



The Politics of Transnational Institutions

Power, Bargaining and Institutional Choice

Oliver Westerwinter

Thesis submitted for assessment with a view to
obtaining the degree of Doctor of Political and Social Sciences
of the European University Institute

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Abstract

This dissertation analyzes the design of transnational institutions in which states, firms, and NGOs cooperate to govern adverse consequences of global corporate conduct in the areas of conflict prevention and security. Although transnational institutions are typically concerned with prisoners' dilemma-like problems, they often lack the institutional structures required to effectively deal with them. Functionalist, constructivist, and simple rational choice-based theories of international cooperation are weak in explaining such inefficient institutions. I propose a political model of transnational institutional design that places distributional conflict and power at the center of the analysis and links them to formal monitoring and enforcement structures of transnational institutions. Extant work typically focuses on particular forms of power in isolation. A single form of power is, however, rarely a universal source of influence in tripartite institutional bargaining. I argue theoretically and show empirically that states, firms, and NGOs use multiple power variants, such as economic, institutional, and network power to secure favorable institutional choices and that the extent to which different power tools are an effective and efficient means of influence is conditioned by the formality and transparency of the institutional context in which bargaining over institutional structures occurs. As a consequence, changes in the bargaining environment impact the distribution of power among states, firms, and NGOs and, in combination with their preferences, shape institutional choices. Integrating case studies, network analysis, and statistical methods, I draw on data from five negotiation episodes of tripartite institutional bargaining in three transnational institutions—the Kimberley Process, the International Code of Conduct for Private Security Service Providers, and the Voluntary Principles on Security and Human Rights—to probe the explanatory power of my model. This dissertation also makes a methodological contribution that improves researchers' ability to measure the structural properties of large transnational networks constituted by different types of actors.

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Chapter 1

Introduction

Why do transnational institutions differ in their institutional designs? This dissertation analyzes the design of a particular type of transnational institution; namely, transnational public-private governance schemes in which states, firms, and NGOs cooperate to govern the negative externalities of global corporate conduct. Specifically, I examine the relationship between the power politics of tripartite bargaining and transnational institutional design analyzed in terms of formal monitoring and enforcement structures.

In addressing this general problem, I also examine more specific questions. Has the unique governance system of the Kimberley Process which regulates the global diamond trade been driven by the functional requirements of the policy problem it addresses, socialization of the diamond industry, path dependence and cross-pollination within the organizational field in which it operates, or has strategic bargaining and power politics played a role? Were political conflicts and power asymmetries as, or perhaps even more, important as the properties of regulatory problems, socialization, and path dependence for the bumpy institutional trajectory of the Voluntary Principles on Security and Human Rights which govern the negative human rights externalities of extractive companies operating abroad? More recently, can the governance architecture of the International Code of Conduct for Private Security Service Providers be explained by functionalist, constructivist, and historical institutionalist logics, or must we examine the power politics among states, security contractors, and non-governmental organizations (NGOs) to understand why one particular institutional design has been chosen while possible alternatives have been dismissed? If strategic bargaining and power politics played a role in these and other cases, *how* exactly did it play out and *how* did it affect the creation and change of transnational institutions?

International relations scholars have long debated the role of bargaining and power in the formation and evolution of international institutions (e.g. Krasner, 1991; Garrett, 1992; Gruber, 2000; Barnett and Duvall, 2005; Stone, 2011). Extant work typically focuses on particular forms of power in isolation and argues that the distribution of either economic or institutional power is of primary importance (Krasner, 1991; Drezner, 2007;

Abbott and Snidal, 2009*a*; Buthe and Mattli, 2011). It is, however, unlikely that a single form of power is a universal source of leverage in institutional bargaining. I argue that states, firms, and NGOs use multiple forms of power in their negotiation strategies, such as economic, institutional, and network power, to secure favorable institutional choices when they bargain over the design of transnational public-private governance schemes.

I argue that whether different forms of power are effective and efficient means of influence is systematically conditioned by two characteristics of the political context in which bargaining takes place: (1) the formalization of the institutional context in which negotiations occur and (2) the transparency of the negotiation process. Specific combinations of these conditions which I outline in detail in chapter 2 affect whether economic, institutional, or network power are assets in institutional bargaining and, hence, shape power configurations and, ultimately, institutional choices. Bringing this interplay between the transnational bargaining game and the political context in which it takes place into the study of transnational institution-building and change is the purpose of this dissertation.

1.1 Private Authority and the Rise of Transnational Public-Private Governance

Transnational public-private governance schemes are an important element of contemporary world politics. They are transnational institutions in which states, firms, and NGOs create and implement standards to govern the negative consequences of global corporate conduct. In contrast to traditional state-based regulation, in public-private governance schemes private actors are not only the objects of governing but are involved at the center stages of the governance process including decision-making, monitoring, and enforcement (Reinicke and Deng, 2000; Risse, 2004; Benner, Reinicke and Witte, 2004; Borzel and Risse, 2005; Abbott and Snidal, 2009*a,b*). These hybrid arrangements are only the most recent development in the “emergence of private authority in global governance” (Hall and Biersteker, 2002)¹ and demonstrate how the authority to govern in some issue areas is moving “sideways” from national governments and intergovernmental organizations (IGOs) to a diversity of non-state actors (Haufier, 2003, p. 226). As such, public-private governance schemes challenge the traditional statist understanding of world politics which conceives of states as the only actors in the international system with decision-making authority (Waltz, 1979; Keohane, 1984).² They demonstrate that “the state is far from

¹Early statements on the growing importance of non-state actors in world politics include Keohane and Nye (1971), Risse-Kappen (1995), Cutler, Haufier and Porter (1999), and Josselin and Wallace (2001). For a discussion of the early works, see Buthe (2004).

²This trend remains partial and uneven, however. Rather than a “retreat of the state” (Strange, 1996), what we observe is more accurately described as shifting patterns of authority which accumulate to a patchwork of global governance in which public-private and private-private institutions supplement and overlap with unilateral, bilateral, and multilateral arrangements among states (Abbott and Snidal,

the only game in town, and may no longer be the most important game in town” (Abbott and Snidal, 2009 *a*, p. 87; see also Abbott, Green and Keohane, 2013, p. 2).

Public-private governance schemes have been flourishing since the late-1990s. Today they govern a range of global policy domains including environmental protection, human and labor rights, global health, and even the sensitive areas of conflict prevention and security (Borzel and Risse, 2005, pp. 204-5; Abbott and Snidal, 2009 *a*, p. 55). They typically deal with novel, border-spanning problems related to the adverse consequences of global business activities. In the World Commission on Dams, for example, states, business, and NGOs negotiated international standards for sustainable large dam construction (Brinkerhoff, 2002). The Fair Labor Association creates, monitors, and enforces standards which aim at preventing abusive labor practices in the transnational apparel industry (Bartley, 2007). In the security domain, the Kimberley Process seeks to curb the trade in “conflict diamonds” through a system of diamond import and export controls that brings together states, the diamond industry, and NGOs (Haufler, 2010).

Several studies point to the progressive growth of tripartite regulatory schemes in world affairs. According to Abbott and Snidal (2009 *a*), transnational governance schemes are a recent phenomenon. While few such arrangements existed before 1994, since then their number has increased steadily (2009 *a*, pp. 53-5). Likewise, Abbott, Green and Keohane (2013, p. 2) find that “private transnational organizations” formed by different combinations of states, civil society, and business have proliferated in the past decades.

This general assessment is supported by studies that present more precise figures. Kaul (2006, p. 219), for example, shows that the number of transnational public-private partnerships has increased from 50 in the mid-1980s to at least 400 today. Focusing on environmental governance, Andonova (2010, p. 25) reports the creation of over 400 so-called type II partnerships in the aftermath of the 2002 World Summit of Sustainable Development and the initiation of more than 150 collaborations between United Nations (UN) agencies, states, and non-state actors between 1998 and 2008 under the auspices of the UN Fund for International Partnerships. For the global health sector, Caines presents survey results that estimate between 75 and 100 global health partnerships (quoted in Ulbert (2008, p. 1)). In short, despite the lack of systematic data, it is apparent that transnational public-private governance schemes are an essential element of the emerging patchwork of global governance.

1.2 Puzzle

The empirical puzzle that motivates this dissertation is why transnational public-private governance schemes differ in their formal institutional structures. A striking feature of the emerging web of hybrid global governance is the kaleidoscopic variety of organizational

2009 *a,b*; Avant, Finnemore and Sell, 2010).

forms across institutions and over time. Some governance schemes are purely voluntary and do not create substantial obligations for their members; others have become de facto mandatory. Some delegate important competencies to independent agents; others involve only little authority transfer and serve mainly as consultation forums. Some specify elaborated procedures for monitoring; others contain only self-reporting mechanisms or have no compliance verification systems at all. Some create enforcement structures that provide formal sanction measures; others rely on informal punishment; and still others have no “teeth” at all.

What makes this empirical diversity a puzzle is the prevalence of institutions that rational choice-oriented theories of international cooperation consider ill-equipped to tackle the collective action problems they are established to resolve. Transnational public-private governance schemes typically address negative environmental and social externalities of global corporate behavior, such as unsustainable practices in forestry and mining, human rights abuses of private security contractors, or trade in rough diamonds fueling civil wars (Vogel, 2009; Abbott and Snidal, 2009a).³ Redressing these externalities and devising effective regulation of transnational business activities is costly. States and companies are often required to make substantial departures from their behavior under the regulatory status quo and invest resources they would not invest in the absence of regulation. In other words, transnational tripartite governance often, though not always, involves “deep” cooperation (Downs, Rocke and Barsoom, 1996).

The Kimberley Process, for example, provides a system of diamond import and export controls run by states complemented by a self-regulation mechanism of the diamond industry which together significantly increase the transparency and scrutiny of an industry which has traditionally been operating in opacity and secrecy (Spar, 2006; Haufler, 2010). Likewise, the International Code of Conduct for Private Security Service Providers requires behavioral changes and the investment of resources by private security companies and states to maintain compliance with international standards that go far beyond existing regulatory requirements (Grespin, 2012; Ralby, 2011; DeWinter-Schmitt, 2012). Importantly, the empirical observation of hard and prolonged bargaining between states, firms, and NGOs over monitoring and enforcement in numerous instances of transnational cooperation suggests that actors perceive the regulations they have hammered out as significant departures from the regulatory status quo. If cooperation was considered to be shallow, monitoring and enforcement would cause less controversy and actors would have less incentives to invest scarce resources in negotiating these issues (Fearon, 1998; Morrow, 1994b).

As a consequence, the process of crafting public-private governance schemes is plagued by free riding and collective action problems. Individual actors have an interest in cooperation, but at the same time also have incentives to renege on their commitments,

³Abbott and Snidal (2009a) provide additional examples.

particularly if defection is unlikely to be detected and punished. This mixed-motive, prisoners' dilemma-like problem structure creates monitoring and enforcement problems—two fundamental obstacles to cooperation in world politics (Downs, Rocke and Barsoom, 1996; Fearon, 1998; Stein, 1982; Lipson, 1984; Snidal, 1985*a*). In such situations, theories of international cooperation in the rational choice tradition suggest that the ability to monitor compliance and punish defection are necessary for “achieving cooperation under anarchy” (Keohane, 1984; Axelrod and Keohane, 1985; Martin, 1992; Downs, Rocke and Barsoom, 1996). Without solutions to monitoring and enforcement problems, cooperation is unlikely to arise and survive in mixed-motive, prisoners' dilemma games.

Empirically, however, we observe much less monitoring and enforcement in transnational public-private governance schemes than rational choice-based theories of international cooperation would expect, given actors' economic and political incentives. Many tripartite governance schemes have limited monitoring powers. The Voluntary Principles on Security and Human Rights, for example, merely rely on extractive companies' self-reports to assess compliance (Pitts, 2011). Likewise, at its beginning, the Kimberley Process had no meaningful mechanism to assess state and industry performance (Haufler, 2010). The United Nations Global Compact, the Roll Back Malaria Partnership, and the World Committee on Tourism Ethics even today lack strong monitoring provisions (Hale, 2011; Ulbert, 2008; Liese and Beisheim, 2011).

Many transnational public-private governance schemes also lack enforcement measures with “teeth”. For example, the Extractive Industries Transparency Initiative, the Voluntary Principles on Security and Human Rights, and the United Nations Global Compact do not dispose of strong sanctioning mechanisms. The only “stick” these schemes can use to punish defection is to remove noncompliant companies and states from the list of their participants (Kantz, 2007*a*; Hansen, 2009; Liese and Beisheim, 2011). Thus, the empirical institutional designs we observe in these and other cases deviate significantly from the expectations derived from rational choice-based theories of international cooperation.

The puzzle becomes even more complex when we then find governance schemes with relatively robust monitoring and enforcement systems in place. The Forest Stewardship Council, for example, relies on independent third-party certification to ensure that companies comply with its requirements for sustainable forest management (Meidinger, 2007). Similarly, the Fair Labor Association uses an independent third-party auditing system to monitor company compliance (MacDonald, 2011). In the labor-rights domain, the Common Code for the Coffee Community subjects companies' self-assessments with regulatory standards to independent external evaluation (Liese and Beisheim, 2011) and in the Global Alliance of Vaccines and Immunization, country performance is verified by external auditors (Liese and Beisheim, 2011).

These empirical patterns pose pertinent questions about the design of transnational institutions, which this dissertation sets out to answer: Why do transnational public-

private governance schemes markedly differ in their formal monitoring and enforcement structures? More specifically, why did institutional designers choose high levels of monitoring and enforcement in some cases and not in others? If the lack of institutional structures that effectively monitor behavior and enforce regulatory standards is a fundamental obstacle to transnational cooperation in prisoners' dilemma-like situations, why do we observe so many tripartite governance schemes with exactly these design features? In short, why so many inefficient transnational institutions?

1.3 State of the Art

A growing literature focuses on the creation and functioning of transnational public-private governance schemes (Reinicke and Deng, 2000; Risse, 2004; Benner, Reinicke and Witte, 2004; Borzel and Risse, 2005; Mert and Chan, 2012) and examines the conditions under which they achieve their goals (Ulbert, 2008; Vogel, 2009; Liese and Beisheim, 2011; Biermann et al., 2012). Questions of why they have developed different institutional designs have, however, received less attention.⁴

Among the few attempts to explain institutional variation in transnational politics that exist, functionalist, historical institutionalist, and constructivist approaches have dominated the debate (Grande et al., 2011; Wexler, 2010; Kantz, 2007 *a,b*). Functionalist arguments stress the importance of the “functional requirements of specific regulatory problems and decision-making procedures” (Grande et al., 2011, p. 13) as the key determinant of transnational institutional design. As these functional requirements change, so the argument goes, the institutions established to govern them vary. The functional logics that link properties of regulatory issues and institutional structures are the resource dependency of actors, transaction costs and asset specificity, and different logics of collective action.

Arguments inspired by historical institutionalism are skeptical about the causal link between problem requirements and institutional designs. Instead, they highlight the “stickiness” of design choices and the role of incremental, unintentional institutional change through issue linkage and cross-pollination within organizational fields (e.g. Hall and Taylor, 1996; Thelen, 2003; Fioretos, 2011). With respect to the evolution of transnational public-private governance schemes, historical institutionalist-inspired approaches argue that interactions between a governance scheme and other institutions that operate within an organizational field create conditions for institutional developments that deviate from the original intentions of institutional designers (Wexler, 2010). Specifically, because institutional designers are not in the position to control the feedback that flows from outside organizations into a particular scheme, they lose control over its institutional trajectory. This is expected to hold especially in situations where the number of issues on which

⁴For a discussion of the literature, see Schaferhoff, Campe and Kaan (2009).

cooperation occurs and the number of organizations involved in governing is high.

A third approach draws on constructivist theories of international relations. In her work on the Kimberley Process and the Extractive Industries Transparency Initiative, Kantz (2007*a,b*), for example, argues that whether a tripartite governance scheme adopts a strong or weak institutional architecture depends on the success of the socialization of the industry it seeks to regulate. In a nutshell, while a successfully socialized industry is hypothesized to push for strong institutional structures, failed industry socialization will lead to weak institutions.

The theoretical models offered by the existing literature face two major challenges. First, while helpful in some cases, the functionalist account proposed by Grande et al. (2011) has problems explaining variation in transnational institutional designs. Specifically, as they admit, issues that display similar regulatory requirements are often governed by schemes with divergent institutional characteristics calling into question the explanatory power of exclusively functionalist theories. Usually there are several institutional options available that satisfy a particular set of regulatory requirements and functional models are weak in specifying what particular design will be chosen. Importantly, with their focus on efficiency and Pareto optimality, functional approaches cannot account for the creation and persistence of inefficient tripartite institutions.

Second, despite the importance of distributional consequences in transnational public-private governance, extant works tend to ignore interest-based politics, strategic behavior, and power. Although scholars acknowledge that tripartite governance often fails to serve a broader public good but instead advances the particularistic interests of powerful actors (Andonova, 2006; Andonova and Levy, 2003), the majority of existing research underscores scientific rationality, partnership, and deliberative consensus building as the principle driving forces of public-private governance (Brinkerhoff, 2002; Grande et al., 2011; Haufler, 2010; Kantz, 2007*a*). Some studies even include the horizontal and cooperative character of the relationships among stakeholders in the very definition of public-private governance which places power politics outside the analytic picture by construction (Ulbert, 2008; Nelson and Zadek, 2000).

While functional demands, historical path dependence, and socialization are relevant aspects of the emergence and development of transnational public-private governance schemes, they are unlikely to be the only driving force. Interests, strategic bargaining, and power differentials often play an equally or even more decisive role, particularly if institutional choices have distributional implications. Ignoring these facets of tripartite cooperation risks arriving at, at best, incomplete, and, at worst, misleading conclusions about the drivers of transnational institutions.

Despite the vivid literature on the power politics of institutional design in world politics more generally (e.g. Krasner, 1991; Garrett, 1992; Gourevitch, 1999; Gruber, 2000; Stone, 2011), research that explicitly studies the power politics of transnational governance is

rare. Three notable exceptions are the works of Drezner (2004, 2007), Abbott and Snidal (2009*a,b*), and Bartley (2007). For Drezner (2007), states and particularly great powers are the key actors in global regulation. In his “revisionist model”, the distribution of state interests and capabilities—defined as the size of states’ internal markets and their relative vulnerability—are the main causal variables that explain differences in outcomes of transnational standard-setting. He argues that the specific distribution of interests among great powers and between great powers, on the one hand, and smaller states, on the other, determines regulatory outcomes. Under certain conditions other actors, such as NGOs and IGOs, can affect states’ strategies, but they will have only minor influence on regulatory outcomes.

In contrast to Drezner’s model, Abbott and Snidal’s framework (2009*a*; 2009*b*) focuses on the transnational regulatory space constituted by the interactions of states, firms, and NGOs. To explain variation in regulatory standards across governance schemes, the authors propose a bargaining model. The distribution of preferences, disparities in bargaining power, and situational factors, most importantly the number of actors involved in bargaining, constitute the model’s key explanatory variables. The bargaining power an individual governor possesses, Abbott and Snidal argue, hinges on the competencies it can contribute to governance, such as operational capabilities or moral authority. They maintain that an actor’s competencies and the extent to which these competencies either enable it to act unilaterally outside a specific governance arrangement, or render it indispensable for effectively dealing with the problem at stake, constitute two distinct forms of power; namely, “go-it-alone-power” and “inclusion power” (2009*a*, pp. 72-3). In combination with the distribution of interests and the number of governors participating in a scheme, the distribution of competency-based power determines governance outcomes.

Bartley (2007) also views new modes of transnational governance as the outcome of political conflict among states, companies, and NGOs, a process he describes as the “political construction of market institutions”. In a nutshell, rather than being only the result of attempts to solve market problems, transnational institutions emerge from bargaining among an array of public and private actors that forge coalitions and mobilize influence to secure favorable institutional choices. The extent to which an actor is able to achieve favorable outcomes depends on the balance of power—understood as the distribution of resources—and the preference configuration among those involved in negotiations. Importantly, for Bartley (2007, p. 309) these negotiations are embedded in the social-political environment which shapes the resources, political opportunities, and cultural scripts on which institutional entrepreneurs can draw in order to build new governance schemes. This interplay among power asymmetries, preferences, and social-political context shapes the institutional trajectory of transnational governance schemes.

All three approaches have the benefit of underscoring the importance of interests, power, and bargaining in transnational governance. In addition, they go some distance in

explaining variation in outcomes. However, making any single approach or a combination of them the analytical basis for an examination of the puzzling variation we observe in the institutional designs of transnational public-private governance schemes encounters two major problems. First, applied to tripartite forms of governing, each model leaves a proportion of empirical variation in institutional structures unexplained. For example, in different governance schemes actors with comparable competence profiles or resources vary in their ability to shape institutional choices. The most endowed are not always the most influential. This casts doubt on the scope of the three models. Similarly, within a single scheme, a specific actor can differ over time in its influence over institutional choices without significant changes in competence and resource distributions or the composition of the group of governors.

Second, the models have difficulties accounting for change in the institutional structures of transnational public-private governance schemes. Basic competence profiles and the extent to which they are required to deal with a governance problem are rather stable attributes of actors and often do not vary to the same extent and at the same pace as transnational governance schemes adjust their institutional designs. The same applies to the distribution of material resources.

In addition, both the models proposed by Abbott and Snidal and Bartley conceptualize the bargaining environment in a rather general fashion. The former focus on the number of actors involved in negotiations, whereas the latter highlights general contextual features, such as ideological scripts. These general characteristics of the social-political context in which bargaining takes place hardly vary at the same rate as actors' bargaining strategies and influence over institutional choices. Thus, while I agree that the political context is a key part of the solution to the puzzle of inefficient transnational institutions, I argue that a more nuanced notion of the bargaining environment is needed to identify the contextual factors that vary at a rate that allows for deriving fine-grained hypotheses about the outcomes of political conflicts over the design of transnational public-private governance schemes.

Combining ideas from these first attempts to study the power politics of transnational governance and supplementing them with theoretical insights from international relations theory, particularly bargaining theory, network theory, and recent works on informal governance, I propose a more nuanced argument about the power politics of transnational public-private governance. The political model of transnational institutional design I offer extends the existing power-oriented theories in two ways. First, I extend these models beyond the analysis of a single form of power to a wider array of power tools (economic, institutional, and network power) and systematically examine how they interact. Second, I take up Abbott and Snidal's and Bartley's argument that the political conflicts over transnational institutional design are affected by the social-political context in which they occur and take it one step further. Specifically, while in their theories, shifts in

context and how they affect actors' bargaining strategies remain unmodeled, I explicitly theorize the effects of changes in the characteristics of the bargaining environment (formalization and transparency) on actors' negotiation strategies and their influence over institutional choices.

1.4 Argument

I argue that how the formal institutional structures of transnational public-private governance schemes get designed is affected less by the functional requirements of regulatory problems, socialization, or historical path dependence than it is by the power politics of the transnational bargaining game among states, firms, and NGOs. My theoretical argument consists of three components.

I start from what Gourevitch (1999) has called the "governance problem in international relations". If states, firms, and NGOs agree that an issue needs to be addressed and that setting up some sort of rules to govern it would make all parties better off, they still often disagree about how exactly institutional rules should be specified. As a consequence, they bargain over the design of transnational public-private governance schemes.

Second, interests and relative power are key drivers of the outcomes of this transnational bargaining game. Actors can use economic power based on the possession of financial capabilities; formal institutional power derived from voting rights, access to negotiation forums, and special rights, such as agenda-setting and proposal-making privileges; and network power emanating from central and brokerage positions in informal information exchange relationships. These three power variants allow actors to affect bargaining through two mechanisms: (1) influencing preferences and beliefs and (2) shaping strategic opportunities. Economic power enables an actor to directly manipulate others' preferences through side payments, issue linkage, and exit options. Formal institutional power, by contrast, permits to manipulate strategic opportunities by controlling access to negotiations, agendas, and proposals. Network power allows affecting others' preferences, beliefs, and strategic opportunities. Privileged access to, and control over, information flows reduces uncertainty and enables actors to better estimate and influence others' preferences and beliefs. Furthermore, hubs and brokers in information exchange networks control access to information and forge and foreclose coalitions.

Finally, different forms of power are by no means universal advantages in bargaining. What power tool is likely to be most effective and efficient in a particular situation hinges on the characteristics of the context in which negotiations occur. Wielding power in negotiations over transnational institutions involves economic as well as political costs. Bargaining environments differ with respect to what costs exercising a particular form of power incurs. Strategic actors seek to minimize these costs by adapting their negotiation strategies to the prevailing context. In addition, negotiators want to achieve their policy

objectives and secure favorable institutional choices. Hence, they use the power variant they expect to conduce to influence. Therefore, I expect actors to craft bargaining strategies that maximize their prospects for successfully shaping institutional structures, while at the same time minimize the costs of wielding power.

What form of power approximates this twofold strategic requirement of effectiveness and efficiency depends on the characteristics of the environment in which bargaining takes place. I focus on two features of the transnational bargaining environment: (1) level of formality of the institutional context and (2) transparency of the negotiation process. As I further elaborate in chapter 2, economic power is likely to be effective, above all, in negotiations marked by moderate formality and transparency. Formal institutional power is likely to be most decisive if formal institutions dominate and negotiations are transparent. However, negotiations over transnational institutions are often marked by the predominance of informal governance and low transparency. As a result, exercising economic or formal institutional power is often either ineffective or prohibitively costly. This creates room for those who possess network power, which my model predicts to thrive in situations where institutional formalization as well as the transparency of the negotiation process are low. As a corollary, we should expect transnational institutions to change if either the distribution of power and preferences among negotiators, or the political context in which bargaining occurs, change.

In sum, I argue that it is important to explicitly theorize about the combinations of contextual conditions that characterize the bargaining environment and how they benefit different power tools if we seek to explain the creation and change of transnational public-private governance schemes. Specifically, I maintain that the effectiveness and efficiency with which economic, formal institutional, and network power can be employed as bargaining assets in negotiations over transnational institutions is contingent on the formalization of the institutional context in which bargaining occurs, and the transparency of negotiations. This model provides an analytical lens well-suited to the study of the power politics of transnational public-private governance. It generates distinct observable implications about how the bargaining setting affects actors' negotiation strategies and their ability to secure favorable institutional choices and how shifts in both power and preference distributions, on the one hand, and the political context, on the other, can lead to institutional change.

1.5 Cases and Methods

To study the power politics of transnational institution-building, I examine five negotiation episodes drawn from three transnational public-private governance schemes in the extractive resources and security sectors; namely, the Kimberley Process (KP), the Voluntary Principles on Security and Human Rights (VPs), and the International Code of

Conduct for Private Security Service Providers (ICoC).

Formally launched in January 2003, the KP brings together states, the diamond industry, and NGOs which cooperate to stop illegal profits from “conflict diamonds”, i.e. “rough diamonds which are used by rebel movements to finance their military activities”⁵, fuelling civil wars in Liberia, Sierra Leone, Democratic Republic of Congo (DRC) and other African countries (Grant and Taylor, 2004; Kantz, 2011; Haufler, 2010; Bieri, 2010; Grant, 2012). To realize this objective, actors created a global certification scheme of import and export controls for rough diamonds complemented by a self-regulatory “chain of warranties” of the diamond industry, which aims at excluding conflict diamonds from the legal diamond trade. Since the initiation of the KP, its stakeholders negotiated over institutional reforms on several occasions. The politically most contentious of these reform efforts were the revision of the scheme’s monitoring system in 2003 and the attempt to modify its overall governance structure in 2010-2012.

The VPs are a tripartite governance scheme in which companies from the extractive sectors (oil, gas, and mining) work together with NGOs and states to regulate the security provisions of extractive companies operating in weakly-governed states. The goal: to prevent extractive companies’ security arrangements from causing or contributing to human-rights violations (Freeman, Pica and Camponovo, 2001; Freeman, 2002; Williams, 2004; Pitts, 2011). The VPs were launched in 2000 as an initiative of the governments of the United States and the United Kingdom and have since then envisioned intensive bargaining over how to organize the governance structure of the scheme. This has often resulted in stalemate and crisis rather than institutional innovation. One of the politically most contentious bargaining episodes in the history of the VPs was the negotiations over the creation of a formal governance architecture between 2010 and 2011.

The ICoC regulates the activities of private security contractors around the globe (Ralby, 2011; Wallace, 2011; Avant, 2013; DeWinter-Schmitt, 2012). It is constituted by the private security industry, human rights NGOs, and states. The ICoC was formally adopted in November 2010 and since then its participants have been negotiating over an institutional structure to implement its regulatory standards. The questions of how to verify company compliance with ICoC standards and how to deal with the firms that violate these standards have been central items on the agenda of these negotiations which found an end in February 2013 with the adoption of the Articles of Association of the ICoC.

I chose three negotiation episodes from the KP, one from the VPs, and one from the ICoC. In each of these episodes states, firms, and NGOs bargained over how to design or reform the formal monitoring and/or enforcement structures of transnational public-private governance schemes as a means of facilitating and maintaining tripartite cooperation.

⁵United Nations General Assembly Resolution A/RES/55/56 (29 January 2001), p. 1.

I employed a theoretically guided sampling, and selected cases based on their analytical usefulness and practical relevance. Overall, five criteria motivated my case selection. Here, I highlight three (chapter 3 provides a detailed discussion). First, the five negotiation episodes I chose constitute deviant cases from the perspective of several theories of international cooperation. In all episodes, the outcomes in terms of formal monitoring and enforcement mechanisms do not conform to the expectations of rational choice-based theories of international cooperation. Adherents to the “enforcement school” of international institutions argue that in situations where the actors interested in cooperation seek to address problems of a prisoners’ dilemma-like character, as they do in the KP, the VPs, and the ICoC, monitoring and enforcement are essential to achieve cooperation (e.g. Keohane, 1984; Downs, Rocke and Barsoom, 1996). However, what we observe empirically is weak to (at best) moderately strong compliance verification and sanctioning measures. Likewise, also functionalist expectations are not met by the institutional outcomes of my cases. Actors facing problems that are similar in terms of their structural characteristics create institutions that vary substantially.

The cases I chose are also deviant on empirical grounds. Their institutional outcomes differ from those of tripartite bargaining in other policy fields and industry sectors. While overall monitoring and enforcement are weak in my cases from the extractive and security industries, several public-private governance schemes concerned with human and labor rights, such as the Fair Labor Association or the Common Code for the Coffee Community, provide for more rigorous compliance verification and sanctioning (MacDonald, 2011; Liese and Beisheim, 2011). Studying such theoretically and empirically deviant cases at close range provides fruitful ground for probing into the explanatory usefulness of my model, and refining it if needed (Bennett and Elman, 2007; Mahoney, 2007).

Second, I want to highlight the importance of transnational public-private governance in the conflict prevention and security domain. While existing research on hybrid forms of global governance largely focuses on environmental, health, labor, and human rights issues, little work exists that examines issues related to conflict prevention and security (Borzel and Risse, 2005, p. 204).⁶ The three governance schemes from which I draw my cases demonstrate that public-private modes of governing have entered what has long been considered the strongest province of state sovereignty.

Further, realist and liberal approaches assume security issues to be the province of states and hard forms of power. If the stakes in negotiations over transnational institutions are high, as they are in regulating the operations of multinational extractive and security companies, we would expect states and companies to use their superior material capabilities and veto positions to secure favorable outcomes. More subtle power tools

⁶Notable exceptions include Williams (2004), Hansen (2009), Haufler (2010), Westerwinter (2013), and the contributions to the 2012 International Studies Association Venture Workshop “The New Power Politics: Networks, Governance, and Global Security”.

based on the informational advantages of informal communication networks should figure less prominently in actors' negotiation strategies. Therefore, transnational public-private governance schemes in the conflict prevention and security areas provide "hard" cases for my argument about the contextualized nature of transnational power politics and the relevance of network power in tripartite institutional bargaining (Bennett and Elman, 2007; Levy, 2002). If I find my model to be useful in the study of conflict prevention and security issues, it is likely to also be relevant in other issue areas.

Third, the five negotiation episodes I chose provide multiple observations of, and variation in, the variables of my model: distribution of preferences and different forms of power, characteristics of the bargaining environment, and formal structures of monitoring and enforcement. This variation provides the analytical leverage needed for probing into the explanatory power of the theoretical argument I put forward. Importantly, the cases do not only provide instances where changes occurred in my dependent variable (positive cases), but also those where bargaining resulted in no creation or change of formal monitoring and enforcement mechanisms (negative cases) (Mahoney and Goertz, 2004, 2006).

I study these cases using a multi-method research design that combines case studies with descriptive network analysis and statistical methods. The case studies combine process tracing and descriptive tools of network analysis. The "structured, focused comparison" (George and Bennett, 2005) of the five negotiation episodes allows me to examine the associations between the variables of my model and differences in formal monitoring and enforcement structures of transnational public-private governance schemes. Further, the qualitative analysis allows for assessing causal process observations (Collier, Brady and Seawright, 2010) which are critical to differentiate between the operations of economic, institutional, and network power and to assess whether a particular form of power was exercised in a negotiation episode; a point I will be discussing in greater detail in chapters 2 and 3. In addition to process tracing, the case studies also employ descriptive network analysis to assess the structural properties of informal information exchange networks among the states, firms, and NGOs involved in a negotiation episode (Wasserman and Faust, 1994; Knoke and Song, 2008). As I outline in chapter 2 in greater detail, this provides the data needed to examine the presence and functioning of network power.

I reconstruct the five negotiation processes using data from semi-structured interviews, archival materials, participant observations, secondary sources, and a multiple-sources and multiple-measurement strategy for collecting network data. Chapter 3 introduces these different types of data as well as the methods of data collection and analysis more systematically.

After the case-based explanatory probes, I provide a more rigorous statistical analysis of the determinants of the structural properties of the informal information exchange networks among states, firms, and NGOs in four of the five negotiation episodes. I use net-

work regression analysis with permutation-based standard errors and hypothesis tests to examine the factors that contribute to individual actors' centrality in informal negotiation networks. In addition, I employ network logistic regression with permutation-based standard errors and hypothesis tests to evaluate—for each negotiation episode separately—what factors make any two actors more or less likely to engage in informal exchange of policy-relevant information during tripartite institutional bargaining.

1.6 Added Value

This dissertation makes three contributions to extant research. First, my study urges the placing of strategic interaction, bargaining, and power politics at the center stage of studying transnational public-private governance. Existing work pays little attention or even outright ignores this important aspect of transnational cooperation (e.g. Kantz, 2007a,b; Wexler, 2010; Grande et al., 2011). The political model I propose, I maintain, gives us a better handle to explain the kaleidoscopic variation in transnational institutional forms than models that are either devoid of politics or focus on different forms of power in isolation. Moreover, by developing an argument about network power as a unique source of influence and how it is related to other forms of power, my research adds to the discussion about the role of power in designing international institutions (e.g. Krasner, 1991; Gruber, 2000; Koremenos, Lipson and Snidal, 2001; Stone, 2011, 2013; Jupille, Mattli and Snidal, 2013).

Second, emphasizing the importance of network power, this dissertation further explores an important aspect of the analysis of power in world politics which has recently been highlighted by students of international relations (Hafner-Burton, Kahler and Montgomery, 2009; Kahler, 2009; Hafner-Burton and Montgomery, 2010; Carpenter, 2011; Avant and Westerwinter, 2013). Importantly, the comparative analysis of the conditions under which different power tools serve as effective and efficient means of influence in bargaining over transnational institutions allows the narrow notion that one form of power systematically dominates others to be overcome. In fact, widening the analytical lens and including multiple forms of power opens up the possibility to systematically investigating how different forms of power interact with one another and under what conditions they are likely to serve as bargaining assets. In addition, my theoretical emphasis on the importance of the political context for the dynamics and outcomes of the transnational bargaining game serves as a reminder to avoid reductionist, decontextualized models of governance.

Empirically, my study provides extensive data on the emergence and development of three transnational public-private governance schemes in the extractive and security sectors. In addition to rich qualitative evidence, these data also include information on the relational qualities of these three governance schemes for four negotiation episodes.

Given the lack of relational data in many studies of networked forms of global governance, the descriptive and causal inferences that become possible on the basis of these data help to enhance our understanding of network forms of world politics both in the extractive and security sectors, and beyond.

1.7 Organization of the Dissertation

This dissertation is organized as follows. In chapter 2, I develop my theoretical argument and outline two mechanisms through which power politics affects tripartite bargaining over the design of formal monitoring and enforcement structures of transnational public-private governance schemes. I also derive hypotheses about the conditions under which I expect economic, institutional, and network power to be an effective and efficient means of influence in the transnational bargaining game.

Chapter 3 clears the methodological ground for my empirical analysis. It develops a multi-method research design for examining the politics of transnational institutional design that combines case study techniques with descriptive network methods and statistical analysis. The core of the chapter is the introduction of the dissertation's methodological innovation: a novel technique for the measurement of the structural properties of large transnational networks that are constituted by different types of actors. Scholars working on networks in world politics are often confronted with daunting challenges when it comes to collecting information about the structural properties of large transnational networks. This holds especially with respect to research questions concerned with interactive networks, i.e. networks constituted by actual flows among actors, such as the exchange of information or material resources. Standard techniques for the measurement of interactive networks, such as network surveys, are time consuming and become prohibitively costly as the number of actors involved increases. In addition, they are very sensitive to missing data. As a consequence, scholars often derive network structures from data that were not constructed to address relational questions or forgo the rigorous empirical analysis of network properties altogether.

To address these problems, I develop a multiple-sources and multiple-measurement procedure for collecting network data. This procedure combines relational information from key informant interviews and archival sources. In particular, it involves four steps: (1) identification of all actors involved in a particular negotiation episode (specification of network boundary); (2) collection of information on relationships among actors through key informant interviews; (3) collection of information on relationships among actors from archival materials; (4) merging individual network measurements and checking robustness of the resulting network data using qualitative evidence.

Chapters 4 through 6 provide exploratory probes of my model using qualitative and network data from five negotiation episodes drawn from the KP, the VPs, and the ICoC.

Overall, these exploratory case studies show that the power strategies of states, firms, and NGOs in the transnational bargaining game vary with the characteristics of the negotiation environment. For example, in the negotiations that led to the establishment of the KP in 2002, low formalization of the institutional context and low transparency of negotiations provided an environment in which network power derived from central and brokerage positions in informal information exchange networks proved to be an effective source of influence. As predicted by my model, those with substantial network power, i.e. diamond industry representatives and states which preferred weak monitoring and enforcement, were able to secure institutional outcomes closely approximating their preferences.

Results also suggest further specifications of my argument. They show, for example, that economic power is typically used indirectly in transnational bargaining. Specifically, rather than offering costly side payments or issue linkage, actors make use of financial capabilities by improving their presence in negotiations. Likewise, institutional power often affects bargaining tactics in an indirect fashion. Actors tend to use privileged institutional access to obtain strategically relevant information which is then used to shape others' preferences and beliefs. Formal veto positions and privileged voting rights, by contrast, are rarely used as bargaining leverage. Both specifications are in line with my theoretical argument about the strategic use of power based on the twofold requirement of effectiveness and efficiency.

Chapter 7 investigates the determinants of the informal information exchange networks that emerged in four of the five negotiation periods under consideration in the case studies. In particular, it addresses two questions: (1) What drives the linking behavior of states, firms, and NGOs in these negotiation networks?; (2) What, if any, role do economic and institutional power play in shaping network structures? Proponents of conventional power approaches might object that even if network power covaries with influence over institutional outcomes and even if causal process observations can be found which suggest that network power was essential in bringing about a particular institutional arrangement, network power might merely be a reflection of other power variants and, hence, epiphenomenal. Central network positions, for example, might be held by actors with superior economic capacity or those that occupy key institutional roles. Likewise, any two actors that are involved in a negotiation episode that includes an economically powerful player or an actor that occupies a privileged institutional role might be more likely to engage in informal information exchange than a comparable pair that does not include such actors. If the argument that network power is epiphenomenal holds, we should observe that actor attributes, such as the possession of financial capabilities or the occupation of key institutional roles, have a strong influence on how network relationships are formed and maintained. If, however, network power operates independently of economic and institutional power, such evidence should be hard to find. I test these arguments using

network regression and network logistic regression analysis with permutation-based standard errors and hypothesis tests. While this analysis is not a full proof of either the epiphenomenal or independent nature of network power, it helps ascertain to what extent economic, institutional, and network power interact with one another.

The concluding chapter turns to more general theoretical reflections and links my findings and their implications to related theoretical debates in the field of international relations. It also acknowledges the limitations of my study and discusses areas for future research.

Chapter 2

A Political Model of Transnational Institutional Design

In this chapter, I develop a political model of transnational institutional design. The model links the formal monitoring and enforcement structures of transnational public-private governance schemes to the bargaining game among states, firms, and NGOs. Specifically, I argue that actors use multiple forms of power, such as economic, institutional, and network power, to secure favorable institutional choices. Further, I maintain that whether different power tools are an effective and efficient means of influence is conditioned by two characteristics of the political environment in which bargaining occurs: the formalization of the institutional context and the transparency of negotiations. Specific combinations of these two conditions affect whether economic, institutional, or network power are assets in institutional bargaining and, hence, shape power configurations and, eventually, institutional choices.

In what follows, I present the building blocks of this model. I start by outlining a political perspective on institution-building and institutional change that conceives of institutions as the result of distributional conflict and power struggles among strategic agents. I then discuss my dependent variable, how I measure it, and why studying transnational institutional creation and change is relevant for scholars and practitioners of international relations alike. The next two sections introduce the core of my model. They specify the variables of interest and how they are measured, elaborate on the causal mechanisms I hypothesize to link the political context, power strategies, and institutional bargains, and generate testable hypotheses. I conclude with a brief summary.

2.1 A Political Perspective on Institutions

This dissertation seeks to explain variation in the formal monitoring and enforcement structures of transnational public-private governance schemes. Before I can elaborate

on how formal monitoring and enforcement structures are defined and how I measure them empirically, some general clarifications on the concept of institutions are needed. These definitional remarks are essential for clarifying the background concept in which the conceptualization and operationalization of my dependent variable is rooted.¹ They also serve the purpose of limiting the scope of my inquiry.

2.1.1 A Rational Choice Approach to Institutions

Following Keohane (1988, 1989), I define institutions in a broad sense as “persistent and connected sets of rules (formal and informal) that prescribe behavioral roles, constrain activity, and shape expectations” (Keohane, 1989, p. 3).² To paraphrase North (1990, p. 4), institutions are the socially generated “rules of the game” that shape the interactions of actors. They provide “scripts for political processes” (Shepsle, 2005, p. 1). The creation and transformation of institutions contain both conscious and unconscious facets and theoretical traditions differ in the degree to which they emphasize the two. For example, rational choice institutionalists highlight that institutions are the result of the strategic interaction of (boundedly) rational agents (Shepsle, 1989, 2005; Weingast, 2002; Snidal, 1996, 2002; Koremenos, Lipson and Snidal, 2001). Conversely, studies in the historical institutionalism vein put a stronger emphasis on the role of historical legacies, unintended consequences, and path dependence to underscore that agents’ design choices are not the only drivers of institution-building (Hall and Taylor, 1996; Pierson and Skocpol, 2002; Thelen, 2003; Fioretos, 2011).

I focus on institutions as the product of the intentional design choices of strategic actors because it can be argued that deliberate design has been the principal mechanism driving the creation and development of transnational public-private governance schemes. Intentional design is of particular import for illuminating the politics of collective choice in the formation and change of tripartite governance schemes because many of these arrangements address new policy problems (e.g. climate change, internet regulation, or negative externalities of companies operating abroad) that do not fit readily into any existing institutional arrangement. In other words, they are often located in sparse institutional fields (Abbott, Green and Keohane, 2013, p. 19).

As a result, unconscious mechanisms of institutional emergence and change, such as evolutionary³ or path dependent⁴ processes, are likely to be of less relevance in this context. If an institution, such as for example, the Voluntary Principles on Security and Human Rights or the International Code of Conduct for Private Security Service

¹See Adcock and Collier (2001) for a detailed outline of the methodological approach on which the measurement scheme of this dissertation is based.

²For related definitions, see North (1990), Knight (1992), Koremenos, Lipson and Snidal (2001), and Stone (2011).

³For a discussion of evolutionary theories, see Kahler (1999).

⁴Pierson (2000) provides a good overview of the debates on path dependence and related concepts.

Providers, is established to govern policy problems that have previously been unregulated, path dependence and evolutionary processes are likely to play less of a role in institution-building because the policy domains that these governance schemes address rarely contain previously existing rules and procedures that could exert such effects. In addition, the fact that the public-private governance schemes that form the focus of this study manifest a recent development in the institutionalization of world politics implies that the time-spans of institutional origin and change that I examine comprise little more than a decade. With its primary focus on long-term developments,⁵ historical institutionalism and its conceptual repertoire are less promising tools for the analysis of such recent and short-term developments.

Institutions may have regulative and constitutive effects (Hall and Taylor, 1996; Keohane, 1989; Duffield, 2003). They exert regulative effects when shaping the incentives and strategic calculations of actors through reducing transaction costs and providing information about preferences, behavior, and the overall situation. Institutions have constitutive effects if they affect actors' understandings of their own as well as others' identities and interests, and shape how they perceive and interpret their own as well as others' actions. While constitutive effects tend to be the focus in studies inspired by historical and sociological institutionalism, regulative effects are prominent in analyses drawing on different forms of rational choice institutionalism (Keohane, 1988; Hall and Taylor, 1996). Although they are not the primary focus of my investigation, as far as institutional effects on tripartite bargaining over the design of transnational public-private governance schemes enter the analysis,⁶ I concentrate on regulative effects. Given the emphasis of my theoretical framework on the role of strategic interaction among purposive agents as the driver of institutional choices, this analytical focus appears to be appropriate.

To summarize, I focus on those relatively persistent sets of institutional rules and procedures that are created intentionally and that affect social-political interactions by prescribing and proscribing agent behavior, or otherwise directly shaping interactions. While this notion captures a multiplicity of formal and informal institutional arrangements, it still excludes a lot from the scope of this study. Among the excluded forms are: intersubjective institutions (Kratowich and Ruggie, 1986), tacit agreements (Downs and

⁵In his review of the conceptual repertoire of historical institutionalism and its potential for furthering the study of international institutions, Fioretos (2011, p. 370) explains that the approach's "substantive focus [lies] on long temporal processes ranging from multiple centuries to several decades". This suggests that the strength of historical institutionalist approaches lie in the study of long-term processes.

⁶Once a transnational institution has been established, its rules and procedures will affect the way actors bargain over changing these rules in subsequent negotiation episodes; they become "strategic resources" and constitute an essential dimension of the "strategic context" of bargaining (Jupille, Mattli and Snidal, 2013, p. 4; Morrow, 1999; Shepsle, 2005). Such effects of institutions on negotiations over their adaptation are incorporated into my analysis in the form of power based on rights and roles in formal institutional arrangements as well as in the form of characteristics of the political context that conditions actors' choices of power tools.

Rocke, 1990), and social practices (Pouliot, 2008).⁷

2.1.2 Toward and Along the Pareto Frontier: Institutions as Objects of Distributional Conflict

Why do international institutions in general, and transnational public-private governance schemes in particular, take on the specific forms they do? The model of transnational institutional design that I propose to answer this question is based on an inherently political understanding of institutions (Moe, 1990; Krasner, 1991; Snidal, 1996; Gourevitch, 1999; Gruber, 2000).⁸ In the context of this perspective, the distribution of power and interests is placed at the center of the study of transnational institutions. Three elements form the core of this perspective: 1) institutions facilitate the generation of benefits from cooperation that would be absent in a situation of no cooperation; 2) different institutional designs distribute the gains from cooperation differently, which provides actors with incentives to fight for favorable institutional structures; 3) what particular institutional arrangement is chosen depends on the distribution of power among the actors involved in institution-building. I elaborate on each of these elements in turn.

Institutions help actors to mitigate collective action problems. As prominently highlighted by Keohane (1984), international institutions provide states with information, lower transaction costs, and reduce the risk of defection and, hence, help to overcome collective action problems that plague international cooperation in an anarchic international system. By alleviating collective action problems and facilitating cooperation, institutions allow actors to generate benefits which would not be available in the absence of cooperation. In other words, they allow actors to move closer to the Pareto frontier of collective action (Keohane, 1984; Axelrod and Keohane, 1985; Krasner, 1991).

Consider the creation of a transnational tripartite governance scheme for regulating the negative externalities of oil, gas, and mining companies operating in weakly governed states. In the absence of regulation, inadvertent corporate behavior may lead to low labor standards, human rights abuses, and environmental damage which incurs economic, political, and social costs for companies, home and host governments, and local populations. If such egregious behavior occurs on a regular basis and the number of corporate scandals

⁷In his eloquent critique of the rational design project, Duffield (2003) urges to include these and other forms of institutionalized international relations into a more comprehensive analysis of the causes of institutional variation. While his arguments are convincing, I leave the broadening of the dependent variable of my study to future research.

⁸This political view of institutional emergence and change has to be distinguished from what Knight (1992) has called a “cooperation-for-collective-benefit” account. From this perspective, institutions are conceived of as solutions to problems of collective action and designed to accomplish shared goals, provide collective goods, and make all those involved better off. The distributional implications of different Pareto improving institutional designs and the politics of institutional choice that result are not given pride of place in this branch of institutional scholarship. For a summary and critique of this family of approaches, see Moe (1984, 1990) and Snidal (1996).

(e.g. Exxon Mobil in Indonesia, BP in Colombia) increases, states, firms, and NGOs encounter incentives to cooperate to mitigate the negative externalities of company behavior and avoid the costs of unregulated business operations. Companies want to avoid the costs of local protests abroad and NGO campaigns at home; home states seek to secure the reputation and business opportunities of their extractive companies; host states are interested in their reputation and economic gains; and NGOs want to increase the quality of life of the local constituencies they represent and satisfy the political objectives of their membership. By building a transnational institution that regulates the operations of extractive companies in states that lack the capacity or political will to provide effective domestic regulation, states, extractive companies, and NGOs expect to obtain benefits that would not be available in the absence of regulation. It is these benefits that the actors engaged in transnational institution-building seek to obtain through cooperation.

However, the fact that institution-building involves a movement toward the Pareto frontier does by no means imply that actors will actually reach the frontier (Moe, 1990; Snidal, 1996; Gourevitch, 1999; Richards, 1999). The institutional bargains struck in any particular case may well leave possible efficiency gains on the negotiation table. On the one hand, this may be due to the imperfect information on the basis of which actors identify institutional options, define their preferences, and form bargaining strategies. For example, given the complexity of the policy problems they deal with, states, extractive companies, and NGOs may find it difficult to identify the institutional structure that best fits the problem they aim to address (Snidal, 1996). Due to imperfect information, actors may even be unable to identify the institutional design that best accommodates their preferences (Morrow, 1994*b*). As a result, negotiators may agree on a design that leaves potential for efficiency gains untapped.

On the other hand, inefficient institutional arrangements may be the result of deliberate choices between politically desirable and economically efficient institutional solutions. Political actors are not necessarily interested in creating those institutions that provide the maximum possible collective efficiency gains. Unlike economic actors, they may find inefficiency actually more valuable (Moe, 1990, p. 766; Snidal, 1996, p. 132). Thus, institutional designs that constitute a political equilibrium in a particular situation and among a specific set of actors, are not necessarily economically efficient solutions to collective action problems (Richards, 1999, p. 4).

Although the argument that institutions help to overcome collective action problems and thereby help to realize mutually beneficial outcomes explains why actors have incentives to create institutions, it does not account for why a particular design among several, potentially indefinite, efficiency-improving structures is chosen. Paraphrasing Krasner (1991, pp. 337-42), expected efficiency gains explain a movement closer to the Pareto frontier, but fail to explain which particular point along the frontier is selected. Institutions help actors to move collective action outcomes toward the Pareto frontier.

But precisely because they do so, means that they create benefits that did not exist before. How these benefits are distributed varies with the type of institutional arrangement. As a result, actors fight over institutional choices to allocate as much as possible of the newly generated benefits of cooperation to themselves (Moe, 1990; Krasner, 1991; Garrett, 1992; Knight, 1992; Snidal, 1996; Gourevitch, 1999; Richards, 1999; Gruber, 2000). As succinctly put by Gourevitch (1999, p. 139): “As institutions are formed or altered, actors seek the best possible institution from their point of view”. Thus, institutions are settlements of distributional conflicts over the expected gains of cooperation and particular institutional designs are the product of strategic bargaining among actors with diverging interests.

How these distributional battles get resolved and what particular institutional arrangement is created, depends on the underlying configuration of preferences and the balance of power among actors. Once institutions have become the object of political conflict, actors will deploy resources to shape rules and procedures toward their liking to the extent that the expected benefits of the institutional provisions sought equal the costs of exercising influence. Powerful actors push for institutions that disproportionately benefit them at the expense of others and deploy their power resources to make weaker parties agree.

In sum, from a political point of view, institutions do not exist because they are an efficient means of overcoming collective action problems and providing collective goods. Rather, they exist and take a peculiar structural form because they conduce to the interests and benefits of powerful actors. In other words, the politics of institutional choice are key for understanding whether and how institutions emerge, what particular arrangements are chosen, and, once established, whether and how these will change. This does of course not necessarily render efficiency gains irrelevant. After all, there needs to be sufficient additional benefits generated to provide incentives to engage in costly institution-building in the first place. Yet, the presence of distributional concerns makes political conflict and power politics a central driver of institutional choice. Importantly, the role of politics is particularly relevant for accounting for institutions that are not Pareto optimal, i.e. inefficient (Krasner, 1991; Snidal, 1996; Gourevitch, 1999). Thus, a political model of institutional design is likely to be helpful in understanding the prevalence of inefficient transnational institutions in world politics.

2.1.3 Assumptions

This political perspective on institutional formation and change, and the model of transnational institutional design that I build on it, are based on a set of behavioral assumptions. Four are of particular importance. First, institutions are the result of the deliberate choices of actors (Shepsle, 1989, 2005; Koremenos, Lipson and Snidal, 2001; Weingast, 2002; Snidal, 2002). Both the creation and transformation of institutional structures are

the result of negotiations among individual actors or coalitions that seek to strike bargains that are as close as possible to their individual preferences.

Second, actors are goal-oriented and seek to maximize their individual benefits from cooperation (Shepsle, 1989, 2005; Weingast, 2002; Snidal, 2002). Purposive action and utility maximization does, however, not imply that actors are hyper-rational, computer-like calculation machines that possess perfect information about all aspects relevant to institutional design. While actors may have full and accurate information about their own preferences and beliefs, they typically have imperfect knowledge about others' motivations and beliefs, the problem under consideration, and the environment in which they operate. Under the condition of complex problems, actors may not even have an accurate view of what institutional design reflects their objectives best and, hence, may have even incomplete knowledge about their own preferences and beliefs (Morrow, 1994*b*). In short, actors are assumed to be goal-oriented utility maximizers with incomplete information.

Third, institutional design is the product of strategic interaction under uncertainty (Gourevitch, 1999; Morrow, 1994*b*, 1999). Actors seek to maximize the chances of attaining their goals. In doing so, they behave strategically, i.e. when developing their negotiation strategies they do not only consider their own preferences and capabilities but also their expectations about how all other relevant actors are likely to behave (Lake and Powell, 1999). This process of strategic interaction takes place under conditions of uncertainty (Gourevitch, 1999; Morrow, 1994*b*).

Fourth, the preferences of actors are not assumed to be fixed and exogenous to their interaction. If the information an actor possesses about the world around it is incomplete, as is typically the case in negotiations over transnational institutions, this actor is likely to alter its preferences and beliefs based on new information and experiences obtained through its interactions with others (Shepsle, 1989, p. 134; Morrow, 1994*b*). By endogenizing the institutional preferences of actors and allowing interests to vary, both between as well as during negotiation episodes, my model addresses one of the major limitations of conventional rational theories of institutions (Hall and Taylor, 1996; Snidal, 2002). Note, however, that this is not simply an analytical move aimed at increasing the validity of my model but, as I will elaborate below, a prerequisite for investigating the role of information in the power politics of tripartite bargaining under conditions of uncertainty.

2.2 What is Transnational Institutional Design?

International institutions are characterized by a kaleidoscopic variety of often very specific institutional designs (Koremenos, Lipson and Snidal, 2001, pp. 761-2; Stein, 2008, p. 213). Transnational institutions are no exception. But what do we mean by institutional design and how do we distinguish empirically between different design elements? In general, institutional design refers to the specific form a particular institution adopts to fulfill

its tasks (Koremenos, Lipson and Snidal, 2001, p. 769). Institutions can be formalized, encoded in treaties and other explicit agreements, or of an informal, more tacit character (Downs and Rocke, 1990; Lipson, 1991; Abbott and Snidal, 2000; Stone, 2011, 2013; Koremenos, 2013; Kleine, 2013*a*). Accordingly, institutional design includes formal as well as informal rules and procedures that organize the operations of an institution. Examples include how information is produced and disseminated, how decisions are made, and how disputes over rule interpretation are resolved.⁹

I focus on variation in formal institutional structures.¹⁰ While both formal and informal rules can be objects of actors' conscious choices and strategic interaction (Lipson, 1991; Abbott and Snidal, 2000; Stone, 2011, 2013; Koremenos, 2013), pinning down negotiations and decisions about informal structures is challenging in practice because such design choices occur over longer periods of time and are of a more tacit character. Decisions about formal institutional rules and procedures, by contrast, are easier to detect and track (Christiansen and Neuhold, 2012, p. 2). Examples of formal institutional design elements that have received attention by international relations scholars include obligation and delegation, scope and precision of rules and procedures, and the organization of dispute settlement (Goldstein et al., 2000; Smith, 2000; Koremenos, Lipson and Snidal, 2001; Hawkins et al., 2006). I focus on the design of formal institutional structures and leave the question of what drives the emergence and evolution of informal governance to future research.¹¹

This general notion of formal institutional design needs to be disaggregated to provide useful ground for empirical analysis. Using overly simple measures that describe institutions in broad terms as, for example, effective or ineffective—as they have been widely used in the literature evaluating the performance of transnational public-private governance schemes (e.g. Ulbert, 2008; Liese and Beisheim, 2011)—is problematic because they collapse relevant design nuances into a single description which leads to a loss of valuable empirical information (Koremenos, Lipson and Snidal, 2001). Conversely, describing individual governance schemes in great depth by singling out each and every difference in their institutional structures is not helpful either, because it conflates trivial differences with those that are theoretically and practically significant.

To balance the competing analytical demands of comprehensiveness and simplicity, I focus on two dimensions of formal institutional design in terms of which transnational public-private governance schemes vary markedly and which have been repeatedly iden-

⁹On the conceptual differentiation between formal and informal governance, see Stone (2011, 2013) and Helmke and Levitsky (2004).

¹⁰There is a growing body of literature examining the design of informal institutions and their role in shaping international outcomes. Seminal works on informal governance in world politics include: Lipson (1991), Abbott and Snidal (2000), and Stone (2011). Helmke and Levitsky (2004) provide an overview of the study of informal governance in the field of comparative politics.

¹¹For a first attempt, see Stone, McLean and Westerwinter (2013).

tified as theoretically vital in the study of international cooperation.¹² These two dimensions are monitoring and enforcement.¹³ Obviously, analyzing formal monitoring and enforcement mechanisms by no means provides an exhaustive description of the organizational structures of any particular governance scheme. However, while public-private governance schemes vary in a wide range of institutional design elements, monitoring and enforcement are critical in situations characterized by prisoners' dilemma-like problem structures (Fearon, 1998; Garrett, 1992; Morrow, 1994*b*; Downs and Rocke, 1990). In addition, empirically, negotiations over monitoring and enforcement mechanisms are typically among the most contentious items on the table during negotiations over the creation and reform of transnational public-private governance schemes and, therefore, some of the hardest and most cumbersome bargaining among states, firms, and NGOs occurs over these issues. As a consequence, negotiations over monitoring and enforcement are likely to bring into sharp focus the dynamics of distributional conflict, bargaining, and power politics on which this dissertation focuses. Thus, examining the design of monitoring and enforcement provisions provides a useful first case for evaluating the usefulness of my political model of transnational institutional design. If the argument that I offer is of any use, it should apply especially to tripartite bargaining over monitoring and enforcement.

Critics might object that transnational public-private governance schemes are instruments of soft law and, hence, by construction are unlikely to have strong monitoring and enforcement capacities. After all, voluntary participation and the lack of enforcement powers have been pointed out as a defining feature of such new forms of governing (Abbott et al., 2000; Abbott and Snidal, 2000; Kirton and Trebilcock, 2004). However, although their rules are legally non-binding for participants, the institutional designs of transnational public-private governance schemes still range considerably from weak, purely voluntary institutions to comparatively strong forms of governance which include *de facto* mandatory performance obligation (Kantz, 2007*a*). Thus, while it is true that transnational public-private governance schemes do not cover the full continuum from hard to soft law (Abbott and Snidal, 2000; Kirton and Trebilcock, 2004), their institutional designs nevertheless vary substantially from purely voluntary and weakly institutionalized schemes to rigid, even *de facto*, compulsory arrangements.

Monitoring refers to how a governance scheme organizes the verification of compliance of rule addressees (Mitchell, 1994, p. 430; Raustiala, 2005, p. 585). It includes the form in which actors report about rule implementation and the way in which performance is ascertained. To measure the strength of a governance scheme's formal monitoring system, I examine whether or not it has set up rules and procedures for assessing the performance

¹²In doing so, I follow previous analyses of international institutional design. For some representative studies, see Koremenos, Lipson and Snidal (2001), Abbott and Snidal (2000), and Raustiala (2005).

¹³Other design elements that are excluded from my analysis, but that have been emphasized in other studies include control, depth, scope, membership, and flexibility (Koremenos, Lipson and Snidal, 2001), obligation and precision (Abbott et al., 2000), and dispute settlement (Smith, 2000).

of rule targets and, if so, what form and strength these provisions take (Mitchell, 1994; Shelton, 2000; Raustiala, 2005). I measure the strength of an institution's monitoring system using a three-point ordinal scale.¹⁴ A high level of monitoring is indicated by strong surveillance procedures which provide for compulsory independent third party inspections of rule targets' implementation activities. By contrast, low monitoring implies no or only minimal verification procedures which rely on voluntary self-reporting or informal assessment of rule targets' performance. In between these two end points are mechanisms with a moderate level of centralization and stringency, such as peer review monitoring systems.

Enforcement describes the rules and procedures a governance scheme adopts to penalize rule violators and induce compliance (Mitchell, 1994, p. 430; Raustiala, 2005, p. 585). As with monitoring, I measure the strength of a governance scheme's formal enforcement structures by investigating whether or not enforcement mechanisms are in place and, if so, what form and strength they take. Again, I use a three-point ordinal scale to measure the presence and strength of enforcement provisions. A high level of enforcement contains the availability of potent and centrally organized sanctions. Potent sanctions include the possibility to ostracize noncompliant participants, granting and withholding benefits of cooperation, and fines. In governance schemes that deal with problems related to the trade in particular commodities, such as the Kimberley Process (diamonds) or the US-Cambodia Textile Agreement (apparel industry), sanctions may take the form of trade restrictions (Vogel, 2009, pp. 172-5). A moderate level of enforcement is indicated by the existence of informal and decentralized means for inducing conforming behavior, such as investigations of rule violations and public disclosure of misconduct (Koremenos, 2013). Finally, low enforcement is associated with an institutional arrangement where no sanctions of any kind can be imposed—neither unilaterally nor multilaterally—and where only informal and decentralized means of enforcement exist, like for example, consumer boycotts or diplomatic and moral peer pressure.

Scoring cases along these indicators is based on a coding strategy that integrates multiple data sources. On the one hand, I draw on archival materials that contain the rules, procedures, and other relevant provisions that constitute the institutional arrangements of the Kimberley Process, the Voluntary Principles on Security and Human Rights, and the International Code of Conduct for Private Security Service Providers. On the other hand, I examine documents from governments, firms, business associations, and NGOs as well as newspaper articles that endorse, comment on, or otherwise elaborate on these rules and procedures. These data are supplemented by information collected through

¹⁴Much research on the design of international institutions dichotomizes design dimensions (e.g. Raustiala, 2005). In contrast, I measure institutional design using an ordinal scale ranging from low to moderate to high levels. While this still entails a simplification of observable design differences, this approach allows for a more fine-grained analysis which at the same time remains analytically and practically feasible.

semi-structured interviews with policymakers and other practitioners that were involved in negotiations over the formal institutional structures of the three governance schemes under investigation as well as secondary sources. This triangulation of different data sources in scoring my cases along the set of indicators introduced above, enhances measurement validity (Adcock and Collier, 2001, p. 540). Table 2.1 summarizes the operationalization and measurement of my dependent variable.

Table 2.1: Monitoring and Enforcement: Measurement and Data

Concept	Scale	Indicators	Data
Monitoring	High, moderate, low	Are monitoring mechanisms in place? What form do they take?	Archival materials, semi-structured interviews, secondary sources
Enforcement	High, moderate, low	Are enforcement mechanisms in place? What form do they take?	Archival materials, semi-structured interviews, secondary sources

Once established, the formal institutional structures of transnational public-private governance schemes may change as time goes by. Some arrangements emerge, decline, and vanish; others grow, expand, and flourish. This holds particularly for tripartite governance schemes, which have been described as highly flexible institutional forms which in contrast to more formalized intergovernmental organizations, can easily accommodate unexpected environmental changes (Abbott and Snidal, 2000, 2009 *a,b*; Abbott, Green and Keohane, 2013; Reinicke and Deng, 2000). In general, I define change in the institutional design of a transnational public-private governance scheme as alterations in its formal rules and procedures. Actors' choices regarding specific design features are by no means set in stone, but can be subject to reconsiderations. Focusing on changes in formalized rules and procedures is of course, only one among many possible ways, to study institutional change; it is, however, an important one and has to precede more nuanced assessments of change.¹⁵

I focus on modifications of the monitoring and enforcement structures of a governance scheme, i.e. alterations of the formal rules that govern the collection, reporting, and evaluation of information about the compliance of rule addressees and those formalized provisions that govern the punishment of rule violators. I measure change and continuity of the formal monitoring and enforcement mechanisms of tripartite governance schemes by examining whether and, if so, how monitoring and enforcement provisions move along the three-point ordinal scales (see table 2.1) between negotiation episodes. In simple

¹⁵ Other approaches include examining changes in the effectiveness of transnational governance schemes (e.g. Ulbert, 2008; Liese and Beisheim, 2011) or investigating the process of change itself as it is the focus of studies that employ a historical institutionalist perspective on institutional change (e.g. Mahoney and Thelen, 2010).

terms, if states, firms, and NGOs bargain over the reform of enforcement provisions and, if at the end of the negotiations, enforcement is strengthened from low to moderate, this constitutes transnational institutional change. Likewise, a weakening of enforcement, such as a downward move from high to low, also constitutes change. By contrast, if at the end of a negotiation episode enforcement mechanisms remain weak, this constitutes institutional continuity in terms of enforcement.

Breaking down the institutional architecture of transnational public-private governance schemes in the way suggested above, I argue, permits me to engage in a focused, though sufficiently nuanced, description of the diversity in institutional designs that can be observed across governance schemes and over time as well as in a fine-grained analysis of the causes of design differences and changes. Despite this analytical merit however, this way of operationalizing transnational institutional design also has limitations. Three are particularly worth mentioning.

First, examining institutional design does not entail investigating actors' performance under the rules and procedures of a governance scheme, i.e. compliance. Institutional design belongs to what previous research has described as the output of public-private governance schemes (Ulbert, 2008; Liese and Beisheim, 2011). Output refers to the immediate activities of an institution, such as setting regulatory standards, establishing operating procedures, convening meetings, or delivering services. Output may or may not affect the behavior of rule targets or the broader policy problem that a governance scheme addresses. My analysis is largely silent on these and other behavioral outcomes of tripartite governance. While providing a detailed account of what shapes institutional design decisions, I do not examine the implementation of regulatory standards, nor do I analyze to what degree governance schemes contribute to the solution of the problems that triggered their creation. This might appear as a rather narrow focus, but given the important distributional consequences attributed to institutional design and given empirical findings which show that differences in institutional structures and particularly differences in how monitoring and enforcement are organized are consequential for governance effectiveness (Liese and Beisheim, 2011), zeroing in on the drivers of variation in transnational institutional design seems to be a legitimate analytical choice.

Second, I focus on a limited set of design features. The design elements on which my conceptualization of institutional design rests are by no means the only dimensions along which transnational tripartite governance schemes vary. The elements on which I concentrate have repeatedly been pointed out as theoretically vital as well as practically relevant by international relations and international law scholars which makes their in-depth analysis a worthwhile undertaking (Abbott et al., 2000; Guzman, 2005; Koremenos, Lipson and Snidal, 2001; Raustiala, 2005).

Finally, measuring monitoring and enforcement along an ordinal scale with three categories ranging from low to medium to high is naturally a simplification. It is meant

to be an analytically reasonable compromise between dichotomizing the two design features, on the one hand, and treating them as what they empirically actually are, namely a continuum between two extreme points with numerous steps in between, on the other hand.

2.3 Bargaining, Power and Institutional Design

2.3.1 The Bargaining Problem of Transnational Cooperation

States, companies, and NGOs that decide to govern the negative externalities of global production and to create a tripartite governance scheme face a bargaining problem that needs to be resolved to realize the gains of cooperation. I follow Fearon (1998) and others (Nash, 1951; Rubinstein, 1982; Snyder and Diesing, 1977; Sutton, 1986; Morrow, 1999; Powell, 2002) in identifying four key characteristics of bargaining. First, bargaining refers to situations where two or, empirically more common, multiple actors negotiate over the terms of an agreement. Actors agree that cooperation is mutually beneficial, but more than one way to cooperate exists and actors have conflicting interests over the ranking of possible agreements. The central problem each actor encounters is, therefore, how to craft an optimal negotiation strategy that allows for reaping the benefits of cooperation while at the same time maximizing one's individual utility.

Second, bargaining involves strategic interaction. When making their decisions, actors not only consider their own preferences and capabilities, but also the motivations and behavior of others (Snidal, 1985*b*; Lake and Powell, 1999). Outcomes thus depend on the choices of all actors involved in a negotiation episode and how they relate to one another. Third, bargaining is inherently dynamic. If bargaining problems are settled at all, they are resolved sequentially through a process of give-and-take, moves and counter-moves that determine the outcome (Wagner, 1983).

Finally, uncertainty is essential to bargaining. Actors possess imperfect information about others' preferences, beliefs, past behavior, and the distribution of bargaining power (Fearon, 1998; Snyder and Diesing, 1977). In sum, in game-theoretic terms, bargaining can be conceptualized as a non-zero-sum, non-cooperative iterative game of incomplete information where the outcome depends on the choices of n players.¹⁶

Any effort at establishing a transnational public-private governance scheme must begin by resolving a bargaining problem. As an empirical matter, when creating a tripartite governance scheme, there is rarely only one institutional option available. Typically, states, firms, and NGOs can choose from a wide array of organizational forms which they

¹⁶The theoretical framework that I develop in this dissertation draws on game theoretic concepts and models. For a general introduction into game theory tailored toward a political science audience, see Morrow (1994*a*). Zagare and Slantchev (2012) provide an excellent, non-technical overview of the game theoretic literature in international relations and conflict research.

prefer over the status quo. Although actors have a complementary interest in achieving agreement and launching a regulatory scheme, they virtually invariably have conflicting interests over what institutional design to select because different choices vary in how they distribute the costs and benefits of cooperation.¹⁷ Bargaining does not, however, stop with the creation of a governance scheme. After an initial agreement has been achieved, bargaining can recur as the situation changes or interests and power differentials shift, so that actors have incentives to re-negotiate existing institutional structures.

Take the Kimberley Process as an example. In 2000, states, the diamond industry, and NGOs shared the common goal of stopping the trade in rough diamonds to finance civil war in Africa. Apart from this, there were substantial differences in actors' preferences over how to organize cooperation. Monitoring was a particularly contentious issue. Some states, such as Russia, China and Israel, rejected any attempt to establish monitoring procedures that go beyond self-reporting. Also industry was reluctant to include centralized compliance verification due to concerns about costs and intrusiveness. NGOs, by contrast, bargained hard for a centralized verification system. They argued that an independent third party auditing system would be essential for the regime's effectiveness and credibility. These diverging views on the economic and political costs associated with different forms of monitoring gave rise to sharp disagreements and tough and prolonged bargaining over precisely how the new institution ought to be designed.

Furthermore, it is apparent that the actors involved in transnational cooperation are interdependent. The pursuit of egoistic interests necessarily requires the consideration of others' choices. As a result, no stakeholder, not even the most powerful player, can attain its most favorable outcome independently. What an individual actor can achieve and what its most promising bargaining strategy is, depends on the preferences and power capabilities of its fellow bargainers.¹⁸ As a consequence, transnational public-

¹⁷An important difference between the available outcomes in this bargaining situation and those in simple coordination games, such as the well-known "battle of the sexes", is that they are not self-enforcing. Other than technical standards which are largely self-enforcing (Abbott and Snidal, 2001), the regulations set up in transnational public-private governance schemes provide individual actors, particularly rule addressees, with incentives to renege on their commitment, a strategic situation akin to the well-known prisoners' dilemma. This suggests that the bargaining situation that characterizes negotiations over transnational institutions is insufficiently captured by simple representations of a distributional problem, such as "battle of the sexes". Conceptualizing these situations as a sequence of interlocking bargaining and enforcement problems is more accurate (Fearon, 1998). This is precisely one of the reasons why monitoring and enforcement are critical in these situations and receive substantial attention of states, firms, and NGOs when it comes to institutional design. I focus on the bargaining phases of transnational cooperation and leave monitoring and enforcement of standard implementing behavior for later investigations. I chose to do so because bargaining and the problems it gives rise to precede monitoring and sanctioning (Morrow, 1994b).

