC, formerly CSO, is the Group's marketing arm which sells De Beers' own diamonds and those mined in joint ventures. Moreover, De Beers has set up sales agreements with major competitors for securing the distribution of their production and sold those diamonds. Due to these agreements, the DTC formerly marketed the USSR/Russian diamond production, Zaire's (present-day DRC') official production, the Minière de Bakwanga (a parastatal Congolese mine), as well as Angola's state-

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[67] Since then, a number of De Beers retail stores have opened, see http://www.debeers.com/en/, last accessed 15 June 2008.

[68] The need to control both arose at the very beginning of De Beers as a company. Already Cecil Rhodes had observed that diamonds were a pure luxury commodity serving neither as a material use to man nor as a financial investment (Voss 1998). They are only bought because they are a symbol of love. Hence they would only be sold at high prices when they were perceived as being scarce by the consumer. In the late 1880s, however, with the new discoveries in South Africa and great advances in diamond production, the prices were under pressure. As Bergenstock (2004:19) points out, within a few years, prices were halved and nearly one-third of South African diamond companies had to end their business. Cecil Rhodes understood very quickly that the diamond market needed to be controlled otherwise the industry would mine too many diamonds and flood the market.

owned diamond-mining company Endiama (Shor 2005b: 204). Finally, the DTC sold diamonds that were bought on the open market (so-called outside buying).[69] Overall, De Beers controlled over 80 percent of the supply of rough diamonds globally (European Commission 2002). The 20 percent marketed outside De Beers came from the Rio Tinto mine in Australia, smaller mining productions in South Africa and South America as well as informal alluvial mining in West Africa (Shor 2005b: 204).[70] Selling the diamonds through the DTC follows traditional rules. The diamonds are sold to pre-selected diamond dealers, so-called sightholders, who are mostly owners of diamond-cutting factories in Antwerp, Bombay, New York and Tel Aviv.[71] In CSO times, around 160 sightholders had the privilege of buying their diamonds directly from the CSO.

Secondly, the Group was key to the industry as it created a new market for diamonds. De Beers started to drive demand for diamonds from the 1930s onwards by constructing diamonds as a symbol of love. Although diamonds have always been perceived as precious stones by monarchs, historically they had never been a metaphor for ever-lasting love. In the late 1930s, De Beers, together with their former public relations agency undertook a campaign to persuade the American public to purchase diamonds.[72] Today, De Beers spends an estimated US$ 200 million per year on advertising (Bergenstock and Maskulka 2001).

Overall, De Beers was the most powerful actor for over 70 years. Due to its enormous financial capability and its firm grip on the diamonds supply, the Group had immense relational power. Dealers feared being cut from the supply chain if they did not comply with the De Beers regime. However, De Beers only rarely needed to exert (or threaten) with its relational power as the Group also has extensive discursive power. The discursive power stems from the fact that the diamond dealers

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[69] The company ended all open market acquisitions in 2000.
[70] Due to changes within the group and diversification of the industry, these numbers have dramatically decreased since 2001.
[71] The diamonds are stored in CSO/DTC offices in London until the company decides how many and which diamonds should be sold. The diamonds are sorted into over 15,000 categories and mixed into 'assortments' (European Commission 2002). The stones of one assortment, different in size and quality, are put into 'boxes'. As only whole boxes are sold, De Beers is able to sell all its stones and not only those that are profitable. Diamond sales, so-called 'sights', are held every five weeks in London (Bergenstock and Maskulka 2001). Sightholders usually communicate their preference regarding quantity or quality to the CSO/DTC. Whether the CSO/DTC meets these requests is dependent on its own needs and the standing of the sightholder.
[72] The agency invented the historical background for giving diamonds as engagement rings and established the origin of the tradition several centuries prior to its actual beginnings in the late nineteenth century (Bergenstock 2004: 58f).

know that no other actor has put so much effort and money into preserving the industry and constructing the value of diamonds as De Beers (Even-Zohar 2002). Apart from De Beers, Antwerp and the Belgian diamond industry's representative, the High Diamond Council (HRD), are historically powerful actors within the industry. In contrast to the De Beers emporium, the diamond industry in Antwerp has always been very fragmented, consisting of a large number of families and small-scale businesses.

However, with the huge structural changes upstream, De Beers has lost its firm grip on the industry since the late 1990s. Within a few years, De Beers had lost its dominating role, as its market share had plummeted from 80 percent in the early 1980s to 65 percent by value in 2000.[73] After the end of the cold war the Russians could adopt a more competitive approach in the industry. As Shor (2005b) describes a new diamond company, Alrosa, was created after the collapse of the USSR. Today, the DTC markets about half of the overall Russian diamond production. The other half goes to domestic diamond-polishing factories including those that are owned by Alrosa (Even-Zohar 2005). Alrosa has now developed into the second largest diamond mining company by diamond production (Even-Zohar 2005). With the emergence of other new players, like BHP Billiton and Rio Tinto, De Beers' single-channel sales have come to be challenged. An even more significant competitor is Leviev. After De Beers left Angola in reaction to public pressure, he created the Angolan Selling Corporation together with the Angolan government which markets Angolan rough diamonds. Since 2000, Leviev is also active in offshore mining in Namibia and markets rough diamonds for the DRC. Overall, LLD Diamonds sold diamonds worth US$1 billion in 2002, making him the most serious competitor of De Beers (Even-Zohar 2002).

Another issue was having an impact on the diamond industry. The East Asian Financial Crisis has hit the sector hard as demand in these emerging markets has plummeted, contributing to a rising supply of diamonds. With new competition looming and De Beers' rough diamond stockpile growing, yet suffering from a declining market share, the Group realised it had to change the way it operated. The rather dramatic changes in the diamond industry prompted De Beers to take unusual actions. For the first time, the Group employed a management consulting firm to

[73] As of 2008, De Beers mines 40 percent of the global diamond output and sells 45 percent (Skapinker 2008).

review their corporate strategies (Bergenstock 2004). It was concluded that De Beers needed to adapt to a new business environment. The growing stockpile of diamonds was no longer considered to be an asset but a liability. The consultancy recommended that De Beers should give up its role as industry custodian ('buyer of last resort'). Rather, De Beers should develop into a 'supplier of choice' (SOC). This strategy was supposed to introduce a multitude of competing brands where the Group would establish itself as a leader rather than a custodian of the industry (Shor 2005b). The SOC strategy includes a series of different policies. Among other things, it includes a reduction in sightholders from an original 120 to 85 (Shor 2004). The SOC was implemented in January 2003 after the EC approved the new business strategy.

However, the change of the business strategy had serious ramifications on the power relations within the industry by introducing new sources for business conflict. Previously, De Beers held a custodial role within the industry by regulating supply and demand. Cutting down its number of sightholders significantly and launching its own brand alienated the manufacturing sector from the Group. With regard to the Forevermark™, many diamond dealers suspected De Beers deliberately ceded trade relations with those dealers handling larger diamonds so as to manipulate supplies, furthering its own retails (Shor 2005b). De Beers had lost control over the industry due to the constant suspicion that De Beers was only pursuing its own interests.

From this sub-chapter we can conclude that the diamond industry sector has gone through very significant changes, just as the Conflict Diamonds Campaign hit the sector. Due to the rise of new players the sector diversified, curtailing the power of De Beers. Chapter 5 scrutinises to what extent these structural changes had an impact on the negotiations for the KPCS.

4.3.3 Industry Opacity as a Structural Feature

We could see from the preceding sections that the diamond industry differs to a great extent from other extractive industries. As noted before, NGOs and policy-makers considered the diamond industry central to facilitating conflict diamonds entering the legal diamond trade. Therefore, I now turn to exploring the issue of industry opacity in connection with conflict diamonds.

The diamond industry's peculiar role is reinforced by their secretive conduct of business in both developing and developed countries. In fact, secrecy has for a long time been a structural feature of the industry. Like no other industry sector, the diamond industry is still based on traditions and customs. Until the launch of the KPCS, most of the deals were made trough extralegal contracts, such as handshakes, without providing written records. Reputation and reliability are the biggest assets among diamond dealers and whoever makes public the workings of the industry risks both as secrecy is highly valued throughout the whole business (Bernstein 1992). Apart from missing paperwork, there are virtually no consistent trade patterns as the traders often change the trade routes. These secretive traditions have evolved for several reasons. Firstly, as mentioned before, the diamond trade is conducted mostly by family-run businesses. Since the industry is a very small one, most of the people have known each other for a long time. Regulating close-knit family enterprises effectively is a very challenging task. Secondly, although diamonds do not play a significant economic role globally, for a lot of producer countries, the stones are vital and therefore considered as a strategic commodity. The industry and the producer countries point out that the trade with diamonds necessitates special security measures. Especially in remote zones of Africa, it can be difficult to assure security when transporting the high-value goods. Finally, traders also change their trade patterns frequently so as to benefit from lower taxes and fewer regulations (GAO 2002). The conduct of business also has repercussions on the effectiveness of national legislation and international regulation as it makes the industry less tangible.

In addition to the peculiarities of the industry, the circumstances in the countries of origin make effective regulation even more difficult. Angola, Sierra Leone and the DRC were zones of weak governance. Since the diamonds were scattered over vast territories it was nearly impossible for the governments to control the diamond mines (Tamm 2002).

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In this sub-chapter, we analysed the diamond industry by introducing the key players both in the corporate sector as well as the producer and consumer countries. The sector is a very peculiar industry. Not only does it deal with a unique product, it was also formerly characterised by an exceptional power distribution, having been

dominated by the cartel of De Beers for decades. Yet with new discoveries the industry began to diversify, empowering new corporate players and producer countries to the detriment of De Beers. In other aspects the industry had remained very traditional, until the KP began benefiting from its opaque business operations. We therefore now turn to analysing the institutional design of the KPCS, which is supposed to render diamond trade more transparent.

4.4 The KP as an International Institution

Regulating illegal trade with diamonds effectively is a very challenging task. African diamonds are mined in remote regions where governance structures are weak or even missing altogether. Moreover, since diamonds are the most concentrated form of wealth, they are also very easy to smuggle. As to the actors involved, adding to the challenge are the secrecy of the diamond industry as well as diamond-producing governments' reluctance to provide accurate documentation about their businesses by labelling this information as commercially sensitive. The KPCS tries to take into account these unique characteristics of the diamond trade.

The participants knew from the beginning that a total elimination of trade with conflict diamonds would not be possible. Essentially, the KPCS aims at creating a clear distinction between legal and illegal diamond markets. By rendering it more difficult for illegally mined diamonds to access the legal global markets, the market price of conflict diamonds and smuggled gems should fall relative to that of the legal commodities. As the risks of trading conflict diamonds increase with the introduction of the KPCS (increased costs with respect to laundering and increased risk of prosecution), the scheme is supposed to cut rebels off from their important income source (Scheiber 2006).

4.4.1 Overview of the KPCS

The KPCS was designed to address the specific needs of the regulation of trade in diamonds by taking into account both the distinct position of the diamond industry and the peculiarity of the diamond trade. The KPCS was not only negotiated by

multiple stakeholders, it also combined two approaches to regulation: the intergovernmental regime being complemented by industrial self-regulation.[74]

The intergovernmental regime consists of a set of politically-binding common standards, enacted by each state through its own national legislation (Wright 2004). The standards determine how member states handle the import and export of rough diamonds (section II. and III. KPCS), set out a system of internal controls to track illicit diamonds (section IV. KPCS), and – to a certain extent – establish cooperation, transparency and monitoring among members (section V. KPCS).[75] The diamond industry is represented through the WDC, an international body specifically created for this purpose. The civil society is represented by Global Witness and PAC.

The regime also explicitly refers to a second form of diamonds trade regulation, the SoW, which is a self-regulatory system established and adopted by the diamond industry (section IV. KPCS). SoW is a complementary set of practices, yet, it is officially acknowledged by the UNSC resolution[76] (World Diamond Council 2003). The SoW addresses one significant loophole of the KPCS, so it has to be considered an important part of the regulation of trade with diamonds. The KPCS only concerns the trade with rough diamonds. The industrial self-regulation addresses the issue by going beyond the regulation of rough gems. Moreover, it contributes to more transparency in the industry. It requires (1) warranties on all invoices for the sale of cut and polished diamonds and jewellery containing diamonds which guarantees that the goods have been purchased from legitimate sources,[77] (2) a code of conduct, (3) the maintenance of detailed records of purchases and sales of rough diamonds, and (4) monitoring via independent auditors.

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[74] For the following, see Appendix 2 on the Interlaken Declaration of 5 November 2002 on the Kimberley Process Certification Scheme (KPCS) for Rough Diamonds, taken from http://www.kimberleyprocess.com/documents/basic_core_documents_en.html; last accessed 16 June 2008.

[75] The main requirements are the following: No participant is allowed to trade diamonds without a certificate-of-origin (section III. KPCS); and participants are not allowed to trade diamonds with non-participants (section III.c KPCS). Member-states also have to ensure that exports and imports of rough diamonds are in tamper-resistant containers (section XX. KPCS) and that a KP certificate-of-origin is attached (section XXX. KPCS). Finally, members have to collect, maintain and exchange official statistical data on the production and trade of rough diamonds so that illicit commodities can be tracked (section XX. KPCS).

[76] UN Security Council Resolution S/RES/1459 (2003), 28 January 2003.

[77] In this system of warranties, all buyers and sellers of rough and polished diamonds are obliged to make the following statement on all invoices: "The diamonds herein invoiced have been purchased from legitimate sources not involved in funding conflict and in compliance with UN resolutions. The seller hereby guarantees that these diamonds are conflict free, based on personal knowledge and/or written guarantees provided by the supplier of these diamonds" (World Diamond Council 2003: 2).

Companies that do not comply with these principles are expelled from the industry organisations, the World Federation of Diamond Bourses (WFDB) and the International Diamond Manufacturers' Association (IDMA) (World Diamond Council 2003). Moreover, the code of conduct requires that participants publicise names of non-compliant companies or individuals.[78] The SoW is crucial to the effectiveness of KPCS. It hampers the possibility that conflict diamonds can be laundered by cutting and polishing them on the black market so they can enter the trade pipeline. Hence, the effectiveness of the whole scheme depends to a large extent on the actions taken by the diamond industry.

The sub-chapter now turns to assessing the institutional design of the KPCS by applying the framework which was elaborated in Chapter 2.

4.4.2 Assessing the Institutional Design of the Kimberley Process

Despite the fact that initially only a few diamond producing and importing countries initiated the Process, a large number of countries were attracted to join the negotiations in the later stages. As of November 2006, 46 countries and the European Community participate in the Scheme. The KPCS includes the diamond-producing countries (e.g. South Africa, Namibia, Canada), countries engaging in sorting and transhipment (e.g. Belgium and Switzerland), and countries with special interests in retail (e.g. the US and Japan).[79] The Scheme has a high level of inclusion as no country critical to the diamond trade deals outside the KPCS. We can therefore conclude that the Scheme has developed into a truly global trade regime. With regard to the NSAs, Global Witness, PAC, and the WDC were participants with rights equal to states in the KP negotiations. In the KPCS, they have observer status, but fulfil various crucial functions and therefore remain indispensable stakeholders. The KP now has an application process in place to ensure that all new participants are compliant with the scheme. A participation committee screens new participants with respect to KPCS conformity.

The KPCS does not define whether it is a legally or politically binding international agreement. The Scheme operates as a system of common minimum

[78] Joint WFDB/IDMA Resolution supporting the Kimberley Process (29 October 2002), available at http://www.worldfed.com/summary-september2005.pdf, last accessed 16 June 2008.
[79] Taiwan is not considered officially as a participant but does conform to the minimal requirements.

international standards for national certification schemes in participating countries.[80] Furthermore, the official website of the KP refers to the Scheme as "an innovative, voluntary system that imposes extensive requirements on participants to certify that shipments of rough diamonds are free from conflict diamonds".[81] Price (2003) therefore concludes that the KPCS can be classified as a Memorandum of Understanding (MoU) or political agreement. However, the KPCS is able to create a strong obligation towards its participants due to the high level of peer pressure, strict monitoring and enforcement measures which are discussed below. The Scheme benefits from a high degree of clarity, although ways of implementation are left to the discretion of the participants. As Scheiber (2006) concludes, the provisions are overall very determinate. The sense of obligation is further strengthened by the fact that the KPCS is applicable to all its participants. Those that are technically not able to apply the minimal standards are assisted by other governments and industry representatives (Interview 12). Moreover, the KPCS is coherent with other international conventions, such as UN resolutions 1173 and 1306 prohibiting trade with conflict diamonds in Angola and Sierra Leone.

As mentioned earlier, the KPCS disposes of very strict compliance mechanisms. The high level of monitoring, enforcement, and sanction mechanisms is very unusual for a soft law agreement. Although the original agreement of the KPCS in January 2003 did not entail any detailed provisions on compliance, the requirements were significantly strengthened throughout the 18 months of operation. Therefore, it is important to look beyond the actual KPCS agreement of January 2003 when assessing the compliance mechanisms.

Monitoring is based on a peer review mechanism. So far, participants have decided to make one review visit per member. Moreover, the participants have to submit annual reports on their implementation of the certification scheme (Kimberley Process Chair 2004). Finally, review missions are deployed in cases of credible indications of non-compliance. Apart from government officials, representatives from the industry and the NGOs participate in these review missions.

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[80] Annex to the Letter from the Permanent Representative of South Africa to the UN addressed to the General Assembly, submitted in Pursuance of Assembly Resolution 55/56 of 1 December 2000, UN Doc A/56/502, App. B, at pg. 7

[81] See http://www.kimberleyprocess.com/background/index_en.html, last accessed 15 June 2008.

Although the review visits are officially not mandatory, in practice no participant can avoid them (Wexler 2006). There exists considerable peer pressure among KPCS participants to allow for review visits in the country as any participant that hesitates to allow a review visits is suspected of being non-compliant. Furthermore, the monitoring capacity of the scheme is significantly strengthened by the inclusion of NGOs and the industry as 'watchdogs'. Their role as permanent observers is acknowledged in section VI para. 10 KPCS. Officially, they have no right to vote, yet, both the industry and the NGOs are *de facto* equal to states since all decisions are taken unanimously. The civil society is represented by Global Witness and PAC. The diamond industry is represented by the WDC. The scheme relies on Global Witness and PAC to a great extent since both organisations have field offices in the countries of concern and regularly issue reports. We can therefore consider the monitoring provisions as being comparatively high.

The KPCS also disposes of a strong enforcement and sanction mechanism of which Section III para. c is the basis. It requires that participants should "ensure that no shipment of rough diamonds is imported from or exported to a non-Participant". Since the KP Participants account for approximately 99.8 percent of the global production of rough diamonds,[82] this creates a very strong incentive to become and remain a participant. Being expelled from the KP means being cut off from the legal global diamond market. Exclusion from the KP is not an idle threat. Already several countries such as the Republic of Congo have been excluded from the KP as they have been found to be non-compliant with the minimal requirements (Kimberley Process 2004). [83] Therefore we can conclude that, despite the KPCS being voluntary from a legal point of view, in effect it is mandatory. In addition, non-compliant participants are named and shamed both by the KP (on the website) and the NGOs. Currently, KPCS compliance is not mainstreamed into IFI lending practices. Only in the case of the Republic of Congo has non-compliance affected the country's relations with IMF and the World Bank (Interview 11).

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[82] See http://www.kimberleyprocess.com/background/index_en.html, last accessed 15 June 2008.
[83] Among other cases of concern were Côte d'Ivoire and Ghana. In the first case, KP participants estimated that the country smuggled diamonds from rebel-held areas into neighbouring countries. Since 2005, trade in Ivorian diamonds is prohibited. In the latter case, a KP meeting following a peer review took a tough stance requiring the country to strengthen its internal control within three months or else face exclusion (Partnership Africa Canada 2006).

The KPCS only applies to rough diamonds that are imported or exported. The important question throughout the KP was, first, how to assure that diamonds are tracked and clean when moving from one dealer to another within countries. According to the experts, diamonds are traded numerous times among individual dealers by being sold back and forth, mixed and re-mixed (GAO 2002). In these instances, the danger of conflict diamonds entering the commodity chain and being laundered is very high. Secondly, the KPCS does not apply to cut and polished stones, which can be considered as a significant loophole. In order to address these problems, the WDC had proposed the introduction of the SoW for the sale of rough diamonds. The stones should be tracked by value and weight when they are moved from dealer to dealer (World Diamond Council 2003). This was supposed to give the exporting authority the assurance that no diamonds were laundered even if the stones came from very remote areas. The SoW is audited differently across the participating countries. The EC decided to adopt the most rigorous requirements for self-regulation. Regular audits by independent auditors of members of each self-regulating body were authorised by the EC (Kimberley Process 2006a). In countries lacking rigorous guidelines, the NGOs now fulfil a major watchdog role for the industry's self-regulation.

To conclude, one can say that the specific set-up of the KPCS is based on performance obligation, which renders the regime de facto mandatory (though not legally binding) trade regime.

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The KP started as an informal consultation process and the participants' expectations were at the beginning very low. Throughout time, however, the mix of intergovernmental regime and a self-regulatory MSI produced a very light, flexible and issue-oriented agreement that has the potential to adapt to future needs. A member of the UK Government Diamond Office notes that due to the mix of intergovernmental and self-regulatory standards, a bureaucratically light regime evolved. It ensures the effectiveness of the regime as the diamond industry does not have to bear administrative or procedural delays when applying for certificates (Wright 2004: 701). The KPCS has developed into a scheme with a comparatively strong institutional design. Among other certification schemes it has the strongest

monitoring and enforcement measures (Crossin et al. 2003). Given that the KPCS is not a hard law instrument but a soft law agreement based on performance obligation, the enforcement mechanisms are quite advanced since both non-compliant states and companies can be removed from the scheme. The incentives for states and the industry to remain participants of the scheme are very high. Although the KP does not have an independent secretariat, its internal organisation is well established due to its annual plenary meetings, working groups and committees. The KPCS together with the SoW covers both upstream and downstream operations, yet, it would be preferable that all countries adopt consistent standards for auditing the SoW. In conclusion, the institutional design of the KPCS can be considered as being very strong. Figure 9 provides a summary of the assessment of institutional design.

Membership	*High*	- Membership - Application procedures - Level of inclusion	- Global - Yes - High
Obligation	*High*	- Type of obligation - Creation of obligation - Clarity - Coherence with other rules - Technical assistance - General applicability - Notion of necessity	- Performance based - Peer pressure - Yes - Yes - Yes - Yes - Yes
Monitoring	*High*	- Monitoring included - Mandatory or voluntary - Who monitors - Systematic & continuous - Publication of reports	- Yes - Voluntary, but de-facto mandatory (peer pressure) - second-party monitoring - Yes - Yes
Enforcement	*High*	- Type of enforcement - Consequences of enforcement - Naming & shaming practices - IFI mainstreaming	- Exclusion from the scheme - Exclusion from the legal trade - Yes, on website; NGOs - Not mainstreamed

Figure 9 Assessing the Institutional Design of the KPCS

4.5 Conclusion

This chapter served to provide the empirical and analytical background for the subsequent chapter. As we could see, diamonds are rather peculiar goods produced by a very unusual industry. Although the stones are a symbol for both luxury and love, in recent times they have acquired a more grim reputation, financing civil wars in Angola, Sierra Leone and the DRC. The opaque diamond trading traditions have especially facilitated the concealment of the stones' origins and made it easier to deal with conflict diamonds. The KP was created to make diamond trade more transparent and to ensure that only conflict-free goods are dealt with internationally. From the analysis of the diamond industry we concluded that the KP coincided with a historically important phase in the diamond industry. Having been dominated by the De Beers cartel for decades, at the end of the 1990s the group's power was challenged by new players in the industry. Since then, De Beers has dramatically changed the way it operates by ending its function as 'buyer of last resort'. Most importantly, we defined the dependent variable for our first case at the end of this chapter. Using the analytical framework from Chapter 2, we assessed the institutional design as being comparatively strong – particularly if we consider that it is a soft law agreement. Not only is the KPCS a truly global regime, it also boasts strong monitoring and enforcement requirements. We considered the obligation to comply with these requirements as being very high. Given this outcome, the question arises as to why the KP was able to produce such a strong institution. This is the question to which we now turn.

CHAPTER 5

The Institutional Design of the Kimberley Process: Structural Opportunities for Norm Entrepreneurs

After having established the peculiarly strong institutional design of the KP, we now turn to the main analysis so as to account for this outcome. By tracing the negotiation dynamics, we can see that norm diffusion by norm entrepreneurs can explain the way the KP was institutionalised.

In this chapter I demonstrate the significance of four turning points that determined the degree of institutionalisation of the KP. The NGOs dominated in the campaign and agenda-setting phase and identified the opaque industry as enablers of the conflicts. While the diamond industry was rather defensive and reactive in this phase, the LM-Group – favouring a strong institutionalised regime – was formed in this early phase. The match of the new norm with established normative frameworks can explain why key countries like the UK and Canada joined the LM-Group. In the second phase the diamond industry formulated its strategy. By abandoning a reactive approach and taking the lead, the industry was able to shape the start of the negotiations in a crucial way, particularly by leading it to an MSI. In the third phase, the technical details of the certification scheme were discussed. While the NGOs were able to dominate the agenda, particularly in the earlier phases, with a more technical debate about how the Scheme should be designed, the industry was able to increase its discursive power by exploiting its technological expertise. A few governments, including that of the US, tried to water down the requirements at that stage. In the end, the Scheme was launched without an agreement on requirements regarding monitoring or disclosure of trade statistics. However, during this phase the industry changed its attitude on the issue a second time. While commercial considerations had a crucial part to play in the industry becoming involved in the first place, the industry then went through a learning process accepting that normative considerations were crucial for selling the product. Ultimately, the diamond industry acknowledged it had to bear a share of responsibility by facilitating the trade of conflict diamonds. The industry's change of attitude has a crucial impact

for the most recent phase of institutionalisation in which the KPCS was significantly strengthened. The phase reveals that normative and cultural differences both played a role, as the norm opponents did not want to submit to monitoring and disclosure of trade statistics. However, as the diamond industry backed the demands of the LM-Group, they could successfully marginalise norm opponents thereby initiating adaptation processes.

Overall, I argue that the strong institutionalisation is not only due to the successful political strategy of the LM-Group. They were also able to exploit POS favourable to strong institutionalisation. Two crucial historical events served as a catalyst for bringing the issue onto the international agenda. Early on, the escalating crisis in Angola catapulted the issue into the headlines. The attacks of 11 September 2001 and the question of whether diamonds would finance terrorism served as a catalyst for the negotiations. Most crucially, however, a normative match and favourable power relations were very important for the success of the LM-Group in determining the institutional design. This becomes clearest when looking at the most recent phase of institutionalisation. The LM-Group was powerful enough to be able to marginalise crucial norm opponents and thus trigger adaptation processes.

In summary, the chapter demonstrates how case-specific opportunity structures empowered the LM-Group to determine institutional design. By initiating learning and adaptation processes, the LM-Group gradually decreased the power of the norm opponents.

5.1 Creating a Global Agenda for Conflict Diamonds

I begin scrutinising the KP by looking in-depth at how a global agenda for conflict diamonds was created at the end of the 1990s. The analysis is important to our argument as we see how the NGO campaign was able to impact the institutional design of the KP from the very beginning. Calling for a global certification scheme gave an important direction to the international efforts curbing trade with conflict diamonds. What is striking when scrutinising the Conflict Diamonds Campaign is that the NGOs were able to obtain international attention and to dominate the public discourse within less than two years. The great success of NGOs in shaping the public discourse becomes even more visible in the final section of this sub-chapter

when looking at the very defensive reactions of the diamond industry towards the campaign.

We can see from the analysis that NGOs were effective in pushing their campaign by capitalising on a policy crisis and exploiting it as a political opportunity. Without the escalating civil conflicts in Africa, NGOs would have probably campaigned more to receive international attention, but political strategy such as framing was also crucial. Being able to build an epistemic community with researchers and UN representatives, the Conflict Diamonds Campaign, boosted their legitimacy in the public eye. Finally, directly turning to the industry was unusual for a NGO campaign addressing human security issues, yet proved to be highly effective in getting all the stakeholders involved. Although the industry was very defensive in this first phase, it provided a setting for future cooperation. The success of the Conflict Diamonds Campaign in raising global attention differentiates the NGO campaign from others dealing with natural resources, such as timber, which needed much more time and energy in order to reach public agendas.

5.1.1 The Epistemic Community on Conflict Diamonds

The conflict diamonds issue is a product of the post-Cold War security debate on the so-called 'economies of war' conducted by scholars, representatives of international organisations and NGOs since the mid-1990s. As we already noted earlier, the 'economies of war hypothesis' states that most conflicts in Africa and Asia are fuelled and sustained by illicit exploitation of natural resources including, but not limited to, diamonds, timber, oil or coltan.

The epistemic community which formed throughout the 1990s consisted of three groups of agents, namely scholars, representatives of international organisations and NGOs. Cooperation within the community was based on a common understanding of the policy issue, industry opacity, and advocating for the same solution, increasing transparency. Each of the groups was crucial in leading the campaign to success.

The actors that discovered the conflict diamonds issue were international NGOs such as Global Witness, PAC and others. From the early 1990s, they had been producing reports on the role of conflict commodities like timber and diamonds in

sustaining conflict. From the early days Global Witness had been the most successful in attracting the world's attention to these issues. When the NGO began to conduct research on the role of natural resources in conflicts, only few other people were examining the issue. After first looking at the role of timber in Cambodia's conflict, corruption and human rights abuses, Global Witness turned their attention to the civil war in Angola. In December 1998, shortly after the UNSC had decided to impose comprehensive economic and political sanctions on UNITA by activating Resolution 1173, Global Witness accused the diamond industry, in particular De Beers, of undermining the sanctions due to its opaque business operations (Global Witness 1998: 659). In 2000, PAC released its own report looking at the role of diamonds in the civil war in Sierra Leone, again specifically identifying the diamond industry as enabling trade with conflict diamonds. For the diamond industry, the link between diamonds and conflict was not new. The UNSC sanctions of July 1998 had put the issue on the agenda for De Beers and the HRD as they had to find ways of filtering Angolan stones from the supply chain. Yet, the NGO campaign changed the political environment for the corporate actors dramatically. Instead of blaming the corrupt Angolan government or UNITA, the Western diamond industry was now put under the spotlight. The fact that the NGOs identified the private sector as the principal driver for change corresponded to the more general trend towards more CSR since the early 1990s. By the time Global Witness classified the diamond industry as the main agent for change several other NGO-campaigns in issue areas as diverse as the environment, health, development and labour standards had already been launched by various transnational advocacy groups (see e.g. Keck and Sikkink 1998). From 1998, when the first NGO report was published, until the Three Year Review in October 2006, the activist network was the main agent in the epistemic community in raising public attention and putting both the industry and governments under pressure. However, the two other groups in the epistemic community were crucial in increasing the campaign's credibility and legitimacy.

At the end of the 1990s, the research community followed the activists by turning their attention to the economic factors of the conflicts in Africa and Asia. A new research programme began to flourish concentrating on the 'resource curse' and 'paradox of the plenty' (e.g. Collier and Hoeffler 1998; Berdal and Malone 2000; Keen 1998). The research programme received institutional backing from the World Bank and the International Peace Academy. At the Bank, Paul Collier set up a

research programme which subsequently published influential work establishing the causal link between natural resource endowment and poverty and corruption (Collier 2000, 2003). The International Peace Academy launched the Economic Agendas in Civil Wars Program looking at the causal relationship between civil war and conflict commodities (e.g. Ballentine and Sherman 2003; Ballentine 2005). The NGO approach of focussing on the industry as the principal driver for change was supported by a growing number of think tanks specialising in CSR. In particular the Council on Economic Priorities and the Prince of Wales Business Leaders Forum conducted initial research on the potential role of business in conflict prevention (Nelson 2000; see also Haufler 2001a; Wenger and Möckli 2003).[84] The researchers underpinned the NGOs' demands with sound social science research and, thus, enhanced their credibility.

The UNSC Sanctions Committee on Angola added further legitimacy to the epistemic community. The task of the expert panel was to examine the connection between diamonds and the ability of Angola's UNITA to purchase weapons.

In summary, the combination of NGOs, researchers and the UN representatives produced an epistemic community that was considered as highly legitimate by the public. However, understanding the Conflict Diamonds Campaign as a unitary agent using the same methods to achieve the common goal is misleading. The epistemic community was always very loosely connected, not being organised by a clearing house. It is therefore unsurprising that especially within the NGO community different, even conflicting, ways of campaigning emerged as more activists joined the network. Some, like Global Witness, emphasised research. Others, like Fatal Transactions mainly organised public pressure. Nevertheless, the peculiar combination of activists, research and UN representatives increased both the credibility and the outreach of the Campaign. With the growing number of research reports from institutions, such as the World Bank and the UN, national decision-makers became more alert to the issue.

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[84] According to Haufler (2001a: 659), the conflict diamonds issue re-invigorated an old debate on the role of business in conflict. This link first became apparent in the 18th and 19th century when colonial investors "disrupted existing patterns of political relationships – more often than not with force". The second wave of interest followed after the Holocaust when its victims re-claimed compensation for forced labour from (mostly German) companies (see on this issue Bindenagel 2006).

5.1.2 Setting the Agenda: Political Strategy and Structural Opportunities

We have already noted the epistemic community's main focus on the industry. In their view, any attempt to pacify the wars in Angola, Sierra Leone and the DRC had to start there since the opaque business procedures of the diamond industry enabled conflict diamonds to enter the legal supply chain. Although the NGOs' prime focus was on the industry, they also knew that without governmental support it would be difficult to realise their proposals. The challenge was therefore to frame the issue in a way that would draw in both kinds of actors. This section examines in detail three factors, related both to political strategy and structural opportunities, which helped the network set the agenda both for the industry and the governments.

The first factor was one of political strategy. The network re-interpreted the conflicts in a way that emphasised both the human security dimension and private sector responsibility. As to engaging the private sector, the NGOs were able to exploit the product characteristics of diamonds. Considering that conflict diamonds were a security and an international trade issue, the focus on the industry was very unusual, but most pragmatic as the industry was the weakest link in the chain. The previous chapter has already pointed out the unique characteristics of diamonds. Their value and their reputation as tokens for love and purity had been constructed by the diamond industry decades ago. It was here the network started by re-constructing the meaning of diamonds. Labelling the gems as conflict diamonds or even 'blood diamonds' to counter the established reputation of diamonds and putting emphasis on the suffering of civilians in the countries concerned, proved to be a very successful frame to raise public attention. As we can see later in this section, the emphasis on human security helped the NGOs to draw in two key governments, those of the UK and Canada.

Secondly, the campaign could benefit from the emerging norm of CSR. Being able to frame the issue in terms of this emerging trend enabled the topic to fit into the other debates on business ethics. To be successful, the NGOs had to have a 'causal story' as to why they considered the diamond industry as the linchpin to finding a solution to the issue rather than the governments. After all, the industry would never have been able to stop the wars. To this end the activists argued that cutting off rebels from their revenue source – the diamonds trade – could potentially contribute not only to ending the civil wars in Africa but could also play a part in sustaining

peace. For this to be achieved, the origin of the stones had to be much better monitored by an international certification scheme. In order to emphasise the role of the industry, it was important that the NGOs could link the diamonds issue with the emerging norm of CSR. The public had already been sensitised to corporate misbehaviour by a number of activist campaigns. Also, as the private sector in general became more aware of the notion of CSR, it began to develop initiatives to pre-empt outside pressures and the threat of potential public regulation (Haufler 2001b). Among other issues, the role and responsibilities of MNCs in developing countries was increasingly debated both in the public and private sector. The Conflict Diamonds Campaign was therefore able to benefit from the increasingly accepted CSR norm. The activists' interpretation was supported by the UN officials. Under the leadership of Ambassador Fowler, the UNSC expert panel on Angola publicly criticised the business operations of the diamond industry. Moving away from normal UN procedure, the report bluntly named and shamed companies, weapon dealers and heads of state that were involved in the trafficking of weapons and diamonds. As to the diamond industry, Antwerp was singled out for not sufficiently complying with the UNSC sanctions. The Antwerp diamond industry and the Belgian authorities alike were accused of being unwilling or unable to enforce stronger controls (United Nations Security Council 2000: 30). Moreover, the Panel criticised De Beers for only reporting the provenance of the goods but not their origin. Since two thirds of all goods imported by De Beers' CSO transited through Switzerland, it was impossible to establish their origin. Yet, overall, the Fowler Report was more favourable towards De Beers' compliance with the sanctions (United Nations Security Council 2000: 31f). Being at the centre of the accusations, Antwerp received the report badly and accused Fowler of trying to boost the emerging Canadian diamond industry (Interviews 18 and 20; Duncan 2000). However, in most other policy circles and in the broader public, the report added legitimacy to the NGO campaign.

Thirdly and most importantly, the network was able to exploit one crucial window of opportunity that catapulted conflict diamonds onto the international agenda. We noted in Chapter 3 that political opportunities can also arise from policy crisis. In this regard, the network could benefit from the increasing publicity of the civil wars in Angola and Sierra Leone (Shaxson 2001; Williams 2005). From 1994 to 1998, UNITA had gained strength by re-arming itself. In December 1998, the same

month Global Witness published its first report, the civil war erupted again. In Sierra Leone, RUF was also re-gaining force, which ultimately led to a UK military operation in early 2000. The escalating conflicts provided an ideal setting for the more confrontational-minded NGOs in the network. They organised protests outside major diamond retailers in the US. Posters with images of mutilated children in Sierra Leone were common (Tamm 2004). Global Witness and PAC also engaged in 'naming and shaming' strategies but first and foremost tried to engage the diamond industry in a dialogue so as to find a solution together. While Global Witness and PAC concentrated on De Beers and the diamond industry in Antwerp, other NGOs targeted the retail sector.

The international campaign very soon gained extraordinary publicity. Magazines such as *Vanity Affairs* and BBC television reports provided immense coverage of the issue. The diamond industry was thus confronted with a new business risk to which it had to adapt. Framing diamonds as 'conflict diamonds' instantly addressed the industry's fear of decreasing profits, but as we can see in the following section, it was far from easy for the corporate actors to adapt to the mounting international pressure.

5.1.3 Confronting the Structural Power of the Diamond Industry

In contrast to the governments and the wider public, the industry was not as receptive to the Campaign. In fact, the industry's initial reaction can be compared with nearly all NGO campaigns against corporate behaviour, whereby the companies denied having any responsibility in the issue. Particularly, the older generation of *diamantaires* and traders, who still belonged to the 'old school', took a very adversarial stance towards the NGOs. Most of them felt they were being attacked unjustifiably by NGOs, the UN and the governments that pushed for a solution. They saw themselves as scapegoats being an easy target for ideological civil society actors because they sold a high profile product that could easily be damaged by negative publicity (Interview 3; Rapaport 1999).

> "The diamond industry cannot accept the responsibility of functioning as a surrogate multilateral responsible for African problems of state. Diamonds must not become a convenient scapegoat (...)" (Antwerp Diamond Bourse 2000).

The more confrontational the NGOs became, the more the industry despised them. In contrast to other industry sectors, it was very difficult for the diamond industry to devise a strategy against the campaign since they had never previously been attacked by international NGOs (Interview 5). We have already noted in Chapter 4 the traditionally very insular character of the diamond industry – not maintaining many contacts with other sectors which have been frequently targeted by civil society, such as the oil or pharmaceutical industries. Hence, in the boardroom the feeling of uncertainty as to how to react properly dominated. Although De Beers had always had contact with local communities and grassroots organisations through its active work in philanthropy in Africa, blueprints or experiences of how to deal with civil society activism were completely missing. Moreover, the industry did not consider it as their job to solve the issue. For the industry this was predominantly a trade issue. Pacifying the civil wars in Africa and ensuring that no illegal diamonds reached the legal market was a task for governments, custom agencies and the UN, not the industry:

> "(...) Frankly, I [Martin Rapaport] don't buy the idea that war in Africa is the fault of the diamond industry. Simply put, since the problems in Africa were created by foreign governments, it is their guilt trip not ours. (...) No one has the right to dictate morality to the diamond industry (...)"(Rapaport 1999).

The NGO campaign strategically identified De Beers as the central target of their campaign. As mentioned in the previous chapter, when the conflict diamonds campaign had started, De Beers was still the largest supplier of diamonds world-wide and had, in contrast to the many family-sized businesses, a public image. Especially at De Beers the senior executives took an arrogant stance. In their view, they were attacked because they were a big company that had controlled the diamond industry for more than a century. Their first reaction was to shield themselves against the allegations without admitting any problems and solutions (see e.g. Lear 1998). Overall, the De Beers executives hoped that the campaign would "go away" (Interview 6). Yet, very quickly the industry realised that the campaign was to stay for the longer run and concerns about a potential loss of profits outbalanced industry ignorance (De Beers 2000a; Antwerp Diamond Bourse 2000).

Hence, De Beers finally realised that the NGO framing of diamonds as conflict goods constituted a serious business risk which could have a devastating effect on their market. This realisation marked the turning point in their behaviour.

So as to restore the reputation of their product, the industry launched a counter-campaign framing the gems as Diamonds for Development. According to this, diamonds, of which allegedly 96 percent were conflict-free, contributed substantially to the economic development of African producer and Asian manufacturing countries (African Confidential 2002). In the view of the industry, tainting diamonds with blood, as the NGO campaign did, was very irresponsible, putting at risk the economic development of a number of African countries.

The launch of the counter-campaign marked the industry's beginning in engaging in the public discourse on conflict diamonds. However, until early 2000, the industry including De Beers was only reactive. In June 1998, De Beers emphasised adherence to the UN embargo by only buying certified Angolan stones. After the Global Witness report made it public that Angolan certificates could be forged, the company announced in October 1999 that it would cease to buy Angolan diamonds on the open market altogether (Bone 2004). On top of this, just a few months later, De Beers decided to close all buying offices in West and Central Africa.

Although the company started to engage in the fight over who was shaping the public discourse, the Diamond for Development Campaign did not much to restore the image of the product. As the public discourse was dominated by the NGOs, the defensive attitude of the industry demonstrated its inept crisis management. The sources are inconclusive as to whether the Conflict Diamonds Campaign slowed down jewellery sales,[85] but at the time, industry representatives feared that the diamonds could develop like fur (O'Ferrall 2002; Smillie 2005b).[86] In summary, the conflict diamonds campaign constituted a new business risk the diamond industry had not yet developed the competence to cope with.

5.1.4 Engaging the Key Countries: Normative Match and Material Interests

Rather than involving the industry, the NGOs were more successful in engaging the key governments: the UK, Canada and African producer countries. In this section I discuss why the key KP countries that had a significant impact on institutional design

[85] Whereas in 2000 newspapers reported a sharp drop in diamond sales in the run-up to Christmas, two years later, another report came to the conclusion that consumers had been largely unaffected by the NGO campaign (Africa Mining Intelligence 2000; Kletter and Conti 2002).
[86] Fur is another luxury commodity which became ostracised in the mid-1990s.

became involved early on. The African producer countries' interest in the process was motivated by the need to respond to an increasing business risk. With regard to the UK and Canada, although both countries are home to the diamond industry, business interest cannot explain why they became involved in the first place. As Chapter 4 elaborated, the industry is economically crucial, especially in countries like Botswana. Although London is a large diamond centre, its exports account for only a small fraction of the annual gross domestic product (GDP) (Even-Zohar 2002). Canada, with its emerging diamond industry, would have benefited from a comparative advantage in the conflict diamonds issue, being able to market Canadian diamonds as conflict free. I argue that in contrast to the African countries, it is not material interest that can account for the UK's and Canada's lead in the KP but the success of the NGOs to make the KP fit into their domestic normative frameworks.

Let us first scrutinise Canada, which soon developed into a key driver for strong institutionalisation of the KP. It had taken an interest in the initiative first due to the strong involvement of the Canadian Ambassador Fowler. Its interest was reinforced as the goals of the NGO campaign matched with Canada's recent foreign policy strategy of supporting – even leading – several international human security initiatives.[87] In fact, the way the NGOs framed the issue of conflict diamonds fitted very well into Canada's foreign policy strategy of promoting human security. Canada had embraced human security as a foreign policy principle since Lloyd Axworthy was appointed as Minister for Foreign Affairs (Behringer 2005). Moreover, Canada was very familiar with working closely with NGOs from the Ottawa Process.

With regard to the UK, the newly elected Labour Government and its turn towards an "ethical foreign policy" focussing on human rights, democracy promotion and securing peace (Williams 2005) provided an important political opportunity for the NGOs to diffuse their norm. As they successfully framed an international trade-related issue into a human security one, their government's new foreign policy focus matched perfectly the aims of the Campaign. Moreover, the Labour government was very sympathetic to liberal and bureaucratically light policy solutions distributing more responsibilities to the private sector. This created a political environment

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[87] The Ottawa Process is another example in which Canada developed into a leading country promoting the human security agenda. The notion of human security was first elaborated by the United Nations Development Programme (UNDP) (UNDP 1994). It called for a re-conceptualisation of security with a focus on protecting the human security of individuals rather than securing nation-states from the nuclear threat.

sympathetic to the NGOs' call for more industry responsibility in the issue. Finally, with the escalating conflicts in Africa, the continent rose considerably as a priority during Labour's first term (Kampfner 2004). Most importantly, the UK began its military intervention in Sierra Leone just when South Africa convened its first meeting of the KP in May 2000, contemplating policy options on how to make its military operations sustainable. Hence, the NGOs met a need for new policy ideas. Like Canada, the UK was very familiar with working with NGOs on international issues.

For African countries such as Botswana, Namibia and South Africa, commercial interest in the Process was the dominant factor in becoming involved. First, as with the industry, the governments had to face a new business risk, fearing a global consumer boycott. Although the NGOs did not call for a boycott, the campaign on conflict diamonds was potentially negative publicity for the diamonds market (Smillie 2005a). Diamonds mined in Botswana, Namibia and South Africa had always been conflict-free. Yet, the countries were involved in the issue as they served as transits for illicitly mined stones from Angola and the DRC (African Confidential 2002; Hazleton 2002).[88] Hence, being part of the problem coupled with vital economist interest can account for their engagement. The African countries feared that a new international regime could have repercussions on their trade by rendering international trade more difficult (Taylor and Mokhawa 2003). In particular, they feared that a costly and inefficient regime would slow down trade. Hence they were in general very wary of the KP but knew a political solution needed to be found to combat trade in conflict diamonds.

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The sub-chapter explored the formation of the Conflict Diamonds Campaign and examined how the network was able to shape the future direction of the KP in a significant way in a very short time. A peculiar combination of NGOs, researchers and UN representatives could boost the legitimacy of the campaign and increased the outreach to governmental decision-makers as in the case of Canada. Nevertheless,

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[88] Tracing the flow of smuggled diamonds is nearly impossible. However, there is evidence that Botswana, Namibia, and South Africa were used to launder the illegal goods. For instance, in South Africa the volume of diamonds going through the diamond bourse had doubled from 1997 to 2002 although the local production had remained stable (African Confidential 2002).

more crucial to the success of the Conflict Diamonds Campaign than the network composition was their ability to spot and exploit significant opportunities. The product characteristics of diamonds enabled the NGOs to re-interpret the meaning of the stones by framing them as conflict diamonds. Being able to draw on the emerging CSR norm facilitated the NGO's causal story of the industry as bearing a share of responsibility in the issue. This frame was very persuasive for the UK government, which favoured a private sector taking on more responsibility. Most importantly, however, the escalating civil wars catapulted both the conflict and the diamonds into the headlines and the agendas of governments. Without this opportunity, it would have been much more difficult to attract widespread international attention within less than two years.

As we can see from this sub-chapter, the NGOs clearly dominated the public discourse in this agenda-setting phase. The governments were very receptive to the NGOs' demand to search for a political solution. With regard to corporate actors, the impact of the campaign caught them by surprise and constituted a serious business risk. At that early stage the industry still had to formulate an appropriate reaction.

5.2 From Laggard to Leader: The Diamond Industry Confronts Conflict Diamonds

The second phase is characterised by the change in the De Beers' attitude from a laggard to a leader in confronting conflict diamonds from the year 2000. It represents a key turning point as it opened the way for the KP. Without it the formation of an MSI would have been highly unlikely and the KP would have, if it had existed at all, turned into a traditional intergovernmental regime. So as to impact on the KP's institutional design in such an important way, however, the diamond industry first had to increase its structural power by becoming united on an unprecedented scale. However, this was not an easy task. When De Beers suddenly and proactively started to engage with the issue in the first half of 2000, a rift between De Beers and the remainder of the industry emerged.

What can explain the fundamental shift of the De Beers position? The subsequent analysis reveals that the pressure campaign by the NGOs only in part accounts for the change in strategy. More important was the confluence of the

outside pressure with the historical changes in the industry structure which we analysed in Chapter 4. It provided the NGOs with the unique opportunity of a more accessible De Beers, a company which had been closed for decades to outsiders. While we noted the ability of NGOs to spot opportunities and frame the policy issue accordingly when setting up their campaign in the previous sub-chapter, this time, being able to exploit the structural changes to their advantage was rather a coincidence than a demonstration of discursive power. In particular, the main motive of De Beers for adopting the proactive stance was more linked to its internal operations review than to the outside pressure campaign. Most crucially, De Beers then started to exert structural power so as to shape the future direction of the KP.

5.2.1 From Business Opportunities to Business Conflict?

We have already discussed De Beers' change of its overall business strategy in detail in Chapter 4. This unprecedented revision also led to a change in attitude of the company towards conflict diamonds in 1999 and 2000. We noted earlier that De Beers was confronted with a further fragmentation and disintegration of the sector due to the emergence of new players both in Africa and in Canada. Coupled with conflict diamonds, this pushed De Beers onto a steep learning curve. As this section shows, De Beers' change in attitude provided entry points for the NGOs to engage seriously with senior executives. Nevertheless, it also led to a growing divergence between the political strategies of the main industry players.

Faster than most in the industry, De Beers realised the potential danger, but also the opportunities, which emanated from the conflict diamonds campaign. In order to be able to transform the risk into an opportunity, De Beers needed to abandon its 'laggard strategy' of trying to ignore the campaign and rejecting any of the NGOs' accusations. As we see later in this sub-chapter, the change of perception within De Beers was crucial for the KP to develop into an MSI.

In order to transform into a leader in the conflict diamonds issue, an internal debate within De Beers had to be fought regarding the giving up of its defensive role. In the early days of the NGO campaign, De Beers' senior and younger executives had an intense discussion about how to deal with the conflict diamonds issue. The younger executives realised that the Diamonds for Development Campaign could not

avoid real engagement with NGO criticism. The older executives, however, insisted on continuing to ignore the issue (Interview 6).

A window of opportunity opened up for active engagement and solved the company dispute. De Beers' review phase at the end of the nineties provided an entry point for serious debate with Global Witness. After having been closed to outsiders for nearly a century, De Beers finally became more accessible as the company had hired a management consultancy to give advice on the future market strategy for the first time in its history. Together with the consultancy firm, De Beers came also to understand how the conflict diamonds issue could be exploited as an opportunity, thereby supporting its overall change in business strategy (for the following see Beffert and Benner 2005). From Chapter 4, we recall that one of the challenges was the growing stockpile. Introducing tougher international controls for certified gems would contribute to De Beers' goal of decreasing its stockpile by reducing the supplies of rough diamonds. A certification scheme would entail comparative advantages, as De Beers would be able to certify the origin of its gems more easily compared with others. De Beers' diamonds came from conflict-free mines in South Africa, Namibia and Botswana. As De Beers was about to launch its own brand, the Forevermark™, presenting itself as a leader in CSR would yield reputational benefits. This was supposed to facilitate the marketing of the new brand. A more cooperative stance on the conflict diamonds issue could ease the tension with US authorities with regard to anti-trust laws. Settling the issue was crucial, as the US was the biggest market for the company and US shareholders controlled more than 30 percent of its shares. Moreover, it was a precondition for opening its own branded diamond stores in the US. Finally, another important objective besides brand management was the desire to have as much influence in shaping the future trade mechanism as possible.

With this analysis in mind, there seemed to be no policy strategy other than being responsive to the NGOs. Hence, in March 2000, De Beers altered its reactive stance into a proactive approach. The first step was to announce that written guarantees were to be given on De Beers invoices declaring that the diamonds had not been purchased from areas where rebels were challenging the legitimate government (Bone 2004). Furthermore, the company wanted to establish its credibility and manifest itself as part of the international efforts to curb trade in conflict diamonds when it was invited to provide written testimony to the US House

Committee on International Relations. The testimony contained proposals for an international solution and expert evaluation of the value of the trade in conflict diamonds (De Beers 2000b). With De Beers' proactive stance, the international cooperation gathered steam. Global Witness was now able to talk directly to De Beers about possible solutions rather than concentrating only on campaigning. For political decision-makers, De Beers' evidence was crucial for finding a position.

However, De Beers' proactive stance also had serious repercussions for the unity of the industry. It put the company into conflict with the remaining corporate players. As long as De Beers had considered the Conflict Diamonds Campaign as a threat, the company was in line with the rest of the industry, but as soon as De Beers realised its own opportunities and changed strategy, a potential business conflict emerged between De Beers and the other firms in the sector. Most of the diamond dealers opposed a certification scheme for several reasons. They lacked a long-term perspective on the issue as they had to focus on the transaction of the moment, turning over large volumes of diamonds, very often at narrow margins (Hart 2003: 200). On the one hand, they realised the immediate threat of the campaign to their businesses, but on the other hand, they did not want to invest in longer-term solutions to the issue. Being small-sized businesses, they feared they would not be able to cope with the increased costs imposed by a certification scheme. Furthermore, since most of the traders were not as publicly exposed as De Beers, they felt they did not suffer as much under the campaign. Hence, engaging in a political strategy towards developing an international certification scheme was not in their interest.

