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Transnational Business Governance and the Management of Natural Resources

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The TBGI Project

Transnational initiatives to regulate business activities interact increasingly with each other and with official regulation, generating complex governance ensembles. Heterogeneous actors and institutions interact at multiple levels and in various ways, from mimicry and cooperation to competition and conflict. The TBGI Project investigates the forms, drivers, mechanisms, dynamics, outputs and impacts of transnational business governance interactions (TBGI) from diverse theoretical and methodological perspectives. It is funded by a Social Sciences and Humanities Research Council of Canada grant led by Professor Stepan Wood, Osgoode.

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Transnational Business Governance and the Management of Natural Resources

Abstract: In the last two decades, the international community has intervened indirectly to reduce the conflict and corruption that accompany natural resource development in weakly governed states. These efforts converge on the norm of information disclosure by industry as a regulatory mechanism, but diverge in how this is institutionalized in a number of different transnational business governance initiative. This article examines how the successive failures of public and private efforts led to patterns of convergence and divergence in the transnational governance of the extractive sector. The timing of the effort, combined with variation in industry structure, differences in the targets of information disclosure, and learning over time influence the outcome in each case. This is explored through a comparison of the Kimberley Process, the Extractive Industries Transparency Initiative, the Dodd-Frank reforms in the US, and recently adopted due-diligence standards by the OECD, the US, and by industry.

Key words: natural resources, extractive sector, global governance, transparency, certification, regulation, Kimberley Process, EITI, due diligence

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I. INTRODUCTION

When the issue of “conflict diamonds” first emerged as a global call to action, the international community—including the diamond industry, states, and NGOs—fairly quickly agreed on a certification system to provide information to buyers about the source of diamonds, in order to keep conflict diamonds out of global markets.[i] Around the same time, growing concern over the “resource curse” led to a much weaker consensus on a transparency regime requiring the publication of information on resource revenues, to keep them from becoming a source of domestic corruption. Over the following decade, various proposals to manage natural resources have included different information disclosure mechanisms as a key element of regulation. Separate agendas on corruption and conflict became linked based on an emerging consensus about the importance of information transparency for improving the governance of natural resources. Despite this normative convergence, we see significant divergence in the design of the resulting institutions. How do we explain the convergence in norms, and the divergence in institutional outcomes, across transnational governance initiatives for the extractive sector?

In this article, I argue that the interaction among public and private governance initiatives, and the successive failures and faults in different efforts, produced a common acceptance of information disclosure as a regulatory mechanism. However, experimentation over time led to variation in who, what and how information was to be disclosed. This variation was a result of evolving relations among public and private authorities as they sought to govern different industries and different targets. The structure of industry, the goals of information disclosure, and learning from failures influenced the character of successive governance schemes. This article compares the Kimberley Process Certification Scheme (KPCS), the Extractive Industry Transparency Initiative (EITI), and a collection of recent supply chain “due diligence” initiatives by states and industry in order to assess the convergence of norms and divergence in institutional outcomes.

All of these governance initiatives grew out of international concern about the link between natural resources and weak governance. All are designed to prevent the extensive revenues from natural resource development from getting into the “wrong” hands, i.e. rebels, paramilitaries, corrupt politicians and bureaucrats. Corruption and conflict initially began as separate international issue areas, with distinct networks of activism and different perspectives on the role of business both in causing and in curing the problem. Over time, issue entrepreneurs linked the agendas into a broader concern with natural resource management in general. These agendas became entwined, with an underlying norm of information disclosure as a means of pursuing regulatory action and improved governance.(Fung, Graham, and Weil 2007)

Despite the meshing of agendas, the institutional outcomes have diverged in a number of key dimensions (see Table 1). First, they differ in the mechanism for information disclosure—certification systems, public reporting of revenues, or auditing of

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supply chains. Second, they aim at different targets—international transactions (trade and supply chains), or domestic transactions (weak governance). Third, they include different actors in governance—states, NGOs and/or industry. Finally, they vary in the scope of the initiative—covering a single mineral, an industry sector, or a supply chain.

The paper is organized as follows. First, I lay out the nature of the conflict minerals problem and the creation of different transnational business governance initiatives. I then discuss some of the existing literature on transnational business governance, and what it says about how different initiatives might interact. This is followed by a comparison of the anti-corruption and conflict prevention agendas, establishing their convergence over time in the area of natural resource management. The next section compares the institutional divergence among governance efforts over time through a comparison of different cases. In the final section, I draw out the comparisons among these governance mechanisms and the implications of this research for our understanding of how different transnational governance initiatives interact.

Table 1. Comparisons

	KPCS	**EITI**	**OECD**	**US**	**EICC-GeSI**
Transactions	Supply chain	Internal Payments	Supply chain	Supply chain	Supply chain
Mechanism	Certification	Reporting/ Auditing/ Reconciling	Due Diligence	Reporting/ Auditing	Auditing
Members	State members, industry participates, NGOs observe	States, with local multi-stakeholder process	None; multi-stakeholder document for industry	Not a membership group; US government regulation	Industry
State Role	Regulates Self	Regulates Self	None	Regulates Industry	None
Industry Role	Regulates Self	Regulated by State	Self-Regulation	Regulated by State	Regulates Self
Enforcement	Via Trade	Via State	None	Via State	None

II. The Problem of Natural Resource Wealth

The period immediately following the end of the Cold War was not one of peace, as many had hoped. States in the former Soviet orbit broke apart violently, particularly in the Balkans. Clients of both the US and USSR in Africa and Central America were cut adrift. Civil conflicts in the developing world, especially Africa, raised concern within the international community. Civil wars and state failures spiked upward in the 1990s, with the horrors of genocide in Rwanda, child soldiers in Sierra Leone, and horrific violence elsewhere making it evident that there would be no global peace dividend—at least, not for some. Long-running and brutal conflicts in Angola, Sierra Leone, Rwanda, the Democratic Republic of the Congo, and Côte d'Ivoire spilled across national borders. It was during this decade that the UN Security Council imposed sanctions numerous times in an effort to end the violence.

