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The Institutionalisation of Private Governance

Conceptualising an Emerging Trend
in Global Environmental Politics

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Foreword

This working paper was written as part of the Global Governance Project, a joint research programme of the Vrije Universiteit Amsterdam, the Potsdam Institute for Climate Impact Research, the Free University of Berlin (Environmental Policy Research Centre), and Oldenburg University. Within the larger context of earth system analysis, the Project investigates international institutions, political processes, organisations and other actors that influence the emerging system of global environmental governance. The current focus is on questions of institutional and organisational effectiveness, learning processes in environmental policy, institutional inter-linkages, the role of private actors in governance systems, and models of global democracy. Major analytical tools are qualitative social science methods, including structured case studies, as well as legal analysis and integrated modelling. Project members represent political science, economics, international law and integrated modelling.

Within the Global Governance Project, this working paper contributes to the efforts of the research group MECGLO—New Mechanisms of Global Environmental Governance. The MECGLO research group has been set up in order to analyse the emergence, functions, and effects of the new governance arrangements in which private actors play an increasingly important as well as a qualitatively new role. Research will focus on public-private rule-making, private regimes, ‘type 2’ partnerships, and on the diffusion of environmental policy innovations.

The research groups of the Global Governance Project include MANUS—‘Managers of Global Change: Effectiveness and Learning of International Organisations’ and MOSAIC—‘Multiple Options, Solutions and Approaches in Climate Governance’. More information on these groups is available at the Project’s web site at www.glogov.org. The Global Governance Project has further organised, together with its partners, the 2001 and 2002 Berlin Conferences on the Human Dimensions of Global Environmental Change (www.environmental-policy.de).

Comments on this working paper, as well as on the other activities of the Global Governance Project, are highly welcome. We believe that understanding global governance is only feasible as joint effort of colleagues from various backgrounds and from all regions of the world. We look forward to your response.

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Abstract

The concept of global governance denotes a fundamental change in the steering mechanisms employed by governments and international organisations as well as in the relation between public and private interests in the provision of global public goods. Next to public-private partnerships and public policy networks, private governance institutions, involving civil society organisations and business actors, enter the centre stage of global governance research within the wider context of International Relations theory.

This paper develops a conceptual framework to understand the emergence and impact of private transnational governance institutions in global environmental politics. This phenomenon, referred to as the “institutionalisation of private governance”, has not received as much attention in academic debate as public-private partnerships or global public policy networks have. I argue that private governance institutions can be understood as systems of rules, norms, and obligations prescribing the behaviour of transnational actors in a specific issue area. They emerge as the result of close cooperation between companies, business associations, and a wide range of non-profit organisations. As a result, “governance without government” becomes more and more institutionalised in global environmental politics. But what precisely is the role of private institutions in global governance, why do they emerge, and what is their impact?

To answer this set of questions, the first part of this paper introduces global governance as an analytical concept to understand the profound changes in the nature of the global political system. The second part proposes a clarification of the concept of private governance institutions by comparing it to rival concepts, such as private inter-firm regimes, green alliances or private organisations. Afterwards, the paper assesses five private governance institutions in the field of environmental politics according to their function and impact. The remainder of the paper discusses different approaches that address the puzzle of private governance institutions’ emergence. Preliminary empirical evidence suggests that further research is necessary, especially on the phenomenon of business-civil society cooperation.

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1 Introduction

As far as rules are concerned, studies in global environmental politics have primarily focused on intergovernmental regimes and organisations designed to address transboundary problems, from oil pollution to climate change. Only recently have non-state actors and their influence on the international political process become a major topic of environmental policy research (Arts 1998; Keck and Sikkink 1998; Reinalda and Verbeek 2001; Raustiala 1997; Rowlands 2001; Tamiotti and Finger 2001; Weiss 1996). But although scholars have studied in detail the role and function of different non-state actors in agenda-setting, lobbying governments, and implementing international agreements, to date, little research has been conducted on rule-making by private transnational actors.

Until very recently, the debate about non-state actors and their contribution to the institutionalisation of environmental governance has been limited to public-private partnerships and global public policy networks (Witte, Reinicke, and Benner 2000; Börzel and Risse 2003). It has neglected to investigate the far-reaching institutionalisations among private actors that are operating outside the realm of governments, government agencies or intergovernmental organisations. But it is precisely this evolving debate that poses new questions with respect to some of our fundamental political concepts, such as public interest, authority, and legitimacy.

In many policy areas, ranging from forestry to the conservation of marine living resources, we witness the emergence of private institutions – systems of norms, rules, and obligations – that result out of the close cooperation between a variety of private actors. Transnational corporations, non-profit organisations, business associations, and think tanks increasingly begin to agree upon, implement, and monitor different forms of regulation, including general codes of conduct, management standards, and certified product labels. As a result, “governance without government” (Rosenau and Czempiel 1992) becomes more and more institutionalised in global environmental politics. Furthermore, the impact of private actors on world politics has changed as well. They have gone from being an intervening variable of the international system to establishing rules that exist mainly outside of it. Consequently, private authority is considered to be different from public authority, because the latter derives mainly from the possibility of coercion, whereas the former is based on persuasion. This does not imply that private rule-systems necessarily lack an element of coercion, but authority rather derives from consumer boycotts or NGO-campaigns than from police or military forces. As a result, private authority most likely takes the form of market or moral authority (Hall and Biersteker 2002; Hall 1997). As Cutler, Haufler and Porter contend, “[a]uthority involves a surrendering of individual judgement, an acceptance of its dictates based not on the merits of any particular pronouncement but on a belief in the rightness of the authority itself” (Cutler, Haufler, and Porter 1999: 334).

In this respect, this explorative paper asks why and how rules are becoming increasingly private, how this private authority is constructed, exercised and maintained by private actors, and what the resulting institutionalisation implies for our understanding of global environmental politics in the 21st century. The contribution attempts to draw a preliminary picture of private rules and its different functions in the field of environmental politics by developing a conceptual framework of private transnational governance institutions. This concept captures the essence of new forms of self- and co-regulation by analysing them as mechanisms of global governance different from traditional intergovernmental or hybrid public-private regimes. The first part of this paper develops a concept of private institutions from a global governance perspective. The second part discusses five empirical examples, which differ according to their actor-constellation, issue-area and instrumental approach. I analyse them as illustrative cases in order to develop some preliminary assumptions about the emergence of private governance institutions, their functions, and their impact on, as well as possible inter-linkages with, the international system.

