

# CREATIVE MULTILATERALISM

## WORKSHOP REPORT

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The workshop on Creative Multilateralism was held at the George Washington University's Elliott School of International Affairs on 16 May, 2016. It was a collaboration between among the Sié Chéou-Kang Center for International Security and Diplomacy and the US State Department's Multilateral and Global Affairs Directorate in the Bureau of Democracy, Human Rights and Labor. It was supported by the University of Denver and the Carnegie Corporation of New York; space was generously donated by the George Washington University. The content of this report reflects the interpretation of the discussion by the workshop organizers.

## BACKGROUND

The Sié Center, with support from the Carnegie Corporation of New York and in conjunction with the State Department's Multilateral and Global Affairs Directorate in the Bureau of Democracy, Human Rights and Labor, convened a one-day workshop entitled "Creative Multilateralism" at the George Washington University May 16, 2016. The purpose of the workshop was to better understand an emerging form of governance illustrated by a variety of relatively new, flexible, and issue-specific initiatives collectively referred to as creative multilateral organizations (CMOs). The workshop focused particularly on CMOs seeking to further human rights goals, including: the Voluntary Principles for Security and Human Rights (VPs), the Community of Democracies (CD), the Extractive Industries Transparency Initiative (EITI), the Freedom Online Coalition (FOC), the Open Government Partnership (OGP), the Public-Private Alliance for Responsible Minerals Trade (PPA), and the International Code of Conduct for Private Security Service Providers Association (ICoCA). The workshop set out to explore the unique potential and limitations of this form of cooperation and, particularly, how the US engages with these initiatives. A group of practitioners familiar with these organizations, alongside academics with expertise in new forms of global governance, participated in four panels: (1) Roots and Reasons, (2) Structure and Processes, (3) Effectiveness, and (4) Recommendations for Research.

## INTRODUCTION

The term "creative multilateral organization" refers to a variety of organizational arrangements (also referred to as regulatory standard schemes or multi-stakeholder initiatives) that have organizational form and resilience, but with different structures or members than traditional UN-based or regional multilateral bodies.<sup>1</sup> CMOs have many different operational models and objectives. It is unclear whether we can or should impute a single objective, model, or valuation of CMOs, but it is clear we should be doing more to study and understand their dynamics. There are a number of ways in which CMOs may be valuable to the US government. For instance, CMOs can be a means for the US to socialize and strengthen cooperation with other states, leading to potential incorporation in other more formal, multilateral bodies. More broadly, they can be a tool to improve domestic practices in other states and often provide mechanisms for governance when existing tools are not fit for the purpose. Finally, whether intentional or not, most of these organizations provide opportunities for civil society, private sector, and other non-governmental actors to participate more directly in transnational policy (whether it be law, regulations, standards, or best practices).

Workshop participants grappled with how analysts might best think of CMOs and what common lessons could be drawn from this particular group. In one participant's terms, CMOs can be likened to a "small ball" strategy in baseball – bunts and steals rather than a swing for the fences. The increasing use of these small ball strategies in global governance is a development worthy of attention, but its results may be subtle and difficult to discern or attribute to particular CMOs. Others noted that while the initiatives on the table were significant, and the US government played a role in each of them, a variety of other multi-stakeholder initiatives would also seem to be relevant (including the Global Network Initiative (GNI) and the Fair Labor Association (FLA)). Finally, participants raised a number of additional issues including the role of CMOs in helping or safeguarding civil society, costs in terms of resources and lost opportunities, and risks or unintended consequences.

## SECTION I: ROOTS AND REASONS FOR DIFFERENT CMOs

The first panel covered the founding and logic behind the launch of various CMOs, focusing particularly on the CD, FOC, ICoCA, and VPs (with some discussion of EITI). In comparing why, how, and when this type of collaboration begins, the discussion generated several relevant points. First, many CMOs were a response to crises (the VPs, the ICoCA, and EITI), perceived openings (the CD), or a combination thereof (the FOC). Other began with aspirational ideas rather than clear goals—both the CD and the FOC fall in that category

—while others formed to solve a particular problem such as the VPs and the ICoCA. Second, the relevant stakeholders that make up CMOs can be quite different. Some, such as the CD, have only governments as decision-making members (though there is at least some role for civil society organizations – CSOs – in all). Others, like the VPs, include governments, civil society groups, and companies. Many CSOs made up only of governments are “big tents” that aim to attract governments that may be moving toward human rights goals into the larger rights-respecting family, and others form around a core of like-minded governments with more similar approaches. Third, in some instances, prospective members work to negotiate clear governing structures at the beginning, while for others founders opt to pull in stakeholders at the beginning and develop governance mechanisms further down the line. There may be costs and benefits to each approach. Lower coherence at the start can lead to challenges and reform later, as with the VPs. Establishing governing mechanisms from the start, however, can take a long time. The EITI took four years to get going given its organizers’ determination to develop these structures. And while the ICoCA developed an oversight mechanism soon after the ICoC was signed, it is still working to finalize its procedures. Finally, the initiatives under review were founded over a fifteen year time period. In some cases this allowed the founders of one to learn from perceived errors of others.

