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Non-State Actors in Global Governance
Three Faces of Power

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1. Introduction

Consider the following examples: (1) non-governmental organizations co-writing drafts of international treaties (e.g. Amnesty International and the Anti-Torture Convention); (2) scientists determining how policy-makers should interpret a policy issue (such as in the case of global warming); (3) business lobbies forcing their preferences in international negotiations (see the contents of the WTO Agreement on Trade-Related Intellectual Property Rights, or TRIPs); (4) protestors blocking the opening and continuation of a WTO conference (Seattle, USA, 1999); and (5) terrorist networks affecting the security policy doctrine of the most powerful country in the world (Boehmer-Christiansen, 1994; Dale, 2001; Higgott et al., 2000; Korey, 1998). All these examples point to the substantial influence of Non-State Actors (NSAs) in international affairs. These NSAs include, amongst others, Non-Governmental Organizations (NGOs), Transnational Corporations (TNCs), epistemic communities (which are networks of experts on a certain policy issue), social movements, liberation movements, churches, the mafia, and terrorist networks (Furtak, 1997; Haas, 1993; Willets, 1982, 1996a). However, this paper focuses on NGOs (non-profit pressure groups) and BINGOs (business NGOs), a selection which will be argued for below.

NSAs have become a ‘hot issue’ in the Study of International Relations (SIR), especially since the end of the Cold War (Furtak, 1997). Since then, we have witnessed a rise of NSA activity in the global arena and an increase in their impact on that arena (see the examples in the above). Today, it is estimated that about 25,000 NGOs are active in the international arena, compared to some 1,000 in the 1950s (CGG, 1995; Keohane and Nye, 2000; Willets, 1996a). This is not to say, however, that the end of the Cold War was the sole cause of this increase, or that we are dealing with a new debate here. Already in the early 1970’s, there were heated discussions on ‘transnational relations’ (Keohane and Nye, 1971). The key question was whether mainstream state-centric approaches, like realism and positivist international law, were not falsified by political realities, which showed the steadily increasing role of NSAs in international politics. Therefore, some asked, should these approaches not be replaced by a new ‘world politics paradigm’? However, as a consequence of intensified Cold War tensions and economic crises in the late 1970’s, this debate soon died. This once again brought intellectual victory to state-centric neo-realism. The late 1980’s witnessed new dynamics in international relations, with the collapse of the Communist Bloc as a very important driving force. The international political landscape has dramatically changed since then, among others things, allowing more political space to issues other than merely security, and to actors other than big states and their allied forces. It seems that the competencies of NSAs have also increased as a result of this development.

Yet the NSA literature is very diverse and fragmented, as is the way the concept is elaborated. This field of study is characterised by ‘empirical and conceptual complexity’, as one recent book on the matter states (Arts et al., 2001: 300). Also, most publications on this phenomenon are edited volumes, consisting of (single) case studies (see for example: Arts et al., 2001; Florini, 2000; Higgott et al., 2000; Keohane and Nye, 1971; Princen and Finger, 1994; Weiss and Gordenker, 1996; Willets, 1982, 1996a). Therefore, this paper aims at bringing at least some ‘unity’

into this complexity by (1) inducing and deducing general, case-transcending factors and trends from the literature on the role and impact of NSAs; and (2) analysing these factors and trends from one specific theoretical framework (i.e. the ‘three faces of power’). In so doing, as a starting-point I assume the premise that ‘NSAs do matter’ in the realm of global governance. I do not argue on normative grounds that NSAs *should* have power; instead, I argue on empirical grounds that they do in fact *have* power. Specifically, a vast amount of literature shows that NSAs indeed make a difference in many cases of international politics (see the edited volumes referred to above). Consequently, to show that they do matter is no longer an interesting and relevant exercise – there is enough proof, so to say. Instead, in the study of international relations today, questions such as *how* and *why* NSAs may make a difference are more interesting empirical and theoretical puzzles (Börzel, 2001). In this paper, the ‘*how*’ is analysed by using a multi-dimensional framework of power, the ‘*why*’ by identifying explanatory factors of the NSAs’ power, to be derived from the transnational literature as well as from (secondary interpretations of) empirical research.

As far as the theoretical framework of this paper is concerned, one concept is central: namely, power. Why so? I have three arguments. Firstly, the NSA literature itself continuously refers to power – albeit implicitly. Transnational authors very often write that ‘NSAs make a difference’, ‘NSAs do matter’, ‘NSAs affect decision-making’, and ‘NSAs are influential players’. In my opinion, in the final analysis, these phrases all come down to the notion of power. Secondly, power is one of the key concepts, if not *the* key concept, of political science. As Lasswell wrote: “Political science (...) is the study of the shaping and sharing of power” (*op cit* Blondel, 1981:115). Thirdly and finally, I have been criticised for applying a limited, one-sided power analysis in previous work (Van Roozendaal, oral statement; see: Arts, 1998). Therefore I use this paper to expand my own analysis of the power of NSAs.

The study of literature and a secondary analysis of empirical research are the two methodologies used in this paper. The procedure consists of: (1) using both theoretical literature and the existing empirical data to build up theoretical claims and hypotheses; and (2) further underpinning these claims and hypotheses by presenting specific empirical cases. This implies that in theory-building in this paper I apply both ‘deductive reasoning’ and ‘inductive sensitising’. At first sight, this approach seems eclectic and untenable, because it is grounded in different scientific paradigms. Yet it is argued for and systematically elaborated upon by others: Layder’s adaptive theory approach is one example (Layder, 1998). As far as the case studies are concerned, it should be mentioned that the cases were selected both on the basis of principal and on pragmatic grounds. Principally, the independent variables – identified in the various hypotheses – indicated that certain cases were more appropriate than others. Pragmatically, given the time available for writing the paper, I needed cases of which I had at least some previous knowledge. Yet the cases below are just *illustrations* of what has been claimed in the theoretical parts of this paper. Therefore, the cases are not really able to test the hypotheses below.

The format of this paper is as follows. First, I will present the state-of-the-art of the research on the role of NSAs in global governance, and will add my own position in relevant debates. Spe-

cial attention will be paid to the concept of NSA, to the transnational debates of the 1970s and 1990s and to the global governance approach. Secondly, I will elaborate on the concept of power and introduce its three faces: decisional power, discursive power and regulatory power. For each face, explanatory hypotheses on the NSAs' power will be formulated. Next, these will be empirically illustrated in reference to what NSAs do and what they achieve in some global governance practices. Three cases will be presented: (1) the Biodiversity Convention and the IUCN (a nature conservation organization); (2) NGOs and the human rights regime; and (3) industry and international environmental standards. Finally, some conclusions will be drawn.

2. Non-state actors in global governance: the state-of-the-art

2.1 The concept

Non-state actors (NSAs) are all those actors that are not (representatives of) states, yet that operate at the international level and are potentially relevant to international relations (based on: Arts et al., 2001; Furtak, 1997; Higgot et al., 2000). The first two criteria are not so difficult to decide on (they are not states, yet operative at the international level); however, the third one *is* (i.e. relevancy). Nonetheless, indicators for this third criterion do exist. For example, Morss (1991) refers to the size, constituency, formal recognition and political impact of NSAs in order to decide whether these are relevant global players or not. Hence, a NSA is relevant when: (1) its size is considerable, (2) its constituency is substantial and covers several countries, (3) governments and IGOs have granted it (in)formal access to political arenas and (4) it has shown that it is consequential to international politics.

Generally, five groups of NSAs are distinguished in the literature: Intergovernmental Organizations (IGOs), International Non-Governmental Organizations (INGOs), Transnational Corporations (TNCs), epistemic communities and a remaining general category. The first group, however, is contested. Some argue that intergovernmental organizations – such as the UN, NATO, the WTO – are not NSAs, because they are established by states, formally ruled by states and instrumental to state interests (Furtak, 1997). Others, however, argue that IGOs are rather autonomous from states in making decisions and policies, given their expertise, formal authority, independent personnel and ties to NGOs (Archer, 1983; Reinalda, 2001; Reinalda and Verbeek, 1998). Although IGOs are to some extent definitely autonomous in policy practices, I agree with the first position *in principle*, and exclude IGOs from the set of NSAs.

An INGO, i.e. the second group, can be defined as any international, non-profit, non-violent organised group of people, not established by governments, which is moreover not seeking government office (Feld and Jordan, 1983; Willets, 1986a). Again, this is a broad definition – making room for churches, scouts, professional associations, business interests and trade unions as well as single-issue organizations such as environmental and human rights groups, etc. It is also a negative definition, only indicating what an NGO is *not*. Following Thomas-Feraru (1974), I would like to preserve the term INGO for those international non-profit, non-violent pressure

groups that pursue certain public goals and that, directly or indirectly, seek to influence outcomes in international politics. Examples are Greenpeace International, Oxfam International, Amnesty International, WWF and Pax Christi. The question is, however, whether industrial interest groups are covered by this definition or not. Literally they *are*, because organisations such as the International Chamber of Commerce and the World Business Council for Sustainable Development are *themselves* not profit-oriented (although their members are). Moreover, besides pursuing private goals, they also pursue public ones (economic development, sustainability), they are non-violent, and they seek to influence international politics. Ideologically and functionally, however, these pressure groups are quite different. Therefore in the literature, as well as in this paper, the distinction is made between NGOs (civic pressure groups), on the one hand, and BINGOs (Business NGOs, or commercial pressure groups), on the other (Chatterjee and Finger, 1995).

A TNC, i.e. the third NSA category, can be defined as any large-scale, profit-making, commercial organisation with offices and/or production units in many countries around the world (Oxford Advanced, 1988). Examples are Shell, BP, Ford, GM, Unilever, McDonalds, IBM, Microsoft, Deloitte and Touche, etc. Today, there are some 37,000 TNCs operative in the international political economy (CGG, 1995). Higgots et al. (2000), however, distinguish between Multinational Corporations (MNCs), which replicate their activities in a number of regions around the world to avoid the risks of trade blocs, and Transnational Corporations (TNCs), which strive for a world-wide intra-firm division of labour. According to this definition, there are probably more MNCs out there than TNCs, because there are not so many large firms whose division of labour is truly global in nature. Yet, following much transnational literature, I use the term TNC as a general term below, referring to both types of firms. Generally, these firms themselves do not participate in politics, but the BINGOs that represent their interests do (see previous paragraphs). Nonetheless, today, individual firms increasingly further their interests in international arenas themselves. Now, for example, they have standing rights in international bodies such as the EU and WTO (De Bièvre, 2002). Consequently, not only are 'normal' NGOs a subject of this paper, so are BINGOs and TNCs, for these, too, seek to influence international politics in order to further public interests.

Epistemic communities, a further category of NSAs, are transnational networks of experts with shared causal beliefs in certain policy issues (Haas, 1993). Their role in international policy-making and institution-building can hardly be overstressed, as the large amount of the literature on the relationship between science and international politics has demonstrated (Andresen et al., 2000; Boehmer-Christianson, 1994; Litfin, 1994). Finally, there is one remaining category of NSAs in which very different types of organizations are positioned: liberation movements, guerrilla organizations, the mafia and terrorist networks, but also churches, professional organizations and scouts. Since neither epistemic communities nor organisations of this group are dealt with in this paper, further comments on this type of NSA are not relevant.

As mentioned in the introduction, this paper focuses both on NGOs and BINGOs. This can be objected to at the outset, because these are very different types of players. Whereas TNCs aim at

maximizing their *profit*, and BINGOs aim at furthering the *private* interests of their members, NGOs try to maximize their political *impact*, and they thus further *public* aims (Furtak, 1997; Reinalda, 2001). Moreover, TNCs and BINGOs seem to be much more powerful actors than NGOs: they are larger; they have more resources; and they are more powerful in terms of ‘structural dependence’. This latter concept refers to the extent to which governments are structurally dependent on other (private) actors for the income and public goods they strive for, e.g. taxes, social welfare, economic growth, jobs, environmental quality, infrastructure, etc. (Higott, et al., 2000; Levy and Egan, 1998). It is obvious that, in this respect, governments are more dependent on TNCs and BINGOs than on NGOs. This probably implies that the interests of the former are automatically taken into account by policy-makers, even in cases where these do not actively engage in lobbying. This may be referred to as the governmental anticipation of business interests, a hidden, yet important power mechanism (Huberts, 1989; Lukes, 1974). To conclude, the objection is that analysing NGOs and TNCs within one framework makes the mistake of ‘comparing very different kinds of fruit’.