2 The concept of private governance institutions

This section develops a general concept of private governance institutions with reference to other theoretical conceptualisations of private governance. I argue that the institutionalisation of voluntary norms and rules goes beyond the current debate about the privatisation of world politics (Brühl 2002), which, to a large extent, has been analysed primarily as the processes of service-provision and rule-implementation by non-state actors. In contrast, the recent institutionalisation of private governance is concerned with norms and rules that exist mainly outside of the traditional international political system.

2.1 THE 'GEOGRAPHIES' OF GLOBAL GOVERNANCE

The attempt to develop a concept to capture empirical phenomena of trans-sovereign global politics in general and private norms and rules in particular is grounded on theoretical considerations often referred to as 'global governance debate' or even 'global governance theory'. Therefore it is necessary to first mark the conceptual and empirical boundaries of this debate before further clarifying what a private governance institution is and how the concept can help make more sense of many phenomena in contemporary world politics.

Recent debates about the growing political influence of non-state actors, multiple interconnected policy levels, and new functional mechanisms of steering beyond the nation-state can all be subsumed under the headline of *global governance*. They have opened up space for a fresh perspective on large-scale transformations, which profoundly alter our understanding of 'who is doing what for whom' in world politics. Al-

though there is neither an uncontested definition of global governance, nor a common understanding of what the term refers to in terms of structure and processes¹, the aforementioned and highly controversial debate highlights some empirical observations that go beyond traditional accounts of international relations, especially in the field of environmental politics.

Global governance is generally believed to encompass different systems of rule on different levels of human activity as an organising social principle beyond hierarchical steering and the sovereign authority of nation-states. As Rosenau notes, “global governance is the sum of myriad – literally millions of – control mechanisms driven by different histories, goals, structures, and processes” (1997: 27). It departs from more traditional concepts in IR in four distinct ways. As an analytical tool for making sense of the “crazy-quilt nature” of world politics (Rosenau 1995: 15) the concept includes (1) non-state actors, (2) analyses multiple spatial and functional levels of politics, (3) is concerned with new mechanisms of producing and maintaining global public goods, and (4) highlights the establishment of autonomous spheres of authority beyond the nation-state. Global governance enriches the IR scholar’s tool-kit as it allows one to grasp the current transformations in world politics by moving beyond the traditional national-international and public-private dichotomy. That is not to say that the term nation-state has lost all conceptual benefits, but rather that a comprehensive picture of the current state of world affairs must be multi-dimensional rather than one-dimensional.

Global governance therefore includes “the activities of governments, but it also includes the many channels through which ‘commands’ flow in the form of goals framed, directives issued, and policies pursued” (Rosenau 1995: 14). What follows from this perception are two different ‘geographies’ of global governance. One being considerably wide, encompassing those actions of states and non-state actors on the international level that involve all non-hierarchical modes of steering, like intergovernmental or inter-organisational bargaining, and the other being more restricted, only including non-hierarchical modes of steering that involve at least one non-state actor, such as global public policy networks.² I take a middle ground, arguing that different modes and actor-constellations are positioned along a continuum from more traditional interstate negotiations, which already involve non-state actors in the process of rule-making, to hybrid public-private partnerships and fully private co-operations, institutions, and organisations.

But the concept of global governance does not only include the process of non-hierarchical steering. It also comprehends the outcome of the many different activities of state and non-state actors on the global level. Consequently, intergovernmental ne-

¹ For further elaborations on the different conceptual uses see Dingwerth and Pattberg (2004, forthcoming).

² For an illustration see Börzel and Risse (2003).

negotiations, public-private partnerships, and private governance institutions could be understood as different mechanisms³ by which global governance is constituted and maintained. Empirical examples for different global governance mechanisms are shown in table 1.

Table 1: Examples of global governance mechanisms according to actor-constellation and purpose

Actor constellation	Public	Hybrid	Private
Purpose			
Provision of Goods and Services	UNEP	Global Reporting Initiative (GRI)	Privatisation of water services
Implementation	Global Environment Facility (GEF)	Global Network on Energy (GNESD)	Cement Sustainability Initiative
Rule-making	Johannesburg Summit	World Commission on Dams (WCD)	Marine Stewardship Council (MSC)

These governance mechanisms differ according to the purpose of governance as well as to the actor-constellation involved. Public forms of global governance include the provision of services and implementation of international norms through comprehensive or issue specific international organisations, as well as rule-making in international negotiations.⁴ Public actor-constellations may include intergovernmental organisations, governments, government agencies, and a wide variety of sub-national public authorities. Hybrid forms of governance are often labelled with the general term public-private partnership (PPP), but include many distinct cooperative arrangements between public and private actors, involving governments, intergovernmental organisations, transnational corporations, global advocacy networks, and non-profit organisations. The third form of governance is purely private in nature, involving firms, business associations, advocacy networks, think tanks, and non-profit organisations.

2.2 THE INSTITUTIONALISATION OF PRIVATE GOVERNANCE: RIVAL CONCEPTS

Private actors are by no means a new phenomenon in global politics⁵. New is the fact that they engage themselves in cooperative arrangements that often lead to private

³ Renate Mayntz defines a social mechanism as a set of “recurrent processes that link specified initial conditions and a specific outcome” (2002: 3).

⁴ Although international negotiations are taking place, by definition, among sovereign nations, it is assumed that non-state actors play a decisive role in current international rule-making, thus qualifying as a weak form of governance.