The CD was founded in 2000 to foster mutual support among democracies. An initial convening group of six diverse countries (the US, Poland, Chile, South Korea, South Africa and India) sought to create a common set of democratic and human rights principles that went beyond those recognized in UN documents and conventions. One hundred and six countries signed the Declaration at Warsaw in 2000 and committed to support emerging democracies. However, there was little consensus among these 106 about just what they were signing on to. The CD developed a governing structure, including a permanent secretariat, but the lack of consensus over its objectives led it to be nearly moribund, mostly a talk-shop, by the end of its first decade. The Vilnius Declaration on July 1, 2011, restructured the convening group to become a governing council of 28 members focused on action rather than unanimity.<sup>2</sup> In 2012 the CD established the LEND (Leaders Engaged in New Democracies) network under one of its working groups. Much of the success of reform is owed to the participation of civil society through the steering committee.

The VPs were also established in 2000 in response to allegations that American, British, and other extractive companies abused, or were complicit in the abuse of, human rights in order to secure their operations. It aimed to establish principles through which extractive companies could secure their operations while ensuring respect for human rights. Several motivations led to the founding. The US and UK governments sought to address the challenges presented to and by multinational extractive enterprises in complex environments. Companies operating in these areas sought to avoid such abuse and find a standard they could follow to generate security (via public and/or private security forces) that would meet human rights concerns. Civil society also wanted a human rights standard to which they could hold companies accountable. Key to their development was a willingness on the part of both companies and civil society groups to accept one another’s bottom line. Due in part to the need to finalize the principles before the end of the Clinton Administration, the VPs were launched with a very loose organizational structure and no clear mechanism through which to hold a signatory company to account for its behavior. In response, a more formal structure, including a secretariat, was established, and there has been incremental progress toward accountability; but many continue to see its governance and oversight functions as incomplete.

The ICoCA was the culmination of what began in 2005 as the “Swiss Initiative” to address increasing concerns about private military and security companies (PMSCs). The Swiss Initiative brought together 17 governments as well as PMSCs and civil society groups to investigate state responsibilities with respect to PMSCs under existing international law. The first accomplishment was the Montreux Document, signed in 2008, that restated existing, relevant legal provisions based on international humanitarian law (IHL) and human rights law, and identified best practices for governments (it now has 53 government and three IO signatories). At the end of the Montreux Document process, participants called for the creation of an International Code of Conduct (ICoC) for private security companies as standards for their behavior were not clearly laid out in IHL. The

ICoC was then negotiated and eventually signed in 2010. It was followed by a three year process (involving government, company, and civil society stakeholders) to develop an oversight and governance mechanism: the ICoC Association (ICoCA). The ICoCA is now functioning and is in the process of finalizing its certification, monitoring, and complaints procedures.

The FOC was founded in 2011 at The Hague. In the wake of the Arab Spring, the US and 15 other founders that self-identified as setting a high standard for advancing internet freedom and protecting human rights online wanted to further that standard. The FOC's main purpose was to serve as a loose contact group for governments and to foster coordination when internet issues came up at various UN forums to accomplish this goal. The FOC also committed to criticizing clearly repressive practices by non-members and urgently advancing internet freedom. This urgency, though, meant that many important details were not fleshed out – from funding to institutional support. It has since grown to 30 countries and includes several additional work streams. Over time, however, the organization has struggled with how to hold members to account when there have been perceptions of backsliding. The Snowden disclosures in particular were identified as an outside event that helped shift the focus to the practices of Coalition members. The FOC is still struggling to find a stable institutional footing, and recently underwent a five-year strategic review to set a path toward addressing some of these issues (Morgan 2016).

The CD and FOC have many similarities. They have only government members, with some civil society input. The CD has a civil society steering committee, and the FOC includes civil society organizations in its working groups and annual conferences. For the CD, being primarily government-run has caused some problems; government coordination is cumbersome and often leads to decisions at the lowest common denominator. The steering committee for civil society has played a dynamic role in pushing the initiative forward. The FOC has not developed a formal mechanism to incorporate non-governmental stakeholder input, although it has developed multi-stakeholder working groups and is considering how it might more formally incorporate outside input as part of an ongoing strategic review.