Many observers of the conflict—activists, scholars, and policymakers—began to identify economic factors as a feature of these "new wars." (Kaldor 1999; Duffield 2001; Newman 2004) Empirical and policy-oriented research analyzed a number of mechanisms by which trade and investment can contribute to the political economy of conflict by creating conditions that sustain the continued use of violence. (Klare 2002; Berdal and Malone 2000; Ballentine and Sherman 2003; Collier and Hoeffler 2004; Humphreys 2005; Ross 2006; Humphreys, Sachs, and Stiglitz 2007) Analysis of the economic causes of war generated an extensive debate over "greed" versus "grievance" as factors explaining the outbreak of violence.(Berdal and Malone 2000; Ballentine and Sherman 2003) The idea of a "resource curse" became a focus of attention in both the academic and policy communities, drawing attention to the correlation between countries that have great natural resource wealth and those that suffer the most poverty, violence, and retarded development. (Karl 1997; Ross 1999; deSoysa 2000; Robinson, Torvik, and Verdier 2006; Petroleum and Poverty Paradox 2008; Humphreys, Sachs, and Stiglitz 2007) Natural resources, particularly high-value ones such as oil and diamonds, provide the financial wherewithal to buy soldiers and weapons for war. They are also a source of competition among elites to control and appropriate resource revenues, fostering corruption and undermining good governance. (Humphreys 2005) Weak governance itself is the primary problem, and resource wealth simply exacerbates it. (Lederman and Maloney 2008; Lujala, Gleditsch, and Gilmore 2005; Fearon 2005; Luong and Weinthal 2006)

It was in the context of this rising concern over how economic factors fed into conflict that activists and policymakers began to consider ways to regulate high-value resources as a means to end war and mitigate corruption. Two different broad approaches have been applied: targeted sanctions applied to commodities and finance; and the transnational governance initiatives analyzed here. The former are a variation on traditional sanctions, and evolved largely out of disappointment with the utility and humanity of comprehensive UN multilateral sanctions. The failure of these "smart" sanctions to achieve their goals laid the groundwork for experimentation with

transnational business governance.

From 1994 to the present time, the United Nations applied sanctions to diamonds, oil, and timber in Angola, Liberia, Sierra Leone, Democratic Republic of Congo, and Côte d'Ivoire. While targeted sanctions had better humanitarian outcomes than comprehensive sanctions would have produced, they did relatively little to stem the violence. In 1998, the UN commissioned a High Level Expert Group to investigate sanctions-busting among states and non-state actors. The resulting report (called the "Fowler Report" after its lead author), was a devastating indictment of the sanctions regime. (Fowler 2000) It was in the aftermath of this report, and the evidence that traditional methods were not working, that both public and private actors sought alternatives. Within the next decade, a variety of stakeholders participated in creating the Kimberley Process for the Certification of Rough Diamonds (KPCS); the Extractive Industries Transparency Initiative (EITI); the U.S. Dodd-Frank conflict minerals provisions; the OECD Due Diligence standards; the Global eSustainability Initiative; the Voluntary Principles on Human Rights and Security; the Chad-Cameroon Pipeline Project; and various other resource management efforts.[ii] All of these governance initiatives seek to address issues of conflict, corruption and the quality of governance by regulating the extractive sector. However, each one varies in some crucial manner, i.e. the particular segment of the extractive sector to be regulated, international versus domestic transactions, or the particular mechanisms and actors involved in governance.

III. Transnational Business Governance Interactions

How do we ensure that transnational business is governed appropriately as it expands beyond the boundaries of any one sovereign authority? Traditionally, scholarship and policymaking has focused on the ability of states to cooperate in establishing an international legal framework for economic activity. In the 1980s and 1990s, international relations theorists developed theories of cooperation, regimes, and institutions to explain successes and failures in regulation, focusing only on *state* behavior. (Keohane 1984; Krasner 1983) In recent years, however, attention has turned to new forms of global governance that complement or compete with traditional forms of authority (Avant, Finnemore, and Sell 2010; Hall and Biersteker 2002; Hewson and Sinclair 1999; Hoffman and Ba 2005; Reinicke, Benner, and Witte 2003) These primarily focus on the transnational regulation of business entities.

These new forms have been characterized as "private authority" (Hall and Biersteker 2002; Buthe 2004; Vogel 2009); "multi-stakeholder governance," (Hallstrom and Bostrom 2010) "global public-policy networks," (Reinicke, Benner, and Witte 2003) "private or industry self-regulation," (Vogel 2009; Haufler 2001) "regulatory standard-setting systems," (Abbott and Snidal 2009) and "transnational business governance." (this issue) These and other labels refer to the significant growth and evolution of regulatory standard setting efforts that are either completely or partly established by non-state actors,

often include the businesses to be regulated, are voluntarily adopted, and are transnational in scope. They may be market-driven, such as international certification systems that label products according to environmental or other standards. (Cashore, Auld, and Newsom 2004) Others are socially-driven systems that establish principles, rules and norms for corporate behavior instead of for products, as in the case of human rights standards for business. Many contain some mix of these features. States are not absent from these new forms of global governance, but they are not always the central authority. (Avant, Finnemore, and Sell 2010)

These systems of governance have grown in number and significance, and they increasingly overlap and interact in ways that we know very little about. (Eberlein et al, Introduction) We see this most clearly in environmental standard-setting, where certification systems such as the Forest Stewardship Council vie with the Sustainable Forestry Initiative for the allegiance of producers and consumers (Bartley, Cashore and Stone, Overdevest and Zeitlin, and Gulbrandsen in this special issue(Cashore, Auld, and Newsom 2004; Meidinger 2006). But such initiatives have emerged across a much wider array of problems—labor (O'Rourke 2003), finance (Porter, this issue), information technology (Tully 2004; Mueller 2002), and others. There are a number of different approaches we might employ to understand how these different systems might interact within a particular issue area.

