

TERMS OF ENGAGEMENT: HOW TO BETTER ENGAGE MULTI-STAKEHOLDER INITIATIVES

WORKSHOP REPORT



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The workshop “Terms of Engagement: How to Better Engage Multi-Stakeholder Initiatives” was held at the Josef Korbel School of International Studies, University of Denver from 15-16 January, 2015. It was a collaboration among the Sié Chéou-Kang Center for International Security and Diplomacy and the Daniels College of Business at University of Denver and the Centre for the Democratic Control of the Armed Forces (DCAF) in Geneva. It was supported by the Society for the Advancement of Management Studies, the University of Denver’s Social Science Foundation, and DCAF. The content of this report reflects the interpretation of the discussion by the Sié Center, the Daniels College of Business, and DCAF.

INTRODUCTION

Multi-stakeholder initiatives (MSIs) aim to generate sustained collective management around an issue.¹ However, the engagement of each type of participant—civil society organizations, businesses, and governments—in MSIs is somewhat puzzling. We frequently think of civil society organizations (CSOs) as principled organizations advocating for the best of all worlds rather than as partners to business and government. Similarly we imagine businesses as driven by “bottom line” concerns with profit rather than governance. Equally curious is the participation of governments in MSIs, where they may engage with non-state actors on a peer-to-peer basis rather than using a top-down regulatory approach. Yet MSIs are increasingly common tools for governing a wide range of transnational issues—even those with impacts on violence and conflict, where the primacy of states has traditionally been assumed. In January 2015, the Sié Chéou-Kang Center for International Security and Diplomacy at the Josef Korbel School of International Studies and the Daniels College of Business at the University of Denver, in collaboration with the Geneva Centre for Democratic Control of Armed Forces (DCAF), convened experts from government, academia, civil society, and the private sector to address three broad questions key to understanding how these different actors engage in MSIs and with what effects:

- What are the roles of CSOs, businesses, and governments in MSIs?
- What are the alternative models and trajectories of different MSIs?
- Under what conditions are MSIs likely to generate their intended effects?

The workshop focused specifically on a group of MSIs that have aimed to curb abuses in potentially violent arenas: the Kimberley Process, the Extractives Industry Transparency Initiative (EITI), the Voluntary Principles (VP) on Security and Human Rights, the International Council on Mining and Metals (ICMM), and the International Code of Conduct for Private Security Service Providers (ICoC). Participants examined the typical roles of actors fundamental to the three pillars common in MSIs, looked at the trajectory of these five initiatives, delved into common questions about resources, longevity, and institutionalization of MSIs, and finally focused on how we should best think about their relative effects, impacts, or success. This paper details the outcome of the workshop discussions.

SECTION I: ROLES OF GOVERNMENTS, BUSINESSES, AND CIVIL SOCIETY ORGANIZATIONS

Th Governments, businesses, and civil society organizations are commonly accepted as the “three pillars” of participants in MSIs. The workshop began with a discussion of the roles that these actors play and the challenges and opportunities they face. The discussion illustrated that all of these actors face trade-offs as they weigh the benefits and costs of participating in MSIs.

GOVERNMENTS

Governments are generally seen as more “stable and able” participants, and they are therefore uniquely positioned to play certain roles in initiating, institutionalizing, and implementing MSIs. If governments have capacity, authority, and perceived neutrality, then they can convene, mediate, and build bridges between other participants. In addition, government funding, particularly for civil society participation, can mitigate concerns that businesses are unduly influencing MSIs. Since governments participate in multiple MSIs across industries, they can also provide knowledge and help cross-pollinate between MSIs by sharing best practices. In addition, governments play a critical role in strengthening the impacts of MSIs by reinforcing standards through procurement policies, strategic endorsement in multilateral resolutions, speeches, and regulation itself. Indeed, governments’ interest in regulation can serve as either a carrot or stick to spur on MSI processes.