Both organizations have struggled with membership criteria. The CD began with an unclear process for admission and membership, though there was an expectation that invited governments signed on to its principles in the form of non-negotiated benchmarks. The convening group enlisted civil society, along with external sources and databases, to provide recommendations for what countries should do to meet the organizations' principles and benchmarks, and even to evaluate whether they were meeting these obligations. Although some governments were annoyed by this, it pushed the organization to develop clear criteria for membership. The coup in Mali, for instance, led to a non-controversial decision that the country no longer met the CD's standards. The FOC has had similar difficulties figuring out how to evaluate if a government is meeting international norms on internet freedom and human rights online.

The VPs and ICoCA also have parallels. Both involved non-governmental organizations (NGOs) and companies as participants and members from their inception. The ability of these different stakeholder groups to willingly understand each other's perspectives and come to agreement on both legitimate security needs and requirements that operations align with human rights standards has enhanced the functioning of these organizations. But there have been struggles in each. The VPs took a big tent approach for civil society organizations, which some claim weakened the civil society pillar. The ICoCA implemented much stricter criteria, requiring civil society organizations to be committed to human rights advocacy, leaving no room for humanitarian NGOs who may have more operational knowledge of private security companies. Humanitarian NGOs, non-governmental clients of private security companies (including extractive companies), and other subject matter experts are all lumped into an observer category with few meaningful ways to participate. This has become more problematic as non-governmental clients' share of the private security market has grown. Finally, presenters mentioned the importance of distinguishing between the founding period and subsequent "reform" or ongoing governance periods.

A variety of more general considerations are of note. One participant suggested that it was worth thinking through whether or not it makes sense to have formalized processes from the beginning. Formal requirements for consensus may lead to paralysis if there are not mechanisms for movement without consensus. For example, though the GNI and FOC are both consensus-driven, only the GNI has mechanisms in place for action when consensus is not reached. Having ways to act without consensus can lead to various benefits. Sometimes those in the minority are more interested in keeping an issue alive and on the agenda than on curtailing action altogether.

The Kimberley Process was offered as an example of an organization with stringent accountability mechanisms—the ability to suspend a country from international diamond markets—under a fairly limited mandate. Participants pointed out that it is interesting that this mechanism and model have not been replicated by other organizations. Of the CMOs under consideration at the workshop, there were differences between those that had clear domestically-oriented obligations and enforcement mechanisms (e.g., EITI and OGP) and those that operated on a more “global” level. The former tend to be focused on setting standards and producing change in government conduct. OGP in particular uses a model of CSO and government collaboration to develop concrete commitments targeting open government reforms. The implementation of these commitments is then evaluated every year by the Independent Reporting Mechanism. This annual appraisal is an important tool for instituting accountability at the country level, and ensuring follow-through on commitments made in action plans. Those focused on corporate conduct (e.g., VPs and ICoCA) are perceived to need clear rules for suspension and/or termination in order to provide credible accountability.

Several participants emphasized the importance of reasonable expectations when assessing CMOs’ effects. Participants, observers, and critics are often impatient with CMOs, not recognizing early vulnerabilities and the time it takes to develop trust among members. The process of involving different stakeholders in developing and implementing standards and benchmarks can be useful. Even if the process is tumultuous, it can help to build trust. Companies in particular take time to feel comfortable with the idea of accountability to outside stakeholders. They may also be hesitant in initial phases to work with CSOs. Discussions of ICoCA confirmed this point, as it took at least three years of interaction between particular individuals working on behalf of companies and CSOs before they could reach agreement on critical threshold issues related to governance.

The panel ended with a discussion of more foundational issues. Some suggested that we need to come up with several *models* rather than one particular model for CMOs. Other participants voiced concerns about this tendency to jump to discussing models without first determining whether we should create CMOs and why. According to some, the thresholds for creating CMOs should be high. These comments reflected uncertainty about whether CMOs are worth the time and resources the US government and others have put into them. Perhaps standards could be set and objectives met in other ways in their absence. There was also some discussion of when CMOs should be suspended. When should stakeholders recognize that their organization is no longer a good use of everyone’s time? And when CMOs have met their goals, should they simply “die” at that point?

## SECTION II: STRUCTURE AND PROCESSES IN DIFFERENT CMOs

The second panel focused on the particular details of each CMO, with an emphasis on the elements that worked well and those that posed operational challenges for the organization. The CMOs discussed include the Communities of Democracy, the Freedom Online Coalition, the Extractive Industries Transparency Initiative, the International Code of Conduct Association, and the Voluntary Principles. Details of each are outlined in the charts that follow.

