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## **Non-state actors and global crime governance.**

### **Explaining the variance of public-private interaction**

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#### **Introduction**

Why and how do non-state actors engage in global crime governance? In recent decades, states committed to a growing number of international regulations and enforcement efforts (e.g. Andreas and Nadelmann 2006), yet they still face limitations in effectively governing crime. One consequence is that civil society organisations, businesses and other associations became important actors in this policy field (Grabowsky 1995, Liss and Sharmann 2014). Their activities range from agenda-setting to the implementation of anti-crime laws. Yet, this involvement in governance differs across issue areas. Non-state actors have been important agenda-setters or implementation bodies in some issue areas, but have been absent in others.

This article argues that this variance is systematic. Non-state actors are more likely to act as advocates in issue areas in which crime is highly moralised, while they often monitor

in issue areas where crime is highly technical. In the former case, public awareness regarding crime is high due to non-state activity, in the latter, crime is mainly administered and the non-state resources are central for implementation of anti-crime laws. This variance implies a higher public awareness of some crimes than others, but also a higher responsibility of implementation for a specific subset of non-state actors. The consequences of this divergence range from questions of accountability to those of privacy, surveillance, and administrative burdens.

Research on governance frequently emphasizes the role of non-state actors, but often overlooks this variance. Exceptions have been Cerny (2010, 289-292) who outlined systematic variation in neopluralist transnational governance. Börzel and Risse (2010, 116) analysed the public-private interplay in weak states. Djelic and Sahlin-Andersson (2006, 395-397) pointed at complex, yet regular interactions in transnational institution building. These analyses outlined important factors in determining public-private interaction, yet they did neither conduct a comparative study of issue areas nor did they analyse the significance of issue characteristics on governance activities.

To fill this research gap, this article first presents the complexity of crime governance, distinguishing different roles of state and non-state actors. In a second step, I outline the main theoretical explanations for explaining non-state actors' involvement in governance, in particular the constructivist idea of normative orientations and the rationalist perspective of resource exchange. Bringing these ideas together, I argue that if an issue area is framed in a highly moralised way, it is likely that non-governmental activity is based on normative convictions, and in particular advocacy is likely to occur. If an issue

area is framed with regard to technical and administrative questions, it is more likely that resource exchange is at the centre, and contributions of non-state actors are foremost linked to delegation. The underlying reason for this is a larger potential for mobilization and resonance in the public in the former case, while there is a stronger managerial approach in the latter. In a further step, this causal relation is explored in a comparison of human trafficking, conflict diamonds, money laundering and cybercrime. Given the transnational nature of global crime governance, the focus is on the global and national level. I conclude with an outlook to the possibilities and limitations of non-state actors in global crime governance, including implications for democratic accountability.

### **The complexity of global crime governance**

Crime governance is the governmental or non-governmental attempt to define, prevent, control, pursue or punish crime. Crime policies are targeted at realising these ends, and they concern different issue areas from human smuggling to corruption and terrorist financing. Crime governance is usually linked closely to a national judicial system, while global crime governance refers to international regulations and their implementation. Global crime governance is therefore a pluralistic and transnational form of governance and actors involved include states, international organisations, police forces, military, advocacy organisations or businesses.

Global crime governance faces many challenges and compared to other policy fields, it even lacks clear indicators of its success. Figures on crime often turn out to be unreliable

or inflated (Andreas and Greenhill 2010). They rely on estimates, for example based on confiscation of illegal products or on street prices of drugs (Lee 1999, 3). More confiscated products may signify either more illegal manufacturing or better law enforcement. Lower prices for drugs may signify an oversupply due to higher production or problems in law enforcement. Governance problems further multiplied in the context of globalisation, in particular due to transnational organised crime. Seemingly local crimes are increasingly global in operation. For instance, Somali pirates capture the ships on the open sea, their weapons are delivered across borders, and the ransom money is laundered in the financial system (Author).

Many states reacted to this complexity in two ways - they internationalised counter-crime efforts and they 'privatised' them. With a view to internationalisation, the recent decades witnessed growing budgets for international police cooperation and enlarged mandates of international organisations. Regulations on crime mushroomed, so that money laundering, corruption, human trafficking and many others are now regulated on a global level (Andreas and Nadelmann 2006; Jojarth 2009; Author). In line with other research on norms, non-state actors have been identified as source of many global crime policies, ranging from slavery to human trafficking, environmental crimes, arms trafficking or corruption (e.g. Bieri and Boli 2011).

All efforts to counter crime fail if the state is not the decisive actor. Any international agreement against crime aims to regulate a behaviour of a group that is by definition not law-abiding – criminals. 'Privatisation' of crime governance has been an important tool to increase effectiveness. States rely on non-state actors in order to draw attention to

causes of crime, and to counter it (Garland 2001). Yet, non-state activities can also overlap or even contradict each other: In the case of trafficking in firearms, non-state actors such as businesses lobbied against a strong UN protocol, while activists lobbied in favour (Jojarth 2009, 222-233). Any assessment of non-state actors in crime governance needs to reflect this variety in organisations and political aims. Moreover, given the continuous limited success of anti-crime efforts, the fact that more actors become involved in governance does not automatically translates to more effectiveness. Given the insecurity in determining outcomes of crime governance, the inclusion of many actors is a clear signal of activity in crime governance, but not necessarily a signal of effective crime governance.

### **Explaining Non-State Actors' Engagement in Global Crime Governance**

Research on non-state actors and governance identified different types of public-private interaction. Focusing on business-state interactions in regulations, and taking up ideas of the policy cycle, Eberlein et al. (2014, 7) distinguish components of governance that range from agenda setting to rule formation, enforcement and reviews. Knill and Lehmkuhl (2002, 49-52) provided an account to different non-state activities in regulation, while Börzel and Risse (2010, 115-116) more recently outlined the public-private interplay in weak states. Early on, Grabosky (1995) underlined the resources that non-governmental actors can bring particularly to crime governance. Despite the importance of non-state actors, the state remains a central actor, and it is the interaction of public and private actors – defined as an interplay of state and non-state actors in governance – that needs

consideration. Like a 'bricolage' (Cerny 2010, 175-194), governance cannot be reduced to single interactions or specific actors alone, but is a partly coherent, partly incoherent interplay of different actors and on different levels of policy-making. It includes questions of effectiveness as well as of accountability (Eberlein et al. 2014; Koenig-Achibugi & MacDonald 2013, 502-504).

