One of the central institutional design choices for multi-stakeholder initiatives (MSI) is about transparency mechanisms: the decision on what kind of information to require, of whom it should be required, and who will be the audience for that information. By selecting a particular mechanism of transparency, the participants are choosing which audience should be empowered by the MSI, either directly or indirectly.

In this draft think piece for the workshop, I explore transparency mechanisms across a number of regulatory standard-setting initiatives in the issue area of conflict minerals. I argue that decisions about institutional design in this issue area are influenced by industry structure, modeling (or mimetic) behavior, and interactions among different standard-setting efforts. The design of any particular MSI is malleable, evolving in response to outside criticism and ongoing experience. Choices about transparency mechanisms made at the creation of a MSI may be modified or added to later on, either expanding or restricting the information shared and the audience that is empowered by it.

MSIs have qualities that distinguish them from other forms of governance: (1) they are voluntary initiatives and therefore they do not apply universally and must work to acquire adherents; (2) their decisions are made by participants from more than one stakeholder group, though the exact distribution of them varies; and (3) those participants may operate at any level, i.e. they can include representatives of local communities, governments, NGOs or business; national governments, NGOs, companies, or industries; or transnational NGOs, corporations, industry associations, and intergovernmental organizations; and (4) they address important social issues, typically ones that have a transnational dimension. The participants negotiate to establish institutions that perform some aspect of governance—identifying problems, collectively establishing rules and standards, monitoring and auditing performance, and enforcing outcomes. MSIs, as noted in the framework for this workshop, are an increasingly common aspect of regulatory governance today.

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1 This description of MSIs builds on the one Desai and Katzenstein present in their memo for this workshop. (Desai and Katzenstein 2016)
The question of how MSIs are designed and what impact these design choices have on valued outcomes is one that is beginning to garner more attention. What are the areas where MSIs make design choices? The main ones are in the areas of MSI governance, membership, funding, and relationships with other entities. The governance choices include decisions about board structure, secretariats, committees, delegation of tasks, standards and standard-setting processes, monitoring and enforcement. Membership has to do with the diversity of representatives, the degree of inclusiveness, entry criteria, expulsion criteria, and pace of growth. Funding includes membership fees, philanthropic donations, fees for service activities, and support from governments and international organizations. Relationships with other governance institutions include specifying how different standards relate to each other and how to reconcile them, ways in which one entity can provide support to or compete with others, and legal status. (Pielmei and Avant 2016)

This is a necessarily brief overview of MSIs and institutional design choices. In this memo, I want to focus on transparency mechanisms as one of the features of governance within MSIs. In the rest of the memo, I will first discuss transparency and information disclosure. I will then provide a brief overview of the governance institutions for conflict minerals, focusing in particular on the Conflict Smelter Scheme, the OECD Due Diligence Guidance, and the Public-Private Alliance for Responsible Minerals Trade. I discuss the different information disclosure mechanisms in these MSIs, and their impact in terms of empowering different audiences.

Transparency Mechanisms: Regulation by Information

“Transparency” is about deliberately producing and sharing information that would otherwise remain private or secret. Information disclosure requirements have been an element in domestic and international regulation for many decades now. In order to hold any actor accountable, we have to have relevant information about them and their behavior. Once we have that information, we can then consider whether to enforce standards and rules of behavior. At the international level, where enforcement is weak, information disclosure becomes a tool of enforcement through the response by market actors, the evolution of norms, and social discourse about standards. (Hale 2008)

Globalization and the development of lengthy international supply chains have made it increasingly difficult to penetrate the production process. Transnational activists bring the spotlight of international attention to the actions of corporate actors wherever they operate, using “naming and shaming” strategies to hold companies accountable for everything from human rights abuses to environmental pollution in every corner of the world. (Spar 1998, Friman 2015, Keck and Sikkink 1998) This kind of information politics has been institutionalized within MSIs, and is a central pillar of global governance today. This information disclosure is both the standard that actors must meet, and an important part of the
process for achieving the ultimate aims of the MSI. Transparency is viewed by most observers and participants as potentially transformative and empowering for those seeking to hold powerful actors accountable. (Gupta and Mason 2014) But information can also be an instrument of control for establishing favorable outcomes. (Auld, Renckens, and Cashore 2015, Desai and Katzenstein 2016)

Auld, et al, discuss the “logic of empowerment” versus the “logic of control” in institutional design choices. The former is about inclusionary decision-making processes and the latter is about standards for relevant outcomes. (Auld, Renckens, and Cashore 2015) Here, I consider information disclosure as both process and standard. The outcome of information disclosure depends on which audience it is meant for, and what that audience does with it. That audience is often not a part of the MSI itself, but is an external group that is affected by the work of the MSI.

