

**TRANSNATIONAL POLITICS AND  
POLICY:  
FROM TWO-WAY TO THREE-WAY  
INTERACTIONS**

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## **Transnational Politics and Policy: From Two-Way to Three-Way Interactions**

**David Levi-Faur and Shana M. Starobin<sup>1</sup>**

**Abstract:** This paper's first aim is to present and extend the regulatory governance approach for transnational politics and policy. The advantages and challenges of this approach are discussed both in relation to what the regulatory governance perspective means and what this approach should strive to highlight and capture beyond what it does now. Its second aim is to develop a three-way framework of regulatory interactions. This framework shifts the focus of transnational politics and policy analysis from rule-makers (RM) to rule-takers (RT) and rule-intermediaries (RI). To build our theoretical argument, we employ as an illustrative case one of the most catastrophic failures of transnational governance: The deadly fire in a certified textile factory in Karachi, Pakistan. We use this failure, where regulatory intermediaries certified a dangerous sweatshop just weeks before the fire, to demonstrate the relevance, the failure, and the importance of a three-way framework. Our three-way interaction framework (a) integrates the growing literature on private governance more closely with the regulation literature; (b) reveals the complexity of regulatory architectures and, therefore, the need for a more complex analysis of interests, power, and accountability; (c) allows the more effective assignment of responsibility and demand for accountability, and (d) sheds more light on the nature of interactions in regulatory systems in general and transnational interactions in particular.

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## **Transnational Politics and Policy: From Two-Way to Three-Way Interactions**

Global governance is expanding via both transnational and intergovernmental institutions. This expansion is often regulatory rather than fiscal (e.g., financial transfers in the forms of aid) or discretionary (e.g., a unilateral decision and action by a powerful and charismatic person). Such regulatory expansion means that power is projected, leveraged, and accommodated via rules, regulatory institutions, and regulocrats – bureaucrats increasingly engaged with regulation rather than service provision – rather than solely or mainly via other legitimate and illegitimate forms of institutionalized power, such as bureaucratic and charismatic discretion or taxing and spending (Brunsson and Jacobsson 2000; Djelic and Sahlin-Andersson 2006). With the institutionalization of rule-based governance, new demands for accountability, transparency, and extended liability are emerging (Power 1999; Rose and Miller 2010). At the same time, new actors enter the spotlight, and new opportunities for rent-seeking, opportunism and capture as well as policy learning and experimentalism arise (Vogel, 2008, 2010; O’Rourke, 2003; Mayer & Gereffi, 2010; Mattli & Woods, 2009; Büthe, 2004: 2010a/b; Potoski, & Prakash, 2005; Graz & Nölke, 2007; Auld, Bernstein & Cashore, 2008; Cafaggi, 2011; Sable & Zeitlin, 2012; Wolf, 2008; Marx, Maertens & Swinnen, 2012). The first aim of this paper is to offer a comprehensive overview of the expanding literature and to make connections that were hardly made before.

Why bother with transnational governance and transnational regulatory governance in particular? One of the many good reasons is simply the fact that some problems – climate change and public health, for example – are transnational in nature (Beck 2006); such problems – and often the solutions to redress them – extend beyond the jurisdictional boundaries of a single nation state. Consequently, global public policy is emerging as a transnational arena of policy making, as a policy network, and as a problem-driven response shaped by particular ideas, interests, and institutions (Coleman, 2012; Stone, 2004; Reinicke, 1998). Many actors critically engage at the transnational level with politics and cultures that are considered unacceptable in various regions of the world and check the abuse of power at yet another level of political action (Risse, Ropp & Sikkink, 1999). As the world becomes smaller,

processes of diffusion become increasingly global. Diverse institutional structures with varying degrees of scope, effectiveness, and legitimacy create a new epoch in the history of world governance. Changes take time and come in diverse forms and places, but the institutional arena in global governance is becoming more crowded than ever. A new global institutional script is born and diffused and with it a new institutional layer is being added to global governance (Meyer & Rowan, 1977, Levi-Faur, 2005; Djelic & Sahlin-Andersson, 2006, Meyer, Drori & Hwang 2006).

All of these provide important reasons and compelling rationales for studying transnational governance, but there is one more reason that is especially important for the purposes of this paper. We should study the transnational because it helps us to better understand regulatory governance. Transnational regulatory governance offers a new angle from which we can understand regulation and regulatory processes and thus to reflect on the basic assumptions that shape the theories of regulation (Abbott & Snidal, 2013). In other words, the transnational arena is not only a theoretical puzzle, a challenge to be solved and defeated. It is also an opportunity to develop yet another and richer understanding of regulatory governance in general and the politics of regulation in particular. Regulatory governance scholarship needs the transnational arena as much as the transnational arena calls for the application of regulatory governance scholarship. The transnational arena presents a diversification and fragmentation of regulatory authority, rules, roles, and architectures of governance to an extent that helps us to better understand politics in the context of the expansion of rule-making. The promises of gains exist, therefore, on both sides. Theories of regulation can be highly useful for the study of transnational governance, and transnational governance allows us to refine and extend theories of regulation.

If our first aim is to develop an integrative approach, the second is to shift the focus of transnational governance, politics and policy analysis from rule-makers (RM) to rule-takers (RT) and rule-intermediaries (RI). We develop a three-way framework of regulatory interactions and focus on the roles, interests, transparency, and accountability of rule-intermediaries. The same holds for the roles of rule-takers and rule-makers and their leeway in venue shopping – that is, their ability to shop for or design the rules that reflect their best interests. We demonstrate our arguments via an illustrative case, the fire in the Ali Enterprise factory in Karachi, Pakistan, on

September 11, 2012. The fire, which killed 262 people and severely injured many more, demonstrates the relevance of studying private regulatory governance in the face of one of its most remarkable and salient failures ever. At the same time, it reveals the importance of regulatory intermediaries in the regulatory process in general and the transnational in particular.<sup>1</sup> As reported in the *New York Times*, two private inspectors visited the Ali Enterprises factory to examine working conditions. These inspectors were certified according to the certification regime known as SA8000 created by Social Accountability International (SAI) – a transnational organization that served as the pillar of the regime that certified the factory.<sup>2</sup> In addition, it emerged later on that the factory was also certified by a German retailer, the main buyer of the factory’s product. The involvement of these private certifiers only strengthened the critiques of transnational and corporate social accountability advocates. While some of the facts and causes for these catastrophic governance failures remain hidden, we know enough to raise questions and provide some suggestions on the way forward both in regards to the role of intermediaries and regulatees in the study regulatory governance in general and transnational regulatory governance in particular. The failure to improve and to radically transform the working conditions in Ali Enterprise, and we suspect many other industrial sites, allow us to reframe the dominant two-way framework of analysis – in which the interactions between regulators and regulatees are the main focus of attention – to a three-way framework, in which intermediaries become central actors in addition to regulators and regulatees. The three-way framework is hardly discussed in mainstream international relations theory and is only partially developed in the regulation and governance literature.

The rest of the paper is organized in six parts. The first offers an overview of the regulatory governance literature on transnational regulatory governance. The progress of the governance literature and institutional theory, more generally, is a welcome development, but regulation theory can and should inform both institutional theory and the governance literature. In order to develop this assertion, it presents the rule-makers centered analysis that currently dominates the literature, as expressed in Abbott and Snidal’s (2009a/b, Abbott, 2012) governance triangle. The second part introduces rule-takers and the demand-side analysis of transnational regulation within a second triangle of rule-takers. The third part discusses the role of intermediaries in

the Karachi fire case. The fourth part introduces the rule-intermediaries' triangle. The fifth part brings RT, RI, and RM together in a framework that allows us to focus our attention on the role of intermediaries and their interactions with rule-makers and rule-takers. The sixth part concludes.

## **I. Transnational Regulatory Governance**

The regulatory governance perspective on transnational governance has emerged since the early 2000s from an exchange among diverse and loosely connected groups of scholars who focus on new pluralistic forms of governance, institutionalization, legalization, authority, and control within the transnational arena. These scholars place a diverse set of regulatory actors within broad governance with an emphasis on the multiple and plural sources of rule-making, technologies of regulation, and enforcement strategies where markets are nurtured, embedded, and guided by public and private institutions via political action (Braithwaite & Drahos, 2000; Bartley, 2007). The regulatory governance perspective captures, explains, and makes sense of a world characterized by horizontal and vertical fragmentation of authority, of actor constellations, and of institutional architecture (Jordana & Levi-Faur, 2004; Scott, 2004; Börzel & Risse, 2005; 2010 Djelic & Sahlin-Andersson, 2006; Bernstein & Cashore, 2007). It brings together scholars with empirical and positivist orientations as well as normative ones. It deals not only with the architecture of governance but also with actors and strategies, that is, the orchestration of various actors into regimes of rules, monitoring, and enforcement institutions (Abbott & Snidal, 2010).