Four main categories can be used to identify variation in the public-private interplay in governance. *Public regulation* constitutes the most basic step in constructing and fighting global crime. National regulations against crime are the most common form, although international regulations become frequent. Still most international regulations (made in the framework of international governmental organisations) refer to implementation in a national legal system. *Advocacy* by non-state actors is crucial for establishing international criminal law. However, creating regulations is one step, implementing them another. With regard to enforcement, business and non-governmental activities can be important *co-regulators* in identifying and fighting crime: For example, international product piracy is usually governed by a range of public private partnerships between industry, international organisations and national authorities (Paun 2011). Sometimes governmental authorities cannot even recognise what actually is a counterfeit product without the advice of the respective industry. In the case of *delegation*, crime governance is widely left to non-state actors. Unlike other forms of implementation, delegation requires non-state actors to pursue monitoring and policing activities that resemble those of state institutions: For instance, banks are required to follow the 'risk-based approach' to prevent money laundering. They need to assess autonomously whether a specific transaction represents a risk, and whether precautions need to be carried out. Only broad

guidelines exist on how such assessment is to be done, and what a risk would be, leaving the responsibility of correct judgment fully to the non-state actor (Bergström et al. 2011, 1060).

### **- Table 1**

Classifying non-state activities in these categories (see table 1) shows that crime governance – despite being grounded in public regulation – is not only a governmental task, and changes over time can be traced in the rise or decline of specific governance activities. The classification also shows that governance by non-state actors is not a seemingly neutral supplement to state-based governance, but that it allow non-state actors to pursue their own interests to a varying degree. Advice given may be strongly penetrated by own interests, but governments are free to take it or not. In contrast, co-regulation allows non-state actors to bring in their own interests continuously and more significantly.

Existing accounts to explain global crime governance often overlook these differences in public-private interaction, leading to a biased view on non-state actors. The standard model of global prohibition regimes starts with the assumption that non-state actors form advocacy-coalitions for normative reasons, while states and international organisations eventually react to these claims and regulate the issue area (Nadelmann 1990). The early transnational movement against slavery provides an important example of this process, and led to the first international agreement against crime (Andreas and Nadelmann 2006, 17-22). The theoretical ideas developed for explaining global prohibition regimes left

their mark on subsequent analyses of non-state actors, in particular those related to global norms and norm entrepreneurship (Finnemore and Sikkink 1998). The constructivist idea of norm entrepreneurship implies that non-state actors are involved in governance because of normative reasons – ideas of what should be done and why (e.g. Bieri and Boli 2011, 507-508). The motivation is intrinsic and bound to moral convictions, even if strategic activity like framing is common. Issue-characteristics seem to be crucial for successful norm entrepreneurship, and campaigns often focus on bodily harm. Campaign success is particularly pronounced if a causal chain can be constructed from those who cause harm to those suffering from it (Keck and Sikkink 1998, 27).

While the role of advocacy and non-state actors has become a central theme in research on global governance since the 1990s, more recent scholarship underlines the role of non-state actors in governance for functional reasons. This function can be performed in weak states (e.g. Börzel and Risse 2010; Risse 2011) or in global policy networks of state and non-state actors (e.g. Dingwerth 2007). Besides a growing number of case studies, typologies of the public-private interaction have been developed, and assessments of normative aspects are carried out (e.g. Eberlein et al 2014, Koenig-Achibugi and Macdonald 2013). The theoretical explanation for these non-state actor contributions is a rationalist idea of resource exchange. In this view, non-state actors provide goods or implement regulations which supplement governmental capacities (Börzel and Risse 2010). Resource exchange has already been prominent in the early literature on lobbying, where industry is conceived as important information source for adequate political regulation (Grabosky 1995, 532).

Juxtaposing these strands of arguments shows that studies of non-state actors and governance cluster around two distinct forms of public-private interaction. Research on the influence of advocacy networks is not concerned with explaining implementation, and research on implementation by non-state actors does not focus on explaining non-state advocacy. The constructivist tradition of non-state actor involvement considers a normative reasoning as explanation for non-state actor involvement in governance. The rationalist idea of resource exchange refers to resources of non-state actors on which the state wants to rely. Both strands can explain the different categories of non-state actor engagement presented before. Advocacy can be based on normative concerns, or the aim to provide guidance for a self-beneficial outcome. Co-regulation can be based on a non-state actor's aim to contribute to a common good, or because they prefer providing resources according to their own criteria. Delegation to non-state actors can incorporate those non-state actors that truly believe in the governmental mission, or those that only provide resources because they are legally required to do so. While all categories can be justified by normative or resource-based theories, it is nonetheless more likely that delegation and co-regulation are based on resources involved, while advocacy (and some aspects of co-regulation) are inspired by normative reasons. Following on from the different motivations for engagement and the different categories of non-state activity in global crime governance, this article argues that (see figure 1):

- a) If an issue area is closely related to bodily harm and human misery (Type I-Frame), it is likely that resulting non-governmental activity in this issue area can be explained by normative convictions. This implies that advocacy and (to

some extent) co-regulation occur more frequently than other forms of public private interaction.

- b) If an issue area is framed with regard to technical and managerial administration (Type II-Frame), it is more likely that resource exchange is at the centre, and contributions of non-state actors are foremost linked to delegation and (some forms of) co-regulation. The number of organisations whose activities are based on normative convictions and that are advocacy actors will be lower in issue areas with a Type-II frame.

