

International Mining Regulations Through a Constructivist Paradigm

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Abstract. The creation of the Global Mining Initiative saw the CEOs of the world's largest mining companies come together from 1998-2002 to approach the social and environmental concerns voiced by many actors regarding the global impact of the mining industry (Tost et al., 2017). This paper shows that the creation and continued use of the Global Mining Initiative can be explained using a constructivist lens. By looking at the history of international mining regulations, constructivist explanations showcase how norms and cultures overtime encouraged the formation of institutions and relationships between stakeholders. The role of ideas, the impact of global norms on mining actors as well as mining actors attempts to influence global norms are explored. This allows for the showcasing of how the interaction between both actors and structures is not a one-way relationship, but one that changes given the interaction of all participants when looked at through a constructivist lens.

Introduction

Mining as a sector is intrinsically environmentally impactful, whether occurring on a small scale in a developed country, or on a large scale in a country with few mining regulations. The creation of the Global Mining Initiative saw the CEOs of the world's largest mining companies come together from 1998-2002 to approach the social and environmental concerns voiced by many actors about the global impact of the mining industry (Tost et al., 2017). The initiative sought to use scientific knowledge regarding sustainable mining practices, transmit information regarding these practices, and instill these norms so that they become acceptable corporate behavior in the mining sector (Dashwood, 2005: 978). The mining industries' participation and voluntary adoption of international conventions and norms speak to the need to look beyond a realist paradigm as has been done in the past with many other global governance networks such as those by Rhodes (1997), Reinecke (2000) and Waddell (2003). Thus, by taking a constructivist perspective, this paper will address "how and why [change] occurs, clearly specifying the actors and mechanisms bringing about change, the scope conditions under which they operate and how they vary across countries (Checkel, 1998)." As such, this paper argues that the creation and continued use of the Global Mining Initiative (GMI) can be explained using a constructivist lens.

Analyzing the worldview surrounding mining initiatives is important because any future attempts on the part of both state and non-state actors to influence global mining regulations create conditions in which they need to know how to work towards this goal for the best outcome. Viewing the creation of these regulations through a realist or liberal perspective cannot lead to the type of whole scale change that can create better sustainable development and environmental initiatives for the people and communities affected by

harmful mining practices. Instead, emphasis must be put on the norms, ideas, and cultures of all actors involved to affect change indeed. Constructivism, as a perspective, has been chosen given that it is not a state-centered approach to understanding international interactions. Additionally, without understanding the social and underlying conceptions of how companies/individuals wish to be seen in society, it is difficult to explain how these norms have come to be a part of the global narrative that exists today. Moreover, one cannot only understand actor behavior but the conditions that influenced that behavior. Only then can people and bodies interested in influencing how mining practiced today can have a better chance of success in continuing to push mining companies towards a cleaner, safer and more sustainable practices.

The scope of the essay will focus on the creation of international mining norms through the GMI and how companies both influence and are influenced by norms since its inception in 2002. Although other international mining regimes exist, the GMI represents the first and most significant of these reporting mechanisms (Dashwood, 2014). It is also notable as a non-state led initiative that restrained the actions of the industry it was created by. Within the essay, a short definition of constructivism will occur, followed by an examination of how the GMI came to be created. Finally, the role of ideas, the impact of global norms on mining actors as well as mining actors attempts to influence global norms will be explored. This structure will allow for the showcasing of how the interaction between both actors and structures is not a one-way relationship, but one that changes given the interaction of all participants when looked at through a constructivist lens.

Constructivism

Constructivism focuses on ideas of norms, the development of structures, the relationship between actors and structures, as well as how identity influences actions and behaviors amongst and between actors (Reus-Smit, 2005: 188). Norms themselves can shape an actor's character and actions, leading actors to specific activities that cannot only be explained through self-interest or power politics (ibid). A norm within this paper is defined as a "mutually shared beliefs of appropriate behavior, defined in terms of rights and obligations" (Dashwood, 2005: 983). These actors, therefore, act differently based on their own identity, culture, interests, and relationship with one another. Wendt writes, "states act differently towards enemies than they do towards friends because enemies are threatening and friends are not (1992: 397)."