The expansion and diversification of transnational governance makes the three main images of international relations – anarchy, hierarchy and intergovernmentalism – increasingly unsatisfactory. The study of the emergence, consolidation, and expansion of private governance, meaning both civil and business, across borders aims to fill the gaps left by traditional state-centered institutions and single-level analysis and at the same time to offer an alternative. Certainly, anarchy is evident at the national and global levels as are intergovernmental institutions, yet they capture much less than in the recent past (Rosenau, 2007; Enderlein, Wälti, & Zürn, 2010). Rules, regimes, norms, and laws constitute formal and informal institutions that govern spaces previously conceptualized as largely or mainly “anarchic” or “hegemonic” (Abbott & Snidal, 2000; Shaffer, 2012). Yet new actors and technologies of governance are

coming into play, making the transnational arena denser, more diverse and more pluralistic than ever before (Cutler et al. 1999; Hall & Biersteker 2002; Djelic & Sahlin-Andersson 2006).

The suggestion that a regulatory governance perspective should be one of the main approaches for the study of transnational governance represents a challenge for the traditional theoretical power and the dominance of the international relations and international law literatures (Koenig-Archibugi, 2010, p. 1142; See also, Falkner, 2003). The dominance of the traditional approach for international analysis in the study of transnational politics is evident in a recent *Handbook of Transnational Governance* (Hale & Held, 2011). The handbook provides a comprehensive map of more than fifty transnational regulatory organizations, yet the framework for the analysis of this otherwise useful handbook rests on mainstream theories of international relations. Functionalism, interests, ideas, and historical approaches provide the causal framework. Theories of regulation and the regulatory governance perspective are represented in the handbook only on the very margins. Mattli and Woods's *The Politics of Global Regulation* presents this same point forcefully: "Few topics are as central and of consequence to the lives and well-being of individuals as regulation, broadly defined as the organization and control of economic, political, and social activities by means of making, implementing, monitoring, and enforcing of rules. Regulation has become increasingly global as elements of the regulatory process have migrated to international and transnational actors in areas as diverse as trade, finance, the environment, and human rights" (Mattli & Woods, 2009, 1).

One illustrative example of the rise of regulatory organizations at the global level is GlobalGap – a private association that sets voluntary standards by bringing together agricultural producers and retailers that want to establish certification standards and procedures for Good Agricultural Practices. Certification covers the production process of the certified product from before the seed is planted until it leaves the farm. Encompassing crops, livestock, and aquaculture and covering more than 400 products, GlobalGap, via 129 accreditation bodies, has certified over 130,000 food producers in more than 110 countries.<sup>3</sup> However, another type of such capacities is corporate-based regulatory actors. Take the transnational corporation chain store Walmart as an example. As the largest private employer in the world, Walmart has

some 11,000 stores under 69 different banners in 27 countries, and 245 million customers a week are served by 2.2 million employees. At the same time, Walmart has tens of thousands of suppliers over which it holds some power (Ruggie, 2007; 823, ff11). Because Walmart has some power over its suppliers, one can target and orchestrate not only Walmart itself but also its suppliers and affect at least in theory the working conditions of many millions of other workers who are part of the Walmart global chain of production.

However, the world of transnational regulatory governance is not only corporate based (in the form of the Walmarts of the world) or associational (e.g. GlobalGap) but also NGO based. One such example is the Fair Labor Association (FLA), a US-based collaborative initiative of apparel and sportswear companies, universities, and NGOs that promote compliance with core international labor standards within their transnational supply chains. It emerged as a direct response to the anti-sweatshop protests in the late 1980s and the 1990s. The initiative that brought the two opposing sides to collaborate thanks to direct pressure from the Clinton Administration led to the creation of the Apparel Industry Partnership (AIP) in 1996. Three years later, this coalition expanded its reach and became incorporated as a non-profit under the new name of the Fair Labor Association (MacDonald, 2011). The association is controversial. Some critics question the FLA's accountability and effectiveness, "highlighting what they perceive to be its corporate-dominated governance structure" (MacDonald, 2011, 244). Others regard it as a leader in innovation in compliance initiatives, "pointing to its progress toward building independent auditing and complaints processes, and its efforts in recent years to strengthening the capacity building dimensions of its compliance program" (Ibid, 2011; See also, Lock, 2013). Most recently, the strong reputation of the FLA proved useful. Thus, when Apple and Foxconn faced criticism over working and safety conditions in the production of Apple's products, they turned to the FLA's inspection in order to demonstrate their credibility.

Transnational regulatory governance in the forms discussed above is both more diverse and messier than traditional regulatory approaches at the national level, but it is not different in principle. Traditional approaches at the national level have often been based on factory-centered, fixed rules and standards, government monitoring



and enforcement, and judicial review (O'Rourke, 2003, pp. 5-6). Transnational regulatory governance is based, however, on networks and centers on global value chains, on new actors, in new roles, and in multiple and shifting relationships, experimenting with new processes of rule-making, rule-monitoring, and rule-enforcement (Ibid). While national, hard-law regulation focuses on the factory and mobilizes the power of the state, transnational regulatory governance mobilizes the power of all stakeholders in order to achieve similar, complementary, or better levels of social performance. The emergence of these institutions, regimes, networks of actors, and discourse is evident. Yet, as already noted by Mattli & Woods, it is less so in the international relations literature. They write:

It is surprising that no sustained attempt has been undertaken in the field of international relations (IR) to take stock of the broad picture of the politics of global regulation by systematically tackling questions such as: What major global regulatory changes have taken place in key issue-areas over the past few decades and what drove these changes? What institutional forums are selected for regulatory activities and what explains these choices? How is compliance monitored and enforced? Who are the winners and losers of global regulation and why? What explains variation across issue-areas?

(Mattli & Woods, 2009, 2)

The regulatory governance approach moves forward in this regard. Within the transnational governance arena, it had emerged most clearly and ambitiously with the publication of Braithwaite and Drahos' *Global Business Regulation* (2000). This study covers no less than thirteen sectors (ranging from contract and property rights, financial regulation and intellectual property, telecommunications, labour standards, competition, and air and sea transport to nuclear safeguards, privacy, food standards, and drugs). The analysis is based on a comprehensive bibliography of almost 1000 entries and on interviews with about 500 individuals. The authors' goal is to offer a broad picture of the globalization of regulatory governance across five types of actors, thirteen key principles that guide rules and regulations, and eight mechanisms of globalization. However, Braithwaite and Drahos were not the first or necessarily the only ones to take regulation and governance (in tandem) seriously in the study of transnational relations and global administration. Their study proves, in hindsight, to

be a turning point in the slow emergence and still loosely connected literature of the regulatory governance approach of transnational relations. The term is still open, not least because the issue was never raised seriously or systematically before.

Abbott and Snidal's work on the diversity of rule-makers has emerged as one of the most dominant and intriguing typologies of regulatory governance (2009a/b, 2010, 2011, Abbott, 2012). Their triangle of rule-makers is divided into seven different zones, and each zone represents a major form of associational configuration. These configurations are, in turn, composed of three different rule-makers (civil society, business, and state) who engaged in voluntary, self-regulatory, and sometime collaborative exercises. They conceptualize and capture novel forms of regulatory standard-setting (RSS), defined as the promulgation and implementation of nonbinding voluntary standards of business conduct. RSS potentially involves all the functions of administrative regulation in domestic legal systems: rule making, rule promotion and implementation, monitoring, adjudication of compliance, and the imposition of sanctions (Abbott & Snidal, 2009a, 507). The use of the word *standards* instead of *law* or *norms* reflects the growing attention of the governance literature to the pluralistic sources and diverse forms of law (Brunsson and Jacobsson 2000, Djelic 2011). The emphasis on *regulatory* means that they constrain, empower and generally nurture new powers or at least shift the balance of power between different actors. The regulatory standards schemes constitute what they call the emerging transnational regulatory governance system. What is important about rule-making in transnational governance is not so much the new rules or the filling up of regulatory voids but instead the layering of multiple rules and policy instruments in particular locations within the global value chain (Djelic and Sahlin-Andersson 2006, Bartley, 2011b).