The above arguments against a comparison can be convincingly countered. First of all, the distinction between private and public aims, related to TNCs/BINGOs and NGOs respectively, seems to have become blurred. While, for example, Greenpeace can be considered some sort of TNC, which furthers private aims, for example, by increasingly selling goods and images, TNCs also pursue public aims, e.g. through notions like Corporate Social Responsibility, Sustainable Business and Triple-P (referring to people, planet and profit; see Mitchell, 1998). Secondly, NGOs and TNCs – and certainly ‘their’ BINGOs – are comparable political actors in political arenas, though they are often each others’ competitors and challengers. They generally apply very comparable strategies to influence policy-making, such as lobbying, advocacy and campaigning. Thirdly, one may question the premise in much of the literature on transnational and international political economy that TNCs are by their very nature always more powerful than NGOs. It is not only the quantity of resources that matter in policy-making, but also their quality (Arts, 1998). Moreover, the mechanism of structural dependence is probably less relevant at the international level than at the national one, where IGOs, and not states, are increasingly taking the initiative in policy-making (Levy and Egan, 1998). Finally, NGOs and TNCs have started to jointly collaborate on public issues – for example, on the environment, in so-called *green alliance* - which are, in my opinion, good examples of private self-governance (Arts, 2002; Bendell, 2000). All in all, I conclude that NGOs, BINGOs and TNCs, though different in many aspects, have enough characteristics in common to make an integrative political power analysis legitimate.

2.1 The transnational debate

Transnational relations refer to regular transboundary interactions among NSAs or among NSAs and governments (Furtak, 1997; Keohane and Nye, 1971; Strange, 1988). In this field, several types of studies can be discerned (Risse-Kappen, 1995). Some focus on the impact of NSAs on

the policies of governments at the domestic level. An example of this is the book *Bringing transnational relations back in*, edited by Risse-Kappen (1995). It analyzes how certain transnational actors co-shaped the domestic policies of countries such as the US, Japan, Russia and Zimbabwe in issue-areas such as monetary affairs, economic development, political reform and nature conservation. Other studies, however, focus on how NSAs had an impact on international organizations, institutions and regimes, hence, on practices of global governance. An example of this is the book *The conscious of the world*, edited by Peter Willets (1986a). It gives an overview of how different NSAs – through consultative mechanisms provided for by the UN system – affected several UN organizations and policies, e.g. on development co-operation, the environment, human rights and matters concerning women, children and refugees. Finally, there are studies which do both – i.e. they analyse the ‘multi-level game’ in which NSAs are involved and simultaneously operate at the domestic and international levels. An example of this is the book *Activists beyond borders*, written by Keck and Sikkink (1998). It analyzes how international campaigns of – what they call – ‘transnational advocacy networks’ on issues such as slavery, footbinding, human rights, womens’ rights and the environment, which have all targeted both international organizations as well as specific (groups of) states, have resulted in changes in international and domestic policies. Although I recognize that most NSA activity is indeed multi-level in nature, this paper mainly focuses on the impact of NSAs on the institutions of global governance, and hence, it contributes to the second type of research agenda.

The main question of the transnational debate is whether transnational relations and NSAs do matter in international and foreign politics. Proponents of *state*-centric approaches tend to believe that they do not, whereas proponents of *society*-centred approaches tend to believe that they do (Furtak, 1997). The example of state-centric thinking is, of course, neo-realism. As its founding father, Waltz, writes (1979:95):

The importance of NSAs and the extent of transnational activities are obvious. The conclusion that the state-centric conception of international politics is made obsolete by them does [however] not follow (...). I define political structures in terms of states (...). When the crunch comes, states remake the rules by which other actors operate.

Curiously enough – and this is a point often neglected by his critics – Waltz recognizes that NSAs may be important players, but he restricts their relevancy to domestic political processes only. He does not believe that they matter in international relations. At that level, outcomes are mainly determined by the anarchic structure of the international system and, consequently, by the security threats and power struggles states have to face as a consequence of this structure. Some twenty years later, this view is still supported, even by those who criticise Waltz on other points (such as his individualist and materialist view of international politics). For example, Wendt (1999:9), who considers himself a social-constructivist, writes:

It may be that NSAs are becoming more important than states as initiators of change, but system change ultimately happens *through* states. In that sense, states still are at the center of the international system.

Like Waltz', Wendt's basic argument is that, although NSAs may have become players that matter in politics, 'real' change can only happen through states, as the latter are at the centre of the international system.

Society-centered approaches have challenged these claims. They have broadened the concept of international politics, have referred to the spectacular rise in the number of NSAs in the international arena since World War II, and have argued that NSAs may be initiators of fundamental change and that they may even overrule governments. Examples are Amnesty International and other human rights groups, which have forced repressive regimes out of office (see the case of Chile), and TNCs, which have shaped the process of economic globalisation, to which governments have to adapt their policies. Willets (1982:24) writes:

Global politics covers the utilization of coercion *and* the disposal of economic resources *and* the mobilization of legitimacy, by governments and intergovernmental organizations and pressure groups (...). In this [latter] domain it is conceivable that Amnesty International, for example, has greater power than any single government. And Cutler (2002:133) frames her transnational position as follows:

Westphalian-inspired notions of state-centricity, positivist international law and public definitions of authority are incapable of capturing the significance of NSAs, like TNCs and individuals, informal normative structures, and private economic power in the global political economy.

The previous quotes stem from two eras: the late 1970s and early 1980s (Waltz and Willets) versus the late 1990s and early 2000s (Wendt and Cutler). This selection has been made intentionally, as two 'waves' of transnationalism can be distinguished (Risse-Kappen, 1995; Wapner, 1995). The early wave, in the 1970s, was a reaction to the state-centric, positivist and structuralist international relations theories of those days, which neglected the role of NSAs (Keohane and Nye, 1971; Thomson-Feraru, 1974). As a consequence, transnationalism functioned as an 'antithesis', and tended to be rather pluralist, voluntarist and normative in nature. It was 'pluralist' because a broad range of public and private actors were considered relevant to international politics, 'voluntarist', because there was not much emphasis on the international system structure constraining NSAs, and 'normative', because the intervention of these actors, and definitely of NGOs, in international politics was generally valued positively. Hence, according to the critics, early transnationalism was a rather 'naïve view'.

Compared to the earlier transnational literature, the more recent writing is more nuanced. The interaction between states *and* NSAs is emphasised more than before, as well as the embeddedness of NSAs in the international system structure (Arts, 2000; Börzel, 1997; Colas, 2002; Risse-Kappen, 1995; Weiss and Gordenker, 1996). Also, NGOs are no longer only considered 'benign' (Strange, 1996; Weenink, 2001a). In addition, there is more emphasis on the historical backgrounds and predecessors of NSAs today, such as the anti-slavery, civil rights, anti-colonial and women's movements (Chabot, 2001; Keck and Sikkink, 1995; Klotz, 2002). Despite these increased nuances, some of today's authors remain critical of transnationalism, either from the perspective of 'societism' or 'statism'. For example, Wapner (1995) holds that the transnational

debate has remained too state-centric, defining politics and NSAs merely in terms of the nation-state, thus neglecting the social dimension of politics and transnational actors. Wendt (1999), on the contrary, holds that transnationalists persist in forgetting about the crucial roles that nation-states still fulfil in the current international system (see also: Van Kersbergen et al., 1999). In other words, the debate of the 1970s has been replayed in the 1990s and 2000s.

My own view is that this debate between ‘statism’ and ‘societism’ has come close to a ‘dialogue of the deaf’. On the one hand, the two positions stress *similar* phenomena, and, on the other, they talk about *different* things. Both neo-realism and transnationalism stress that NSAs may be important for political processes, at least if we take the above quotes seriously (the similarity). However, whereas the state-centric approach (rightly) questions whether NSAs are able to bring about structural change in the world order *as a whole*, without the involvement of states, transnationalists tend to focus on the power of NSAs in *specific* issue-areas in international politics (the difference). But these positions are not necessarily mutually exclusive. In my view, one can defend the political relevance of NSAs in issue-areas, and still stress the ultimate legal, formal and material authority of states to decide over fundamental change in world politics.

2.3 Global governance

A relatively new concept, which partially stems from the transnational debate, is the one of ‘global governance’. The reason to link up to this concept is not just to follow another hype (although it may play a role, to be honest), but to define the aim and scope of the NSAs’ activities. After all, NSAs do not target international relations *in general*, but *specific* issue-areas of global governance, as the cases below will show. Also, the concept of governance includes the relevance of and need for multi-actor regulation in principle, and therefore does not exclude the importance of NSAs in global policy-making in advance, as some state-centric approaches do. Moreover, it considers NSAs *internal*, not external, to the global governance system. This position not only transcends ‘elitist statism’, it also transcends the classical transnationalist view of international politics, in which NSAs are considered to be external, influential lobbyists at best (Reinalda, 2001). Formally and informally, NSAs are increasingly a part of, and giving shape to, international networks of governance. True, they still lobby, but they are also invited by public authorities to sit at negotiation tables. Even more so, they design, implement and monitor international policies themselves. This is also expressed in Keohane and Nye’s (2000:12) definition of the concept of governance:

the processes and institutions, both formal and informal, that guide and restrain the collective activities of a group. (...) Governance need not necessarily be conducted exclusively by governments and the international organizations to which they delegate authority. Private firms, associations of firms, NGOs and associations of NGOs all engage in it, often in association with governmental bodies, to create governance; sometimes without governmental authority.

Hewson and Sinclair (1999) distinguish three sources of the concept of global governance: (1) the literature on globalisation and global change; (2) the literature on transnational relations and international regimes; and (3) the literature on international organizations (including UN reports). Besides these roots, the rise of the global governance concept is also linked to the renewal of public policy-making in the 1980s and 1990s, which implied redefined roles for public authorities, both states and IGOs, and private actors (Kooiman, 1993; Pierre, 2001; Van Kersbergen and Van Waarden, 2001). In addition, political trends which characterized those decades, such as globalisation, individualization, deregulation and privatisation, and which transformed – or, according to some, even hollowed out – the role of the nation-state, are being related to the concept of governance (Strange, 1996; Van Tatenhove et al., 2000). As a consequence of these trends, global public policy-making has become much more complex and fragmented, and has covered more and more levels, issues, arenas and agents.

Basically, we can distinguish between two meanings of governance, one ‘restricted’, referring to only *new* modes of public co-ordination that have recently emerged, like network governance, and one ‘broad’, referring to *any* mode of public co-ordination, either ‘classical hierarchical’ or ‘post-modern bottom-up’ (Heritier, 2001). An example of the former is the expression ‘governance without government’ (Van Kersbergen and Van Waarden, 2001). This expression implies that social co-ordination mechanisms that are based on traditional government are excluded from the governance concept. In contrast, Knill and Lehmkuhl (2002) consider governance a concept that refers to *all* modes of co-ordinating individual actions to provide for common goods, either by public, private or mixed actor groups.

In international relations, however, because the international system lacks a central authority, we always deal with ‘governance without government’, or ‘rule without a ruler’ (Rosenau and Czempiel, 1992; Lipschutz, 1996). Still, we may distinguish between a more ‘restricted’ and a ‘broader’ interpretation of the concept of governance again. An example of the latter is the definition of the Commission on Global Governance (CGG), which was published in the well-known report, *Our Global Neighborhood* (1998): “Governance is the sum of the many ways in which individuals and institutions, both private and public, manage their common affairs” (CGG, 1995:2). This definition makes the concept applicable to all kinds of international policy-making in the state system, with or without NSAs. However, Aart Scholte (2001) considers global governance to only refer to ‘post-sovereign triangular affairs’, hence to new global arrangements of co-ordination among states, IGOs and NSAs, which transcend the intergovernmental approach.

My own position in this debate is as follows. I do not think that we already live in a ‘post-sovereign’ world, although I believe that the concept of sovereignty is under reconstruction now (see section 7 below). In addition, among global governance practices, we can still distinguish between traditional intergovernmental arrangements and ‘post-sovereign’ transnational arrangements, the former being dominant in many cases (Arts, 2001). Therefore I prefer a broader conceptualisation of global governance, including both intergovernmental and transnational co-ordination mechanisms, thus including state regulation (eventually influenced by lobbyists), mixed regulation (by states and NSAs) and private self-regulation (by NSAs only).

3. Three faces of power

3.1 The concept

The concept of power is one of the most essentially contested notions in political science (Baldwin, 2002; Lukes, 1976). It seems as if there are as many definitions and approaches as there are power analysts. Some define power in terms of ‘having resources’, or *dispositional* power (money, knowledge, personnel, weapons, reputation, etc.), whereas others define it in terms of achieving outcomes in social relations, or *episodic* power (e.g. influence on a certain decision); some consider power merely in *organizational* terms (organizations, resources, rules, bargaining), whereas others consider it in *discursive* terms (knowledge, story lines, discourses, deliberation); some relate power to conflict-oriented zero-sum games, or *transitive* power (‘A achieves something at the cost of B’), whereas others relate it to social integration and collective outcomes, or *intransitive* power (‘A and B achieving something together’); and some situate power at the level of the acting *agent* (‘the swimming fish’), whereas others situate it at the level of *structures* (‘the water putting pressure on the fish’) (Brouns, 1993; Clegg, 1989; Goverde et al., 2000; Hager, 1995). In addition, different authors distinguish between different dimensions of the concept of power: one face, two faces, two levels, three dimensions, three circuits, etc. (Bachrach and Baratz, 1962; Clegg, 1989; Dahl, 1957, 1961; Giddens, 1984; Lukes, 1974).