The underlying reason for this argument is a larger potential for mobilization and resonance in the public with regard to Type I-Frames, as these are likely to be more salient. Causal chains, necessary to construct political agendas, are easier to be constructed in these cases as identifiable actors and consequences are visible (e.g. Stone 1989). Type II frames that include foremost technical details are unlikely to cause high saliency and attention, as detailed knowledge is needed to establish causal chains and to grasp the details of regulations. There are therefore also more likely to be delegated to expert discussion and implementation.

The argument is not meant to be strictly predictive for all organisations, nor does it determine the choice of non-state actors in any given situation. The argument also does not imply that normatively inspired activists would not have important resources, or that non-state actors to which task are delegated would not follow any normative convictions. Moreover, these frames are not always clearly distinct in any given issue area, but

represent ends of a continuum. The clear distinction is made to argue that, based on a logic of probability, a dominant pattern of public-private interaction is expected. Given the transnational nature of issue areas and governance, these differences are expected on the global and on the national level.

**- Figure 1 about here**

This argument does not deny that any issue area is contested, and meaning is constructed. Political actors give issues a ‘spin’ and develop narratives (e.g. Miskimmon et al. 2013). They can frame issues as a moral or technical problem, and whether political activity or issue framing occurs first is therefore debatable. The argument made here is not about the framing process itself, but about issue characteristics that already represent a dominant frame, and which reflect a shared perception of an issue area. Advocacy impacts strongly on the definition of emerging issue areas (e.g. Kingdon 2003), and framing an issue with regard to bodily harm helps finding supporters in advocacy (Keck and Sikkink 1998, 27). However, this cannot explain why the overall pattern of public-private interaction varies significantly across issue areas, to the degree that some well-established issue areas do not show prominent non-state advocacy. Therefore, this article conceptualises issue characteristics as an independent variable of non-state actor activity, not the reverse.

## **Methods and Data**

The article explores the theoretical assumptions by comparing four different issue areas in the field of crime governance, specifically human trafficking, conflict diamonds, money laundering, and cybercrime. All of these crimes have become part of an international agenda against crime since the 1990s. The article's overall argument on public-private interaction can be transferred to different policy fields, but a restriction to crime policies is made for theoretical and methodological reasons. This ensures that different patterns of interactions are not the outcome of widely disparate cases. Crime is always marked as being something 'bad' and there is no variation in the moral underpinning of the issue areas analysed. The only variance in this article is the nature of the crime, establishing a continuum from crimes framed in close linkage to bodily harm to those with a highly technical frame (Type I or Type II). At the same time, criminal activity implies circumventing legal state authority and states have limited influence in all issue areas of crime. Variance of state control or governmental resources cannot be found in the different issue areas compared.

The comparative analysis includes non-state actors in governance on the global and national level. Starting with the global level, an overview of the issue areas is given, showing what the crime is and which main counter-activities take place by state and non-state actors. Most information presented results from secondary analysis of available, qualitative research. The article also elaborates on state and non-state activities on the national level, namely the United Kingdom. The British political system is particularly suitable for such an analysis given the longstanding international efforts in fighting global crime, starting with the abolishment of slavery and the fight against piracy and

privateering (Andreas and Nadelmann 2006, 23-33). At the same time, the UK is exemplary for a liberal regulatory system and frequent outsourcing of governance activities to non-state actors (e.g. Esping-Andersen 1990; Milbourne 2009). A complex public-private interplay in governance is particularly likely in this country.

### **Transnational Public-Private Interaction against Human Trafficking**

Human trafficking is the illegal and profit-based exploitation of people in different contexts, ranging from forced labour to prostitution, forced marriage and fighting in wars. The corresponding international regulation is the human trafficking protocol, a part of the UN Convention against Transnational Organised Crime. Other relevant international and United Nations' standards relate to human rights, anti-discrimination, the protection of children, or the smuggling of migrants (Gallagher 2010). Human trafficking is often transnational, so that victims cross borders and traffickers in different jurisdictions are involved. Finding evidence of the crime is mostly based on the victim's testimony, and given the threats that victims can face from their traffickers, a lack of knowledge about their rights, and the likely deportation to the home country, counter-trafficking efforts are often ineffective (Williams 2009, Shelley 2010).

Human trafficking is one of the most widely discussed and publicly known global crimes. Many nongovernmental organisations pressure for better governance efforts, closely connected to the discussion of sexual exploitation, bodily harm and violence (Chuang 2005-2006; Munro 2006, 325-329). The current anti-trafficking efforts echo the earlier

movement for the abolition of slavery which emerged in beginning of the 19<sup>th</sup> century (Andreas and Nadelmann 2006, 33-37). Human trafficking is often conceived as a new form of slavery, because victims are dependent on the traffickers as their ‘owners’ and their human rights are violated. Counter-trafficking activities are based on the ‘3 P’s’, prevention, protection and prosecution (Friesendorf 2009, 17-21). Prevention includes educating potential victims about risks of migration, or enhancing social conditions at the place of origin. Protecting includes care for the victims their families, protecting them from pressure from traffickers, and enabling recovery. Prosecution implies effective law enforcement and punishment of traffickers, but also identifying corruption in the police and the judicial systems.

We find a high prominence of non-governmental advocacy in the issue area of human trafficking: Most discussions were initiated by trafficking women for the purpose of prostitution, but later expanded to exploitation in further societal contexts and to other groups of people. Amid different opinions on how to tackle trafficking best, women’s and human rights organisations lobbied massively for the creation and implementation of regulations and the support of trafficking victims (e.g. Chuang 2005-2006; Munroe 2006, 325-329; Simm 2004). At the same time, we also find some forms of delegation: Civil society organisations assist trafficked people by providing shelters, lawyers or other support (e.g. Gallagher and Pearson 2010). If these shelters are primarily a means of support and not of detention, they can challenge existing national laws that often conceive trafficking victims as offenders who illegally crossed the border. The simultaneous presence of counter-trafficking laws and the needs of existing illegal migrants sometimes results in oblivious ignorance on the governmental side. Non-state

activity then takes place in ‘a space where the state *chooses* to be absent’ (Ford and Lyons 2013, 217, emphasis in original), which signifies an implicit delegation of governance to non-state actors.