**Figure 1 about here**

Abbott and Snidal's triangle, as presented in figure 1, presents the diverse constellations of transnational architectures and regimes. By looking into time and dividing the scheme into three different snapshots they could show temporal dimensions as well and, most importantly, the expansion of schemes within different zones. Points on the Triangle locate individual schemes according to their most salient and innovative feature: the relative shares that Firms, NGOs, and States exercise in scheme governance. Only schemes that address firms directly are included. The

regulatory space is divided into seven zones representing situations in which one (Zones 1–3), two (Zones 4–6), or three (Zone 7) actor groups dominate governance of RSS schemes (Abbott & Snidal, 2009a, 512–3). Zone 1 is dense with traditional or intergovernmental yet diverse schemes. Zone 2 is where the explosion of transnational regulatory scheme is most visible, such as The Gap-Inc. (GAP++, 1992) and the chemical industry’s Responsible Care program (RC, 1987). Zone 3 contains a smaller number of NGO schemes, including the pioneering Sullivan Principles (1977), the CERES Principles (1989), and Rugmark (1994). Zone 7 schemes share governance among all three groups of actors. Examples include the International Labor Organization’s Declaration on Multinational Enterprises (ILO) and the Voluntary Principles on Security and Human Rights [VPSHR]. The remaining zones include RSS schemes governed jointly by two or more types of actors. Zones 4 and 5, which contain hybrid public–private arrangements, are relatively unpopulated at the transnational level. Zone 4 contains the UN Global Compact (UNGC); the Equator Principles (EQP), a banking initiative encouraged by the International Finance Corporation and based on IFC environmental and social standards; and the ISO 14001 environmental management standard. Zone 5 is virtually empty. Its only examples are the specialized TCO Development and the recent UN-sponsored Principles for Responsible Investment, in which pension funds and other fiduciary investors act as NGOs (Abbott & Snidal, 2009b, 517–8). The most populated of these seven zones is Zone 6, which includes schemes that are joint efforts between NGOs and firms, such as the Forest Stewardship Council (FSC); the Fair-Trade Labeling Organization (FLO) and the Fair Labor Association (FLA). Zone 6 has arguably been the most vibrant area of transnational polity-building in recent years. It is here where Abbott and Snidal located Social Accountability International (SAI), the architect of the governance regime that certified the Karachi factory that burned down. But SAI is not necessarily the main transnational actor that failed. While Abbott and Snidal’s triangle capture SAI nicely in Zone 6, it does not help us to capture the critical role of rule-takers and the role of regulatory intermediaries, in general, and in the Karachi regulatory failure and the effectiveness and legitimacy of transnational governance regimes, in particular.

By emphasizing rule-makers and the supply-side of rules and by amalgamating different types of organizations into one framework, Abbott and Snidal’s framework

misses the importance of rule-takers and rule-intermediaries. As said, we discuss our approach and extend our arguments with illustrations that draw on the Karachi fire case, one of the most deadly fires on record in Pakistan and in the world. The investigation and the lesson-drawing from the experience were still ongoing at the time that this paper was written. Unfortunately, it became clear during our research that the Karachi fire was one of a few high-profile failures of transnational regulatory governance: labor safety and welfare in Apple's iPhone subcontractor, Foxconn, in China; the deadly fire in November 2012 in the Tazreen fashion factory in Bangladesh's capital, Dhaka, which killed over one hundred workers in Bangladesh; as well as the more recent collapse of an eight-story building housing garment factories in Dhaka in April 2013. The death toll of this collapse was 1,127 people with thousands more injured. These are not isolated incidents. For example, between 2006 and 2009, 414 garment workers were killed in at least 213 factory fires in Bangladesh (SOMO & CCC, 2013, p.5). What we know already is enough to point to a failure of government, municipal, and national industrial safety regimes. These regulatory failures are not surprising or exceptional, as the literature and historical experience point to many similar incidents. What is more interesting at the theoretical level is that it was also a failure of the transnational regime that was established over more than a decade to shape the rules, monitor, and promote compliance of industrial and worker safety. Much of the discussion, at least outside Pakistan and Bangladesh, centered on the role, ambitions, structure, technologies, and motivation of transnational actors rather than intergovernmental and governmental actors. We suggest, however, that more scholarly and public attention should be given to the weak links between civil and governmental actors in the creation of these transnational regimes and, in particular, to the role and regulatory regimes that govern regulatory intermediaries. The next parts of this paper extend the framework of regulatory governance analysis in these directions. We start with the conceptualization of rule-takers.

## **II. Beyond the Rule-Makers: Bringing Rule-Takers In**

A regulatory governance perspective problematizes the rule-takers. This means that it does not assume their identity, responsibilities, and accountability mechanisms. Instead it asks who, why, where and when some actors are assigned the role of rule taker and not others. The allocation of regulatory responsibility is less natural, neutral fixed, and clear than is usually assumed. Take, for example, the Walmart Corporation,

which is certainly a rule-taker when it comes to international, national, and host-country laws and regulatory regimes. The same Walmart that is a rule-taker is also a rule-maker when it creates its own codes of conduct and applies them to its suppliers and sometimes to its suppliers' suppliers. These two roles are inseparable in the Karachi fire case and in any other regulatory failure that you may want to consider in which corporations act as rule-makers with regard to their suppliers. Or alternatively, consider the fact that the transnational regulatory regimes can share, shift, and extend the responsibility between different actors in the global production chain. Certification can be awarded to the producer, to the product, to the shipper, and to the brand that sells it. If so, who is the rule-taker? And why do different regimes focus on different rule-takers?

One way to move forward when facing regulatory complexity and these difficult questions is to employ a distinction between demand-side and supply-side theories of regulation (Stigler, 1971; Posner, 1974; Peltzman, 1976; Büthe, 2010; Keohane, Revesz, & Stavins, 1998; Mattli & Woods, 2009). While supply-side theories focus on the suppliers of regulation (or the rule makers), demand-side theories focus on regulation as it emerges from the interests of potential rule-takers. They often conceptualize rules as a good, sometimes even as a commodity, driven by the demands of firms, interest groups, politicians, and the public. Rule-takers compete between themselves and with other actors on the relative or absolute gains in a process that is sometimes described succinctly as a game that aims towards regulatory rents or maximization of net benefits. It follows that rules are not simply imposed on firms but are rather demanded by them. The demand aims to harness the powers of the regulatory regimes in order to benefit them at the expense of other actors and players, notably other firms. Rules can be understood therefore as commodities in a political or regulatory market (Büthe, 2010; Mattli & Woods, 2009). The demand-side perspective on regulation opens up a new direction for analysis, one that is sensitive to the role of rule-takers.

For example, firms and other rule-takers can be involved in venue shopping, that is, shopping for the rules that best fit their needs in a certain time and context. As rule-makers, firms engaged in regulation and governance involve themselves in the process of crafting standards that suit their interests – through their participation in

business associations designing industry codes, multi-stakeholder initiatives, or self-regulation involving the creation of a firm's own standards and codes of conduct. In their role as rule-takers, firms instead venue shop from among an existing set of rules crafted by others. They may opt in to pursue voluntary certification for compliance with quality, environmental, or social standards. Yet venue shopping as part of the demand for regulation does not end with the shopping of rules. Monitoring and enforcement technologies and architectures can also be shopped for. Rule-takers may take part in a one or more of dozens of initiatives that include various sets of rules and diverse sets of monitoring and enforcement technologies and procedures. Rule-takers can shop for their preferred monitoring and enforcement technologies and push the system of rules and accompanied institutions from one type of rule-taker to another. As firms opt-in to voluntary compliance schemes, these rule-takers not only select among standards to which they would like to be held to account but also most often determine the level of stringency of ultimate enforcement by choosing the actors who will ultimately evaluate them for compliance. Firms already in compliance or beyond compliance with social and environmental standards, for example, may opt for certification according to the highest standards by an accredited auditor with a superb reputation, whereas laggard firms might search for weak standards, if not also weak monitoring and enforcement.<sup>4</sup>