This paper takes the following positions on this power debate. First of all, the focus is *both* on having resources and on achieving outcomes, something that is expressed in Giddens’ definition of power (upon which this paper builds): “power is the capacity to achieve outcomes” (Giddens, 1984). Both an episodic and a dispositional dimension are part of this definition. Yet one cannot *equate* resources and outcomes (Keohane and Nye, 1989). To have (access to) resources is one thing, to use them and become effective another. Secondly, power will be considered *both* in organizational and discursive terms below. NSAs may become influential not only by employing organizational resources, like money, personnel and tactics, but also by employing arguments and persuasion, or by both. At first glance, this seems quite obvious. Yet some scholars in IR theory do not relate arguing and persuasion to power, as, in the end, the one who should be influenced simply agrees with you. For them, power is always exercised *against the will of others* (see next point). However, arguing and persuasion, if successful, nonetheless imply the ‘power of arguments’, and hence transcend ‘simply agreeing’ (Risse, 2002b). Thirdly, power games are not necessarily zero-sum games, although they may be. For example, TNCs may win in certain political struggles at the cost of NGOs, and vice versa. At the same time, these agents may join hands, and achieve something together. In addition, these actors may co-operate with (inter)governmental agencies in tri-sectoral networks of governance (Keohane and Nye, 2000). Obviously, different political processes raise different power games, either transitive or intransitive. Fourthly, the power concept used in this paper is definitely agency-oriented, as non-state *actors* are its core subject. Yet it should be recognized that social agents are always embedded in historically and socially constructed structures, e.g. in terms of institutions, discourses and power relations. These to a substantial degree constitute their identities and enable and constrain certain types of behaviour more than others (Giddens, 1984). Given these considerations, for the sake of

this paper, the concept of power is defined as follows: *power is the organizational and discursive capacity of agencies, either in competition with others or jointly, to achieve certain outcomes in global governance, a capacity which is, however, co-determined by the social structures in which these agencies operate.*

In contrast to the text above, where power is related to ‘achieving outcomes’ in general, this definition entails the idea that only some outcomes, i.e. only *certain outcomes*, are meant. This is done to acknowledge the fact that power should not be equated with *any* effect whatsoever, since agencies cannot only achieve desired outcomes, but also unintended or unconscious effects. The question is whether these latter categories should be considered part of the power concept. I propose *excluding* unintended effects, and *including* unconscious effects, at least conceptually. After all, it is odd to consider an agent who achieves an unintended effect, e.g. the opposite of what he or she had strived for, as powerful. On the other hand, an actor who causes preferred effects without knowing it, is so. Here we touch upon the phenomena of ‘anticipation’ and ‘structural dependence’ (Higgott et al., 2000; Huberts, 1989; Lukes, 1974; Van der Pijl, 1992, 1995). It is conceivable, for example, that policy-makers autonomously take certain interests into account, e.g. of business or of civil society. In so doing, they anticipate ‘the will’ of industry or of the people in order to have support for their policies or to prevent opposition. This implies that agents may have substantial political leverage without becoming politically active themselves.

Methodologically and empirically, however, this concept of ‘unconscious power’ is very problematic. It is hard to assess methodologically, and to trace empirically (Huberts and Kleinnijenhuis, 1994). After all, anticipation is something that takes place in the heads of decision-makers, and there are no traces of attempts by societal actors to influence them. Also, the concept of ‘structural power’ (or ‘structural dependency’) is highly speculative, and it easily leads to reification. The concept namely presupposes that the ‘given’ institutional and ideological orders systematically favour some actors over others. Although certain rules and resources in a social system definitely enable some more than others, and constrain some more than others, there is, in my view, no ‘social law’ about how this works. One cannot assume, for example, that TNCs are always, and per definition, favoured by the neo-liberal order, whereas NGOs are constrained by it. Social reality is much more diverse. Therefore it is better to try to assess the power of actors vis-a-vis each other in each specific situation, and in each specific institutional and ideological context, than to assume a transcendental power structure, which reifies itself due to the lack of – and the impossibility of – empirical confirmation and falsification.

3.2 Dimensions of power

It should be noted that the above definition, the basis of this paper, exclusively links the concept of power to the concept of agency. Following Giddens, it is assumed that structures have no capacity to act and achieve outcomes *themselves*. Therefore, instead of speaking of power, Giddens speaks of the effects of structures in human conduct as ‘enabling’ and ‘constraining’. A similar position is taken by Guzzini (1993). He also reserves the concept of power for the agent level,

but adds that structural elements can be part of a power analysis (p. 469): “Impersonal effects or structural bias may be part of any power *analysis*, but it cannot be part of the power *concept* if the latter is actor-based.” Yet this position is controversial, as others do link the concept of power to structures. This becomes obvious in the ‘dimensional debate on power’. This debate started with the well-known article, *Two Faces of Power*, by Bachrach and Baratz (1962), who criticized the one-dimensional view of Dahl. While the latter focused on how community leaders influenced certain issues in local political decision-making, in his famous book *Who Governs?* (1961), the former argued that power is not only exercised through decision-making itself, but also by excluding issues from the political agenda, hence by *non*-decision-making. Therefore power consists, according to Bachrach and Baratz, of two faces, and not of one.

In the 1970s, this debate continued, and Lukes, in his much-cited, *Power: A Radical View* (1974), added a third dimension. He criticized both Dahl and Bachrach/Baratz for focusing too much on actors, behaviour and observable conflicts, while neglecting the subtle, often hidden power mechanisms through which issues are kept out of politics. This is also referred to as ‘the mobilization of bias’. According to Lukes, this power process, through (hidden) individual actions, social forces or institutional practices, favours certain interests over others, even though ‘the dominated’ are not aware of that most of the time. Particularly this last position, which comes close to the Marxist view of the ‘false consciousness’ of the ruled classes – which makes the exercise of power by those ruling so easy – has been severely criticized. For example, Giddens (1984) rejects this view and considers agencies to be ‘capable’ and ‘knowledgeable’ in principle, which implies that (groups of) people cannot simply be dominated at their own expense for long, as if this is the ‘normal’ situation. As a consequence, for his own conceptualisation of power, Giddens stripped Lukes’ third dimension, returned to Bachrach and Baratz, and reframed the two faces of power in his own structuration model.

Unhappy with this – in his view – agency-oriented solution, Clegg (1989), building on Dahl, Bhaskhar and Foucault, amongst others, introduced his three circuits of power, which consist of episodic, dispositional and facilitative power respectively. Here the notion of power is once again related to structural phenomena. The first ‘episodic’ circuit refers to agency, causal mechanisms and outcomes, the second ‘dispositional’ one to social integration, discourses and rules of the game in organisations, and the third ‘facilitative’ circuit to system integration, normalization and domination at the systemic level of societies as a whole. These three circuits are highly interdependent. Episodic power produces – through agencies – certain outcomes, potentially affecting the other two circuits of power; dispositional power ‘fixes’ agencies in organisations in terms of meaning, rules and resources (they prescribe certain positions, roles and views); and facilitative power enables and constrains agencies in social relations (they define what is normal and legitimate in social practices, although agents may of course resist). Although this scheme is highly sophisticated and inspiring, it is, in my view, also potentially too determinist in nature. Particularly the third circuit bears the ‘post-structuralist’ danger of considering power to be an all-compassing, omnipresent, de-centred, invisible force in society that disciplines all those ‘poor’ individuals.

One may, however, question the relevancy of this dimensional power debate of political sciences for the study of international relations (Baldwin, 2002). In an outstanding essay, Guzzini (1993) convincingly argues that this debate has been entirely replayed in IR theories. Transnationalists have mainly focused on (non)decision-making (first circuit), an example being Keohane and Nye (1971; 1989; 2000); realists have focused on dispositional power (second circuit), examples being Morgenthau (1993, 6th ed.) and Waltz (1979); and international political economy, either in neo-Marxist or Foucauldian versions, has focused on structural and systemic power (third dimension), examples being Strange (1988) and Pentinnen (2000).

3.3 Three faces of power

Given my ‘transnational roots’ and agent-oriented conceptualisation of power, the starting-point for my own framework of analysis is the first circuit of power. Yet *three* faces of power will be distinguished *within* this circuit. These faces are built on the following logic. Firstly, as Bachrach and Baratz made clear, achieving outcomes is not only about controlling decision-making, but also about the agenda-building on the basis of which decisions are made, and by which a certain ‘bias’ in outcomes is mobilised. With that, at least two faces of power are to be distinguished within the first circuit of power: decision-making and non-decision-making. However, this second face is broadened in this paper. For example, Hager (1995) rightly claims that a ‘mobilisation of bias’ in politics does not only occur through agenda-setting, but also through discursive practices. By (co-)determining or controlling political discourse, agents may indirectly affect political decision-making, as discourses shape the discursive space within which actors discuss political issues, agendas and decision-making. Framing political discourse is, in other words, a way of defining issues inside and outside of politics, which is in fact a discursive type of mobilization of bias, a discursive variant of Bachrach and Baratz’s second face of non-decision-making. Giddens (1984) broadens this perspective again. For him, discourses are specific types of rules, namely *constitutive* ones, and these exist along with *regulative* rules, the latter referring to social institutions. Now agents can achieve outcomes not only by directly influencing other agencies, but also by influencing the rules – discourses and institutions – within which these agents have to operate. Hence, by changing discourses or social institutions, decision-making within the context of these rules may in turn be changed as well, and other outcomes will last. These two mechanisms are basically behind the second and third face of the framework of analysis to be designed below, *discursive* and *regulatory* power respectively.

From the above it seems as if this framework is entirely theoretically deduced. But this is not the case. Inspiration was also sought in empirical studies on NSA power. For example, Van Roozenendaal (2001), who analysed the influence of trade unions on the social clause controversy in the ILO and WTO, makes the distinction between *substantive* and *sensitising* impacts. The former refers to the influence on political decisions by trade unions, the latter to the influence on political discourse. These concepts come close to my own first and second faces of power respectively. Sell (2000), who assessed the impact of transnational firms on the TRIPS agreement, uses

three power concepts: *direct* power (impact of TNCs through information transfer), *indirect* power (impact through changing the normative context of policy-making) and *structural* power (industrial demands matching the dominant neo-liberal world order very well). In my framework, direct power refers to decisional power and indirect power to the third and second faces of discursive and regulatory power respectively. Structural power, however, is not a concept used in this paper, as indicated above. Levy and Egan (2000) next analysed the power of firms in climate change politics, and distinguished between *instrumental* forms of power, *discursive* influence and *structural dependency*. The first and second dimensions come close to my own first and second faces, whereas the third one is excluded. However, what all these empirical power analyses share is a focus on NSAs that affect the formal politics of governments. What they neglect is the (increasing) ability of private actors to design policies themselves, and regulate themselves, something which is emphasised in the current governance literature (Pierre, 2000; Van Kersbergen and Van Waarden, 2001). And this is what my third face of power is all about.

Finally, in building up the framework below, I used the principle of ‘saturation’ (a well-known principle in qualitative research; Wester, 1991). While reading and analysing all kinds of cases regarding the power of NSAs, I asked myself whether all the types of effects that I came across were covered by the power concepts as defined so far. If not, some theoretical amendments were made. After some time, the number of amendments decreased and slowly but surely I became convinced that the framework of analysis had become appropriate and complete.

To conclude: on the basis of theoretical deduction, empirical induction and the principle of saturation, the following three faces of power are distinguished: (1) *decisional* power, related to policy-making and political influence; (2) *discursive* power, related to the framing of discourse; and (3) *regulatory* power, related to rule-making and institution-building (see Table 1). Together, they constitute the power of agents, i.e. the capacity ‘to achieve outcomes’ in social interactions, embedded in institutional and ideological contexts.

| Faces | Capacities |
|---------------------|---|
| 1. Decisional power | The capacity to influence decision-making |
| 2. Discursive power | The capacity to (re)frame discourse |
| 3. Regulatory power | The capacity to (re)make rules |

Table 1: The three faces of power

It should be acknowledged, however, that the previous distinctions between the three faces of power are analytical in nature. In fact, they are empirically interdependent. After all, to influence decision-making one might also need to (re)frame discourses. And rule-making might require exerting political influence on state agencies as well. In addition, NSAs may use these three faces as complementary power strategies. Yet these are separately analysed in this paper, and related to single cases, just to make argumentation, hypotheses and claims as clear and distinctive as possible.