⁵ Note that medieval guilds, the British and Dutch East India Company, and the 19th century International Chamber of Commerce could all be considered as private actors that exercise various degrees of private authority.

systems of rule, complementing traditional ways of political influence, such as lobbying international negotiations or raising public awareness. This institutionalisation of private governance is different from ad-hoc partnership or strategic alliances because it involves the notion of shared norms and principles as well as the prescription of roles and responsibilities. In this perspective, institutions can be defined as "social practices consisting of easily recognized roles coupled with clusters of rules or conventions governing relations among the occupants of these roles" (Young 1989: 32). Two aspects are crucial to the concept of private governance institutions: first, they are established among a wide range of private actors from all segments of transnational society; and second, that they function as a mechanism of global governance within the wider context of world politics.

To further clarify the concept of private governance institutions in environmental politics, I discuss alternative approaches to the phenomenon of private governance in the following section. The focus is on how the concept of private governance institutions draws upon or departs from three prominent concepts addressing similar questions, namely private sector international regimes, private organisations and green alliances.

The term *private sector international regime* was first established in the field of industrial relations and commercial activity to denote institutionalised responses to state or market failure. As Haufler argues, a "mis-match between markets and politics in terms of governance" is responded to by the construction of private international regimes in many industry sectors (2000: 122). These private inter-firm regimes, understood as formal and informal norms, principles, rules, and decision-making procedures exercise a "form of self-regulation or rule-setting in the absence of an overarching global political regime" (Haufler 2000: *ibid*). Whereas the traditional debate on international regimes, by definition, has focused on the cooperation of states only, the concept of private regimes broadens this narrow view to incorporate formal and informal institutions that are the source of governance for an economic issue area as a whole (Cutler, Haufler, and Porter 1999: 13). Private inter-firm regimes differ from other forms of cooperative business-arrangements, such as industry associations, production alliances, and cartels, in terms of the breadth of their activity, often incorporating less institutionalised forms within their scope (Cutler 2002: 28-29). Consequently, the concept of private inter-firm regimes is broader than private governance institutions because it incorporates different forms of cooperation as well as different sets of regulations. In analogy to a private sector regime expanding over a whole economic issue area, a private regime in the field of marine fisheries for example would incorporate all those different sets of private rules and norms applying to marine fisheries as a whole. Private governance institutions, in contrast, are understood as a specific institutionalised cooperation between private actors focusing on the creation of voluntary norms and rules.

The second concept competing with private governance institutions, *private organisation*, starts from the assumption that the failure of states and markets to create stable environments for commercial and social transactions leads to the establishment of alternative governance mechanisms through private organisations (Ronit and Schneider 1999: 244), an argument resembling much of the theorised causes for the construction of private inter-firm regimes. According to Ronit and Schneider, private organisations include *inter alia* the following: multi-national corporations, business associations, federations of trade unions, standardising associations, learned societies, think tanks, religious orders, sporting organisations and environmental groups (2000: 1). But research has been largely limited to global business actors, such as the International Chamber of Commerce (ICC), the International Federation of Pharmaceutical Manufacturers Association (IFPMA) or the Ecological and Toxicological Association of Dyes and Organic Pigments Manufacturers (ETAD) (Ronit and Schneider 1999).

The concept of private organisations aims at developing a “new and all-encompassing theory, which integrates all private actors active in global politics” (Ronit and Schneider 2000: 7), not exclusively focusing on those actors participating in the global policy cycle, but also incorporating organisations that assume responsibility for problem-solving through standard setting and self-regulation. Although the concept of private organisations is a step forward towards understanding the complex structure and nature of private actors in world politics and remedies much of the conceptual imprecision of the frequently used term ‘non-governmental organisation’⁶, it still falls short of capturing the diversity of institutional settings and procedures that characterise private regulation in world politics.

In contrast, the proposed concept of private governance institutions differs from the concept of private organisations in five distinct ways: first, it includes less formalised co-operations not qualifying as an independent organisation⁷; second, it focuses on systems of rule only, thus excluding sufficiently debated issues of non-state actors’ involvement in policy-making or rule-implementation on the international level; third, it highlights alternative actor-constellations within institutions and organisations; fourth, it acknowledges the network character of many institutions; and fifth, it overcomes sharp distinctions between the profit and non-profit sector of transnational society, focusing on their joint efforts to create and sustain global public goods instead.

⁶ According to some definitions, the term non-governmental organisation includes non-central state actors, such as local communities, as well as transnational corporations or criminal organisations within its conceptual range (Reinalda 2001: 13).

⁷ Note that the decisive difference between an organisation and an institution lies in the actor-quality of the former. In contrast, an institution is generally referred to as the ‘rule of the game’, in which a rule can be formal (e.g. law) or informal (e.g. social habit). In a narrower sense, political institutions can be defined as “formal arrangements for aggregating individuals and regulating their behaviour through the use of explicit rules and decision processes enforced by an actor or a set of actor formally recognised as possessing such power” (Levi 1990: 405).

The third alternative concept to private governance institutions – *green alliances* – focuses explicitly on partnerships between global non-profit organisations and transnational business actors in the area of environmental politics. But as Murphy and Coleman contend,

“[p]artnership’ is not the first word that usually comes to mind when one thinks about business and NGOs. Over the past three decades, most relationships between the commercial sector and civil society have been founded on conflict” (2000: 207).

The term *partnership* has predominantly referred to profit-making relationships between individuals, but in recent years gained prominence as a more general inter-personal and inter-organisational idea, including relations between various transnational actors, international organisations, and states.

Two events are generally believed to have triggered the transformation from confrontational strategies to those of partnership in the field of environmental politics: the public debate about Shell’s involvement in the Ogoni case in southern Nigeria and the disposal of the Brent Spar off-shore oil rig. After widespread public protest and consumer boycott, Shell’s Chief Executive Officer Herkstroter highlighted the positive aspects of the Greenpeace campaign, and a partnership approach in general:

“We took decisions, which in retrospect were mistakes. We now realise that alone we could never have hoped to reach the right approach – that we should have discussed them in a more open and frank way with others in order reach acceptable solutions... In essence, we were somewhat slow in understanding that environmental groups, consumer groups and so on were tending to acquire authority” (Heap 2000: 3).