¹⁸States, companies, and NGOs are also interdependent in a more general sense. Even resourceful developed countries and IGOs typically lack the capacities required for effectively governing complex transnational problems and, therefore, need to involve companies and NGOs in policy-making and implementation (Avant, Finnemore and Sell, 2010). Likewise, companies have an interest in collaborating with NGOs and states for credibility and legitimacy reasons (Abbott and Snidal, 2009 a). Finally, NGOs depend on states' and companies' cooperation since they are the ones whose behavior they seek to change

private governance schemes emerge piecemeal out of the strategies and counter-strategies of states, firms, and NGOs. These strategies are shaped by what actors consider feasible and around what they can mobilize others to agree to (Bartley, 2007).

Moreover, the bargaining problem of transnational institutional design will be resolved, if at all, sequentially. Take again the example of monitoring. In many empirical cases, including those I analyze in this dissertation, NGOs enter negotiations with a demand for the creation of an independent third party auditing system. Industry, often in cooperation with governments, responds by offering company self-reporting as a less intrusive and less costly alternative. If actors fail to agree on one of these initial offers but positions are not too far apart, they start making concessions until they arrive at a mutually agreeable solution; the negotiations over the peer review monitoring system of the Kimberley Process are a case in point (Bieri, 2010). If actors, however, hold truly incompatible preferences and no party has sufficient relative bargaining leverage, a stalemate will result as has, for example, repeatedly been demonstrated by the negotiations over the governance structures of the Voluntary Principles on Security and Human Rights (Hansen, 2009).

Finally, uncertainty is essential to negotiations over transnational institutions. Actors have, at best, incomplete knowledge about the nature of the regulatory problem they face, what other parties are willing to accept, how costly they deem non-cooperation, and how powerful they are. More fundamentally, states, firms, and NGOs have only incomplete information about the wider “state of the world” in which the regulatory problem they are concerned with is embedded. For example, when the “conflict diamonds” issue first entered the political agendas of UN diplomats, the diamond industry, and human rights NGOs in the late-1990s it was not clear what the exact nature and implications as well as possible consequences of this problem would be. It took a while until the different stakeholder groups involved started to get a grasp on the problem and learned how to position themselves best in negotiations over how to address what seemed to be a new global policy issue (Bieri, 2010; Haufler, 2010). Thus, creating and managing tripartite governance schemes is a complicated task, involving technical difficulties and political contention (Abbott and Snidal, 2009*a*; Avant, Finnemore and Sell, 2010). Due to this complexity, actors are uncertain about the costs and benefits of the available institutional forms so that it is unclear which institutional design is preferable and what precisely the non-negotiated alternatives are (Morrow, 1994*b*).

In addition, negotiating transnational public-private governance schemes involves elements of both distributive and integrative bargaining (Walton and McKersie, 1965, pp. 4-5; Young, 1989). In situations of distributive bargaining, actors have accurate knowledge about the location and shape of the Pareto frontier, i.e. they have a clear understanding of what results particular institutional solutions produce and how this affects individual actors’ preferences. As a result, their negotiation tactics primarily focus on achieving an

(Abbott and Snidal, 2009*a*).

outcome that is as close as possible to their most preferred solution. Under integrative bargaining, by contrast, negotiators lack a well-defined understanding of the Pareto frontier. Thus, before distributive bargaining can commence, states, firms, and NGOs need to explore the opportunities for mutually beneficial agreements and develop an understanding of the effects of institutional alternatives on actors' positions. In other words, they first and foremost have to figure out where the Pareto frontier is and how its curvature is shaped, before negotiating over where on the frontier to settle for an agreement. This does not, however, imply that distributive concerns play no role in integrative bargaining. In fact, actors can seek to shape the definition of the "state of the world" and the location and shape of the Pareto frontier such that it is easier for them to achieve favorable outcomes in distributive bargaining (Morrow, 1994*b*).

2.3.2 Power Strategies and Tripartite Institutional Bargaining

One way to resolve bargaining problems is through the exercise of power (Krasner, 1991; Gourevitch, 1999; Gruber, 2000; Moe, 2005). Individual actors and coalitions employ their power capabilities as bargaining leverage to induce cooperation on their most favorable institutional arrangement. Put simply, they use power to maximize their expected utilities of cooperation.

In a general sense, "power is the production, in and through social relations, of effects that shape the capacities of actors to determine their own circumstances and fate" (Barnett and Duvall, 2005, p. 8). It allows actors to get others to do something they would not do if power differentials were absent (Dahl, 1957). Power is intrinsically relational. Rather than being a monadic property that an actor possesses independently from the world around it, power derives from, and is exercised through, social relationships between two or more actors (Simon, 1953; Dahl, 1957; Baldwin, 1979; Lazer, 2011). Despite the differences between relational conceptions of power, what these approaches share is the idea that an actor's power cannot be understood only by examining its raw capacities, but requires a careful analysis of the relationships between a potential power wielder and one or more power addressees, and how this relationship affects A's ability to get B to do what it would not otherwise do.

Power has multiple faces (Bachrach and Baratz, 1962; Baldwin, 1979; Barnett and Duvall, 2005). It can be rooted in different sources (e.g. money, military personnel, specialized expertise), manifest in different forms (e.g. coercive, productive, structural), and be exercised through a range of channels. Different forms of power are not mutually exclusive, but can interact with one another. It is, therefore, apparent that all governance including institution-building and institutional change involves the exercise of power. It is only a question of whether more or less coercive or more or less subtle power strategies are exercised (Avant and Westerwinter, 2013). I focus on three forms of power that,

in combination with actors' preferences, affect the dynamics and outcomes of tripartite institutional bargaining; namely, economic power, institutional power, and network power.

These three types of power allow actors to affect institutional bargaining through two basic mechanisms: (1) influencing preferences and beliefs; (2) shaping strategic opportunities (see table 2.2). Economic power is based on the possession of financial and technical resources. It enables actors to directly manipulate others' institutional preferences through side payments and issue linkage (Krasner, 1991; Sebenius, 1983). Agreement on a particular institutional design may depend on some form of redistribution of the costs and gains of cooperation. Actors with financial and technical capabilities can offer their opponents side payments as compensation for their agreement to an otherwise unfavorable institutional structure (Krasner, 1991; Moe, 2005). Likewise, combining several disparate issues into a single negotiation package, opens up room for agreement that may otherwise not be possible (Axelrod and Keohane, 1985; Sebenius, 1983). Thus, side payments and issue linkage function as direct utility transfers between players in a bargaining game. Multinational companies and industrialized states, for example, can offer financial support and technical assistance to smaller firms, developing countries, and NGOs to get their concession to a governance structure that otherwise implies significant burdens for them.

Table 2.2: Power Mechanisms

Form of Power	Pay-Offs	Strategies
Economic	Side payments, issue linkage, and exit options directly/indirectly affect utilities	
Institutional		Control over access, agenda, proposals allows shaping strategic options
Network	Control over information allows better estimating and affecting others' preferences and beliefs	Hubs and brokers control access and forge/foreclose coalitions

Furthermore, actors that hold superior economic capabilities in an issue area can have "go-it-alone" power (Gruber, 2000; Abbott and Snidal, 2009 *a*; Avant, 2013). They are able to unilaterally generate or forestall institutions that, at least partially, meet their interests. If exercised, such outside options impose negative externalities on other actors because the exit of a major power reduces the value of cooperation for others (Stone, 2013, p. 8). Thus, compared to side payments and issue linkage "go-it-alone" power has an indirect impact on others' expected utilities of cooperation. The big African diamond producers, such as Botswana, Namibia, or Zimbabwe, for example, have potential "go-it-alone" power in governing the diamond trade. Given their sizeable share in global diamond production,

these states can use the threat to leave the Kimberley Process and establish their own governance scheme as a leverage in negotiations over its policies and institutional rules.

Second, institutional power is constituted by access to negotiation forums, voting rights, veto privileges, and other formalized control rights within an institution. It permits actors to manipulate strategic opportunities by controlling access to negotiations, agendas, and proposals. Actors can use institutional power to block unfavorable decisions or structure negotiations in a more positive fashion. Veto positions are an important aspect of negative institutional power (Tsebelis, 2002). Privileged access to decision-making forums, such as steering committees or working groups, and the ability to define negotiation agendas and make proposals are aspects of positive institutional power (Buthe and Mattli, 2011; Stone, 2013). Actors that control agendas and draft proposals can constrain others' choice set at early stages of the negotiation process in a way that enables them to secure favorable institutional choices. In the Kimberley Process, for example, the annually rotating Kimberley Process Chair and the chairs of the working groups have important agenda-setting and proposal making powers. Further, the *de facto* unanimity-based voting procedures of the KP confer veto power to every state, thereby providing to some extent, negative institutional power to all state members of the governance scheme.

Third, network power derives from an actor's position in the webs of relationships among those involved in governing an issue (Avant and Westerwinter, 2013). In a general sense, a network is a set of units and a set of links that indicate the presence or absence of relationships among units (Barabasi and Albert, 1999, p. 509).¹⁹ Units can be everything from states to NGOs to individuals. Likewise, the content of links can vary in a number of ways, including exchange of material resources, flow of information, friendship, or enmity. In this dissertation, I focus on informal communication networks that emerge through the exchange of policy-relevant information and advice among states, firms, and NGOs involved in negotiations over the formal institutional structures of transnational tripartite governance schemes. Information exchange networks are important for understanding tripartite institutional bargaining because access to information about, for example, others' beliefs and preferences, and existing and possible coalitions are critical for crafting effective negotiation strategies.

In contrast to economic and institutional power, network power derives from an actor's position in the informal webs of relationships among those involved in negotiating a tripartite governance scheme. As succinctly put by Hafner-Burton, Kahler and Montgomery (2009, p. 570): "a structural analysis of networks equates the power of a particular node to its position in the network, defined by its persistent relationships with other nodes". Having many direct relationships (access) or being the only link between otherwise unconnected others (brokerage) in a network enables an actor to affect bargaining by better

¹⁹This structural understanding of networks has to be distinguished from approaches that conceive of networks as forms of organization (e.g. Powell, 1990; Podolny and Page, 1998).

estimating others' preferences and beliefs, changing others' preferences and beliefs, and influencing strategic opportunities (Avant and Westerwinter, 2013; Lake and Wong, 2009; Goddard, 2009, 2012; Carpenter, 2011; Hafner-Burton and Montgomery, 2010; Wellman, 1988; Burt, 1992). Recall that uncertainty is pervasive in bargaining and actors have limited knowledge about others' preferences, beliefs, and power. In such a situation, central and broker positions in information exchange networks constitute a source of bargaining power because they transmit strategically valuable information which help to mitigate these uncertainties, designing better negotiation strategies, and affecting how others perceive their expected utilities (see Harsanyi, 1962; Lipson, 1985). Actors in central network positions, for example, can use their knowledge about others' preferences and beliefs to invent institutional arrangements that enjoy their support and, hence, facilitate agreement while at the same time providing them with individual gains (Young, 1989).

The same informational benefits of central network positions also provide actors with a first-mover advantage at early stages of institutional bargaining (Buthe and Mattli, 2011). Receiving information about policy problems, available solutions, and coalitional patterns early on, enables an actor to shape the negotiation agenda or draft proposals when others are still trying to find out what the problem they are dealing with is all about. These informational advantages of central positions in informal communication networks are of particular importance if negotiations occur in a context where more formalized mechanisms of information sharing are lacking.

Networks are also a tool to convey information either directly or through intermediaries. The effects of a particular institutional setup are difficult to judge a priori. What exactly is at stake in negotiations over institutional structures and the exact nature of the issue at hand is often only defined over time as actors engage in information exchange and debate (Jervis, 1988; Morrow, 1994*b*). If a negotiator is uncertain of the value of different possible institutional forms, others can use their informal connections to provide it with additional information and persuade it that a particular design option is preferable to others. Particularly if mediators are involved in this process, this can help increasing the trustworthiness and accuracy of communication (Kydd, 2003, 2006; Suk-Soung Chwe, 2000). In 2003, NGOs in the Kimberley Process for example, used their indirect network connections via industry associations to the most critical government opponents to monitoring to influence their beliefs and, ultimately, preferences in bargaining over the revision of monitoring rules.

In addition to informational benefits, networks also provide strategic advantages. Central actors have privileged knowledge about how actors in their environment are connected. This is strategically valuable information because it contains knowledge about existing and potential coalitions and how to best forge own, and prevent others', alliances. Further, central hubs can control access to a governance scheme and strategically engineer others' relationships (e.g. hubs can exclude others from negotiations; brokers can pre-

vent others from communicating directly) (Lake and Wong, 2009). Note, however, that due to resource and cognitive constraints as well as general complexity and unanticipated consequences actors' ability to strategically affect others informal relationships is likely to be limited to their local network context. As a consequence, observing the exercise of network power as a tool to shape others strategic opportunities during episodes of institutional bargaining is most likely to occur in the local, i.e. one or two-step distance, network environment of hubs and brokers (Gould and Fernandez, 1989).

In sum, network power helps in mitigating informational challenges that occur in the context of designing transnational institutions (see Gourevitch, 1999) by providing privileged access to information. Actors thrive on this asymmetrical access to information and use control over information to facilitate cooperation on favorable terms. It also enables actors to control elements of the negotiation setting, including the actors involved and how they are linked to one another, which has important consequences for the strategic options available.

Different forms of power are not universal advantages in bargaining (Schelling, 1960, p. 22; Keohane and Nye, 1977, p. 11). Take, for example, economic power. While actors with superior financial resources, such as multinational corporations or industrialized states, are sometimes able to secure favorable outcomes in transnational tripartite governance, they are by no means always successful (Levy and Prakash, 2003). There are multiple empirical cases where actors that are weak by the standards of economic capacity "punch above their weight" and succeed in bargaining. The influential role of NGOs, such as Global Witness and Partnership Africa Canada, in the negotiations over the peer review monitoring system of the Kimberley Process (Wexler, 2010), the key role of NGOs, such as Lawyers' Committee for Human Rights or International Labor Rights Fund, as architects of the monitoring program of the Fair Labor Association (Bartley, 2007, p. 332), the significant influence of NGOs like Global Witness in the creation of the norms that constitute the Extractive Industries Transparency Initiative (Kantz, 2007 *a*, p. 9), and the crucial role of Switzerland and human rights NGOs in developing the International Code of Conduct for Private Security Service Providers are notable examples (Avant, 2013).

Furthermore, actors with economic power do not always use these powers but turn to more subtle and less costly means of influence. When negotiating the institutional architecture of the Voluntary Principles on Security and Human Rights, the US government for example, deliberately decided not to wield its superior economic might. Instead, it used its brokerage position between extractive companies and NGOs to forge an agreement that closely approximates its preferred institutional setup. Likewise, institutional power is often relatively evenly distributed in transnational public-private governance schemes which suggests that something below the surface of formal rules and procedures must account for differences in influence.

As these examples indicate, different power tools may be instrumental in influencing

conflicts over transnational institutional design and there is neither a clear empirical pattern nor an a priori theoretical reason that indicates that one form always outperforms others. Thus, it seems to not be a question as to whether those who emphasize the importance of economic power or those who underscore the merits of institutional or network power are right, but rather under what conditions different forms of power or power mixes confer advantages in institutional bargaining.

2.4 Bargaining Environment and the Strategic Use of Power

The previous section set forth a general argument regarding the importance of distributive bargaining and power politics as driving forces behind the institutional design of transnational public-private governance schemes. This section further specifies this argument and articulates hypotheses about the conditions under which we can expect economic, institutional, and network power to confer influence in the transnational bargaining game. In doing so, my model encourages a broader perspective in which institutional bargaining is understood in its political context and it directs attention to variation in this context that conditions power dynamics and governance outcomes.

In a nutshell, I argue that actors use power strategically. In bargaining over the gains of tripartite cooperation, actors expend resources, i.e. exercise power, to wield influence in the transnational bargaining game. They do so up to the point where the marginal costs of exercising power equal the marginal benefits expected from the institutional rules they seek to obtain. Conversely, opponents of the same organizational element expend resources to prevent it.

The exercise of power is costly. Wielding power involves both economic and political costs. Most obviously, deploying economic capabilities or transferring technology as a means of forging agreement on institutional structures requires spending financial resources. But the costs of power reach far deeper and incur also more diffuse political costs related to the reputation of the power wielder vis-à-vis relevant audiences. The overt use, for example, of “go-it-alone” power based on economic advantages does not only incur costs in the form of forgoing the benefits of full cooperation but also entails reputational costs vis-à-vis fellow negotiators and the broader public if negotiations are conducted in a transparent manner and cooperation and the ultimate provision of the related public good is considered desirable by stakeholder groups. The same holds for institutional power and especially institutional power based on veto positions. The threat or actual exercise of a veto involves political costs for those who employ it because they can be viewed as spoilers who block actions that are considered desirable by others.

In addition to concerns about the costs of power, effectively accomplishing political

goals is important. Negotiators want to achieve their policy objectives and secure favorable institutional choices and, hence, use the power tool they expect to conduce to influence. Therefore, I expect strategic actors to craft bargaining strategies in a way that maximizes their prospects for success in negotiations over institutional design, while at the same time minimizes costs.

Bargaining environments differ with respect to what costs wielding a particular form of power incurs and rational actors seek to minimize these costs. Actors can reduce these costs by adapting their negotiation strategies to the prevailing political context. Importantly, this includes shifting between different power alternatives if they have more than one form of power at their disposal. Thus, the driving force behind actors' power strategy choices is a combination of effectiveness and efficiency considerations. Negotiators want to achieve their policy objectives and secure favorable institutional arrangements and, hence, use the form of power they expect to conduce to influence (effectiveness). But, in doing so, they also want to spend as little as possible of their scarce power resources (efficiency). Therefore, we should expect rational utility-maximizing actors to craft bargaining strategies in a way that maximizes their prospects for success in negotiations over institutional design, while at the same time minimizes costs.

Table 2.3: Power Strategies and Bargaining Environment

Form of Power	Formality	Transparency
Economic	Moderate	Moderate
Institutional	High	High
Network	Low	Low

What form of power approximates this twofold strategic requirement of effectiveness and efficiency depends on the characteristics of the political environment in which bargaining takes place. I argue that two situational factors are of particular relevance; namely, (1) the level of formality of the institutional context in which negotiations take place and (2) the degree of transparency of the negotiation process. These two contextual factors structure the transnational bargaining game and affect outcomes. Specifically, they determine what form of power is likely to be an effective means of influence and what the costs of exercising it are. Put differently, these contextual factors “determine the ‘currency’ used in the political marketplace and how different political assets are valued” (Lake, 2008, p. 14). As these conditions differ across negotiation episodes, some power strategies will be more effective and efficient than others. This, in turn, influences power dynamics and, ultimately, bargaining outcomes and institutional design. Table 2.3 summarizes the argument.

2.4.1 Formalization of Institutional Context

The institutional context in which negotiations occur affects the power strategies that actors exercise. Specifically, the degree of formality of the institutional setting impacts what form of power is likely to be an effective and efficient source of influence in transnational bargaining. In simplified terms, institutional environments can be dominated by either formal or informal governance. High formality describes an institutional context in which standard operating procedures (e.g. voting rules, decision-making procedures, membership criteria) are explicitly codified in treaties, statutes, and other official documents and established, communicated, and sanctioned through official and largely public channels (Stone, 2011, 2013; Helmke and Levitsky, 2004). By contrast, an informal institutional environment is dominated by regularized practices and interactions that are unwritten and not enforced by public authorities (Stone, 2011, 2013; Christiansen and Neuhold, 2012; Tsai, 2006; Prantl, 2005; Christiansen, Follesdal and Piattoni, 2003). A prime example of formal governance is domestic regulation where decision-making through legislatures and implementation through government agencies are structured by a myriad of written and publicly enforced rules and procedures. Examples of informal governance include informal agreements, such as the United States's tacit acknowledgement of the Soviet Union's sphere of influence in Eastern Europe during the Cold War (Lipson, 1991) or transgovernmental networks in which national bureaucrats coordinate regulations (Eilstrup-Sangiovanni, 2009). Although almost all institutional environments contain elements of both formal and informal governance, the extent to which formal or informal elements dominate differs across settings and over time.

In a formalized institutional setting, institutional power is a critical source of influence. If formal rules and procedures impose an explicit, tight structure on bargaining, actors with privileged access to formal negotiation forums, veto positions or otherwise favorable voting power, or the ability to set the agenda and make proposals can exert strong influence over the design of transnational public-private governance schemes. In a formal institutional environment, the critical steps of negotiating institutional structures, such as agenda-setting, proposal-making, and decision-making, are governed by detailed written rules and procedures that provide actors few possibilities to work their way around those rules; and even if ways to bypass standard operating procedures exist, they are likely to be costly. Thus, if formal governance dominates the institutional context in which negotiations occur, actors with institutional power can be expected to achieve favorable outcomes.

If the formal institutional context is, however, of a rudimentary character or if the rules that govern negotiations are largely informal, institutional power is likely to be less effective. The dominance of informal governance places actors with network power in an advantageous position. Unlike its formal counterpart, informal governance often works in

a subtle (sometimes even invisible) manner, which benefits those that occupy central or otherwise privileged positions in informal networks. In fact, networks themselves can be considered one of many manifestations of informal governance (Radnitz, 2011).

Similarly, economic power is likely to be most effective if bargaining occurs in an institutional context marked by moderate formality. Because in thin institutional contexts only few or no rules and procedures exist that govern actors' interactions when negotiating over the organizational specifics of a public-private governance scheme, they can easily turn to the coercive power potential residing in their superior financial capabilities and attractive outside options to secure outcomes that reflect their preferences (Gourevitch, 1999; Lake, 2008). Conversely, a highly formalized institutional context makes the use of threat and coercion more difficult and costly.

2.4.2 Transparency of Negotiations

A second contextual factor that affects the power politics of transnational bargaining is the level of transparency of negotiations. Transparency refers to the availability of information about the internal operations and decision-making processes of a public-private governance scheme to those involved in its work as well as outsiders (Lindley, 2007; Mitchell, 1998; Chayes and Chayes, 1995; Florini, 1997). Transparency facilitates actors' ability to assess the internal operations of a governance scheme. In a transparent scheme, high-quality information about past meetings and decisions, present and future negotiation agendas, or the next steps in the decision-making process are accurately produced, stored, and disseminated. Even if it is not circulated automatically, information can be easily accessed. Thus, as understood here, high transparency of a governance scheme reflects the existence of formalized institutional mechanisms for exchanging and providing information during episodes of institutional bargaining (Lindley, 2007, p. 9).

In an arrangement characterized by low levels of transparency, by contrast, information is not readily available and actors will find it difficult to figure out what the current stage of a negotiation process is or whether other negotiations in which they are not directly involved are relevant for them. In short, while a transparent governance scheme is characterized by generally open internal procedures and decision-making processes where all actors involved in principle have access to information at all stages of the decision-making process, a scheme with low transparency lacks institutionalized mechanisms for the timely dissemination of information.

High levels of transparency advantage actors with institutional power and disadvantage those with economic and network power. If institutionalized mechanisms exist which make access to information about negotiations easily available, those with privileged access to formalized institutional arrangements benefit. They will receive important information earlier than others and will be able to shape proposals at early stages of a negotiation

process, which is a critical first-mover advantage in bargaining (Buthe and Mattli, 2011).

Furthermore, high transparency facilitates tracking internal decision-making and makes scrutinizing actors' behavior in negotiation processes easier for both negotiators as well as interested outside audiences (Florini, 1997, p. 59). Attempts to coerce others using superior material resources are more likely to be detected in high transparency arrangements. If such threats are publicly visible, legitimacy problems can occur when open coercion is considered an inappropriate means of influence. Those targeted by threats based on superior economic power can, for example, use public statements to "name and shame" their opponents which makes the use of a threat-based power strategy costly. Similarly, the threat to exit a negotiation process is likely to attract public attention in high transparency environments which can create costs for the threatening party. Hence, if deals are hammered out in public, with much fanfare and public attention, then the political costs of using economic power are heightened. High levels of institutional transparency also lead to a decline in the relative informational advantages of network power. If strategically valuable information is equally available to all negotiation parties due to the existence of institutionalized information sharing mechanisms, prominent positions in informal information exchange networks provide few additional benefits.

By contrast, opacity has its virtues for those that hold economic and particularly network power. In governance schemes without institutionalized rules and procedures which ensure that information about internal operations and decision-making processes are widely disseminated, the informational advantages emanating from central positions in informal communication networks are a useful means of influence. If there are few formal procedures and institutionalized mechanisms for information provision, getting information about where negotiations are and where they are going is contingent on informal networks. In extreme situations, they can even be the only channels through which information about ongoing negotiations can be obtained. As a result, the bargaining advantages conferred by central positions in informal information exchange networks increase as the transparency of the negotiation process decreases.

Finally, in a moderate transparency environment, exerting influence through the coercive use of financial capabilities can be concealed more easily compared to high transparency settings. Because threats are likely to be less visible to interested audiences inside and outside the negotiation process the costs of using open threats as bargaining leverage are lower. In sum, in governance schemes with high levels of transparency we can expect actors to be in an advantageous position who possess relative institutional power, while low transparency particularly benefits actors with significant network power. Economic power is likely to be most effective under conditions of moderate transparency.

In bargaining environments characterized by contextual features that suggest that more than one form of power is likely to be effective, actors choose the power strategy that incurs lower costs. Assuming that actors make purposive choices, act strategically,

and choose—within the limits of their cognitive abilities and organizational capacities—the strategies that best meet their goals, we would expect that actors use different forms of power strategically. When they have more than one power tool at their disposal which they consider as potentially functional given the particular political circumstances, they will use the tool that incurs the lowest costs. Compared to the use of financial capabilities, for example, exercising network power often causes fewer costs because it operates subtly through webs of informal relationships.

As a corollary, as an empirical matter, negotiations over the creation and reform of transnational public-private governance schemes are often characterized by low formality and low transparency. Therefore, we should expect, all else being equal, network power to be more frequently observed in action in the transnational bargaining game than alternative power strategies. The paradox of power, i.e. that the powerful do not always prevail (e.g. Mack, 1975), might, thus, be no paradox at all but only caused by a too simplistic account of what constitutes power in transnational bargaining and how it plays out under different political circumstances.

Finally, we should expect transnational public-private governance schemes to change if either the distribution of power and preferences among negotiators or the political context in which bargaining occurs change. On the one hand, as interests and/or power distributions change, those in superior positions have incentives to initiate negotiations aimed at altering institutional structures provided that the degree of formalization and transparency of the negotiation environment remain unchanged and favorable for the effective exercise of the particular form of power in question. On the other hand, even if the distribution of interests and power remains constant, alterations in the political context in terms of formality and transparency may lead to shifts in the balance of bargaining power because different forms of power will be effective and efficient sources of bargaining leverage under different circumstances. Thus, both shifts in the distribution of institutional preferences and power as well as alterations in the formality and transparency of the negotiation environment have the potential to trigger institutional change. In both situations, actors have the opportunity to modify the institutional design of a transnational public-private governance scheme which triggers new bargaining episodes.

This argument generates distinctive observable implications:

Hypothesis 1: All else being equal, economic power is likely to be an effective and efficient source of bargaining leverage in situations characterized by moderate institutional formality and moderate transparency.

Hypothesis 2: All else being equal, institutional power is likely to be an effective and efficient source of bargaining leverage in situations characterized by high institutional formality and high transparency.

Hypothesis 3: All else being equal, network power is likely to be an effective and efficient source of bargaining leverage in situations characterized by low institutional formality and low transparency.

Hypothesis 4: All else being equal, as preferences and power configurations change, the institutional structures of transnational public-private governance schemes are likely to change.

Hypothesis 5: All else being equal, as the level of institutional formality and transparency of the bargaining environment change, the power configurations among states, firms, and NGOs are likely to change

2.5 Measuring Preferences and Power

The indicators and data used to measure the dependent variable of my model, i.e. formal monitoring and enforcement mechanisms of transnational public-private governance schemes, as well as to assess the characteristics of the negotiation context, i.e. formalization of the institutional context and the transparency of negotiations, were presented before. In the remainder of this chapter, I explain how I measure the other variables of my model; namely, preferences and different forms of power.

2.5.1 Preferences

I define preferences in a general sense as actors' rank-ordering of possible negotiation outcomes (Frieden, 1999, p. 42). My analysis of preferences and their role in determining institutional outcomes and change focuses on the interests of governments, companies, and NGOs in negotiation episodes that deal with the creation or amendment of the formal monitoring and enforcement structures of a transnational public-private governance scheme. An actor may, for example, prefer an institutional arrangement with no monitoring provisions, over one that provides for voluntary self-reporting of rule targets, over one that establishes mandatory third-party auditing. In complex political settings, such as transnational public-private governance schemes, the interests of any actor—even the most powerful one—do not directly translate into outcomes. Rather, they are the result of a complex strategic interplay among actors and coalitions with divergent interests (Frieden, 1999). Hence, a systematic analysis of the interests that drive a negotiation process must consider not only individual actors' preferences, but also the way these interests interact with one another.

I empirically establish actors' institutional preferences by using an inductive approach (Krasner, 1978; Jervis, 1988; Garrett, 1992; Richards, 1999; Frieden, 1999). I specify actors' revealed preferences as they were in place at the beginning of a particular negotiation episode. Since interests cannot be observed directly, I examine statements of states,

firms, and NGOs to determine what institutional preferences they had at the beginning of a negotiation episode and whether this changed during the course of bargaining. More specifically, I examine public statements of representatives of states, firms, and NGOs, public and confidential documents (e.g. press releases, reports, memos), and private statements gathered through semi-structured interviews with state, company, and NGO representatives and other practitioners. I also use this inductive technique to identify changes of preferences during and across negotiation episodes. To avoid tautological reasoning, I establish preferences on the basis of sources other than those that are subsequently used to empirically analyze actors' bargaining behavior and outcomes.

Table 2.4: Institutional Preferences: Conceptualization, Operationalization and Data

Conceptualization	Operationalization	Data
Way an actor orders the possible outcomes of negotiations over formal monitoring and enforcement mechanisms	How comprehensive and intrusive does an actor want monitoring to be? Should sanctions be imposed on rule violators? If so, what sanctions and how should their use be organized?	Public statements, confidential and public documents, semi-structured interviews

Establishing preferences through empirical investigation “risks confounding preferences with their effects” (Frieden, 1999, p. 59), because it is always possible that statements about interests and behavior are determined by actors' strategic considerations or environmental factors which renders them an inaccurate reflection of preferences. I argue, however, that this inductive approach is the best research strategy available for the particular problem under investigation in this study, given the lack of theories that determine the interests of states, companies, and NGOs in transnational public-private governance (Frieden, 1999, pp. 61-6). Importantly, it avoids the circular reasoning which occurs when interests are derived from outcomes only to use these interests to account for the very outcomes they were derived from (Frieden, 1999, p. 52; Snidal, 2002, p. 80).

The institutional preferences of states, firms, and NGOs are affected by a multiplicity of factors such as position in the industry supply chain (for companies and states), industry structure and nature of the produced good (for companies), and focus of activities and membership structure (for NGOs). The analysis is not designed to capture each and every single detail of an individual actor's preference portfolio with respect to transnational cooperation. Rather, it seeks to capture their fundamental orientation with respect to the organization of formal monitoring and enforcement within transnational public-private governance schemes. How comprehensive and intrusive should verification of rule

compliance be? How should rule violations be addressed, and to what extent should the sanctioning of violations be subject to explicitly formalized rules and centralized?

2.5.2 Power

Preferences alone do not tell us much about how negotiations over transnational public-private governance schemes evolve and what outcomes they produce. Which actor or coalition has the power to bargain for favorable outcomes is the key question. But how can we measure economic, institutional, and network power in a way that permits investigating whether and how they confer influence in the transnational bargaining game? To do so, one needs two types of empirical evidence. On the one hand, one needs data that allows us to assess whether or not a particular actor had a specific form of power at its disposal during a particular bargaining episode. On the other hand, it requires process observations that enable us to evaluate whether an actors has actually used a particular form of power to achieve its goals. The latter type of evidence plays a critical role in discriminating between the importance of different power tools in situations where one actor held different forms of power at the same time so that correlational evidence between preferences and power, on the one hand, and influence over bargaining outcomes, on the other, fails to provide clear answers to the questions generated by my model.

I operationalize economic power by examining the amount of financial capabilities that an actor controls at the outset and during a particular bargaining episode. Importantly, rather than measuring the amount of financial capabilities that an actor has at its disposal in absolute terms, I carefully analyze its economic power relative to other bargainers. This allows me to assess the strategic position and relevance, for example, of an individual state or company in the industry a public-private governance scheme seeks to regulate or of an NGO within the group of civil society organizations involved in negotiations. For example, to assess the relative strategic economic position of states in the Kimberley Process, I analyze the size of their diamond production, exports, imports, and consumption in relation to the world's total diamond production, exports, imports, and consumption.

The size of the relative economic capabilities of a state, company, or NGO provides important information about the maximum financial resources it can possibly mobilize to shape negotiations over transnational institutions and how large or small these resources are relative to others. To investigate states' and companies' relative economic power, I rely on trade data obtained from documents, online resources, and direct communications with governments, firms, and NGOs. For NGOs, such trade figures are not available. As an alternative proxy for their relative economic power, I examine the amount of financial capabilities individual organizations have at their disposal and how large or small these are compared to other NGOs as well as states and firms. Due to a notorious lack of exact data on NGOs' annual budgets the empirical assessment of NGOs' relative economic

power relies on qualitative data on organizational budgets and capacities. Data for this analysis were obtained through analyzing public and confidential documents as well as semi-structured interviews with practitioners.

Operationalizing the institutional power of states, firms, and NGOs engaged in a transnational public-private governance scheme involves three key questions: 1) does an actor have access to negotiation forums, such as steering committees or working groups; 2) does it have the right to vote and, if so, is it a veto player or enjoys otherwise privileged voting rights; 3) does it have the power to set negotiation agendas and participate in drafting proposals? I investigate these questions relying on qualitative data obtained from public and confidential documents as well as semi-structured interviews and secondary sources.

When it comes to network power, I operationalize access power by examining the number and quality of direct information exchange ties states, companies, and NGOs have to others during a particular negotiation episode. More specifically, drawing on the methods of formal network analysis, I analyze actors' degree and eigenvector centrality as well as the heterogeneity of their direct contacts within the informal information exchange network that emerges among states, companies, and NGOs during an episode of institutional bargaining.²⁰

Degree centrality describes the number of direct connections an actor i has with others in a network (Freeman, 1978). Let $\mathbf{\Omega}$ be an $n \times n$ square matrix, where each element ω_{ij} represents a transmission of policy-relevant information or advice from actor i to j , ($i, j = 1, \dots, n$), and n is the number of actors in the network:

$$\mathbf{\Omega}_{n,n} = \begin{pmatrix} \omega_{1,1} & \omega_{1,2} & \cdots & \omega_{1,n} \\ \omega_{2,1} & \omega_{2,2} & \cdots & \omega_{2,n} \\ \omega_{3,1} & \omega_{3,2} & \cdots & \omega_{3,n} \\ \vdots & \vdots & \ddots & \vdots \\ \omega_{n,1} & \omega_{n,2} & \cdots & \omega_{n,n} \end{pmatrix}.$$

If, for example, actor 1 is a state, say the United States, and actor 2 is an NGO, say Amnesty International, then $\omega_{12} = 1$ indicates that the United States and Amnesty International exchanged policy-relevant information during the particular episode of tripartite institutional bargaining under consideration.

Since the data that I collected on the informal exchanges of policy-relevant information and advice among states, firms, and NGOs during tripartite negotiations is directed, i.e. $\omega_{ij} \neq \omega_{ji}$, I can distinguish between outdegree and indegree centrality which measure the number of an actor's direct outgoing and incoming information exchange ties respectively. Formally, the outdegree and indegree of actor i are defined as follows:

²⁰Chapter 3 provides a more systematic introduction to formal network analysis and the related theoretical and technical concepts.

$$Outdeg_i = \frac{\sum_{\forall j \neq i} \omega_{ij}}{(n-1)} \quad \text{and} \quad Indeg_i = \frac{\sum_{\forall j \neq i} \omega_{ji}}{(n-1)}, \quad (2.1)$$

where $n - 1$ is the number of actors in the network other than i . Because outdegree and indegree measures are strongly affected by the overall number of actors in a network the absolute number of node i 's outgoing and ingoing ties is divided by $n - 1$ to normalize degree scores and facilitate comparison across networks. Whereas high indegree centrality provides an actor direct access to the informational resources of many other network members, high outdegree gives her the opportunity to spread information widely within the network.

Eigenvector centrality measures how far an actor is directly connected to other central actors (Bonacich, 1987). Thus, it takes into account that an actor's centrality depends on the centrality of its neighbors, its neighbors' neighbors, etc. Technically, it is a centrality measure "in which a unit's centrality is its summed connections to others weighted by their centralities" (Bonacich, 1987, p. 1172). The basic notion of eigenvector centrality is formalized as follows:

$$\lambda e_i = \sum_{j \neq i} \Omega_{ij} e_j, \quad (2.2)$$

where e_i and e_j are the i th and j th elements of an eigenvector of Ω , and λ is the eigenvalue associated with this eigenvector. For technical reasons for the purpose of computing eigenvector centralities the directed network data is symmetrized so that $\omega_{ij} = \omega_{ji}$. Since influence over outcomes of tripartite institutional bargaining may well stem from being linked to other well connected actors rather than being connected to marginal actors, eigenvector centrality complements indegree and outdegree centrality in measuring informal access power.

Finally, rather than the mere number of direct information exchange ties it may well be that the informational content these connections provide is important for how strong an actor is in terms of network power. To measure the extent to which an actor has access to information from different others which are likely to provide it with heterogeneous as opposed to redundant information, I analyze the heterogeneity of actor's group of direct neighbors using the index of qualitative variation (IQV). This variable measures the heterogeneity of an actor's group of first-step neighbors based on a categorical variable that groups its direct neighbors into five distinct political groups.²¹ In general, the IQV of actor i 's group of direct neighbors is defined as follows:

²¹For all five negotiation episodes under investigation in this dissertation these groups are (1) African states, (2) Western and other states, (3) industry, (4) civil society, (5) international organizations and other entities.

$$IQV_i = \left(1 - \sum_{k=1}^k p^2\right) \left(\frac{k}{(k-1)}\right), \quad (2.3)$$

where p is the proportion of direct neighbors in each of the five categories and k is the number of categories, i.e. 5. The index ranges from 0 to 1 with lower values indicating relatively homogenous groups and higher values referring to sets of first-step neighbors that are relatively heterogeneous. A numerical example: assume a state that has direct information exchange relationships to 14 other actors during a negotiation episode. Let 3 of these direct contacts be African states, 6 Western or other states, 2 industry representatives, 2 NGOs, and 1 international organization. The heterogeneity of this state's group of 14 direct neighbors can then be easily computed using equation 2.3:

$$\left(1 - \left(\left(\frac{3}{14}\right)^2 + \left(\frac{6}{14}\right)^2 + \left(\frac{2}{14}\right)^2 + \left(\frac{2}{14}\right)^2 + \left(\frac{1}{14}\right)^2\right)\right) \left(\frac{5}{(5-1)}\right) \approx 0.91. \quad (2.4)$$

The high IQV value of 0.91 indicates that the state in this hypothetical example has a heterogeneous group of direct network contacts and, hence, is likely to obtain non-redundant policy-relevant information from its direct informal communication ties.

To measure brokerage power, I investigate how far actors serve as bridges between otherwise unconnected parties (Goddard, 2009, 2012; Nexon and Wright, 2007). I use two measures to assess an actor's brokerage power; namely, betweenness centrality and liaison brokerage. Betweenness centrality calculates the number of shortest paths or geodesics that connect actor j and k and go through actor i (Freeman, 1978). In a general sense, betweenness centrality measures the extent to which actor i is pivotal for transactions of information between every other two actors in a network and can be understood as a global measure of brokerage. It can be formalized as follows:

$$Between_i = \sum_{\forall j \neq k, j \neq i \neq k} \frac{g_{jik}}{g_{jk}} \left(\frac{(n-1)(n-2)}{2}\right)^{-1}, \quad (2.5)$$

where g_{jk} is the number of geodesics connecting actors j and k and g_{jik} is the number of geodesics between j and k that contain i . The second term in equation 2.5 is a normalizing constant that refers to the maximum number of possible non-directional connections in the network.

Furthermore, to investigate to what extent an actor is a local broker between two otherwise unconnected others which do not belong to the same social-political group as the broker itself (mediation), I examine the type of local brokerage position an actor occupies. For this purpose, I use one of the five brokerage measures developed by Gould

and Fernandez (1989); namely, *liaison brokerage*.²²

Finally, to examine the distribution of informal network power among states, firms, and NGOs in a particular bargaining episode, I analyze the centralization of the information exchange networks. Centralization is a network-level index that measures the dispersion of central positions in a network, i.e. how much actors vary in terms of their centrality (Butts, 2009, p. 26). Network centralization can be computed on the basis of all four node centrality measures introduced above. The general formalization is given by the following equation:

$$Cent_{\Omega} = \frac{\sum_i [C^* - C_i]}{\max \sum_i [C^* - C_i]}, \quad (2.6)$$

where C refers to a particular centrality measure (e.g. indegree or betweenness), C^* is the largest observed value of C in the network, C_i is the observed value of C for node i , and $\max \sum_i [C^* - C_i]$ is the maximum possible sum of differences in node centralities for a network of n nodes. $Cent_{\Omega}$ measures the degree to which C^* exceeds the centralities of all other nodes in the network. It varies between 0 and 1 with lower values indicating a relatively equal distribution of central positions and, hence, informal network power and higher values referring to a relatively uneven distribution.

On the one hand, I rely on qualitative data on actors' information exchange relations obtained from documents and semi-structured interviews. On the other hand, I use formal network data obtained through a multiple-sources and multiple-measurement strategy for network data collection that combines key informant surveys with archival information about the exchanges of policy-relevant information and advice between states, firms, NGOs, and other actors involved in negotiations during a particular negotiation episode.²³

2.6 Summary

Starting from a political perspective on institution-building and change, this chapter outlined the basic building blocks of a political model of transnational institutional design. I argued that the institutional architecture, and particularly the formal monitoring and enforcement mechanisms of transnational public-private governance schemes, are an outcome of distributive conflict and bargaining among states, firms, and NGOs. The outcomes of this transnational bargaining game depend on the distribution of preferences

²²Given an information flow from actor 1 to actor 2 to actor 3, where 2 is the broker, liaison: BAC (all nodes belong to different groups). The four remaining brokerage types identified by Gould and Fernandez which are not used here are gatekeeper: BAA (source belongs to different group), consultant: BAB (broker belongs to different group), coordinator: AAA (all nodes belong to same group), and representative: AAB (recipient belongs to different group).

²³Chapter 3 and Westerwinter (2011) introduce this strategy for collecting network data on information exchanges in large networks in greater depth.

and different forms of power; namely, economic, institutional, and network power. Importantly, what particular form of power is likely to be an effective and efficient means of influence for strategic actors in fights over transnational institutional design depends on the characteristics of the political environment in which bargaining occurs. Specifically, the formalization of the institutional setting in which negotiations take place and the transparency of the negotiation process determine which power tools are likely to be an effective and efficient source of bargaining leverage.

In the following chapters, I will submit this model to first tests. Chapters 4 through 6 provide exploratory probes of the explanatory power of my theoretical argument based on qualitative evidence from case studies on five negotiation episodes in which states, firms, and NGOs bargained over the design of formal monitoring and enforcement provisions in the Kimberley Process, the International Code of Conduct for Private Security Service Providers, and the Voluntary Principles on Security and Human Rights. Chapter 7 examines the determinants of actors' positions in the informal information exchange networks that underpin tripartite institutional bargaining in these three governance schemes. However, before proceeding to the empirical analyses, the next chapter will provide a detailed outline of my multi-method research design and introduce the different types of data that I use to evaluate the observable implications of my model.

Chapter 3

Research Design: Methods, Cases and Data

The previous chapter argued that the institutional structures of transnational public-private governance schemes are the result of a bargaining game among states, firms, and NGOs and developed a model of transnational institutional design that puts the distribution of interests and the interplay between different forms of power and the political environment in which negotiations occur at the center of the analysis. In this chapter, I clear the methodological ground for empirically exploring the explanatory usefulness of this model. I start out by outlining the basic elements of a multi-method research design that integrates case study techniques with social network analysis. I briefly introduce each of these two families of methods and discuss how combining them generates a useful tool for testing the observable implications generated by my theoretical argument.¹ I then present the cases under investigation, the criteria that guided their selection, and discuss the scope conditions of my inquiry that result from this “casing”. I close by introducing my data which consists of different types of qualitative and network data, and discuss how these data were collected.

3.1 A Multi-Method Research Design

3.1.1 Case Study Methods: Cross-Case Comparison, Within-Case Analysis and Process Tracing

Case studies of five negotiation episodes drawn from the Kimberley Process, the Voluntary Principles on Security and Human Rights and the International Code of Conduct for Private Security Service Providers are the first component of my multi-method research

¹The statistical methods used for the analysis of the determinants of actors’ network positions and the presence and absence of informal information exchange ties between actors during negotiation episodes will be introduced separately in chapter 7.

strategy. I study these cases combining structured focused cross-case comparison with in-depth within-case analysis (George and Bennett, 2005; Bennett and Elman, 2007; Mahoney, 2000, 2007). The structured focused comparison of the five negotiation episodes allows me to examine the associations between the dependent and independent variables of my model across cases. In addition, the multiple observations of institutional formation and change in the Kimberley Process allow for in-depth within-case analysis of tripartite bargaining over monitoring and enforcement structures in a specific governance scheme over time.

The synchronic cross-case investigation allows comparison across negotiation episodes in what combinations preferences, different forms of power, contextual factors, and institutional outcomes occur and whether the observed associations between variables meet the expectations derived from my model. The diachronic within-case analysis permits me to trace at close range the interplay between my variables and the causal mechanisms at work in negotiation episodes. Specifically, it allows me to “locate the intervening mechanisms linking a hypothesized explanatory variable to an outcome” (Mahoney, 2007, p. 132). Such a combination of synchronic and diachronic analysis increases the number of comparisons obtained from examining a few cases at close range which, in turn, can generate considerable inferential leverage (Bennett and Elman, 2007, p. 176). Importantly, it helps to examine at close range the causal mechanisms that link the different variables of my model. Obviously even for a detailed analysis of causal mechanisms such as this it will ultimately remain difficult to fully eliminate the possibility that the observed association between a particular configuration of interests and power, a particular political context, and a particular institutional outcome is spurious.² However, empirically observing the processes through which these factors are related to one another (rather than only measuring correlations between variables), mitigates this risk and increases the confidence that the hypothesized causal connection exists.

In order to compare the five negotiation episodes with one another and over time I employ process tracing. “With process tracing, causation is established through uncovering traces of a hypothesized causal mechanism within the confines of one or a few cases” (Bennett and Elman, 2007, p. 183). Thus, process tracing is especially well-suited to identify and explicate the causal process that links an outcome to a set of independent variables and helps testing as well as refining theories about these mechanisms (George and Bennett, 2005, p. 209; Bennett, 2008, pp. 704-5; Mahoney and Thelen, 2010, p. 125). Process tracing can be used inductively as well as deductively. “Inductive examination may reveal potentially causal processes that the researcher had not theorized a priori. Deductively, theories can suggest which intervening events should have occurred within

²In general, a spurious correlation describes a situation in which two variables, x and y , that are correlated with one another are jointly determined by a third variable z . Therefore, rather than x causing y both variables are affected by z which, if z is omitted from the analysis, creates the impression that x has an independent impact on y .

a case if the theory is an accurate explanation of the case” (Bennett and Elman, 2007, p. 183). I use process tracing primarily in a deductive fashion to assess whether the power mechanisms outlined in my hypotheses have occurred in the way and under the conditions suggested by my model.

This analysis not only elucidates whether the intervening steps suggested by a hypothesized power mechanism are in place in a particular case. It also allows assessing other observable implications of a hypothesized mechanism (Mahoney, 2007, p. 132; Bennett and Elman, 2007, p. 185). Importantly, a specific “hypothesis might suggest several auxiliary hypotheses that can be tested in conjunction with the main hypothesis” (Mahoney, 2007, p. 132). For example, if the political environment in which bargaining takes place puts actors with a particular form of power in an advantageous position and if actors expect this environment to persist, we should expect that actors which lack this particular form of power seek to acquire it. Similarly, if the political context is such that actors with network power have advantages in institutional bargaining, we should observe that these actors prefer institutional structures that are likely to maintain or further enhance their position. They should, for example, have an interest in keeping governance informal and transparency of negotiations low. Likewise, the hypothesis of interest might entail implications about other evidence that is expected to be present if the hypothesis holds.

A critical part of process tracing is unearthing and examining what Collier, Brady and Seawright (2010) call “causal-process observations”. “A causal-process observation”, the authors define, “is an insight or piece of data that provides information about context or mechanism and contributes . . . leverage in causal inference” (2010, p. 184). Unlike data-set observations which form the basis of causal inference in large- n , correlational analysis, causal-process observations provide the raw materials and mortar for generating mechanism-based explanations. Specifically, they can provide information on the presence and scores of an independent variable, the presence and outcomes of the dependent variable, and whether and how far the mechanisms posited by a particular theory actually operate between the independent variable and the dependent variable (Mahoney and Thelen, 2010, pp. 125-30). If a causal-process observation allows for convincingly discriminating between the hypothesis under study and the major competing explanations, a few or in exceptional cases even a single piece of decisive evidence can already provide a powerful basis for inferring the correctness of a given hypothesis in a particular case (Bennett, 2008, p. 711; Collier, Brady and Seawright, 2010, p. 196). Thus, the extent to which tracing within-case processes yields valid inferences and ultimately good explanations depends to a considerable extent on the researcher’s ability to discover causal-process observations. As emphasized by Collier, Brady and Seawright (2010, p. 187), such inferences can be further strengthened by combining causal-process observations with data-set observations, i.e. statistical analysis, in a single investigation.

Such causal process observations are critical in order to differentiate between the

operations of economic, formal institutional, and network power and to assess whether a particular form of power was wielded in a particular negotiation episode in order to gain influence over the design of monitoring and enforcement mechanisms. These causal process observations are of particular importance in order to examine situations in which an actor that possesses two or more forms of power became influential, i.e. situations in which different forms of power are simultaneously associated with an actor's ability to shape institutional choices. In such situations, correlational evidence is insufficient to convincingly infer a causal relationship between the possession of a particular power variant and influence over institutional structures and we need to turn to the causal process to assess what form or mix of forms of power was actually exercised in order to secure favorable bargaining outcomes (Mahoney, 2007, p. 132).

If, for example, in a particular negotiation episode an actor such as the United States possesses large amounts of economic power but, at the same time, is also a broker between otherwise unconnected groups in the informal communication and information exchange network among negotiators in that episode—suggesting that it had substantial network power according to my argument—how can we tell whether economic or network power was the key to success in case the United States managed to secure favorable outcomes? Correlational evidence does not help to differentiate between economic and network power because the observed events (co-occurrence of economic and network power, on the one hand, and influence over institutional choice, on the other) conform to both competing hypotheses. However, as specified in chapter 2, different forms of power have different observable implications with respect to the negotiation strategies and tactics actors use. Thus, if indeed economic power was the key to bargaining success, we would expect to observe pieces of evidence that suggest that the United States paid-off its opponents or engaged in issue linkage in order to influence institutional design toward its liking. Conversely, if network power was crucial we would expect to find different pieces of evidence, such as reports about the United States activities as broker between opposing groups, conveners of formal and informal negotiation meetings, information transmitters, and how these were used in order to shape institutional outcomes. Thus, examining causal process observations through careful in-depth evaluation of various kinds of empirical evidence from different sources and process-tracing is critical for the researcher's ability to distinguish between the operations of different forms of power in situations where influential actors have more than one power variant at their disposal.

Qualitative methodologists have pointed out a number of strengths of case study methods which make them useful tools for testing and generating theories (e.g. Mahoney, 2007; Bennett and Elman, 2006, 2007; Collier, Brady and Seawright, 2010; George and Bennett, 2005; Levy, 2002; Mahoney and Goertz, 2006). Five of these strengths are of particular relevance for my inquiry and make case studies an essential tool for my analysis. First, case studies are apt for the study of the causes of effects, i.e. the processes that

brought about a particular outcome of interest (Mahoney and Goertz, 2006, p. 230). In contrast to large- n quantitative analysis which is typically interested in identifying the effects of causes, i.e. the consequences of a particular variable or set of variables, qualitative researchers are often interested in investigating the causes of a particular outcome. What causes social revolution? What are the antecedents of state breakdown? What drives financial crises? Why are international institutions created in a largely anarchic international system and why do they take the peculiar forms they do? Given that in this dissertation I am interested in what brings about particular structural features of transnational institutions case study methods provide a powerful tool for my inquiry. In short, case studies and process tracing are essential for addressing the type of substantive question that motivates this research.

Second, as outlined above, case studies are an essential tool for examining the causal mechanisms that link independent variables to outcomes of interest (Fearon and Laitin, 2008; Mahoney, 2000; Mahoney, 2007; Bennett and Elman, 2007). They allow for collecting and engaging with richly-detailed data that are an indispensable foundation for testing theories about causal mechanisms (Collier, 1999). At its core my theoretical model entails claims about how different forms of power under specified conditions translate into institutional structures of transnational public-private governance schemes. Importantly, evaluating the usefulness and explanatory capacity of my model requires not only empirically establishing patterns of associations between power and preference configurations, on the one hand, and the specific form of monitoring and enforcement mechanisms of transnational institutions, on the other. It also requires ascertaining and assessing whether economic, institutional, and network power operated through the hypothesized mechanisms. Case studies are essential tools for doing so.

Third, power, preferences, and institutional context are concepts that are difficult to capture by simple indicators. For example, it is not necessarily clear whether financial capabilities or institutionally guaranteed voting rights are adequate proxies for economic and institutional power in different contexts. The specific meaning of economic and institutional power—as well as other concepts that form the basis of the variables of my model—is likely to depend on the particular context in which events occur. For example, being an important consumer of private security services may conduce to influence over the institutional structures of the emerging governance scheme that regulates the activities of private security service providers. In the diamond industry, by contrast, producer states are often in a better position to shape the outcomes of institutional bargaining. Thus, relying on crude indicators is likely to cause problems of adequately measuring the variables of my model which in turn can lead to incorrect inferences in form of false positives and negatives. Case studies help addressing this measurement problem and increasing the validity of operationalization of variables (Mahoney, 2007; Bennett and Elman, 2007; Mahoney and Goertz, 2006). Analyzing particular negotiation episodes with fine-grained

evidence and in-depth case knowledge allows for constructing indicators through an iterated dialogue between evidence and theoretical ideas (Ragin, 1992*a*; Adcock and Collier, 2001). Such indicators are likely to be less error-prone and, hence, yield more accurate and valid measurement of the variables of interest.

Fourth, case studies are useful to explore the causal complexity characteristic of the power politics of transnational institutional design (Ragin, 1987; Bennett and Elman, 2007, p. 171). At its core, my model is about how different forms of power contingent on identifiable features of the political context provide advantages in negotiations over institutional structures. In other words, it is about interaction effects between different power variants and the political context and how these interactions affect institutional outcomes. Case studies and process tracing are a strong tool for exploring this kind of complex causality because they allow consideration of a broad variety of interacting factors and a detailed examination of the causal mechanisms that link institutional outcomes to the interplay among preferences, power, and bargaining environment (Fearon and Laitin, 2008, p. 774).

Finally, case studies are a useful tool for conducting exploratory research in understudied research areas (Mahoney, 2007). On the one hand, they permit one to probe into the exploratory power of a tentative theoretical model. On the other hand, they are flexible enough to refine the initial model based on the empirical evidence found in the cases under study. Put differently, case studies allow for “extracting new ideas at close range” (Collier, 1999, p. 4). Variables that are already part of the model can be further specified, additional variables integrated, causal mechanisms clarified, and scope conditions modified so that the initial model can be adjusted and tested in later research cycles.

3.1.2 Descriptive Network Analysis

In addition to cross-case comparisons, within-case analysis, and process tracing, I also use several descriptive tools of social network analysis in my case studies to assess the structural properties of the informal networks of communication and information exchange among states, firms, and NGOs involved in negotiations over monitoring and enforcement mechanisms of transnational institutions. This will provide the material required to analyze the presence, distribution, and functioning of network power.

Network analysis originated outside political science in sociology and anthropology. It is an analytical approach to the study of interactions among units, the patterns of associations that emerge from these interactions, and the antecedents and consequences of these patterns (Wasserman and Faust, 1994, p. 10; Wellman, 1988).³ Network analysts broadly define a network as a set of units (or nodes) and a set of connections (or ties)

³For a general overview of network analysis, see Wasserman and Faust (1994) and Knoke and Song (2008). For more recent developments, see Carrington, Scott and Wasserman (2005).

representing the presence or absence of relationships between units (Barabasi and Albert, 1999, p. 509; Wasserman and Faust, 1994, p. 9). Nodes can be individuals or corporate actors of any kind, such as states or NGOs. Likewise, the content of ties can vary in a number of ways, including exchange of material resources, flow of information, friendship, or enmity. In addition to their content, ties can be distinguished according to their form. They can be dichotomous or valued indicating the mere presence or absence of relationships in the first case and permitting distinctions between different strengths of ties in the latter. Further, ties can be measured as directed or undirected allowing for distinctions between symmetric and asymmetric relations. Finally, network structures are defined as “lasting patterns of relations among actors” (Wasserman and Faust, 1994, p. 4) providing actors with specific opportunities and restrictions which may define, enable, or constrain their behavior. Understood in such a broad sense, the network concept can be applied to investigate a range of social-political structures including transnational advocacy networks (e.g. Keck and Sikkink, 1998) and global public policy networks (e.g. Reinicke and Deng, 2000) but also markets and formal hierarchies.

Although it is not a unified theory, the network approach rests on three fundamental analytical principles which specific network theories have in common: (1) an anticategorical imperative; (2) an understanding of relationships as conduits for material and non-material flows; (3) and the assumption that the properties of patterns of associations affect behavior and other outcomes (Wasserman and Faust, 1994, p. 4).⁴

The “anticategorical imperative” refers to the fact that network analysis as opposed to standard social science research rejects the idea of accounting for behavior and outcomes by primarily focusing on the categorical attributes of agents conceived of as fully independent from each other (Emirbayer and Goodwin, 1994, p. 1414; Wellman, 1988, p. 157). Instead, it starts from the assumption that units are interdependent. They are always embedded in a broader social context of interaction which has important implications for their beliefs, attitudes, and behavior. Thus, for network analysts, it is not actors’ attributes or capabilities but the connections among actors that are the main causal factors driving social-political life.

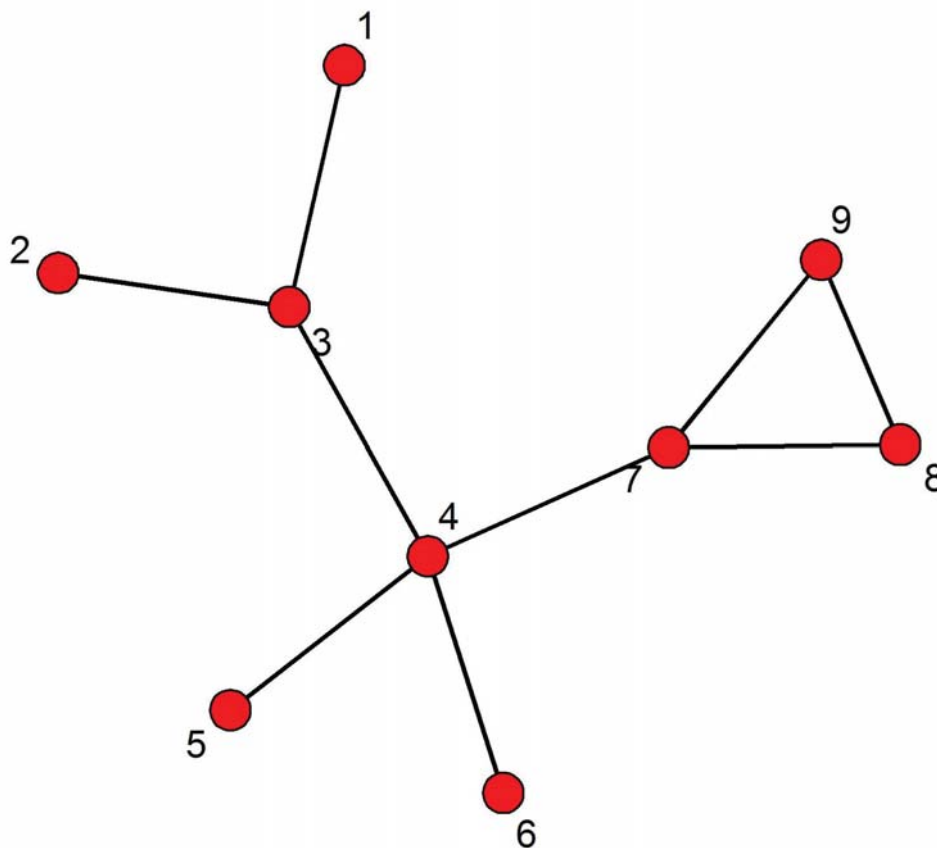
A second key analytical principal of network analysis is that relationships serve as conduits through which resources such as information, money, or weapons can flow (Borgatti et al., 2009, p. 894). The structures that emerge from these flows provide actors with access to scarce resources. Because the creation and maintenance of ties is costly, actors differ in their network position. This variation in actors’ network positions causes and amplifies uneven distributions of resources among network members which can in turn serve as a basis of power and influence (Knoke, 1990, p. 9). By extension, specific structural locations such as broker positions between otherwise unconnected actors can themselves

⁴This approach to networks is different from a more cultural perspective (Emirbayer and Goodwin, 1994).

become a resource which actors seek to acquire because they allow for privileged access to other valued resources.

Finally, a third fundamental assumption of network analysis is that networks provide opportunities as well as constrains and, hence, have consequences for outcomes both at the actor and the network level of analysis with different structural properties producing different effects (Borgatti et al., 2009, p. 894). As put succinctly by Knoke and Kuklinski (1982, p. 13): “the structure of relations among actors and the location of individual actors in the network have important behavioral, perceptual, and attitudinal consequences for both the individual units and for the system as a whole”.

Figure 3.1: Hypothetical Network with Ten Nodes



Networks vary across two dimensions, size and distribution of ties. Size refers to the number of nodes in a network opening up a large continuum of possible configurations ranging from triads of three nodes to vast networks including dozens, hundreds or even thousands of units. Further, and more importantly, networks differ in the ways nodes are connected to one another. At the actor level, direct and indirect relations are typically

unevenly distributed creating differences in nodes' positions. Node centrality which refers to an actor's structural importance or prominence has received particular attention by network analysts and a large number of different centrality measures have been developed (Bonacich, 1987; Freeman, 1978; Freeman, Borgatti and White, 1991). Take, for example, degree centrality which describes the number of direct connections a node has established with others (Freeman, 1978). According to this notion of centrality, the more direct ties a node has, the more central it is. In the hypothetical network in figure 3.1 on page 60, node 4, for example, has four direct connections (to nodes 3, 5, 6, and 7) and is, hence, most central in this network in terms of degree centrality.

At the group level, networks can be divided into subgroups. Network analysis differentiates two basic types of subgroups, namely cohesive subgroups and structurally equivalent clusters. In the first case actors are part of the same subgroup if they have direct ties of a specific density with one another. In the case of structurally equivalent clusters two actors belong to the same cluster when their connections to others are sufficiently similar. A large number of different measures for both cohesive subgroups and structurally equivalent clusters have been proposed including cliques for the former and structural equivalence for the latter (Wasserman and Faust, 1994). Cliques are subgroups in which all nodes are directly connected to all other nodes that belong to the same subset. In the hypothetical network in figure 3.1, nodes 7, 8, and 9 form a clique of size three, since no further node can be added that has also a direct connection to all three of them. Moreover, two nodes are structurally equivalent when they are related to similar others without being necessarily directly connected to one another. Drawing again on the hypothetical network, nodes 1 and 2 are structurally equivalent, because both are connected in the same way to node 3.

Finally, at the network level networks can vary in their overall patterns of associations. They can be dense or sparse, integrated or fragmented, or characterized by a scale-free structure with a few central hubs to name just the most widely studied network-level properties (Barabasi and Albert, 1999; Butts, 2009; Doreian, 1974). Real-world networks can differ with respect to all these structural characteristics and network theories build their explanations from these variations. Depending on their particular substantive focus they argue that overall patterns of associations, group structure, and actors' positions vary across networks and that these differences are consequential for individual and network-level outcomes.

The network paradigm provides an analytical perspective that is distinct from traditional international relations theories. Its emphasis on interactions and relationships informs the ways in which scholars pose questions, generate puzzles and theoretical propositions, organize data collection, and develop analytic methods. As the major introduction to the field puts it: "the fundamental difference between a social network explanation and a non-network explanation of a process is the inclusion of concepts and information on

relationships among units in a study” (Wasserman and Faust, 1994, p. 6). In general, network analysis can be of descriptive, theoretical, and methodological value for all those research areas in which interactive processes and relations are considered important.⁵ With its focus on interactive processes and relationships the network approach lends itself to a combination with bargaining theories which share this emphasis on interactions, relationships, and exchanges.

3.1.3 Why Mixing Methods?

I integrate case study techniques and network methods in a multi-method research strategy because each of them contributes in important ways to empirically examining transnational tripartite bargaining from the perspective of my model and probing into the overall explanatory usefulness of the theoretical argument I put forward.⁶ In-depth process tracing and causal process observations are critical for examining the institutional preferences of states, firms, and NGOs and how they change during and across negotiation episodes, the distribution of economic and formal institutional power, the characteristics of the political context in which bargaining took place, and the processes through which these factors interacted with one another and led to particular designs of monitoring and enforcement mechanisms. Case study evidence is also essential for assessing alternative explanations of variation in institutional structures such as functionalist or epistemic communities-based arguments. Descriptive network methods are essential for assessing the distribution of network power among states, firms, and NGOs based on their involvement in informal communication and information exchange during episodes of tripartite institutional bargaining. In short, each of the two families of methods makes a critical contribution to the descriptive and inferential leverage of my analysis.

Each of these methods clearly comes with specific strengths and weaknesses. Triangulating techniques within a multi-method research strategy allows to some degree for mitigating the limitations of one method by the advantages of another. Case studies and process tracing are powerful tools for identifying the causal processes through which independent variables are linked to outcomes and analyzing complex interactions between individual explanatory factors. They are, however, of limited use for precisely measuring

⁵To illustrate, in their analysis of the social network constituted by states’ joint memberships in preferential trade agreements (PTAs) Hafner-Burton and Montgomery (2008) argue that states’ network position affects their propensity to initiate economic sanctions. Using the tools of network analysis they show that both states’ centrality and the size of the group they belong to increase the likelihood of sanctions onset in a dyad (2008, p. 228). Similarly, in what is one of the first studies that treat the network character of transnational advocacy networks seriously Murdie (2013) employs network concepts and methods to investigate the advocacy activities of human rights NGOs finding that more central organizations undertake more advocacy activities.

⁶Discussions of multi-method research in the field of political science have largely focused on ways to combine case study methods with statistical analysis (e.g. Lieberman, 2005; Rohlfing, 2008). Less attention has been given to how case studies can be fruitfully integrated with the tools of network analysis. For a notable exception, see Westerwinter (2011).

and mapping out network structures. Although methodologists have recently begun to systematize approaches for studying networks with qualitative methods (Hollstein, 2011; Bogason and Zolner, 2007), these tools only yield relatively rough descriptions of the structural properties of networks. Archival sources, for example, are able to provide a first assessment of the most prominent actors in a network based on frequency counts of the appearance of particular actors in documents, such as minutes of meetings, non-papers, or policy reports (Esmark and Triantafillou, 2007). Similarly, semi-structured interviews may provide first useful hints about whether a particular actor had a mediating or brokerage role in a negotiation process or whether coalitional patterns emerged during the course of deliberations (Zollner, Rasmussen and Hansen, 2007). These and other qualitative assessments of network features are clearly valuable first steps in empirically analyzing relational structures and may often be the only evidence a researcher can obtain given practical constraints. Yet, because they strongly rely on individual actor's perceptions of network characteristics and do not provide for a procedure that compensates for the bias and descriptive errors that may easily be entailed in individual perceptions (e.g. due to cognitive limitations of respondents, strategic misrepresentation, or selective reporting in documents), the descriptions of network properties they yield remain partial and preliminary unless combined with more systematic data on overall patterns of connections. This is of particular concern if network data is used in order to evaluate hypotheses about the consequences of actors' network position or overall network properties, such as density and centralization, on particular outcomes, as it is the case in my inquiry.

Conversely, case study methods help to address some of the descriptive and inferential limitations of formal network analysis.⁷ At the most basic level, qualitative methods help improve network descriptions in critical ways. While a graph like the one depicted in 3.1 on page 60 provides a useful tool to summarize the basic structural features of the pattern of relationships that prevails among a given set of actors, it contains only little information about who the individual actors are, what the meaning of relationships is, and what interactions and dynamics occur among actors. Even if researchers collect data on network exchanges and, therefore, know whether a tie indicates the exchange of information, the transfer of money, or other resources, structural data still provides limited insight into what exactly, for example, differences in the number of information exchange links mean in a particular context. For example, whether high network centrality in an information exchange network is an advantage or disadvantage in bargaining likely depends on the specific context in which negotiations occur and what information exactly flows through the network. Network descriptions that rely on formal network methods alone are unable to reveal such differences.

Formal network data, therefore, can be usefully supplemented by qualitative informa-

⁷The following paragraphs build on Westerwinter (2011).

tion on network dynamics, the attributes of actors, and institutional contexts within which a network is embedded. This information can be gathered by drawing on a range of qualitative methods of data collection, including the analysis of documents, archival materials, various kinds of qualitative interviews, or more ethnographic methods, such as participant observation. In the field of international relations, first examples that triangulate different kinds of evidence and combine different tools of data collection to generate rich network descriptions include Goddard (2009) and Nexon and Wright (2007) who use archival materials, Carpenter (2011) who combines hyperlink analysis with semi-structured interviews, focus group interviews, and document analysis, and Kenney, Coulthart and Martin (2013) who integrate a comprehensive analysis of news paper articles, semi-structured interviews, and participant observations. Thus, by combining network analysis with case studies, researchers can better understand who the nodes are that constitute a given network, what the meaning of ties is, and which processes and dynamics occur in a given network.

Furthermore, qualitative methods can also strengthen inferences about the causal relationships between the structural properties of networks and outcomes of interest. Although it provides a powerful toolbox for describing network structures and measuring their properties, network analysis itself does not entail the tools necessary for making causal inferences about the effects of networks. In order to arrive at such inferences network methods need to be combined with other techniques. As demonstrated by the vast majority of network studies in international relations and a plethora of works in other fields of political science, one way of doing so is to merge network analysis with large- n , cross-case comparison and different forms of regression-based analysis in order to estimate average causal effects of network variables (e.g. Hafner-Burton and Montgomery, 2006, 2008; Dorussen and Ward, 2008; Ingram, Robinson and Busch, 2005; Cao, 2010). Despite the merits of this strategy, a viable alternative is a “thick” approach to making inferences about network effects which combines network analytic tools with within-case analysis, process tracing and other qualitative methods (Westerwinter, 2011). Here, causal inferences are made on the basis of careful examination of causal processes that operate between the structural properties of networks, such as distribution of central positions among nodes or fragmentation of the overall network into different clusters, and different outcomes on the dependent variable of interest.

To illustrate, take, for example, Carpenter’s (2011) study on issue adoption in the transnational advocacy network concerned with human security issues. Combining network techniques with within-case analysis and in-depth process tracing, she provides a detailed account of how issue-adoption decisions of organizations in central network positions influence issue adoption by other actors in the network and, conversely, how issue-adoption dynamics in the overall network affect the behavior of central actors. With respect to the former, she identifies two mechanisms that link preferences of central network hubs to the success and failure of issue adoption in the disarmament advocacy network. On the

one hand, she posits, the agendas of central organizations such as Human Rights Watch and the International Committee of the Red Cross have a strong influence on what other organizations perceive as constitutive for a particular issue area so that issue adoption by a hub signals an issue's importance to the overall network. On the other hand, if a central organization places a new issue on its agenda, this confers legitimacy to that issue which then encourages other actors to follow (2011, pp. 76-7). Conversely, when defining their agendas and deciding whether to promote an issue or not, central organizations consider what other organizations are already associated with that issue and what reputation and legitimacy those organizations enjoy. As one of Carpenter's interviewees explained: "we looked into DU (depleted uranium munitions, OW) and chose not to do anything on that. Frankly, it's just a hornet's nest. We didn't think we're gonna bring anything new to the table in terms of original research, and it's just—there's too many crazies in the issue"⁸. Uncovering these kinds of interrelations between network dynamics at different levels of analysis and examining how they jointly affect outcomes of interest is one of the major contributions "thick" network analysis promises make to the study of international networks.