The relevance of the rule-takers' problematization is evident in the Karachi fire case. Probably the most visible rule-takers in this case are the owners of Ali Enterprises factory in Karachi. At a simple level, like any firm subject to state regulations, the Ali factory is a clear rule-taker, as it is a target of the failed Pakistani legal and regulatory system. The relevance of the transnational regulatory governance perspective is evident from the fact that at least two transnational inspections were made at the factory, while none was carried out by the Pakistani government inspectors (on this see later on). Still, to focus the analysis solely on Ali Enterprises' owners, which makes sense in legal and moral terms, would be to miss something of importance. The regulatory regime may assign rule-taking responsibility to other actors as well. When this occurs, we have at least two types of rule-takers: the buyers (or contractors) and the suppliers (we later show that they can assign responsibility also to various intermediaries). In buyer-driven commodity chains, increasingly powerful multinational firms (e.g., big box retailers like Walmart) dictate the rules and act as

rule-makers. They may craft their own standards for suppliers, as Walmart has recently done for many quality and environmental criteria across all producers supplying the retailer. Alternatively, large multinational corporations may participate, along with other firms and stakeholders, in crafting standards to which suppliers – producers of agricultural commodities, for example, or manufacturers of goods like apparel – of the marketplace more broadly may be held (e.g., Global GAP as discussed earlier). In the first case – with a single firm unilaterally crafting standards for its suppliers and dictating the rules of monitoring and compliance – suppliers may be purely rule-takers, choosing to accept the rules of being a supplier as demanded by the buyer or opting not to supply. In the second case, to the extent that the standards for compliance are prescribed but the selection of monitors and enforcers is left open to the supplier, producers are left with some wiggle room to influence the ultimate efficacy of the standard (and its reputation) by selecting the agents that will monitor their enforcement and compliance. In this respect, suppliers are not simply rule-takers but engage in rule-making to the extent that they alter the de facto governing rules, if not the de jure standards established on paper by those private authorities crafting the rules.

But the list of rule-takers does not end here. The Pakistani state itself should be considered as a rule-taker of international rules because it is a signatory to some of the ILO conventions, which cover issues of safety. In other words, the identity of rule-takers is not obvious and the boundaries between rule-takers and rule-makers are not that clear. Take for example the main buyer of Ali Enterprises' products – the German big retailer *KiK Textilien und Non-Food GmbH*. KiK has its own code of conduct, which governs its contractual actions in Pakistan and elsewhere. Working according to this code of conduct and hiring its own monitoring arm, KiK is not only a rule-taker but also a rule-maker. The blurred boundaries and the multifaceted governance regimes in which rule-makers are also rule-takers, by their own design or by the design of others, do not stop here. As we will show in the next part of the paper, the rule-intermediaries, such as third-party certification and verification actors, also engage as rule-takers and rule-makers for certain purposes. The demand of rule-takers and rule-intermediaries for regulation, and their ability to shop for their preferred rules, offers a richer perspective on the regulatory processes and on transnational regulatory governance.

Demand-side and supply-side perspectives can be brought together to complement each other in a creative manner (e.g., Keohane et al., 1998). The demand side simply brings forward and overcomes the relative marginalization of rule-takers in the analysis. Yet, this should not prevent us from noting two important aspects of the regulatory process. First, that rules, the demand for rules, and the institutionalization of monitoring and enforcement institutions arise from the interactions between rule-makers and rule-takers in multistep, iterative, sense-making, and reflexive processes rather than solely by one or few formative events (Keohane et al., 1998; Eberlin et al., 2013). Second, that clear distinctions and boundaries between rule-makers and rule-takers are often assumed in the analysis. This may represent a bias especially with regards to voluntary, soft, and transnational schemes. Abbott and Snidal's rule-makers triangle reflects some recognition of these problematic assumptions when they offer seven different combinations of three types of actors and point to the diverse ways in which states, NGOs, and businesses interact. Nonetheless it makes sense to conceptualize rule-takers as a source for the demand for regulation and to visualize their role in a rule-takers triangle.

**Insert Figure 2 about here**

Figure 2 presents the triangle of rule-takers constellations. We distinguish between the rule-taking roles of business as buyers and their roles as suppliers. It keeps the state in the framework as a rule-taker. The two vertices of the base of the triangle capture the role of business as buyers (right side) and suppliers (left side). On one end (the buyer-side) stand retailers such as Walmart, C&A, KiK, and producers such as Apple, while on the other end (the supplier-side) stand companies like Ali Enterprises, Tazreen, Foxconn, and EtherTex, to name some of the companies that were involved in tragic incidents. The top vertex is dedicated to states as rule-takers, meaning states that are targets of voluntary and incentive regulations that come from the transnational and intergovernmental organizations as well as directly from other governments. Again, in the spirit of Abbott and Snidal, the triangle includes seven zones capturing different architectures that target different types of rule-takers. Zone 1 is populated by schemes that place sole responsibility squarely on the state. This is the zone in which most intergovernmental regulatory schemes can and should be placed when rule-taking is considered. This zone was the most populated zone before



the rise of transnational regulatory governance in which international relations and interactions were mostly about governmental interactions. It is also an important zone of action now, when many issues are still the prerogative of states that are considered the main and even sole rule-takers in international regulatory regimes. It is important to distinguish here between assigning responsibilities for states as buyers (e.g., to buy or allow importation of only ethical products) and assigning responsibilities for states as suppliers (to produce in an ethical and socially responsible manner). The most relevant regimes here are the ILO regime and the WTO regime. They are remarkably different with the WTO social and ethical pillars tilted toward free rather than free and fair trade. The ILO, on the other hand, imposes via intergovernmental conventions some important duties, such as the freedom of association and the right to a healthy environment. The translation of general international norms that were supposed to be obeyed by the Pakistani government as rule-takers has been less than optimal, both because the government failed to ratify these ILO conventions and because it failed to enforce national laws effectively. A report on the issue by the Clean Clothes Campaign and SOMO reveals that labor inspection is almost non-existent. Labor inspections were abolished in some regions in order to develop “an industry and business-friendly environment” (SOMO & CCC, 2013).

As mentioned before, we distinguish between two types of pure regulatory models (Zones 2 and 3): one that assigns responsibility to buyers and one that assigns responsibility to suppliers. In Zone 2 we can place schemes that situate the supplier at the center of the regulatory regime. This is the case with Ali Enterprises where the certification has targeted the producer-supplier rather than the buyers. Ali Enterprises was indeed the subject not only of one social and ethical auditing but of two different regimes. In the first case, it was audited according to the social accountability standard SA8000, and in the second case it was audited according to KiK standards and codes. Thus, we place in Zone 3 of the RT schemes like that of the German big retailer, *KiK Textilien und Non-Food GmbH*. This company – the buyer of 75 to 90 percent of Ali Enterprises’ product – acted as rule-maker, via company codes, toward Ali Enterprises. But at the same time, KiK should be considered a rule-taker, because it binds itself and operates under its own social and ethical code. KiK has recognized responsibility towards the victims’ families by committing to pay some compensation for their losses. Zone 5 is the zone where the regime’s design assigns

responsibilities for both states and business as buyers. Zone 4 is the zone where the regime's design assigns responsibilities for both states and businesses as suppliers. Zone 6 is the zone in which the regime's design divides responsibilities between businesses that act as buyers and businesses that act as suppliers. Zone 7 is the zone where responsibility is assigned in multiple manners to state, non-governmental actors, and business and for both suppliers and buyers.

The rule-takers triangle allows us to identify more clearly the dynamics of rule-taking and the possibilities of extension of responsibilities towards more actors above and beyond the immediate culprits or regulatees. Thus, there is a strong rationale for a second triangle and a clear conceptualization of the role of rule-takers. The next part adds a third and final triangle focusing on rule-intermediaries.

### **III. Transnational Regulatory Regimes and the Ali Enterprise Deadly Fire**

Let us go back again to the regulatory failure in Ali Enterprises of Karachi where 262 people were killed. The safety and working conditions in the factory were appalling. Here is one account given one year later by Hunter King, Labor Rights reporter:

Ali Enterprises was an unregistered, illegally functioning factory with an unapproved building design and missing onsite fire-fighting equipment and an emergency alarm system. Workers reported that the factory employed children and that all workers were employed under an illegal third-party contract system. Workers were not unionized and thus had no collective bargaining power to push for better working conditions. Most lacked job verification letters and, despite the fact that registration is mandatory in Pakistan, were not registered with the country's Social Security and Old Age Benefit institutes. The factory had only one exit, which at the time of the fire was blocked, and all windows were covered with iron grills. In spite of two previous fire incidents, including one which took place in February of the same year, the factory failed to pursue precautionary measures or educate their workers in fire safety and exit strategies. In fact, when the building started to go up in flames, workers found that they were not only trapped, but that they were forced to

save factory materials and equipment before attempting to save themselves.