It is the concept of green alliances that addresses these unusual partnerships with respect to the idea of policy arrangements. The term policy arrangement “refers to the temporary stabilisation of the content and organisation of a policy domain,” including policy programmes and discourses as content, and actors and their coalitions as organisations (Arts 2002: 4). These policy arrangements are influenced by the macro-societal process of reflexive modernization (Beck, Giddens, and Lash 1994) that effects the policy domain at the meso-level and forces actors to adopt to the changed environment. Mirroring the fundamental trend of political modernization, with its move from static, state-centred forms of governance, to more pluralist and open governance styles, the relationship between the private sector and civil society develops roughly along the same line.

The debate about green alliances, defined as “collaborative partnerships between environmental NGOs and business that pursue mutually beneficial ecological goals” (Arts 2002: 2) highlights four important elements of ‘private environmental policy arrangements’ (Arts 2002: 4) that are relevant in the context of private governance institutions: first, partnerships take different types, running along a continuum from informal to highly formal institutions; second, within green alliances, power is equally distributed; third, flexible ‘rules of the game’ help to sustain partnerships over a longer period; and fourth, discourse framing is understood as an important condition for the emergence of environmental policy arrangements (Arts and Tatenhove 2000).

Turning back to the initial aim of clarifying the concept of private transnational governance institutions with respect to other terms proposed in the literature, a comprehensive definition can be offered, which covers different types of institutions as well as different instrumental approaches. Accordingly, a private transnational governance institution is a self-coordinated network of two or more private actors operating in more than one country (involving the non-profit and/or the profit sector of society), engaging in the establishment, implementation and monitoring of a voluntary systems of rules (general codes of conduct, management standards or labels) directed towards a specific issue area, and not being primarily profit-orientated. Nevertheless, the market provides the mechanism through which authority is, at least partially, allocated to distinct private institutions. It is the consumer, producer, and retailer who legitimise a certain private rule-system.⁸

Empirically, private governance institutions occur as three different types, based on the specific actor-constellation involved and societal arena they emanate from: first, private sector institutions involving inter-firm cooperation within or across industrial sectors, such as the Responsible Care Initiative (RC), the Global Mining Initiative (GMI) or the Apparel Industry Coalition (AIC); second, private-private institutions that result from enhanced cooperation between former adversaries, namely transnational corporations and global NGOs, such as the Forest Stewardship Council (FSC), the Coalition of Environmentally Responsible Economies (CERES) or the Marine Stewardship Council (MSC); and third, civil society institutions bringing together different globally active NGOs and advocacy groups in one transnational network, such as the Sustainable Agriculture Network (SAN), the International Federation of Organic Agriculture Movements (IFOAM) or Social Accountability International (SAI). Their purpose and function can differ widely from case to case, as well as their specific relation to other private partnerships, NGOs, international organisations or governmental agencies. Industry- and commerce-based institutions shall accordingly be called private sector governance institutions; civil society-based institutions shall be called civic governance institutions, and those institutions that bring together a wide range of stakeholders from all segments of society shall be called private-private governance institutions.

This typology seems very much straightforward, but it should be regarded as indicating ideal types, rather than reflecting a comprehensive empirical picture. Many private institutions can not easily be grouped within one of the clusters, either because they have emanated from civil society but represent strong business interests, as in the case of the International Federation of Organic Agriculture Movements (IFOAM), or because private institutions are closely linked to international norms and rules, as in

⁸ Benjamin Cashore has explicitly focused on the question of how authority is granted to a governance institution through market transactions (2002).

the case of the Ethical Trading Initiative (ETI), which promotes basic standards of the International Labour Organisation.

3 Do private governance institutions matter? Functions, institutional inter-linkages, and the puzzle of emergence

One task of this section is to discuss the different functions that private governance institutions fulfil. Although, by definition, governance institutions are involved in the establishment of voluntary norms, rules and standards, they perform a wide range of additional functions, from monitoring their stakeholders' compliance over producing and disseminating information to influencing public opinion. Another task of this section is to discuss possible feedback loops with the international system, assuming that private institutions have impact above and beyond the inter-national system, but nevertheless still function in close relation to global public norm- and rule-development. Next to questions of function and impact, the third puzzle this section addresses concerns the causes, necessary conditions, and enabling factors that allow private governance institutions to emerge in the field of global environmental politics. To further illustrate their internal structure, rule-making procedure and additional functions, five private environmental institutions, which represent the industry-based, hybrid, and civil society type of private governance institutions, respectively, serve as preliminary empirical examples.

3.1 MAKING THE RULES

The idea of rule-making seems self-evident in most domestic and international contexts, but if we talk about private systems of rule, what do we refer to? From the perspective of regime theory, rules occur as four different types: (1) principles (beliefs of fact and causation); (2) norms (rights and obligations); (3) regulations (pre- or pro-scriptions for action); (4) procedures (decision-making rules) (Krasner 1983: 2). But already from the very beginning of regime theory, disagreement existed about the nature of these rules. Krasner argues that “[a] fundamental distinction must be made between principles and norms on the one hand, and rules and procedures on the other” (1983: 3). Principles and norms provide the basic characteristics of an institution, whereas regulations and procedures may change without altering the substantial content of a regime. To capture this important difference, some scholars have argued for distinguishing between constitutive rules on the one hand, and regulative rules on the other (Giddens 1984; Arts 2003). As a result, a change in the constitutive rules is understood to alter the institution as a whole, whereas a change in the regulative rules only implies a transformation of existing procedural, structural or substantive rules, such as a tightening of certain product standards or introducing additional aspects of environmental management.

Following from these considerations, standard setting in the context of private governance institutions is conceptualised as the act of agreeing on regulative rules. Standard setting, as opposed to the more general process of establishing and maintaining constitutive regulations, is consequently defined as the making of voluntary, expertise-based structural, procedural or substantive regulation (Kerwer 2002: 298). Standards can take the form of management schemes, labels or general codes of conduct.⁹ Although private standards are voluntary in nature, some degree of compliance is necessary to qualify as private regulation.

In sum, private governance institutions include both constitutive and regulative rules. But whereas the former are considered to be an important prerequisite for enhanced cooperation between different actors, the latter are understood as the functional output of governance institutions. Private standards in global environmental politics therefore include product as well as process standards. They are applied above the national level and, as voluntary regulations, include management standards, codes of conduct as well as labels.