There are different types of information disclosure that are of interest to the participants in MSIs: information about how products or resources are produced; where they come from; and who was involved in the production process, from raw materials to retailers. The point is to make public key information about partners in global supply chain relationships, and their decisions relevant to social issues. Different institutional mechanisms get at these different types of information, and they are meant to empower different groups. These mechanisms can be roughly categorized as: reporting requirements, certification systems, and due diligence.

Straightforward reporting requirements require actors to provide information about where and how products were made or acquired, including financial disclosure as a check on corruption. The audience includes local communities that might be affected by the actions of companies, such as how they treat workers or the environment, where they plan to operate within the country, or what payments they make to the government in taxes and fees. This transparency is meant to provide local communities with the information they need to hold companies accountable. Ideally, this will empower them to make demands of business and government. The audience for transparency also includes buyers—both other businesses within a supply chain, and the consumers who are the final buyers and may be located in other countries. They use this information to make decisions about who to do business with, what to buy, and who to buy from. Finally, another audience for transparency is the activist community, which can use the information to shape their strategies—including proposals for revising the MSIs themselves.

Certification systems are meant to provide assurance or confirmation that actors are living up to the standards the MSI establishes. The certification is itself the information that is used by others. The audience for certification includes other

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2 MSIs may also try to impose transparency requirements on governments, too, concerning their revenue and outlays. These governments voluntarily sign up for something that they then implement in enforceable legislation. The MSI itself may be voluntary, but some of its provisions may not be.
businesses within the global value chain, and end users including consumers. They can use the certification as a short-hand to determine which businesses meet specified standards, without having to interpret information or investigate to collect it themselves. Another audience is the activist NGOs, both inside and outside the MSI, who may view certification as a way of enforcing desirable outcomes, and as a way of manipulating the reputations of different companies. Finally, certification increasingly has an audience among governments, who may adopt regulations that encourage or even mandate certification.

Due diligence requirements require companies to disclose information concerning the participants in their global value chain as part of assessing risk. This includes disclosures regarding traceability, i.e. where raw materials and products come from. It also involves knowing something about who you do business with, and making sure they are trustworthy partners who also meet relevant standards. This may require companies to provide information about the real owners of companies when that information is hidden (what is called “beneficial ownership”). Due diligence requirements are often mechanisms that support other aspects of the MSI mission. It can be a first step towards reporting and certification, for instance. The audience for due diligence reporting is generally business partners, governments, and in some cases other governance initiatives.

These different mechanisms are not entirely distinct, but all involve the collection and sharing of information. The audience for each is slightly different, and only one—reporting requirements—is aimed at empowering people.

Industry Structure, Modeling, and Interactions

In this memo, I will focus here on three features that I argue shaped design choices for MSIs dealing with conflict minerals, including decisions about transparency mechanisms: the structure of the global value chain; the influence of the first MSIs on the design of ones that followed; and interactions among different governance efforts in this area.

The globalization of production has occurred through both the expansion of transnational corporations to almost every corner of the globe, and the construction of extensive supply chains that integrate markets across borders. The design of MSIs for conflict minerals is influenced by the character of the global supply chain for them. The participants in MSIs use the global value chain as a conduit or instrument to influence social or environmental outcomes. (Bush et al. 2015) The transnational nature of a supply chain makes it particularly important to establish standards, rules and systems to facilitate operations across multiple jurisdictions.
The targets of regulation can be located at any point in the supply chain, from raw materials suppliers to processors to distributors and retailers. The distribution of power across the global value chain provides varying points of leverage, which is why it has become a target of regulatory standard-setting. Unlike a pure market exchange relationship, the supply chain embeds firms within an ongoing contractual relationship in which major producers and major buyers have significant leverage over others, and can provide incentives or enforcement of rules and standards.