### **Transnational Public-Private Interaction against Conflict Diamonds**

The term ‘conflict diamond’ refers to gem stones found in war zones. Starting in the 1990s, non-governmental organisations began to draw attention to the linkage of diamonds and the financing of civil war (Jojarth 2009, 181-191). In a non-conflict environment, diamonds can benefit the broader population and lead to development, but the diamond trade also financed and prolonged the civil wars in Angola and Sierra Leone (Le Billon 2001, Global Witness 1998). Rough diamonds are usually part of a long trading chain, including miners and different sellers until they reach major diamond trading centres. After being sold there, they are cut and polished, added to jewellery and sold to the consumer. The market used to be centralised through the DeBeers group, and for most of the time, deals were made based on trust and without paper documentation (Haufler 2009, 405-407; Gooch 2008; Kantz 2007).

The early efforts to curb the trade in conflict diamonds have been state-based and mainly involved sanctions by the international community (Jojarth 2009, 186-189). The sanctions usually targeted imports to market countries. Yet, subsequent reports showed a wide gap in effective implementation (United Nations Security Council 2000): Private companies were found to be continuing to buy and sell these diamonds and neighbouring countries

and their elites routinely ignored embargoes related to arms, travel, diamonds, and finance. When this failure became obvious, non-governmental actors started a broad advocacy campaign, ranging from customer awareness to lobbying governments. They continuously published reports that underlined how the international community was unable to stop conflict-related diamond trade, and how private business was profiting from the war (Bieri and Boli 2011, 510-516; Bieri 2010; Haufler 2009, 407). The campaign left consumers with a disturbing view about the origin and production of diamonds, and ultimately led the diamond industry to reconsider its policies (Grant and Taylor 2004, 390-391).

Against the backdrop of growing civil society activism and an ineffective sanctions regime, the Kimberley Process Certification Scheme was introduced as a public-private governance instrument (Bieri and Boli 2011, 516-521). States in this scheme oblige themselves to establish import and export authorities related to the diamond trade. They also need to introduce control systems for separating conflict diamonds from others, including the issuing of certificates of origin. Data on the production, import, and export of rough diamonds is to be collected and exchanged (Grant and Taylor 2004, 394; Gooch 2008, 194; Jojarth 2009, 191). These governmental activities are supplemented by self-regulation of the industry, a certification scheme to which the governmental part of the Kimberley scheme explicitly refers (Haufler 2009, 404-409; Kantz 2007, 3). Non-state actors became co-regulators: They have a significant degree of freedom in how exactly they regulate the trade and implement regulations across the industry.

## **Transnational Public-Private Interaction against Money Laundering**

Money laundering is the attempt to disguise the criminal origin of wealth. It is usually carried out by complex transfers within the banking system, so that the eventual owner cannot be connected to the criminal activities by which the wealth was created. The global regulation of anti-money laundering policies is foremost based on non-binding agreements in the frame of the Financial Action Taskforce (FATF) (e.g. Tsingou 2010). The G7 created the FATF in 1989 as a network for developing expertise and regulations against money laundering. The main instrument are its '40 Recommendations', initially issued in 1990 and later revised, including a newly established focus on terrorism financing and later proliferation financing. The recommendations constitute a soft form of governance, because they are formally non-binding (FATF 2003; Gardner 2007, 329-332). The regulations are strict, and they are based on a review process of members and non-members. In this process, the FATF assesses whether countries introduce adequate anti-money laundering and ensure their enforcement, non-compliance can result in sanctions (e.g. Sharman 2008, 644-646).

The role of non-state actors in establishing this global regulatory structure has been marginal: Transgovernmental bodies, such as the Basel Committee on Banking Supervision, supported the evolving anti-money laundering regime early on. Only years after the initial inception, the private sector – the Wolfsberg Group of major banks – created own standards that became linked to the FATF regulations (Flohr 2014, 133). Other civil society actors have remained absent in the mostly technical discussion on money laundering, and no advocacy existed.

Banks as well as related professions like auditors or lawyers are nonetheless closely involved in the implementation. Related to the so-called risk-based approach, the FATF recommendations conceive them as the primary responsible institutions for fighting money laundering, and many regulations cannot be executed without the cooperation from banks (Bergström et al. 2011, 1045-1052). In particular customer due-diligence has contributed to a growth in knowledge about customers in banks. States created regulations around this principle, without having immediate access to this knowledge themselves. This also implies that banks are under pressure to rebalance principles of privacy and good customer relationships with the obligation to report suspicious transactions (Svedberg Helgesson 2011). The degree of delegation is thus high in this issue area, and by implementing the risk-based approach, financial institutions are also becoming co-regulators. The low degree of advocacy is striking, given that anti-money laundering regulations penetrate citizens' life on many levels, including banking, accounting, and buying property.

### **Transnational Public-Private Interaction against Cybercrime**

Cybercrime is a broad term and encompasses the emerging threat of cyber warfare but also the use of computers to commit fraud, steal information, get access to data and damage critical infrastructure (Singer and Friedmann 2013; Marshall et al. 2005, 121). Three interrelated concerns exist in this issue area: The first is a technical approach to computer security - protecting a system or their users against attacks or crime. The second

concern focusses on technical appliances to the social use of cyberspace, and how it could be used against national interests and governments by criminal or terrorist networks. The third and most recent concern is the idea of cyber warfare (Manjikian 2010; Hansen and Nissenbaum 2009; Tikk 2011). Such an attack can occur if there are weaknesses in the infrastructure or through the programming of viruses.