But the regulative rules of private governance institutions in the field of environmental politics do not only contain prescriptions of behaviour directed towards the environment, they also define who accounts for the compliance with management standards, codes of conduct or labels and under what rules. Governance institutions employ three basic types of reporting compliance with their voluntary standards. Ideal types range from first-party reporting (self-assessment), wherein organisations generate rules internally and report conformance themselves, over second-party reporting (joint assessment), wherein firms and organisations work together to generate rules and report compliance, to third-party reporting (independent assessment), wherein the governance institution sets the standards and independent commercial bodies report conformance on a regular base (Garcia-Johnson 2001: 2).

To fully understand the concept of private governance institutions as systems of rule within the wider context of global governance the focus is on how rules and standards are developed and agreed on as well as on how they are implemented and monitored. Consider, for example, the Forest Stewardship Council (FSC), a collaboration between the transnational timber industry, forest managers, global environmental organisations, most notably the World Wide Fund for Nature (WWF), and a wide range of local and regional human rights networks as well as trade unions.

The FSC includes three basic types of standards, which constitute the regulative rules of the institution. First, global forest management standards that form the basis for national and regional standards development; second, chain of custody standards prescribing detailed rules along the production chain; and third, standards for accredi-

⁹ For a detailed typology of global standards see Nadvi and Wältring (2002).

tation.¹⁰ The standards are developed and drafted by the standards and policies unit within the international secretariat and later approved by the board of directors. The standard setting procedure involves consultations with all relevant stakeholders. Often technical committees are formed to include the expertise of forest managers and producers along with the normative guidance of non-profit actors. Recent negotiations about the issue of percentage based claims¹¹ for example included technical experts on paper production and representatives from environmental NGOs to ensure the technical feasibility of producing paper out of recycled raw material and FSC certified timber as well as the acceptable decision on how much FSC timber must be included. Conformance with the three types of standards is ensured through two different mechanisms: first, management and chain of custody standards are certified by independent certification bodies accredited by the FSC accreditation business unit according to the accreditation manual (FSC 2002); second, national initiatives are also accredited by the accreditation unit according to the applicable standards.

But private governance institutions do not only include regulative rules on sustainable production and management, but also substantive 'rules of the game', from formal regulations on governance structure, voting rights, and complaint procedures to informal norms, such as the appropriate behaviour in times of conflict, the style of communication, and the individual or collective self-recognition.

3.2 BROKERING KNOWLEDGE

Despite the fact that private governance institutions are mainly involved in standard setting, they also perform a wide range of additional functions, similar to intergovernmental organisations, which are also increasingly perceived as autonomous actors in world politics (Biermann and Bauer 2003).¹² Private governance institutions produce and disseminate information, raise public awareness, monitor compliance through different types of reporting, and provide useful models of cooperation for other actors and other issue areas.

Most obvious is the function of producing and disseminating information. As I have argued above, standard setting is, by definition, based on specific expertise. Agreeing on regulative rules in such complicated issue areas as chemical substances or marine biodiversity requires not only substantial theoretical knowledge, but also a great deal of practical experience. These substantive and organisational prerequisites allow private actors to take a leading role in standard setting, precisely because most public

¹⁰ The FSC international secretariat sets standards according to which certification bodies and national initiatives are accredited by the accreditation business unit within the secretariat.

¹¹ The term percentage based claim refers to the question of how much FSC certified timber must be included in a product to be eligible to carry the FSC trademark.

¹² Technically speaking, institutions do not possess agency. In the case of private governance institutions, it is the individual or the collective organisation that acts. Only in this sense do private institutions perform different functions.

actors lack the necessary theoretical and practical resources. In contrast to public actors, the network character of private governance institutions and the resulting close incorporation of relevant experts in the process of rule-making produce very detailed standards outperforming, in many cases, international regulation. The aforementioned FSC standards and principles for sustainable forestry currently cover more than 39 million hectares of forest in 57 countries¹³, whereas the intergovernmental negotiation process under the auspices of the United Nations fell short of producing considerable results.¹⁴ The very diverse and broad knowledge base that the FSC is able to draw upon can partially explain this difference. As noted above, a standard setting process usually involves not only technical experts and NGO representatives, but also concerned practitioners and the wider public. In addition, the specific decentralised structure of FSC makes it easy to integrate local and national expertise when ever appropriate.

A different example is the Sustainable Agriculture Network (SAN), a transnational cooperation of non-profit organisations and research institutions promoting a conservation approach in tropical agriculture, certifying a wide variety of tropical products, from bananas to coffee, according to a detailed code book. The established environmental management standards are applied to individual farms, including smallholder cooperatives as well as large agribusinesses, and cover nine generic standards and principles (Rainforest Alliance 2002).

The case of SAN illustrates clearly the important role of expert knowledge in private standard setting. Under the leadership of the Rainforest Alliances (RA), an international conservation organisation with the distinct mission to implement better business practices for biodiversity conservation, experts from the fields of tropical agriculture discussed a broad set of standards to promote sustainable agriculture within the context of tropical ecosystems. The local background of most of the network's members facilitates the incorporation of specialised knowledge that is frequently lost in international negotiations and policy programmes. In the words of SAN:

“Local groups have a perspective on the political, cultural, historic, and economic realities of the area in which they work. They are best able to adapt the certification system to those local realities while maintaining systematic quality” (Rainforest Alliance 2003).

What follows from these examples is the importance of expert knowledge, not only in the early stage of formation and standard setting, but also in later stages of further developing the governance institution's policies by adapting to special local or regional structures.

¹³ As of November 2003, 39,865,959 ha of forests have been certified according to the FSC Standards and Principles. FSC accredited certification bodies have issued 3300 certificates worldwide.

¹⁴ The UNFF was established in 2000, after over eight year of intense and controversial negotiations within the Intergovernmental Forum on Forests (IFF) and its predecessor, the Intergovernmental Panel on Forests (IPF). As the United Nations Conference on Environment and Development (UNCED) had not brought any binding results, the international community agreed on a lengthy negotiation process with considerable few results.