From this section we can see how significant the historical structural changes within the diamond industry were at the end of the 1990s and how they influenced the political strategy of De Beers towards conflict diamonds. The further fragmentation and disintegration of the industry coupled with a loss of financial power forced De Beers to fundamentally review its business operations. This transition phase not only rendered the company more accessible to outsiders but also revealed that the conflict diamonds offered important opportunities for a revised business strategy. For the remainder of the industry, however, De Beers' shift was not welcomed. As the other companies could not derive much benefit from an international certification scheme, a rift within the diamond industry emerged.

5.2.2 Taking the Lead to Kimberley

Being the first in the industry to recognise both the risks and opportunities stemming from the conflict diamonds issue, De Beers transformed into a leader in the search for a political solution to the conflict diamonds issue by using its structural power. One of the most important objects besides containing the public relations damage was to be able to have as much influence in shaping the certification scheme as possible. De Beers needed a two-pronged strategy to spark change.

First, the executives quickly realised that the industry would not be able to curb trade in conflict diamonds without the governments. Only governments would have the capacity and the responsibility for this. De Beers worked closely with the South African government, which invited all the stakeholders to Kimberley in order to discuss the issue in the 'Diamond Experts' Technical Forum' in May 2000 (Smillie 2005c).

More importantly, however, De Beers realised very quickly that its proactive stance would put the company into conflict with the rest of the diamond industry. Yet, so as to be able to find a solution to the issue and protect the industry from material and reputational risks, a concerted effort of the industry was necessary. Although De Beers would have had a comparative advantage by becoming a first mover in certified diamonds, the company realised that in order to protect the reputation of the product, all diamonds should be certified.

At first glance, we might expect it to be easy for De Beers to unite the diamond industry. After all, the industry is very small in comparison to other industry sectors. Moreover, De Beers had controlled supply and demand of diamonds for a very long time. It possessed enormous financial capacity and instrumental power having the ability to cut off dealers from the supply chain. In addition, De Beers' discursive power stemmed from the fact that every diamond dealer knew that no other actor had put so much effort and money into preserving the industry and constructing the value of diamonds as had De Beers (Even-Zohar 2002). Yet, De Beers' ability to act as the *behemoth* of the diamond industry was constrained by several significant aspects. First, there was a structural aspect. Chapter 4 already referred to the fragmentation of the industry where the retail sector had no contact with the upstream part of the industry. De Beers' reach was therefore limited to one part of the industry. Second, throughout the transition phase, cutting the number of

its sightholders had sparked conflict and mistrust between De Beers and the rest of the industry. Coupled with the rise of other independent diamond dealers such as Leviev in Angola, giving dealers new options, the company had lost significant power in initiating change just when the KP was supposed to kick off. The difficult situation for De Beers was that it could no longer force the diamond industry to act according to their wishes as there was a constant suspicion that De Beers was only pursuing its own interests. In fact, there was a double-edged dynamic at play (Interview 14). As the company pursued its own interests both by transforming its business strategy and by becoming proactive with regard to conflict diamonds, small traders and manufactures felt threatened. This decreased chances for collective action. Nonetheless, the only way to protect the industry from material and reputational risks was to persuade its peers that they needed to act in unison. To that end, a lot depended on the discursive power of De Beers to persuade the industry.

De Beers began to lead the events in the private sector shortly after the first technical meeting in May 2000. A month later, the company sent letters, signed by Nicky Oppenheimer and Gary Ralfe, Managing Director, to the Presidents of the WFDB, IDMA, other industry associations and diamond bourses worldwide. In these letters, they not only called for a collective response to the issue of conflict diamonds, but also urged the diamond bourses to expel any member caught trading in the conflict commodities (De Beers 2000a; Hart 2003). These letters demonstrated that De Beers was taking the situation very seriously and, thus, served as a 'wake up call' within the industry. Some weeks later, the Antwerp Diamond Bourse addressed the issue of conflict diamonds and called for the united efforts of the industry (Antwerp Diamond Bourse 2000). De Beers diffused its strategy not only by public speeches but also by directly approaching corporate actors and confronting them with the issue. The company used this influence in order to arrange several meetings with diamond dealers to discuss the issue, always making sure to emphasise the benefit for the whole sector and not just for itself. Sometimes, they also invited representatives of NGOs (Interview 3). In these cases, De Beers also acted as a facilitator for NGOs by helping them to get into contact with diamond dealers who would otherwise never have talked to representatives of civil society.

With other parts of the industry no longer belonging to the De Beers system – the retail, manufacturers and small diamond dealers – the Group was less successful in creating change. The manufacturing sector, for instance, the most remote from

consumer pressure and the actual conflicts, was profoundly resistant to change (Interview 14). They, along with small diamond dealers which had lost their sightholder status, suffered very much from the De Beers' revised overall business strategy and were therefore highly suspicious of the company's leadership.

De Beers had to realise that their leadership would not be sufficient to unite the industry. An independent industry body with more credibility across all sectors would be more suitable to deal with this issue. This would also ensure that industry action would be seen as a sector-wide contribution rather than a De Beers initiative (Interview 14). The most significant contribution of De Beers in leading the industry to Kimberley was its engagement in building a new institution that is now in charge of dealing with KP related issues, the WDC. The aim of building this institution was to create a place where the entire industry, from mining to retail, could come together discussing among themselves and with civil society the various approaches to solving the issue. The HRD especially had not trusted De Beers to represent the interests of the entire industry and, by being present, wanted to protect its Antwerp dealers. Therefore, in the first two meetings of the KP in Kimberley, South Africa (May 2000), and Luanda, Angola (June 2000), the industry was represented by two bodies, the HRD and De Beers. For several reasons, the industry realised that being represented by two different bodies would be a disadvantage. Initially, the diamond industry was only supposed to provide technical consultation. However, when the Process began, negotiations were very politicised. Therefore, the industry saw a need to adapt to this situation and delegate representatives that were not only technically knowledgeable but also politically sensitive. Moreover, the industry feared that either governments or civil society could exploit the rift in the industry by playing the two business players off each other (Interview 5).

By creating the WDC, De Beers intended to overcome these issues, but the company had to be careful not to give the impression of pursuing their only own interests, but those of the whole industry. Considering how disparate and competitive the industry was, the creation of the WDC was a very innovative and bold move. Together with the industry bodies WDFB and IDMA, De Beers worked towards the creation of the WDC and ensured that the industry would be properly represented. On 17 July 2000, at the 29th World Diamond Congress, the WDC was created. Eli Izhakoff, the president of WFDB, was elected as chairman of WDC. De Beers had pushed for Izhakoff behind the scenes (Interview 5). He was considered to be the

ideal candidate since he was both very highly esteemed in the diamond trade and also had political experience. Hence, he was able to lead the diamond industry in the politicised atmosphere of the KP. For De Beers, the creation of the WDC meant that it was giving away its leadership to the new body. However, at this very specific moment in time for the industry, De Beers considered it more as an advantage than a loss of power.

This section examined the efforts taken by De Beers to act as a leader within the diamond industry. The historical changes within the industry structure had a profound impact on De Beers' behaviour. However, the changes did not provide the company with an opportunity but rather limited its behavioural options. With its decreasing instrumental and structural power, De Beers' ability to guide the industry diminished. As a large number of players in the industry began to distrust the company, it had to find a new way of initiating collective action. In order to be able to lead, De Beers had to take the exceptional step of transferring its power to the newly created industry body. Thus, De Beers ensured that diverging perceptions and interests in the industry did not develop into a business conflict which would have weakened the industry's impact.

5.2.3 Setting the Scene for an MSI

The creation of the WDC was an important milestone not only for fostering collective action within the industry but also for directing the KP into an MSI.

In the early days of the Process, leading governments, in particular that of the UK, were in search of a political format for the evolving process. For several reasons, the UN was not considered to be the appropriate place (Interview 11). The UK would have preferred to push the certification scheme through the UNSC as a Chapter 7 resolution since conflict diamonds had an obvious link to peace and security aspects.[89] Since the UK delegation also preferred a legally-binding agreement, working within the UNSC framework seemed most advantageous. Other UNSC members, however, had a different opinion and did not consider the UNSC as the appropriate institution to deal with conflict diamonds. For the Russians and the

[89] UNSC Chapter 7 deals with threats to peace.

Chinese the conflict diamonds seemed to differ too much from the usual UNSC Chapter 7 issues and neither government was eager to set new precedents for the use of that Chapter. Moreover, the US hesitated to call on the UNSC since they preferred a lighter and swifter solution (Interview 11).

The way the KP had evolved until the end of 2000 forced governments to realise that it would be impossible to achieve and implement an international agreement without the strong support of the industry.[90] Any effective political solution would therefore need to take into account the industry's position. The first reason for this could be found in the opacity of the diamond industry. As explained in Chapter 4, the diamond trade is very difficult to track. Yet, in order to set up an effective commodity tracking system, policy makers need to have a profound understanding of the supply chain (Interview 20). Moreover, due to the secretive trade traditions, consistent and accurate data on global diamond production was not available (GAO 2002). Hence, it was impossible even to estimate the amount of conflict diamonds traded per year. This is not unusual when trying to regulate an illegal market. However, governments also had very little knowledge of how the diamond industry worked. Most importantly they did not understand how supply chains functioned. Globally, there were only a small number of diamond experts, most of them working as consultants in the industry. Apart from the industry, only Global Witness and PAC had acquired an advanced and reliable knowledge of these issues through their campaign activities.

The governments realised that the only way for them to acquire that understanding was to cooperate intensely with the experts. Nevertheless, why did the diplomats see a need to allocate equal rights to the NSAs by designing the KP as an MSI? Looking at other international negotiations, we can distinguish a number of ways by which governments can allocate participating rights to industry representatives and civil society. In global environmental politics for instance, governments need technological and scientific advice from the industry to the same extent. Therefore, the governments included industry representatives in their national delegations during the negotiations for the Montreal Protocol and the Kyoto Protocol.

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[90] This paragraph draws heavily on Kantz (2007).

However, the way the KP had evolved from the beginning had directed the Process away from such traditional methods of inclusion towards a more novel approach. First, in several African countries, the industry itself was a private-public partnership. Therefore a natural distinction in countries such as Botswana, Namibia and Angola between the public and private sector did not seem appropriate. Even more importantly, the industry itself was able to steer the Process into the direction of an MSI by launching the WDC. Governments found it very easy to engage with the industry and to exchange their knowledge through the WDC. Hence they did not see the necessity to change that status quo by including industry representatives in their national delegations. With the formation of this new industry body, the diamond industry paved the way for the MSI. Only by unifying the industry and speaking with a single voice could corporate actors transform their technological and industrial expertise into structural power, shaping the nature of the KP in a significant way. We should therefore consider the creation of the WDC as pivotal for the industry's acquisition of equal participation rights in the KP.

With the inclusion of the industry, policy-makers also had to assign participation rights to the NGOs so as to balance the negotiations. As mentioned before, most of the diplomats, especially those from the UK and Canada, had good experience cooperating with NGOs from the landmines campaign. Hence, they treated Global Witness and PAC with respect from the very beginning. Moreover, especially smaller delegations from African countries, such as the one from Sierra Leone, benefited from the alliance with NGOs as they could rely on their policy consulting and experience in international politics (Interview 1). However, it should not be surprising that NGO participation to that extent was not uncontested. In the early phase of the KP, only Zimbabwe and Angola opposed the presence of civil society. Not sufficiently valuing their domestic civil society, it was difficult for those diplomats to adapt to this very open and inclusive negotiation style (ibid.), but the more countries that joined, the more the specific approach of the KP to diplomacy had to be justified. As noted by Smillie (2005: 59), in particular Russia, China and Japan repeatedly "stalled and blocked" the negotiations trying to restrict NGO participation. It is only due to the persistence of the UK (later the EC) and Canada that NGOs were allowed to participate to such a high degree.

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Overall, in this phase structural opportunities were more important than the NGOs' political strategy. De Beers' change from being defensive to a leading industry was crucial for being able to devise a common industry position on the issue, but rather than NGO pressure and framing, opportunities arising from structural changes in the industry sector are what account for De Beers' change of attitude. Political strategy became more important when it came to unifying the industry's approach to the KP. It was rather difficult for De Beers at that specific moment in time to be a leader as the rest of the industry was highly suspicious about its motivation. Even more importantly, however, the leadership of De Beers and the creation of a new industrial body directed the KP towards an MSI. Being able to talk with a single voice, the industry was finally able to exercise structural power on the evolving KP agenda. As such, this phase is very crucial for explaining business' impact on the KP and ultimately being able to explain certain institutional design features of the KP.

In summary, this sub-chapter gives evidence for the overall argument of the thesis that the specific structural setting of a case is crucial when analysing the design of international institutions.

5.3 Multi-stakeholder Diplomacy: From Luanda (2000) to Interlaken (2002)

The third phase is characterised by an increase of the norm opponents' impact on the KP institutionalisation. Most notably, the more the diamond industry could increase its influence, the more technical the negotiations would become. With the growing number of participants in the KP, opponents of strong institutionalisation soon outnumbered the LM-Group. This change in the power distribution during the negotiations ultimately had a significant impact on the institutionalisation as a number of requirements – such as disclosure of statistics, monitoring and requirements of KP governance (the secretariat) – were watered down. Yet, despite this crucial set-back, in this phase the foundation was laid out to push institutionalisation after the launch of the KP as the NGOs could successfully initiate a learning process within the industry. At the end of this phase, the industry had profoundly changed its stance on opacity and its responsibility with regard to conflict

diamonds. The effects of this change in attitude can be seen in the final phase of the KP (see 5.4).

Overall, this accounts for key institutional design features such as the issue of diamond identification (5.3.1), the rotating chair, and weak monitoring and statistic disclosure requirements (5.3.3). Moreover, it explains why the diamond industry began to be interested in stronger institutionalisation (5.3.2).

5.3.1 Establishing Corporate Power: The Role of Scientific Expertise

Following a stakeholder meeting in Luanda in June 2000, the industry concentrated on increasing its impact on shaping the institutional design of the certification scheme. In this regard, we have already noted the significance of the formation of the WDC, as it concentrated corporate voices. In addition, one crucial issue for the industry was to increase its discursive power. The corporate actors had to understand the negotiation dynamics, spot windows of opportunities and swiftly learn how to use their technological and scientific expertise in those instances. To some extent, the NGOs had a competitive advantage, especially at the beginning of the negotiations, as they already had experience of this kind of policy impact. Yet, the ability of the industry to make an impact on the institutional design was limited by one further aspect. The governments, especially the UK (later the EC) and Canada, distrusted the industry, as they had been persuaded by the NGOs that the way the industry dealt with the diamonds was an essential component of the policy problem (Interview 11). Hence, in the beginning, it was clear to the industry representatives that some governments and the NGOs did not expect them to be honest partners. If they wanted to make an impact on the scheme, therefore, they knew that they had to establish their trustworthiness. In order to achieve this, they pursued the strategy of providing reliable, relevant and timely information. Accordingly, their discursive power grew increasingly. Throughout the process, the industry also learned to steer the negotiations by giving out the appropriate kind of information at a given time (Interview 5). The endeavour of the industry to increase its impact was facilitated as the discussion began to focus on how to design a certification scheme. The stakeholders concentrated on discussing more technical issues rather than the

humanitarian situation on the ground. This was an opportunity for the industry to have more impact on the scheme than the NGOs.

Among the members of the WDC were representatives of De Beers and HRD. They had already gained some experience in setting up a certification scheme, albeit limited in scope (Bone 2004). De Beers had introduced issuing guarantees with its diamonds assuring that none of the goods would derive from regions of conflict. The HRD had cooperated with the governments of Angola and Sierra Leone to devise a national forgery-proof certificate of origin documentation system (Cook 2001). The representatives of both organisations drew on these experiences to consult governments. Although governments had a rough idea of how they wanted to design the certification scheme, they did not know whether this would do justice to how the supply chain worked in reality. Therefore they cooperated closely with the WDC and the HRD in order to see whether their idea of a certification scheme would be feasible and effective.

The technological and scientific recommendations from industry representatives were contested by the NGOs. Policy impact by the industry can therefore be best characterised as fights over different regimes of truth where both the NGOs and the industry tried to exploit the governments' uncertainty on the issue, framing for them what was considered to be the best policy solution. Norm diffusion in this respect had not one direction, but instead the different stakeholders tried to push their specific regime of truth. Among the numerous contributions of the industry and relating discussions with NGOs, two stand out as giving crucial further direction to the certification scheme. They also serve as a good illustration of the competition between industry and NGOs to make an impact on institutional design.

The first issue concerned the evaluation of the value of trade in conflict diamonds. For the governments, before starting to discuss the details of the certification scheme, it was important to analyse the extent of the policy issue. The NGOs insisted that conflict diamonds represented at least 20 percent of the entire diamond trade. In contrast, De Beers contended in its testimony that they represented no more than four percent in 1999 (De Beers 2000b). The governments knew that the exact amount of illegal diamonds could not be estimated, but as De Beers was the only organisation that had quantified the amount of rough diamonds available to RUF and UNITA, governments accepted the industry's estimate. The figure of four

percent was subsequently used in official documents by the UN, governments and even some NGOs.

The second, more important issue was that of diamond identification. At the centre of the discussion was how to differentiate between illegally and legally mined diamonds. In order to obtain a more profound insight into the issue, the UK funded a working report produced by Global Witness that compiled and compared different means for identification and assessing existing national control systems (Global Witness 2000). The report dismissed the industry's assertion that experts could not assess the origin of diamonds by quoting De Beers' Jim Cluskie. He had admitted that De Beers was able to identify "Angolan production with 90 percent accuracy and 50 percent of certainty [to] Unita production" (quoted in Global Witness 2000). Later, the diamond industry argued that it might be possible to identify the origin of diamonds when having a sample of diamonds stemming from the same area, as geologists could examine small dirt particles attached to the diamond. However, the industry maintained that it would be totally unfeasible to establish the origin once the gems were mixed (Schefer 2005). In order to solve this issue, Global Witness argued for a technological solution using laser beams for the identification (Global Witness 2000). From a technical point of view this was, indeed, an option. Already in March 1998, De Beers had announced the development of a new branding technique. According to the new strategy, the CSO planned to brand high-quality diamonds bigger than one carat with a De Beers mark and serial number for their Forevermark™ (Bergenstock 2004). At a conference hosted by the White House Office of Science and Technology in January 2001, the stakeholders looked more profoundly into technological solutions for identification (Cook 2001). The diamond industry strongly opposed Global Witness' suggestion arguing that it would be technically and economically unfeasible to mark the world diamond output. For the Forevermark™, only a very small amount of diamonds was branded. However, each year around 100 million carats are mined, which translates to millions and millions of individual stones, each often weighing a fraction of one carat (Interview 3). The diamond industry therefore argued against such an "ill-conceived" quick fix and proposed to design an international certification scheme accordingly to the models of already existing national certification of origin schemes (Izhakoff 2001). The industry's proposal was not only technically persuasive but also more cost-efficient

than that of the NGOs. Hence, the industry's proposal was accepted by the governments.

The decision as to how identify diamonds was important for the impact of the industry on the institutional design of the Scheme. Having delivered essential technical expertise the WDC could establish itself as a trustworthy body. Subsequently, it became profoundly involved in designing the actual certification scheme. The HRD's Director of International Affairs, Mark van Bockstael became the chair of the Working Group Diamond Experts and Technical Issues. In retrospect a number of stakeholders confirmed that he could be singled out as one of the biggest contributors to the scheme (Interviews 2, 20). Van Bockstael drew from his experience in Angola and Sierra Leone where he had headed the design of national certification schemes just before the KP had started (Cook 2001). On behalf of the participants of the KP, Global Witness was mandated to assess the certification in Sierra Leone established at the end of 1999. Global Witness concluded that the scheme was broadly working and made a number of recommendations with regards to the global scheme (DFID 2002; Global Witness 2001b).

The governments relied heavily on van Bockstael's expertise when devising the global scheme. Although delegates had a rough idea of how they wanted to design the scheme they did not know whether this would do justice to how the supply chain functioned in reality. Therefore, they cooperated closely with the WDC and van Bockstael in order to see whether their ideas would be feasible and effective (Interview 2). The WDC issued a draft of "A system for International Rough Diamond Export and Import Controls" (World Diamond Council Technical Committee 2000), in which they outlined regulations for the certification schemes and proposed a three-part export and import verification document consisting of the certificate of export origin, a detachable import confirmation certificate, and a security slip. Furthermore they made suggestions regarding an audit trail and electronic data transmission. This system was adapted from the certification scheme of Sierra Leone.

However, the impact of the industry was not unlimited. One example for this is the industry's fear of bureaucratic measures that would be a burden for their trade. This is a normal reaction of an industry which faces more regulation. Together with the Belgian government they called for any bureaucratic burden, like setting up databases, to be placed onto the African governments (Interview 20; Bryant Banat

2002: 950). Thus, the importing countries would not have to bear this bureaucratic burden. The EC was particularly opposed to such a proposal arguing the Africans needed to be supported by the industrialised countries (Interview 20). Moreover, the industry was very opposed to any compliance measures and the publication of statistical data, referring to the right of protecting proprietary data (Bryant Banat 2002). Regarding monitoring, the industry argued that such measures would at best be ineffective and at worst interfere with the trade. As the subsequent section shows, the industry needed to go through a learning process in order to support stronger institutionalisation of the KP in the importing countries.

To conclude, this section demonstrated how crucial discursive power is to be able to impact the institutional design. At the beginning of the KP, the industry's influence was rather limited as it first had to build up its discursive power. But the more technical the discussions became and the more the industry could present itself as trustworthy, the more it could increase its impact on institutional design features. However, from the beginning the industry tried to block certain requirements regarding monitoring and statistics disclosure. It took another change in attitude before the industry began to support stronger institutionalisation.

5.3.2 Framing and Learning: New Industry Responsibilities

At first glance, we might be tempted to explain the strong institutionalisation of the KP by the overlapping interests of the main stakeholders. The NGOs were interested in establishing trade regulation whereas the governments' and the industry's interest was to get rid of the NGOs. Yet, a close look at the negotiation dynamics reveals that the overlapping interests first had to be discovered. This section concentrates on a learning process within the industry sector triggered by the NGO framing.

At the beginning the stakeholders were far from realising common interest. In fact, the KP kicked off in a difficult atmosphere as the stakeholders seemed to have significantly divergent interests. We have already noted that the governments, especially the UK (later the EC) and Canada were wary of the industry and wanted them to deal more responsibly with their product. But although they wanted to solve the issue, they were not prepared to push for strong public regulation. Industry representatives mistrusted the diplomats as they did not know what the motivations

of governments were. Their greatest fear was that strict public regulation would be set up which could inhibit the diamond trade. In particular, they feared that more sanctions would be imposed on non-compliant exporting countries. Those were considered as ineffective and trade intrusive. Finally, NGOs were very suspicious of the industry. But they were also unsure as to whether to trust the governments to produce a strong international institution. Hence, the first meetings of the Process did not bring any ground-breaking results and were marked by some strong disputes, particularly between NGOs and corporate actors.

However, during these negotiations the stakeholders began to realise that they had converging interests. What stands out most in this analysis is the profound change of attitude of the diamond industry which opened the way to strict rules on monitoring, enforcement and the disclosure of statistics. Eventually, as we see from the next sub-chapter, the industry began to contribute significantly to the stronger institutionalisation of the KP by pushing opposing governments to accept monitoring and compliance.

What motivated the industry to change its attitude on these issues and to discover common interests with the other stakeholders, most notably those of the LM-Group? We can see from the subsequent analysis that the NGOs were able to initiate a learning process by using framing as a political strategy. This was facilitated both by the profound uncertainty of the industry about corporate behaviour and responsibility as well as close consumer relations.

Let us first turn to the issue of uncertainty which played a crucial role in the institutionalisation of the KP. We already noted that it was the governments' uncertainty as to how to technically devise the certification scheme which ultimately paved the way to a MSI. With regard to the industry, they were uncertain about their responsibility in the issue and their role in keeping conflict diamonds out of the legal trade. We noted in 5.1.3 that the industry would not accept bearing a share of responsibility considering this was an international trade issue. In their view, it was the governments, particularly the African ones, which were in charge and, therefore, had to bear most of the bureaucratic responsibility. However, as we see below, the high level of uncertainty offered huge potential for diffusing the new transparency norm and more corporate responsibility. Uncertainty was created by two issues. First, as mentioned before, the industry had never been subject to an activist campaign. Secondly, although especially De Beers was involved in philanthropy in Africa,

when producing the diamonds CSR had never been an issue before. As we can see from Section 5.4.4 the KP was actually the starting point of CSR in the sector. The campaign as a business risk created an uncertainty about how the value of the product was created and led the industry to re-assess how the value of their product was constructed. Most importantly, the NGOs not only created a new business risk but also gave guidelines on how the industry could manage this new risk by re-defining business responsibility. Managing the diamond business responsibly previously meant that the industry needed to focus on preserving the scarcity of the product so as to maintain the stones' high prices. With the framing of conflict diamonds, however, the way the industry operated suddenly had repercussions on the value of the product. Such a question had never before been an issue. Slowly, normative considerations began to have an impact on the material value of the product.

> " (...) The leaders of the industry saw that there was a clear moral imperative that we could not allow our beautiful and unique product to be associated in any way with the horrors of war. We could not stand aside and say this was an African problem, let Africa solve it. A very large proportion of our rough diamonds – the diamonds you buy here at the Sights, and are traded and polished downstream and made into jewellery – come from Africa. Whether we like it or not, we were involved, we are involved. Equally, the commercial imperative was clear – do nothing and our entire industry was at risk. The leaders of the industry chose, wisely, to act. (O'Ferrall 2002)

As soon as the industry understood that normative concerns were crucial for creating value, the interests of NGOs and industry started to converge as rigid international certification essentially preserved the diamond's value. Hence, while no-one in the industry denied that there was a vital commercial interests, business representatives also started to consider cooperating in the Process as a moral imperative. Material interest and normative concerns became inseparable from one another. Moreover, many in the industry began to understand that although the way their business traditionally operated did not cause the conflicts, but it enabled their continuation.

> "(...) *Taking responsibility*: The diamond industry must address the fact that illegal diamonds from Sierra Leone and other war zones are in fact finding their way into the diamond marketplace. While the industry in general cannot solve Sierra Leone's problems it can, and must, take realistic measures to assure that illegal diamonds are excluded from the marketplace. The argument that it is impossible to ascertain the origin of specific diamonds is very interesting, *but it does not negate the responsibility of our industry* (...). (Rapaport 2000, emphasis added).

Several individuals in the diamond industry soon turned to be the most committed members of the Process, disclosing the opaque world of the diamond industry to governments and NGOs. Some of them later on mentioned that it was due to NGO

research that they changed their attitude (Ratner 2007; Smillie 2005c). Eventually, this led to a more balanced design where importing and exporting countries as well as the industry were responsible for keeping the trade clean.

But not only was the political strategy of creating a demand for new business conduct important for the industry's change of attitude. It was also a question of normative match. The upstream and retail sector reacted to a consumer demand which fit that of NGOs. Having close contacts with the consumer the retail sector had to meet the new societal values (Interview 14). In contrast to this, the manufacturing sector, being the most removed from the consumers, did not undergo this change of attitude. As we see in the following section, the governments representing this part of the industry contributed to weakening the institutionalisation. Overall, it was the confluence of good strategy and structural normative opportunity that can account for the change of attitude.

The framing and learning process about new industry responsibilities created a shared understanding on the issue and ultimately the industry also altered its perception towards the NGOs. During the negotiations, they discovered common interests, such as ending trade in conflict diamonds, and common frustrations out of their interaction with governments. Especially, when more governments joined thereby delaying the process, the NGO-industry relationship evolved. They were newcomers on the international diplomatic parquet and clung together because they were increasingly frustrated by governments' intransigence and procrastination (Smillie 2005). From meeting to meeting, interactions among the NSAs intensified; all were on a first-name basis and had regular personal, phone and e-mail contacts between meetings. NGO representatives were invited to meetings of the World Diamond Congress in Antwerp where they were allowed to attend most of the meetings and treated "cordially" (Smillie 2004). Both sides wanted an agreement on an international certification scheme as fast as possible. Hence, both put pressure on governments and thereby pushed the Process forward.

In summary, the realisation that normative issues would have an impact on the value of their product changed the industry's stance on the KP. Essentially, the diamond industry learned what other industries had realised before, that there was a business case to be made about responsible behaviour. Whilst before, the industry tried to water down requirements on monitoring, enforcement and statistics, it started to acknowledge that the way it operated had enabled a continuation of the conflicts.

The NGO-industry discussions on the situation in Africa were critical for this learning process. We can see that the diffusion of ideas by framing and learning is most effective when there is a demand for new ideas. Most importantly, the NGOs themselves created that demand by launching the pressure campaign. The confluence of that political strategy and the normative match of consumer expectations accounted for the successful diffusion of the transparency norm.

5.3.3 Doomed to be Weakly Institutionalised?

The learning dynamics, especially between the NGOs and the industry, should not conceal the fact that as the agreement drew closer in late 2002, some of the NGOs' maximum demands were not met (Partnership Africa Canada et al. 2002). Not like-minded actors were able to exploit political opportunities to slow down the Process and water down the requirements. Many critical issues such as monitoring, enforcement and the issue of statistics' disclosure were not agreed upon when the KPCS was launched in 2003.

The main issue for not being able to agree was that more and more countries had joined the Process between 2001 and 2002. This dynamic was triggered by an internal KP debate on whether to set up a closed diamond trade where only participants were allowed to trade with each other. Being less interested in the issue of conflict diamonds, other producers feared being marginalised and cut off by the supply chain lest they join the Process. Hence the rush to join the KP resembles what we discussed in Chapter 3 as the tipping point. As most of the countries were to some extent involved in the manufacturing process, such as India and Brazil, the group of latecomers had two commonalities. They were the most removed from consumer pressures and NGO activism as they concentrated on manufacturing rather than mining or retail. Therefore, they were not willing to disrupt their diamond industry with new trade laws. Those countries therefore shifted the power balance from the coalition calling for strong institutionalisation towards those preferring a low degree.

The debate about a 'closed diamonds buyers' club' was highly successful in increasing the number of countries wishing to participate in the KP. As discussed later in this section the proposal was contested mostly by the US, fearing incompatibility with the international trade regime. The US position on the KP was

actually very mixed throughout the Process.[91] The US had been in the Process from the beginning, with the Clinton administration backing international cooperation to find a solution to the issue (Cook 2001).[92] This was in line with the increased focus of the Clinton administration on Africa (Wright 2004). Interest in the Process decreased considerably when George W. Bush became US President, mainly because of the administration's dislike for multilateral agreements. The US remained in the Process to protect its jewellery industry. In the immediate aftermath of 11 September 2001, the US administration became more interested in a stronger KP as, not long after that day, journalists and activists drew a causal connection between conflict diamonds and Islamic terrorism. A Washington Post journalist revealed that members of Al Qaeda benefited from the sales of millions of dollars of conflict diamonds mined by the RUF in Sierra Leone (Farah 2001; see also Global Witness 2003b). Moreover, the diamond industry, especially in the US, was severely hit by that claim. While conflict diamonds and civil war in remote parts of Africa had had some effects on American consumers, the 'terrorist' diamonds had an even bigger impact, as it had brought the terror home to US consumers. Even when in 2002, most analysts – including officials from the US administration – were more cautious about 'terrorist diamonds', the topic still haunted the US diamond industry (Bates 2002). Islamic terrorism had an effect on the US position but not because of the US administration's security concerns. In fact, the NGOs were concerned that the fight against terrorism would distract the US from conflict diamonds (Global Witness 2001a). Rather, the diamond industry increased its pressure on the US administration to negotiate a strongly institutionalised KP.

With more countries joining the KP negotiations, the peculiar nature of multi-stakeholder diplomacy was replaced by day-to-day intergovernmental diplomacy.

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[91] As mentioned before, domestic politics is only covered in this thesis if it contributes to shedding light on preference formation at the international level. Suffice it therefore to say that the NGO network in the US was backed by Congressman Tony Hall who lobbied for more US support. As early as 1999, Congressman Hall proposed a bill in Congress, the Consumer Access to Responsible Accounting of Trade (CARAT Act) which required that every diamond worth more than US$ 100 would be certified. However, Congress did not adopt the bill (Feldman 2003). Hall attempted to re-introduce the bill several times at a later stage but was never successful. In the end a similar bill called the Clean Diamond Trade Act was adopted in 2003. The bill was successful mainly because at the time of its adoption, the US diamond industry had begun to favour stronger regulation and had started to lobby Congress. The bill mainly provides mechanisms for the US to implement the KPCS as well as some additional penalties in cases of non-compliance (ibid.).

[92] One of the last acts of the Clinton administration was to convene a White House Diamond Conference looking into the issue of technologies for identification and certification (Cook 2001).

NGOs and the industry alike complained in the latter stages of the KP that a large amount of time was lost with lengthy diplomatic statements. In particular, four issues have to be highlighted which not only slowed down the Process significantly but also had crucial effects on the institutional design. Due to the persuasiveness of the moral cause of the KP, not-like minded countries could not argue in principle against a certification scheme but had to exploit certain opportunities to either slow down the negotiations or prevent strong institutionalisation.

The first was the question of costs and the complexity of putting the system into place. So as to implement the Scheme properly, every country, except Belgium and Israel, which already had special expertise on diamonds in their customs departments, would have to train their customs officers. Most countries feared the enormous costs the Scheme would entail (Smillie 2001). Up until now, the US in particular is resisting any requirements that could potentially be costly (US Delegation n.d.).

The second issue was monitoring of the Scheme. NGOs demanded the establishment of an independent secretariat with third-party monitoring power in charge of statistical reporting. The proposal to create a secretariat was backed by South Africa and Namibia. However, most of the norm opponents, most notably the US, Israel, China and Russia – albeit for different reasons – fiercely opposed it. The US was worried about funding whereas Russia considered the creation of a secretariat as a first step towards monitoring. Most of the countries – in particular Israel, Russia and China – rejected the idea drawing on the principle of state sovereignty. In many countries, such as Russia, diamonds were considered as a strategic mineral and therefore international regulation on reporting and monitoring would touch upon state sovereignty. Even a lighter version respecting state sovereignty, by not making review visits mandatory and by not insisting that NGOs had to be in the review teams, was not accepted. Most African countries were particularly "nervous" about monitoring (Feldman 2003b). Russia and Israel, having the biggest political clout among these countries, opposed openly the idea of an independent secretariat with far-reaching rights. Both countries blocked the proposal on commercial confidentiality grounds. Specifically, Russia exploited the opportunity to water down the Scheme by referring to its domestic laws on "trade secrets" (Feldman 2003b; Smillie 2005c). Since all other issues had been solved by consensus, the participants were required to find a compromise rather than pushing

strict regulation on statistics. In the Ottawa meeting in March 2002, an agreement was reached that participating countries would produce quarterly trade statistics and semi-annual production statistics. Although this was a major boost for transparency in a traditionally opaque industry, the agreement was full of loopholes. The participants could not concur on a harmonised standard but agreed to use their own statistical arrangements. Moreover, although Russia agreed on the compromise, it did not disclose any trade statistics in the first two years after the certification scheme was launched.

For the NGOs, self-regulation in particular was untenable, and until the end of 2002, they threatened to leave the Process. As the coalition of not-like minded governments prevailed, the NGOs had to make a choice about their future role in the Process. They agreed to stay on and compromise in order to push further for eventual institutionalisation.

The third issue concerned the coherence with other multilateral agreements such as the General Agreement on Tariffs and Trade (GATT). So as to be effective, the KP had to prohibit trade between participants and non-participants. However, as a 'Closed Clean Diamonds Buyers Club', the KPCS was potentially relevant to the WTO. For some countries which had only reluctantly joined the Process, such as India, this served as a window of opportunity for trying to stop the Process altogether. To this end, India announced it would file a complaint against the KP at the WTO if the negotiators adopted trade prohibition between participants and non-participants. Since India was thus threatening the effectiveness of the whole scheme, the question about the KP's compatibility with GATT was the most serious issue during the negotiations. It delayed the negotiations for a significant time, not least because the LM-Group including the industry was not able to decide on a common strategy to counteract India. The US, Canada and Japan wanted to ask for a waiver at the WTO, whereas the Europeans (mostly due to UK influence) wanted to push the negotiations further arguing that given the implications to human security in Africa, no waiver would be needed anyway (Interview 11; Smillie 2005c) After long discussions, the issue was solved when a coalition of countries applied for a waiver at the end of 2002, which the WTO granted in February 2003.

Literally at the last minute, the Process was stalled by the question of which actor should be considered as a participant. The issue was led by China, which called for a wording to exclude Taiwan. The issue was very serious for Taiwan as it would

have legally excluded the country from the diamond trade which was important to its economy. So as to find a quick solution to the issue, Western diplomats simply advised Taiwan to ignore the wording (Feldman 2003b).[93] The incident was less about the institutional design of the KP than about China's relations with Taiwan, yet, it demonstrates the pragmatic approach of the LM-Group to swiftly finding a solution and getting the certification scheme started.

In summary, the KP risked falling short of its proposition to create a strong international trade regulation as crucial requirements were watered down by a growing number of norm opponents. Given the consensual character of the KP negotiations and the fact that the KPCS had as yet not been launched, norm opponents could easily block stronger institutionalisation. Their strategy was to exploit opportunities by framing diamonds as strategic commodities and capitalising on global trade rules. The LM-Group feared that the KPCS could ultimately fail if pushed too hard towards strong institutionalisation. The group therefore decided to first launch the Scheme and then engage in regime evolution.

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This sub-chapter explained the main decisions taken on institutional design features between 2000 and 2003. I particularly highlighted the ability of the industry to shape the technical issues of the certification scheme. With a greater significance of technical issues, we can see the rise of the industry's discursive power and a decrease of NGOs' impact. The NGOs were defeated with respect to questions about diamond identification, monitoring, statistics and the international secretariat.

What stands out from the analysis is that both sides, NGOs and the industry, used their technological knowledge to exploit the governments' uncertainty on the issue and frame the best policy solution. This confirms what has been said in Chapter 3: that norm diffusion is multi-dimensional where norm entrepreneurs and opponents try to diffuse their interpretation of reality. By the end of 2002, the certification scheme was drafted, albeit without the very elements for which it is now applauded as a strong institution. Requirements on monitoring and enforcement as well as on the disclosure of statistics were still missing. Disappointed by the progress, several NGOs called the KP "a watchdog without teeth" (cited in Price 2003: 35). We see

[93] Until now, Taiwan participates in the KP without being formerly recognised as a participant.

from the following sub-chapter how the stakeholders eventually agreed upon these institutional design features. This sub-chapter, however, discussed a crucial developement which paved the way for regime evolution. Triggered both by uncertainty about the issue and a normative match, the industry underwent a learning process, starting to acknowledge its share of responsibility in the issue. More specifically, it adopted the transparency norm, conceding that the opaque business operations enabled the flow of conflict diamonds. Ultimately, the industry therefore changed its attitude on issues such as monitoring, enforcement and the disclosure of statistics by joining forces with the LM-Group. The next sub-chapter elaborates on the significance of this altered attitude for the evolution of institutional design.

5.4 Beyond Kimberley: Regime Evolution

The KPCS, as of Interlaken 2003, is not the most ambitious regime. In particular, basic requirements on monitoring, enforcement and statistics were still missing. Yet, the years subsequent to the launch of the scheme demonstrated the real strength of the Process. The soft law approach enabled a 'learning by doing' approach and the ability to make incremental enhancements whenever participants could achieve a new consensus on an issue.

We have already concentrated on learning processes specifically within the industry as a turning point for achieving a strong institution. This sub-chapter elaborates to what extent the industry was important in achieving a stronger institutional design. We see that in the most recent phase of the KP institutionalisation process, exerting structural power gains importance as a political strategy. With the diamond industry now on board regarding the contested issues, the LM-Group was big and powerful enough to marginalise norm opponents and to trigger adaptation.

After the official launch of the KPCS, two groups emerged within the Process. First, the group which focused on preliminary implementation hoping that in a few years time the Process would be obsolete. This group consisted of those countries which had only reluctantly joined the KP in the first place. Countries such as China and Russia belonged to this group, which does not value strict international regulation or transparency in other policy issues. Their aim therefore was to preserve

the status-quo of the KPCS by not appending tougher regulation. The second group, the LM-Group, considered the launch of the KPCS as only an intermediate step. These participants, among them the EC, Canada and the NGOs, knew that the KPCS agreement had significant loopholes which would hamper the effectiveness of the scheme. For the LM-Group, the year after the launch of the KPCS was crucial in achieving a consensus on pushing the Process forward so as to boost its credibility. As this sub-chapter demonstrates, the LM-Group could strengthen the regime design by engaging with specific norm opponents individually. Thus, they could broaden the coalition favouring strong institutionalisation issue by issue and marginalise other not-like minded actors. Marginalisation of not-like minded actors was specifically successful, as the KP had acquired a very good reputation. Every participant who opposed advancements of the scheme was suspected of supporting diamond smuggling. Obviously, most of the countries were careful not to acquire such a dubious reputation. Ultimately, a good reputation created the strong sense of obligation noted in Chapter 4. As the participants recognise that the reputation of the KPCS can only be preserved if it delivers good results, peer pressure has since been very high.

This sub-chapter highlights the political strategy of structural power and marginalisation by looking at how the procedures for restricting membership (5.4.1), monitoring, enforcement and obligation (5.4.2), and further institutionalisation of transparency by requirements on disclosure statistics (5.4.3) were included in the KPCS. The sub-chapter concludes with an assessment on the overall impact of the KP on the diamond industry. I demonstrate that the diamond industry did not only adapt to a new political environment but, indeed, went through a learning process re-conceptualising its role in the sector. This adds to our argument as we can contextualise what was said previously about the learning process.

5.4.1 The First Challenge: Setting up a Participation Committee

The two prime issues, the questions of participation and monitoring, were linked together (Interview 18). Participation concerned the question of what requirements countries had to fulfil so as to become members of the KP. Before launching the KPCS, the negotiating parties had turned a blind eye to this issue partially so as to

engage with as many countries as possible in the first place. Essentially, any country that endorsed the KPCS at the meeting in Interlaken was an official participant in the Scheme (Smillie 2005). However, this had led to a situation where countries with a reputation for smuggling or laundering conflict diamonds were allowed to trade with the gems. Burkina Faso, for instance, a KP participant, had been named and shamed before for trading in conflict diamonds. The Republic of Congo was able to trade diamonds under the Scheme although it had no domestic production at all (JCK 2003). At the Plenary in Johannesburg in 2003, the first one after the KPCS launch earlier that year, the participants had to face the fact that there was no control over whether the participants were really implementing the Scheme. Apart from the NGOs, the EC, Canada and South Africa were most concerned about this issue (Interview 18). Nevertheless, within this group, disagreements emerged on which issue, participation or monitoring, needed to be pushed first. The NGOs favoured the latter. The EC was sympathetic to strengthening the monitoring but considered the control of participation to be the more pressing issue and prevailed. The Working Group on Monitoring (WGM) with the EC as Chair proposed to set up a new committee, the Participation Committee, which would screen all the participants so as to decide which ones could stay and which ones would need to develop an appropriate system to implement the KP before re-applying as a participant. According to the proposal, 31 July 2003 was set as the deadline. Before that date, non-implementation was tolerated, but those participants that had failed to implement the KPCS by the deadline would be excluded and be forced to re-apply.

The success of the proposal was astonishing. No-one had expected that within very little time, the advocates of the committee could gain the support from the other participants given that its implementation could have very serious repercussions for a number of participants.

What is it, then, that explains the swift success of the Participation Committee? First, a number of participants that joined the KP for reptuational benefits but which had little interest in a tough Scheme, had altered their preferences within the first months of the existence of the KP. So as to enjoy the reputational benefits, it was no longer sufficient to support a weak KP. Instead, the KP had to be a credible instrument in the fight against conflict diamonds, which included taking a tough stance on non-implementing participants. Moreover, those participants that implemented the KPCS, and changed their legislations and customs procedures

wanted to ensure that free-riders would be excluded from the system. Second, those participants that wanted to free-ride the system could not openly oppose the Participation Committee. Any participant opposing stronger participation rules was suspected of seeking to benefit from trade with conflict diamonds. Norm opponents had no possibility for framing that would legitimise their opposition. A number of those countries may have hoped that the KP would not exclude participants after all, given its soft law character. Their hopes remained unfulfilled. When the deadline passed, the KP lived up to its requirements for the very first time and expelled 23 countries, among others Burkina Faso, Ghana and the Czech Republic (Gomelsky 2003).

Overall, the new rules on participation were very successful as they ensured that only implementing countries remained part of the Process. What we could see from the analysis is the importance of group dynamics after having reached the tipping point whereby the launch of a new regime creates new interests. Moreover, norm opponents who wanted to free-ride the weak KPCS were unable to openly oppose tougher regulations as they would have suffered damage to their reputation.

5.4.2 Short Distance, Much Progress: From Johannesburg (2003) to Sun City (2003)

While the question of participation could be settled in a quick fix, the Johannesburg Plenary had still left open the thornier issue of monitoring. In most general terms, the KP participants were bifurcated into two groups, both stressing two different principles to make their case (Interview 11; Beffert and Benner 2005). On the one hand, the LM-Group wished to enhance the key principle of the KP, transparency, by introducing third-party monitoring. Among the most committed actors were the NGOs, the EC and South Africa. However, essential to the success was also the industry, which sided with the LM-Group on the issue of monitoring. The NGOs pushed very strongly on the issue of monitoring by publicly pressuring norm opponents. Shortly after the launch of the Scheme they seized a window of opportunity for raising public awareness. Following a coup in early 2003, the KP participants suspected that the Central African Republic was laundering conflict diamonds and that their controls were insufficient (Dietrich 2003). On the other hand, the group of norm opponents rejected independent monitoring by not desiring

to go beyond the original KPCS document. Those participants, among them Israel, Russia, China and some African diamond-trading countries, feared that monitoring would infringe on their state sovereignty (Wallis 2003). Also, a few of countries feared that commercial secrets could be revealed during the reviews (Interview 11).

As Beffert and Benner (2005) emphasise, the biggest difficulty in the discussion about monitoring was that the UNGA only provided scarce guidance on how to design it. The UNGA had made quite detailed recommendation regarding the design of the certification scheme. Yet, in this case, the UNGA drew on both the principle of state sovereignty and transparency leaving it to the discretion of the participants to bring together those apparently irreconcilable principles. The LM-Group pursued a two-fold strategy. First, the NGOs maintained the momentum by publicly criticising the KP. Second, the group tried to engage with norm opponents in small and informal groups thus splitting and marginalising not like-minded actors. The bulk of the discussions were conducted in the WGM in which only a small fraction of the KP members were participating, but the advocates also attempted to meet with norm opponents individually to persuade them of the necessity of monitoring. One of the most important opponents of monitoring was Israel. At an informal meeting in Tel Aviv in the run-up to the Sun City Plenary in 2003, the NGOs, representatives of the WDC and the Israeli government met to discuss the issue. At that meeting, the WDC was particularly instrumental in finding a workable compromise as it produced a preliminary compromise, based on the EC proposal. The fact that the proposal was supported by the WDC contributed in two ways to achieving a compromise with Israel. First, Israel was concerned about trade efficiency and trusted that the industry would not support an overburdening compromise. Second, the WDC was able to convince Israel that strong monitoring requirements would be a commercial benefit as it would manage reputational risks. In addition, the way the EC framed the compromise was crucial to getting Israel on board. The compromise attempted to reconcile the requirement of transparency with the principle of state sovereignty by conducting monitoring through voluntary peer reviews. The EC's strategy was to seize the middle ground between the two extreme positions on monitoring.

This strategy, with the input from the WDC, yielded success. Nevertheless, with the Israelis now on board, the LM-Group still had to convince a number of countries. Since, in the run-up to the Sun City Plenary, all the discussions were

conducted in informal meetings among only a small number of participants, most of the participants were actually not aware of the details of the proposals. For a number of participants it came as a surprise that monitoring was on the agenda at Sun City.

At the Plenary, prospects for the LM-Group to obtain an agreement on monitoring looked rather gloomy due to initially very divergent positions. However, the compromise brokered in Tel Aviv proved to be very convincing. How could the LM-Group convince the norm opponents? First, the fact that the proposal was already backed by representatives of the three stakeholder groups marginalised other opponents and made it rather difficult for them to maintain their resistance. Particularly, the backing of Israel, a formerly powerful norm opponent, having used the same arguments, weakened the resisting states. Also, the industry made very clear that they were in favour of monitoring requirements (Interview 18). Second, the LM-Group specifically addressed the norm opponents' framing by avoiding any language which might have sounded too intrusive so as to make clear that monitoring was not at odds with state sovereignty. Instead of monitoring, the WGM used the term 'peer review' and avoided terms such as 'inspection' thus emphasising its voluntary character (Interview 11). The strategy was successful as it made arguments against monitoring futile. In particular China could be convinced that monitoring would not affect its sovereignty. The Chinese government was careful not to set any precedent about compulsory monitoring for sovereign states. After their support could be secured, the participants endorsed the new procedures on monitoring, stressing that

> "these visits will take place on a voluntary basis, ... [but] it would be 'desirable for the largest number of Participants possible to volunteer to receive a review visit' by 2006" (Kimberley Process 2003).

The first test case for the credibility of the new monitoring procedures followed about a year later. According to the statistics and the diamond experts, the Republic of Congo having only a very small diamond production, still managed to export more than US$ 200 million worth per year (Innocenti 2004). The KP participants had a strong suspicion that conflict diamonds from the neighboring DRC and Angola were being laundered in the Republic of Congo. The review mission sent to Brazzaville in June 2004 confirmed the suspicion and only a month later the country was expelled from the Process (Kimberley Process 2006a).[94] The Review Mission to Brazzaville

[94] The Republic of Congo was re-admitted in November 2007 (Kimberley Process 2007)

was as yet the only one that was not voluntary. Instead, the Canadian KP Chair had to press for it (Smillie 2005b). It was clear that this was a serious test case for the KP and unless drastic consequences were taken, the credibility of the Process would be undermined.

The recent Three Year Review demonstrated that the KP participants, including the NGOs and the industry, were very satisfied with the new monitoring requirements. Despite its voluntary nature, 30 countries had invited review visits by the end of 2006 (Partnership Africa Canada 2006). Those countries that try to evade monitoring raise suspicions of concealing non-compliance. Therefore, the high participation in the review visits can be explained by the reputational gains to be made when offering to be subject to monitoring.

Why is voluntary monitoring so successful? As already mentioned, the majority of the stakeholders wished to preserve the good reputation of the KP. The obligation to commit voluntarily to review visits stems from the high degree of peer pressure. Overall, this section could show that despite the voluntary character of the KP, monitoring and enforcement requirements could be set up which are de facto mandatory given the high degree of a sense of obligation.

5.4.3 The Trouble with Numbers: Making Statistics More Transparent

With the participation committee and monitoring requirements in place, the KP then turned to its "greatest challenge" (Smillie 2005b), the creation of a reliable and comparable statistical database.

As already mentioned, the KP is fundamentally a transparency exercise. Without the knowledge of each member's production statistics it is impossible to detect conflict diamond smuggling and laundering. However, the creation and management of a KPCS statistical database, as well as establishing a coherent methodology for analysing the data, proved to be highly difficult.

The first difficulty was the creation and management of the statistical database. Although the disclosure of trade statistics is one of the key requirements of the KPCS, a number of participants, among others the US, passively opposed the creation of a database up until the end of 2004 (Interview 18; The Washington Post 2004). In particular Russia, referring to its domestic legislation on diamond trade

statistics as a state secret, was not willing to agree on any further disclosure requirements. With regard to the minimal requirements agreed upon in the original KPCS, a large number of countries provided the data either too late or inconsistent with the agreed formula (Smillie 2005b; The Washington Post 2004). Was this just an issue of non-compliance or also one of weak institutional design? The answer to this question is both, but a weak design of the disclosure requirements caused non-compliance. Given that the disclosure of trade statistics was so hotly contested, the original KPCS had left open the question of what format the data that had to be submitted must take. Moreover, the KP did not have an enforcement system in place for situations of non-compliance. The LM-Group realised that so as to achieve higher compliance rates, the institutional design features on statistics had to be strengthened. In particular, the group proposed setting up naming and shaming practices for those who would not comply with disclosure requirements, as well as agreeing on clear guidelines on what data should be disclosed and when (Kimberley Process 2006b). The Ottawa Plenary in 2004 provided a window of opportunity for the NGOs to bring the issue of statistics to attention. At this plenary, the Russians had applied and been designated as vice chair and therefore would automatically become chair of the KP in 2005. As the NGOs increased their pressure on Russia, a number of KP participants doubted whether a country that was non-compliant with key requirements should become chair. Just before the deadline in December 2004, the Russians changed their legislation and disclosed their data to the KP Working Group on statistics. The joint pressure by KP-participants, both NGOs and governments in connection with the embarrassment Russia faced if excluded as a chair, served as a push factor for the Russian government to adopt the new legislation. Russia's new commitment coupled with ongoing NGO pressure enabled the KP to adopt new requirements regarding the disclosure. At the plenary in Gaborone in 2006, the KP participants agreed to publish the names of members that habitually failed to disclose their statistics. By 2006, every KP member was compliant with the statistics requirement. Moreover, as a last step, KP participants agreed on the publication of the statistics in 2006 (Kimberley Process 2006b). For the first time, statistics on the diamond trade were published on the KP website in 2007.[95] For 2008, the participants envisage publishing even more detailed data.