Consumer countries and buyer firms do not have the capacity to directly regulate upstream production. Producers must be regulated directly by their own national governments, which may eventual lead either to autonomous and differentiated standards across different jurisdictions, or to pressure for interstate negotiation of common standards. What consumer governments and buyers can do is to require transparency, due diligence, and reporting about the provenance of products and how they are made.

One of the key features of the conflict minerals issue area is that this is an arena in which stakeholders have created a multiplicity of governance schemes. There are two features of the interaction among them that are particularly significant for institutional design. First, the first MSIs governing the extractive sector became models for the others that followed, as will be described below. Second, the interaction among them has been less about competition (which is common in other issue areas) and more about “conditional referencing” in which compliance with the conditions of one scheme is accepted as compliance with the requirements of another. (Gulbrandsen 2014, Bernstein and Cashore 2004, Eberlein et al. 2014) Both institutional mimicry and coordination through referencing have pushed towards convergence among MSIs. Gulbransen points to coordination among actors within an issue area, and institutional mimicry, as mechanisms of convergence across governance schemes. (Gulbrandsen 2014)

**Conflict Minerals and MSIs**

The concern over conflict minerals began in the late 1990s, as activists pointed out that rebels were financing themselves through sales of rough diamonds in global markets, which reduced their incentive to seek peace. In 2000, the UN General Assembly unanimously passed a resolution that condemned the role of diamonds in financing conflict and declared its support for 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.”4 The conflict areas of concern initially were in Sierra Leone, Angola, and Liberia.5

This activism around conflict diamonds intersected with more general concerns about the role of the extractive sector—oil, gas and mining—in conflict, corruption, and environmental devastation. The result has been a proliferation of multi-stakeholder initiatives that provide a rich arena for exploring questions of institutional design. Here, I focus on governance in the area of so-called conflict minerals: tin, tantalum, tungsten and gold (shortened to 3TG minerals). Conflict minerals are identified as coming from the Democratic Republic of the Congo (DRC) and its neighboring states (the DRC region), specifically from rebel-held territory in this geographic area. Governance of conflict minerals is intended to reduce the ability of rebels to use the global minerals trade to finance the hiring of soldiers, purchase of weapons, and continuance of conflict.

Two MSIs have dominated the debate over how to design new institutions to deal with conflict minerals, and have influenced the way in which they are now governed. They are the Kimberley Process for the Certification of Rough Diamonds (which Oliver Westerwinter will discuss in detail), and the Extractive Industries Transparency Initiative (EITI). They were both created in the early years of the 21st century, and remain today unique MSIs that have not be directly replicated elsewhere. I will just briefly describe them before moving on to three critical MSIs regulating the trade in conflict minerals: the Conflict Smelter Scheme, the OECD Due Diligence Guidance, and the Public-Private Alliance for Responsible Minerals Trade.

The negotiations over the Kimberley Process Certification Scheme for rough diamonds (KP) began operating in 2000 and implemented in 2003. Member states agreed not to export or import uncertified diamonds and the industry would develop national systems to track and certify rough stones from field or mine to the border. NGOs would participate in negotiations over the rules and would monitor their implementation. The KP essentially combines an intergovernmental organization with an industry-led standard-setting body, embedded in a multi-stakeholder scheme backed by national legislation. This complicated mix of public and private authority established the “legitimate” market for rough stones and succeeded in undermining rebel capacity. The core of the KP is—as its name says—a certification system. The success of the KP certification scheme in regulating the diamond supply chain influenced debates over conflict minerals, but the structure of the industry supply chain for 3TG minerals made it more difficult to implement.

Through a somewhat different set of political dynamics, the issue of corruption in natural resource markets had risen to the top of the international

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4 [http://www.un.org/peace/africa/Diamond.html](http://www.un.org/peace/africa/Diamond.html) This definition would become the center of controversy in later years, because it identifies only rebels as perpetrators and targets, and not governments.