Communities of Democracy	Objective and Strategies	Membership	Governance	Funding Sources and Challenges	US Government Role and Support	Operational Challenges	Relationships with Other Organizations
	<ul style="list-style-type: none"> <li>Common goal: "Supporting democratic rules and strengthening democratic norms and institutions around the world" (Warsaw Declaration)</li> <li>Practical Goals:               <ol style="list-style-type: none"> <li>Promote civil education</li> <li>Support civil society and independent media</li> <li>Work with relevant institutions and international orgs.</li> <li>Assist one another in economic and social dev.</li> <li>Collaborate in int'l and regional institutions aimed at promoting democratic governance (esp. UN)</li> </ol> </li> <li>Working group initiatives</li> </ul>	<ul style="list-style-type: none"> <li>All parties to the Warsaw Ministerial Conference in 2000 are members</li> <li>Intergovernmental with civil society, private sector, and parliamentarian participation</li> <li>Evaluated by the governing council through consensus over 2 years</li> <li>Self-selective</li> <li>Requires a commitment of active support</li> <li>Suspension requires a two-thirds vote</li> </ul>	<ul style="list-style-type: none"> <li>Three Main Bodies:               <ol style="list-style-type: none"> <li>Single country Presidency with a term of 2 years</li> <li>Governing Council of 28 countries</li> <li>Permanent Secretariat led by Secretary General that supports the President</li> </ol> </li> <li>Working Groups:               <ol style="list-style-type: none"> <li>Enabling &amp; Protecting Civil Society</li> <li>CD Governance and Effectiveness</li> <li>Education for Democracy</li> <li>Elections</li> <li>Promoting Freedom of Opinion and Expression</li> <li>Women and Democracy</li> </ol> </li> <li>Int'l Steering Committee consisting of 27 leaders of civil society organizations led by the Chair</li> <li>Council for a Community of Democracies serves as the ISC Secretariat</li> </ul>	<ul style="list-style-type: none"> <li>US gov't is the largest source</li> <li>Donations in the form of people and or money</li> <li>LEND Network</li> </ul>	<ul style="list-style-type: none"> <li>US heavily involved</li> <li>US behind the founding and currently President</li> <li>US is currently co-chair of the Promoting Freedom of Opinion and Expression working group</li> <li>US helped to reform and revitalize initiative</li> <li>NOTE: the US has always been significant but remained in the background; no longer the case</li> </ul>	<ul style="list-style-type: none"> <li>Difficult to hold countries to standards due to self-evaluation</li> <li>Difficult to keep countries active in their commitments</li> </ul>	<ul style="list-style-type: none"> <li>No institutionalized relationships with other CMOs</li> <li>Trying to work with OGP</li> <li>Trying to ramp up work in the UN (esp. regarding the Guiding Principles on Business and Human Rights)</li> <li>Increasing corporate outreach</li> </ul>

Objective and Strategies	Membership	Governance	Funding Sources and Challenges	US Government Role and Support	Operational Challenges	Relationships with Other Organizations
<ul style="list-style-type: none"> <li>Group of governments committed to working towards global internet freedom and protecting human rights – free expression, association, assembly, and privacy online</li> <li>Objectives are less specific, but center broadly on external coordination and international accountability</li> <li>Strategies are less specific, with members generally working together through joint FOC activities and adherence to the Founding Declaration</li> </ul>	<ul style="list-style-type: none"> <li>One level of membership</li> <li>Countries apply to the Chair country and the founder</li> <li>Applications assessed based on:                             <ol style="list-style-type: none"> <li>Domestic record regarding human rights online</li> <li>The country's int'l voting record on Internet freedom</li> <li>Whether the country has been proactive in furthering Internet freedom</li> </ol> </li> <li>FOC favors geographical diversity</li> <li>Currently consists of 30 government</li> <li>Highly engaged members include Friends of the Chair</li> <li>Lacks a mechanism for reevaluation of members</li> </ul>	<ul style="list-style-type: none"> <li>30 Gov't Members</li> <li>Coalition Chair with a one year mandate handles day to day coordination and diplomatic support</li> <li>Chair assisted by the Friends of the Chair, consisting of 9 FOC member countries</li> <li>Multi-stakeholder Working Groups:                             <ol style="list-style-type: none"> <li>An Internet Free &amp; Secure</li> <li>Digital Development &amp; Openness</li> <li>Privacy &amp; Transparency Online</li> </ol> </li> <li>FOC Support Unit provides administrative and coordinative assistance, currently held by Global Partners Digital (UK)</li> </ul>	<ul style="list-style-type: none"> <li>No funding required for members</li> <li>Voluntary and ad hoc funding</li> </ul>	<ul style="list-style-type: none"> <li>US is the driving force behind FOC</li> <li>Serves on the Friends of the Chair group</li> <li>Is a member of all three working groups; although it has not served as Chair</li> </ul>	<ul style="list-style-type: none"> <li>No mechanism for evaluating performance by members has led to similar problems as CD regarding the difficulty of holding countries to the standards</li> </ul>	<ul style="list-style-type: none"> <li>Coordinates with certain UN bodies</li> <li>Local chapters at various UN venues that are largely ad hoc</li> <li>Natural overlap with GNI but no structural connections</li> <li>Issues with potential duplication as field of internet freedom has expanded rapidly</li> </ul>