One of the most prominent approaches focuses on market competition as the main form of interaction. For instance, strong forest sustainability initiatives compete with weak ones, independently monitored labor codes compete with self-monitoring ones, as each one seeks to obtain the support of producers and consumers. (Cashore, Auld, and Newsom 2004) Cashore, et al have done the most to develop this idea, proposing a category of regulatory systems they label "non-state market driven (NMSD)." But this competitive approach is also a significant element in the work of Prakash and others, who use "club theory" to frame the emergence of transnational business governance. (Prakash and Potoski 2010) These provide insights into situations where more than one governance initiative is essentially seeking the same goal, i.e. certification schemes compete to enroll participants and attract consumers through the standards they negotiate and the legitimacy they seek to establish. (Koppell 2010) This literature explains why and how competition can lead schemes to converge or diverge in their rules, standards, and enforcement mechanisms. However, they are less helpful in explaining situations where the overarching social goal is the same in different schemes, but they operate in different markets or industry segments. Competition is not the main form of interaction.

A more relational approach to interaction can be seen in theories of hierarchy, delegation, collaboration and orchestration. Abbott and Snidal have surveyed these alternatives, focusing in particular on the relationship between public and private authority. (Abbott and Snidal 2011) Both hierarchy and delegation assume that different authorities have conflicting interests, but that they are not operating completely independently of each other. Hierarchy and delegation involve ordered relationships between authorities, with an identifiable superior. (Hawkins 2006) Collaboration and orchestration assume more congruence between interests, and describe relationships that

are more equal. These models apply to distinct governance schemes that establish a division of responsibility between them, instead of competing to do the same job. The problem is trying to explain the interaction within a particular issue area or industry sector of multiple schemes that are *not* attempting to do the same job, but that overlap in terms of their overarching goals.

A further way of thinking about interactions among governance schemes is to think of each one as only a piece of a larger whole. Avant, et al argue that global governance can be disaggregated into different steps—agenda-setting, negotiating rules, implementing them, monitoring and enforcement, and adjudication. (Avant, Finnemore, and Sell 2010) Each step in this process, or a cluster of steps, may be undertaken by different sets of actors through different transnational governance initiatives, as Eberlein et al describe. (Eberlein et al 2012) A set of advocacy organizations and states may put an issue on the international agenda, for instance, and a mix of different stakeholders may negotiate the rules. Industry may implement those rules, perhaps in concert with international organizations. Monitoring may be handled by activist organizations, while adjudication may occur through a multi-stakeholder process. Each set of actors may be in a different type of relationship with others, and it may be difficult to characterize the governance system as a whole.

This messy picture is what recent work on regime complexes seeks to explore. It tends to be state-centric, but has relevance to understanding the interactions among governance initiatives of all sorts. Raustiala put forth the concept to describe systems of overlapping and non-hierarchical regimes in an area.(Raustiala and Victor 2004) Keohane and Victor analyze state efforts to deal with climate change as a regime complex, in which efforts to construct a single comprehensive regime have not proven successful. They explain the multiple overlapping regimes as a consequence in part of the multitude of problems within that issue area, and strategic behavior among states, which results in a diversity of institutional responses. (Keohane and Victor 2011) The interaction among the elements of the regime complex is characterized by path dependence between earlier and later regimes; forum-shopping by participants seeking the best venue to achieve their interests; legal inconsistencies between regimes; and efforts by states to overcome these inconsistencies through broad implementation and interpretation. (Raustiala and Victor 2004)

The concept of a regime complex can be seen as an international version of the sociological concept of an “organizational field.” This concept, however, emphasizes commonalities and homogenization, while the regime complex literature emphasizes competing interests. Nevertheless, both are approaches to analyzing an issue area, and both look at how disparate elements become a common field.[iii] Sociological institutionalism tells us that when an organizational field emerges there will be pressures towards homogenization even in areas without market competition. An organizational field is “those organizations that, in the aggregate, constitute a recognized area of institutional life:

key suppliers, resource and product consumers, regulatory agencies, and other organizations that produce similar services or products." (DiMaggio and Powell 1983, 148) Coercion, common norms, and modeling behavior (mimesis) push managers to adopt similar organizational models. (DiMaggio and Powell 1983) In highly structured organizational fields the pressure towards convergence will be high. The organizations are both connected and equivalent; they compete with each other but also belong to the same networks, which evolve over time. (Bartley and Smith 2008) The field is "structured" through a process that involves increased interaction among organizations, and rising awareness of similar goals. Weakly structured fields will experience fewer pressures towards convergence. As Beckert notes, however, more attention has been paid to convergence, homogenization, and diffusion than to divergence, differentiation and unique trajectories in this literature. (Beckert 2010)

The transnational governance of natural resources has some characteristics of a regime complex or organizational field, given the diverse collection of governance initiatives that has emerged. Unlike the climate change case, however, there has never been an effort to negotiate a single comprehensive regime, perhaps because it has never before been viewed as a single problem area. It is a loosely structured field, which may explain the divergence in institutional outcomes yet pressure towards similar norms. As an emerging organizational field, path dependence may be an important factor in the interactions of each successive governance effort, since the interactions take place over time. Earlier efforts are both a model for and a constraint upon later initiatives. The natural resource sector itself is of course not one single sector, but a set of different industries and supply chains, each with its own characteristics. This combination may explain the divergence in institutional forms.