Governments are driven to convene or participate in MSIs as pragmatic, inclusive, less time-intensive alternatives to legally binding treaties or regulation. However, governments do face some risks in engaging with MSIs,

including jeopardizing the primacy of states as regulators. Many governments remain skeptical of the MSI model, which gives undue influence to non-state actors. Moreover, government funding for a particular initiative may bring into question the neutrality of the collaborative space. In order for governments to justify their participation in MSIs, they need to see measurable impacts, of which the timing and content may not coincide with business or civil society interests.

It is important, however, to consider the different capacities and roles of local governments (often in developing countries) and foreign governments (often in developed countries). For example, local governments can be critical players in implementation, but they sometimes lack effective enforcement capacity. Local governments may also be less than enthusiastic about MSIs that are critical of their practices. Some governments view the MSI model as “Western” and do not wish to participate.

Even in the developed world, different states can also play different roles based on their legitimacy and claim to authority. For example, with the ICoC, the Swiss government had an important convening role given its perceived neutrality, while the U.S. government incorporated the standards into procurement policies, which supported enforcement.

In addition, not all MSIs have government participants. The Global Network Initiative (GNI), for instance, does not have governments as members. Instead, companies provide investment and academic organizations contribute analysis and research.

BUSINESSES

Companies join MSIs for a variety of reasons. Certain industries and companies are threatened by the public perception that they are not upholding a commitment to human rights. Participation in an MSI to produce guidelines for promoting human rights — guidelines that become industry standards and eventually best practices — helps companies manage this public perception risk. For companies already achieving these standards, it is in their interest to “raise the bar” of performance standards to which all companies are held accountable. In order to make companies’ participation financially worthwhile and to change business behavior, clients (which may include governments) *must* agree to incorporate these standards into procurement and contracting requirements.

As with the other pillars, there is a wide range in the capacities of local and international businesses to participate. Local businesses may not have the financial resources to facilitate participation, and junior corporations might not share the same sense of public perception risks as larger, multi-national corporations.

CIVIL SOCIETY

Civil society organizations are often seen as the instigators behind MSIs. Indeed, CSOs often call media and public attention to human rights abuses which lead to the formation of MSIs. At the local level, CSOs might have low capacity, but they are deeply invested in local concerns. Participation in MSIs, however, is a challenging decision for many organizations. Civil society organizations, like some governments, face issues of reputational risk of being perceived as collaborating with companies. This risk can be life-threatening — in some cases, people have burned effigies of CSO representatives to protest their participation in initiatives perceived as promoting, such as the EITI. In other areas, severe repression of human rights activists makes participation impossible.

Where participation is possible, the presence of many different initiatives can make it difficult for CSOs to decide how to invest their limited resources. Additional barriers to CSO participation include lack of funding, capacity, access to information, and equality in decision making. At times, the lack of balance in MSI membership may also dissuade CSO organizations from participating. CSOs have particular contributions they can make to MSI processes, such as stakeholder analysis. However, they have concerns about how this information will be used and shared. They fear being used to legitimize a process in which they do not have full participation.

The other pillars can support CSO engagement through awareness, support, and equality. CSOs benefit greatly from financial and technical support from neutral sources to improve their capacity to participate. CSOs also

require clear and equal rules and roles. The process of dialogue and trust-building through which MSIs develop these rules and a common agenda is valuable and should be seen as such by all parties.

IMPACTED COMMUNITIES

CSOs are generally accepted as proxies or representatives for communities affected by the actions of companies and states. However, this is not always the case. Differences of class, language, and culture can mean that CSOs have difficulty communicating with communities and vice versa. In addition, affected communities are often in rural areas, whereas meetings and CSOs are concentrated in capital cities. CSO selection for MSI participation can be problematic; one study showed that in 7 out of 15 MSIs, the selection of CSO participants was influenced by governments. In addition to this government influence on selection jeopardizing the independence of CSOs, some CSOs felt they were not the right people to be at the table, which limited their participation and ownership in the process. As a result of this and other issues, local stakeholders are not aware of actions at the international level. A study by Global Rights demonstrated that stakeholders had very low level of awareness of the Voluntary Principles, despite regular interactions with participants in the initiative.² Getting full, equal participation from representatives of directly-affected communities is very challenging, but must be attempted nonetheless.