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[95] Currently, data is published on a country-by country basis with all rough diamond production (semi

As to the second issue, the question on methodology, the launch of the KP in 2003 had left open the question of how to create and manage the KP database as well as how to analyse the data (Kimberley Process 2006a: 44). Since March 2003, Canada had chaired the Working Group on Statistics at considerable cost to itself. The working group tried to conduct a first-ever full scale analysis of the statistics. The NGOs argued for employing a professional financial services firm such as KPMG or Deloitte to carry out the analysis. Yet, in the run-up to the Three Year Review 2006, the government rejected this proposal after considering the costs for hiring such a company (Partnership Africa Canada 2006). Instead, the participants endorsed the analysis of the statistics at the plenary in Gaborone in 2006 (Kimberley Process 2006b).

In conclusion, both Russia's new legislation and the publication of statistical data on the diamond trade have constituted tremendous progress in making the diamond industry more transparent and in curbing trade with conflict diamonds. As in other issues before, peer pressure and reputational risks were crucial in achieving greater transparency (Federal News Service 2006). Specifically, the strategy to speak to participants individually and the threat to withdraw chairmanship from Russia enabled a re-negotiation of disclosure requirements.

5.4.4 The 'Kimberley Effect' within the Diamond Industry

There can be no doubt that the diamond industry was crucial in setting up the KPCS. As mentioned earlier in this chapter, the diamond industry very much exploited its discursive and structural power so as to design the Scheme as much as possible to its own needs. However, the KP also had an enormous impact on the diamond industry. For centuries, it was one of the most secretive industries. Within a few years, the industry had transformed itself from a situation where only unreliable and contradictory data was available from customs to one where a global regulatory body requires all governments to provide detailed statistics on a regular basis. Even more so, this information is now publicly available. The diamond industry must comply with the KPCS requirements. It has to register for the acquisition of certificates and

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annually) and trade (by quarters) including carat weights and values (see https://mmsd.mms.nrcan.gc.ca/kimberleystats/default.asp, last accessed on 28 June 2008).

trade within that framework. As to the self-regulation, the system of warranties creates a paper-trail through which bureaucracies can trace all legal rough diamond transactions.

The culture of the diamond industry has also changed significantly. The Campaign against Conflict Diamonds opened up the sector. Whereas the industry was formerly very insular, companies now hire CSR officials coming from other sectors such as pharmaceuticals (Interview 14). In the long term, this will have a profound impact on their business culture. Moreover, the sector exhibited more togetherness. The crisis served to create a greater understanding of the interdependencies along the supply chain. What happens at the mining end affects the retail and vice versa.

Finally, the crisis introduced the CSR notion into the sector. Since the KP, a number of other initiatives have been initiated in cooperation with the NGOs, such as the Diamond Development Initiative (DDI) and the Council for Responsible Jewellery Practices. The DDI, created in 2005, is a logical consequence of the KP. As soon as De Beers began to cooperate with Global Witness and PAC on a regular basis, both the industry and the NGOs became aware that controlling the trade in rough diamonds by means of the KPCS and the SoW only partially covers the problems associated with diamonds. The NGOs and the industry concluded that only the downstream activities had been addressed throughout the KP. The certification scheme covers aspects regarding the export and import of diamonds, the SoW regulates downstream operations, that is to say polishing, manufacturing, and retail. The upstream operations remain unregulated and there is an immense issue with the considerable proportion of illicit alluvial mining. Contrary to kimberlite mining, artisanal mining is carried out by individuals who are mostly not registered. The conditions in which miners operate make these operations especially prone to predatory actions. In addition to this, the working conditions are very hard, as remuneration is very poor and health and safety measures are virtually absent (DDI 2005).

The DDI was initiated by Global Witness, PAC, De Beers and Rapaport in order to address these issues. The initiative is now supported by the World Bank's Communities and Small-Scale Mining Initiative. Although the DDI is in a very early phase of existence, the initiative is supposed to become a major contributor to sustainable development and CSR in African artisanal mining. In November 2004,

the so-called Early Adopters' Initiative which subsequently developed into the London-based Council for Responsible Jewellery Practices was launched (Shor 2005a, 2005b). The initiative aims at promoting "responsible business practices in a transparent and accountable manner throughout the industry from mining to retail".[96] In particular, the Council seeks to facilitate compliance with the practices of the SoW provisions and fair labour practices.

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In summary, the recent phase of institutionalisation is the most important one for the KP as it strengthened the Scheme significantly in a number of ways. The LM-Group was successful in pushing for application procedures, monitoring and enforcement mechanisms, as well as tougher disclosure requirements for statistics. Especially for the NGOs, this constitutes a great success as their demands were met by both the industry and the governments.

The sub-chapter revealed how important it was for the LM-Group to draw on different political strategies depending on which stakeholder was addressed in order to succeed in determining the specific institutional design. While initiating a learning process was successful with the industry, such a strategy did not yield much success with other norm opponents. With the diamond industry on board in most of the issues, it became easier to put not like-minded actors under pressure. Norm opponents did not concede to strengthening the scheme because they became convinced of its necessity. In fact, most countries such as Russia, China or India draw on very different normative frameworks regarding issues of transparency and monitoring. As for transparency, we could see that Russia was one of the fiercest opponents of disclosing trade statistics having considered this as a state secret for decades. China and Israel did not want to be subject to by monitoring requirements fearing that they would interfere with their sovereignty. The success of the LM-Group can be explained by several aspects. First, the KP is an excellent example to demonstrate to what extent regimes impact the interests of their members. Those stakeholders that wanted to join the KP for reputational benefits ('fighting conflict diamonds is good') started to realise that they needed to strengthen the Scheme once it was launched to preserve the reputation of the KP. Hence, by agreeing to

[96] See http://www.responsiblejewellery.com/, last accessed on 27 September 2006.

application procedures, monitoring and enforcement requirements, they wished to preserve the status as a 'good guys' club'. Second, political strategy was crucial. It was important that the diamond industry supported strong institutionalisation as it shifted the power balance in favour of the LM-Group. Being able to present suggestions that were already endorsed by the three stakeholder groups enhanced the legitimacy of the proposals significantly, but most crucially, being able to marginalise not like-minded states by getting key norm opponents on board yielded success. Both with monitoring and disclosure of statistics, the LM-Group engaged with Russia and Israel separately before presenting a compromise to the plenary. This put the not like-minded group under pressure and forced them to adapt to a new political environment.

To conclude, this sub-chapter demonstrates that norm diffusion can be successful in cases where there is no normative match. However, so as to be able to achieve norm diffusion under those circumstances, it was crucial that the LM-Group was powerful enough to incite such adaptation processes. In fact, the group had to depend on its ability to marginalise the norm opponents so that they would give their consent for strengthening the scheme.

5.5 Conclusion

The KP is certainly a great success for the NGOs. In less than five years they were not only able to convince key decision-makers that curbing trade in conflict diamonds would be an appropriate measure to contribute to pacifying the civil wars in Africa. They were also instrumental in strengthening the Scheme significantly after it was launched.

Early on, we can explain support for the KP by favourable POS. Especially, a normative match explains why a few crucial governments, such as those of the UK and Canada, became involved in the first place. As for the industry, the historical changes of the industry structures made De Beers push for industry involvement early on.

Yet, overall, the KP is an example in which strong institutionalisation could be achieved by capitalising on policy crisis with sound political strategy. It accounts for the agenda-setting phase up until regime evolution after 2003. Norm diffusion is

important to explain the case. It gives a reason for the crucial role of the diamond industry. Although very defensive at the beginning, the diamond industry became increasingly important for determining the institutional design. I identified two dynamics that kept the diamond industry committed during the negotiations. First, the initial interest of the corporate sector in taking lead action and commit to the KP was based on commercial considerations. The creation of the WDC served to increase the industry's structural power and maximised the corporate impact on the negotiations. Second, the diamond industry changed its attitude on the question of responsibility and to what extent the industry should become transparent during the negotiations. The LM-Group, particularly the NGOs, was able to incite a learning process within the industry on the value of business ethics. This explains the long road the industry travelled from denying the link of the diamond industry to conflict diamonds altogether and being very hostile to any regulations, to eventually admitting a share of responsibility. Ultimately, the diamond industry endorsed a scheme that was far more ambitious than corporate actors had initially wanted it to be, and even supported the LM-Group in further strengthening the Scheme. The LM-Group was able to incite such a learning process as uncertainty of the industry about both the issue, the link between conflict and diamonds, and uncertainty about how to react to the activist campaign made the industry more accessible to re-evaluating its own behaviour. It adopted a new understanding of what responsibility meant in the industry. Previously, diamonds were considered as valuable because they were scarce, hence De Beers' role as custodian of the industry. With the Conflict Diamonds Campaign, however, the diamond industry realised that normative considerations were crucial for maintaining the high price level.

Norm diffusion simply by framing and learning, however, would not have produced such a strong institutional design. By 2002, too many norm opponents had joined the KP, all interested in keeping the institutional design as weak as possible. Exerting power on norm opponents by marginalising them and structural power was crucial in pushing for strict monitoring, enforcement and statistics disclosure rules. Framing and learning proved to be ineffective as increasing transparency did not match with the norm opponents' stance on diamonds as a strategic and therefore secretive commodity. Given that the US was not interested in investing many resources into a strong KPCS, the LM-Group had to push for stronger institutionalisation in another way. Being able to break up the group of norm

opponents by engaging with some of them on an individual basis served to marginalise others and ultimately forced adaptation. This strategy was effective both for increasing monitoring and for the disclosure requirements.

Looking at the industry sector now it is fair to say that the KP had a significant impact. As we could see the idea of CSR had spill-over effects by initiating other certification initiatives in the sector. Both the private and the public sector are less opaque than they were previously. In fact, for the first time in history, diamond trade statistics are published on a regular basis.

CHAPTER 6

Regulating Revenue Flows in the Oil Industry

Oil and gas fuel our everyday life. Whether it is petrol for cars, synthetic fibres or plastics, petroleum and petrochemical products can be found in nearly every part of private use and industrial processes. Gas plays an equally essential role in economic development as a major generator for electricity. Where the resources are found in abundance, many stakeholders have hopes and expectations. Governments count on large and regular revenues, citizens hope for an increase in their living standards, local communities wish for it to be a panacea for poverty and multinational oil firms expect high returns on their large-scale investments.

However, the highly valued resources can also be used by rebels, insurgents or secessionists to further their goals. In many oil- and gas-rich countries, the high hopes for sustained economic growth were dashed by the gradual destruction of the livelihoods of local communities, social unrest, a corrupt political elite and increased poverty.

This chapter introduces the second case study of the thesis, the EITI. The initiative aims at increasing the transparency of oil and mining revenues in resource-rich countries. Basically, it is a very simple international institution. Companies have to publish what they pay to governments and the governments have to publish what they receive from the companies. A national multi-stakeholder group reconciles the two figures. The citizens of the implementing country can be confident that all resource revenues reach government accounts. As already discussed in Chapter 1, unlike the KP, the EITI is not limited to one sector of the extractive industries. In fact, it addresses the oil, gas and mining sectors. The case study concentrates on all aspects of the oil and gas sectors since in the first phase of creation and implementation, the EITI was still limited to oil companies. As a report recently concluded, the EITI is more suited to regulating the oil industry as it still lacks institutional features to address the specific challenges of the mining sector (EITI 2006a).

The chapter first explores the emergence of transparency regimes in the oil and gas sectors and explains their need by clarifying the link between oil, gas and conflict. I then provide a brief narrative of the creation of the EITI so as to make the subsequent analysis more intelligible for the readers. The chapter then provides a detailed analysis of the key players in the oil industry and its structural pressures. Finally, I define the dependent variable of the case by assessing the institutional design of the MSI. Given the low level of membership, low enforcement, a moderate degree of obligation and a high degree of monitoring, I conclude that the EITI is weakly institutionalised.

6.1 The Trouble with Black Gold: Oil and Conflict

The aim of EITI is to "strengthen governance by improving transparency and accountability in the extractives sector".[97] The increased interest in launching transparency regimes regulating both the private and the public sectors has already been mentioned throughout this thesis. In this sub-chapter, I specifically examine the flourishing of initiatives regulating the oil and gas sectors. As mentioned before, I concentrate on the oil and gas sectors rather than mining as those industries were instrumental in the design of the EITI.[98] I argue that the increased interest stems from the international effort to cut the link between hydrocarbon abundance and civil conflict in resource-rich developing countries. Oil and war have been bedfellows since the beginning of the twentieth century. Oil has a vital economic and strategic significance for all countries of the world. Access to oil can therefore be considered as a geopolitical interest and constitutes both a foreign policy issue and a matter of national security. The ongoing war in Iraq has revived the debate about oil as a motivation for engaging in war in political and academic circles (e.g. Bromley 2005; Klare 2004a). However, oil and war are linked beyond this traditional geopolitical understanding as the sub-chapter later demonstrates.

I first turn to a brief discussion of different existing initiatives that were launched to increase transparency in the oil sector. Then I turn to explain why the

[97] See www.eitransparency.org, last accessed on 13 May 2008.
[98] However, unaccounted mining royalties also facilitate corruption to the same extent as unpublished oil and gas revenues facilitate corruption (The Economist 2007b).

international community saw a need to create those initiatives by exploring the link between oil abundance, bad governance and conflict.

6.1.1 Overview of International Initiatives Dealing with the Policy Issue

Up to now, the EITI is the most significant international initiative to promote revenue transparency. Launched in 2002, the EITI is part of the anti-corruption movement which has emerged since the end of the Cold War.[99] With increasing globalisation, fighting against corruption and promoting transparent public financial management and accountability have gained more significance. A number of international initiatives have arisen since then, such as the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997), the UN Convention against Corruption (2003) or the Global Compact (1999). These international norms promote, amongst other things, the principle of transparency. Yet, apart from a very general recommendation there are no specific guidelines, monitoring or enforcement procedures attached to the principle (DFID 2003).

There is an existing consensus amongst diplomats, policy-makers and academics about the causal relationship of the mismanagement of oil revenues and internal conflict in resource-rich countries. This is looked at below. Until the creation of the EITI, only a few international initiatives existed specifically to promote the transparency of payments and revenues. IFIs recently began to pay more attention to transparency-related issues in the extractive industries sector by reassessing the performance of their own operations' performance. They are one of the most influential agents in shaping the operations of the extractive industries and the host governments. Due to their lending activities they reach far into the sector, especially in key moments such as the period prior to exploration and later when petrodollars become insufficient (Gary and Karl 2003).

This new engagement of IFIs stems from growing pressure from civil society, who questioned lender support for oil exploitation projects in conflict-ridden regions (Gary and Karl 2003; Pegg 2006a). The World Bank started to focus more closely on

[99] The NGO network, PWYP actually very closely connected its campaign to the global fight against corruption. The campaign and its framing are analysed in detail in Chapter 7.

the issue of transparency in their programmes on the extractive industries. In 2000, the Bank announced it would conduct an independent stakeholder consultation, the Extractives Industries Review (World Bank Group 2004). The aim was first to analyse the extent to which the extractive industries could contribute to sustainable development. Furthermore, it scrutinised whether and how the Bank's lending practices could be reconciled with the principles of sustainable development and poverty alleviation. One of the major outcomes of this report was that pro-poor governance required transparency in the resource revenue management (World Bank Group 2004: iv-vi).

As part of the new focus on promoting transparent revenue management the Bank announced its participation in the Chad-Cameroon Development and Pipeline Project.[100] It is very regional in scope as it only involves ExxonMobil, Chevron, the Malaysian state oil company Petronas, the World Bank, the governments of Chad and Cameroon, as well as NGO representatives. The aim of the project is to stimulate responsible and socially beneficial management by the government of Chad. Central to the initiative is the Revenue Management Program whereby the Chadian government is obliged to establish a system of safeguards assuring that the revenues contribute to poverty alleviation.[101]

Having a slightly different mandate, the IMF has recently followed suit by promoting revenue transparency as part of its overall fiscal transparency agenda (Gary and Karl 2003; IMF 2005a, 2005b). Moreover, it advises the establishment of oil funds taking Norway as a role model.

In looking at other initiatives that exist in the field we can understand why the EITI fills a crucial gap. It is the only initiative that tries to involve a larger number of resource-rich countries by elaborating a common global revenue transparency standard. The EITI as an international institution is presented and assessed later in this chapter.

6.1.2 Exploring the Link between Oil, Corruption and Conflict

As with diamonds fuelling civil war, there exists a strong academic consensus about the connection between oil and conflict. There are, however, strong disagreements

[100] See www.worldbank.org/afr/ccproj, last accessed on 6 July 2007.
[101] See http://go.worldbank.org/RQSFYMZPE0, last accessed on 6 July 2007.

about how oil is related to conflict and the causal mechanism of this claim. As to the first disagreement, scholars have advanced competing hypotheses on whether oil increases the incidence, duration or intensity of war or whether the commodity renders conflict resolution more difficult (Kaldor et al. 2007). This section explores the two main competing explanations, the 'greed and grievance' approach and the petro-state argument, by concurring with Kaldor et al. (2007: 24) that the two explanations are valid in combination with each other "at different levels and at different times".[102] The analysis is illustrated by looking at two cases, those of Nigeria and Angola.

The petro-state argument explores the paradox of weak petro-states. One might expect that oil and gas resources contribute to the development of a strong state, but actually natural resources weaken state institutions (Karl 1997; Moore 1998; Ross 2004). The argument starts from the Weberian assumption that the economic foundation of a state matters as the sources of income shape the structure and the dynamics of state power (Kaldor et al. 2007). The state's income normally derives from its citizens' taxes. In these societies, the government is not in control of income but has to negotiate with the citizens. The citizens, in turn, ask for participation rights in determining how their money is spent. A state whose income is based on taxes will therefore most likely develop into a democratic one. Petro-states, however, are *rentier* states. Their governments generate income by exploiting their oil and gas resources and by selling them to foreign consumers. It is not the citizens who are in control of the state's income but the government itself. This leads to a weakening of the citizen-state linkage. On the one hand, the citizens are less informed about state expenditure and activities, while on the other, the state is not dependent on involving its citizens in the decision-making processes on how the money is spent. In addition to the alienation of the state and its citizens, the elites are inclined to adopt a so-called *rent-seeking behaviour*. Rents differ from other industry sector's profits and wages in that they are not dependent on the productive efficiency but simply on the quality of land. Individuals, whether they work for the government or the private sector, have an incentive to build political mechanisms which allow

[102] Note that Kaldor et al. (2007) include a third approach as well. The introduction of this sub-chapter has already referred to the geopolitical significance of oil. This explanation is excluded from the subsequent analysis as it focuses on the oil-consuming countries as triggers of regional or global conflicts.

them to capture these rents. The rent-seeking behaviour is supported by a system of financing patronage, repression and corruption. In contrast to the previous case, where diamonds were easily accessible to rebel groups in remote regions of the country, oil is a fixed asset whose exploration is capital-intensive and demands a lot of technological know-how. Thus, the executive, the state oil company and the ministries of energy and finance are privileged in their rent-seeking behaviour (Ross 2003). However, as the example of Nigeria shows below, NSAs are able to capture some rents by engaging in illegal activities related to oil exploration and production (E&P).

The competing explanation looks at 'greed and grievance' processes in the societies of resource-rich countries. As mentioned in Chapter 4, the literature on the political economy of conflicts point to the economic motivations as a driving force for conflict in resource-rich countries. Especially in petro-states, the rule of law and taxation systems have collapsed, so individuals are forced to look for other sources of income. Being highly capital-intensive, the oil sector is mostly an enclave industry with very few linkages to other industrial sectors of the country. The geographical location of the resource has an impact on what kind of conflict will develop. If the oilfields are in close reach of the government, a *coup d'état* is more likely in which a certain political group aspires to gain control over government (and thus the income form the natural resource). Where the oilfield is distant, as was the case with Nigeria, the conflict is most likely to be secessionist.

The Nigerian case stands out from others since the conflict provoked vigorous grassroots protests (Abah and Okwori 2006). Oil has been central to the Nigerian conflict since the outbreak of the civil war in 1967 and is linked to human rights abuses, environmental degradation and state corruption. Although Nigeria is the largest oil producer in Africa and the world's eighth largest producer (Herskovits 2007), oil revenues have not contributed at all to the welfare of its citizens. Nigeria developed into a petro-state soon after the civil war (1967-70), which had its roots in the legacy of the colonial rule.[103] Oil did not serve as a trigger for the civil war, but the conflict in turn served as a catalyst for Nigeria's development into a petro-state fostering corruption and misappropriation (Ibeanu and Luckham 2007). In contrast to other oil-rich countries, Nigeria never established full control over its oil industry but

[103] For a detailed analysis of the Nigerian civil war see Luckham (1971).

cooperated intensely with the multinationals. Thus, Western oil companies, especially Nigeria's largest oil producer Shell, became quickly entangled in the policies of the military dictatorships that ruled the country until 1998 (Said 2005). Their complicity with the ruling elite became specifically apparent when local communities began attacking oil installations and kidnapping workers. As a consequence of the attacks, the companies requested security assistance, whose involvement often led to human rights violations (see e.g. Human Rights Watch 1999). Western oil firms became the focal point for grassroots violence as they constituted a surrogate for the neglectful government (Ibeanu and Luckham 2007). Bad governance, inequalities in the distribution of oil rents and environmental degradation alienated local communities from the central government. In the Niger Delta the conflict around oil has been most severe and has received global attention. The conflict led to the establishment of the Movement for the Survival of the Ogoni People in 1993, which demanded compensation for lost oil revenues and environmental damage (Human Rights Watch 1999). Moreover, they sought control of the petroleum resources, corporate responsibility for the oil firms, and more federalist political rights (Ibeanu and Luckham 2007). The campaign was met with brutal repression by the military regime, which culminated in the execution of the leader Ken Saro-Wiwa and eight other leading members of the group in early 1995. While the oil companies, especially Shell, adopted a neutral stance on the issue in public, senior officials are said to have worked behind closed doors so as to contain the government excesses.

As the Angolan case demonstrates, oil conflicts do not only have domestic roots. Rather 'greed and grievance' mechanisms can also exacerbate existing conflicts. Chapter 4 has already referred to Angola's wealth in natural resources. While diamonds constitute an important commodity, the oil sector can be considered as the key resource. After Nigeria, Angola is Africa's largest oil producer, but it only contributes one percent of the global production. Nevertheless, the commodity is domestically of great significance, since it provided 80 percent of government revenue during the 1990s (Le Billon 2001). 95 percent of Angola's total oil production is offshore and therefore was unaffected by the civil war. With the development of new technology in the late 1990s enabling companies to drill in ultra-deep waters, international oil companies (IOCs) engaged in highly competitive bids so as to ensure the exploration rights for blocks on offer. The oil industry is

controlled by the national oil company (NOC) Sonangol, which enlists IOCs in production-sharing agreements (PSAs). In total, ten IOCs are operating in the country (Le Billon 2007). Like in Nigeria, oil was not the trigger for the conflict. Nonetheless, Le Billon (ibid.) suggests that if the oil fields were onshore and therefore closer to the conflict-ridden regions, this would have provided an incentive for the government to become more engaged in the peace process. The availability of oil revenues prolonged the conflict in two ways. First, a large portion of the oil revenues were used by the Angolan government after the end of the Cold War to fund the war against UNITA. So as to be able to acquire more weapons, the Angolan government also signed oil-backed loans (ibid.). Second, apart from the redistribution of oil revenues through official government channels, a vast amount of money also enriched the Angolan political and military elite. The prospects of benefiting from the military supplies offered an incentive for individuals from the military elite to push forward the privatisation of the war (Global Witness 1999). Western oil companies and governments also became entangled in the arms-for-oil deals (Global Witness 1999; Le Billon 2007).

While oil is rarely the only reason for the emergence of internal or international conflict, we can see from the above country cases that oil has been a crucial factor in sustaining or fuelling existing conflicts. From the example of Angola, we can see that governments were able to finance their wars against rebel groups by using the oil revenues. Moreover, using the petrodollars for personal enrichment fostered widespread impoverishment in those countries. In Nigeria, the negative environmental consequences of oil exploitation and its unequal distribution fuelled existing post-colonial ethnic conflict. Here, NSAs were able to capture a fraction of the oil revenues by illegal means such as kidnapping or siphoning. At the heart of the problem are mismanagement and misappropriation of the oil revenues by governments, the military or NSAs, all of which revenue transparency initiatives try to address. It has been suggested that IOCs were able to benefit from the instability in the countries and even fostered this instability (Frynas 1998; Manby 1999). Whether this allegation is correct has as yet not been established (Detheridge and Pepple 1998). However, since the late 1990s, the conflicts have had a very negative impact on the companies' public relations and prompted a review of their operations.

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Against this background of conflict and corruption, the international community saw a need to find a solution to the policy issue. Given that a number of anti-corruption conventions already existed and had no impact, there was a high uncertainty as to how to design a global revenue transparency initiative. The following section briefly revises the creation of the EITI to make the subsequent analysis more intelligible to the reader.

6.2 Negotiating and Implementing the EITI

At the beginning of this millennium, it has become increasingly clear to policymakers that the causal relationship between resource wealth and civil conflicts had to be terminated. As previously mentioned, the EITI touches new ground concerning the regulation of resource revenue flows. This sub-chapter briefly gives an overview of how the issue reached the international agenda in 2003. Subsequently, I explain the evolution of the EITI and issues of contention that arose during the negotiation. The final section looks at the implementation of the EITI.

6.2.1 Publish What You Pay and the Emergence of EITI

The NGO campaign, PWYP, is driven by the same players as the Conflict Diamonds Campaign. The issue of revenue management was brought to the international agenda by the NGO Global Witness. Whilst investigating UNITA's diamonds funds in Angola, the activists recognised the huge revenue stream flowing to the government from companies that were completely unaccounted for in the public budgets (Hayman and Crossin 2005). After investigating the issue more thoroughly in Angola, Global Witness published its first report on the issue in December 1999 (Global Witness 1999). The report called for full transparency in the oil sector so as to enable the African civil society to monitor the government's oil revenues. In 2002, Global Witness won over a powerful ally, the financial speculator George Soros, founder of the Open Society Institute (OSI). Together with Soros, the advocacy work gained steam by launching PWYP in June 2002. Since then, more than 200 NGOs and individual academics worldwide have joined the campaign (Hayman and Crossin 2005: 265). The objective of the NGO campaign is to push for mandatory disclosure

by oil companies through stock market requirements. We come back to analysing in more detail the NGO campaign, their objectives and methods in Section 7.1.1.

With the political clout of Soros, PWYP was able to lobby the UK government in little time. Tony Blair launched the EITI at the WSSD in September 2002 (ibid.).The UK Department for International Development (DFID) was mandated to lead the creation of the initiative.

In the first year, DFID mainly engaged bilaterally with the IMF and the World Bank, which were working on similar issues at the time. The first multi-stakeholder meeting was convened in February 2003 in London. At the workshop, the stakeholders discussed possible formats for the initiative as well as principles, definitions and objectives. In June 2003, the stakeholders convened for the First Plenary Conference at Lancaster House, London and agreed on a Statement of EITI Principles to increase transparency over payments and revenues in the extractive industry sector.[104] Among other things, the stakeholders agreed on setting up a voluntary disclosure initiative. After a stagnation period of two years, another workshop followed by the Second Plenary Conference convened in London 2005. The NGOs, being disappointed that their call for mandatory disclosure remained unheard, pushed for tougher accountability rules for both implementing countries and companies. Thus, the plenary of 2005 endorsed the EITI Criteria, which were supposed to translate the principles into action. Essentially, the Criteria are a set of guidelines for those countries wishing to implement the EITI (International EITI Secretariat 2005).[105] In 2005, the initiative had attracted interest from a number of countries and the stakeholders saw the need to develop a more stable governance structure for EITI. The 2005 Plenary therefore mandated an International Advisory Group (IAG) to decide on the governance and future direction of the initiative. The IAG was constituted by representatives of companies, countries, NGOs and investors. Peter Eigen, the founder of Transparency International (TI), chaired the group. From June 2005 to August 2006, the IAG met six times, discussing a broad range of issues such as

- Monitoring of both the implementing countries and companies (the 'Validation Process')

[104] See http://www2.dfid.gov.uk/news/files/eitireportconference17june03.asp, last accessed 7 December 2007 and Appendix 3 for EITI Principles.
[105] See Appendix 3 on EITI Criteria

- The future governance of EITI
- Proposals for dispute resolution mechanisms
- The role of emerging economies
- The extension of the EITI to the sub-national level
- Incentives for implementation.

At the final IAG meeting in June 2006, the group was transformed into the Board. The IAG final report was presented at the third Plenary Conference in Oslo, October 2006 (EITI 2006a). The objectives of the Oslo conference were threefold: (1) expand the number of countries participating in the process; (2) improve the record of implementation, (3) endorse the recommendations of the IAG on the future policy arrangements for EITI. Most importantly, the Oslo conference launched the Validation Process, which was supposed to monitor the progress of implementation.[106]

6.2.2 Issues of Contention

Since its conception, the EITI has had a very narrow focus by only engaging with stakeholders and governments that were directly relevant to the process. Thus, the initiative could maintain a highly technical focus, avoiding politicised discussions. Unlike the KP where more global issues such as the question of Taiwan stalled the negotiations for a while, the issues of contention in EITI negotiations where exclusively related to the topic and mostly technical by nature. The main issues of contention are listed below. Chapter 7 analyses these issues in great detail.

- The design of the overall scheme: mandatory vs. voluntary scheme
- Role of civil society in implementing countries
- Ways of reporting
- Engaging the US and US companies
- Engaging emerging economies
- Monitoring

[106] See http://www.eitioslo.no/, last accessed 6 August 2007.

- Funding of the Secretariat

One of the thorniest issues at the beginning of the initiative was the question of whether EITI should be mandatory or voluntary. As discussed at length in the following chapter, a mandatory agreement would have meant placing the burden of responsibility with the companies rather than with the producer governments. Related to this was the problem of winning the commitment of the US to the initiative. The administration was adamant in opposing anything that would place its oil industry at a competitive disadvantage. In the end, like-minded actors chose to integrate the US at the expense of a mandatory regime.

Once the overall design of the scheme was agreed, the discussion turned to implementation issues. Two aspects dominated the negotiations for a long time. While some oil companies opposed certain ways of reporting, producer countries tried to water down the role of civil society at the national level. After giving up a mandatory regime, reporting methodology was another lost battleground for the NGOs as their preferred methodology was not adopted. So as to appease the NGOs and keep them engaged, the UK subsequently bolstered their role at the national level, even risking alienating several producer countries such as Angola from the initiative.

When EITI was revised in October 2006, the discussions turned to questions about monitoring and funding of the secretariat. Most of the northern stakeholders had realised that the initiative had to be strengthened by a compliance mechanism. Consequently, in October 2006, the so-called Validation Process was put into place. With the transfer of the secretariat from London to Oslo, funding also came onto the agenda. Previously, EITI was substantially funded by the UK government. Up until the present day, funding remains a big issue, as the initiative becomes more cumbersome and expensive. Very recently, emerging economies have reached the top of EITI's agenda. As discussed at length later, they do not participate in EITI and enjoy substantial benefits as free-riders. While no-one contests that emerging economies challenge EITI, there is substantial disagreement about how significant the issue is. Several countries and the Board consider the involvement of emerging economies as key to the success of EITI, whereas some NGOs regard the discussion as a red herring. They fear that the discussion distracts from what they think is the main issue, implementation on the national level (Interview 24).

6.2.3 Implementing the EITI

As with the KP, the EITI sets minimal international standards its implementing participants are required to fulfil. Furthermore, the initiative is based on a 'learning by doing' approach. In June 2003, the pilot phase was launched, in which Nigeria, Azerbaijan, Kyrgyzstan and Ghana volunteered to implement the initiative as first movers. Since then, the participants have been meeting on a regular basis and have strengthened the standards significantly. The EITI is implemented nationally and its implementation is divided into four phases: sign up, preparation, disclosure and dissemination. The EITI distinguishes between candidate countries and compliant countries. Compliant countries have fully implemented the EITI requirements in all four phases. Candidate countries have met the four Sign Up criteria[107]. Once a country has obtained that Candidate status, it has two years in which to be validated as a Compliant country.[108]

Implementation of EITI is obviously crucial for the ultimate success of the initiative. At the time of writing, however, the picture looks rather grim. So far, no country has been able to reach the Compliant status.

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As we have been able to see from this brief narrative, the stakeholders could create an international initiative within very little time. Given that the oil industry (both national and private) was considered as the main culprit for the misappropriation of oil revenues, we now turn to analysing the key players in this industry sector.

6.3 The Key Players in the Global Oil and Gas Market

The global oil regime is a highly complex regime and, not surprisingly, has been described in a variety of ways (for different approaches see Yergin 2003; Falola and Genova 2005; Bridge 2008; Awad 1999). This sub-chapter breaks the structure of the

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[107] The four criteria are (1) committing to implement EITI, (2) committing to work with civil society and the private sector, (3) appointing an individual to lead implementation, and (4) producing a Work Plan that has been agreed with stakeholders (EITI 2006b: 3).
[108] See http://eitransparency.org/implementingcountries, last accessed on 28 June 2008.

oil regime into two main entities: public agents – that is producer and importing countries – and IOCs and NOCs which will be discussed with regard to the high level of competition. As Grant (2006) correctly points out, there are many other parties involved in the regime that guarantee its functioning, such as smaller oil firms, spin-off industries and energy traders. Yet, it is the states and the large oil companies which have a profound impact as far as our case study is concerned. One crucial player in the oil regime is, of course, the Organization of the Petroleum Exporting Countries (OPEC). The organisation is not included in the analysis since it is not relevant to our case study.

Currently, the industry structure is subject to dramatic changes which will probably have as much impact as the first nationalisation wave in the 1970s. Therefore, I focus specifically on the extent to which the changes affect the relations among the players and the degree of competition.

The most crucial ordering principle of the oil regime is competition among oil consuming nations, NOCs and IOCs. Oil is, and will remain, the main source of energy in the near future. Despite the debates about climate change, energy security and renewables, the International Energy Agency's world energy outlook predicts a growing demand of 1.9 percent per annum (IEA 2005). The growing demand is fuelled by sustained economic growth in Asia's emerging economies (in particular China), but also by the industrialised world and an increase in global transportation. Against the rising demand stands a fast growing supply gap of roughly 62 million barrels per day by 2020 (Boscheck 2007: 5).

6.3.1 Agency and Structure in the Oil Regime (1): The Producing and Consuming Countries

Since oil is the most important source of energy, every nation in the world is a consumer country. The top importers are the US, Japan, China and Europe (BP 2008). With regard to the producing countries, most of the oil is found in developing countries and economies in transition. Together, they hold 94 percent of the world's oil reserves and account for 88 percent of the world's oil exports (McPherson 2005: 461). The top net exporters are Saudi Arabia and Russia, followed at some distance by Norway, Iran, and the United Arab Emirates (UAE). Table 3 gives an overview of

oil imports and exports in 2007. Despite the fact that the main oil producers are found either in the Middle East, Russia or Latin America, new regions continue to gain importance in the global market. As easily accessible crude oil resources are becoming depleted or are located in countries which are essentially closed for major IOCs because of a nationalised oil industry, the companies have been forced to turn to more remote and unstable regions in search for their resources. Two regions highly relevant to our case study have become special 'hotspots' for energy supplies: Sub-Saharan Africa and the Caspian Sea Region.

	Crude Imports*	**Crude Exports***
US	10.073	123
Canada	979	1.879
Mexico	10	1.828
South & Central America	847	2.313
Europe	10.890	585
Former USSR	2	6.360
Middle East	117	17.262
North Africa	179	2.721
West Africa	68	4.706
East & Southern Africa	514	385
Australasia	548	310
China	3.277	73
Japan	4.118	†
Singapore	1.028	16
Other Asia Pacific	7.187	885
Unidentified‡	-	392
* *In thousand barrels daily*		
† *Less than 0.05*		
‡ *Includes changes in the quantity of oil in transit, movements not otherwise shown, unidentified military use etc.*		

Table 3 **Oil Imports and Exports in 2007 (BP 2008)**

Up to this point, the significance of Sub-Saharan Africa in the global oil market has been only of minor significance, with the notable exception of Nigeria. Because of widespread political instability, civil wars and geographic remoteness, much of Southern Africa remains unexplored. Only recently, IOCs have become increasingly

interested in the region. Experts suggest that Africa's role as a major supplier will grow immensely in the decades to come (for the following see Hueper 2005: 241f). It is estimated that the region's potential corresponds to one fifth of the Middle East's undiscovered resources. The discovery rates in ultra-deep waters offshore from Nigeria, Angola and Equatorial Guinea are unmatched elsewhere in the world. For instance, as of today, Angola is only the 25th largest oil producer in the world. However, given the unknown reserves offshore Angola could potentially overtake Nigeria and become the largest producer in Sub-Saharan Africa (Le Billon 2007). This immense potential explains the rush of the IOCs into the country. Together with the exploration in the mature oil provinces in Nigeria, Angola, Gabon and the Republic of Congo it is suggested that the region could account for up to 20 percent of oil production by 2020. However, whether West Africa will develop into an important oil supplier depends not only on its geology, but also on foreign investment for E&P. Since the region competes with other newly developing oil and gas regions around the world, it is crucial that the political and economic environment in the West African countries becomes more stable.

The most important competitor to Sub-Saharan Africa is the Caspian Sea region. The discoveries in this region have been favourable to the countries concerned, in particular with regard to their size and timing. The region is home to a number of mega-projects, such as the Kazakh fields of Kashagan and Karachaganak (Davis 2006). While the Caspian Sea region does not suffer from the political instabilities related to civil war, with the notable exception of Chechnya, the region is nonetheless volatile. On top of the political issues there are also transportation problems. The transport routes from Azerbaijan and Kazakhstan to Western and Eastern markets are blocked by territories involved in civil wars (Chechnya and Afghanistan), great power politics (Russia, Iran, China) or by geographical obstacles. Thus, the pipeline routes have great political importance. With the exception of the Baku-Supsa pipeline and the Khashuri-Batumi pipeline, ending in Georgia, and the Baku-Tbilisi-Ceyhan pipeline, ending in Turkey, all other existing pipelines to the West run through Russia (Davis 2006). New pipeline projects are planned but depend on the geopolitics of the countries concerned.

Given the vast resources of the Middle East, the new oil provinces can diversify yet not substitute for the Middle East. Nonetheless, what makes Western Africa and the Caspian Sea region so attractive to the West is their openness to IOCs.

In contrast to many other oil producers such as Russia and the OPEC member countries, the new regions constitute business opportunities for Western IOCs. This becomes even more important with the recent wave of resource nationalism in Latin America. In the cases of Nigeria, Angola, Azerbaijan and Kazakhstan, the NOCs are the dominant actors but rely extensively on partnerships with IOCs. The relationship between the NOCs and the IOCs is analysed in more detail below.

6.3.2 Agency and Structure in the Oil Regime (2): The Industry Structure

As with any other industry, the petroleum industry has undergone significant changes since its origins in the late 1860s (for a historic overview see Bromley 2005; Yergin 2003; Sampson 1988). Today, the players in the oil industry are typically grouped as integrated, independent companies (IOCs), NOCs, as well as contract and service firms such as refineries, transport firms, and the petrochemical industry. After a number of re-structurations and the wave of nationalisation in the 1970s, the most successful majors are the 'Big Five': ExxonMobil, BP, Shell, ChevronTexaco and Total.[109]

The development of the oil industry has always been dominated by political and technological barriers. As mentioned previously, the political barriers imposed by most OPEC countries and former communist countries ruled out investment and operations in these countries. Only small companies were able to enter politically sensitive areas, but they did not have the financial resources to conduct the major projects. Moreover, up until ten years ago, technological barriers also prevented companies from exploiting reserves in deepwater reservoirs. The change of political constellations, most notably the end of the Cold War, resulted in many regions of the world becoming accessible to IOCs. An example of this is the Caspian Sea Region. In addition, tremendous technological improvements opened up multiple investment opportunities, which the majors are most apt to exploit (Antill and Arnott 2002).

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[109] Minor oil companies, also known as independents, are non-integrated companies that concentrate on the upstream exploration and production segment. They originate from the North American and North Sea markets. The size of the companies varies considerably, from one-or-two person companies to large publicly traded multinational companies. Examples are ConocoPhillips and Talisman Energy. Some of the independents, like Talisman Energy and Apache, seem to join the majors in terms of geographical scope, technological complexity and scope. In contrast to the majors, they do not have direct contacts with consumers as they do not operate downstream.

Since only recently, IOCs have acquired the technology to produce oil in the ultra-deep waters offshore from Angola. Overall, these developments explain the rise of operations in conflict-ridden countries such as Angola, Burma and Sudan.

The oil industry is a highly influential player in domestic politics both in host and home countries. The industry derives its structural power from the central role oil plays in the world economy (Goel 2004). However, the countries are not only dependent on the industries' delivery but also on their technological expertise. In the context of resource scarcity, the technological ability to produce oil profitably in geographically difficult regions, such as areas of West Africa, the Caspian Sea and Russia, gains increasing importance. Although NOCs from emerging economies are catching up, IOCs are the only enterprises that have the technological expertise to produce oil efficiently. We also have to consider the companies' commercial weight as a source of power. In Western countries, both the majors and the independents are among the most successful companies. [110]

The giant multinational companies notwithstanding, the oil and gas industry is dominated by NOCs, as 90 percent of the world's oil reserves are state-owned (Marcel 2006). The five biggest NOCs of Saudia Arabia, Kuwait, Algeria and Abu Dhabi in the UAE produce one quarter of the global oil and hold half of the world's oil and gas reserves. In comparison to these NOCs, the most successful majors, ExxonMobil, BP and Shell, are but mere dwarves (Petroleum Review 2005).

Until recently, NOCs were mostly important for IOCs as they regulated the access to resources in the host countries. Hence, in countries where oil was not completely nationalised, such as Nigeria, NOCs constituted the local join venture partners for IOCs. Given the predominance of NOCs in oil-rich countries, one dominating structural aspect of the oil industry is the relation between the host government, the NOC and the investing IOC. Whereas the government and the NOC control the bulk of the available oil and gas reserves, the IOC meets much of the financial, technical, organisational, and marketing needs. There are several contractual forms at their disposal, the most frequently used since the nationalisation wave in the 1970s being PSAs. Here the government retains sovereignty over the raw material with its NOC as its agent (Barnes 1995: 42f; Johnston 2007). The IOC has

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[110] According to Forbes, ExxonMobil, Royal Dutch Shell and BP belong to the 10 biggest companies in the world. See http://www.forbes.com/lists/2008/18/biz_2000global08_The-Global-2000_Rank.html, last accessed 19 September 2008.

the right to produce oil or gas but does not own the equipment. The physical production is divided between the private company and the host, who retains a portion for the recovery of pre-production and production costs.

Increasingly, however, NOCs from emerging consuming countries compete with IOCs for access to resources in producer countries. Asian NOCs especially have begun to acquire oil and gas E&P assets around the world. The growing demand and increased concerns about energy security pushes Asian NOCs to both improve their national domestic oil recovery and diversify sources of imports (Mitchell and Lahn 2007; Yi-Chong 2007). China's energy consumption has increased considerably over the last 25 years. In 2003, China became the second largest oil consumer in the world, following the US and overtaking Japan (Energy Information Administration 2005; Grant 2006). To fill the supply gap, China significantly increased its relations with the oil boom countries in Africa (The Economist 2004). For instance, the China National Offshore Oil Corporation (CNOOC) bought a 45 percent stake in an offshore Nigerian oilfield for US$ 2.27 billion in 2005 (Alden 2007). By 2004, 28.7 percent of Chinese crude oil imports already came from African producer countries (Zweig and Jianhai 2005).[111]

The emergence of new global players has significant repercussions on the potential for business conflict. To be fair, regardless of their great structural power, the IOCs have never been completely successful in impacting politics. Like any other industry sector, the oil industry does not consist of a monolithic bloc. Characteristics such as company size, market of operation, ownership structure or the culture of the home country may account for different interests or strategies. However, in times of growing concerns about resource scarcity and energy security, the additional competition between IOCs and NOCs has crucial consequences for the structure of the oil industry and its regulation. Due to their growing commercial and technical capabilities, coupled with strong home government support, NOCs increasingly compete with IOCs on the global oil market. As the technological gap between IOCs and NOCs decreases, the picture is mixed concerning technological competition. The

[111] NOCs from emerging economies not only extend their global reach but also diversify within the value chain. Until recently, NOCs concentrated predominantly on the upstream side (Antill and Arnott 2002: 10). However, NOCs now also integrate vertically downstream so as to secure outlets for crude oil production and not by increasing profits in downstream operations. However, in contrast to the diamond mining industry, where the big profits are made downstream, the greatest returns in the oil business are gained from developing new oil fields and not from investing in refining.

gap seems to still be quite significant, especially concerning deep offshore oil and gas extraction. For instance, Chinese companies were able to acquire Angolan oil blocks, yet the blocks will actually be operated by Total (Global Witness 2007). However, others, like Petrobras, are catching up. The Brazilian NOC is involved in operations in the deep and ultra-deep acreage with technology traditionally used by IOCs. Two incidents in particular alerted IOCs as well as Western governments in recent times. In 2005, CNOOC attempted to procure the ninth largest US oil company, Unocal, and only withdrew its bid after massive intervention by the US Congress (Kahn 2005). In the same period, the Iranian National Petrochemical Company tried to acquire a Shell-BASF petrochemical venture. Again, the bid was unsuccessful because of political intervention from Washington and pressure on Shell not to accept the bid (Marcel 2006: 228f). Due to their home government support, NOCs are able to make better offers to oil-producing countries than international private companies. First, they seem to be willing to pay more for oil and gas assets than the markets justify.[112] Second, the governments of China, Venezuela and Saudi Arabia have become increasingly engaged in refining and infrastructure programmes in Africa and South-East Asia, where vast amounts of money are put into oil-backed loans. Thus, they gain comparative advantages, as IOCs consider investment in downstream activities in oil-producing countries as risky and unprofitable. This form of development assistance in exchange for access to raw materials was recently labelled as "rogue aid" due to its non-democratic and non-transparent characteristics (Naím 2007). Most African countries are attracted by China's 'pragmatic' approach to investment.

The rise of NOCs from emerging economies also has repercussions on CSR practices in the industry. There has always been a drift between CSR leaders and laggards in the field. At the end of the nineties, a number of high-profile crises, such as the crisis in Nigeria, pointed to the complicity of the oil companies in human and labour rights abuses (Frynas and Pegg 2003). Several of the largest oil companies responded very quickly to the NGOs' accusations not only through advertising but also by adopting codes of conduct, fostering their environmental management systems, engaging in dialogue and partnerships with NGOs and increasing their support for local communities (Bendell 2000). Shell became the first MNC that

[112] Mitchell and Lahn (2007: 8) refer to the example of CNOOC's bid for Unocal, where the Chinese offer accounted for US$ 18.5 billion. Chevron only offered US$ 16.6 billion.

referred to human rights in public and published its "Statement of General Business Principles" (Said 2005). Those companies which are now at the forefront of CSR argue for its strong business case (see Utting and Ives 2006). In contrast to that, small companies and NOCs not only fall behind by being indifferent to CSR, but also by increasingly operating in regions where the more responsible companies choose not to go. Pegg (2006b) emphasises two groups of companies in particular which fall into this category of CSR laggards. The first group constitutes small Western corporations such as Lundin Petroleum and Unocal.[113] Although all of these companies have accepted CSR, for instance, by supporting the Voluntary Principles (e.g. Unocal 2004), they continue to operate in very difficult regions of the world. Lundin Petroleum maintained its investments in Sudan, ignoring the role of oil in the country's civil war (Gagnon and Ryle 2001). Unocal continued to operate in Burma despite the country's concerning record of human rights abuses and accusations of using forced labour when constructing oil pipelines (Larsen 1998). The other group pointed out by Pegg (2006b: 256) is that of Asian NOCs. Where more responsible companies abandoned their operations, the NOCs took over, as in the case of Talisman, who sold its Sudanese holdings to an Indian NOC.

The analysis of CSR leaders and laggards shows that the success of CSR activists has only been partially successful, namely in cases where oil companies can be held accountable directly by Western consumers. Given the high structural power of the oil industry, the fact that the oil industry is sensitive to consumer pressure might be counter-intuitive. Oil is, after all, a crucial commodity. As we discuss in the following chapter in more detail, examples of activist pressure against Shell show that international vertically integrated oil companies are indeed vulnerable. Their company-consumer relations are close due to the contacts fostered through their branded service stations. The more independent oil companies focus on operations upstream, the more remote they become from consumer pressure and the less influential the civil society campaign is. Globalising NOCs seem to be even less vulnerable to Western activist pressure whether vertically integrated or not. The discourse of CSR has not as yet become accepted in the BRIC countries, due to their primary concern with economic growth and the political weakness of civil society. For instance, Chinese officials cannot be compelled by public pressure to meet with

[113] Unocal is now part of ChevronTexaco.

Western NGOs (Alden 2007; Financial Times 2007).[114] Therefore, NOCs benefit from comparative advantages when behaving irresponsibly or investing in politically unstable regions. In the long term, however, NOCs from emerging economies might be affected by activism and the politically unstable conditions of oil-producing countries as well. In Nigeria, for instance, Chinese oil workers have already become targets for kidnapping by militant groups (Agence France Presse 2007).

6.3.3 Opacity as a Structural Feature

We have already noted the high level of competition as a major structural feature in the industry. In addition, opacity is another feature that structures the international petroleum sector. I discuss this separately as this is the fundamental policy issue which established the need for the creation of EITI.

Karl (2007: 265) considers opacity to be the "glue" that holds together the various agents in the industry. According to the principle of contract confidentiality, governments and companies do not disclose the most basic information about the revenue flows. Moreover, citizens of producer countries are not provided with information about the amount of resources available, their rate of exploitation, the revenues governments receive and how they are used (ibid.). Such secrecy reinforces the characteristics of *rentier* states in which governments are more and more alienated from their citizens.

Secrecy in the oil business could become a structural feature as it serves the interests of both producer governments and IOCs in the short run. For government elites, opacity offers windows of opportunity for personal enrichment as the actual amount of revenues they receive is unknown and revenue flows are untraceable (Global Witness 2004). For IOCs, even though corruption is considered as economically unbeneficial, opacity offers opportunities to decide how to account for their costs, what profits to report and also the chance to evade taxes. It also improves the companies' competitive stance when negotiating access to the resources. By offering large signature bonuses or side payments, IOCs can improve their bid vis-à-

[114] Alden cites the desperate remark by one US activist who admitted: "We don't have leverage here like we do elsewhere, we can't put pressure directly on the Chinese government and neither can Chinese NGOs" (Financial Times, 2007, quoted in Alden 2007: 111f).

vis their competitors (Karl 2007). Ultimately, opacity is also a means for producer governments to strengthen their bargaining power vis-à-vis IOCs. We already noted the difficult power relations in the oil and gas market in which national governments and NOCs controlling the bulk of the hydrocarbon reserves face IOCs meeting the majority of the financial, technical, organisational and marketing needs to produce the oil. Under certain circumstances – high oil prices and low financial and technical investment needs – governments and NOCs have more bargaining power than IOCs. However, these power relations are very fragile. Governments face considerable challenges when dealing with international corporations as they are dependent on the companies' technological expertise and financial capability. This dependency leads to the awkward situation in which the buyer (the company) actually knows more about the value of the goods than the seller (Humphreys et al. 2007: 4). Companies then have more bargaining power than the governments.[115] One way of restricting this bargaining power to include confidentiality clauses in PSAs with companies. By limiting the information flow to companies during the bidding process and thereby increasing the competition, governments can increase their own power and play companies off each other. Contract confidentiality therefore fosters state sovereignty over natural resources when government power is fragile.[116]

In the long run, opacity is obviously not beneficial for both parties. The lack of transparency exemplified in OPEC's refusal to publish field-by-field production data and the extraordinary secrecy of the swing producer Saudi Arabia foster speculation and price volatility (Karl 2007). Within producer countries, corruption is a direct cause of opacity ultimately exacerbating internal conflict and grievances. For companies, corruption increases the transaction costs of conducting business and internal conflict increases the political risks of operating in the countries.[117]

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In this sub-chapter, we analysed the oil and gas industry by introducing the key players in the corporate sector as well as in the producer and consumer countries. We

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[115] In a few cases, like in Russia's Sakhalin-II, IOCs were able to strike beneficial deals due to their higher bargaining power. See also Fn. 151.

[116] From an international law perspective, state sovereignty over natural resources has its roots in the principle of self-determination. The issue mainly arose throughout the process of decolonialisation and found its main expression in UNGA resolution 1803 (14 December 1962) (Dufresne 2004)

[117] For a more detailed account of the long term negative effects of opacity, see Karl (2007).

can note several commonalities with the previous case. Like the diamond industry, the oil sector is a very peculiar industry – but for different reasons. The fact that the product is of strategic importance to the global economy empowers those actors that have access to oil. As with the diamond industry, structural changes gained importance in the oil industry just shortly before the campaign for more transparency began. We scrutinise in Chapter 7 whether these changes had the same effects on the institutionalisation process of EITI as they had on the KP. Finally, another similarity stands out: Industry opacity is a structural feature in the oil industry. As the EITI was designed to increase transparency, we now turn to an in-depth analysis of the institution.

6.4 The EITI as an International Institution

The EITI is an international initiative that operates exclusively on the global level but which supports country-driven reform towards good governance. Like the KP, the EITI establishes a set of minimal requirements on the international level which participants, implementing countries and companies alike, must comply with. Contrary to the KP, where consumer countries also have to implement the standards, in the EITI, consumer countries are supporters and sponsors of the initiative but do not need to implement standards.

Corruption is an internal and sovereign affair in the economic process of a country. As an international initiative cannot intrude in such a process, EITI is only designed to lay open the revenue flows of resource-rich countries. In cases where corruption has occurred, the initiative may give recommendations on how to deal with it but there are no political consequences prescribed. This is for the political elite together with civil society in the respective country to decide.