Despite the broad agenda, and several initiatives to regulate cybercrime, the Council of Europe is the only international body that has regulated cybercrime most prominently, starting in 1996. The eventual convention was adopted in 2001 and has also been signed by non-member countries, among them the United States. A restricted number of ratifications leads to the fact that the convention cannot prevent the existence of safe havens for cybercriminals (Calderoni 2010, 350). Other organisations have mainly regulated restricted aspects of cybercrime, have only a regional scope, or introduced non-binding instruments (UNODC 2013, 63-68). Also, states are deeply divided regarding cybercrime – given that many authoritarian states would like to introduce control mechanisms that other states reject. National laws and enforcement are therefore still much more important in governing cyberspace compared to the international arrangements.

Cybercrime is a highly technical issue area, but touches upon core normative expectations like privacy or the freedom to information (e.g. Dutton et al. 2011). Some groups are policing the internet to detect crimes (Huey et al. 2012) or try to realise a free cyberspace, like Anonymous. Other groups use the internet as a tool to mobilise as part of an advocacy strategy (Lewis et al. 2014). However, organised non-governmental action that would

provide advocacy for a specific regulation on cybercrime is absent. As political observers denote, there is considerable absence of public attention related to regulations of cyberspace (Baum et al. 2013). Political action mainly seems to be caught in between fundamental conflicts of freedom versus security in cyberspace (Manjikian 2010, 382-383).

But while advocacy is limited, implementation by non-state actors is of utmost importance: Regulating cybercrime poses the particular challenge that it requires up-to-date knowledge on information and communication technology while investigating, prosecuting and judging these crimes. This knowledge, however, is highly specialised and access to it is restricted. Moreover, cybercrime takes place in virtual environments and at a different pace. Both characteristics make it difficult to police. Principles of sovereignty are almost rendered meaningless in a worldwide cyberspace, and the evidence of crimes can be modified or vanish quickly (Calderoni 2010, 340-2). Cybercrime regulations therefore concern data and traffic storage, to be implemented by internet providers. These providers are not necessarily supporting these regulations, given that costs increase and customers may try to avoid their services – not only criminals. Like banks, internet providers may consider themselves primarily as service providers, not policing bodies. The legal requirement to store the data aimed at finding criminals means delegation from state to non-state actors.

### **Public-Private Interaction in the United Kingdom**

While the global perspective on the different issue areas has revealed a variety in public-private interaction, this is also reflected on the national level. Human trafficking is a topic for a large number of non-state activists in the UK, ranging from 'Unseen', to 'Hope for Justice' or the 'Human Trafficking Foundation'. These have been founded to raise awareness on different aspects of human trafficking or to advocate for policy change. Also established charities like the Salvation Army or the National Society for the Prevention of Cruelty to Children dedicate resources to anti-trafficking measures. There is also an All-Parliamentary Group against Human Trafficking, whose members are partly also members of the Human Trafficking Foundation (APPG 2014). The advocacy element is prominent, while the actual implementation of laws, besides providing shelter, is seen as a policing task. In June 2014, a so-called 'modern slavery bill' was introduced to the British parliament, including human trafficking and other forms of servitude (Parliament 2014). The year before the bill was introduced, several reports on human trafficking were published, among them a global slavery index by the 'Walk Free Foundation' (2013). The label 'modern slavery' is closely linked to activism and the idea to frame human trafficking more dramatically to raise attention. As one analyst states: 'The Global Slavery Index is pushing this idea that we should be recasting trafficking and forced labour and call them both - modern slavery. Calling these people slaves and calling it slavery is in order to garner political action' (Balcher, quoted by Muir-Cochrane 2013). The report and the campaign referred to estimates of bonded work, human trafficking or forced marriage. As a result, human trafficking is today high on the British political agenda, but has become part of a broader campaign against 'modern slavery', also including the topic of harsh working conditions.

The fight against conflict diamonds has been led by an internationally oriented, London-based organisation, Global Witness. This advocacy organisation still engages with the issue of diamonds and other conflict-related minerals today. The UK is member of the Kimberley Process and implements its scheme. The Government Diamond Office issues the required certificates for cross-border trade, and the London Diamond Bourse commits its members to these formal standards. Yet, activists have pointed at loopholes in the schemes – like a lack of independent auditing (Global Witness and Amnesty International 2007). Despite criticism on the overall, global scheme and its failures, the issue of conflict diamonds decreased in its public prominence in the UK and elsewhere. This led some activists to conclude that the Kimberley Process has mainly led to a ‘whitewashing’ of the diamond-trade, but not to a solution of the underlying problems (New Internationalist Magazine 2012). Despite protest of non-governmental activists in recent years over details of the global process, these questions rarely catch wide-spread public attention.

Given the size of the banking sector, money laundering regulation has affected British banks and financial institutions in many respects (Bergström et al. 2011; Levi 2010; Sproat 2007). Other than in the case of human trafficking or conflict diamonds, there had been no non-state advocacy related to money laundering. The regulatory issue is of relevance to the financial industry, in particular because of the financial costs involved in oversight but also the fear to loose clients due to growing surveillance (Vlcek 2008, 292-294). As foreseen in the global and European regulations, countering money laundering is mainly left to banks and financial institutions, signifying delegation to non-state actors. In contrast to other countries, however, this delegation does not work in complete top-down approach, but banks are involved in setting regulatory details (Bergström et al.

2011, 1052-1059). Taken together, money laundering does not show advocacy comparable to other issue areas, but its governance is mainly based on delegation to non-state actors – ultimately also raising issues of responsibility in case of failures.

Cybercrime, and the role of cyberspace in committing criminal and terrorist acts, is discussed frequently as a threat in the British media, among policy actors and by police authorities. Criticism exists, relating to privacy concerns of regulations and police powers – yet also media denote that compared to the other issue areas, advocacy is not prominent (Guardian 2014). An initial challenge to the governmental policy came from an intergovernmental body, the European Court of Justice. In early 2014, the court deemed the European Data Retention Directive and corresponding British law as being incompatible with European human rights principles (BBC 2014). As a consequence, new ‘emergency legislation’ was drafted in the UK that would still allow storage of internet data by internet providers and to be accessed by intelligence and police forces (Data Retention and Investigatory Powers Act 2014). The act regulates the storage and control of online activities by internet providers, showing the continuing delegation to private actors in this issue area.