Objective and Strategies	Membership	Governance	Funding Sources and Challenges	US Government Role and Support	Operational Challenges	Relationships with Other Organizations
<ul style="list-style-type: none"> <li>Promote accountable management of natural resources:               <ol style="list-style-type: none"> <li>Reduce corruption</li> <li>Increase transparency</li> <li>Reduce violence</li> <li>Empower civil society</li> </ol> </li> <li>Seeks to:               <ol style="list-style-type: none"> <li>Strengthen gov't and corp. systems</li> <li>Inform public debate</li> <li>Promote understanding</li> </ol> </li> <li>Addresses governance issues:               <ol style="list-style-type: none"> <li>Allocation and registration of licenses and contracts</li> <li>The owners of operations</li> <li>Fiscal and legal arrangements</li> <li>How much is produced &amp; paid</li> <li>Where revenue is allocated</li> <li>Contribution to the economy</li> </ol> </li> <li>Strategies reflect a multi-stakeholder approach</li> </ul>	<ul style="list-style-type: none"> <li>Currently 50 member countries</li> <li>States apply for membership and are given time to become compliant, including req. for:               <ol style="list-style-type: none"> <li>Transparency</li> <li>Accountability</li> <li>Multi-stakeholder implementation</li> </ol> </li> <li>Tiered Structure:               <ol style="list-style-type: none"> <li>Compliant Members meet all req.</li> <li>Candidates are members not yet compliant but moving towards</li> <li>Suspended Members who become non-compliant or fail progress</li> <li>Delisted Members are suspended to take corrective measures</li> </ol> </li> <li>National multi-stakeholder groups implement but don't have membership</li> </ul>	<ul style="list-style-type: none"> <li>International Management consists of the Secretariat and the Board:               <ol style="list-style-type: none"> <li>Secretariat based out of Oslo, Norway responsible for day-to-day operations</li> <li>Board elected by members upholds the Standard by monitoring and assessing progress within countries</li> <li>Board meets with full members every three years</li> </ol> </li> <li>Three Step Implementation:               <ol style="list-style-type: none"> <li>National Multi-Stakeholder groups, consisting of gov't, companies, and civil society, decide how the EITI process occurs within their country</li> <li>Information about governance of the sector is reported annually (and audited) alongside recommendations for improvements</li> <li>Information is widely disseminated to inform public debate followed by recommendations</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>Primarily from gov'ts and corporations, with each paying 50% on a voluntary basis</li> <li>Ad hoc</li> <li>CSOs pay nothing</li> <li>Facilitated through the creation of a World Bank trust fund</li> </ul>	<ul style="list-style-type: none"> <li>Launched by UK, but the US has been a supporting country from the beginning</li> <li>Under Obama, became one of the first supporting countries (Norway was first) to commit to becoming an implementing country.</li> </ul>	<ul style="list-style-type: none"> <li>Challenges in terms of secretariat capacity and mandate, esp. as membership and systems have expanded</li> <li>Funding formula has the unintended consequence of acting as a ceiling; as of April 2016 it is being reworked</li> </ul>	<ul style="list-style-type: none"> <li>General working relationships with regional and international organizations, including the World Bank trust fund, list of partner organizations, plus letter of support from institutional investors</li> <li>No formal ties</li> </ul>

Objective and Strategies	Membership	Governance	Funding Sources and Challenges	US Government Role and Support	Operational Challenges	Relationships with Other Organizations
<ul style="list-style-type: none"> <li>Multi-stakeholder initiative promoting and overseeing responsible conduct of Private Security Companies (PSC), specifically the International Code of Conduct</li> <li>Promotes the responsible provision of security services and respect for human rights and national and international law</li> <li>Articles of Assoc. mandate focuses on preventative strategies including:               <ol style="list-style-type: none"> <li>Certification</li> <li>Reporting, Monitoring, and Assessing Performance</li> <li>Handling complaints on alleged violations</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>Three Pillars               <ol style="list-style-type: none"> <li>States</li> <li>PSCs</li> <li>Civil Society Organizations (CSO)</li> </ol> </li> <li>Certification of corporate members reflects a commitment to human rights and humanitarian law principles</li> <li>PSCs are subject to audit by a third party</li> <li>CSOs, which aid in monitoring, must be independent &amp; have a reputation of human rights participation &amp; advocacy</li> <li>Persons or entities interested in participating may be granted Observer status at the discretion of the Board of Directors</li> <li>Government membership is contingent on being a Montreux Document participant</li> </ul>	<ul style="list-style-type: none"> <li>Four Main Bodies:               <ul style="list-style-type: none"> <li>Executive Director, who heads the Secretariat</li> <li>The General Assembly, made up in part of the three pillars of membership</li> <li>The Board of Directors is the executive decision-making body of the Association (a) consists of 12 members (4 elected from each of the three pillars of membership) (b) grants equal representation to each pillar of membership</li> <li>Secretariat, which operates under the Executive Director, currently includes 3-5 full time staff based in Geneva                   <ul style="list-style-type: none"> <li>Operations Manager</li> <li>Project Officer</li> <li>Administrative Assistant</li> <li>Project Assistant</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Primarily funded by members</li> <li>Company members pay a one-time joining fee (1,000 USD) plus annual dues determined by the company's revenue</li> <li>Civil Society members pay dues of 100 USD, which can be waived</li> <li>Member States make voluntary contributions</li> <li>Observers are required to pay an annual fee (amt. to be determined)</li> </ul>	<ul style="list-style-type: none"> <li>US has been a primary proponent from its inception and provides some funding</li> <li>Highly invested as it is the largest contractor of PSCs</li> </ul>	<ul style="list-style-type: none"> <li>Challenges arise from establishing a secretariat from scratch</li> <li>Board of Directors is currently developing methods to operationalize preventative strategies listed under the mandate</li> </ul>	<ul style="list-style-type: none"> <li>Created in the wake of the Montreux Document and state/IO members must pledge support for the MD and ICoC</li> <li>Recognized observer of VPs (and vice versa)</li> <li>Participates in relevant ISO and ANSI standards</li> <li>Supported by the Geneva Centre for the Democratic Control of Armed Forces (DCAF)</li> </ul>