There are a variety of ways to gather input from affected stakeholders that do not necessarily involve membership. No MSI design will be perfect, and formal processes must be supplemented with active engagement. For instance, in the Fair Labor Association (FLA), members have been able to consult with unions about wage strategy; despite unions' hostility to the FLA, they can work together on a specific issue of common interest. In addition, working groups are going into the field to gather input at the local level. It is reasonable to ask communities to organize themselves, to identify their own representation — and it is important to do so, rather than avoid seeking their input. Other means of communicating at the local level include translating topics such as the Voluntary Principles into local parlance and conducting education through means such as street theater.

SECTION II: MSI MODELS AND TRAJECTORIES

The second and third panels of the workshop considered different aspects of how MSIs are designed and implemented, how they change over time, and what lies ahead. Given the number and diversity of MSIs, there was some debate among workshop participants about the utility of comparing and contrasting them. However, it is evident that specific MSIs reference and learn from each other. Despite their variety in scope and substance, MSIs must all address issues of design, purpose, membership, institutionalization, sustainability, resources, and governance.

Historically, MSIs appeared in the 1990s with the Forest Stewardship Council, the first global MSI. The early 2000s saw a large increase in MSIs such as the Voluntary Principles, the Kimberley Process, and EITI. This trend is continuing into the present with the International Code of Conduct Association (ICoCA), due diligence for the Organisation for Economic Co-operation and Development (OECD), and others.

We can analyze and learn from the different design features of MSIs, particularly around these questions:

1. How broad or narrow are the MSI's goals? How flexible are these goals over time?
2. Who are the members? Who represents affected communities? How equal is that representation?
3. What is the role of governments in the MSI? Are they participants or targets?
4. How institutionalized is the MSI? Is it a process or an organization?

These design concerns affect all organizations, of course. What makes MSIs distinct is the relationship between these factors and how that influences the *legitimacy* of the members and the MSI process in general.

GOALS AND PURPOSE

Every MSI struggles with how specific or broad its purpose is, partly because of the time it takes to get multiple stakeholders to agree. For an MSI with limited goals, it is easier to agree, but its limited scope may cause frustration, and it can be difficult to expand this scope later. The Kimberley Process started with narrow goals that were shared among their stakeholders. Over time, some stakeholders wanted to expand the goals. An inability to do so ultimately undermined the legitimacy of the process, and some members withdrew.

The EITI is also narrow in scope — it addresses transparency of revenue through reporting, but it does not address other forms of corruption in local contexts, which frustrates some stakeholders. For instance, research in Guatemala demonstrates that even after EITI-certification, there was still severe corruption, particularly around government inspection and approval of extractive sites. Smaller companies do not have as much exposure or reputational risk for violating correct processes, and governments often lack the capacity, resources, or political will to carry out inspections. As a result, even though a country is EITI certified, stakeholders may be frustrated that there is not more progress towards the broader goal of reducing corruption. This is particularly frustrating to civil society stakeholders because there are multiple initiatives, and CSOs must make trade-off decisions about which ones to join.

Unlike the Kimberley Process, the EITI is demonstrating some flexibility and attempting to address these complaints with new rules, which changed in 2011. The role of CSOs was strengthened to enable their free, full, independent, and active participation. Candidate countries are required to have a multi-stakeholder group in place and a multi-stakeholder-developed work plan. The first EITI validation under the new set of rules will take place in Azerbaijan.

On the other hand, MSIs with vague missions struggle to develop internal agreement on several questions around purpose—who and what are we here to serve? For instance, the Voluntary Principles (VPs) initiative still struggles with these questions. Without clearly defined objectives, it is difficult to demonstrate value to both external actors and to members as they weigh the personnel and financial costs of participation.

MEMBERSHIP

The effectiveness of MSI processes are shaped by the equality of roles and access of their members. The Kimberley Process only had states as official members; states delegated implementation to companies, and CSOs only had observer status. This unequal distribution of power undermined the Kimberley Process's goals.