Differences in the public-private interplay of crime governance are not only visible on the global level, but are also reflected in British politics: Activism is clearly visible in issue areas that concern human suffering, like human trafficking and conflict diamonds. Other, more technical issue areas show delegation and co-regulation as dominant contribution of non-state actors to governance. There is also a significant change visible once reframing takes place: The public interest in conflict diamonds vanished when the

questions related to the Kimberley Process became more detailed. In a reverse movement, cybercrime legislation currently becomes more openly criticised when human rights concerns were raised.

### **Comparison and Conclusions: Patterns in Transnational Governance**

The findings support the initial assumptions presented in this article. *Human trafficking* is a case in which bodily harm and human misery is most clearly pronounced, and the victimisation of individuals is highly emphasised. With a view to the contributions of non-state actors in this issue area, we find foremost advocates of anti-trafficking policies. They also give advice on how to avoid trafficking, raise public awareness and provide details on trafficking patterns and organisations. To a limited degree we also face delegation, because states often rely on non-governmental actors when it comes to support the victims which are often left without support and vulnerable to threats by traffickers. *Conflict diamonds* are also framed closely to human misery and harm, yet the connection is more indirect via the idea of financing war. In this case, non-state actors also show a high degree of advocacy, shown in large-scale campaigns for consumers and in lobbying with governments. Yet, many details of the Kimberley Process also rely on co-regulation in the implementation phase, in particular related to self-regulation of the industry. A significantly different pattern can be observed in the widely technical field of *money laundering*: Here, no prominent non-state advocacy exists, but some co-regulation and important delegation via the risk-based approach exists. This pattern is even more

pronounced in the case of *cybercrime*: Here, non-state activism and co-regulation rarely take place, but tasks like data storage and traffic surveillance are delegated to internet providers even when this counters their interests.

Bringing together the findings from the different analytical perspectives shows that non-state contributions to governance are differentiated along a continuum of issue characteristics (table 1). If an issue area is framed in a highly moralised way (Type I frame), non-governmental activity is mainly focused on advocacy and some forms of co-regulation. If the issue area is framed with regard to technical and administrative questions (Type II frame), resources of non-state actors are central, and contributions of non-state actors were foremost linked to delegation and co-regulation.

**- Table 2 about here**

Even the limited number of case studies presented here shows that, depending on the framing of an issue area, some non-state activities are more common than others. This result has serious consequences: When actors successfully achieve establishing a Type-II Frame in a given issue area, the area might easily escape the scrutiny of advocacy. At the same time, it will be easier to use resources of non-state actors by reference to a common governance aim. Securitisation processes (Buzan et al. 1998) move issues outside broader, democratic debate, and this might equally be true for seemingly technical and administrative issues. The important difference is that the process of securitisation is

publicly announced and criticised frequently in the public, but issues linked to a Type II frame are not – they just escape the public attention.

While such a shift away from public scrutiny represents a challenge to democratic oversight in any policy field, observing this pattern related to crime governance is particularly challenging: Given the complexity of crime governance and the difficulties in assessing its success, it is easy to broaden any anti-crime agenda by using Type-II frames. This expansion can take place even if the success of measures might be limited and many resources of non-state actors will need to be used. The recent British ‘emergence legislation’ can be interpreted as such a technical approach to crime governance despite its political significance on government-citizen relations. The recent revealing of intelligence agencies and their secret monitoring of internet activities has shown that states sometimes use governance resources – in this case data – of non-state actors even without their knowledge or consent. Based on the findings of this article, it is likely that states can invent governance instruments without much public attention when they frame it as a technical issue. This may lead to regular omission of much needed democratic deliberations – about crime governance and other regulations.

## References

Andreas, P. & KM. Greenhill (Eds.) (2010) *Sex, Drugs, and Body Counts. The Politics of Numbers in Crime and Conflict*, (Ithaca; Cornell University Press).

Andreas, P. & E. Nadelmann (2006) *Policing the Globe. Criminalization and Crime Control in International Relations* (Oxford: Oxford University Press).

APPG (2014) Website: The APPG. Online at <http://www.allpartygrouphumantrafficking.org/>, 26 July 2014.

Baum, GR, C. Kurz & P. Schantz (2013) Das vergessene Grundrecht. Online at <http://www.faz.net/aktuell/feuilleton/debatten/datenschutz-das-vergessene-grundrecht-12095331.html>. *Frankfurter Allgemeine Zeitung*, 26 February 2013.

BBC (2014) Top EU court rejects EU-wide data retention law. Online at <http://www.bbc.co.uk/news/world-europe-26935096>, July 26, 2014.

Bergström, M., K. Svedberg Helgesson & U. Mörth (2011) A New Role for For-Profit Actors? The Case of Anti-Money Laundering and Risk Management. *Journal of Common Market Studies*, 49 1-22.

Bieri, F. (2010) *From Blood Diamonds to the Kimberley Process: How NGOs Cleaned up the Global Diamond Industry* (Farnham: Ashgate).

Bieri, F. & J. Boli (2011) Trading Diamonds Responsibly: Institutional Explanations for Corporate Social Responsibility. *Sociological Forum*, 26, 501-526.

Börzel, TA. & T. Risse (2010) Governance without a State. Can it work? *Regulation and Governance*, 4 (2), 113-134.

Buzan, B, O. Weaver & J. de Wilde (1998): Security. A New Framework for Analysis. (Boulder: Lynne Rienner).

Calderoni, F. (2010) The European Legal Framework on Cybercrime: Striving for an Effective Implementation. *Crime, Law and Social Change*, 54 339-357.