Case studies can also contribute to "thickening" inferential network methods. As I will outline in chapter 7, statistical network analysis relaxes the assumption of observational independence of conventional quantitative research and, thus, poses fewer challenges when combined with case study methods than conventional large- n tools. Still, the results of statistical network analysis reflect correlational associations between a particular pattern of ties, on the one hand, and a set of independent variables, on the other—they have no causal interpretation. Whether a particular variable is causally related to the linking and de-linking behavior of nodes and through what mechanism this relationship operates are questions that cannot be satisfactorily answered based on inferential network methods alone. Complementing statistical network analysis with within-case analysis and in-depth case knowledge of a particular network helps to mitigate these limitations. Specifically, it allows examining the complex processes that bring about a particular network structure at close range and thereby adding some "flesh" to the "bones" of correlational patterns among variables.

In sum, the multi-method approach I propose here allows, on the one hand, for more systematic and accurate measurement of network structures in qualitative case studies. On the other hand, compared to formal network methods employed in isolation it yields "thicker" descriptions of structural properties and more nuanced assessments of the mechanisms through which particular networks exert effects and come about. It is essential for generating a more complex understanding of the politics of transnational governance that goes beyond the simple distinction of, for example, economic or network power to a model of how multiple power variants in different combinations and interactions together with

⁸Human Rights Watch official quoted in Carpenter (2011, p. 98).

features of the political context produce variation in the formal institutional structures of transnational public-private governance schemes.

3.2 “Casing” and Case Selection

At the most general level, my research concerns all instances in which states, business actors, and NGOs negotiate over how to design the formal operating rules and procedures of tripartite institutions that govern the negative externalities of transnational corporate conduct. Thus, the largest relevant universe of cases of my analysis consists of all tripartite negotiations over the organizational structures and processes of transnational public-private governance schemes. However, as indicated by the empirical and theoretical puzzle that motivates this research, my main interest is in the design of the formal monitoring and enforcement mechanisms of transnational tripartite governance schemes. Whether and how to establish institutional structures that verify rule compliance and sanction rule violations are typically among the most controversial questions among states, companies, and NGOs interested in cooperation. Hence, issues of monitoring and enforcement bear a high likelihood of bargaining and power politics being important drivers of institution building and development. Focusing on the design of formal monitoring and enforcement structures as opposed, for example, to scope, flexibility, or delegation involves a first narrowing of the universe of relevant observations. Yet, even this subset still includes a broad range of empirically diverse cases across regulatory areas, industry sectors, and time periods.

From this universe I select five negotiation episodes drawn from three transnational regulatory institutions in the extractive and security sectors; namely, the Kimberley Process (KP), the Voluntary Principles on Security and Human Rights (VPs or Voluntary Principles), and the International Code of Conduct for Private Security Service Providers (ICoC or International Code of Conduct).

These five negotiation episodes are cases for the purpose of my inquiry on both theoretical and empirical grounds (Ragin, 1992*b,a*). Theoretically, they are instances of the same general class of phenomena, i.e. tripartite bargaining over the design of formal monitoring and enforcement structures of transnational institutions. These phenomena, in turn, are relevant for international relations scholarship because, as I outlined in detail in previous chapters, they pose empirical and theoretical puzzles to existing theories of international cooperation, especially those inspired by rational choice approaches to institutions. Better understanding these puzzles holds the promise to further refine theories of international institutional design. On empirical grounds, these negotiation episodes are cases because they have empirical boundaries in time, though less in space, that allow me to separate them from one another and other cases. As I will elaborate in subsequent paragraphs, for each of these negotiation episodes it is possible to empirically identify when they started

and ended, what actors were involved, what were the issues at stake, what the outcomes were, and how they were produced.

But how to identify the boundaries of such negotiation episodes? When do negotiations begin? When do they end? In general, I identify the start of a negotiation episode inductively by looking at what time actors started to place a particular issue, such as creation or modification of a verification procedure or the creation or modification of a sanctioning mechanism, on a governance scheme’s agenda. Empirically, this can be reflected in public speeches, non-papers, NGO reports, or the launch of a working group or committee. At times, negotiations are launched in a more formal manner when governance schemes provide for regular reviews of their operating procedures. To illustrate, in the Voluntary Principles NGOs at several occasions issued public statements and reports making a case for the inclusion of rigorous monitoring and enforcement in the initiative’s governance architecture which launched institutional bargaining among participants. By contrast, the 2005-2006 negotiations concerned with reforming the monitoring and enforcement processes of the Kimberley Process were launched in a more formal fashion as part of a periodic review process which is itself part of the scheme’s institutional architecture.⁹ In short, identifying the beginning of negotiation episodes is based on a theoretically informed empirical strategy that looks for observational evidence that indicates at what particular points in time states, firms, and NGOs started negotiating over formal monitoring and enforcement mechanisms of transnational institutions (Ragin, 1992 *a*).

I employ the same strategy in order to identify the termination of negotiations and, therefore, the upper time bound of my five cases. If institutional bargaining yields an outcome, the end of a negotiation episode is typically marked by a formal agreement. This can take the form of the creation or modification of rules and procedures, the creation of new working bodies, or both. If no outcome is reached, specifying negotiation end points is less straightforward. Negotiations may be formally terminated by one or several parties officially announcing that no agreement could be achieved. They may, however, also linger for a long time before ultimately fading away. Particularly in the latter case the upper time bounds of a negotiation episode will be fuzzy and determining where empirical analysis stops a matter of practical judgment by the researcher. In sum, institutional history rather than any preconceived theoretical model constitutes the upper and lower time boundaries of my five cases.

Formally launched in January 2003, the Kimberley Process brings together states, the diamond industry, and NGOs which cooperate to stop illegal profits from “conflict diamonds” fuelling civil wars in Liberia, Sierra Leone, the Democratic Republic of Congo and other African states (Grant and Taylor, 2004; Kantz, 2007 *a,b*; Haufler, 2009, 2010; Bieri, 2010). The regulatory approach actors adopted in order to realize this objective is a global certification scheme of import and export controls for rough diamonds comple-

⁹Kimberley Process Certification Scheme, p. 11.

mented by a self-regulatory “system of warranties” of the diamond industry which aims at excluding conflict diamonds from the legal diamond trade. Given the secrecy and opacity with which the diamond industry has traditionally conducted its business, the export and import regulations introduced by the KP require substantial behavioral changes of companies and diamond producing, trading, and manufacturing states. For example, with respect to the regulation of the Angolan diamond trade an NGO report criticizes:

“lack of understanding and government scrutiny of the functioning of the diamond trade has resulted in the absence of any serious examination of corporate culpability, allowing many diamond companies to continue to operate without fear that their actions may be called into question by consumers.”
(Global Witness, 1998, p. 2)

The regulatory standards introduced by the KP set out to significantly change this situation and therefore require states and companies to change their behavior substantially. In addition, because states have to implement Kimberley Process regulations in form of legally-binding domestic law and dedicate personnel and resources to execute regular export and import controls of rough diamonds arriving at and leaving their national jurisdiction, the scheme creates significant costs for states which they would not have encountered in the absence of regulation. The same holds for the diamond industry which had to establish a range of new procedures to comply with the regulations of the Kimberley Process Certification Scheme. In short, the KP is an example of “deep” and costly transnational cooperation (Downs, Rocke and Barsoom, 1996).

Since the initiation of the Kimberley Process in 2000 states, industry, and NGOs have negotiated over institutional reforms of the scheme including the revision of formal monitoring and enforcement mechanisms at several occasions. The most important and politically most contentious of these reform discussions were the revision of the scheme’s monitoring system in 2003 and, most recently, the attempts to modify the overall governance structure of the institution which begun in 2010 and came to a provisional end in 2012.

The Voluntary Principles are a tripartite governance scheme in which companies from the extractive sectors (oil, gas, and mining) work together with human rights NGOs and governments in order to regulate the security provisions of extractive companies operating in weakly governed states and make sure that these provisions do not cause human rights abuses (Freeman, 2002; Williams, 2004; Hansen, 2009; Pitts, 2011). Compared to the Kimberley Process the level of cooperation aimed at by the Voluntary Principles is less “deep”, though not shallow. The principles and standards of good corporate behavior of the VPs are articulated in a rather broad and vague manner, but, if taken seriously, imply a substantial departure from the regulatory status quo in the field of security provision of extractive companies operating abroad.

The Voluntary Principles were launched in 2000 as a joint initiative of the governments of the United States and the United Kingdom and have since then envisioned hard and prolonged bargaining among states, companies, and NGOs over how to organize the governance structures of the scheme which often resulted in stalemate and crisis rather than institutional innovation. One of the politically most contentious episodes during the Voluntary Principles’ institutional development was the negotiations over the creation of a formalized governance architecture for the initiative between January 2010 and September 2011.

The International Code of Conduct is a multi-stakeholder initiative that regulates the activities of security contractors around the globe (Ralby, 2011; Wallace, 2011; DeWinter-Schmitt, 2012; Avant, 2013). It is constituted by the private security industry, human rights NGOs, and several states including the United States, United Kingdom, and Switzerland. Like the Kimberley Process, the International Code of Conduct is ambitious in the depth of cooperation. It was formally adopted in November 2010. Since then participants have been negotiating over a governance structure to implement its regulatory provisions. These negotiations reached a critical point with the release of the second Draft Charter of the ICoC in February 2013. The questions of how to verify company compliance with the standards of the International Code of Conduct and how to deal with those who violate those standards were central items on the negotiation agenda.

Table 3.1: Case Overview

Scheme	Start	End	Subject	Result
Kimberley Process	2000	2002	Creation of governance scheme	Weak monitoring and moderate enforcement
Kimberley Process	2003	2003	Monitoring reform	Moderate monitoring
Kimberley Process	2010	2012	Monitoring and enforcement reform	Further institutionalization of monitoring; no changes of enforcement
Voluntary Principles	2010	2011	Monitoring and enforcement reform	Weak monitoring and enforcement
International Code of Conduct	2010	2013	Creation of governance scheme	Moderate monitoring and enforcement

I chose three negotiation episodes from the Kimberley Process, one from the Voluntary Principles, and one from the International Code of Conduct. In each of these five episodes states, firms, and NGOs bargained hard over how to design or reform formal monitoring and/or enforcement mechanisms with varying outcomes. Each of these episodes displays a characteristic pattern of power configurations, preferences, political context, and institutional outcomes. Table 3.1 on page 69 provides a brief summary of these five negotiation

episodes.

The distribution of negotiation episodes across the three institutions is unbalanced. However, this unbalanced representation of governance schemes in the sample of negotiation episodes is a result of the specific historical trajectories of the three governance schemes under investigation rather than motivated by theoretical considerations. Both the Kimberley Process and the Voluntary Principles reach back until 2000, while the International Code of Conduct has only operated since late-2010. As a consequence, actors involved in these two schemes simply had more occasions for (re-)negotiating monitoring and enforcement mechanisms than those participating in the International Code of Conduct. Nevertheless, comparing the newly established International Code of Conduct with the two older governance schemes provides opportunities for a series of theoretically and empirically interesting cross-case comparisons that would not be possible if the analysis were restricted to the Kimberley Process and the Voluntary Principles.

I did *not* select cases randomly from the overall population of relevant observations (Fearon and Laitin, 2008). Instead, I employed a theoretically guided purposeful sampling and chose cases on grounds of their theoretical usefulness and practical relevance (Bennett and Elman, 2007; Levy, 2002). In particular, I selected the five negotiation episodes because they are deviant cases from the perspective of existing theories of international cooperation. In addition, they let me assess the power politics of tripartite bargaining over transnational institutional design and how it interacts with characteristics of the negotiation environment in conflict prevention and security-related settings. Importantly, these cases also provide cross-case variation on the variables of my model as well as substantial within-case variance. Furthermore, they are data-rich and important for students and practitioners of transnational public-private governance. I explain each of these five case selection criteria in turn, followed by a brief discussion of other relevant cases which I decided to exclude from my analysis.

First, the five negotiation episodes constitute deviant cases from the perspective of existing theories of international cooperation. In general, deviant cases are those observations that fail to match the predictions of existing theories or have outcomes that differ from similar cases (Mahoney, 2007; Bennett and Elman, 2007; George and Bennett, 2005; Eckstein, 1975; Lijphart, 1971). To varying extent in all five negotiation episodes the outcomes in terms of monitoring and enforcement mechanisms do not conform to the expectations of rational choice-based theories of international cooperation. Particularly adherents of the so-called enforcement school of international institutions argue that in situations where the actors interested in cooperation seek to address problems with a prisoners' dilemma-like character, as they do in the Kimberley Process, Voluntary Principles, and the International Code of Conduct, rigorous monitoring and enforcement is required to achieve and sustain cooperation (e.g. Keohane, 1984; Downs, Rocke and Barsoom, 1996). However, as I outline in greater detail in the introduction, what we observe

empirically is weak to at best moderately strong verification and sanctioning measures. Likewise, also functionalist expectations are not met by the institutional outcomes we observe in these five cases given that actors who face problems that are similar in their basic structural characteristics create institutional structures that differ substantially.

The cases I chose are also deviant on empirical grounds. Their institutional outcomes differ substantially from those of tripartite institutional bargaining in other policy fields and industry sectors. While overall monitoring and enforcement are weak in my cases from the extractive and security industries, several public-private governance schemes concerned with human and labor rights, such as the Fair Labor Association or the Common Code for the Coffee Community, provide for more rigorous compliance verification and sanctioning (MacDonald, 2011; Liese and Beisheim, 2011). Studying such theoretically and empirically deviant cases at close range promises fruitful ground for probing into the explanatory usefulness of my model and further refining it if needed (Bennett and Elman, 2007; Mahoney, 2007).

Second, I chose to examine negotiation episodes from the Kimberley Process, the Voluntary Principles and the International Code of Conduct because I want to highlight the importance of tripartite governance in the conflict prevention and security domain. Research on hybrid forms of global governance has thus far largely focused on environmental, health, labor, and human rights issues.¹⁰ Only little research exists that examines issues related to security and conflict prevention (Borzell and Risse, 2005). The three governance schemes and five negotiation episodes provide ample evidence that new modes of public-private governance have entered what has long been considered the strongest province of state sovereignty. Further, realist and many liberal approaches assume security issues to be the province of states and hard forms of power such as military or economic might. If the stakes in negotiations over the creation and change of institutional structures are high as they are in regulating the transnational operations of big extractive and security companies, we would expect states and businesses to use their superior material capabilities and institutional veto positions in order to secure favorable outcomes rather than turning to more subtle forms of power based on strategically relevant information derived from informal networks. Therefore, transnational public-private governance schemes in the conflict prevention and security areas provide “hard” cases for the importance of my argument about the contextualized nature of transnational power politics and the relevance of informal network power in institutional bargaining (Bennett and Elman, 2007; Levy, 2002).¹¹ If I find my model to be useful in security and conflict prevention issues,

¹⁰The empirical literature is vast. Notable examples include Pattberg et al. (2012), Dingwerth (2007), Fuchs and Kalafagianni (2010), Meidinger (2007), Ulbert (2008), and Liese and Beisheim (2011).

¹¹As qualitative methodologists have pointed out, the identification of hard or least-likely cases emanates from a dialogue between theory and evidence and follows a Bayesian logic: “the more surprising an outcome is relative to extant theories, the more we increase our confidence in the theory or theories that are consistent with that outcome” (Bennett and Elman, 2007, p. 173).

the chances are it will be equally relevant in other issue areas.

Third, this is the first extensive investigation of institutional bargaining and power politics in transnational public-private governance schemes. For this reason, and to obtain the most inferential leverage, it is important to examine a set of cases that allows examination of how different power strategies function under different political conditions. The five negotiation episodes drawn from the Kimberley Process, the Voluntary Principles, and the International Code of Conduct evince variation on all variables of my model: distribution of preferences and different forms of power, characteristics of the bargaining environment, and institutional structures of monitoring and enforcement. This variation is critical because it maximizes the inferential leverage needed for probing into the explanatory power of the theoretical argument I put forward (Bennett and Elman, 2007, p. 172). As I elaborate in subsequent paragraphs, there naturally remains the concern that variables operate differently in different cases. Yet, the fact that I theoretically and empirically narrow the scope of my analysis minimizes this risk of causal heterogeneity (see subsequent paragraphs in this section).

The three governance schemes vary substantially in terms of the characteristics of the political context in which institutional bargaining takes place. For example, while in the Kimberley Process and the Voluntary Principles bargaining occurs in an informal institutional context where there are not many formalized rules and procedures in place that structure participants' interactions, negotiations over the governance framework of the International Code of Conduct have been taking place in a more formalized institutional context. Moreover, the five negotiation episodes vary in terms of the distribution of economic, institutional, and network power among negotiators. For example, industry representatives in the Kimberley Process and the Voluntary Principles can draw on vast financial and technical resources, whereas private security companies are much less economically potent. Likewise, the network power of the diamond industry throughout the institutional evolution of the Kimberley Process has been much stronger than the network position of companies in the Voluntary Principles. The same holds for NGOs in these two arrangements. While with few exceptions NGOs in the Voluntary Principles have not occupied privileged network positions (in terms of access and brokerage), there are important instances where they managed to do so in the context of the Kimberley Process, though, there is important variation in NGO positions in the Kimberley Process network over time. In the International Code of Conduct, security companies are often located at the margins of informal communication and information exchanges, while NGOs occupy central network positions characterized by high levels of access.

Importantly, the selected cases also provide rich variation on the dependent variable of my model. First and foremost, the Kimberley Process, the Voluntary Principles, and the International Code of Conduct vary substantially in the strength of their formal monitoring and enforcement systems. In the VPs, both monitoring and enforcement can

be described as rather weak. The scheme primarily relies on company self-reporting for its assessment of rule target compliance and the only means of sanctioning is the expulsion of defectors which is, however, not associated with substantial costs for those expelled. By contrast, the peer review mechanism of the KP can be characterized as moderately strong. It is accompanied by a relatively vigorous enforcement apparatus that includes the possibility to de facto exclude defectors from the legal diamond trade. Finally, the monitoring and enforcement mechanisms of the ICoC can be described as moderately strong.

The five negotiation episodes I selected do not only provide instances where institutional outcomes in terms of monitoring and enforcement occurred (positive cases), but also those where bargaining resulted in no creation or change of monitoring and enforcement mechanisms (negative cases). Analyzing both positive and negative cases is important because it allows examining the conditions under which institutional change and stability occur. In sum, my case selection provides for variation on my dependent variable and includes negative cases (Mahoney and Goertz, 2006, 2004).¹²

Another criterion for case selection was data richness. As the observable implications of my argument derived in chapter 2 suggest, assessing hypotheses on the contextualized power politics of transnational institutional design requires information about the two features of the bargaining environment identified by my model (formalization of institutional context and transparency of negotiations), the initial policy preferences of the major actors in each negotiation episode and whether these preferences changed during the course of bargaining, the power resources actors had at their disposal during the negotiations, and how they used these sources in order to secure favorable monitoring and enforcement provisions. Investigating these interacting factors and how they jointly affect transnational institutional structures at close range requires fine-grained qualitative analysis in the form of process-tracing (Collier, 1999; George and Bennett, 2005). The five negotiation episodes I chose fulfill this important requirement, though, to different degrees.

My data is best for the Kimberley Process and the Voluntary Principles. I conducted extended field research in the form of participant observations at the (semi-)annual plenary meetings of these two governance schemes. Apart from participant observations in tripartite negotiations I also conducted numerous semi-structured interviews with state

¹²Selecting cases such that variation on the dependent variable occurs anticipates one of the major criticisms quantitatively oriented methodologists have raised with respect qualitative research that selects self-consciously on the dependent variable (e.g. Achen and Snidal, 1989; King, Keohane and Verba, 1994; Geddes, 1990). In a nutshell, research designs that select on the dependent variable are likely to suffer from selection bias which in turn leads to inferential error. Although qualitative methodologists have brought forward several reasons why often selecting on the outcome variable is a reasonable strategy in small-*n* research (e.g. Bennett and Elman, 2007; Mahoney, 2007; George and Bennett, 2005; Ragin, 1987), this remains an issue of major contention between quantitative and qualitative scholars (Mahoney and Goertz, 2006).

representatives, business representatives, and NGO staff who were directly involved in the work of the two schemes at different stages of their historical development. In both cases, I also collected public as well as confidential archival materials. Particularly in the case of the Kimberley Process (less so in the case of the Voluntary Principles) I could also draw on an increasingly rich secondary literature consisting of both policy-oriented as well as scholarly work.

My data on the International Code of Conduct is more scant. Here, my main source of data is semi-structured interviews with state, industry, and NGO representatives who were involved in negotiating the scheme's governance architecture. Information obtained from these interviews is complemented by a range of publicly available documents including minutes of meetings, policy documents, and NGO reports that have been produced in the course of negotiations. Given that the International Code of Conduct has only been up and running since 2010, the scholarly literature on this scheme is still rather nascent and often not detailed enough in order to provide the detailed information necessary for assessing the variables of my model. Nevertheless, overall the data I managed to collect is sufficiently detailed in order to examine the negotiations over a governance framework for the implementation of the International Code of Conduct from the perspective of my model.

Finally, cases were chosen for their scholarly and policy relevance. In contrast to quantitative analyses, in qualitative research not all cases are necessarily equal. Often, some cases are regarded substantively more important than others (e.g. the French Revolution for theories of social revolutions or California for theories of voting behavior) and theories that are unable to explain these cases are considered problematic (Mahoney and Goertz, 2006, p. 242). The Kimberley Process and the Voluntary Principles are two of the first truly tripartite transnational governance schemes that entered the scene of world politics in the early-2000s (Abbott and Snidal, 2009 *a*).

Although there has been substantial variation in the assessment of the success of both governance arrangements over their now more than ten years of existence, they continue to serve as important points of orientation (both in positive as well as negative respects) for the development and reform of public-private governance schemes that seek to avoid their perceived limitations and replicate their strengths. Particularly at the early stages of its development, the Kimberley Process, for example, was considered a role model of innovative forms of governing problems stemming from insufficient resource governance and inspired efforts of policymakers, businesses, and NGOs to regulate trade in timber, gold, tin, tantalum, and other commodities. As the initiative evolved, however, the limitations particularly of its governance framework became more and more visible so that its weaknesses became something new efforts of tripartite institution building sought to avoid rather than replicate. Nevertheless, whether referred to as a positive or negative example the Kimberley Process has served as an important reference point for

transnational public-private governance schemes particularly when it comes to questions of institutional design.

Despite this substantial interest of practitioners in the institutional architectures of these two governance schemes, scholarly analysis of their institutional structures is scant at best.¹³ Existing work typically stops with a description of formal institutional rules and procedures but does not provide an account of how these structures came into being. Yet, if policymakers are interested in how to replicate or avoid particular institutional design elements embodied in a particular set of initiatives, detailed causal knowledge about how these elements came into being is pivotal. This dissertation starts to fill this gap.

The International Code of Conduct is a prominent present-day example of institutional formation that involves states, business, and NGOs as equal partners in governance. It has received particular attention because it is an attempt to institutionalize the regulation of the global operations of private security providers. This is a particularly important case because state outsourcing of security and military tasks to private corporations affects one of the core functions of the modern state and has direct implications for state sovereignty. Hence, a better understanding of tripartite institutional design in this crucial area will provide important insights for comparable efforts in other fields.

Together, these theoretically and empirically grounded case selection criteria yield a small subset of all tripartite negotiations over the institutional design of transnational public-private governance schemes. Among other features this subset is defined in terms of institutional outcomes (monitoring and enforcement), policy domain (conflict prevention and security), and industry sectors (extractive and security industries). It is conceptually different from negotiations that are concerned with other institutional design elements (e.g. scope, flexibility, delegation) and occur in the context of regulatory schemes that govern other issue areas and industries, such as, for example, the Fair Labor Association and the Common Code for the Coffee Community, which address labor and human rights issues in the apparel and coffee industry, or the World Commission on Dams which set up standards for the environmentally and economically sustainable construction of large dams.

This casing involves a theoretically motivated narrowing of the empirical focus of my investigation and leaves other instances of the same general phenomenon aside (Ragin, 1992a, p. 222). There are a host of other transnational public-private governance schemes that are not covered in my sample. Most importantly, I exclude the Extractive Industry Transparency Initiative (EITI) from my analysis (Kantz, 2007a; Williams, 2004; Hansen, 2009). The Extractive Industry Transparency Initiative also addresses issues related to conflict prevention and security and has also received substantial attention particularly from policymakers, though, less so than the Kimberley Process. Unlike the Voluntary Principles and the International Code of Conduct, including it into my sample and com-

¹³Two exceptions include Kantz (2007a) and Wexler (2010).

paring its institutional formation and evolution with the Kimberley Process would have added less variation in terms of the variables of my model and, therefore, provided less inferential leverage. The context in which the EITI operates is very similar to that of the Kimberley Process. It is characterized by a low level of institutional formality and a low level of transparency. Likewise, the scoring on the dependent variable is similar. The formal monitoring and enforcement mechanisms of the EITI and the Kimberley Process are, compared to the other two initiatives, more similar and, hence, offer less variation on the dependent variable.

I also do not include several prominent cases in the environmental (e.g. World Commission on Dams, Forest Stewardship Council), health (e.g. Global Alliance of Vaccines and Immunization, Roll Back Malaria Partnership), and labor rights areas (e.g. Fair Labor Association, Common Code for the Coffee Community). Likewise, the vast number of so-called type-II partnerships established after the 2002 World Summit for Sustainable Development in Johannesburg and the public-private partnerships formed under the umbrella of United Nations Fund for International Partnerships (Andonova, 2010) are excluded from the analysis. While most of the excluded governance arrangements are worthy of further study and some of them would provide interesting additional test cases for my model, many of these do not meet my five case selection criteria as well as the Kimberley Process, the Voluntary Principles, and the International Code of Conduct. For example, the Global Alliance of Vaccines and Immunization is more concerned with service provision rather than rule-making and institution-building. Its major focus is the implementation of pro-health programs in developing countries. We would, therefore, expect that institutional bargaining in these governance schemes follows a different dynamic. Also, many of the Johannesburg partnerships are only small, substantively narrow projects which are not as policy relevant as, for example, the Kimberley Process or the International Code of Conduct.

Other arrangements, such as the Forest Stewardship Council, the Fair Labor Association, or the Common Code for the Coffee Community, are of greater policy relevance and provide valuable material for broadening the scope of my analysis. Including cases from other industry sectors and policy domains would be particularly interesting in order to examine whether bargaining dynamics vary across domains and explore possible scope conditions of my model. While this would be an important extension of my analysis, I will nevertheless limit the investigation to the five negotiation episodes from the Kimberley Process, the Voluntary Principles and the International Code of Conduct and leave the extension of the empirical scope to future research.

Limiting the scope conditions of my theoretical argument by narrowly defining the population of empirical phenomena relevant for my analysis is important because it ensures that the assumption of conceptual and causal homogeneity—a critical prerequisite of positivist modes of causal analysis—is met. Conceptual and causal homogeneity is a

property of empirical data in relation to a particular model. While the former requires that the theoretical concepts that constitute the core of my model, such as economic or network power or formalization of institutional context, have a sufficiently similar meaning across cases, the latter refers to the fact that the variables of my model operate in the same way across cases (Mahoney, 2007, p. 129; Goertz and Mahoney, 2005; Ragin, 1987). The more different cases are, i.e. the more diverse the universe of relevant observations, the more likely it is that instances of the general phenomena of interest are so different that variables work differently or have different conceptual meanings in different cases. Thus, causal homogeneity implies the absence of relevant alternative or confounding causes of the outcomes of interest (Mahoney and Goertz, 2006, p. 238). In short, narrowing the scope conditions of my analysis—together with in-depth case knowledge—ensures that selected “cases . . . exhibit sufficient similarity to be meaningfully compared to one another” (Mahoney, 2007, p. 129).¹⁴ These scope conditions, however, can be relaxed and carefully expanded if my argument turns out to hold for the initially narrowly specified universe in order to explore whether it also works in a broader set of cases (Mahoney, 2007, p. 130; Mahoney and Goertz, 2006, p. 231), a task to which I will come back in the conclusions.

3.3 Data

Studying the contextualized power politics of transnational institution building and change using in-depth case studies and network methods creates data demands that go beyond and differ from the kind and amount of information required in studies based on more conventional bargaining models. In particular, it requires fine-grained data on the characteristics of the formal monitoring and enforcement mechanisms of transnational public-private governance schemes and whether and how these mechanisms changed over time; the main players involved in institutional bargaining, their preferences, and interactions; the configuration of power in terms of economic, institutional, and network power; and the features of the environment in which negotiations occurred. The data I collected for my inquiry consists of information obtained from public and private archival materials and secondary sources; participant observations of negotiations among state, industry, and NGO representatives at the plenary meetings of the Kimberley Process and the Voluntary Principles on Security and Human Rights; semi-structured interviews with representatives of states, industry, and NGOs who have been involved in the work of the Kimberley Process, the Voluntary Principles, and the International Code of Conduct at different stages of their institutional development; and network data obtained using a multiple-sources

¹⁴Statistical analyses address the problem of causal heterogeneity by using significance levels in hypothesis tests, i.e. they allow for a limited amount of empirical deviation from the hypothesized relationships between variables without immediately rejecting a theory. Experimental studies use replication in different contexts and with different subject pools in order to test whether the assumption of causal homogeneity holds.

and multiple-measurement strategy for mapping the informal information exchanges and communication among states, firms, and NGOs during neogitation episodes. I will discuss these four types of data and how they were collected in turn.

3.3.1 Archival Materials and Secondary Sources

Archival materials are the first building block of the dataset for my qualitative analysis. Documents are particularly useful for examining the formal institutional structures of a governance scheme, the actors involved in its operations, and, in some instances, also their institutional preferences and negotiation strategies. The analysis of formal governance structures includes first and foremost information on the content of the institutional rules and procedures themselves, i.e. what provisions they entail, what they require rule targets to do, what obligations actors have whose behavior is not directly addressed by the rules, and how they organize the governance of the arrangement. Information on these and similar questions can be obtained from official and unofficial documents published by governance schemes, from a scheme's homepage, or from secondary literature.

Information on the actors involved in tripartite governance goes well beyond knowledge about what particular actors have participated in negotiations at what time. It also requires data on their beliefs and preferences, controversies between different interests, and the bargaining strategies actors used in order to secure favorable institutional outcomes. Documents, such as minutes of meetings, organizational mission statements, informal memos and non-papers, press releases, or reports, are sources from which this information can be obtained.

Between 2009 and 2012, I systematically collected a vast amount of publicly available documents from a range of sources, including the websites and online archives of the Kimberley Process, the Voluntary Principles and the International Code of Conduct, individual actors involved in their work (e.g. online archives of business associations, NGOs, and government websites), international and regional organizations, and research institutions. The online archives of the Kimberley Process and the International Code of Conduct turned out to be particularly rich and detailed, while the website of the Voluntary Principles provided relatively less official documents. In addition to these publicly available archival materials I also had access to two private archives which covered the operations of the Kimberley Process between 1999 and 2008 (held by an NGO involved in the work of the scheme) and the early development of the Voluntary Principles between 1999-2000 (held by an individual who was involved in the early work of the Voluntary Principles), respectively.

These archival materials were further supplemented with secondary sources from the scholarly and policy-oriented literature on the Kimberley Process, the Voluntary Principles, and the International Code of Conduct. In addition to information about the broader

historical background in which the three governance schemes are embedded, these secondary sources also provide general information about the institutional development of the schemes as well as the major actors involved. Given that the scholarly and policy-oriented literature on the Kimberley Process is richer compared to those on the Voluntary Principles and the newly created International Code of Conduct, secondary sources are an important source of information in the analysis of the former, while they play a less important role in the two latter schemes.

3.3.2 Semi-Structured Interviews

Semi-structured interviews are another important source of information for my analysis. Compared to many conventional international organizations, such as the United Nations, the World Trade Organization, or the European Union, transnational public-private governance schemes often produce less of a “paper trail” in the course of their operations. The number of publicly available documents that can be used for research purposes is, therefore, often limited. On top of that, the information contained in official documents is often not detailed enough for assessing some of the variables of my model. While institutional outcomes and changes can often enough be accurately reconstructed using official documents, data on the informal communication and information exchange networks during a particular negotiation episode (the basis of my measure of network power), for example, are less accessible through archival materials. Likewise, information about actors’ interactions with one another during negotiations is less accessible through documents.

In order to balance these limitations of archival materials, a large part of my qualitative data consists of semi-structured interviews with representatives of states, companies, business associations, NGOs, NGO coalitions, international and regional organizations who were involved in the work of the Kimberley Process, the Voluntary Principles, and the International Code of Conduct at different states of their historical development. On the one hand, these interviews allowed me to obtain information about important details of monitoring and enforcement structures that were not mentioned in official documents. Although these informal and more tacit aspects of institutional design are not part of my dependent variable, they nevertheless provided important background knowledge which in turn allowed for a more nuanced analysis of formal structures. On the other hand, interviews were used to obtain more private information about actors’ institutional preferences and beliefs, their bargaining strategies, interactions with others during negotiations, and private accounts of the influence of particular actors over the design of formal monitoring and enforcement mechanisms. These are all critical pieces of information required for scoring my five cases in terms of the variables of my model.

I conducted interviews using a semi-structured interview protocol. This protocol was initially derived from the theoretical framework of this study and further adjusted af-

ter the first round of interviews and participant observations in 2009-2010. After this adjustment interviews were based on basically identical interview protocols with only minor differences caused by differences between governance schemes or between negotiation episodes. The semi-structure interview protocol contains open-ended questions that served to stimulate interviewees to report their knowledge and experiences with respect to a particular negotiation episode (e.g. the institutional preferences they represented, preferences of other major actors, bargaining strategies, interactions during negotiations) as well as some more general aspects of a particular governance scheme at a particular stage of its institutional development (e.g. institutional context in which it is embedded, its level of institutional formalization, transparency of operations).

Between 2010 and 2013 I conducted 108 interviews with representatives of governments, companies, business associations, NGOs, NGO coalitions, international and regional organizations who were involved in the work of the Kimberley Process, the Voluntary Principles, and the International Code of Conduct at different states of their development. Some individuals were interviewed more than once because they were involved in several negotiation episodes. A full list of individuals interviewed including their organizational affiliation is provided in appendix B. The majority of these interviews were conducted face-to-face. In some cases, however, where practical constraints did not allow for a personal meeting interviews were held via telephone. Interviews lasted between twenty minutes and more than two hours. Most of the interviews were recorded electronically. In a few instances interviewees only allowed me to take notes by hand.

I did not fully transcribe every single interview but wrote summaries of interviews with shorter passages of direct transcriptions. This reduced form of storing interview data is legitimate because I use these interviews as sources of information rather than detailed accounts of actors' life stories or ethnographic recollections. Linguistic details, context, and other subtleties the recovery of which requires full interview transcripts are not the focus of my analysis. In addition, given the wealth of interview data I collected fully transcribing every single interview or even only a selection of interviews would have been prohibitively costly.

3.3.3 Participant Observations

Archival materials and semi-structured interviews in combination go some distance in analyzing institutional outcomes and change, actors' institutional preferences, power capabilities, and bargaining strategies. In order to complement and further strengthen these data I conducted participant observations at several plenary meetings of transnational public-private governance schemes. Even in the least institutionalized instances transnational public-private governance schemes typically provide for an annual (sometimes bi-annual) meeting where states, companies, and NGOs come together in order to

discuss issues related to the operations of the scheme. These issues include the election of the chair of the scheme, experiences with the implementation of regulatory standards and the exchange of best practices, but also design and reform of institutional structures, such as the creation of secretariats, establishment of new working groups, or the formation or reform of monitoring procedures.

The primary purpose of these participant observations was to obtain direct observational evidence on the negotiation behavior and interactions of states, firms, and NGOs. In addition to direct observations of actors' negotiation behavior, participation in these plenary meetings also provided me with access to numerous primary documents which would have not been available otherwise. Further, being on site during the negotiations also led to a range of formal semi-structured interviews and informal conversations during lunch and coffee breaks which provided both additional input in form of interview data as well as important background information about many aspects of tripartite bargaining which would not be possible to obtain through alternative sources.

Similar to my semi-structured interviews my observation of negotiation behavior and interactions at plenary meetings was guided by an observation protocol. Unlike the interview protocol the observation protocol largely focused on the interactive dimension of bargaining. Here, the focus was on the approaches actors' adopt when they make an intervention in a discussion, what claims, demands, and offers they make, how they address others, whose position they support and whose they oppose, with respect to what issues do they take the floor, how often and long do they talk, etc. To a lesser extent, for the more recent negotiation episodes participant observations are also used to assess actors' institutional preferences over different forms of monitoring and enforcement particularly if those preferences have changed during negotiations. Finally, as outlined in greater detail below, for the more recent negotiation episodes participant observations in combination with semi-structured interviews also served as a "qualitative robustness check" of the reliability of the network data for the corresponding negotiation episode.

Between 2010 and 2012 I participated in five plenary meetings as an academic observer; three annual plenary and one inter-sessional meeting of the Kimberley Process and one annual plenary of the Voluntary Principles (see table 3.2 on page 82). In addition, my request to attend the extraordinary plenary meeting of the Voluntary Principles in March 2011 in Ottawa, Canada, was declined by the Voluntary Principles Steering Committee. At this meeting Voluntary Principle participants negotiated over and adopted the new governance framework of the institution which also contains provisions for verifying compliance and addressing rule violations. The rejection of my request for participation in this particular meeting is, however, an interesting piece of evidence in itself which I will use in my analysis in chapter 6.

During these meetings I attended both the major plenary sessions where all participants were present as well as break-out sessions of working groups dedicated to specific

issues. In the case of the Kimberley Process, for example, I observed several meetings of the working group on monitoring and the committee on the reform of the Kimberley Process which have been key sites for discussing monitoring and enforcement issues.

Table 3.2: Participant Observations of Negotiation Meetings

Scheme	Meeting	Year	Location	Duration
Kimberley Process	Annual Plenary Meeting	2010	Jerusalem	4 days
Voluntary Principles	Annual Plenary Meeting	2010	Washington, DC	2 days
Kimberley Process	Annual Plenary Meeting	2011	Kinshasa	4 days
Kimberley Process	Inter-sessional Meeting	2012	Washington, DC	4 days
Kimberley Process	Annual Plenary Meeting	2012	Washington, DC	4 days

I recorded my observations in form of extensive field notes structured on the basis of my observation protocol. In addition to the categories of the protocol these notes also include a range of other information about interactions outside the formal negotiation settings (e.g. informal conversations during breaks) as well as more general information that will be used as background information in the analysis of the primary materials.

3.3.4 Network Data

A fourth important type of data for my process-tracing analysis are information about the informal communication and information exchange relationships among states, firms, and NGOs involved in particular negotiation episodes. This relational data is particularly important for measuring actors' network power in the form of access and brokerage. Network data can be collected in qualitative as well as more formal forms and I make use of both types of data in my analysis because both complement each other and are essential for examining the relational undergirdings of transnational public-private governance and how the properties of patterns of informal communication among negotiators affect their ability to secure favorable institutional choices.

Qualitative network data focuses on the overall character of interactions and relationships among actors including, for example, whether they are more characterized by cooperation or conflict and how this changes over time (Hollstein, 2011). While archival materials and secondary sources can provide some clues regarding this qualitative dimension of networks, semi-structured interviews with representatives of the governments, companies, and NGOs that constitute and operate within these relational structures and, for more recent negotiation episodes, participant observations are likely to deliver valuable qualitative information about informal communication and information exchange during negotiation episodes.

Formal network data, on the other hand, provides a fine-grained mapping of rela-

tionships that prevail among the actors involved in transnational governance and allows the accurate measurement of these patterns of connections. This kind of formal network data can potentially be obtained through a number of procedures each of which with its own strengths and weaknesses (e.g. network questionnaires, archival sources, key informant interviews). However, given the level at which my analysis is located (meso-level of inter-organizational networks) and given the type of connections I am interested in (informal communications and exchange of information pertinent to the institutional design of a particular governance scheme during a specific time period), a multiple-sources and multiple-measurement strategy of collecting formal network seems to be most appropriate and feasible (Butts, 2009).

The multiple-sources and multiple-measurement strategy I employ in order to collect the formal network data necessary for measuring the structure of the informal communication and information exchange networks that evolved among the actors involved in the five negotiation episodes in my small- n sample combines relational information obtained from key informant interviews and the analysis of archival materials. In particular, this measurement strategy involves four steps: 1) identification of all actors involved in a particular negotiation (specification of network boundary); 2) collecting information on relationships among these actors through key informant interviews; 3) collection of information on relationships among actors from archival materials; 4) merging individual network measurements and checking robustness with qualitative network information.

A network's boundary is constituted by the set of units on which it is defined and the set of relationships among those units (Marsden, 1990). Careful specification of the boundaries of the network under study is a crucial first step in every study of relational environments. Faulty specification of network boundaries may lead to the exclusion of relevant as well as the inclusion of irrelevant nodes and the ties between these nodes and all others in the network. The incorrect inclusion or exclusion of nodes and their ties in key network positions, such as, for instance, actors that bridge two otherwise unconnected parts of the network, has dramatic effects on many structural properties that are of substantive interest for international relations scholars, such as a network's connectivity or centralization. As stated by Butts (2009, p. 17): "the inappropriate inclusion or exclusion of a small number of entities can have ramifications which extend well beyond those entities themselves, and which are of far greater importance than the types of misspecification which occur in most non-relational settings." Consequently, a careful specification of network boundaries that adequately reflects the substantive research problem a study is concerned with is vital for every research project that includes relational variables.

I use a three-step strategy for defining network boundaries that combines elements of positional and reputational instruments for network boundary specification (Marsden, 1990, 2005; Wasserman and Faust, 1994). In order to identify the actors that have been involved in a particular negotiation episode, I use a backward mapping technique (Bogason

and Zolner, 2007, pp. 6-9). This technique starts out from a specific governance outcome or change, such as the establishment or change of a particular institutional procedure, and then traces backward the actors that were relevant for producing these outcomes and changes. Accordingly, in a first step I have to identify the institutional outcome or end point (for those cases where no actual outcome was achieved) for all five negotiation episodes under investigation.

Second, one has to identify the actors that were formally and informally involved in negotiating these outcomes. For this purpose I rely on three complementary sources of information: network rosters and membership lists that indicate the actors that are official participants of a governance scheme; various kinds of public and confidential documents that mention actors that have been involved in negotiations; and semi-structured interviews with actors involved in the three schemes under study as well as knowledgeable external observers. Whereas membership rosters and documents are helpful for identifying the actors that were formally involved, qualitative interviews help identifying the actors whose participation in negotiations was of a more informal character.

Finally, in order to make sure that no relevant actors have been left out, the key informants who provided information about the relations among these actors were asked to add any actors that have been relevant for the specific outcome under consideration and were not yet included in the list of actors produced in steps one and two. Here, I used a name generator instrument that allowed network informants to add any actor not already identified as part of the network that they considered as a involved in the negotiation episode under consideration (Marsden, 1990, pp. 441-44; Burt, 1984). In particular, I used the following question or close variations of it as a name generator when collecting network data: "Are there any other states or organizations that have been involved in the negotiation process which are not contained in this list?". While the first two steps were taken before the actual collection of network data the latter double-checking for omitted actors was part of the collection of relational data with key informants.

This three-step network boundary specification yields a set of actors who were formally and/or informally involved in a particular negotiation episode. The use of various information sources for generating such lists allows for compensating for the weaknesses of each source and, hence, enhances the accuracy and validity of the list. It also permits the inclusion of formally excluded actors which is important for studying power and influence in networks. I performed these three steps of network boundary specification for each negotiation episode because the actors involved in the respective episodes are likely to differ.

After the sets of actors involved in the negotiations have been identified, one has to collect information on the presence and absence of relationships among these actors. The type of relationship which constitutes the networks on which I focus in this dissertation is the informal exchange of policy-relevant information and advice pertinent to the

institutional design of a particular public-private governance scheme in a particular negotiation episode. Policy-relevant information and advice refers to strategically valuable information pertinent to institution building and change in a transnational public-private governance scheme. It includes, for example, briefings and exchanges about the regulatory problem a governance scheme addresses or the institutional preferences and interests of different stakeholder groups. It also includes the provision of policy recommendations on, for example, how to deal with a particular problem or how to forge a coalition of like minded actors to pursue a particular institutional outcome. There are several other types of relationships which could be used as indicator for the structure of informal interactions among states, industry representatives, and NGOs involved in transnational governing, such as provision of funding, project collaboration, or geographical proximity. I selected exchange of information and policy advice because from the perspective of my model and bargaining theories of international relations more generally (Morrow, 1999; Wagner, 2000; Powell, 2002; Reiter, 2003) how and to whom information and knowledge about problems, solutions, and institutional preferences are disseminated and from whom received is critical for the dynamics and outcomes of negotiations over transnational institutional design.

I collected data not only on the mere presence or absence of such information exchange ties but also on their directedness. Hence, I collected dichotomous (non-valued), directed network data on the flow of policy-relevant information and advice between the actors involved in the networks that undergird the five negotiation episodes in my sample.

I collected network data on informal communications and exchanges of policy-relevant information among states, firms, and NGOs for four of the five negotiation episodes in my small- n sample; namely, the negotiations over the creation of the Kimberley Process Certification Scheme in 2000-2002, the reform of the institutional architecture of the Kimberley Process in 2010-2012, the reform of the Voluntary Principles in 2010-2011, and the creation of the governance and oversight mechanism of the International Code of Conduct in 2010-2013.

For the purposes of network data collection, I employed a variant of an arc sampling design for network measurement (Butts, 2009, p. 20). I started out from the lists of actors generated through the network boundary specification procedure outlined above. I then collected data on the information and policy advice exchange relations between these actors through interviews with a number of key informants from inside the network. I asked these informants to provide evaluations of the overall pattern of exchange of policy-relevant information and advice among the actors identified as involved in a certain negotiation episode. I focused on the entire duration of a negotiation period and collapsed the information available on the exchanges of policy-relevant information and advice during that period into one single network of interactions. Each key informant's responses provided one individual measurement of the overall network structure. Key in-

formants were selected so as to represent structurally non-equivalent parts of the network in order to compensate for actor bias emanating from an informant's network position (Burt, 1983). Further, I selected actors that could be expected to be central in the network in order to enhance the accuracy of their network assessments (Marsden, 2005). Since the network data obtained from such a broad variety of different informants spans the diversity of significant actor perspectives present in the networks under study, this data collection procedure helps to mitigate potential informant bias.

These measurements were then further supplemented with information gained from confidential and publicly available archival materials which provided an additional assessment of the exchange of policy-relevant information among the actors involved in the respective bargaining periods.

Finally, for each negotiation episode, the network measurements obtained from the multiple sources were merged and only those relationships taken into consideration for the further analysis that were jointly reported by at least two sources, i.e. either two key informants or one key informant and archival sources.

In a final step, these combined measurements of the overall patterns of the exchange of policy-relevant information and advice in the four negotiation episodes were compared with qualitative information about network structures obtained through semi-structured interviews, participant observation, and secondary sources. This comparison allowed for a "qualitative robustness check" of the validity of the measurement of the overall network structure.

Although this multiple-sources and multiple-measurement strategy of network measurement does certainly not reveal each and every single exchange of policy-relevant information and advice that has occurred during a particular episode of tripartite bargaining over transnational institutional design, previous research suggests that it adequately captures the overall pattern of regular informal interaction relevant for a specific negotiation episode (Torenvlied and van Schuur, 1994; Marsden, 2005; Westerwinter, 2013). Given the technical difficulties associated with applying more conventional tools of network data collection to large transnational networks, this middle ground approach between no or a very detailed measurement of relational structures can be considered a legitimate research strategy.

3.4 Summary

This chapter outlined a multi-method research strategy for the study of tripartite bargaining over the institutional design of transnational public-private governance schemes. I discussed the two fundamental components of my multi-methods research strategy; namely, case study methods and network analysis. The cases from which I draw my empirical data were introduced and the criteria used for their selection explained. I also

discussed the different types of data used in both the qualitative and the network analysis and how these were collected. In what follows I will put this research design to practice and use it to provide five in-depth exploratory probes of my theoretical model (chapters 4 through 6) as well as a complementary analysis of the determinants of the structures of the information exchange networks that emerged in four of the five negotiation episodes (chapter 7).

Chapter 4

Regulating the Global Diamond Trade

In the late-1990s, a series of NGO reports demonstrated a clear association between the international rough diamond trade and the perpetuation of civil wars in Angola, Sierra Leone, Liberia, and the Democratic Republic of Congo (Global Witness, 1998; Smillie, Gbrie and Hazleton, 2000). They showed that profits from illegally mined diamonds provided rebel groups with income to finance their fighting against legitimate governments and, therefore, fuelled civil wars in the course of which thousands of Africans lost their lives and millions were forced to leave their homes. In Angola, for example, revenues from diamonds provided the financial basis for the National Union for the Total Independence of Angola's (UNITA) attacks against the legitimate Movimento Popular de Libertacao de Angola (MPLA) led government (Beffert and Benner, 2005 *a*, pp. 1-2). With an estimated \$3 billion stemming from diamond sales, UNITA leader Jonas Savimbi was able to build up a well-equipped army of about 35,000 men which entangled the government forces in a protracted civil war during which more than 500,000 Angolans died and another 4,000,000 were displaced. Likewise, in Sierra Leone diamonds fuelled a brutal, almost decade-long civil war that took "over 75,000 lives, caused half a million Sierra Leoneans to become refugees, and displaced half of the country's 4.5 million people" (Smillie, Gbrie and Hazleton, 2000, p. 1).

As a response to this linkage between the global diamond trade and civil war, the United Nations Security Council imposed targeted sanctions on conflict diamonds, i.e. rough diamonds used by rebel groups to finance their military operations against legitimate internationally recognized governments,¹ from Angola in 1998 and later Sierra Leone in order to curb the funds of rebel groups and to end the civil wars in the two countries (Wright, 2004; Beffert and Benner, 2005 *a*). In the case of Angola, these sanctions sought to severe UNITA's diamond revenues by prohibiting the direct and indirect import of Angolan diamonds exported without a so-called certificate of origine issued by the Angolan government.² In 2000, the same certificate of origine approach was used in order to cut

¹United Nations General Assembly Resolution A/RES/55/56 (29 January 2001).

²United Nations Security Council Resolution S/RES/1173 (12 July 1998).

off the rough diamond-based funds of the Revolutionary United Front (RUF) in Sierra Leone.³ However, as many other United Nations Security Council resolutions that establish sanction regimes also the restrictions that targeted UNITA and RUF diamond sales remained largely without practical consequences and, hence, did not solve the problem of violent fighting facilitated by revenues from the diamond trade (Beffert and Benner, 2005a, p. 2).⁴

As the ineffectiveness of the patchwork of United Nations sanctions became obvious, South Africa, Namibia, and Botswana met for exploratory consultations with the United Kingdom, the United States, and Belgium in May 2000 in Kimberley, South Africa, in order to discuss the issue of conflict diamonds and to craft a more systematic international response (Grant and Taylor, 2004; Bone, 2004; Wright, 2004, 2012). Representatives of the diamond industry and NGOs were also present at this first of a series of meetings which later became known as the Kimberley Process (KP). The purpose of these meetings was to “discuss and establish a unified approach to address challenges facing the African diamond industry.”⁵ Within less than three years after the initial meeting in Kimberley states, industry, and NGOs agreed on a certification scheme for regulating the international trade in rough diamonds, the Kimberley Process Certification Scheme (KPCS), which was meant to establish a “clean diamond cartel barring conflict diamonds from entering the legal market” (Beffert and Benner, 2005b, p. 2).

The KPCS has two components. An intergovernmental regime of import and export controls for rough diamonds under which states have to certify that all rough diamonds exported from their territory stem from sources that are not involved in supporting civil war. Likewise, importers are obliged to guarantee that rough diamonds entering their country come from legitimate sources as testified by a certificate issued by the exporting state. This intergovernmental system of export and import certification is complemented by a voluntary self-regulation system run by the diamond industry: the so-called chain of warranties.⁶ This self-regulatory mechanism requires diamond suppliers, traders, and manufacturers to include a written statement of warranty when they pass along diamonds and goods that contain diamonds that guarantees those who receive the good that the traded diamonds have been produced by a member country of the Kimberley Process.⁷ Furthermore, the

“system of warranties underpinned through verification by independent auditors of individual companies and supported by internal penalties set by in-

³United Nations Security Council Resolution S/RES/1306 (5 July 2000).

⁴Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA, S/2000/203 (10 March 2000).

⁵Conclusion of the Diamond Technical Forum Held in Kimberley, South Africa, 11-12 May, 2000.

⁶Diamond Industry Takes the Initiative with Self-Regulation to Combat Conflict Diamonds, World Diamond Council Press Release, Milan, Italy, March 13, 2002.

⁷Conflict Diamonds and the Kimberley Process Fact Sheet, World Diamond Council, 2008, p. 1.

dustry, which will help to facilitate the full traceability of rough diamond transactions by government authorities.”⁸

Haufler (2007, p. 6) describes this nesting of an intergovernmental system of cooperation and an industry self-regulatory mechanism as a “layered double club”.

The objective of the KP is to undo the connection between diamonds and the financing of civil war by establishing a comprehensive international certification scheme for the legal global diamond trade. The regulatory system enshrined in the KPCS is designed to provide a public good in the form of decreased conflict, as it seeks to make it more difficult to sell rough diamonds on the legal market to obtain funds to initiate and sustain violent intra-state conflicts. During its first years of operations the Kimberley Process has yielded first results. Most importantly, it has been accredited with curbing the flow of conflict diamonds, thereby cutting off an important financial source for the rebel armies in Angola, Sierra Leone and other African countries which in turn contributed to the termination of hostilities in those countries (Global Witness, 1998, p. 6; Partnership Africa Canada, 2009*a*, p. 1). In the case of Sierra Leone, for example, observers highlight the fact that funds dried up after the KPCS became operational as a factor that brought people to the negotiation table (Haufler, 2007, p. 1). In addition, the Kimberley Process has also been credited with the sizeable increases in legitimate diamond exports (Global Witness and Partnership Africa Canada, 2004, p. 4). Since its establishment, the amount of legitimate diamonds traded in international legal markets has risen significantly. Particularly in developing countries this provides governments with growing revenues that can be used in order to strengthen governance and the provision of public goods to their populations.

However, the KP also has its weaknesses. The internal control mechanisms of many participating countries—a key element of the export and import control regime—are weak. This holds particularly for the countries which are affected most by conflict diamonds such as Angola, Guinea, Democratic Republic of Congo, and Sierra Leone (Partnership Africa Canada, 2009*b*, pp. 5-6; Partnership Africa Canada, 2009*a*, p. 2). According to NGO observers, in these countries the KP is unable to track half of the circulating rough diamonds (Partnership Africa Canada, 2009*a*, p. 1). Further, the scheme has been criticized for its reliance on consensus among its participants for decision-making. As observers have noted, the fact that every participating state has a veto often leads to delays even in simple decisions and horse-trading on different agenda items including issues related to implementation and enforcement (Bone, 2012, p. 192; Partnership Africa Canada, 2009*a*, p. 1).

At its outset in 2000 as well as at several later stages of the Kimberley Process’s development states, diamond industry representatives, and NGOs bargained hard over the substance of regulatory standards and institutional structures of the governance scheme.

⁸Kimberley Process Certification Scheme, p. 7.

Of these conflicts, controversies over the creation and design of monitoring and enforcement structures have been among the most fundamental ones and on several occasions almost derailed the entire process (Wright, 2012, p. 185). In these negotiations actors exercised a variety of different power strategies in order to secure favorable outcomes vis-à-vis others.

In this chapter, I examine three episodes in which states, diamond industry, and NGOs negotiated over the monitoring and enforcement mechanisms of the Kimberley Process; namely the initial negotiations over the creation of the KPCS (2000-2002), negotiations over the establishment of a peer review system (2003), and the most recent efforts to change the Kimberley Process's overall governance framework (2010-2012). For each negotiation episode I analyze the institutional choices from which actors could have chosen a particular setup of monitoring and enforcement provisions, actors' institutional preferences, the actual choices made, and how different forms of power were used by different parties to influence institutional structures toward their liking. Together, the exploratory evidence from these three negotiation episodes suggests that actors' power strategy choices vary with the characteristics of the bargaining environment they face and that informal network power is more frequently used than conventional power approaches would expect. The preliminary results suggest that the political model of transnational institutional design put forward in this dissertation allows us to understand institutional choices that are considered inefficient and, therefore, puzzling from the perspective of efficiency-oriented rational choice-based theories of international cooperation and traditional power-oriented approaches that focus on the distribution of economic capabilities and formal institutional privileges alone.

4.1 Setting up the Kimberley Process

4.1.1 Institutional Choices

At the outset of the initial negotiations in 2000, states, diamond industry, and NGOs faced a plethora of choices regarding how to design the political institutions of the emerging Kimberley Process. Among these choices, how to organize monitoring and enforcement turned out to be both politically sensitive and technically challenging (Beffert and Benner, 2005b, p. 5). The selection of monitoring and enforcement mechanisms was of particular importance due to the prisoners' dilemma-like nature of the strategic situation states, diamond industry, and NGOs encountered when they decided to work together in order to deal with the conflict diamond issue. Monitoring and enforcement of the KPCS's regulatory standards for diamond import and export controls could have been delegated to the domestic authorities of participating states; actors could have delegated the authority to monitor implementation and enforce compliance to the KP itself and built institutional

structures that would enable the scheme to exercise this authority independent of its members such as an independent secretariat; the KP plenary meeting (an assembly of all participants in the process) could also have been tasked with monitoring implementation; transferring monitoring tasks to independent auditors could have also been an option; and of course the status quo of no systematic transnational regulation of trade in rough diamonds could have also been maintained.

When on November 5, 2002 the Interlaken Declaration was adopted by 36 countries⁹ and the European Community in the presence of the diamond industry and civil society representatives and actors decided on the basic regulatory content and institutional architecture of the Kimberley Process, they created a unique institution.¹⁰ Although full membership and formal voting rights are restricted to states, diamond industry and NGOs have official observer status and can participate in all meetings and negotiations on an equal footing with governments (Haufler, 2010; Bieri, 2010; Wright, 2012). Importantly, this tripartite institution contains decentralized monitoring and vigorous, though decentralized, enforcement mechanisms.

At its beginning, the Kimberley Process contained a rudimentary and rather weak monitoring system. States were required to provide reports to the KP annual plenary meeting (the main decision-making body of the governance scheme) about how they implement the minimum standards for the export and import of rough diamonds set out in the KPCS within their domestic jurisdictions.¹¹ Further, “review missions” were envisaged as a complementary “verification measure” in case questions regarding a country’s implementation efforts arise. These review missions were meant to address situations “where there are credible indications of significant non-compliance with the Certification Scheme”¹². However, what precisely “credible indications of significant non-compliance” are and how to recognize them remained unspecified making it difficult to decide in what situations a review mission would be unleashed. In addition, launching a review mission required the agreement of all participating states. This provided potential rule violators and their allies an effective veto in the monitoring process. On top of that, all participating states had to agree on the terms of reference for each individual review mission as well as the reviewers, again by consensus.¹³ In short, the monitoring provisions originally enshrined in the KPCS were weak and organized in a decentralized manner. The case-by-

⁹The countries present at the Interlaken meeting were Angola, Australia, Botswana, Brazil, Burkina Faso, Canada, Côte d’Ivoire, People’s Republic of China, Cyprus, Czech Republic, Democratic Republic of Congo, Gabon, Ghana, Guinea, India, Israel, Japan, Republic of Korea, Lesotho, Malta, Mauritius, Mexico, Namibia, Norway, Philippines, Russian Federation, Sierra Leone, South Africa, Swaziland, Switzerland, Tanzania, Thailand, Ukraine, United Arab Emirates, United States of America, and Zimbabwe.

¹⁰Interlaken Declaration of 5 November 2002 on the Kimberley Process Certification Scheme for Rough Diamonds.

¹¹Kimberley Process Certification Scheme, pp. 9-10.

¹²Kimberley Process Certification Scheme, p. 10.

¹³Kimberley Process Certification Scheme, p. 10.

case consideration of review missions made monitoring subject of political negotiations in which rule violators and their supporters could bargain to secure favorable terms of being scrutinized.

Compared to monitoring, enforcement mechanisms were more vigorous, though also organized in a decentralized way. In principle, the sanctioning capacities of the KP are powerful. The ultimate measure of punishing rule violations was (and still is) the expulsion of shirkers. The KPCS prohibits KP participants to trade rough diamonds with non-participants.¹⁴ Therefore, suspending a country from the regime isolates it from the legal diamond trade and forces it to either terminate its diamond operations altogether or shift them to illegal markets. This de facto exclusion from the legal trade in rough diamonds is backed up by a waiver of the World Trade Organization (WTO) that exempts the trade measures taken under the Kimberley Process Certification Scheme from provisions under the General Agreement on Tariffs and Trade (GATT).¹⁵ Because together the participants of the KP constitute approximately 99.8 percent of the global diamond production,¹⁶ an exclusion from the KP imposes high costs on defectors and can, hence, serve as powerful threat to deter cheating.

However, the actual usage of this potentially powerful enforcement tool is compromised by the rules and procedures that govern its execution. On the one hand, the Kimberley Process cannot enforce its decisions directly; only individual member states can do so. On the other hand, while the KPCS clearly states that expulsion constitutes the ultimate measure of rule enforcement, precise procedures for how it can be invoked are largely lacking. Importantly, any sanctioning measures are subject to political negotiations in which all states, including the potential rule violator under consideration, have equal voice and decide by consensus (which in the KP typically means unanimity) how to punish defection.¹⁷ Thus, as with monitoring each individual state has an effective veto. Negotiations over how to address individual cases of non-compliance have been of an ad-hoc character and often highly politicized.

Furthermore, formal provisions are also surprisingly silent on enforcement measures below the highest level of punishment, i.e. expulsion. In fact, the only section in the KPCS which explicitly addresses “compliance and dispute prevention” contains no provisions as to how to exactly deal with compliance problems. It says:

“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

¹⁴Kimberley Process Certification Scheme, p. 6.

¹⁵World Trade Organization, Council for Trade in Goods, Waiver Concerning Kimberley Process Certification Scheme for Rough Diamonds, G/C/W/432/Rev.1, February 24, 2003.

¹⁶See <http://www.kimberleyprocess.com/web/kimberley-process/kp-basics>, accessed: November 01, 2012.

¹⁷Kimberley Process Certification Scheme, p. 11.

Participants without delay about the said concern and enter into dialogue on how to address it.”¹⁸

As a result of this vagueness, there exists no standardized routine for addressing non-compliance in the Kimberley Process. As stated succinctly by a state representative: “In the KP, there are as many ways to enforce standards as there are cases of non-compliance”¹⁹. This non-standardized, case-by-case treatment of non-compliance weakens the potentially powerful KP enforcement procedures substantially. How can these institutional choices be explained?

4.1.2 Initial Preferences

States, diamond industry, and NGOs had a common interest in setting up a transnational tripartite regime to regulate the global diamond trade and prevent diamond revenues to fund rebel groups. However, actors’ preferences over the nature of the institutional structure of such a governance scheme varied considerably. Throughout the Kimberley Process negotiations between 2000 and 2002 how to monitor and enforce the future rough diamond certification scheme was one of the most contentious issues. There were three camps with sharply diverging views: actors who pushed hard for a strong monitoring system that provides for independent third party audits (particularly NGOs); those who were reluctant to accept any comprehensive and detailed system of compliance verification (industry and states such as Russia, Israel, and China); actors that were not taking a particularly prominent position and remained largely passive during the negotiations (e.g. United States, European Union).

NGOs pushed hard for “regular, independent, expert monitoring of all national control mechanisms” (Smillie, 2002, p. 9). They argued that monitoring of states’ national export and import control systems has to be mandatory for all KP members for the scheme to be credible and effective. NGOs also wanted the institutional body responsible for monitoring to have some “teeth” which implied the specification of explicit consequences for states and industry in case they do not live up to their commitments and ultimately the ability to ostracize noncompliant participants from the regime (Beffert and Benner, 2005 *b*, p. 7). A petition signed by about 200 civil society organizations in September 2001 succinctly summarizes the NGO position:

“Self-regulation will not work. Too many governments, companies and individuals have already proven themselves unworthy of trust, at the expense of tens of thousands of lives. Governments and the diamond industry must produce a practical certification agreement now, and it must be an agreement

¹⁸Kimberley Process Certification Scheme, p. 11.

¹⁹Interview state representative, Jerusalem, November 04, 2010.

with credible international monitoring provisions built into it. All countries involved in the production, movement and processing of rough diamonds *must* agree to minimum international standards, and these *must* be open to international scrutiny. Nothing less will suffice if consumers are to have the confidence they need and deserve when they purchase something as expensive and as important as a diamond.”²⁰

This demand for mandatory, regular and independent verification accompanied by the ability of the scheme to expel those participants that operate in violation of its rules was essential for NGOs and they strongly articulated it at nearly every KP meeting: “For NGOs, this is an obvious necessity. It is not negotiable; it cannot be watered down or leavened with vague wording. We must be clear on this.”²¹

By contrast, many states, notably Russia, Israel and China, and industry rejected the concept of regular independent monitoring outright. Instead, they argued for voluntary verification and sought to “ensure that the emerging scheme not be monitored by any institution outside their own national jurisdiction” (Smillie, 2010 *a*, p. 185). Some states (e.g. Russia) even considered anything beyond voluntary self-reporting a “deal-breaker” that would have led them to walk away from the negotiation table.²²

Reluctant states were particularly eager to make sure that the new institution does not infringe on their sovereign rights and, therefore, objected the idea of independent third-party auditors monitoring their national control systems (Beffert and Benner, 2005 *b*, p. 7). They also warned of the costs regular independent monitoring would incur and were concerned that commercial confidentiality would be undermined by an intrusive verification mechanism. Especially governments with state-run diamond sectors were not keen in having their national systems scrutinized by outside observers and exposed to state and industry competitors (Wright, 2012, p. 182). Industry also highlighted the economic costs as well as transparency and commercial sensitivity issues as major concerns. The diamond industry in general and small and medium diamond dealers in particular were cautious about creating a comprehensive and demanding set of new transparency rules that substantially deviated from the secretive and opaque trading system they had developed over the past centuries (Beffert and Benner, 2005 *b*, p. 7; Spar, 2006, p. 205; Weber, 2001). For them a robust monitoring system based on independent auditing would have meant to grant external actors access to their trust and kinship-based business networks; a scenario which they abhorred. In addition, unlike other industries the diamond business has traditionally opposed government intervention and assistance and, thus, was generally skeptical about any attempts of imposing strong and intrusive

²⁰Civil society petition, “Governments and Industry: Stop Blood Diamonds Now! The Key to Kimberley”.

²¹Notes for NGO Comments at World Diamond Council Meeting, Milan, March 13, 2002.

²²Confidential NGO memo, Gaborone Kimberley Process Meeting, November 2001.

regulatory requirements on companies (Weber, 2001).

Most other countries, including such big players in the diamond trade as the United States, Canada, and the European Union (EU), remained largely silent when it came to bargaining over monitoring and enforcement provisions.²³ Notably, even though states such as the United States, South Africa, Botswana, and the EU acknowledged the need for “good arrangements for compliance monitoring”, they did not speak up when the issue was negotiated, but referred to the rather “soft” wording as it ultimately got incorporated in the KPCS as adequate.²⁴

The battle lines that emerged on monitoring were mirrored in the fights over enforcement. NGOs argued that meaningful penalties should be associated with rule violations. Every country that decides to join the Kimberley Process should be legally obliged to meet the regulatory standards set out in the KPCS and there should be consequences if it fails to do so (Smillie, 2002, p. 10). An arrangement without the “teeth” required to ensure compliance, they argued, will lack credibility and ultimately fail to achieve its goals. States and industry, by contrast, objected any centralized sanctioning capacities and were anxious about keeping any responsibility for responding to non-compliance with the minimum standards of the intergovernmental certification scheme and the requirements of the industry’s system of warranties with individual states and companies respectively (Beffert and Benner, 2005*b*, p. 7).

The final monitoring and enforcement mechanisms which were agreed upon in December 2002 in Interlaken were no single groups’ ideal point; no one set of actors was able to entirely design the new institutional structures. However, given the configuration of preferences, the monitoring and enforcement structures, on which actors ultimately agreed, closely approximate the interests of recalcitrant states and industry (Beffert and Benner, 2005*b*; Wexler, 2010). Monitoring became voluntary and primarily based on state and industry self-reporting. Review missions could only be triggered in extraordinary circumstances and were left to the discretion of the entire Kimberley Process membership. Enforcement was potentially strong but the decentralized and largely informal rules and procedures that governed its execution provided states significant control over the use of this powerful tool through veto positions. No centralized sanctioning capacities were created and reaction to individual cases of non-compliance was made subject to political negotiations among all members of the Kimberley Process. How can this outcome be explained? Why were reluctant states and industry better able to secure favorable outcomes than their opponents from the NGO camp?

²³Confidential NGO memo, Gaborone Kimberley Process Meeting, November 2001.

²⁴Confidential NGO memo, Gaborone Kimberley Process Meeting, November 2001.

4.1.3 Bargaining over Monitoring and Enforcement

The situation in which bargaining over the creation of the KPCS occurred was characterized by low formalization of the institutional context. Neither was there an official negotiation mandate issued by the United Nations or any other international organization nor were the negotiations based on a solid, formalized institutional foundation. For example, at the beginning of the negotiation process, i.e. in 2000, participation in the process was to a considerable degree contingent upon the willingness of the South African convener to acquiesce to the presence of stakeholders at the negotiation table; no rules existed that could have been invoked to ensure participation or other privileges. At best there was a set of informal practices that emerged during the negotiation period. Later on, a resolution of the United Nations General Assembly encouraged

“the countries participating in the Kimberley Process to consider expanding the membership of the Process in order to allow all key States with a significant interest in the world diamond industry to participate in further meetings, . . . in close collaboration with the diamond industry and taking into account the views of relevant elements of civil society.”²⁵

But still how to exactly determine what states have “significant interest in the world diamond industry” and how to make sure that all stakeholders have access to the negotiations remained unspecified and subject of case-by-case considerations. Furthermore, who could make proposals and how was not spelled out in any formalized rules and procedures so that informal practices and tacit understandings how to deal with these and other procedural issues dominated. Yet, even these informal practices were only weakly developed and did not provide much of a structure for bargaining. Overall, in the period between 2000 and 2002 the Kimberley Process operated in an informal and often ad-hoc fashion.

In addition, the broader institutional context in which the emerging Kimberley Process was located was rather thin at that time. Prior to the KP no institution addressed the issue of conflict diamonds in a systematic and comprehensive fashion. The few United Nations sanctioning regimes and corresponding inspection panels that dealt with diamond-fueled civil wars in a handful of African countries did not provide much of an institutional context for KP negotiations. In addition, although the endorsement of the Kimberley Process by the United Nations General Assembly and the G-8 was considered important and provided the negotiations with additional legitimacy, participants deliberately decided not to transfer the negotiations to these more formalized institutional arenas because they were concerned that the rules of traditional diplomacy and the bureaucratic requirements of these forums would render swift progress difficult (Wright, 2012, p. 183). Relations

²⁵United Nations General Assembly Resolution 55/56 (1 December 2000).

to the World Trade Organization or the World Customs Organization were also only rudimentary in these early years of the Kimberley Process's development.

The transparency of the 2000-2002 negotiations was low. There was no institutionalized mechanism in place through which stakeholders could have accessed information about the negotiation process. The final communiqués that were published after every KP meeting provided only summary reports. They conveyed a rather high resolution picture of what happened at the individual meetings rather than providing detailed information about the agenda, positions, achievements, and the way ahead. Reporting on the numerous informal gatherings that took place in-between these official meetings was lacking almost completely.²⁶ As a result, sometimes even organizations that were deeply engaged in the negotiations lost track of certain developments and were at times confronted with new issues and proposals only at the later stages of the discussion. Actors that did not participate regularly in formal and informal meetings encountered even more problems in keeping track of the negotiation process. Despite NGO efforts to raise public awareness of the Kimberley Process and the issue of conflict diamonds more generally (Shaxson, 2001, p. 217), detailed information about the negotiations was not readily available, especially for interested public audiences, most importantly consumers of diamond jewelry.

Finally, polarization among negotiators was high. In addition to monitoring and enforcement also other issues, such as the provision of statistical data about rough diamond imports and exports or the creation of a KP secretariat, were highly contentious. States, industry, and NGOs were deeply divided, often along lines similar to those outlined above.

In addition, particularly at the early negotiation stages the relationships between stakeholder groups were characterized by deep-seated tensions and frictions and there was only limited communication between them. In particular, industry and some states (e.g. Russia, China but also several African countries), on the one hand, and NGOs, on the other, had only little direct relationships with one another. Major industry players, such as De Beers or the Belgian High Diamond Council (HRD), were only reluctantly willing to directly engage with NGO campaigners who had previously accused them of contributing to some of the world's most brutal civil wars. As a former NGO campaigner recalls: "(industry; OW) was totally against us, hated the campaign, and thought we were evil, nasty, vicious, horrible terrorists who were trying to destroy the diamond industry".²⁷ Shaxson (2001, p. 218) concurs when he reports an anonymous interview with a representative of the Belgian diamond industry who describes the NGO Global Witness as a "bunch of well-intentioned hooligans". Similarly, particularly states with authoritarian political systems had a negative image of NGO groups and were at the beginning not willing to accept them as equal partners at the negotiation table (Wright, 2012, p. 182). This lack of contact and exchange has been accompanied by significant mutual mistrust

²⁶For a rare exception, see Tamm (2002).

²⁷Interview with Alex Yearsley, Global Witness, as quoted in Beffert and Benner (2005 *a*, p. 7).

between the protagonists of an industry that has traditionally operated in relative secrecy and the activists of some of the world's biggest human rights NGOs (Bieri, 2010, p. 70).