Below, in the remaining sections of this paper, I will elaborate on the three faces of power, theoretically and empirically. In so doing, a certain format for each face will be applied, consisting of the following elements:

- A short overview of (some of) the academic literature on each face;
- A presentation of the type of outcome involved in each face (after all, power is about achieving *certain* outcomes);
- An analysis of the way this outcome is achieved by NSAs, and which strategies are employed in achieving it;
- An outline of the main explanations for why NSAs may become effective;
- Given outcomes, strategies and explanations, the presentation of a simple causal model for each face: ‘independent variables → intervening variables → dependent variables’;
- The formulation of ‘face-specific’ hypotheses on NSA power;
- An illustration of each face in reference to one case in particular;
- An argumentation for each case-selection.

4. Face I: Decisional power

There is a whole body of literature on the influence of NGOs and TNCs on international decision-making (Arts et al., 2001; Bouwens, 2002; Chatterjee and Finger, 1994; Higgott et al., 2000; John, 2002; Keck and Sikkink, 1998; Kolk, 1996; Levy and Egan, 1998; Mazey and Richardson, 1992, 1993; Potter, 1996; Princen and Finger, 1994; Risse-Kappen, 1995; Van Rozendaal, 2001; Van Schendelen, 2002; Walk and Brunnengräber, 2000; Weiss and Gordenker, 1996; Willets, 1982, 1996a; and many others). This literature shows that these NSAs can have a substantial influence on international decision-making. However, the danger of emphasizing the successes of NSAs in international decision-making is that one may overstress their political influence. After all, there are many incidents of failure. For example, TNCs ‘did not get’ their much wanted Multilateral Agreement on Investment (Higgott et al., 2000), nor have NGOs ‘gotten’ a global forest treaty, for which they have already campaigned for more than a decade (Kolk, 1996).

The outcomes NGOs and TNCs strive for in the context of this first face of power are ‘modified decisions’, of course, modified in the sense that these decisions (1) echo their preference(s) as much as possible and (2) do have at least some political relevance (after all, what is the use of influencing decisions that have no impact on society at all). Here we touch upon the phenomenon of political influence, which can be broadly defined as *preference-realization in political decision-making due to one’s own intervention(s) in the political process* (compare: Arts, 1998;

Huberts, 1989). Note that decisional power and political influence are strongly related, but *not* synonyms. The former refers to the *capacity* to achieve an outcome, the latter to the actual *achievement* of the outcome (Cox and Jacobson, 1973; Kuypers, 1973).

Focusing exclusively on the phase of *formal* political decision-making, while neglecting the rest of the policy cycle – i.e. agenda-setting, policy formulation, policy implementation, and monitoring compliance – could result in a misunderstanding of the concepts of decisional power and political influence. All these phases imply decision-making, and non-decision-making, and all these phases (may) include the attempts of stakeholders to influence outcomes. In fact, some believe that NSAs are more effective in certain policy phases than in others, e.g. in agenda-setting or monitoring, while formal political decision-making is mainly a governmental or inter-governmental affair (Hooghe, 1995; Mazey and Richardson, 1992). Others believe that NSAs may also be influential in this latter phase. In any case, this discussion makes it obvious that a broad perspective of the entire policy cycle is more fruitful than a perspective restricted to formal decision-making only.

In order to have a chance to have an effect, NSAs need to intervene, directly or indirectly, in the decision-making process they want to influence. They can do so in several ways. In the literature, several strategies are distinguished, from which the following are considered the most relevant: lobbying, advocacy, monitoring, protest and participation (Huberts, 1989; Van Noort et al., 1987; Van Schendelen, 2002). *Lobbying* refers to tacit, informal attempts to influence decision-makers, for example, in the corridors of political arenas; *advocacy* refers to open, often formally accepted ways of spreading information, views and ideas in political arenas, on the basis of which decision-makers may change or adapt their preferences; *monitoring* refers to NSA's 'watchdog role', which involves controlling whether governments comply with their own promises and policies; *protest* refers to the open propagation of or opposition to certain ideas, institutions or measures, outside formal political arenas (or clandestine within it), generally on the basis of non-institutionalized tactics; and, finally, *participation* refers to formally being part of policy arrangements, as a relevant stakeholder, or even as a co-decision-maker. By means of this, decision-making can be influenced much more directly. To some extent, these strategies may overlap. For example, one may play the watchdog role by organizing protest meetings.

All these strategies have some advantages and disadvantages. Lobbying implies direct and close contacts, but it is not a transparent process, and it can easily lead to clientelism. Advocacy is indeed transparent, but probably less effective, as ideas are just thrown into the ring without specific targets. Monitoring can be very effective, because governments, being brokers of promises, do not like to be publicly embarrassed. But as the only strategy, it falls short of affecting previous decisions in the policy cycle. Protest has the advantage that it allows one to remain independent from the political system (one does not get dirty hands), and that *massive* protest can really achieve something. Yet most demands of protest movements will not be taken very seriously by decision-makers. Also, radical tactics may scare the decision-makers off. Finally, participation brings you closest to the political fire, but here the danger of co-optation is real. Decision-makers can instrumentally use NSAs to legitimize their decisions. Or representatives of

NSAs, who feel wonderful that they have finally reached the political core, may forget their background and become ‘second-order’ politicians. The (dis)advantages of the several strategies raise the question of which of these are the most effective. The literature, however, indicates that there is no univocal answer. Some view lobbying as the most effective way to influence decision-making, others, protesting, and others still, a combination of strategies (Arts, 1998; Van Noort et al., 1987). The answer is also very much dependent on the type of decision, on the decision-makers themselves and, in specific cases, on the institutional context. To give an example, the WTO is less open to NGOs than the UN; consequently, with regard to these two international organizations, other NGO strategies will be potentially effective, and therefore prevail.

The previous paragraphs dealt with ‘how’ NSAs matter (political influence, NSA intervention, strategies), but this paper also deals with ‘why’. In the literature, a number of explanatory factors (or independent variables) for NSA influence are distinguished, including the expertise (and other resources) NSAs possess, the access they have to policy processes, the legitimacy of their demands, the nature of the political issue at hand, the policy phase the process is in and the extent of co-operation among NSAs (Arts, 1998; Bouwens, 2002; Hooghe, 1995; Huberts, 1989; Potter, 1996; Princen and Finger, 1994; Van Noort et al., 1987). Some factors are recognized as being more relevant than others, and some are referred to by more authors than others. In this literature, two factors come to the forefront as the key independent variables for NSAs’ political influence: namely, ‘resources’ and ‘political access’. This is no surprise, for without having the resources that policy-makers would like to acquire – such as knowledge, support, legitimacy, reputation, etc. – NSAs would probably remain ineffective. Of these resources, one seems of utmost importance: substantive knowledge, or policy-relevant knowledge (which is not necessarily scientific knowledge, but can include lay knowledge from the field as well). My own research indicated that policy-makers believe that this resource is the main asset of (in this case) NGOs (Arts, 1998:258). By bringing (additional) knowledge to the table, something which most policy-makers appreciate, NGOs may influence decision-making. Other sources also confirm the importance of this asset (Hooghe, 1995; Huberts, 1998; Keck and Sikkink, 1998; Potter, 1996).

Having substantive knowledge is one thing, being able to deliver it another. Here the second factor – i.e. ‘access’ – comes into play. Even though they might have the appropriate resources, if NSAs have no access to policy-makers, they will remain ineffective as well (Bouwens, 2002). So the formal and informal access rights NSAs have today – such as voting rights in a few international organizations (ILO), standing rights for certain courts (EU, NAFTA), observation rights as well as participation rights in many international organizations (UN, WTO, IMF) and informal access to policy-makers in the corridors of many political arenas – are important prerequisites for political influence.

In the light of the above discussions on preferred outcomes, political influence, strategies and explanations in mind, the basic causal model of this first face of power can be drawn as follows:

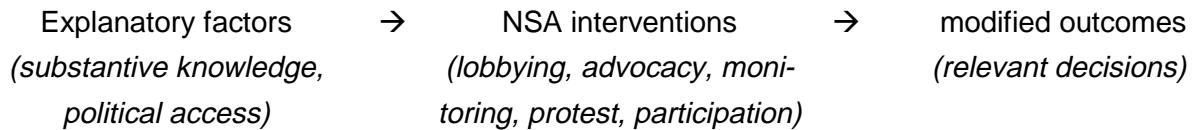


Figure 1: A causal model of decisional power

This model can also be translated into a hypothesis.

Hypothesis 1

A NSA is more likely to have decisional power, the more it possesses policy-relevant substantive knowledge, the more it has access points to decision-making, and the more it actually intervenes (lobbying, advocacy, etc.).

Below, in section 5, one case of decisional power will be elaborated on in more depth: the IUCN and the Biodiversity Convention. This case was selected for several reasons: it is a nice expression of the causal model of decisional power presented above, and the author is very well acquainted with it (Arts, 1998). Also, the three case selections (see sections 5, 7 and 9) have been linked to each other with the aim of providing some diversity in actors examined (NGOs and TNCs) as well as in issue areas (biodiversity, human rights, environmental management) over the three faces of power.

5. Case I: the IUCN and the Biodiversity Convention

The notion of biodiversity means: “the variability among living organisms from all sources, including, *inter alia*, terrestrial, marine and other aquatic ecosystems, and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems” (UNEP, 1992). Hence, biological diversity refers to the richness of genes, species and ecosystems worldwide. Therefore the notion brings together different areas of concern: (1) the problems relating to genetic erosion and genetic engineering; (2) the endangering and extinction of species; and (3) the destruction and loss of ecosystems. These issues are covered by the UNEP Convention on Biological Diversity (CBD), adopted at the UNCED in Rio de Janeiro in 1992 and signed and ratified by more than 150 countries. It aims at nature conservation, on the one hand, and at the sustainable use of biological resources, on the other (Glowka et al., 1994). Moreover, it regulates the property rights over biological resources, as well as over those products that result from the use of these resources – including biotechnology. It also contains Article 19(3) on biosafety. This article urges parties to the CBD to consider the need for and elements of a protocol aimed at dealing with the safe transfer, handling and use of genetically modified organisms (GMOs). As a result, the Cartagena Protocol on Biosafety was adopted in Montreal, Canada, January 2000. This was the first protocol of the CBD.

The claim of this section is that in preparing, formulating, implementing and elaborating on the CBD, the IUCN or World Conservation Union – formerly called the International Union for the Conservation of Nature and Natural Resources – played an influential role. Founded in 1948, the IUCN brings together a diverse range of non-governmental organizations as well as government agencies in an extensive world partnership: It consists of over 980 members in all, spread across some 140 countries. Given this partnership, IUCN is not a ‘pure’ NGO, but a ‘hybrid’ one, although the non-governmental nature of the organisation is definitely dominant (contrary to other ‘hybrids’, in which the role of governments is much more prominent; see Willetts, 1996a). As IUCN’s website states, the union seeks “to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable” (www.iucn.org). The organization has been involved in the design of several intergovernmental environmental agreements, notably the Convention on the International Trade of Endangered Species of Wild Flora and Fauna (CITES), the RAMSAR Convention on Wetlands of International Importance, the World Heritage Convention, the Convention on Migratory Species and, last but not least, the CBD.

The origin of the biodiversity treaty goes back to recommendations of the 1984 meeting of the General Assembly of the IUCN (Burhenne-Guilmin and Casey-Lefkowitz, 1992; Glowka *et al.*, 1994). It was recognized that a global instrument was needed, irrespective of the fact that quite a number of international agreements on the conservation of biological diversity had already existed for many years. But according to the IUCN, even together, these instruments could not guarantee the conservation of *global* biodiversity. Therefore an umbrella instrument was needed. Subsequently, some of IUCN’s commissions and experts prepared draft articles for a global convention. This draft convention very much focused on nature conservation, although some development aspects were dealt with as well. In 1987 the United Nations Environment Programme (UNEP) also recognized the possible relevance of a global instrument for biological and genetic diversity. It therefore started a debate on the issue, which revealed that there would be no general basis for an IUCN-like treaty, as many states did not want to focus exclusively on conservation aspects. Therefore elements such as conservation in gene banks, sustainable use of biological resources and access to genetic resources and biotechnology were added to the agenda. On the basis of that, UNEP formulated a second draft convention, and in February 1991 formal negotiations started in the Intergovernmental Negotiating Committee (INC). This INC met five times before the text could be agreed upon and adopted. Subsequently, more than 150 countries signed the CBD at the UNCED in Rio de Janeiro (June 1992). In 1994, after 50 national ratifications, it entered into force.