5 The Security Council had already applied sanctions against the UNITA rebels in Angola, including an embargo on trade in diamonds in 1998, without successfully ending the war.
agenda. Then-Prime Minister Tony Blair proposed what became known as the Extractives Industry Transparency Initiative (EITI) as a platform to reduce corruption in the extractive industries. It was implemented in 2004. The EITI requires member states to establish a multi-stakeholder group to oversee a national process for companies to report the payments they make to governments for taxes and fees. Governments would report what they received, and the two accounts would be reconciled. The core of EITI is the reporting requirements that are intended to provide the public with the information to hold companies and governments accountable. The EITI has evolved over the years—it has established a regularized process of entry and compliance, and expanded and refined the information that needs to be reported.

At the same time as activists raised concern about diamonds financing war, they also identified other so-called conflict minerals. NGOs including Global Witness and Enough, plus buyers in the electronics industry, and national governments all pushed to establish standards of “due diligence” and “responsible sourcing.” From 2000-2011, a number of MSIs were established (in addition to industry and government schemes). The structure of the global supply chains vary across the four minerals, which explains some of the institutional variation. However, they all converge in referencing other standards and ensuring compatibility among them. The participants in developing these new MSIs drew upon what could be learned from the KP and EITI models, and their certification and reporting mechanisms.

Activists chose to target the vulnerable consumer end of the supply chain for 3TG, and focused their efforts on the electronics industry. In 2004, the electronics industry formed the Electronic Industry Citizenship Coalition to develop a general code of conduct for corporate social responsibility in supply chain sourcing. Along with the Global eSustainability Initiative (GeSI), it identified tin smelters as a choke point in the supply chain, and worked to establish the Conflict Free Smelter Program in 2008. The initiative certifies smelters that can demonstrate they do not accept for processing any conflict minerals; since the supply chain from mine field to smelter is short, it is relatively easy to find out the origin of minerals. This provides a way for buyers to determine the traceability of minerals in the supply chain. The CFS is part of the larger Conflict Free Sourcing Initiative, which attempts to promote traceability by providing data on the country of origin for refiners and smelters.

One of the most significant steps in the governance of conflict minerals was taken by the OECD. The OECD itself is an intergovernmental organization, but in 2009 it convened a multi-stakeholder negotiation to develop guidance on supply chain “due diligence” to support traceability. The OECD meetings included representatives of civil society, such as Enough, Global Witness and International Alert; industry players from the DRC, the ITRI tin association, and major mining and electronics firms; interested governments; and other international organizations. The latter included the UN Group of Experts on the DRC, along with the UN Stabilization Mission in the DRC (MONUSCO). OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
was finally adopted in 2011 after two years of negotiation. The Guidance encourages voluntary annual reporting and due diligence in supply chain management for tin, tungsten, tantalum and gold. (OECD 2010) The voluntary standards include the recommendation that firms have a clear management policy on conflict minerals, assess their supply chains to make sure they are free of conflict minerals, have third-party audits and public reporting on the results.

In the midst of the OECD meetings, in 2010 the US government passed the Dodd-Frank financial reform legislation. It included a provision (Section 1502) for conflict minerals reporting by all companies listed on US stock exchanges, and would be implemented by the Securities and Exchange Commission. This legislation had a powerful effect on the landscape of conflict minerals governance. The OECD Due Diligence Guidance adapted to the US requirements, and is now promoted as a means to satisfy US requirements. Governments in producer countries, individually or as a group in the International Conference for the Great Lakes Region (ICGLR), began to adopt producer certification to assure “clean” supply lines.

In order to foster more convergence, the US Department of State in 2011 launched the Public-Private Alliance for Responsible Minerals Trade. The partners include the Department of State, USAID, companies and industry associations, local and international NGOs, and the ICGLR. The goal is to create a thoroughly traceable and validated path from mine to market for minerals from the DRC region, expanding upon the OECD Due Diligence Guidance. Alliance members commit to developing a common position on the issues and facilitate harmonization. It has created a common website to assist with meeting the US Dodd-Frank Section 1502 requirements. The PPA is more of a platform to support other governance initiatives than a governance scheme itself. Members commit to traceability, due diligence, and validation measures that have been developed in other MSIs and government regulation.