My argument suggests that in such a situation we should expect actors with network power to be particularly influential in bargaining, followed by those that hold economic power. Formal institutional power should not have much of a relevant impact on bargaining dynamics. There is indeed evidence suggesting that the network power of industry and the states with which it shared an interest in decentralized and light monitoring and enforcement was essential for the negotiation outcomes we observe in this initial negotiation period.

Due to their expertise on diamond production and trade, the major representatives of the diamond industry such as the World Diamond Council (WDC) or the market leader De Beers were popular actors in the evolving Kimberley Process network, which attracted particularly governments that relied heavily on their knowledge for successfully regulating the global diamond trade. This led to the formation of several new direct ties between industry representatives and key governments.

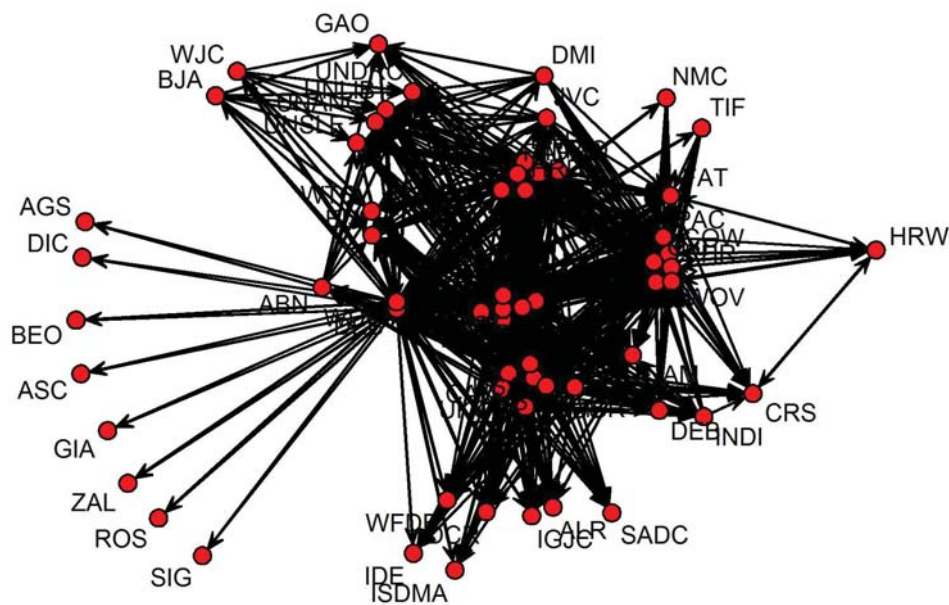
Further, with the establishment of the WDC very soon after the launch of the Kimberley Process the industry created a single focal point for its interactions within the scheme. The representatives of the WDC had the mandate to negotiate on behalf of the entire diamond industry and, hence, occupied together with a few other entities, such as De Beers and the Belgian High Diamond Council, an important brokerage position between governments and NGOs, on the one hand, and large parts of the diversified diamond industry, on the other. As brokers, they were able to provide other participants with scarce, otherwise inaccessible knowledge on such crucial issues as supply chain management or techniques for the identification of rough diamonds' place of origin. This brokerage position and the informational advantages emanating from it provided industry representatives with power to influence the negotiation agenda, the definition of problems and potential solutions, and in some cases even others' preferences. Importantly, industry used its informational advantage to persuade various states that state and industry self-reporting would be the only way to create an affordable and manageable monitoring and enforcement system.

In addition to these newly established relationships, industry could draw on previously established strong connections with some key states. De Beers had strong ties based on licensing agreements and collaborative ownerships with major African and Western diamond producers such as South Africa, Botswana, Namibia, and Canada (Pohl, 2005; Spar, 2006). Together with the government of Botswana it is, for example, the joint owner of the mining company Debswana (Weber, 2001). Further, in the early-2000s it bought major shares in Canadian mines and substantially expanded its activities in Russia through negotiating new trade agreements with Russian companies (Spar, 2006, p. 203). Likewise, the HRD had close relationships with the Belgium government which in turn was closely related to the government of South Africa due to their common efforts in leading

the early Kimberley Process negotiations (Bieri, 2010; Shaxson, 2001). Moreover, intra-industry relationships have traditionally been characterized by dense and strong social ties. As Hauffer (2013, p. 15) describes: “The diamond sector is characterized famously by social networks, typically ethnic, that generate sufficient trust that millions of dollars in gems can be exchanged on a handshake.”

These strong connections continued to exist in the Kimberley Process context and provided the basis for trustful interactions among the various industry players as well as between the industry and several countries at a time when NGOs and other governments have just started to form more collaborative relationships with one another. In short, the representatives of the diamond industry together with a few key governments formed a powerful group whose members were densely connected to one another through strong, direct ties, while outsiders—in this case NGOs and other states—had no access. Exploiting this powerful network position based on an important brokerage position and the membership in a cohesive group, the WDC, De Beers and the HRD were able to effectively influence the negotiations over monitoring and enforcement.

Figure 4.1: Exchange of Policy-relevant Information and Advice, KPCS Negotiations 2000-2002



Notes: Visualization based on a variant of Fruchterman and Reingold’s force-directed placement algorithm as implemented in the network package for R (Butts, Handcock and Hunter, 2013). Isolates are not included in order to facilitate readability.

By contrast, NGO representatives were less well connected within the emerging KP network. Initially, NGOs had difficulties establishing relationships with states and industry. Due to their often aggressive campaigning activities during the late-1990s and the early negotiation period (Bieri, 2010), states and particularly industry were reluctant to

engage with civil society organizations on cooperative grounds. Likewise, NGO activists continued to meet state and industry representatives with distrust and skepticism.²⁸ This made the formation of ties with important states and companies difficult. The few ties NGOs had to like-minded governments, such as the United Kingdom (Beffert and Benner, 2005a, p. 5), although they had proven to be useful in the earlier advocacy campaigns, did not provide much of a strategic benefit in the negotiations because these states decided to take a back seat on the tricky and politically sensitive issues of monitoring and enforcement during the 2000-2002 negotiations.

As a result, NGOs had less privileged access to the information flow within the network which made it difficult for them to influence the negotiations in the early stages. In fact, they were in such a weak bargaining position that they ultimately had to back down on one of their key concerns in the negotiations; namely, the creation of a regular, independent monitoring system.²⁹

Table 4.1: Centrality and Centralization in the 2000-2002 KP Network

	Outdegree	Indegree	Eigenvector	Betweenness
De Beers	0.424	0.127	0.204	0.049
WDC	0.424	0.127	0.204	0.049
HRD	0.178	0.136	0.147	0.001
South Africa	0.339	0.339	0.185	0.037
Botswana	0.339	0.339	0.185	0.037
Israel	0.331	0.110	0.178	0.004
United States	0.331	0.110	0.178	0.004
Russia	0.331	0.110	0.178	0.004
DRC	0.339	0.339	0.185	0.037
Global Witness	0.127	0.305	0.170	0.006
Partnership Africa Canada	0.127	0.305	0.170	0.006
Centralization	0.352	0.267	0.210	0.023

Notes: Calculations performed using the network package for R (Butts, Handcock and Hunter, 2013).

These qualitative observations of the informal communication and information exchange relations that existed during the 2000-2002 negotiation episode can be further strengthened and refined by examining the formal properties of the prevailing network structure (see figure 4.1 on page 101). Overall, 119 states, companies, NGOs and other entities can be identified as—to varying extent—involved in the negotiations over the creation of the Kimberley Process Certification Scheme. However, the participation in informal communication and information exchange of these 119 actors was very unbalanced during

²⁸Interviews industry and government representatives, August 13 and October 01, 2010.

²⁹Confidential NGO memo, Gaborone Kimberley Process Meeting, November 2001. See also Smillie (2010a, p. 191).

the negotiation episode. To start with, according to my data only 62 of the 119 actors were actually participating in informal information exchanges during the negotiations; 57 states and organizations were completely isolated from this exchange. Among these 57 isolated actors were many NGOs, such as Action Aid, Oxfam International or Physicians for Human Rights. This peripheral location as isolates in the informal communication network made it difficult for these and many other NGOs to make their voices heard and provide inputs based on their institutional preferences into the negotiation process.

Table 4.2: Egonetwork Heterogeneity and Liaison Brokerage in the 2000-2002 KP Network

	Egonet Heterogeneity (Incoming Ties)	Egonet Heterogeneity (Outgoing Ties)	Liaison Brokerage
De Beers	0.700	0.762	0.590
WDC	0.700	0.762	0.590
HRD	0.752	0.867	2.264
South Africa	0.961	0.961	1.663
Botswana	0.961	0.961	1.663
Israel	0.621	0.914	1.114
United States	0.621	0.914	1.114
Global Witness	0.916	0.622	0.755
Partnership Africa Canada	0.916	0.622	0.755

Notes: Calculations performed using UCINET 6.476 (Borgatti, Everett and Freeman, 2002).

If we focus on the group of 62 actors which were actively involved in informal communication and information exchange during the negotiations the picture remains largely the same. A closer look at the individual network positions of some of the most prominent actors reveals an uneven distribution of central network positions. As shown in table 4.1 on page 102, De Beers and the World Diamond Council as the major industry representatives and South Africa and Botswana as two of the leading African diamond producing states occupy advantageous network positions particularly with respect to their outdegree (number of direct outgoing connections), eigenvector (connections to other central actors), and betweenness (number of times of being located on the shortest path between others) centrality. By contrast, Global Witness and Partnership Africa Canada as the two leading NGOs in the Kimberley Process are substantially less well positioned in terms of outdegree, eigenvector and betweenness.

In terms of indegree (number of direct incoming ties) centrality, Global Witness and Partnership Africa Canada are in better positions compared to industry but not to South Africa and Botswana. This suggests that it is especially the ability to spread negotiation-relevant information to large numbers of others and to mediate information flows between otherwise unconnected others that provides bargaining advantages. For example, by hav-

ing many direct connections to others the WDC was able to widely communicate its interpretations of regulatory problems and feasible solutions and thereby persuade other parties that its preferred solution—a light monitoring and enforcement system—is most suitable to effectively tackle the problem of conflict diamonds.

If we consider network measures that combine structural information about actors' network position and qualitative actor attributes, the picture becomes more nuanced. If we examine the heterogeneity of actors' first-order neighborhood of outgoing ties, we observe that the major representatives of the diamond industry—especially the Belgian High Diamond Council—sends policy-relevant information and advice to a heterogeneous group of actors as indicated by its high index of qualitative variation (IQV) scores for its first-order outgoing ties of 0.867 (see table 4.2 on page 103). Likewise, some of the state protagonists in the 2000-2002 negotiation episode, such as South Africa and Botswana, disseminate information to a wide range of different actors as indicated by their high first-order outgoing IQV scores of 0.961.

By contrast, the pattern of outgoing communication of NGOs is less heterogeneous. Compared to the HRD and South Africa, Global Witness and Partnership Africa Canada, for example, have a relatively homogenous group of actors among which they disseminated their views, demands, and proposals during the 2000-2002 negotiations. The IQV score for their group of direct outgoing neighbors is 0.622. This suggests that some of the key industry and state players in the negotiations over the creation of the Kimberley Process Certification Scheme reached a relatively more diverse audience with the policy-relevant information and advice they disseminated during the negotiations than their opponents from the NGO camp. This provided them a number of channels through which they could affect the beliefs and preferences of others in a way that made it easier for them to secure favorable monitoring and enforcement mechanisms. NGOs lacked this strategic asset.

A similar picture emerges from the pattern of brokerage positions we observe in the network. The liaison brokerage scores of the HRD as well as those of South Africa and Botswana are substantially above 1.00 which indicates that these actors mediate information flows between two different groups that do not belong to their own group at rates much higher than expected based on the size of the network and the sizes of the actor groups within it. By contrast, the two NGOs considered here all have liaison brokerage scores significantly below one indicating that they are less involved in brokering information flows between actors from different groups than we would expect given the size of the network and size of the five different groups identified for the purpose of this analysis.³⁰

What about economic power? To start with, at the time of the negotiations over the creation of the KPCS the global production of rough diamonds was highly centralized.

³⁰Recall that in order to compute the composition of actors' first-step egonetworks and to analyze their brokerage roles I partitioned the actors involved in the network using a five-level categorical actor attribute that distinguishes between "African States", "Western and Other States", "Industry", "Civil Society", and "International Organizations and Other Entities".

Only three countries together accounted for almost two-thirds of the overall global diamond production. In 1999, when the issue of conflict diamonds started to figure prominently in NGO campaigns and public media with an annual production worth \$1,800 million Botswana alone accounted for about 26 percent of the global production followed by Russia, South Africa and Angola which produced diamonds worth \$1,600, \$800, and \$600 million respectively. Compared to these market leaders Western producers such as Canada or Australia played only minor roles with annual diamond productions worth \$400 million each in 1999 (see table 4.3 on page 105).

Table 4.3: World Diamond Production, 1999-2000

	1999		2000	
	Value (mio. \$)	% World Production	Value (mio. \$)	% World Production
Botswana	1,800	26.47	2,200	29.33
Russia	1,600	23.53	1,600	21.33
South Africa	800	11.76	900	12
Angola	600	8.82	750	10
Australia	400	5.88	300	4
Canada	400	5.88	400	5.33
Namibia	400	5.88	500	6.67
Others	800	11.76	900	12
World	6,800	100	7,500	100

Source: (Shaxson, 2001, p. 214).

Global trade was also centralized with a few countries accounting for the vast majority of exports and imports. According to a World Bank report in 1999 Botswana alone was responsible for about 22 percent of the world's total rough diamond exports (Goreux, 2001, p. 3). Russia, South Africa, and the Democratic Republic of Congo occupied the ranks two through four with 21, 14, and 10 percent of the share in total global diamond exports respectively. To compare, the two biggest Western exporters, Australia and Canada, together account for only 12 percent of overall global exports.

Data on rough diamond imports for 1999 are not readily available. A 2000 United Nations report about sanctions on Sierra Leone identifies Belgium, the United Kingdom, the United Arab Emirates, India, and Israel as the most important importers. Belgium was of particular importance with around half of all world diamond production passing in one way or another through the Antwerp trading center (Shaxson, 2001, p. 216). In 1999, India, for example, imported about \$187 million carats of rough diamonds closely followed by Israel, which received \$183 million carats.³¹

³¹Report of the Panel of Experts Appointed Pursuant to UN Security Council Resolution 1306 (2000), Paragraph 19, in Relation to Sierra Leone, December 2000, p. 22.

When it comes to manufacturing the United States had jewelry manufacturing worth \$9.6 billion and was the biggest manufacturer of rough diamonds in 2000. Western Europe, India, and China were also relevant players with manufacturing activities worth \$8.1, \$7.2, and \$3.6 billion respectively (Bain & Company, 2011, p. 49).

Furthermore, the United States was, and still is, by far the biggest consumer of diamond jewelry. Estimates of the overall size of the market for diamond jewelry in 2000 vary widely and range between \$11.54 and \$39.8 billion (Burkhalter, 2001) but clearly single out the United States as the most important consumer of gem-quality diamonds. According to Weber (2001) with total diamond jewelry sales of approximately \$26 billion in 2000 the United States alone accounted for about 50 percent of all world diamond sales. The two next biggest consumer markets, Japan and Europe, were significantly smaller followed by India, China, and the Persian Gulf region (Bain & Company, 2011, p. 59).

The distribution of financial capabilities within the diamond industry is also highly skewed. In 2000, the market leader De Beers sold rough diamonds worth \$5.9 billion followed by the Russian monopoly ALROSA, BHP Billiton, and Rio Tinto which registered sales of \$1.7, \$0.3, and \$0.2 billion respectively (Bain & Company, 2011, p. 31). Finally, compared to the economic capacities of industry and diamond producing, trading, and manufacturing states, the financial capabilities of small NGOs such as Global Witness or Partnership Africa Canada or even bigger organizations such as Amnesty International and Human Rights Watch can be described as miniscule.

This highly skewed distribution of economic power had no strong impact on the outcomes of institutional bargaining. For starters, many actors with abundant financial capabilities relative to others remained weak and played no decisive role in shaping the monitoring and enforcement structures of the emerging Kimberley Process Certification Scheme. Take Russia as an example. Despite its substantial economic power as the second largest producer of rough diamonds in the world in 1999 and 2000 Russia remained unable to fully accomplish its goals. Although throughout the negotiations it strongly opposed the inclusion of any language on compliance verification and enforcement into the new certification scheme the country did not manage to achieve this objective and ultimately agreed to the creation of a rudimentary monitoring mechanism. Thus, in several instances the correlational evidence on the relationship between the possession of economic power and the ability to influence institutional choices fails to be in line with the expectation that control over financial capabilities is an effective means of influence in tripartite institutional bargaining.

Moreover, although in some cases the actors in central network positions also hold significant economic power (e.g. Botswana, South Africa, Israel, De Beers), we lack strong evidence that side payments, issue-linkage, and “go-it-alone” power figured prominently in bargaining tactics. There is no recorded instance of industry or states offering NGOs financial or some other form of material compensation for their agreement to a monitoring

and enforcement system they considered dysfunctional and inappropriate. For example, despite its superior position in the global diamond industry (Wright, 2012, p. 184), De Beers did not use its capabilities in order to exercise direct influence over the institutional framework of the KPCS. Instead it typically “sat quietly in the second row of seats and decided matters during the breaks in the negotiation” (Wright, 2012, p. 184) by using its informal relationships to other organizations and governments and exploiting the informational advantages stemming from its privileged position in the negotiation network.

This is not surprising from the perspective of my argument. Why should have industry and the reluctant states with which they shared common institutional preferences used expensive economic power if they could achieve their goals to the same degree, if not better, by exploiting the informational and brokerage advantages derived from their privileged position in the information exchange networks that undergirded the negotiations over the KPCS? The informal institutional context and low transparency with which the negotiations occurred made network power a much more efficient means of shaping the outcomes of institutional bargaining. In sum, the simple existence of differences in resource endowments is a poor predictor of actors’ power over institutional structures in the 2000-2002 KPCS negotiations.

Finally and not surprisingly, formal institutional power was not a relevant source of bargaining leverage either. The negotiations were not guided by any set of formalized rules and procedures that could have been invoked by stakeholders in order to claim participation rights or other privileges. As a consequence, beyond the convening role of the South African Kimberley Process Chair, there was no institutional framework which could have advantaged some and disadvantaged others.

What about alternative explanations? To begin with, exit power was not a relevant source of influence in the negotiations over the creation of the Kimberley Process Certification Scheme. No individual stakeholder group had attractive and credible alternatives to a negotiated agreement which could have been invoked to get a better deal. For industry and diamond producing states letting negotiations fail would have incurred high financial and reputational costs given the level of consumer awareness and the threat of a potential consumer boycott that has been created by the massive NGO campaigns on “blood diamonds” in the late-1990s and early-2000s (Bieri, 2010; Shaxson, 2001). In a nutshell, industry and diamond producing countries were afraid that diamonds would become the next fur. “Having spent hundreds of millions of dollars on advertising this product (, i.e. diamonds; OW), De Beers is deeply concerned about anything that could damage the image of diamonds as a symbol of love, beauty, and purity.”³² The stakes were also high for Africa’s major diamond producers, such as South Africa, Botswana, or Namibia. These countries also had a lot to lose from a consumer boycott of diamonds

³²De Beers Written Testimony before the United States Congress, House Committee on International Relations, Subcommittee on Africa, Hearings into the issue of “Conflict Diamonds”, May 09, 2000.

which would not only hurt the illegal but also the legal branches of the global diamond trade. The possibility of such a boycott actually materializing was very real in the negotiation period between 2000 and 2002 (Beffert and Benner, 2005 *a*). Further, forgoing a tripartite regime that excluded NGOs and instead creating some sort of state-industry co-regulatory scheme would have implied a loss of independence and legitimacy of the scheme (Abbott and Snidal, 2009 *a*).

Similarly, NGOs did not use the threat to exit the negotiations as bargaining tactic. Although they could have in principle easily left the process, they recognized that “if they did so there would be no return to the table and no agreement of any kind” (Smillie, 2010 *a*, p. 191) which would have left them without any influence over the development and implementation of regulatory standards. Thus, industry and states as well as NGOs did not have affordable and credible exit options. Other than NGOs, however, industry and their state allies did not depend on such options because under the given circumstances they could effectively achieve their objectives at relatively low cost using their superior network power.

Learning and socialization did not play an essential role in shaping negotiation outcomes either. While the socialization of the diamond industry may be considered an important driver of change the industry’s initially completely hostile position against introducing any regulation of the global diamond trade and bringing them to the negotiation table (Kantz, 2007 *a,b*), there is no evidence in my data that supports the argument that learning played an important role in shaping negotiation dynamics and outcomes. Finally, functionalist explanations cannot account for the observed outcome either. First of all, as outlined above, there were several options for how precisely to design the new institution all of which were possible ways to achieve the shared goal of regulating the global trade in rough diamonds and curbing rebels’ profits from selling diamonds on the legal market. In addition, a functionalist explanation cannot explain the inefficient monitoring and enforcement structures established in late-2002.

To summarize, at the outset there were many options available to guide how to organize monitoring and enforcement in the emerging Kimberley Process. The solution that was ultimately chosen reflected the relative bargaining power of actors at that time. Importantly, given the specificities of the environment in which the negotiations occurred (predominance of informal rules and procedures, low transparency, high polarization), particularly industry and their state allies which had significant network power in form of high access and brokerage were able to secure favorable outcomes. Economic and institutional power played no major role in the bargaining tactics of states, firms, and NGOs. The same holds for learning processes and functional requirements of the regulatory problem.

4.2 Moving Toward Strengthened Monitoring

Soon after the KPCS was adopted in Interlaken, the Kimberley Process was confronted with a growing demand by some stakeholders, in particular NGOs but also several consumer states, to strengthen its monitoring system (Smillie, 2005; Beffert and Benner, 2005b). While NGOs had to give in and make major concessions on monitoring and enforcement in order to reach agreement in the 2000-2002 negotiations, in 2003 they launched a new attempt to bargain for a stronger verification system. This time they should turn out to be more successful.

4.2.1 Institutional Choices

As in the first half of 2000, also in early-2003 states, industry, and NGOs had several options regarding how to amend the monitoring provisions outlined in the Kimberley Process Certification Scheme. Maintaining the institutional status quo of state and industry self-reporting complemented by occasional review missions in urgent instances of non-compliance was a possibility; developing a set of detailed provisions (e.g. clearly specified monitoring benchmarks) to strengthen self-reporting was another; creating a mandatory third party auditing system would have also been an option; and expanding the review system component of the existing monitoring scheme was yet another possibility.

Ultimately, a year after the adoption of the KPCS the Sun City Kimberley Process plenary meeting in October 2003 adopted an administrative decision creating a voluntary peer review mechanism in order to guarantee that KPCS standards are effectively implemented by all participants, i.e. KP participants agreed to monitor each other on a voluntary basis.³³ “The agreement establishes a comprehensive framework for monitoring implementation of the Scheme, based on a combination of reporting and the use of review visits and review missions to Participants.”³⁴

This peer review system is composed of three pillars: participants’ annual implementation reports, review visits, and review missions. As outlined already in the KPCS, participating states have to make available information on an annual basis about their efforts toward implementation of KPCS export and import standards. Based on extensive guidelines articulated in the annex to the administrative decision on the peer review system participants submit annual reports to the Kimberley Process Chair who then makes these reports available to the chair of the newly built working group on monitoring and other participants. The working group on monitoring reviews each participant’s report and presents its main findings to the annual plenary meeting for further discussion. Importantly, in addition to the annual reports, participating states, industry, and NGOs

³³Administrative Decision, KPCS Peer Review System, Sun City, South Africa, October 30, 2003.

³⁴Final Communiqué, Kimberley Process Plenary Meeting, Sun City, South Africa, October 29-31, 2003.

also have the possibility to communicate additional information about the implementation of any participant to the chair of the working group who can then ask the concerned participant to respond to this information.³⁵

“Review visits” constitute the second pillar of the peer review system. A review visit is a short mission conducted by a small team of KP participants to a participating country in order to assess its implementation of KPCS requirements. Review visits take place on a voluntary basis and together with participants’ annual reports form the core of the KP monitoring system. They are based on standardized terms of reference and allow for data collection and on-site inspections by other participants.

Finally, on recommendation of the working group on monitoring a “review mission” can be sent to countries “where there are credible indications of significant non-compliance with the Certification Scheme”³⁶. As opposed to review visits, the annual plenary meeting, typically on recommendation of the working group on monitoring, can initiate a review mission regardless of whether or not the country to be scrutinized agrees. However, the plenary meeting decides about the launch of review missions on a case-by-case basis through negotiations and consensus decision-making. As a result, the state under scrutiny and its allies have substantial room to influence whether or not a review mission takes place and, if so, what its exact composition and terms of monitoring are. Thus, the peer review monitoring system adopted in October 2003 combines elements of the previous voluntary, largely self-reporting-based arrangement with extended peer auditing and a few but important mandatory elements. It can be described as a mixture of “police patrols” and “fire alarms” (McCubbins and Schwartz, 1984; Raustiala, 2004).

Over the past years, this peer review monitoring mechanism has turned out to be quite effective (Global Witness, 2006). Even though monitoring remains voluntary, as of today, all participating states have received at least one review visit and many have already volunteered to host a second review.³⁷ In addition, several review missions have been conducted in order to evaluate implementation problems and non-compliance in a number of countries including Central African Republic, Ghana, Côte d’Ivoire, and Zimbabwe. These missions have proven critical in resolving some of the major challenges and frictions the Kimberley Process has encountered in its still young history.

How can this institutional change from a weak toward a moderately strong monitoring system be explained?

³⁵ Administrative Decision, KPCS Peer Review System, Sun City, South Africa, October 30, 2003.

³⁶ Administrative Decision, KPCS Peer Review System, Sun City, South Africa, October 30, 2003, p. 2.

³⁷ Final Communique, Kimberley Process Plenary Meeting, Brussels, Belgium, 5-8 November 2007.

4.2.2 Initial Preferences

As in the first negotiation episode, states, industry and NGOs had again a strong common interest in continued cooperation; no stakeholder group conceived of a termination of its engagement in the newly built Kimberley Process as a viable option. Industry had a strong interest in the reputational benefits of participating in multi-stakeholder regulation; states needed the Kimberley Process in order to protect their diamond industries against a threat (potential consumer boycotts) they could not effectively address without the contributions of industry and civil society; and NGOs wanted to continue tripartite cooperation in order to have the opportunity to remain engaged in shaping standards for the global diamond trade. Yet, actors' preferences over how to re-organize monitoring differed sharply.

There were again three distinct camps, though this time the battle lines emerged somewhat differently. Again, NGOs forcefully argued for mandatory and regular independent monitoring which they considered a necessary element of an effective and credible KP. They were confronted with a large number of states that were outspoken in their opposition to a regular monitoring system. Among others this coalition of reluctant states included China, Russia, India and particularly Australia and Israel (Bieri, 2010, pp. 125-6). As reported by a leading NGO activist: "Israel saw the idea (of regular monitoring, OW) as the thin edge of an NGO wedge which, if accepted, would result in hordes of NGOs poring over the accounts of individual Israeli diamond dealers, bringing the entire industry to a standstill" (Smillie, 2005, p. 4).

The third group consisted of industry and a few states, such as South Africa and the European Union which now shared some of civil society's concerns about the scheme's credibility and reputation given the lack of a robust verification and enforcement. As Nicky Oppenheimer, then-chairman of De Beers, said at the Kimberley Process meeting in April 2003 in Johannesburg:

"I believe that transparent verification of both government and industry procedures is essential to the credibility of the certification scheme in the eyes of the world. It is for this reason that the industry wholeheartedly supports the NGOs' objectives in securing a credible system of monitoring" (Partnership Africa Canada, 2003, p. 2).

Importantly, states that have remained largely silent on monitoring in the 2000-2002 negotiation episode (e.g. Canada and the EU), were now more vocal and bargained for a stronger monitoring arrangement. Together with the now more monitoring-friendly industry position this provided NGOs with a larger and potentially more powerful group of allies in their fight for a strengthened compliance verification system. However, these states as well as industry still rejected mandatory monitoring—NGOs' most preferred outcome—but instead argued for a middle ground solution between the system outlined in the 2002 KPCS and a mandatory arrangement.

These differences have been resolved in favor of the industry and some Western states, leaving NGOs and the initially reluctant states aggrieved, though, less so compared to the first negotiation episode. The new monitoring mechanism adopted at the annual plenary meeting in 2003 strongly approximates the institutional preferences of industry and some Western states, whereas it is at odds with the initial preferences of some big players in the diamond trade, including Israel, Australia and Russia. NGOs ended up somewhere in the middle. While not the mandatory, independent verification mechanism which was preferred by NGOs, the modified monitoring system goes significantly beyond the weak mechanisms contained in the initial agreement of 2002 and expands particularly the peer auditing component of the earlier system.

4.2.3 Bargaining over Monitoring Reform

The conditions under what the reform of the KP monitoring system was negotiated strongly resembled those under what bargaining over the KPCS occurred. Although the institutional context has become somewhat more developed with the official launch of the certification scheme, institutional structures were still of a rather nascent character and dominated by informal rules and practices.

Transparency of negotiations was still low and polarization significant. In its early years, the KP lacked well-developed institutional routines for the dissemination of information about ongoing negotiations and matters of internal governance more generally. The degree to which individual actors were able to keep themselves up-to-date and follow how particular negotiation items evolved heavily depended on their informal relationships with others. Further, despite some improvements toward the end of the 2000-2002 negotiations the relationships between states, industry, and NGOs were still marked by a considerable lack of mutual trust and persistent cleavages with respect to key substantive issues including monitoring, enforcement, and the creation of an administrative support structure for the KP (delegation of authority). Thus, in accordance with the argument put forward in this dissertation, we should again expect actors with network power to win in bargaining, while those with economic and institutional power should have less of an impact. There is again some first evidence that supports these expectations; the point along the Pareto frontier actors agreed upon closely reflects the distribution of network power. Causal mechanism-observations further strengthen this finding.

Although it initially seemed as if NGOs would have no substantive role after the adoption of the KPCS (Wright, 2004), they soon became even more influential than before in shaping the institutional architecture of the KP and particularly its monitoring system. Over time and repeated interactions NGOs could improve their network position through forming direct ties with like-minded states and the leaders of the diamond industry. For example, through their collaboration during the first KP review mission to the Central

African Republic in March 2003 NGOs could build up direct connections with the EU, South Africa, and the World Diamond Council with whom they could discuss the concept of an extended peer review mechanism (Bieri, 2010, p. 125).³⁸ The common experiences the actors made during the monitoring mission supported the development of compatible institutional preferences. Likewise, since the latter half of the 2000-2002 negotiations, NGOs and industry have established first relationships, built up trust, and even discovered a few substantive commonalities (Bone, 2004; Partnership Africa Canada, 2001 *a,b*). These nascent ties provided the basis for regular information exchange and promoted targeted collective action in pursuit of a strengthened monitoring system. Importantly, NGOs had now access to one of the key brokers in the still factionalized KP, namely the WDC, and also established strong relationships with several important states, such as the EU, South Africa, and the United States. These new relationships and the informational and strategic options that became available through them significantly increased the bargaining leverage of NGOs.

NGOs also managed to become part of a cohesive group formed by a few major representatives of the diamond industry and some key—mostly Western—states many of which joined the KP at one of the very first meetings in 2000. This group is characterized by a high density of within-group interactions and a high number of strong, direct ties among its members. Although the group internally contained many reciprocated ties which provide redundant information, it also includes some actors with connections to distant parts (particularly industry representatives from the WDC, HRD, and De Beers) of the KP network ensuring a continuous inflow of fresh information from outside the group. By exploiting these newly built relationships NGOs distributed their expertise and views more widely across the KP network than in the previous negotiation period which provided them with more influence over the KP agenda and the framing of issues and solutions.

This cohesive group adopted a leading role in establishing the peer review monitoring system. Its pooled social and political capital provided the group with informational and coordination advantages in the negotiations over the monitoring mechanism that allowed its members to overcome the resistance of actors that opposed a strengthened verification system. The WDC which is part of this cohesive group also occupied an important broker position between the pro- and anti-monitoring factions. NGOs used their access to this broker in order to negotiate a mini-lateral agreement with one of the strongest monitoring opponents, i.e. Israel, and industry (Bieri, 2010, pp. 125-6).

In early-2003, the meaning, implications, and consequences of monitoring the implementation of the KPCS export and import control standards on the ground were unclear for many states. In particular Israel had strong doubts about how exactly monitoring

³⁸The participants in this review mission were the European Union which served as chair of the review team, South Africa, Guinea, the World Diamond Council, and Global Witness.

would affect their industry. Among other things they feared that monitoring would bring hundreds of independent auditors to their trading sites and force each and every individual Israeli diamond dealer to open his or her books for scrutiny. Obviously, such a monitoring procedure would be economically costly and politically intrusive. Such uncertainty made the potential value of a strengthened verification system unclear to many states. Ascertaining the consequences of monitoring for state sovereignty and industry practices, therefore, became an essential problem particularly for Israel but also other actors that were recalcitrant with respect to this issue.

During the negotiations, NGOs and their allies from the WDC used information in order to change the beliefs of other players about the value of strengthened monitoring provisions. They sought to shape beliefs of reluctant states in a way that enabled them to secure an outcome that was close to their preferred institutional design. Through the provision of new information and continued mini-lateral dialogue NGOs and the WDC managed to overcome Israel's strong resistance. NGOs used their newly developed relationship to the industry association to provide Israel with detailed information about what they had in mind when they were demanding stronger monitoring procedures. The WDC acted as an interested broker and its mediation mitigated the lack of trust and direct connections between NGOs, on the one hand, and Israel, on the other. The new information and sustained dialogue induced Israel to develop a more complete understanding of the problem of monitoring, how it could be addressed, and what kind of institutional structure the NGOs were advocating. This more complete understanding of the problem and available solutions in turn helped convince recalcitrant Israel to agree to the creation of a stronger monitoring structure. The experience of these mini-lateral dialogues considerably contributed to convincing Israel that the discussion of monitoring does not do as much harm as they initially thought. In other words, exchanges of information led to change in beliefs about the value of monitoring as an institutional design element by several states including Israel and the emergence of common views on what mechanisms are needed to provide the KP with "teeth" and credibility in the face of risks of defection of individual states and industry.

Once Israel gave in to the idea of a peer review-based monitoring mechanism, this generated momentum that trickled through the entire KP network and allowed NGOs to win over other reluctant states such as China, Russia, India, and Australia. Once the resistance of Israel was overcome, agreement to stronger monitoring cascaded through the entire KP network. By the time of the Sun City annual plenary meeting in October 2003, a prominent NGO activist recalls, "it was almost impossible to object the establishment of a peer review monitoring mechanism and finally everybody agreed during that meeting."³⁹

Importantly, NGOs used the support of a key broker, the WDC, in combination with their ability to transfer information to the Israeli representatives through very short chan-

³⁹Telephone interview NGO representative, July 22, 2010.

nels in order to convince Israel that a peer review monitoring system would not harm Israel's interests (Bieri, 2010, pp. 125-6). While brokering an agreement between these two opposed groups the WDC used its influential position to shape the specificities of the new monitoring provisions and made sure that it does not incorporate items that were not in accordance with industry interests, such as an independent third party monitoring system as preferred by NGOs.

What role did economic and institutional power play in this negotiation episode? To start with economic power: also in the years 2002 and 2003 the distribution of economic power among states, industry, and NGOs involved in the Kimberley Process remained uneven and highly centralized. Similar to the years 1999 and 2000 the world diamond production was dominated by a small number of big players. With an annual production of about \$2,200 million Botswana remained the world leading producer in 2002 followed by Russia, Angola, and South Africa which produced rough diamonds worth \$1,500, \$1,000, and \$800 million respectively (see table 4.4 on page 115). Together these four countries accounted for more than two thirds of the total world production in 2002. By contrast, Canada and Australia, the two major Western producers, had diamond production of \$600 and \$400 million respectively in 2002. This reflects a combined share of about twelve percent of 2002's total world production.

Table 4.4: World Diamond Production, 2002-2003

	2002		2003	
	Value (mio. \$)	% World Production	Value (mio. \$)	% World Production
Botswana	2,200	27.85	2,500	25.51
Russia	1,500	18.99	1,600	16.33
South Africa	800	10.13	1,000	10.20
Angola	1,000	12.66	1,100	11.22
Australia	400	5.06	400	4.08
Canada	600	7.59	1,200	12.24
Namibia	400	5.06	500	5.10
Others	1,000	12.66	1,500	15.31
World	7,900	100	9,800	100

Source: (Rio Tinto Diamonds, 2003, p. 6; Rio Tinto Diamonds, 2004, p. 16).

When it comes to diamond trading countries the picture looks very much the same. Also here we see the global trade in non-manufactured diamonds being dominated by a handful of major players. As table 4.5 on page 116 shows, in 2002 Belgium was by far the single-most important exporter of rough diamonds in the world. Its exports of \$14,125 million alone accounted for more than 25 percent of the world's total exports in 2002. Israel, India, and the United Kingdom occupy the ranks two through four with

annual exports of \$10,829, \$7,829, and \$7,104 million respectively. Together the four top exporters account for about 71 percent of world exports in 2002. With respect to imports the situation looks the same. With annual imports of \$7,200 million Belgium was the world's top importer of rough diamonds followed by India and Israel which imported non-manufactured stones worth \$5,700 and \$4,400 million, respectively (Rio Tinto Diamonds, 2003, p. 10-12). Thus, Belgium clearly remains by far the most significant diamond trading center in the world. Reviewing the development of the diamond business in 2002 an industry report estimated in 2003 that "eight out of ten of all rough diamonds are handled in Antwerp and one out of two of all polished diamonds pass through Antwerp at some stage" (Rio Tinto Diamonds, 2003, p. 12).

Table 4.5: World Diamond Exports, 2002-2003

	2002		2003	
	Value (mio. \$)	% World Export	Value (mio. \$)	% World Export
Belgium	14,125	25.34	12,230	20.89
Israel	10,829	19.42	11,862	20.27
India	7,829	14.04	8,791	15.02
United Kingdom	7,104	12.74	8,055	13.76
South Africa	2,178	3.91	2,113	3.61
UAE	1,039	1.86	1,706	2.91
China	734	1.32	881	1.51
Canada	633	1.14	1,274	2.18
Angola	495	0.89	277	0.47
Others	10,790	19.35	11,342	19.38
World	55,756	100	58,531	100

Source: <https://web.duke.edu/soc142/team7/trade%20patterns.htm>,
accessed: July 24, 2013.

Finally, also in terms of manufacturing and retail the global diamond industry remained centralized in 2002 and 2003. In 2002, rough diamonds were cut and polished in a small number of centers world-wide including Mumbai, Tel Aviv, Antwerp, and New York. Among these manufacturing centers India and Israel clearly dominated the industry with an overall cutting production of \$7,100 million and \$2,800 million, respectively (Rio Tinto Diamonds, 2003, p. 8). Together they account for 72 percent of the world's total diamond cutting and polishing production. Other relevant cutting and polishing hubs include China (\$800 million), Thailand (\$600 million), and Russia (\$600 million) (Rio Tinto Diamonds, 2003, p. 8). Not surprisingly this leading role in the diamond cutting and polishing industry also provided the basis for India being the world's most important exporter of polished diamonds in 2002.

As in 1999-2000, the United States remained the single-most important consumer of rough diamonds and accounted for about 48 percent of the world's diamond jewelry sales

in 2002. It was only followed by Japan, the European Union, and the Asia Pacific area with consumer market shares of 18, 13, and 5 percent, respectively (Rio Tinto Diamonds, 2003, p. 13). China and India were minor but growing consumer countries of polished diamonds in 2002. Both countries' consumption was estimated to be about \$1,000 million in 2002 (Rio Tinto Diamonds, 2003, p. 15).

The unbalanced distribution of economic capabilities and importance among states involved in the diamond business is mirrored at the industry level. Like global diamond production, trade, and manufacturing also the diamond industry is highly centralized and dominated by a small number of big companies. De Beers continued to be the most important individual industry player with annual revenues of \$570 billion in 2002.⁴⁰ Other important companies included the Australian firms BHP Billiton and Rio Tinto, and the Russian Alrosa which in 2002 had total revenues of \$17, \$8.7, and \$1.7 billion, respectively (BHP Billiton Limited, 2002, p. 6; Rio Tinto, 2010, p. 259; Alrosa Company Limited, 2002, p. 8).

Finally, compared to the major diamond producing and trading countries and the major industry players the economic capabilities of NGOs such as Global Witness and Partnership Africa Canada—not to mention smaller African organizations—remained neglectable during the 2003 negotiations. If anything the power of the NGO camp in terms of economic capacities deteriorated rather than improved compared to the 2000-2002 episode because major NGOs such as Human Rights Watch and Amnesty International who were part of the NGO coalition during the initial negotiations reduced their engagement significantly after the official adoption of the KPCS in late-2002. As a consequence, the NGO coalition of the 2003 negotiations lacked much of the organizational capacities and public visibility which it had during the 2000-2002 episode.

Did this uneven distribution of economic capabilities and relative importance in the global diamond industry have a relevant impact on the negotiations over the reform of the Kimberley Process's monitoring system in 2003? Like in the previous negotiation episode we again lack evidence that the actors that secured a favorable bargaining outcome were able to do so due to their financial capabilities. Although in some instances actors that occupied key network positions, such as industry represented by the World Diamond Council or Israel, also possess considerable financial resources, there is no indication that they actually used this power to exert influence. Compensation through side payments was no central ingredient of actors' bargaining strategies. Rather than using its financial resources to compensate Israel, Russia, China and other reluctant states for their agreement to a stronger monitoring system the WDC and other industry players, such as De Beers, used its position as a network hub and broker to persuade them and affect their understanding of strengthened monitoring which in turn was critical in preparing

⁴⁰Press Release, De Beers annual results for 2002, February 06, 2003. See <http://www.angloamerican.com/media/releases/2003pr/2003-02-06>, accessed: July 24, 2013.

the ground for agreement.⁴¹ In addition, actors with high economic power that did not occupy central network positions, such as the EU, United States, or Canada, were unable to shape negotiation outcomes.

Finally, as my argument suggests, given the low formality of the context in which bargaining occurred, institutional power had not much of an impact on negotiation dynamics and outcomes. The governance architecture of the KP was still evolving in 2003. Although in early-2003 several working groups (e.g. Working Group on Rules and Procedures, Monitoring and Control, Statistics, and Diamond Experts) were established and complemented the KP Chair and Plenary Meeting as a rudimentary institutional backbone of the governance scheme, at the beginning these working bodies were preoccupied with adopting terms of references and settling other matters of internal organization.⁴² As a consequence, important substantive negotiations did not figure prominently on the agenda of the working groups but were rather conducted in informal meetings and the KP Plenary Meeting. Furthermore, voting in the KP was and still is based on consensus, or better, unanimity. As a consequence, each individual participant is a potential veto player and well placed to block any move it opposes. Because formal access, voice, and vote are relatively evenly distributed among KP participants, no actor is in an advantageous position due to institutional power.

Despite their modest direct impact, these elements of a nascent KP governance architecture had an important indirect influence on bargaining. Through their participation in formal institutional forums, such as working groups and the first review missions, actors established new relationships with one another. These new connections in turn contributed to the build-up of trust between actors that have been traditionally skeptical or even outright hostile toward one another (e.g. NGOs and industry, NGOs and some non-Western states). The new connections also provided more general channels for informal communication which could in turn be used to acquire information on other issues including views on preferable options for re-designing the KP monitoring system. Thus, more than being a specific direct bargaining advantage access to formal negotiation forums contributed to the creation of new informal relationships among states, industry, and NGOs. These new informal relationships in turn facilitated the generation of trust among negotiators and provided opportunities for receiving and disseminating strategically valuable information during negotiations. As the 2003 negotiations show, it was ultimately these informational advantages conveyed by actors' positions in informal communication networks that conferred leverage over the outcomes of bargaining over the reform of the Kimberley Process's monitoring system.

In conclusion, while the situational characteristics of the 2003 negotiations closely ap-

⁴¹Telephone interview industry representative, July 06, 2011, and telephone interview NGO representative, July 22, 2010.

⁴²Final Communique, Kimberley Process Plenary Meeting, Johannesburg, South Africa, April 28-30, 2003.

proximated the conditions under which the 2000-2002 negotiations occurred, changes in the distribution of relative network power among states, industry, and NGOs in combination with changes in industry preferences led to important institutional reforms. NGOs played a crucial role in establishing the peer review monitoring system. The dominance of the industry within the KP network, which was decisive for the outcomes of the negotiations over the KPCS, was no longer as exclusive as it was in the previous period. To some extent NGOs were successful in balancing the network power of industry. This improved network position provided NGOs the leverage to push for monitoring provisions that go far beyond what many reluctant states were initially willing to accept. Yet, to achieve this goal they relied on allies from industry and like-minded states and did not accomplish their most favored outcome, a mandatory independent monitoring mechanism. Industry was again able to prevent the latter using the leverage derived from their position as a critical broker in the Kimberley Process network.

4.3 Negotiating a New Governance Architecture

After the adoption of the peer review mechanism in 2003, the Kimberley Process went through a prolonged period of institutional stagnation. Despite NGOs' sustained lobbying for more vigorous monitoring and enforcement capacities there was little appetite for far-reaching institutional reforms among the majority of Kimberley Process participants especially among governments. The review of the governance scheme in 2005-2006 ended without an agreement on whether and how to reform monitoring and enforcement structures (Partnership Africa Canada, 2006). In the years that followed, states, industry, and NGOs were more concerned with addressing compliance crises, such as those in the Republic of Congo, Ghana, or Venezuela, using the existing ad-hoc, negotiation-based enforcement procedures rather than negotiating a more formalized and stronger sanctioning apparatus. Overall, while in this period there were several developments with respect to the informal governing procedures of the Kimberley Process, changes in its formalized institutional structure remained rare and, if they occurred at all, took the form of minor amendments (e. g. creation of new working groups and formalization of operational procedures for the dissemination of information).

It was only in 2010 that the Kimberley Process led by the governments of Israel and the United States—the KP Chair and Vice-Chair at that time—again entered negotiations over a reform of its governance architecture. Partly sparked by the ongoing problems with ensuring compliance with Kimberley Process standards in the Marange diamond fields of Zimbabwe and the frustration of several states, companies, and NGOs with the KP's inability to deal with these problems the reform efforts covered a broad range of institutional design elements. Among the most contentious items at the negotiation table were the broadening of the Kimberley Process's substantive scope and whether this should

be extended toward human rights, the creation of an administrative support structure or secretariat, as well as strengthening and further institutionalizing formal monitoring and enforcement mechanisms. When the negotiations came to a preliminary end at the Annual Plenary Meeting in November 2012 in Washington, DC, the results were mixed at best. While states, the diamond industry, and NGOs managed to agree on some first steps toward the creation of a Kimberley Process secretariat and made some minor changes in the monitoring system, no deal could be struck with respect to opening up the scope of the scheme towards human rights and strengthening the institution's enforcement capacities.

4.3.1 Institutional Choices

At the beginning of the reform negotiations in 2010 a number of options regarding how to change the monitoring and enforcement procedures of the Kimberley Process were at the table. As in the 2000-2002 and 2003 negotiations, moving from a voluntary peer review system for verifying compliance with KPCS standards to a mandatory, independent third party auditing system run either by an organization outside the KP or a future KP secretariat was again a possibility; keeping the peer review mechanism but making regular reviews mandatory was another; incorporating an independent external expert as constant part of all review visits and missions while keeping the basic voluntary peer review character of the system would have also been an option; leaving the building blocks of the monitoring system unchanged but imposing more formalized rules and procedures for the process and particularly the follow-up to review reports was also at the table; and of course simply maintaining the status quo was also an option. Also reforming the first pillar of the KP's review and monitoring apparatus, the annual reporting of states to the KP Chair and Plenary Meeting, was a possibility. Here, the inclusion of industry and NGOs views and opinions into the preparation of states' annual compliance reports was the most widely discussed reform option.

When it comes to enforcement, the range of possibilities at the table was more limited. Here, the two basic alternatives were further formalizing and institutionalizing the thus far largely informal enforcement procedures, for example, by establishing institutional structures that allow law enforcement experts to participate more directly in the enforcement of KPCS minimum requirements and keeping the status quo of ad-hoc, negotiation-based enforcement.

When the negotiations came to a tentative end at the Annual Plenary Meeting in November 2012 in Washington, DC, states, industry, and NGOs agreed on a few amendments to the administrative decision on the KP's peer review system (adopted at the Sun City Plenary Meeting in 2003) which further institutionalize the system and open it up for broader expert participation.⁴³ Specifically, the new administrative decision intro-

⁴³Final Communique, Kimberley Process Annual Plenary Meeting, Washington, DC, November 30,

duced more regular review visits, broadened the possibilities for expert participation, and imposed additional requirements on how to follow-up on the findings of review visits and missions, all issues that have previously governed by informal practices and were entirely left to individual participants' good will. The procedures for states' annual compliance reporting remained, however, unchanged.

The new rules, for example, encourage states to "invite and receive a subsequent review visit at the latest three years"⁴⁴ after the first monitoring of their national export and import control systems to follow-up on the findings of the first review and assess the progress made. Furthermore, participants are requested to report in detail to the working group on monitoring on how they addressed problematic issues identified by a review visit. As stated in annex II of the administrative decision:

"The Participant under review should report in writing to the Working Group on Monitoring on steps undertaken to implement the recommendations made in the report of the review visit, within six months after the date when the report had been circulated by the Chair to the other Participants. The Participant under review is encouraged to provide detailed information on each issue identified by the report."⁴⁵

Finally, the amendments to the review mechanism provide first steps toward opening up the peer review system for broader expert participation that goes beyond the individuals directly involved in the KP. In general, the administrative decision demands that

"participation in a review mission or review visit team should be open to any Participant, in particular to members of the Working Group on Monitoring, the Working Group on Statistics and the Working Group of Diamond Experts. Any candidate that wishes to be included in a review mission team should be able to demonstrate to the team leader technical knowledge of the KPCS and in particular of the KPCS minimum requirements."⁴⁶

Importantly, while this formulation opens up room for participation of experts from participants and observers from outside the narrow circle of those directly involved in the daily operations of the Kimberley Process, it does not allow for the involvement of experts from outside the governance scheme, such as independent auditors or international

2012, p. 3. Kimberley Process Administrative Decision "KPCS Peer Review System", Washington, DC, November 2012.

⁴⁴Kimberley Process Administrative Decision "KPCS Peer Review System", Washington, DC, November 2012, p. 2.

⁴⁵Kimberley Process Administrative Decision "KPCS Peer Review System", Washington, DC, November 2012, p. 14.

⁴⁶Kimberley Process Administrative Decision "KPCS Peer Review System", Washington, DC, November 2012, p. 11.

organizations. On this issue, which was of particular importance for NGOs and several Western states (see subsequent section), no bargain could be struck so that at the end of the negotiations the different camps could only agree “to continue reviewing the AD on Peer Review, including the possibility for outside experts to be part of review visit teams.”⁴⁷

Progress with respect to reforming the Kimberley Process’s enforcement capacities was even more modest. By the time the negotiations ended, basically no deal was struck on enforcement. Here, the only formulation negotiators could agree to was to “continue discussions on this issue”.⁴⁸

4.3.2 Initial Preferences

As in the first two negotiation episodes, states, diamond industry, and NGOs had sharply diverging preferences over how to reform the Kimberley Process’s formal monitoring and enforcement mechanisms. There were again three distinct camps that were actively engaged in institutional bargaining and a fourth group consisting of all those states and organizations that adopted a more passive role.

Again, NGOs’ maximal position and most preferred outcome with respect to monitoring and enforcement was to develop the voluntary peer review system into a mandatory, independent third party auditing mechanism accompanied by rigorous follow-up procedures and credible sanctions for addressing sustained non-compliance.⁴⁹ They emphasized the limitations of the KP peer review monitoring mechanism and urged that “the KPCS would greatly benefit from additional independent oversight.”⁵⁰ With respect to enforcement NGOs argued that “any regulatory system needs a system of standardized and graduated penalties as well as a technical support mechanism to remedy technical problems of compliance.”⁵¹ In particular, they demanded reforms that provide for a more systematic and formalized sanctioning apparatus which is not subject to case-by-case ad-hoc negotiations driven by political and economic interests. As a prominent NGO activist summarized at the outset of the reform negotiations:

“The need for independent, third party monitoring can no longer be ignored. The KP Chair should create a panel of experienced experts to design and propose a range of models for independent, third party monitoring

⁴⁷Final Communique, Kimberley Process Annual Plenary Meeting, Washington, DC, November 30, 2012, p. 3.

⁴⁸Draft Final Communique, Kimberley Process Annual Plenary Meeting, Washington, DC, November 30, 2012, p. 3.

⁴⁹Interview NGO representative, Washington, DC, June 5, 2012. Kimberley Process Civil Society Coalition, Communique, Brussels Meeting, November 17-19, 2011.

⁵⁰Kimberley Process Civil Society Coalition, Communique, Brussels Meeting, November 17-19, 2011, p. 2.

⁵¹Kimberley Process Civil Society Coalition, Communique, Brussels Meeting, November 17-19, 2011, p. 3.

complemented by rigorous follow-up, credible sanctions in cases of continued non-compliance, and a decision-making process on non-compliance that is not hostage to political interference.” (Smillie, 2010*b*, p. 11)

In addition, recognizing that there was little appetite among many of the most important Kimberley Process members for moving toward an independent third party verification system NGOs also had two second-best options which they pursued in the negotiations. One such second-best preference was to maintain the basic structure of the peer review system but making the reception of regular review visits mandatory for all participating states. “Countries should be obliged to be monitored and not be able to opt out.”⁵² Another second-best option was to introduce an independent technical expert as a constant part of all review visits and missions who would then also lead the review team and be in charge of writing the review report and recommendations for improvements of national control systems. This, NGOs argued, would help to make the process more efficient and professional and less subject to political and economic interests which they considered one of the major weaknesses of the current system.⁵³ Particularly on the two latter points the NGO preferences were shared by a number of Western states including, most prominently, the United States and Canada, who both bargained hard for the reforming the Kimberley Process in general and for strengthening its monitoring and enforcement system more specifically.⁵⁴

NGOs confronted a large coalition of states which vigorously opposed any changes of monitoring and enforcement capacities that developed existing mechanisms toward increased institutionalization and “bite”. Basically what these actors preferred was maintaining the status quo without any amendments to existing procedures. Among many others this broad alliance consisted of India, the United Arab Emirates, Russia, China, South Africa, and Zimbabwe. As reported by NGOs, the United Arab Emirates, for example, “was strongly against any reforms of the monitoring and enforcement structures that could increase the efficiency of the KP.”⁵⁵ Similarly, South Africa and Russia fiercely rejected the attempts of the United States and Canada to open up the monitoring system for the participation of external experts.⁵⁶

A third group with a more complicated preference profile consisted of the diamond industry, the European Union, and states, such as Australia. To start with, in contrast to the 2000-2002 and 2003 negotiations industry was divided on the issues of monitoring and enforcement (Partnership Africa Canada, 2012, p. 2). While retailers (e.g. Jewel-

⁵²Interview NGO representative, Washington, DC, June 5, 2012.

⁵³Interview NGO representative, Washington, DC, June 5, 2012.

⁵⁴Interview government official, Washington, DC, June 5, 2012. Ambassador Milovanovic Opening Remarks to Kimberley Process Plenary, November 27, 2012, pp. 7-9.

⁵⁵Interview NGO representative, Washington, DC, June 5, 2012.

⁵⁶Author’s participant observations, Kimberley Process Annual Plenary Meeting, Washington, DC, November, 2012.

ers of America) as well as big visible—particularly Western—mining companies, such as DeBeers, were in favor of strengthening monitoring and enforcement in order to enhance the Kimberley Process’s credibility and public reputation, companies located at the middle of the diamond production chain (e.g. diamond traders and manufacturers) adopted a more conservative position and were skeptical about introducing far-reaching changes that increased the level of scrutiny. With respect to enforcement, for example, the World Diamond Council supported the formation of an ad hoc committee on enforcement in order to enhance the information exchange and cooperation among national enforcement authorities of KP members.⁵⁷ As a consequence of these divisions, in contrast to the 2000-2002 and 2003 negotiations industry was often not able to articulate clear positions and play a strong role during the 2010-2012 negotiations. As I show below, this division of interests within the diamond industry had an important impact on the dynamics and outcomes of institutional bargaining.

Finally, actors, such as the European Union and Australia, were also ambivalent in terms of their preferences over monitoring and enforcement reform. Both, the European Union and Australia, clearly preferred reforms over the institutional status quo.⁵⁸ But not at all costs. For them, strengthening the governance architecture of the Kimberley Process was essential in order to prevent the scheme from becoming irrelevant in the coming years. However, paraphrasing one interviewee, if changing the Kimberley Process in certain ways means that certain countries walked out then they would not support such change.⁵⁹ In short, at the outset of the reform negotiations in 2010 the configuration of institutional preferences among negotiations can be described as “a political fight between the West and the African countries”⁶⁰ with a handful of actors with more ambivalent positions and a number of largely passive bystanders.

These sharp divergences over whether and how to reform the formal monitoring and enforcement mechanisms of the KP have been settled in favor of the coalition of states and organizations that were reluctant to change the existing structures, leaving NGOs and the Western states that supported them once more aggrieved. The amendments to the peer review system adopted at the 2012 Annual Plenary Meeting strongly approximate the institutional preferences of the reform opponents and are largely at odds with the initial preferences of NGOs and their allies. Recalcitrant states were successful in blocking a stronger institutionalization of peer reviews and prevented the monitoring system to be opened up for the participation of experts from outside the Kimberley Process. Independent, third-party auditing often not even made it on the agenda. The attempts particularly of the United States, Canada, and the NGOs to increase the formalization

⁵⁷Eli Izhakoff, President of the World Diamond Council, Address to the KP Plenary Meeting, Washington, DC, November, 2012, p. 4.

⁵⁸Interviews government officials, Washington, DC, June 5, 2012.

⁵⁹Interview government official, Washington, DC, June 5, 2012.

⁶⁰Interview government official, Washington, DC, June 5, 2012.

of enforcement by establishing an institutional forum to facilitate communication and cooperation among national custom and law enforcement authorities were also effectively blocked by states, such as India, Botswana, and Zimbabwe. How can this outcome be explained?

4.3.3 Bargaining over Monitoring and Enforcement Reform

The political context in which the negotiations over the reform of the Kimberley Process governance architecture took place between 2010 and 2012 differs in important ways from the environment of the 2000-2002 and 2003 negotiations. Whereas the transparency of negotiations was still rather low, the formalization of the institutional context had increased to a moderate to high level with elements of formal and informal governance co-existing in parallel within the institution. Given that the biggest steps toward higher formalization occurred with respect to decision-making and access to critical negotiation forums this change in contextual features had important consequences for the dynamics of institutional bargaining among states, diamond industry, and NGOs. In particular, as I will show below, it enhanced the role formal institutional power played in the negotiation strategies of several key actors.

The institutional formalization of the Kimberley Process has increased in important respects since the termination of the 2003 negotiations. Over the years a number of working groups, sub-committees, and ad-hoc groups have been established.⁶¹ These working groups serve as the primary working bodies of the Kimberley Process where the vast majority of substantive negotiations take place, proposals get prepared, and contentious issues solved before a particular item enters the agenda of the Plenary Meeting for endorsement. Of particular importance for this dissertation is the establishment of working bodies that are explicitly dedicated to the discussion of questions of institutional reform. These working groups provide sites for institutional reform negotiations where the composition, tasks, and terms of reference of the working forum are spelled out explicitly and in a detailed fashion which provides a highly formalized context for institutional bargaining. During the first comprehensive review of the Kimberley Process in 2005-2006, for example, participants created an ad hoc group on the review of the Kimberley Process Certification Scheme in order to provide room for the reform negotiations.⁶² Likewise, in 2011 under the chairmanship of the government of the Democratic Republic of Congo the ad hoc committee on the KPCS review (CKR) was launched and tasked with reviewing

⁶¹Today, there exist seven permanent working groups in the Kimberley Process; namely, the working group on monitoring, the working group on statistics, the working group of diamond experts, the working group on alluvial and artisanal production, the participation committee, the committee on rules and procedures, and the selection committee. See <http://www.kimberleyprocess.com/web/kimberley-process/working-groups>, accessed: March 23, 2013.

⁶²Administrative Decision, Ad hoc Group on the Review of the KPCS, Moscow, November 16, 2005.

the KP's governance architecture and developing reform proposals.⁶³

Importantly, in addition to the working group system, decision-making has also become more structured in the KP. In the Kimberley Process, only states have the formal right to vote. While industry and NGOs typically participate in negotiations on an equal footing and have access to and an important role to play in decision-making, their official status as "observers" does not provide them with the right to vote when formal decisions are made (Smillie, 2005; Kantz, 2007b).⁶⁴ Among states what started as consensus decision-making at the outset of the scheme's development has rapidly evolved into an unanimity procedure. Each individual state has one vote and formal decisions are taken by consensus. Practically, within the Kimberley Process consensus means unanimity. As put by a prominent NGO activist who has been involved in the Kimberley Process for a long time: "consensus which in the real world means generalized agreement, in the Kimberley Process came to mean unanimity: if one government dissents from a position, that position cannot go forward" (Smillie, 2010 *a*, p. 197; Smillie, 2010 *b*, pp. 3-4). Accordingly, each state has a *de facto* veto and can block unfavorable decisions which makes the Kimberley Process a "one man-one veto arrangement" (Smillie, 2010 *a*, p. 197). Together with the now elaborate working group system these formalized rules and procedures that organize decision-making imposed more structure on institutional bargaining in the 2010-2012 episode compared to the 2000-2002 and 2003 negotiations.

In contrast to institutional formalization, transparency within the Kimberley Process was still low between 2010 and 2012 (Bone, 2012, p. 192). As reported by a NGO representative, "internal transparency and communication has always been uneven and problematic in the KP."⁶⁵ A government official concurs when he describes the Kimberley Process with respect to its internal transparency as "so obscure."⁶⁶ In fact, enhancing "communication, transparency and information flow within the KP and between the KP, outside partners, the media and the general public"⁶⁷ was a central goal of the US KP Chair in 2012.

The mechanisms to share information about working group negotiations with the members of other working groups or the wider group of KP participants are only rudimentarily developed. Minutes of meetings or reports are not always readily available, not even for well embedded actors.⁶⁸ As a government official reports:

"It is next to impossible to obtain information about internal operations of the KP other than through either participating in working groups or through

⁶³Administrative Decision, Periodic Review of the KPCS, Kinshasa, November 3, 2011.

⁶⁴Kimberley Process Certification Scheme, p. 10.

⁶⁵Interview NGO representative, Washington, DC, June 05, 2012. See also Kimberley Process Civil Society Coalition, Communique, Brussels Meeting, November 17-19, 2011, p. 3.

⁶⁶Interview government official, Washington, DC, June 08, 2012.

⁶⁷Ambassador Milovanovic Opening Remarks to Kimberley Process Process Plenary, November 27, 2012, p. 2.

⁶⁸Interview NGO representative, Washington, DC, July 03, 2012

informal communications with those who do participate in working groups.”⁶⁹

A recent administrative decision on confidentiality and information sharing within and outside the Kimberley Process even formally prohibits the dissemination of working group negotiation details with actors from outside the working body as long as discussions are ongoing:

“As a general principle, all KP-related information circulated among Participants and Observers in the execution of the work and mandates of the KP standing bodies (i.e. working groups and committees, OW) should, until finalization, be understood to be confidential and therefore not to be circulated to outside parties.”⁷⁰

As a consequence, an actor’s ability to obtain a particular piece of information during a negotiation episode in a timely fashion strongly depends on its informal relationships with others. The lack of institutional transparency and internal information sharing is so eminent that sometimes even resourceful actors that participate in almost all working groups and committees, such as Canada, have difficulties finding minutes of a particular meeting or a specific document they wish to consult.⁷¹ Furthermore, the communication among participants between the six-monthly general meetings is often not good so that keeping track of negotiation processes in between meetings can be difficult particularly for actors with little organizational capacity.⁷²

This lack of institutionalized information sharing mechanisms made it particularly difficult for actors that are unable to be continuously involved in all working groups to keep track of negotiations. Actors who are not well involved in the KP working group system only become aware of a particular proposal that affects their interests at a later stage of the negotiation process. This makes it difficult for them to introduce or prevent changes to a particular proposal because this would require opening up already settled negotiations and risk the agreement reached on this item. By contrast, states and organizations which actively cover the operations of many working groups and committees have considerable informational advantages. With respect to institutional reform negotiations this uneven access to bargaining-relevant information through formal channels is further amplified by the fact that the composition of the CKR which served as the primary site of reform discussions in 2010-2012 is very selective.⁷³ Basically CKR membership is limited to previous KP chairs plus the World Diamond Council and NGOs which left a large number

⁶⁹Interview government official, Washington, DC, July 09, 2012.

⁷⁰Draft Administrative Decision, Procedures for Respecting Confidentiality within the KP, Jerusalem, November 04, 2010, p. 1.

⁷¹Author’s participant observations, Kimberley Process Annual Plenary Meeting, Washington, DC, November, 2012.

⁷²Interview NGO representative, Washington, DC, June 05, 2012.

⁷³Administrative Decision, Periodic Review of the KPCS, Kinshasa, November 3, 2011, p. 1.

of Kimberley Process participants without formal access to information about the reform negotiations.⁷⁴

In such a political context characterized by moderate to high formalization of institutional rules and procedures and low transparency of the negotiation process we should expect the negotiation strategies of governments, industry, and NGOs to feature both aspects of formal institutional and network power. While the low transparency of the negotiation process benefits actors which have network power at their disposal, the moderate to high level of institutional formalization places those with formal institutional power in an advantageous bargaining position. There is again some empirical evidence in support of these expectations, though the power politics of tripartite bargaining have been more nuanced and complicated in this negotiation episode. In a nutshell, due to the mixed characteristics of the negotiation environment in terms of institutional formality and transparency, deriving expectations of who are likely to be the winners and losers of institutional bargaining in this period is more ambiguous.

To start with, the patterns of informal communication relationships among Kimberley Process participants and the positions of individual actors within these networks have changed dramatically compared to the negotiation periods examined above. Although NGOs managed to improve their position in the informal communication and information exchange networks after the formal launch of the Kimberley Process in 2002 and partially overcame their peripheral status, their relationships particularly with many African governments deteriorated again toward the end of the decade. In the wake of the negotiations over the KPCS compliance of the activities of the Mugabe regime in the Marange diamond fields of Zimbabwe the confrontation between NGOs and their supporters, on the one hand, and African governments, on the other, became more severe and at times even hostile. Mutual mistrust increased and previously established communication channels and informal working relationships deteriorated or even disappeared in that period which had an important impact on informal communication and information exchange relationships.

Between 2009 and 2011, the KP was dominated by the discussion about the KPCS compliance of Zimbabwe. In June 2009, the scheme started to discuss the situation in the Marange diamond fields of Zimbabwe, one of the country's large alluvial mining areas. The debate was accompanied by NGO activists' charges that Marange diamonds are tainted by human rights violations of the Zimbabwean military including killings and forced labor (Partnership Africa Canada, 2010*a*). The KP decided to send a first review mission to the country in June-July 2009 which found "credible indications of significant non-compliance with the minimum requirements of the KPCS"⁷⁵. On the basis of these findings exports

⁷⁴During the 2010-2012 negotiations the members of the ad hoc committee on KPCS reform included Botswana (chair), Canada (vice-chair), Democratic Republic of the Congo, European Union, India, Israel, Namibia, Russia, South Africa, United States, the World Diamond Council, and NGOs.

⁷⁵Final Communiqué, Kimberley Process Plenary Meeting, Swakopmund, Namibia, November 5, 2009,

of rough diamonds from the Marange area were stopped and a Joint Work Plan for the implementation of the recommendations of the review mission developed. In addition to measures for enhanced regional cooperation and the provision of technical assistance the work plan also established a KP Monitor with the mandate to examine and certify all diamond shipments from Marange prior to export and to ensure that both production and export of those stones is compliant with KPCS minimum standards.⁷⁶

When the KP re-convened at the inter-sessional meeting in Tel Aviv in June 2010 and negotiated on the progress made toward the implementation of the Joint Work Plan, participants could—for the very first time in the history of the scheme—not reach a consensus position on the issue.⁷⁷ They sharply disagreed in their assessments of the human rights situation in Marange and how far it is related to the minimum requirements of the KPCS which originally only focused on conflict diamonds and not the activities of legitimate governments. Led by the United States, an alliance of mainly Western countries, civil society, and parts of the industry—primarily representatives of retailing and large Western mining companies—worried about the human rights situation in the Marange diamond fields and argued that it should be a concern of the KP (Partnership Africa Canada, 2009*b,a*). They referred to the findings of the 2009 review mission and the 2010 follow-up mission and insisted on a halt of exports from Marange until Zimbabwe has been found to be fully compliant. By contrast, a coalition of African and manufacturing states and some industry representatives referred to the report of the KP Monitor, who certified some shipments from Marange as KPCS compliant, and accordingly permitted their export. Arguing that the remaining human rights concerns are not part of the KPCS framework and noting that the “Kimberley Process is not a human rights organization” (Partnership Africa Canada, 2009*b*, p. 2) they urged that Zimbabwe should be no longer prevented from making use of its right to export its resources.

In order to overcome this stalemate, the Israeli KP chair, the European Union, and the president of the World Diamond Council jointly convened a “mini-summit” of those participants with the highest stakes in the negotiations in the context of the WDC annual meeting in July 2010. At this meeting, a provisional agreement that allowed Zimbabwe to carry out two supervised exports of rough diamonds from the Marange fields could be achieved.⁷⁸ Yet, despite the mediation efforts of Israel, the EU, and the WDC the sharp divergences persisted during the coming months so that the subsequent annual plenary meeting in November 2010 in Jerusalem also brought no final consensus.⁷⁹ Participants continued to negotiate after the plenary meeting. The working group on monitoring held

p. 3.

⁷⁶ Kimberley Process Administrative Decision, Swakopmund, Namibia, November 5, 2009.

⁷⁷ Concluding Statement, Kimberley Process Intersessional Meeting, Tel Aviv, Israel, June 21–23, 2003.

⁷⁸ World Diamond Council and Kimberley Process Press Release, St. Petersburg, Russia, July 15, 2010.

⁷⁹ Final Communique, Kimberley Process Annual Plenary Meeting, Jerusalem, Israel, November 4, 2010. Government of Israel, Ministry of Industry, Trade, and Labor, Press Release: KP Intersessional Meeting Ends with No Resolution, June 24, 2010.

two extraordinary meetings in Brussels (November 2010) and Dubai (April 2011) which did not bring about a workable solution.

During the June 2011 inter-sessional meeting in Kinshasa the situation then further escalated when the Democratic Republic of the Congo which took office as KP chair in January 2011 unilaterally decided to release exports from Marange in spite of a lack of consensus among participants (Partnership Africa Canada, 2011). In response, the members of the civil society coalition walked out of the meeting and unanimously expressed their lack of confidence in the way the KP has been dealing with Zimbabwe's non-compliance.⁸⁰ Even so, several other participants opposed the decision of the chair, both in terms of its substance and the way it came into being, so that again no consensus was reached.

Following the June meeting, the EU launched an initiative aimed at finding consensus among participants based on the original Joint Work Plan endorsed in Swakopmund in 2009. In the months leading to the Kinshasa annual plenary meeting in November 2011 the EU mediated between the major opposing parties, i.e. the United States and Zimbabwe, and thereby incrementally prepared the ground for an agreement. As a result, in the absence of the NGOs⁸¹ at the Kinshasa annual plenary meeting, participants managed to agree on an administrative decision that allows Zimbabwe to resume the export of rough diamonds from the Marange fields and specifies a specific monitoring regime which is supposed to promote and observe Zimbabwe's compliance with KPCS minimum standards.⁸²

These politicized fights over whether and how to enforce KPCS regulatory standards in the Marange diamond fields of Zimbabwe affected negotiations over other issues, such as the establishment of a KP secretariat, reforming monitoring and enforcement, as well as the relationships among states, diamond industry and NGOs more generally.⁸³ As a consequence, the structure of the informal networks that have emerged among KP participants over the past years changed and communication and trust decreased (Bieri and Waddell, 2012, p. 16). This, in turn, had an important impact on distribution of informal network power among the protagonists in the 2010-2012 negotiations over monitoring and enforcement reform. During the period between 2009 and 2011 one can observe an increase in the overall fragmentation of the web of relationships among the KP participants which persisted throughout the 2010-2012 negotiations. Because of the growing tensions and "negative emotions"⁸⁴ in the context of the often very intense Zimbabwe negotiations the level of informal connectedness among states, diamond industry representatives, and NGOs declined considerably. The NGOs, for example, were more and more frustrated

⁸⁰Global Witness, Press Release, June 23, 2011.

⁸¹As a sign of their protest, NGOs had decided to boycott the Kinshasa annual plenary meeting and accordingly did not participate in the final negotiations on the Marange administrative decision; at least not directly.

⁸²Kimberley Process Administrative Decision, Marange Diamonds, Kinshasa, November 2011.

⁸³Interview NGO representative, Bonn, August 17, 2011.