There are a number of specific issues that were particularly influenced by IUCN: (1) the CBD principles on the intrinsic value of biodiversity, on the role of specific groups in conserving biodiversity (indigenous people, women) and on ‘biosafety’ (the prevention of adverse effects of GMOs on nature); (2) the articles on nature conservation measures in the treaty; and (3) the issue of marine biodiversity, which was given special attention while the CBD was being elaborated,

after its adoption.¹ This influence was mainly exercised through the text of the IUCN's draft treaty (although not formally tabled, it was still consulted by delegates), through lobbying countries, through pressure on the process as a whole (publications, oral statements, and the like), through organizing conferences (so-called Global Forums on Biodiversity) and through the consultation by delegates (looking for expertise). Yet the IUCN did not achieve all of its preferences in the CBD process: For example, it lost the 'global lists' it had proposed (lists of 'hot spots' of biodiversity around the world to be protected by the CBD, which was mainly opposed by developing countries); IUCN could not – together with other NGOs – get the issue of the conservation of (tropical rain-) forests on the CBD agenda (again, the developing countries opposed); and a multilateral fund for biodiversity, with the aim of financing biodiversity projects, was not established (now the rich countries, who should mainly pay for it, opposed). All in all, the IUCN's influence on the CBD was moderate, but still more than one might have expected from an NGO.

If we return to the causal model of decisional power and hypothesis 1, and apply these to this case, then the following picture emerges. Indeed, IUCN was able to become influential, because, on the one hand, it has well-established contacts with governments and international organizations and because, on the other, IUCN is one the world's leading expert groups on nature conservation having in-house data-banks, field experience in the conservation and use of biodiversity around the world and expertise on international environmental law. Even more so, IUCN stood at the inception of the concept of biodiversity and wrote a first draft of a biodiversity treaty. Later on, UNEP took over the initiative, but IUCN continued to intervene in the negotiation and implementation processes of the CBD. Its representatives lobbied, advocated, pressured, and organised conferences. Its interventions were facilitated by the many access points IUCN has to UNEP, to the CBD Secretariat, to individual governments, to scientists and to NGOs. These access points are partially formal and partially informal in nature. The IUCN has formal participation rights in the CBD, just as any NGO, given the rules of procedure. But as a leading nature conservation NGO, it (informally) has special status. As a consequence of its resources, access points and interventions, IUCN modified the decision-making of the CBD.

6. Face II: Discursive power

Political science, including the study of international relations (SIR), has recently undergone an 'argumentative turn' – or 'cognitive turn' –, a process influenced by the rise of post-structuralism, post-modernism and social-constructivism in the social sciences (Hajer, 2000; Risso, 2002b; Wendt, 1992). Besides the classical political variables, such as 'interests', 'power' and 'bargaining', more cognitive ones, such as 'arguments', 'norms' and 'persuasion', have complemented political analyses. The general premise is that ideas matter in politics and can bring about change. Although it is rather obvious, SIR had troubles accepting this premise. This

¹ These claims are based on previous research (Arts, 1998). I based the assessment of political influence on the perceptions of key NGO representatives and key (inter)governmental delegates on the one hand and on an own process analysis of decision-making on the other.

reluctance was due to the dominance of neo-realism and structuralism in its recent history, with the emphasis on national interests, power struggles, security dilemmas and self-help, as a consequence of a rather stable, international system structure, characterized by anarchy (Waltz, 1979). Yet, slowly but surely, articles with more argumentative and social constructivist analyses started to appear. Breakthroughs were, amongst others, the publications of Alexander Wendt (1992, 1999). On the basis of ideas regarding how states and individuals relate to each other (i.e. as enemies, rivals or friends), he argues that the international state system is not what it *is*, but what states *make* of it. Also influential were writings on epistemic communities and the science-policy interface (Andresen et al., 2000; Boehmer-Christiansen, 1994; Litfin, 1994), on norm-creation and norm-driven behaviour in the international system (Dessler, 1986; Kratochwil and Ruggie, 1986; Risse, 2000) as well as on a discourse analyses in the global arena (Hajer, 1995; Pentinne, 2000; Van der Pijl, 1995).

Part of this literature deals with the role of NSAs in knowledge construction, norm creation and discourse formulation in international politics (Haas, 1993; Klotz, 1995; Van Roozendaal, 2001; Wapner, 1995). This literature is less substantial than the literature of NSAs and decisional power in SIR (see previous section), although it is growing fast. The basic argument is that NSAs – by shaping and disseminating politically relevant values, norms, theories and stories – co-determine the behaviour of states and other participants in the global arena. In this paper, that phenomenon is called *discursive power*.

As explained earlier, discursive power is defined as ‘the capacity to (re)frame discourse’. *A discourse refers to a more or less coherent set of values, norms, ideas, concepts, buzzwords, testimonies, etc., produced, reproduced or transformed by a group of societal actors, to give meaning to a certain practice* (adapted from Hajer, 1995). Given this definition, the NSA’s ‘framing of the political discourse’ means that these private actors give meaning to a certain political phenomenon, such as global warming, by formulating and using new sets of values, ideas, concepts, etc., or by adapting or re-interpreting old ones. They do so for themselves, in order to give signification to the world around them, but they also do so to position themselves in relation to others. For example, some radical NGOs that are part of the anti-globalisation movement have framed the concept of sustainable development into a specific political discourse (Arts, 1994). They base this discourse on ‘deep’ social and ecological values, strict norms regarding the (economic) behaviour of (wo)men, radical ideas on reforming the (global) market economy, buzzwords such as ‘think globally, act locally’ and ‘small is beautiful’ and testimonies about the adverse effects of global capitalism. In so doing, these NGOs position themselves in respect to other sustainable development discourses, such as those of governments and industry. Also, these NGOs hope to convince the larger public that their views on sustainable development are more promising than those of others.

Another example of the NSAs’ framing of political discourse is presented by Van Roozendaal (2001). This has already been referred to above. She studied attempts of (Western) trade unions to strengthen core labour standards within the ILO and WTO and to get the ‘social clause’ – i.e. trade sanctions for countries who do not comply – adopted in both international organizations. In

analysing this case from the 1990s, Van Roozendaal made the distinction between an *interventionist* discourse coalition in favour of core standards and the social clause (most Western countries, most trade unions), on the one hand, and a *neo-liberal* one, opposing some aspects of the core standards and the social clause as a whole (developing countries, business, some trade unions from the South), on the other. To a certain degree, the union's interventionist discourse was successful. After all, the social clause was discussed in the ILO, and the core labour standards were discussed in the WTO. However, the latter organization did *not* consider the social clause: It was too controversial! Moreover, the discourse had more of what Van Roozendaal calls a *sensitizing* than a *substantive* impact. The former refers to influence on the dominant discourse, or discursive power, as it is called in this paper, the latter to influencing policies, or decisional power. Hence, the discourses in the ILO and WTO were to some extent modified due to the trade unions, but the political outcomes were hardly influenced.

In section 4, the link between decisional power and the policy cycle was elaborated upon. This linkage is quite obvious. The one between the policy cycle and discursive power, however, is more complex, yet existent, as the above example of Van Roozendaal shows. To repeat, political discourses define issues inside and outside of politics, and hence, discourses co-determine agenda-setting and non-decision-making, as both Hager and Van Roozendaal emphasize. Yet I believe that the impact of discourses transcend this individual phase of the policy cycle. Discursive practices – defining, interpreting, signifying, etc. – are inherent to *all* policy phases, and discourses are instrumental to that. However, there is no one-to-one relationship between discursive power and policies (as there is between decisional power and the policy cycle). After all, policy-makers do not negotiate on discourses *as a whole*, but on certain discourse 'tools' (certain ideas, concepts, values, etc.). In that respect, discourses function as frames of references for policy-making. This also implies that political discourses transcend policies both in time and space. Reconsider the above examples: sustainable development and labour standards. While these concepts and underlying discourses have been developed, debated and redefined in global, national and local arenas in the past *decades*, governments and international organizations adopted *short-term* policies, which drew upon these discourses and gave certain flesh and blood to these values, norms and concepts.

What are the outcomes that 'framers' of political discourses strive for? Before answering this question, it should be acknowledged that – contrary to influencing decision-making – framing discourse is generally not a straightforward, intentional, individual or rational act. Discourses just develop in time, collectively, partially unintended, partially intended. They are also less focused and targeted than arguments related to decisional power. Discourses 'exist', because we cannot do without them. Any (collective) actor needs a worldview, a story about his or her own life and those of others in the world, about 'the good' and 'the bad', and about what to strive for. And as we as human beings tend to disagree on many of these things, we more often than not try to convince others to accept the validity and appropriateness of our own views. Having said that, one can argue that 'framers' of political discourse define themselves in the political world (identity, position), define their political ideals and values (ideal society, causal and normative be-

iefs), define their norms for political behaviour (rights and obligations), define what really matters and what not (ideas, concepts, buzzwords) and define their political strategies in order to persuade others of the appropriateness of their own worldview.

A political strategy related to discursive power consists of at least the following three elements: naming, framing and campaigning. ‘Naming’ refers to the process of defining properties, events, processes, etc. in certain politically relevant ways (Van Tatenhove et al., 2000); ‘framing’ to the process of bringing elements together in a more or less coherent story (McAdams et al., 1996); and ‘campaigning’ to the process of spreading this story into societies and political systems in order to challenge and change dominant political discourses (Keck and Sikkink, 1998). Compared to strategies related to decisional power, these have some specific (dis)advantages. On the negative side, the strategies of naming, framing and campaigning are less focused and targeted than for example lobbying, advocacy and monitoring, which aim at very specific political outcomes. As a consequence, the effects are quite diffused in time and space, and hard to predict. On the positive side, however, in the long run, the strategy may be able to change values and norms in a society as a whole and therefore may contribute to fundamental social and political change. According to many, such ‘deep’ change is needed to achieve a just and sustainable world order. Lobbying, advocacy and monitoring do not and cannot aim at such far-reaching objectives, because these strategies are embedded in short-term, and often reformist, policy-making.

According to the literature, what factors may explain the (relative) success of discursive power strategies? Three key ones are to be distinguished: moral authority, access to the mass media and the legitimacy of the dominant discourse that is being challenged (Hajer, 1995; McAdams et al., 1996; Risse, 2000). Moral authority refers to the legitimate right of an agent, either formally or informally granted, to speak about a topic in moral terms in the public arena. This right is based on the agent’s broadly accepted reliability, integrity and knowledge of the topic. The more such moral authority an actor possesses, the more persuasive he or she will probably be. For example, the Pope claims and receives moral authority in Roman-Catholic circles, and even wider, to speak about issues such as abortion and euthanasia. His opinions are very influential. The same goes for Amnesty International and its views on human rights issues. Also, Greenpeace has some moral authority with regard to environmental issues. However, moral authority does not exclude contestation. The values and norms of the Pope are contested worldwide, as are the views of Amnesty and Greenpeace. Access to the mass media is a second independent variable of the strategy of naming, framing and campaigning, especially when organizations wish to approach, convince and mobilize support among larger sectors of society. Greenpeace has become famous for its interactions with the mass media. The Brent Spar case offers a good example (Dickson and McCulloch, 1995). With the sinking of an old oil platform in the sea at stake, through the mass media, Greenpeace created an image of a struggle of the ‘good David’ (Greenpeace itself) against the ‘bad Goliath’ (Shell) (remember the pictures of small Greenpeace boats, threatened by huge water canons from Shell’s vessels, with the oil platform in the background). This image, which was widely spread by the mass media, mobilized large support in Western Europe, both among politicians and the general public, so that Shell was pressured to change its plans. The

third explanatory factor of discursive success is the legitimacy of the current, still dominant political discourse, which is challenged. If it is still considered legitimate by the majority of the people, and if it is highly institutionalized, then any challenging discourse will remain weak. But should increasing numbers of people start to question or reject the dominant discourse, then any challenging form of discourse has a chance to become (more) dominant. Take agriculture: An increasing number of crises (BSE, Mouth and Foot Disease, acid rain, hormones in meat, pollution of feed and fodder, GMO scandals) have subject the traditional discourse of the ‘modern industrial agriculture’ – based on concentration, specialization, growth, high productivity, high inputs, bio-technology and large-scale farms – to severe pressure. As a consequence, alternative discourses (e.g. sustainable agriculture, integrated agriculture, organic agriculture) have gained prominence.