For many, it was already too late.<sup>5</sup>

This dangerous and inhumane sweatshop was certified by a rising category of actors that we call regulatory intermediaries. Two intermediaries came to our attention but there are probably a dozen more that were not spotted immediately after the fire. First and probably most important is Social Accountability Accreditation Services (SAAS). The mission of SAAS is to accredit and monitor organizations seeking to act as certifiers of compliance with the SA8000 social standard – pioneered by Social Accountability International (SAI)--and to offer accreditation services to certification bodies (Braun, 2011). The SA8000 standard pertains to the certification of manufacturing facilities, not brands or retailers (O'Rourke, 2003, 14). SAAS's transparency and effectiveness is contested because it discloses lists of certified facilities and their locations but does not publicly disclose which facilities have lost their certification or were rejected in their application (O'Rourke, 2003, 14–15). Established as a department within Social Accountability International (SAI) in 1997, SAAS formally established itself as a not-for-profit organization in 2007. But beyond SAAS, the intermediaries here also include RINA, an Italian multinational, which offers certification and verification services on a for-profit basis, and its subcontractor in Pakistan, Regional Inspection & Certification Agency (RI&CA). While RINA was accredited by SAAS, RI&CA was not accredited by SAAS because of its unusually high rate of approval in Pakistan (SOMO & CC, 2013, 26). Ali Enterprises received certification just weeks before the tragedy. While it is not clear at all that denial of certification would have been able to prevent this incident, the fact that certification was granted suggests a widespread failure. Neither the supply-centered framework nor the demand-centered perspective that were discussed earlier captures the central role of these intermediaries.

**Table 1: Transnational Regulatory Architectures:  
A Comparison of Three RI-Centered Failed Governance Systems**

		SAAI-RINA-RI&RA	KiK, UL Responsible Sourcing
<b>Actors role</b>	<b>Rule Maker</b>	Social Accountability International	KiK
	<b>Rule Taker</b>	Ali Enterprises	KiK
	<b>Rule Intermediary</b>	SAAI-RINA-RI&RC	UL Responsible Sourcing
<b>Intermediary characteristics</b>	<b>Internal Auditors of Rule Taker</b>	No	Yes
	<b>External Auditor of Rule Taker</b>	Yes	Yes
	<b>Independent Auditor</b>	Yes	Yes
	<b>For Profit Auditor</b>	Yes	Yes
	<b>Non-Profit or NGO affiliated Auditor</b>	Yes, partly	No
	<b>Who pays the auditor?</b>	Ali Enterprises, with possible subsidy from the Pakistani Government	The Rule maker/ Rule Taker/ i.e., KiK
<b>Transparency</b>	<b>Public Reporting of successful auditing</b>	Yes	No
	<b>Public Reporting of failures</b>	No	No
	<b>Public Reporting of on-going certification</b>	No	No
	<b>Public Disclosure of certification costs</b>	No	No
	<b>Ranking of rule-takers</b>	No	No
	<b>On Product Labeling</b>	No	No

Another intermediary’s failure that should be discussed is that of the internal compliance mechanism of KiK and its external monitor UL Responsible Sourcing, a for-profit intermediary that certified Ali Enterprises for KiK. The architecture of transnational regulatory governance that was applied here rests on common practices of many brand corporations. They create codes of conduct either as extensions of their supply chain management programs, by simply adding labor, human rights, and environmental concerns to their existing programs; or they create entirely new systems of internal monitoring and evaluation (O’Rourke, 2003, 7; Starobin & Weinthal, 2010). Some, like KiK, add external monitoring such as UL Responsible Sourcing to their own internal systems. UL Responsible Sourcing is a global safety company which, according to its self-reported vision, is “[d]edicated to promoting safe living and working environments, UL helps safeguard people, products and

places in important ways, facilitating trade and providing peace of mind. UL certifies, validates, tests, inspects, audits, and advises and educates”.<sup>6</sup> Like RINA it also certified Ali Enterprises, and three audits were conducted between 2007 and 2011 (SOMO & CCC, 2013, 23). No serious shortcomings were found in these audits.<sup>7</sup> Like the role of auditors in the Enron scandal and like the role of credit rating agencies in the financial crisis of 2007/2008 (Partnoy, 2007), the functioning, accountability, motives and transparency of UL Responsible Sourcing, SAAI, RINA, and RI&CA were and remain still under scrutiny mainly by transnational NGOs and social advocates.

Table 1 presents a comparison of intermediaries’ characteristics in the two failed transnational regulatory schemes that are relevant to the tragedy of the fire in the Karachi case and presents some of the characteristics of each of the schemes of regulation delineating the main players, the characteristics of the regulatory regimes that govern the intermediaries, and the transparency of the reporting and labeling regimes. One way forward in future analysis of the regulatory regimes that govern the intermediaries is to focus on policy learning (Bennett and Howlett, 1992) and experimental governance (Sabel and Zeitlin, 2012). This perspective offers an opportunity for a focus on the goals of effectiveness and the challenges of legitimacy as well as on mechanisms that will overcome future catastrophic failures. In our case, learning would focus on the implications of the growing role of intermediaries in this process. It makes sense therefore to bring them into the center of the theoretical, analytical, and empirical efforts in the study of transnational governance.

#### **IV. A Focus on Regulatory Intermediaries**

Broadly conceptualized, regulatory intermediaries are regulatory actors with the capacity to affect, control, and monitor relations between rule-makers and rule-takers via their interpretations of standards and their role in the increasingly institutionalized processes of monitoring, verification, testing, auditing, and certification. They include a range of public and private actors serving as ad hoc regulators such as vigilant civilians, consumers, and professionals voluntarily contributing to collective enforcement of societal rules, sounding “fire alarms,” and calling for regulatory action (see also, Busch, 2010; Loconto & Busch, 2010). Some of these intermediaries are easy to recognize and this is their main function; others are not. Physicians, social

workers, and teachers have duties to report abuse and neglect without direct evidence (Thompson, 2002).

In Disneyworld, Mickey Mouse does not only entertain park visitors but also disciplines them (Shearing and Stenning, 1987). The mobilization of passengers and other drivers to the enforcement process for road safety by the creation of monitoring techniques, such as *How is my driving?* bumper stickers is a regulatory technique that is increasingly common around the world. In a similar arrangement, Qui Tam laws mobilize and reward private individuals who assist prosecutors as whistleblowers, most often in white-collar crimes. Braithwaite (2012, 4) tells us that corporate crime enforcement has a low success rate because of its poor record of getting insider testimony from corporations and organizations that are breaking the law. One of his solutions for a better regulatory compliance system is leveraging the moral, legal, and regulatory capacities of insiders to prevent fraud and other regulatory and compliance failures. Kraakman (1986) asks, from a legal point of view, when should we impose liability on intermediaries? The legal and terminological terrain includes such concepts as *third party*, *collateral liability*, and *secondary liability*. The legal, regulatory, and ethical obligations of the financial ratings agencies come to mind here (Sinclair, 2005). Their accountability should be assessed to evaluate the effectiveness and legitimacy of their regimes, especially given recent financial catastrophes from Enron to the Euro via the collapse of the housing market in the US in 2007.

Regulatory intermediaries include individuals and organizations positioned to play a more consistent and systematic role in the regulatory regime, unlike *ad hoc* regulators that are ad hoc alarmist. These actors are increasingly entrusted with ongoing regulation because of their intimate familiarity, often as expert professionals, with the processes of rule-making, rule-intermediaries, and rule-enforcement. They include lawyers, accountants, investment bankers, credit rating agencies, auditors, certifiers, testing companies, labs, and inspectors. Thus, banks have a duty to monitor and report money laundering. Credit card companies are pressured to minimize gambling transactions over the Internet. Internet Service Providers (ISPs) have to disclose the location and other private information of suspected offenders. Universities are required to act as intermediaries in the monitoring and enforcement of intellectual property and ethical codes in regards to their staff's research.