6.4.1 Overview of the EITI

The EITI is a highly managed regime whose secretariat has been based in Oslo since September 2007.[118] The initiative is based on a set of Principles[119] and Criteria[120] which call for greater revenue transparency in the extractive industries (Principle 5) without compromising confidentiality clauses enacted in existing oil and mining contracts (Principle 6). EITI is an MSI, but it addresses producer governments at the first instance as implementing parties (Principle 2). EITI consists of two components. At the national level, once the government has decided to implement EITI, payments by companies to governments and revenues of governments from companies have to be published (Criteria 1). The payments and revenues are then reconciled by an independent auditor to ensure that no corruption is taking place (Criteria 3). The national civil society accompanies all the phases of this process, fulfilling a watchdog function (Principle 12, Criteria 5). Moreover, with the reports by the international auditor, the civil society is equipped with a tool to monitor public spending.[121]

Once participants are committed to implementing the standards for revenue transparency enacted in the EITI Sourcebook, monitoring is implemented according to the Validation Guide (International EITI Secretariat 2005, 2006).

On the international and sponsoring level, EITI participants developed incentives and technical assistance programmes to induce producer countries to fully implement the initiative.

Its participants exert control by collective and consensual decisions. Up to now there is no formal dispute settlement mechanism. The main legitimising authority of the initiative stems from the international conferences where participants agreed upon the Principles, the Criteria and the Validation Process. In between these conferences, an independent board (the 'Board') is responsible for the overall direction of EITI and the policy issues as they arrive. The Board is made up of representatives from three supporting countries, five implementing countries, five

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[118] Before September 2007, the secretariat was housed by DFID in London.
[119] See http://www.eitransparency.org/eiti/principles, last accessed on 28 June 2008.
[120] See http://www.eitransparency.org/eiti/criteria, last accessed on 28 June 2008.
[121] An important precondition for the civil society's monitoring function is that it is literate and is able to understand public budgets as well as extractive industries' revenue flows. Therefore, the Revenue Watch Institute, an EITI participating NGO, organises workshops and publishes guides for civil society on how to monitor the process (e.g. Shultz 2005; Tsalik and Schiffrin 2005).

NGOs, five companies and one investor. Its chairman, Peter Eigen, stands as an independent. The initiative is also supported by a group of investors (Insight Investment 2005).

As Chapter 7 demonstrates, the EITI is a work in progress and its institutional design has changed several times, often in a very short period of time. The subsequent section analyses the institutional design as of November 2007.

6.4.2 Assessing the Institutional Design of EITI

In the following, the degree of institutionalisation will be analysed by using the analytical framework introduced in Chapter 2 – membership, obligation, monitoring and enforcement.

Concerning its membership, the EITI does not have to be a regime with truly global scope like the KP. It addresses first and foremost resource-rich countries and the extractive industries, and hence, those developing countries that are neither resource-rich nor home to companies from the extractive industry sector are not addressees of the initiative. However, Northern countries that are neither resource-rich nor home country to oil and gas or mining companies can act as supporters of the initiative and are therefore potentially addressees of EITI. There are no formal application procedures to become a member. Between 2003 and 2005, 24 resource-rich countries publicly committed to EITI. Since the Oslo Plenary in October 2006, the EITI distinguishes between Candidate countries and Compliant countries. As of autumn 2007, no country has been formally monitored ('validated'). Of the 53 countries that the IMF lists as resource-rich countries, 15 are now listed as EITI candidate countries (IMF 2005b; World Bank 2008). The EITI is officially multilaterally or bilaterally supported by Australia, Belgium, Canada, France, Germany, Italy, the Netherlands, Norway the UK, and the US. The institutions international legitimacy was enhanced by consecutive endorsements by the G-8 at Evian, France (2003), Sea Island, US (2004), Gleneagles, UK (2005), and Heiligendamm, Germany (2007) (see e.g. G8 Summit Heiligendamm 2007). Out of the 22 top international oil and gas companies, 14 IOCs are EITI participants. Membership is also limited with regard to emerging economies. Apart from Brazil and Mexico, emerging economies are not supporters of the initiative. In particular,

emerging economies which are mostly home to NOCs do not support the initiative. The lack of support is crucial as it leads to collective action problems. If not all resource extraction companies cooperate, host governments will have little incentive to reform their governance practices. This chapter has already discussed the increasing globalising operation of Asian NOCs. Especially when national or privately owned companies from the emerging economies compete with EITI participating companies, it is feared that resource-rich countries would cooperate with those that do not require good governance practices. That this is a real threat is demonstrated by the case of Angola, a country that has decided to remain outside EITI with the help of Chinese oil-backed loans (see Chapter 7.4). Overall, due to EITI's limited membership, the collective action problem has as yet not been reduced. Therefore, the limited membership of the EITI significantly weakens the initiative.[122]

As with all soft law mechanisms, the EITI is devoid of contractual obligation. However, as the previous case demonstrated soft law mechanisms can create a high degree of obligation in a "felt sense" (Finnemore and Toope 2001). Only recently, the EITI has become a performance based initiative. Those stakeholders that do not implement or comply with the regime requirements will be expelled (see below). Unlike the KP, the EITI has not as yet been able to create peer pressure to comply with the requirements or to undertake validation. The EITI disposes of clear benchmarks. The Sourcebook and the Validation Guide clearly state what is expected from the countries and how compliance with these requirements can be achieved (EITI 2005b, 2006b). Moreover, the initiative has now developed clear guidelines on how to implement EITI on the domestic level (see World Bank 2008). Being an initiative promoting transparency, the EITI is coherent with other international standards such as the OECD Convention against Bribery, the Global Compact, the IMF Guide on Resource Revenue Transparency and the IMF Good Fiscal Transparency Practices for Resource Revenue Management (e.g. IMF 2005a, 2005b). The coherence with those established international conventions and guidelines significantly raises EITI's legitimacy. However, the sense of obligation is hampered by the fact that the EITI distinguishes between developing resource-rich countries and developed resource-rich countries. In Chapter 7, I show that the

[122] The same assessment would be true, if the mining sector was included into the analysis.

missing general applicability not only decreases the notion of legitimacy and social pressure among member countries but also severely decreases EITI's discursive power to attract new member countries. Overall, this decreases the sense of obligation which is mirrored in patchy implementation.

The Third Plenary Conference has significantly strengthened the monitoring mechanism (International EITI Secretariat 2006). Prior to that, the initiative had no monitoring mechanism in place. Stakeholders feared that the opportunities for whitewash were very high. The Validation Process is now in place, and EITI countries must undergo this process at least every two years (World Bank 2008).[123] The national multi-stakeholder group managing implementation at the country level has to appoint an independent Validator. The Validator reports on whether the county's progress is according to the Country Work Plan and to what extent the country has implemented EITI. The Validator will also monitor company implementation. At the end of the process, the Validator has to assess whether the country receives the candidate or compliant status. The report of the Validator will be published after the multi-stakeholder group, the government and the EITI Board have been given an opportunity to comment on it. However, in case of disagreements, the stakeholders will deal with it locally in the first instance. Since there is no dispute settlement mechanism, the EITI Board will be called to help in cases of serious disputes.

The initiative does not dispose of any enforcement mechanisms but operates on a 'carrot' basis. It is argued that implementing countries will gain material advantages from improved governance of the oil sector.[124] The only 'stick' the initiative has is to remove members who do not comply from the participation list. Before September 2007, the EITI had listed 24 countries as implementing participants. In autumn 2007, nine countries which had not implemented the initial requirements were removed from the list of candidate countries. For some months, the countries were still listed on the website in the category of 'indeterminate countries'.[125]

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[123] For the following see also www.eitransparency.org/eiti/implementation/validation, last accessed on 11 January 2008.
[124] On the techniques used to persuade countries and companies to become members, see Chapter 7.
[125] See Fn. 152.

Thus, enforcement is very weak and could potentially be strengthened by two aspects. First, NGOs both at the national and international level could increase their naming and shaming activities. Public naming and shaming activities are especially missing at the national level. NGO pressure is hampered by the fact that the initiative is not widely known to the public. Even in countries like Azerbaijan, which are in advanced stages of implementation, the initiative is not well-known to the wider public. Another way is to increase EITI's attractiveness. Most of the countries addressed by the EITI are dependent on foreign aid and investment. Although the EITI is supported by the World Bank and the IMF, EITI implementation is not as yet mainstreamed into their lending requirements. Making loans and grants contingent upon EITI implementation could provide a bigger incentive for countries to become members. Yet, the greater the influx of revenues from the exploitation of natural resources, the less the country is dependent on foreign aid. The most promising way to increase EITI benefits is to strengthen EITI's effect on a country's risk rating (Leipprand and Rusch 2007). Better risk ratings lower the costs associated with raising sovereign debt in international capital markets. Risk rating is also a crucial indicator for private investors who take it into account when making project appraisals. A country can become more attractive for private investors by improving its rating. That EITI has an impact on the risk ratings is shown in the case of Nigeria (Leipprand and Rusch 2007; see also Melville 2004).[126] Leipprand and Rusch (2007: 21) therefore propose that rating agencies should create a mechanism using EITI implementation as a proxy for good governance in their risk assessments. In summary, the enforcement measures are low in comparison to the numerous options available to the EITI.

The EITI has progressed significantly since October 2006. By then, its institutionalisation was very low. With the introduction of the Validation Process, the EITI was significantly strengthened. Nevertheless, as Figure 10 summarises, low membership, low enforcement mechanisms and selected applicability weaken the institutional design considerably. In contrast to the KP, which is highly institutionalised in all four aspects, the level of institutionalisation of the EITI is still considerably low. The following chapter accounts for this outcome.

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[126] On Nigeria, see also Chapter 7.

Membership	*Low*	- Membership - Application procedures - Level of inclusion	- Restricted - No - Low
Obligation	*Moderate*	- Type of obligation - Creation of obligation - Clarity - Coherence with other rules - Technical assistance - General applicability - Notion of necessity	- Performance based - Peer pressure - Yes - Yes - Yes - No - No
Monitoring	*High*	- Monitoring included - Mandatory or voluntary - Who monitors - Systematic & continuous - Publication of reports	- Yes (since October 2006) - Mandatory - second-party monitoring - Yes - Transparent process
Enforcement	*Low*	- Type of enforcement - Consequences of enforcement - Naming & shaming practices - IFI mainstreaming	- Exclusion - None - Not on website; NGOs - Not mainstreamed

Figure 10 Assessing the Institutional Design of EITI

6.5 Conclusion

This chapter introduced the empirical and analytical background of the second case study. Oil and gas resources can provide enormous wealth to one's citizens, as the examples of Norway and Saudi Arabia demonstrate. However, as we saw from the examples of Angola and Nigeria, many resource-rich countries suffer from the 'paradox of the plenty': although being theoretically very affluent, the oil wealth translates into widespread poverty and civil conflict. The undisclosed and unaudited revenue flows from oil companies to host governments have provided opportunities for the personal enrichment of the ruling elites.

The EITI was created to increase transparency in the oil and gas markets of resource-rich developing countries. Like the KP, the EITI was institutionalised at a time when the industry structure had begun to change. Since the wave of nationalisation in the 1970s, IOCs were gradually able to recover and regain their commercial strength just after the end of the Cold War. However, globalising Asian

NOCs coupled with a rising demand for hydrocarbons and a revival of resource nationalism opened up a new 'scramble for resources'.

Most crucially, this chapter assessed the institutional design of the initiative, thereby defining the dependent variable of the second case. In comparison to the KP, we concluded that the institutional design of the EITI was rather weak. We identified a low degree of membership, low enforcement, a moderate degree of obligation and a high degree of monitoring (albeit only very recently) as indicators for weak institutionalisation overall. Given a number of similarities with the KP, most notably with respect to the policy issue and similar important norm entrepreneurs (Global Witness and the UK), the question arises of why the EITI failed to produce a strong institution.

CHAPTER 7

The Institutional Design of the EITI: Structural Opportunities for Norm Opponents

Building on the background of the previous chapter the analysis now turns to accounting for the regime design of EITI. The analysis emphasises four crucial turning points that determined the institutional design of the initiative. In the agenda-setting phase, the NGOs were able to quickly dominate the public discourse by launching the PWYP campaign. Within less than a year they built an effective coalition with sympathisers of the transparency norm, DFID and the Anglo-Dutch oil companies. In the second phase, negotiations on the EITI were launched. The LM-Group very early lost its discursive power to have a profound influence on key features of the EITI. In particular, the debate on whether EITI should be government-driven or company-driven set the direction towards a voluntary initiative. American IOCs backed by the US government could draw on the changes in the industry structure as a window of opportunity for blocking stronger institutionalisation. In the third phase, stakeholders were more concerned about details, such as how to design reporting templates and what role civil society at the national level should have. It neither strengthened nor weakened institutionalisation of EITI but revealed a stalemate between the two groups favouring different degrees of institutionalisation. The most recent stage significantly strengthened the regime design by introducing the monitoring mechanism ('Validation'). Despite the recent boost, however, the analysis concludes that the EITI is a very fragile process.

A close analysis of the negotiations dynamics of EITI reveals important differences between this case and the KP. Although both industries were subject to dramatic structural changes, in the EITI, those changes served as a window of opportunity for not like-minded actors to oppose strong institutionalisation by using framing strategies. In addition, we can also see how differences in the normative structures rendered it more difficult to exercise discursive power effectively to get a set of producer countries to join the initiative. Normative and cultural differences also challenged the institutionalisation of the KP, but in this case, the LM-Group

could successfully marginalise norm opponents thereby initiating adaptation processes. In contrast, the structural changes in the oil industry were most crucial in the recent stage of EITI as they prevented norm entrepreneurs from marginalising not-like minded actors and pushing for stronger institutionalisation. The altered power relations due to changes within the industry structures constrained the LM-Group, and prevented it from using this strategy effectively. In Chapter 6, we identified low membership, low enforcement and moderate obligation as indicators for low institutionalisation and we should not expect the EITI to overcome these any time soon.

In summary, the chapter demonstrates how the case-specific opportunity structures constrained the LM-Group, and prevented it from replicating the success of the KP. Rather than initiating learning and adaptation processes, norm opponents gradually increased their power and blocked several institutional design proposals.

7.1 Creating a Global Agenda for Revenue Transparency

Revenue transparency first reached the international agenda in the early 2000s. In this phase, the NGOs, supported by academics, formed an epistemic community to lobby for an international institution. Beginning the analysis with the agenda-setting phase of EITI is important as we can see how the PWYP campaign was able to bring transparency onto the international agenda. By looking at the responses from the corporate sector, we can conclude that in this phase, the NGOs were able to exercise discursive power by shaping the discourse on revenue transparency. Their success in dominating the agenda is mainly due to the fact that business was split over political strategy. The NGOs were able to exploit BP's and Shell's sympathy for broadening transparency whereas CSR laggards tried mainly to passively oppose the creation of EITI.

7.1.1 The Formation of an Epistemic Community against Revenue Opacity

In 6.2.1 we only briefly looked at the role of NGOs in raising awareness of the issue. In this section we return to the activist network by providing an in-depth analysis of their campaigning methods.

The campaign for revenue transparency in the extractive industries is essentially a continuation of the Conflict Diamonds Campaign. The fact that PWYP involved mostly the same players and campaigning methods as the Conflict Diamonds Campaign – albeit with a dissimilar outcome regarding the degree of institutionalisation – makes both cases interesting for comparison. As with the diamonds case, the norm entrepreneurs tied PWYP closely to the evolving agenda on the role of business and conflict. PWYP received support from the same academics who had already researched the link between resources and conflict resources. During the Conflict Diamonds Campaign, these academics had increasingly turned to the question of to what extent companies could play a responsible role in mitigating conflicts in the regions in which they operate (Wenger and Möckli 2003; Nelson 2000; Haufler 2001a). The KP and new CSR approaches by oil companies in Nigeria and Colombia demonstrated that business could, indeed, be used to break the link between conflict and resources. The Council on Economic Priorities and the Prince of Wales Business Leaders Forum published a report making a moral and business case for corporate conflict prevention (Nelson 2000). NGOs like International Alert produced a range of reports focussing on the same issue (Banfield et al. 2003). Since the same actors who had formerly worked on conflict diamonds had now moved on to the issue of revenue transparency, it was not necessary for a new epistemic community to be created. The old epistemic community simply took another topic on board whilst already having in place the communication channels to governments, MNCs and international organisations.

The epistemic community did not only have the main agents in common, it also repeated its main campaigning strategy by turning to MNCs. The NGOs' turn to corporations was a strategic move as the norm entrepreneurs had difficulties in opening the debate with resource-rich countries. As with the conflict diamonds case, MNCs were considered to be more potent drivers for change; being sensitive to Western consumer attitudes. Sceptics might object that in contrast to the diamond industry, the oil industry is less susceptible to consumer perception. The unique

product characteristics did play a role in that the Conflict Diamonds Campaign had more leeway in teaching the industry that the value of diamonds did not only depend on their scarcity but also on the way the industry operated (see 5.3.2). However, as we see in the subsequent section this does not suggest that integrated oil companies are insensitive to consumer pressure. The other reason for turning to the companies was the campaigns' link to the global anti-corruption movement which had kicked off at the end of the Cold War. Anti-corruption had become an established norm in Western companies, which had by now launched many regulatory schemes to fight corruption. As Chapter 3 discussed, the normative match of new ideas to established normative frameworks increases the likelihood that the idea will be adopted. Overall, PWYP benefited greatly from this established norm. The movement against corruption provided the NGOs with a window of opportunity to bring the issue onto the global agenda and to obtain both company and country support in a comparatively short time. Hence, the campaign should not be seen in isolation from the global anti-corruption campaign.

A thorough description of the rise of the anti-corruption norm is beyond the scope of this thesis. It is sufficient to point out some major developments to illustrate how anti-corruption has become an established global norm. Overall, since the 1990s, a large number of international and regional organisations have formulated policies against corruption.[127] With the deregulation and privatisation of former USSR markets and the acceleration of information technologies after the end of the Cold War, corruption began to be a concern for Western governments. The new economic environment created conditions in which corruption could flourish (Galtung 2000). Throughout 1992 and 1993, significant corruption scandals raised public awareness in Western countries and in Russia. Yet, while the end of the Cold War spurred corruption, the subsequent wave of democratisation also provided an ideal environment to fight it. Since the 1970s, academic research on the negative economic consequences of corruption had grown gradually. Nevertheless, until very recently the US was the only country that legally prohibited bribery with its 1977 Foreign Corrupt Practices Act (Galtung 2000).[128] An important norm entrepreneur

[127] Examples are the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and International Chamber of Commerce's updated Rules of Conduct.

[128] As Galtung (2000: 20) points out, in the 1990s most of the European countries still did not take bribery seriously as they allowed for tax deductibility of bribes as business expenses.

promoting the anti-corruption norm was TI. Its director, Peter Eigen, had previously worked for the World Bank and had experienced bribery and corruption first-hand. From very early on, TI was supported by key business players and government representatives including the Nigerian President Olusegun Obasanjo. The fight against corruption was also boosted by international organisations, especially the World Bank. James Wolfensohn made the fight against corruption a priority of the Bank. Within a short space of time, the Bank became a leading platform in the fight against corruption (McCoy and Heckel 2001). From the very beginning, TI and the Bank framed the fight against corruption in political development terms, arguing that poor countries could least afford the negative consequences of corruption. As part of its good governance policies, the Bank integrated anti-corruption policies into its programmes. TI was highly successful in launching 'naming and shaming' campaigns by publishing its annual Corruption Perception Index (CPI). Since its inception, the CPI has had serious implications for the reputation of developing countries (Wang and Rosenau 2001).

The anti-corruption norm was also extended to the corporate actors in developing countries. Since the turn of the millennium, major business scandals pushed the anti-corruption agenda in industrialised countries. The collapse of Enron and WorldCom hit business and governments alike in 2001, and led to a drastic increase of disclosure requirements by the accounting sector. The US designed the most far-reaching legislation for transparency, the Sarbanes-Oxley Act, which aimed at restoring public confidence in American business (The Economist 2007a; Calland 2007).

PWYP is a product of the anti-corruption norm, but the publicity of the fight against corruption on a global scale also presented a window of opportunity to promote the idea of revenue transparency. Right from the start, activists like Global Witness, International Alert and Pax Christi established a clear connection between revenue transparency and corruption, arguing that opaque revenue streams were one aspect of corrupt oil economies (Global Witness 1999). Due to revenue opacity, resource-rich countries such as Angola, which could potentially be among the wealthiest in Africa, were, in fact, among the poorest. As with the Conflict Diamonds Campaign, NGOs turned to MNCs considering this to be the most effective move to promote change. In light of the anti-corruption movement, NGOs considered Western oil companies as a better target given the costs and benefits to MNCs of

reputation and risk management (Bendell 2004). Moreover, most of them had already endorsed the anti-corruption norm following the push by the US government. PWYP expected that it would be relatively easy to extend the anti-corruption norm to the extractive industries.

In conclusion, the peculiar mixture of experienced players who had already campaigned on issues linked to extractive industries and security as well as the ability to connect PWYP to an already established anti-corruption norm produced a cross-linked network which was able to put the issue onto the international agenda within very little time. In particular, linking revenue transparency to the broader issue of anti-corruption proved to be a very persuasive framing as the chapter later demonstrates, making it more difficult for not like-minded actors to oppose the norm.

7.1.2 Diverging Conceptions about Company Responsibility

We have already noted that the NGOs first turned to the oil companies expecting a quicker reaction than with producer countries. However, while it was relatively easy for the NGOs to put the diamond industry under pressure, as one would expect due to the strategic and economic significance of the product, the oil industry was more difficult to campaign against. However, as I discuss later in this section, oil and gas companies have often been targets of civil societal criticism in the past and – in response – changed the way they operated. In fact, it is not only product characteristics, such as oil as a vital fuel for the global economy or diamonds as symbol for love and luxury, that determine whether shaming campaigns yield success. Another crucial issue that has an impact on the level of vulnerability, as discussed in Chapter 3, is company-consumer relations, which might provide opportunity structures for norm entrepreneurs. Due to their direct outreach to consumers, integrated oil companies are relatively sensitive to consumer pressure. For instance, throughout a consumer boycott in reaction to Shell's plan to dump Brent Spar into the North Sea, sales had dropped in Germany by 30 percent (Neale 1997). The companies therefore were already sensitive to commercial risk stemming from activism.

The more crucial differences between the diamond and oil industries were that the latter was already experienced in being attacked by NGOs. Hence, activists

could not create an environment of uncertainty as they did prior to the KP. In fact, most of the oil companies had already formulated their own CSR policies according to which they devised their strategies in response to NGO pressure. The low degree of uncertainty had two consequences. On the one hand, the campaign did not constitute a policy crisis as the Conflict Diamonds Campaign was for the diamond industry. It was therefore more difficult to diffuse the new idea with not like-minded actors. On the other hand, however, the NGOs could build a coalition with those companies whose own CSR policies were very close to the idea of revenue disclosure.

An analysis of the CSR policies prior to PWYP reveals that some companies already focused on revenue transparency in their CSR policies whereas others completely ignored the issue. The split within the corporate community may be surprising considering the strong business case for oil companies to fight corruption in resource-rich countries. Regardless of the short term benefits discussed in 6.3.3, bribery increases the costs of operations and makes the business environment less stable. Oil companies have to invest major sums for E&P and usually have to stay in the country for a long time. Fighting corruption and poor governance could therefore be considered as an essential part of their risk management and as a way to secure their assets in the host country (see e.g. Poroznuk 2006). We can see the divergence in company attitudes on these issues by assessing company literature published before 2003 (for the following see Skjærseth et al. 2004). While the majority of the major companies recognise the broader social concerns in the countries in which they operate in, only BP and Shell emphasised their commitment to key social issues as part of their business agenda. According to Skjærseth et al. (2004: 9), ExxonMobil had responded to growing CSR pressures by 2002, but the "relevant sections on governments and societies are (...) amazingly sparse in clear commitments on the macro level, compared to BP and Shell". Looking more specifically at the issue of revenue transparency, an assessment of company literature provides an even clearer picture. Both BP and Shell considered non-transparent financial flows in host countries as problematic and emphasised the need for more transparent governance in the countries in which they operated. Furthermore, as early as 1999 (Shell) and 2001 (BP) the companies had the ambition to become leaders in developing standards for transparent reporting (BP 2001 and Royal Dutch Shell plc 1999 cited in Skjærseth et al. 2004). Yet, ExxonMobil rarely mentioned the issue in their company

literature (e.g. ExxonMobil 2002 cited in Skjærseth et al. 2004). When looking at how theory is translated into action, we find more evidence for this divergence. In its recent report, TI concluded that Shell was among the best for revenue and payments transparency. BP, although only scoring averagely in the overall rating, received a 'first' for the disclosure of payments. ExxonMobil was ranked very lowly alongside China's CNOCC and Lukoil (Transparency International 2008).[129]

At the heart of the differences between the Anglo-Dutch and the US IOCs was a different conception of who should bear a share of responsibility in the 'paradox of plenty'. Whereas the Anglo-Dutch companies recognised that they had a part to play in helping their host countries deal with the influx of revenues, US companies did not accept any responsibility for the issue. ExxonMobil preferred to call the issue a "governance curse" (The Economist 2005), where private investors had no role to play.[130]

The divide between the companies is less surprising if we link revenue transparency to the broader CSR attitudes of Western IOCs. We can discern a normative match between favourable attitudes towards revenue transparency and other CSR issues. Looking at the ways European- and US-based IOCs have responded to climate change confirms the thesis of diverging CSR strategies. For a long time, the European IOCs, specifically the Anglo-Dutch ones, have adopted proactive strategies embracing climate change policies while US-based firms have been reactive (Skjærseth and Skodvin 2001, 2002). As with climate change strategies, one factor explaining the different CSR approaches is the difference of societal demands in the companies' home countries. BP and Shell already experienced significant consumer pressure over human rights violations and strategies for tackling civil conflict in countries such as Nigeria (Shell) and Colombia (BP). Each company suffered a major public scandal. BP had to fire its chief security officer in Colombia after evidence suggested that the company had bought military equipment linked to paramilitary death squads (Pegg 1999, 2006b). In Nigeria, Shell

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[129] Overall, TI assessed three areas of revenue transparency: payments to host governments, public reporting on a country-by-country basis and anti-corruption programmes. Companies were ranked in each of the areas and received an overall mark (Transparency International 2008).

[130] As mentioned later in this chapter, ExxonMobil actually takes part in the Chad-Cameroon Pipeline Project. Here, the company leaves crucial political roles such as institutional design to the World Bank (Buchan and Mcnulty 2002). I elaborate later on why ExxonMobil agreed to join that initiative.

was entangled in the execution of eight Ogoni leaders, including Ken Saro-Wiwa. In the aftermath, the company drastically changed the way it operated in Nigeria.

The incidents in Colombia and Nigeria served as crises to which both BP and Shell were required to find an appropriate strategy. The high level of uncertainty of the companies' officials as to how best to respond to the crisis served as an entry point for the diffusion of new domestic norms on CSR (Pulver 2007; Skjærseth and Skodvin 2003). By acquiring a greater understanding of the roles companies play in conflict prone regions and countries, BP and Shell learned further about the benefits when adopting more responsible practices in the field.[131] Shell, for instance, formerly supported state suppression in Nigeria, but after the incidents in the Niger Delta, Shell fundamentally revised its political approach in conflict-prone regions (Ibeanu and Luckham 2007). It now organises stakeholder meetings and has expanded its community development programmes to mitigate political risk for its employees and assets. Shell was also active in lobbying the Nigerian government for an improvement of the social conditions in the oil-producing regions of Nigeria.[132] The Delta is still a very difficult region for Shell to operate in, but the company now assumes more responsibility in managing social risk. US-based companies had not experienced similar public relations disasters until early 2003. Therefore, there was no need for these companies to internalise new business practices that exceeded vague verbal commitments.

We can see from this section that a rift on revenue transparency between the US and Anglo-Dutch firms had partially arisen because of the firms' diverging positions on appropriate behaviour in host countries. Due to the specific social demands in the home countries of BP and Shell, the IOCs had revised their CSR strategies in host countries long before PWYP was launched. Revenue disclosure was an issue that BP and Shell themselves had already pondered on when advocating for a more active role in preventing or mitigating conflicts. In contrast, the strategy of US firms was to retreat from a political role so as to prevent any public criticism in the first place.

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[131] With regard to environmental risk, Shell's Brent Spar crisis also incited a learning process. Public pressure not only motivated Shell to re-assess the necessity of dumping the platform into the North Sea but also incited a re-think of the cultural assumptions the decision had been based on (Neale 1997).

[132] Following the lobbying activities, the Nigerian government began to return 13 percent of the oil revenues to the oil-producing regions (as opposed to the prior policy of returning 3 percent) (Litvin 2003).

7.1.3 Corporate Responses to PWYP: Towards A Divided Business Front?

Given the diverging conceptions of a company's role in host countries, the firms reacted very differently when Global Witness started lobbying for stricter disclosure regulations in resource-rich countries. The split between the companies first became visible as early as 2000, when the issue of revenue transparency gathered steam. Global Witness had begun to invite the companies operating in Angola as well as concerned NGOs to discuss ways of disclosing company payments. Since the companies had all started to operate in the country very recently, the NGOs had hoped they could change their business practices from the start. Already in 2000, the FCO took up the issue by discussing ways of disclosure with IOCs operating in Angola. However, in contrast to the European oil companies, ChevronTexaco, ExxonMobil and other IOCs did not seem to be interested in the topic and were absent from the meetings (Shaxson 2007). Globally operating NOCs were not integrated into the dialogue either. Since the Asian NOCs did not have a reputation for being interested in advancing anti-corruption policies, neither the officials of the UK Foreign and Commonwealth Office (FCO) nor the NGOs addressed those companies in the first place. The perception of a normative and cultural rift between Western private and Asian national companies was therefore crucial for deciding which actors should be involved in the new initiative.

As far as BP was concerned, because of its position on the issue, the UK government's and Global Witness' lobbying efforts seemed to yield success quite quickly. After all, Global Witness advocated a norm which fitted perfectly into the company's approach to transparency. In early 2001, BP took leadership in promoting transparency in Angola. The company announced that it would publish payments to the Angolan government for oil concessions (for the following see Gary and Karl 2003; Global Witness 2004). BP's disclosure included net production, aggregate payments, total taxes and levies paid as well as a recent signature bonus to Angola.[133] BP decided to disclose this information under the impression that under their contract with the Angolan government this would be legal (Interview 17). Its stance aimed at creating a new benchmark for public and shareholder expectations towards the

[133] Subsequently to this announcement, BP revealed that it had paid the Angolan government a US$ 111 million signature bonus for a 26.7 percent operating share in the Angolan Block 31 (Gary and Karl 2003: 53).

private sector. On behalf of the Angolan government, Sonangol reacted furiously, citing a confidentiality clause and threatening to dissolve the contract with BP. Since BP had high stakes in Angola, the company distanced itself from Global Witness (Shaxson 2007: 216).[134]

In contrast to the Anglo-Dutch companies, the other IOCs remained largely hostile to the NGOs demands on revenue transparency. The US companies still rejected having a responsibility on the issue. On BP's move in Angola, ExxonMobil commented that such a move to disclosure was not a "proper role for private companies" (Buchan and Mcnulty 2002). ChevronTexaco agreed by saying:

> "We recognize that we have a responsibility to the people of Angola, but when it comes to government policy we feel very strongly that it's not our role to suggest or influence national economic policy" (Volman 2003).

As the strategy to involve US IOCs by discursive power had failed, the NGOs had to look for another way to get them involved. In early 2003, a window of opportunity presented itself to PWYP when the so-called Riggs Bank scandal unravelled in Washington, D.C. Journalists and Global Witness had discovered unaccounted payments by American IOCs to Equatorial Guinea. More specifically, ExxonMobil, ChevronTexaco, Amerada Hess and Marathon Oil were accused of paying Equatorial Guinea's oil revenue into accounts controlled by President Teodoro Obiang Nguema, at Riggs Bank (Silverstein 2003; Peel 2004; Shaxson 2007). Journalists and NGOs exploited the scandal with public pressure and bad press reports (e.g. Global Witness 2003a). It also had political implications, as the permanent Sub-committee of the Senate launched an investigation into the unaccounted payments. Although there was no evidence of corruption in early 2003, the scandal was a very serious issue for the companies as managers were put on witness stands in congressional hearings. PWYP exploited the scandal by publicly naming and shaming the US IOCs. In the face of mounting public pressure, US companies saw the need to become more engaged in transparency initiatives. Suddenly, the EITI was not considered as a nuisance anymore but as an opportunity to improve their image. According to interviews with NGO representatives, after the Riggs Bank scandal, the US oil companies began to

[134] Nevertheless, the company remained committed to its principles. Despite the serious blowback with Sonangol, BP banned not only outright bribery, but also all facilitation of payments in 2003 (Skjærseth et al. 2004).

come regularly to the EITI meetings bringing with them officials of the US State Department (Interview 4 and 17, see also Energy Compass 2004).[135]

In contrast to the diamond industry, which ultimately coordinated its response, the IOCs could not overcome the collective action problem. Although the diamond industry is very competitive and fragmented, De Beers could incite collective action even at a time when its power was decreasing. As we noted in Chapter 6, unlike the diamond industry, the oil industry consists of a larger number of big companies. The Big Five not only competed with each other, but also with local companies and increasingly with NOCs. Most importantly, however, the oil industry structure at the time differed dramatically from that of the diamond industry, which had to recover from the Asian financial crisis and had to struggle with an increasing supply from new discoveries in Canada. For IOCs, business was dominated by decreasing access to the resources and increasing global demand, which ultimately drove the level of competition to a peak and rendered collective action unfeasible. In fact, the question of whether IOCs should address the issue together was never really discussed in the early stages. For BP and Shell, the situation constituted an opportunity to try to achieve competitive advantages by being first movers in corporate citizenship. Some of the US oil companies calculated that adopting a bottom line would give them a competitive edge when dealing with the producer countries (Buchan and Mcnulty 2002).

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To conclude, this sub-chapter demonstrated the importance of the normative match to diffusing a new norm. The NGOs could quickly bring revenue transparency onto the international agenda, benefiting not only from the continuation of the epistemic community but also from their ability to link the new norm to the accepted anti-corruption norm. In contrast to the Conflict Diamonds Campaign, PWYP did not create a 'crisis situation' for the companies. Most companies were already aware of the issue and had positioned themselves in the debate. The activists were therefore unable to exploit the companies' uncertainty as to how to react to mounting public pressure, as in the case of the KP. However, they could benefit from the normative

[135] American IOCs, like Exxon Mobil, deny that there is a causal link between the Riggs Bank scandal and their increasing interest in EITI.

match. Already being sympathetic to revenue transparency, it was easy to get the support of BP and Shell. In cases where there was no normative match between the new and the established normative framework, it needed the political opportunity of a corruption scandal to get the US oil companies involved. Overall, this shows how important both political strategy (NGO framing to create a normative match) and circumstantial opportunities are for launching an effective lobbying campaign.

7.2 Setting the Scene for EITI: Conflicting Ideas, Common Goals

Despite the fact that some IOCs had already thought about the issue prior to the campaign, creating an international institution that promoted revenue transparency in resource-rich countries was a new task for all stakeholders. Although a small scale role model already existed – the Chad-Cameroon Pipeline Project – uncertainty as to how to design such a regime on a global level was immense. The beginning of EITI was marked by the debate between the proponents of two conflicting ideas. The difference between both ideas centred on where to put responsibility for ensuring revenue transparency. On the one hand, the not like-minded group consisting of producer countries, US companies and the US government wanted to allocate the responsibility to oil-producing countries. Their stance is analysed in the following sections. On the other hand, PWYP considered the Western companies as the enabling force of corruption in host countries. However, the BP-Sonangol incident had convinced the activists that pushing IOCs to unilaterally disclose their payments to host governments was not a feasible option given that host governments could punish the companies quite harshly. The activists' focus therefore turned to Western regulators and mandatory disclosure for Western IOCs. PWYP called for a "regulatory requirement" for resource companies "to disclose their net payments (...) through stock market rules and international accounting standards" arguing that this would be one way to "override individual confidentiality agreements without bringing companies into conflict with host governments" (PWYP 2003). The NGOs thought this approach would protect the companies from the individual confidentiality agreements of host countries since it would be a requirement by western law. Confidentiality agreements had always been required to enable IOCs to

comply with their domestic law. Moreover, this mandatory initiative would establish a level playing field for all companies, and governments would not be able to penalise resource companies for illegal disclosure (Schumacher 2003). More specifically, PWYP proposed as a condition for stock market listing, the requirement for companies to disclose their information about tax payments, royalty fees, revenue-sharing payments, and commercial transactions with governments to market regulators (Hayman and Crossin 2005).

In the UK, DFID was generally sympathetic to the NGOs' proposal. The aims of PWYP corresponded very much to what the government tried to achieve throughout the KP, decreasing the potential for conflict by increasing business transparency. However, while at the beginning of the KP, UK officials had wondered about the appropriate format for the negotiations, the EITI was set to become an MSI from the beginning. Although the KP could not be copied, its success should be replicated with EITI (Interviews 8 and 11). Together with the NGOs, the UK formed the LM-Group, but although the UK was interested in the issue, the government did not want to spend too many resources on this. The suggestion of mandatory new stock market requirements seemed to be a feasible and fast option as demonstrated by the example of Canada. Up to now, Canada is the only country where listed companies are required to disclose their payments (Save the Children UK 2005b).[136] The UK government would not need to engage with developing countries in a lengthy process but would nonetheless send out a strong signal to resource-rich countries to address the issue. The mandatory requirement also corresponded to the concern of the UK to establish a level playing field.

We see below how not like-minded actors slowly began to dominate the discourse despite not being able to completely prevent the institutionalisation of EITI. That the LM-Group was able to sustain the process even with such resistance was mainly due to the fact that no norm opponent wanted to appear as a corruption sympathiser. EITI's normative match to the anti-corruption norm was therefore highly significant.

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[136] The Canadian legislation corresponds to what NGOs were calling for as it also overrides all confidentiality clauses in Canadian companies' contracts with host governments (Insight Investment 2005; Save the Children UK 2005b)

7.2.1 Re-asserting Sovereignty over Natural Resources

As already mentioned, norm opponents were able to gradually increase their influence on the institutional design during this phase. However, not like-minded actors such as resource-rich countries had to constrain outright resistance. PWYP's strategy of very closely connecting revenue transparency to the established anti-corruption norm proved to be very successful. No government dared to openly oppose revenue transparency. However, the outcome of this was not that producer countries would not try to fight this NGO framing. In order to fight it though, they had to find a legitimate reason to dispute the NGO proposals without losing their credibility and reputation. Framing, therefore, was a crucial strategy to impact the future design.

The way the norm entrepreneurs argued offered a window of opportunity to fight their suggestions. As PWYP framed the solution to the issue by placing the burden of responsibility on IOCs, governments framed their rejection of mandatory stock market requirements by addressing the question of national sovereignty. Producer countries argued that putting corporate responsibility at the centre of an international response to oil-related corruption would infringe on their sovereignty over their national resources and their right to determine the conditions of exploitation thereof. Very instructive in this regard is a statement by the representative of Botswana who argued that despite the fact that transparency "has become one of the universal virtues of our time (...) its application in specific situations needs to be tempered by commercial and political prudence" (Mokgothu 2003).

Launching international regulation usually involves reducing national sovereignty. Therefore, under normal circumstances, we should not expect this argument to be persuasive enough to challenge the NGO's proposal. However, as noted in 6.2.3, the question of sovereignty over natural resources, mostly considered as strategic commodities, is a more specific issue than regulating other economic processes. Being legally able to determine the terms of resource company-host country relations is crucial for producer countries in dealing with the power dilemma. We noted in Chapter 6 that under certain circumstances, resource companies actually have more bargaining power than their host countries. Being able to negotiate access and its terms under the principle of contract confidentiality is one way to increase the

bargaining power of producer countries in the bidding process by allowing the producer country to play companies off against each other. Moreover, state sovereignty over exploitation of natural resources is a principle of international law, so the argument turned out to be a very powerful one in challenging the NGOs' call for companies to be proactive in the fight for transparency. As soon as this counter-argument appeared on the agenda, the fight for a mandatory initiative turned into a lost cause for NGOs. For the LM-Group, the defeat meant that a 'quick fix' on the issue was no longer possible.

7.2.2 Bandwaggoning Resource-Rich Countries: Corporate Framing Strategies Against a Mandatory Scheme

Apart from the producer countries, US IOCs were particularly hostile to the suggestion of devising mandatory disclosure. They disliked the fact of being held responsible for corruption and bad governance in resource-rich countries. The IOCs continued to consider corruption as a governmental problem and not as an issue for private companies, since only the countries could determine the rules of disclosure and decide on their expenditure (American Petroleum Institute 2003; Buchan and Mcnulty 2002; Interview 21, Palley 2003; Robertson 2004). However, like their host governments, they had difficulties in outwardly opposing the PWYP's call for more transparency. After the range of corporate corruption scandals at the beginning of the new millennium, no major western company could afford to publicly oppose anti-corruption policies. It was therefore crucial for the companies to find another legitimising cause for their resistance so as to subtly undermine the campaign. The companies very swiftly realised that the debate about corporate responsibility and state ownership constituted a window of opportunity for them and should be exploited for their own benefit. To this end, the US companies joined forces with the host governments by legitimising their resistance to mandatory disclosure, referring to the principle of state sovereignty. They emphasised that any initiative would have to respect the sovereign right of the resource-rich countries to decide on setting up licence agreements and revenue expenditure. The firms warned the LM-Group that such a mandatory initiative would alienate producer countries (Robertson 2004).

Yet, more importantly, the recent changes in the industry structure provided an even better window of opportunity to legitimise their opposition to the NGO suggestions. In contrast to the NGOs, they had a much deeper understanding of the industry and were concerned about their position vis-à-vis globalising Asian NOCs. They argued that mandatory disclosure required by stock market listing would counteract DFID's objective to establish a level playing field for all companies in the extractive industries, since securities and exchange requirements would only affect publicly listed companies. As such, the initiative would develop into a regulatory mechanism aimed at western global resource companies and ignoring non-listed companies, including state-owned and parastatal companies. It would put the IOCs at a considerable competitive disadvantage relative to non-listed companies from emerging economies. The opposing oil companies were backed by the World Bank, which considered the producer countries rather than the industry as the main culprits of corruption (Interview 13). As mentioned before, given the profound normative and cultural differences with respect to valuing transparency, DFID did not see any possibility in engaging with countries such as Russia or China and their NOCs.
On the European front, BP and Shell remained sympathetic to the proposal of mandatory disclosure. Throughout the entirety of the negotiations they held a middle position, mediating between the LM-Group and norm opponents. The heated debate between the NGOs on one side and US IOCs and resource-rich countries on the other gave them an opportunity to distance themselves in the public eye from their competitors (Shaxson 2007). However, given the broad consensus between US IOCs and the host governments blocking the way toward mandatory regulation, BP and Shell did not have much political leeway to make the first move.

7.2.3 Sending out Mixed Signals: the US

In the KP, the NGOs had been able to obtain the support of a number of major and middle powers. In the EITI, the initiative was backed by only a few countries from the beginning. In addition to UK involvement, Norway joined the LM-Group early

on. Canada, crucial to the KP, only recently expressed support for EITI.[137] France[138] and Germany[139] backed EITI financially without playing a big role in most of the institutionalisation process. Apart from the UK, the US had the biggest impact on the institutional design. Since the beginning of PWYP, the US had been very cautious towards revenue transparency as the administration faces a dilemma between several important policy objectives.

The first policy objective concerned its changing energy policy. The scramble for resources, especially oil and gas, coupled with terrorist threats from the Middle East, has transformed Central and West Africa as well as the Caspian Sea region into new hotspots for US energy supplies. As early as 2000, the US Central Intelligence Agency (CIA) forecast that by 2015, West Africa alone would supply 25 percent of US imported oil (The Economist 2002; Volman 2003). The US policy toward procurement of African oil was formulated prior to the attacks of 11 September 2001. The key document is the National Energy Policy of 17 May 2001, widely known as the 'Cheney Report', as it was written under the auspices of Vice President Dick Cheney (Klare and Volman 2006). It advocated increasing reliance on foreign oil sources so as to meet the US's growing oil demand. The attacks of 11 September 2001 and increased volatility of supplies from the Middle East underscored the need for the US to diversify its energy supplies by expanding trade relations with African countries. The current administration is specifically interested in West African oil due to its fast transport routes to US markets, the high quality of sweet oil, and the prospect of Africa's considerable proven and probable reserves. Moreover, apart from Nigeria which is a member of OPEC, African countries provide easy access for IOCs (Klare 2004b). However, civil wars, corruption and sabotage against international oil companies are undermining the stability of US oil supplies (see e.g. Kansteiner III and Morrison 2004). A key priority for US foreign policy was therefore to contribute to the stabilisation of energy producing countries. Civil war and poor governance are not only a concern of humanitarianism but considered in the context of economic and strategic US interests in the region. One should therefore

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[137] Having already launched mandatory disclosure rules, Canada did not consider it necessary to join EITI early on (Haworth 2003; Department of Finance Canada 2007).
[138] France was more active during the IAG.
[139] Germany very recently became more engaged, making an effort to involve the emerging economies at the G8 meeting in Heiligendamm (G8 Summit Heiligendamm 2007). Moreover, Germany pledged to host the EITI Secretariat after September 2007 (BMZ 2006).

assume that promoting revenue transparency in resource-rich countries was in US foreign policy interests.

However, despite the fact that the EITI could meet its foreign policy goals, the US government was very hesitant to endorse the initiative at the beginning. As with other issues in foreign policy such as environmental politics, domestic and societal forces play a crucial role in determining US politics (see e.g. Falkner 2005a). We have already noted that US IOCs have been investing heavily in West Africa and the Caspian Sea region.[140] US oil companies usually have full governmental support for their contribution to the US economy (Obi 2006; Gary and Karl 2003). So with EITI, the US government did not intend to threaten their companies' interests in the producer countries. In addition to the dilemma of balancing the interests of its IOCs operating in prospective EITI member states and its interests in stabilising oil producing countries, the US administration had a particular dislike for cooperating in multilateral institutions (Mingst 2006). Under the presidency of George W. Bush, the US rejected cooperation in both the International Criminal Court (ICC) and the Kyoto Protocol. Whilst maintaining an interest in stabilising both West Africa and the Caspian Sea region, the US took on a different approach from the UK government. Rather than being enthusiastic about EITI, the US aims to stabilise the political and economic environment through the use of military assistance, such as the provision of arms and military assistance, the establishment of military bases and, ultimately, the deployment of US combat forces. As Klare and Volman (2006) stress, the Clinton administration commenced this policy by establishing military ties with Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan and Uzbekistan. The strategy was further re-emphasised after 11 September 2001 and introduced in Africa. The greater part of assistance to African oil-producing countries intends to enhance the internal security capability, including better control of the diverse communities within the countries.

Further to internal security risks, the US administration identified another risk to energy procurement in Africa and the Caspian Sea region. US officials are increasingly concerned about competition with China. In light of this new challenge,

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[140] To give two examples, ChevronTexaco announced in 2002 that it had invested US$ 5 billion in the past five years in African oil and would spend US$ 20 billion more over the next five years. In the same year, ExxonMobil intended to invest US$ 15 billion in Angola in the next four years and US$ 20 billion across Africa during the next decade (Gary and Karl 2003: 12).

the US is concerned that China might pre-empt US firms in winning contract bids (Klare and Volman 2006). Competition with China and increased concerns about energy security are crucial reasons preventing further strengthening of the scheme. We return to this in section 7.4.4.

In light of the vested interests of the US administration and its strong ties to the oil industry, Global Witness was concerned that the UK government's efforts to design a tough EITI would be undermined by the US government so as to protect the interests of the oil industry (Global Witness 2003c). While in the KP, a strong regime could be created and *although* the US did not take a lead in the EITI , it seemed to be a much more pronounced opponent to strong institutionalisation. Since the US is also home to a number of important IOCs, it was obvious for both the NGOs and the UK government that EITI could not be successful without having the US on board. Marginalising the US, as the LM-Group did in the KP with opponents to strong institutionalisation, was not an option in this case given the power of the US in the industry. Eventually, the US came to be much more inclined towards a tougher EITI once Steven Krasner joined the US State Department as Director for Policy and Planning (Interview 17). He argued that opacity in the oil business would prevent democratisation in producer countries as it provides producer states with resources to oppress opposition. EITI would not only increase energy security and contribute to a more stable international environment but also contribute to promoting democracy (Krasner 2006). By linking EITI to democracy promotion, the initiative fitted more into the normative framework which informed US foreign policy. However, far from changing its stance completely, the US remained committed to a voluntary approach whilst further pursuing military assistance to guarantee stability in the countries concerned.

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The sub-chapter focussed on the different framing of revenue transparency and the different policy proposals by the various stakeholders before main decisions as to how the EITI should look were taken. It demonstrated that, although dominating the discourse at the beginning, the NGOs gradually lost their grip in shaping the policy options. Overall, while the NGO framing (the link to the global fight against corruption) was very difficult to oppose, not like-minded actors succeeded in

legitimising their policy solutions. Most importantly, the changing industry structure provided an ideal window of opportunity to constrain more ambitious institutional design ideas. Moreover, important allies of PWYP such as Soros and the UK could be convinced that mandatory stock market requirements were not an appropriate policy option. Both the argument by the host governments on state sovereignty and that by the IOCs on the level playing field persuaded DFID to stop backing PWYP's suggestion. Soros, having his ties to the US political elite, quickly realised that such legislation was not feasible in the US given the Congress' Republican majority (Soros 2006: 179). There was also a pragmatic consideration at play. The UK government wanted to exploit the political climate and launch an initiative as soon as possible fearing that the momentum could pass. Knowing that a mandatory initiative could not be realised at that moment, DFID abandoned the idea. At the London Conference in 2003, state ownership and voluntary, state-driven disclosure were endorsed as part of the EITI founding principles (Principle 2). The US, after having worked closely with its IOCs, declared its support for EITI only after these concessions had been made.

7.3 Successes and Setbacks: From an Idea to a new International Initiative

Only a year after launching the initiative, the LM-Group once more had to experience serious backlashes. As discussed below, the voluntary design of EITI was considered as a serious defeat within the NGO community. The phase that followed was characterised by a stalemate between supporters of strong institutionalisation and not like-minded actors. The companies could draw from their discursive power and dominated the discussion on the reporting templates. The NGOs resorted to the tactic of pushing the initiative by giving in to compromises. In exchange they were able to strengthen civil society involvement at the national level. The biggest success in this phase was receiving support from producer countries. Despite serious setbacks, the initiative could nevertheless move on.

This sub-chapter examines more closely the evolution of some of the key institutional design issues of the EITI, such as the creation of the Principles and Criteria as well as the reporting guidelines (7.3.1), the role of civil society at the

national level (7.3.2), and the process of obtaining support from producer countries (7.3.3). The sub-chapter also assesses to what extent the industry served as a norm entrepreneur in the institutionalisation process (7.3.4).

Overall, this phase is characterised by a stalemate between the LM-Group and their opponents. Although not like-minded actors could not prevent further institutionalisation, they shaped the design significantly according to their benefits.

7.3.1 Moving from Principles to Criteria (London 2003 – 2005)

This section analyses how the EITI Principles and Criteria were developed. Moreover, it examines how the US IOCs could push for their preferred option of disclosure.

In early 2003, when the aim of the initiative was clear but not its means, DFID elaborated the Principles to underpin the objective of the initiative. Specifically, Global Witness and Shell were involved in making suggestions for the Principles. The US companies set the top line by demanding that the Principles should not entail any legal obligation and threatening that they would stop cooperation otherwise. Moreover, they required the principles to fulfil three criteria: universality, protection of proprietary information and no violation of existing contracts or legislation in host governments (Interview 26). Although the US companies wanted to circumvent strong institutionalisation of the EITI from the start by emphasising the principle of universality, they significantly strengthened the initiative (Principle 11 and Criteria 4). They were sincerely concerned about the growing competition in the sector and wanted to introduce a level playing field between IOCs and host country NOCs. Therefore, EITI implementation should apply universally to all extractive industries operating in the respective country regardless of whether the companies were state-owned, private or publicly listed.

Universality was one of the very few issues the NGOs and the companies were united on. For the NGOs, this objective represented an opportunity to partially compensate for the lost fight for mandatory requirements on the international level. Despite this small achievement accomplished by the companies rather than the NGOs, the outcome of the conference in 2003 was not very satisfying for PWYP. Neither countries nor companies could be held to account if they did not comply with the Principles, as they were not legally binding. After the Principles were agreed

upon, the process stalemated. The NGOs especially were very disappointed with the results of the conference and had to ponder on their strategy.

In contrast to the Principles, the Criteria were very much debated. They were formulated in the run-up to the second Plenary Conference in London in 2005 and reinvigorated the stalemated process. The Criteria served to translate the Principles into action and therefore had to have more substance than the Principles (Davis 2005). Again, NGOs and companies advised DFID through the EITI core group.