Cerny, PG. (2010) *Rethinking World Politics: A Theory of Transnational Neopluralism*. (Oxford: Oxford University Press)

Chuang, JA (2005-2006) The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking. *Michigan Journal of International Law* 27 (Winter), 437-494.

Chuang, JA. (2010) Rescuing Trafficking From Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy. *University of Pennsylvania Law Review*, 158, 1655-1728.

Data Retention and Investigatory Powers Act (2014) Online at <http://services.parliament.uk/bills/2014-15/dataretentionandinvestigatorypowers.html>,

July 26, 2014

Dingwerth, K. (2007) *The New Transnationalism. Transnational Governance and Democratic Legitimacy* (Houndsmill: Palgrave).

Djelic, M-L. & K. Sahlin-Andersson (2006) Institutional Dynamics in a re-ordering World. In: Djelic, M-L. & K. Sahlin-Andersson (Eds.) *Transnational Governance. Institutional Dynamics of Regulation*, (Cambridge: Cambridge University Press), 375-397.

Dutton, WH., A. Dopatka, M. Hills, G. Law & V. Nash (2011) *Freedom of Connection, Freedom of Expression. The Changing Legal and Regulatory Ecology Shaping the Internet* (Paris: UNESCO Publishing).

Eberlein, B, KW. Abbott, J. Black, E. Meidinger & S. Wood (2014) Transnational Business Governance Interactions: Conceptualization and Framework for Analysis. *Regulation and Governance*, 8, 1-21.

Esping-Andersen, G. (1990) *The Three Worlds of Welfare Capitalism* (Princeton: Princeton University Press).

FATF (2003) *The Forty Recommendations. 20 June 2003* (with the amendments of 22 October 2004) (Paris: FATF).

Finnemore, M. & K. Sikkink (1998) International Norm Dynamics and Political Change. *International Organization*, 52 (4), 887-917.

Flohr, A. (2014) *Self-Regulation and Legalization. Making Global Rules for Banks and Corporations* (Houndmills: Palgrave).

Ford, M. & L. Lyons (2013) Outsourcing Border Security: NGO Involvement in the Monitoring, Processing and Assistance of Indonesian Nationals Returning Illegally by Sea. *Contemporary Southeast Asia*, 35, 215-234.

Friesendorf, C. (2009) The Security Sector and Counter-Trafficking. In: C. Friesendorf, (Ed.) *Strategies against Human Trafficking: The Role of the Security Sector*, (Vienna and Geneva: Austrian Ministry of Defence and Geneva Center for Democratic Control of the Armed Forces), 17-32.

Gallagher, AT. & E. Pearson (2010) The High Costs of Freedom: A Legal and Policy Analysis of Shelter Detention for Victims of Trafficking. *Human Rights Quarterly*, 32, 73-114.

Gallagher, Anne T. (2010) *The International Law of Human Trafficking* (Cambridge, Cambridge University Press).

Gardner, KL. (2007) Fighting terrorism the FATF way. *Global Governance*, 13 (3), 325-345.

Garland, D. (2001) *The Culture of Control. Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press).

Global Witness (1998) *A Rough Trade. The Role of Companies and Governments in the Angolan Conflict*. (London: Global Witness).

Global Witness and Amnesty International 2007: *Conflict Diamonds. UK jewelry retailers still not doing enough*. Online at [http://www.globalwitness.org/sites/default/files/import/gw\\_uk\\_survey\\_final.pdf](http://www.globalwitness.org/sites/default/files/import/gw_uk_survey_final.pdf), July 26, 2014

Gooch, TM. (2008) Conflict Diamonds or Illicit Diamonds: Should the Difference Matter to the Kimberley Process Certification Scheme? *Natural Resources Journal*, 48 (Winter 2008), 189-214.

Grabosky, PN. (1995) Using Non-Governmental Resources to Foster Regulatory Compliance. *Governance: An International Journal of Policy, Administration, and Institutions*, 8 (4), 527-550.

Grant, A. & I. Taylor (2004) Global Governance and Conflict Diamonds: The Kimberley Process and the Quest for Clean Gems. *The Round Table*, 93 (375), 385-401.

Hansen, L. & H. Nissenbaum (2009) Digital Disaster, Cyber Security, and the Copenhagen School *International Studies Quarterly*, 53 1155-1175.

Haufler, V. (2009) The Kimberley Process Certification Scheme: An Innovation in Global Governance and Conflict Prevention. *Journal of Business Ethics*, 89 (4), 403-416.

Jorath, C. (2009) Crime, War and Global Trafficking. Designing International Cooperation Cambridge, Cambridge University Press.

Kantz, C. (2007) The Power of Socialization: Engaging the Diamond Industry in the Kimberley Process. *Business and Politics*, 9 (3-2), 1-20.

Keck, ME. & K. Sikkink (1998) Transnational Advocacy Networks in International Politics: An Introduction. In: ME. Keck & K. Sikkink (Eds.) *Activists Beyond Borders: Advocacy Networks in International Politics*. (Ithaca: Cornell University Press), 1-38

Kingdon, John W. (2003). *Agendas, Alternatives and Public Policies*, (New York et al.: Longman).

Knill, C. & D. Lehmkuhl (2002) Private Actors and the State: Internationalization and Changing Patterns of Governance. *Governance: An International Journal of Policy, Administration, and Institutions*, 5, 41-63.

Koenig-Achibugi, M. & K Macdonald (2013) Accountability-by-Proxy in Transnational Non-State Governance. *Governance-an International Journal of Policy Administration and Institutions*, 26, 499-522.

Le Billon, Ph. (2001) Angola's Political Economy of War: The Role of Oil and Diamonds, 1975-2000. *African Affairs*, 100 (398), 55-80.

Lee, RW. (1999) Transnational organized Crime: An Overview. In: Farer, Tom (Ed.) *Transnational Crime in the Americas*. (London, Routledge), 1-38

Levi, M. (2010) Combating the Financing of Terrorism: A History and Assessment of the Control of 'Threat Finance'. *British Journal of Criminology*, 50, 650-669.