Diverse in their form and function, these actors include for-profit companies, governmental and intergovernmental agencies, and other non-governmental organizations (NGOs). A new market of auditing, verification, certification, and accreditation is booming (cf. Reinecke, Manning, & von Hagen, 2012). The emergence of this market for intermediation can be analyzed in terms of its useful functions in economic, social, and political processes. Kearl (1983), for example, asserts that the dynamics of the regulatory process rests on \consideration of responses to these costs. Rule intermediaries, he wrote, will emerge who serve a useful function in lowering the social costs of a given regulatory scheme. Still, these actors have their own interests and sometime are in a position more privileged than the rule makers and rule-takers. Take, for example, the case of the cartel of credit rating agencies. Their privileged power is grounded in a de facto monopoly over certification granted by the Securities and Exchange Commission (White, 2010). Or consider Quality Assurance International (QAI) that managed to convince , along with others, the U.S. Congress to create the Organic Foods Production Act of 1990. The act created an elaborate scheme to define the term *organic* and established a legal subcategory of intermediaries called “accredited certifiers” (Klonsky, 2000). Politics was found in this case as a root for a successful business model. Nonetheless, QAI did not receive the same monopoly status that was given so generously to the few credit rating agencies that dominate the financial world.

**Insert figure 3 about here**

The Karachi fire catastrophe and the associated regulatory failures revealed by it open a window of opportunity that allows us to study, discuss, and analyze the role of intermediaries. This role is more significant than the theoretical and empirical attention given to it by scholars of regulation and transnational regulatory governance. We are relatively familiar in public and scholarly forums such as GlobalGap, the Fair Labor Association, the World Wide Fund for Nature, the Fair Wear Foundation, the Forest Stewardship Council, and the Marine Stewardship Council. We know much less about the organizations that monitor, audit, verify, and certify the rules these organizations created. These anonymous regulatory agents – often subcontracted third parties, tending to remain hidden from view are presumed to be credible agents by virtue of their purported independence from rule-making organizations (Starobin and Weinthal, 2010). One important assertion of this paper is that these regulatory actors

represent an exciting and important research frontier in the study of regulatory governance in general and transnational governance in particular. Figure 3 presents types of regulatory intermediaries along with the distinction between state, business and society. The space is divided into seven zones. Zone 1, the zone of states, is exemplified by the monitoring bodies of the Council of Europe in the development of human rights, an elaborate system including various organizations specializing in different types of human rights abuses. Inspectors of the nuclear non-proliferation regime can also be included here. They are organized in the Safeguards Department of the International Atomic Energy Agency (IAEA). Its role is to verify compliance with an extensive set of technical measures made by member states regarding their nuclear material and activities. Zone 2 includes organizations like RINA, UL Responsible Sourcing, and credit rating agencies, all for profit-intermediaries. Zone 3 includes NGOs such as the Worker Rights Consortium, which focuses on monitoring and regulation via public information. Zone 4 includes collaborative actions by states and business, while Zone 5 includes organizations with collaborative schemes between NGOs and states. Zone 6 includes intermediaries that are hybrids of civil society and business actors. Zone 7 includes intermediaries that are hybrid of the three actors under discussion. There is, for example, the case of the Independent Monitoring Association for Child Labor (IMAC), which was established in 2003 to monitor labor issues in the sporting goods industry in Sialkot, Pakistan (Nadvi, 2008). These seven zones allow us to focus analysis on various public roles intermediaries take on when they verify for the regulatees, the regulators, and other stakeholders so production and supply chains meet required standards (cf. Meidinger, 2003).

One important way forward in the study of intermediaries is to raise questions about the role of regulatory intermediaries, in particular the following: How, why, and when do different regulatory intermediaries emerge and expand their role? When and to what extent do regulatory intermediaries gain autonomy from rule-makers and rule-takers? How do regulatory intermediaries help expand, limit, and shape transnational governance? To what extent do regulatory intermediaries serve to frame, extend, and limit collective goods when compared to rule-takers and rule-makers? What are the challenges and possible solutions for democratic regulatory control of regulatory intermediaries? All these questions require us to think clearly in terms of a third



regulatory triangle, that of the intermediaries. In the next section, we bring them together in a three-way analysis.

## **V. Three Ways, Three Actors Interaction**

We now offer a three-way framework of analysis resting on three different types of actors, each represented by one triangle of actors' constellations. Together, these three triangles capture important and relevant aspects of the complex architecture of actors' constellations and interactions in transnational politics and policy. One way to imagine this complex architecture is seeing the regulatory arena as a multilayered space of three partly overlapping triangles in three-dimensional space. Since each of the triangles has seven relevant types of actors' constellations, the total number of combinations is 7 zones times 7 zones times 7 zones, or 343 different combinations of actors' constellations. These interactions can be captured by using the distinctions between first-, second-, and third-party regulation. The actors in this complex architecture can have one of three types of relations (e.g., hierarchical, interdependent, or arm-length) and the results can be legitimate and effective regulatory governance or alternatively rent-seeking behavior, as well as the capture of one or more type(s) of actors.

In first-party regulation, the regulator (a firm or any other player/actor) is not only a rule-maker but also a rule-taker and rule intermediary. They create the code and standard (RM); the firm is subjected to compliance with the standard (RT), and they are charged with auditing their own compliance with the standard, making some actors, group of actors, or sub-organizations within the firm responsible as RI. The intermediary here is an insider within the organization that regulates itself and enjoys privileged access to intra-organizational information on rule-making and compliance processes when compared to an external intermediary. In second-party regulation, the regulator and regulatee are two different actors; the regulatory intermediary here, as in the case of first-party regulation, is an insider within the rule-making organization and enjoys privileged access to intra-organizational information on rule-making when compared to an external intermediary. All other stakeholders in compliance relations place their trust in the regulator and in its intra-organizational intermediaries in achieving compliance. In third party regulation<sup>8</sup>, regulators and regulatees manage their relations with the help of separate intermediaries that conduct functional and

ceremonial auditing, verification, testing, and certification to achieve compliance by the regulatees. Rule-makers, rule monitors and rule intermediaries are independent from each other. The intermediary relations with the rule-makers and the rule-takers do not allow for privileged, iterative, and intimate access to intra-organizational rule-making and compliance processes. All other stakeholders in compliance are expected to place their trust in the regulator and in the intermediaries.

Third-party regulation represents the most elaborate scheme, making the three types of actors' constellations – or our three triangles – most visible for analysis. Inter marriages embedded in the regulatory process in both second- and first-party regulation get full visibility in the third-party model. We can now explore more clearly both their independence from the rule-makers and the rule-takers and their interactions with these actors. Some of the questions that can be raised now include: whom do they serve?; who pays for their services?; what are the norms that guide their activities?; what are their legal obligations?; who are they accountable to and which kind of relations do they develop or should develop with rule-takers and rule makers?

The discussion so far has allowed us to extend the analysis from a rule-maker-centered analysis to rule-takers and rule-intermediaries. This framework was especially useful, as it allowed us to focus our attention on the regulatory intermediaries and the various ways in which actors appear and reappear in all three roles. The light that this paper sheds on the failures of intermediaries in transnational regulatory governance does not suggest that rule-takers and rule-makers are less critical and less central. What it does suggest is that responsibility for failures is much more widespread and much more theoretically interesting than is usually assumed. Transnational regulatory governance not only fragments responsibility but also extends the chain of accountability. One advantage of this framework is that it allows us to break from conceptual straightjackets that treat the rule-taker as government, the idea of an intermediary as a professional auditor, and that of rule-takers as firms. Instead, we suggest a political analysis of the interests, ideas, and institutions that govern all three types of regulatory roles. We focus in particular on three approaches for the political analysis of governance failures: policy learning and experimentalism;

rent-seeking and business capture approaches; and a Polanyian perspective on transnational governance as the creation and moderation of the market.

## **VI. Conclusions**

One of the main assertions of this paper is that we need to shift our attention from the composition and interests of the rule-makers to those of rule-takers and rule-intermediaries. Abbott and Snidal's framework with its seven zones of organizational designs allows us to capture the diversity of the rule-makers composition. We use it here to advance a perspective of multidimensional space that allows RM, RT, and RI to interact and to create regulatory architectures that meet their needs. By first drawing a distinction between the diversity of rule-makers' institutions and the diversity of rule-makers, we were able to create a second triangle allowing for interaction between rule-makers and rule-takers. We then add a third triangle focusing on a third type of actor, regulatory intermediaries; little-observed and little-conceptualized both in the transnational governance literature and the regulation literature. It is then argued that the role of regulatory intermediaries is essential to understand the construction, development, failure, and success of regulatory regimes in general and transnational regulatory regimes in particular. In the case of the Karachi fire this is demonstrated in the role of the Italian for-profit auditor (RINA), their Pakistani subcontractor (the RI&CA auditing firm) and UL Responsible Sourcing. This means that we have to focus scholarly efforts on a new type of actor, a new industry of verification, auditing, and assurances, and on the mechanisms that enhance their transparency and accountability. If there is one regulatory lesson from the deadly fire at Ali Enterprises and its human costs, this aspect is the most useful to remember.