Next to producing detailed standards, private governance institutions are involved in widely distributing this information to different stakeholders¹⁵ as well as to the general public, thus serving as brokers of knowledge. Closely connected to the dissemination of knowledge is the private governance institution's role in raising public awareness about their specific area of concern. The Marine Stewardship Council (MSC) illustrates this awareness-raising function very clearly. The MSC was established in 1997 as the result of a private partnership between the world's largest conservation organisation, WWF and Unilever, a transnational corporation specialising in branded food, laundry and personal care products.

Focusing on sustainable marine fisheries by promoting responsible, environmentally friendly, social beneficial and economically viable fishery practices and management schemes, the MSC has introduced a broad set of standards and principles for certification of sustainable fisheries worldwide. As an institutional answer to the global fisheries crisis¹⁶, the MSC was founded with expertise from both the staff of WWF and Unilever, involving high-level negotiations between key representatives of both organisations. After an initial phase of close cooperation and leadership of the two founding members, the MSC became a legally independent non-profit organisation by June 1998. In March 2000 the West Australian Rock Lobster (WARL) became the first fisheries to be independently certified against MSC standards. It generates annual revenues of € 250 million.

Next to standard setting and certification through independent third party certification organisations, the MSC is involved in a range of other activities, supporting the assumption that private governance institutions are performing many functions additional to standard setting. The most visible is the MSC's public-awareness and fund-raising campaign 'Sea into the Future'. This Internet campaign is targeted at consumers. To get them involved in the idea of sustainable fishery and the solution the MSC is promoting, this three year campaign offers information on the global fisheries crisis, informs where to buy certified products, and how to get involved in influencing governments and other stakeholders towards the MSC's goals. In addition to raising public awareness by disseminating critical information, advertising the MSC label and offering items of corporate identity, such as screensavers or recipes, 'Sea into the Future' also aims at collecting 10 million pounds in donations within a three year period. This major fund-raising campaign is estimated to cover the MSC's operational expenses for the next five years. In the words of the MSC:

¹⁵ The term 'stakeholder' in the context of private cooperation refers to "those who have an interest in a particular decision, either as individuals or representatives of a group. This includes people who influence a decision, or can influence it, as well as those affected by it" (Hemmati 2001).

¹⁶ The FAO estimates 47% of the world's commercially important marine fish stocks to be fully fished and another 15% to be over-fished, while 10% are already fully depleted. At the same time, total capture fisheries production reached 94.8 million tonnes, the highest level ever, amounting to some US\$ 81 billion of sales value.

“Sea into the Future will enable the MSC to outreach to consumers in order to raise awareness of the issues surrounding overfishing and the MSC’s solution to the problem” (Sea into the Future 2003).

This approach clearly shows the paramount importance of building a strong consumer base for sustainable products as well as exercising pressure on governments and corporations. When the campaign ends in 2005, the MSC will rely on its own trading company, the MSCI, to collect revenues from companies who use the MSC logo on their products.

3.3 PROVIDING A SOLUTION

Next to setting detailed standards, both substantive and regulative, and producing and disseminating information valuable to many different stakeholders, private governance institutions perform a third function within the system of global governance. By bringing together many different actors and interests within one forum, by providing detailed guidance on standards and principles, by verifying these commitments, and last but not least, by providing a model for other actors and other issue areas, private actors provide an institutionalised solution to environmental problems, from tropical deforestation to marine overfishing.

The FSC for example provides three different types of fora to its members and stakeholders through which discussion processes are enhanced and consensus on diverse issues can be reached. The principles forum is the general assembly that comes together physically every three years but is asked to decide on various issues on a regular basis by mail or E-mail. Next to the international General Assembly (GA) there are the 31 National Initiatives (NI) of FSC that provide institutional space for discussions on the national and regional aspects of standards and principles, as well as on specific areas of concern. The recent decentralisation of the FSC’s geographic structure has resulted in the creation of four regional offices¹⁷, Europe, Africa, Latin America, and Asia, that organise regular meetings of all national initiatives within a region, thus enhancing cooperation among national initiatives as well as among the individual stakeholder groups. The fourth type of forum for close stakeholder contact is provided by the distinct mechanism of expert involvement in the making of rules and standards, as discussed above. Technical and standard committees involve all relevant interests in the process of standard setting, not only providing a forum for direct stakeholders but also for the general public and interested individuals through an open-access internet forum or other communication tools.

¹⁷ The regional offices coordinate and deliver services to all national initiatives and interested parties within their region. Currently, four countries are not part of this regional structure, but are administered through the international centre because of their size and general importance. These countries are Canada, China, Russia, and the United States. For a detailed list of NIs see <http://www.fscoax.org/certification/nationalinitiatives>.

Next to providing a forum for stakeholder negotiations and consensus-building, private governance institutions monitor their member's compliance with the standards agreed upon, at the same time enforcing this compliance when necessary. The distinct mechanisms of compliance management and reporting differ from case to case. Some institutions rely on independent third-party reporting, whereas others just require annual self-assessments. The FSC for example is currently outsourcing its own accreditation¹⁸ business unit to ensure greater independence from the standard setting process within FSC. This strategic move clearly illustrates the importance of credible compliance management and constant surveillance of the operations in question. Responsible Care (RC), the chemical industry's international programme on environmental, health and safety standards, is an example of rather weak reporting and compliance rules. Since its launch in 1985 in Canada, RC has developed into a global initiative, covering more than 85% of the world's chemicals, which are manufactured in 47 countries (European Chemical Industry Council 2002: i). It was not until 1996, that the International Council of Chemical Associations (ICCA), which oversees RC since 1992, established a common procedure for verifying individual company's compliance with the agreed upon management practices. But still, the day-to-day operation, implementation and monitoring lie in the responsibility of regional and national associations. As a result, the status of the Responsible Care programme differs considerably among different countries and regions. In the words of the European Chemical Industry Council (CEFIC):

“Gathering and checking data is a complex and time consuming process. For new parameters, the information is not fully comprehensive. No benchmarking can be performed between countries because of size and process differences between each country's industry” (European Chemical Industry Council 2002: 28).