Similarly, Alder (1998) says that where people go, how, when and why "is not entirely determined by physical forces and constraints; it is also a matter of shared knowledge, the collective meaning they attach to their situation, the rules, institutions and material resources they use to find their way and practices (321)." Actions are not just the result of autonomous self-interest, but it is through interpretation that these actions can showcase the importance of ideas and how they influence interactions in the world. The interpretation of actions through a lens of collective meaning helps to create the structures that surround actors (Wendt, 1992: 397).

Forms of identity within constructivism are explained based on interactions between actors, and it is through these interactions that over time those relationships develop (Ruggie, 1998: 859). For constructivists, this occurs not just on a state-to-state level but also between individuals, organizations, and other important institutions on a domestic and international level (ibid). This is key because, in order to analyze the creation of international mining regulations, a frame must be used that recognizes international cooperation beyond cooperation on a state level. Furthermore, simply looking at things through a liberal paradigm ignores that it is ideas that shape international institutions, and what specific actors feel is in their best interest is dependent on cultural, circumstantial and relational circumstances (Risse, 2000: 25).

Taking a constructivist perspective also means that different actions on the part of actors should be expected. Given differences in experiences, similarities but also varying viewpoints, constructivism can explain why actors who seem to have similar self-interest would pursue different actions (Hofferberth et al., 2011: 215). Important to explaining viewpoints is the strength of norms/ideas within a specific time timeframe. This is because changes in actors, ideas, and circumstances are situation (time) dependent (Finnemore and Sikkink, 1998: 889). What acceptable behavior in society is changing over time as norms change, leading to differences in the expected behavior of actors (Hofferberth et al., 2011: 214). Critical to the constructivist argument is the importance of looking beyond anarchy as an explanation for actor actions. Wendt explains this in light of the realist perspective on anarchy, “if today we find ourselves in a self-help world, this is due to the process, not structure. There is no logic in anarchy apart from the practices that create and instantiate one structure of identities and interests rather than another; structure has no existence or causal powers apart from the process (1992, 394).” The process is, therefore, vitally important to explain what occurs in the international system.

Actors in the international system decide how the system should operate, and their positions on issues can change over time (ibid). In contrast to realists and liberals, constructivism focuses on the making of set conditions in the international system (Ruggie, 1998: 877). Because of this significant difference in worldview, constructivism stands in contrast to the philosophical underpinning of all types of realist and liberal views of international relations. Thus, actors are not merely actors responding to a set of given conditions in the international system, but they play a part in creating them (Hofferberth et al., 2011: 214). This is important to emphasize given that many global governance networks are viewed from lens of inter-state governmental viewpoint in which it is solely as a result of either states directly or through appointed players (realist) or states and actors (liberal) that global networks can come together and function (Park et al., 2008: 207).

The properties of a system are because of interactions and interpretations of events in a manner that leads to viewing the world in a particular way, creating norms overtime (Risse, 2000: 27). Constructivists look at how norms develop, who advocates for norms, and who advocates for differing norms from the ones currently in place (Adler, 1998: 338). This is done in everyday international relations settings, or in more particular contexts such as the development of norms in international organizations. As Reus-Smith (2005) explains,

“identities are constituted by the institutional norms, values, and ideas of the social environment in which they act” (199). Thus, by looking at how norms emerge, how they affect states and non-state actors, as well as how these norms are then implemented by states internally, which norms will matter and under what conditions is particularly important (Hofferberth et al., 2011: 212). This paper will, therefore, seek to trace the importance of sustainable development and regulation when it comes to mining activities to showcase not just how mining actors adopted ideas of how they should operate, but also how given their time, relationships, culture and perspectives they advocate for very particular norms on an international stage.