⁸⁴Concluding Statement, Kimberley Process Intersessional Meeting, Tel Aviv, June 21-23, 2003.

about the resistance of many governments to engage in substantial discussions about the linkages between diamond trade and human rights issues in general and the human rights abuses in the Marange fields in particular. In order to put more pressure on these reluctant governments, some NGOs started to adopt a more aggressive negotiation strategy including more aggressive public statements and reports.⁸⁵ Furthermore, as human rights issues began to surface in the KP's discussions, larger NGOs such as Human Rights Watch which have been absent from the scheme since the advocacy campaigns of the late 1990s started to re-engage. Yet, since they were not used to the social practices and customs of the KP, they often caused irritation of governments and industry which in turn had negative consequences for the relationships between those governments and companies and the NGO coalition.

Moreover, also the behavior of some governments toward NGOs deteriorated between 2009 and 2011. To illustrate, at the November 2009 annual plenary meeting in Swakopmund the Zimbabwean delegation "openly mocked and shouted threats to a Zimbabwean civil society organization that had come to present evidence of government complicity in the violence in Marange" (Partnership Africa Canada, 2010 *c*, p. 3). Also the relationships between the United States, on the one hand, and Zimbabwe and its supporters, on the other, became increasingly problematic and politicized as the negotiations proceeded. Whereas the former positioned their arguments within a human rights framework, the latter referred to the narrower conflict diamonds frame set out in the KPCS core document. Over time the stances of these two protagonists toward each other became more and more aggressive and sometimes even hostile.⁸⁶ Also other participants such as the EU were personally attacked and discredited by high-level Zimbabwean officials. As a consequence, during the negotiations on how to properly address Zimbabwe's non-compliance the relationships among participants have been characterized by the existence of two groups with diverting interests that framed their positions in sharply conflicting ways.

As these growing tensions emerged, the number and strength of informal communication relationships between actors who belonged to the distinctive groups declined in comparison to the late negotiations on the KPCS in 2000-2002 and the 2003 negotiations which led to critical changes in the scheme's monitoring system. This weakening and severing of informal relationships and the growing fragmentation of the overall Kimberly Process network led to a relative decline of communication and trust among the groups, which in turn contributed at the outset of the 2010-2012 negotiations to the emergence of a much more fragmented network structure compared to, for example, the 2000-2002 and 2003 periods. What we observe is basically two densley connected groups consisting mainly of NGOs and Western states, on the one side, and African and several key trading

⁸⁵Interview government official, Jerusalem, November 03, 2010. Interview government official, Kinshasa, October 31, 2011.

⁸⁶Author's meeting notes, Kimberley Process Annual Plenary Meeting, November 2011, Jerusalem.

and manufacturing countries, such as the United Arab Emirates, China, and India, on the other side.

This fragmented structure of informal communication and trust relationships was further exacerbated by several coalition-building activities among African countries. During the negotiations on Zimbabwe, South Africa adopted an active role as leader of the Southern African producer states and gathered strong African support in a defensive alliance around Zimbabwe and against the United States, NGOs, and their supporters (Smillie, 2010a, p. 201). During the 2010-2012 reform negotiations South Africa continued to play a leading role among African governments and effectively organized a broad alliance in opposition to the reform efforts of the United States, Canada, NGOs, and others. Furthermore, during the reform negotiations the African Diamond Producers Association (ADPA) became more and more involved in the Kimberley Process and provided Southern African states with a platform to aggregate their positions and speak with a single voice in bargaining over changes of monitoring and enforcement structures.

This fragmented structure and the loss of several important informal relationships to key governments made it difficult for NGOs to disseminate their views and arguments among KP participants. They still had strong ties to important Western governments including first and foremost the United States and Canada but these players themselves had lost several of their strong communication and trust relationships with African states during the Zimbabwe crises so that the distance which NGO information could travel in the network remained limited. Conversely, the strategic information NGOs were able to obtain from other actors (e.g. information about their reasons to object more vigorous monitoring and enforcement) was also limited because their main sources of such information were the United States, Canada and states with similar preferences and knowledge about the evolving negotiation landscape so that much of the information their informal relationships provided them was redundant.

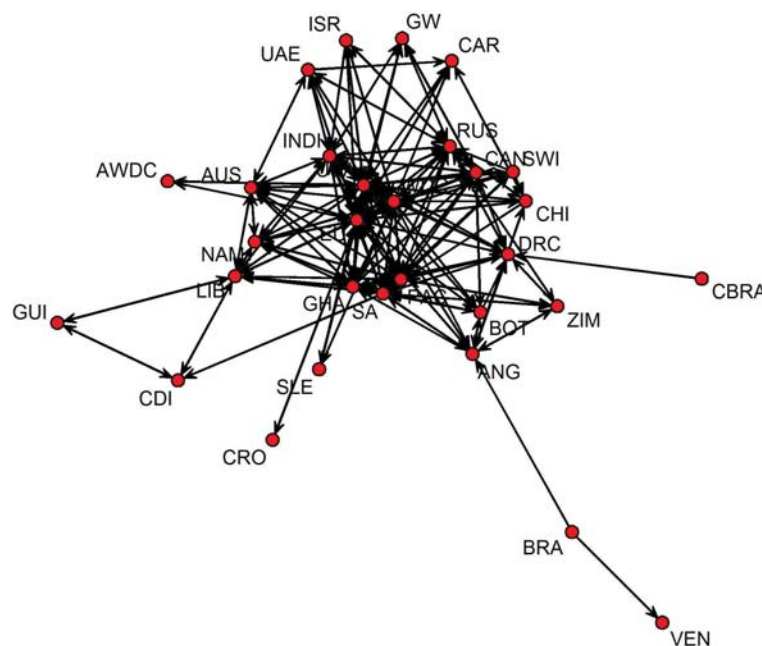
Finally, one of the most important strategic allies of the NGOs in the 2003 negotiations, the industry's World Diamond Council, was less effective as a broker between the opposed blocks in 2010-2012 than it was in the earlier years. Different constituencies of the World Diamond Council had diverging views over whether and how to reform KP monitoring and enforcement. Retailer associations, such as Jewelers of America and large multinational extractive companies including De Beers and Rio Tinto, were open to further strengthening verification and sanctioning capacities in order to increase the KP's credibility and public reputation. Diamond traders and manufacturers, by contrast, were reluctant to push for far-reaching institutional reforms.⁸⁷ The same divisions could be observed with respect to industry's position on whether or not to include human rights into the substantive scope of KP governance. These divisions made it difficult for the representatives of the WDC in the negotiations to take strong positions for or against reforms and often caused them

⁸⁷Interview industry representative, Washington, DC, June 05, 2012.

to articulate ambivalent positions that avoided to offend either of the two camps among its members. Partly as a result of these divisions, the WDC could not effectively exploit its still central position in informal communication networks as leverage in institutional bargaining and ceased to be the powerful NGO ally it used to be in the 2003 negotiations.

This qualitative analysis of the patterns of relationships among states, diamond industry, and human rights NGOs in the 2010-2012 negotiations over KP monitoring and enforcement reform is supported and further specified by examining the structural properties of the informal information exchange and communication network that existed among negotiators in this period (see figure 4.2 on page 133). As the qualitative observations suggest, we see a decrease in the overall information exchange and communication activities compared to the 2000-2002 and 2003 negotiations. Despite the fact that, according to my data, more actors were involved in informal communication and information exchange—network size increased from 119 to 154 nodes between the first and third negotiation episode—the density of information exchanges decreased from about 0.07 to 0.01. Thus, while in the first negotiation episode more than 7 percent of all possible ties were actually realized, in the informal communication network in 2010-2012 it was only about 1 percent.

Figure 4.2: Exchange of Policy-relevant Information and Advice, KP Reform Negotiations 2010-2012



Notes: Visualization based on a variant of Fruchterman and Reingold's force-directed placement algorithm as implemented in the network package for R (Butts, Handcock and Hunter, 2013). Isolates are not included in order to facilitate readability.

Furthermore, of the 154 states, companies, NGOs and other entities that were identified by various sources as—to varying extent—involved in the negotiations 124 actors

were completely isolated from informal communication and information exchanges that occurred during the negotiation episode; only 30 actors actively participated in these exchanges. Among the 124 isolated actors were many NGOs, such as the Liberian Green Advocates and the Zimbabwe-based Center for Research and Development and Zimbabwe Lawyers for Human Rights. Importantly, even resourceful organizations that had ties in the 2000-2002 network, such as Human Rights Watch or the Belgian International Peace Information Service, became disembedded during the 2010-2012 period in terms of informal communication. This reflects the severing of communication and trust relationships revealed by the qualitative examination of network connections reported above.

Also, the overall centralization of the network, i.e. the distribution of central positions among individual actors, increased. Particularly with respect to eigenvector centrality central positions were more concentrated in the 2010-2012 communication network compared to the 2000-2002 network (see table 4.6 on page 134 and table 4.1 on page 102). This means that informal information exchange and communication was more clustered around a few highly central actors in the third negotiation episode compared to the first one.

Table 4.6: Centrality and Centralization in the 2010-2012 KP Network

	Outdegree	Indegree	Eigenvector	Betweenness
AWDC	0.013	0.013	0.049	0.000
WDC	0.118	0.098	0.306	0.003
South Africa	0.092	0.111	0.286	0.004
Botswana	0.046	0.039	0.161	0.000
Zimbabwe	0.026	0.026	0.090	0.000
Israel	0.033	0.026	0.111	0.000
United States	0.144	0.137	0.317	0.009
Russia	0.085	0.085	0.245	0.002
UAE	0.046	0.039	0.133	0.000
India	0.092	0.098	0.256	0.002
Global Witness	0.033	0.033	0.105	0.000
Partnership	0.092	0.092	0.249	0.002
Africa Canada				
Centralization	0.134	0.141	0.413	0.008

Notes: Calculations performed using the network package for R (Butts, Handcock and Hunter, 2013).

Finally, the graph in figure 4.2 on page 133 also shows a higher level of clustering of informal information exchanges. By eyeballing the graph we can identify a highly connected core group and several peripheral areas that are attached to the core group but not linked to one another. Together, the decrease in density, the much higher proportion of isolates, and the increase in centralization and clustering reflect the qualitative observation that several of the previously existing informal communication relationships among states,

diamond industry, and NGOs disappeared during the Zimbabwe crisis and that actors flocked around a few central hubs in clusters with only limited exchange between groups.

If we move from the network to the actor level of analysis and examine the individual positions of the protagonists of the reform negotiations we see a highly uneven distribution of central network positions. As shown in table 4.6 on page 134, the United States and the industry's World Diamond Council occupy important positions as hubs in the information exchange network. Especially their outdegree and eigenvector centrality measures reflect their dominant positions. The United States ranks first with respect to all four centrality measures only followed by the WDC and South Africa. Other key state players in the negotiations, such as Russia, India, or the United Arab Emirates, rank low in terms of network centrality. NGOs only occupy marginal network positions. Global Witness and Partnership African Canada which are the two main leaders of the KP civil society coalition are particularly weak in terms of their indegree, eigenvector, and betweenness centralities which indicates that their information dissemination and global brokerage activities were limited during the 2010-2012 negotiations.

Table 4.7: Egonetwork Heterogeneity and Liaison Brokerage in the 2010-2012 KP Network

	Egonet Heterogeneity (Incoming Ties)	Egonet Heterogeneity (Outgoing Ties)	Liaison Brokerage
AWDC	0.000	0.000	0.000
WDC	0.600	0.687	1.518
South Africa	0.753	0.765	0.022
Botswana	0.764	0.612	0.394
Zimbabwe	0.781	0.469	0.000
India	0.811	0.829	0.446
UAE	0.347	0.561	0.000
Israel	0.469	0.400	0.000
United States	0.816	0.811	0.457
Global Witness	0.000	0.000	0.000
PAC	0.702	0.702	1.502

This profile of informal communication ties provided the United States and the World Diamond Council with the relational infrastructure needed for accessing and disseminating large amounts of strategically valuable information during the negotiation episode. Particularly their connections to other central actors as indicated by their high eigenvector centrality allowed them to tap and spread large amounts of negotiation-relevant information in short periods of time. Their opponents including, for example, Zimbabwe, the United Arab Emirates, and Israel, lacked this strategic advantage.

Analyzing actors' structural positions in combination with qualitative information about actor types further confirms the advantageous network positions of the United States which bargained hard for changing the institutional status quo of the peer review mon-

itoring system and weak enforcement. As shown in table 4.7 on page 135, the United States had both incoming and outgoing information exchange ties with a range of actors from different groups as indicated by the high index of qualitative variation scores of its first-step neighbors of 0.816 and 0.811, respectively. The same holds for Partnership Africa Canada with index of qualitative variation scores of 0.702 for both direct incoming and outgoing information transfers. By contrast, Global Witness which has used considerably more aggressive rhetoric and bargaining tactics particularly toward the end of the Zimbabwe crisis and eventually exited the Kimberley Process has entirely homogenous groups of first-order contacts. Moreover, the reform opponents, most notably Zimbabwe, South Africa, the United Arab Emirates, and India, had both outgoing and incoming information exchange ties with a range of different actors.

In addition, as suggested by their high liaison brokerage scores, Partnership Africa Canada and the industry's World Diamond Council were also by far the most active brokers between different actors from different groups. This means that Partnership Africa Canada and the WDC received policy-relevant information and advice from many different groups in the Kimberley Process (e.g. Western states, NGOs, industry, African states, and the representatives of intergovernmental organizations such as the World Customs Organization or Interpol) providing them with substantial network power based on informational and strategic advantages. Those actors which bargained for the maintenance of the institutional status quo (e.g. United Arab Emirates and Zimbabwe) lacked this strategic advantage. Interestingly, even reform opponents which have heterogenous groups of direct incoming and outgoing ties, such as India, are, compared to Partnership Africa Canada and the World Diamond Council, weak in terms of brokering between different groups in the Kimberley Process during the 2010-2012 negotiation episode. Finally, overall the level of inter-group brokerage activities in the 2010-2012 period is very low compared to the 2000-2002 negotiations (see table 4.2 on page 103). This further highlights the increased overall fragmentation of the informal communication and information exchange network in this period discussed above.

There are several pieces of qualitative evidence in my data that indicate that informal network power was a key element in the United States's and NGOs' bargaining strategy. When the United States together with Canada and the NGOs bargained for the creation of a sub-group on enforcement within the working group on monitoring as a first step toward an increased institutionalization and professionalization of KPCS enforcement it used its knowledge about the positions and major concerns of the reform opponents in order to articulate a proposal which they thought would provide room for agreement. During the hot phase of the negotiations they repeatedly referred to the fact that the new sub-group would only provide a more formalized setting for information exchange and coordination among national custom and law enforcement authorities and have no enforcement authority itself, that the new body would operate strictly within the overall

mandate of the KPCS, and that membership would be entirely voluntary.⁸⁸ They knew from various exchanges with India, Russia and their supporters that these points were major concerns for them. Hence, rather than employing a coercive bargaining strategy based on a “take-it-or-leave-it” approach they used more subtle negotiation tactics based on their advantageous strategic knowledge and crafted a bargaining strategy that included a proposal that anticipated their opponents major concerns in order to persuade them and make agreement more likely.⁸⁹ Despite all these efforts, they failed.

Another example comes from the negotiations over changing the monitoring system. Here, the United States together with Canada, the NGOs and others sought to open up the peer review system for the participation of external experts. However, rather than starting with a strong proposal that closely reflected its preferences the US used its knowledge about the preferences and concerns of the reform skeptics to come up with a bargaining strategy that sought to address many of these concerns from the beginning. For example, rather than making the participation of external personnel standard practice for KP review visits and missions, it suggested a procedure that allowed for a case-by-case assessment of required expertise and the extent to which it is or is not available among KP members. It also suggested making external participation contingent on the agreement of the state being reviewed, other members of the review team as well as the chair of the working group on monitoring. Finally, the US proposal also assured skeptics that externals will participate in reviews on their own bill or receive voluntary financial support from Kimberley Process participants. In short, the United States proposed amendments to the peer review system that allowed for a number of “checks and balances” in the process of external participation in review visits and missions which it thought would allow the skeptics to agree.⁹⁰

In both cases the United States would not have been able to anticipate the preferences and concerns of their opponents and build their negotiation strategy accordingly had they not received that information from their informal communication relationships. Yet, in both instances the efforts of the United States and its allies to establish the ground for agreement were effectively blocked by South Africa, Russia, the United Arab Emirates, India and other reform opponents who used their *de facto* veto power to prevent institutional changes and manipulated bargaining outcomes to their own ends.⁹¹

In sum, between 2010-2012 NGOs and their supporters lacked the network power that had proven to be a critical element of their successful bargaining strategy in the 2003

⁸⁸ Author’s participant observation, Kimberley Process Annual Plenary Meeting, Washington, DC, November, 2012.

⁸⁹ Ambassador Milovanovic, Opening Remarks to Kimberley Process Plenary, Washington, DC, November 27, 2012, p. 3.

⁹⁰ Author’s participant observations, Kimberley Process Annual Plenary Meeting, Washington, DC, November, 2012.

⁹¹ Author’s participant observations, Kimberley Process Annual Plenary Meeting, Washington, DC, November, 2012.

negotiations. Not only had their relationships with many of the strongest opponents of monitoring and enforcement reform deteriorated so that they had difficulties obtaining strategically valuable information from these players in order to craft a more effective negotiation strategy. Due to the exit of Global Witness in the course of the Zimbabwe crisis the reform camp also lacked one of the most vocal protagonists of previous negotiation episodes. Further, NGOs and their allies could also not draw as extensively as in previous negotiations on the brokerage activities of the World Dimaond Council which, as outlined above, struggled with a constituency divided over monitoring and enforcement and, hence, could often only articulate ambivalent negotiation positions and support their concerns only half-heartedly at best.⁹² African countries by contrast were deeply embedded in a cohesive group of like-minded actors who shared an interest in maintaining the institutional status quo and preventing any meaningful reforms of the Kimberley Process's monitoring and enforcement mechanisms. In short, the distribution of network power this time was more in favor of the actors who sought to prevent reforms than those who tried to change the Kimberley Process's institutional architecture. Also, because of the higher level of formalization of the institutional context in which the negotiations took place the reform opponents could use their formal veto positions in order to block institutional changes they disliked.

Table 4.8: World Diamond Production, 2009-2011

	2009		2010		2011	
	Value (mio. \$)	% World Production	Value (mio. \$)	% World Production	Value (mio. \$)	% World Production
Russia	2,341	28	2,382	21	2,675	19
Canada	1,475	18	2,305	20	2,551	18
Botswana	1,436	17	2,586	23	3,902	27
SAF	886	11	1,194	10	1,730	12
Angola	804	10	976	8.6	1,163	8.1
Namibia	409	5.0	744	6.5	873	6.1
Australia	313	3.8	252	2.2	221	1.5
DRC	226	2.7	174	1.5	180	1.2
SLE	78	0.9	106	0.9	124	0.9
ZIM	20	0.2	340	3.0	476	3.3
India	1.7	0.02	3.3	0.03	2.2	0.02
China	0.5	0.01	0.3	0.00	0.1	0.00
Others	272	3.3	330	2.9	510	3.5
World	8,262	100	11,393	100	14,407	100

Source: Kimberley Process Rough Diamond Statistics

(<https://kimberleyprocessstatistics.org/>, accessed: March 23, 2013).

⁹² Author's participant observations, Kimberley Process Annual Plenary Meeting, Washington, DC, November, 2012.

What about economic power? At the outset of the negotiations the global production of rough diamonds was still highly centralized. If anything the centralization of production has further increased compared to the situation at the beginning of the decade. As table 4.8 on page 138 shows, throughout the period between 2009 and 2011 only four states (Russia, Canada, Botswana, South Africa) together accounted for about 75 percent of the world diamond production. The major African producers, such as Botswana and South Africa, still figured prominently among the world's most important diamond producers with an annual production of \$1,436 and \$886 million respectively in 2009. In the years 2010 and 2011 their production increased even further to \$3,902 and \$1,730 million respectively. Importantly, this increase also led to a growth in their relative shares in the global diamond production with Botswana accounting for 27 percent and South Africa for 12 percent of world production. Also Russia maintained its position as a leading producer with an annual production ranging from \$2,341 to \$2,675 million between 2009 and 2011. Importantly, over the years Canada continuously expanded its market position and became a major diamond producer. Compared to the early years of the Kimberley Process Canada dramatically expanded its diamond production. While its annual production in 1999 was worth only \$400 million, it produced diamonds worth \$1,475 million in 2009. This growth further continued in 2010 and 2011 with an annual production of \$2,305 and \$2,551 million respectively. Accordingly, Canada's relative weight as a producer increased dramatically from 5.9 percent in 1999 to 18 percent in 2011.

Another important change compared to the early years of the Kimberley Process is the rise of Zimbabwe as a relevant player on the global diamond market. In the middle of the decade large deposits of high quality diamonds were discovered in Zimbabwe. Although it took a few years until the country was able to exploit its newly discovered resources, diamond production in Zimbabwe started to take off in 2010 and 2011. From an annual output of \$20 million in 2009 production jumped to \$340 and \$476 million in 2010 and 2011. As a consequence, Zimbabwe's share in the global diamond production increased from irrelevant 0.02 percent in 2009 to 3.3 and 2.2 percent in 2010 and 2011. This growth is expected to further continue in the future years.

Also with respect to states' shares in world imports and exports the global diamond market continued to be highly centralized in the 2010-2012 period with a handful of countries accounting for the majority of trade activities. On the import side only three countries, i. e. the European Union, India, and Israel, accounted for more than 75 percent of the world's diamond imports with trade inflows worth of \$9,200, \$6,955, and \$2,938 million respectively in 2009 (see table 4.9 on page 140). Throughout the negotiation episode the European Union and India were by far the most active importers of rough diamonds both in terms of absolute and, more importantly, relative figures. In 2009, for example, the European Union and India were responsible for 37 and 28 percent of all rough diamond imports. Israel on rank 3 accounted for only 12 percent.

Table 4.9: World Diamond Imports, 2009-2011

	2009		2010		2011	
	Value (mio. \$)	% World Import	Value (mio. \$)	% World Import	Value (mio. \$)	% World Import
EU	9,200	37	13,456	36	18,509	36
India	6,955	28	11,235	30	14,280	28
Israel	2,938	12	4,429	12	5,325	10
China	1,675	6.7	2,023	5.4	3,157	6.2
UAE	1,386	5.5	2,062	5.5	3,701	7.3
SAF	357	1.4	308	0.8	460	0.9
USA	341	1.4	583	1.6	647	1.3
Botswana	334	1.3	617	1.6	849	1.7
Russia	124	0.5	61	0.2	70	0.1
Canada	102	0.4	193	0.5	291	0.6
Australia	9.5	0.04	10.9	0.03	8.7	0.02
Others	1,489	5.9	2,400	6.4	3,479	6.8
World	25,027	100	37,572	100	50,898	6.8

Source: Kimberley Process Rough Diamond Statistics
(<https://kimberleyprocessstatistics.org/>, accessed: March 23, 2013).

Global exports were even more unevenly distributed. As shown in table 4.10 on page 141 the European Union was clearly the market leader with an annual export volume between \$9,562 and \$18,542 million in 2009-2011 which corresponds to a share of about 38 percent of the world's rough diamond exports. Compared to production and imports the rest of the export market was less centralized in 2009 and 2010. Eight countries accounted for market shares between 3.1 (China) and 9.3 (Israel) percent in 2009 and nine countries had export shares between 2.6 (India) and 9.9 (Israel) percent in 2010. In 2011, centralization slightly increased. Importantly, while Zimbabwe's importance as a producer of rough diamonds has increased significantly since 2009 this has not yet translated into a bigger role as exporter. Although we can observe an slight increase in its world export market share between 2009 and 2010, Zimbabwe's contribution to overall global exports remains below one percent.

Diamond manufacturing also continued to be highly centralized in 2009 and 2010, though the key players have shifted compared to the early years of the Kimberley Process. While in 2000 the United States was the biggest manufacturer of diamond jewelry, during the decade it has been overtaken by India, China, and Western Europe. In 2010, India was the biggest player on the manufacturing market with jewelry manufacturing worth \$28 billion followed only by China and Western Europe with \$19.4 and \$12.9 billion respectively. The United States even experienced a decrease of \$1.8 billion compared to 2000 (Bain & Company, 2011, p. 49). Despite this decrease, the United States remained the single most important consumer of diamond jewelry accounting for almost a third of

the world's \$18 billion diamond jewelry consumption (Bain & Company, 2011, p. 59).

Table 4.10: World Diamond Exports, 2009-2011

	2009		2010		2011	
	Value (mio. \$)	% World Export	Value (mio. \$)	% World Export	Value (mio. \$)	% World Export
EU	9,562	38	14,315	38	18,542	35
Israel	2,329	9.3	3,739	9.9	4,419	8.4
UAE	2,068	8.3	3,543	9.4	5,872	11
Botswana	2,013	8.1	2,880	7.7	5,474	10
Canada	1,544	6.2	2,407	6.4	2,679	5.1
Russia	1,229	4.9	2,781	7.4	3,811	7.2
SAF	1,019	4.1	709	1.9	1,370	2.6
Angola	791	3.2	824	2.2	1,150	2.2
China	763	3.1	972	2.6	1,441	2.7
India	712	2.8	968	2.6	1,800	3.4
ZIM	29	0.1	320	0.9	423	0.8
Others	1,557	6.2	2,411	6.4	3,880	7.3
World	24,998	100	37,590	100	52,825	100

Source: Kimberley Process Rough Diamond Statistics

(<https://kimberleyprocessstatistics.org/>, accessed: March 23, 2013).

The distribution of economic capabilities among the major players in the diamond industry in period between 2010 and 2012 also continued to be skewed. De Beers remained the uncontested market leader with annual revenues of \$654 billion in 2009 and \$1,428 billion in 2010 (De Beers, 2010, p. 22; De Beers, 2011, p. 25). It was followed by the Australian companies BHP Billiton and Rio Tinto which had annual revenues of \$50.2 and \$40.3 billion in 2009 and of \$52.8 and \$55.2 billion in 2010, respectively (BHP Billiton Limited, 2011, p. 2; Rio Tinto, 2011, p. 131). Although it experienced an increase in its annual revenues compared to the early years of the Kimberley Process, the Russian Alrosa remained a relatively minor player in the diamond industry in terms of its economic capacities compared to the British market leader. In 2009 and 2010 it had annual revenues of \$1.7 and \$2.7 billion respectively (Alrosa Company Limited, 2011, p. 58).

Finally, compared to the economic capacities of industry and states the financial capabilities of the NGOs involved in the Kimberley Process continued to be miniscule in the 2010-2012 period. The overall number of organizations that were involved in the work of the Kimberley Process on a regular basis had increased over the past years. While after the formal launch of the KP in 2003 Global Witness and Partnership Africa Canada have been the only organizations which remained involved in the schemes's operations on a regular basis, they could now share the operational work with other NGOs, such as the Bonn International Center for Conversion which since 2010 hosts the secretariat of the Fatal Transactions campaign, the Belgian International Peace Information Service, and

the Liberian NGO Green Advocates. Furthermore, NGOs also created the so-called civil society coalition as a platform to share information and join operational resources. As of today the coalition consists of a core membership of about 15 Western and African NGOs and—like the industry’s World Diamond Council—participates in the Kimberley Process as a corporate actor with one voice.⁹³

However, many of the coalition’s members are small organizations with their main basis in African countries and can, hence, make only small contributions to the effective representation of the interests of civil society in the Kimberley Process. Often they cannot even carry the costs of attending Kimberley Process meetings and, therefore, need financial support from Partnership Africa Canada and Global Witness.⁹⁴ In addition, with the exit of Global Witness in 2011 the NGO coalition lost one of its two most resourceful members which had a considerable impact on the availability of financial resources. In short, despite these attempts to strengthen the material and organizational capabilities of the NGOs involved in the KP, overall their economic power remained limited and neglectable compared to those of industry and states.

As shown in the previous paragraphs, the distribution of economic power among states, diamond industry, and NGOs continued to be highly uneven during the negotiations over the reform of the Kimberley Process’s governance architecture between 2010 and 2012. On the one hand, the key players in the global diamond trade and industry were clearly stronger in terms of economic power than human rights NGOs. On the other hand, a few states and firms clearly trumped the majority of states, firms, and business associations involved in the negotiations. However, there is no strong evidence in my data that indicates that these actors directly used their financial capabilities in order to generate leverage in institutional bargaining. Side payments and issue-linkage played no prominent role in actors’ bargaining tactics. Neither did companies offer NGOs financial or other compensation in exchange for their agreement to monitoring and enforcement structures that they would have otherwise rejected nor did economically powerful consumer and trading countries, such as the United States, the European Union, Canada, or Israel, try to organize the support of small African nations for a strengthened monitoring apparatus or more vigorous sanctioning capacities by providing them with financial or technical assistance or other compensation. Also, as highlighted by a high-level US diplomat at the opening session of the 2012 Kimberley Process Annual Plenary Meeting, the United States did explicitly not use a coercive “take-it-or-leave-it” strategy based on their economic power when they negotiated with others over how to amend formal monitoring and enforcement mechanisms.⁹⁵

⁹³Contact List Kimberley Process Civil Society Coalition Members.

⁹⁴Interview NGO representative, Jerusalem, November 2, 2010. Interview government official, Kinshasa, October 31, 2011.

⁹⁵Author’s meeting notes, Kimberley Process Annual Plenary Meeting, Washington, DC, November, 2012.

The negotiation behavior of De Beers is a case in point. Although De Beers as the leading company in the diamond industry was in a superior position in terms of economic power compared to the vast majority of state and non-state negotiators, it did not use these capabilities in order to exercise influence over the reform of the Kimberley Process's governance framework. In fact, in all the major negotiation meetings between 2010 and 2012 the representative of De Beers was one of the least active members of the industry delegation. Particularly in the sessions during which the toughest bargaining over institutional reforms took place De Beers remained silent and was sometimes not even in the room. The World Diamond Council did all the negotiating on behalf of the industry and De Beers as well as several other major industry players such as BHP Billiton and Rio Tinto took a backseat.⁹⁶ This is surprising because, as outlined above, during the 2010-2012 negotiations the institutional preferences of industry were much less aligned compared to the 2000-2002 and 2003 episodes so that De Beers had in principle good reasons to take the floor and articulate its individual position more pronounced than a joint statement by the World Diamond Council could do in this situation. Nothing of this happened.

Despite the absence of directly exercised economic power, there is some evidence that differences in financial capabilities played a relevant indirect role. Specifically, being strong in terms of economic power enabled actors to increase their coverage of negotiations and their participation in the Kimberley Process's operational work more generally. Economically powerful actors, for example, have the resources required to send large delegations to Kimberley Process meetings. Given that attending these meetings is typically costly and that participants have to pay for their travel and other expenses attending negotiations with large delegations incurs costs which only few KP participants can afford. As a result, while economically powerful actors, such as the United States, the European Union, Russia, Zimbabwe, and industry, typically attend Kimberley Process negotiations with delegations of six or more individuals, others including Switzerland, Australia, and the NGOs have typically only a few people on the ground.⁹⁷ Such differences in delegation size in turn affect how much of the negotiations actors are able to cover. The meetings of working groups—which are the sites where most of the critical bargaining occurs—typically run in parallel so that small delegations have to choose which meeting to personally follow and which not. In addition, especially during “hot” negotiation phases extraordinary meetings are scheduled which often last until late at night. While larger delegations can handle parallel and extraordinary meetings flexibly, smaller delegations are at a disadvantage. This disadvantage is further exacerbated by the low level of transparency that continued to characterize the Kimberley Process in 2010-2012. As a member of a small

⁹⁶ Author's participant observations, Kimberley Process Annual Plenary Meetings, Jerusalem, 2010, Kinshasa, 2011, and Washington, DC, 2012.

⁹⁷ Author's participant observations, Kimberley Process Annual Plenary Meetings, Jerusalem, 2010, Kinshasa, 2011, and Washington, DC, 2012.

Kimberley Process delegation reports, because institutionalized mechanisms for sharing information about negotiation agendas, progress, and future steps are largely absent, being not directly involved in the discussion of a particular item makes it difficult to obtain accurate information about how negotiations have proceeded and where they are likely to go. The only way to obtain such information for those not directly involved in negotiations over a particular item are informal relationships and networks to those that are covering the issue.⁹⁸

Furthermore, particularly in the recent years there were several key KP gatherings in addition to the yearly Interessional and Plenary Meetings which often proved to be critical for negotiations. Examples that were of particular importance for negotiations over monitoring reforms include the extraordinary meeting of the Working Group on Monitoring in St. Petersburg in July 2010 (Partnership Africa Canada, 2010 *d*, p. 1) and the extraordinary meeting of the ad hoc committee on KPCS Review in Brussels in July 2013.⁹⁹ Actors with smaller budgets often have difficulties attending these meetings. The decisions taken at such meetings often mark critical steps in the overall negotiations and are difficult to “re-open” at later negotiation stages. This puts actors which cannot participate due to budget or other constraints at a disadvantage.

Finally, economically powerful actors are in a better position to participate in review visits and missions. The review visits and missions which are the cornerstone of the Kimberley Process’s peer review system and their primary purpose is to assess the compliance of states’ export and import control systems with the minimum requirements of the KPCS. But in addition they are also a major venue for information sharing and trust-building among KP participants (Bieri and Waddell, 2012, pp. 14-15). Review visits are one of the major communication channels within the Kimberley Process. They bring together participants in between plenary meetings and provide ample room for exchanging information and experiences. Often participating in review teams provides actors with privileged access to information held by others about ongoing negotiations and other aspects of KP operations.¹⁰⁰ These informational advantages in turn can confer influence with respect to KP governance, such as institutional bargaining or agenda-setting more generally. In addition, because they cause participants to spend several days of intensive work together, review visits also promote the formation of stronger personal relationships among states, industry, and NGOs which in turn can have a positive impact on trust and information sharing.

Participation in review teams is voluntary and participants have to pay for their own expenses which can be considerable. As a result, participation in Kimberley Process reviews is unevenly distributed among KP members. Since the formal launch of the peer

⁹⁸Interview with state representative, Kinshasa, November 2, 2011.

⁹⁹Kimberley Process, (<http://www.kimberleyprocess.com/en/meeting-ad-hoc-committee-kpcs-review-brussels-0>), accessed: March 23, 2013.

¹⁰⁰Interview government official, Kinshasa, November 02, 2011.

review system in 2003 some actors, such as the United States, South Africa, and the World Diamond Council, have been on a large number of review teams, whereas others including Switzerland and particularly African human rights NGOs, rarely participate. This is also mirrored in the review activities during the negotiation episode in 2010-2012. During that time nine review visits and missions took place.¹⁰¹ Overall, only 21 states and organizations or 14 percent of the 154 which could be identified as involved in the negotiations between 2010 and 2012 participated in these reviews.¹⁰²

At the level of individual participation, the European Union was most active and participated in seven reviews followed by the World Diamond Council and Russia and India with five and four participations respectively. By contrast, NGOs were less well represented. Global Witness and an NGO from Côte d'Ivoire joint one review team and Partnership Africa Canada were part of three reviews. With respect to information collection, this unbalanced participation in review visits and missions puts those that can afford to attend many reviews at an informational advantage compared to others that lack the resources to frequently participate.

In sum, as in previous negotiation episodes there is no strong evidence that the direct use of economic power in the form of side payments and issue-linkage figured prominently in actors' bargaining strategies. Yet, the increased institutional formalization of Kimberley Process governance that has occurred since the 2003 negotiations opened up some routes through which economic advantages could indirectly impact institutional bargaining in form of increased coverage of negotiation meetings and participation in the daily operations of the KP.

What role did formal institutional power play in this negotiation episode? As outlined above, the formalization of the institutional context within which states, industry, and NGOs work together in governing the global diamond trade has increased in important respects since the 2003 negotiations. The increasing number and formalization of working groups, the creation of several sub-committees and ad-hoc expert groups, and the codification of previously informal operating procedures in terms of references and other guiding documents imposed more structure on institutional bargaining compared to the early years of the Kimberley Process. Despite this partial formalization, many aspects of KP operations, such as the organization of monitoring visits and missions, remain largely governed by informal rules and procedures. Thus, the Kimberley Process's present governance structure can be described as moderately to strongly formalized depending on which aspects of its institutional structure one focuses on.

As a result, the relevance of formal institutional power has increased compared to the 2000-2002 and 2003 negotiations. Three aspects of formal institutional power were

¹⁰¹The nine reviewed countries are Bangladesh, India, Zimbabwe (all 2010), Lesotho, Botswana, Ukraine (all 2011), Thailand, Canada, and Switzerland (all 2012).

¹⁰²Document on Kimberley Process review visit and mission participations prepared for the author by the 2012 Kimberley Process Chair.

of particular importance in the 2010-2012 negotiations: the distribution of voting rights, access to negotiation forums, and agenda-setting and proposal-making powers. To start with, only states have the formal right to vote in the Kimberley Process. While industry and NGOs typically participate in negotiations on an equal footing, their official status as “observers” does not provide them with the right to vote when formal decisions are made.¹⁰³ Among states each individual state has one vote. Formal decisions are taken by consensus. As a practical matter, within the Kimberley consensus means unanimity. As put by a prominent NGO activist who has been involved in the Kimberley Process for a long time: “consensus which in the real world means generalized agreement, in the Kimberley Process came to mean unanimity: if one government dissents from a position, that position cannot go forward” (Smillie, 2010 *a*, p. 197). Accordingly, each state has a de facto veto and can block unfavorable decisions making the Kimberley Process a “one man-one veto arrangement” (Smillie, 2010 *a*, p. 197). Thus, whereas states are in a privileged position with respect to formal voting rights compared to industry and NGOs and, hence, are stronger in terms of formal institutional power, among states formal voting rights do not confer much of a relative advantage because veto power is equally distributed.

The picture becomes more nuanced if we examine formal access to relevant negotiation forums. States, industry, and NGOs have equal access to the Intersessional and Annual Plenary Meetings—the primary decision-making bodies of the KP. All governments and organizations involved in the work of the Kimberley Process can attend these meetings, take the floor, and raise questions and concerns. Participation in the working groups—the primary working organs of the initiative—is, however, more uneven.

During the negotiations over the reform of the Kimberley Process’s governance framework in 2010-2012 there was a total of seven permanent working groups and a few committees and sub-groups which operated on the basis of temporarily limited mandates. The Working Group on Monitoring (WGM), the Committee on Rules and Procedures (CRP) and, most importantly, the Ad Hoc Committee on KPCS Review (CKR) are of particular relevance for negotiations over monitoring and enforcement reforms. While in principle working groups and committees are open to all participants and observers, in practice participation is more selective. Overall, only 31 states and organizations participated in the seven working groups and the reform committee during the negotiation episode. The WGM, CRP, and CKR had only 16 and 12 members respectively. At the level of individual actors, very few states and organizations (e.g. United States, European Union, Botswana, South Africa, World Diamond Council) were involved in seven or eight working groups and committees, while the vast majority of actors including Switzerland and Global Witness only covered three or fewer forums.¹⁰⁴ Hence, a large number of states

¹⁰³ Kimberley Process Certification Scheme, p. 10.

¹⁰⁴ Document on historical development of working group and committee memberships prepared for the author by the 2012 Kimberley Process Chair.

and organizations had no or only limited formal access to those stages of the negotiation process at which critical decisions were made.

Finally, agenda-setting and proposal-making powers are also distributed unevenly among actors. The annually rotating Kimberley Process Chair and Vice-Chair have substantial agenda-setting and proposal-making power in the overall governance scheme.¹⁰⁵ In addition, the chairs of the working groups and committees have ample room to shape the detailed agendas of working group negotiations. Importantly, the roles of chairs and vice-chairs are largely reserved for states. At times, NGOs try to compensate for this lack of formal agenda-setting and proposal-making rights and seek to shape negotiation agendas by publishing policy reports or organizing informal side events at Intersessional and Plenary Meetings that aim at drawing attention to a particular issue. The “KPCS Enforcement Seminar” which Partnership Africa Canada organized in collaboration with the United States and Canada following the Kimberley Process Intersessional Meeting on July 24, 2010, in Tel Aviv (Partnership Africa Canada, 2010*b*) and the report “Paddles for Kimberley” written by the former NGO activist Ian Smillie and published by Partnership Africa Canada (Smillie, 2010*b*) are two notable examples from the 2010-2012 reform negotiations. But since the impact of such activities on negotiation agendas depends to a considerable extent on the degree to which NGOs can mobilize states and industry representatives to pick up the concerns they present in these reports and briefing meetings their effectiveness often remains limited.

As expected on the basis of my theoretical model, under conditions of overall moderate and partially high institutional formalization this uneven distribution of formal institutional power had some impact on negotiations over monitoring and enforcement reforms. Most notably, at several occasions during the 2010-2012 negotiation episode the states that were against further strengthening and institutionalizing the monitoring and enforcement capacities of the Kimberley Process used their veto powers to prevent negotiations from moving toward an unfavorable direction. Although vetos were not issued formally at any point in the negotiation process, the explicit or implicit threat of formally objecting a particular issue often sufficed to block unfavorable developments.

For example, when the NGOs together with the United States, Canada and a few other states tried to open up the peer review system for the regular participation of external experts they experienced vigorous pushback by South Africa, India, Botswana and many other African states which raised concerns about threats to confidentiality and argued that the expertise available among KP members was sufficient for sustaining high-quality peer-to-peer monitoring. The proponents of increased external participation, by contrast, highlighted the fact that review teams often lack the technical and political expertise required to monitor a country’s export and import control system and that the

¹⁰⁵ Administrative Decision, Terms of Reference for the Chair and Vice-Chair of the Kimberley Process, 2010.

possibility to recruit external experts for monitoring visits and missions would increase the monitoring capacities of the Kimberley Process. The discussions went back and forth and as the recalcitrant states became aware that their opponents would not back down they simply said they are unable to agree to such an expansion of the monitoring system, i.e. they implicitly referred to their ability to object to it, so that the United States and its allies had to cave in.¹⁰⁶

Also relevant, though less decisive for eventual institutional choices, was the agenda-setting and proposal-making power of the Kimberley Process Chair and Vice-Chair and the chairs of the WGM and CKR. During its year as KP Chair, Isreal, launched the reform process by preparing non-papers and initializing several administrative decisions which aimed at modifying important elements of the Kimberley Process's governance arrangement, such as creating a permanent secretariat and establishing an ad-hoc committee for exploring possible ways of how to reform the initiative.¹⁰⁷ Even more important was the comprehensive reform initiative of the United States KP Chair in 2012. The joint chairs of the CKR, Canada and Botswana, also made extensive use of their agenda-setting powers and drafted a number of working documents which formed the points of departure for institutional bargaining among committee participants.¹⁰⁸ Yet, eventually these agenda-setting efforts turned out to have limited impact on negotiation outcomes because based on the practically unanimity decision-making rule of the Kimberley Process recalcitrant actors, such as South Africa, Angola, or Zimbabwe could and, in fact, did at several occasions use their veto powers to exclude particular issues from the reform agenda or prevent negotiations moving toward a particular direction. In short, formal institutional power played a bigger role in the 2010-2012 negotiations compared to the early years of the KP. Yet, while it proved to be an effective tool in bargaining strategies aimed at forestalling particular actions, it was of only limited use for those who sought to impact institutional bargaining in a more "productive" fashion.

Exit power did not have much of an influence over the dynamics and outcomes of institutional bargaining in the 2010-2012 negotiations. The distribution of credible outside options among states, industry, and NGOs closely resembled the picture of the 2000-2002 and 2003 negotiation episodes. Due to reputational and economic costs, states and industry largely lacked viable alternatives to the Kimberley Process. Again, if at all, NGOs had the possibility to use the threat to leave the governance scheme as bargaining leverage. However, when they used this potential and incorporated the threat to exit in

¹⁰⁶ Author's participant observations, Kimberley Process Annual Plenary Meeting, Washington, DC, November 27-30, 2012.

¹⁰⁷ Draft Administrative Decision, Administrative Support Office, 2010, Draft Administrative Decision, Establishment of an ad-hoc committee for exploring the modalities of enhancing the efficiency of the Kimberley Process with a view to provide administrative support for its activities, 2010, and the non-paper "Working Body on Reform Proposal".

¹⁰⁸ Author's participant observations, Kimberley Process Annual Plenary Meeting, Washington, DC, November 27-30, 2012.

their bargaining tactics in 2011, it turned out to be an ineffective power strategy. The “walk out” by NGOs at the Kinshasa Intersessional Meeting in June 2010 followed by the absence of NGOs at the negotiation tables of the Kinshasa Annual Plenary Meeting in November 2010 did not lead NGO opponents to back down on their sceptical positions with respect to human rights and strengthened monitoring. Nor is there strong evidence that this temporary absence of the entire civil society coalition and the exit of Global Witness from the KP put NGOs in a better bargaining positions after their return in 2012. Even when NGOs made the continuation of their “full engagement with the KP dependent on the adoption of substantial and sufficient reforms”¹⁰⁹ this, according to my data, did not have the positive effect on their bargaining power they sought.

We also lack evidence that the power of epistemic communities and collective knowledge had relevant influence on the negotiations. The failure of the United States’s efforts to mobilize the epistemic community of customs and law enforcement officials from Kimberley Process countries in order to support its attempt to strengthen enforcement provides an empirical illustration. In parallel to the Annual Plenary Meeting in Washington, DC, the United States Border Protection Agency hosted a seminar on KP enforcement for national custom and law enforcement authorities. The goal: to enhance information sharing and collaboration between national law enforcement authorities and increase the effectiveness of KP enforcement. One of the major outcomes of the experts’ deliberations was the recommendation to establish a sub-committee on enforcement as a sub-group of the working group on monitoring with a temporarily limited mandate for one year.¹¹⁰ Compared to the ad-hoc, informal, and negotiation-based enforcement mechanism of the Kimberley Process, the establishment of such a sub-committee would have been a first step toward more institutionalized and expert-driven enforcement and would have reduced the strongly political and interest-driven character of the current system.

When the United States presented the results and recommendations to the members of the working group on monitoring, they received strong pushback from India, Botswana, Russia and others which were highly skeptical about increasing the “bite” and institutionalization of KP enforcement. Support came from NGOs, the European Union, and industry.¹¹¹ The United States and its supporters sought agreement of the skeptics by highlighting the relatively marginal institutional change the establishment of the sub-committee would introduce, the committee’s focus on information exchange, and its voluntary membership. India and Botswana together with other recalcitrant states, by contrast, were concerned that the committee would open up room for infringing on the

¹⁰⁹ Communique, Kimberley Process Civil Society Coalition, Brussels Meeting, November 17-19, 2011, p. 1.

¹¹⁰ Draft Final Communique, Kimberley Process Annual Plenary Meeting, Washington, DC, November 30, 2012, p. 11. Author’s participant observations, Kimberley Process Annual Plenary Meeting, Washington, DC, November, 2012.

¹¹¹ Author’s participant observations, Kimberley Process Annual Plenary Meeting, Washington, DC, November, 2012.

national sovereignty of states by touching upon issues of border control which are not part of the overall KPCS agreement and for broadening the KP's mandate toward law enforcement. Ultimately, the United States and its supporters failed and no sub-committee on enforcement was established.¹¹² Why was the US attempt to use the authority of an epistemic community not a successful bargaining strategy?

The epistemic community of national law enforcement experts remained institutionally disconnected from the rest of the Kimberley Process and from the working group on monitoring more specifically. On the one hand, the members of this community remained completely outside the Kimberley Process. The members of KP delegations did not participate in the enforcement seminar and the experts did not sit at the table when the results of their deliberations were presented to KP participants. On the other hand, the experts remained fragmented. Custom and law enforcement officials from the United States, Canada, Australia, and other, largely Western countries, together with the European Union and the World Customs Organization attended the meeting and participated in articulating recommendations for how to strengthen Kimberley Process enforcement.¹¹³ However, many important players in the diamond trading system, such as India or the United Arab Emirates, did not send their officials and, hence, their views were not reflected in the seminar's outcome.¹¹⁴ Thus, two important aspects that proponents of the epistemic community approach highlight as essential for the power of collective ideas and shared understandings to have an impact on governance were not in place (Haas, 1992). As the result, the epistemic community of national law enforcement and border control experts did not have much of an impact on the negotiations over changing the KP enforcement structures.

4.4 Summary

In this chapter I have analyzed the formation and evolution of the Kimberley Process. Focusing on three negotiation episodes during the life course of this governance scheme, I examined how the power politics at work in transnational public-private bargaining shaped formal monitoring and enforcement mechanisms. Findings of this qualitative analysis lend first support to my argument. As my model suggests, in an environment characterized by low formalization of the institutional context and low transparency of negotiations the informational and strategic advantages derived from central and brokerage positions in informal information exchange networks are important bargaining assets. The 2000-2002

¹¹²Final Communique, Kimberley Process Plenary Meeting, Washington, DC, November 30, 2012, p. 3.

¹¹³Draft Final Communique, Kimberley Process Annual Plenary Meeting, Washington, DC, November 30, 2012, p. 11.

¹¹⁴Draft Final Communique, Kimberley Process Annual Plenary Meeting, Washington, DC, November 30, 2012, p. 11. Author's participant observations, Kimberley Process Annual Plenary Meeting, Washington, DC, November, 2012.

negotiations over the formation of KP monitoring and enforcement structures and the 2003 negotiations over monitoring reform are a case in point. As the bargaining environment changes in terms of institutional formality and transparency, the effectiveness and efficiency of power strategies alters as well which, in turn, impacts the power configurations among negotiators. The recent bargaining over a reform of the overall Kimberley Process governance architecture points toward this direction. With an increase in the formalization of the institutional context economic and particularly formal institutional power become a more important element in actors' bargaining strategies, though, it seems that economic power is primarily used indirectly. The 2010-2012 negotiation episode also indicates that different power variants can interact with one another in various ways. Together these findings suggest that focusing on the power politics of transnational institutional design and how it interacts with the political context in which bargaining occurs can help us better understand inefficient institutional outcomes. The next chapter will continue the qualitative exploration of my model by investigating the creation of the International Code of Conduct for Private Security Service Providers.

Chapter 5

Regulating Private Security Contractors

The problem of the lack of accountability of private security service providers entered the spotlight of public attention in the course of a series of incidents during which private security companies operating on behalf of governments in armed conflict settings became involved in human rights violations and other fraudulent behavior including ill-disciplined shootings (Sturchler, 2008). Perhaps the publicly most visible and well-known of these incidents is the 2007 Blackwater scandal. On September 16, 2007, private security contractors working for the company formerly operating under the name Blackwater Worldwide—a private security company working for the United States Department of State—“killed 17 unarmed civilians and wounded 24 more in an unprovoked incident (of shootings, OW) in Baghdad’s Nisoor Square” (Human Rights First, 2010, p. 1; Human Rights First, 2008, p. 1; Johnston and Broder, 2007). A public outcry in Iraq, the United States, and other countries followed and strained the relationships between Baghdad and Washington (Stewart, 2011). Other incidents include the shooting of a member of the Iraqi Vice President’s security personnel by a Blackwater employee on Christmas Eve 2006, the involvement of contractors working for the US firm Titan Corporation in acts of torture at Abu Ghraib, as well as the shooting of two Iraqi civilian vehicles by Triple Canopy contractors on July 8, 2006, just to name a few (Human Rights First, 2008, pp. 1-3).¹ In fact, the US NGO Human Rights First estimates that in Iraq alone there are thousands of occasions in which private security contractors have discharged their weapons and that hundreds of these occasions involved using firearms against civilians (Human Rights First, 2008, p. 3). These events showed to US policy-makers and the public at large that the “United States lacked a coordinated, systematic policy for overseeing private contractors abroad and holding them accountable for serious violent crimes.” (Human Rights First,

¹Human Rights First Written Testimony for The Commission on Wartime Contracting in Iraq and Afghanistan, Hearing on “Are Private Security Contractors Performing Inherently Governmental Functions”, June 18, 2010, p. 2.

2010, p. 1).

As a response to these corporate scandals and to the lack of accountability and transparency in connection with the use of private military and security companies in armed conflicts the International Committee for the Red Cross (ICRC) teamed up with the Federal Department of Foreign Affairs of Switzerland to launch an initiative called the Montreux Process in early 2006 (Sturchler, 2008, p. 10; Ralby, 2011). The goal: to initiate a multi-stakeholder process composed of the private security industry, governmental and non-governmental clients of private security companies, civil society organizations, and other experts to identify relevant international legal obligations and best practices for governments in their interactions with the private security industry. After a series of expert and intergovernmental meetings an initial group of seventeen states² endorsed the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflicts on September 17, 2008 (International Committee of the Red Cross, 2009).

The Montreux Document focuses on the obligations of states in their use of private security companies. Specifically, it “delineates pertinent international legal obligations and lists specific recommendations related to procurement practices and operational oversight” (Grespin, 2012, p. 2; see also Sturchler, 2008, p. 10; Ralby, 2011, p. 3). However, the Montreux Document provides little guidance targeted at the behavior of the security industry itself. In order to address this gap, the Swiss government launched another multi-stakeholder process in March 2009 which built upon the Montreux Process and aimed at creating oversight, accountability and operational standards for private security providers enshrined in an international code of conduct for the private security industry (Grespin, 2012, p. 2). Assisted by the Geneva Centre for Democratic Control of the Armed Forces (DCAF) and the Geneva Academy of International Humanitarian Law and Human Rights (ADH) the Swiss Federal Department of Foreign Affairs led the lengthy and oftentimes very contentious negotiation process which ultimately culminated into agreement on the International Code of Conduct for Private Security Providers (ICoC).³

The International Code of Conduct was initially signed by 58 private security and military companies in Geneva, Switzerland, on November 9, 2010.⁴ It is a legally non-binding document under international law. By signing the Code private security and military companies make two broad commitments; namely, to adhere to a set of operational principles

²These initial states were Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, Ukraine, the United Kingdom, and the United States.

³See International Code of Conduct for Private Security Service Providers, http://www.icoc-psp.org/uploads/INTERNATIONAL_CODE_OF_CONDUCT_Final_without_Company_Names.pdf, accessed: October 07, 2013.

⁴At the time of writing 708 companies have signed the ICoC. See International Code of Conduct for Private Security Service Providers, <http://www.icoc-psp.org/ICoCSignatoryCompanies.html>, accessed: October 08, 2013.

that reinforce security companies' obligations with respect to international humanitarian law and human rights law and to follow certain procedural provisions (Ralby, 2011, p. 1; Grespin, 2012, p. 2). Specifically, the ICoC lays out a set of human rights-based principles and best practices for the provision of private security services including principles for the conduct of private contractors with respect to the use of force, the prohibition of torture, gender-based violence, human trafficking, and other human rights violations.⁵ With respect to process and management the Code contains provisions with respect to the vetting and training of security personnel, weapons management, grievance mechanisms, and other procedural aspects.⁶

The agreement on the ICoC was, however, just another intermediate step on the way to the establishment of a governance mechanism to regulate the global security industry. The International Code of Conduct does not contain provisions for detailed operational standards for the industry and, most importantly, does not establish an oversight mechanism that allows monitoring of industry's adherence to its regulatory provisions and reaction to standard violations. However, in its preamble as well as paragraph seven the ICoC acknowledges that such institutional structures including monitoring and enforcement mechanisms are required to effectively ensure the implementation of regulatory standards into the daily operations of private security companies and specifies the cornerstones of the process required for the effective implementation of its standards. Importantly, companies, states, and civil society commit themselves to:

“Establish external independent mechanisms for effective governance and oversight, which will include Certification of Signatory Companies' compliance with the Code's principles and the standards derived from the Code, beginning with adequate policies and procedures, Auditing and Monitoring of their work in the field, including Reporting, and execution of a mechanism to address alleged violations of the Code's principles or the standards derived from the Code.”⁷

It also creates a “temporary steering committee” with the mandate to develop an independent governance and oversight mechanism as an institutional framework for ensuring the implementation of the Code's regulatory standards (Wallace, 2011, p. 90).⁸

The temporary steering committee began its work in early 2011. Over a period of about two years the committee held numerous personal meetings and conference calls, organized stakeholder briefings and a number of other events which served as sites for negotiations among states, industry representatives, and human rights NGOs over the

⁵International Code of Conduct for Private Security Service Providers, pp. 7-10.

⁶International Code of Conduct for Private Security Service Providers, pp. 10-14.

⁷International Code of Conduct for Private Security Service Providers, p. 7.

⁸See International Code of Conduct for Private Security Service Providers, p. 11.

creation of a governance and oversight mechanism for the ICoC. These negotiations covered a wide range of issues, such as the funding of the new governance scheme, the distribution of voting rights among states, companies, and NGOs, and the overall organization of governance and decision-making (Ralby, 2011, pp. 16-17). Two of the most controversial items on the negotiation agenda were how to organize the monitoring and enforcement capacities of the new institution.

During these negotiations the steering committee produced a Draft Charter of the Oversight Mechanism for the International Code of Conduct for Private Security Service Providers in January 2012.⁹ As soon as this draft institutional framework was opened up for discussion it was met by strong criticism and objections particularly by industry representatives.¹⁰ Again, monitoring and sanctioning capacities were among the issues that gave rise to sharp divergences among the actors involved.¹¹ However, after two years of hard and prolonged bargaining on February 22, 2013, states, industry representatives, and NGOs ultimately achieved agreement and adopted the final version of the ICoC Charter, the so-called Articles of Association.¹² These Articles outline the institutional structure of a new transnational public-private governance scheme, the International Code of Conduct Association, that seeks to regulate the global operations of private military and security companies. It was officially launched on September 19, 2013, and held its first General Assembly on September 20, 2013, in Geneva.¹³

5.1 Institutional Choices

At the beginning of the negotiations over the governance and oversight mechanism for the ICoC states, private security companies, and human rights NGOs envisioned a range of possibilities with respect to how to organize the formal monitoring and enforcement mechanisms of the new governance scheme. Among the many institutional options at the table were an “administrative bureau with licensing functions, an independent prosecutor, an oversight office, investigation teams, ad hoc fact-finding commissions, an ombudsman, an independent grievance tribunal, compliance panels, a standards committee, and a plenary assembly of members.”¹⁴ In principle, the regulatory standards and provisions outlined in the International Code of Conduct were compatible with a variety of monitoring and enforcement structures. As noted by the Swiss Ambassador, Claude Wilde, who served as

⁹Draft Charter of the Oversight Mechanism for the International Code of Conduct for Private Security Service Providers.

¹⁰Interviews government officials, Washington, DC, December 04 and 07, 2012.

¹¹Interviews government officials, Washington, DC, December 04 and 07, 2012.

¹²Swiss Federal Department of Foreign Affairs, Press Release, February 22, 2013.

¹³International Code of Conduct for Private Security Service Providers Association, Press Release, September 27, 2013.

¹⁴Discussion Paper on Transition to an Accountability and Oversight Mechanism, Swiss Federal Department of Foreign Affairs, p. 1. See also Minutes, ICoC Steering Committee Meeting, 31 January 2011, Washington DC, p. 2.

facilitator of the negotiation process: “The Code supports various methods of enforcement including independent oversight, grievance mechanisms, certification and auditing.”¹⁵

When the negotiations came to an end and states, industry, and NGOs reached agreement on the Charter for the Oversight Mechanism of the International Code of Conduct for Private Security Service Providers—the so-called Articles of Association of the ICoC—on February 22, 2013, in Montreux, Switzerland, they agreed on creating a moderately strong monitoring system that combines elements of both “police patrols” and “fire alarms” (see McCubbins and Schwartz, 1984; Raustiala, 2004) and a weak enforcement apparatus.

The monitoring system of the new institution consists of general verification procedures combined with a third-party complaints process.¹⁶ With respect to compliance verification the Charter for the Oversight Mechanism states that the new institution is “responsible for exercising oversight of Member companies’ performance under the Code, including through external monitoring, reporting and a process to address alleged violations of the Code.”¹⁷ While the Charter does not spell out a fully fledged monitoring mechanism, it provides clear principles and outlines several institutional building blocks of the scheme’s monitoring system which are considered to be an institutional blueprint.¹⁸

According to these principles information on company compliance can be collected through three channels: the ICoC secretariat can gather information to assess company compliance from public or other sources; individual member companies have to provide written reports about their performance under the Code; and the future executive director of the scheme can launch field-based reviews in order to evaluate company compliance. Such reviews can be initiated in situations where available information has indicated a need for further monitoring of a particular geographic area or company or upon request of ICoC members.¹⁹

The information about companies’ compliance behavior is reviewed by the secretariat which provides observations and assessments to the executive director who then—in case non-compliance is identified—refers the alleged rule violations to the scheme’s board of directors. If the board confirms the occurrence of rule violations, it determines the corrective actions required to remedy them and sets a specific time frame within which the company under consideration has to address the identified problems. Failure to provide the remedies within the set time frame allows the board to initiate the company’s suspension from the ICoC.²⁰ Thus, although there is no routinized comprehensive compliance

¹⁵Letter by Swiss Ambassador Claude Wilde, Bern, August 27, 2010.

¹⁶International Code of Conduct for Private Security Service Providers’ Association, Articles of Association, 2013, pp. 7-10.

¹⁷International Code of Conduct for Private Security Service Providers’ Association, Articles of Association, 2013, p. 7.

¹⁸Interviews government official and NGO representative, Geneva, September 19, 2013.

¹⁹International Code of Conduct for Private Security Service Providers’ Association, Articles of Association, 2013, p. 7.

²⁰International Code of Conduct for Private Security Service Providers’ Association, Articles of Association, 2013, p. 8.

verification, this system constitutes a constant threat of being monitored for companies since they can be monitored at any point in time once there are indicators suggesting problems related to their operations under the Code of Conduct.²¹ Together these procedures constitute a regular company compliance review system that can be characterized as a “police patrol” mechanism.

The Charter also contains a complaints procedure for addressing alleged violations of the Code by signatory companies that displays the features of a “fire alarm” mechanism. This procedure can be launched if the secretariat receives a complaint about an incident of harm from an individual or its representatives that makes allegations about a signatory company which, if true, constitute a violation of the standards and provisions of the ICoC. Only matters that fulfill these substantive requirements can be considered under the complaints mechanism. Once a complaint has been verified by the secretariat as meeting these two criteria it informs the complainant party about possible grievance mechanisms and potential remedies for the experienced harm.²²

If the complainant disagrees with the suitability of existing grievance mechanisms and the appropriateness of the remedy proposed by the involved signatory company, the secretariat and the board of directors mediate between the two parties to find a mutually agreeable settlement. In situations in which after such consultations a company remains unwilling to effectively address the allegations, the board of directors has the power to take the actions it considers necessary to settle the complaint. Importantly, these sanctions include the suspension and termination of a company’s membership in the ICoC. As stated in the Articles of Association:

“If, after further consultation with the complainant and the Member company, the Board considers that the Member company has failed to take reasonable corrective action within a specified period or cooperate in good faith in accordance with this Article, it shall take action, which may include suspension or termination of membership.”²³

This two-track monitoring mechanism can be described as moderately strong. While it does not provide for an independent third-party auditing system based on compliance verification conducted by experts from outside the group of actors directly involved in the ICoC’s operations, it provides the board of directors and, importantly, the independent secretariat with substantial governing powers at several stages of the monitoring process. For example, one of the key obligations of the secretariat is to collect information about signatory companies’ performance under the Code of Conduct independent

²¹Telephone interview NGO representative, September 23, 2013.

²²International Code of Conduct for Private Security Service Providers’ Association, Articles of Association, 2013, p. 9.

²³International Code of Conduct for Private Security Service Providers’ Association, Articles of Association, 2013, p. 9.

of and in addition to the written self-reports of companies and field-based review missions.²⁴ Furthermore, it is the task of the secretariat to review the information about company performance “to identify compliance concerns, assess the human rights impacts of company operations, and identify and analyze broader patterns (of problematic company behavior, OW) in particular complex environments.”²⁵ In particular, the strong role of the secretariat in the monitoring process confers significant independence to the system because it removes it from the direct influence of the political and economic interests of governments and companies; something that has been, for example, a central problem for the peer review monitoring system of the Kimberley Process since its launch in 2003.

While the monitoring system outlined in the Articles of Association can be described as moderately strong, the enforcement capacities of the ICoC remain weak. Suspension or termination of company membership is the ultimate means of reacting to rule violations. The Code’s goal to ensure that governmental and non-governmental clients of private security providers include adherence to its standards as a requirement in their contracts makes expulsion a potentially costly sanction. On the one hand, making adherence to the regulatory provisions of the Code a prerequisite for submitting bids for contracts creates a strong business case for individual companies to join and remain member of the governance scheme. Those which do not sign the Code or get expelled because of violating its rules will be excluded from doing business with clients which demand good standing under the ICoC. On the other hand, once the regulatory standards of the Code are incorporated into a contract between a security provider and its client, human rights abuses and other violations of the the ICoC can trigger litigation which in turn incurs social as well as financial costs for rule violators. “Such litigation and the possibility of exclusion from being a signatory to the ICoC could go far beyond any consequences of violations of ‘hard law’.”²⁶

However, until to date the only clients involved in the ICoC process are governments. NGO clients, IGOs, and other companies (e.g. extractive industries) have so far hardly been involved in the work of the governance scheme. The US Department of Defense is one of the few governmental clients that has a mandatory reference in its contracts with private contractors to the PSC 1 management and conformity assessment standard which was developed under the leadership of the American National Standards Institute and which is based on the ICoC.²⁷ Further, the US Department of State and the government of

²⁴International Code of Conduct for Private Security Service Providers’ Association, Articles of Association, 2013, p. 7.

²⁵International Code of Conduct for Private Security Service Providers’ Association, Articles of Association, 2013, p. 7.

²⁶Nils Rosemann, Swiss Federal Department of Foreign Affairs, “International Code of Conduct for private security providers: a multi-stakeholder initiative of the 21st century?”, November 24, 2010, <http://www.ihrb.org/commentary/guest>, accessed: September 05, 2013.

²⁷Ambassador King’s Remarks at the Launch Ceremony for the International Code of Conduct for Private Security Service Providers Association, Geneva, September 19, 2013, <http://geneva.usmission.gov/2013/09/19/icoc/>, accessed: October 21, 2013.

Switzerland have made compliance with the regulatory standards of the ICoC a mandatory part of their security contract bidding.²⁸ Other big clients, such as the United Kingdom, Australia and many extractive companies, even today have no such mandatory reference as a requirement in the bidding process for their security contracts (DeWinter-Schmitt, 2012, p. 13). Unless more clients make adherence to the provisions of the ICoC a mandatory part of the bidding for their contracts, the threat to suspend or terminate membership in the scheme remains a weak sanctioning instrument (Ralby and Tonkin, 2011, p. 11; Grespin, 2012, p. 3).

Furthermore, the monitoring procedure outlined in the Articles of Association provides only a weak channel through which public shaming of noncompliant companies can operate. Information collected and processed in the course of ICoC monitoring is subject to confidentiality and strict non-disclosure provisions so that NGOs are restricted in their use of this information for the purpose of publicly identifying and acting against noncompliant companies. Also, subject to the same confidentiality arrangements the board of the scheme can make public statements of the status or outcome of the review of a member company.²⁹ However, because the confidentiality and non-disclosure arrangements are not yet articulated and because of the need to consult with the involved parties prior to issuing public statements, this possibility of “naming and shaming” rule violators is at the moment a rather weak instrument of rule enforcement. If disclosure of information is subject to consultations with the noncompliant party, then it is unlikely that meaningful information will be released in public statements making “naming and shaming” strategies a weak enforcement instrument.

5.2 Initial Preferences

After the adoption of the ICoC in 2010 there was broad agreement among states, private security companies, and human rights NGOs that there is a need for an institutional framework that guarantees independent oversight and accountability with respect to the implementation of the regulatory standards of the Code of Conduct.³⁰ Yet, how exactly the new institution should be organized was not obvious.

How to structure monitoring and enforcement mechanisms were especially contentious and states, companies, and NGOs had sharply diverging institutional preferences on these issues.³¹ As one interviewee representing the industry put it: “The major battle between

²⁸Meg Roggensack’s Remarks at the Launch Ceremony for the International Code of Conduct for Private Security Service Providers Association, Geneva, September 19, 2013, author’s participant observation notes.

²⁹International Code of Conduct for Private Security Service Providers’ Association, Articles of Association, 2013, p. 8.

³⁰Discussion Paper on Transition to an Accountability and Oversight Mechanism, Swiss Federal Department of Foreign Affairs, p. 1.

³¹James Cockayne, “From Sandline to Saracen: Time to hold the pri-

civil society, industry, and governments is over the performance assessment (i.e. monitoring, OW) mechanism of the ICoC.”³² With respect to monitoring what specific monitoring requirements should be, how to structure performance assessment, and to what extent and under what circumstances company compliance should be reviewed have been particularly contentious questions during the negotiations. With respect to enforcement how much sanctioning capacities the new institution should have and to what degree these should be exercised independently vis-à-vis ICoC members were the major dimensions along which the institutional preferences of states, industry, and NGOs differed.

At the outset of the negotiations in 2010 there were three distinct camps. For the NGOs and some state actors, such as the United States Department of State and Switzerland, robust and mandatory monitoring was a critical component of the institutional framework for implementing ICoC standards. For NGOs, such as Human Rights First and Human Rights Watch, mandatory and independent compliance verification was one of the key elements of the governance architecture of the new institution.³³ Robust monitoring and enforcement were even so critical for the NGOs represented in the ICoC temporary steering committee that they declared them “red lines” for their support of the emerging governance scheme.³⁴ From the NGO perspective it was important that the ICoC process be more than just a trade regulation and technical standardization regime; it should also develop a meaningful and robust human rights component.³⁵ Accordingly, NGOs bargained hard for the creation of a mandatory independent third party auditing system of company compliance, something they explicitly referred to as the “Fair Labor Association model”³⁶. In particular, they pushed for a strong and independent position of the secretariat in the monitoring process.³⁷ They also sought a grievance mechanism with a quasi-judicial function.³⁸ With respect to enforcement civil society lobbied for a mechanism that involves public disclosure of non-compliance and public expulsion of

vate security industry to its human rights commitments”, September 25, 2012, <http://www.ihrb.org/commentary/guest/from-sandline-to-saracen-time-to-hold-the-private-security-industry-to-its-human-rights-commitments.html>, accessed: October 11, 2013.

³²Interview industry representative, Washington, DC, July 12, 2012.

³³Telephone interview NGO representative, July 05, 2012. Interview government official, Washington, DC, July 11, 2012. Interview government official, Washington, DC, December 07, 2012. See also Meg Roggensack, “Now the real work begins: Implementing the International Code of Conduct for Private Security Service Providers”, <http://www.ihrb.org/commentary/guest/implementing-icoc-for-private-security-service-providers.html>, accessed: October 11, 2013.

³⁴James Cockayne, “From Sandline to Saracen: Time to hold the private security industry to its human rights commitments”, September 25, 2012, <http://www.ihrb.org/commentary/guest/from-sandline-to-saracen-time-to-hold-the-private-security-industry-to-its-human-rights-commitments.html>, accessed: October 11, 2013.

³⁵Interview NGO representative, Washington, DC, July 11, 2012.

³⁶Interview NGO representative, Washington, DC, July 11, 2012. Telephone interview NGO representative, September 23, 2013.

³⁷Interview industry representative, Washington, DC, July 10, 2012.

³⁸Interview government official, Washington, DC, July 11, 2012.

noncompliant companies.³⁹

In sum, mandatory and independent performance assessment and sanctioning capacities were important for NGOs and their supporters (e.g. US DoS, Switzerland) because they thought of them as a critical prerequisite of the credibility of the ICoC (Roggensack, 2013). As an interviewee from the group of states that supported the NGO position put it: “If the ICoC cannot react with teeth to concrete cases of industry non-compliance this would threaten its credibility.”⁴⁰

By contrast, large parts of the industry and some state agencies, most notably the United States Department of Defense (DoD), were initially very skeptical about monitoring and enforcement.⁴¹ Their primary concern was that independent third party verification would become too intrusive and too costly for states and companies alike.⁴² As put by an NGO respondent: “Some industry and government representatives were terrified by the idea of monitoring. They did not want it because they considered it too intrusive.”⁴³ In particular, industry objected to put the ICoC secretariat in a position that allows it to independently decide whether and on the basis of what criteria to monitor company behavior.⁴⁴ There were also major concerns in the industry and government camp about confidentiality in the context of monitoring company performance. As put by an industry representative:

“Industry is scared to death about confidentiality in general and also in the context of performance assessment. Leaking sensitive information can lead to litigation and drive individual companies out of business in the worst case. Litigation can be very costly.”⁴⁵

As a consequence, industry and its state supporters (e.g. DoD) forcefully objected any monitoring arrangement that allows for using information obtained through company reviews for enforcement purposes. Finally, some government agencies, such as the United States DoD, also referred to national security concerns and how those would be negatively affected by a stringent and detailed monitoring procedure when making the case against the creation of robust monitoring structures (Roggensack, 2013).

In addition, industry argued that technical certification is different from monitoring and that the ICoC should focus on the former. Specifically, companies wanted to stick to the original agreement enshrined in the ICoC which focused on technical certification as opposed to more political and human rights-oriented performance assessment. They

³⁹Interview NGO representative, Washington, DC, July 11, 2012.

⁴⁰Interview government official, Washington, DC, June 29, 2012.

⁴¹Interviews NGO representative and government official, Washington, DC, July 11, 2012. Interview government official, Washington, DC, December 07, 2012.

⁴²Interview industry representative, Washington, DC, July 12, 2012.

⁴³Interview NGO representative, Washington, DC, July 11, 2012.

⁴⁴Interview industry representative, Washington, DC, July 12, 2012.