Due to companies' longer time horizons, huge stake, and expertise, they are often the center of gravity of MSI processes, regardless of official structure. Full participation from CSOs increases the perceived and real legitimacy of the process, so resources must be invested into enabling this full and equal participation. Providing funding to CSOs in particular allows them to send the right individuals to meetings, rather than the individuals who are closest geographically but unfamiliar with the issues.

Resource requirements impact the membership of other participants as well. In the VPs, companies and governments pay dues, with governments paying on a sliding scale based on World Bank rankings. Resources and personnel are a struggle for some participants and prevent others from applying for membership, particularly smaller corporations.

One factor for all stakeholders is how much decision-making authority the representatives have; many members have to go back and convince headquarters in order to proceed with negotiations. This is an issue that should be openly addressed and transparent within stakeholder groups. Some stakeholders are also not at the table; in ICoCA, for example, not all private security clients are represented, only states.

Turnover and capacity building are also important issues around membership. Within the pillars, participants' ability to participate varies. Local governments might have limited capacity, and the needs and capacity of junior versus senior companies vary significantly. Turnover within all organizations is a chronic and pervasive issue. Having meetings of members within the pillars can help build capacity and also mitigate loss of institutional

knowledge resulting from turnover.

Growth in membership is also important to consider. Over time, the membership of an MSI has to be able to change. Some MSIs set rigorous standards for a small number of member companies/countries to implement. EITI, on the other hand, started with a very small membership during the negotiations, and membership has expanded in the implementation phase. Some MSIs might have a lower barrier to entry and many members, and then hope to ratchet up expectations, but in general this increase in standards does not occur.

The three pillar model is useful and can help create transparency around the distribution of roles and responsibilities in an MSI. However, the three pillar model also limits horizontal thinking; MSIs miss opportunities for organizations to identify common goals and work as a caucus that cuts across pillars. In addition, with the three pillar structure, a minority in one pillar can hold up progress. As an MSI evolves, that structure might become less relevant.

ROLE OF GOVERNMENTS

The role of governments within MSIs vary. As noted above, the GNI has no formal role for governments. On the other hand, some MSIs have a large role for governments. For instance, until 2006, the VPs initially required that a government join before its companies could sign on. Others, like the EITI, aim to affect government behavior. More generally, governments can play a role in shaping MSI models. In some instances, early adopters may have a greater influence while other states wait out the negotiation process before participating in a given MSI. Along with other actors, governments play a role in communicating expectations around the MSI, its scope, and how success may be determined. Governments can frequently affect the degree to which MSIs are enforced. Some also play an influential role in defining proper governance functions of MSIs and/or influence the legitimacy (or perceived legitimacy) of a given initiative through their support, participation, and messaging around the initiative.

INSTITUTIONALIZATION

Some MSIs develop into institutions over time, whereas others are self-limiting and end after negotiations conclude, such as the World Commission on Dams. When MSIs institutionalize, they do so in a variety of ways. The Kimberley Process has been slow to institutionalize, though it has started to increase monitoring and self-regulation. The EITI struggled from the beginning, but has become a more established organization.

The VPs have developed over time, including developing standard processes for decision-making when consensus cannot be reached. However, the VPs still struggle with an overall strategic direction because of inconsistent leadership; the government chair rotates every year. There is a strategic plan, but there are still questions about overall governance. With a steering committee and an outside secretariat, there is capacity to move and make decisions, but still no overarching direction.

The ICoCA has an executive director, but institutionalization brings into evidence certain tensions. On the one hand, the most efficient way to achieve a high number of objectives is to make executive decisions and divvy up tasks among stakeholders. On the other hand, that approach could jeopardize the trust and ownership that come with deliberative consensus-building and cohesive joint actions. This case highlights the importance of clear governance mechanisms that will shepherd the MSI through possible shifts in membership and scope.

TRAJECTORIES AND TRENDS

Workshop participants identified a number of trends in how MSIs are developing.

A Multiplicity of MSIs: Nesting or Competing?