The Adoption of Global Mining Regulations and Global Norms

The global focus on sustainable development became an important issue after World War II when a large acceleration of economic growth and resource extraction could be seen around the world (Tost et al., 2018: 975). In 1987, after decades of work by NGO’s, the UN’s World Commission on Environmental and Development drafted a definition of sustainable development often still used today, “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (WCED 1987, paragraph 1). This created a link between sustainable development and recognition of the ecological limits of the earth (Tost et al., 2017: 42). The definition was later expanded through the UN’s Conference on Environment and Development in Rio de Janeiro, which defined sustainable development as a result of three pillars, environment, social, and economic (UNCED 1992: 2). However, no mining companies were present at this conference beyond the overarching Business Council for Sustainable Development, of which only a few mining companies were nominal members (Dashwood, 2007: 132). By the early 1990s, while the UN, some states, and NGO groups had recognized the need for environmental and social regulations, most mining companies were still resistant to the idea (ibid: 131). Therefore, later actions by companies going beyond regulatory compliance, especially when not facing environmental public relations crisis speak to a shift in thinking on the part of mining executives compared to the past (Hofferberth et al., 2011: 2011).

The Global Mining Initiative was created in the late 1990s at a time in which anti-globalization movements were particularly strong, and as a result, NGO actors pushed to hold MNCs to account not just for their actions domestically, but also internationally (Dashwood 2005: 984). Global recognition from large NGOs and international organizations that economic globalization does not benefit everyone equally was critical in allowing NGOs to bring about a change in thinking about who should be held responsible for the environmental and human impacts of resource extraction (Hofferberth et al., 2011: 210). International nongovernmental organizations such as Transparency International, Human Rights Watch, Greenpeace, and Oxfam pushed for corporate social responsibility through the internet, in person, and through other activist methods (Vogel, 2010: 75). The 2002 UN Conference on Sustainable Development realized this on a larger scale, which

included NGOs, states, and for the first time in a direct manner, mining companies.

The launch of the GMI at this time can be explained through several factors, the initial one being increased awareness on the part of the mining industry of their bad image in the face of these changing norms, and the need for a global forum to engage with the global reach of new discourse on corporate responsibility and sustainability (Dashwood, 2005: 983). The creation of the GMI allowed companies to press for inclusion into events such as the UN Conference on Sustainable Development and be a part of the conversation regarding what should be done to bring about sustainable development (ibid). Additionally, the GMI was an attempt to catch up to the growing number of international voluntary codes and standards developed across international organizations, some of which were relevant to the mining sector and others which did not have the specificity to be useful to mining stakeholders (IIED, 2002: xxiv).

The GMI was created at the World Economic Forum in Davos, Switzerland, when nine CEOs from major global mining companies agreed on the need for global action on the part of the mining industry. It facilitated mining, minerals, and sustainable development projects that seek to understand how sustainable development could be implemented in the industry on local, regional, national, and global levels (Buxton, 2012: 5). The report that was created from this (called Breaking New Ground) was signed in Toronto and formulated as the result of a multi-stakeholder consultation process to bring together actors from academia, the sustainable development policy research community, the labour movement, international governmental agencies, NGO's mining businesses, trade associations community and indigenous peoples' organizations and financial institutions (IIED, 2002). The organization also focused on establishing regional partnerships in Australia, North America, South America, and Africa, with each group setting their agenda and designing regional research initiatives (ibid). Directly from its initial creation, but also as a result of ongoing research projects, the GMI set itself up to create dialogue and promote sustainable development with groups that previously had not cooperated directly with mining MNC's (ICMM, 2003).

The GMI has also worked with the Global Reporting Initiative to establish guidelines that are relevant to the mining sector. It enabled companies to report on sustainable development and mining activities in a way that had not occurred previously and worked to incentivize companies to participate in sustainable development (Global Reporting Initiative, 2018). The Initiative requires all members to accept the obligation to promote sustainable development (IIED, 2002: 15) and member companies to the Global Mining Initiative agree to a number of sustainable practices including ethical corporate governance, the integration of sustainable development considerations, upholding of human rights, continually improving corporate environmental performance, contribute to communities, transparent engagement, communication and independently verified reporting to company stakeholders (Global Reporting Initiative, 2018). Since its inception, the GMI has continued to amass members and uphold international regulatory regimes to the present day. The following section will investigate constructivist explanations for the initial creation and continued use of this regulatory regime.