Drawing selectively upon this literature, I make two general arguments about the convergence in norms and divergence in institutional form for natural resources. The first has to do with timing and sequence. Early schemes institutionalized the idea of information disclosure as a governance mechanism, which constrained the range of options considered later. Transnational activism around the resource curse reinforced this path, as the anti-corruption and conflict prevention campaigns separately reinforced the push for information disclosure. These helped structure or constitute the emerging organizational field of transnational resource management.

The second argument has to do with the interaction among schemes. Early failures mobilized a growing alliance of transnational activists, international organizations, industry and states that sought to address gaps in coverage. The participants experimented with different institutional models in order to address different targets and respond to variations in industry structure—but they experimented within a narrow range, changing targets and goals but consistently focusing on information disclosure mechanisms. Both time and the character of the problem are relevant to explaining the interactions within this loosely constructed organizational field. (Mahoney 2000)

IV. Convergence of Norms and Agendas 1991-2000

The agenda for fighting international corruption, and the one for cutting the link between conflict and natural resources, each emerged out of separate campaigns, investigations, and lobbying efforts. As they merged, they have become a new field of action and inquiry through interaction and engagement with each other.(Bartley and Smith 2008) They share common norms regarding the importance of transparency and information disclosure as a governance mechanism. The turn towards transnational business governance as a solution to common problems came on the heels of repeated failure of traditional international solutions, specifically, international peacekeeping and sanctions.

In the immediate aftermath of the end of the Cold War, conflicts in the Balkans and in sub-Saharan Africa became particularly brutal and intractable. Peacekeeping efforts and the imposition of sanctions became more common, with mixed success. (Finnemore 2003) Humanitarian intervention became much more common, and the pressures for the international community to respond to civil war became more acute. (Barnett and Snyder 2009; Barnett and Weiss 2008) By the mid-1990s, rebels and governments increasingly used the exploitation and sale of natural resources to finance war and violence, as the patronage of Cold War competitors disappeared. The "resource curse" and "state failure" became more common as subjects of inquiry in scholarship and policymaking. Activist NGOs highlighted the role of commodities such as oil, diamonds, and timber in financing long-running conflicts. (Global Witness 1998, 1999; Smillie, Gberie, and Hazleton 2000) Numerous meetings, conferences and workshops began to create a network of people focused on how natural resource development was managed by both host governments and industry.

Corruption, often tied to resource wealth, did not at first generate much policy attention. The US had passed the Foreign Corrupt Practices Act in 1977, amended in 1988, with little support from the rest of the world.(Weiss 2009) But a handful of years after the fall of the Soviet Union, in 1993, Peter Eigen launched the NGO Transparency International to pursue a transnational campaign against corruption—the "abuse of entrusted power for private gain," as it states on its website. (www.transparency.org) It established national branches throughout the world, and pushed for changes in law and policies at the global, regional, and local levels. (Waddell and Khagram 2007) Each year, it publishes a Corruption Perceptions Index which ranks countries by how corrupt they are perceived to be. And, as its name proclaims, the organization promotes transparency as the main mechanism to stamp out corruption. (Galtung and Pope 1999) In 1995, with some controversy, the World Bank joined this campaign and launched its own efforts to fight corruption and facilitate "good governance" in the developing world.[iv] Two years later, member states negotiated the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which some heralded as the impetus to changes in attitudes towards corruption worldwide. (Brown and Cloke 2004; McCoy 2001; George, Lacey, and Birmele 2000) By the middle of the decade, the norms about corruption had changed in significant ways.

Fighting the resource curse quickly became a focus of the anti-corruption campaign. The Open Society Institute, founded by George Soros in 1993 to support democracy and a free media, established a special program called Revenue Watch in 2002 to investigate and monitor the flow of funds from oil companies to governments in the Caspian region. Its goal was "To help ensure that existing and future oil and natural resource funds in the region be invested and expended for the benefit of the public through transparency, civic involvement, and government accountability." (www.eurasianet.org)[v] At around the same time, the Publish What you Pay Campaign was launched by a handful of London NGOs to press for more transparency and accountability in the oil, gas and mining sectors. Within six years, it had grown to include over 350 organizations—international and local, secular and faith-based. (van Oranje and Parham 2009) Within the space of a decade, both the official and activist worlds had established a core agenda that included anti-corruption norms, transparency and accountability mechanisms, and a focus on the extractive sector.

It was in this same time period that the business and conflict agenda emerged, with a somewhat later start. The concern over how natural resources finance conflict began very quickly with the end of the Cold War, leading to UN sanctions in some cases. But we can date the *business* and conflict agenda to the initial outcry against "conflict diamonds"—rough diamonds from regions of conflict, whose sale financed bloodshed in Angola and Sierra Leone. Global Witness, launched in 1993, issued ground-breaking reports in 1998 and 1999 highlighting the role of oil and diamonds, and Ian Smillie investigated rough diamonds in Sierra Leone.(Global Witness 1998, 1999; Smillie, Gberie, and Hazleton 2000) Other groups joined the transnational campaign against "blood diamonds," threatening the brand and reputation of the diamond industry. Other natural resources also came in for attention—timber, oil, and other minerals. At the same time, broader concerns about transparency and accountability throughout the extractive sector emerged.