With the growing popularity of MSIs, initiatives often overlap. Sometimes the existence of multiple sets of standards can reinforce norms. Several of the MSIs discussed at the conference reinforce one another as well as other initiatives, such as the United Nations Guiding Principles on Business and Human Rights. However, at times some stakeholders try to reinvent the wheel and create their own new standards in order to have a leadership role in

(or more control over) the process. While spearheading initiatives can have benefits for individual stakeholders, this redundancy can have negative impacts. In the coffee industry, the multiplicity of standards creates confusion among consumers and therefore downward pressure, as companies can choose whichever standards are least costly to adopt. Having multiple initiatives in the same space can also divide the already-stretched resources of participants and call into question the legitimacy of each initiative. Creating standards for MSIs could help deter redundant initiatives from launching. For example, ISEAL has a certification process for certification processes.

MSIs and Regulation

While sometimes legal regulation is viewed as an alternative to an MSI, more often it is the case that an MSI can feed into regulation. It is easier to get regulation passed to enact standards that have already been negotiated with the major players, particularly large companies. For example, the EITI helped demonstrate that there was multi-stakeholder consensus for addressing corruption and helped pave the way for Dodd-Frank legislation. In addition, through negotiating and implementing MSIs, stakeholders often develop specific best practices that can be built in to regulation. These practices are sometimes seen as more legitimate because they have been ratified by the MSI process.

Incorporating MSI-negotiated standards into legislation and procurement policies can also give stakeholders leverage. For instance, private security companies do not control their interactions with local stakeholders; the clients dictate these interactions. However, if risk assessments and grievance mechanisms are written into procurement language, companies are empowered to include them in contracts with clients. The adoption of MSI standards by clients is the driving factor in companies' implementation of those standards.

Local Initiatives

Local efforts related to MSIs are important for effectively adapting global practices to local contexts. For instance, using the Voluntary Principles as a framework, communities and companies can negotiate around issues that are within the scope of the VPs but that the international initiative is not equipped to address on a global scale, such as companies' employee housing. In many cases, these local efforts are completely unconnected with the formal transnational bodies. In both Peru and Colombia, local efforts drawing on the VPs addressed specific local concerns and cultivated relationships to address that concern in a way that was consistent with the VPs, but did not engage the VP initiative. These local efforts build relationships and facilitate communication, which can help prevent or de-escalate social conflict in a variety of ways.

In another model, local efforts can be closely connected to the MSI, like a franchise or syndicate which is true to its center but has greater involvement in a particular community. Issue-driven, adaptable local chapters of MSI initiatives could help make global MSIs more relevant to stakeholders. The EITI's requirement that an MSI be in place for countries applying for certification is one way to foster the development of these local groups. Yet, conference participants were wary of this model. Participants were most taken with the locally-grown models and discussed ways in which MSIs could lobby for policies that support their goals in local contexts in order to foster conditions for success. Worker-driven Social Responsibility (WWSR) is another model of stakeholder engagement. In the case of the Fair Food Program, farmworkers in Florida reached out to commercial buyers and then to farm owners to develop regulations for protection. This worker-driven initiative also has a worker-enforced monitoring program.

Flexibility

Given the wide array of MSIs and the different functions that MSIs take on over their life cycles, it was agreed that it is helpful to have flexibility built into an MSI from the beginning. This flexibility allows an MSI to adapt to changing circumstances and engage communities on the issues that matter most to them. For example, most communities care most about being involved with monitoring and reporting processes and perhaps less so about the specific details of certification processes. Membership could and perhaps should change as the focus shifts from negotiation to implementation, as well.

Away from Advocacy

Over time, there is often a shift in the type of CSO that participates in an MSI. Among CSOs, it is common to see more technical organizations coming to the table as major human rights advocacy organizations depart. Many large human rights organizations have left MSI processes due to tensions between their commitment to continual human rights improvement and the compromise necessary for participation in MSIs. In the long run, if MSIs continue to function, it is often with more technical, process-oriented CSOs at the table rather than advocacy organizations. While some workshop participants see this change in membership as a natural shift in the focus of the MSI, representatives of advocacy organizations pointed out that their departures are also partly due to the inherent imbalances that give companies greater control over the processes.