The Role of Ideas

The creation of the Global Mining Initiative and its subsidiary, the International Council on Mining and Metals, has allowed the mining industry to both absorb global norms and ideas surrounding how extractive industries interact with the environment but has helped them to shape the process itself (Dashwood, 2007: 131). This birthed an interactive or dynamic process in which while actors do not always agree on end goals or exact definition, they all connect within an international space that recognizes the importance of sustainable development. In this way, cooperation between MNCs, NGOs, and other actors on the international stage speaks to the importance of global norms but is also a way to note the role that MNCs are playing in bringing together actors to try to foster cooperation and trust overtime (ibid: 137).

The cooperation between mining companies to not just adopt policies but also promote these policies through practices and rules in the GMI speaks to how ideas create a multi-level impact that affects the reality seen on the ground when building mines. By drafting an internationally recognized set of documents and releasing them publicly, companies are therefore socialized not just by outside but internal forces to adopt and put these ideas into action (Hofferberth, 2011: 215). While this will occur at different times and different levels of success depending on the company, industry association setting standards through persuasion, dialogue, and public shaming forces companies to justify positions that they previously were not scrutinized for (Dashwood, 2005: 983). Although these international agreements are strictly voluntary, their commitments do allow other actors to hold company inconsistencies to account. Ideas consequently do not just influence actor behavior, but the construction of institutions and regulations in the international realm.

The continued role of ideas also means that as notions of sustainable development and corporate social responsibility change, institutional regulations will also change. Over time, the idea of sustainable development has solidified, leading to a more specific, more environmental and climate change focus on development (Tost et al., 2018: 43). For that reason, it has necessitated a rethinking of existing regulations under the GMI as acceptable definitions changed over time. Thus, regulations since their creation in 2000 have been strengthened to include third-party certification through the AA1000 standard, reporting to external stakeholders, standardization of project indicators, and public disclosure of results when judging environmental and social sustainability performance (Dashwood, 2014: 568). The result is revision four times over the 15 years since the regulation's inception (ICMM, 2018), showing how ideas shape institutions and actions overtime despite and because of change.

Influence of Norms and Shared Knowledge

The presence and creation of the GMI speak to the impact that norms and shared notions of knowledge can have on corporate behavior. Mining MNC's, for the most part, exists because of the normative western ideas of what a marketplace is, whether it is ideas

of private property rights, adherence to contracts, and a specific type of justice system (Dashwood, 2005: 982). Their success within this system thereby often encourages them to preserve these norms, even if it requires them to adopt obligations that do not seem in their self-interest but reflect the culture that they are a part of (ibid). The acceptance and participation in the creation of increased norms and regulations on the part of large mining companies with global operations also speak to the preference on the part of these companies to a global western standard setting when compared to the regulatory uncertainty they may face without these norms (Hofferberth, 2011: 2010). The preference to hold to global western standards is especially true in certain developing parts of the world, where the adoption of stricter standardized policies can help companies to decrease risk in the face of regulatory and normative uncertainty (Ougaard, 2006: 244). Increased cooperation and networks on the part of international mining companies show how the GMI used mining companies' propensity for looking out for their self-interest to improve corporate behavior.

NGOs being asked to consult regularly with mining companies as the GMI was developed recognized not just the more extensive and complex network of actors involved in creating international regulations today, but also allowed for recognition of the role that these organizations have in shaping the idea of what responsible mining practices are (Dashwood, 2007: 133). It acknowledged the ability of actors to be influenced by broader norms and values, giving them common worldviews that then encouraged working together (Hofferberth, 2011: 2012). Because NGOs played such a significant role in defining appropriate behavior for mining companies, GMI's recognition of them showed a shared acknowledgment of the broader interests NGOs had been pushing for and the power they have to influence global norms.

That MNC's created transnational networks to assume private authority in pushing corporate social responsibility norms speaks to the need to look beyond a narrow idea of self-interest, or the implementation of these regulations as merely a public relations exercise. Corporations are often excluded from conceptions of global civil society and are usually deemed unable to cooperate both amongst themselves and with other state and non-state actors (Dashwood, 2005: 980). There are good reasons for these assumptions, given the amount of environmental harm and human rights abuses they have contributed to. Because of the cyclical nature of resource extraction and the especially small profit margins during economic downturns for MNC's, if looking through a lens of self-interest on the part of companies, one would expect a very reactive and defensive environmental strategy from the mining industry. However, studies have also shown that companies will undertake costs even when the returns are not easily quantified, as can be seen in the case of international mining regulations (Prakash, 2000).