⁴⁵Interview industry representative, Washington, DC, July 12, 2012.

did not want to include additional compliance monitoring and reporting mechanisms in the governance framework. Furthermore, rather than establishing new monitoring mechanisms and duplicating institutional structures they argued for using already existing tools. In particular, they lobbied hard for incorporating ICoC performance assessments into the already existing certification process of the American National Standards Institute (ANSI); a process that has frequently been referred to as dominated by the United States DoD and industry.⁴⁶

Finally, a small group of companies and industry associations based in the United Kingdom were even more skeptical about monitoring and enforcement. In fact, they were skeptical toward the ICoC process more generally. For industry and particularly the British industry the negotiations were a general fight with human rights NGOs and a few Western governments over relinquishing control over their operations and policies.⁴⁷ Throughout the negotiations they sought to set up a governance framework they could control and were constantly talking about institutional alternatives to the ICoC as a realistic outside option.

These sharp differences in institutional preferences have been settled in favor of human rights NGOs and their supporters which bargained hard for robust monitoring and enforcement capacities. Industry and state actors which sought lighter monitoring and sanctioning mechanisms or were even completely against the inclusion of monitoring and enforcement in the formal governance framework of the new institution had less influence. Although NGOs, most prominently Human Rights First and Human Rights Watch, could not fully achieve a mandatory third party-based auditing system, the creation of evidence-triggered in-field monitoring and the powerful role of the ICoC secretariat in initiating, conducting, and acting upon monitoring lends substantial independence to performance assessment from the political and economic interests of states and industry. These institutional provisions are clearly at odds with the light or no monitoring and enforcement capacities preferred by the industry and its supporters. How can these institutional choices be explained?

5.3 Bargaining over Monitoring and Enforcement

The political context in which the negotiations over the creation over the governance and oversight mechanism for the International Code of Conduct took place between November 2010 and February 2013 was characterized by a low level of institutional formalization and a low level of transparency of the negotiation process.

The institutional environment in which states, security industry, and NGOs bargained

⁴⁶Interview government official, Washington, DC, July 11, 2012. Interview academic expert, Washington, DC, July 13, 2012.

⁴⁷Interview NGO representative, Washington, DC, July 11, 2012.

over the organizational structures of ICoC governance and oversight mechanism have been dominated by informal governance. Overall, not much of an institutional framework existed that structured the negotiations and the internal operations of the process were often of an ad-hoc character.⁴⁸ The rudimentary structure that existed evolved around three institutional pillars: the temporary steering committee, three thematic working groups, and the convenor and facilitator activities of the Swiss government and the Geneva Centre for the Democratic Control of Armed Forces.

Throughout the negotiation episode the majority of the institutional bargaining occurred in the temporary steering committee of the ICoC. The steering committee consists of three participants and auxiliary members from each of the three stakeholder groups of the International Code of Conduct, i.e. states, security industry, and NGOs. Its work is guided by the Framework for the Steering Committee⁴⁹ which outlines the overall mandate of the committee, its composition, and decision-making procedures. However, many aspects of the committee's work remained unspecified in this guiding document. As one interviewee put it:

“the steering committee has been given a job but no clear instructions for how to achieve it. The steering committee had to develop its own working procedures, processes, and working methods. The steering committee has built its own structures over time as they were needed.”⁵⁰

Both outside observers as well as participants in the negotiations concur in describing the work of the steering committee as not very rigid and structured.⁵¹ Particularly the daily operations of the committee remained largely driven by informal practices. Agenda-setting and proposal-making are a case in point. Each meeting of the steering committee is led by a chair that rotates among the three stakeholder groups. The office of the chair changes from meeting to meeting.⁵² The chair plays an important role in organizing the committee's agenda and leading meetings. Yet, the specific procedures for how exactly the agenda is developed is not governed by the rules that organize the work of the steering committee; it is subject to informal practices that emerged as the negotiations evolved. “The rotating chair and DCAF are setting the agenda but this is something that has developed as an informal procedure and practice. It is not part of the formal rules and structures of the ICoC process.”⁵³ The same applies to the drafting of background documents and policy proposals. Here, the “chair and DCAF typically work on first drafts of

⁴⁸Interview NGO representative, Washington, DC, July 11, 2012.

⁴⁹See The International Code of Conduct for Private Security Service Providers, Framework for the Steering Committee.

⁵⁰Interview government official, Washington, DC, December 07, 2012.

⁵¹Interview government official, Washington, DC, December 07, 2013. Interview academic expert, Washington, DC, July 13, 2012. Telephone interview NGO representative, September 23, 2013.

⁵²The International Code of Conduct for Private Security Service Providers: Framework for the Steering Committee, p. 2.

⁵³Telephone interview NGO representative, September 23, 2013.

important documents and then informally seek views and positions from other TSC members and the ICoC stakeholders more generally.”⁵⁴ Thus, the operations of the temporary steering committee which was a central site for the negotiations over the institutional design of the governance and oversight mechanism of the ICoC were to a great extent governed by informal rules and practices. This holds in particular with respect to such critical aspects of the negotiation process as agenda-setting and proposal-making.

Between May and August 2011 the work of the steering committee was assisted by three thematic working groups. The operational procedures of these working groups were articulated in very general terms and can be described as rudimentarily formalized at best. In fact, the only two documents that structured negotiations within the working groups were a thematic concept paper issued by the steering committee that served as substantive point of departure for discussions and a one-page guiding document.⁵⁵ While the concept paper included no statement about working procedures at all, the guidance document only articulated the composition of the groups’ memberships in broad terms⁵⁶ and stated that the final report the groups were to submit to the steering committee has to be drafted in consensus by the drafting members. Other aspects of the working groups’ activities, such as their overall purpose and mission, who has access to their meetings, or how the drafting of their final report to the steering committee should proceed, remained unspecified.⁵⁷ Of particular importance for the dynamics of institutional bargaining between 2010-2013 was the fact that access to working groups was regulated informally.⁵⁸ As a consequence, it was not always clear who was allowed to have a seat at the table and through what channels to gain access to working group deliberations at critical stages of the negotiation process. As I will show below, this predominance of informal governance with respect to access to important negotiation forums had an important impact on the power strategies and outcomes actors used during the negotiations.

Finally, the Swiss government and DCAF served as convenor and facilitator of the negotiation process. The Swiss government provided political leadership and convening capacities to the process. In addition, based on a mandate from the Swiss government DCAF functioned as a secretariat for the ICoC process since the negotiations over the regulatory standards of the Code between 2009 and 2010. It provided administrative support to the steering committee and the working groups and facilitated the negotiation

⁵⁴Telephone interview NGO representative, September 23, 2013.

⁵⁵See Concept Paper: Areas Requiring Further Consideration for the ICoC and International Code of Conduct for Private Security Service Providers, Temporary Steering Committee, Guidance on Working Groups.

⁵⁶Each working group consisted of six so-called drafting members who were responsible for drafting the working group report to the steering committee, six participating members who were permitted to participate in the discussion of the working groups, one member for each of the three stakeholder groups (i.e. states, companies, NGOs) from the steering committee, and the Swiss government as convenor.

⁵⁷See International Code of Conduct for Private Security Service Providers, Temporary Steering Committee, Guidance on Working Groups.

⁵⁸Telephone interview NGO representative, September 23, 2013.

process. It prepared steering committee, working group, and other negotiation meetings, prepared and distributed the minutes of meetings, and undertook outreach activities in order to increase the number of subscribers to the International Code of Conduct. However, like the other elements of the thin institutional framework in which the negotiations took place also Switzerland's and DCAF's convening and facilitating roles largely lacked formal backup. While their roles are occasionally referred to in several documents,⁵⁹ how exactly these should be exercised is to a substantial extent subject to informal practices rather than formalized rules and procedures.

What holds for the work within these working bodies is even more true for the relationships between them. Here also informal governance dominated with the interactions between, for example, the steering committee and the three thematic working groups being only loosely organized and primarily guided by informal rules and practices. Importantly, participants perceived this informality as an advantage during the negotiation process. As one respondent put it:

“I think we are better off without a whole lot of structure. If the Code had been too restrictive as to the working rules and procedures of the TSC, the committee would have not been able to adjust its rules and working methods as it did in the past.”⁶⁰

The Transparency of the negotiation process was low. Formally, the framework for the work of the steering committee states that “Participants and Auxiliary Members consult with all stakeholders throughout (the negotiation process, OW) so that the views of interested stakeholders inform the Committee’s work.”⁶¹ It also says that the committee has to “operate with transparency in respect to governments, participating civil society organizations, and Signatory Companies.”⁶² Yet, this vague reference to transparency provides only little concrete guidance as to how and to what extent information about steering committee negotiations is to be shared with stakeholders outside the committee. In fact, stakeholders not involved in the steering committee often had difficulties obtaining information about the negotiations and related issues. As a company representative reports:

“The TSC kept this knowledge too long and too much for itself. It did not share this information about the process and where things are going openly

⁵⁹See for example The International Code of Conduct for Private Security Service Providers: Framework for the Steering Committee or International Code of Conduct for Private Security Service Providers, Temporary Steering Committee: Guidance on Working Groups.

⁶⁰Interview government official, Washington, DC, December 07, 2012.

⁶¹The International Code of Conduct for Private Security Service Providers, Framework for the Steering Committee, p. 1.

⁶²The International Code of Conduct for Private Security Service Providers, Framework for the Steering Committee, p. 1.

with others. I could have made an effort to contact Person A (name of a personally indentified member of the steering committee, OW) in order to obtain some of this information but in general it is not readily available in the ICoC context.”⁶³

Moreover, there is no formal mechanism for actors outside the steering committee to channel their views and interests into the negotiations other than through their respective stakeholder representatives on the committee (Ralby, 2011, p. 14).⁶⁴ As reported by an NGO representative:

“If you are not on the TSC the most important way to obtain information about negotiations in the ICoC is through the representative of your pillar on the TSC. TSC members are supposed to function as liaison actors with the different stakeholder communities.”⁶⁵

In fact, for actors that are not part of the steering committee or any other working body informal communication with their stakeholder group representatives is the primary channel to obtain information about ongoing negotiations within the ICoC process.⁶⁶ These informal information sharing mechanisms vary between stakeholder groups. Every “pillar” in the ICoC process has its own modalities for how they distribute and share information about ongoing negotiations.⁶⁷ As a result, throughout the negotiation episode actors, particularly those not involved in the steering committee and working groups, had difficulties obtaining information about the negotiation process and how best to shape its outcomes.

Take the negotiations over the first Draft Charter of the Oversight Mechanism as an example.⁶⁸ At the beginning, there was much information going into the work of the steering committee but not much going out in return. A lot of ideas were flowing into the committee’s drafting work and then disappeared as if it were a “black hole”⁶⁹. Out of this black hole the first Draft Charter then emerged. It was perceived by many stakeholders not involved in the steering committee as coming “out of nowhere”⁷⁰. Consequently, stakeholders did not understand the rationale behind the Draft Charter, they did not know how the steering committee arrived at this particular text. They did not understand why some comments solicited by the steering committee on the Charter were taken into account, while others were not. The reasons behind this were not clear for outside stakeholders.

⁶³Interview industry representative, Washington, DC, July 12, 2012.

⁶⁴Interview academic expert, Washington, DC, July 13, 2012.

⁶⁵Telephone interview NGO representative, September 23, 2013.

⁶⁶Telephone interview NGO representative, September 23, 2013.

⁶⁷Telephone interview NGO representative, September 23, 2013.

⁶⁸For the following, see interview government official, Washington, DC, December 07, 2012.

⁶⁹Interview government official, Washington, DC, December 07, 2012.

⁷⁰Interview government official, Washington, DC, December 07, 2012.

This has led to problems and a lot of push back by stakeholders from outside the steering committee when the committee opened up the first Draft Charter for public discussion and stakeholder comments.

If transnational tripartite bargaining over institutional design occurs in such a political context characterized by low institutional formalization and low transparency of negotiations my argument suggests that we should expect actors with network power at their disposal to achieve institutional choices that approximate their preferred outcomes. Economic and especially formal institutional power should be less relevant. As I will show in greater detail below, there is again some empirical support for these expectations. NGOs together with their supporters from the US Department of State, Switzerland, and the Geneva Center for the Democratic Control of Armed Forces were able to strike an institutional bargain that established monitoring and enforcement provisions that come fairly close to their institutional preferences. The interests of industry and the US Department of Defense which were more skeptical about robust and independent monitoring and enforcement procedures are less well reflected in the institutional architecture laid out in the Articles of Association of the International Code of Conduct for Private Security Service Providers.

Throughout the negotiation episode institutional bargaining was concentrated in the temporary steering committee that was established shortly after the adoption of the International Code of Conduct in November 2010. The purpose of the committee was to create a governance and oversight mechanism as an institutional backbone for the implementation of the regulatory provisions of the Code. It is constituted by nine members from industry, states, and civil society. Three voting-members came from industry. These were representatives of the Northern companies G4S, Aegis, and Triple Canopy. The African company Saracen also had a seat at the table as a non-voting or auxiliary member. At the beginning governments sent two voting-members; namely, the United States and the United Kingdom. In May 2011, Australia joined the committee as a third government voting member.⁷¹ Civil society was represented by the NGOs Human Rights First, Human Rights Watch, and the European Interagency Security Forum. Soon after the creation of the committee the European Interagency Security Forum, however, dropped out and was replaced by an academic representative from the Center for Human Rights and Business at the University of Zurich.⁷² In addition, the Swiss government and the Geneva Centre for the Democratic Control of Armed Forces adopted a convening and facilitating role.

In May 2011, the steering committee created three working groups.⁷³ The groups focused on the issues of (1) Assessment, Reporting and Internal and External Oversight, (2) Resolution of Third Party Grievances, and (3) Independent Governance and Over-

⁷¹Minutes, ICoC Steering Committee Meeting, Tuesday 3 May 2011, p. 2.

⁷²Minutes, ICoC Steering Committee Meeting, Tuesday 3 May 2011, p. 2.

⁷³Minutes, ICoC Steering Committee Meeting, Tuesday 3 May 2011.

sight Mechanism Structure, Governance, and Funding, respectively.⁷⁴ Starting from a discussion paper prepared by the steering committee which outlined controversial issues and several open questions⁷⁵ the major purpose of the working groups was to conduct in-depth discussions in the three focus areas, consult with external experts from outside the ICoC membership, and prepare the ground for agreement on critical issues of institutional design and organization. Like the steering committee the membership of these working groups was tripartite in nature and included in addition to the members of the committee other individuals and organizations from governments, industry, and civil society.⁷⁶ However, despite several months of intensive negotiations and numerous personal and telephone conference meetings the issues on the agendas of the working groups remained highly controversial so that little progress was achieved. The views and interests of the different stakeholder groups diverged so sharply that the final report of the working groups was not even released for the wider public. Not even ICoC participants not directly represented on the steering committee had access to this document (Ralby, 2011, p. 15).

Not all actors involved in the working groups or the steering committee were, however, equally important during the negotiations. The United States clearly dominated the government block while the United Kingdom and Australia were less active. Importantly, within the US government the Department of State and particularly the Bureau of Democracy, Human Rights, and Labor (DRL) regularly took the lead with respect to articulating US interests and positions in the negotiations. Other US agencies, such as the Bureau of Diplomatic Security at the Department of State (DSS) or the Department of Defense (DoD), which had a more technical as opposed to human rights concerned interest in regulating the global security industry often took a back seat at the bargaining table.⁷⁷

When it comes to industry the US-based company Triple Canopy early on adopted a leading role within industry in the working groups and particularly the steering committee. However, as a single and relatively small company Triple Canopy lacked both the legitimacy and resources to function as a representative of the US security industry not to mention the global security industry as a whole.⁷⁸ Other than in the various negotiation episodes within the Kimberley Process, industry associations, such as the North-American International Stability Operations Association (ISOA), the British Association of Private Security Companies (BASC), or the Pan-African Security Association (PASA), were less engaged in representing their respective constituencies in the negotiations. As a result,

⁷⁴Concept Paper: Areas requiring further consideration for the ICoC, 2011.

⁷⁵Concept Paper: Areas requiring further consideration for the ICoC, 2011.

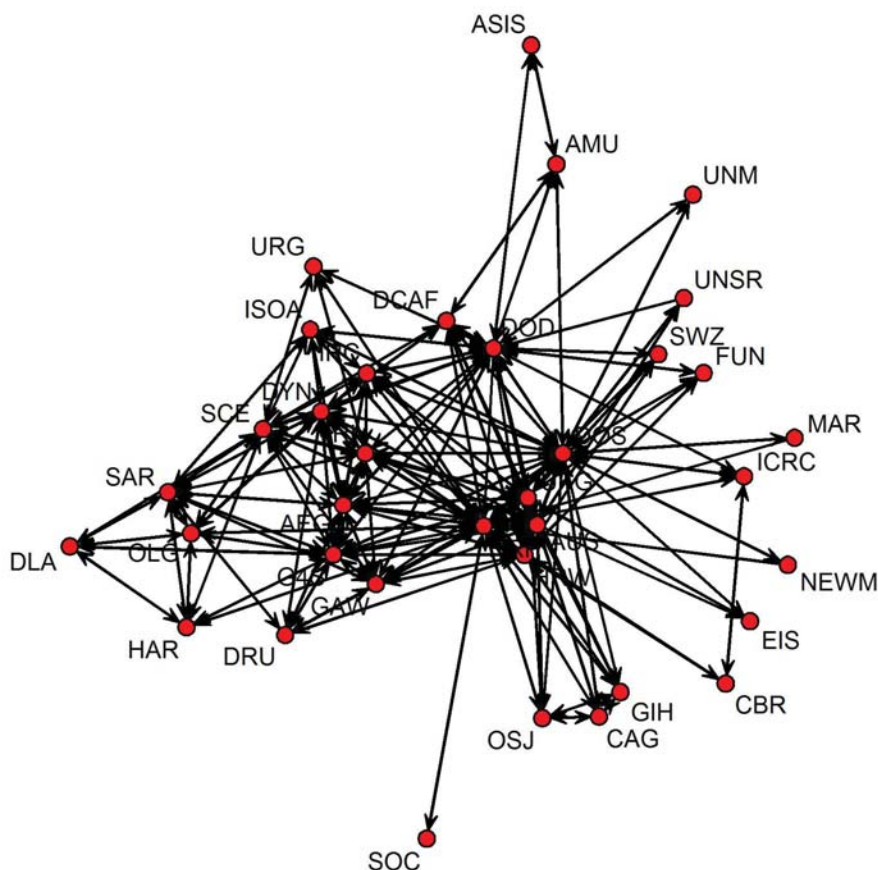
⁷⁶International Code of Conduct for Private Security Service Providers, Working Groups, as at 1 August 2011.

⁷⁷Interview industry representative, Washington, DC, July 12, 2012.

⁷⁸Interview industry representative, Washington, DC, July 12, 2012.

other than the diamond industry in the context of the Kimberley Process the security industry lacked a single voice in institutional bargaining and often remained fragmented and divided; the lack of a single leading organization or company throughout the negotiations made it very difficult for industry to build an effective coalition to lobby for its institutional preferences of weak monitoring and enforcement.⁷⁹

Figure 5.1: Exchange of Policy-relevant Information and Advice, ICoC Negotiations 2010-2013



Notes: Visualization based on a variant of Fruchterman and Reingold's force-directed placement algorithm as implemented in the network package for R (Butts, Handcock and Hunter, 2013). Isolates are not included in order to facilitate readability.

Finally, the civil society group in the steering committee and working groups was dominated by the US NGO Human Rights First. Although other NGOs, such as Human Rights Watch, the Open Society Justice Initiative, and War on Want, were regularly involved in steering committee and working groups meetings, Human Rights First was by far the single most important NGO in the negotiation process.⁸⁰ Like Triple Canopy on the industry side, Human Rights First had no official mandate to represent civil society

⁷⁹Interview industry representative, Washington DC, July 12, 2012.

⁸⁰Interview industry representative, Washington, DC, July 12, 2012.

interests in the negotiations. However, as I will elaborate in greater detail below, other than Triple Canopy, Human Rights First used its brokerage and gatekeeper position in the informal information flows between the ICoC working bodies, on the one hand, and the broader civil society stakeholder group, on the other, to control access of non-steering committee members to the negotiations and often excluded other members of the civil society group which articulated positions that diverged from its own.⁸¹ This often created a situation in which Human Rights First de facto operated as the only voice of the civil society group in the negotiations vis-à-vis governments and industry.

These qualitative observations about the differences in participation are mirrored by the pattern of the informal information exchanges and communications that emerged among states, security industry, and NGOs during the negotiations over the governance and oversight mechanism of the ICoC between November 2010 and February 2013. To start with, while—according to my data—133 actors can be identified as somehow involved in institutional bargaining during this period only 36 governments and organizations were actively involved in the exchange of policy-relevant information and advice; a group of 97 states, companies, and NGOs were completely isolated from the informal flow of negotiation-relevant information. This is reflected in a very low overall density of the information exchange network of 0.02 which indicates that only two percent of all possible communication ties were actually realized during the negotiation episode.

Among the 97 isolated actors were many security companies (e.g. Academi), a host of non-state clients of private security providers (e.g. extractive companies, such as Exxon Mobil, Chevron, and Rio Tinto), the vast majority of the states that endorsed the Montreux Document, and several human rights NGOs, such as Amnesty International, War on Want, and Rights and Accountability in Development. Importantly, even companies and organizations with substantial resources and organizational capacity at their disposal and with an interest in the issues at stake, such as Amnesty International, had difficulties participating in the informal communications among negotiators. The fact that these actors were completely excluded from the informal information exchanges among negotiators implies that the views and interests that they represent and which several interviewees described as critical for the effective regulation of the global private security industry were not included in bargaining over the institutional framework of the ICoC.⁸²

Moreover, the centralization of the information exchange network is high which indicates an uneven distribution of central positions in informal communications among negotiators. Particularly with respect to eigenvector centrality central positions were highly concentrated during the ICoC negotiations (see table 5.1 on page 172). Specifically, while a big group of 103 actors (about 77 percent of all actors in the network)

⁸¹Interview academic expert, Washington, DC, July 13, 2012. Interview industry representative, Washington, DC, July 12, 2013. Interview academic expert, Geneva, September 20, 2013.

⁸²Interviews government officials, Washington, DC, July 11, 2012 and December 07, 2012. Interview academic expert, Washington, DC, July 13, 2012.

had eigenvector centrality scores of less than 0.05, only 14 governments and organizations (about 11 percent) had values of 0.15 and higher. This indicates that the informal exchange of information relevant to the creation of the ICoC governance and oversight mechanism was clustered around a small number of highly connected actors while the majority of stakeholders occupied marginal network positions. In other words, there existed an hierarchy among states, security industry, and NGOs in terms of their participation in informal information exchange and communication during the negotiation episode.

Table 5.1: Centrality and Centralization in the 2010-2013 ICoC Network

	Outdegree	Indegree	Eigenvector	Betweenness
US DoD	0.159	0.152	0.280	0.018
US DoS	0.182	0.167	0.283	0.026
Switzerland	0.030	0.030	0.080	0.000
DCAF	0.061	0.068	0.157	0.001
HRF	0.190	0.212	0.322	0.034
American Univ.	0.030	0.030	0.055	0.001
Triple Canopy	0.114	0.114	0.249	0.003
DynCorp	0.098	0.098	0.210	0.002
ISOA	0.061	0.061	0.143	0.001
Centralization	0.172	0.195	0.407	0.017

Notes: Calculations performed using the network package for R (Butts, Handcock and Hunter, 2013).

This is further supported by examining the network graph in figure 5.1 on page 170. Just by eye-balling the graph one can observe that the informal information exchange network is fragmented into a few densley connected clusters which are only sparsely connected to other components of the network. For example, in the lower left-hand area of the graph one can indentify a group of security companies (e.g. Saracen, Olive Groups, Hart Security, and G4S) and some business associations (e.g. International Stability Operations Association). The informal information exchanges among these organizations are much denser than they are between these organizations and the NGOs located in the far right-hand area of the graph, such as the Open Society Justice Initiative or the International Committee of the Red Cross. Likewise, in the center of the graph there is another distinguishable cluster consisting of some human rights NGOs (e.g. Human Rights First and Human Rights Watch) and their government supporters from the US Department of State, the United Kingdom and Australia. These organizations are not only less well connected to the security companies on the left but also to other NGOs, such as the Fund for Peace or the European Interagency Security Forum. Together the low density, the large number of isolates, the high concentration of central positions and clustering mirror the qualitative observation that the active participation in the negotiations over the institutional design of the ICoC was unevenly distributed among states, security industry,

and NGOs between November 2010 and February 2013.

When we move from the network to the actor-level of analysis and examine the positions of individual states, companies, and NGO in the negotiation network we find substantial differences in actors' positions. For example, Human Rights First which was the most vocal and prominent representative of the civil society stakeholder group in the negotiations was the most central actor in the informal information exchange network irrespective of which of the four centrality measures in table 5.1 one takes into account. Also some of the other entities represented at the temporary steering committee, such as the US Department of State, the US Department of Defense, or Triple Canopy, occupy privileged network positions. However, we can see that Human Rights First is better positioned compared to its fellow steering committee members. Importantly, my data shows that Human Rights First occupied an advantageous position compared to those actors which pursued institutional preferences that diverged from its interests, such as the US Department of Defense, Triple Canopy, and DynCorp International.

Table 5.2: Egonetwork Heterogeneity and Liaison Brokerage in the 2010-2013 ICoC Network

	Egonet Heterogeneity (Incoming Ties)	Egonet Heterogeneity (Outgoing Ties)	Liaison Brokerage
US DoD	0.856	0.884	1.163
US DoS	0.966	0.951	1.613
Switzerland	0.625	0.625	0.000
DCAF	0.864	0.820	1.124
HRF	0.890	0.824	0.648
American Univ.	0.781	0.781	1.124
Triple Canopy	0.778	0.778	0.163
DynCorp	0.695	0.695	0.039
ISOA	0.820	0.820	0.173

This pattern of informal communication provided the US Department of State and Human Rights First which shared an interest in robust monitoring and enforcement with a relational infrastructure which made obtaining and disseminating strategically valuable information about the regulatory problem at hand, possible solutions as well as others' institutional preferences easier. Especially their connections to other central actors as reflected in their high eigenvector centrality put them into a position which allowed them to access and circulate negotiation-relevant information to a large number of other actors in a short period of time. Their opponents from the US Department of Defense, Triple Canopy and DynCorp International lacked this strategic asset which put them at a disadvantage.

This picture is further supported when we examine actors' structural positions in combination with qualitative information about actor types. Also with respect to these

measures Human Rights First and the US Department of State were in an advantageous position compared to their opponents from the industry and the US Department of Defense. As shown in table 5.2 on page 173, the DoS had incoming and outgoing information exchange ties to a heterogeneous group of other actors as indicated by its high index of qualitative variation scores of its first-step neighbors of 0.966 and 0.951. Likewise, Human Rights First established informal communication relationships with a range of different actors as reflected in its index of qualitative variation scores of 0.890 for incoming ties and 0.824 for outgoing communications. This provided them with direct access to a broad range of non-redundant information which they could use to optimize their bargaining strategies. By contrast, particularly their opponents from the industry received more homogeneous strategic information during the negotiations. Triple Canopy, for example, has IQV scores of 0.778 for both its first-step incoming and outgoing information exchange ties. DynCorp International's scores on these measures are even lower.

Likewise, with respect to their liaison brokerage activities industry representatives were in a weaker position vis-à-vis the advocates of robust monitoring and enforcement from Human Rights First and the US Department of State. This means that Human Rights First and the DoS received policy-relevant information and advice from many different stakeholder groups in the ICoC process (e.g. states, security industry, extractive companies, or other organizations, such as the Fair Labor Association or the Office of the United Nations Special Representative for Business and Human Rights). This provided them with substantial network power based on the informational and strategic advantages of their informal communication relationships. Industry representatives which lobbied for keeping the “bite” of the monitoring and enforcement structures of the governance and oversight mechanism of the ICoC at a minimum lacked these advantages.

In sum, with a low overall density, a high level of clustering, a high level of centralization, and substantial differences in brokerage activities there existed a striking imbalance of informal network power among states, security industry, and NGOs during the negotiations over the monitoring and enforcement mechanisms of the International Code of Conduct.

This pattern of informal information exchange relationships—and the uneven distribution of network power associated with it—had important consequences for the negotiations over the design of the governance framework of the ICoC. To begin with, the US Department of State occupied a central position in the informal communication network with direct information exchange relationships to a large number of other central actors. Importantly, while initially—particularly during the negotiations over the International Code of Conduct between March 2009 and November 2010—the Bureau of Diplomatic Security took the lead within the State Department on this issue, it was soon outmaneuvered by the Bureau of Democracy, Human Rights, and Labor. DRL had better contacts, better NGO support, and was able to devote more resources in terms of personnel and

time to the negotiations.⁸³ By contrast, the DSS and the Department of Defense which had a strong, though different interest in the negotiations were unable to mobilize similar amounts of personnel and resources. As a result of this combination of an advantageous structural position and capacity investment, DRL has been dominating the negotiations on the US side. This dominant position persisted even after the Department of State made the office of the legal advisor the formal leader and representative of the United States in the negotiation process.

Based on these advantages DRL took a leading role in drafting the governance and oversight mechanism of the ICoC. Drafting proposals and other documents is important in institutional bargaining because it provides an actor with the “power of the pen”⁸⁴. To paraphrase an interviewee: once things are put in writing negotiations move on from there and it is often much more difficult to change a specific item once it has been included in a written proposal or other document. Also, if an actor participates in drafting a proposal, it can include something more than it actually wants in order to be later able to go back and make concessions. This provides it with important room for maneuvering at later stages of the negotiation process.⁸⁵ Furthermore, once such a draft exists drafters can start negotiating with their closest allies and seek to create a group of supporters. With such a group of closely aligned supporters in their back they can then confront the parties which hold diverging interests which then have a hard time to reject this proposal that already enjoys the support by a larger number of actors.

DRL employed this strategy during the negotiations. With respect to monitoring and enforcement it had a strong preference for setting up an institution with robust and independent compliance verification and enforcement capabilities. It sought to create human rights performance assessment mechanisms that go beyond the mere certification of internal management processes of security contractors and wanted the new governance scheme to conduct in-field monitoring of company operations on the ground. It also wanted the governance mechanism to have “teeth” in order to enable it to effectively react to violations of the regulatory standards of the Code of Conduct. During the drafting phase of the new governance framework DRL included these institutional design elements in the Draft Charter of the Oversight Mechanism for the International Code of Conduct for Private Security Service Providers⁸⁶ without consulting the larger stakeholder constituency of the International Code of Conduct. Instead, it gathered a small group of early supporters around its draft which were strongly aligned in terms of their institutional preferences on monitoring and enforcement. This group included a small number of actors, such as Human Rights First, Human Rights Watch, Switzerland, and DCAF, which in some cases

⁸³Interview government official, Washington, DC, July 11, 2012.

⁸⁴Interview industry representative, Washington, DC, July 12, 2012.

⁸⁵Interview industry representative, Washington, DC, July 12, 2012.

⁸⁶See Draft Charter of the Oversight Mechanism for the International Code of Conduct for Private Security Service Providers, 16 January 2012.

(e.g. Human Rights First, Human Rights Watch) occupied themselves important structural positions in the negotiation network. With the support of this small but structurally powerful group of actors it was difficult for other actors, such as the US Department of Defense, or industry representatives, such as Triple Canopy or DynCorp International, to work against the DRL position and to lobby for substantial changes in the Draft Charter with respect to monitoring and enforcement.

Human Rights First also occupied a privileged position in the informal communication network. In particular, it had a strong direct relationship to the US Department of State and especially DRL. Two leading individuals within the bureau had worked for Human Rights First in the past and had strong personal relationships to the individuals who were representing the NGO in the negotiations.⁸⁷ They had a “very sympathetic ear”⁸⁸ to the issues Human Rights First raised which provided the NGO activists with privileged access to a key actor in the drafting of the institutional architecture of the new governance scheme. The information they received from and could provide to DRL provided Human Rights First with an important first-mover advantage in the drafting process. While many other actors with diverging interests (e.g. industry and US Department of Defense) only became aware of the specific content of the draft institutional design when the first Draft Governance Charter was released for public comments in January 2012, Human Rights First through its strong informal relationships with DRL could shape critical parts of the document toward its institutional preferences at the very early stages of the drafting process. Elements of the first Draft Charter that can be traced back to the joint efforts of Human Rights First and DRL include the creation of a Chief of Performance Assessment as part of the independent secretariat who was intended to have the “principal responsibility for the implementation and operation of the Mechanism’s performance assessment (i.e. monitoring, OW) program”⁸⁹. The Draft Charter also provided the Chief of Performance Assessment with the “responsibility and discretion [...] to develop a monitoring plan defining the geographic, temporal and substantive scope of monitoring to assess performance under the Code.”⁹⁰ These and other provisions of the Draft Charter would have led to a monitoring mechanism that would have approximated the independent third-party auditing system as preferred by Human Rights First and other NGOs even closer than the mechanism that has ultimately been agreed upon in the Articles of Association.

Human Rights First had also strong direct relationships with DCAF and the Swiss government, which shared its preferences for robust and independent monitoring and

⁸⁷Interview government official, Washington DC, July 11, 2012.

⁸⁸Interview industry representative, Washington, DC, July 12, 2012.

⁸⁹Draft Charter of the Oversight Mechanism for the International Code of Conduct for Private Security Providers, p. 12.

⁹⁰Draft Charter of the Oversight Mechanism for the International Code of Conduct for Private Security Providers, p. 13.

enforcement. Although both the Swiss government and DCAF officially adopted more of a neutral convening and facilitating role, in terms of their preferences they were in line with what DRL and Human Rights First advocated for. Their strong informal relationships to these two structurally very prominent actors further enhanced the amount and quality of the strategic information Human Rights First could access through its network ties and exploit in its negotiation tactics. In short, Human Rights First could use its strong direct connection to the leading drafting agency as well as other structurally important actors to exercise substantial influence over the particularities of monitoring and enforcement laid out in the first Draft Charter and later in the Articles of Association. This was a critical component of Human Rights First's negotiation tactics. Industry, by contrast, lacked both the informal relationships and more general negotiation expertise to use a similar strategy.⁹¹ It lacked a strong connection to DRL and its most important supporters from the US Department of Defense and the Bureau of Diplomatic Security at the State Department were due to resource constraints less involved in the drafting process and, hence, less of a bargaining asset.

In addition, Human Rights First used its brokerage position between the larger group of civil society stakeholders, on the one hand, and the members of the temporary steering committee and working groups, on the other, in order to prevent the interests and views of other NGOs to be heard and considered in the negotiations of the committee. This holds particularly for those NGOs whose positions differed from Human Rights First's agenda. As one interviewee reported: "if you are outside the temporary steering committee and have a different view than Human Rights First this is not even mentioned in steering committee discussions."⁹² For example, an academic who was involved in the negotiations and who also works for Amnesty International articulated on multiple occasions positions that deviated from those held by Human Rights First. In particular, this person was often more closely aligned with the US Department of Defense than the Department of State and DRL. Human Rights First, by contrast, typically sharply disagreed with the DoD especially with respect to whether performance assessment, i.e. monitoring, should be part of the governance architecture of the new institution and how strong it should be. Although organizations on the temporary steering committee are responsible for communicating the views of their broader constituencies into the discussions of the committee,⁹³ Human Rights First used its brokerage and gatekeeper position to cut off outside voices and monopolized the civil society representation in the negotiations. As a result, other civil society groups, such as Amnesty International or the Fund for Peace, which were closer to DoD and DSS were not well represented in the negotiations.

Moreover, later in the negotiation process—to be precise during 2012—Human Rights

⁹¹Interview industry representative, Washington DC, July 12, 2012.

⁹²Interview government official, Washington, DC, July 11, 2012.

⁹³The International Code of Conduct for Private Security Providers, Framework for the Steering Committee, p. 1. Telephone interview NGO representative, September 23, 2013.

First and its allies from DRL used the informational advantages stemming from their privileged networks positions to change industry's beliefs with respect to monitoring. This ultimately prepared the ground for achieving agreement.⁹⁴ At the beginning of the negotiations, the issue of performance assessment and monitoring was new to the industry which was only familiar with the concept of technical certification. They associated a number of problems with monitoring. They perceived it, for example, as duplicating the efforts undertaken in the context of technical certification, as intrusive, and as violating issues of confidentiality. They also feared issues of liability and were concerned about the additional costs it would incur and who would eventually pay the monitoring bill. Over time and continued interaction, however, Human Rights First and its supporters provided industry with information and additional background knowledge on what they actually meant when they talked about monitoring. They explained how it is different from certification, elaborated on the added value it has when conducted in addition to technical auditing, and ensured companies that a robust monitoring mechanism would not lead to "armies of NGO activists" inspecting the operational sites of security contractors.⁹⁵

During this continued exchange of information and discussion many industry representatives (e.g. Triple Canopy, DynCorp International, ISOA) developed a more nuanced understanding of what monitoring in the context of the ICoC would mean and became less recalcitrant. Once they had developed a better understanding of what monitoring is about and what NGOs meant when they referred to it, industry started to understand the value of monitoring and believed NGOs that this is what they had in mind and not the problematic aspects industry originally assumed NGOs sought when they demanded stronger monitoring. Importantly, "industry started to believe and understand that monitoring is something that is also in their interest"⁹⁶. Thus, over time NGOs and their allies from DRL used their informal information exchange and communication ties with industry representatives in order to generate a basis of trust. They used this in turn in order to change industry beliefs about what monitoring is and how it works and ultimately industry institutional preferences. This allowed them to get industry to agree to monitoring provisions that are closer to their most preferred outcome of an independent third-party monitoring mechanism. Without such an information-induced change of industry beliefs and preferences it would have been difficult for NGOs and their allies to achieve such an institutional outcome.

Another example of how the informational advantages of privileged network positions were used to impact institutional bargaining involves DCAF's role in negotiating the new governance scheme's enforcement structures. At some point during the negotiations the actors which were lobbying for strong enforcement capacities of the governance and

⁹⁴Interview government official, Washington DC, June 29, 2012.

⁹⁵Interviews government officials, Washington DC, June 29, 2012, and July 11, 2012.

⁹⁶Interview government official, Washington, DC, June 29, 2012.

oversight mechanism of the ICoC introduced the idea of creating an arbitration committee for settling grievance cases against individual companies and deciding upon remedies.⁹⁷ Because of its position as a liaison broker between different stakeholder groups (see table 5.2 on page 173) DCAF early on in the negotiation process obtained information about different parties' preferences and positions on this issue. On the basis of this information DCAF realized that particularly industry and some government representatives considered an arbitration committee too costly and intrusive and that they would strongly oppose such a proposal.⁹⁸

Based on its knowledge about parties' positions towards the question of whether to create an arbitration committee for the ICoC DCAF developed a good idea about which parts of this proposal had the chance to garner agreement and which did not. It then disaggregated the proposal and positioned different aspects of it as stand-alone negotiation items. This disaggregation made possible agreement on a contentious issue which as a whole would not have been accepted by the enforcement skeptics.⁹⁹ Several of the disaggregated parts of the original proposal, such as the prominent and independent role of the ICoC secretariat and the board of directors in assessing and addressing cases of company non-compliance, are now contained in the Articles of Association of the ICoC.¹⁰⁰ This can be considered a success for the coalition of NGOs and governments that forcefully argued for including strong enforcement mechanisms into the governance architecture of the new institution. This is an illustrative example of how strategic information about others' preferences and views toward a negotiation item was used to tailor a controversial issue in a way that made striking a bargain possible. Without its superior information about others' views, interests, and concerns DCAF would not have been able to achieve this deal.

In sum, between November 2010 and February 2013 NGOs and their supporters formed a strong and cohesive alliance that bargained hard for robust and independent monitoring and enforcement mechanisms to implement the regulatory provisions of the ICoC. The key members of this coalition (e.g. Human Rights First, DRL, DCAF) all occupied central positions in the negotiation network and were active brokers between different stakeholder groups. These structural positions provided them with large amounts of non-redundant bargaining-relevant information and strategic advantages to control the information flow from and toward stakeholder groups which depended on their brokering activities for having access to the wider network. The parties that were more skeptical about vigorous monitoring and enforcement, such as many industry representatives and the US Department of Defense, were less well embedded in the informal information ex-

⁹⁷Telephone interview NGO representative, September 23, 2013.

⁹⁸Telephone interview NGO representative, September 23, 2013.

⁹⁹Telephone interview NGO representative, September 23, 2013.

¹⁰⁰International Code of Conduct for Private Security Service Providers' Association. Articles of Association, pp. 8-9.

change and communication network. As a result, they often became aware of critical draft proposals and other bargaining relevant developments at later stages of the negotiation process which left them often with little room for bargaining for amendments. In addition, due to their relational disadvantage they were also less able to tailor their negotiation strategies toward others' positions in order to facilitate institutional choices that reflect their preferences. In short, the distribution of informal network power in this negotiation episode clearly favored those actors who sought to establish strong monitoring and enforcement mechanisms. Given the characteristics of the negotiation environment (low institutional formalization and low transparency) they could use these advantages as bargaining leverage which eventually allowed them to bias the design of the formal monitoring and enforcement mechanisms of the governance and oversight mechanism of the ICoC toward their preferences.

What about economic power? To start with, the structure of the global private security industry is different compared to the diamond industry or the extractive sector. While the diamond and the extractive industries sector are dominated by a few large multinational companies (e.g. De Beers, Rio Tinto, Exxon Mobil, Chevron), the private security industry largely consists of small and medium sized corporations. There are only a few big players.¹⁰¹ In other words, there is no De Beers or Exxon Mobil in the global private security industry. In addition, many companies in the private security sector are not exclusively security companies but have other business as well.¹⁰² As a result, the distribution of economic capacities and power is less concentrated within the security industry than it is within the diamond and extractive industries. In addition, the gap in terms of economic power between companies, on the one hand, and NGOs, on the other, which is substantial in the context of the Kimberley Process and the Voluntary Principles on Security and Human Rights is relatively smaller in the ICoC process because of the on average smaller size of individual companies. Yet, the difference between companies and NGOs in terms of financial resources and organizational capacities are still significant.

Data on the annual revenues of private security companies is difficult to obtain. However, the figures which are available illustrate the overall small size of the industry and limited economic power of individual companies compared to the diamond and extractive sectors. For example, the British company G4S which is one of the world's leading providers of private security services earned revenues of £7.5 billion and £7.0 billion in 2012 and 2011, respectively (G4S, 2012, p. 84). This made G4S the biggest UK-based private security firm in 2012. Other security contractors which sought to play an active role in the negotiations over the governance and oversight mechanism of the ICoC

¹⁰¹Interview industry representative, Washington, DC, July 12, 2012. See also Nils Rosemann, Swiss Federal Department of Foreign Affairs, "International Code of Conduct for private security providers: a multi-stakeholder initiative of the 21st century?", November 24, 2010, <http://www.ihrb.org/commentary/guest>, accessed: September 05, 2013.

¹⁰²Interview industry representative, Washington, DC, July 12, 2012.

are even weaker in terms of their economic weight. The US-based company DynCorp International, for example, had annual revenues of \$3.6 billion in 2010¹⁰³, \$3.7 billion in 2011¹⁰⁴, and \$4.0 billion in 2012¹⁰⁵. Also the Canadian Garda World Security Corporation can be described as relatively small compared to multinational firms, such as De Beers or ExxonMobil. Its annual revenues amounted to about \$1.1 billion in both 2010 and 2011 (Garda World Security Corporation, 2011, p. 20). Thus, other than their counterparts in the diamond and extractive industries the private security companies addressed by the regulations of the ICoC do not have large amounts of financial capabilities at their disposal that can be dedicated to lobby for favorable policies and institutional structures of the governance scheme that regulates their operations.¹⁰⁶

Table 5.3: US DoD Security Contractors and Contract Values in Iraq and Afghanistan, 2009-2011

	Iraq		Afghanistan	
	No. Contractors	Contract Value (mio. \$)	No. Contractors	Contract Value (mio. \$)
2009	116,527	9,204	88,140	7,147
2010	80,083	6,918	94,413	11,267
2011	64,253	Na	90,339	Na

Source: (Schwartz and Swain, 2011, pp. 28-31).

In contrast to industry, economic power among the states involved in the ICoC process has been more concentrated. “Western governments are among the largest consumers of military and security services.” (Krahmann, 2013, p. 5) Specifically, the United Kingdom and the United States are the biggest players in the global private security market.¹⁰⁷ The United States is the single most important consumer of private security contractor services. Overall the availability of accurate data on contractor numbers and contract values is sketchy but in those areas where it exists it shows the position of the United States as a major consumer of private security and military services. When the negotiations over the ICoC governance and oversight mechanism started in 2010 the US Department of Defense relied extensively upon private security companies to support its overseas contingency operations. In 2010 it had, for example, 94,413 private security providers on the ground

¹⁰³ DynCorp International, <http://ir.dyn-intl.com/releasedetail.cfm?ReleaseID=476456>, accessed: October 18, 2013.

¹⁰⁴ DynCorp International, <http://files.shareholder.com/downloads/DCP/2739912301x0x558421/6d4cd32f-0273-418a-af68-d1d725c5135f/DynCorpFinalRelease.pdf>, accessed: October 18, 2013.

¹⁰⁵ DynCorp International, <http://files.shareholder.com/downloads/DCP/2739912301x0x648823/6e53b4b3-8179-43a5-ac8e-f9207af5814a/DynCorp.pdf>, accessed: October 18, 2013.

¹⁰⁶ Interview industry representative, Washington DC, July 12, 2012.

¹⁰⁷ United Kingdom Foreign Office Minister Mark Simmonds, written statement to Parliament “International Code of Conduct for Private Security Service Providers Association”, October 15, 2013, <https://www.gov.uk/government/speeches/international-code-of-conduct-for-private-security-providers-association>, accessed: October 23, 2013.

in Afghanistan and 80,083 in Iraq (see table 5.3 on page 181). In terms of contract values, the DoD had obligations toward private security companies of about \$7.0 billion in 2010 in Afghanistan and of about \$11.3 billion in Iraq (Schwartz and Swain, 2011, p. 31).

In addition, the US is also the second largest host of private security companies involved in the ICoC process. Of the 708 companies that have signed the ICoC as of September 1, 2013, 64 or nine percent were based in the US.¹⁰⁸ The 208 UK-based companies constitute the biggest share with 29 percent of all ICoC signatory companies. Australia and South Africa as the third and fourth largest host countries each account for only three percent of all signatory companies. The situation with respect to the member companies of the newly found ICoC Association looks similar. The UK ranks again first with 51 out of 135 (about 38 percent) companies that became founding members of the new governance scheme.¹⁰⁹ The US hosts 12 of the 135 ICoC Association member companies (about 9 percent) and is, therefore, the second most important host country. Australia and South Africa are the home countries of five (four percent) and four (three percent) member companies, respectively.

Being the world's single-most important consumer of private security services and the host country of a considerable proportion of the security companies involved in the ICoC process provides the US with high potential bargaining power based on side payments and exit options. The vast financial capabilities which the US government agencies engaged in the ICoC negotiations have at their disposal in principle provide them with considerable room to use side payments and package deals to shape negotiation outcomes. Its superior economic position also provides the US with the threat of exiting the ICoC process as another tool in its repertoire of negotiation tactics. Given the importance of the US as a consumer of security service and a host of security companies any regulatory scheme at the global level that lacks US involvement and support would suffer from effectiveness problems. This in turn is a potentially powerful source of bargaining leverage for the US.

Finally, similar to the Kimberley Process and the Voluntary Principles on Security and Human Rights the financial capabilities of the NGOs involved in the ICoC process can be described as limited. Even the bigger organizations, such as Human Rights First and Human Rights Watch, were constrained by the "simple issue of resource limitation that has left many civil society organizations unable to commit the resources necessary to maintain consistent presence and continuous input in the ICoC development process." (Grespin, 2012, p. 3). Such resource constraints even multiplied for smaller organizations which often had difficulties attending the frequent personal meetings and conference calls that were held during the negotiation episode. Importantly, even the more resourceful NGOs with a stake in the ICoC negotiations, such as Amnesty International, "feel that they have

¹⁰⁸International Code of Conduct for Private Security Service Providers, <http://www.icoc-psp.org/>, accessed: October 21, 2013.

¹⁰⁹International Code of Conduct for Private Security Service Providers Association, <http://www.icoca.ch/>, accessed: October 21, 2013.

been deliberately shut out of the process.” (Grespin, 2012, p. 3).

This distribution of economic power among states, security industry, and NGOs had only little impact on the negotiations over the governance and oversight mechanism of the ICoC. The economic capabilities of the security industry were limited to begin with. In addition, many companies were also not able and willing to devote significant amounts of their scarce economic resources to their engagement in the ICoC.¹¹⁰ More importantly, we also lack empirical evidence that bargaining tactics based on economic capabilities, such as side payments, issue linkage or threats to exit the negotiations, played a relevant role in industry’s and states’ negotiation strategies. There is no recorded incidence of a company or government offering a human rights NGO financial or other compensations in order to make it agree to a monitoring or enforcement system it would not have opted for otherwise. This resonates with the assessment of the representatives of some NGOs and companies in the negotiation process who report that the “big players are not always the most influential ones”¹¹¹. Further, as reported by several interviewees, the threat to leave the ICoC process and pursuing alternative options for addressing the regulatory problems of the global private security industry was not a relevant source of leverage in the negotiations over the ICoC governance architecture.¹¹² In sum, there is no strong empirical evidence in my data that during the negotiation episode the direct use of economic power figured prominently in the bargaining strategies of states, companies, and NGOs.

Finally, what role did formal institutional power play in the negotiations? As outlined above, overall the level of formalization in which the negotiations over the governance and oversight mechanism of the ICoC occurred can be described as low. Besides the temporary steering committee and the three working groups not much of an institutional framework existed that imposed a structure on tripartite bargaining between November 2010 and February 2013. However, the few institutionalized settings which existed affected the bargaining dynamics among states, security industry, and NGOs in relevant ways.

Two aspects of were of particular importance. On the one hand, being a member of the temporary steering committee and the working groups was important with respect to access to critical stages of the negotiation process. Due to the lack of institutionalized mechanisms for sharing information about the work of the steering committee and working groups those who remained outside these working bodies had difficulties keeping track of the negotiation process. Oftentimes actors from outside these negotiation forums were not even aware of what was being discussed at a particular point of the negotiations and whether or how far this affects their interests.¹¹³ Given that only ten actors were

¹¹⁰Interview industry representative, Washington DC, July 12, 2012.

¹¹¹Interview academic expert, Washington DC, July 12, 2012. Interview NGO representative, Washington, DC, July 11, 2012.

¹¹²Interview NGO representative, Washington, DC, July 11, 2012.

¹¹³Interview government official, Washington, DC, July 11, 2012. Interview academic expert, Washington, DC, July 13, 2012.

members of the temporary steering committee this left the vast majority of states and organizations with a stake in the negotiations aggrieved in terms of access to the major sites of institutional bargaining.

Likewise, access to the working groups was unevenly distributed among stakeholders. Only Human Rights First and the US Department of State were represented in all three working groups. On the industry side, no individual company or association—even companies which are relatively powerful in terms of economic capacities such as G4S or DynCorp International—was member of more than one working group. Further, the US Department of Defense had no representative in the working group on Independent Governance and Oversight Mechanism Structure, Governance, and Funding which was a key site for the highly controversial discussions about monitoring and enforcement.¹¹⁴ This provides an additional explanation for why the US Department of Defense and industry, which shared a preference for a light compliance verification and enforcement system, encountered difficulties striking a more favorable bargaining and had ultimately to settle on a governance architecture which with respect to monitoring and enforcement reflects the interests of NGOs and the DRL much closer than its own priorities.

Furthermore, access to the more formalized negotiation settings also had an important indirect effect on the negotiation dynamics. Being regularly involved in the meetings of the temporary steering committee and the working groups allowed actors to establish new informal connections to states, firms, and organizations to which they had no relationship in the past. Particularly the numerous monthly meetings of the temporary steering committee provided ample room for those regularly involved in the negotiation process to establish and foster informal working relationships which, at later stages of the process, turned out to be valuable advantages in institutional bargaining.¹¹⁵

Other elements of formal institutional power had no relevant effect on the dynamics and outcomes of institutional bargaining. The *de facto* veto positions of individual steering committee and working group members that emerged from the practice of consensus-based decision-making did not figure prominently in actors negotiation strategies.¹¹⁶ There is no evidence in my data that at any point during the more than two years of negotiations states, companies, or NGOs vetoed an institutional design element they did not want. Nor was such a veto threatened at any time. Not even the qualified majority voting procedures were used in order to overcome disagreements.¹¹⁷ Instead, in all instances where actors had diverging interests over institutional design elements negotiations continued until the parties managed to identify a mutually agreeable solution. As argued and shown above,

¹¹⁴International Code of Conduct for Private Security Service Providers, Working Groups, as at 1 August 2011, p. 3.

¹¹⁵Interview government official, Washington, DC, December 07, 2012. Telephone interview NGO representative, September 23, 2012.

¹¹⁶Telephone interview NGO representative, July 05, 2012.

¹¹⁷Telephone interview NGO representative, September 23, 2012.

the informational and strategic advantages derived from central and brokerage positions in the informal communication network that emerged among states, security industry, and NGOs during the negotiation episode turned out to be critical assets in this process.

5.4 Summary

In this chapter, I have examined the negotiations over the creation of a governance and oversight mechanism to facilitate the implementation of the regulatory standards of the International Code of Conduct for Private Security Service Providers between November 2010 and February 2013. The findings of the qualitative analysis lend further support to my theoretical argument. In a bargaining environment characterized by informal governance and low transparency network power based on privileged positions in the web of informal information exchange relationships among states, security contractors, and NGOs are an effective means of influence. More specifically, my data suggests that it is particularly connections to others who occupy central positions and who are critical brokers of information flows that provide actors with decisive informational advantages in institutional bargaining.

I also find that formal institutional power played indirect roles in actors' negotiation strategies. While the blocking capacities of veto positions and voting rights were not invoked directly to gain influence, access to negotiation forums (e.g. temporary steering committee and working groups) and especially the lack of such access turned out to be important for bargaining dynamics and outcomes. Institutional access and participation also provided actors with opportunities to forge informal trust and communication relationships which could then be exploited as informational assets in institutional bargaining. Thus, formal institutional power in the form of access to negotiation settings had a reinforcing impact—both negative and positive—on the inequalities among negotiators that emerged from the uneven distribution of network power.

The next chapter will provide my fifth and final exploratory case study of tripartite institutional bargaining in the context of the Voluntary Principles on Security and Human Rights before chapter 7 will then turn to an analysis of the determinants of the structures of informal negotiation networks.

Chapter 6

Regulating the Extractive Industries

In the late-1990s, extractive companies operating outside their home countries on multiple occasions were accused of complicity in human rights violations by NGOs and local community activists. One of the publicly most visible instances of company involvement in human rights violations was related to Exxon Mobil's operations in the province of Aceh in Indonesia (Clarke, 2008). During the 1980s and 1990s Exxon Mobil as well as its predecessors Mobil Oil Corporation and Mobil Oil Indonesia had hired individuals of the Indonesian military forces as private security personnel to protect its facilities in the Aceh region of Indonesia, where it was running natural gas extraction operations. It not only paid public security forces but also supported their equipment and training. When these security forces were accused of committing human rights abuses, including torture, rape and killings, against local villagers in the surrounding areas of Exxon Mobil's facilities the company faced allegations of complicity in these abuses. One of the allegations, for example, asserted that the earth-moving equipment provided by the company was used by the Indonesian military to dig mass graves (Shari, 1998, p. 69). Exxon Mobil, so the argument brought forward by victims and NGO activists went, "should have been aware of the high degree of risk that TNI (Indonesian military forces, OW) security personnel might commit human rights abuses" (Clarke, 2008, p. 3) and, hence, should have avoided hiring them as security providers. Other incidents included BP in Colombia which had been accused of hiring private security contractors that were involved in human rights abuses (Browne, 2010, p. 98)¹ as well as Chevron in the Niger Delta which had been "charged with responsibility for the consequences of the use of their equipment by state security forces which perpetrated human rights violations."²

As a response to these corporate scandals, the Voluntary Principles on Security and Human Rights (VPs or Voluntary Principles) were launched in 2000 as an initiative of the

¹See also, Human Rights Watch, "Colombia: Human Rights Concerns Raised By The Security Arrangements Of Transnational Oil Companies", April 1998, p. 4.

²Bennett Freeman, "Red Meat on the Table: Negotiating the Voluntary Principles on Security and Human Rights", p. 1.

governments of the United States and the United Kingdom. The VPs are a transnational public-private governance scheme in which companies from the extractive sectors (oil, gas, and mining) work together with human rights NGOs and governments to regulate the security provisions of extractive companies operating in weakly governed states and make sure that these provisions do not cause or are complicit in human rights abuses (Freeman, 2002; Williams, 2004; Hansen, 2009; Pitts, 2011).

The main objective of the Voluntary Principles is to assure the safety and security of extractive companies' operations in host states, while at the same time assuring that companies are not committing or contributing to human rights violations. They encourage companies to examine and monitor the impact their actions have on the human rights situation of the local communities in which they operate.³ For example, when a company seeks the assistance of the public security forces of the state that is hosting its business operations the nature of the relationship between those forces and local communities must be taken into consideration by the company especially with respect of the public forces' past human rights records.

While the Voluntary Principles are a set of general principles, they are procedural in nature as they instruct companies on how to practice due diligence in the area of human rights, particularly with respect to their engagement with private and public security providers. For example, the VPs state that "companies should consult regularly with host governments and local communities about the impact of their security arrangements on those communities."⁴ Aside from these practical guidelines, the Voluntary Principles also provide an institutional forum where members can engage in dialogue regarding the extractive industries, company behavior, security arrangements, and human rights protection. Member companies can share best practices and learn from each other's experiences in dealing with problems that emanate from the intersection of security and human rights issues. The Voluntary Principles also require companies to become more involved with and aware of the communities and states where they operate. They are encouraged to develop a greater understanding of these communities and attempt to mitigate or prevent the negative social, environmental, economic and political consequences that they may have on the security situations in communities affected by conflict.

Since their initiation in 2000 the Voluntary Principles on several occasions during their historical trajectory envisioned hard and prolonged bargaining among states, extractive companies, and human rights NGOs over how to organize the institutional structures needed to implement the regulatory standards contained in the VPs and to ensure company compliance. These episodes of tripartite institutional bargaining often evolved around disagreements on questions related to monitoring and enforcement.⁵ The modal

³Voluntary Principles on Security and Human Rights, p. 2.

⁴Voluntary Principles on Security and Human Rights, p. 3.

⁵Interview NGO representative, London, September 24, 2010.

result of these negotiations: stalemate, and at times even paralysis rather than institutional innovation.⁶

In addition to the negotiations over the creation of the governance scheme in 2000, one bargaining episode that was of particular importance for the development of the scheme was the negotiations over the establishment of a new governance architecture of the institution. These negotiations started in January 2010 and ended at the Extraordinary Plenary Meeting of the Voluntary Principles in September 2011 in Ottawa. The result: the adoption of the Governance Rules of the Voluntary Principles on Security and Human Rights.⁷ This most recent instance of tripartite institutional bargaining within the Voluntary Principles on Security and Human Rights provides the empirical material for my final case study in this dissertation.

6.1 Institutional Choices

At the beginning of the negotiations over the reform of the governance architecture of the Voluntary Principles in January 2010, states, extractive companies, and NGOs had a number of options with respect to whether and how to change the monitoring and enforcement mechanisms of the governance scheme. Moving from the existing annual self-reporting system to an independent third-party auditing scheme was one possibility; establishing standardized reporting indicators and guidelines to make company self-reports more detailed and comparable was another; and adherence to the institutional status quo was also a viable option at the negotiation table.

When the new Governance Rules of the Voluntary Principles were adopted on September 16, 2011 states, extractive companies, and NGOs agreed on an institutional framework which contained only a few minor amendments with respect to the formal monitoring and enforcement structures of the scheme. Companies' annual reports about how they have tried to implement the Voluntary Principles into their daily business operations remained the only official source of information on the basis of which company performance under the regulatory provisions of the VPs is evaluated.⁸ No party other than the individual companies themselves is involved in the collection and assessment of information about their implementation efforts and compliance performance. Other than in the past, however, these reports had now to be written based on a set of reporting guidelines outlined

⁶Bennett Freeman, "Remarks at Reception for the Voluntary Principles Mid-year Special Session", Embassy of Switzerland, Washington, DC, June 30, 2010, p. 1. Interview industry representative, London, September 28, 2010. Interview former government official, London, September 29, 2010. Interview government official, Washington, DC, August 17, 2010. Interview NGO representative, Washington, DC, August 18, 2010.

⁷Initiative of the Voluntary Principles on Security and Human Rights, Governance Rules.

⁸Initiative of the Voluntary Principles on Security and Human Rights, Governance Rules, p. 20. Interview government official, Washington, DC, August 17, 2010.

in the Governance Rules.⁹ Yet, because these guidelines are simply a list of indicators which have to be assessed when reporting about a firm's implementation of the regulatory provisions of the VPs they do not impose much of a structure on reporting.¹⁰

Furthermore, in principle companies' annual self-reports remain strictly confidential and are not available to a broader public audience so that NGOs within the Voluntary Principles cannot use them as material for "naming and shaming" companies that are doing poorly in terms of standard implementation, nor can stakeholders from outside the governance scheme obtain information about what actions companies undertake to implement the Voluntary Principles. The fact that recently some companies, such as BP,¹¹ have started publishing their implementation reports voluntarily does not change this situation because those companies that encounter problems and are, therefore, potential targets of rule enforcement are unlikely to voluntarily publish their implementation assessment results.¹² On the basis of the confidential individual company reports the VPs secretariat produces an annual summary report which is publicly available and summarizes—in the aggregate—good practices and progress made with respect to the implementation of the Voluntary Principles.¹³ Yet, the VPs Governance Rules explicitly state that individual companies must not be referenced by name in these reports so that, again, the potential of using this information to point out individual companies' good or bad performance and using this as leverage for enforcement is limited.¹⁴

Moreover, there continues to exist a lack of mechanisms for verifying company reporting results and monitoring in the Voluntary Principles. There is no mechanism in place that provides for systematic evaluation of companies' behavior under the regulatory standards of the VPs.¹⁵ The only mechanism that approximates a monitoring procedure is individual participants' ability to raise case-specific concerns about other participants' implementation efforts. As stated in the appendix 2 of the Governance Rules:

“Participants are permitted to raise concerns regarding whether any other Participant has met the Participation Criteria and, where appropriate, concerns regarding sustained lack of efforts to implement the Voluntary Principles.”¹⁶

However, its case-by-case and ad-hoc character make this complaints procedure a rather

⁹Initiative of the Voluntary Principles on Security and Human Rights, Governance Rules, p. 51.

¹⁰Initiative of the Voluntary Principles on Security and Human Rights, Draft Reporting Guidelines, pp. 51-53. Interview government official, Washington, DC, August 17, 2010.

¹¹BP, Annual Report on the Voluntary Principles on Security and Human Rights January to December 2011, February 16, 2012.

¹²Interview NGO representative, Washington DC, July 03, 2012.

¹³See Summary Report of Voluntary Principles Implementation Efforts During 2010 and Summary of Voluntary Principles Implementation Efforts During 2011.

¹⁴Initiative of the Voluntary Principles on Security and Human Rights, Draft Reporting Guidelines, p. 20.

¹⁵Telephone interview NGO representative, May 09, 2011.

¹⁶Initiative of the Voluntary Principles on Security and Human Rights, Governance Rules, p. 33.

weak monitoring tool. In addition, in order to raise concerns the complaining organization needs first to collect the information that allows indentifying and qualifying implementation failure.¹⁷ Since there is no systematic procedure to produce such information in the first place, the ability, for example, of NGOs to notice a company's failure to implement the VPs is strongly dependent on the information they can obtain which, in turn, is dependent on the resources they have at their disposal. The financial resources and organizational capacities of the NGOs participating in the VPs are typically limited which has a dampening effect on their ability to use this ad-hoc, case-by-case compliance verification mechanism.

When it comes to enforcement a participant may be expelled from the Voluntary Principles if it fails to meet its obligations as a member of the governance scheme. For companies this primarily refers to the submission of reports to the annual VPs plenary meeting and the preparedness to engage in dialogue with members of the scheme that raise concerns about its behavior under the regulatory standards of the VPs.¹⁸ Below the threshold of outright expulsion a participant may also be "declared inactive if it fails to submit an Annual Report that meets the criteria specified in the Reporting Guidelines."¹⁹ While an "inactive" participant maintains formal membership status in the VPs, it temporarily loses its full membership rights.

However, the possibility to expel or declare a company as inactive remains a weak enforcement instrument. On the one hand, the decision to ostracize a participant or to suspend its membership is made by the annual plenary meeting of all VPs participants where each individual participant has one vote. Because the annual plenary meeting typically seeks to make decisions by consensus it is relatively easy for individual actors or small groups to block a particular decision which they consider unfavorable.²⁰ On the other hand, it is unclear what costs, if any, expulsion from the VPs incurs to expelled companies. Unlike the Kimberley Process, there are no trade sanctions related to non-member companies. Also, there is little evidence that host states (typically weakly governed states in which extractive companies operate) use their contracts with multinational companies as a vehicle to enforce the regulatory standards of the Voluntary Principles and sanction non-compliance. Finally, given the low level of overall public visibility of the VPs, the reputational costs associated with a company's expulsion from the governance scheme are minor.

In sum, with respect to formal monitoring and enforcement structures, the new Governance Rules of the VPs introduced only a few minor changes in companies' reporting requirements, created no systematic and robust mechanism for validating reports and verifying company compliance with regulatory standards, and provided the governance

¹⁷Initiative of the Voluntary Principles on Security and Human Rights, Governance Rules, pp. 33-34.

¹⁸Initiative of the Voluntary Principles on Security and Human Rights, Governance Rules, p. 23.

¹⁹Initiative of the Voluntary Principles on Security and Human Rights, Governance Rules, p. 20.

²⁰Interview NGO representative, Washington, DC, July 13, 2012.

scheme with only weak capacities to sanction violations of its regulatory standards. How can these institutional design choices be explained?

6.2 Initial Preferences

As throughout the lifetime of the Voluntary Principles, when states, extractive companies, and NGOs met in January 2010 and undertook yet another attempt to negotiate over the creation of monitoring and enforcement mechanisms, actors once again held sharply diverging preferences on whether at all and, if so, what compliance verification and enforcement system to adopt. There were basically two opposing camps.

Particularly the human rights and advocacy NGOs, such as Oxfam International, Human Rights Watch, Human Rights First, and Amnesty International, forcefully lobbied for more robust and independent reporting and compliance validation procedures. Their most preferred institutional design was an independent third-party verification system.²¹ Human rights NGOs complained that annual reports submitted by participating companies were not sufficiently detailed, difficult to compare, and did not provide the information necessary to evaluate whether companies actions were in compliance with the regulations set out in the VPs. They were concerned that company self-reporting was not sufficient to maintain the reputation and credibility they perceived necessary for effectively addressing human rights abuses by extractive companies operating in weakly governed states.²² In fact, as stated by a high-level NGO representative at the scheme's 2011 annual plenary meeting in Washington:

“a more systematic and independent reporting mechanism that goes beyond company self-reporting coupled with robust verification and validation procedures of company compliance with the Voluntary Principles was the top priority for the group of human rights NGOs during the 2010-2011 negotiation episode.”²³

Another human rights activist echoed this: “another year without progress on these critical issues is unacceptable; disclosure and independent validation are key.”²⁴

The human rights NGOs were supported in their demand for strengthened monitoring and enforcement by several of the government participants in the VPs.²⁵ In particular the United States and Canada but also the Netherlands and Norway sought to reform

²¹ Author's participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011.

²² Telephone interview industry representative, October 13, 2010.

²³ Author's participant observation, Voluntary Principles on Security and Human Rights Plenary Annual Meeting, Washington, DC, March 25-26, 2011.

²⁴ Author's participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011.

²⁵ Interview government official, Washington, DC, August 17, 2010.

reporting and compliance verification in order to enhance and protect the public credibility and reputation of the institution.²⁶ They considered robust and effective reporting, monitoring and enforcement a critical issue in the context of the reform of the governance architecture of the initiative.²⁷ As argued by a government representative: “the Voluntary Principles would be well served by a mechanism that allows for reporting to the outside world about its operations.”²⁸

In addition to the vocal human rights NGOs and governments there was also a small group of companies, such as BP, BHP Billiton, Talisman Energy and some of the mining companies, that were more open toward the adoption of more rigorous reporting, monitoring and enforcement procedures.²⁹ They recognized that transparent reporting and validation of compliance were critical to secure the reputational and operational benefits the VPs provide to individual member companies and to distinguish the responsible and compliant companies from the laggards.

On the other side, the vast majority of companies and especially US-based oil companies, such as Chevron, Exxon Mobil, and Conoco Philips, were highly skeptical about strengthened reporting, monitoring and enforcement.³⁰ For them, enhanced reporting requirements and compliance validation had unforeseeable implications for legal liability and raised problems with respect to disclosure of business-related information.³¹ They considered the annual reports submitted by individual companies to the secretariat and the secretariat’s aggregate public reporting about implementation as sufficient.

These reluctant companies were supported by a group of NGOs, including Fund for Peace, International Alert, and Search for Common Ground, the activities of which are stronger focused on assisting companies with their implementation of the Voluntary Principles. These implementation NGOs were less concerned about issues of internal governance, monitoring and enforcement and more oriented toward on the ground implementation work in the countries in which extractive companies encounter difficulties. They typically perceived the debates about reporting and validation as a waste of valuable time and energy which, according to them, would be more effectively spent on making the VPs work on the ground.³² As reported by a representative of one of these implemen-

²⁶Telephone interview government official, November 09, 2010. See also Bennett Freeman, “Remarks at Reception for the Voluntary Principles Mid-year Special Session”, Embassy of Switzerland, Washington, DC, June 30, 2010, p. 1.

²⁷Telephone interview government official, November 09, 2010.

²⁸Author’s participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011.

²⁹Author’s participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011. See also interview former government official, Washington, DC, July 06, 2012.

³⁰Interview former government official, Washington, DC, July 06, 2012.

³¹Author’s participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011. Telephone interview industry representative, October 13, 2010.

³²Author’s participant observation, Voluntary Principles on Security and Human Rights Annual Ple-

tation NGOs: “I am sick of these governance debates, we should instead better focus on implementation.”³³

With the adoption of the Governance Rules of the Voluntary Principles at the Extraordinary Plenary Session in Ottawa on September 16, 2011, these sharp divergences were resolved in favor of the recalcitrant US oil companies and their supporters from the camp of the implementation NGOs. The reporting requirements outlined in the 2011 Governance Rules strongly approximate the institutional preferences of the reporting skeptics and basically confirm the company self-reporting scheme that has been in place since the creation of the Voluntary Principles in 2000. Monitoring and validation procedures remain rudimentary at best which is clearly at odds with the more systematic and independent performance validation for which the human rights NGOs and governments bargained hard. The Governance Rules also provide no improvement with respect to the “teeth” of the Voluntary Principles. Although companies that do not self-report on their implementation of the VPs on an annual basis and consistent with the newly established Reporting Guidelines can be expelled from the scheme or declared inactive, the decision to ostracize or suspend a company has to be made by the annual plenary meeting which typically decides by consensus. This subjects enforcement decisions to the politics of a tripartite bargaining process where each individual actor has a *de facto* veto position. The result: weak formal enforcement capacities, at best.

6.3 Bargaining over Monitoring and Enforcement

The political context in which the negotiations over the new Governance Rules of the Voluntary Principles occurred between January 2010 and September 2011 was characterized by a low level of institutional formalization and low transparency of the negotiation process. Prior to the adoption of the Governance Rules the institutional architecture of the VPs was very much of an ad-hoc and informal character. According to several interviewees before the Governance Rules came into being, the VPs had no clear governance structure in place.³⁴ As succinctly put by a government official: “The VPs have been very much of an ad-hoc organization. The rules of the game are not clearly specified. Sometimes even the most important procedures are not well-defined.”³⁵

The primary institutional working bodies during the negotiation episode were the steering committee which functioned as the executive body of the governance scheme and a small number of working groups which provided participants with forums for in-depth

nary Meeting, Washington, DC, March 25-26, 2011. Interview NGO representative, Washington, DC, March 31, 2011.

³³Interview NGO representative, Washington, DC, March 31, 2011.

³⁴Interview NGO representative, Washington, DC, August 18, 2010. Interview government official, Washington, DC, August 17, 2010. Telephone NGO representative, July 16, 2012.

³⁵Interview government official, Washington, DC, March 23, 2011.

substantive discussions on specific issues. Of these working groups the working groups on Organization and Administration and Assurance and Accountability had the explicit mandate to negotiate the draft governance rules. They were, therefore, key sites for institutional bargaining over the design of formal monitoring and enforcement structures. Other working groups that existed during the negotiation episode included the working groups on Formation of a Legal Entity, Outreach and Implementation, and Communication.³⁶

Both the steering committee as well as the working groups largely operated on the basis of informal rules and practices. Their operational rules and procedures were only rudimentarily specified in written documents or not formally articulated at all. Even such crucial aspects as applying for membership in the working groups or sharing information among working group members and Voluntary Principles participants from outside the working groups were handled in an informal and unsystematic manner. Becoming a member of a working group, for example, required only an email to the secretariat which then included the actor that sought membership in the list of working group members.³⁷ No formal procedure was in place in order to deal with working group membership requests.