Long-term Resourcing

For MSIs to be sustainable, they must be able to demonstrate their impacts to members, all of whom are weighing the costs of participation against the return on their investments. Beyond the participants, those who provide resources and support for the processes must also be convinced of the effectiveness of MSIs. However, given the 10-30 year timeline of some processes, it is difficult to demonstrate impact, particularly given the shorter time horizons of most foundations who fund human rights organizations. In order to ensure the full future participation of CSOs, MSIs may need to consider funding sources like trust funds.

SECTION III: MEASURING EFFECTIVENESS

The Workshop participants agreed that MSIs regularly succeed in building trust, relationships, and shared understanding among members. These relationships often directly contribute to members' ability to prevent or mitigate conflict. In one case, when a government was considering taking military action against a group of artisanal miners, it called the VPs, which coordinated a conversation and precluded violent action. This case would be considered a success; however, it is difficult to truly quantify the value of these relationships or to demonstrate this value to external parties.

Workshop participants drew a distinction, therefore, between success, effectiveness and impacts. This distinction resonates with measurement tools such as the OECD framework for evaluating national regulatory mechanisms based on five stages: inputs, process, outputs, effects, and impacts. Most organizations struggle to measure even their outputs, much less their impacts. The lack of comprehensive baseline data across many sectors also complicates this process.

MSIs help to build capacity among CSOs, build understanding among companies, and strengthen the capacity of government to resist corruption and promote human rights. The inclusive nature of MSIs, in general, promotes a democratic exchange of ideas and participation in governance. Like building relationships, these can be considered successes of MSIs.

Most measures of effectiveness require clearly defined objectives, baseline data, and a system in place for measurement and evaluation with defined indicators. However, it is rare that all of these elements are present in an MSI. Defining these objectives and indicators is an intensely political as well as technical process.

MSI Integrity has developed a 50-page tool for evaluating MSIs specifically based on seven aspects of MSI design: scope and mandate, standards, internal governance, implementation (including monitoring, evaluation, and grievance), capacity to evolve over time, transparency and accessibility, and involvement of affected communities.³

Based on initial research, community involvement is a recurring theme in determining MSI effectiveness. In particular, grievance mechanisms are very important to communities. Effective grievance mechanisms, which are mentioned in the United Nations Guiding Principle 30, help bridge the gap between an MSI's standards and implementation and therefore help to maintain an MSI's legitimacy.

The legitimacy of an MSI ultimately depends on the impacts on affected communities. The fact that these impacts are so difficult to measure — and yet of such critical importance — points again to the need for greater community involvement and input. MSIs have additional impacts as well, for instance shifting the tone or focus of policy conversation. For example, the Montreux process helped to shift the nature of the conversation around private security contractors from sovereignty and financing to human rights.

CONCLUSION

Workshop participants agreed that while MSIs continue to face challenges over their legitimacy and sustainability, they are also likely to continue to shape governance around global issues, including in violent contexts. Participants in MSIs are learning from past experiences — that no pillar is monolithic, that broad participation is essential, that dialogue and agenda-setting are valuable albeit slow-moving parts of the process, that long-term resourcing is essential, that MSIs must be able to adapt over time, and that MSIs must invest in measuring their impacts and demonstrating their value. Measuring impact is difficult, but tools like the MSI Integrity evaluation process, OECD framework, and ISEAL certification may prove useful resources.

This focus on impact is one of several factors that are emphasizing the local over the global in MSI development. By adapting global frameworks to local contexts, stakeholders can develop ownership over MSI processes on the ground, with lower costs and greater opportunity for input from affected communities—the very people MSIs are often intended to serve. ■

ENDNOTES

¹ MSIs have many different functions and structures. We use this term broadly to describe processes or organizations that involve states, civil society, and the private sector to varying degrees.

² <http://www.voluntaryprinciples.org/wp-content/uploads/2015/01/Global-Rights-VPs-Baseline-Study-Nigeria-Ghana-Final-2014.pdf>

³ <http://www.msi-integrity.org/evaluations/tools-guidance/msi-evaluation-tool/>