Lewis, K, K. Gray & J. Meierhenrich (2014) The Structure of Online Activism. *Sociological Science*, 1, 1-9.

Liss, C. & J. Sharman (2014) Global Corporate Crime-Fighters: Private Transnational Responses to Piracy and Money Laundering. *Review of International Political Economy* (forthcoming), DOI: 10.1080/09692290.2014.936482.

Manjikian, MM. (2010) From Global Village to Virtual Battlespace: The Colonizing of the Internet and the Extension of Realpolitik. In: *International Studies Quarterly* 54(2):381-401.

Marshall, CE., TH. Robinson & K. Dae-Hoon (2005) Computer Crime in A Brave New World. In: P. Reichel (Ed.) *Handbook of Transnational Crime and Justice*. (Thousand Oaks, Sage) 114-138.

Milbourne, L. (2009) Remodelling the Third Sector: Advancing Collaboration or Competition in Community-Based Initiatives? *Journal of Social Policy*, 38, 277-297.

Miskimmon, A., B. O'Loughlin & L. Roselle (2013) *Strategic Narratives: Communication Power, and the New World Order* (London: Routledge).

Muir-Cochrane, A. (2013): Are there really 21 million slaves worldwide? BBC Report. Online at <http://www.bbc.co.uk/news/magazine-26513804>, July 26, 2014.

Munro, VE. (2006) Stopping traffic? A comparative study of responses to the trafficking in women for prostitution. *British Journal of Criminology*, 46, 318-333.

Nadelmann, EA. (1990) Global Prohibition Regimes: The Evolution of Norms in International Society. *International Organization*, 44 (4), 479-526.

New Internationalist Magazine (2012) Kimberley Process 'whitewashes' blood diamonds. Online at <http://newint.org/sections/agenda/2012/04/01/kimberley-process-certification-scheme/>, July 26, 2014.

Parliament (2014): Modern Slavery Bill. HC Bill 8. Online at [http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0008/cbill\\_2014-20150008\\_en\\_1.htm](http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0008/cbill_2014-20150008_en_1.htm), last access on 26 July 2014.

Paun, C.J. (2011) Between Collaboration and Competition: Global Public-Private Partnerships against Intellectual Property Crime. *TranState Working Paper* 149/2011. University of Bremen

Risse, T. (Ed.) (2011) *Governance Without a State: Policies and Politics in Areas of Limited Statehood* (New York: Columbia University Press)

Sharman, J.C. (2008) Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States. *International Studies Quarterly*, 52 (3), 635-656.

Shelley, L. (2010) *Human Trafficking. A Global Perspective* (Cambridge: Cambridge University Press).

Simm, G. (2004) Negotiating the United Nations Trafficking Protocol: Feminist Debates *Australian Yearbook of International Law*, 23, 135-160.

Singer, P.W. & A. Friedman (2013) *Cybersecurity and Cyberwar. What Everyone needs to Know* (Oxford: Oxford University Press).

Sproat, Peter A (2007) An evaluation of the UK's anti-money laundering and asset recovery regime. *Crime Law and Social Change*, 47, 169-184.

Svedberg Helgesson, K. (2011) Public-Private Partners Against Crime: Governance, Surveillance and the Limits of Corporate Accountability. *Surveillance & Society*, 8 (4), 471-484.

Stone, D.A. (1989) Causal Stories and the Formation of Policy Agendas. *Political Science Quarterly*, 104 (2), 281-300.

Tikk, E. (2011) Ten Rules for Cybersecurity. *Survival*, 53 (3), 119-132.

Tsingou, E. (2010). Global Financial Governance and the Developing Anti-Money Laundering Regime: What lessons for the International Political Economy. *International Politics*, 47, 617-637.

United Nations Security Council (2000) Report of the Panel of Experts on Violations of Security Council Sanctions Against UNITA (S/2000/203, 10 March 2000). New York, United Nations.

UNODC (2013) Comprehensive Study on Cybercrime. Draft of 21 February (Vienna: UNODC)

Vlcek, W. (2008) Development vs. terrorism: Money transfers and EU financial regulations in the UK. *British Journal of Politics & International Relations*, 10, 286-302.

Walk Free Foundation (2013) Global Slavery Index. Online at <http://www.globalslaveryindex.org/>, 26 July 2014.

Williams, P. (2009). Combating Human Trafficking: Improving Governance Institutions, Mechanisms and Strategies. In: C. Friesendorf (ed.) *Strategies against Human Trafficking. The Role of the Security Sector*. (Geneva and Vienna: DCAF and Austrian Ministry of Defense), 381-425.

Table 1

**Table 1: Global crime governance by state and non-state actors**

Type	Public regulation	Advocacy of private actors	Private co-regulation	Delegation to private actors
Examples	<ul style="list-style-type: none"> <li>▪ National laws against crime</li> <li>▪ International laws against crime</li> </ul>	<ul style="list-style-type: none"> <li>▪ Norm entrepreneurship regarding drug control</li> <li>▪ Advocacy to close regulatory loopholes</li> </ul>	<ul style="list-style-type: none"> <li>▪ Public-private partnerships in international law enforcement</li> <li>▪ Industry codes of conduct against corruption</li> </ul>	<ul style="list-style-type: none"> <li>▪ Monitoring of financial transactions by banks</li> <li>▪ Private security services in shipping security</li> </ul>

Table 2

**Table 2: Comparing global crime governance by non-state actors**

Issue Area	Framing	Advocacy	(Co)-Regulation	Delegation
Human Trafficking	Type I: Bodily Harm and Human Misery	X	-	(x)
Conflict Diamonds		X	X	-
	↓			
Money Laundering		-	(x)	X
Cybercrime	Type II: Technical and Administrative Issue	-	-	X

Note: X=emphasized; (x)= to some degree existent; - = widely absent

**Figure 1: Relation of Issue Characteristic and Non-State Governance Contribution**