The transparency of the 2010-2011 negotiations was also low. Institutionalized mechanisms for sharing information among negotiators were not in place. Even for members of the working groups it was often difficult to obtain information about processes in which they had a stake. As noted by a NGO representative at the working group on Assurance and Accountability: “Even for me as a member of the working group it is really difficult to get information on processes relevant for me. I really have to dig deep.”³⁸ If such difficulties existed for those actors who regularly participated in the working group negotiations, they were even more severe for those not directly involved in working group activities. Even basic information, such as detailed minutes of the meetings of working groups and the steering committee are only provided to those who are formally involved in these working bodies and not to outsiders.³⁹ For actors outside the governance scheme it becomes close to impossible to obtain detailed information about the VPs work.

As a consequence of this absence of formalized information sharing and dissemination procedures the primary means for obtaining and distributing information within the VPs were informal relationships and networks. With respect to participants outside the working groups a government official reports: “Typically the only way for actors outside the working groups or outside the VPs to obtain important information is through informal relationships with those who are involved.”⁴⁰ An NGO representative concurs: “finding

³⁶Email Communication Voluntary Principles secretariat, July 13, 2012.

³⁷Interview Voluntary Principles secretariat, Washington, DC, July 13, 2012.

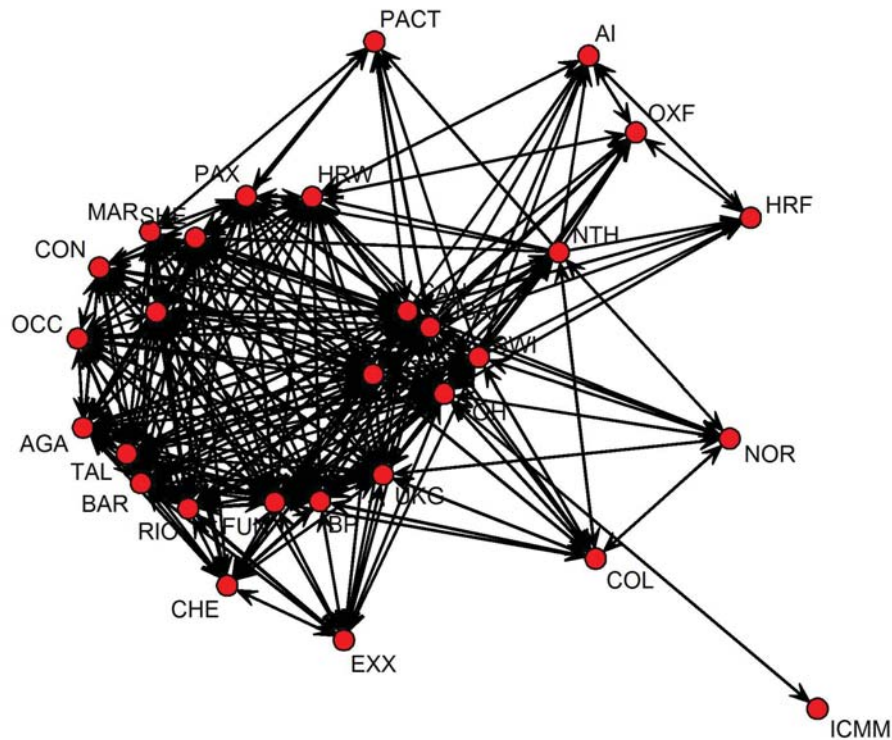
³⁸Interview NGO representative, Washington, DC, July 11, 2012.

³⁹Interview Voluntary Principles secretariat, Washington, DC, November 30, 2011.

⁴⁰Interview government official, Washington, DC, March 23, 2011.

the participant who can get you the piece of information you seek is critical.”⁴¹

Figure 6.1: Exchange of Policy-relevant Information and Advice, VPs Reform Negotiations 2010-2011



Notes: Visualization based on a variant of Fruchterman and Reingold’s force-directed placement algorithm as implemented in the network package for R (Butts, Handcock and Hunter, 2013). Isolates are not included in order to facilitate readability.

In such a political context my theoretical argument suggests that we should expect actors with informal network power to be successful in influencing the dynamics and outcomes of tripartite institutional bargaining. Those with formal institutional and economic power at their disposal are expected to do less well. Yet, what we observe in the 2010-2011 negotiations over the VPs Governance Rules deviates to some extent from these expectations. Although we observe network-based power being a prominent element in the negotiation strategies of governments and human rights NGOs, it did not always turn out to be a powerful bargaining asset. Instead, the oil companies and their supporters from the implementation NGOs which sought to prevent a strengthening of company reporting and performance assessment mechanisms managed to strike a favorable institutional bargain by using their de facto veto positions to block unfavorable institutional choices.

The informal information exchange and communication network that emerged among states, extractive companies, and NGOs during the negotiations over the VPs Governance

⁴¹Telephone interview NGO representative, July 16, 2012.

Rules was characterized by high fragmentation and centralization and striking differences in the network positions of individual actors. To start with, of the 60 actors that could be indentified as involved in the negotiation process only 29 states, companies, and NGOs were actively engaged in the exchange of policy-relevant information and advice. 31 actors were isolated from the informal information exchange. Accordingly, the overall density of informal communication among negotiators was low with only 13 percent of all possible information exchange relationships acutally realized.

Among the 31 isolates were several extractive companies, such as Anglo American, BHP Billiton, and Newmont Mining, and implementation NGOs, including International Alert and Search for Common Ground. Other isolates came from the group of host countries of extractive companies' operations (e.g. Indonesia, Peru) and international organizations (e.g. OECD, United Nations Special Representative for Business and Human Rights). Importantly, none of the human rights NGOs and Western governments were completely detached from the informal communications that occurred during the negotiation episode. This shows again that there is not necessarily a perfect correlation between the distribution of financial resources and organizational capacities, on the one hand, and positions in informal information networks, on the other. This configuration of isolates provides a first indicator that the actors which sought to prevent the strengthening of formal monitoring and enforcement mechanisms, i.e. extractive companies and their supporters from the camp of the implementation NGOs, were in a disadvantaged position in terms of network power vis-à-vis their opponents from the human rights NGOs and Western governments.

Furthermore, the centralization of the network is high, which indicates that central positions in the informal information exchanges during the negotiations were unequally distributed among states, extractive companies, NGOs, and other entities. As table 6.1 on page 198 shows, especially with respect to outdegree, indegree, and eigenvector centrality central network positions were highly concentrated and held by a small number of actors. Take the distribution of outdegree centrality, i.e. the number of actors' direct outgoing information exchange relationships, as an example. 35 actors or about 58 percent of all actors involved in the negotiation process had an outdegree centrality of 0.1 or lower. By contrast, only three actors, i.e. five percent, had values of 0.4 or higher. The picture looks similar if we examine the distribution of indegree and eigenvector centrality. These skewed distribution of individual centralities indicate that the informal information flows during the negotiation episode were dominated by a small number of central actors, while a large number of actors, though not completely isolated, were only weakly connected. Again, therefore, we observe an informal hierarchy among states, industry, and NGOs.

This is further supported by investigating the network graph in figure 6.1 on page 196. We can identify a densely connected cluster of actors in the center area which mainly consists of governments and a few human rights NGOs. A second densely connected clus-

ter consists of several extractive companies which are located in the left-hand area of the graph. By contrast, some of the big human rights organizations (e.g. Amnesty International, Oxfam International, Human Rights First) are located at the network periphery. As can be seen in the far right-hand area of the graph, these organizations have only a few connections to some of the governments and no informal information exchange relationships with the extractive companies in the far left-hand area. In combination the low overall density, the large number of isolates, the high centralization, and the high fragmentation of the network indicate that the access to the informal information exchanges and communications that took place during the 2010-2011 negotiations over the new VPs Governance Rules of the was unevenly distributed among negotiators. A small minority of actors was well-endowed with network power, while the vast majority remained marginal.

Table 6.1: Centrality and Centralization in the 2010-2011 VPs Network

	Outdegree	Indegree	Eigenvector	Betweenness
United States	0.458	0.407	0.248	0.021
Canada	0.458	0.407	0.248	0.021
HRF	0.051	0.119	0.065	0.000
HRW	0.305	0.339	0.207	0.010
Foley Hoag	0.475	0.474	0.248	0.080
Chevron	0.271	0.271	0.177	0.001
Exxon Mobil	0.220	0.220	0.150	0.000
Conoco Philips	0.271	0.271	0.182	0.000
Fund for Peace	0.373	0.373	0.229	0.006
Pact	0.102	0.136	0.087	0.000
Centralization	0.347	0.347	0.240	0.040

Notes: Calculations performed using the network package for R (Butts, Handcock and Hunter, 2013).

This first hint at an uneven distribution of network power is further substantiated when we move from the network to the actor level of analysis and examine the network positions of individual actors. In addition to the low overall density and high fragmentation at the network level we can observe an uneven distribution of central positions among states, companies, and NGOs at the actor level of analysis. As shown in table 6.1 on page 198, the United States, Canada and their allies from the human rights NGOs (e.g. Human Rights Watch) occupy more central positions in the information exchange and communication network than their opponents from the US oil companies and the implementation-oriented NGOs. Both the United States and Canada as well as the human rights NGOs score substantially higher in terms of their indegree and eigenvector centrality than actors, such as Chevron, Exxon Mobil, Conoco Philips or the NGOs Fund for Peace and Pact. This suggests that the human rights NGOs and their supporters had better access to policy-relevant information during the negotiation episode than their opponents which provided

them a strategic advantage in crafting better bargaining strategies. In addition, they also have high outdegree centralities which provided them with ample channels through which they could disseminate their views, positions, and other policy relevant information among negotiators when bargaining over formal monitoring and enforcement mechanisms.

Table 6.2: Egonetwork Heterogeneity and Liaison Brokerage in the 2010-2011 VPs Network

	Egonet Heterogeneity (Incoming Ties)	Egonet Heterogeneity (Outgoing Ties)	Liaison Brokerage
United States	0.819	0.867	0.870
Canada	0.819	0.867	0.870
HRF	0.762	0.593	0.000
HRW	0.860	0.815	0.454
Foley Hoag	0.878	0.878	1.893
Chevron	0.719	0.719	0.000
Exxon Mobil	0.805	0.805	0.000
Conoco Philips	0.813	0.813	0.000
Fund for Peace	0.755	0.755	1.530
Pact	0.875	0.963	2.685

The picture becomes more mixed when we analyze structural and attribute information in combination. As shown in table 6.2 on page 199, the access to heterogeneous groups of first-step incoming and outgoing information exchange relationships was more balanced between the groups of monitoring and enforcement supporters and opponents than the distribution of central network positions. The United States, for example, which occupies the first rank in terms of all four centrality measures (see table 6.1 on page 198) had incoming and outgoing information exchange ties to a heterogeneous group of first-step neighbors as indicated by its high index of qualitative variation scores of 0.819 and 0.867, respectively. The first-step heterogeneity measures of Canada and the Human Rights Watch—two actors which held the same preferences with respect to monitoring and enforcement as the US—are similar. In contrast to the situation with respect to simple centrality, however, the position of monitoring and enforcement skeptics does not look so different. For example, Exxon Mobile—one of the fiercest opponents of robust monitoring and enforcement among the VPs participants—could draw on non-redundant policy-relevant information from a range of different actors as indicated by its IQV scores for first-step incoming information exchange ties of 0.805. Likewise, Exxon Mobil could also spread strategic information to a heterogeneous group. Its IQV score for first-step outgoing information exchange ties was 0.805 during the negotiation episode. Interestingly, the implementation NGO Pact was even better situated than the US and its allies.

Finally, the US, Canada, and Human Rights Watch were in a stronger position with respect to their liaison brokerage activities vis-à-vis extractive companies but not vis-à-vis

some of the implementation NGOs. In fact, with liasion brokerage scores of 1.530 and 2.685 the implementation NGOs Fund for Peace and Pact were the most important brokers between actors from different groups during the negotiations over the VPs Governance Rules between January 2010 and September 2011.

To summarize, while the distribution of individual actors' network positions favors the camp of the advocates of robust monitoring and enforcement, the distribution of liasion brokerage activities empowers the group of monitoring and enforcement skeptics. The distribution of access to heterogenous groups of first-step neighbors is balanced.

This distribution of network power between those who bargained hard for strengthened monitoring and enforcement and those who sought to prevent rigorous and independent compliance verification and sanctioning capacities had some impact on the dynamics and outcomes of institutional bargaining. Several respondents report concurrently that informal networks are a key instrument to achieve your goals in the context of the VPs: "you get what you want in the VPs through informal networks."⁴² Particularly the informational advantages conferred by privileged network positions are an important bargaining asset. They allow actors to better position themselves vis-à-vis other negotiators as well as to form coalitions in support of their institutional preferences. As articulated by a human rights activist: "Having informal relationships with many others allows to better understand others' positions and motivations, to convey one's own position, and to identify room and options for agreement."⁴³

There is evidence in my data that the reform advocates incorporated the exercise of network power in their negotiation strategies when they bargained with their opponents over how to design the formal monitoring and enforcement mechanisms of the Voluntary Principles between January 2010 and September 2011. Yet, their attempts were of limited success.

When the US, Canada, and human rights NGOs tried to use the informational advantages derived from their central network positions in order to persuade oil companies about the desirability of stronger monitoring and enforcement mechanisms they remained largely unsuccessful. Two bargaining episodes from the 2010-2011 negotiations serve as an illustration. When the negotiations over reporting and monitoring entered the hot phase at the March 2011 Annual Plenary Meeting in Washington, governments and human rights NGOs were careful in presenting their positions in a way that anticipated the major objections they knew existed in the camp of the reform skeptics.

First and foremost, they tried to present robust and independent reporting as a chance rather than a threat to companies. In particular, they emphasized that monitoring which is conducted by an independent third party in accordance with a systematic information gathering and evaluation scheme would substantially enhance the consistency of compa-

⁴²Interview NGO representative, Washington, DC, July 09, 2012.

⁴³Interview NGO representative, Washington, DC, July 03, 2012.

nies' implementation reports which, in turn, helps to identify positive experiences and best practices.⁴⁴

Furthermore, they used their experience with and knowledge about other public-private regulatory regimes, such as the Extractive Industries Transparency Initiative, the Fair Labor Association and the Kimberley Process, in order to present examples about how rigorous monitoring can work without violating confidentiality and causing problems of legal liability.⁴⁵

Finally, the US and its allies were also careful in highlighting the dangers of weak monitoring and enforcement. In particular, they emphasized that companies that used the VPs without being an official member of the governance scheme are a risk for the entire institution and especially for participating companies because they benefit from being associated with the scheme without being part of the formal process and paying the costs it incurs. If these companies fail, so their argument goes, this can become a problem for the VPs as a whole and the companies associated with them in particular.⁴⁶ As put by an NGO activist:

“it would be good for firms to have a credible validation process in place because it would secure responsible companies and enable them to distinguish themselves from those who do not implement the regulatory requirements of the VPs seriously.”⁴⁷

With the latter argument governments and human rights NGOs managed to convince some of the British companies, such as BP and BHP Billiton, of the value of strengthened monitoring. Based on their modified beliefs about the implications and payoffs of robust reporting and monitoring these companies changed their negotiation positions and supported the demands of the US, Canada, and the human rights NGOs.⁴⁸ As a costly signal of their support for a reporting procedure that goes beyond self-reporting BP and others volunteered to test the draft guidelines for company reports on the implementation of the VPs which were objected by the reform skeptics. Yet, despite this shift in the institutional preferences of some companies, the most recalcitrant ones (e. g. Chevron, Exxon Mobil) remained deeply skeptical and continued to forcefully reject any amendments to the institutional status quo of monitoring and reporting.

Another example comes from the US's attempt to establish a voluntary information sharing mechanism to complement the information about the implementation of the VPs'

⁴⁴ Author's participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011.

⁴⁵ Author's participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011.

⁴⁶ Author's participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011.

⁴⁷ Author's participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011.

⁴⁸ Interview government official, Washington, DC, July 15, 2012.

regulatory standards provided in companies' annual self-reports.⁴⁹ In its proposal, the US presented the rationale underlying the proposed information sharing mechanism as follows:

"There is currently no established platform, or forum, for VPs participants to self-initiate or to pose questions to other participants concerning specific implementation issues, or for the involved participants to present their own best practices, experience or lessons learned. At present, such discussions are entirely ad hoc, and all of the expectations within the VPs organization related to such information are placed on the annual reporting process."⁵⁰

The United States intended this mechanism to provide a more structured and formalized framework for sharing experiences and best practices about the implementation of the VPs.⁵¹ Importantly, when presenting its proposal at the annual VPs plenary meeting, the US used its knowledge about companies' skepticism and concerns about issues of legal confidentiality and particularly highlighted the voluntary nature of the mechanism. It also emphasized the practical benefits of enhanced best practice and lessons learned sharing for individual firms and the governance scheme as a whole.

Yet, the meticulously prepared and strategically crafted launch of the proposal failed. Companies, such as Shell, BHP Billiton, Freeport McMoRan, Hess and others, forcefully rejected the US proposal. For them, the creation of such a formalized information sharing mechanism critically hinged on the improvement of trust among VPs participants.

"Trust has to precede the sharing of confidential information. *Company X* (name change by author) is not yet ready for sharing confidential information since it considers that the trust necessary for sharing confidential information does not yet exist."⁵²

Another company representative at the negotiation table echoed this: "Particularly when third parties are involved one has to be careful about information sharing because legal issues can become critical."⁵³

When confronted with this rejection, the US emphasized again the practical benefits that the new mechanism would yield and argued that even though trust may still be a

⁴⁹Promoting Voluntary Information Sharing within the Voluntary Principles on Security and Human Rights, United States Proposal, March 25, 2011.

⁵⁰Promoting Voluntary Information Sharing within the Voluntary Principles on Security and Human Rights, United States proposal, March 25, 2011, p. 1.

⁵¹Author's participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011.

⁵²Author's participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011.

⁵³Author's participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011.

problem in the VPs information sharing can help generating trust. Human rights NGOs came to the support of the US government and argued that such a voluntary information sharing mechanism would be much less confrontational than the ad hoc complaints procedure NGOs have used in the past in order to point out single instances of company implementation problems and non-compliance.⁵⁴ Despite all efforts the recalcitrant companies remained unwilling to move on this issue so that the US proposal ultimately failed.

These and other attempts of Western governments and human rights NGOs to use the informational benefits derived from their network position remained, however, largely unsuccessful. Despite their in terms of centrality and ego-network heterogeneity advantageous positions in the informal information exchange and communication network that emerged during the negotiation period and despite a political context that was amenable to the use of network power in tripartite bargaining the US, Canada, and the human rights NGOs did not manage to overcome the resistance of the oil companies and their supporters from the implementation NGO camp.

Instead, what we observe is that the actors that were reluctant with respect to monitoring and enforcement used their de facto veto positions in order to prevent any movement on this issue. Prior to the creation of the new governance architecture in September 2011 decision-making within the VPs was based on consensus. From the annual plenary meeting which is the scheme's central decision-making organ to the steering committee to the working groups participants typically negotiate contentious issues until consensus on the issue at stake is reached. Yet, in practice consensus is typically treated as unanimity. This does not only increase the amount of time that is needed to achieve agreement. It also provides each individual participant, including companies and NGOs, with a de facto veto position.⁵⁵

On several occasions in the 2010-2011 negotiations over the reform of the monitoring and enforcement structures of the VPs this informal veto power has been used in order to block negotiations. Particularly oil companies have used their informal veto power in order to prevent a strengthening of compliance verification and sanctioning capacities of the VPs. Thus, the existence and even distribution of informal veto positions was a critical element in the negotiation strategies of some actors in this episode of tripartite institutional bargaining. The reporting and monitoring skeptics effectively used their de facto veto positions to block institutional change and preserve the status quo of self-reporting and weak enforcement.

Finally, what role did economic power play in this bargaining episode? To begin with, the distribution of economic power in terms of financial resources and organizational ca-

⁵⁴ Author's participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011.

⁵⁵ Interview Voluntary Principles secretariat, Washington, DC, July 13, 2012. Interview government official, Washington, DC, November 30, 2012.

capacities between extractive companies and governments, on the one hand, and NGOs, on the other, was highly uneven. Compared to the economic capabilities of governments and firms the financial resources and organizational capacities even of large human rights NGOs, such as Amnesty International, Oxfam International, and Human Rights Watch are negligible. In addition, apart from occasional loose coordination there were no efforts among NGOs to pool their financial and organizational resources to increase their bargaining power vis-à-vis companies. The differences in organizational mandates and institutional preferences were too striking for the development of strong cooperative relationships between human rights NGOs and implementation NGOs to emerge.⁵⁶ In fact, the institutional preferences of implementation NGOs, including those on monitoring and enforcement, were often closer to those of extractive companies so that they often negotiated on the same side rather than as parts of opposing camps.⁵⁷

Table 6.3: Extractive Companies Annual Revenues 2009-2011 (billion \$)

	2009	2010	2011
Exxon Mobil	301.500	370.125	467.029
Chevron	167.402	198.198	244.371
Shell	278.188	368.056	470.171
BP	239.272	209.107	375.517
Conoco Phillips	149.341	189.441	244.813
BHP Billiton	50.211	52.798	71.739
Rio Tinto	40.262	55.171	60.537
Anglo American	24.637	32.929	36.548
Freeport McMoRan	15.040	18.982	20.880

Sources: (Exxon Mobil, 2011, p. 40), (Chevron Corporation, 2011, p.35), (Chevron Corporation, 2012, p. 4), (Royal Dutch Shell, 2012, p. 10), (BP, 2011, p. 19), (Conoco Phillips, 2011, p. 41), (BHP Billiton Limited, 2011, p. 2), (Rio Tinto, 2011, p. 131), and (Freeport McMoRan Copper & Gold, 2011, p. 22). Anglo American, “News Release”, February 17, 2012, p. 2, <http://www.angloamerican.com/media/Files/A/Anglo-American-Plc/media/releases/2012pr/2012-02-17pr.pdf>, and Anglo American, “News Release”, February 18, 2011, p. 2, <http://www.angloamerican.com/media/Files/A/Anglo-American-Plc/media/releases/2011pr/2011-02-18/2011-02-18.pdf>, accessed: October 27, 2013.

Among extractive companies economic power was also unequally distributed. The divide between oil companies and mining companies is especially striking. In a nutshell,

⁵⁶Interviews NGO representatives, Washington, DC, August 08, 2010, and September 07, 2012. Interview NGO representative, London, September 24, 2010. Telephone interview NGO representative, July 16, 2012.

⁵⁷Author’s participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011.

the financial capabilities for the oil companies are vast compared to those of the mining firms. The US oil company Chevron, for example, had annual revenues of \$167.402, \$198.198, and \$244.371 billion between 2009 and 2011. Likewise, with annual revenues of \$301.500, \$370.125, and \$467.029 billion in 2009, 2010, and 2011, respectively, also the US Exxon Mobil had substantial financial resources at its disposal during the negotiation episode. The situation is similar for other oil companies, such as Shell, Conoco Phillips, and BP (see table 6.3 on page 204). Mining companies, by contrast, have been relatively weaker in terms of economic capabilities. The Australian firm BPH Billiton which is one of the world's three largest mining companies had annual revenues of \$50.211, \$52.798, and \$71.739 billion between 2009 and 2010. The US-based resource extraction company Freeport McMoRan was even weaker. It had annual revenues of \$15.040, \$18.982, and \$20.880 billion in 2009, 2010, and 2011, respectively.

Finally, the distribution of economic capabilities among the governments involved in the negotiations over the VPs Governance Rules was also skewed. Among the seven states which were official participants of the VPs in 2011⁵⁸ the US, the UK, and Canada clearly predominate in terms of the financial resources and organizational capacities they had at their disposal during the negotiation episode. On the one hand, the US and the UK are the host countries of some of the world's largest extractive companies, such as Exxon Mobil, Chevron, Shell, and BP, which provides them with possible bargaining leverage in the form of "go-it-alone" power; without them the goal of the Voluntary Principles of governing the human rights externalities of the security provisions of extractive companies operating in weakly governed states could hardly be achieved effectively. On the other hand, due to their financial capabilities the US, the UK and Canada also had the resources needed in order to work on the VPs with large delegations of diplomatic personnel. Importantly, having the financial resources necessary to attend all personal and conference call negotiation meetings with delegations that were large compared to those of other VPs state members, such as the Netherlands and Norway, was an advantage. The gap in terms of economic power between the US, the UK and Canada and host states of extractive companies' activities (e.g. Colombia, Indonesia) was even more significant.

Despite these sharp differences in terms of financial resources and organizational capacities there is no strong evidence in my data which suggests that the actors which controlled large amounts of economic capabilities (e.g. Exxon Mobil, Chevron, BP, United States, Canada) directly used this potential as a source of bargaining leverage in the negotiations over the reform of the monitoring and enforcement mechanisms of the VPs between January 2010 and September 2011. Side payments and issue-linkage played no prominent role in actors' negotiation strategies. In particular, we do not observe any instance where

⁵⁸In 2011, the Voluntary Principles had seven state participants: Canada, Colombia, the Netherlands, Norway, Switzerland, United Kingdom, United States. See, Voluntary Principles on Security and Human Rights, "Summary of Proceedings. Voluntary Principles on Security and Human Rights Extraordinary Plenary Session", Ottawa, September 16, 2011, p. 2.

a company sought to buy off a human rights NGO in order to achieve agreement on an institutional design close to its institutional ideal point. Similarly, economically powerful states, such as the US and Canada, abstained from coercing companies that forcefully rejected the creation of robust monitoring and enforcement structures; something they bargained hard for.

Although we do not observe the direct exercise of economic power to be a prominent element in actors' negotiation strategies, there is again some evidence for its indirect relevance. Like in the KP and ICoC negotiations control over financial resources and organizational capacities permitted actors to widen their coverage of negotiations and their participation in the Voluntary Principles more generally. Economically powerful actors can draw on the resources needed in order to attend negotiation meetings with delegations that are larger in terms of personnel numbers than those of other participants. The US and Canada are two cases in point. Both states are typically represented by five or more individuals at negotiation meetings which enables them to be present at every meeting even in situations where multiple sessions take place in parallel.⁵⁹ A government official concurrently reports that "the US puts a lot of resources into its engagement in the VPs"⁶⁰ and that the Department of State has several members of its staff working on VPs issues. This provides the US and other actors with large amounts of financial capabilities and organizational capacities with informational and first-mover advantages in situations where not the entire VPs membership is gathered around the negotiation table. Smaller delegations, such as those of smaller states and NGOs, have difficulties to cover multiple meetings at the same time.

In addition, actors with large amounts of financial and organizational capacity at their disposal are also better able to develop and maintain involvement in several working groups at the same time. Actors that lack such resources (particularly NGOs) often encounter difficulties participating in all working groups that deal with issues they care about. An interviewee elaborates: "It is also a capacity issue. The more working groups are created the more difficulties NGOs have to cover all of them."⁶¹ This, again, provides economically powerful actors with informational advantages vis-à-vis those actors which have to be selective in terms of working group involvement due to resource constraints. Such informational advantages are of particular strategic value in situations where information sharing mechanisms are not well established and formalized; a situation as we can clearly observe it in the Voluntary Principles in 2010 and 2011.

⁵⁹ Author's participant observation, Voluntary Principles on Security and Human Rights Annual Plenary Meeting, Washington, DC, March 25-26, 2011.

⁶⁰ Interview government official, Washington, DC, September 30, 2013.

⁶¹ Interview government official, Washington, DC, September 30, 2013.

6.4 Summary

In this chapter, I have investigated the most recent episode of tripartite bargaining over the design of formal monitoring and enforcement mechanisms within the Voluntary Principles on Security and Human Rights which took place between January 2010 and September 2011. This case deviates from the expectations generated by my theoretical argument.

Although the political context in which institutional bargaining occurred was amenable to the use of negotiation strategies based on the informational advantages of network power, the actors which occupied privileged positions in the informal information exchange network that emerged during the negotiation episode were not able to translate these advantages into influence over institutional outcomes. While my data provides some evidence in the form of causal mechanism observations that shows that the US, Canada, and human rights NGOs sought to use their network power to change the beliefs and preferences of their opponents and to strike a bargain that provided for strengthened monitoring and enforcement of the VPs, these attempts remained largely unsuccessful. By contrast, oil companies and their supporters from the camp of the implementation NGOs did not make use of the informational benefits conferred by their central network positions. Rather, they used their *de facto*, i.e. informal, veto power to block any reform of the governance scheme's monitoring and enforcement system. Further, there is again some evidence that suggests that economic power indirectly affected tripartite institutional bargaining. Specifically, it allowed economically powerful players to increase their presence at negotiation meetings and in working groups which facilitated their participation in informal communication. This, in turn, contributed to increasing their centrality and brokerage in the information exchange network and the informational power derived from it.

These, from the perspective of my theoretical model, unexpected findings challenge my theoretical argument. I will pick up these challenges in the conclusions and use them as a point of departure for outlining possible refinements of my model. Before I turn to this task, however, I will address another important challenge to my argument; namely, the question whether informal network power is—rather than a power variant *sui generis*—merely epiphenomenal with respect to economic and institutional power.

Chapter 7

Networks: Epiphenomenal or Independent Source of Power?

The case studies presented in the previous chapters show that under certain conditions central positions in informal information exchange networks can be a source of power in negotiations over the institutional design of transnational public-private governance schemes. Proponents of conventional power approaches, however, might object that even if network power co-varies with influence over institutional choices and even if causal process observations can be found which suggest that network power was at play in bringing about a particular institutional arrangement, network power itself is endogenous and determined by other forms of power. Central network positions, for example, might be held by actors with substantial economic capacity or those who occupy key institutional roles, such as chairing a negotiation process or being member of an exclusive negotiation forum such as a steering committee or working group. In other words, being central in informal negotiation networks or occupying strategically advantageous brokerage positions might merely be a reflection of the distribution of economic and formal institutional power and, hence, epiphenomenal.

The qualitative material presented in the previous chapters seems to lend partial support to such a skeptical view. For example, in the negotiations over the creation of the Kimberley Process in 2000-2002 as well as during the negotiations over the reform of its monitoring system in 2003 the major representatives of the diamond industry (e.g. World Diamond Council, Belgian High Diamond Council, De Beers) as well as some of the most important diamond producing and trading states (e.g. Botswana and Israel) occupied key positions in the information exchange networks that emerged among negotiators which were characterized by a large number of direct connections to others. In addition, particularly the World Diamond Council also occupied a critical brokerage position and used the informational and strategic benefits that emerged from this position to shape institutional choices. From a correlational point of view economic and network power coincided.

Likewise, when states, extractive companies, and human rights NGOs bargained over

the reform of monitoring and enforcement mechanisms in the Voluntary Principles on Security and Human Rights between 2010 and 2011 the United States not only figured prominently in the informal information exchange network but also formally chaired and managed the negotiation process and, therefore, had substantial formal institutional power in the form of agenda-setting, proposal-making, and convening power. Similarly, during the negotiations over the governance and oversight mechanism for the International Code of Conduct for Private Security Service Providers in 2010-2013 the NGO Human Rights First and the United States Department of State both occupied central positions in the informal communication network which provided them with access to information from a diverse group of actors as well as ample opportunity to disseminate information among negotiators. At the same time, each of them also chaired one of the three working groups of the scheme which were a central site of institutional bargaining. This conferred important agenda-setting and proposal-making power. Thus, formal institutional and network power co-occurred.

My case study analyses use a range of causal process observations (see Collier, Brady and Seawright, 2010) drawn from different types of data in order to carefully assess whether in addition to the mere correlation between different forms of power, on the one hand, and influence over institutional outcomes, on the other, also the mechanisms associated with the respective forms of power (see chapter 2) were at play. This analysis goes some distance and helps sorting out what form of power or power mixes actors actually used in their negotiation strategies in cases where they had more than one power variant at their disposal. For example, while there is no evidence in my data that the diamond industry used side payments or issue linkage strategies (mechanisms associated with economic power) to secure a favorable outcome in negotiations over the reform of the Kimberley Process monitoring system in 2003, there is ample evidence that shows how industry used its brokerage position among different coalitions to achieve an agreement that closely reflected its preferences. Likewise, in the 2010-2011 negotiations over the reform of the Voluntary Principles, the United States and Canada, which together with a small group of human rights NGOs bargained hard for a more systematic and independent monitoring procedure, pursued a bargaining strategy built around the attempt to use private information about their opponents' preferences and concerns to persuade them to give up their blocking position. Side-payments, issue-linkage and other aspects of economic power did not figure prominently in their negotiation tactics although these actors had considerable economic capacity at their disposal. Similar observations can be made with respect to the US's bargaining strategy during the 2010-2012 negotiations over the reform of the Kimberley Process's governance architecture.

This evidence, critics might object, remains anecdotal, however. And indeed it does. Thus, in order to further differentiate network power from economic and formal institutional power, this chapter takes a step back and examines the determinants of the informal

information exchange networks that evolved in four of the five negotiation episodes under consideration in my case studies. What drives the networking behavior of states, firms, and NGOs in these four negotiation episodes? More specifically, what factors make states, industry representatives, and NGOs more or less likely to occupy central positions in these four negotiation networks? What are the factors that impact whether two actors engage in informal exchange of policy-relevant information? Are economically powerful actors, such as states or industry representatives, more likely to occupy central positions? Are actors which occupy privileged roles in the formal institutional framework of a public-private governance scheme more likely to be important players in informal communication networks?

In this chapter, I explore these questions using permutation test-based linear regression and network logit models. The former allow me to examine whether the likelihood of individual actors occupying central positions in informal negotiation networks is affected by their economic and formal institutional power. The latter are a tool for investigating whether factors, such as the distribution of economic and institutional power, have an impact on the likelihood of two actors exchanging information during a particular negotiation episode. While this analysis is by no means a full proof of either the epiphenomenal or independent character of network power, it is an important first step in ascertaining to what extent the three power variants under consideration in this dissertation interact with one another. In particular, it helps to assess how far the distribution of economic and formal institutional power affect network structure and network power.

The chapter proceeds as follows: in the next section, I further elaborate on the theoretical arguments introduced above and outline the hypotheses I investigate in this chapter. I then present the two model setups I use in order to test these hypotheses. Third, I outline how I measure the variables of interest and describe the data used to do so. This will be followed by the presentation and discussion of my empirical results. The chapter concludes by summarizing the empirical findings and relating them to the results of my case study analyses.

7.1 Determinants of Network Structure: Hypotheses

Economic and institutional power can affect actors' positions in informal information exchange networks in several ways. In general, if the argument holds that network power is epiphenomenal and merely a reflection of the distribution of economic and institutional power we should observe that actor attributes, such as the possession of financial capabilities or the occupation of key institutional roles, are factors that have a recognizable influence on how network relationships are formed.

At the actor level, the distribution of financial resources among states, industry representatives, and NGOs may be reflected in the degree to which individual actors occupy

central network positions. More specifically, if the distribution of economic capabilities among negotiators has an impact on network structure and power actors with more financial resources at their disposal should be more likely to have a large number of direct and indirect information exchange connections to others. Likewise, economically powerful actors should be more likely to broker information flows between otherwise unconnected others. At the dyad level, all else being equal, any pair of actors that involves organizations or states which can draw on large amounts of financial capabilities should be more likely to engage in the informal exchange of information during a negotiation episode than pairs constituted by economically less powerful actors. In other words, the likelihood of an informal information exchange relationship should be higher for pairs of actors where at least one actor is strong in terms of economic power.

The possession of financial capabilities can benefit actors' involvement in informal information exchanges in a number of ways. To start with, economically powerful actors, such as, for example, the United States or the European Union, have the financial resources necessary to regularly attend negotiation meetings. Typically, the full membership of a transnational public-private governance scheme, such as the Kimberley Process or the Voluntary Principles on Security and Human Rights, meets once or twice a year in form of a "general assembly" or similar forum in order to deal with issues related to internal and external governance. These meetings are critical moments for bargaining over institutional choices and governance more generally. It is typically at these meetings that draft proposals are discussed by the full membership of a governance scheme and decisions taken. In between these major gatherings there are a number of personal and telephone conference meetings at the working level during which proposals are drafted and major issues sorted out before the full membership picks up discussions.

Both the general negotiation sessions as well as the working level meetings are primary sites for informal information exchanges in transnational public-private governance schemes. During the negotiation sessions themselves as well as during the numerous side events and breaks the representatives of states, industry, and NGOs come together, exchange their views about issues on the agenda, seek to sort out differences, and try to hammer out agreements. Given the sheer number and geographical spread of these meetings, actors with limited financial resources encounter difficulties attending all meetings. Especially NGOs and smaller states often lack the capabilities required to systematically cover the full breadth of personal and virtual meetings. This in turn decreases their opportunities to engage in informal information exchange with others. By contrast, those with ample financial resources and organizational capacity are better able to regularly attend meetings and engage in informal communication. If the possession of financial capabilities shapes networking behavior, this should be reflected in economically powerful actors occupying central positions in informal communication networks.

Furthermore, among those who can afford to regularly attend negotiation meetings, the

actors with superior financial capabilities typically send larger delegations to negotiations which in turn allows them to cover more meetings and a broader range of issues. This further increases their overall interactions with other negotiators and their opportunities to engage in informal information exchanges. By contrast, particularly in situations where different issues are negotiated in parallel as it is, for example, the case at the annual plenary meetings of the KP and the VPs, small delegations have to be selective with respect to the number of meetings they attend. As a result, compared to states and organizations represented by larger delegations they have fewer opportunities to engage in informal communication and, all else being equal, are less likely to be central players in the information exchange network that emerges during a negotiation episode.

These inequalities are likely to be particularly strong between different categories of actors. The governments involved in transnational public-private governance schemes regularly attend negotiation meetings and—with few exceptions—basically participate in all meetings. In the Kimberley Process, for example, states like the United States, Canada or Zimbabwe typically attend negotiations with delegations that consist of six or more individuals which permits them to cover all meetings even if several sessions run in parallel. By contrast, smaller states, such as Ghana and Liberia, have much smaller delegations and, hence, encounter difficulties once more than one session takes place at the same time.¹ The same holds for industry representatives. Companies and industry associations use their vast financial resources in order to attend virtually all personal and virtual negotiation meetings. By contrast, NGOs and particularly civil society organizations from the global South often have difficulties attending meetings due to resource and personnel constraints.² In many public-private governance schemes the number of negotiation meetings is so large that small organizations with one person working part time on the issue—a situation common for NGOs—are typically unable to maintain a high involvement for longer periods of time. In addition, compared to states and industry, the delegations of NGOs at negotiation meetings often only consist of one person which further limits their possibilities for engaging in informal exchanges of policy-relevant information.³ Thus, I hypothesize:

Hypothesis 6: States are more likely to send and receive information in informal networks that emerge during periods of tripartite institutional bargaining.

Hypothesis 7: Companies and industry associations are more likely to send and receive information in informal networks that emerge during periods of tripartite institutional bargaining.

¹ Author's participant observations, Kimberley Process Annual Plenary Meeting, Kinshasa, November 2011 and Kimberley Process Annual Plenary Meeting, Washington, DC, November 2012.

² Interviews NGO representatives, Jerusalem, November 02, 2010, and Kinshasa, November 03, 2011.

³ Author's participant observations, Kimberley Process Annual Plenary Meeting, Kinshasa, November 2011 and Kimberley Process Annual Plenary Meeting, Washington, DC, November 2012.

Hypothesis 8: NGOs are less likely to send and receive information in informal networks that emerge during periods of tripartite institutional bargaining.

If network structure is shaped by the distribution of formal institutional privileges among those involved in bargaining we should observe that actors that occupy key institutional roles are more likely to be central in informal communication networks. Likewise, pairs of actors where at least one actor has formal institutional power should be more likely to engage in informal information exchange.

On the one hand, if formal institutional power shapes the distribution of network power actors which act as leaders of a tripartite negotiation process may be more likely to occupy prominent positions in informal information exchange networks. The actors which formally chair and direct a negotiation process or parts of it perform a number of functions that contribute to increasing the efficiency of bargaining and facilitate agreement (Tallberg, 2010, p. 243). They structure, for example, agenda setting and management, broker agreement among opposing parties, and represent the group of negotiators in interactions with third parties. Performing these functions not only provides formal leaders with special power resources and disproportionate influence over outcomes (Tallberg, 2010; Metcalfe, 1998; Young, 1991). It also makes them more likely to become central hubs and brokers of informal information flows among negotiators.

The office of the chair is a key institutional hub in the day-to-day governance operations of a transnational public-private governance scheme. In the Kimberley Process, for example, the Kimberley Process chair and the chair of the structurally important working group on monitoring are the first actors which receive participants' annual reports about their efforts to implement the regulatory provisions of the Kimberley Process Certification Scheme within their national jurisdictions. They also play a key role in organizing monitoring missions and reviewing compliance reports. Similarly, the chair of the working group on statistics collects the annual statistical raw data about states' rough diamond exports and imports, analyzes it, and prepares the data for distribution to the wider Kimberley Process membership and other stakeholders. Occupying these structurally important roles in governance operations places formal leaders in a position where they receive and disseminate vast amounts of formal and informal communications which in turn results in central positions in informal information exchange networks.

Actors which formally direct negotiation processes also mediate between parties with opposing positions and broker agreement (Tallberg, 2010). In situations of deadlock where parties are unable to identify a zone of possible agreements negotiation chairs often act as facilitators of communication. The opponents individually share private information about their preferences and positions with the chair which then transfers this information to the other side and uses this privileged strategic knowledge in order to identify possible agreements and compromise. In other words, negotiation chairs serve as channels for the

reliable exchange of private information among bargainers (Tallberg, 2010, pp. 244-5; see also Kydd, 2003, 2006; Blavoukos, Bourantonis and Tsakonas, 2006).

To illustrate, during the 2009-2012 negotiations over how to address the non-compliance of Zimbabwe with the export and import regulations of the Kimberley Process Certification Scheme, Israel and the Democratic Republic of the Congo (which chaired the governance scheme in 2010 and 2011 respectively) as well as the European Union (which served as chair of the working group on monitoring since its inauguration) continuously worked as mediators between Zimbabwe and its supporters, on the one hand, and the United States, on the other. They crafted a series of compromise proposals, organized special small-group meetings in between the major Kimberley Process negotiation meetings, and brokered informal negotiations between the two conflicting camps. Likewise, during the negotiations over the creation of the Voluntary Principles on Security and Human Rights in 2000 the United States was critical in facilitating communication and agreement between a group of major transnational oil companies including Chevron and Shell and human rights NGOs, such as Amnesty International and Human Rights Watch. While fulfilling these brokerage roles Israel, the Democratic Republic of the Congo, the European Union, and the United States received and transmitted substantial amounts of informal information about negotiations preferences, positions, and other private information. As a result, they became central figures in the informal communication networks that emerged among the stakeholders involved.

Hypothesis 9: Formal negotiation leaders are more likely to send and receive information in informal networks that emerge during periods of tripartite institutional bargaining.

In addition to leadership formal institutional power can also affect network structure in a more indirect way. Specifically, actors with access to formal negotiation forums, such as working groups or steering committees, may be particularly likely to be involved in informal information exchange. The majority of the hard and detailed bargaining in transnational public-private governance schemes occurs in steering committees, working groups or similar formalized working forums in which a subset of the actors which participate in a governance scheme bargain over draft proposals before they are tabled for debate of the full membership. Such working meetings function as major sites of information sharing. They also serve as entry points for external knowledge provided, for example, in form of expert consultations and sharing of best practices with representatives of other institutions. Given that only a small portion of the total membership of a governance scheme is regularly participating in these working forums those who are involved have advantages obtaining strategically valuable information at early stages of the negotiation process compared to those who are not. This not only provides them with a “first-mover

advantage” and recognizable influence over policy-making and institution-building (see Buthe and Mattli, 2011, pp. 55-8). It also creates abundant opportunities to establish relationships with others and engage in informal information exchange.

In the Kimberley Process, for example, the working groups are typically the place where—at the early stages of a negotiation process—drafts are discussed among those actors with the strongest interest in the issue under consideration. The Ad-hoc Committee on Kimberley Process Certification Scheme Review is a prime example. Established in 2010 and mandated with the task of preparing proposals for the institutional reform of the governance scheme in a number of areas (e.g. amending its substantive scope, setting up a secretariat, reforming monitoring and enforcement procedures) it has been a site of highly controversial institutional bargaining among a small group of KP participants including South Africa, Botswana, India, Canada, United States, industry, and NGOs. Likewise, in the negotiations over the creation of a governance and oversight mechanism for implementing the International Code of Conduct for Private Security Service Providers the temporary steering committee and the three thematic working groups provided a forum for addressing the most severe disagreements between major stakeholders and drafting first versions of what later became the Articles of Association of the International Code of Conduct. Also here only a small subset of all actors involved in the negotiations had access to these structurally important forums of institutional bargaining.

By participating in these forums actors have ample opportunities to formally and informally interact with others and exchange information and knowledge. Further, the actors who participate in these working meetings are also popular contact points for those who are not formally involved but seek information about the issue at stake and the current stage of the negotiations. As a result, if formal institutional power has an impact on informal negotiation networks we should observe that actors who are participating in one or more of these working forums are more likely to have a large number of incoming and outgoing information exchange relationships than those who are not, all else being equal.

Hypothesis 10: Actors participating in working groups are more likely to send and receive information in informal networks that emerge during periods of tripartite institutional bargaining.

Finally, it might also be actors’ overall level of involvement in different transnational public-private governance schemes that impacts their information exchange behavior in a particular scheme and negotiation episode. Often, states, companies, and NGOs participate in multiple public-private governance schemes at the same time (Haufler, 2013). The United States, for example, uses public-private forms of governing as an instrument for achieving its foreign policy goals in a number of policy domains, such as the regula-

tion of private military companies, small arms trafficking, and labor rights abuses in the global apparel industry (Avant, 2013; Bartley, 2007). Likewise, NGOs, such as Human Rights First and Human Rights Watch, are involved in several governance arrangements, including the Fair Labor Association, the Voluntary Principles on Security and Human Rights, and the International Code of Conduct for Private Security Service Providers.

Oftentimes, for a particular state or organization the same departments, bureaus, and individuals are in charge for their engagement in multiple governance schemes. For example, the United States is represented by the Department of State's Bureau of Democracy, Human Rights and Labor in various governance schemes, including the Kimberley Process, the Voluntary Principles and the Fair Labor Association. Likewise, the NGO Human Rights First is represented by the same staff members in the International Code of Conduct, the Voluntary Principles, and the Fair Labor Association.

This engagement in multiple public-private governance schemes may affect an actor's information exchange behavior in a particular governance arrangement through at least two mechanisms. On the one hand, relationships that were established in one governance scheme may be reproduced in a different setting. The fact that two actors engaged in informal information exchange in one institution may positively impact their likelihood of exchanging information in another arrangement. Two bureaus or individuals, for example, that interacted during the negotiations over the reform of the Voluntary Principles' governance framework in 2010-2011 may be more likely to exchange policy-relevant information during the partially overlapping negotiations over the reform of the Kimberley Process in 2010-2012 compared to actors that lack such a previous joint involvement in other governance schemes. In other words, informal communication relationships may travel across governance schemes and negotiation episodes.

Moreover, apart from the direct interaction between concrete relationships and experiences across governance schemes, being involved in multiple tripartite governance arrangements may also have a more indirect effect. Actors who participate in a number of governance schemes over time accumulate a particular set of social and political skills which makes it easier for them to interact with others and exchange information (Jonsson et al., 1998, p. 332). Negotiating policies and institutional rules in groups constituted by states and organizations from different societal sectors and guided by very different organizational cultures and interests requires social and communication skills which are, according to several interviewees, quite different from those required in more conventional negotiation contexts.⁴ From a government perspective, for example, it makes a difference whether bargaining involves only other governments as opposed to groups which contain governments but also companies, business associations, and NGOs. Successfully interacting in the latter environment requires skills distinct from those needed in the former setting. Similarly, for NGOs, engaging with companies and governments requires compe-

⁴Telephone interview NGO representative, July 16, 2012.

tencies that differ from those required to coordinate with other NGOs or organize effective “naming and shaming” campaigns targeted at transnational corporations or lobbying state officials.

Those actors who have obtained such skills of “know-how” and “know-who” in multi-stakeholder communication through their participation in previous negotiations or other governance schemes will find it easier to immerse themselves into a new multi-stakeholder process or new negotiation episode and establish new relationships. This in turn will have a positive effect on their likelihood of becoming involved in sending and receiving information in informal negotiation networks during a particular bargaining episode. In short, all else being equal, we should expect those who have been involved in other transnational public-private governance schemes to be more central in informal information exchange networks. Further, dyads which include actors who have a history of interacting in previous negotiation episodes or other governance schemes should be more likely to engage in informal information exchange. This effect should hold in particular across public-private governance schemes which cover similar regulatory issues and industry sectors.

Hypothesis 11: Actors involved in other public-private governance schemes in the extractive and security sectors are more likely to send and receive information in informal networks that emerge during periods of tripartite institutional bargaining.

7.2 Models and Estimation

I use two types of models to examine the effect of economic and formal institutional power on the structure of informal information exchange networks among states, industry, and NGOs during negotiations over the institutional design of transnational public-private governance schemes. At the actor level, I analyze how economic and institutional power affect the probability of states, industry representatives, and NGOs occupying central network positions. At the dyad level, I investigate the extent to which the distribution of economic and institutional power shapes the likelihood of two actors exchanging policy-relevant information, i.e. forming a network tie, during a negotiation episode. For the analysis at the actor level I use linear regression models to estimate coefficients and permutation tests to obtain p -values for testing hypotheses about the association between economic and institutional power, on the one hand, and network position, on the other. In order to examine the determinants of dyadic networking behavior, I use network logit models where the dependent variable is the presence of a directed information exchange from actor i to actor j . Here, coefficients are estimated employing logistic regression and p -values for hypothesis tests obtained by applying the quadratic assignment procedure.

Linear models with permutation-based standard errors and p -values are a variant of

conventional ordinary least squares (OLS) regression. They are particularly well-appt to fit models to data that violates the assumption of non-independence of observations which is central to standard regression analysis (Freedman and Lane, 1983, p. 291; Freedman, 2010, p. 26). Observations made on a set of actors that are part of a network are not independent. In fact, the recognition that the behavior of one actor depends on the behavior of others to which it is directly and indirectly connected is one of the theoretical hallmarks of network analysis (Wasserman and Faust, 1994, p. 4).

Take clustering of information exchanges as an example. If states, industry representatives, and NGOs tend to communicate in densely connected groups of like-minded others, then the likelihood of the presence of an information exchange tie between any pair of actors, i and j , is not only affected by the monadic and dyadic characteristics of these two actors (e.g. the possession of abundant financial resources or being of the same organizational type) but also by how they are related to others in the network. For example, the existence of a third actor k with whom i and j are both communicating during a negotiation episode may have a positive effect on whether there will also be information exchange between i and j (triadic closure). Likewise, individual actors may be particularly popular targets of information flows during a negotiation episode. While such popularity may exist because of a particular attribute of the actor (e.g. it might occupy an important position in the decision-making process), it might also be that it is the result of an endogenous structural dynamic within the network through which actors with a large number of existing ties are more likely to receive additional ties (preferential attachment).

If such interdependencies are not taken into account, standard OLS regression yields biased results. More specifically, because observations are not independent the error terms in linear regression models tend to be correlated which inflates or deflates standard errors (Heagerty, Ward and Gleditsch, 2002; Hoff and Ward, 2004; Gartzke and Gleditsch, 2008; Freedman, 2010; Krackhardt, 1988, p. 361). This in turn makes p -values too optimistic or pessimistic and leads to biased hypothesis tests. Typically, standard errors and p -values obtained from methods that do not account for interdependence tend to be too small so that independent variables are identified as significantly correlated with the outcome variable although they are actually not (Freedman, 2010, p. 39). As methodological work has shown, even if data are characterized by only moderate amounts of interdependence, the conventional OLS estimator is more likely to incorrectly reject the null hypothesis (Type I error) (Heagerty, Ward and Gleditsch, 2002, p. 311; Freedman, 2010, pp. 30-1; Krackhardt, 1988). Thus, if we want to examine whether the extent to which an actor occupies a central position in informal negotiation networks is affected by the amount of the financial capabilities it controls (economic power) or the institutional privileges it enjoys (formal institutional power), we need to employ methods that are able to cope with interdependencies in the data in order to avoid faulty hypothesis tests. But how can

we perform unbiased hypothesis tests on interdependent data?

Linear models with permutation-based significance tests allow for accomodating non-independent data. This approach uses standard OLS methods for parameter estimation but calculates p -values and standard errors based on permutation tests. The p -values and standard error estimates obtained from this procedure remain valid under non-independence of observations without theoretically modeling the dependence structure at work in the underlying data generating process. In general, a permutation or randomization test allows for testing the hypothesis that the observed ordering of data, here the association between central network positions, on the one hand, and a set of actor covariates exogenous to the network (e.g. level of formal institutional access or control over financial resources), on the other, is significantly different from what would have been expected as a result of a random process (Freedman and Lane, 1983; Manly, 1991; Anderson and Robinson, 2001; Wheeler, 2010). In other words, it tests whether the observed dataset with a particular pattern of associations between a dependent variable, y , and a set of independent variables, x , is typical or atypical compared to other datasets derived through random permutations of observations in the original dataset.

With respect to the problem at hand, OLS coefficients for independent variables, β_{obs} , are obtained by regressing the dependent variable, i.e. actors' centrality in informal information exchange networks, on the observed data on independent variables of interest (e.g. level of access to formal negotiation forums). These coefficients are then compared to the distribution of coefficients obtained from fitting the same model to data where the observations, i.e. rows in the dataset, on the independent variables have been randomly permuted while the ordering of the outcome variable remains as observed. Importantly, under the null hypothesis of no relationship between dependent and independent variable each permutation of the observed data is equally likely (Wald and Wolfowitz, 1944, p. 358). If the value of β_{obs} for a particular independent variable were the result of mere chance, observing values of β obtained from regressing the outcome variable on the randomly permuted observations on the independent variables that are as extreme or more extreme than β_{obs} would be common. Continuing the example of the relationships between network position and institutional access, β_{obs} would be a typical value in the distribution of coefficients obtained from regressing network centrality on the permutations of the data on formal institutional access (Freedman and Lane, 1983, pp. 293-4). Graphically speaking, the coefficient obtained from fitting the model on the observed data would be located somewhere in the center of the distribution of simulated coefficients or close to it. In this case we would fail to reject the null hypothesis that there is no relationship between centrality and level of formal institutional access. If β_{obs} , however, is an atypical value it will be located at the margins of the distribution of β s obtained through fitting the model to the randomly permuted data. In this case the hypothesis that there is a latent process that produced the observed pattern of association between network position and

institutional access becomes more plausible.

One way of examining the significance level of β_{obs} based on a permutation procedure is to analyze the proportion of the coefficients obtained from fitting the model of interest to the randomly permuted data, β_{sim} , that is as extreme or more extreme than β_{obs} . This proportion is the p -value of the permutation-based significance test (Freedman and Lane, 1983, p. 294; Wheeler, 2010, p. 5). Similar to classical hypothesis testing, for a one-tailed test we only examine the tail of the distribution of simulated coefficients that corresponds to the sign of our alternative hypothesis. For example, if we want to know whether states and industry representatives are more likely to engage in informal information exchanges during episodes of tripartite institutional bargaining (hypotheses 6 and 7), we are interested in the proportion of simulated coefficients that are equal to or larger than the observed coefficients β_{obs}^{state} and β_{obs}^{ind} . By contrast, for a one-tailed test of an alternative hypothesis about a negative sign, such as my hypothesis 8 that NGOs are less likely to engage in informal information exchanges, we only examine the negative tail of the distribution of simulated coefficients. Here, we want to know how many values in the distribution of permutation-based coefficients are equal to or smaller than the observed coefficient β_{obs}^{NGO} .

Formally, the permutation-based p -value of the regression coefficient for a particular independent variable of interest for a one-tailed hypothesis test ($H_0 : \beta = 0$; $H_{1a} : \beta > 0$ or $H_{1b} : \beta < 0$) can be defined as follows:

$$P(\beta_{obs}) = \frac{\sum (\beta_{sim} \geq \beta_{obs}) + n_{obs}}{(n_{sim} + n_{obs})} \quad \text{or} \quad P(\beta_{obs}) = \frac{\sum (\beta_{sim} \leq \beta_{obs}) + n_{obs}}{(n_{sim} + n_{obs})}, \quad (7.1)$$

where P is the probability of obtaining a value as large or larger than β_{obs} if the data were product of a random process, $\sum (\beta_{sim} \geq \beta_{obs})$ is the number of times we obtain simulated β s that are as large or larger than β_{obs} (in a one-tailed test for a positive sign of β_{obs}), $\sum (\beta_{sim} \leq \beta_{obs})$ is the number of times we obtain simulated β s that are equal to or smaller than β_{obs} (in a one-tailed test for a negative sign of β_{obs}), and n_{obs} and n_{sim} are the number of observed and simulated β s, respectively.

$P \in [0, 1]$. If all possible $n!$ permutations of a dataset are taken into account the measure in equation 7.1 provides an exact p -value of β_{obs} . However, the number of all possible re-allocations of observations in a particular dataset is typically large and exponentially increases with the size of n . For example, even for a very small dataset with say 13 observations (which would correspond to a network with 13 nodes in my analysis) $13! = 6,227,020,800$ permutations would have to be evaluated in order to obtain exact p -values. Accordingly, the computational capacity required to obtain exact p -values for testing hypotheses for the dataset of 466 observations which I use in this chapter would be immense and prohibitively costly.

An alternative is to approximate the full distribution of permutations by randomly sampling without replacement from all possible re-allocations of observations. The p -value obtained from such a sample is an estimate of the actual value (Manly, 1991, p. 102; Wheeler, 2010, p. 33). It is an estimate of the probability of a coefficient of the size of β_{obs} or larger and indicates the significance of β_{obs} . As in conventional hypothesis tests for OLS regression results, if $p < 0.05$ we can reject the hypotheses that β_{obs} is not different from 0 for a one-tailed test. In other words, the null hypothesis that there is no relationship between an independent variable and the outcome of interest is rejected for the conventional significance level of $p < 0.05$ if $p(\beta_{obs}) < 0.05$. In order to facilitate comparison with conventional analyses I compare the results of my permutation-based hypothesis tests with those obtained from employing conventional OLS methods.

This permutation interpretation of p -values makes no assumptions about the particularities of the process that generated the observed data (Freedman and Lane, 1983, p. 293) and, hence, allows for testing hypotheses with data characterized by interdependence among observations. Importantly, because no assumptions are made about the data generating process and how the sample data under investigation is related to the larger population, the obtained p -values have no stochastic interpretation (Freedman and Lane, 1983, p. 293). Within a permutation framework significance levels are a descriptive statistic that relates the observed data to a universe of other datasets derived from it by randomly shuffling observations. As a consequence, permutation-based hypotheses testing does not allow for generalizing findings to a larger population. “All that a randomization test tells us is that a certain pattern in data is or is not likely to have arisen by chance” (Manly, 1991, p. 2). The result of a permutation test is completely specific to the particular data at hand and is not related to the concept of a larger population from which the data of interest is drawn (Wheeler, 2010, p. 4). For example, if we find in the four negotiation networks which I examine in this chapter that there is a positive relationship between an actor’s possession of financial resources and its centrality in an informal information exchange network, this does not allow us to conclude that such a link between economic power and network power exists in other networks as well. It only refers to the existence of a relationship between the distribution of financial capabilities and centrality in the four specific networks under consideration. Because my interest in this chapter focuses on the exogenous determinants of the structure of the informal information exchange networks that emerged in four particular episodes of tripartite institutional bargaining, this limitation does not pose any constraints on my analysis.

Permutation-based hypotheses testing is a technical approach to dealing with interdependence; it does not involve the theoretical modeling of patterns of dependencies within a dataset. Models that allow for such theoretical modeling of interdependencies within a network framework are, for example, exponential random graph models (Robins et al., 2007; Cranmer and Desmarais, 2011; Lusher, Koskinen and Robins, 2013) and stochastic

actor-oriented models (Snijders, 1996). These models permit to explicitly characterize the dependence structure that exists among the units in a network. For example, with respect to information exchange among states, companies, and NGOs during episodes of tripartite bargaining one can employ exponential random graph models in order to investigate whether in addition to actor and dyad covariates, such as the possession of financial resources or the joint involvement in other transnational public-private governance schemes, extra-dyadic dependencies in the information exchange network, such as triadic closure or popularity, shape actors' information exchange decisions. Despite the promises of these models I limit the analysis in this chapter to simpler models and leave the exploration of alternative approaches to future research.

At the dyad level of analysis, I use network logit models to examine the effect of economic and formal institutional power on the information exchange behavior among states, industry representatives, and NGOs during particular episodes of bargaining over the institutional design of transnational public-private governance schemes. While individual actors are the units of analysis in the linear models that regress network centrality on independent variables of interest, the unit of analysis in the network logit models is the directed actor dyad $i \rightarrow j$. The overall question which these models address is what variables affect the likelihood of observing an information transfer from actor i to actor j in a particular information exchange network.

As in the OLS regression case above, I use conventional procedures for model parameter estimation and then estimate p -values and standard errors in a way that accounts for interdependence. Specifically, since the outcome variable of interest is binary (1 if i sends information to j during a particular negotiation episode and 0 otherwise) I use logistic regression and maximum likelihood procedures to estimate model coefficients. In contrast to conventional methods, however, standard errors and p -values for hypothesis tests are obtained from the quadratic assignment procedure (QAP) (Hubert and Schultz, 1976; Krackhardt, 1987, 1988; Butts and Carley, 2001).

Like in the permutation test procedure for linear regression models, in QAP standard errors and p -values are computed using simulation techniques based on random permutations of the data. In principle, QAP is similar to the permutation test procedure outlined above. The model with the independent variables of interest is fitted to the observed data using logistic regression and the coefficients from this model stored. The observations on the independent variables are randomly shuffled. It is important to recall that like the permutation procedure for the linear models QAP shuffles the dataset but for any single actor the row and column in the data matrix remain the same and are permuted together so that they are not separated. The same model is then estimated for the permuted dataset. The coefficients obtained from this model are stored and the process repeated multiple times in order to obtain an empirical sampling distribution of coefficients estimated on simulated data which serves as null hypothesis for the hypothesis test. Finally,

using equation 7.1 the coefficients obtained from fitting the model to the observed data are compared to the empirical sampling distribution obtained from the simulation in order to evaluate the significance of the corresponding independent variable.

Again, I compare the results of the hypothesis tests obtained from my network logit models with those obtained using logistic regression and conventional methods for computing standard errors and evaluating significance levels.

7.3 Data and Variables

Using the methodological tools of network analysis I describe the pattern of informal exchanges of policy-relevant information and advice among states, industry, and NGOs involved in negotiations over the creation and change of transnational public-private governance schemes as a matrix. Policy-relevant information and advice refers to strategically valuable information pertinent to institution-building and change in a transnational public-private governance scheme. It includes, for example, briefings and exchanges about the regulatory problem a governance scheme addresses or the institutional preferences and interests of different stakeholder groups. It also includes the provision of policy recommendations on, for example, how to deal with a particular problem or how to forge a coalition of like-minded actors to pursue a particular institutional outcome. There are several other types of relationships which could be used as indicator for the structure of informal interactions among states, industry, and NGOs involved in transnational tripartite bargaining, such as provision of funding, project collaboration, or geographical proximity. I selected exchange of information and policy advice because how and to whom information and knowledge about problems, solutions, and institutional preferences are disseminated and from whom received is critical for the dynamics and outcomes of negotiations over transnational institutional design.

Let $\mathbf{\Omega}$ be an $n \times n$ matrix, where the element ω_{ij} represents the sending of policy-relevant information directed from actor i to actor j , ($i, j = 1, \dots, n$) and n is the number of states, industry representatives, and NGOs involved in a particular episode of tripartite institutional bargaining:

$$\mathbf{\Omega}_{n,n} = \begin{pmatrix} \omega_{1,1} & \omega_{1,2} & \cdots & \omega_{1,n} \\ \omega_{2,1} & \omega_{2,2} & \cdots & \omega_{2,n} \\ \omega_{3,1} & \omega_{3,2} & \cdots & \omega_{3,n} \\ \vdots & \vdots & \ddots & \vdots \\ \omega_{n,1} & \omega_{n,2} & \cdots & \omega_{n,n} \end{pmatrix}.$$

Since the data I collected on informal information exchanges during negotiation episodes contains information about the direction of information flows, i.e. whether actor i is a sender or receiver of policy-relevant information, $\mathbf{\Omega}$ is a directed, asymmetric matrix where

the individual elements can be formally defined as follows:

$$\omega_{ij} = \begin{cases} 1 & \text{if actor } i \text{ sends information to } j \text{ in a given negotiation episode} \\ 0 & \text{otherwise.} \end{cases} \quad (7.2)$$

I collected data on informal exchanges of policy-relevant information among states, industry, and NGOs for four episodes of tripartite bargaining over formal institutional structures in three transnational public-private governance schemes; namely, the negotiations over the creation of the Kimberley Process in 2000-2002, the reform of the institutional architecture of the Kimberley Process in 2010-2012, the reform of the Voluntary Principles on Security and Human Rights in 2010-2011, and the creation of the governance and oversight mechanism of the International Code of Conduct for Private Security Service Providers in 2010-2013. These governance schemes are three of the few truly tripartite transnational institutions in contemporary world politics (Abbott and Snidal, 2009 *a*). In all three institutions, companies, industry, and NGOs have access to negotiations, are members of working bodies (e.g. steering committees and working groups), participate in drafting policy proposals, and, in some cases, have the right to vote. Thus, in these three governance schemes business actors and civil society organizations participate alongside states at all stages of the governance process including institution-building, policy-making, and implementation.

Furthermore, all four negotiation episodes are characterized by a high level of political controversy over whether and, if so, how to create and reform the formal organizational rules and procedures of transnational public-private governance schemes. For example, when the Kimberley Process was created between 2000 and 2002, states, diamond industry and human rights NGOs sharply disagreed on how robust the new institution's capabilities for verifying rule compliance ought to be. While a coalition of diamond producing and trading states (e.g. Russia, Israel) and the diamond industry were concerned about the costs and intrusiveness of monitoring and argued for limited compliance verification mechanisms, NGOs forcefully bargained for robust independent third-party monitoring which they considered necessary for effectively deterring rule violations and guaranteeing the institution's public credibility and reputation (Beffert and Benner, 2005 *a*; Bieri, 2010).⁵ Likewise, during the negotiations over the reform of the governance architecture of the Voluntary Principles on Security and Human Rights between 2010 and 2011 states, extractive companies, and NGOs bargained hard over how to adjust the institution's monitoring system. States—especially the United States and Canada—together with human rights NGOs, such as Amnesty International, Human Rights Watch and Oxfam Interna-

⁵See chapter 4 for a more in-depth analysis of these and other controversial negotiations that occurred during the institutional trajectory of the Kimberley Process.

tional, pushed for strengthening the scheme's weak reporting procedures toward a more systematic and independent verification apparatus. Their reform proposals were met by vigorous opposition of extractive companies including Chevron, Exxon Mobil and Hess.⁶

Given this high level of political controversy, distributions of power and insterests played a critical role in shaping negotiation dynamics and institutional outcomes in these four negotiation episodes. Importantly, at several occasions the negotiations over the creation and change of the Kimberley Process, the Voluntary Principles on Security and Human Rights and the International Code of Conduct for Private Security Providers occurred in an institutional setting predominated by informal governance. As I have argued and shown in the previous chapters, this made power based on privileged positions in informal information exchange networks an important source of influence in institutional bargaining. In short, because negotiations over institutional formation and change were highly controversial in these four episodes and because informal network power played a key role in shaping bargaining dynamics these four cases provide useful empirical ground for the study of the antecedends of informal network power and how it interacts with more conventional forms of power, such as economic and formal institutional power.

Data for measuring the structure of informal information exchanges among the states, industry representatives, and NGOs involved in these four negotiation episodes was collected through a multiple-sources and multiple-measurement strategy that combines information from key informant interviews and archival resources (Butts, 2009). I illustrate the data collection procedure I used drawing on the example of the negotiations over the creation of the International Code of Conduct for Private Security Service Providers in 2010-2013. Data for the other episodes was gathered analogously.

In a first step, documents from the website of the ICoC⁷ and qualitative interviews with government, industry, and civil society representatives were consulted to identify actors reported as somehow involved in the negotiations over the creation of a governance and oversight mechanism to implement the regulatory provisions of the scheme between December 2010 and February 2013. This boundary specification yielded a group of 133 actors which includes states, private security and military companies, business associations, NGOs, and other organizations, such as the American National Standards Institute or the United Nations Special Representative for Business and Human Rights.

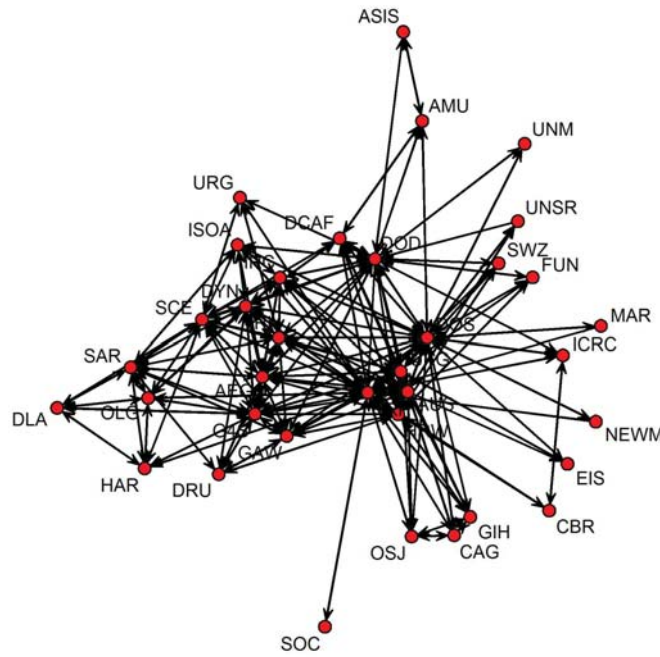
In a second step, actors who held key positions during the negotiations (e.g. members of the scheme's steering committee or working groups) were asked to provide information about the exchange of policy-relevant information and advice pertinent to the design of monitoring and rule enforcement mechanisms among these 133 actors. Informants were selected so as to represent structurally different parts of the negotiation network, such as diverse clusters or network core and periphery. Data on the ICoC information exchange

⁶See chapter 6 for a more detailed analysis.

⁷See <http://www.icoc-psp.org/>.

network, for example, was obtained from government, industry, and NGO representatives which belonged to different coalitions during the 2010-2013 negotiations.⁸ Using key informants from such structurally different parts of the network helps to compensate for informant bias emanating from network position because it combines data on negotiators' information exchange relationships that were obtained from a "diversity of significant actor perceptions" (Burt, 1983, p. 154) of network structure instead of relying merely on the views of informants that occupy a particular type of structural position. Further, I selected actors that could be expected to be central in the network to enhance the accuracy of their network assessments (Marsden, 2005). In sum, four key informant assessments were obtained each of which was then coded as a separate 133×133 matrix Ω^i with the superscript i referring to one of the four network structure assessments.

Figure 7.1: Exchange of Policy-relevant Information and Advice during the ICoC Negotiations, 2010-2013



Notes: Visualization based on a variant of Fruchterman and Reingold's force-directed placement algorithm as implemented in the network package for R (Butts, Handcock and Hunter, 2013). Isolates are not included in order to facilitate readability.

This data was then supplemented with information gained from documents which provided an additional network assessment. In particular, membership rosters, minutes of meetings, and summary reports of the steering committee and working group meetings that occurred during the negotiation period were used to construct an actor-by-working group affiliation matrix Θ where each individual entry θ_{ij} indicates the participation of

⁸See chapter 5 for a more detailed analysis.

actor i in the working group j . Because 133 actors were identified as—in different ways—involved in the negotiations and because there existed three working groups and a steering committee in the context of the ICoC between 2010 and 2013 this affiliation matrix is of dimension 133×4 . By multiplying Θ with its transpose Θ' this affiliation matrix was then transformed into a new actor-by-actor sociomatrix, Δ , of dimension 133×133 where each individual entry δ_{ij} indicates the number of working groups in which actor i and actor j are jointly participating in. The diagonal values of Δ were set to zero because of the irrelevance of reflexive connections of actor i with itself and the off-diagonal values were dichotomized. This information produced another network assessment yielding to a total number of five individual measures of the overall network structure Ω .

In a final step, the five network assessments were merged and only those ties taken into consideration which were jointly reported by at least two sources. The graph in figure 7.1 visually represents the informal information exchange network during the negotiations over the ICoC that was obtained through this procedure. Isolates are excluded from the graph to enhance visual clarity.

Taking into account the qualitative data that I collected on this network, I am confident that the graph in figure 7.1 adequately reflects the overall pattern of informal information exchanges that emerged among states, private security industry, and NGOs during the negotiations over the creation of a governance and oversight mechanism for the ICoC between December 2010 and February 2013. Although this graph does certainly not depict each and every single exchange of policy-relevant information that has occurred during that time among this set of actors, I am confident that it adequately captures the *overall pattern* of regular informal interactions relevant for the negotiations over the design for formal monitoring and enforcement mechanisms.