The year 2000 marks a turning point in the corruption and conflict agendas. Some NGOs began to make the case that business has an interest in peace because it benefits commerce, and therefore should become more engaged in conflict prevention. (Nelson 2000) This was the year Secretary-General Kofi Annan launched the United Nations Global Compact; one of its first activities was a Policy Dialogue on Business in Zones of Conflict. The participants, drawn from industry, government, three UN agencies, and NGOs, quickly focused on transparency as a core issue, which intersected with the interests of the anti-corruption campaign. A few years later, the UN Global Compact would add anti-corruption as its tenth Principle.[vi] That same year, the UN General Assembly adopted a resolution supporting the certification of "clean" rough diamonds from conflict-free regions. By the end of the year, the first meeting of diamond producers, consumers and activists met Kimberley, South Africa to discuss how to establish a certification regime.

From the end of the Cold War to the turn of the century—a relatively short span of time in international relations history—we see the emergence onto the international agenda of corruption and civil conflict. Both converged towards a focus on natural resources as a particular problem that required international action, and the promotion of transparency as a means to resolve it. Despite their commonalities, however, different kinds of institutions were established over the next decade.

V. Institutional Divergence 2000-2012

By 2000, information disclosure had become a common touchstone in all proposals that focused on natural resources as a source of conflict and corruption. In the decade to follow, we see a slow build-up of different transnational business governance initiatives. The first one—the Kimberley Process—began with a multi-stakeholder negotiation that covered the entire diamond industry and all the major players. Each succeeding initiative both built upon and differed in significant ways from the others. All entailed some form of information disclosure—certification, reporting, and/ or auditing. These include the Extractive Industries Transparency Initiative, the OECD Due Diligence Guidance, the US Dodd-Frank provisions on the extractive sector, and a variety of recent supply chain tracing and tracking initiatives that are only currently being developed, primarily by the Global eSustainability Initiative (GeSI).

The Kimberley Process Certification Scheme (KPCS)

The "sanctions decade" of the 1990s came to a close with increasing evidence that selective or "smart" sanctions had failed. These included sanctions on specific minerals, timber and oil that were identified with conflicts. The UN established a panel of experts to review the sanctions experience in Angola, which reported in detail the shameful level of sanctions-busting by individuals, firms, and governments.(Fowler 2000) By 1998, the UN Security Council began experimenting with having governments certify that diamond exports were from conflict-free zones. However, there was rising impatience with traditional measures to end conflict, and horror at the genocide in Rwanda and the cruelty of rebel practices in Sierra Leone.

The ongoing bloodshed generated media attention and galvanized activism on behalf of the victims. Global Witness published widely noted investigative reports in 1998 and 1999 that put companies on a par with governments in facilitating the ongoing conflict in Angola, focusing especially on oil companies and banks. Other activists and NGOs began to identify rough diamonds as a major source of war finance. The idea of "conflict diamonds" entered political debates, propelled in part by highly effective campaigns by a coalition of advocacy organizations targeting consumer sentiment by re-labeling them "blood diamonds." In the space of only a few years, the debate over how to resolve conflict began to shift from a focus on governments to increasing concern over the role of industry—particularly the extractive sector.

In 2000, the UN General Assembly passed unanimously a resolution condemning the role of diamonds in financing conflict and supporting the institution of a global certification regime. 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, or in contravention of the decisions of the Security Council." (http://www.un.org/peace/africa/Diamond.html) The UN focused its attention initially on

Sierra Leone, Angola, and Liberia. The UN Security Council had already applied sanctions against the UNITA rebels in Angola, including an embargo on trade in diamonds in 1998 (and oil in 1999), but the evident failure of these sanctions—which did nothing to stem the flow of commodities or to bring the warring parties to the negotiating table—helped spur the blood diamond campaign. The Kimberley Process was born out of the failure of UN sanctions.

The diamond industry, including DeBeers, initially tried to ignore the campaign against conflict diamonds. But this was a challenging time for DeBeers., which faced increased difficulty in maintaining its control over the market. Conflict diamonds in Africa were flooding the market, and the collapse of the Soviet Union led to "leakage" of diamonds outside of DeBeers' control. New producers were entering the market, and Africa was no longer the central source of rough diamonds.

A number of producers, both in the industry and in exporting states, began to be more concerned about the conflict diamond campaign. They were tired of the sanctions, and feared stronger government intervention in the market. To some degree they also worried about consumer response to the campaign, and the harm it was doing to the image of diamonds. As a response, the diamond industry itself proposed a voluntary system to identify rough diamonds from conflict zones, and certify them as "conflict free." Producer states, such as South Africa and Botswana, sponsored negotiations in Kimberley, South Africa in 2000 among industry representatives, diamond producing states, and two of the NGOs most active in the campaign--Global Witness and Partnership Africa Canada. Their goal was to develop a global certification system. The World Federation of Diamond Bourses and the International Diamond Manufacturers Association afterwards created the World Diamond Council (WDC), with a mandate to develop a tracking system for the export and import of rough diamonds. By the end of the year, the UN General Assembly adopted a resolution supporting the establishment of a diamond certification system.

Under the KPCS, rough diamonds (diamonds that are uncut or minimally cut and unpolished) would be packaged together in a parcel with a forgery resistant certificate that documents that the stones do not come from designated conflict zones—i.e. rebel-held or contested territory. All member states are required to ensure that exports and imports of diamonds are in sealed containers, properly certified, and do not come from non-participant states. The industry would provide a system of warranties to track the rough diamonds internally within states.