Keeping the above discussions about preferred outcomes, political influence, strategies and explanations in mind, the basic causal model of this second face of power can be portrayed as follows:

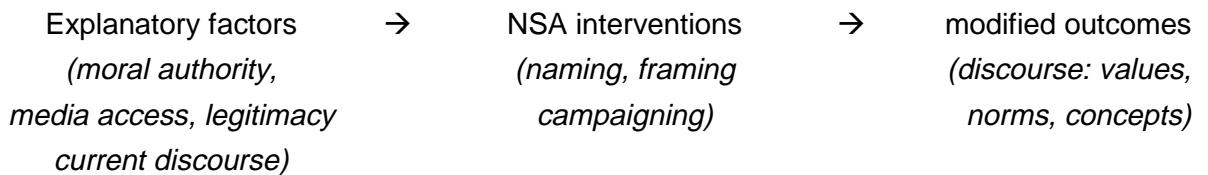


Figure 2: A causal model of discursive power

Implicitly, this model includes the following hypothesis:

Hypothesis 2

Discursive power of a NSA is more likely, the more moral authority it possesses, the more access it has to the mass media, the less legitimate the dominant political discourse is and the more it actually intervenes (naming, framing, campaigning).

Below, in section 7, one case of discursive power will be elaborated on in more depth: human rights. This case was selected because: (1) it is a relatively old issue (at least compared to the environment), and it is thus possible to take long-term developments into account; (2) NGOs have played a clear role in it; (3) it is linked to a number of international instruments, embedded in a shared regime and discourse (so we do not analyse a single instrument below, as was the case in section 5 on biodiversity); and (4) the issue of NGOs and human rights is very well documented (Cook, 1996; Ennals, 1982; Gaer, 1996; Keck and Sikkink, 1998; Korey, 1998; Risse, 2000; Van den Berg, 2001; and many others).

7. Case II: NGOs, human rights and national sovereignty

According to the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in December 1948, human rights include, amongst others:

- The equality of all humans, without distinction of any kind, with regard to as race, colour, sex, language, religion, and political views and differences of opinion;
- The freedom of speech and belief, of movement and travel, of peaceful association and of political and cultural participation;
- The right to life, liberty and security, to marry and found a family, to property, to work and equal payment, to health and well-being, to education, to asylum from non-criminal prosecution and to equal treatment by the law; and

The right not to be subjected to torture, arbitrary arrest or slavery (source: www.unhchr.ch/udhr).

These rights can be traced back to the French Revolution (1791) and to the US Bill of Rights (1789). However, until the establishment of the UN in 1945, human rights were merely considered a domestic issue, not an international one (Keck and Sikkink, 1998; Korey, 1998). How governments treated their citizens was considered national policy, and it was a matter of national law and national sovereignty. Other states were not supposed to intervene in such ‘internal affairs’. After the Nazi-led Holocaust, however, the traditional domestic discourse on human rights was no longer legitimate. Therefore, during the establishment of the UN, human rights were included in its 1945 Charter (although only after lengthy debates among reluctant states, while subject to heavy pressure by American NGOs). Three years later, this aspect of the UN Charter was elaborated upon in the Universal Declaration.

Since the adoption of this declaration, a whole regime on human rights has been designed, consisting of about 100 international instruments (conventions, protocols, declarations, resolutions, recommendations, principles and guidelines; see: www.unhchr.ch). On the one hand, these instruments focus on different rights such as civil, political, economic and cultural rights, and, on the other, on target groups such as labourers, women, youth and children. Amongst others, examples are the Geneva Conventions and Protocols on warfare and the rights of soldiers and civilians, the Covenants on Civil and Political Rights as well as on Economic, Social and Cultural Rights, the Anti-Torture Convention, the Protocol relating to the Status of Refugees and the Convention on the Prevention and Punishment of the Crime of Genocide. Moreover, UN bodies were designed – e.g. the UN Commission of Human Rights and UN Center for Human Rights; and, more recently, a UN High Commissioner of Human Rights was installed. Also, international bodies and tribunes were established to monitor the compliance with international human rights and, if necessary, to punish the violators. Examples are the International Criminal Courts for Rwanda and former Yugoslavia as well as the (rather new) International Criminal Court. This human rights regime as a whole is based on four core principles: (1) the agreed upon norms are universal and indivisible; (2) the promotion and protection of human rights are a concern of the

international community; (3) each state is held accountable to the international community for human rights issues; and (4) the international community not only consists of nation-states, but also of NGOs and individuals involved in these issues (Cook, 1996).

NGOs played important roles in designing, implementing and monitoring this regime (Korey, 1998). Dealing with NGOs in this area, one of course immediately thinks of groups such as Amnesty International and Human Rights Watch. However, Amnesty was established not before 1961, and Human Rights Watch not even before 1991. So it was other groups that intervened during the early days of the regime, such as religious groups, peace groups, concerned individuals and ‘victim-interests’ (individuals who had suffered human rights abuses, or who were directly related to such victims). For example, the American Jewish Committee, the American Christian Churches and the US-based Carnegie Group, amongst others, campaigned and lobbied for the inclusion of human rights in the UN system during its establishment in 1945 (Gaer, 1996). But the heydays of NGO activism on human rights came only after the establishment of Amnesty International, which was motivated by human rights abuses in the 1960s, 1970s and 1980s (South-Africa, Soviet Union, Vietnam, Chile, Argentina, etc.). It was Peter Benenson who laid the foundation for Amnesty by publishing an article in *The Observer* (26 May 1961) in which he called for a one year campaign for the release of all those ‘forgotten prisoners’, who were put in jail solely for political, religious or cultural ideas and beliefs (Ennag, 1982). This ‘Appeal for an International Amnesty’ met with a tremendous response, not only in the UK, but worldwide.

Another key NGO in this field is Human Rights Watch (HRW). This organization dates back to the Helsinki Watch Group, established by Soviet dissidents in 1978 (Risse, 2000). This group monitored the extent to which the USSR lived up to the human rights standards this country itself had adopted in the framework of the Helsinki Accords, embedded in the Organization for Security and Co-operation in Europe (OSCE). This ‘watching’ initiative was copied in many regions of the world, thus several regional watch groups were founded. Ultimately, these decided to join hands in the umbrella organization HRW in 1991. Its objectives are comparable with those of Amnesty International: to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, to bring offenders to justice, to investigate and expose human rights violations, to hold abusers accountable, to end abusive practices and to respect international human rights law (source: www.hrw.org). Like Amnesty, HRW does not accept government funds, directly or indirectly.

The main activities human rights NGOs undertake are (Cook, 1996; Korey, 1998, Risse, 2000)

- campaigning: people, governments and intergovernmental organizations should be made aware of the abuses of human rights worldwide;
- fact-finding: people, governments and intergovernmental organizations should be informed about facts and data on human rights abuses;
- norm-setting: universal norms on human rights should be set and elaborated upon;

- public pressure: public opinion should be made supportive of human rights' norms, and it can be used to put pressure on governments to do the same;
- agenda-setting: human rights issues should be included in political agendas and become part of the political decision-making process in order to bring about binding decisions on human rights policies and measures;
- drafting of legal texts: law-makers should be supported in writing good drafts for international human rights law;
- monitoring compliance: governments and other relevant parties should be monitored to see whether they live up to human rights standards.

The question is whether all these activities have been effective. Looking back at the history of the post-World War II regime, it is evident that an initial success has already been referred to above. It was indeed American NGOs that, mainly through the US delegation, succeeded in getting human rights norms into the UN Charter (Korey, 1998). Later on, NGOs were effective in influencing many legal instruments. A good example is the Anti-Torture Convention (Cook, 1996; Risse, 2000). In 1972, Amnesty International started a campaign to combat torture, after the 1967 Greek colonels' putsch. This led to a resolution of the UN General Assembly (UNGA) with a more or less similar message in 1973. During the UNGA deliberations, preceding the adoption of this resolution, several delegates referred to the Amnesty campaign. Subsequently, from then until 1997, this organization published reports, organized an international conference and launched an action network on this topic. Shock events, such as the Chilean case and the death of Steve Biko in Southern Africa in the same period, emphasized the relevancy of these initiatives. This all culminated in 1977 in the call for a legally-binding convention against torture by the UNGA. Negotiations and drafting started immediately, and humanitarian NGOs, including lawyers working for Amnesty, were fully involved in this process. In 1984, the Anti-Torture Convention was able to be adopted, and it entered into force in 1987.

The above analysis implies NGO power indeed. Again, the question is how relevant this power has been. Did it affect consequential actors and rules? The answer seems to be affirmative. Both Risse (2000) and Keck and Sikkink (1998) go so far as to state that human rights norms have deeply affected the principle of national sovereignty. The latter write (p. 79):

The doctrine of internationally protected human rights offers a powerful critique of traditional notions of sovereignty, and current legal and foreign policy practices regarding human rights show how understandings of the scope of sovereignty has shifted.

Risse adds that dictators can no longer claim that those who criticize their human rights policy are 'interfering in internal affairs'. This is, in his view, a profound change in the underlying principle of international society. To be accepted as a member of the international community, a state should respect human rights (at least on paper, but increasingly also in practice). Consequently, the old standard – i.e. of having effective and exclusive control over and authority in a certain

territory – no longer seems valid. An example is of course Serbia: it was confronted with humanitarian intervention in Kosovo, which is part of Serbia's legal territory (although contested by the Albanese). Another consequence is that (more and more) dictators are on the run, due to international and domestic pressures (e.g. Pinochet, Suharto). If these claims are true, both about NGO power and about shifts in the meaning of sovereignty, then the political relevance of NGOs is unprecedented, as they – through the (re)framing of values, norms and concepts – have undermined one of the pillars of the state system.

To summarise the above arguments in accordance with the causal model of the previous section: NGOs concerned individuals and ‘victim-interests’ were able to get human rights accepted as an *international* norm just after World War II. They argued that in a civilized world, a holocaust-like event simply cannot be allowed to happen again. So the international community has a duty to protect human rights all over the world. This discourse had of course enormous moral power at that time (and still has). Supported by the rather ‘idealist’ post-War U.S. foreign policy, these norms entered the UN system, although only after intense campaigning and lobbying by NGOs. However, these long remained ‘paper norms’, because U.S. ‘realpolitik’ became increasingly important during the heat of the Cold War. For all kinds of reasons which cannot be elaborated upon here (Cuba crisis, Vietnam war, protest movements, human rights abuses, etc.), this situation drastically changed in the 1960s. At the beginning of this decade, Benenson wrote his famous article for an international amnesty, based on the ‘paper norms’ of the Universal Declaration – which granted his story some moral authority – and based on testimonies of prisoners of conscience, by which a name and face was given to anonymous victims. Through the mass media, his appeal became known worldwide. New cases of human rights abuses (Greece, Chile, Argentina, Sovjet Union, Cuba, China) fuelled the debate in the 1970s. By further shaping the human rights discourse (women’s rights, children’s rights, etc.) and by all kinds of campaigns (e.g. against torture), NGOs contributed to elaborating the human rights regime. Ultimately, these norms have not remained ‘paper ones’ in foreign and international politics, but they have shaped practice as well. As a consequence, the traditional principle of national sovereignty, implying non-intervention in internal affairs, no longer applies in general.

8. Face III: Regulatory power

NSAs are no longer merely watching, influencing and waiting for governments and intergovernmental organizations to establish public rules on various matters; they are increasingly taking the initiative to set rules *themselves*. Historically, this phenomenon is not new at all – one might, for example, think of guilds in the Middle Ages, mercantilist firms in the Golden Age, and the Chamber of Commerce (ICC) in the 19th century. These all set standards. But it seems a rather new development now, because the international arena after World War II was so strongly determined by states, interstate rivalry (Cold War) and intergovernmental policy-making (Higgott et al., 2000). In this paper, cases are said to exemplify regulatory power if private rule-making initiatives are successful. Related to this type of power is the literature on non-state authority,

private regimes and private governance. In order to put the concept of regulatory power into theoretical perspective, I will shortly deal with this literature below.

Strange (1988, 1996) criticizes the mainstream Study of International Relations (SIR) for focusing on states too much, while leaving the market and NSAs under-theorized. She goes so far as to argue that the state, although it is definitely not disappearing, has been ‘hollowed out’:

Where states were once the masters of markets, now it is the markets which, on many crucial issues, are the masters over the governments of states. And the declining authority of states is reflected in a growing diffusion of authority to other institutions and associations, and to local and regional bodies, and in a growing asymmetry between the larger states with structural power and weaker ones without it (Strange, 1996, p. 4).

Particularly in the realms of technology, finance, knowledge and global production and services structures, TNCs are more influential in setting the tone for and determining outcomes than states are, either directly (relational power) or indirectly (structural power). Also, as a consequence of privatisation processes, TNCs have taken over all kinds of functions that were formerly attributed to and executed by states; for example, the production of certain public goods (water supply, transport, telecommunication), the redistribution of wealth (investments in developing countries) and the management of labour issues (from tripartite to bilateral arrangements). As a consequence, authority in the global political economy has been diffused, leaving NSAs with considerable power.