Objective and Strategies	Membership	Governance	Funding Sources and Challenges	US Government Role and Support	Operational Challenges	Relationships with Other Organizations
<ul style="list-style-type: none"> <li>Set of Principles designed to guide companies in maintaining the safety and security of their operations within a framework that encourages respect for human rights</li> <li>Main objective is to promote and implement the VPs</li> <li>Strategies include:               <ol style="list-style-type: none"> <li>Risk Assessments of the Company's operating environment</li> <li>Engagement between companies and public security actors, and companies and private security actors</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>All parties to the Warsaw Ministerial Conference in 2000 are members</li> <li>Intergovernmental with civil society, private sector, and parliamentarian participation</li> <li>Evaluated by the governing council through consensus over 2 years</li> <li>Self-selective</li> <li>Requires a commitment of active support</li> <li>Suspension requires a two-thirds vote</li> </ul>	<ul style="list-style-type: none"> <li>All three pillars of Membership form a Steering Committee, which confirms membership by consensus or vote for prospective Company and NGO members               <ol style="list-style-type: none"> <li>Governments</li> <li>Companies</li> <li>NGOs</li> </ol> </li> <li>Secretariat handles day-to-day operations, the current Secretariat is a law firm based in D.C.</li> <li>Certain decisions are made by full plenary and others are made by the Steering Committee in consultation with the pillars</li> </ul>	<ul style="list-style-type: none"> <li>Dues annually assessed for gov't and corporate members; annual Government contributions adjusted based on IMF development index</li> <li>Annual budget agreement is agreed to by the Plenary at the Annual Plenary Meeting</li> </ul>	<ul style="list-style-type: none"> <li>Cofounded by the US and the UK</li> <li>Key actor in revitalizing the org. and launching governance reform</li> <li>Recently completed a term as Chair from March 2015-April 2016</li> </ul>	<ul style="list-style-type: none"> <li>Struggle with institutional harmony and consistency of vision during transitions between government chairs</li> <li>Developing multi-year strategies has helped transitions</li> </ul>	<ul style="list-style-type: none"> <li>Recognized by ICoCA, IFC, and ICRC as observers</li> </ul>

## SECTION III: THE EFFECTIVENESS OF CMOs

There are a variety of ways we might think about the effectiveness of CMOs. Academic analyses on supranationalism (Tsebelis and Garrett 2001), hard and soft law (Abbott and Snidal 2001), transgovernmental networks (Slaughter 2005), private governance (Cutler, Haufler, and Porter 1999; Hall and Biersteker 2002), regulatory standard setting schemes (Abbott and Snidal 2009), voluntary regulation (Potoski and Prakash 2009) and other emerging forms of transnational governance (Mattli and Woods 2009; Avant, Finnemore, and Sell 2010) all offer insights into the varying effects of these different forms of governance.

Though some analyses initially examined these schemes as alternatives to, or in tension with, governance undertaken by governments, more and more analysts recognize these enterprises as attempts to mobilize collective action—or governance—in situations where who governs is not only governments (Rosenau and Czempiel 1992; Avant, et al. 2010). What effect they have depends, in part, on how CMOs relate to other initiatives, including traditional multilateral organizations, working in related policy spaces, which often include government policy. In many such cases, CMOs emerge to fill a gap in governance. The government model of governance is not fit for all purposes (Cerny 1995). This is especially evident with internet rights issues, where the private sector owns and operates much of the infrastructure and is responsible for many aspects of governance. And efforts to support democratic practices in emerging democracies can also be seen as filling a governance gap – as can attempts to set standards for security practices that support human rights for various actors.