There are a number of information disclosure mechanisms that are part of the Kimberley Process. The most obvious is the certification system itself, which provides both information and assurance that rough diamonds do not come from conflict zones. The industry provides a chain of custody assurance through its warranties. In addition, member states are required to supply information on diamond production levels, trade data, and implementation problems they encounter. The KPCS also includes a system of peer review to monitor the behavior of member states. Countries that do not meet Kimberley standards can have their membership revoked. Since member states cannot

trade with non-member states, exclusion from the Kimberley Process carries significant costs.

The Kimberley Process is currently facing a challenge that it may not be able to overcome: the outcry over Zimbabwe. In 2006, the government of Zimbabwe took over the Marange diamond region—potentially one of the richest sources in the world. It has controlled the region through violence and repression, leading to calls that Zimbabwe's membership in the KPCS be revoked. However, under the terms of the Kimberley Process, conflict diamonds come from rebel held or contested territory and not from violence by government. The Kimberley Process members are divided on whether to certify Marange diamonds. Some industry players refuse to buy from Zimbabwe, and one of the NGO observers—Global Witness, a founding participant—recently walked away from the KPCS. African states, including South Africa, argue that Zimbabwe has met the conditions of membership, while the US, Canada, and Australia condemn the country. At this point, the KPCS is saying Zimbabwe can sell diamonds, but the issue threatens to undermine the scheme as a whole.

The Kimberley Process is a transnational business governance initiative, although one with a higher degree of state participation than most. The members are states, but significant responsibilities are delegated to industry and NGO participants. The aim of the system is to regulate trade among member states, and internally regulate the supply chain for diamonds. The idea of targeting diamonds to address conflict came from the earlier experience with sanctions. The idea of certification may have come from earlier experiences with it in the environmental and labor arenas, with the Forest Stewardship Council and Fair Labor Association as potential models.(Bartley 2010)

The Extractive Industries Transparency Initiative

At the World Summit on Sustainable Development in Johannesburg in September 2002, British Prime Minister Tony Blair first proposed the Extractive Industries Transparency Initiative (EITI). He declared that governments and companies need to be more open about the payments companies make to governments for the exploitation of natural resources in order to ensure equitable, sustainable development. The EITI aims to reduce corruption through public reporting, and empower citizens through the process. Although initiated as a foreign policy of the UK government, Blair intended from the beginning for the EITI to be adopted widely, and to evolve into a multilateral program. The EITI was conceived from the first as a platform to involve many different groups, including governments, international organizations, NGOs and business, in a multi-sectoral partnership. States are members, but the EITI requires multi-stakeholder consultation within states over implementation.

In June 2003, representatives from 31 countries and 17 oil and mining firms broadly endorsed the EITI. From 2002-2006, the EITI struggled to expand membership and

institutionalize its processes, including a formal Validation Process for membership. Under the EITI, companies must publish what they pay to governments, governments must publish what they receive, and the two accounts must be audited and reconciled. Each member state has their own national EITI to oversee the changes in law and regulation necessary to implement the EITI requirements.

The EITI now has a Secretariat based in Oslo, a Board and President and member conferences every two years. The membership and validation processes have become more detailed and comprehensive over time, with rigorous requirements for reporting, auditing, and reconciling accounts. Azerbaijan was one of the first countries to join the EITI, and the first to achieve compliant status. Today thirteen states are compliant, including Ghana, Liberia, Nigeria and Norway, and twenty others have declared their candidacy. Many of these countries joined or attained compliant status only in the last few years.

Initially, only a small number of extractive companies supported the EITI publicly. But today, over forty large oil, gas and mining companies have declared their support and work with national EITI groups. Three major industry associations have also declared their support for the EITI: the American Petroleum Institute, the International Organization of Oil and Gas Producers, and the International Council on Mining and Metals. In addition, a group of financial firms has stated their formal support for the program. About a dozen NGOs work with the EITI at the international level, while many civil society groups work with it at the local level.

Information disclosure is central to the work of the EITI. It is a transnational business governance initiative in which member governments have a central role, but industry is a key partner and critical to its success. Unlike the KPCS, this initiative is entirely focused on internal transactions between business and government. Initially it addressed the problems of petroleum development, not minerals, and industry was not initially a strong supporter of the regime. The EITI was launched around the same time that the Kimberley Process was implemented. Some of the same people involved in the Kimberley Process, especially the activist NGOs such as Global Witness, supported the EITI process. The two processes operated independently of each other, in different markets, but have the potential to overlap as the EITI begins to pay more attention to mining and minerals.

Supply Chain Management and Due Diligence: OECD, US Dodd-Frank, and GeSI

As the Kimberley Process teetered, and the EITI expanded, the next stage in addressing the conflict and corruption linked to natural resource wealth focused on the oversight of supply chains linking end users to the raw materials. New NGOs such as the Enough and Resolve kept attention on the role of minerals in ongoing bloodshed, particularly in the Democratic Republic of the Congo and its neighbors. Out of this grew a range of initiatives to establish standards of “due diligence” and “responsible sourcing.” The most significant of these have been the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (hereafter the OECD Due Diligence Guidance), the US Section 1502 provisions of the Dodd-Frank financial sector

reforms, and the GeSI initiatives on mineral smelters and supply chain tracing. The European Union is considering provisions similar to those in the US, and the UN has been promoting due diligence in high-level reports for the last few years. Of the three discussed here, one is a traditional OECD standard-setting exercise, one is a purely unilateral move by the US, and one is an industry alliance. These three interact with each other and with the pre-existing governance mechanisms in the extractive sector.