A regulatory turn in the study of transnational governance is increasingly visible in the scholarly literature. It brings a fresh perspective and insights on regulatory governance to the fields of transnational sociology and international relations. Using diverse forms and terminology and coming from different part of the social sciences, regulation literature facilitates the study of the emergence, consolidation, and transformation of transnational regulatory regimes around an increasing number of issues and forms of control. This is a welcome development, not least because global governance is increasingly regulatory complementing fiscal (e.g., aid) and

discretionary (power-centered, unilateral action by one or more actors) forms of power. This means that power is projected, accommodated, and interacting with rules and regulatory capacities rather than other resources.

Still another direction which was not developed here and might be useful is a focus on public choice and rational choice interpretations of the political process, also known as the economic theories of regulation. Here, the concepts of *business capture* and *rent-seeking behavior* are major tools for analysis. Accordingly, the behavior of the actors responsible for governance failure will be addressed as manifestations of capture and rent-seeking behavior. Extension of the attention we suggest towards RT and RI implies that capture is the control of either or all processes of rule-making, rule monitoring and rule enforcement by one of the actors at the expense of others. Capture is not only capture by the government; rule-takers can also be captured. To understand the three-way game of regulatory players, we need to ask who captures whom, how, and to what purpose? At the same time, we suggest extending rent-seeking analysis, intimately connected with capture theories, to all three categories of actors – states, NGOs, or business. Finally, given that the regulatory process has at least three distinct components – rule making, rule-monitoring, and rule-enforcement – we need to ask what exactly is being captured and how does the capture of one stage of the regulatory process affect the other two stages. The scope of conditions for capture and rent-seeking behavior are different in these three stages of the regulatory process, and political analysis according to this line of explanation calls for specification and refinement of the arguments for rent-seeking behavior regarding each stage of the regulatory process.

The focus on regulatory failure on one hand and on intermediaries and rule-takers on the other should not prevent us from seeing the larger picture of the emergence of the new transnational arena as a political exercise for building a market while embedding it in a global social setting. This political exercise emerges from non-governmental organizations, from progressive state and intergovernmental actors, and from corporations (brands and retailers) close to consumers and vulnerable to their pressures or for negative media attention. This political analysis builds in itself on a three-way analysis of relations between the social, the economic, and the political at the national and transnational level simultaneously (Bruszt, & McDermott, 2009;

2012). This approach looks at the embeddedness, re-embeddedness and de-embeddedness of markets, societies, and states as a continuous dynamic process with uncertainty about the results (Bartley, 2007; Djelic and Sahlin 2009; Mayer and Gereffi, 2010; Levi-Faur, 2013). This understanding of the rise of transnational governance contrasts with one popular analytical narrative that sees it as driven by the decline in the power of the state (or at least regulatory deficits and voids left by hollowed states) and the rise in the power and regulatory capacities of the corporation. This process of states and markets is then followed by social response expressed in two ways. First is the response of civil society organizations. Here, transnational regulatory governance attests to the growing influence of non-governmental organizations and, more generally, global civil society (Boli and Thomas 1999). This global society-centered explanation gains support from the many manifestations of protests, advocacy, and social networks across countries and continents. Civil society and NGOs were and are the bearers of normative change towards more liberal and more ethical human activities than represented by most states and most corporations. At the same time, mechanisms of transnational regulatory governance are seen as effective ways to increase the power and scope of authority of civil society rather than simply addressing a particular problem at particular time. One expression of this social response is represented by a shift in the norms of social responsibility of corporations, leading to the development of transnational regulatory governance systems increasingly overcoming their inherent failures by processes of policy learning, including a more sophisticated use of intermediaries, to increase their legitimacy and effectiveness and the trust of all stakeholders. The failure of transnational governance here is an indication of the political struggle over the best strategies to re-embed markets rather than a testimony to policy failure. The remedy for the situation is to extend technologies of governance across the chain of custody via political effort and pressures, and to balance the NGOs' current focus on firms and corporations with a growing pressure on government and intergovernmental organizations.<sup>9</sup>