From very early on, a deep divide emerged between the stakeholders. It concerned the question of how to design the reporting templates. The issue turned out to be very complicated, since policy-makers and NGOs did not have a profound understanding of how to design the templates. Their uncertainty on the issue dramatically increased the discursive power of the IOCs which drew from their legal and technological expertise. Two types of reporting were discussed prior to the conference. The NGOs favoured the approach of disaggregated reporting. In this case company data should be published separately, so that one could account for the payments from each company individually. The companies, again, were split on this issue. BP, Shell, Statoil and Nordsk-Hydro favoured disaggregated reporting, arguing that it corresponded to their company policy on transparency. [141] ChevronTexaco and ExxonMobil were extremely opposed to disaggregated reporting (Energy Compass 2004; PWYP and Revenue Watch Institute 2006). Together with a majority of resource-rich countries they argued for aggregated reporting that added up the information of a similar type before publication. The companies would only have to disclose the basic annual country figures whereas the PSA arrangements and revenues from crude sales would remain secret. So as to legitimise this form of reporting, proponents of aggregated reporting contended that this would be the only way to uphold the protection of proprietary data. Their disclosure would put the companies at a competitive disadvantage (Interview 26). In their opinion, the purpose of transparency was to provide data for civil society which in turn would be able to hold their governments to account. Disaggregated reporting, in their view, did not

[141] Shell for instance stated that "Our view is that it is for host governments to decide whether individual or aggregated company payments should be disclosed. But, having said that, we start from the premise that individual company payments should be disclosed in each country that is implementing EITI – unless there are good and defensible reasons not to do so." See http://www.shell.com/home/content/envirosoc-en/society/using_influence_responsibly/payments_to_governments/our_approach/our_approach_ptg.html, last accessed on 9 May 2008.

serve this purpose, as it was considered to be "company-specific information" which was "not central to achieving the aims of EITI" (American Petroleum Institute 2003). The companies argued that the aggregated figure was fully sufficient for civil society to contribute to government accountability.

NGOs argued that although aggregated reporting was better than no reporting at all, it still entailed a number of problems. They argued that citizens had a right to know which companies paid what kind of revenue. Moreover, aggregate data would not allow the identification of leakage sources or poorly performed reporting by scrutinising citizens. There was a need to check the total figure against individual company payments so as to assure proper reporting. According to the NGOs, aggregated reporting could have an impact on the reputation of those companies that performed well in reporting, as it left options for free-riders (PWYP and Revenue Watch Institute 2006; Global Witness 2005a, 2005b). Several investors partially supported the NGOs, arguing that as long as reporting was disaggregated company-by-company and not further broken down by payment type[142] or field-by-field, the commercial interests of the companies were not compromised (Insight Investment 2005: 16).

Companies remain divided on the issue of reporting to this day. Among others, BP, Shell, Statoil and Talisman are willing to publish data on a disaggregated basis (Interviews 13, 21, 22 and 26). The US companies were supported by the World Bank, which considered it to be more important to account for the revenues of the governments rather than control the financial flows of the companies. Whereas NGOs had always considered the companies as enablers for corruption, the IFIs from the beginning had argued that the issue could only be solved by addressing the corrupt governments.

DFID was committed to finding a workable compromise between the two positions, balancing the opposing stakeholders by leaving the decision of aggregated or disaggregated reporting at the discretion of implementing countries. In the process of doing this, they re-emphasised the principle of state ownership. The issue of reporting templates constituted an additional crucial defeat for the NGOs. As with mandatory disclosure, the NGOs had to give in to a compromise so as to keep the process alive.

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[142] For instance, breaking payments down into signature bonus, royalty payments, fees and taxes.

When analysing the negotiations during the years 2003 to 2005, distinctive negotiation dynamics stand out as they differed profoundly from those in the KP. First, contact between individuals was significantly less than in the KP since many delegations kept changing their composition. Second, throughout the process, the alliances remained roughly as they had been at the beginning. The NGO-industry relationship remained stable overall throughout the negotiations. Only in a very few cases, the NGOs and resisting oil companies fought for the same issues, one of them being the question of universality mentioned earlier. In most other issues, the LM-Group, BP and Shell on the one hand and producer countries, the rest of the oil industry and the US on the other were very opposed. Only the IFIs, World Bank and IMF, sided with the different groups depending on the issue. The creation of a shared understanding and the constitution of similar interests therefore remained very limited throughout the negotiations.

7.3.2 Negotiating Compromises: the NGOs

In 2003, the EITI had decided on the overall design of the initiative by endorsing the Principles. During 2004 and at the beginning of 2005, it became clear that many contested details had to be discussed so that the EITI could move forward. Since the Principles did not entail any legal commitment, the NGOs especially wanted to make sure that the EITI would gain more substance. For them, the beginning of the EITI had been difficult since they felt defeated right from the start. One possibility to increase their bargaining power was to threaten to leave the Process if their demands were not met by the other stakeholders. Thus, the EITI Conferences in 2003 and 2005 were critical moments for them in deciding whether they should continue to lend their support to the EITI or walk out of the process. The NGOs had to be very careful, though, and it was imperative they remain balanced with their threat to abandon EITI. The initiative was still very fragile as not like-minded actors only reluctantly backed the idea. Threatening to abandon the EITI during stalemates was a rhetorical device but not a realistic option. The NGOs knew that as soon as they left EITI, the initiative would fade away (Interview 4 and 22). This decreased their bargaining power significantly, so the NGOs went along strategically with the voluntary design both to keep the initiative alive and in order to able to ask others to make compromises in return later on. Not being able to push for their preferred

design reminded some NGOs, especially Global Witness, of the dynamics of the KP. Prior to the launch of the Scheme, the NGOs had called, without success, for the integration of some strict requirements such as the peer review or rules for the disclosure of statistics. In the end, those requirements were included in the Scheme subsequent to its launch. This experience motivated the NGOs to remain in the EITI and to consider it as an incremental process towards stricter institutionalisation.

The greatest victory for the NGOs was the strong emphasis on the role of civil society both at the international and national level (Principle 12, Criteria 5). One of the crucial questions when designing the EITI was how to deal with reported data. An international initiative could provide the framework for how to account for payments and how to report data. An independent auditor ('Validator') could ensure that the figures produced by both the companies and government institutions matched and could publish a report on the data. Yet, as mentioned before, monitoring revenue flows and ensuring that oil money is not flowing into secret funds of the political elite is part of a democratic domestic process that cannot be determined by international agents. The heart of EITI therefore is the strengthening of civil society in member countries which should enable them to hold their government to account. The EITI made civil society representation mandatory for national EITI committees (EITI 2005b). These representatives have to participate in every implementation phase of the initiative. So that domestic civil society can deliver its role, the EITI engages in capacity building together with its international NGO members (e.g. Shultz 2005; Tsalik and Schiffrin 2005). When pushing for a strong role for civil society the NGOs did not experience any outright opposition from the other stakeholders. The Western governments and the companies were especially aware that the issue had been driven by the NGOs, so they had a right to demand appropriate participation rights. As discussed in more detail below, many producer countries, however, had difficulties in accepting the civil society role – especially on the national level. However, instead of lobbying against the NGOs' role, governments attempted to circumvent the requirement by bringing in government-influenced NGOs (PWYP and Revenue Watch Institute 2006).

7.3.3 Talking Producer Countries into EITI: The Case of Nigeria

Resource-rich countries play an important role in the EITI. In contrast to the KP, which compensates for the weak capacity of resource-rich countries by placing the burden of regulation on importing countries, resource-rich countries are the main drivers of regulation in the EITI. Although companies play an important role in the disclosure of payments, it is resource-rich countries that have to lead disclosure, not Western resource-importing governments.

Given the significance of resource-rich developing countries, it was crucial for EITI to find supporters amongst the countries that would assist in designing and implementing the initiative. As mentioned previously, the EITI is the first revenue transparency initiative of its kind. Especially in the second phase, when EITI participants looked into the details of how to design the initiative, policy-makers, companies and NGOs alike were very unsure as to how to design the initiative. Rather than designing the initiative on the drawing board where none of the stakeholders was certain that the proposals would work in real life, they needed to have the practical input of implementing countries. Therefore, EITI chose the approach of looking for support from so-called pilot countries which would volunteer to try out EITI in their countries. This pilot-country approach allowed the stakeholders to adopt a 'learning by doing' approach whereby the pilot countries would have an immense impact on the design of the initiative.

However, finding pilot countries was crucial not only for the design of the EITI. It was also crucial for the survival of the fragile initiative in the first place. Early on, there was only little tangible country support as the US was rather hesitant to commit and most of the host governments were reluctant to join the initiative. As a matter of survival, therefore, the EITI had to overcome theoretical debates on the fundamentals of the design and attract tangible interest from countries that wanted to implement it.

Among the two techniques of how to find resource-rich countries that would join EITI, pressure and persuasion, the initiative could only use the latter. Having emphasised the principle of state ownership and state sovereignty of national resources, the EITI could only rely on persuading resource-rich countries to support the initiative. The EITI campaign has always been a very technical process. Although the network mentioned the economic implications of corruption rather than human

security in resource-rich countries, EITI supporters drew their discursive power from the economic benefits implementing countries could expect when cooperating. One can therefore call EITI's approach to spreading the norm a mixture between technical persuasion and bargaining through incentives.

The LM-Group gained discursive power due to the fact that most of the resource-rich countries they engaged with suffered severely under the resource curse and had only little economic expertise on how to address their economic and political issues (e.g. the DRC or Chad). EITI stakeholders promoted the initiative through bi- and multi-lateral workshops and diplomatic meetings. The EITI was framed as a crucial instrument whereby corruption and rent-seeking could be reduced, civil conflict alleviated and poverty fought. By increasing transparency, trust between political elites and civil society could be rebuilt, which would in turn lead to greater political and social stability. EITI therefore would not only have immediate effects for the economic development of the respective country, but would also contribute to the political stabilisation of the country. Framing EITI benefits in this way was specifically important to obtain the support of countries that feared instability through the empowerment of civil society. EITI stakeholders argued that one of the direct benefits of cooperation is the possibility of prevention or mitigation of conflict and civil unrest. Increased transparency, reduced corruption and rent-seeking would also have an impact on the country's international reputation and credibility. For instance, EITI can be considered as a strategy to increase its CPI ranking and, thus, improve the climate for FDI and developmental aid (see e.g. EITI 2005a; Eigen 2007a).

Yet, as we can see from the case of Nigeria, the EITI depended on national policymakers sympathetic to fighting corruption and to galvanising political change. Moreover, these policymakers had to be situated within institutional arrangements that allowed them to become the drivers of change. Rather than addressing the ministries, the stakeholders directly addressed the presidents of the respective countries. Countries such as Russia, which lacked sympathetic interlocutors, were not addressed by the EITI at that stage. As discussed later, this represents a far-reaching limitation to EITI.

The first two countries that became interested in EITI were Nigeria and Azerbaijan. Both were convinced of the benefits the initiative could entail for their countries. Nigeria was especially interested in the initiative to increase the

international credibility of the government to fight corruption in the oil sector. That a country like Nigeria – in which political elites had misappropriated oil revenues for decades – would be the first to embrace EITI, might come as a surprise. However, since the death of General Abacha in 1998 and the re-election of President Olusegun Obasanjo in 1999, the country had experienced profound reforms. We have already noted the involvement of Obasanjo in TI. In addition, Obasanjo also built up a "close and mutually advantageous relationship with Western governments and donor institutions" (Gillies 2007: 569) on this and other issues, such as Nigerian debt relief. Research suggests that Obasanjo was specifically interested in the reputational benefits provided both nationally and internationally by his alignment with the international donor community (ibid.). Considering that revenue transparency had become such a prominent issue within the Western donor community, becoming active in the EITI was an ideal way to improve his reputation internationally. In fact, Nigeria could demonstrate that a country's reputation could be improved by publicly committing to EITI. According to analysts, the country's reputation has soared even before Nigeria started to publish its oil revenues (Melville 2004).

For the EITI, Obansanjo's openness to political ideas from the international community provided a crucial window of opportunity towards shaping the country's resource politics. Being able to take Nigeria on board as a pilot country was equally advantageous for the EITI as it was for Obasanjo. Since the Nigerian oil industry has had a global reputation for its corrupt nature, EITI stakeholders considered that succeeding there meant being able to accomplish their goals anywhere else. From the very beginning, Nigeria wanted to convey that it was more than committed to fighting corruption: "Not only do we embrace it, we internalise it, we practise it and show the world that we practise it" (Agence France Presse 2004). Indeed, Nigeria was not only the first country to endorse and implement EITI, but it has developed into the EITI leader in the meantime. In 2004 it established its own country branch, a year later a global financial service firm completed the first independent audit of the Nigerian oil sector covering the period 1999 to 2004.[143] In contrast to most EITI countries, Nigeria chose disaggregated reporting and therefore exceeds the international minimal standard. The audit also takes into account other aspects not

[143] See http://eitransparency.org/Nigeria, last accessed on 17 September 2008.

included in the international EITI standard, such as government regulatory practices and state capacity issues (Gillies 2007).

Overall, finding producer countries to not only publicly commit to EITI but also to seriously engage with it was a very difficult task. As we can see from the case study of Nigeria, for Obasanjo, joining the EITI constituted the opportunity to promote transparency, a norm he had already subscribed to. As on previous occasions, the normative match was a crucial structural driver for its institutionalisation. However, it was not very often that the EITI could count on such circumstantial opportunities. Between 2003 and 2005, 24 resource-rich countries publicly committed to EITI. However, after expressing their commitment, no further action followed in the majority of cases. At no point can we discern a dynamic reaching the tipping point as in the KP, where more and more countries emulated norm adoption. We return to this point later in this chapter to explain the divergence between the two cases.

7.3.4 Industry Structure as a Driver of and Constraint on Norm Diffusion

Given that the LM-Group could not incite an emulation dynamic in support of strong institutionalisation, EITI supporters had to look for other ways to diffuse the norm. One option might have been to exploit the close IOC-host country relations to increase support. In fact, NGOs have called on IOCs to play a more active role in norm diffusion (e.g. Save the Children UK 2005a). As we have learned throughout this chapter, at the international level, companies played a very mixed role in the institutionalisation of EITI. While they had pushed forward the initiative in many crucial ways, for instance when the companies had insisted on the principle of universality in EITI implementing countries, they also belonged to the main opponents of strong institutionalisation. This section turns to the question of to what extent resource companies contributed to further institutionalisation of EITI by acting as a norm entrepreneur in the countries. As we were able to see from the KP, the diamond industry played an important role in persuading countries not only to take part in the Scheme but also to strengthen it in a number of ways. The section contributes to the overall argument of the thesis as we see that power relations in the

industry structure determine to what extent companies can act as drivers or contraints.

Overall, the role of companies in resource-rich countries regarding EITI has been very subtle. IOCs, even those very committed to the EITI, maintain that their role in persuading resource-rich countries to participate and implement the initiative is very limited. The companies refer to two reasons based on power relations. The first concerns market and competition dynamics in the sector. Companies are highly dependent on access to the resources in producer countries. IOCs consider securing access as their priority, paying only minor attention to the costs involved (Gulbrandsen and Moe 2007: 814).[144] Although most of the IOCs dwarf oil-producing countries in economic terms, financial superiority and technical and legal expertise do not always translate into increased bargaining power as we discussed before. In fact, since the first nationalisation phase in the 1970s, growing competition and the governments' ability to play companies off each other led to a collective action problem within the private sector. Although all IOCs have an interest in reducing levels of corruption in the countries where they operate, they are reluctant in pushing too much for transparency initiatives. The example of BP's unilateral act of publishing a signature bonus for their operation in Angola is very instructive in this, as it shows the companies' vulnerability vis-à-vis host governments. Currently, the specific market dynamics in which the companies operate, higher commodity prices and the increased competition in the industry work in favour of the host countries. In this respect, Angola was able to significantly increase its bargaining power during the last decade. As access to the oil resources is so crucial, companies are very reluctant to risk their good relationship with the governments. Since every company fears a disadvantage when pushing for more transparency, no company is actually willing to go through with it.

In addition to increasing the bargaining power of producer countries, decreasing the discursive power of companies to propagate change in host countries plays a role. After having experienced many scandals, resource companies were accused of political meddling with the host countries' politics. They now lack the legitimacy to become openly involved in politics, as they fear detrimental publicity if

[144] This is not to suggest that IOCs want to produce oil no matter the price. In fact, many oil projects, such as most of the Tar Sands in Canada remain undeveloped due to escalating costs. However, given the expected profit, IOCs are prepared to take a lot of costs and risks to produce oil.

they intervene too much or in the wrong ways. Although being an MSI, all companies emphasise that the EITI is a country-driven process, so the governments have to decide whether or not they want to participate.

It is therefore not surprising if, especially at the beginning of EITI, some companies were hesitant to lend their support to EITI as they feared inferring publicly that the host governments in which they operated were corrupt. This could have detrimental consequences when companies next bid for contracts (Sheperd-Smith 2008). One example for this is the Italian IOC ENI, operator of the major Kazakh oil field of Kashagan. During the first years of EITI, the company was absent from every meeting, claiming that being an official member of the OGP it did not need to attend the meetings. Observers, however, suggested that ENI's reluctance to attend was more due to the fact that Kazakhstan for a long time had refused to participate in the EITI (Energy Compass 2004).[145]

The argument about market and competition dynamics is strengthened when looking at one case where an oil company actually helped in diffusing the norm. BP in Azerbaijan was one critical factor that led both to the country's participation in EITI and to its support for strong institutionalisation. Research suggests that Shell played an equal role in Nigeria where it actively supported Obasanjo and the Nigerian NOC's desire to become an EITI member (Schouten and Remmé 2006). With respect to BP in Azerbaijan, Gulbrandsen and Moe (2007: 820) contend that there is very little information regarding the nature of company influence on government politics,[146] but they show that the company has, indeed, spoken out on sensitive issues like corruption and revenue opacity. In 2002, the President of BP Azerbaijan David Woodward, for instance publicly stated that

> "a clear distinction should be established between people in business and people in government, including a much clearer separation of the roles in those government bodies who currently act as both a regulator and provider of services" (quoted in Gulbrandsen and Moe 2007: 820).

Guldbrandsen and Moe (2007) conclude that Azerbaijan's leadership in the EITI is, amongst other factors, a result of BP's critical involvement. However, the case of BP

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[145] In Kazakhstan a powerful domestic extractive industry was for a long time blocking EITI participation. After a number of corruption scandals such as 'Kazakhgate' the country finally addressed the issue more seriously as it wanted to become more integrated into the global economic system. In this respect, Kazakhstan's entry into the WTO is one of the key priorities of the government (Global Witness 2004; Raballand and Genté 2008).

[146] The reader should note that company representatives did not talk about these issues during the interviews with the author.

in Azerbaijan is unique for various reasons. BP is by far the leading foreign oil company and foreign investor in the country.[147] Moreover, BP is heavily involved in E&P operations and therefore has a greater requirement for a stable and predictable political and economic environment. Being the dominant company and sufficiently valuing the collective good of transparency, BP may be more willing to cover a significant proportion of the cost of establishing the good (Gulbrandsen and Humphreys 2006: 816). This prominent position gives BP more leverage in promoting transparency not least because the company has many more personal contacts to appropriate authorities than in other countries. Even in Azerbaijan, however, the company had to balance its norm promoting activities so as not to harm its business interests.

In addition to the company's weight in the country, it was easier for BP to discuss transparency issues with Azerbaijan as some institutional structures for promoting transparency already existed and served as entry points for norm diffusion. In December 1999, a State Oil Fund of the Republic of Azerbaijan was established which was responsible for redistributing a proportion of Azeri oil revenues to the poor (Luecke and Trofimenko 2008). Moreover, the President İlham Aliyev had recently been elected and was looking for an opportunity to promote a good reputation internationally (Interview 25). BP also gained support from Soros' foundation OSI, which had been active in Azerbaijan since 1996 and had developed close relations with the government since then.[148]

The Angolan case provides even further evidence that BP's influence in Azerbaijan is mainly driven by the distinctive power relations in the industry structure of that country. In Angola, BP has to compete with a number of other IOCs and Chinese NOCs. Considering the high level of competition, BP would not be able to exert the same amount of policy influence. Nevertheless, on a very small scale, the company also tried to promote EITI there. BP tried to lobby the Angolan Finance Minister and together with the World Bank the company brought in expert advice from academia (Interview 21). However, as elaborated on in more detail below, the

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[147] BP is the biggest shareholder in Azerbaijan's three most important oil and gas projects: Azeri-Chirag-Guneshli, the Baku-Tbilisi-Ceyhan pipeline project, and Shah Deniz, see http://www.bp.com/sectiongenericarticle.do?categoryId=430&contentId=2000578, last accessed on 17 September 2008.

[148] See www.osi-az.org/an16.shtml, last accessed on 11 May 2008, for more details on OSI operations in Azerbaijan.

Angolan government decided to maintain its observer status and was eventually dropped from the EITI website altogether. The case studies of both countries demonstrate the limited ability of like-minded companies to promote EITI. Like EITI itself, they are dependent on the political will of the host governments. We can therefore conclude that the industry's role as a driver is very small given the current structural dynamics.

The role of the industry in promoting EITI becomes more significant once the countries become interested in EITI. As such, we can draw a parallel between the diamond industry and the oil industry. In the KP, the diamond industry plays a key role in advising countries on how to design, implement and monitor their national certification schemes. With regard to EITI, the oil industry lobbies countries to support low or strong institutionalisation depending on their own strategy. When supporting stronger institutionalisation, they can help to facilitate the dialogue with other stakeholders, such as local and international civil society, and even assist in implementation by offering technical support (Gulbrandsen and Moe 2007).

Although BP played a crucial role in Azerbaijan, the case also shows that the government is still the key player when deciding on the level of institutionalisation. In contrast to Nigeria which decided to adopt disaggregated reporting, Azerbaijan chose only to disclose the aggregate figure despite the fact that BP has always favoured disaggregate reporting.

Nevertheless, company-producer country relations varied significantly during the institutionalisation process depending on the countries and companies concerned. Some companies that favoured low institutionalisation during the international negotiations also aimed at pursuing the same strategy when engaging with producer countries. As mentioned previously, the discussion on aggregation versus disaggregation was one of the most contested ones at the international level. There, the issue was finally resolved by leaving it to the discretion of implementing countries. Not surprisingly, the issue was also one of the most contested ones on the domestic level (World Bank 2008). In Nigeria, for instance, US IOCs were at first a significant opponent of adopting higher standards domestically than at the international level (Eigen 2007a; Igbikiowubo 2005).[149]

[149] After the EITI was established in Nigeria in 2003, the government chose to go beyond the basic level of aggregate reporting and demanded a breakdown by individual company, production field and category of payment. Although ExxonMobil and ChevronTexaco had agreed to comply with the legal

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The third phase represents a stalemate between the LM-Group and those preferring weak institutionalisation. As in the KP, the industry could benefit from their technical knowledge when negotiating the details of reporting. The US IOC particularly exploited this ability when preventing disaggregated reporting, fearing it would disclose any proprietary data. The NGOs could strengthen their future role in implementing resource-rich countries.

This sub-chapter also discussed ways in which the EITI could involve resource-rich countries. I argued that given their inability to exert direct pressure on resource-rich countries, the EITI had to rely on countries in which they could find interlocutors already sympathetic to fighting corruption. The normative match therefore was the political opportunity that drove institutionalisation in the early phases of EITI. However, given the current power relations in the market, IOCs can only act in very specific circumstances as norm entrepreneurs for strong institutionalisation of EITI on the country level. BP's approach in Angola and Azerbaijan provides the best evidence for this as the industry structure differs widely in both countries. We return to this issue in the following sub-chapter.

7.4 Backlashes: Dwindling Support for Strong Institutionalisation

I now turn to the most recent phase of EITI. Currently, the initiative is in a peculiar shape. While it was significantly strengthened at the Oslo Conference 2006 by the launch of a monitoring and enforcement process the EITI remains very fragile.

The linchpin of the fragility is the very low level of membership. As we noted in Chapter 2, a high degree of membership is vital for a strong soft law institution to increase its credibility. To put it bluntly, the strongest institutional design is not worth the paper it is written on if no-one endorses it. Credibility is crucial for fostering the other two institutional features in which the EITI is rather weak – obligation and enforcement. After reviewing the consolidation of EITI (7.4.1), I turn to discussing the reasons for its inability to overcome its own weaknesses, in

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requirements of their host governments they were now objecting to the requirements as they turned out to be much stricter. It took the personal intervention of Soros and the Nigerian government for both companies to agree to disclose their disaggregated data (Interview 17, Eigen 2007a).

particular, scrutinising why the political strategy of the LM-Group failed in this case. We see that the EITI has failed to galvanise support for stronger institutionalisation as it was neither able to incite learning processes (7.4.2), nor to trigger adaptation by allocating reputational (7.4.3) or financial benefits (7.4.4).

7.4.1 Consolidating the Initiative: Moving from London (2005) to Oslo (2006)

With the fundamentals of the initiative in place and more countries publicly expressing their commitment to EITI, the question arose of how to ensure that commitments would not just be whitewash. The companies especially saw the need to protect themselves against free-riders.

To this end, the IAG was mandated to develop suggestions as to how EITI could be strengthened. The approach taken by EITI differed significantly from the strategy the KP had adopted in order to push for stronger institutionalisation. As we noted, after the KPCS was launched, the LM-Group built issue-specific coalitions to determine how the Scheme could be strengthened. The coalitions then engaged with the key opponents and brokered compromises. Thus, other opponents found themselves marginalised and eventually agreed to the changes. In the EITI, the IAG was a fairly homogenous group consisting of countries and NSAs interested in strengthening the existing design.

Due to the homogeneity in the group, the IAG negotiations were rather smooth. The US IOCs along with the US government had drawn a top line long before the IAG was created by blocking anything mandatory and maintaining the focus on host government responsibilities rather than on company obligations. The fundamentals of the EITI were now in place and the US IOCs had set a top line for regulation. During the IAG, the different company attitudes on disclosure ceased to play a role. This might as first come at a surprise but can be explained by three reasons. First, those companies that were interested in going beyond EITI were able to do so in cases where the host countries allowed them to do. For BP and Shell, this served as an opportunity to present themselves as first movers with regard to transparency. Secondly, with the increase of NOC influence in Africa, the Anglo-Dutch companies realised that regulatory limitations were set by competition with those companies rather than the US IOCs. Finally, although previously there has

been very little collective action within IOCs in the EITI, the way the IAG operated forced the IOCs to come to a consensus first amongst themselves before making suggestions to the IAG (Interview 25). This, for the first time during the EITI negotiations, fostered collective action. BP and Shell pursued a strategy of compromise by agreeing on the top line set by the Americans on the international level but supporting implementing countries to go beyond the minimal standards domestically. An example of this is Nigeria, where Shell supports disaggregated reporting and is open about sub-national reporting. American IOCs were opposed to sub-national reporting so as not to become embroiled in the debate over how revenues should be allocated between the federal government and the state level. As we noted at the beginning of this chapter, Shell was already consulting the Nigerian federal government on this issue (Litvin 2003). On other issues, however, they had found a shared interest, which was to prevent validation from becoming too onerous. This was specifically important with respect to company validation which should not replicate existing company audits (Baxter and Laidlaw 2006). Another important goal was to contain some NGO proposals that called for broadening the EITI focus to issues such as expenditure or even going beyond the extractive industry sector. From the companies point of view the purpose of EITI was not to achieve transparency for its own sake, but to make economic processes more transparent where it would lead to better governance (ibid.). To also contain far-reaching proposals, BP and ChevronTexaco, representing the companies in the IAG, adopted a strategy directly lobbying the EITI Secretariat without letting the NGOs know about it (Interview 24). Moreover, the US government supported the containment of the so-called EITI-plus issues (US Delegation 2006). Given that there was an urgent need to make the institutional design implementable in the first place, the IAG and the EITI Secretariat very quickly conceded that EITI first needed to be consolidated before its focus could be broadened. Proposals for EITI-plus requirements were not included in the IAG recommendations. A compromise was reached with the NGOs to leave EITI-plus issues at the discretion of the implementing countries.

Overall, the issue with the consolidation phase was not obtaining agreement for strengthening EITI with regard to monitoring and enforcement. The bigger issue was getting active agreement on supporting of the new institutional features by those actors which had not participated in the IAG. Although the institutional design of the EITI was significantly strengthened in 2006, the initiative has become neither a

globally accepted standard nor a strong initiative. The negotiations on the institutional design of EITI were not subject to major obstructions by political opponents, but most governments that committed themselves to EITI opposed stronger institutionalisation (and implementation) by 'passive' opposition: they said the right thing but then did absolutely nothing (Energy Compass 2004).

7.4.2 Growing Normative Mismatch

We now turn to analysing why the political strategy of the LM-Group failed. Since EITI's inception, the LM-Group has been largely unable to incite learning processes with most of the governments of resource-rich developing countries. In fact, throughout the institutionalisation process, the discursive power of the LM-Group stagnated. This was mainly due to the growing mismatch between the promoted norm and the established normative frameworks in resource-rich countries. The EITI aims to contribute to a profound policy change in the extractive industries of producer countries. For instance, one of the main pillars of the EITI is the empowerment of civil society in producer countries. As mentioned before, the EITI is only about laying open the revenue flows of resource-rich countries. The initiative does not prescribe any political consequences where cases of corruption have occurred. This is for the civil society in the various countries to decide. Therefore, EITI requires a significant shift in the government's attitude to freedom of discourse in the public space (Eigen 2007a). Research on the policy diffusion by IFIs suggests that technical reforms such as new macroeconomic policies or trade liberalisation reforms as promoted by the World Bank and the IMF in the 1980s and early 1990s could be successful when adopting a "top-down" approach (Naím 1995; Nelson et al. 1994; Woods 2006). However, reforms aimed at improving transparency and good governance imply profound changes in the way politics operate in countries. They require 'deep' cognitive changes through persuasion and learning that are shared not only by a small number of bureaucrats. The LM-Group was successful in persuading countries as long as it could focus on those where it could find willing interlocutors in those countries that already adhered to normative frameworks close to the EITI objectives, as we saw in the cases of Nigeria and Azerbaijan. Hence, the circumstances and prevailing sets of ideas in the respective countries played a crucial

role in the success of EITI in its early stages. Nigeria and Azerbaijan, the producer countries that contributed the most to the institutional design of EITI, already had a vibrant civil society before the EITI was put in place (e.g. Ibeanu and Luckham 2007). There are also some examples in which countries have really strengthened their civil society and given them a genuine opportunity to contribute in the process. For instance we have Ghana, where civil society was able to push for the publication of payments from the federal government to provincial councils and publication of information about specific government expenditures (PWYP and Revenue Watch Institute 2006). In other countries, however, repressive governments are hesitant to give their civil society a greater role in political life. The strong role of civil society has been one of the main reasons for passively opposing EITI. Many countries that committed to the initiative act in ways that conflict with their EITI membership. Equatorial Guinea and the Republic of Congo intimidate their civil society and invite handpicked civil society members to the committee meetings (DiNardo 2006; Eigen 2007a). The same has happened in Kazakhstan, Cameroon, Mauritania and Mongolia (PWYP and Revenue Watch Institute 2006). Most of these countries fear that by increasing the power of civil society, secessionist or opposition movements could be strengthened.

Normative mismatch also explains why middle-income countries from the Middle East do not participate in the EITI. The countries have a very different perspective on NGOs due to their closed societies (Sheperd-Smith 2008). The same accounts for China and Russia. Early on, EITI chose not to engage with these countries knowing it would be very difficult to motivate them to cooperate (Interview 8), but since the EITI recognises that these countries can severely damage the objective of the initiative, the stakeholders increasingly turn to the emerging economies (EITI 2006a).

Normative mismatch was also an issue in the KP as more countries joined the negotiations. China, Israel, India and Russia were especially very concerned about the far-reaching role civil society had during the negotiations, and became even more alarmed when the LM-Group wanted them to occupy a role in monitoring. Diamond trade statistics were considered as a state secret in Russia, so that they had been very adamant that they should not be required to disclose these figures. The reader may recall that those countries mentioned above eventually conceded to the requirements – albeit not by accepting the transparency norm, but rather by having to adapt to a

new political environment. The chapter therefore turns to assessing the reasons why the EITI failed to incite adaptation processes as the KP did.

7.4.3 A 'Bad Guys Club'

As mentioned before, learning is not the only way to strengthen institutionalisation. Actors may emulate a political strategy when expecting reputational benefits. That this strategy has largely failed can be seen by looking at the attempt to increase the level of membership.

Since its inception, the EITI has acquired a particular 'branding' which has turned the initiative into a victim of its own success. After having been able to attract the commitment of over 20 countries with severe governance and corruption issues, the EITI has acquired the reputation of a 'bad guys club' which has significantly weakened EITI stakeholders' power to persuade more countries to join as they fear reputational *dis*advantages (Interview 25; Sheperd-Smith 2008). The 'bad branding' is due to two reasons.

First, as we already discussed in Chapter 6, the EITI disclosure requirements do not have general applicability among the participating countries. As countries such as Canada or the UK cooperate in the EITI by being donor countries, yet not by implementing it, the initiative lacks role models. Developed countries maintain that although many of them are home to important extractive industries, these normally do not dominate the government's sources of income and export revenue. Moreover, many developed producer countries have always argued that they would not need to implement EITI, since they have mainstreamed transparency and revenue disclosure into their existing regulatory frameworks (Sheperd-Smith 2008; World Bank 2008). However, since the EITI has developed into an umbrella organisation for countries reputed to be suffering from high corruption, many resource-rich developing countries, such as Indonesia, do not identify with the initiative's objectives. First and foremost they do not consider themselves as suffering from the resource curse to the extent many EITI participants do. Moreover, even if they benefit from implementing it, they shy away from it because they do not want to be branded as a corrupt EITI country. On the contrary, resource-rich countries which want to increase their transparency but do not suffer from the resource curse make great progress without

the process. An example of this type of country is Trinidad and Tobago. The country has been an EITI member since the beginning of 2005 and is generally supportive of the initiative. However, it was able to increase its transparency in the resource sector without implementing EITI.[150] The Finance Minister Christine Sahadeo therefore questioned to what extent her country's economy can benefit from cooperating in EITI (Sahadeo 2005). The same applies to the Republic of Congo and São Tomé and Principe, which make a slow effort in increasing their revenue transparency outside the EITI process (Energy Compass 2004). The reputation of EITI differs profoundly from that of the KP. In this case, its reputation as a 'good guys' club' actually enabled strong institutionalisation. For instance, its strong monitoring requirements actually depend on positive peer pressure and the good reputation of the KPCS. No country wants to be seen as lagging behind in the fight against conflict diamonds.

Secondly, the fact that only developing countries implement EITI not only watered down the normative appeal of the initiative but also the discursive power of the LM-Group. Some countries, such as Angola and South Africa, now perceive the initiative as 'colonial', by which the West wants to push for a certain flavour of transparency (see e.g. Reed 2006). In this respect, a South African representative criticised the design of EITI as early as 2003 with the following statement:

> "It is inequitable that only countries host to extractive industries are covered by the EITI. This creates the impression that only developing countries, which tend to host the extractive industries, are corrupt or are considered to be corrupt" (EITI 2003).

Only recently, the EITI began to address this issue when Norway decided to become an implementing country (United Press International 2007). The turning point came when the Norwegian government decided to house the EITI Secretariat. Oslo wanted to demonstrate it was committed to the success of EITI by becoming a role model. In contrast, suggestions to make only producing countries implement the certification scheme were overruled in the KP at an early stage. The EC especially was very committed to not placing the burden only on the developing countries, but rather spreading it evenly over all participants. Hence, although some African countries feared a 'colonial' attitude from Western actors those concerns could be contained very early.

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[150] Despite having concentrated on becoming more transparent outside the EITI, the country recently did not receive 'Candidate Status'. (see www.eitransparency.org, last accessed on 29 June 2008).

7.4.4 The Trouble with Competition: Declining EITI Benefits

The LM-Group also failed to trigger an adaptation process by offering financial benefits. This inability stems mainly from the current industry structure which serves as an opportunity for norm opponents.

The preceding chapter has already drawn attention to the recent 'scramble for resources', particularly in Africa, and the growing significance of Asia as an importer and Asian NOCs as new global players in the field. This has significantly altered the power relations in the industry. The intensified competition in the extractive industries significantly increases the bargaining power of producer countries and thereby reduces the incentive to become an EITI member. In order to illustrate this I first briefly compare the current industry structure with the more favourable circumstances in existence when the Chad-Cameroon Pipeline Project was created in the 1990s. Then, I look in more detail at how the current changes in the industry affect the institutional design of EITI by examining the case of Angola.

So as to better understand the significance of recent shifts in the industry, we first turn to the power relations in existence when the Chad-Cameroon Project was created. In the 1990s, after the first Gulf war, commodity prices were at a low point (BP 2008). Moreover, producer countries, especially those seeking to develop new projects, such as those from the former USSR or Africa, were not able to plan and operate their projects alone. They lacked both the technological knowledge and the financial ability for necessary investments (O'Reilly and Aubertin-Giguère 2006). The IOCs (and thus their home-governments) had both the financial ability and the technological knowledge, which they offered to the producer countries. The fact that the IOCs were necessary for operating projects the producer countries could not implement on their own significantly increased the bargaining power of oil companies and their home governments. Furthermore, since oil prices and demand for oil were much lower than they are today, producer countries did not have much leeway in negotiating PSAs with IOCs. Indeed, at the time a number of PSAs with unfavourable terms for the producer countries were negotiated.[151] Western

[151] One example of this is Russia's Sakhalin-II. As the country urgently needed Western companies to produce their oil, a number of PSAs were concluded which turned out to be unbeneficial for Russia. With a stronger Russian government, higher commodity prices and more technological knowledge the

governments and intergovernmental donor agencies would have been much more inclined to push for strong institutionalisation had the EITI movement existed at that time. This was especially true since competition in the bids was rather limited as Western governments and their IOCs were the only possible joint venture partners for engaging in oil production. In fact, the Chad-Cameroon Pipeline Project was negotiated at the time because investment and political risk management activities by the World Bank were vital for Exxon[152] and for the governments of Chad and Cameroon to develop the project. Therefore, the joint venture partners accepted not only a comprehensive environmental assessment and public consultation with local communities but also to control over whether the project's revenues would be well-managed (Brown 1997; Pegg 2006a; Horta and Djiriabe 2007). The governments of Chad and Cameroon would probably not have agreed to the far-reaching terms for revenue disclosure had China been interested in the project, offering more investment in the country's infrastructure rather than good governance.

The example of Chad and Cameroon can be contrasted with that of Angola and its (non-) membership in the EITI. The case demonstrates to what extent the growing significance of emerging economies in the commodity sector can be detrimental for the global institutionalisation of EITI. As the incident between BP and Sonangol in 2001 demonstrated, Angola has never been enthusiastic about Western-dominated revenue transparency. In fact, the IMF has been criticising Angola's corruption and opaque revenue streams for a long time (Armitage 2007). IFIs, members of the EITI Secretariat and civil society therefore have engaged with key government officials since 2003 to convince Angola to cooperate. However, Angola has repeatedly rejected becoming an EITI member while emphasising how much progress it has already made by adopting good governance principles and becoming more transparent (see e.g. Graça 2003). As discussed above, Angola considered the initiative as a 'colonial' intrusion into interior affairs. Consequently, EITI stakeholders did not find any sympathetic interlocutors in the Angolan government with whom they could engage in a constructive way. For the LM-Group, Angola represented a tough case for their discursive power. As a result, they began to

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government was recently able to improve the terms of the contract by pushing Gazprom into the project (Litvin 2007; Bradshaw 2006).

[152] Exxon wished to avoid becoming entangled in regional and ethnic conflicts as Shell had done in Nigeria. By securing the World Bank's investment and political risk management, Exxon hoped to attract other investors and to secure its assets on the ground (Horta and Djiriabe 2007; Brown 1997).

rely more on the approach of bargaining through incentives. Angola's interest to participate in an IMF programme to structure its debt was considered as a good window of opportunity. The IMF and EITI had finally found a way to give Angola an incentive to join the initiative. Policymakers tried to bargain with Angola by presenting the implementation of the EITI as an integral part to ease the country's relationship with the IMF (Africa News 2005). The strategy seemed to yield success since, in 2005, the Angolan Finance Minister announced that his country might join EITI on the condition that the country could take part in certain IMF monitoring programmes (Fourie 2005). Between 2004 and 2005, it seemed as if the EITI stakeholders had made progress. In 2004, an important precedent was set when ChevronTexaco, the Government of Angola and Sonangol agreed to disclose the details for a payment made to secure an extension of Chevron's concession of the offshore Block O (Save the Children UK 2005a: 23; ChevronTexaco 2004). However, during 2006 and 2007, the relationship between Angola and Western donors again turned sour, in particular over the issue of oil revenue disclosure. Angola pulled out of the negotiations with the IMF (Africa Research Bulletin 2007). At the Oslo EITI Plenary Conference 2006, the Angolan Finance Minister reiterated that Angola had made good progress in becoming more transparent due to its own policies and for the second time rejected EITI implementation (Graça 2006). Finally, in early 2007 the EITI excluded Angola as an observer from the initiative. Angola had repeatedly put under pressure companies that cooperate with EITI and wanted to disclose payments (Eigen 2007b). In the end, Angola was able to pay off most of its Paris Club debts without the help of the IFIs (Africa Research Bulletin 2007). Angola was able to resist financial incentives to join EITI as it was able to play IFIs and companies off each other by preferring China as a business partner. China is Angola's second biggest trading partner and pursues a 'no strings attached' policy in energy producing countries (Taylor 2006; Naím 2007; The Economist 2008b). Both China and Angola, are on common terms as they perceive EITI as an intrusion into the host countries' internal affairs and therefore reject it (Interview 24). Thus, Chinese oil-backed loans gave Angola the outside-option of receiving financial benefits without improving its bad governance. China and other emerging economies

destroy the level-playing field of EITI. [153] Other countries might also find it more beneficial to rely on unconditional oil-backed loans rather than pursuing profound governance changes.[154] The new competition with Asian NOCs also has serious consequences for Western companies operating in Angola. BP, for instance, would welcome a more transparent policy in Angola. Yet, the approach to revenue transparency taken by the government and Sonangol is preventing BP's disclosure. For BP, Angola is an important country of operation and the company cannot afford to lose its concessions there. Trading oil outside the EITI framework has become even more lucrative since the recent rise in the oil prices. The promise of high profits incites more and more government leaders to remain outside the EITI.

As mentioned before, given that countries like China, Malaysia and Russia do not value transparency as Western countries do, it is impossible to get their support for the EITI. Moreover, since Western consumers have no reach to Asian NOCs, those actors cannot be put under pressure to join the EITI. However, these countries, including their NOCs, are very powerful players in the sector as the example of Angola demonstrates. Hence, normative and cultural differences in appreciating transparency and good governance are crucial for understanding the peculiar institutionalisation of EITI.

So far, structural reasons for supporting low institutionalisation for companies and producer countries have been looked at. The increasing competition and concerns over supply coupled with tight oil prices, however, also mean backlashes in the energy politics of major importing countries. Structural changes and outside pressures brought the question of energy security to the top of the international agenda. Whereas Islamic terrorism reinforced institutionalisation of the KP, it has had a weakening effect on EITI. Increasingly, major importing countries have to rely on energy supplies from places where security cannot be guaranteed. Energy supplies face other risks, too. In the summer of 2005 the hurricanes Katrina and Rita delivered the world's first integrated oil shock by disrupting flows of oil, natural gas and electric power (Yergin 2006). A year later, the Russian-Ukrainian natural gas dispute

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[153] For instance, China has made a substantial commitment to rebuild the country in the form of oil-backed loans worth more than US$3 billion and further technical assistance (Reed 2006).

[154] In late 2007, the government of the DRC announced cooperation with China. In exchange for the right to mine copper ore at a value of US$ 12 billion, Chinese state-owned firms would construct or restore various railways, roads and mines around the country at an equivalent cost (The Economist 2008b). As The Economist stresses the sum of US$ 12 billion is more than three times Congo's annual budget and roughly ten times the aid guaranteed by Western donors until 2010.

raised the EU's concerns about their reliance on natural gas from Russia (Light 2006). Finally, the high oil price empowers oil-rich countries. I argued above that in the 1990s, IOCs were largely able to dictate PSA terms. However, the higher the oil price, the more oil-rich countries become reluctant to host IOCs as providers of capital. The recent waves of resource nationalism in countries like Russia, Venezuela and Bolivia therefore further add to the political turmoil in the sector (Mouawad 2006). For IOCs the issue is not 'peak oil', but actual access is becoming a huge problem. Not surprisingly, energy security was the number one topic at the G8 summit in St Petersburg, Russia, in 2006, only a few months before EITI convened its Third Plenary Conference in Oslo.

The NGOs tried to exploit the prominence of energy security by linking it to resource transparency. Fighting corruption in producer countries fits into the strategic approach on energy security (Global Witness 2007), but whereas similar framing was successful in the KP, policymakers thus far could not be convinced that an increase in transparency should be part of a strategic approach to their new energy politics.

In sum, given the peculiar structural circumstances of the industry, norm entrepreneurs were not able to exert structural power so as to force norm opponents to adapt.

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The sub-chapter scrutinised why the EITI is still fragile even after having been significantly strengthened recently by including a monitoring and enforcement mechanism. In summary, the three strategies available to the LM-Group to galvanise support for strong institutionalisation all failed. Emphasising the financial and political benefits was successful in Nigeria and Azerbaijan, but largely failed in the other cases due to the normative mismatch. The established normative frameworks differed too much from the new norm, specifically with regard to the far-reaching role of domestic NGOs in the EITI. Enticing support by offering reputational benefits failed because the EITI soon became branded as the initiative of corrupt countries. Finally, inciting an adaptation process because of fear of marginalisation failed due to structural changes in the industry. The changes in the material structure of the sector empowered those actors that did not value transparency and good governance. With China's increasing demand for oil, it becomes impossible to exclude producer

countries from investment benefits. Coupled with developing countries' rising concerns with energy security, this casts a rather bleak outlook on strengthening of the scheme.

The Oslo Conference of 2006, in theory, strengthened the EITI. However, stronger institutionalisation did not translate into practice. As the initiative still lacks widespread support, one big discussion among the stakeholders was whether to actually implement enforcement, as they feared that most of the countries would have to be dropped from the participants list, completely undermining EITI's credibility (Interview 22).[155] This demonstrates that without increasing the level of membership, the EITI will not be able to overcome its other weaknesses in institutional design, low enforcement and moderate obligation.

7.5 Conclusion

When Global Witness first proposed the setting up of a revenue transparency regime to governments and companies "everybody laughed" (DiNardo 2006). The fact hat EITI exists is already a great achievement. To some extent, diverging perceptions of what role resource companies should play in host countries enabled the creation of the EITI. Had all oil companies adopted an opposing stance to the issue, the epistemic community would have been devoid of allies. However, disagreement over business strategy also contributed to a lower degree of institutionalisation. Twice, the US companies were able to avert tough regulations (arguably strongly supported by the US administration and producer countries). Diverging business strategies in implementing countries also seem to be crucial for the countries becoming involved in EITI, as the case of Azerbaijan suggests.

The small advances since Oslo 2006 should not obscure the fact that the institutional design remains weak. So far, the LM-Group has exercised only limited discursive power. By tracing the negotiations for the institutional design of EITI, this chapter placed little emphasis on norm diffusion by either learning or adaptation.

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[155] Shortly after the validation process was endorsed EITI was actually hesitant to drop participants from the list. For some time, a new status (Indeterminant), in addition to Candidate and Compliant, was created so as to give countries more time to reach Candidate status. Some months later, the Indeterminate status was dropped again. See http://eitransparency.org/newsletter/december2007 and http://eitransparency.org/implementingcountries, both last accessed on 19 September 2008.

This stems from the failure of the LM-Group to initiate any meaningful norm diffusion either with host countries or with resource companies. Whereas in the KP, several actors – such as Israel and the diamond industry – changed their attitude towards a number of issues, in the EITI, no stakeholder did likewise. Those actors that were willing to contribute to strong institutionalisation did so because they were already sympathetic to the idea. BP and Shell had already focussed on the issue in their in-house policies as well as bilaterally with the NGOs. The same applies for Nigeria and Azerbaijan, the producer countries that were most active in pushing for a stronger institutional design. Other countries did not openly oppose institutionalisation, fearing that publicly opposing the fight against corruption would be badly received in the international community. However, those countries have since remained passive as far as actively endorsing the strengthened institutional design is concerned. In contrast to the KP which gave rise to new initiatives in the diamond industry sector, the oil industry has so far restricted its involvement to the EITI only. The companies have subdued any effort taken by NGOs to broaden the debate to encompass issues such as contract transparency.

Two structural factors can explain the failure of political strategy to diffuse the norm. First, we have the mismatches in normative structure. Norm entrepreneurs focussed on creating a link between the new norm of 'revenue transparency' and established norms ('corruption'). They were successful, as hardly any country or company dared to reject the EITI. They also attempted to persuade countries by outlining economic benefits, but several issues such as normative mismatch with regard to the role of civil society, the selective applicability of disclosure requirements and reputational disadvantages for EITI participants, decreased the initiative's discursive appeal.

Second, we have the industry structure. The high degree of fragmentation and the ever increasing intensity of competition in the oil and gas industry averted any possibility of norm diffusion between CSR leaders and laggards. Although the major IOCs often cooperate in joint ventures on the field, they remain fierce competitors concerned that the other might win a profitable block in the next bidding process. While the diamond industry created a new institution to increase its impact on the certification scheme, IOCs emphasised different attitudes to the role of companies in promoting transparency and details such as reporting templates. Most crucially however, the current changes in the industry structure empowered players that did

not value transparency and good governance. Normative and cultural differences about those values are therefore important for understanding the case. With a greater number of oil companies operating in the field and resource nationalism decreasing access, competition has reached highly sensitive levels. IOCs are willing to pay a high price for the concessions but have lost the ability to dictate the terms. Given the increasing power of Asian NOCs, IOCs do not dare be overly critical of the host countries' interior affairs. The same applies to their home governments, which are more than ever concerned about secure supplies. In the short run, it seems unlikely that developed countries will jeopardise their relationship with producer countries in order to push for a strong regime fighting revenue transparency.

Was political strategy an option to mitigate the impact of the structural factors? Being able to frame EITI in such a way that it could link to the wider anti-corruption discourse was crucial to get the initiative off the ground in the first place. Later, however, the agents contributed to the failure of norm diffusion to the extent that Western countries did not want to implement EITI like resource-rich countries did. With respect to inciting learning or adaptation processes, the LM-Group was however constrained by the specific set-up of the POS. Hence, in summary, this case is excellent for studying the failure of norm diffusion due to case-specific POS.

CHAPTER 8

The Institutional Design of Multi-Stakeholder Initiatives: Conclusions and Implications

This research project set out to account for the variance in the institutional design of two MSIs in the extractive industries. I advanced a distinctive approach for accounting for the research puzzle by looking at the complex relationship between institutional design, norm diffusion and POS. By doing this, the thesis broadly speaks to two themes in IPE scholarship. First, it advances our understanding of new forms of governance by studying the institutional variety of MSIs. Second, we look at norm diffusion and POS as explanatory factors to account for institutional design. Thus, more generally, by holding a thin rationalist view of how ideas and norms matter in international relations, my study contributes to the debate on IR theory as I unveil the circumstances in which ideational facts do not make their way through.
I begin this final chapter by summarising the main insights and results of this study. I first turn to the dependent variable, institutional design of MSIs. Second, I summarise the theoretical framework of the independent and intervening variables and evaluate the findings of the empirical cases in light of the theoretical propositions. The added value of my distinctive approach becomes even clearer as I revisit three alternative explanations. Then, I proceed to show how my findings contribute to larger academic debates on the research of new forms of governance in IPE and the study of norms in IR theory. Particularly, I push the conclusions of my research by calling for more cooperation between rationalist and constructivist research. Fourthly, given the several limitations mentioned in Chapter 1, I discuss possible directions for further research. I conclude this thesis by discussing the challenges arising from this research with regard to the future of CSR in the next phase of globalisation.

8.1 MSIs, Institutional Design and the Future of Global Governance

The two cases examined in this thesis reveal a trend towards more participation rights for NSAs in global politics. NGOs and MNCs have long influenced international relations through lobbying (Coen 2005), providing technological solutions to environmental problems (Falkner 2005b), shaping discourses (Sell and Prakash 2004), and setting rules (Pattberg 2004b). Thus, increasingly, NSAs not only change the demand side of international politics[156] but also fill the supply side by proposing how to design these institutions. MSIs acknowledge this role of NSAs in global politics as they allocate far-reaching participation rights to them when deciding on the design of the institution. As we have been able to see from the two case studies, participation does not end there but continues when the institutions come into operation. NSAs are involved in monitoring and enforcement and, by maintaining public pressure, they contribute to creating the obligation for the participants to comply with the requirements.

On the macro-level, the development of these institutions together with other forms of governance gives rise to a complex and multi-layered legalization not captured by the traditional understanding of international public law. Next to traditional intergovernmental public law, hybrid agreements and law-like arrangements co-exist. We demonstrated this complex structure by looking at the extractive industries in Table 1. This "complex legalization" (Brütsch and Lehmkuhl 2007) has a twofold characterisation. First, we have the fragmentation and multiplication of political agency. As we have been able to see, policy fields like the extractive industries are governed by a multitude of actors that create international institutions with and without the state. Second, with the greater role of NSAs comes an increase in consensual soft law. This form of law – in contrast to hard law – allows for the active participation of NSAs in both the creation and implementation phases (Reinicke and Witte 2000).

Much has been written to describe and explain these characteristics of global governance along with greater participation of NSAs. What has been largely ignored,

[156] Examples are not only the case studies of this thesis but also the Ottawa Convention to Ban Landmines and the ICC where NGOs were calling for their creation rather than the states (Cameron 2002; Deitelhoff 2006). Similarly, other forms of regulation such as TRIPS were created due to the demand from MNCs (Sell and Prakash 2004).

however, is that the institutional choice when creating new forms of governance differs as much as when creating intergovernmental regimes. However, the more of these institutions that are created, the more differences in the institutional features we can discern. Although most, if not all, of these initiatives are soft law mechanisms and are therefore not legally but only politically binding, we should not judge these mechanisms as having 'no teeth'. Like the cases examined in this thesis, most of the so-called voluntary standards undergo an evolution process in which their requirements are strengthened. We were able to see this evolution process best in the KP, which at the time of its official launch lacked tough monitoring and enforcement rules. Nevertheless, as we learned from Chapters 4 and 6, MSIs vary to a great extent with regard to their degree of institutionalisation.