The term “effectiveness” may not be the best language to describe what we want to know. It suggests that we can add up the relative benefit of what may be a wide variety of different outcomes. We might more appropriately focus on effects—describing what they are and assessing them individually. There are a number of ways to cut this. We could examine an initiative’s effect on process. This could mean assessing its impact on things like inclusivity, democracy, or legitimacy (Mattli and Woods 2009: 5-12). We could also analyze effects by asking who is participating and how participation impacts their credibility, influence, objectives, and tactics. Or, we could evaluate its output—does it manage to “get something done.” This could mean increasing the visibility of an issue or generating new rules, or better monitoring—progress in any step of the governance process (Abbott and Snidal 2009, 46; Avant et al. 2010, 2).<sup>3</sup> We could also evaluate its broader impact on the more general outcome. This is often measured against the initiative’s founding goals—did it solve, or make progress toward solving—the problem that generated the need for governance in the first place (Drezner 2007, 13).

Evaluating effects could be quite useful for recognizing trade-offs that CMOs might generate. They may lead to increased visibility or new rules, for instance, but not in a way that engenders democratic accountability. Much thinking about how democratic processes work is rooted in the “government” model of governance. How do we think about democratic processes when corporations such as Google affect people across and outside of polities? It is common to think of transnational governance schemes, particularly those involving non-state actors, as prone to significant democratic deficits (Keohane 2002). But governments accountable to people in one geographic space may not represent broader collective interests, especially those outside that geographic space. We could draw inspiration from those who have examined the concept of agonism to understand global politics (Mouffe 2013).<sup>4</sup> Rather than searching for consensus, this view sees agreement on the contestation surrounding a multiplicity of voices and views as a way of gaining legitimacy. This may also better reflect the nature of multi-stakeholder initiatives, where diverse participants have different and sometimes competing goals.

Focusing more on the governance process than its outcomes could also be useful for examining CMOs. We might borrow from the management literature and examine the interrelated processes of forming (creation of a collective effort), storming (working through conflicts that challenge roles and boundaries), norming (establishing and enforcing expectations for conduct), and reforming (occasionally revisiting these steps). As initiatives gain

experience and transform, different considerations of and concerns for success will develop, particularly in meeting standards.

In the ensuing discussion, one participant noted that some in civil society see any “voluntary” standards for companies that CMOs set as inherently illegitimate. But many others pointed out that this is shortsighted. Initiatives need to start somewhere; laws forcing companies’ adherence do not just appear. A value of MSIs is that they bring people together who normally wouldn’t talk to each other. Still, CMOs might give the illusion of legitimation and inclusion while actually shutting many actors out of the system. There might be benefits to having a small group of actors at the start, but we need to think about the long run issues surrounding the inclusiveness of these initiatives and how they hold participants to account.

The connections between a CMO’s effects, its accountability, and its legitimacy is worthy of much more thought. According to one participant, CMOs are, at some level, all part of an effort to make global politics more responsive to more constituencies. But they are not organized in the same way as representative democracies; the participants are often self-selected. Accountability and legitimacy are closely related and affect both inputs and outputs. For inputs, it matters who gets a seat at the decision-making table, and for outputs, the question is whether initiatives are producing what they say they are producing. CMOs may have problems with accountability based on the stakeholders being held accountable. The ICoCA, for example, is limited in holding companies accountable, because it does not have the force of national or international law (although it may have the ability to increase economic opportunities for its members). Transparency then becomes arguably more important.

Finally, a number of comments involved processes of change and critical junctures. Forms of CMOs change and their impacts on effectiveness depend in part on circumstances of origin and founding moments. CMOs’ purposes may change following particular events, such as for FOC after the Snowden revelations. Taking a long view, however, many agreed that they had seen changes they hadn’t thought possible, especially with respect to the expectations of young leaders and the way in which human rights are understood and taught in universities.

## SECTION IV: RECOMMENDATIONS FOR RESEARCH ON CMOs

There was consensus among the workshop participants that we need to understand much more about the purposes, broadly construed, of CMOs generally. Why have these governance forms proliferated? Some speculated that CMOs aimed to lessen the asymmetry in the international system by ratcheting up governance standards in areas where governments are falling short. Others suggested that CMOs can be laboratories that help us figure out what international norms should be in emerging areas. CMOs can also help to provide standards for operating across jurisdictions, especially when laws are lagging behind. We need research that includes why and how various models of CMOs are taken up around the world, including in indirect ways.