In addition, some private governance institutions also provide a model for successful cooperation for other actors and within different issue areas. Consider the close organisational resemblance between the FSC and MSC. Both institutions are private-private co-operations between environmental NGOs and business actors, and are involved in standard setting, accrediting certifiers, and granting labels for products and production chains. This specific type of a private governance institution is often termed “private environmental certification programme” or “environmental certification institution” (Meidinger 2000; Garcia-Johnson 2001), indicating that standards are certified by independent organisations, which are themselves operating under rules set by the private governance institution.

The WWF was a key player in the establishment of both the FSC and MSC. After lengthy negotiations among a wide range of stakeholders in the case of the FSC, individuals at WWF, who were asked to develop a similar institution, decided to cut short

¹⁸ Accreditation is “the procedure by which an accreditation body gives written assurance that a certification body conforms with the requirements of an accreditation system” (FSC 2002: Glossary). This definition conforms with the according ISO guidelines (ISO/IEC Guide 2: 1991 paragraph 13.7).

the process of stakeholder involvement and to start with one important partner only. Unilever was quickly identified as a potential partner, because of its substantial organisational commitment to questions of sustainability (Fowler and Heap 2000: 137). Already in 1997, WWF and Unilever launched the MSC as a close private-private partnership. As a result, the governance structure is markedly different from that of FSC, because both partners decided not to include other stakeholders in the negotiations of standards and principles. Further, the MSC is not a membership organisation, but is governed by a board of trustees appointed by the two founding institutions. Stakeholders are represented in the Stakeholder Council along a public interest and a commercial/socio-economic category (Marine Stewardship Council 2003). But nevertheless, the specific model of stewardship provided by the FSC, combining expert standard setting with independent third party certification, proves to be successful in the field of marine resources as well. As a formally independent institution the MSC today certifies seven highly valuable fisheries worldwide, 13 are currently in the process of full assessment. The certification/stewardship model won further support in 2001 when, after publishing its core standards, the Marine Aquarium Council (MAC) became the second private governance institution modelled after the FSC.

3.4 INSTITUTIONAL INTER-LINKAGES

The analysis of specific functions of private governance institutions leads to a brief discussion of possible feedback loops between new spheres of private authority (Rosenau 1999: 295) and the international system. Scholars have argued that private rule-making is exercised mainly outside of the traditional international system, involving a wide range of actors. But despite the private nature of authority constructed by governance institutions on the global scale, there are numerous inter-linkages between private and public institutions in world politics. First, private institutions set standards that are directed only at other private actors, as in the case of certification institutions. Second, private actors set standards that are followed by private as well as public actors, illustrated by the activities of bond-rating agencies in the global economy (Sinclair 2002, 1999). Third, private governance institutions set rules that are initially targeted at other private actors, but are transferred to the international level with the help of intergovernmental organisations.

The development of the Global Reporting Initiative (GRI), which was originally implemented by the Coalition for Environmentally Responsible Economies (CERES) and the United Nations Environment Programme (UNEP) and today operates as an independent global non-profit organisation, serves as an empirical example for the latter type of feedback between private governance institutions and the international system. CERES and UNEP established the GRI in 1997 as a close cooperation with the mission to develop and disseminate globally applicable sustainable reporting guidelines. Based on the knowledge of the private governance institution CERES, representing environmental, social and investment interests, the GRI became an independent

organisation in 2000. After five years of intense debate with stakeholders and the resulting refinement of the reporting standard, the GRI currently offers the 2002 sustainable reporting guidelines, technical protocols, and sector supplements as its key products (Global Reporting Initiative 2002). To date, 194 companies from 24 countries have used parts of or the whole guidelines for reporting on environmental, social, and economic impacts of their operations, products, and services.¹⁹ About 3800 individual stakeholders have participated in commenting and thus improving the key documents of the GRI.

Previous to becoming an independent organisation with a board, a stakeholder and technical advisory council, as well as a secretariat and a chief executive in 2000, the initiative was governed by CERES and UNEP, relying on funds from charitable foundations. This development, from a private initiative over a public-private partnership to a global independent organisation clearly illustrates one of the possible feedback-loops of private governance institutions with the international system, as well as other private individual or institutional actors.

3.4 THE PUZZLE OF EMERGENCE

After having illustrated some of the additional functions of private governance institutions and some possible inter-linkages with the international system, I now turn to another unsolved puzzle in the context of private governance. What are the enabling factors and necessary conditions for private institutions to emerge? This question is predominantly discussed with reference to industrial co-operations or with a theoretical focus on transaction-cost approaches. The literature on private inter-firm regimes highlights certain explanatory factors in the emergence of private cooperation. For Virginia Haufler, the central question is why business actors do not rely on the market as the organising principle of interaction (2000: 123). According to Haufler et al., there are three different possible answers to this puzzle: (1) institutions exercise authority by establishing voluntary standards in order to reduce transaction costs and provide information for individual or collective stakeholders; (2) actors create cooperative arrangements to gain power over other actors in the field; and (3) private sector governance institutions emerge as a result of general historical trends, such as internationalisation and globalisation (Cutler, Haufler, and Porter 1999: 337). A fourth answer can be found in growing societal concerns about corporate behaviour and general implications of corporate action. In this perspective, it is the increasing demand for stricter ethical regulation that forces individual companies and company networks to respond. Often self-regulation is enacted to prevent governments from regulating the issue in question, in order to maintain the industry's autonomy.

¹⁹ For details see <http://www.globalreporting.org/guidelines/companies/asp>.

Closely connected to the impact of societal pressure on corporate behaviour is the question of discursive frameworks within a specific issue area. Such a policy discourse can be defined as:

“[a] specific ensemble of ideas, concepts, and categorisations that are produced, reproduced and transformed in a particular policy domain through which meaning is given to the physical and social realities of that domain” (Hajer 1995).

The sustainability discourse is paramount in the environmental policy domain. Rule-making or norm change thus can be understood as a change in the dominant discourse, framing the debate on both sides. Change in the discursive framework can then be identified as one of the conditions for private governance to emerge, especially with regards to private-private partnerships.