What do we learn, though from studying and assessing the differences in the institutional design features of MSI? Compliance theory on intergovernmental regimes asserted that the institutional setting is crucial for fostering compliance with the obligations (Shelton 2000; Chayes and Chayes 1995).[157] Hence, although this thesis did not focus on compliance, institutional design is crucial for ensuring that the institution lives up to its expectations. As we discussed in Chapter 2, monitoring and publicly 'naming and shaming' can be the most effective ways of providing strong deterrents for non-compliance. Soft law has been criticised for lacking the credibility and strength of hard law. However, as I argued in this thesis, soft law and strong requirements on monitoring and enforcement coupled with a high degree of obligations do not contradict each other. As Shelton (2000) contends, sometimes actors may be prepared to commit to stronger requirements because of the non-binding character of the institution.

To be able to assess the institutional design of the two cases, we first looked at the two existing theories, the legalization approach (Abbott et al. 2000) and rational design (Koremenos et al. 2001). However, as these approaches are not able to capture institutional variety within soft law by focussing on the dichotomy between hard and soft law, the research question required us to establish our own methodology for assessing institutional variance. The approaches of both Abbott et

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[157] Note that constructivists like Finnemore and Toope (2001: 743) disagree with this. They argue that the assessment of the formal characteristics of international institutions ignores the fact that legalization depends upon "deeply embedded practice, beliefs and traditions of society".

al. (2000) and Koremenos et al.' (2001), together with the global governance literature, provided a good starting point from which to develop such a methodology. Four indicators were singled out for the analytical framework. The importance of monitoring has just been pointed out. Like monitoring, enforcement is a crucial component for strengthening the institution, as it creates disincentives for non-compliance. Given that soft law lacks contractual obligation, including obligation as an indicator for the degree of institutionalisation might be counter-intuitive. As we were able to see from the KP and the EITI, obligation can be created in a different way. For MSIs, peer pressure is a crucial component. Finally, we identified membership as an indicator for the degree of institutionalisation. As the case study on the EITI demonstrated, this indicator is crucial for safeguarding the credibility of MSIs. A high degree of membership is the precondition for being able to create obligation (through peer pressure) as well as monitoring and enforcement. As discussed in Chapter 7, the LM-Group of the EITI was hesitant over whether to actually implement its enforcement mechanisms, knowing it was lacking widespread support. Membership therefore is the linchpin of the institutionalisation of MSIs.

Figure 11 summarises and compares the institutional design of the KP and the EITI. We can see that both MSIs differ quite substantially in all but one indicator.[158] Of course, the analysis of to what extent MSIs differ from each other does not push knowledge about the potential success of new forms of governance very far. The more crucial question deriving from the assessment of institutional design is – how can we account for the variance? The following sub-chapter summarises the findings of thesis on its main research question.

[158] By the time this research project had started, the discrepancy in the institutional design of the two MSIs was even greater as the EITI was still lacking the monitoring provisions. As we noted in Chapter 7, the EITI LM-Group is trying to push the MSI towards stronger institutionalisation. However, it is questionable whether the EITI will reach the high degree of the KPCS.

	KP	ETIT
Membership	**High**	**Low**
- Membership	- Global	- Restricted
- Application procedures	- Yes	- No
- Level of inclusion	- High	- Low
Obligation	**High**	**Moderate**
- Type of obligation	- Performance based	- Performance based
- Creation of obligation	- Peer pressure	- Peer pressure
- Clarity	- Yes	- Yes
- Coherence with other rules	- Yes	- Yes
- Technical assistance	- Yes	- Yes
- General applicability	- Yes	- No
- Notion of necessity	- Yes	- No
Monitoring	**High**	**High**
- Monitoring included	- Yes	- Yes (since October 2006)
- Mandatory or voluntary	- Voluntary, de-facto mandatory	- Mandatory
- Who	- Second-party	- Third-party
- Systematic & continuous	- Yes	- Yes
- Publication of reports	- Yes	- Yes
Enforcement	**High**	**Low**
- Type of enforcement	- Exclusion	- Exclusion
- Consequences	- Exclusion from legal trade	- None
- Naming & shaming practices	- Yes, on website & NGOs	- No, only NGOs
- IFI mainstreaming	- No	- No
Overall	**High**	**Low**

Figure 11 Assessing and Comparing the Institutional Designs of the KP and the EITI

8.2 Political Opportunity Structures and Norm Diffusion in the Regulation of Oil Revenues and the Diamond Trade

This thesis argued for a distinctive approach to accounting for the institutional design of the EITI and the KP. Starting with the ontologist assumption of boundedly rational actors, I adopted a multi-dimensional framework that focused both on POS and agency-centred political strategy to explain the success or failure of the diffusion of the new transparency norm. Strong institutionalisation is explained by the confluence of favourable POS and norm entrepreneurs who are able to successfully map and exploit those circumstances by using political strategies such as framing and structural power. In the case of weak institutionalisation, norm opponents were able to map and exploit favourable POS.

Why was the development of such an approach necessary? After all, there are two mainstream theories that have previously been used to explain the institutional design of intergovernmental regimes. Before summarising the main findings of the thesis I wish to revisit three alternative explanations: neo-realism, neo-liberal institutionalism and the specific product characteristics to explain institutional design. By critically reviewing these explanations I can point to the added value of my own approach.

8.2.1 Revisiting Alternative Explanations

Neorealism is highly sceptical about the relevance of international institutions to global politics, and therefore has little to say about their design (Morgenthau 1953; Waltz 1979). However, some realists consider international institutions as tools for powerful states to further their influence and self-interest in global politics (e.g. Carr 1946). Pure coercion is costly and not always in the interests of the hegemon. The creation of international institutions can therefore be explained by the aim of the hegemon to strengthen its primary role in the international economic system without having to bear the costs of unilateral action. To what extent can this approach be used to explain the institutional design of the KP and the EITI? Without doubt, the US is the most powerful actor in the international system, but would it be interested

in regulating diamond trade or setting rules for revenue disclosure in resource-rich countries? As for the latter, the US does actually have an interest. It is not only home to many big IOCs but it also has the world's biggest demand for oil imports. Satisfying this demand is crucial for the US to ensure economic growth and maintain its military leadership. Although roughly 35 percent of American oil imports stem from the Middle East and Latin America, the US is very interested in oil from Africa and the Caspian Sea Region, in order for it to diversify its imports.[159] American IOCs especially have in the past made huge bids and invested vast amounts in oil exploration infrastructure in both regions. The nature of the petro-states with their great likelihood for conflict is therefore a danger to US commercial interests. Creating international institutions that contribute to stabilising the political and economic climate in Africa and the Caspian Sea Region should therefore be of interest to the US. According to this, we can conclude that the US actually should have contributed to a strong institutionalisation of the EITI. With regard to the KP, although the US jewellery market is the biggest in the world, it does not contribute significantly to the GDP of the US economy (Even-Zohar 2002). Having no stake in the upstream diamond industry, a strong KPCS does not further any US interests. Overall, using the power-based approach would actually explain a different outcome, a strong EITI and a weak KP.[160] Overall, neorealism as a structural theory does not attempt to make explicit predictions of specific cases (Waltz 1986). The same can be said about the Neo-Gramscian approach, which we discarded as a possible theoretical account in Chapter 1.

Neo-liberal institutionalism starts from the assumption that rational actors strive to create institutions as cooperation maximises their own benefits. Therefore, actors want to design the institution in such a way that it deals most effectively with the policy problem. The institutional design should therefore be similar according to the issue at stake. Collaboration problems, for instance, are created as the incentive for free-riding and cheating prevents cooperation. When designing institutions that tackle collaboration problems, actors therefore aim at formalising the institutions to

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[159] In contrast, the US imports an estimated 14 percent of its oil supply from West Africa and 3.4 percent from the former USSR. The percentages are based on the data given at the BP Statistical Review 2008 (BP 2008). Data from inter-area movements is taken from 2007.

[160] As explained in Chapter 7, for the US, the stabilisation of both regions is important, so it actually does not want to rely on multilateral cooperation but rather on their military policies.

prevent cheating. We should therefore have a closer look at the case study design and the policy issue concerned. The two cases were intentionally chosen to control for the policy issue. Both institutions address the 'resource curse' by aiming at mitigating the potential for conflict in resource-rich developing countries. Arguably, it was ultimately the actors in the countries concerned who were responsible for the conflicts. In the case of diamonds, rebels used the precious stones to fund their battle against the governments in civil wars which were started not because of diamonds but for other political reasons, long before the rebels discovered the gems as a financial resource. With regard to oil, corrupt elites seek to misappropriate revenues for their own enrichment rather than using them for the economic development of their country. Nevertheless, the extractive industries have to bear a share of responsibility as the way in which they operate enables conflict agents in the countries to misappropriate the resources. The underlying problem of both cases was industry opacity, which served as an enabling factor for conflict. So as to curtail this opacity, both initiatives aim to make industry operations more transparent. The KPCS concentrates on tracking to the origin of the goods entering the legal trade. Moreover, for the first time in the history of the diamonds trade, producer and consumer countries now publish and monitor trade statistics to prevent smuggling. The EITI focuses on the revenue side in the trade in natural resources by requiring both host governments and companies to publish what they pay or receive. In implementing countries, civil society groups are able for the first time to hold their governments to account over how they use the oil revenues. Although both initiatives differ in the substantive content of their regulation, central to both is a collaboration problem. If all companies and countries do not participate in the initiatives, free-riders may gain immensely from cheating. We should expect that rational, efficiency-seeking actors create the two institutions alike with respect to the indicators, so as to prevent cheating and free-riding. Given the different outcomes we can therefore conclude that neo-liberal institutionalism fails to account for the outcome.

The last alternative explanation I want to discuss concerns product characteristics as an industry opportunity structure. We have already alluded to this several times. Despite important similarities, there have been noticeable differences since the beginning of the institutionalisation process of the KP and the EITI. Most strikingly, the initiatives deal with products whose characteristics could not differ more. Oil is the most crucial single commodity that sustains the global economy. In

contrast, notwithstanding the important contribution of the diamond industry to the economy of the producing countries, the stones are – economically speaking – not important for the world economy. The value of diamonds is constructed by the notion of scarcity and their reputation as tokens for enduring love. Given this very important difference should we not expect *this* to be the explanation for the variation of the institutional design of the KP and the EITI? The difference in the product characteristics might provide an industry opportunity structure, empowering or disempowering civil society. As the diamond industry's profits depend on the untainted reputation of their products and diamonds are not vital goods for daily industrial and personal life, organising a boycott would have been easy. Other campaigns against luxury products, such as fur, could already demonstrate this. By framing the stones as conflict diamonds, the epistemic community targeted the weakest spot in the industry. It is therefore conceivable that the diamond industry agreed to strong institutionalisation to protect its revenues. According to such an interpretation, the oil industry could not be put under pressure as it deals with a commodity without which we cannot carry out our daily lives. Lovers might stop considering a diamond ring as a romantic present confronted with media coverage of bloody civil wars in Africa, but would consumers really stop buying petrol because PSAs enable the misappropriation of oil revenues in resource-rich countries? Using its structural power, the oil industry was able to constrain strong institutionalisation.

The empirical evidence clearly does not support such an interpretation as both industries reacted very quickly to the pressure campaigns. The Conflict Diamonds Campaign started near the end of 1998 and De Beers began to take a proactive stance in March 2000. Two months later the stakeholders met for the first time in Kimberley. Given that oil is a strategic commodity, we would expect the oil industry to take longer to react to activist pressure. Global Witness wrote its first report on revenue transparency in 1999. Already by 2001, the NGO had won BP as a supporter which subsequently disclosed payments to the Angolan government for oil concessions (Gary and Karl 2003). The PWYP campaign was officially launched in June 2002 and already by March 2003 the stakeholders had met for the first EITI meeting in London. Notwithstanding the differences in product characteristics, both industries reacted quite quickly in light of the emerging civil societal criticism. That the diamond industry was more vulnerable than the oil industry cannot be confirmed.

Therefore, product differences were not as important as it might seem at first glance. The above alternative explanation clearly overestimates the power of the oil industry vis-à-vis civil society pressure by lumping together different companies with varying ownership structures. The neo-pluralist conception of business coupled with an analysis of the consumer-producer relations introduced in Chapter 3 helps to explain the times when companies are vulnerable to civil society activism. The more companies invest in branding and have contacts with consumers, the more they can be pressured by them. This explains why vertically integrated oil companies like BP and Shell have already been successfully targeted by NGOs in the past. Shell especially provides a very good example for this. The company had to review its practices in light of consumer pressure. Reiterating the example of Shell planning to dump Brent Spar into the North Sea, Greenpeace Germany called for a boycott of Shell service stations. Consequently, the company's sales dropped by a remarkable 30 percent and Shell introduced a new policy on sustainability (Neale 1997).[161]

From the above discussion, we can conclude that alternative explanations cannot deepen our understanding of the two.

8.2.2 Summary of the Findings

The inability of the mainstream IR theories to explain the outcome justifies the need for a more refined theoretical account. The approach as outlined at the beginning of this sub-chapter has two advantages. First, by choosing the distinctive POS, it takes both power and normative diversity of the social world into account. Just how crucial a normative account is for explaining the outcome is demonstrated by the third alternative explanation – trying to explain the outcome by looking at product characteristics. As we have noted, the explanation underestimates the importance of the normative framework in which MNCs – even IOCs – are embedded. Moreover, the failure of neo-liberal institutionalism points to the need to integrate power and norms as either a structural driver or constraint for strong institutionalisation. The explanatory power of neo-liberal institutionalism is limited as the focus on

[161] Criticism of Shell's behaviour in Nigeria would be another example of the dependence of IOCs on consumer perceptions.

bargaining and the quest for efficiency of international institutions gives a very incomplete picture of the complex linkages of power and norms that shape the creation of institutions in international politics. However, as the failure of the power-based approach shows, international institutions are also not just a "direct manifestation of the actual relations of social power" (Hurrell 2000: 345). My approach puts a corrective to the oversimplistic assumptions of neo-realism and neo-liberal institutionalism. Second, by combining two levels of analysis, structure and agency, the approach acknowledges the complexity of the social world. This is especially important when examining the negotiations of MSIs, as they involve a broad range of stakeholders from a vast variety of normative, institutional and political backgrounds. Overall, the focus on POS is important as it explains the success and failure of the norm entrepreneurs in diffusing the new transparency norm. We have already noted that the policy issue is similar in both cases, but what makes the two cases even more intriguing for comparison is that the main norm entrepreneurs and their political strategies were similar at the beginning of the initiatives.

The remainder of this section revisits the institutionalisation process of the KP and the EITI by comparing to what extent POS served as drivers or constraints on the political strategy of the norm entrepreneurs to diffuse the transparency norm.

Let us begin by reviewing the similarities in the first phase of institutionalisation in both cases. At the end of the 1990s, the epistemic community, consisting primarily of NGOs and academics, was formed after Global Witness had begun to research the connection between diamonds and war in Angola (Global Witness 1998). In 2002, the same epistemic community formed the basis for the PWYP campaign. Having been very successful in putting conflict diamonds on the international agenda, the epistemic community used the same strategy to lobby for international support on revenue transparency. Thus, the beginning of both campaigns is characterised by the identification of MNCs as the most potent drivers for change and by the use of successful framing strategies to get these actors involved. Being able to re-frame the policy issues and link them to already-established normative frameworks, human security in the case of conflict diamonds and anti-corruption in revenue transparency, was especially important in putting both issues on the international agenda very swiftly. Being able to shape the discourse, the

epistemic community clearly dominated the agenda in the very early phase of institutionalisation in both cases. The discursive power of NGOs was from the very beginning clearly boosted by their creation of a demand for a new institution and their proposing how the new institution should look like. Framing as a political strategy was crucial in obtaining the support of key like-minded governments. In both cases, the UK in particular stands out as a key supporter for strong institutionalisation. We discussed normative match as the reason behind the UK becoming involved. With regard to the KP, Canada as a crucial norm entrepreneur further strengthens the need for an explanation based on the normative match. By the time the KPCS became institutionalised, Canada had emerged as an important diamond producer. Having always been conflict free, Canada would have had a material interest in *not* supporting the KP. The issue of conflict diamonds would have given Canada a competitive edge, enabling it to market its diamonds as a unique Canadian conflict-free brand. For Canada, this would have entailed the specific benefit of being able to make up for a competitive disadvantage, as African diamonds are considered to be of higher quality.[162]

Despite these important similarities, both cases differ from early on in respect to how the MNCs reacted to being the focal point of the pressure campaigns. The diamond industry was largely inexperienced in dealing with such public pressure and needed some time to become proactive. In this case, we can see that changes in the industry structure were crucial for the success of the NGO campaign rather than the activists' political strategy. The confluence of the outside pressure with the historical changes in the industry structure is more important for accounting for the proactive strategy of the diamond industry. De Beers, in particular, recognised early on the potential benefits deriving from the regulation of the diamond trade for its own change in business strategy, and began to drive industrial collective action. This was far from being easy, as the power of De Beers was already on the wane at the time. In the end, De Beers was able to create a momentum for collective action by transferring its influence on the future certification scheme to a newly created industry body, the WDC.

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[162] Angolan diamonds particularly are regarded as being the highest quality in the market (Even-Zohar 2002).

The response of the oil industry to PWYP was very different. As the analysis of the company literature prior to the campaign revealed, uncertainty on the specific problem was not an issue for the IOCs. Revenue transparency already featured in their company reports outlining their specific policies. We discerned a rift regarding the IOC positions on the issue, which was in line with the overall CSR attitudes. The rift, specifically between the US and Anglo-Dutch firms, had arisen because of the firms' diverging positions on appropriate behaviour in host countries. Whereas BP and Shell had adopted a much more proactive policy largely because they had previously been the focus of pressure campaigns, the US IOCs preferred to retreat from a politicised role in order to prevent any public criticism in the first place. Given the different attitudes on this and other CSR issues, coupled with a high level of competition in the field, the IOCs saw no need to engage in collective action. Both groups of companies considered their stance as giving them a competitive advantage over the other group.

We noted in Chapter 1 that uncertainty is crucial for successful norm diffusion by serving as a road map when redefining preferences (Goldstein and Keohane 1993). Uncertainty was the driver for norm diffusion in the case of the diamond industry. We pointed out the great shift the diamond industry underwent between 2000 and 2003 by finally acknowledging that it had to bear a share of responsibility for conflict diamonds. This change of position was partially induced by NGO framing and partially driven by the industry's uncertainty. It was a crucial driver for the institutionalisation of the KP as the support of the diamond industry on issues such as monitoring and enforcement shifted the power balance in favour of the LM-Group. In contrast, the IOCs already had their policies formulated with respect to revenue transparency, which made norm diffusion much more difficult. In the end, the IOCs did not change their position on the issue.

Despite these differences, we can discern further commonalities with respect to NSA strategies to impact the institutional design during the negotiations for the KP and the EITI. We noted that in both cases the NGOs were dominating the agenda at the beginning of the pressure campaigns. During the negotiations, however, the discursive power of the NGOs decreased whereas the MNCs could increase their clout. In comparing the two cases we can recognise a cyclical pattern of who impacts and when. The NGOs clearly have an advantage when it comes to agenda-setting and

raising awareness. This is not a new finding, as the literature on world civic governance has pointed to this before (e.g. Wapner 1996; Keck and Sikkink 1998). With further institutionalisation of the initiatives came a greater demand for technological expertise to shape the details of the regulation. In both cases, NGOs and MNCs competed in shaping the technical details of the institutions, trying to convince each other and the states that their own interpretation was the 'better' one. However, the greater demand for technological expertise empowered MNCs to shape institutional design. This finding on political strategy broadens our understanding about the roles of NSAs in the institutionalisation process of MSIs in two ways. First, the finding confirms a conjecture made in Chapter 3 that norm diffusion is multi-dimensional. Rather than being just a social mechanism for norm entrepreneurs to impact politics, norm diffusion should be conceptualised as a contest between norm entrepreneurs and opponents over discourse domination. Both use norms to justify their policy preferences as there is no norm-free space. The finding therefore speaks to neo-pluralists who consider business not in terms of its domination, but as being privileged in certain situations because of its technological expertise. Second, on a more theoretical level, this finding demonstrates that ideas can only be diffused under certain enabling circumstances. The MNCs were only able to increase their discursive power because their ideas were needed by the state elites. We return to this in the following sub-chapter. Arguably, the political strategy of increasing MNCs' discursive power was also important as the case of the diamond industry shows. In this case, the corporate actors were very inexperienced in international political negotiations, so they had to learn when and how to seize the moment to maximise their impact. Overall, this already points to the main finding of the thesis – the dependence of ideas on enabling circumstances.

With regard to states targets of norm diffusion, in the cases we can find both norm opponents and countries supportive of transparency. The KP was backed by South Africa, Namibia and Botswana largely due to their material interests, fearing that the Campaign could lead to a global consumer boycott of diamonds. The EITI could acquire support especially from Azerbaijan and Nigeria, which also wanted to benefit economically from more revenue disclosure. Here, material interests coupled with a normative match with regard to the fight against corruption can account for their backing EITI. In particular, Nigeria could serve as an example where the EITI served as an opportunity for President Obasanjo to strengthen an advantageous

relationship with donor countries and agencies as well as to foster his own fight against corruption by implementing EITI.

Notwithstanding the support the LM-Group received both in the KP and the EITI, the institutionalisation processes were seriously constrained by norm opponents. In both cases, norm opposition can be explained by the differences in the normative frameworks. The KP and the EITI capture a great variety of actors with very different normative and historical backgrounds. While transparency is an established norm in Western countries, many African and Asian countries do not value it as much. However, given that powerful donor countries and agencies embraced transparency and good governance, the norm opponents had to find other ways to legitimise their opposition. As the framing strategies of the LM-Group failed, norm opponents also used this strategy by framing natural resources as strategic commodities. It proved to be an ideal strategy for containing overambitious transparency requirements. Next to framing and inciting learning processes, we identified another political strategy for diffusing the norm, exerting structural power. Whether this political strategy succeeded, however, depended ultimately on the specific set-up of the industry structure providing either entry points or constraints on norm diffusion.

As we noted, both industries experienced structural changes that started just before the two initiatives were created. While in the two cases the changes were the same (formerly powerful agents lose influence in the market), it is the effects of those changes on the market dynamics at the particular point of institutionalisation that differ – and ultimately explain the outcome. When the KP was created, De Beers' power to determine industry action was in decline. A number of former De Beers clients had lost the trust that the Group would further the collective interest of the industry and was not only acting in self-interest. However, in contrast to the oil industry, by the time the KPCS was negotiated, De Beers was not seriously confronted by industry challengers. Canada became the world's third largest diamond producer by value in 2003. Given its positive contribution to the institutionalisation of the KPCS, the emergence of Canada as a major player in the industry did not actually endanger strong institutionalisation. The historical structural changes in the diamond industry that preceded De Beers' decline in power provided opportunities for the group to turn conflict diamonds into an advantage. In contrast,

the change of the industry structure in the oil sector had a profound effect on the power distribution and established normative frameworks. Ultimately, that change affected the degree of institutionalisation of the EITI. As we noted in Chapters 6 and 7, the oil industry has been dominated by increasing competition through a rising demand for access to the resources by new industrial players (globalising Asian NOCs) and growing consumer demand. Among other reasons, this has led to a rising oil price which has reinvigorated resource nationalism in Russia and Latin American countries, further decreasing access to E&P assets for IOCs. The rising competition coupled with higher oil prices empowers host governments vis-à-vis the IOCs. The majority of resource-rich countries oppose greater revenue transparency, as they fear competitive disadvantages when negotiating PSAs with companies. Moreover, we cannot rule out the possibility that some host governments oppose EITI as it closes the potential for enrichment of the political elites. With regard to not like-minded IOCs, we already discussed their opposition in respect to the normative mismatch. More importantly, the development in the oil market provided them with the political opportunity to legitimise their opposition to more transparency. They feared that more requirements for transparency would raise the benefits for those actors that remain outside the EITI, in particular the globalising Asian NOCs.

With regard to opposing governments in the KP, the more favourable industry structure enabled the LM-Group to exert discursive and instrumental power by marginalising norm opponents and inciting adaptation processes. Neither the diamond industry nor the producer countries could exploit structural opportunities to legitimise their opposition. Even more so, 11 September 2001 served as a political opportunity for the LM-Group – not so much because the US considered conflict diamonds funding Al-Qaeda as a real threat to its homeland security – but because the notion of 'terrorist diamonds' brought the terror home to the consumers, affecting the industry.

The political strategies of framing and marginalisation could have been successful in the oil industry too – if only the industry structure had been more favourable. In Chapter 7, we compared the current industry with that in the 1990s, where oil prices were considerably lower and resource-rich countries were in need of FDIs to produce the oil. Given that Chinese NOCs did not provide an outside option, the governments of Chad and Cameroon depended on the Western donor community.

This is the reason why the World Bank was able to successfully create the Chad-Cameroon Pipeline Project, a regionally limited revenue transparency regime.

We can therefore conclude that the empirical evidence confirms the thesis that the degree of institutionalisation is determined by the confluence of political strategy and POS. Could we make the argument that it was simply the variance of structural factors, thereby ignoring the agency part? The answer to this has to be no, as I demonstrated in the KP case that structure was an enabling factor, but strategy was crucial for achieving specific institutional design features. Particularly, the strategy to force adaptation through structural power after the launch of the KPCS shows deliberate intention on the part of the LM-Group to strengthen the institutional design. In contrast, the analysis of the EITI focused on unfavourable POS which put constraints on the ability of the LM-Group to diffuse the norm and gave norm opponents more leverage to oppose strong institutionalisation.

8.3 Implications for the Findings for Debates in IPE

The cases point to the importance of further study regarding the institutionalisation of new forms of governance and the role of norms in IR. In this thesis, we looked at two very specific institutions in the extractive industry. Nevertheless, the findings allow us to draw some general conclusions, thus contributing to the current debates in IPE and IR theory. I concentrate on three themes which have been crucial in my thesis.

First, the thesis advances our understanding of the institutional variety of new forms of governance and thus speaks both to critics and supporters of global governance. With the multiplicity of new institutions, global governance as such changes its character by giving rise to a complex and multilayered legalization (Brütsch and Lehmkuhl 2007). However, in contrast to traditional intergovernmental governance, political agency is fragmented. Furthermore, with global governance, consensual forms of law, such as soft law, become more prominent. The features of the "complex sovereignty" (Pauly and Grande 2005) have already been well-researched. Yet, both scholars and practitioners have only scant knowledge of the conditions for success for international institutions – particularly in the realm of new

forms of governance. Sceptics of global governance have repeatedly criticised new forms of governance as ineffective since they lack the legally binding elements of hard law. I challenged this view by assessing the institutional design of two MSIs. Based on the analytical framework I developed from existing institutional design theories and the global governance literature, I demonstrated that new forms of governance exist in great institutional variety, ranging from weakly to very strongly institutionalised initiatives. In doing so, the thesis contributed to a better theoretical understanding of new forms of governance. Soft law agreements are not *per se* weak regulatory institutions. Rather, it depends on the specific institutional set up of the requirements. Thus, global governance is able to produce 'institutions with teeth' even if it is confined to the soft law approach. In summary, my findings reveal the need for further research. While much energy in IPE has been spent on describing new forms of governance and accounting for why they emerge, we now need to move on, explaining why some of the institutions were able to generate strong institutional designs whereas others were not. While my thesis contributes to that new endeavour, we now have to broaden the empirical focus by conducting more comparative case studies. We need to reveal institutional diversity of new forms of governance, looking at which institutional design features are sector-specific and which are more universal.

Considering the growing role of NSAs in global politics, to what extent does that mean that the state is in "retreat" (Strange 1996)? As I argued in Chapter 2, the emergence of NSAs reconfigures – but does not diminish – state power and authority. Compared to other new forms of governance such as industrial self-regulation and private-private partnerships, MSIs actually recapture state power. As we were able to see from the case studies, states were crucial for the institutionalisation of the KP and the EITI. In both cases, NSAs first tried to find a solution for themselves. It is at these he EITI is most instructive on, as Global Witness and BP worked towards voluntary disclosure of IOCs as a global standard. Yet, given the policy issue and not least the role of producer states, private governance was not an option. Natural resources are more than any other product subject to state sovereignty by international law. It is therefore not surprising that producer countries defended their right to have a say in setting up regulations. Overall, the case studies demonstrated that although states failed to produce an

intergovernmental hard law agreement, they must still be part of the solution. Private governance has as yet failed to produce reliable solutions. Many CSR initiatives lack appropriate compliance and enforcement mechanisms. MSIs are a third way between public and private governance. Their advantages are manifold. They integrate the structural power of MNCs and the discursive power of NGOs. States are able retain their regulatory power, but in a different way. They are no longer the sole actors negotiating rules, but they are crucial as they ensure legitimacy and the institutional setting. Ultimately, states are able to retain their power and authority since they decide which NSA joins the initiative and how much autonomy the actor should have. It is in this regard that states still retain control over global governance (for a different view see Drezner 2007a).

Last but not least, this thesis contributes to the debate on IR theory by criticising mainstream theories as being too simplistic to account for the institutional variance of MSIs. On a more general level, by looking at the issue of institutional design the study also contributed to research on the role of ideas and norms in IR. Reviewing mainstream IR theories, we criticised neorealism for overestimating power as a direct manifestation of social control in international relations. Power manifests itself in much more subtle ways than direct imposition. Social power establishes itself in the hegemonic discourses and social norms that govern international institutions. With its emphasis on coercion and imposition, neorealism lacks the analytical tools to understand that social component of political power. To solve these issues, neo-liberal institutionalism overestimates the human capacity to fully understand complex issues and the consequences of their actions. Actors might seek to design institutions in an effective way, but what they consider as effective depends on their adopted normative frameworks with which they interpret the policy issue and for which they seek solutions. The concept of bounded rationality – according to which actors do not dispose of complete knowledge and the time to evaluate all options when designing institutions – makes our framework much more grounded in the reality of daily political and social life. The case studies emphasised that the uncertainty as to how to best design MSIs was very high. Looking at other examples, such as the global climate regime or the attempt to regulate novel technologies such as nanotechnology, actors always have to make decisions about institutional design features without being able to fully assess their consequences. Moreover, the institutional choice also depends on their position in the international

system. Powerful actors have more choices at hand than weaker ones. Considering these criticisms, constructivism might be the solution. However, when looking at this approach we noted that it falls short of delivering the evidence for its assumptions. For instance, the landmark study on socialisation by Risse et al. (1999) could not provide evidence for norm adoption and internalisation without acknowledging that a power shift ultimately accounted for the establishment of human rights as accepted norms. To give another example, Deitelhoff and Müller (2005) recently conceded that they failed to find evidence for the empirical distinction between constructivist arguing and instrumentalist bargaining. Both appeared simultaneously in international negotiations.

Given the methodological issues, I discarded a pure constructivist framework for this thesis. That ideas and norms matter in international relations remains uncontested. In light of the constructivist pitfalls and methodological issues, I chose to contribute to the thin rationalist understanding of *how* norms and ideas matter. I advanced a very distinct understanding of norm diffusion by looking at POS either driving or constraining norms. Thus, on a fundamental level, I argued that ideas can have diverging impacts in different structural settings. The case studies have shown that ideas sometimes do not make their way through as they can become constrained both by material and normative factors. As Ikenberry (1993) pointed out, many good ideas will never become accepted as norms of international society, while many bad norms have been around for a long time. The thesis therefore confirms and contributes to existing thin rationalist research arguing that "ideas and normative frames cannot be examined without specifying whose interests they serve" (Sell and Prakash 2004: 168; see also Ikenberry 1993). In this respect, ideas are very fragile. The case studies could show that norm entrepreneurs create policy crises themselves, in which norm opponents are uncertain about their behavioural options. It is in these crucial turning points that the practical value of new ideas at that particular point of time causes ideas to become sufficiently powerful so as to become accepted in the normative framework. Actors, however, whether they are stakeholders of MSIs or states in intergovernmental negotiations, come from very different normative and historical backgrounds. By conceptualising normative frameworks and power relations in the specific market as POS, my approach acknowledges the complexity of the social world. Norm entrepreneurs also have to take into account that different strategies of diffusing norms might work with different actors. Therefore, when

looking at the agency side of the framework, we could see that structural power was also a crucial strategy. Powerful actors are able to subtly impose new ideas by institutionalising them as norms in institutions, therefore forcing weaker actors to adapt to the new political environment. Yet, in cases of unfavourable POS or inept norm entrepreneurs, ideas will forever remain as just ideas.

Overall, my argument calls for more cooperation of rationalist and constructivist informed research. A thin rationalist understanding holds that accepted norms are the ideas of those in power, but the constructivist informed concept of framing as a political strategy is crucial for understanding how new ideas become accepted as norms. Framing is a form of discursive power that exploits the link with existing normative frameworks. Agents are therefore crucial in the analysis as they can let those opportunities pass unless the appropriate strategy is used. Constructivism is right in arguing that international society is not a norm-free space. The case studies pointed to norm opponents who use the same strategies as norm entrepreneurs to further their own policy preferences. They do so by framing established norms, thus making them more resilient to normative change. In conclusion, norm diffusion is a contest between new ideas and established normative frameworks.

8.4 Outlook: Further Directions for Research

As mentioned in Chapter 1, the study was constrained by a number of limitations. This was important for maintaining the analytical focus and elaborating a parsimonious theoretical account. However, both the insights and limitations of this study suggest promising avenues for further research.

The first concerns the analytical framework to assess the institutional design of MSIs. As I established in the thesis, MSIs exist in a great institutional variety ranging from weakly to strongly institutionalised initiatives. Since the study concentrated on one industry sector, the question arises whether in some sectors low institutionalisation occurs more often than in others. For instance, in the financial sector both the Wolfsberg Principles and the Equator Principles are only weakly institutionalised whereas in the apparel industry very elaborate certification schemes have evolved since the late 1990s (Social Accountability International, Fair Labor

Association and the Worldwide Responsible Apparel Production) (Meidinger 2007). The question therefore arises whether commonalities and differences in the industry sectors provide structural opportunities for weak or strong institutionalisation.

Secondly, moving on to the theory for accounting for the institutional design of MSIs, I argued in Chapter 1 that my framework would not be a definite conclusion on the validity of my hypotheses. The research was only based on a *small-n* case study design so the aim was to develop a first step towards an institutional design theory on new modes of governance. In order to test and refine the conjectures made in the above, the focus needs to be extended to a broader selection of cases. Again, combining several cases from different industry sectors, for instance, the sustainable logging and fisheries, would present a promising step towards testing and refining my theoretical approach.

Finally, with regard to the emergence and diffusion of new ideas, the study has mostly concentrated at the international level. However, as Risse-Kappen (1994) emphasises, ideas do not float freely at the international level. Often, they emerge in a national setting and only later diffuse to the international level. To give a more coherent picture of how new ideas successfully emerge (or not), it is important to study how the actors at the national and international level interact. One model that successfully integrated the two levels is Putnam's (1988) 'two-level game'. It seeks to organise the interaction between domestic and international factors in negotiations. In the case of the EITI, for example, revenue transparency was an issue that had been discussed among national policy-makers and NGOs long before it was put on the global agenda. Early on, revenue transparency was discussed as a domestic policy issue in the context of poverty reduction between the UK Cabinet Office and Global Witness. At the time poverty reduction in Africa was one focus of New Labour's foreign policy. It was only when BP and Shell joined the discussions emphasising the international competitive constraints of IOCs and Global Witness began to draw in US State Department Officials that the UK began to understand the issue as an international one. Applying Putnam's two-level game and analysing in more detail the very early phases of norm emergence in the KP and EITI would help us to shed more light on how new ideas are successfully created by norm entrepreneurs.

8.5 Whither CSR in the Next Phase of Globalisation?

I conclude this thesis with a discussion of the practical implications of the findings regarding the challenges and opportunities for CSR in the next phase of globalisation.

Governance gaps provide the roots for a "permissive" environment in which MNCs can commit harmful acts without being held accountable (UN Human Rights Council 2008). Like the problem, the solution, CSR, is a product of the globalisation of neo-liberal ideas and the anti-globalisation movement. For states, CSR seems like a convenient way of outsourcing costly public regulation. For companies, CSR is a way to counter and pre-empt NGOs' criticism. Hence, in the last decades, numerous codes of conduct and private-private partnerships have emerged which were supposed to set new standards for corporate behaviour. Only recently, the initiatives have become more sophisticated. This subsequent phase, which I would call the 'second generation CSR', moved from codes of conduct and private regimes to the quasi-legal arrangements as discussed in this thesis. Chapter 1 referred to John Ruggie (2001), who designed the Global Compact as a learning forum without any monitoring and enforcement mechanisms. I was curious whether my research could support such a constructivist hypothesis. However, the empirical evidence of the case studies demonstrated that learning and the diffusion of ideas is dependent on circumstantial factors such as the industry structure or whether there is a demand for new ideas. CSR initiatives therefore should not rely solely on 'soft' norm diffusion like learning. The more sophisticated 'second generation CSR', which increasingly relies on stricter monitoring and enforcement regimes, is therefore an important opportunity for embedding corporate responsibility into the global normative framework

However, the greater institutionalisation and sophistication of CSR should not conceal the fact that there is still a political struggle over the meaning of corporate responsibility. The cases of both diamonds and the oil demonstrate this discursive contest between NGOs and business, with each having a different understanding of its meaning. Whichever one is more powerful in shaping that discursive struggle will be able to dominate the debate in the coming decades. It remains to be seen whether the report on the framework for business and human rights written by the Special

Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (SRSG), John Ruggie (UN Human Rights Council 2008) makes an authoritative contribution towards filling the concept with more meaning.

There is good and bad news about CSR in the current phase of globalisation. Whether or not CSR is successful is still a contested issue (e.g. Frynas 2005; Blowfield 2007), but at the most general level we can attest that the social demand for more responsibility on behalf of Western consumers guarantees that managers in the boardrooms will continue to engage with CSR policies. The greater sophistication of international initiatives gives evidence for that increasing social demand. Moreover, for many companies, most certainly in the extractive industries, CSR has become a tool for political risk management. Given the increasing demand for natural resources, companies are forced increasingly to access resources in politically sensitive areas. However, more companies are forced to concede that they cannot afford to take the risks of operating in inhospitable environments – a development which accounts for allegedly dwindling operations onshore in Nigeria (The Economist 2008c).

In this thesis I have drawn attention to a change in the structure of the political economy of the 21st century in which Asia re-emerges as a new player. We noted that NOCs, not being vertically integrated, are independent from the Western social demand regarding CSR. We can generalise this insight by looking at developments in other industry sectors. In the financial services sector, for instance, the same development takes place where Chinese state-owned banks venture to finance projects and companies that Western banks would no longer touch (Newton 2006). As in the extractive industries, Chinese banks thereby undermine newly developed standards such as the Equator Principles.

This thesis has argued that CSR initiatives, if cleverly designed, have the potential of developing into soft law with teeth, but considering that CSR is still a discursive struggle, is the second generation of CSR doomed to falter in light of powerful norm opponents such as China, India and Russia? At least when looking at the case of EITI, this seems to be a reasonable concern.

Arguably, the emerging multi-polar structure of the political economy provides a challenge for the future of CSR. Most emerging economies do not have well funded and well staffed advocacy organisations like Global Witness, who can

hold their globalising firms to account. Whilst being a danger to the global adoption of CSR, a new debate on its added-value can also be exploited as an opportunity. I suggest two ways of safeguarding CSR in the next phase of globalisation. First, NGOs, Western governments and donor agencies should put more emphasis on the business case for CSR rather than on the moral imperative. In the extractive industries, conflict-ridden Africa in particular places high demands on the practices of the operating MNCs. The more companies from emerging economies choose to operate in these regions, the more they will be exposed to the same structural constraints and political risks as their Western peers. Already now, Chinese oil workers face the same level of violence as Shell employees (Agence France Presse 2007). In the long run, Chinese firms will look for ways to limit political risks to their investments.[163] Western actors should be prepared to frame CSR as an answer to this risk. Second, the strategy of Western advocacy must change. We noted that international advocacy networks such as PWYP do not have access to MNCs from emerging economies. Shareholder activism, which is already quite successful in the Western hemisphere, might prove more successful in targeting at least emerging economies' listed companies. A recent example is provided by activists who forced a Western fund to sell most of its US holdings in PetroChina to protest against the companies operations in Darfur, Sudan (McGregor 2007). Hence, while the next phase of globalisation creates crucial challenges for CSR, it is within our power to turn these challenges into opportunities.

[163] Another example is the Indian mining industry, which is beginning to consider the concern of local communities when planning a new project (Litvin and Kantz 2007).

Appendix 1: List of Interviews

Kimberley Process

Ambassador J.D. Bindenagel, US State Department, former Special US Negotiator for "Conflict Diamonds". Chicago on 2 March 2007.

Mark van Bockstael, High Diamond Council, Director/ HRD International Affairs & Trade. Antwerp, Telephone Interview on 8 September 2006.

Stephane Chardon, European Commission, Directorate General for External Relations. Brussels on 16 May 2007.

Kim Eling, European Commission, Geneva, formerly Directorate General for External Relations. Telephone Interview on 3 May 2007.

Cecilia Gardner, Jewelers Vigilance Committee, President and CEO. New York on 8 March 2007.

Simon Gilbert, De Beers, External Affairs. London, on 10 August 2006 and Follow-up Interview. London on 12 September 2006.

Matt Runci, Jewelers of America, President and CEO. New York on 7 March 2007.

Sue E. Saarnio, US State Department, Special Advisor for Conflict Diamonds. Washington D.C. on 6 March 2007.

Ian Smillie, Partnership Africa Canada. Ottawa, Telephone Interview on 12 September 2006.

Ben Stride, British Foreign and Commonwealth Office, Government Diamond Office. London on 2 May 2002.

Ton De Vries, European Commission, Directorate General for External Relations. Brussels on 16 May 2007.

Clive Wright, British Foreign and Commonwealth Office, Embassy Washington. D.C. Telephone Interview on 24 July 2006, and Follow-up Interview in Washington, D.C. on 6 March 2007.

Alex Yearsley, Global Witness. London on 30 January 2006.

EITI

Graham Baxter, BP, Vice President for Corporate Responsibility, member of IAG and EITI Board. London on 7 June 2007.

Gavin Hayman, Global Witness, member of IAG and EITI Board. London on 13 September 2006.

Khatira Iskender, BP, former BP Community Relations Manager in Azerbaijan. London on 31 July 2007.

John Kelly, ExxonMobil, Coordinator, Upstream Policy Issues, Public Affairs, member of EITI Board. Houston, Telephone Interview on 8 August 2007.

Karin Lissakers, Revenue Watch Institute, Director, member of IAG and EITI Board. New York, Telephone Interview on 22 July 2007.

Julie McCarthy, Revenue Watch Institute. New York, Telephone Interview, on 30 May 2007.

Charles McPherson, IMF, formerly World Bank. Washington, D.C. on 6 March 2007.

Ben Mellor, UK Department for International Development, former Head of EITI Secretariat. London, Telephone Interview on 2 February 2007.

Sarah Pray, PWYP Washington, US Coordinator, D.C. Telephone Interview on 3 July 2007.

Henry Parham, PWYP International Coordinator. London on 23 July 2007.

Hattie Park, Lehman Brothers, Sustainability. London on 27 June 2008.

Anwar Ravat, World Bank. Washington, D.C. on 5 March 2007.

Appendix 2: Kimberley Process Certification Scheme

PREAMBLE

PARTICIPANTS,

RECOGNISING that the trade in conflict diamonds is a matter of serious international concern, which can be directly linked to the fuelling of armed conflict, the activities of rebel movements aimed at undermining or overthrowing legitimate governments, and the illicit traffic in, and proliferation of, armaments, especially small arms and light weapons;

FURTHER RECOGNISING the devastating impact of conflicts fuelled by the trade in conflict diamonds on the peace, safety and security of people in affected countries and the systematic and gross human rights violations that have been perpetrated in such conflicts;

NOTING the negative impact of such conflicts on regional stability and the obligations placed upon states by the United Nations Charter regarding the maintenance of international peace and security;

BEARING IN MIND that urgent international action is imperative to prevent the problem of conflict diamonds from negatively affecting the trade in legitimate diamonds, which makes a critical contribution to the economies of many of the producing, processing, exporting and importing states, especially developing states;

RECALLING all of the relevant resolutions of the United Nations Security Council under Chapter VII of the United Nations Charter, including the relevant provisions of Resolutions 1173 (1998), 1295 (2000), 1306 (2000), and 1343 (2001), and determined to contribute to and support the implementation of the measures provided for in these resolutions;

HIGHLIGHTING the United Nations General Assembly Resolution 55/56 (2000) on the role of the trade in conflict diamonds in fuelling armed conflict, which called on the international community to give urgent and careful consideration to devising effective and pragmatic measures to address this problem;

FURTHER HIGHLIGHTING the recommendation in United Nations General Assembly Resolution 55/56 that the international community develop detailed proposals for a simple and workable international certification scheme for rough diamonds based primarily on national certification schemes and on internationally agreed minimum standards;

RECALLING that the Kimberley Process, which was established to find a solution to the international problem of conflict diamonds, was inclusive of concerned stake holders, namely producing, exporting and importing states, the diamond industry and civil society;

CONVINCED that the opportunity for conflict diamonds to play a role in fuelling armed conflict can be seriously reduced by introducing a certification scheme for rough diamonds designed to exclude conflict diamonds from the legitimate trade;

RECALLING that the Kimberley Process considered that an international certification scheme for rough diamonds, based on national laws and practices and meeting internationally agreed minimum standards, will be the most effective system by which the problem of conflict diamonds could be addressed;

ACKNOWLEDGING the important initiatives already taken to address this problem, in particular by the governments of Angola, the Democratic Republic of Congo, Guinea and Sierra Leone and by other key producing, exporting and importing countries, as well as by the diamond industry, in particular by the World Diamond Council, and by civil society;

WELCOMING voluntary self-regulation initiatives announced by the diamond industry and recognising that a system of such voluntary self-regulation contributes to ensuring an effective internal control system of rough diamonds based upon the international certification scheme for rough diamonds;

RECOGNISING that an international certification scheme for rough diamonds will only be credible if all Participants have established internal systems of control designed to eliminate the presence of conflict diamonds in the chain of producing, exporting and importing rough diamonds within their own territories, while taking into account that differences in production methods and trading practices as well as differences in institutional controls thereof may require different approaches to meet minimum standards;

FURTHER RECOGNISING that the international certification scheme for rough diamonds must be consistent with international law governing international trade;

ACKNOWLEDGING that state sovereignty should be fully respected and the principles of equality, mutual benefits and consensus should be adhered to;

RECOMMEND THE FOLLOWING PROVISIONS:

SECTION I

Definitions

For the purposes of the international certification scheme for rough diamonds (hereinafter referred to as "the Certification Scheme") the following definitions apply:

CONFLICT DIAMONDS means rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments, as described in relevant United Nations Security Council (UNSC) resolutions insofar as they remain in effect, or in other similar UNSC resolutions which may be adopted in the

future, and as understood and recognised in United Nations General Assembly (UNGA) Resolution 55/56, or in other similar UNGA resolutions which may be adopted in future;

COUNTRY OF ORIGIN means the country where a shipment of rough diamonds has been mined or extracted;

COUNTRY OF PROVENANCE means the last Participant from where a shipment of rough diamonds was exported, as recorded on import documentation;

DIAMOND means a natural mineral consisting essentially of pure crystallised carbon in the isometric system, with a hardness on the Mohs (scratch) scale of 10, a specific gravity of approximately 3.52 and a refractive index of 2.42;

EXPORT means the physical leaving/taking out of any part of the geographical territory of a Participant;

EXPORTING AUTHORITY means the authority(ies) or body(ies) designated by a Participant from whose territory a shipment of rough diamonds is leaving, and which are authorised to validate the Kimberley Process Certificate;

FREE TRADE ZONE means a part of the territory of a Participant where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory;

IMPORT means the physical entering/bringing into any part of the geographical territory of a Participant;

IMPORTING AUTHORITY means the authority(ies) or body(ies) designated by a Participant into whose territory a shipment of rough diamonds is imported to conduct all import formalities and particularly the verification of accompanying Kimberley Process Certificates;

KIMBERLEY PROCESS CERTIFICATE means a forgery resistant document with a particular format which identifies a shipment of rough diamonds as being in compliance with the requirements of the Certification Scheme;

OBSERVER means a representative of civil society, the diamond industry, international organisations and non-participating governments invited to take part in Plenary meetings; *(Further consultations to be undertaken by the Chair.)*

PARCEL means one or more diamonds that are packed together and that are not individualised;

PARCEL OF MIXED ORIGIN means a parcel that contains rough diamonds from two or more countries of origin, mixed together;

PARTICIPANT means a state or a regional economic integration organisation for which the Certification Scheme is effective; *(Further consultations to be undertaken by the Chair.)*

REGIONAL ECONOMIC INTEGRATION ORGANISATION means an organisation comprised of sovereign states that have transferred competence to that organisation in respect of matters governed by the Certification Scheme;

ROUGH DIAMONDS means diamonds that are unworked or simply sawn, cleaved or bruted and fall under the Relevant Harmonised Commodity Description and Coding System 7102.10, 7102.21 and 7102.31;

SHIPMENT means one or more parcels that are physically imported or exported;

TRANSIT means the physical passage across the territory of a Participant or a non-Participant, with or without transhipment, warehousing or change in mode of transport, when such passage is only a portion of a complete journey beginning and terminating beyond the frontier of the Participant or non-Participant across whose territory a shipment passes;

SECTION II

The Kimberley Process Certificate

Each Participant should ensure that:

(a) a Kimberley Process Certificate (hereafter referred to as the Certificate) accompanies each shipment of rough diamonds on export;

(b) its processes for issuing Certificates meet the minimum standards of the Kimberley Process as set out in Section IV;

(c) Certificates meet the minimum requirements set out in Annex I. As long as these requirements are met, Participants may at their discretion establish additional characteristics for their own Certificates, for example their form, additional data or security elements;

(d) it notifies all other Participants through the Chair of the features of its Certificate as specified in Annex I, for purposes of validation.

SECTION III

Undertakings in respect of the international trade in rough diamonds

Each Participant should:

(a) with regard to shipments of rough diamonds exported to a Participant, require that each such shipment is accompanied by a duly validated Certificate;

(b) with regard to shipments of rough diamonds imported from a Participant:

- require a duly validated Certificate;
- ensure that confirmation of receipt is sent expeditiously to the relevant Exporting Authority. The confirmation should as a minimum refer to the

Certificate number, the number of parcels, the carat weight and the details of the importer and exporter;
- require that the original of the Certificate be readily accessible for a period of no less than three years;

(c) ensure that no shipment of rough diamonds is imported from or exported to a non-Participant;

(d) recognise that Participants through whose territory shipments transit are not required to meet the requirement of paragraphs (a) and (b) above, and of Section II (a) provided that the designated authorities of the Participant through whose territory a shipment passes, ensure that the shipment leaves its territory in an identical state as it entered its territory (i.e. unopened and not tampered with).

SECTION IV

Internal Controls

Undertakings by Participants

Each Participant should:

(a) establish a system of internal controls designed to eliminate the presence of conflict diamonds from shipments of rough diamonds imported into and exported from its territory;

(b) designate an Importing and an Exporting Authority(ies);

(c) ensure that rough diamonds are imported and exported in tamper resistant containers;

(d) as required, amend or enact appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions;

(e) collect and maintain relevant official production, import and export data, and collate and exchange such data in accordance with the provisions of Section V.

(f) when establishing a system of internal controls, take into account, where appropriate, the further options and recommendations for internal controls as elaborated in Annex II.

Principles of Industry Self-Regulation

Participants understand that a voluntary system of industry self-regulation, as referred to in the Preamble of this Document, will provide for a system of warranties underpinned through verification by independent auditors of individual companies and supported by internal penalties set by industry, which will help to facilitate the full traceability of rough diamond transactions by government authorities.

Section V

Co-operation and Transparency

Participants should:

(a) provide to each other through the Chair information identifying their designated authorities or bodies responsible for implementing the provisions of this Certification Scheme. Each Participant should provide to other Participants through the Chair information, preferably in electronic format, on its relevant laws, regulations, rules, procedures and practices, and update that information as required. This should include a synopsis in English of the essential content of this information;

(b) compile and make available to all other Participants through the Chair statistical data in line with the principles set out in Annex III;

(c) exchange on a regular basis experiences and other relevant information, including on self-assessment, in order to arrive at the best practice in given circumstances;

(d) consider favourably requests from other Participants for assistance to improve the functioning of the Certification Scheme within their territories;

(e) inform another Participant through the Chair if it considers that the laws, regulations, rules, procedures or practices of that other Participant do not ensure the absence of conflict diamonds in the exports of that other Participant;

(f) cooperate with other Participants to attempt to resolve problems which may arise from unintentional circumstances and which could lead to non-fulfilment of the minimum requirements for the issuance or acceptance of the Certificates, and inform all other Participants of the essence of the problems encountered and of solutions found;

(g) encourage, through their relevant authorities, closer co-operation between law enforcement agencies and between customs agencies of Participants.

Section VI

Administrative Matters

MEETINGS

1. Participants and Observers are to meet in Plenary annually, and on other occasions as Participants may deem necessary, in order to discuss the effectiveness of the Certification Scheme.

2. Participants should adopt Rules of Procedure for such meetings at the first Plenary meeting.

3. Meetings are to be held in the country where the Chair is located, unless a Participant or an international organisation offers to host a meeting and this offer has been accepted. The host country should facilitate entry formalities for those attending such meetings.