Like Strange, Haufler (1993; 2001) criticizes the ‘statism’ of SIR, but targets traditional regime theory in particular. Regime theory focuses on sets of rules – principles, norms, regulations, procedures – that govern a certain issue-area in international relations, e.g. aviation or the environment (for an overview see, for example: Hasenclever et al., 1997; Krasner, 1983; Rittberger, 1993). Most regime theorists focus on states, but NSAs are also considered important in regime analysis (Arts, 2000; Haas, 1993; Rittberger, 1993; Young, 1982). According to Haufler, regimes have also been designed by private actors alone, which she calls ‘private regimes’. These have become important phenomena, because, on the one hand, there is a need for market regulations, felt by the private sector, and, on the other hand, there is a governance gap, or a mismatch between markets and politics (see also: Cerny, 2000; Cutler, 2002). Also, the capability and knowledgeability of governments in the realm of economic governance are questioned (Pierre, 2000). Private regimes should fill this gap and overcome these shortcomings. Haufler refers to five types of rule-setting: technical standards, codes of conduct, transaction safety rules, the prevention or pre-empting of government regulation and responses to societal demands. The issue-areas in which most private regimes are to be found are: insurance, banking, shipping, engineering, medicine, arbitration, ICT and stock markets. Outside the commercial sectors, however, private regimes can be found as well, the regime on population and family planning being one good example (Haufler, 1993). In the establishment of this regime, NGOs such as the International Planned Parenthood Federation and the US-based Population Council played decisive roles. Most private regimes are nonetheless nested in public ones. Examples are the standards of the

International Organization for Standardization (ISO). Most of its standards find their origin in the private sector. After being incorporated there, they are endorsed by governments as well.

Very much related to this literature on private regimes, but developed against a different background, is the literature on private governance and private actors in global governance (Heritier, 2002; Kerwer, 2001, 2002; Knill and Lehmkuhl, 2002; Ney and Donahue, 2000; Weiss and Gordonker, 1996; Wolf, 2001). While the former is rooted in SIR and the latter is rooted in policy studies and public administration, these two bodies of literature do overlap today, given many cross-references. The central thesis is that traditional arrangement of state governance, both at national and international levels, has increasingly lacked efficiency, effectiveness and legitimacy in establishing and executing governance tasks, due to processes of globalization, emancipation, the increasing scientific uncertainty and the increasing governance overload, amongst others (see also: Kickert et al., 1997; Kooiman, 1993; Van Tatenhove et al., 2000). Private actors are subsequently considered alternatives to or complementary to state governance, and it is thought that their participation or self-regulation will potentially increase both input and output legitimacy. Whereas much of the early private governance literature seems to support the thesis that the state is ‘hollowing-out’ (Cerny, 2000; Strange, 1996), and it seems to glorify – or criticize – one type of private self-regulation (market neo-liberalism), recent theories take a much more nuanced stance. For example, Knill and Lehmkuhl (2002) argue that globalization does not necessarily imply the demise of the state in general. Instead, the governance capacity of both public and private actors may vary with the type of policy problem, the regulatory structure in place and the institutional context in different issue-areas. As a consequence, the capacity of either public or private actors may be high in one area, but low in another.

An example of private governance is the standardization by credit rating agencies (Kerwer, 2001, 2002). These agencies, like Moody’s or Fitch/IBCA, have set standards to determine the credit-worthiness of financial organizations, be they lenders (banks), borrowers (firms) or even countries as a whole. In the USA, for more than a century these organizations have already played this role in increasing the safety of market transaction. They have been able to do so, because of the US ideology of market self-regulation, on the one hand, and the need for risk reduction for business, on the other. Slowly but surely, however, these private rules have been institutionalized at the international level as well, and have become key standards on the basis of which interested parties decide whether organizations in other countries are safe to do business with. This institutionalization process can be traced back to competition for market access to the USA (without a good rating, just forget about it), to the formalization of the standard (it has to some extent become part of state regulation) and to the export of the US regulatory approach via international organizations. As a consequence, global financial regulation is to a certain extent based on standards which were entirely developed within the private sphere.

Above, the main focus is on *economic* private actors as (potential) authoritative rule-makers. That is no coincidence since the literature on non-state authority, private regimes and private governance tends to focus on TNCs (Wolf, 2001). Yet NGOs may be authoritative sources of rule-making as well. To present some examples: the International Federation of Organic Agricul-

tural Movements (IFOAM) – a worldwide federation of about 750 organizations of producers, consumers and environmental interests from more than 100 countries – has developed generally accepted norms and standards on organic agriculture, which have been even adopted by the EU to shape its own policy on the matter (wwwIFOAM.org; www.verbraucherministerium.de). WWF together with some parts of the forest industry established the Forest Stewardship Council in 1991 to develop a label that sets criteria for sustainable forest management and that informs consumers about the background of timber (Bendell, 2000). And WWF, together with Unilever, has developed a similar label for sustainable fishery (Bendell, 2000). These product labels have gained a certain market niche in West-European countries. Although still quite restricted in terms of market sales, the labels themselves and the standards these incorporate have nonetheless become the leading ones in their fields.

If we talk about rule-making by NSAs in the context of regulatory power, as defined in this paper, what do we refer to? From the perspective of regime theory, there are four types of rules: (1) principles (moral and causal beliefs); (2) norms (rights and duties); (3) regulations (pre- or proscription for action); and (4) procedures (decision-making rules) (Krasner, 1983). From the perspective of structuration theory, however, the first two categories (principles and norms) belong to the set of *constitutive* rules, hence they are related to discourses and discursive power, and the last two categories (regulations and procedures) belong to *regulative* rules, hence they are related to institutions and regulatory power (Dessler, 1989; Giddens, 1984). Regime theorists themselves have also acknowledged a fundamental difference between these two sets of regime rules, since they speak of regime change *as a whole* when referring to changes in principles and/or norms, and they speak of changes *within* a regime when either the regulations and/or procedures change (Young, 1982). In the context of this paper, this implies that principles and norms were already dealt with in the previous section on discursive power, whereas below we need to concentrate on regulations and procedures as part of the concept of regulatory power.

Having set these differences, it should be noted that much literature on private governance does not speak of regulations and procedures in the fashion of regime theory, i.e. in order to refer to rule-making by NSAs; instead it speaks of *standards* and *standard-setting* (compare: Haufler, 2000; Held, 2002; Kerwer, 2002). Kerwer defines (2002: 298) a standard as an expertise-based voluntary rule on organizational structures and procedures. Yet this definition is void of any *substance*: it only refers to structures and procedures. Although this definition is broad enough to capture many standards (like management standards such as ISO 14000), it is too narrow to include standards such as those of IFOAM, FSC and MSC, which set certain *substantive* rules (such as: ‘do not cut endangered tree species!’). Therefore I would like to add the notion of ‘regulation’ to the definition of a standard. To conclude, *rule-making in the context of NSAs’ regulatory power is to be considered standard-setting, whereby a standard is defined as an expertise-based voluntary rule on organizational regulations, structures and/or procedures*.

The above definition links two elements to a rule in order to become a (private) standard: it must be ‘expertise-based’ and ‘voluntary’. Expertise is probably the key asset for NSAs in the realm of regulatory power, and the main source of substantive authority on the basis of which these

standards can be set and will be broadly accepted (Kerwer, 2002; Wolf, 2001). After all, setting and implementing an authoritative standard definitely requires extensive substantive, legal and organizational knowledge and competencies (together: technical expertise). It is also important to emphasize the ‘voluntary’ character of standards. As soon as a standard becomes compulsory, for example, by being adopted by states and being incorporated into state or intergovernmental regulation, it loses the character of a private standard (Kerwer, 2002). Yet one may put the ‘voluntary’ character into perspective. Though on different grounds than states, private actors can also oblige others to adopt certain policies, not on the basis of formal authority, but on the basis of substantive authority, or on the basis of some other power, such as resource dependency (e.g. a small firm being a supplier of a big one). Also, once voluntary standards have become ‘authoritative’ in their fields, everyone feels ‘obliged’ to adopt them. Hence, the term ‘voluntary’ in the above definition means ‘free of binding state regulation’, not ‘free of any coercion’.

Having shortly dealt with *how* NSAs may matter in standard-setting, one may ask *why* they get involved in the first place? The most probable answer is that there is a need for private regulation in a (still) empty institutional space. If there is an empty institutional space – or, in the words of Hager (2000), an ‘institutional void’ –, rules are lacking to guide behaviour, thus the mutual objectives, roles and expectations of agencies remain unclear. This ‘anarchic’ situation may produce a cry for regulation to increase transparency, safety and clarity in certain markets or policy fields. And private standards may deliver in such cases. Such institutional voids may, by the way, be intended or unintended. In the first case, states *deliberately* leave it to the market, and eventually civil society, to take up the challenge of regulation. In the second case, the governance gap is the result of unintended processes that took their own courses, e.g. the speeding up of globalisation processes or the discovery of a new risk, which may create a demand for additional regulation that states cannot deliver.

With the above discussions in mind, the basic causal model of this third face of power can be drawn as follows:

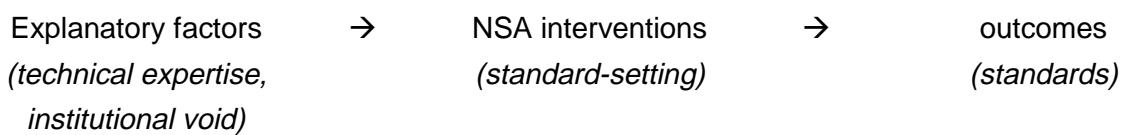


Figure 3: A causal model of regulatory power

Implicitly, this model includes the following hypothesis:

Hypothesis 3

Regulatory power of a NSA is more likely, the more that it possesses technical expertise to set standards, the more that rules on the matter are lacking ('institutional void') and the more that the NSA actually intervenes (standard-setting).

In the next section, the focus is on the origin and design of environmental standards by industry (often TNCs). The choice for this topic was based on: (1) the need for considering TNCs in accord with two empirical cases dealing with NGOs (biodiversity and human rights); and (2) the fact that I already had some knowledge of this field (though less than in the field of biodiversity, definitely more than in the field of human rights).

9. Case III: Industry and environmental standards

Since the late 1980s and early 1990s, industry has increasingly taken ‘voluntary initiatives’ in the field of environmental management. Kolk (2000:54) defines voluntary initiatives as “guidelines adopted or measures taken in the absence of mandatory regulation in order to enhance corporate responsibility”. Examples are environmental codes of conduct, the publication of environmental reports, designs of environmental management systems and the establishment of environmental standards. Below, a combination of the latter two issues will be dealt with: i.e. the standardization of environmental management systems within and by industry (and other organizations). These voluntary initiatives mark a (partial) shift in environmental governance: namely, from state-centered patterns of governance to network or self-governance (Gunningham et al., 1999). Governments have to some extent privatised and de-regulated their environmental policies, at least in the West, leaving more political space for market and civil society parties. They did so, because the classical ‘command & control’ approach, although successful in some environmental areas, turned out in general to lack effectiveness, efficiency and legitimacy. On the other hand, business itself has taken on its own responsibility for environmental matters. This is expressed by these voluntary initiatives (Eden, 1996). Whether these ‘new’ types of private governance are more successful than the old forms of direct regulation can of course be questioned, as we will see below.

As said, this section deals with the standardization of environmental management systems (EMSs). An EMS is an organizational approach towards environmental management (Goetsch and Davis, 2001; Harbour, 2000; Kolk, 2000). It refers to that part of an organization’s overall management system that addresses the environmental aspects of its operation and that leads to continual improvement of environmental performance. The origin of these systems was mainly in the USA, and to a lesser extent in Europe, in the 1980s (Steger, 2000; Vermeulen, 2000). Pressed by environmental regulations, compliance difficulties, liability for bad performance, ‘public shaming’ for incidents and litigation by public authorities and civilians, US companies themselves started to streamline, structure and systematize their environmental policies in order to achieve better results. One way to do so was to integrate environmental concerns into the overall management system. In Europe, some companies did similar things, but for pro-active reasons most of the time. They hoped, given the popularity of ‘green consumerism’ in Europe those days (late 1980s, early 1990s), to improve their public reputation by integrating environmental concerns into their operations, and – as a consequence – to achieve better market opportunities. In the beginning, individual companies ‘invented’ their own EMS, but later on, experi-

ences were shared, and industrial associations started to formulate guidelines, as did international organizations and governments. With that, the standardization of EMSs began.