Next, it would be useful to better understand what effects different CMOs have. Do they engender harmonization? Of law? Of practices? How do they affect different stages of the governing process (visibility and agenda setting, rule or policy making, evaluation and monitoring, adjudication, etc.)? Are they to be understood as complementary to government policy or to other initiatives (EITI and the Dodd-Frank legislation may be a useful case for the former, the VPs and the ICoCA for the latter)? Or do they crowd out other initiatives or create the illusion of progress? How do they affect accountability? Of the process? Of the outcome? Among whom? Do they change who is in charge (who gets to hold accounts)?

An important element that might distinguish initiatives is whose behavior an organization is ultimately trying to impact. Is it governments (as with the CD, FOC and OGP), companies (as with the VPs and the ICoCA), or both? These often go together—EITI was designed to influence company decisions so as to improve the

behavior of governments. But CMOs trying to influence governments could also make more space for CSOs domestically (as is arguably the case with EITI and OGP), as well as in conventional multilateral fora (as is arguably the case with CD and FOC), via support for the practice that governments have an obligation to consult civil society organizations. For those targeting companies, we could learn from the FLA and the way procurement policies by the US government can have important impacts on an initiative's impact. Focusing on the immediate targets may give us some sense of the roles of different stakeholders and alternative strategies to enhance the conditions for success.

A number of questions can also be aimed to better understand the role of different actors—governments, civil society organizations, and/or companies—in CMOs. Who within governments, companies, and NGOs participate in and are responsible for these initiatives? How are issues of confidentiality handled in various organizations and how may that impact company and civil society participation? Who are the right civil society organizations to engage? It is often internationally funded ones at the table for CMOs, but more locally representative groups may have greater effects, and there may be less backlash against local than international CSOs. How do you keep CSOs engaged and at the table? Similarly, what do CMOs do for companies? CMOs can be risk management tools to avoid naming and shaming, and help companies build a more positive story. They can also provide assistance in complying with national or international tools. By better understanding why companies join CMOs we could encourage more participation. And why do governments participate in these initiatives? If, as was the sense in the room, more and more governance is being accomplished through these initiatives, are governments well set up to participate in these? Finally, how do non-Western governments, companies, and civil society groups view these initiatives?

A key issue to investigate is whether CMOs have a ratchet effect; in other words, whether they can combat problems of government or corporate backsliding. International Organizations (IOs) have value, many argue, because of these ratcheting effects that keep governments from going back on the policies they agree to. Do CMOs do this in similar or different (and better or worse) ways than more formal IOs? Do they accomplish a ratcheting effect on corporate behavior? There may even be diversity among CMOs on this point, with EITI (given its two stages of membership and the potential for states' demotions) having more ratchet effects than others.

Several participants noted the importance of stories, vignettes, or anecdotes that illustrate particularly important interactions that solidified cooperation among CMO participants, or where the interactions facilitated by a CMO generated outcomes that would not have happened otherwise. Some of these stories were unknown even to those who had been following these initiatives closely. Many agreed that collecting such anecdotes could be a particularly useful exercise.

Participants also discussed the benefits to be had from looking horizontally—to gain insights from CMOs in different issue areas. Much of the learning about best practices has been informal because little of this knowledge has been institutionalized. The environmental community might have voluntary standards and processes from which we might learn. Beyond this we need more stories of how the process unfolded in many different areas. Instead of assuming we have the answers or the right set of categories, we should adopt an openness in tone.

Finally, all agreed that focusing on resources is particularly important. How are different CMOs funded? When do they receive corporate support? Foundation support? Is funding tied to effectiveness? Who contributes—(governments? companies? why not civil society?)? There was a strong sense that “color of money” issues had a huge impact on the ability of US agencies to contribute to these initiatives. What could be done to provide more funding and flexibility, and how might such spending be targeted strategically? Is there a way around these problems through creative bookkeeping? If so, what are some examples? Or is there a potential need for mobilization around these kinds of initiatives to generate more appropriate US funding? If the latter, how might that happen?

## ENDNOTES

<sup>1</sup> For regulatory standard schemes see Abbott and Snidal 2009, p. 44. For multi-stakeholder initiatives see Hale and Held 2011, p 155. We chose the term creative multilateral organization to indicate a broad view of these initiatives rather than requiring them to have representation from government, civil society, and business.

<sup>2</sup> See: <https://www.community-democracies.org/Talking-Democracy/Ministerial-Conferences>; <http://www.humanrights.gov/dyn/the-community-of-democracies-vilnius-lithuania.html>

<sup>3</sup> Though it may be particularly difficult to measure the outputs of particular CMOs when they try to abolish bad practices (e.g., human rights violations/abuses), as it is sometimes a struggle to count something's absence.

<sup>4</sup> According to Mouffe (2013: introduction), "(t)he central task of democratic politics is to provide the institutions which will permit conflict to take an 'agonistic' form, where opponents are not enemies but adversaries among whom exists a conflictual consensus."

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