The fact that both NGO's, governments and mining companies recognize that there is a 'right' way to do sustainable development and corporate social responsibility speaks to the way that ideas influence actors and institutions (Hofferberth et al., 2011: 211). Companies show this through the act of engaging in public discussions and acknowledging stakeholders beyond shareholders represents a substantial shift in perspective for these MNC's (Dashwood, 2014: 565). Since companies are often said to be only responsible to

their shareholders, it seems contrary to ideals of the maximization of profit that they would recognize other stakeholders in the areas of human rights, labor, and the environment. However, companies/the industry wanting to be seen as in favor of sustainable development showcases the impact that ideas have had on the mining industry. For MNCs, implementing the need for public disclosure mechanisms showcases the need for companies to actively implement company level change based on global pressure that did not exist 15 years prior and not just acts in their self-interest (ibid: 567).

Since the initial creation of the Global Mining Initiative, many actors have stated that significant improvements have been made regarding the conduct of mining companies (Tost et al., 2017: 42). Operational safety and health have improved, environmental management systems and impact assessments are now the industry standard across both countries that require and countries that do not require them, mining companies seek to build community relations where they did not before, and many mining companies now publish their annual contribution to sustainable development publicly with third party verification (ibid). Improvement at this level speaks to a recognition on the part of mining companies that having a social license to operate (beyond a regulatory license to operate) creates a learning process in which both self-interested motives and broadly created global norms create incentives for mining companies to adopt sustainable development and corporate social responsibility doctrines (Prno, 2013). For actors, interests are not fixed, but change as the environment around them changes, and actors work together overtime on both international and local scales. It is vital to note that this does not mean that mining practices around the world are perfect or that existing international mining regulations are sufficient to solve the world's large-scale environmental issues. Different actors have responded to GMI regulations; differently, some mining companies such as Placer Dome and Noranda publicly released corporate social responsibility data freely in the 1990s and were initial members of the GMI that pushed for stronger regulations and public disclosure after successful multi-stakeholder mining initiatives in Canada's north (Dashwood, 2007: 152). Other mining companies joined the organization over time (such as Glencore or Areva) after seeing the success of other members or facing public relations difficulties due to the environmental impact of their mining practices. Still others (due to the locations they operate in and/or corporate culture) are not members at all (ibid). However, the increase in companies voluntarily placing themselves under the international regulations created by the GMI speaks to the success of global pressures and a new environment that defines sustainable development as a crucial part of resource extraction.

Attempts to Influence International Norms

The creation of the Global Mining Initiative, as well as ongoing efforts by the industry to introduce international self-regulation, has created a "reconstituted global public domain" which was created by the interaction between civil society actors and multinational corporations, alongside states (Ruggie, 2004: 500). It is not that authority is actively taken away from states, but instead, the private sector has created a new transnational area to push

their agenda (ibid: 503). By voluntarily adopting codes of conduct and creating private governance structures with other mining companies, the mining sector can push its ideas of appropriate behavior for itself beyond that prescribed by the state or NGO's (Dashwood, 2007: 133). Participation on the part of the industry at events such as the World Bank's Extractive Industry Review (which develops corporate social responsibility standards relevant to mining) showcases the ability of the industry to be seen as an actor able to influence final suggested industry outcomes and goals (Dashwood 2007: 134).