Around the same time that the Kimberley Process was established, many activists were pressing companies to reveal more about the sources of their minerals. They particularly targeted the electronics industry and minerals such as col-tan and gold. In 2004, the electronics industry formed the Electronic Industry Citizenship Coalition to put forth a general code of conduct to promote corporate social responsibility. It worked with the Global eSustainability Initiative (GeSI)—a partnership between industry and NGOs—to study the feasibility of supply chain transparency with regard to tantalum sourcing, later adding gold, tin and tungsten. In 2009, it issued a report that concluding that supply chain transparency is feasible, although not with 100% certainty about sources. (Resolve 2010) The GeSI launched the Conflict-Free Smelter (CFS) program in 2009. The CFS is a voluntary audit program which verifies that a smelter does not obtain materials from the DRC region. It covers tin, tantalum, tungsten and gold. Any smelters obtaining materials from the DRC region must follow the OECD guidelines. The CFS also intends to be in conformance with the Dodd-Frank provisions.

The information provisions of the CFS entail auditing supply chains for the sources of material obtained by the smelter. Unlike the KPCS and EITI, the main focus is a key node in the middle of the industry value chain—the smelters—instead of the miners or the end users. Under the CFS, smelters ask to be audited, and if they successfully meet the standards of the CFS they are listed as compliant. The EICC and GeSI maintain a website with information on compliant smelters, currently only available for tantalum. They recently developed a template for conflict minerals reporting.

In the US Congress, from 2008 on, various legislators proposed legislation addressing the issue of conflict in the DRC. As the Wall Street reform bill moved through the US Congress in 2010, they successfully pressed for transparency and due diligence provisions on conflict minerals to be in the final document. Section 1502 of the Dodd-Frank reform bill imposes reporting requirements on companies listed on US stock markets that use conflict minerals, establishing transparency and reporting requirements. Conflict minerals are defined as gold, wolframite, cassiterite, coltan, and any other mineral financing conflict in the DRC or neighboring states. If a company sources from the DRC region, it must report to the SEC and publicly disclose information about due diligence—including an audit, what conflict minerals it uses and from where, and any efforts to identify the origin of minerals. This US initiative has potentially far-reaching international impact. It will apply to all companies listed on the US stock exchange. Business groups such as the US Chamber of Commerce have blasted the reporting requirements, and many within

the DRC express concern that this may lead companies to avoid the DRC altogether. Some observers believe the SEC rules to implement Section 1502 are too draconian, and amount to a trade embargo on the DRC.(Taylor 2012)

The OECD has also taken up the issue of supply chain management and conflict minerals. In fall of 2010, it held a multi-stakeholder meeting to discuss conflict and minerals in the Great Lakes region of Africa. It then proposed a set of voluntary guidelines on supply chain management and reporting, which was adopted by the OECD in December and supported by a number of African states. The Guidance encourages voluntary annual reporting, and what it calls "risk management" through due diligence in supply chain management for tin, tungsten, tantalum and gold. The OECD currently is working within the DRC region on the ground, to help the minerals sector develop supply chain management, due diligence, and reporting standards. The OECD is working with industry to trial the Guidance on the ground. It is making an effort to apply the Guidance in a way that supports artisanal miners without contributing to ongoing conflict.(OECD 2010)

Variation across Initiatives

All of these initiatives regulate business transnationally, and utilize some form of information disclosure as a key mechanism of governance. They vary in significant ways—the exact nature of the disclosure requirements, the transactions targeted by the initiative, the industry affected, and most of all the degree to which industry contributes to governance or is simply the object of regulatory action. (see Table 1)

The Kimberley Process is the only initiative that focuses explicitly on certification, although the Conflict-Free Smelter program is essentially certifying smelters by listing them as compliant. The EITI, in contrast, relies on public reporting as the form of information disclosure. The OECD Due Diligence standards lie somewhere in between. The KPCS, CFS, and OECD Due Diligence are concerned with international trade, and monitoring of the supply chain. The EITI is primarily focused on internal transactions within a country, although some of the due diligence efforts by the OECD (along with other efforts, such as the Diamond Development Initiative) attempt to improve internal domestic governance. One of the striking differences is sectoral—diamonds, other minerals, and petroleum. The diamond industry is highly organized in way that the other sectors are not. It has a unique history as one of the most durable cartels that has ever existed in modern times, characterized by strong long-term contracts backed by common norms. (Spar 2006) Although the cartel was weakening, the structure of the diamond sector facilitated the creation of the Kimberley Process. Other mineral industries are more competitive and do not have the same sort of history of tight control and social pressures as in the diamond sector. The same is true for the oil and gas industry, although it can be characterized as an oligopoly among the oil majors, and is undergoing significant change with the globalization of state-owned firms from China and elsewhere. These differences explain why their was rapid consensus in the diamond sector, which led to the rapid conclusion of the Kimberley Process. The greater diversity and different interests in the other sectors would inhibit a similar rapid consensus.

Another area of significant variation is in the degree of government involvement, as a participant or a target. The major diamond producing states had a common interest in addressing the conflict diamonds issue, and took a strong role in the Kimberley Process. The KPCS was created as a two-tier system in which states became members of an intergovernmental organization, and industry provided the certification and chain of custody system. In contrast, the home state of major oil and mining companies had a particular interest in addressing civil conflicts in areas abroad where industry faced a challenging environment. The EITI was launched by the UK and meant to apply not to itself, but to resource-rich fragile states in the developing world. Once launched, the target states could sign up to become members after making fairly profound changes to their own governance system. This included the establishment of a multi-stakeholder national EITI implementation group, reporting on industry and government financial transactions, and the auditing and reconciliation of accounts. The OECD Due Diligence obviously involved the OECD governments, but it is industry that voluntarily adopts the guidelines to apply to their supply chains. The US Section 1502 provisions are traditional government regulation in some ways, but apply to all companies listed on the US stock exchange and directly affect all companies in the supply chain of these companies. The CFS is an industry initiative, developed in partnership with NGOs, in which there is no government participation. Overall, the degree to which they require domestic change varies, as does the level of participation by industry. The variation in government participation and their different interests as home states and hosts, targets of the initiative or not, influenced the institutional differences.