4. At the end of each Plenary meeting, a Chair would be elected to preside over all Plenary meetings, *ad hoc* working groups and other subsidiary bodies, which might be formed until the conclusion of the next annual Plenary meeting.

5. Participants are to reach decisions by consensus. In the event that consensus proves to be impossible, the Chair is to conduct consultations.

ADMINISTRATIVE SUPPORT

6. For the effective administration of the Certification Scheme, administrative support will be necessary. The modalities and functions of that support should be discussed at the first Plenary meeting, following endorsement by the UN General Assembly.

7. Administrative support could include the following functions:

a) to serve as a channel of communication, information sharing and consultation between the Participants with regard to matters provided for in this Document;
b) to maintain and make available for the use of all Participants a collection of those laws, regulations, rules, procedures, practices and statistics notified pursuant to Section V;
c) to prepare documents and provide administrative support for Plenary and working group meetings;
d) to undertake such additional responsibilities as the Plenary meetings, or any working group delegated by Plenary meetings, may instruct.

PARTICIPATION

8. Participation in the Certification Scheme is open on a global, non-discriminatory basis to all Applicants willing and able to fulfill the requirements of that Scheme.

9. Any applicant wishing to participate in the Certification Scheme should signify its interest by notifying the Chair through diplomatic channels. This notification should include the information set forth in paragraph (a) of Section V and be circulated to all Participants within one month.

10. Participants intend to invite representatives of civil society, the diamond industry, non-participating governments and international organizations to participate in Plenary meetings as Observers.

PARTICIPANT MEASURES

11. Participants are to prepare, and make available to other Participants, in advance of annual Plenary meetings of the Kimberley Process, information as stipulated in paragraph (a) of Section V outlining how the requirements of the Certification Scheme are being implemented within their respective jurisdictions.

12. The agenda of annual Plenary meetings is to include an item where information as stipulated in paragraph (a) of Section V is reviewed and Participants can provide further details of their respective systems at the request of the Plenary.

13. Where further clarification is needed, Participants at Plenary meetings, upon recommendation by the Chair, can identify and decide on additional verification measures to be undertaken. Such measures are to be implemented in accordance with applicable national and international law. These could include, but need not be limited to measures such as;

a. requesting additional information and clarification from Participants;
b. review missions by other Participants or their representatives where there are credible indications of significant non-compliance with the Certification Scheme.

14. Review missions are to be conducted in an analytical, expert and impartial manner with the consent of the Participant concerned. The size, composition, terms of reference and time-frame of these missions should be based on the circumstances and be established by the Chair with the consent of the Participant concerned and in consultation with all Participants.

15. A report on the results of compliance verification measures is to be forwarded to the Chair and to the Participant concerned within three weeks of completion of the mission. Any comments from that Participant as well as the report, are to be posted on the restricted access section of an official Certification Scheme website no later than three weeks after the submission of the report to the Participant concerned. Participants and Observers should make every effort to observe strict confidentiality regarding the issue and the discussions relating to any compliance matter.

COMPLIANCE AND DISPUTE PREVENTION

16. In the event that an issue regarding compliance by a Participant or any other issue regarding the implementation of the Certification Scheme arises, any concerned Participant may so inform the Chair, who is to inform all Participants without delay about the said concern and enter into dialogue on how to address it. Participants and Observers should make every effort to observe strict confidentiality regarding the issue and the discussions relating to any compliance matter.

MODIFICATIONS

17. This document may be modified by consensus of the Participants.

18. Modifications may be proposed by any Participant. Such proposals should be sent in writing to the Chair, at least ninety days before the next Plenary meeting, unless otherwise agreed.

19. The Chair is to circulate any proposed modification expeditiously to all Participants and Observers and place it on the agenda of the next annual Plenary meeting.

REVIEW MECHANISM

20. Participants intend that the Certification Scheme should be subject to periodic review, to allow Participants to conduct a thorough analysis of all elements contained in the scheme. The review should also include consideration of the continuing requirement for such a scheme, in view of the perception of the Participants, and of international organisations, in particular the United Nations, of the continued threat posed at that time by conflict diamonds. The first such review should take place no later than three years after the effective starting date of the Certification Scheme. The review meeting should normally coincide with the annual Plenary meeting, unless otherwise agreed.

THE START OF THE IMPLEMENTATION OF THE SCHEME

21. The Certification Scheme should be established at the Ministerial Meeting on the Kimberley Process Certification Scheme for Rough Diamonds in Interlaken on 5 November 2002.

ANNEX I

Certificates

A. Minimum requirements for Certificates

A Certificate is to meet the following minimum requirements:

- Each Certificate should bear the title "Kimberley Process Certificate" and the following statement: "The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process Certification Scheme for rough diamonds"
- Country of origin for shipment of parcels of unmixed (i.e. from the same) origin
- Certificates may be issued in any language, provided that an English translation is incorporated
- Unique numbering with the Alpha 2 country code, according to ISO 3166-1
- Tamper and forgery resistant
- Date of issuance
- Date of expiry
- Issuing authority
- Identification of exporter and importer
- Carat weight/mass
- Value in US$
- Number of parcels in shipment
- Relevant Harmonised Commodity Description and Coding System

- Validation of Certificate by the Exporting Authority

B. Optional Certificate Elements

A Certificate may include the following optional features:

- Characteristics of a Certificate (for example as to form, additional data or security elements)
- Quality characteristics of the rough diamonds in the shipment
- A recommended import confirmation part should have the following elements:

  Country of destination
  Identification of importer
  Carat/weight and value in US$
  Relevant Harmonised Commodity Description and Coding System
  Date of receipt by Importing Authority
  Authentication by Importing Authority

C. Optional Procedures

Rough diamonds may be shipped in transparent security bags.

The unique Certificate number may be replicated on the container.

Annex II

Recommendations as provided for in Section IV, paragraph (f)

General Recommendations

1. Participants may appoint an official coordinator(s) to deal with the implementation of the Certification Scheme.

2. Participants may consider the utility of complementing and/or enhancing the collection and publication of the statistics identified in Annex III based on the contents of Kimberley Process Certificates.

3. Participants are encouraged to maintain the information and data required by Section V on a computerised database.

4. Participants are encouraged to transmit and receive electronic messages in order to support the Certification Scheme.

5. Participants that produce diamonds and that have rebel groups suspected of mining diamonds within their territories are encouraged to identify the areas of rebel diamond mining activity and provide this information to all other Participants. This information should be updated on a regular basis.

6. Participants are encouraged to make known the names of individuals or companies convicted of activities relevant to the purposes of the Certification Scheme to all other Participants through the Chair.

7. Participants are encouraged to ensure that all cash purchases of rough diamonds are routed through official banking channels, supported by verifiable documentation.

8. Participants that produce diamonds should analyse their diamond production under the following headings:
    - Characteristics of diamonds produced
    - Actual production

Recommendations for Control over Diamond Mines

9. Participants are encouraged to ensure that all diamond mines are licensed and to allow only those mines so licensed to mine diamonds.

10. Participants are encouraged to ensure that prospecting and mining companies maintain effective security standards to ensure that conflict diamonds do not contaminate legitimate production.

Recommendations for Participants with Small-scale Diamond Mining

11. All artisinal and informal diamond miners should be licensed and only those persons so licensed should be allowed to mine diamonds.

12. Licensing records should contain the following minimum information: name, address, nationality and/or residence status and the area of authorised diamond mining activity.

Recommendations for Rough Diamond Buyers, Sellers and Exporters

13. All diamond buyers, sellers, exporters, agents and courier companies involved in carrying rough diamonds should be registered and licensed by each Participant's relevant authorities.

14. Licensing records should contain the following minimum information: name, address and nationality and/or residence status.

15. All rough diamond buyers, sellers and exporters should be required by law to keep for a period of five years daily buying, selling or exporting records listing the names of buying or selling clients, their license number and the amount and value of diamonds sold, exported or purchased.

16. The information in paragraph 14 above should be entered into a computerised database, to facilitate the presentation of detailed information relating to the activities of individual rough diamond buyers and sellers.

Recommendations for Export Processes

17. A exporter should submit a rough diamond shipment to the relevant Exporting Authority.

18. The Exporting Authority is encouraged, prior to validating a Certificate, to require an exporter to provide a declaration that the rough diamonds being exported are not conflict diamonds.

19. Rough diamonds should be sealed in a tamper proof container together with the Certificate or a duly authenticated copy. The Exporting Authority should then transmit a detailed e-mail message to the relevant Importing Authority containing information on the carat weight, value, country of origin or provenance, importer and the serial number of the Certificate.

20. The Exporting Authority should record all details of rough diamond shipments on a computerised database.

Recommendations for Import Processes

21. The Importing Authority should receive an e-mail message either before or upon arrival of a rough diamond shipment. The message should contain details such as the carat weight, value, country of origin or provenance, exporter and the serial number of the Certificate.

22. The Importing Authority should inspect the shipment of rough diamonds to verify that the seals and the container have not been tampered with and that the export was performed in accordance with the Certification Scheme.

23. The Importing Authority should open and inspect the contents of the shipment to verify the details declared on the Certificate.

24. Where applicable and when requested, the Importing Authority should send the return slip or import confirmation coupon to the relevant Exporting Authority.

25. The Importing Authority should record all details of rough diamond shipments on a computerised database.

Recommendations on Shipments to and from Free Trade Zones

26. Shipments of rough diamonds to and from free trade zones should be processed by the designated authorities.

Annex III

Statistics

Recognising that reliable and comparable data on the production and the international trade in rough diamonds are an essential tool for the effective

implementation of the Certification Scheme, and particularly for identifying any irregularities or anomalies which could indicate that conflict diamonds are entering the legitimate trade, Participants strongly support the following principles, taking into account the need to protect commercially sensitive information:

(a) to keep and publish within two months of the reference period and in a standardised format, quarterly aggregate statistics on rough diamond exports and imports, as well as the numbers of certificates validated for export, and of imported shipments accompanied by Certificates;

(b) to keep and publish statistics on exports and imports, by origin and provenance wherever possible; by carat weight and value; and under the relevant Harmonised Commodity Description and Coding System (HS) classifications 7102.10; 7102.21; 7102.31;

(c) to keep and publish on a semi-annual basis and within two months of the reference period statistics on rough diamond production by carat weight and by value. In the event that a Participant is unable to publish these statistics it should notify the Chair immediately;

(d) to collect and publish these statistics by relying in the first instance on existing national processes and methodologies;

(e) to make these statistics available to an intergovernmental body or to another appropriate mechanism identified by the Participants for (1) compilation and publication on a quarterly basis in respect of exports and imports, and (2) on a semiannual basis in respect of production. These statistics are to be made available for analysis by interested parties and by the Participants, individually or collectively, according to such terms of reference as may be established by the Participants;

(f) to consider statistical information pertaining to the international trade in and production of rough diamonds at annual Plenary meetings, with a view to addressing related issues, and to supporting effective implementation of the Certification Scheme.

Appendix 3: EITI Principles and Criteria

Principles

1. We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.
2. We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.
3. We recognise that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.
4. We recognise that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.
5. We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.
6. We recognise that achievement of greater transparency must be set in the context of respect for contracts and laws.
7. We recognise the enhanced environment for domestic and foreign direct investment that financial transparency may bring.
8. We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.
9. We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business,
10. We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.
11. We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.
12. In seeking solutions, we believe that all stakeholders have important and relevant contributions to make – including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors, and non-governmental organisations

Criteria

1. Regular publication of all material oil, gas and mining payments by companies to governments ("payments") and all material revenues received by governments from oil, gas and mining companies ("revenues") to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified.
4. This approach is extended to all companies including state-owned enterprises.
5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.
6. A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

Bibliography

Abah, Oga S., and Jenks Z. Okwori. 2006. "Oil and Accountability Issues in the Niger Delta" In *Rights, Resources and the Politics of Accountability,* ed. P. Newell and J. Wheeler. London: Zed Books.

Abbott, Kenneth W. 2005. "Toward a Richer Institutionalism for International Law and Policy." *Journal of International Law and International Relations* 1 (1-2):9-34.

Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal. 2000. "The Concept of Legalization." *International Organization* 54 (3):401-19.

Abbott, Kenneth W., and Duncan Snidal. 1998. "Why States Act Through Formal Organizations." *Journal of Conflict Resolution* 42 (1):3-32.

———. 2000. "Hard and Soft Law in International Governance." *International Organization* 54 (3):421-56.

Africa Mining Intelligence. 2000. "Strategic Difference on Conflict Diamonds." 2 November.

Africa News. 2005. "Angola: Outgoing Ambassador Urges Greater Transparency and Donor Patience." 25 March.

Africa Research Bulletin. 2007. "Angola: New Oil Power." March 16th - April 15th 2007:17325f.

African Confidential. 2002. "Blood from Stones." 43 (12):4-5.

Agence France Presse. 2004. "Nigeria Sets Up Team to Throw Open Oil Industry's Books." 16 February.

———. 2007. "Nigerian Police Rescue Kidnapped Chinese Worker." 4 June.

Alden, Chris. 2007. *China in Africa.* London, New York: Zed Books.

American Petroleum Institute. 2003. *Remarks by Genevieve Laffly Murphy (API), Extractive Industries Transparency Initiative (EITI), London Conference, 17 June 2003.* [cited 24 October 2007]. Available from www.dfid.gov.uk/pubs/files/eitidraftreportapi.pdf.

Antill, Nick, and Robert Arnott. 2002. *The Oil Company Crisis: Managing Structure, Profitability and Growth.* Oxford: Oxford Institute for Energy Studies.

Antwerp Diamond Bourse. 2000. *Antwerp Diamond Bourse Addresses Conflict. Press Release* [cited 16 January 2008]. Available from http://www.diamonds.net/news/NewsItem.aspx?ArticleID=4178.

Archer, M. 1995. *Realist Social Theory: The Morphogenetic Approach*. Cambridge: Cambridge University Press.

Armitage, Timothy. 2007. "Angola Breaks Ties with IMF." *World Markets Research Centre*, 14 March.

Awad, Samir. 1999. "The Political Economy of Oil." *Third World Quarterly* 20 (6):1221-5.

Bachrach, Peter, and Morten Baratz. 1962. "Two Faces of Power." *American Political Science Review* 56:947-52.

Ballentine, Karen. 2004. "Consolidation of the GC Policy Dialogue on 'The Role of the Private Sector in Zones of Conflict'. Expert Workshop #1: "Identifying Public Policy Options to Promote Conflict-Sensitive Business Practices"." New York: UN Global Compact.

———. 2005. "Peace before Profit: The Challenges of Governance." In *Profiting from Peace. Managing the Resource Dimensions of Civil War*, ed. K. Ballentine and H. Nitzschke. Boulder: Lynne Rienner.

Ballentine, Karen, and Heiko Nitzschke. 2005. *Profiting From Peace. Managing the Resource Dimensions of Civil Wars*. London: Lynne Rienner.

Ballentine, Karen, and Jake Sherman. 2003. *The Political Economy of Armed Conflict*. Boulder, Col: Lynne Rienner.

Banfield, Jessica, Virgina Haufler, and Damian Lilly. 2003. "Transnational Corporations in Conflict Zones: Mapping Policy Responses and a Framework for Action." London: International Alert.

Barnes, Philip. 1995. *Indonesia: The Political Economy of Energy*. Oxford: Oxford University Press, Oxford Institute for Energy Studies.

Barnett, Michael. 1999. "Culture, Strategy and Foreign Policy Change: Israel's Road to Oslo." *European Journal of International Relations* 5 (1):5-36.

Barnett, Michael, and Raymond Duvall. 2005. "Power in Global Governance." In *Power in Global Governance*, ed. M. Barnett and R. Duvall. Cambridge: Cambridge University Press.

Bates, Rob. 2002. "Will the Conflict Diamond Issue Ever Go Away?" *JCK-Jewelers Circular Keystone*, 1 June, 38.

Baxter, Graham, and Sam Laidlaw. 2006. *Comments on Company Validation Paper Circulated on December 16, 2005* [cited 10 July 2007]. Available from eitidev.forumone.com/UserFiles/iagcompanyvalidationpaperlaidlawbaxtercommments.pdf.

Beffert, David, and Thorsten Benner. 2005. "Stemming the Tide of Conflict Diamonds: The Kimberley Process. Hertie School of Governance Teaching Case." Berlin: Hertie School of Governance.

Behringer, Ronald M. 2005. "Middle Power Leadership on the Human Security Agenda." *Cooperation and Conflict* 40 (3):305-42.

Beisheim, Marianne, Andrea Liese, and Cornelia Ulbert. 2007. "Erfolgsbedingungen transnationaler Partnerschaften: Hypothesen und erste Ergebnisse." In *Regieren ohne Staat? Governance in Räumen begrenzter Staatlichkeit*, ed. T. Risse and U. Lehmkuhl. Baden-Baden: Nomos.

Bendell, Jem. 2000. *Terms for Endearment: Business, NGOs and Sustainable Development.* Sheffield: Greenleaf Publishing.

———. 2004. "Barricades and Boardrooms: A Contemporary History of the Corporate Accountability Movement." Geneva: UN Research Institute for Social Development (UNRISD).

Berdal, Mats, and David M. Malone. 2000. *Greed and Grievance: Economic Agendas in Civil Wars.* Boulder, CO: Lynne Rienner.

Bergenstock, Donna J. 2004. *An Analysis of the International Diamond Market.* Lewiston, N.Y.: Edwin Mellen Press.

Bergenstock, Donna J., and James M. Maskulka. 2001. "The De Beers Story: Are Diamonds Forever?" *Business Horizons* 44 (3):37-44.

Bernauer, Thomas. 1995. "The Effect of International Environmental Institutions: How We Might Learn More." *International Organization* 49 (2):351-77.

Bernauer, Thomas, and F. Caduff. 2004. "In Whose Interest? Pressure Group Politics, Economic Competition and Environmental Regulation." *Journal of Public Policy* 24 (1):99-126.

Bernstein, Lisa. 1992. "Opting out of the Legal System: Extralegal Contractual Relations in the Diamond Industry." *The Journal of Legal Studies* 21 (1):115-57.

Bernstein, Steven. 2005. "Legitimacy in Global Environmental Governance." *Journal of International Law and International Relations* 1 (1-2):139-66.

Bindenagel, J.D. 2006. "Justice, Apology, Reconciliation, and the German Foundation: "Remembrance, Responsibility, and the Future"." In *Taking Wrongs Seriously. Apologies and Reconciliation*, ed. E. Barkan and A. Karn. Stanford: Stanford University Press.

Blowfield, Michael. 2005. "Corporate Social Responsibility. The Failing Discipline and Why it Matters for International Relations." *International Relations* 19 (2):173-91.

———. 2007. "Reasons to Be Cheerful? What We Know about CSR's Impact." *Third World Quarterly* 28 (4):683-95.

BMZ. 2006. *Response to IAG Members from German Government to Support the Location of the EITI Secretariat in Bonn* [cited 10 July 2007]. Available

from
http://www.eitransparency.org/UserFiles/File/iaglondon/bonnsecretariatsupport.pdf.

Boli, John, and George M. Thomas. 1999. *Constructing World Culture. International Nongovernmental Organizations since 1875.* Stanford: Stanford University Press.

Bone, Andrew. 2004. "Conflict Diamonds: the De Beers Group and the Kimberley Process." In *Business and Security. Public-Private Sector Relationships in a New Security Environment*, ed. A. J. K. Bailes and I. Frommelt. Oxford: Oxford University Press.

Börzel, Tanja A., A. Heritier, and Anna Kristin Müller-Debus. 2007. "Der Regulierungsbeitrag von Grossunternehmen im Kampf gegen HIV/AIDS in Suedafrica." In *Regieren ohne Staat? Governance in Raeumen begrenzter Staatlichkeit*, ed. T. Risse and U. Lehmkuhl. Baden-Baden: Nomos.

Börzel, Tanja A., and Thomas Risse. 2005. "Public-Private-Partnerships: Effective and Legitimate Tools of Transnational Governance?" In *Complex Sovereignty: Reconstituting Political Authority in the Twenty-first Century*, ed. E. Grande and L. W. Pauly. Toronto: University of Toronto Press.

Boscheck, Ralf. 2007. "Energy Futures - Introduction and Overview." In *Energy Futures*, ed. R. Boscheck. New York: Palgrave Macmillan.

BP. 2001. "BP Business Policies: What We Stand For." London: BP.

———. 2008. *Statistical Review of World Energy 2008* [cited 17 September 2008]. Available from http://www.bp.com/productlanding.do?categoryId=6929&contentId=7044622.

Brack, Duncan, Kevin Gray, and Gavin Hayman. 2002. "Controlling the International Trade in Illegally Logged Timber and Wood Products. A study prepared for the UK Department for International Development." London: Royal Institute for International Affairs.

Bradshaw, Michael. 2006. "Battle for Sakhalin." *The World Today* (November).

Bream, Rebecca. 2005. "De Beers: Competition for Cartel Status." *Financial Times*, 27 June.

Braithwaite, John, and Peter Drahos. 2000. *Global Business Regulation.* Cambridge: Cambridge University Press

Bridge, Gavin. 2008. "Global Production Networks and the Extractive Sector: Governing Resource-based Development." *Journal of Economic Geography* 8:389-419.

Brinkerhoff, Jennifer M. 2002a. "Global Public Policy, Partnership, and the Case of the World Commission on Dams." *Public Administration Review* 62 (3):324-35.

———. 2002b. "Partnerships as a Social Network Mediator for Resolving Global Conflict. The Case of the World Commission on Dams." *International Journal of Public Administration* 25 (11):1281-310.

Broadwater, Ian, and Inge Kaul. 2005. "Global Public-Private Partnerships. The Current Landscape. Study Outline (UNDP/ODS Background Paper)." New York: United Nations Development Program (UNDP).

Bromley, Simon. 2005. "The United States and the Control of World Oil." *Government and Opposition* 40 (2):225-56.

Brown, Paul. 1997. "Uneasy Chad Poised for Oil Boom." *The Guardian*, April 23, 11.

Brown Weiss, Edith, and Harold K. Jacobson. 1998. *Engaging Countries: Strengthening Compliance with International Environmental Accords*. Cambridge, MA: MIT Press.

Brühl, Tanja, Tobias Debil, Brigitte Hamm, Hartwig Hummel, and Jens Martens. 2001. *Die Privatisierung der Weltpolitik. Entstaatlichung und Kommerzialisierung im Globalisierungsprozess*. Bonn: Dietz.

Brütsch, Christian, and Dirk Lehmkuhl. 2007. "Complex Legalization and the Many Moves to Law." In *Law and Legalization in Transnational Relations*, ed. C. Brütsch and D. Lehmkuhl. London: Routledge.

Bryant Banat, Amanda. 2002. "Solving the Problem of Conflict Diamonds in Sierra Leone: Proposed Market Theories and International Legal Requirements for Certification of Origin." *Arizona Journal of International and Comparative Law* 19 (3):939-74.

Buchan, David, and Sheila Mcnulty. 2002. "A Dinosaur still Hunting for Growth: Interview with Lee Raymond, ExxonMobil." *Financial Times*, 12 March, 16.

Bull, Benedicte, and Desmond McNeill. 2007. *Development Issues in Global Governance. Public-Private Partnerships and Market Multilateralism*. London: Routledge.

Calland, Richard. 2007. "Prizing Open the Profit-Making World." In *The Right to Know. Transparency for an Open World*, ed. A. M. Florini. New York: Columbia University Press.

Cameron, Maxwell A. 2002. "Global Civil Society and the Ottawa Process: Lessons from the Movement to Ban Anti-Personnel Mines." In *Enhancing Global Governance. Towards a New Diplomacy?*, ed. A. F. Cooper, J. English and R. Thakur. Tokyo: United Nations University Press.

Campbell, Greg. 2004. *Blood Diamonds. Tracing the Deadly Path of the World's Most Precious Stones*. Boulder: Westview Press.

Campbell, John L. 2005. "Where Do We Stand? Common Mechanisms in Organizations and Social Movements Research " In *Social Movements and Organization Theory* ed. G. F. Davis, D. McAdam, W. R. Scott and M. N. Zald. Cambridge: Cambridge University Press.

Caporaso, James A., and Joseph Jupille. 2001. "The Europeanization of Gender Equality Policy and Domestic Structural Change." In *Transforming Europe: Europeanization and Domestic Change*, ed. M. Green Cowles, J.A. Caporaso and T. Risse. Ithaca, NY: Cornell University Press.

Cargill, Thomas F., and Elliot Parker. 2001. "Financial Liberalization in China: Limitations and Lessons of the Japanese Regime." *Journal of the Asia Pacific Economy* 6 (1):1-21.

Carr, Edward H. 1946. *The Twenty Year's Crisis: 1919-1939*. London: Macmillan.

Cater, Charles. 2003. "The Political Economy of Conflict and UN Intervention: Rethinking the Critical Cases of Africa." In *The Political Economy of Armed Conflict. Beyond Greed & Grievance*, ed. K. Ballentine and J. Sherman. Boulder, London: Lynne Rienner.

Cerny, Philip G. 1999. "Globalization and Erosion of Democracy." *European Journal of Political Research* 36 (5):1-36.

Chayes, Abram, and Antonia Handler Chayes. 1993. "On Compliance." *International Organization* 47 (2):175-205.

———. 1995. *The New Sovereignty: Compliance with International Regulatory Agreements*. London: Harvard University Press.

Checkel, Jeffery T. 1999a. "Norms, Institutions, and National Identity in Contemporary Europe." *International Studies Quarterly* 43:83-114.

———. 1999b. "Why Comply? Constructivism, Social Norms and the Study of International Relations." *Arena Working Papers* WP 99/24.

———. 2001. "Why Comply? Social Learning and European Identity Change." *International Organization* 55 (3):553-88.

Chesterman, Simon. 2004. "Oil and Water: Regulation of Multinational Corporations Through Law." *N.Y.U. Journal of Law and Politics* 36 (457):307-29.

ChevronTexaco. 2004. *ChevronTexaco Awarded Extension to Block 0 Concession in Angola. Press Release.* [cited 11 November 2007]. Available from http://investor.chevron.com/phoenix.zhtml?c=130102&p=irol-newsArticle_Print&ID=531301&highlight.

Chinkin, Christine. 1989. "The Challenge of Soft Law: Development and Change in International Law." *International and Comparative Law Quarterly* 1989 (38).

———. 2000. "Normative Development in the International Legal System." In *Commitment and Compliance. The Role of Non-Binding Norms in the International Legal System*, ed. D. Shelton. Oxford: Oxford University Press.

Cockburn, Andrew. 2002. "Diamonds: The Real Story." *National Geographic* March.

Coen, David. 2005. "Environmental and Business Lobbying Alliances in Europe: Learning from Washington?" In *The Business of Global Environmental Governance*, ed. D. L. Levy and P. J. Newell. Cambridge, MA: MIT Press.

Coleman, David. 2003. "The United Nations and Transnational Corporations: From an Inter-nation to a "Beyond-state" Model of Engagement." *Global Society* 17 (4):339-57.

Collier, Paul. 2000. "Economic Causes of Civil Conflict and Their Implications for Policy." Washington D.C.: World Bank.

———. 2003. "Breaking the Conflict Trap: Civil War and Development Policy." Washington, D.C.: World Bank.

Collier, Paul, and Anke Hoeffler. 1998. "On the Economic Causes of Civil War." *Oxford Economic Papers* 50:563-73.

Cook, Nicholas. 2001. "Diamonds and Conflict: Policy Proposals and Background." In *CRS Report for Congress*. Washington: Library of Congress: Congressional Research Service.

Cortell, Andrew P., and James W. Jr. Davis. 2000. "Understanding the Domestic Impact of International Norms: A Research Agenda." *International Studies Review* 2 (1):65-87.

Cortright, David, and George A. Lopez. 2000. *The Sanctions Decade: Assessing UN Strategies in the 1990s*. Boulder, CO: Lynne Rienner.

Cox, Robert W. 1987. *Production, Power and World Order*. New York: Columbia University Press.

Cragg, Wesley. 2004. "Multinational Corporations, Globalisation, and the Challenge of Self-Regulation." In *Hard Choices, Soft Law. Voluntary Standards in Global Trade, Environment and Social Governance*, ed. J. J. Kirton and M. J. Trebilcock. Aldershot: Ashgate.

Crossin, Corene, Gavin Hayman, and Simon Taylor. 2003. "Where Did It Come From? Commodity Tracking Systems." In *Natural Resources and Violent Conflict. Options and Actions*, ed. I. Bannon and P. Collier. Washington, D.C.: The International Bank for Reconstruction and Development.

Cutler, Claire A., Virgina Haufler, and Tony Porter. 1999. *Private Authority and International Affairs*. Albany: State University of New York Press.

Dahl, Robert. 1957. "The Concept of Power." *Behavioral Science* 2:201-15.

Davidow, J., and L. Chiles. 1978. "The United States and the Issue of the Binding or Voluntary Nature of International Codes of Conduct Regarding Restrictive Business Practices." *American Journal of International Law* 72 (2):247-71.

Davis, Jerome D. 2006. "Caspian Oil: The Political Economy of Bottlenecks." In *Global Perspectives on Oil and Security*, ed. A. L. Griffiths. Halifax: Center for Foreign Policy Studies, Dalhousie University.

Davis, Peter. 2005. *Extracting Transparency Promises* [cited 15 May 2008]. Available from http://www.ethicalcorp.com/content.asp?ContentID=3683.

DDI. 2005. "Conference Report: Report on the Proceedings of the DDI Conference, 28-31 October in Accra, Ghana." Ottawa: Diamond Development Initiative (DDI).

De Beers. 2000a. *De Beers Calls for Action on Conflict Diamonds. Press Release.* [cited 16 January 2008]. Available from http://www.diamonds.net/news/NewsItem.aspx?ArticleID=4150.

———. 2000b. *Written Testimony before the United States Congress, House Committee on International Relations, Subcommittee on Africa. Hearings into the Issue of "Conflict Diamonds", 9 May* [cited January 16 2008]. Available from http://www.diamonds.net/news/newsitem.asp?num=4046.

Deitelhoff, Nicole. 2006. *Überzeugung in der Politik. Grundzüge einer Diskurstheorie internationalen Regierens*. Frankfurt/M.: Suhrkamp.

Deitelhoff, Nicole, and Harald Müller. 2005. "Theoretical Paradise - Empirically lost? Arguing with Habermas." *Review of International Studies* 31:167-79.

Department of Finance Canada. 2007. *Canada's New Government Supports an International Initiative to Improve in Resource-Rich Countries* [cited 17 June 2007]. Available from http://www.fin.gc.ca/news07/07-012e.html.

Dessler, David. 1989. "What's at stake in the Agent-Structure Debate?" *International Organization* 43 (3):441-73.

Detheridge, Alan, and Noble Pepple. 1998. "A Response to Frynas." *Third World Quarterly* 19 (3):479-86.

DFID. 2002. "Sierra Leone Diamond Policy Study." London: Department for International Development (DFID).

DFID. 2003. *The Extractive Industries Transparency Initiative Discussion Paper for International Stakeholders Meeting 11-12 February 2003.* [cited 12 July 2007]. Available from www2.dfid.gov.uk/pubs/files/eitiworkshopreportfeb03.pdf.

Dietrich, Christian. 2003. *Diamonds in the Central African Republic.* [cited 24 July 2006]. Available from http://www.pacweb.org/e/images/stories/documents/car_e.pdf

DiMaggio, Paul J., and Walter W. Powell. 1991. *The New Institutionalism in Organizational Analysis* Chicago: University of Chicago Press.

DiNardo, Robert. 2006. "Transparency Initiative Gathers Steam in Oslo." *Platts Oligram News* 23 October.

Dingwerth, Klaus. 2004. "Effektivität und Legitimität globaler Politiknetzwerke." In *Unternehmen in der Weltpolitik: Politiknetzwerke, Unternehmensregeln und die Zukunft des Multilateralismus*, ed. T. Brühl, H. Feldt, B. Hamm, H. Hummel and J. Martens. Bonn: Dietz Verlag.

———. 2007. *The New Transnationalism: Transnational Governance and Democratic Legitimacy*. Basingstoke, New York: Palgrave Macmillan.

Doremus, Paul N., William W. Keller, Louis W. Pauly, and Simon Reich. 1990. *The Myth of the Global Corporation*. Princeton, NJ: Princeton University Press.

Downs, George W., David M. Rocke, and Peter N. Barsoom. 1996. "Is the Good News about Compliance Good News about Cooperation?" *International Organization* 50 (3):379-406.

Drezner, Daniel W. 2007a. *All Politics is Global. Explaining International Regulatory Regimes*. Princeton and Oxford: Princeton University Press.

———. 2007b. "The New New World Order." *Foreign Affairs* (March/April).

Dubash, Navroz K., Mairi Dupar, Simtu Kothari, and Tundu Lissu. 2001. *A Watershed in Global Governance? An Independent Assessment of the World Commission on Dams*. Washington, D.C.: World Resources Institute.

Dufresne, Robert. 2004. "The Opacity of Oil: Oil Corporations, Internal Violence, and International Law." *N.Y.U. Journal of Law and Politics* 36:331-94.

Duncan, Julia M. 2000. "Canada Could Capitalize on Conflict." *Professional Jeweler Magazine*, 22 June

Eigen, Peter. 2007a. "Fighting Corruption in a Global Economy: Transparency Initiatives in the Oil and Gas Industry." *Houston Journal of International Law* 29 (2):327-54.

———. 2007b. ""Wir sitzen im Glashaus"." *Die Zeit*, 24 May.

EITI. 2003. *Statement by the Chamber of Mines of South Africa, London Conference, 17 June 2003* [cited 3 January 2008]. Available from http://www.dfid.gov.uk/pubs/files/eitidraftreportsacm.pdf.

———. 2005a. *Incentives for Stakeholders in EITI: Overview Paper. A paper prepared for the EITI International Advisory Group (IAG) by the EITI Secretariat.* [cited 24 October 2007]. Available from http://eitidev.forumone.com/UserFiles/iagincentivesoverviewpaper17_08.pdf.

———. 2005b. "Source Book." London: International EITI Secretariat in the UK Department for International Development (DFID).

———. 2006a. "Report of the International Advisory Group." London: Department for International Development (DFID).

———. 2006b. "Validation Guide." London: DFID (Department for International Development).

Energy Compass. 2004. "Transparency: Clear as Mud." 29 October.

Energy Information Administration. 2005. "World Oil Balance 2001-05." Washington, D.C.: U.S. Department of Energy.

Esterberg, Kristin G. 2002. *Qualitative Methods in Social Research*. Boston: McGraw-Hill.

European Commission. 2002. *EC will Approve Supplier of Choice* [cited 16 January 2008]. Available from http://www.diamonds.net.

Even-Zohar, Chaim. 2002. *From Mine to Mistress: Corporate Strategies and Government Policies in the International Diamond Industry*. Kent, UK: Mining Journal Books Ltd.

———. 2005. *The 2004 Diamond Pipeline* [cited 23 August 2006]. Available from http://www.idexonline.com.

ExxonMobil. 2002. "Corporate Citizenship in a Changing World." www2.exxonmobil.com/CorporateINewsroom/Publications/c_cc_02/commitments/.

Falkner, Robert. 2005a. "American Hegemony and the Global Environment " *International Studies Review* 7:585-99.

———. 2005b. "The Business of Ozone Layer Protection: Corporate Power and Regime Evolution." In *The Business of Global Environmental Governance*, ed. D. L. Levy and P. J. Newell. Cambridge, Mass: MIT Press.

———. 2008. *Business Power and Conflict in International Environmental Politics*. Basingstoke: Palgrave Macmillan.

Falola, Toyin, and Ann Genova. 2005. *The Politics of the Global Oil Industry: An Introduction*. Westport: Greenwood Press.

Farah, Douglas. 2001. "Al Qaeda Cash Tied to Diamond Trade; Sale of Gems from Sierra Leone Rebels Raised Millions, Sources Say." *Washington Post*, November 2, A1.

Fearon, James D., and Alexander Wendt. 2002. "Rationalism v. Constructivism." In *Handbook of International Relations*, ed. W. Carlsnaes, T. Risse and B. A. Simmons. London: Sage Publications.

Federal News Service. 2006. "State Department Foreign Press Center Briefing: Conflict Diamonds." 12 December.

Feldman, Daniel L. 2003. "Conflict Diamonds, International Trade Regulation, and the Nature of Law." *University of Pennsylvania Journal of International Economic Law* 24 (4):835-74.

Ferejohn, John. 1991. "Rationality and Interpretation: Parliamentary Elections in Early Stuart England." In *The Economic Approach to Politics*, ed. K. R. Monroe. New York: HarperCollins.

Financial Times. 2007. "China Trade on Western Toes in Africa." 12 January.

Finnemore, Martha. 1996a. *National Interests in International Society*. Ithaca, NY: Cornell University Press.

———. 1996b. "Norms, Culture, and World Politics: Insights from Sociology's Institutionalism." *International Organization* 50 (2):325-47.

Finnemore, Martha, and Kathryn Sikkink. 1998. "International Norm Dynamics and Political Change." *International Organization* 52 (4):887-917.

Finnemore, Martha, and Stephen J. Toope. 2001. "Alternatives to 'Legalization': Richer Views of Law and Politics." *International Organization* 55 (3):743-58.

Fligstein, Neil. 2002. *The Architecture of Markets: An Economic Sociology of Twenty-First Century Capitalist Societies*. Princeton, NJ: Princeton University Press.

Flohr, Annegret, Lothar Rieth, Sandra Schwindenhammer, and Klaus Dieter Wolf. 2007. Conceptualizing Business Corporations as Norm-Entrepreneurs. Paper presented at the Workshop "Theorizing Business and Global Governance", at Copenhagen, 15-16 November, Garnet Network of Excellence, EU FP 6

Florini, Ann. 2000. *The Third Force. The Rise of Civil Society*. Washington, D.C.: Carnegie Endowment for International Peace.

———. 2007. "Introduction: The Battle over Transparency." In *The Right to Know: Transparency for an Open World*, ed. A. Florini. New York: Columbia University Press.

Fort, Timothy L., and Cindy A. Schipani. 2004. *The Role of Business in Fostering Peaceful Societies*. Cambridge: Cambridge University Press.

Fourie, Thea. 2005. "IMF Deal Could Secure Angola's Commitment to Fighting Corruption." *World Markets Research*, October 27.

Frieden, J. 1988. "Sectoral Conflict and U.S. Foreign Economic Policy, 1914-1940 " *International Organization* 42 (1):59-90.

Frynas, Jedrzej G. 1998. "Political Instability and Business: Focus on Shell in Nigeria." *Third World Quarterly* 19 (3):457-78.

———. 2005. "The False Developmental Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies." *International Affairs* 81 (3):581-98.

Frynas, Jedrzej G., and Scott Pegg. (eds.) 2003. *Transnational Corporations and Human Rights*. New York: Palgrave Macmillan.

Fuchs, Doris A. 2005. *Understanding Business Power in Global Governance*. Baden-Baden: Nomos.

Fuchs, Doris A., and Markus ML Lederer. 2007. "Business Power and Global Governance." *Business and Politics* 9 (3):Article 1.

G8 Summit Heiligendamm. 2007. "Growth and Responsibility in the World Economy. Summit Declaration (7 June 2007)." Heiligendamm.

Gagnon, Georgette, and John Ryle. 2001. "Report of an Investigation into Oil Development, Conflict, and Displacement in Western Upper Nile, Sudan." Ottawa: Canadian Auto Workers Union, Steelworkers Humanity Fund, Simons Foundation, United Church of Canada, Division of World Outreach, and World Vision Canada.

Galtung, Fredrik. 2000. "A Global Network to Curb Corruption: The Experience of Transparency International." In *The Third Force. The Rise of Civil Society*, ed. A. M. Florini. Washington, D.C.: Carnegie Endowment for International Peace.

GAO. 2002. "International Trade: Critical Issues Remain in Deterring Conflict Diamond Trade. Report to Congressional Requesters." Washington, D.C.: General Accounting Office.

Gary, Ian, and Terry Lynn Karl. 2003. "Bottom of the Barrel: Africa's Oil Boom and the Poor." New York: Catholic Relief Services.

George, Alexander L. 1979. "Case Studies and Theory Development: The Method of Structured, Focused Comparison." In *Diplomacy: New Approaches in History, Theory and Policy*, ed. P. G. Lauren. New York: Free Press.

George, Alexander L., and Andrew Bennett. 2005. *Case Studies and Theory Development in the Social Sciences*. Cambridge, Mass: The Belfer Center for Science and International Affairs.

Gereffi, Gary, Ronie Garcia-Johnson, and Erika Sasser. 2001. "The NGO-Industrial Complex." *Foreign Policy* (125):56-65.

Giddens, Anthony. 1979. *Central Problems in Social Theory*. Berkeley: University of California Press.

———. 1984. *The Constitution of Society: Outline of the Theory of Structuration.* Cambridge: Polity Press.

Gill, Stephen, and David Law. 1989. "Global Hegemony and Structural Power of Capital." *International Studies Quarterly* 33 (4):475-99.

Gillies, Alexandra. 2007. "Obasanjo, The Donor Community and Reform Implementation in Nigeria." *The Round Table* 96 (392):569-86.

Global Witness. 1998. "A Rough Trade: The Role of Companies and Governments in the Angolan Conflict." London: Global Witness.

———. 1999. "A Crude Awakening." London: Global Witness.

———. 2000. "Conflict Diamonds: Possibilities for Identification, Certification and Control of Diamonds." London: Global Witness.

———. 2001a. *Hypocrisy On Countering Terrorism - Why Some Governments Are Failing To Take Action on Conflict Diamonds* [cited 29 June 2008]. Available from http://www.globalwitness.org/media_library_detail.php/244/en/hypocrisy_on_countering_terrorism_why_some_governm.

———. 2001b. "Review of the Sierra Leone Diamond Certification Scheme." London: Global Witness.

———. 2003a. "Does US Bank Harbour Equatorial Guinea's Oil Millions in Secret Accounts? US Department of Justice Must Investigate (Press Release)." London: Global Witness.

———. 2003b. "For a Few Dollars More. How Al Qaeda Moved into the Diamond Trade." London: Global Witness.

———. 2003c. *New Standard on Oil, Mining and Gas Revenue Transparency Unveiled but will Actions Follow Words? Press Release from 16 July* [cited 11 May 2008]. Available from http://www.globalwitness.org/media_library_detail.php/302/en/new_standard_on_oil_mining_and_gas_revenue_transpa.

———. 2004. "Time for Transparency. Coming Clean on Oil, Mining and Gas Revenues." Washington D.C: Global Witness.

———. 2005a. *EITI on the Right Track: Let's Go Further and Faster (Press Release)* [cited 16 September 2007]. Available from http://www.globalwitness.org/media_library_detail.php/371/en/eiti_on_the_right_track_lets_go_further_and_faster.

———. 2005b. "Making It Add Up: A Constructive Critique of EITI Reporting Guidelines and Source Book." London: Save the Children, Global Witess.

———. 2007. "Oil Revenue Transparency: A Strategic Component of U.S. Energy Security and Anti-Corruption Policy." Washington, D.C.: Global Witness.

Goel, Ran. 2004. "A Bargain Born of a Paradox: The Oil Industry's Role in American Domestic and Foreign Policy." *New Political Economy* 9 (4):467-92.

Goldstein, Andrea. 2007. *Multinational Companies from Emerging Economies. Composition, Conceptualization and Direction in the Global Economy.* Basingstoke, New York: Palgrave Macmillan.

Goldstein, Judith, and Robert O. Keohane. 1993. "Ideas and Foreign Policy: An Analytical Framework." In *Ideas and Foreign Policy : Beliefs, Institutions, and Political Change*, ed. J. Goldstein and R. O. Keohane. Ithaca: Cornell University Press.

Goreux, Louis. 2001. "Conflict Diamonds. African Region Working Paper Series No. 13." Washington DC: World Bank.

Gowda, Rajeev, and Jeffrey Fox. 2002. *Judgements, Decisions, and Public Policy.* Cambridge: Cambridge University Press.

Graça, Job. 2003. *Statement by Graça, Vice-Minister of Finance of Angola at the Extractive Industries Transparency Initiative London Conference 17 June* [cited 11 November 2007]. Available from http://www.dfid.gov.uk/pubs/files/eitidraftreportangola.pdf.

———. 2006. *Statement by Angola's Vice-Minister of Finance at the Third Plenary Session of the Extractive Industries Transparency Initiative* [cited 17 July 2007]. Available from http://www.eitioslo.no/Speeches/Speech+Graca.htm.

Granovetter, Mark. 1985. "Economic Action and Social Structure: the Problem of Embeddedness." *American Journal of Sociology* 91 (3):481-510.

Grant, Andrew J., and Ian Taylor. 2004. "Global Governance and Conflict Diamonds: The Kimberley Process and the Quest for Clean Gems." *The Round Table* 93 (375):385-401.

Grant, Ian. 2006. "Geopolitics or Petropolitics? China and the Global Oil Regime." In *Global Perspectives on Oil and Security*, ed. A. L. Griffiths. Halifax: Center for Foreign Policy Studies, Dalhousie University.

Gruchalla-Wesierski, Tadeusz. 1984. "A Framework for Understanding Soft Law." *McGill Law Journal* 30:37-88.

Guaqueta, Alexandra. 2003. "The Columbian Conflict: Political and Economic Dimensions." In *The Political Economy of Armed Conflict: Beyond Greed & Grievance*, ed. K. Ballentine and J. Sherman. Boulder, London: Lynne Rienner.

Gulbrandsen, Lars H., and David Humphreys. 2006. "International Initiatives to Address Tropical Timber Logging and Trade. A Report for the Norwegian Ministry of the Environment." Lysaker, Norway: Fridtjof Nansen Institute.

Gulbrandsen, Lars H., and Arild Moe. 2007. "BP in Azerbaijan: a Test Case of the Potential and Limits of the CSR Agenda?" *Third World Quarterly* 28 (4):813-30.

Guzzini, Stefano. 2005. "The Concept of Power: A Constructivist Analysis." *Millennium* 33 (3):495-522.

Haas, Peter M. 1992. "Knowledge, Power, and International Policy Coordination." *International Organization* 46 (1).

Hale, Thomas N., and Denise L. Mauzerall. 2004. "Thinking Globally and Acting Locally: Can the Johannesburg Partnerships Coordinate Action on Sustainable Development?" *Journal of Environment & Development* 13 (3):220-38.

Hall, Peter A. 1986. *Governing the Economy: The Politics of State Intervention in Britain and France*. New York: Oxford University Press.

Hall, Rodney B., and Thomas J. Biersteker. 2002. *The Emergence of Private Authority in Global Governance*. Cambridge: Cambridge University Press.

Hart, Matthew. 2003. *Diamond. A History of a Cold-Blooded Love Affair*. London: Fourth Estate.

Hasenclever, Andreas, Peter Mayer, and Volker Rittberger. 1997. *Theories of International Regimes*. Cambridge: Cambridge University Press.

Haufler, Virgina. 1999. "Self-Regulation and Business Norms. Political Risk, Political Activism." In *Private Authority and International Affairs*, ed. C. A. Cutler, V. Haufler and T. Porter. Albany: State University of New York Press.

———. 2001a. "Is There a Role for Business in Conflict Management?" In *Turbulent Peace. The Challenges of Managing International Conflict*, ed. C. A. Crocker, F. O. Hampson and P. Aall. Washington: United States Institute of Peace.

———. 2001b. *A Public Role for the Private Sector: Industry Self-Regulation in a Global Economy*. Washington, D.C.: Carnegie Endowment for Peace.

———. 2006. "Global Governance and the Private Sector." In *Global Corporate Power*, ed. C. May. Boulder, Col.: Lynne Rienner.

Haworth, Richard T. 2003. *Ministerial Conference on Extractive Industries Transparency Initiative (EITI) London, June 17th 2003: Address by Dr. Richard T. Haworth, Assistant Deputy Minister, Minerals and Metals Sector, Natural Resources Canada* [cited 17 June 2008]. Available from http://www.dfid.gov.uk/pubs/files/eitidraftreportcanada.pdf.

Hayman, Gavin, and Corene Crossin. 2005. "Revenue Transparency and the Publish What You Pay Campaign." In *Profiting from Peace. Managing the Resource*

Dimensions of Civil War, ed. K. Ballentine and H. Nitzschke. Boulder and London: Lynne Rienner.

Hazleton, Ralph. 2002. "Diamonds: Forever or For Good?" Ottawa: Partnership Africa Canada.

Held, David. 1995. *Democracy and the Global Order. From the Modern State to Cosmopolitan Governance.* Cambridge: Cambridge University Press.

Held, David, Anthony G. McGrew, David Goldblatt, and Jonathan Perraton. 1999. *Global Transformations: Politics, Economics and Culture.* Stanford, CA: Stanford University Press.

Hemingway, Christine A., and Patrick W. Maclagan. 2004. "Manager's Personal Values as Drivers of Corporate Social Responsibility." *Journal of Business Ethics* 50 (1):33-44.

Herskovits, Jean. 2007. "Nigeria's Rigged Democracy." *Foreign Affairs* 86 (4):115-30.

Hill, Christopher. 2003. *The Changing Politics of Foreign Policy.* New York: Palgrave Macmillan.

Holzscheiter, Anna. 2005. "Discourse as Capability. Non-State Actors' Capital in Global Governance." *Millennium* 33 (3):723-46.

Hooghe, Liesbet. 2005. "Several Roads Lead to International Norms, but Few Via International Socialization: A Case Study of the European Commission." *International Organization* 59 (2):861-98.

Horta, Korinna, and Delphine Djiriabe. 2007. "Trouble in the Pipeline." *The Guardian*, 17 January.

Hueper, Paul F. 2005. "Sub-Saharan Africa." In *Energy and Security: Toward a New Foreign Policy Strategy*, ed. J. H. Kalicki and D. L. Goldwyn. Washington, D.C., Baltimore: Woodrow Wilson Press Center; Johns Hopkins University Press.

Human Rights Watch. 1999. "The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities." New York: Human Rights Watch.

Humphreys, Macartan. 2005. "Natural Resources and Armed Conflict: Issues and Options." In *Profiting From Peace. Managing the Resource Dimensions of Civil War* ed. K. Ballentine and H. Nitzschke. Boulder, London: Lynne Rienner.

Humphreys, Macartan, Jeffrey D. Sachs, and Joseph E. Stiglitz. 2007. "Introduction: What Is the Problem with Natural Resource Wealth?" In *Escaping the Resource Curse*, ed. M. Humphreys, J. D. Sachs and J. E. Stiglitz. New York: Columbia University Press.

Hurd, Ian. 2003. "Labor Standards through International Organizations. The Global Compact in Comparative Perspective." *Journal of Corporate Citizenship* 11 (Autumn):99-111.

Hurrell, Andrew. 2000. "Conclusion: International Law and the Changing Constitution of International Society." In *The Role of Law in International Politics: Essays in International Society* ed. M. Byers. Oxford: Oxford University Press.

———. 2005. "Power, Institutions, and the Production of Inequality." In *Power in Global Governance*, ed. M. Barnett and R. Duvall. Cambridge: Cambridge University Press.

Hurrell, Andrew, and Amrita Narlikar. 2006. "A New Politics of Confrontation? Brazil and India in Multilateral Trade Negotiations." *Global Society* 20 (4):415-33.

Ibeanu, Okey, and Robin Luckham. 2007. "Nigeria: Political Violence, Governance and Corporate Responsibility in a Petro-State." In *Oil Wars*, ed. M. Kaldor, T. L. Karl and Y. Said. London; Ann Arbor, MI: Pluto Press.

IEA. 2005. "World Energy Outlook." Paris: International Energy Agency.

Igbikiowubo, Hector. 2005. "Beyond the Rhetoric: Measuring Revenue Transparency in the Oil and Gas Industry'." *Vanguard (Nigeria)*, 23 August.

Ikenberry, G. John. 1988. "Conclusion: An Institutional Approach to American Foreign Economic Policy " In *The State and American Foreign Economic Policy*, ed. G. J. Ikenberry. Ithaca: Cornell University Press.

———. 1993. "Creating Yesterday's New World Order: Keynesian "New Thinking" and the Anglo-American Postwar Settlement." In *Ideas and Foreign Policy*, ed. R. O. Keohane and J. Goldstein. Ithaca, NY: Cornell University Press.

IMF. 2005a. "Good Fiscal Transparency Practices for Resource Revenue Management." Washington, D.C.: International Monetary Fund.

———. 2005b. "Guide on Resource Revenue Transparency." Washington, D.C.: International Monetary Fund.

Innocenti, Nicol Degli. 2004. "Inspection Will Test UN's 'Conflict Diamond' Process." *Financial Times*, 28 May.

Insight Investment. 2005. "A Discussion Paper on Revenue Transparency." London: Insight Investment.

International EITI Secretariat. 2005. "Extractive Industries Transparency Initiative Source Book." London: Department for International Development (DFID).

———. 2006. "Extractive Industries Transparency Initiative : Validation Guide." London: Department for International Development (DFID).

Izhakoff, Eli. 2001. Speech by the World Diamond Council Chairman, Eli Izhakoff. Paper presented at White House Diamond Conference: Technologies for Identification and Certification, hosted by the White House Office of Science and Technology Policy, January 10, 2001, at Washington D.C.

Jägers, Nicola. 1999. "The Legal Status of the Multinational Corporation Under International Law." In *Human Rights Standards and the Responsibility of Transnational Corporations*, ed. M. K. Addo. The Hague: Kluwer Law International.

Johnston, Alanstair I. 2001. "Treating International Institutions as Social Environments." *International Studies Quarterly* 45:487-515.