Other scholars have stressed the functional dimension of private rule-making with regards to its emergence. Arts contends that “there is a need for private regulation in a (still) empty institutional space,” (2003: 34) thus highlighting the crucial role of macro-structures. From this perspective, an existing governance gap, resulting from transboundary problems and the state’s diminished capacity to cope with these challenges, is creating demand for private institutions that fill this functional gap, while further lowering costs for other actors.

A different perspective is provided by those scholars that focus on the convergence of distinct policy streams as explanations for the emergence of cooperation in general and private rule-making in particular (Kingdon 1984; Gray 1989; Lober 1997). In this perspective, a “collaborative window” opens due to the convergence of the problem, policy, organisational, and social/economic process stream (Lober 1997: 21). Although this model of institutional collaboration is developed from a national policy perspective, it might be useful to better understand the necessary condition for the emergence of private institutions on the global level because it has no formal linkages with the political system and government policies (Lober 1997: 8).

The different explanations for the emergence of private governance institutions and the evidence to support them are summarised in table 2.

Table 2: Varieties of explanations for the emergence of private governance institutions

Assumption	Evidence	Explanatory Factor
Governance institutions reduce transaction costs and provide information	Positive effects on the corporation’s bottom line	Interest
Governance institutions enhance the capacity of some actors to exercise authority over others	Oligopolistic structure or single leadership	Power

Governance institutions are a response to civil society pressure and reflect the general policy discourse	Catalytic events and public pressure	Knowledge
Governance institutions are the result of historical macro-trends in global politics (<i>la longue durée</i>)	Expansion of markets	Structure
Governance institutions close an existing institutional gap	Absence of public or private regulative institutions	Function
Governance institutions result from a collaborative window	Perceived Crisis, complexity of problem, failure of adversary approaches	Convergence of policy streams

Although the above section highlights some working-assumptions on the necessary conditions for private governance institutions to emerge, these can hardly substitute for a systematic approach on the formation process of private systems of rule in general. Especially the many multi-interest co-operations between different segments of transnational society have not received sufficient attention. This is troublesome for at least two reasons. First, multi-interest institutions constitute the hard cases with respect to explaining their emergence. Whereas cooperation between different corporations or industry association as well as between different non-profit organisations is based on a common discursive framework and long established institutional and individual contacts, cooperation between formerly opposed segments of society, as in the case of the MSC, poses a range of unsolved questions. The main puzzle is to identify and understand the process that has led to the convergence of private actors' interests in the field of global environmental politics, as well as the process that has created demand for private rule-making in the first place. The second reason for further occupation with the emergence of private governance institutions lies in its practical relevance. As many global environmental problems still lack a sufficient institutional answer and international processes are slow in providing a solution, private initiatives become paramount. Knowledge on the why and how of private governance formation would therefore increase the possibilities for future cooperation between a wide range of diverse actors in global environmental politics and thus would contribute to the much needed institution-building for sustainable development.

Therefore, future research should be directed towards the necessary conditions and enabling factors of private governance institutions, with a special focus on those cases constituted by profit and non-profit private actors. Based on a solid understanding of private governance institution's functions within the broader context of global governance and the decisive factor leading to private rules, future research could well focus on sensitive questions, such as their democratic legitimacy or their impact on IR theory in general.

4 Conclusion

In this paper I have argued that we can make sense of many emerging phenomena in global environmental politics by applying the concept of governance institutions to denote changes in both the activity of private actors and the outcome of their cooperation, which is increasingly resulting in systems of rule beyond the international political system. Although some approaches in international relations and international political economy do address private institutions, the phenomenon still lacks a coherent and encompassing approach, which unifies competing views to improve our theoretical and empirical knowledge under one conceptual framework. The core questions are why and how private governance institutions emerge, which functions they fulfil and what kind of inter-linkages with the international system can be observed.

This paper first argued that global governance is the appropriate optic to analyse basic trends that separate the study of global environmental politics from more traditional accounts of international relations. First and foremost, it is the growth in number and influence of non-state actors – including non-profit organisations, inter-governmental organisations, transnational corporations, global business associations, scientific networks, and broad advocacy coalitions – that profoundly alter the state-centred structure of world politics. Second, the multiple spatial and functional interactions of policy levels necessitate a multi-level rather than a one-dimensional approach. Third, new mechanisms different from hierarchical modes of steering increasingly produce and maintain global public goods. Finally fourth, new spheres of authority, many of them private, alter the institutional structure of environmental politics on the global scale. Based on these considerations, the concept of private governance institutions encompasses one of the most challenging developments in contemporary politics, namely the establishment and impact of private rule-making bodies, initiatives, partnerships, and organisations active in fields ranging from biodiversity over natural resources to general environmental performance.

In contrast to other concepts of partnership put forward in the literature, such as private inter-firm regimes, green alliances or private organisations, the concept of private governance institutions links together the three key features of the phenomenon in question: first, the private nature of the respective body, distinguishing it from hybrid private-public partnerships; second, the distinct mechanisms of rule-making, clearly excluding forms of rule-implementation or service provision by private actors; and third, the institutional character, allowing for highly formalised organisations and less formalised initiatives alike. This rather general concept allows the inclusion of different institutional types of private rule-making bodies. Empirical examples referred to in this paper include inter-firm networks (private sector governance institutions), non-profit networks (civil governance institutions), and those between the profit and the non-profit sector (private-private governance institutions).

The remainder of the paper highlighted some of the core functions of governance institutions as well as some of the possible explanations for their emergence. Next

to standard setting, private governance institutions perform a wide range of functions, from producing and disseminating information to monitoring compliance and providing institutional models for other actors and other issue areas. These additional functions can be summarised as brokering knowledge and providing a solution. Analytically, they are the functional outcome of private governance institutions. The final section on the emergence of private governance highlighted some preliminary assumption found in the literature, mainly with respect to private sector governance institutions, which have received at least some scholarly attention. I conclude that future research on the emergence of private governance institutions should focus on those examples that bring together profit and non-profit organisations in a multi-interests arrangement as the hard cases of private governance.

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