In this past, this was particularly important to the mining industry, given that by the late 1990s, NGOs were increasingly involved in decision-making in international organizations such as the UN, while MNC's were not (Dashwood, 2014: 566). The mining industry recognized that the ideas and norms of sustainable development and corporate social responsibility are shaped by international institutions (which had already included NGOs and states) but also critically if they were also included could be shaped by the mining corporations themselves (ibid). The creation of the GMI, therefore, enabled the industry to create an international space where other international bodies could recognize it. The formation of voluntary international regulations and institutions has helped mining companies to have a seat at the table as represented not just with their inclusion to the 2002 World Summit on Sustainable Development but their continued presence at state-based international organizations where these issues are being addressed (Dashwood, 2014: 564). Mining companies both absorbed dialogue about sustainable development but also sought to create an environment of acceptance in which the public and other regulatory actors recognize the trade-off between mining benefits (for example, economic growth) and the environmental impact they have (Dashwood, 2005: 990).

Mining companies have a history of pushing for a definition of sustainable development and corporate social responsibility that acknowledges the importance of growth and profit as well as the importance of environmental protection (Prno, 2013: 581). In doing so, they continue to advocate for actions based on their worldview that profit, development, and social responsibility do not contradict one another (Tost et al., 2018: 972). When looking for a definition of what sustainable development meant for the mining industry, the Global Mining Initiative did not ask a UN body, NGO or government to craft a working definition of sustainable development for their use. Instead, they tasked the World Business Council for Sustainable Development (WBCSD) (ibid). The WBCSD is a CEO industry-led organization that has been charged by NGOs such as Greenpeace as representative of the largest non-renewable energy and carbon-intensive companies in the world (Greenpeace, 2011: ix). The definition of sustainable development crafted by WBCSD for the industry states, "In the context of the minerals sector the goals [of sustainable development] should be to maximize the contribution to the well-being of the current generation...without reducing the potential for future generations to meet their own needs" (IIED 2002). The definition speaks to the mining industry's continued values related to profit and market-based principles rather than a stricter version of sustainability positions (also called strong sustainability) that emphasizes holding back on current production for the environmental wellbeing of the future (Prno. 2012: 348). It also contrasts with the UN

definition, which instead speaks of meeting rather than maximizing the needs of the current generation (WCED 1987, paragraph 1). Currently, none of the large mining companies involved in the Global Mining Initiative support strong sustainability positions and instead advocate for sustainability initiatives that allow for existing business models to continue (Tost et al., 2017: 45).

It is critical when analyzing how mining companies push forward their agenda to recognize that this does not simply represent a liberal politics lens in which the power of actors tells the whole story about what their actions will be. Although companies advocate for policies in their interest, their position regarding creating regulations is determined not simply by the power they possess, or the institutions that surround them, but by ideas and norms. Tost et al.'s show this when stating that the GMI does not need to adopt strong sustainability positions because their position is aligned with current societal expectations (2017: 47). Additionally, the ten-year review of the GMI's progress concluded that while good intentions existed on an industry standards level, the complexity of issues involved at mining sites around the world meant that implementation of the goals of the GMI is highly variable and the industry tends to take a wait and see approach to complex issues such as climate change (Buxton, 2012: 14). As norms and ideas become more accepted by a larger number of actors, however, a rethinking of existing positions can be seen by the mining industry, leading to new vocalized priorities and continual reworking of existing international regulations.

Conclusion

This paper has shown that the creation and continued use of the Global Mining Initiative can be explained using a constructivist lens. Whether looking at the history of the organization, the role of ideas, or how global norms have influenced the mining industry to create these regimes, constructivist explanations showcase how norms and cultures overtime encouraged the formation of institutions and relationships between stakeholders. It is true whether the mining industry is internalizing these norms to create programs for sustainable development and corporate social responsibility or pushing for their definition of sustainable development to further their agendas. Seeing mining MNC's as actors influenced by and influencing broader ideas in this manner helps to understand the shift the industry has experienced and continues to experience concerning sustainable development. In the future, pushing corporations to accept sustainable development and corporate social responsibility initiatives more broadly must include recognition of how ideas and norms influence corporate change. Failure to do so could lead to accusations of the Global Mining Initiatives as merely a form of greenwashing that is not capable of truly changing its policies to reflect the emphasis on sustainable development and adaptation to climate change that it claims to have. Holding organizations accountable is important, but furthermore, understanding how and why they change can give actors the ability to affect change. Understanding the Global Mining Initiative from a constructivist perspective can do this.

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