VI. Interactions among Governance Initiatives

This brief overview of different governance initiatives highlights the role of information disclosure as a commonality among them, despite institutional variation. We see a convergence in the nexus between conflict and corruption, as attention shifted from states to business in response to repeated failures of sanctions and other means to address these issues. Sometime around the year 2000 there was as tipping point as more and more anti-corporate campaigns began looking to business as a solution to intractable problems. Both the anti-corruption and conflict campaigns looked to business as a source of the problem, and a potential partner in solving it. This began a process of convergence that created a common organizational field, populated by a number of different governance programs. While much of the literature on global normative convergence focuses on rationalization and bureaucratization as key features of contemporary global society (DiMaggio and Powell 1983; Barnett and Finnemore 2004), here I focus on information disclosure by both business and governments—making information about the activities and operations visible through self-reporting. (Florini 1998; Gupta 2010) Gupta has called this part of a “procedural turn” in politics, in which there is a concern to establish processes in the hope they will lead to desired outcomes.(Gupta 2010) We see this occurring across a range of areas—calls for transparency in foreign aid, philanthropy, civil society

organization funding, etc. However, as I argue, this normative convergence has been accompanied by institutional divergence.

Much of the development of and difference in each of these initiatives can be traced to the failures and weaknesses of earlier efforts. This is a case of path dependence with experimentation: earlier initiatives established certification and transparency models, and later ones selectively took up some features and not others. The Kimberley Process clearly came about due to the obvious failures of sanctions to bring about peace. The EITI was created as a transnational initiative to address clear government failures in resource-rich developing states. Once in place, the two together could be viewed as a complementary set of standards for the management of natural resources. But each had weaknesses. The KPCS is credited with helping bring rebels to the negotiating table in Sierra Leone, and expanding the amount of "legitimate" diamonds in trade, it is not designed to deal with violence by governments, and the situation in Zimbabwe is undermining the entire process. The EITI has been a spur to establish better governance among states that sign on—but not all states have joined, and it has not been designed to deal with the profound violence and breakdown in parts of the Democratic Republic of Congo. The result has been a spate of initiatives at the international, national, and industry levels designed to trace and track minerals and ensure they do not come from the DRC region. These clearly reference each other, and reference the KPCS and EITI.

The identity of major actors varied across these initiatives. We can look at power among states, and power within industry sectors. The diamond industry had a major player in DeBeers, with sufficient market power to greatly influence the outcome of the rough diamonds debate. In addition, the major producer and consumer states—South Africa and the US—both agreed on the need for a certification system, and were supported by the UN. Both the EITI and the US systems clearly relied on one powerful actor to initiate them, but with different interests. The UK wanted an international regime based on transparency, while the US wanted a domestic regime with transnational reach. The extractive industry itself had diverse interests, with no one arguing for certification but increasing concern for supply chain transparency by the electronics industry. Recently, Apple voluntarily published information on its supply chain—not due to the Section 1502 requirements but as a commitment to address the conflict minerals issue.(Apple 2012) It is working with the GeSI and the OECD Due Diligence Guidance.

There have been numerous calls for certification by activists concerned about conflict minerals. The Enough campaign is pressing Apple, as an industry leader, to develop a certification system. The electronics industry, however, is not so oligopolistic and the supply chains are complex, in contrast to the diamond industry. The diamond industry is highly structured and close-knit in ways that we do not see in other sectors. In addition, it is much more affected by reputational threats than, say, oil or coltan. However, there are signs that the Conflict-Free Smelter program could gradually move from reporting to a more stringent certification program.

Today, natural resources are subject to increasing international regulation of different types. These transnational business governance initiatives increasingly overlap,

and the participants work within multiple initiatives at the same time. Their common focus on information disclosure as a governance mechanism reflects a larger shift towards transparency across many issue areas. Public reporting and certification provide the means to hold governments and industry accountable, even in the absence of democratic processes. The development of this organizational field, or regime complex, raises further questions. How effective are they? Will state-owned companies from China and elsewhere undermine them? How have networks among activists and policymakers facilitated the creation of complementary governance initiatives? These questions will be particularly interesting to explore as competition for access to natural resources increases in the future.

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[i] The use of mineral resources to finance conflict and foster corruption is not new, but the category of "conflict minerals" has been socially constructed by activists as an international problem only in recent decades.

[ii] All of these efforts have some element of information disclosure in how they work. Here, I compare only those where some form of information disclosure is the central governance mechanism, leaving out the Chad-Cameroon project and the Voluntary Principles.

[iii] Burkhard Eberlein argues that the concept of regime complex emphasizes fragmentation, while organizational fields are about homogenization. (personal communication) Nevertheless, they both try to make sense of an area of common endeavor.

[iv] The World Bank staff debated whether anti-corruption policies hindered development, and some were concerned that they would be trespassing into political affairs.

[v] In 2006, Revenue Watch became an independent organization with a global mandate to promote effective governance of natural resources.

[vi] The founding principles of the Global Compact contain three principles on labor, three on human rights, and three on the environment—plus the anti-corruption principle.