An EMS generally consists of the following elements: an organization's environmental policy, a planning scheme, environmental measures, a monitoring scheme, corrective actions and management reviews. Most EMSs are based on the 'intervention cycle' or 'Deming cycle': that is, they *plan* (take measures on the basis of the environmental policy), *do* (implement and operate measures), *check* (consider whether they work or can be improved) and *act* (take corrective action and undergo management review). This cycle should be continuously reviewed, with the aim of continual improvement. What most EMSs do not do, however, is set ecological goals, e.g. targets for a certain amount of greenhouse gas emission (reduction) each year, or for a certain load emission (reduction) each year; nor do they develop specific requirements for a product, such as eco-design. Additional important aspects of any EMS are auditing, certification and review. If an organization applies for a certain standard, an auditing team – consisting in some cases of associates, or in others of independent third parties – checks to see whether an EMS is in place and does indeed function. If those results are positive, the organization can be certified. After that, the organization will once again be reviewed regularly to see whether it still deserves to carry the standard. Kolk (2000) distinguishes three types of EMSs, which are increasingly 'demanding', yet increasingly 'ecologically sound': end-of-the-pipe, process-oriented and product-oriented systems. The first one only tries to manage outputs, but it leaves both the process and the product undisturbed; the second system adapts, if necessary, the whole production process to improve environmental performance; and the third system even redesigns or replaces the product *itself*. Below, we will deal with two EMSs of the second type (process-oriented EMSs): Responsible Care and ISO 14001. These have many similarities, but exhibit many differences as well. Together, these nonetheless show the regulatory power of industry (and TNCs in particular).

The Responsible Care Initiative (RCI) is a standard for the chemical industry, which mostly consists of big TNCs. It is concerned with the safe and environmentally sound management of chemicals throughout their life cycle (www.ccpa.ca). In the aftermath of the Bhopal tragedy in 1984, CRI was designed by the Canadian Chemical Producers' Associations (CCPA), although its origin goes back to the late 1970s, when guiding principles for the management of hazardous chemicals were endorsed (O'Connor, 2002). Also, projects on responsible care and product stewardship were executed in the early 1980s, however low-profile and behind the scenes they may have been. But no formal policy was adopted. The Bhopal tragedy, however, tremendously sped things up. In no time, public confidence in the chemical industry dramatically dropped, and both civilians and politicians asked whether similar accidents could happen everywhere. The response of the CCPA was to review its safety and emergency programs and their Public Relations (PR) and communication programs. Both were adjusted and integrated, and in this process the first contours of the RCI emerged. A task-force continued working on it. Later, the board and members had to be persuaded to accept it. A new shock event in Canada itself – chemical pollution of the St. Clair River in 1985 – as well as public and governmental pressure for immediate action kept the process in motion. Principles and codes of practice were either designed or re-

fined, and, finally, the foundation of the RCI was publicly announced in spring 1986. Amongst other things, it consists of a Responsible Care Ethic (six principles: stewardship, accountability, respect for people, continuous improvement, respect for the law and inspiration to third parties), a Community-Right-To-Know Policy (informing and communicating with the public) and six Codes of Practice (community awareness and emergency response, research and development, manufacturing, transportation, distribution and hazardous waste management) (CCPA, 2000).

ISO 14001 is also an EMS standard, but it is not designed by and for a specific industrial sector, such as the chemical industry. It was developed in the context of the International Organization for Standardization (ISO) (Goetsch and Davis, 2001). The standard applies to many different sectors and types of organizations, including industry. Its history and origin are quite complex. Its roots go back to individual initiatives of firms in the 1980s, referred to above, initiatives by industrial sectors (like Responsible Care), the design of national EMS standards in the early 1990s (such as the BS 7750 in the UK), older ISO standards on which it could be built (such as ISO 9000 on Quality Management), as well as the preparation of the UN Earth Summit, or UNCED, held in Rio de Janeiro, Brazil, in 1992 (Goetsch and Davis, 2001; Kolk, 2000; Vermeulen, 2000). The International Organization for Standardization (ISO) also participated in the UNCED process and, being stimulated by it, it started to consider the need for developing an international EMS standard. In 1993, it created the Technical Committee 207, which designed the ISO 14000 family (including 14001). Like many other EMSs, ISO 14001 is based on the premise of continual improvement and on the ‘Deming cycle’: i.e. the cycle to plan, do, check and act. Yet, it does not set environmental goals; nor does it oblige parties to undergo an external audit, or report their performance and progress to the larger public (‘environmental reporting’). For these reasons, critics believe that it is a weak system from an ecological point of view (Seger, 2000).

A comparison of the Responsible Care Initiative (RCI) and ISO 14001 produces the following picture. On the one hand, RCI transcends ISO 14001, because it also includes the adoption of certain substantive principles (on safety, health and the environment), the reckoning of product stewardship and the establishment of community dialogue. On the other hand, ISO 14001 transcends RCI, since it is not restricted to industrial organizations, or to one sector. In fact, the two are very different regulatory systems (Gunningham et al., 1999). RCI builds on a system of ‘self-regulation’, which is a process whereby an organized group regulates the behaviour of its members. That’s exactly what CCPA and other national chemical industry associations do: i.e. they regulate the environmental behaviour of their members. ISO 14001, by contrast, builds on a regulatory system of ‘voluntarism’. Not associations, but individual organizations are the main subject, thus (environmental) initiatives are taken unilaterally, and voluntary.

The above seems to point to private initiatives which governments and intergovernmental organizations (IGOs) do not play any role in – although they do. As far as RCI is concerned, the *direct* role of governments and IGOs has been nil. It was a business initiative, and has remained so, all the more so since (most) of the involved chemical associations reject (inter)governmental interference (Gunningham et al., 1999). Yet governments have played a more indirect role, by

setting legally-binding environmental goals for the sector and, in some cases, by supporting – through financial incentives – both firms and associations that adopt the RCI. Still, governments did not *force* the chemical industry to establish these steps. However, the situation regarding ISO 14001 is a bit different. Here the role of governments has been more extensive. Firstly, ISO 14001 was an initiative of ISO. Although ISO is not an IGO in the strict sense, but an INGO that unites national standardization organizations, governments are generally members of these national organizations. In some countries, they even dominate them (Goetsch and Davis, 2001). Secondly, ISO 14001 grew out of the UNCED process, which was mainly an intergovernmental initiative (although NSAs were strongly involved). Thirdly, governments grant legal status and legitimacy to national standardization organizations, which then have the formal authority to design voluntary standards and to establish private accreditation organisations (Vermeulen, 2000). And finally, more and more governments are trying to link ISO 14001 to their own environmental policy, by granting some ‘regulatory relief’ to firms if these have installed, or will install, an EMS (Gunningham et al., 1999). For example, the Netherlands has introduced a ‘framework permit’, which is much simpler and more flexible than the traditional one. It only sets end-goals, and it leaves the architecture of the processes and procedures to the EMS, which is usually ISO 14001.

So far we have mainly dealt with *how* industry (TNCs) has mattered in rule-making. *Why* they (successfully) did so is another question. This why-question can be deconstructed and reformulated in three sub-questions: Why does the private sector engage in standard-setting? Why has it been successful in doing so? And why are individual firms willing to adopt these standards and live up to them? To start with the last sub-question, in the literature, several motivations are summed up, some of which were already referred to above (Eden, 1996; Kolk, 2000). A firm may be motivated: (1) to improve one’s reputation as a responsible social agent (which may be an asset on the market); (2) to respond to external pressure for action, either from society, governments or intergovernmental organizations; (3) to hope for ‘regulatory relief’ from governments; (4) to give substance to one’s own ethic and environmental values; (5) to increase market access as well as access to contracts (since a certificate for an EMS has increasingly become a prerequisite for doing business); or (6) to become a member of an industrial association which prescribes the adoption of a standard (as is the case with RCI). Many discussions concern whether industry has ‘benign’ or ‘self-interested’ motivations for engaging in EMSs (Eden, 1996). It probably has both, although industry itself tends to emphasize the former, while its opponents, often the environmental movement, tend to emphasize the latter. The other sub-question is why industrial sectors and associations engage in standard-setting themselves. While motivations may play a role similar to those of individual firms looking for certification – albeit at a sectoral level – some additional ones should be mentioned. Firstly, sectors may respond to needs expressed by their members. As was the case with EMSs, the first pioneers had to invent the wheel themselves. They lacked guidelines. Those were only to be established by their associations later on. These helped and instructed those who followed in the next stage. Secondly, sectoral associations generally have regular contacts with governments, and they know what is going on and what might happen. If (tough) governmental regulation is in the pipeline, then intro-

ducing (more business-friendly) environmental standards might be a way of anticipating on or pre-empting it.

The third sub-question – i.e. why industry may be *successful* in private standardization processes – relates to the causal model of the previous section. The following independent variables were distinguished: namely, technical expertise and institutional void. Indeed, the above examples seem to point to the importance of these factors. The Canadian chemical industry had a whole battery of senior experts working on the RCI before it was publicly introduced (O'Conner, 2002). Obviously, it paid, since individual chemical firms were able to put it into operation and there were hardly any complaints of technical infeasibility. The same goes for the ISO 14001 standard, which the ISO Technical Committee 207 was working on, and which built on expertise involved in other standards (BS 7750 and ISO 9000). It is unthinkable that governments alone would have been able to set up these standards at a similar technical level or that, without the involvement of industry, government standards would have been as well adapted to industrial practice. In addition, ‘institutional voids’ may explain the rise of private standards in these cases as well. In the 1980s, firms noticed that they lacked methods for translating general environmental targets into concrete environmental performance. There were hardly any rules, procedures and standards for accomplishing this. Individual firms just tried. They did their best (or not). This, in any case, resulted in bad figures, non-compliance and a bad reputation among the public. In fact, industry lacked a system of environmental management, and it faced a ‘management gap’ (Gunningham et al., 1999). By setting new rules, industrial associations started to fill this gap, a move which was often applauded by governments.

10. Conclusion

The political power of non-state actors (NSAs) remains a contested issue, as the continuing debates between neo-realists and transnationalists within the Study of International Relations (SIR) show. Behind these different views, there are – overt or covert – clashes of various meta-theoretical worldviews, of various theories, of various conceptualisations of power, of various methodologies and of various empirical analyses. Therefore, a single, all-compassing and comprehensive conclusion on this topic, which will close the debate for once and for all, will never be reached. And neither should we strive for that. We simply have to live with – and we should value – this rich plurality of academic views. Yet we can try our best to sort things out, theoretically, methodologically and empirically, and see whether our analyses and arguments may convince others, both academics and practitioners.

In the introduction to this paper, the objective of creating more ‘unity’ in the diverse and fragmented NSA literature was formulated: (1) by deducing general, case-transcending trends on the political role and impact of NSAs; and (2) by analysing these trends from one specific theoretical framework. The first sub-goal was (hopefully) achieved by analysing cases from different issue-areas (environment and human rights) and from the perspective of different types of NSAs (NGOs and TNCs). The second sub-goal was (hopefully) achieved by applying the framework of

‘the three faces of power’. Inspired by and derived from the academic debates on the concept of power, these faces consists of: (1) *decisional* power, related to policy making and political influence; (2) *discursive* power, related to the (re)framing of discourses; and (3) *regulatory power*, related to rule-making and standard-setting

In the case of biodiversity, IUCN played an influential role in the formation of the Biodiversity Convention: by putting the issue on the international agenda, by formulating a first draft treaty, by delivering expertise to the governmental delegates who negotiated the convention and by monitoring its implementation worldwide. Here the substantive expertise the IUCN possessed and delivered and the access that the IUCN was (in)formally granted to intergovernmental decision-making were considered important explanatory factors for successful intervention. In the case of human rights, a broad range of NGOs – from peace and religious groups in the 1940s to Amnesty International from the 1960s onward – emphasized respect for human rights and campaigned for this premise to become an international norm on the basis of which states would shape their interrelationships. As a consequence, the dominant discourse on national sovereignty has been (partially) reframed. No longer can governments legitimize the violation of human rights by referring to the sovereign right of states to act within their borders as they please. Here the moral authority of NGOs, their access to the media and the contested legitimacy of the national sovereignty discourse were considered important explanatory factors for successful intervention. In the case of environmental standards, TNCs and industrial associations played entrepreneurial roles in designing and institutionalising environmental management systems, such as Responsible Care and ISO 14001. These systems, which have become some of the leading ones in their fields at the global level, have contributed to improving the environmental performance of firms, and hence to the implementation of environmental policy in general. Here the technical expertise that industry possessed and the existence of an ‘institutional void’ with regard to the standards to be developed were considered important explanatory factors for successful intervention.

It should be noticed that the above three examples – biodiversity, human rights and environmental standards – are just illustrations of decisional, discursive and regulatory power respectively, and that many more examples could be thought of, both affirming and not affirming the hypotheses. Yet these cases substantiate the view that NSAs are capable of reshaping the patterns and outcomes of global governance through the three faces of power.

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