For the purpose of estimating linear regression models with actors' individual centrality scores as dependent variables the data for all four networks is merged into one large dataset. This pooled dataset contains $n = 466$ observations at the actor level of analysis. The network logit models with the presence of a directed information exchange relationship as the dependent variable are estimated for each network separately. Given that the unit of analysis for these models is the directed actor dyad this yields a total of 14,042, 23,562, 3,540, and 17,556 observations for the 2000-2002 and 2010-2012 Kimberley Process, the 2010-2011 Voluntary Principles and the 2010-2013 International Code of Conduct network, respectively.⁹

Dependent variables. In order to test my hypotheses about the determinants of actor centrality I compute four centrality measures—outdegree, indegree, eigenvector, and betweenness centrality—for each of the four networks Ω_{KP2000} , Ω_{KP2010} , Ω_{VP2010} ,

⁹The total number of directed dyads in an $n \times n$ sociomatrix or network is, if self-reflexive connections (i.e. diagonal values of the matrix) are excluded, $n \times (n - 1)$. Thus, for example, the network that emerged during the negotiations over the International Code of Conduct has a total number of $133 \times (133 - 1) = 17,556$ directed dyads.

and $\Omega_{ILOC2010}$. In general, degree centrality describes the number of direct connections an actor i has with others in a network (Freeman, 1978). Since the data I collected on the exchange of policy-relevant information and advice among states, firms, and NGOs during tripartite negotiations is directed, i.e. $\omega_{ij} \neq \omega_{ji}$, I can distinguish between outdegree and indegree centrality which measure the number of an actor's direct outgoing and incoming information exchange ties, respectively. Formally, the outdegree and indegree of actor i are defined as follows:

$$Outdeg_i = \frac{\sum_{\forall i \neq j} \omega_{ij}}{(n-1)} \quad \text{and} \quad Indeg_i = \frac{\sum_{\forall j \neq i} \omega_{ji}}{(n-1)}, \quad (7.3)$$

where $n-1$ is the number of nodes in the network other than i . Because outdegree and indegree measures are strongly affected by the overall number of actors in a network the absolute number of actor i 's outgoing and ingoing ties is divided by $n-1$ to normalize degree scores and facilitate comparison across networks.

Eigenvector centrality measures the extent to which an actor is directly connected to other central actors (Bonacich, 1987). Thus, it takes into account that an actor's centrality depends on the centrality of its neighbors, its neighbors' neighbors, etc. Technically, it is a centrality measure "in which a unit's centrality is its summed connections to others weighted by their centralities" (Bonacich, 1987, p. 1172). The basic notion of eigenvector centrality is formalized as follows:

$$\lambda e_i = \sum_{i \neq j} \Omega_{ij} e_j, \quad (7.4)$$

where e_i and e_j are the i th and j th elements of an eigenvector of Ω , and λ is the eigenvalue associated with this eigenvector. For the purpose of computing eigenvector and betweenness centralities the directed network data is symmetrized so that $\omega_{ij} = \omega_{ji}$.

Finally, betweenness centrality calculates the number of shortest paths or geodesics that connect actors j and k and go through actor i (Freeman, 1978). In a general sense, betweenness centrality captures the extent to which actor i is pivotal for transactions of information between every other two actors in a network and can be understood as a global measure of brokerage. It can be formalized as follows:

$$Between_i = \sum_{\forall j \neq k, j \neq i \neq k} \frac{g_{jik}}{g_{jk}} \left(\frac{(n-1)(n-2)}{2} \right)^{-1}, \quad (7.5)$$

where g_{jk} is the number of geodesics connecting actors j and k and g_{jik} is the number of geodesics between actors j and k that contain actor i . The second term in equation 7.5 is a normalizing constant that refers to the maximum number of possible non-directional connections in the network.

These four centrality measures derived from the networks Ω_{KP2000} , Ω_{KP2010} , Ω_{VP2010} ,

and $\Omega_{ICOC2010}$ serve as dependent variables in the linear regression models I estimate in the first part of my empirical analysis and I examine to what extent the centrality of an actor i is affected by its economic and institutional power.

For the network logit models in the second part of my empirical analysis the dependent variable is the presence of a directed information transmission between actor i and j in a particular negotiation episode. This is a binary variable coded 1 if actor i provided j with policy-relevant information during a given negotiation episode and 0 otherwise. Equation 7.2 on page 225 defines this measure formally. I investigate how the distribution of economic and institutional power shapes the information exchange behavior of all dyads in the networks Ω_{KP2000} , Ω_{KP2010} , Ω_{VP2010} and $\Omega_{ICOC2010}$, controlling for other exogenous variables.

Independent variables. To examine the relation between economic power and network power I use three indicator variables for states, industry representatives, and NGOs, respectively. For the linear regression models the variables $State_i$, $Industry_i$ and NGO_i are coded 1 if a particular node in a negotiation network is a state (or industry representative or civil society organization) and 0 otherwise. For the network logit analysis I use a set of dyadic indicators as proxies for economic power. $State_{ij}$, $Industry_{ij}$ and NGO_{ij} are coded 1 if at least one actor in a dyad is a state, industry representative or NGO respectively and 0 if not. Given that states and companies have typically more financial capabilities at their disposal than NGOs, in combination these three indicator variables should allow for a first approximation to the impact of economic power on the formation of informal information exchange ties during episodes of tripartite institutional bargaining. In particular, if network structure is driven by the distribution of financial capabilities among negotiators, we should observe a positive effect for the state and industry indicators in both the linear regression and network logit models. The NGO indicator, by contrast, should have a negative sign.

Further, to test for the effect of institutional power on informal information exchange, I include two variables, *Chair* and *Access*, in both the linear regression and network logit models. In the linear regressions, $Chair_i$ is an indicator variable and measures whether or not a particular state, company, or NGO was serving as chair of either a governance scheme as a whole (e.g. Israel was the Chair of the Kimberley Process in 2010) or of the steering committee or any working group during a negotiation episode (e.g. Canada and Botswana co-chaired the Ad-hoc Committee on the Reform of the Kimberley Process during the 2010-2012 negotiations). This variable is coded 1 for all actors that chaired a working group, steering committee or governance scheme as a whole during a particular negotiation episode and 0 otherwise.

Similarly, in the network logit models the variable $Chair_{ij}$ indicates whether actor i , j or both either chaired a governance scheme as a whole or one or more of its working bodies during a particular negotiation episode. It is coded 1 for dyads where at least

one actor served as chair during a negotiation episode and 0 for dyads that contain no actor in a chairing role. If informal network power reflects the distribution of formal institutional power, we should observe the effect of these variables to be positive both in the linear regression and network logit models. In other words, actors that occupy privileged institutional roles should be more likely to occupy central positions in informal information exchange networks. Likewise, dyads that contain at least one actor in a chairing role should be more likely to form informal information exchange ties.

I also measure institutional power as access to formal negotiation forums, such as steering committees and working groups. In the linear regression models, $Access_i$ is a count variable that reflects the number of working groups or other formal negotiation forums of which actor i is a member. For example, during the negotiations over the institutional reform of the Kimberley Process between 2010 and 2012 South Africa was member of all eight working groups that existed during that period and, hence, had the maximum access score of eight during that period. By contrast, other actors, such as Switzerland or the United Arab Emirates, were weaker in terms of formal access as indicated by their scores of three on the access variable. In the network logit analysis, $Access_{ij}$ is the sum of the working group memberships of both actors in a dyad. If formal institutional positions are a relevant driver of informal network power, we should observe a positive coefficient for this variable in both models.

To investigate whether an actor's overall activities in transnational public-private governance schemes in the extractive and security sectors have an effect on its linking behavior in the four information exchange networks under consideration I include the variable MSI_i in the regression models in the first part of my empirical analysis. Similar to $Access_i$ this variable counts the number of times actor i was involved in other multi-stakeholder initiatives in the extractive and security sectors during a particular negotiation episode. In addition to the Kimberley Process, the Voluntary Principles, and the International Code of Conduct I also draw on membership information from the Extractive Industries Transparency Initiative in order to compute this count variable.¹⁰

For the purpose of fitting network logit models to the four negotiation networks the count variable MSI_i is substituted by MSI_{ij} . This variable is a binary dyadic measure that indicates for every pair of actors i and j in a particular negotiation network whether they were jointly participating in other multi-stakeholder initiatives in the extractive and security sector during a bargaining episode. For example, the United States and Canada were not only two of the protagonists in the negotiations over the reform of the institutional architecture of the Kimberley Process in 2010-2012 but also both involved in the negotiations over the new governance framework of the Voluntary Principles on Security and Human Rights in 2010-2011. Likewise, the extractive company Rio Tinto and the United States were involved in the Kimberley Process negotiations between 2010

¹⁰See <http://eiti.org/supporters/companies>, accessed: May 07, 2013.

and 2012 as well as in the Voluntary Principles negotiations between 2010 and 2011.

Technically, this variable captures another network, say Φ , on the same set of actors involved in a negotiation episode which is constituted by their joint involvements in other multi-stakeholder initiatives. Similar to the network Δ described above it is constructed by projecting an actor-by-multi-stakeholder initiative affiliation network into an undirected, binary actor-by-actor social network where the individual elements $\phi_{ij} = \phi_{ji} = 1$ if two actors are both involved in at least one multi-stakeholder initiative in the extractive and security sectors other than the particular initiative under consideration and 0 otherwise.

Table 7.1: Summary Statistics Monadic Variables

	Mean	Std. Dev.	<i>N</i>
Outdegree _{<i>i</i>}	4.488	9.715	466
Indegree _{<i>i</i>}	4.488	9.195	466
Eigenvector _{<i>i</i>}	6.585	11.340	466
Betweenness _{<i>i</i>}	0.087	0.349	466
State _{<i>i</i>}	0.384	0.487	466
Industry _{<i>i</i>}	0.333	0.472	466
NGO _{<i>i</i>}	0.185	0.388	466
Chair _{<i>i</i>}	0.041	0.198	466
Access _{<i>i</i>}	0.650	1.555	466
MSI _{<i>i</i>}	0.468	0.855	466

MSI_i and MSI_{ij} capture different aspects of between-network interactions and indicate whether being involved in other multi-stakeholder initiative makes an actor more likely to participate in informal information exchange in the four networks under consideration. If such between-network effects exist, we should observe a positive coefficient for MSI_i in the linear regression results and a positive sign of the estimated coefficient of MSI_{ij} in the network logit models.

Data for measuring the independent variables that are endogenous to the four negotiation networks under consideration was obtained through extensive fieldwork between 2009 and 2012 which included collecting official and confidential documents from websites and private archives as well as email communication with secretariats and working groups of the Kimberley Process, the Voluntary Principles on Security and Human Rights and the International Code of Conduct for Private Security Service Providers. Table 7.1 displays summary statistics for the monadic variables used in the regression models.¹¹

¹¹See Appendix C for summary statistics of the dyadic variables used in the network logit models.

7.4 Results

I first analyze whether economic and institutional power affect individual actors' positions in informal negotiation networks using the four different centrality measures described above as dependent variables. I then estimate four network logit models to evaluate whether the dyadic information exchange behavior in the four negotiation networks is affected by the distribution of financial capabilities and formal institutional roles.

7.4.1 Actor Centrality and Exogenous Power

The four nodal centrality measures that serve as dependent variables for the analysis in this section indicate the extent to which an actor i occupies a central position in the pattern of informal information exchanges that emerged during episodes of tripartite bargaining over the design of transnational public-private governance schemes. The unit of analysis for the models in this section is, therefore, the actor-negotiation episode. For every actor i in my dataset one observation on the dependent and independent variables is recorded for each negotiation episode in which it was involved. This yields a total of $n = 466$ observations across the four negotiation episodes.

Table 7.2: Effect of Economic and Institutional Power on Node Centrality, OLS Regression

	(1)	(2)	(3)	(4)
	Outdegree	Indegree	Eigenvector	Betweenness
State $_i$	1.322 (1.366539)	-1.390 (1.270841)	0.812 (1.278173)	-0.030 (0.0543969)
Industry $_i$	2.089 (1.384022)	.0163 (1.2871)	2.144 (1.294525)	-0.062 (0.0550928)
NGO $_i$	0.763 (1.510455)	0.926 (1.404679)	1.522 (1.412783)	-0.058 (0.0601256)
Chair $_i$	-4.823* (2.424926)	-5.197* (2.255111)	-0.479 (2.26812)	0.514*** (0.0965274)
Access $_i$	3.509*** (0.3275398)	3.588*** (0.3046025)	5.479*** (0.3063597)	0.023 (0.0130382)
MSI $_i$	0.681 (0.4855683)	0.454 (0.4515644)	-0.354 (0.4541695)	-0.013 (0.0193287)
Intercept	0.741 (1.22871)	2.512* (1.142665)	1.902 (1.149257)	0.100* (0.0489104)
Observations	466	466	466	466
\bar{R}^2	0.285	0.310	0.541	0.121
F Statistic	31.93***	35.83***	92.38***	11.64***
BIC	3320.937	3253.272	3258.633	316.421

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$. OLS estimates. Standard errors in parentheses.

Table 7.2 on page 233 shows the results of the baseline models which were fitted using conventional OLS regression methods naïvely assuming independence of observations. The results indicate that being an industry representative has no effect on actors' outdegree, indegree, eigenvector, and betweenness centrality in the four informal information exchange networks under consideration. Likewise, there is no evidence for the expected positive effect of being a state on network centrality. My data also fails to provide evidence for the expectation that NGOs are less likely to be central in informal negotiation networks. For none of the four centrality measures considered we observe a statistically significant effect of being an NGO on network position.

Access has a positive and highly statistically significant effect on outdegree, indegree and eigenvector centrality. Thus, it seems that a higher level of access to formal forums where the detailed bargaining over institutional rules and procedures takes places has a positive impact on an actor's access to informal networks. All else being equal, the more extensive an actor's access to formal negotiation forums the more likely it is to send and receive information through informal networks and the more likely it is connected to hubs of informal communication.

There is no evidence in my data for a similar effect of access on betweenness centrality. However, being the chair of a governance scheme or a formal working body has a significant positive effect on betweenness centrality. Thus, actors who serve as chairs are more likely to broker informal information exchanges than those who are not. $Chair_i$ also has a weak negative effect on outdegree and indegree centrality suggesting that those actors who chair a negotiation process or parts of it are less likely to receive and disseminate large amounts of information during negotiation episodes. Being a member of other public-private governance schemes that regulate corporate conduct in the extractive and security industries is not statistically significant for any of the four centrality measures. In sum, the results from the four baseline models provide no support for the hypothesis that the possession/lack of financial capabilities has a positive/negative effect on centrality in informal negotiation networks. There is, however, some evidence that formal institutional power in form of access and the "power of the chair" has a positive impact on informal access and brokerage, respectively.

I also fitted robust regression models with standard errors clustered on actors as well as fixed effects models with the grouping unit being the negotiation episode.¹² The results only differ slightly from the naïve regressions discussed above. In the robust regression models industry representatives are more likely to score high on outdegree and eigenvector centrality, while there is no effect on indegree and betweenness. According to the fixed effects models industry representatives are more likely to be central in terms of outdegree, while there is no effect different from zero on indegree, eigenvector and betweenness centrality. In both models access has a strong positive effect on outdegree,

¹²The results for the robust regression and fixed effects models are available upon request.

indegree and eigenvector centrality but no impact on betweenness. Chairing a governance scheme or working group during the course of a negotiation episode has a positive effect on betweenness centrality. Importantly, in the robust regression and fixed effects models the counterintuitive weak negative effect of $Chair_i$ on outdegree and indegree centrality disappears.

Both the naïve and robust OLS regressions as well as the fixed effects models reported above assume independence. While the OLS models assume independent observations, the fixed effects models assume independent negotiation episodes. Given the fact that we are dealing with network data neither of these assumptions is likely to be met by the data. The behavior and attributes of actors in networks are not independent but related to one another in non-random ways. Given the fact that we are dealing with non-independent observations, I fitted linear models to the data where p -values and standard errors are computed based on permutation tests rather than conventional methods.

Table 7.3: Effect of Economic and Institutional Power on Outdegree and Indegree Centrality, OLS Regression with Permutation-Based P -Values

	(5)		(6)	
	Outdegree		Indegree	
	Coeff.	p	Coeff.	p
State _{<i>i</i>}	1.322	0.212	-1.390	0.819
Industry _{<i>i</i>}	2.089	0.098	0.016	0.511
NGO _{<i>i</i>}	0.764	0.341	0.926	0.300
Chair _{<i>i</i>}	-4.823	0.962	-5.197	0.980
Access _{<i>i</i>}	3.509	0.000	3.588	0.000
MSI _{<i>i</i>}	0.681	0.122	0.454	0.202
Intercept	0.741	1.000	2.512	0.943
Observations	466		466	
\bar{R}^2	0.29		0.31	
F Statistic	31.93***		35.83***	

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$. OLS estimates. Permutation-based p -values. Number of random permutations of observations on independent variables = 100,000.

I estimated the regression coefficients of interest (e.g. β^{ind} for the industry indicator) on hypothetical data obtained through shuffling the observations (rows) on the independent variable scores by randomly sampling without replacement from the population of all possible permutations of the 466 rows in my dataset.¹³ Thus, I simulated the regression coefficients we would obtain if actors were randomly allocated to network positions.

¹³As a robustness check, I repeated the same procedure for randomly permuting the values on the outcome variables while keeping the ordering of observations on the independent variables as observed. The obtained p -values are basically the same indicating that results are not affected by the choice of which part of the data is permuted. Data and R code for this as well as for all other analyses reported in this chapter are available from the author.

The coefficients (e.g. β_{obs}^{ind}) obtained from fitting the model to the observed data are then compared to the simulated distribution of β s in order to evaluate how likely observing a particular coefficient would have been if actors were allocated to network positions by chance. This provides a procedure to assess the significance level of β_{obs} that does not require the assumption of independent observations. Recall that these significance levels are descriptive statistics and not probabilities. They do not allow for making inferences beyond the four negotiation networks under consideration.

Table 7.4: Effect of Economic and Institutional Power on Eigenvector and Betweenness Centrality, OLS Regression with Permutation-Based P -Values

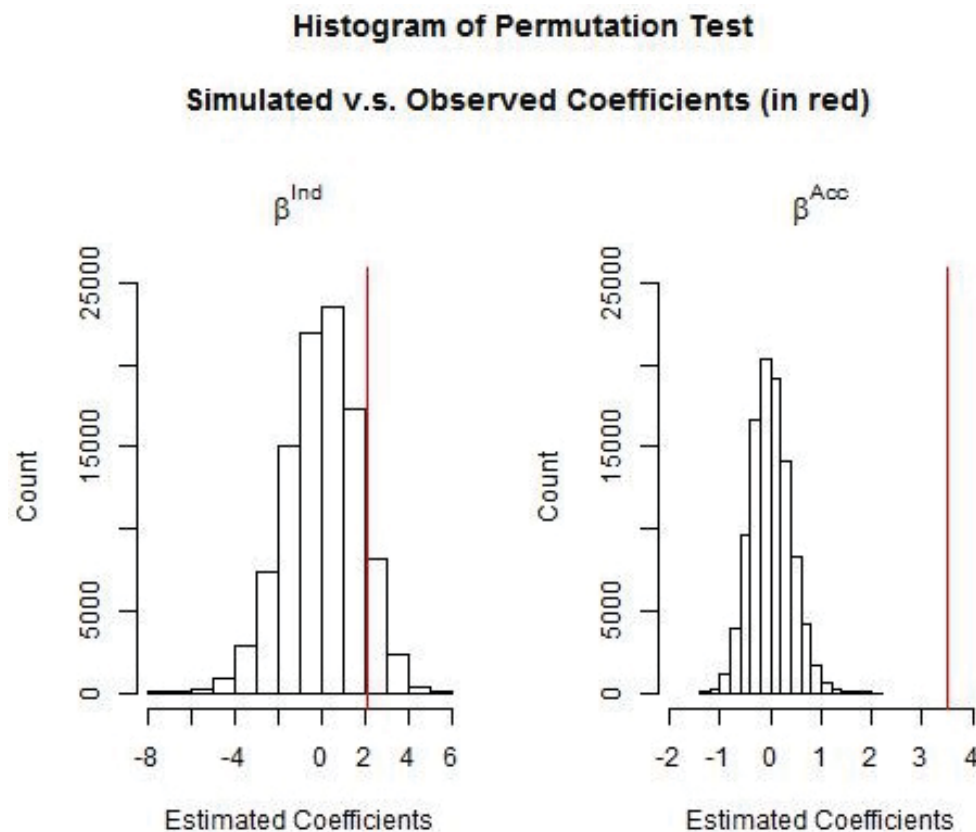
	(7)		(8)	
	Eigenvector		Betweenness	
	Coeff.	p	Coeff.	p
State _{<i>i</i>}	0.812	0.340	-0.030	0.723
Industry _{<i>i</i>}	2.144	0.130	-0.062	0.851
NGO _{<i>i</i>}	1.522	0.234	-0.058	0.820
Chair _{<i>i</i>}	-0.479	0.546	0.514	0.000
Access _{<i>i</i>}	5.479	0.000	0.023	0.065
MSI _{<i>i</i>}	-0.354	0.698	-0.013	0.718
Intercept	1.902	1.000	0.100	0.350
Observations	466		466	
\bar{R}^2	0.54		0.121	
F Statistic	92.38***		11.64***	

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$. OLS estimates. Permutation-based p -values. Number of random permutations of observations on independent variables = 100,000.

The results, shown in tables 7.3 and 7.4 on page 235 and 236, support some of the findings of the baseline OLS regression models and reject others. Those with access to formal negotiation forums tend to have higher outdegree, indegree, and eigenvector centrality in informal information exchange networks that emerge during the course of tripartite institutional bargaining in the four negotiation episodes under consideration. The coefficient of the count variable for the number of formal negotiation forums in which an actor is participating is positive and highly statistically significant even if non-independence of observations is taken into account. With respect to outdegree centrality (model 5), for example, the observed β of ≈ 3.5 for $Access_i$ is larger than any of the coefficients obtained from fitting models to the randomly permuted data. By contrast, the coefficient for the state indicator of ≈ 1.3 is equaled or exceeded by ≈ 21 percent of all 100,000 simulated coefficients which does not allow to distinguish the effect of being a state on outdegree centrality from what would have occurred by chance based on conventional understandings of statistical significance. This indicates that receiving and disseminating policy-relevant information and advice during the four negotiation periods under study

benefits from being involved in formal institutional arenas in which the hard work of institutional bargaining occurs. It appears that actors with high institutional access are more likely to be outdegree, indegree, and eigenvector central in informal information exchange networks. Recalling that both degree and eigenvector centrality capture different aspects of access in a network it appears that formal access facilitates informal access.

Figure 7.2: Histogram of β^{Ind} and β^{Acc} Coefficients from Permutation Test Plotted with Coefficients Estimated from Observed Data



Notes: Dependent variable of fitted model: outdegree centrality. Number of random permutations of observations on independent variables = 100,000. Sampling from total distribution of permutations without replacement.

Also, as reported in the second column of table 7.4 (model 8), I find little evidence in my data that formal access benefits an actor's betweenness centrality which captures the extent to which it brokers information flows between otherwise unconnected others. With a p -value of 0.065 the coefficient of $Access_i$ slightly misses conventional significance levels. However, being the chair of the public-private governance scheme in which negotiations take place or chairing one of its working groups has a positive and highly statistically significant effect on being a broker in informal information exchange networks. The observed coefficient of ≈ 0.55 is larger than any of the coefficients obtained from fitting the model to the simulated data. Importantly, as already indicated by the robust regression

and fixed effects models, also in the linear regression models where p -values and standard errors are computed based on randomization tests the puzzling weak negative effect of being a chair on outdegree and indegree vanishes.

In contrast to institutional power, there is little evidence in my data that economic power affects actors' centrality in informal information exchange networks. The three indicators for an actor being a state, industry representative or NGO have no effect on any of the four centrality measures. Importantly, while being an industry representative had a positive and statistically significant effect on outdegree and eigenvector centrality in the robust OLS and fixed effects models, this positive impact vanishes once interdependence of observations is taken into account. Focussing, for example, on outdegree as dependent variable (model 5), the observed coefficient of the industry indicator variable of ≈ 2.09 is equal to or exceeded by almost 10 percent of the coefficients obtained from fitting the model to the simulated data. This indicates that the observed association between outdegree centrality and being an industry representative is not unusual compared to a random baseline.

Figure 7.2 on page 237 analyzes the p -value of the coefficient of the statistically insignificant industry indicator and compares it to the highly significant effect of formal institutional access on outdegree centrality. The two histograms plot the coefficients for the industry indicator and access count variable that were obtained after rearranging the data 100,000 times and fitting my model to each of the rearranged datasets. The red lines mark the coefficients obtained from estimating the model on the observed data. As we can see, in 9,741 out of 100,000 random permutations we obtain a coefficient on *Industry_i* that is equal to or larger than the coefficient produced by estimating the same model for the observed data. By contrast, with respect to *Access_i* none of the simulated datasets yields a coefficient equal or larger than the one obtained from the observed data. This corresponds to a p -value of < 0.001 which, again, indicates a strong positive relationship between increasing an actor's formal institutional access and its network outdegree centrality in informal information exchange networks.

With respect to eigenvector centrality as dependent variable, the picture looks similar and for indegree and betweenness centrality β_{obs}^{ind} is even less uncommon compared to the distribution of simulated coefficients. This suggests that, in the four negotiation episodes under consideration, the fact that a particular actor had substantial financial capabilities at its disposal (states and industry) has no affect on its centrality in informal information exchanges. Having little financial resources (NGOs) has no negative statistically significant effect either. Like in the OLS baseline models, being involved in other multi-stakeholder initiatives has no effect on outdegree, indegree, eigenvector and betweenness centrality that is significantly different from what would have been expected to occur through random process.

In all, these results lend some first support to hypotheses 9 and 10 and virtually

no support to hypotheses 6-8. The possession of economic resources does not affect the positions of states, industry representatives, and NGOs in informal information exchange networks that emerged during the four episodes of tripartite institutional bargaining in the Kimberley Process, the Voluntary Principles on Security and Human Rights, and the International Code of Conduct for Private Security Service Providers. Neither are NGOs, which typically have little financial capabilities at their disposal, less likely to occupy central network positions nor are states and industry representatives which are usually more economically powerful more likely to be central nodes in informal information flows.

There exist, however, significant relationships between formal institutional and informal network power. By providing actors with ample opportunities to get in touch and collaborate with others on a regular basis access to steering committees and working groups facilitates actors' networking behavior and makes them more likely to occupy central positions in terms of outdegree, indegree, and eigenvector centrality. Further, those who formally chair a negotiation process or parts of it are more likely to act as information brokers. These results are in line with the qualitative analysis of the previous chapters which shows that actors which chair a working group or negotiation episode often act as mediators and transmitters of information in situations where opposing parties have difficulties reaching an agreement or directly communicating with one another.

7.4.2 Dyadic Information Exchange and Exogenous Power

The dependent variable in this section is the presence of a directed information exchange relationship from actor i to actor j during a particular negotiation episode. Accordingly, the unit of analysis is the directed dyad negotiation episode. Like in the previous section, I start out by presenting baseline models—one for each of the four negotiation episodes—which use conventional methods to conduct hypothesis tests. I then estimate the same four models using permutation methods to show how results change once techniques are employed that accommodate the non-independence of observations.

Table 7.5 on page 240 shows the results of the baseline models which were fitted using conventional logistic regression and maximum likelihood estimation. As can be seen in the first row, there is little evidence in my data that having a state being involved in a dyad positively affects the likelihood of two actors exchanging information during an episode of tripartite institutional bargaining. However, in the network that emerged during the negotiations over the creation of a governance and oversight mechanism for the International Code of Conduct the fact that a state was involved in a dyad made it less likely that two actors engaged in informal information exchange. Dyads with at least one industry representative involved were more likely to exchange information in the 2000-2002 negotiations over the creation of the Kimberley Process. Dyads with industry participation were less likely to form information exchange ties during the negotiations over the reform

of the Voluntary Principles in 2010-2011 and the creation of the International Code of Conduct in 2010-2013. Having at least one NGO involved made negotiators less likely to engage in informal information exchange in the first Kimberley Process episode as well as the Voluntary Principles and the International Code of Conduct negotiations.

Table 7.5: Effect of Economic and Institutional Power on Dyadic Information Exchange, Logistic Regression

	(9)	(10)	(11)	(12)
	KP 00-02	KP 10-12	VPs	ICoC
State _{ij}	-0.071 (0.08695)	0.802 (0.76151)	-0.354 (0.20309)	-1.634*** (0.18321)
Industry _{ij}	0.292*** (0.07620)	-0.230 (0.22921)	-1.114*** (0.24856)	-0.723*** (0.18023)
NGO _{ij}	-0.399*** (0.08225)	0.412 (0.23169)	-0.523* (0.21467)	-0.677*** (0.17398)
Chair _{ij}	1.953*** (0.14455)	-0.441* (0.19676)	-1.707*** (0.26163)	-0.265 (0.16668)
Access _{ij}		0.823*** (0.03629)	1.435*** (0.068)	1.518*** (0.06023)
MSI _{ij}	2.551*** (0.45562)	1.100*** (0.24141)	0.414* (0.19729)	-0.091 (0.19973)
Intercept	-2.542*** (0.10899)	-10.043*** (0.82028)	-10.265*** (0.50561)	-6.248*** (0.26051)
Observations	14,042	23,562	3,540	17,556
Log-likelihood	-3615.193	-552.536	-482.033	-853.333
Pseudo- R^2	0.031	0.589	0.654	0.468
BIC	7287.684	1175.544	1021.269	1775.078

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$. MLE estimates. Standard errors in parentheses.

Together these findings provide mixed support for the expectation that informal network power reflects the distribution of economic capabilities. While dyads with at least one NGO involved seem to be consistently less likely to engage in informal information exchange, the findings for dyads with industry representatives and states involved are less clear. Here, we sometimes observe a positive, sometimes a negative, and sometimes no significant relationship at all.

In all three models where it is included, *Access_{ij}* has a positive and highly statistically significant effect on the likelihood of two actors engaging in informal information exchange. This indicates that, all else being equal, two actors with high levels of access to formal negotiation forums are more likely to engage in informal communication during a negotiation episode. The effects of at least one actor in a dyad being a chair is less consistent. It is positive in the first Kimberley Process episode (2000-2002) and becomes

negative or ceases to be significant once access is added (models 10-12).¹⁴ The effect of two actors being jointly involved in other transnational public-private governance schemes in the extractive and security sectors has the expected positive effect in models 9-11 but is not distinguishable from zero in model 12.

Table 7.6: Effect of Economic and Institutional Power on Dyadic Information Exchange, Logistic Regression with Permutation-Based P -Values, KP 00-02 and KP 10-12

	(13) KP 00-02		(14) KP 10-12	
	Coeff.	p	Coeff.	p
State _{ij}	-0.071	0.6269	0.802	0.0690
Industry _{ij}	0.292	0.2008	-0.230	0.6602
NGO _{ij}	-0.399	0.1343	0.412	0.7122
Chair _{ij}	1.953	0.0250	-0.441	0.6186
Access _{ij}			0.823	0.0000
MSI _{ij}	2.551	0.0080	1.100	0.1475
Intercept	-2.5422	1.000	-10.043	1.0000
Observations	14,042		23,562	
BIC	7287.68		1175.54	

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$. MLE estimates. Permutation-based p -values. Number of random permutations of observations on independent variables = 30,000.

The results from the four baseline models presented in table 7.5 on page 240 are suspicious because like standard OLS regression logistic regression assumes independence of observations and will yield biased hypothesis tests if the data is characterized by interdependence. As I argued above, this is likely to be the case because we are dealing with network data. Thus, to accommodate the non-independence of the data in my hypothesis tests I estimated network logit models for each of the four negotiation episodes where the p -values and standard errors were computed based on permutation methods rather than conventional procedures. In subsequent paragraphs, I discuss the results obtained from randomly permuting observations on the independent variable side leaving the ordering of the outcome variable as observed. The results for the hypothesis tests obtained from randomly permuting observations on the outcome variable while leaving the ordering of observations on the independent variables unchanged are fully in line with those obtained from the independent variable permutation.¹⁵

The results reported in tables 7.6 and 7.7 on page 241 and 242 are in sharp contrast with those obtained from the conventional logistic regression models. While financial

¹⁴ Access_{ij} is not included in model 9 because during the negotiations over the creation of the Kimberley Process between 2000 and 2002 no working groups or similar formalized negotiation forums existed. It was only after the formal launch of the Kimberley Process in 2003 that its participants started to form working groups and other formalized working bodies.

¹⁵ Results, data, and R code for this analysis are available upon request.

capabilities seemed to have a strong effect on dyadic information exchange in the naïve models, this effect disappears completely once the interdependence of observations is taken into account. The effect of formal institutional access, however, persists.

Table 7.7: Effect of Economic and Institutional Power on Dyadic Information Exchange, Logistic Regression with Permutation-Based P -Values, VPs and ICoC

	(15) VPs		(16) ICoC	
	Coeff.	p	Coeff.	p
$State_{ij}$	-0.354	0.7077	-1.634	0.9993
$Industry_{ij}$	-1.114	0.9753	-0.723	0.9443
NGO_{ij}	-0.523	0.2026	-0.677	0.1457
$Chair_{ij}$	-1.707	0.8874	-0.265	0.5523
$Access_{ij}$	1.435	0.0000	1.518	0.0000
MSI_{ij}	0.414	0.225	-0.091	0.5493
Intercept	-10.265	1.0000	-6.248	1.0000
Observations	3,540		17,556	
BIC	1021.27		1775.08	

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$. MLE estimates. Permutation-based p -values. Number of random permutations of observations on independent variables = 30,000.

Take $Industry_{ij}$ as an example. Recall that this variable captures whether at least one actor in a dyad is a company or business association and, hence, likely to have ample financial capabilities at its disposal. It is coded 1 for dyads that contain one or two industry representatives and 0 otherwise. This variable has a statistically significant positive effect on the likelihood of dyadic information exchange in the 2000-2002 Kimberley Process negotiations when we use standard logistic regression methods to estimate model coefficients and test hypotheses (model 9). Yet, once we obtain p -values and standard errors using methods adequate to deal with non-independent observations, this strong effect ceases to exist. As shown in model 13 in table 7.6, for example, the observed coefficient for $Industry_{ij}$ of ≈ 0.29 is equal to or exceeded by ≈ 20 percent of all 30,000 coefficients obtained from fitting the model to the randomly permuted data. This does not allow me to reject the null hypothesis that there is no relationship between $Industry_{ij}$ and the likelihood of the presence of a directed informal information exchange in the 2000-2002 Kimberley Process network.

The same applies to the effect of NGO_{ij} on directed dyadic information exchange. While there is a highly significant negative effect of having at least one NGO involved in a dyad on actors' propensity to engage in informal information exchange during the 2000-2002 Kimberley Process and the 2010-2013 International Code of Conduct negotiations, this effect disappears once we account for interdependence. More specifically, the observed values of $\beta^{NGO_{ij}}$ of ≈ -0.399 and ≈ -0.677 are equal to or exceeded by ≈ 13 and 15

percent of all 30,000 simulated β s in the 2000-2002 Kimberley Process and the 2010-2013 International Code of Conduct network. This does not allow me to distinguish from zero the observed association between NGO_{ij} and the likelihood of an informal information exchange relationship being present in a dyad. In other words, there is no evidence in my data of a statistically significant effect of NGO involvement on the likelihood of informal information exchange during episodes of tripartite institutional bargaining.

In contrast to economic power, the effect of institutional power on informal information exchange persists even if non-independence of observations is taken into account. The positive effect of institutional access on the likelihood of two actors engaging in informal information exchange during episodes of tripartite institutional bargaining reported in models 10-12 in table 7.5 is further supported by the results obtained from the permutation-based hypothesis tests. For example, the coefficient of ≈ 0.82 obtained from estimating model 14 (KP 2010-2012) on the observed data is larger than any of the coefficients obtained from fitting the same model to the 30,000 permuted datasets. The same holds for the effect of institutional access in models 15 and 16 in table 7.7. Interestingly, other than in the conventional models the effect of having at least one actor in a dyad that serves as negotiation chair during a particular episode on the likelihood of dyadic information exchange which is positive and significant in the 2000-2002 Kimberley Process network disappears once the access measure is included in the model. This suggests that in the four negotiation episodes under study the general access to bargaining forums is a more important driver of informal communications than the agenda management, broker, and representation functions of formal leaders.

Joint involvement in other multi-stakeholder initiatives in the extractive and security sectors also ceases to be significant in all negotiation episodes but the 2000-2002 Kimberley Process negotiations once non-independence of observations is taken into account. As expected, it has a positive impact on two actors' propensity to engage in informal information exchange.

Together these results from the dyad level of analysis are consistent with and lend further support to the findings obtained at the actor level. Once methods appropriate for dealing with non-independent data are employed, there is no evidence in my data that economic power has an impact on informal network structure and power. In none of the four negotiation networks do we observe a significant positive effect of having at least one state or industry representative involved in a dyad on actors' likelihood to engage in informal information exchange. Nor does my data provide evidence for the negative relationship between having NGOs involved in a dyad and informal communication which we would expect to observe if informal network power is shaped by the distribution of financial capabilities. In sum, also at the dyad level of analysis there is virtually no evidence in my data that lends support to hypotheses 6-8.

There is, however, evidence for a relationship between formal institutional power and

network power. In particular, increasing the extent to which two actors have access to formal negotiation forums makes them more likely to engage in informal exchange of policy-relevant information and advice during episodes of tripartite institutional bargaining. This effect is consistent across networks and negotiation episodes. Once this effect of formal institutional access on networking behavior is taken into consideration there is no evidence in my data that the “power of the chair” influences whether two actors informally exchange information.

7.5 Summary

In this chapter, I have examined the role economic and institutional power play in determining the structure of informal information exchange networks and the distribution of network power in four episodes of tripartite institutional bargaining. At the actor level of analysis, I have tested whether actors that control financial capabilities or occupy privileged institutional roles are more likely to be central in informal information exchange networks. At the dyad level, I have examined whether two actors are more likely to engage in informal information exchange if at least one of them is strong in terms of economic or formal institutional power.

I find that if appropriate methods are applied, economic capabilities have no impact on network position and dyadic information exchange in the four negotiation episodes covered by my data. Neither individual actors’ centrality nor the likelihood of dyadic information exchange is significantly driven by the distribution of economic power. By contrast, institutional power in the form of access to negotiation forums has a strong impact on both actors’ centrality and dyadic information exchange. Participation in negotiation forums increases the odds of an individual actor to be a central hub in the web of informal exchanges of policy-relevant information among negotiators. Likewise, the higher the degree to which two actors have access to working groups and similar forums the higher the likelihood that they engage in informal information exchange. In addition, negotiation chairs display a higher likelihood of being central in terms of betweenness centrality. This resonates with the qualitative analysis of the previous chapters as well as with extant research on the role of formal leadership in multilateral negotiations which emphasizes the brokerage and mediation responsibilities of negotiation chairs.

Chapter 8

Conclusions

In this dissertation, I have provided a systematic investigation of the institutional design of the Kimberley Process, the International Code of Conduct for Private Security Service Providers, and the Voluntary Principles on Security and Human Rights. Focusing on five negotiation episodes during the life course of these transnational public-private governance schemes, I examined how the formalization of the institutional context in which negotiations over organizational structures occur and the transparency of the negotiation process affect the power strategies that states, firms, and NGOs choose in order to shape formal monitoring and enforcement mechanisms. In particular, I emphasized the importance of network power as a source of influence in tripartite institutional bargaining. Economic capabilities and institutional privileges are relevant power instruments also in the realm of transnational public-private governance. Yet, under conditions of informal governance and low transparency which often prevail in the environment in which the transnational tripartite bargaining game takes place, network power has decisive efficiency and effectiveness advantages. In this concluding chapter, I discuss some of the major theoretical implications of my findings, acknowledge the limitations of my study, and highlight some avenues for further research.

8.1 Theoretical Implications

The findings of my analysis lend preliminary support to my theoretical argument. As my model suggests, in an environment dominated by informal governance and low transparency, the informational and strategic advantages derived from central and brokerage positions in informal information exchange networks among states, firms, and NGOs are assets in tripartite institutional bargaining. Economic, and especially, formal institutional power are less decisive power instruments under such conditions. The 2000-2002 negotiations over the formation of the monitoring and enforcement mechanisms of the Kimberley Process, the 2003 negotiations over the Kimberley Process monitoring reform, and the creation of a governance and oversight mechanism for the implementation of the

regulatory standards of the International Code of Conduct for Private Security Service Providers are cases in point. As the formalization of the institutional context and the transparency of negotiations increase, the advantages of network power diminish and the importance of economic and formal institutional power grows. The negotiations over the reform of the Kimberley Process's governance architecture between 2010 and 2012 provide an illustrative example for this process.

The outcomes of the negotiations over the creation of a formalized governance architecture for the Voluntary Principles on Security and Human Rights deviate from the expectations suggested by my argument. Despite an institutional context that is dominated by informality and low transparency, the actors which occupied central and brokerage positions in the informal communication network that emerged among states, extractive companies, and NGOs during the negotiation episode failed to translate the informational and strategic benefits conferred by their relationships into influence over bargaining outcomes. They failed to bias institutional choices toward their preferences. Instead, those actors which occupied *de facto* veto positions in the decision-making process used these to block institutional change.

These findings seem to suggest that my argument about the interaction between the bargaining context and negotiators' power strategies does not apply in this case. This may be interpreted as a reminder of the difficulty of arriving at general statements about the relationship between tripartite power politics, bargaining environment, and transnational institutional design. Even if the theoretical and empirical scope of the analysis is limited to a small number of relatively similar cases, the possibility continues to exist that relevant cross-case variation remains unmodeled and unobserved. This unobserved cross-case variation, in turn, may be responsible for the fact that in some cases we observe, as expected, the informational power of networks at work, while in other, equally conducive, situations it remains absent. One way to address this challenge is to further limit the scope conditions of the applicability of my theoretical argument. Another possibility is to return to the original data and to systematically search for variables that are so far not included in my model which may help to account for the differences in the effectiveness of network power strategies under—at first glance—similar conditions. These and other refinements of my theoretical argument are promising avenues for future research.

The case of the 2010-2011 Voluntary Principles negotiations may also point to another refinement my model. Specifically, it suggests a modified conceptualization of institutional power into a formal and an informal component. Like formal institutional rules, also informal institutions can confer power under specified circumstances (Stone, 2011). Because the veto power which the reform opponents in this negotiation episode used was not based on written rules and procedures but on informal practices, this case provides an example for how informal institutions can be a source of bargaining power if the negotiation environment is characterized by low formalization. This points to the similarity between

informal institutional power and network power in terms of the conditions of their use. Yet, my analysis also points to an important difference between the two power tools. While network power tends to figure prominently in the negotiation strategies of actors which seek to positively shape governance activities, informal institutional power in the form of informal veto positions is used as an instrument to block unfavorable outcomes. These results from the deviant Voluntary Principles case are certainly not conclusive but, at the very least, they stimulate further theoretical work on the conceptualization of informal governance and how different aspects of informal power relate to one another (Stone, McLean and Westerwinter, 2013).

The empirical evidence presented in this dissertation further suggests that economic and formal institutional power interact with network power. On the one hand, rather than offering costly side payments or issue linkages, actors that control financial capabilities often use these by improving their presence in negotiation meetings which in turn has enhancing effects on their position in informal communication networks. On the other hand, access to formal institutional structures (e.g. working groups) provides actors with opportunities to build informal communication ties which can then be used to affect others' preferences and beliefs in institutional bargaining. These qualitative observations are further reflected in the results of my statistical analysis of the determinants of network structure which suggest that especially formal institutional power in the form of institutional access has an impact on the distribution of network power.

Together, these findings suggest that focusing on the power politics of institutional design can help us better understand the *how* and *why* of institutional choices in transnational public-private governance schemes that remain puzzling from the perspective of other theoretical perspectives. They also suggest that the political environment in which tripartite institutional bargaining takes place has an important impact on how power is manifest in bargaining and when it has effects on institutional choices. In general, this highlights the importance of a more nuanced understanding of the context of power politics in contemporary world politics. In particular, there are six major theoretical implications that follow from my study.

First, inefficient institutions can be the result of deliberate choice. While inefficient institutional structures are suboptimal from a collective action perspective, they can be in line with the preferences of individual actors (Moe, 1990). This holds especially in situations where actors discount the future and operate on the basis of short time horizons. On multiple occasions in my five case studies particularly companies and, to a lesser degree, states pursued strategies aimed at preventing formal monitoring and enforcement structures which efficiency-oriented rational choice theories of international cooperation consider as insufficient for fostering cooperation in situations characterized by prisoners' dilemma-like problem structures. Once we allow for inefficient institutional designs to be an explicit strategic goal of individual actors and coalitions, researchers do not necessar-

ily have to turn to models that assume bounded rationality (Jupille, Mattli and Snidal, 2013) or organizational pathologies (Barnett and Finnemore, 1999) to account for inefficient institutions. While such more complex theoretical models are to different degrees complementary with the power politics explanation I offer, my research emphasizes that inefficient institutional choices are a possible—and indeed quite frequent—institutional outcome as soon as we permit collective inefficiency to be an individual goal and approach institution-building and change from a political perspective.

Second, my research shows that—under specific conditions—central and brokerage positions in informal information exchange networks are a source of power in tripartite institutional bargaining. Economically better-endowed or institutionally better-positioned actors are not always the most successful ones. At times they remain weak and even fail. This serves as a powerful reminder that thinking about power as simply flowing from resource endowments or institutional positions is problematic and of limited use when it comes to understanding what power is and how it creates effects in world politics (Finnemore and Goldstein, 2013, p. 4). Together with economic capabilities and institutional positions, central and brokerage positions in informal communication networks are an instrument of power. Importantly, network power is not only the strategy of choice of economically and institutionally weaker players, such as NGOs, it also manifests in the strategies of states and companies because if the bargaining environment is conducive it can be as or more effective than alternative forms of power and less costly to exercise. This by no means implies that economic and institutional power cease to be important. It points, however, to ongoing changes in the instruments of power in world politics which are worth further examination.

Third, both my qualitative case studies and quantitative analysis indicate that there are multiple ways in which economic, institutional, and network power interact in the context of transnational public-private governance. These interactions can take various forms. Different power variants may facilitate or magnify one another. The positive effect of access to formal institutional forums on actors' positions in informal information exchange networks is an example that can be found throughout my empirical data. Interactions among different power tools can also occur in the form of two or more power variants being simultaneously employed. In the Kimberley Process reform negotiations between 2010 and 2012, for example, the US used both the informational advantages conferred by its central network position as well as its institutional role as the chair of the Kimberley Process to push for strengthened monitoring and enforcement. Similarly, the US Department of State's Bureau of Democracy, Human Rights, and Labor combined network power and the benefits derived from its seat in the temporary steering committee when it bargained for robust monitoring and enforcement structures of the governance and oversight mechanism of the International Code of Conduct for Private Security Service Providers. These and other examples show that even economically strong players, such

as the US, do not always draw on their material resources to gain influence but can turn to more subtle forms of power or power mixes to do so. This alerts researchers to the multifaceted nature of power and the many ways in which different forms of power interact (Finnemore and Goldstein, 2013, p. 8). The theoretical argument I propose in this dissertation provides a starting point for unpacking power in world politics and systematically studying these interactions.

Fourth, our understanding of the environment in which actors wield power needs to be expanded. It is an important first step to acknowledge that “power politics is not just a game for states any more” (Finnemore and Goldstein, 2013, p. 4; see also Avant, Finnemore and Sell, 2010; Avant and Westerwinter, 2013) and to incorporate intergovernmental organizations and non-state actors into our theoretical and empirical accounts of power in world politics. However, my research suggests that further broadening is required. Scholars not only need to be more open toward the actor configurations of global governance. They also benefit from taking other features of the environment of power politics into account. As I argue theoretically and show empirically, informality of the institutional context and transparency of negotiation processes are two contextual factors that impact power dynamics and outcomes. Others include the social and ideational structures in which global governance takes place (Schoppa, 1999; Sikkink, 2013). Such broadening of our notion of the environment of power politics can yield new insights of how bargaining and power politics are embedded in the social political context and how variation in this embeddedness affects outcomes of global governance.

Fifth, strategic goals have an impact on what power instruments actors choose. Power is always exercised in the service of specific interests and the nature of these interests affects how actors craft their power strategies. Although my evidence is not conclusive, my findings suggest that network power is often the power instrument of choice if an actor seeks to proactively achieve a particular goal, such as creating a policy or institution. It is rarely used to block action. If actors aim at preventing a particular course of action, they tend to more conventional forms of power, and especially formal institutional power in the form of veto positions. This finding resonates with recent work on power in global governance which emphasizes the proactive strength of relational power strategies (Avant, 2013; Avant and Westerwinter, 2013). Together with these works, my study encourages further work on the relationship between actor preferences and power strategies; a topic that has thus far received little attention by students of world politics.

Finally, my study joins recent research in highlighting the importance of informal governance in world politics (Stone, 2011, 2013; Koremenos, 2013; Vabulas and Snidal, 2013; Kleine, 2013*a,b*). In particular, it makes the case for the impact of informality on power dynamics and outcomes. On the one hand, I argue and show that the level of institutional formality of the environment in which bargaining takes place has an impact on what power instruments actors choose and what form of power is likely to be an

effective means of influence. On the other hand, my work urges scholars to broaden their understanding of informality in the context of distributional conflict and power asymmetries. While existing work focuses on the role of informal rules and practices as sources of power (Stone, 2011, 2013), I show that informal networks are another dimension of informal governance that can figure prominently in the transnational power politics game. Importantly, focusing on networks as a manifestation of informal governance allows researchers to see that informal governance is not only a power strategy of strong players but can also empower otherwise weaker actors. Thus, my research suggests to open up the nascent research agenda on informal governance in world politics toward a broader notion of informality and the dynamics and effects of informal governance outside intergovernmental organizations.¹

8.2 Limitations and Future Research

Despite the tentative support my empirical analysis lends to my theoretical argument about the context-dependency of the use of economic, institutional, and network power as instruments in bargaining strategies in negotiations over the institutional design of transnational public-private governance schemes, more work is needed to further explore this theoretical connection. Most importantly, it is necessary to extend the analysis to additional cases. On the one hand, additional case studies are required. As discussed in the introduction, to date, research on transnational public-private governance has largely focussed on governance schemes that operate in the environmental, human and labor rights, and global health area. Yet, little is known about the power politics within governance schemes, such as the World Commission on Dams, the Forest Stewardship Council, the Fair Labor Association, or the Global Alliance for Vaccines and Immunization. Using the theoretical model I offer in this dissertation to investigate these and other transnational public-private governance schemes, promises new insights into the drivers of their institutional structures and trajectories.

On the other hand, complementing the in-depth qualitative investigation of the power politics of transnational institutional design I conducted in this dissertation with a large- n statistical analysis would be another useful way to extend the empirical test of my model. Researchers could, for example, collect data from historical records on the institutional developments of all transnational public-private governance schemes across issue areas and time. One would also have to examine individual cases in detail to code negotiation episodes in terms of the distribution of different forms of power and influence of different groups over institutional choices. Although such a large-scale data collection effort would be costly, the potential empirical and theoretical pay-offs would be substantial. Specifi-

¹Stone, McLean and Westerwinter (2013) provide some first suggestions on how these and other “blind spots” of the emerging research agenda on informal governance in world politics could be addressed.

cally, it would not only allow to provide a more robust test of the importance of different forms of power under the contextual conditions identified by my model. It would also permit to address issues of endogeneity that pose challenges to making inferences about the connections between the variables of my model.

In addition, there is a need to better conceptualize and operationalize economic power in the context of transnational public-private governance to improve empirical tests of its effects on institutional choices and its interactions with other forms of power. In this dissertation, I chose to assess the economic power of states, companies, and NGOs separately and then compared economic capacities across groups. This approach is a valuable first step and helps to examine the power dynamics in the transnational bargaining game. Yet, there is room for improvement. Assessments of relative positions in an industry (states), annual revenues (companies), and financial resources (NGOs) only provide a first approximation of actors' economic power. More nuanced measures, such as the exact budgets states devote to their engagement in public-private governance schemes, the exact number of personnel states and organizations employ to represent them in public-private governance schemes, or exact figures about NGO annual budgets, would be valuable additions and enhance researchers' ability to analyze the role of economic power in the context of transnational tripartite bargaining. I explore some of these more nuanced dimensions of economic power—specifically the number of individuals which represent an actor in negotiations—in my case studies. More systematic and rigorous work, however, is needed to make further progress in our understanding of economic power in the context of transnational public-private governance and how it interacts with other power variants.

Moving toward a theoretical approach to the assessment of states', companies', and NGOs' institutional preferences would also be desirable. Due to the lack of theories of actor preferences over transnational institutions, I chose an empirical approach to examine what monitoring and enforcement structures individual actors and coalitions sought at the beginning of a negotiation episode and whether and how these institutional ideal points changed as bargaining proceeded. While the empirical analysis of actor preferences constituted a valuable first step and helped to shed light on the political dimensions of transnational institutions, it has limitations. Most importantly, even if multiple forms of data obtained from different sources (e.g. documents, interviews, participant observations) are combined to assess what states' and organizations' preferred monitoring system was during a negotiation episode, such an assessment remains confronted with the fundamental challenge of actors' incentive to strategically misrepresent their preferences (Frieden, 1999). One way to overcome this limitation is developing a systematic theory of actor preferences over transnational institutions.

My analysis of actor preferences over formal monitoring and enforcement mechanisms of transnational public-private governance schemes indicates empirical patterns which point to directions into which a such theory could be developed. To start with, in all five

negotiation episodes I study, NGOs bargained for the creation of robust formal monitoring and enforcement structures of transnational institutions. Specifically, throughout my five case studies, their institutional ideal point was independent third party auditing and independent sanctioning capacities. The relative weakness of NGOs vis-à-vis companies and states may account for this preference profile. Compared to weak monitoring and enforcement, robust structures provide NGOs—to some extent—with participation rights and decision-making authority which are enshrined in written rules and procedures. This, in turn, makes their ability to exert influence on the behavior of the targets of regulatory standards less dependent on the economic and political interests of companies and states. This independence may be one driver of their demand for formal monitoring and enforcement mechanisms in transnational public-private governance schemes.

By contrast, companies often prefer weak monitoring and enforcement mechanisms. However, in some situations they join NGOs in their demand for more robust structures. This observable trend among companies toward a demand for weak monitoring and enforcement could be driven by the fact that it is typically industry that bears the major share of the costs incurred by the implementation of new regulatory standards—at the end of the day it is their behavior which is supposed to change. While the creation of a regulatory regime creates reputational and economic benefits for companies, they have an incentive to reduce the costs produced by the generation of these benefits to a minimum. Weak monitoring and enforcement are a way to reduce the costs of transnational cooperation from an industry perspective.

What about the rare situations in which industry advocates more robust monitoring and enforcement? According to my data, it seems to be particularly companies and industry associations that are publicly visible due to their brand name (e.g. De Beers) and companies that are at the retail end of an industry which has direct customer contact (e.g. Jewelers of America, Jewelers Vigilance Committee) which in some situations have an interest in monitoring structures that go beyond self-reporting. What these actors share is the relatively direct contact with their customers. As a result, they are more responsive to customers' demands with respect to regulating the negative human rights and security externalities of global business operations in their sectors. Joining NGOs in their efforts to establish robust accountability mechanisms is one way to respond to these demands and can, therefore, reduce the costs of potential consumer boycotts. Companies that lack this consumer visibility have less incentive to advocate for costly monitoring and enforcement provisions.

The empirical observations with respect to the institutional preferences of states are more mixed. States sometimes favor robust monitoring and enforcement and sometimes they do not. According to my data, it is often Western, industrialized states that join NGOs in their demand for robust monitoring and enforcement. The US and Canada, for example, formed a coalition with human rights NGOs that advocated for strengthened

monitoring and enforcement both in the 2010-2012 Kimberley Process negotiations as well as the 2010-2011 Voluntary Principles negotiations. By contrast, states, such as Russia, China, India, and many African states, typically seek to prevent the creation of strong monitoring and enforcement. The existence of domestic groups that lobby for governing the negative externalities of global corporate conduct could be one way to explain this variation. The governments of developed democracies with an active and vocal civil society may develop a preference for robust and credible monitoring and enforcement mechanisms in order to respond to their constituencies' demands for holding multinational corporations accountable. Less developed democracies with weaker civil societies do not encounter this pressure to the same extent and, therefore, are less interested in creating costly monitoring and enforcement capacities of transnational public-private governance schemes, particularly in situations where they are directly affected by these costs.

Moreover, critics might object that network power is endogenous to the distribution of economic capabilities and formal institutional power. This is a legitimate claim and chapter 7 addresses it to some extent by showing that both individual actors' network positions as well as the probability of dyadic information exchange are not systematically driven by the distribution of financial resources. Yet, it also shows that there is a relationship between formal institutional power in the form of access to negotiation forums and network power. This confirms the finding of my case studies that institutional access often has an indirect effect on tripartite institutional bargaining by facilitating informal information exchange and, thereby, network power. Although I carefully distinguish between formal institutional privileges and central and brokerage positions in informal information exchange networks as distinct forms of power, this particular interaction between formal institutional and network power remains unmodeled in my analysis. Incorporating this interaction into my theoretical argument more systematically would be a valuable extension of my model. Furthermore, it is also plausible that the participation in formal negotiation forums is itself endogenous to actors' preferences (Johns and Pelc, 2013) which suggests to extend the analysis of the endogeneity of network power even further. One way to do this is to make the origins of actors' preferences endogenous and include them as additional variables in the model. This would then allow for examining how different preference portfolios affect actors' strategy choices and, ultimately, their ability to shape institutional outcomes.

Finally, with its focus on the power politics of transnational institutional design, my dissertation does not directly address the important question of the effects of different institutional choices on governance outcomes. I do not provide a systematic analysis of the effects of the inefficient monitoring and enforcement mechanisms that constitute the puzzle that motivated my study. Picking up this question, there are two areas for future research that are of particular interest. First, starting from the recent research that found evidence for a connection between the presence of monitoring and sanctioning capacities

and governance effectiveness (Liese and Beisheim, 2011), one could examine how the often weak compliance verification and sanctioning mechanisms of the Kimberley Process, the International Code of Conduct for Private Security Service Providers, and the Voluntary Principles on Security and Human Rights affect the outcomes of these institutions, such as goal attainment or the provision of public goods. Research along these lines would complement my analysis and provide scholars with a more complete picture and better understanding of the drivers, developments, and effects of transnational public-private governance schemes.

Second, following the argument of Koremenos (2013), who shows that in the absence of formal monitoring and enforcement mechanisms institutions that address prisoners' dilemma-like problems sometimes compensate for the lack of formal structures by turning to informal governance, one could examine whether a similar pattern can be found in the realm of transnational public-private governance. In other words, one could examine whether in situations of inefficient or absent formal monitoring and enforcement capacities the actors in transnational public-private governance schemes use informal mechanisms to verify rule target performance and punish standard violations. A question worth pursuing in this context would be whether the informal networks that emerge among the actors involved in transnational public-private governance schemes serve as informal structures to facilitate monitoring and enforcement. For example: Do networks provide information on compliance behavior? Do they serve as social levers for punishing defectors?

Despite its limitations, this dissertation makes important theoretical and empirical contributions to the growing literature on public-private forms of global governance. It shows that bargaining and power politics are far from absent in "hybrid" forms of governing. It also shows that economic capabilities are far from the only power currency that states, companies, and NGOs use to bias transnational institutional designs toward their preferred outcome. In fact, under conditions of low formalization and transparency—two contextual features that are quite common in the policy areas governed by transnational institutions—it is often the distribution of network power that turns out to be decisive. Power politics continues to be an important driver of institution-building and policy-making in world politics, though it often takes more subtle and nuanced forms than conventional statist theories suggest.

Appendices

Appendix A

List of Acronyms and Abbreviations

AD Administrative Decision

ADH Geneva Academy of International Humanitarian Law and Human Rights

ADPA African Diamond Producer Association

ANSI American National Standards Institute

BASC British Association of Private Security Companies

CKR Ad Hoc Committee on the KPCS Review

CPR Committee on Rules and Procedures

DCAF Geneva Center for Democratic Control of the Armed Forces

DoD United States Department of Defense

DRC Democratic Republic of Congo

DRL Bureau of Democracy, Human Rights, and Labor, United States Department of State

DSS Bureau of Diplomatic Security, United States Department of State

EITI Extractive Industries Transparency Initiative

EU European Union

HRD Belgian High Diamond Council

ICRC International Committee for the Red Cross

IGO Intergovernmental Organization

ICoC International Code of Conduct for Private Security Service Providers

IMF	International Monetary Fund
IQV	Index of Qualitative Variation
ISOA	International Stability Operations Association
KP	Kimberley Process
KPCS	Kimberley Process Certification Scheme
MPLA	Movimento Popular de Libertacao de Angola
MSI	Multi-Stakeholder Initiative
NGO	Non-Governmental Organization
OLS	Ordinary Least Squares
PASA	Pan-African Security Association
PSC	Private Security Company
PTA	Preferential Trade Agreement
QAP	Quadratic Assignment Procedure
RUF	Revolutionary United Front
UN	United Nations
UNGA	United Nations General Assembly
UNITA	National Union for the Total Independence of Angola
UNSC	United Nations Security Council
VPs	Voluntary Principles on Security and Human Rights
WCO	World Customs Organization
WDC	World Diamond Council
WGM	Working Group on Monitoring
WTO	World Trade Organization

Appendix B

Lists of Interview Partners

Table B.1: Interview Partners: Kimberley Process

<i>No.</i>	<i>Name</i>	<i>Organization</i>	<i>Location</i>	<i>Date</i>
01	Alan Martin	Partnership Africa Canada	Telephone inter- view	July 14, 2010
02	Ian Smillie	Former Partnership Africa Canada	Telephone inter- view	July 22, 2010
03	Cecilia Gardner	Jewelers Vigilance Committee	New York	July 28, 2010
04	Mike Kowalski	Tiffany & Co	New York	July 28, 2010
05	Patrick Dorsey	Tiffany & Co	New York	August 04, 2010
06	Matthew Runci	Jewelers of America	New York	August 05, 2010
07	Sheldon Moulton	Government of South Africa	Telephone inter- view	August 06, 2010
08	Eli Izhakoff	World Diamond Council	New York	August 11, 2010
09	Nadim Kara	Former Partnership Africa Canada	Telephone inter- view	August 12, 2010
10	Rina Pretorius	Government of South Africa	Telephone inter- view	August 13, 2010
11	Jon Elliott	Human Rights Watch	Washington, DC	August 27, 2010
12	Roger Matthews	European Union	Telephone inter- view	August 27, 2010
13	Stéphane Chardon	European Union	Telephone inter- view	August 28, 2010
14	John Hall	Rio Tinto	London	September 21, 2010
15	Ian Smillie	Former Partnership Africa Canada	London	September 28, 2010
16	Charmain Gooch	Global Witness	London	September 30, 2010
17	Elly Harrowell	Global Witness	London	September 30, 2010
18	Brad Brooks-Rubin	United States Depart- ment of State	Washington, DC	Spetember 02, 2010
19	Marie Müller	Fatal Transactions	Bonn	September 16, 2010
20	Andrew Bone	De Beers	London	October 01, 2010
21	Anthonius De Vries	Former European Union	Telephone inter- view	October 07, 2010
21	Sabrina Ramzi	Government of Canada	Telephone inter- view	October 08, 2010

Table B.2: Interview Partners: Kimberley Process (*continued*)

<i>No.</i>	<i>Name</i>	<i>Organization</i>	<i>Location</i>	<i>Date</i>
22	David Viveash	Former Government of Canada	Telephone interview	October 08, 2010
23	Clive Wright	Government of the United Kingdom	Telephone interview	October 06, 2010
24	Rory Moore O'Ferral	Former De Beers	Telephone interview	October 22, 2010
25	David Eastham	Former United States Department of State	Telephone interview	October 28, 2010
26	Mark van Bockstael	Antwerp World Diamond Centre	Jerusalem	November 01, 2010
27	Roger Matthews	European Union	Jerusalem	November 03, 2010
28	Kabinet Cissé	International Trade Centre for Development	Jerusalem	November 03, 2010
29	Paul Mabolia Yenga	Government of Democratic Republic of the Congo	Jerusalem	November 04, 2010
30	Seth Klaye	Government of Ghana	Jerusalem	November 04, 2010
31	Roland Vock	Government of Switzerland	Jerusalem	November 04, 2010
32	Brad Brooks-Rubin	United States Department of State	Washington, DC	April 01, 2011
33	Tiseke Kasambala	Human Rights Watch	Telephone interview	July 06, 2011
34	Cecilia Gardner	Jewelers Vigilance Committee	New York	July 08, 2011
35	Matthew Runci	Jewelers of America	New York	July 20, 2011
36	Eli Izhakoff	World Diamond Council	New York	July 21, 2011
37	Marie Müller	Fatal Transactions	Bonn	August 17, 2011
38	Jacob Thamage	Government of Botswana	Washington, DC	June 04, 2012
39	Oliver Schatz	Government of Canada	Washington, DC	June 04, 2012
40	Bernhard Taylor	Partnership Africa Canada	Washington, DC	June 05, 2012
41	Stephen Wright	Government of Australia	Washington, DC	June 05, 2012
42	Fabienne Juilland Metzger	Government of Switzerland	Washington, DC	June 05, 2012

Table B.3: Interview Partners: Kimberley Process (*continued*)

<i>No.</i>	<i>Name</i>	<i>Organization</i>	<i>Location</i>	<i>Date</i>
43	JJ Harder	United States Department of State	Washington, DC	June 26, 2012
44	JJ Harder	United States Department of State	Washington, DC	June 28, 2012
45	Bernhard Taylor	Partnership Africa Canada	Telephone interview	June 29, 2012
46	Bernhard Taylor	Partnership Africa Canada	Telephone interview	July 03, 2012
47	Brad Brooks-Rubin	United States Department of State	Washington, DC	July 09, 2012
48	Daniel Painter	European Union	Washington, DC	November 26, 2012
49	Eleanor Flowers	Government of Australia	Washington, DC	November 27, 2012
50	JJ Harder	United States Department of State	Washington, DC	September 26, 2013

Table B.4: Interview Partners: International Code of Conduct for Private Security Service Providers

<i>No.</i>	<i>Name</i>	<i>Organization</i>	<i>Location</i>	<i>Date</i>
01	Jason Pielemeier	United States Department of State	Washington, DC	June 29, 2012
02	Christopher Albin-Lackey	Human Rights Watch	Telephone interview	July 05, 2012
03	Mark DeWitt	Triple Canopy	Washington, DC	July 10, 2012
04	Christopher Mayer	United States Department of Defense	Washington, DC	July 11, 2012
05	Amol Mehra	International Corporate Accountability Roundtable	Washington, DC	July 11, 2012
06	Meg Roggensack	Human Rights First	Washington, DC	July 11, 2012
07	William Imbrie	DynCorp International	Washington, DC	July 12, 2012
08	Rebecca DeWinter-Schmitt	American University	Washington, DC	July 13, 2012
09	Douglas Brooks	International Stability Operations Association	Washington, DC	July 16, 2012
10	Devon Chaffee	American Civil Liberties Union	Washington, DC	July 18, 2012
11	Christopher Mayer	United States Department of Defense	Washington, DC	December 04, 2012
12	Mark DeWitt	Triple Canopy	Washington, DC	December 06, 2012
13	Jason Pielemeier	United States Department of State	Washington, DC	December 07, 2012
14	Peter Cook	Security Association for the Maritime Industry	Geneva	September 19, 2013
15	Jan Christoffel Greyling	Pan African Security Association	Geneva	September 19, 2013
16	Christopher Mayer	United States Department of Defense	Geneva	September 19, 2013
17	Amol Mehra	International Corporate Accountability Roundtable	Geneva	September 19, 2013
18	Deborah Avant	University of Denver	Geneva	September 20, 2013
19	Anne-Marie Buzatu	Geneva Centre for the Democratic Control of Armed Forces	Telephone Interview	September 23, 2013

Table B.5: Interview Partners: Voluntary Principles on Security and Human Rights

<i>No.</i>	<i>Name</i>	<i>Organization</i>	<i>Location</i>	<i>Date</i>
01	Lea Rivera	United States Department of State	Washington, DC	August 17, 2010
02	Krista Hendry	Fund for Peace	Washington, DC	August 18, 2010
03	Arvind Ganesan	Human Rights Watch	Washington, DC	August 18, 2010
04	Timothy Schnabel	United States Department of State	Washington, DC	August 26, 2010
05	Amy Lehr	Foley Hoag	Washington, DC	August 27, 2010
06	Aaron Ziulkowski	Pact Inc.	Washington, DC	August 31, 2010
07	Salil Tripathi	Institute for Human Rights and Business	London	September 20, 2010
08	Graham Minter	Former International Business Leaders Forum	London	September 22, 2010
09	Frøydis Cameron	Anglo American	London	September 23, 2010
10	Aidan Davy	International Council on Mining & Metals	London	September 24, 2010
11	Diana Klein	International Alert	London	September 24, 2010
12	Edward Bickham	Former Anglo American	London	September 28, 2010
13	Bennett Freeman	Former United States Department of State	London	September 29, 2010
14	Tanja Barman	Former International Business Leaders Forum	London	September 29, 2010
15	Oliver Broad	BP	London	September 29, 2010
16	Egbert Wesselink	Pax Christi	Telephone interview	October 05, 2010
17	Edward Bickham	Former Anglo American	Telephone interview	October 13, 2010
18	David Rice	Former BP	Telephone interview	October 15, 2010
19	Hege Røttingen	Government of Norway	Telephone interview	November 09, 2010
20	Frances House	Former International Business Leaders Forum	Telephone interview	November 22, 2010

Table B.6: Interview Partners: Voluntary Principles on Security and Human Rights (*continued*)

<i>No.</i>	<i>Name</i>	<i>Organization</i>	<i>Location</i>	<i>Date</i>
21	Alan Detheridge	Former BP	Telephone interview	December 01, 2010
22	Sarah McLaughlin	Search for Common Ground	Washington, DC	March 31, 2011
23	Bennett Freeman	Former United States Department of State	Washington, DC	April 02, 2011
24	Arvind Ganesan	Human Rights Watch	Telephone interview	May 09, 2011
25	Aidan Davy	International Council on Mining & Metals	Telephone interview	May 27, 2011
26	Julia Cloutier	Government of Canada	Telephone interview	November 08, 2011
27	Melike Yetken	United States Department of State	Washington, DC	July 02, 2012
28	Arvind Ganesan	Human Rights Watch	Telephone interview	July 03, 2012
39	Bennett Freeman	Former United States Department of State	Washington, DC	July 06, 2012
30	JJ Messner	Fund for Peace	Washington, DC	July 09, 2012
31	Steve Utterwulghe	Search for Common Ground	Washington, DC	July 12, 2012
32	Sarah Altschuller	Foley Hoag	Washington, DC	July 13, 2012
33	Bennett Freeman	Former United States Department of State	Washington, DC	July 15, 2012
34	Kady Seguin	Partnership Africa Canada	Telephone interview	July 16, 2012
35	Melike Yetken	United States Department of State	Washington, DC	July 17, 2012
36	Jennifer Stein	United States Department of State	Washington, DC	November 30, 2012
37	Sarah Altschuller	Foley Hoag	Washington, DC	November 30, 2012
38	Jennifer Stein	United States Department of State	Washington, DC	September 30, 2013
39	Melike Yetken	United States Department of State	Washington, DC	September 30, 2013

Appendix C

Summary Statistics for Dyadic Variables

Table C.1: Summary Statistics Dyadic Variables, KP 2000-2002

	Mean	Std. Dev.	N
InfoExchange _{<i>ij</i>}	0.075	0.263	14,042
State _{<i>ij</i>}	0.704	0.457	14,042
Ind _{<i>ij</i>}	0.442	0.497	14,042
NGO _{<i>ij</i>}	0.404	0.491	14,042
Chair _{<i>ij</i>}	0.017	0.129	14,042
MSI _{<i>ij</i>}	0.001	0.038	14,042

Table C.2: Summary Statistics Dyadic Variables, KP 2010-2012

	Mean	Std. Dev.	N
InfoExchange _{<i>ij</i>}	0.010	0.101	23,562
State _{<i>ij</i>}	0.711	0.453	23,562
Ind _{<i>ij</i>}	0.519	0.500	23,562
NGO _{<i>ij</i>}	0.288	0.453	23,562
Chair _{<i>ij</i>}	0.126	0.332	23,562
Access _{<i>ij</i>}	1.520	2.660	23,562
MSI _{<i>ij</i>}	0.023	0.150	23,562

Table C.3: Summary Statistics Dyadic Variables, ICoC 2010-2013

	Mean	Std. Dev.	<i>N</i>
InfoExchange _{<i>ij</i>}	0.018	0.134	17,556
State _{<i>ij</i>}	0.533	0.499	17,556
Ind _{<i>ij</i>}	0.684	0.465	17,556
NGO _{<i>ij</i>}	0.279	0.449	17,556
Chair _{<i>ij</i>}	0.074	0.262	17,556
Access _{<i>ij</i>}	0.887	1.274	17,556
MSI _{<i>ij</i>}	0.127	0.333	17,556

Table C.4: Summary Statistics Dyadic Variables, VPs 2010-2011

	Mean	Std. Dev.	<i>N</i>
InfoExchange _{<i>ij</i>}	0.132	0.340	3,540
State _{<i>ij</i>}	0.363	0.481	3,540
Ind _{<i>ij</i>}	0.560	0.497	3,540
NGO _{<i>ij</i>}	0.441	0.497	3,540
Chair _{<i>ij</i>}	0.098	0.298	3,540
Access _{<i>ij</i>}	4.2	3.048	3,540
MSI _{<i>ij</i>}	0.374	0.484	3,540

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