Today, within the arena of conflict minerals, there exist a wide variety of governance schemes: regulation via information disclosure requirements by the US government; regional certification by the ICGLR and national certification by Rwanda; voluntary initiatives by industry associations within each of the minerals sectors; certification of middle-men in the Conflict Smelter Scheme, an MSI which was driven by the electronics industry; OECD Due Diligence Guidance, developed via a multi-stakeholder process, in addition to requirements for due diligence imposed by the UN Group of Experts for the DRC; and the PPA, a MSI promoted by the US government.

**Conclusion: Empowerment and Control**

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6 The EU is considering similar legislation.
The four minerals subject to conflict minerals governance are now regulated by a mix of voluntary and mandatory regulation at the national, regional and international levels. These have been developed by governments alone, industry sectors, regional and intergovernmental bodies, and multi-stakeholder processes. They include variations on certification, due diligence, traceability and reporting requirements. What is striking is that there is so much activity in what is after all a narrow issue area. In this arena, there is a fair degree of consensus on goals among NGOs, the large buyers, and consumer governments, with some variation across the different mining sectors.

Do institutional design choices matter for MSIs? Do they influence outcomes in particular ways? How have particular design choices become embedded in institutions? In this very brief memo, I outlined possible ways in which the choice of transparency mechanism can impact different audiences. I also indicated (although admittedly briefly) that the structure of the supply chain, pre-existing models, and interactions among governance schemes affect design choices and outcomes.

For conflict minerals, the most powerful impact has not been from the MSIs but by the US government, in its Dodd-Frank legislation. In order to avoid having to investigate their supply chains and/or report that they might be using conflict minerals, many companies simply stopped buying minerals from the DRC region. This undermined local economies in the DRC and made it more difficult to establish stable government following the long civil conflict there. One of the main reasons the US government supported the PPA was to try to foster the development of clean supply lines for the DRC and bring business back.

I would say that the Conflict Smelter Scheme is beginning to gain traction. Its impact is felt primarily by the electronics sector, which wants to be able to assure consumers that there are no conflict minerals in their products. Apple, which relied on the Conflict Free Sourcing Initiative for supply chain auditing, recently reported that its supply chain is 100% conflict free. Very few companies can claim the same, and Apple worked hard to clean up its suppliers without abandoning the DRC.

The OECD Due Diligence Guidance, along with the support of the PPA, has become the global standard for due diligence. Participants from industry and government have pushed the different schemes towards convergence and harmonization. Such harmonization benefits industry, especially those companies subject to the Section 1502 reporting requirements. A recent analysis of data by the OECD demonstrated that there is growing uptake of responsible sourcing and due diligence by the private sector, and an increase in the amount of responsibly sourced minerals coming from the DRC. However, the DRC situation is a complex one in which eastern provinces are essentially stateless. UN intervention has had a growing impact which is difficult to separate out from the effect of responsible sourcing programs. While one prominent rebel group has disbanded, there remain dozens more.
The only MSI that is deliberately designed to empower local communities is the EITI. The national EITI process is overseen by a multi-stakeholder group which can include representatives of communities affected by resource extraction. The EITI is supposed to reduce corruption by giving the public information to hold business and government accountable. So far, most analyses of the EITI indicate that it has not been associated with a significant reduction in corruption, as measured by the Corruption Perceptions Index.

Institutional design choices matter—but they are often overwhelmed by other forces. The MSIs I discussed here are part of a larger organizational field in which institutional choices are replicated, and participants share a common perspective on what features of design are desirable to create responsible sourcing systems. The information is a process good, but it is intended to facilitate real outcomes, i.e. less conflict. The latter goal is a difficult one to achieve, however, especially given the complexity of the DRC conflict.

Do the design characteristics of the conflict minerals MSIs travel? Are they generalizable to other issue areas and industries? I think the transparency mechanisms I discussed here, and who they empowered, will be similar in other areas. A next step in analyzing design choices is to compare or map design features across multiple MSIs.

Sources