Johnston, David. 2007. "Petroleum Fiscal Systems: Royalty/Tax Systems, Production Sharing Contracts and Service Agreements Compared." In *Energy Futures*, ed. R. Boscheck. New York: Palgrave Macmillan.

Jönsson, Christer. 2002. "Diplomacy, Bargaining and Negotiation." In *Handbook of International Relations*, ed. W. Carlsnaes, T. Risse and B. A. Simmons. Thousand Oaks: Sage.

Josselin, Daphné, and William Wallace. 2001a. *Non-state Actors in World Politics.* Basingstoke: Palgrave.

———. 2001b. "Non-state Actors in World Politics: the Lessions." In *Non-state Actors in World Politics*, ed. D. Josselin and W. Wallace. Basingstoke: Palgrave.

Kädtler, Jürgen. 2001. "Social Movements and Interest Groups as Triggers for Organizational Learning." In *Handbook of Organizational Learning and Knowledge*, ed. M. Dierkes, A. B. Antal, J. Child and I. Nonaka. Oxford: Oxford University Press.

Kahler, Miles. 2000. "Conclusion: The Causes and Consequences of Legalization." *International Organization* 54 (3):661-83.

Kahn, Joseph. 2005. "Behind China's Bid for Unocal." *The New York Times*, 27 June.

Kaldor, Mary, Terry Lynn Karl, and Yahia Said. 2007. "Introduction." In *Oil Wars*, ed. M. Kaldor, T. L. Karl and Y. Said. London; Ann Arbor, MI: Pluto Press.

Kampfner, John. 2004. *Blair's Wars*. London: Free Press.

Kansteiner III, Walter H., and Stephen J. Morrison. 2004. *Rising U.S. Stakes in Africa. Seven Proposals to Strengthen U.S.-Africa Policy*. Washington, D.C.: Center for Strategic and International Studies (CSIS).

Kantz, Carola. 2007. "The Power of Socialization: Engaging the Diamond Industry in the Kimberley Process " *Business and Politics* 9 (3):Article 2.

Karl, Terry Lynn. 1997. *The Paradox of Plenty: Oil Booms and Petro-states.* Berkeley: University of California Press.

———. 2007. "Ensuring Fairness. The Case of Transparent Fiscal Social Contract." In *Escaping the Resource Curse*, ed. M. Humphreys, J. D. Sachs and J. E. Stiglitz. New York: Columbia University Press.

Katzenstein, Peter J., Robert O. Keohane, and Stephen D. Krasner. 1998. "International Organization and the Study of World Politics." *International Organization* 52 (4):645-85.

Kaul, Inge. 2003. *Providing Global Public Goods: Managing Globalization.* New York: UNDP.

Kaul, Inge, Isabelle Grunberg, and Marc A. Stern. 1999. *Global Public Goods: International Cooperation in the 21st century.* Oxford, New York: Oxford University Press, UNDP.

Keck, Margaret E., and Kathryn Sikkink. 1998. *Activists beyond Borders: Advocacy Networks in International Politics.* Ithaca, N.Y.: Cornell University Press.

Keen, David. 1998. *The Economic Functions of Violence in Civil Wars, Aldephi Papers 320.* New York, London: Oxford University Press for the International Institute of Security Studies.

———. 2000. "Incentives and Disincentives for Violence." In *Greed and Grievance: Economic Agendas in Civil Wars*, ed. M. Berdal and D. M. Malone. Boulder: Lynne Rienner.

Kempton, W, and P.P. Craig. 1993. "European Perspectives on Global Climate Change." *Environment* (April).

Keohane, Robert O. 1980. "The Theory of Hegemonic Stability and Changes in International Economic Regimes." In *Changes in the International System*, ed. O. R. Holsti, R. M. Siverson and A. L. George. Boulder, Colo.: Westview.

———. 1984. *After Hegemony: Cooperation and Discord in the World Economy.* Princeton: Princeton University Press.

———. 1997. "International Relations and International Law: Two Optics." *Harvard International Law Journal* 38 (2):487-502.

———. 2001. "Governance in a Partially Globalized World." *American Political Science Review* 95 (1):1-13.

Kerwer, Dieter. 2002. "Standardizing as Governance: The Case of the Credit Rating Agencies." In *Common Goods. Reinventing European and International Governance*, ed. A. Heritier. Lanham: Rowman & Littliefield Publishers.

Khagram, Sanjeev, James V. Riker, and Kathryn Sikkink. 2002. *Restructuring World Politics. Transnational Social Movements, Networks and Norms.* Minneapolis: University of Minnesota Press.

Kimberley Process. 2002. *Workshop on WTO Conformity, 15-17 February. Chairman's Non-Paper* [cited 16 January 2008]. Available from http://www.kimberleyprocess.com:8080/site/www_docs/related_docs1/wto%2c_on_kp_conformity.pdf.

———. 2003. *Final Communiqué. Kimberley Process Plenary Meeting. Sun City, South Africa, 29-31 October* [cited 16 January 2008]. Available from http://www.kimberleyprocess.com/documents/plenary_intersessional_meeting_en.html.

———. 2004. *Kimberley Process Removes the Republic of Congo from the List of Participants. News Release, July 9,* [cited 7 May 2008]. Available from http://www.kimberleyprocess.com/structure/participants_world_map_en.html .

———. 2006a. "The Kimberley Process Certification Scheme Third Year Review."

———. 2006b. *Kimberley Process Plenary Final Communiqué. November 6-9, 2006; Gaborone, Botswana* [cited 25 April 2008]. Available from http://www.kimberleyprocess.com/documents/plenary_intersessional_meeting_en.html.

———. 2007. *2007 Kimberley Process Communiqué* [cited June 18 2008]. Available from www.kimberleyprocess.com.

Kimberley Process Chair. 2004. *Chair's Report to Plenary. Kimberley Process Plenary Meeting, Gatineau, Canada, 27-29 October* [cited 18 June 2008]. Available from http://www.kimberleyprocess.com:8080/site/www_docs/plenary_meetings20/chair_report_to_plenary.pdf.

Kindleberger, Charles P. 1983. "Hierarchy versus Inertial Cooperation." *International Organization* 40 (4):841-47.

King, Gary, Robert O. Keohane, and Sidney Verba. 1994. *Designing Social Inquiry.* Princeton, New Jersey: Princeton University Press.

Kirton, John J., and Michael J. Trebilcock. 2004. "Introduction: Hard Choices and Soft Law in Sustainable Global Governance." In *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environmental and Social Governance*, ed. J. J. Kirton and M. J. Trebilcock. Aldershot: Ashgate.

Kitschelt, Herbert P. 1986. "Political Opportunity Structures and Political Protest: Anti-Nuclear Movements in Four Democracies." *British Journal of Political Science* 16:57-85.

Klare, Michael. 2004a. *Blood and Oil: The Dangers and Consequences of America's Growing Petroleum Dependency.* New York: Metropolitan Books.

Klare, Michael T. 2004b. "Essay: The Bush/Cheney Energy Strategy: Implications for U.S. Foreign and Military Policy." *N.Y.U. Journal of Law and Politics* 36:395-424.

Klare, Michael, and Daniel Volman. 2006. "The African 'Oil Rush' and US National Security." *Third World Quarterly* 27 (4):609-28.

Klein, Naomi. 1999. *No Logo: Taking aim at the Brand Bullies*. New York: Picador.

Kletter, Melanie, and Samantha Conti. 2002. "Little Retail Impact Expected from Conflict Diamond Rules." *Women's Wear Daily* 96 (187):7.

Klotz, Audie. 1995. *Norms in International Relations: The Struggle against Apartheid*. Ithaca, NY: Cornell University Press.

Koenig-Archibugi, Mathias. 2004. "Transnational Corporations and Public Accountability." *Government and Opposition* 39 (2):234-59.

Koh, Harold H. 1995. "A World Transformed." *Yale Law Journal* 20:vii.

Kolk, Ans, and Rob van Tulder. 2006. "Setting New Rules? TNCs and Codes of Conduct." *Transnational Corporations* 14 (3):1-28.

Koremenos, Barbara, Charles Lipson, and Duncan Snidal. 2001. "The Rational Design of International Institutions." *International Organization* 55 (4):761-99.

Krasner, Stephen D. 1976. "State Power and the Structure of Foreign Trade." *World Politics* 28:317-47.

———. 1983. *International Regimes*. Ithaca: Cornell University Press.

———. 1993. "Sovereignty, Regimes, and Human Rights." In *Regime Theory and International Relations*, ed. V. Rittberger. Oxford: Claredon Press.

———. 2000. "International Law and International Relations: Together, Apart, Together." *Chicago Journal of International Law* 1:93-100.

———. 2006. "Effective Democracy, Oil, and EITI." In *Pilot Countries Experience. International Conference. Baku, Azerbaijan (April 6-8), 2006* ed. Extractive Industries Transparency Initiative. Baku: Centre for Economic and Political Research (FAR Centre).

Kratochwil, Friedrich V. 1989. *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*. Cambridge: Cambridge University Press.

Kratochwil, Friedrich V., and John G. Ruggie. 1986. "International Organization: A State of the Art on the Art of the State." *International Organization* 40 (4):753-75.

Krisch, Nico, and Benedict Kingsbury. 2006. "Introduction: Global Governance and Global Administrative Law in the International Legal Order." *European Journal of International Law* 17 (1):1-13.

Krueger, Jonathan. 1999. *International Trade and the Basel Convention*. London: Royal Institute of International Affairs and Earthscan.

Kuper, Andrew. 2004. "Harnessing Corporate Power: Lessons from the UN Global Compact." *Development* 47 (3):9-19.

Larsen, Jensine. 1998. "Crude Investment: The Case of Yadana Pipeline in Burma." *Bulletin of Concerned Asian Scholars* 30 (3):3-13.

Le Billon, Philippe. 2001. "Angola's Political Economy of War: The Role of Oil and Diamonds 1975-2000." *African Affairs* 100:50-80.

———. 2003. "Getting it Done: Instruments of Enforcement." In *Natural Resources and Violent Conflict: Options and Actions*, ed. I. Bannon and D. Collier. Washington, D.C.: World Bank.

———. 2007. "Drilling in Deep Water: Oil, Business and War in Angola." In *Oil Wars*, ed. M. Kaldor, T. L. Karl and Y. Said. London; Ann Arbour, MI: Pluto Press.

Lear, William J. 1998. "Letter to the Editor." *New York Times*, 17 December.

Leipprand, Tobias, and Phillip Rusch. 2007. "Advancing the Extractive Industries Transparency Initiative (EITI)." Cambridge, Mass: Harvard University.

Levy, David L., and Daniel Egan. 2003. "A Neo-Gramscian Approach to Corporate Political Strategy: Conflict and Accommodation in the Climate Change Negotiations." *Journal of Management Studies* 40(4): 803-830.

Levy, David L., and Peter J. Newell. 2005. *The Business of Global Environmental Governance*. Cambridge MA: MIT Press.

Levy, David L., and Peter J. Newell. 2000. "Oceans Apart? Business Responses to the Environment in Europe and North America." *Environment* 42 (9):3-20.

Levy, David L., and Peter J. Newell. 2002. "Business Strategy and International Environmental Governance. Toward a Neo-Gramscian Approach." *Global Environmental Politics* 2 (4):84-100.

Levy, Marc A. 1996. "Assessing the Effectiveness of International Environmental Institutions." *Global Environmental Change* 6 (4):395-7.

Light, Margot. 2006. "Gassy Issues." *The World Today* (November).

Lindblom, Charles E. 1977. *Politics and Markets: The World's Political-Economic Systems*. New York: Basic Books.

Lipson, Charles. 1991. "Why Are Some International Agreements Informal?" *International Organization* 45 (4):495-538.

Litfin, Karen. 1994. *Ozone Discourses : Science and Politics in Global Environmental Cooperation*. New York: Columbia University Press.

Litvin, Daniel. 2003. *Empires of Profit: Commerce, Conquest and Corporate Responsibility*. New York and London: Texere.

———. 2007. *Much at Stake. Projects in Crisis in Russia & Bangladesh* [cited 13 May 2007]. Available from http://www.c-resource.com/documents/CriticalResourceBulletin-May2007.pdf.

Litvin, Daniel, and Carola Kantz. 2007. *A Mine Field for an Indian Giant* [cited 20 December 2007]. Available from http://www.c-resource.com/documents/CriticalResourceBulletin-December2007.pdf.

Luckham, Robin. 1971. *The Nigerian Military: A Case Study of Authority and Revolt*. Cambridge: Cambridge University Press

Luecke, Matthias, and Natalia Trofimenko. 2008. "Wither Oil Money. Redistribution of Oil Revenue in Azerbaijan." In *The Economics and Politics of Oil in the Caspian Basin. The Redistribution of Oil Revenues in Azerbaijan and Central Asia*, ed. B. Najman, R. Pomfret and G. Raballand. New York: Routledge.

Lukes, Steven. 1974. *Power: A Radical View*. London: Macmillan.

Lumsdaine, David H. 1993. *Moral Vision in International Politics: The Foreign Aid Regime 1949-1989*. Princeton: Princeton University Press.

Manby, Bronwen. 1999. "The Role and Responsibility of Oil Multinationals in Nigeria." *Journal of International Affairs* 53 (1):281-301.

Marcel, Valérie. 2006. *Oil Titans. National Oil Companies in the Middle East.* London: Royal Institute of International Affairs.

March, James G., and Johan P. Olson. 1984. "The New Institutionalism: Organizational Factors in Political Life." *American Political Science Review* 78 (3):734-49.

———. 1998. "Institutional Dynamics of International Political Orders." *International Organization* 52 (4):943-69.

Martin, Roger 2002. "The Virtual Matrix. Calculating the Return on Corporate Social Responsibility." *Harvard Business Review* 80 (3):69-75.

May, Christopher. (ed.) 2006. *Global Corporate Power*. Boulder, Col.: Lynne Rienner.

McAdam, Douglas, John D. McCarthy, and Mayer N. Zald. 1996. *Comparative Perspectives on Social Movements* Cambridge: Cambridge University Press.

McCoy, Jennifer, and Heather Heckel. 2001. "The Emergence of a Global Anti-corruption Norm." *International Politics* 38 (1):65-90.

McGregor, Richard. 2007. "Darfur Activists Claim Fidelity Success." *Financial Times*, 16 May.

McIntosh, Malcolm, Sandra Waddock, and Georg Kell. 2004. *Learning to Talk: Corporate Citizenship and the Development of the UN Global Compact.* Sheffield: Greenleaf.

McKeown, Timothy. 2004. "Case Studies and the Limits of the Quantitative Worldview." In *Rethinking Social Inquiry*, ed. H. E. Brady and D. Collier. Lanham, Md: Rowman & Littlefield.

McPherson, Charles. 2005. "Governance, Transparency, and Sustainable Development." In *Energy and Security: Toward a New Foreign Policy Strategy*, ed. J. H. Kalicki and D. L. Goldwyn. Washington, D.C.: Woodrow Wilson Center Press and Johns Hopkins University Press.

Meidinger, Errol. 2006. "The Administrative Law of Global Private-Public Regulation: the Case of Forestry." *European Journal of International Law* 17 (1):47-87.

Meidinger, Errol. 2007. "Beyond Westphalia. Competitive Legalization in Emerging Transnational Regulatory Regimes." In *Law and Legalization in Transnational Relations*, ed. C. Brütsch and D. Lehmkuhl. London: Routledge

Melville, Chris. 2004. "Gabon Signs Up to Oil Revenue Transparency Initiative." *World Markets Research Centre*, 21 May.

Miles, Edward L., Arild Underdal, Steinar Andresen, Jorgen Wettestad, Jon Birger Skjaerseth, and Elaine M. Carlin. 2002. *Environmental Regime Effectiveness: Confronting Theory with Evidence.* Cambridge, Mass: MIT Press.

Mingst, Karen A. 2006. "The Bush Doctrine and Multilateral Institutions " In *American Foreign Policy in a Globalized World*, ed. D. P. Forsythe, P. McMahon and A. Wedeman. New York, Abingdon: Routledge.

Mitchell, John, and Glada Lahn. 2007. "Oil for Asia." London: The Royal Institute of International Affairs.

Mitchell, Ronald B. 1994a. *Intentional Oil Pollution at Sea: Environmental Policy and Treaty Compliance.* Cambridge, Mass: MIT Press.

———. 1994b. "Regime Design Matters: Intentional Oil Pollution and Treaty Compliance." *International Organization* 48 (3):425-58.

Mokgothu, Boometswe. 2003. *Statement at the Ministerial Conference on the Extractive Industries Transparency Initiative (EITI) London, 17 June* [cited 24 October 2007]. Available from www.dfid.gov.uk/pubs/files/eitidraftreportbotswana.pdf.

Montague, Dena. 2002. "Stolen Goods: Coltan and the Conflict in the Democratic Republic of Congo." *SAIS Review* XXII (1):103-18.

Moon, Bruce E. 2004. "From Seattle and Doha to Cancun: The Trade Agenda in the New Millennium " In *Trade Politics*, ed. B. Hocking and S. McGuire. London: Routledge.

Moore, Mick. 1998. "Death without Taxes: Democracy, State Capacity, and Aid Dependence in the Fourth World." In *The Democratic Developmental State*, ed. M. Robinson and G. White. Oxford: Oxford University Press.

Morgenthau, Hans J. 1953. *Politics among Nations: The Struggle for Power and Peace*. New York, N.Y.: Alfred A. Knopf.

Morrow, James D. 2000. "Alliances: Why Write Them Down?" *Annual Review of Political Science* (3):63-83.

Mouawad, Jad. 2006. "As Profits Surge, Oil Giants Find hurdles Abroad." May 6, 1.

Munck, Gerardo L. 2004. "Tools for Qualitative Research." In *Rethinking Social Inquiry*, ed. H. E. Brady and D. Collier. Lanham, Md: Rowman & Littlefield.

Naím, Moisés. 1995. *Latin America's Journey to the Market: From Macroeconomic Shocks to Institutional Therapy* San Francisco: International Center for Economic Growth.

———. 2007. "Rogue Aid." *Foreign Policy* 159 (March/ April 2007):96-5.

Neale, Alan. 1997. "Organizational Learning in Contested Environments: Lessons from Brent Spar." *Business Strategy and the Environment* 6:93-103.

Nelson, Jane. 2000. *The Business of Peace. The Private Sector as a Partner in Conflict Prevention and Resolution*: International Alert, Council on Economic Priorities, The Prince of Wales Business Leaders Forum.

———. 2002a. *Building Partnerships. Cooperation between the United Nations System and the Private Sector.* New York: United Nations, Department of Public Information.

———. 2000b. *The United Nations and Business. A Partnership Recovered.* New York: St. Martin's Press.

Nelson, Joan, Jacek Kochanowicz, Kalman Mizsei, and Oscar Munoz. 1994. *Intricate Links: Democratization and Market Reforms in Latin America and Easter Europe* Washington, D.C.: Overseas Development Council.

Nelson, Paul J. 2002b. "Agendas, Accountability, and Legitimacy among Transnational Network Lobbying the World Bank." In *Restructuring World Politics. Transnational Social Movements, Networks, and Norms*, ed. S. Khagram, J. V. Riker and K. Sikkink. Minneapolis: University of Minnesota Press.

Newell, Peter J., and David L. Levy. 2006. "The Political Economy of the Firm in Global Environmental Governance." In *Global Corporate Power*, ed. C. May. Boulder, Col: Lynne Rienner.

Newell, Peter, and M. Paterson. 1998. "A Climate for Business: Global Warming, the State and Capital." *Review of International Political Economy* 5 (4):679-703.

Newell, Peter, and Joanna Wheeler. 2006. "Rights, Resources and the Politics of Accountability: An Introduction." In *Rights, Resources and the Politics of Accountability,* ed. P. Newell and J. Wheeler. London: Zed Books

Newton, Andrew. 2006. "Chinese Banks: How the Other Half Lends ". [cited 28 June 2008]. Available from http://www.ethicalcorp.com/content.asp?ContentID=4682

Ng, Francis, and Alexander Yeats. 2002. "What Can Africa Expect of its Traditional Exports? Africa Region Working Paper Series no. 26." Washington D.C.: World Bank.

Nolan, Justine. 2005. "The United Nations Compact with Business. Hindering or Helping Protection of Human Rights?" *University of Queensland Law Journal* 24 (2):445-66.

O'Brien, Robert, Anne Marie Goetz, Jan Art Scholte, and Marc Williams. 2000. *Contesting Global Governance. Multilateral Economic Institutions and Global Social Movements*. Cambridge: Cambridge University Press.

O'Ferrall, Rory. 2002. *The End of the Beginning for Kimberley.* [cited 16 January 2008]. Available from http://www.diamondintelligence.com/magazine/magazine.asp?id=113&search_text=.

O'Reilly, Fergal, and Sébastien Aubertin-Giguère. 2006. "The Relationship Between the Russian State and the Oil and Gas Sector: Implications for Global Energy Security." In *Global Perspectives on Oil and Security*, ed. A. L. Griffiths. Halifax: Dalhousie University.

O'Rourke, Dara. 2003. "Outsourcing Regulation. Analyzing Nongovernmental Systems of Labor Standards and Monitoring." *The Policy Studies Journal* 31 (1):1-29.

———. 2006. "Multi-stakeholder Regulation. Privatizing or Socializing Global Labor Standards?" *World Development* 34 (5):899-918.

Obi, Cyril I. 2006. "Foreign Interests and Environmental Degradation." In *Africa-US Relations. Strategic Encounters*, ed. D. Rothchild and E. J. Keller. Boulder and London: Lynne Rienner Publishers.

OECD. 2000. "The OECD Guidelines for Multinational Enterprises." Paris: Organisation for Economic Co-operation and Development (OECD).

———. 2001. "OECD Environmental Outlook." Paris: Organisation for Economic Co-operation and Development (OECD).

OGP. 2002. "Combating Corruption. OGP Progress Report." London and Brussels: International Association of Oil and Gas Producers (OGP).

Ottaway, Marina. 2001. "Corporatism goes Global: International Organizations, Nongovernmental Organization Networks, and Transnational Business." *Global Governance* 7:265-92.

Ougaard, Morten. 2006. "Instituting the Power to Do Good?" In *Global Corporate Power*, ed. C. May. London: Lynne Rienner.

Pallemaerts, Marc. 2003. "Is Multilateralism the Future? Sustainable Development or Globalisation as a Comprehensive Vision of the Future of Humanity." *Environment, Development and Sustainability* 5 (1-2):275-95.

Palley, Thomas I. 2003. "Lifting the Natural Resource Curse." *Foreign Service Journal* 80 (12):54-63.

Partnership Africa Canada. 2002. "Meetings." *Other Facets. News and Views on the International Effort to End Conflict Diamonds* 5 (March).

———. 2003. "WTO Green Light for Kimberley." *Other Facets. News and Views on the International Effort to End Conflict Diamonds* 11 (September).

———. 2006. "Killing Kimberley? Conflict Diamonds and Paper Tigers ". Ottawa: Partnership Africa Canada.

Partnership Africa Canada, Oxfam International, Global Witness, ActionAid, and Amnesty International. 2002. *NGO Report on Ottawa Kimberley Process Meeting* [cited 6 February 2008]. Available from http://action.web.ca/home/pac/attach/NGOreport.rtf.

Pattberg, Philip H. 2004a. "The Institutionalisation of Private Governance. Conceptualising an Emerging Trend in Global Environmental Politics." In *Global Governance Working Paper*. Potsdam, Amsterdam, Berlin, Oldenburg: The Global Governance Project.

———. 2004b. ""Private-Private Partnerships" als innovative Modelle zur Regel(durch)setzung?" In *Unternehmen in der Weltpolitik: Politiknetzwerke, Unternehmensregeln und die Zukunft des Mulitlateralismus*, ed. T. Brühl, H. Feldt, B. Hamm, H. Hummel and J. Martens. Bonn: Dietz Verlag.

———.2007. *Private Institutions and Global Governance. The New Politics of Environmental Sustainability*. Cheltenham, UK and Northampton, MA, USA Edward Elgar.

Paul, James A. 2001. "Der Weg zum Global Compact. Zur Annäherung von UNO und multinationalen Unternehmen." In *Die Privatisierung der Weltpolitik. Entstaatlichung und Kommerzialisierung im Globalisierungsprozess*, ed. T. Brühl, T. Debil, B. Hamm, H. Hummel and J. Martens. Bonn: Dietz.

Pauly, Louis W., and Edgar Grande. 2005. "Reconstituting Political Authority: Sovereignty, Effectiveness, and Legitimacy in a Transnational Order." In *Complex Sovereignty: Reconstituting Political Authority in the Twenty-First Century*, ed. L. W. Pauly and E. Grande. Toronto: University of Toronto Press.

Payne, Rodger A. 2001a. "The Legitimacy of the Global Environment Facility." In *Global Environmental Politics: Institutions and Procedures*, ed. H. Jeong. Basingstoke: Macmillan.

———. 2001b. "Persuasion, Frames and Norm Construction." *European Journal of International Relations* 7 (1):37-61.

Peel, Michael. 2004. "Spotlight on Multinationals' Africa Links: A US Senate Report Claims Oil Companies have Contributed to Corruption in Equatorial Guinea." *Financial Times (USA Edition)*, 24 September.

Pegg, Scott. 1999. "The Cost of Doing Business: Transnational Corporations and Violence in Nigeria." *Security Dialogue* 30 (4):473-84.

———. 2006a. "Can Policy Intervention Beat the Resource Curse? Evidence from the Chad-Cameroon Pipeline Project." *African Affairs* 105 (418):1-25.

———. 2006b. "World Leaders and Bottom Feeders: Social Divergent Strategies Toward Social Responsibility and Resource Extraction." In *Global Corporate Power*, ed. C. May. Boulder, Col.: Lynne Rienner.

Petroleum Review. 2005. "BP is Now the Largest Oil Producer." (October 2005):24-5.

Pieth, Mark, and Aiolfi. 2003. "The Private Sector becomes Active: The Wolfsberg Process." *Journal of Financial Crime* 10 (4):359-65.

Poroznuk, Amber. 2006. "Corruption Q&A (Interview with Graham Baxter)." *Transparency Watch. The E-Bulletin of the Anti-Corruption Movement* July 2006.

Prakash, Aseem. 2000. *Greening the Firm : The Politics of Corporate Environmentalism*. Cambridge: Cambridge University Press.

Price, Tracey Mitchell. 2003. "The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate." *Minnesota Journal of Global Trade* 12 (1):1-69.

Pulver, Simone. 2007. "Making Sense of Corporate Environmentalism. An Environmental Contestation Approach to Analysing the Causes and Consequences of the Climate Change Policy Split in the Oil Industry." *Organization & Environment* 20 (1):44-83.

Putnam, Robert. 1988. "Diplomacy and Domestic Politics. The Logic of Two-Level Games." *International Organization* 42 (2).

PWYP. 2003. *NGO Coalition Statement to the Extractive Industries Transparency Initiative High-Level Multi-Stakeholder Conference, London 17 June.* [cited 23 October 2007]. Available from www.difid.gov.uk/pubs/files/eitidraftreportpwyp.pdf.

PWYP, and Revenue Watch Institute. 2006. "Eye on EITI. Civil Society Perspectives and Recommendations on the Extractive Industries Transparency Initiative." London and New York: PWYP and Revenue Watch Institute.

Raballand, Gaël, and Régis Genté. 2008. "Oil in the Caspian Basin." In *The Economics and the Politics of Oil in the Caspian Basin. The Redistribution of Oil Revenues in Azerbaijan and Central Asia*, ed. B. Najman, R. Pomfret and G. Raballand. New York: Routledge.

Rapaport, Martin. 1999. *Blood Money* [cited 31 July 2006]. Available from http://www.diamonds.net/news/NewsItem.aspx?ArticleID=3347.

———. 2000. "Guilt Trip." *Rapaport Diamond Report* [cited 31 July 2006]. Available from http://www.diamonds.net/news/NewsItem.aspx?ArticleID=3830.

Ratner, Lizzy. 2007. "Think about the Diggers." *Business Day (South Africa)*, March 3, 10.

Reed, John. 2006. "Angolan Transparency: A Patchy Performance." *Financial Times*.

Reeve, Rosalind. 2002. *Policing International Trade in Endangered Species: the CITES Treaty and Compliance*. London: Royal Institute of International Affairs and Earthscan.

Reich, Robert. 1990. "Who is Us?" *Harvard Business Review* 68 (1):53-64.

Reinicke, Wolfgang H., Francis Deng, Jan Martin Witte, Thorsten Benner, Beth Whitaker, and John Gershman. 2000. *Critical Choices. The U.N., Networks and the Future of Global Governance*. Ottawa: IDRC Publishers.

Reinicke, Wolfgang H., and Jan Martin Witte. 2000. "Interdependence, Globalization, and Sovereignty: The Role of Non-Binding International Legal Accords." In *Commitment and Compliance. The Role of Non-Binding Norms in the International Legal System*, ed. D. Shelton. Oxford: Oxford University Press.

Reus-Smit, Christian. 2004. "The Politics of International Law." In *The Politics of International Law*, ed. C. Reus-Smit. Cambridge: Cambridge University Press.

Risse-Kappen, Thomas. 1994. "Ideas Don't Float Freely." *International Organization* 48 (2):185-214.

Risse, Thomas. 2000. ""Let's Argue!": Communicative Action in World Politics." *International Organization* 54 (1):1-39.

———. 2004. "Global Governance and Communicative Action." *Government and Opposition* 39 (2):288-313.

Risse, Thomas, Stephen C. Ropp, and Kathryn Sikkink. 1999. *The Power of Human Rights: International Norms and Domestic Change.* Cambridge: Cambridge University Press.

Risse, Thomas, and Kathryn Sikkink. 1999. "The Socialization of International Human Rights Norms into Domestic Practices: Introduction." In *The Power of Human Rights: International Norms and Domestic Change*, ed. T. Risse, S. C. Ropp and K. Sikkink. Cambridge: Cambridge University Press.

Robertson, Peter J. 2004. *'Serving Stockholders, Sustaining Partnerships: A Chevron Texaco Perspective on Transparency'. Remarks to the ISIS Asset Management Reception and Program for Institutional Investors on the Extractive Industries Transparency Initiative (EITI), British Embassy, Washington, D.C. 25 February* [cited 24 October 2007]. Available from www.chevron.com/news/Speeches/Release/?id=2004-02-25-probertson.

Rochefort, David A., and Roger W. Cobb. 1994. *The Politics of Problem Definition.* Lawrence: University of Kansas Press.

Rodriguez-Garavito, Cesar A. 2005. "Global Governance and Labour Rights. Codes of Conduct and Anti-Sweatshop Struggles in the Global Apparel Factories in Mexico and Guatemala." *Politics and Society* 33 (2):203-33.

Rogowski, R. 1989. *Commerce and Coalitions: How Trade Affects Domestic Political Alignments.* Princeton, NJ: Princeton University Press.

Rosenau, Pauline Vaillancourt. 2000. *Public-Private Partnerships.* Cambridge, MA: MIT Press.

Ross, M. 2004. "Does Taxation lead to Representation?" *British Journal of Political Science* 34:229-49.

Ross, Michael L. 2003. "Oil, Drugs, and Diamonds: The Varying Roles of Natural Resources in Civil War " In *The Political Economy of Armed Conflict: Beyond Greed & Grievance*, ed. K. Ballentine and J. Sherman. Boulder, London: Lynne Rienner.

Rowlands, Ian H. 2000. "Beauty and the Beast? BP's and Exxon's Positions on Global Climate Change." *Environment and Planning C: Government and Policy* 18:339-54.

Royal Dutch Shell plc. 1999. "People, Planet and Profits - Does there Have to Be a Choice?" London: Royal Dutch Shell.

———. 2005. *Shell General Business Principles* [cited 17 July 2007]. Available from http://www.shell.com/static/royal-en/downloads/sgbp/sgbp_300805.pdf.

Ruggie, John G. 1998. "What Makes the World Hang together? Neo-utilitarism and the Social Constructivist Challenge." *International Organization* 52 (4):855-85.

———. 2001. "global_governance.net: The Global Compact as Learning Network." *Global Governance* 7:371-8.

———. 2002. "The Theory and Practice of Learning Networks: Corporate Social Responsibility and the Global Compact." *Journal of Corporate Citizenship* 5 (Spring):27-36.

———. 2004. "Reconstituting the Global Public Domain - Issues, Actors, and Practices." *European Journal of International Relations* 10 (4):499-531.

Sahadeo, Christine. 2005. *Trinidad and Tobago: Speech Given at the EITI Conference 2005 in London* [cited 17 July 2007]. Available from www.eitransparency.org/UserFiles/File/londonplenary2005/christinesahadeo.pdf.

Said, Yahia. 2005. "Global Civil Society: Oil and Activism." In *Global Civil Society 2004/5*, ed. H. Anheier, M. Glasius and M. Kaldor. London: Sage Publications.

Sally, Razeen. 1995. *States and Firms: Multinational Enterprises in Institutional Competition*. London, New York: Routledge.

Sampson, Anthony. 1988. *The Seven Sisters: The Great Oil Companies and the World They Made*. Sevenoaks: Coronet.

Save the Children UK. 2005a. "Beyond the Rhetoric. Measuring Revenue Transparency: Company Performance in the Oil and Gas Industries." London: Save the Children UK.

———. 2005b. "Beyond the Rhetoric. Measuring Revenue Transparency: Home Government Requirements for Disclosure in the Oil and Gas Industries ". London: Save the Children.

Schachter, Oscar. 1977. "The Twilight Existence of Nonbinding Agreements." *The American Journal of International Law* 71 (2):296-304.

Schäferhoff, Marco, Sabine Campe, and Christopher Kaan. 2007. *Transnational Public-Private Partnerships in International Relations. Making Sense of Concepts, Research Frameworks and Results.* [cited 25 August 2008]. Available from http://www.sfb-governance.de/publikationen/sfbgov_wp/wp6_en/SFB_700_Working_Paper_No__6.pdf.

Schefer, Krista Nadakavukaren. 2005. "Stopping Trade in Conflict Diamonds: Exploring the Trade and Human Rights Interface with the WTO Waiver for the Kimberley Process." In *Human Rights and International Trade*, ed. T. Cottier, J. Pauwelyn and E. Bürgi. Oxford: Oxford University Press.

Scheiber, Christine. 2006. Between Crime and War: Illicit Flows and the Institutional Design of International Policy Responses, International Relations, University of London, London.

Schimmelfennig, Frank, Stefan Engert, and Heiko Knobel. 2006. *International Socialization in Europe. European Organizations, Political Conditionality and Democratic Change*. Basingstoke; New York: Palgrave Macmillan.

Schouten, Esther M.J., and Joop Remmé. 2006. "Making Sense of Corporate Social Responsibility in International Business: Experiences from Shell." *Business Ethics: A European Review* 15 (4):365-79.

Schumacher, Joe. 2003. *Interview with Erin Wakes and Gavin Hayman, Global Witness Programme Officers* [cited 13 June 2007]. Available from www.monitor.upeace.org/archive.cfm?id_article=58.

Schumacher, Joseph A. 2004. "Introducing Transparency into the Oil Industry. The Quest for EITI." *Global Jurist Advances* 4 (3).

Schurman, Rachel. 2004. "Fighting "Frankenfoods": Industry Opportunity Structures and the Efficacy of the Anti-Biotech Movement in Western Europe." *Social Problems* 51 (2):243-68.

Searle, John R. 1995. *The Construction of Social Reality*. New York: Free Press.

Sell, Susan K. 2003. *Private Power, Public Law. The Globalization of Intellectual Property Rights*. Cambridge: Cambridge University Press.

Sell, Susan K., and Aseem Prakash. 2004. "Using Ideas Strategically: The Contest Between Business and NGO Networks in Intellectual Property Rights." *International Studies Quarterly* 48 (1):143-75.

Shaxson, Nicholas. 2001. "Transparency in the International Diamond Trade." In *Transparency International: Global Corruption Report 2001*, ed. R. Hodess, J. Banfield and T. Wolfe. Berlin: Transparency International.

———. 2007. *Poisoned Wells: The Dirty Politics of African Oil*. New York: Palgrave Macmillan.

Shelton, Dinah. 2000. "Introduction: Law, Non-Law and the Problem of 'Soft Law'." In *Commitment and Compliance. The Role of Non-Binding Norms in the International Legal System*, ed. D. Shelton. Oxford: Oxford University Press.

Sheperd-Smith, Amelia. 2008. *EITI - Extracting Transparency* [cited 8 April 2008]. Available from http://www.ethicalcorp.com/content.asp?ContentID=5817.

Shor, Russell. 2004. "Surviving Supplier of Choice." *The Loupe* 13 (2).

———. 2005a. "Good Business for All." *GIA: In the Loupe* 14 (2).

———. 2005b. "A Review of the Political and Economic Forces Shaping Today's Diamond Industry." *Gems & Gemology* Fall 2005:202-33.

Shultz, Jim. 2005. *Follow the Money. A Guide to Monitoring Budgets and Oil and Gas Revenues*. New York: Open Society Institute; Central European University Press.

Silverstein, Ken. 2003. "Oil Boom Enriches African Rules." *Los Angeles Times*, 20 January.

Simmons, Beth A. 2002. "Capacity, Commitment, and Compliance: International Institutions and Territorial Disputes." *Journal of Conflict Resolution* 46 (6):829-56.

Simmons, Beth A., and Zachary Elkins. 2004. "The Globalization of Liberalization: Policy Diffusion in the International Political Economy " *American Political Science Review* 98 (1):171-89.

———. 2005. "On Waves, Clusters, and Diffusion: A Conceptual Framework." *The ANNALS of the American Academy of Political and Social Science* 598 (1):33-51.

Simon, Herbert A. 1957. *Models of Man: Social and Rational; Mathematical Essays on Rational Human Behaviour in a Social Setting* New York: Wiley.

Skapinker, Michael. 2008. "De Beers Chief Seeks Fresh Settings." *Financial Times*, March 17.

Skidmore-Hess, Daniel. 1996. "Business Conflict and Theories of the State." In *Business and the State in International Relations*, ed. R. W. Cox. Boulder, Colo.: Westview.

Skidmore, Daniel. 1996. "The Business of International Politics." *Mershon International Studies Review* 39 (2):246-54.

Skjærseth, Jon Birger, and Tora Skodvin. 2001. "Climate Change and the Oil Industry: Common Problems, Different Strategies." *Global Environmental Politics* 1 (4):43-64.

———. 2003. *Climate Change and the Oil Industry*. Manchester University Press: Manchester.

Skjærseth, Jon Birger, Kristian Tangen, Philip Swanson, Atle Christer Christiansen, Arild Moe, and Leiv Lunde. 2004. "Limits to Corporate Social Responsibility: A Comparative Study of Four Major Oil Companies." Lysaker: The Fridthof Nansen Institute.

Slaughter, Anne-Marie. 2004. *A New World Order*. Princeton, N.J.: Princeton University Press.

Slaughter, Anne-Marie, Andrew S. Tulumello, and Stepan Wood. 1998. "International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship." *American Journal of International Law* 92:367-97.

Smelser, Neil J., and Richard Swedberg. 2005. *The Handbook of Economic Sociology*. Princeton, NJ: Princeton University Press.

Smillie, Ian. 2001. "Of Judgement and Cunning Work. Conflict Diamonds and the Implications for Canada." *International Journal* LVI (4):579-94.

———. 2004. "Climb Every Mountain: Civil Society and the Conflict Diamonds Campaign." In *Fighting for Human Rights*, ed. P. Gready. London: Routledge.

———. 2005a. "Criminality and the Global Diamond Trade." In *Illicit Flows and Criminal Things. States, Borders, and the Other Side of Globalization*, ed. W. van Schendel and I. Abraham. Bloomington: Indiana University Press.

———. 2005b. "The Kimberley Process Certification Scheme for Rough Diamonds." In *Verifor Case Studies*. London: Overseas Development Institute.

———. 2005c. "Lessons from the Kimberley Process." In *Profiting from Peace. Managing the Resource Dimensions of Civil War*, ed. K. Ballentine and H. Nitzschke. London: Lynne Rienner.

Smillie, Ian, Lansana Gberie, and Ralph Hazleton. 2000. "The Heart of the Matter: Sierra Leone, Diamonds and Human Security." Ottawa: Partnership Africa Canada.

Soros, George. 2006. *The Age of Fallibility. The Consequences of the War on Terror.* New York: PublicAffairs.

Spar, Debora L. 1994. *The Cooperative Edge. The International Politics of International Cartels*. Ithaca and London: Cornell University Press.

Spar, Debora L., and Lane T. La Mure. 2003. "The Power of Activism: Assessing the Impact of NGOs on Global Business." *California Management Review* 45 (3):78-101.

Steets, Julia. 2005. "Developing a Framework: Concepts and Research Priorities for Partnership Accountability." In *GPPi Research Paper Series No. 1*, ed. G. P. P. Institute. Berlin: GPPi.

Steger, Ulrich. 1993. "The Greening in the Board Room: How German Companies are Dealing with Environmental Issues." In *Environmental Strategies for the Industry: International Perspectives*, ed. K. Fischer and J. Schit. Washington D.C.: Island Press.

Strange, Susan. 1996. *The Retreat of the State: the Diffusion of Power in the World Economy*. Cambridge: Cambridge University Press.

Swanson, Philip. 2002. "Fuelling Conflict. The Oil Industry and Armed Conflict. Economies of Conflict: Private Sector Activity in Armed Conflict." Oslo: Programme for International Co-operation and Conflict Resolution, Fafo.

Tamm, Ingrid J. 2002. "Diamonds in Peace and War: Severing the Conflict-Diamond Connection." Cambridge, Mass: World Peace Foundation, WPF Program on Intrastate Conflict, Carr Center for Human Rights Policy.

———. 2004. "Dangerous Appetites: Human Rights Activism and Conflict Commodities." *Human Rights Quarterly* 26:687-704.

Tarrow, Sidney. 1996. "States and Opportunities: The Political Structuring of Social Movements." In *Comparative Perspectives on Social Movements. Political Opportunities, Mobilizing Structures, and Cultural Framings*, ed. D. McAdam, J. D. McCarthy and M. N. Zald. Cambridge: Cambridge University Press.

Taylor, Ian. 2006. "China's Oil Diplomacy in Africa." *International Affairs* 82 (5):937-59.

Taylor, Ian, and Gladys Mokhawa. 2003. "Not Forever: Botswana, Conflict Diamonds and the Bushmen." *African Affairs* 102 (407):261-83.

Tesner, Sandrine , and Georg Kell. 2000. *United Nations and Business. A Partnership reconsidered.* New York: St. Martin's Press.

The Economist. 2002. "Black Gold." October 24.

———. 2004. "A New Scramble." 27 November.

———. 2005. "The Paradox of Plenty." 20 December.

———. 2007a. "Five Years under the Thumb." 28 July.

———. 2007b. "Who Benefits From The Minerals?" 22 September.

———. 2008a. "The Challengers. A New Breed of Multinational Company has Emerged." 10 January.

———. 2008b. "A Ravenous Dragon." March 15.

———. 2008c. "The Slippery Business of Oil." 26 June.

The Washington Post. 2004. "Controlling Diamonds." 29 November.

Thies, Cameron G. 2003. "Sense and Sensibility in the Study of State Socialization: A Reply to Kai Alderson." *Review of International Studies* 29:543-50.

Tilly, Charles. 1978. *From Mobilization To Revolution.* Reading, M.A.: Addison-Wesley Pub. Co,.

Transparency International. 2008. "Promoting Revenue Transparency. 2008 Report on Revenue Transparency of Oil and Gas Companies." Berlin: Transparency International.

Trimble, Phillip R. 1990. "International Law, World Order and Critical Legal Studies." *Stanford Law Review* 42 (3):811-45.

Tsalik, Svetlana, and Anya Schiffrin. 2005. *Covering Oil. A Reporter's Guide to Energy and Development.* New York: Open Society Institute; Central European University Press.

Turner, Mandy. 2006. "Taming Mammon: Corporate Social Responsibility and the Global Regulation of Conflict Trade, Conflict, Security and Development." *Conflict, Security and Development* 6 (3):365-87.

UN General Assembly. 2003. "Enhanced Cooperation between the United Nations and All Relevant Partners, Including the Private Sector. Report of the Secretary-General, A/58/227." United Nations General Assembly.

———. 2005. "Enhanced Cooperation between the United Nations and All Relevant Partners, in Particular the Private Sector, Report of the Secretary-General, A/60/214." United Nations General Assembly.

UN Human Rights Council. 2007. "'Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts.' Report of the Special Representative of the Secretary-General (SRSG) on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises. A/HRC/4/035 ". Geneva: Human Rights Council.

———. 2008. "Protect, Respect and Remedy: a Framework for Business and Human Rights. Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie. A/HRC/8/5." Geneva: UN Human Rights Council.

UNDP. 1994. *Human Development Report 1994*. New York, Oxford: Oxford University Press.

United Nations Security Council. 2000. "Report of the Panel of Exports on Violations of Security Council Sanctions against UNITA. S/2000/203. "The Fowler Report"." New York: United Nations Security Council.

United Press International. 2007. *Norway Signs Anti-Oil Corruption Treaty* [cited May 9, 2008]. Available from http://www.upi.com/International_Security/Energy/Briefing/2007/09/27/norway_signs_antioil_corruption_treaty/6331/.

Unocal. 2004. "Code of Conduct." El Segundo, Calif.

US Delegation. 2006. *EITI Comments, post-Baku* [cited July 10, 2007. Available from eitidev.forumone.com/UserFiles/File/iagbaku/usnotesecretariat.pdf.

———. n.d. *Review of the Kimberley Process Certification Scheme U.S. Comments - Response to Questionnaire* [cited 2 April 2006]. Available from http://www.kimberleyprocess.com:8080/site/www_docs/related_docs1/review_kpcs-_response_usa.pdf.

Useem, Bert, and Mayer N. Zald. 1982. "From Pressure Group to Social Movement: Efforts to Promote Use of Nuclear Power." In *Social Movements in an Organizational Society* ed. M.N. Zald and J.D. Carthy. New Brunswicck, NJ: Transaction

Utting, Peter. 2002. "Regulating Business via Multistakeholder Initiatives. A Preliminary Assessment." In *Voluntary Approaches to Corporate Social*

Responsibility. Readings and a Resource Guide ed. UNRISD. Geneva: United Nations Research Institute for Social Development (UNRISD)

———. 2005. "Corporate Social Responsibility and the Movement of Business." *Development in Practice* 15 (3&4):61-130.

Utting, Peter, and Kate Ives. 2006. "The Politics of Corporate Responsibility and the Oil Industry." *St Anthony's International Review* 2 (1):11-34.

Utting, Peter, and Ann Zammit. 2006. "Beyond Pragmatism. Appraising UN-Business Partnerships. Markets, Business and Regulation Programme Paper Number 1." Geneva: UNRISD.

van Evera, Stephen. 1997. *Guide to Methods for Students of Political Science.* Ithaca, New York: Cornell University.

Victor, David G., Kal Raustiala, and Eugene B. Skolnikoff. 1998. *The Implementation and Effectiveness of International Environmental Agreements.* Cambridge, MA: MIT Press.

Volman, Daniel. 2003. "The Bush Administration & African Oil: The Security Implications of US Energy Policy." *Review of African Political Economy* 30 (98):573-84.

Voss, Bristol L. 1998. "The Diamond Business Gets Rough." *Journal of Business Strategy* July/ August 1998:36-43.

Waltz, Kenneth N. 1979. *Theory of International Politics.* Reading MA: Addison-Wesley.

———. 1986. "Reflections on Theory of International Politics: A Response to My Critics." In *Neorealism and Its Critics*, ed. R. O. Keohane. New York: Columbia Press.

Wang, Hongying, and James N. Rosenau. 2001. "Transparency International and Corruption as an Issue of Global Governance." *Global Governance* 7:25-49.

Wapner, Paul. 1995. "Politics beyond the State: Environmental Activism and World Civic Politics." *World Politics* 47 (3):311-40.

———. 1996. *Environmental Activism and World Civic Culture.* Albany, NY: State University of New York Press.

Warhurst, Alyson. 2001. "Corporate Citizenship and Corporate Social Investment: Drivers of Tri-Sector Partnerships." *Journal of Corporate Citizenship* 1: 57-73

Weber, Max. 1980. *Wirtschaft und Gesellschaft.* Tübingen: Mohr.

Weil, Propsper. 1983. "Towards Relative Normativity in International Law?" *The American Journal of International Law* 77 (3):413-42.

Weissbrodt, David. 2004. "Die Erarbeitung der UN-Menschenrechtsnormen für Transnationale Konzerne und andere Wirtschaftsunternehmen." In *Unternehmen in der Weltpolitik. Politiknetzwerke, Unternehmensregeln und die Zukunft des Multilateralismus*, ed. T. Brühl, H. Feldt, B. Hamm, H. Hummel and J. Martens. Bonn: Dietz.

Wendt, Alexander. 1987. "The Agent-Structure Problem in International Relations Theory." *International Organization* 41 (3):335-70.

———. 1992. "Anarchy Is what the States Make of It: the Social Construction of Power Politics." *International Organization* 46 (2):391-425.

———. 1999. *Social Theory of International Politics*. Cambridge, New York: Cambridge University Press.

Wendt, Alexander, and Raymond Duvall. 1989. "Institutions and International Order." In *Global Changes and Theoretical Challenges: Approaches to World Politics for the 1990s*, ed. E.-O. Czempiel and J. N. Rosenau. Lexington, MA: Lexington Books.

Wenger, Andreas, and Daniela Möckli. 2003. *Conflict Prevention. The Untapped Potential of the Business Sector.* Boulder, London: Lynne Rienners.

Wexler, Pamela. 2006. "The Kimberley Process Certification Scheme on the Occasion of its Third Anniversary. An Independent Commissioned Review." Global Witness.

Wiener, Antje. 2003. "Constructivism: The Limits of Bridging Gaps." *Journal of International Relations and Development* 6 (3):252-75.

Williams, Cynthia A. 2004. "Civil Society Initiatives and "Soft Law" in the Oil and Gas Industry." *N.Y.U. Journal of Law and Politics* 36:457-502.

Williams, Paul. 2005. *British Foreign Policy under New Labour, 1997-2005*. New York: Palgrave Macmillan.

Wilson, Dominic, and Roopa Purushothaman. 2003. "Dreaming with BRICs: The Path to 2050." In *Global Economics Paper No. 99*. New York: Goldman Sachs.

Winston, Morton. 2002. "NGO Strategies for Promoting Corporate Social Responsibility." *Ethics and International Affairs* 16 (1):71-87.

Witte, Jan Martin, Charlotte Streck, and Thorsten Benner. 2003. "The Road from Johannesburg: What Future for Partnerships in Global Environmental Governance?" In *Progress or Peril? Partnerships and Networks in Environmental Governance. The Post-Johannesburg Agenda*, ed. J. M. Witte, C. Steck and T. Benner. Washington, D.C./ Berlin.

Wolfrum, Rüdiger. 1998. "Means of Ensuring Compliance with and Enforcement of International Environmental Law." *Recueil Des Cours, Collected Courses of the Hague Academy of International Law* 272.

Woods, Ngaire. 2006. *The Globalizers. The IMF, The World Bank, and Their Borrowers*. Ithaca and London: Cornell University Press.

World Bank. 2008. "Implementing the Extractive Industries Transparency Initiative. Applying Early Lessons From the Field." Washington, D.C. : The International Bank for Reconstruction and Development/ The World Bank.

World Bank Group. 2004. "Striking a Better Balance - The World Bank Group and Extractive Industries: The Final Report of the Extractive Industries Review." Washington, D.C.: World Bank Group.

World Diamond Council. 2003. "The Essential Guide to Implementing the Kimberley Process." New York: World Diamond Council.

World Diamond Council Technical Committee. 2000. "A System for International Rough Diamond Export and Import Controls." New York: World Diamond Council.

Wright, Chris, and Alexis Rwabizambuga. 2006. "Institutional Pressures, Corporate Reputation, and Voluntary Codes of Conduct: An Examination of the Equator Principles." *Business and Society Review* 111 (1):89-117.

Wright, Clive. 2004. "Tackling Conflict Diamonds: The Kimberley Process Certification Scheme." *International Peacekeeping* 11 (4):697-708.

WTO. 2003. *WTO News: Agreement Reached on WTO Waiver for "Conflict Diamonds"* [cited 16 January 2008]. Available from http://www.wto.org/english/news_e/news03_e/goods_council_26fev03_e.htm

Yakovleva, Natalia. 2005. *Corporate Social Responsibility in the Mining Industries*. Aldershot: Ashgate.

Yergin, Daniel. 2003. *The Prize: The Epic Quest for Oil, Money, and Power*. New York: Free Press.

———. 2006. "Energy Security." *Foreign Affairs* (March/April 2006).

Yi-Chong, Xu. 2007. "China's Energy Security." In *Energy Security in Asia*, ed. M. Wesley. New York, NY: Routledge.

Young, Oran R. 1979. *Compliance and Public Authority: A Theory with International Applications*. Baltimore, MD.

———. 2002. "Evaluating the Success of International Environmental Regimes: Where Are We Now?" *Global Environmental Change* 12:73-7.

Zadek, Simon. 2001. *The Civil Corporation: The New Economy of Corporate Citizenship*. Serling, VA: Earthscan Publications Ltd.

Zandvliet, Luc. 2005. "Assessing Company Behaviour in Conflict Environments: A Field Perspective." In *Profiting from Peace. Managing the Resource*

Dimensions of Civil War, ed. K. Ballentine and H. Nitzschke. Boulder: Lynne Rienner.

Zürn, Michael. 1998. "The Rise of International Environmental Politics - A Review of Current Research." *World Politics* 50 (4):617-49.

Zweig, David, and Bi Jianhai. 2005. "China's Global Hunt for Energy." *Foreign Affairs* 84 (5):25-38.