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# Appendix

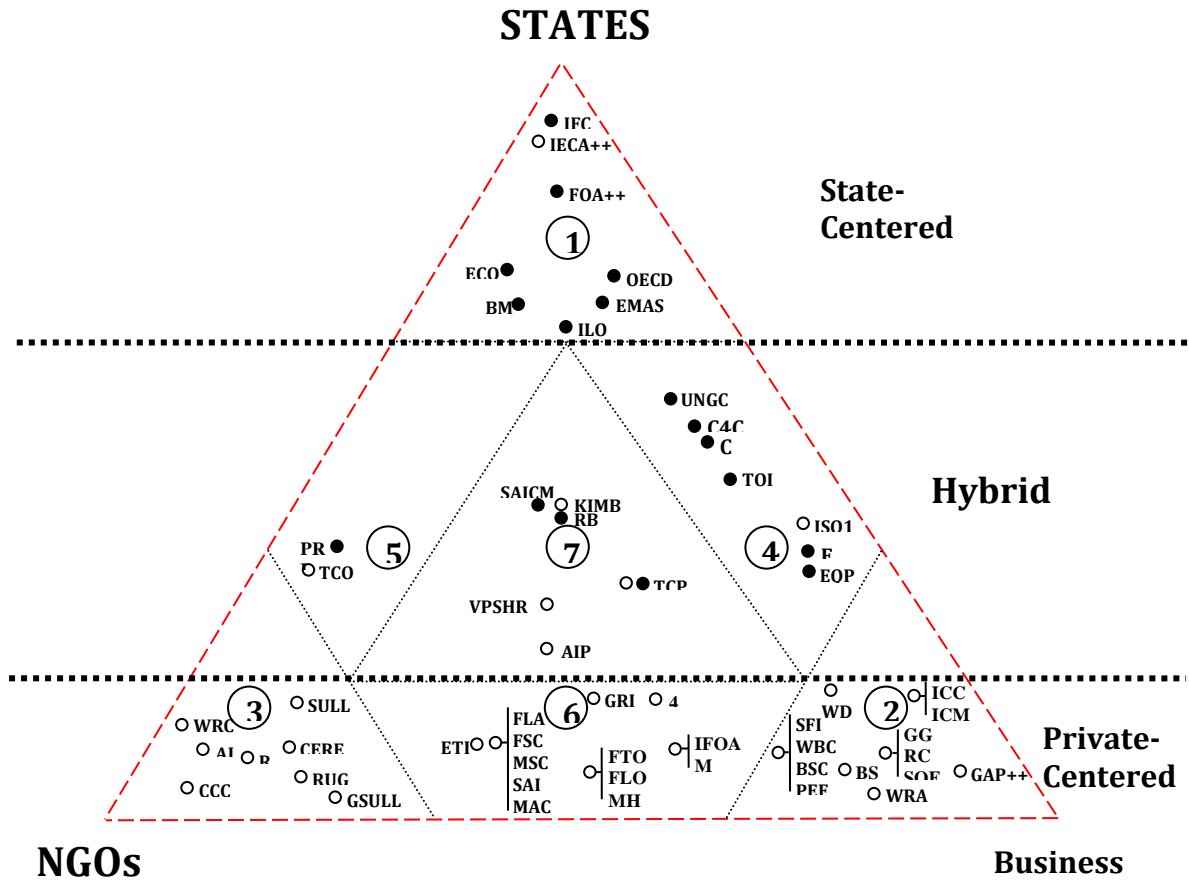
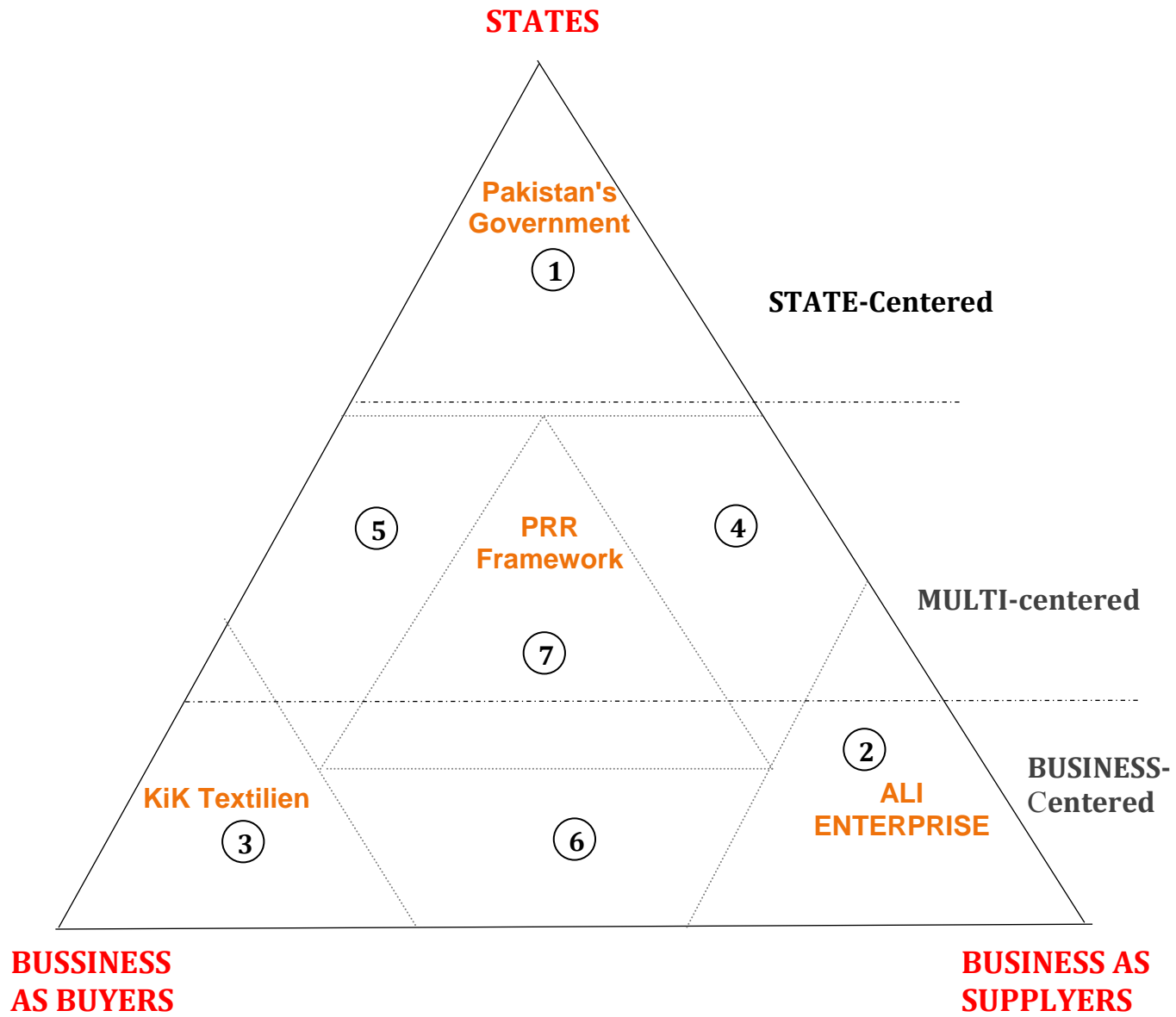
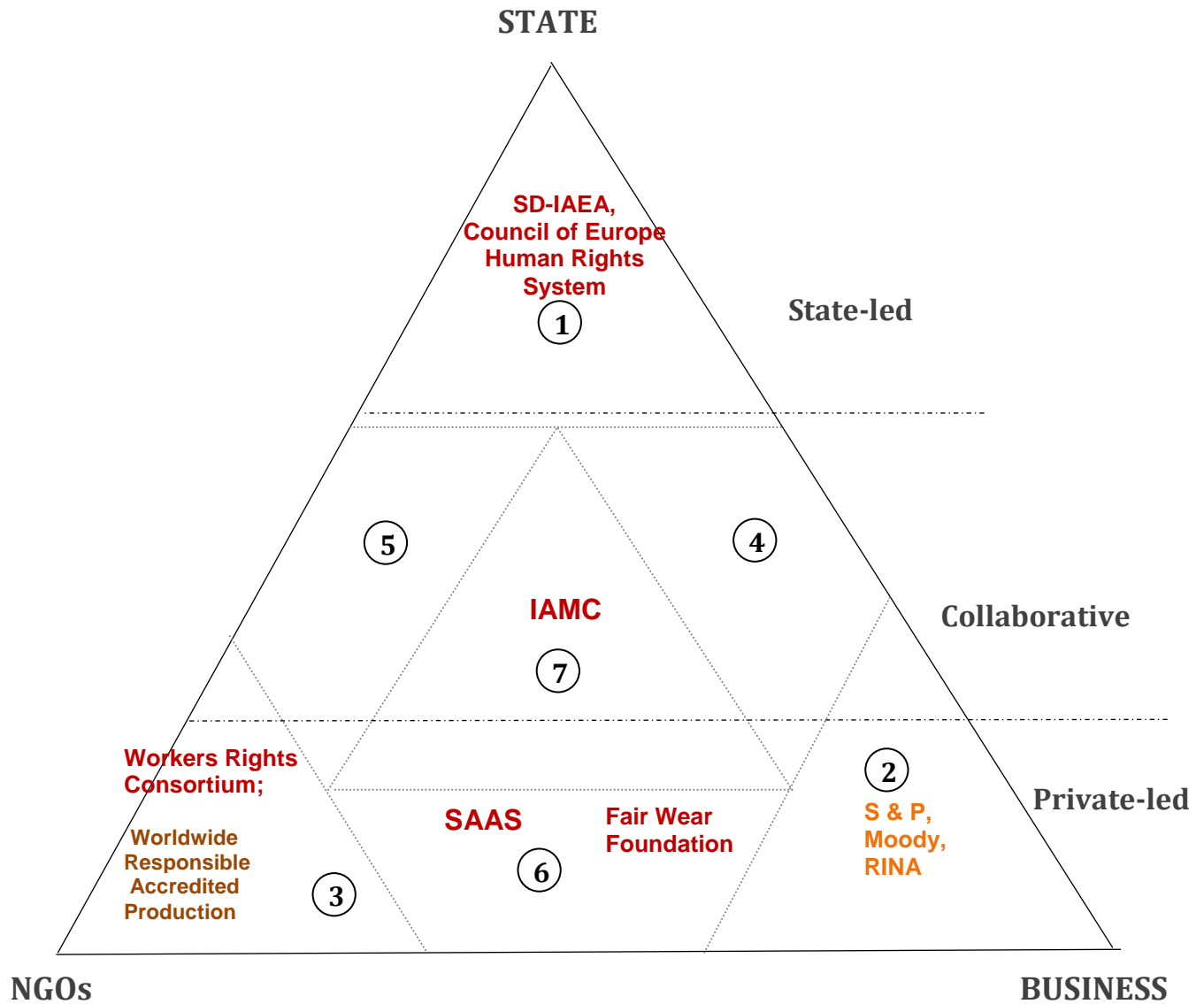


Figure 1: The Rule Takers-Centered Triangle,  
Source: Courtesy of Abbott and Snidal with some adaptations



**Figure 2**  
**The Rule-Takers Triangle**



**Figure 3**  
The Regulatory Intermediaries Triangle

## Notes

<sup>1</sup> The discussion of the rule-intermediaries and the rule-takers extends the framework of analysis. It does not aim directly to answer how to design an effective and legitimate transnational regime (O'Rourke, 2000; 2003; Hutchens, 2011; Overdevest & Zeitlin, 2012). Nonetheless, we are certain that an investment in theoretical and empirical studies of these actors and the architecture of control associated with them may help to improve both effectiveness and legitimacy and help clarify some of the options for collaborative regulatory arrangements and division of labor among civil society, businesses, and state actors around the rule-making, rule-monitoring, and rule-enforcement aspects of the policy regime and institutions.

<sup>2</sup> The certification meant that it had met “international standards in nine areas, including health and safety, child labor and minimum wages.” See Inspectors Certified Pakistani Factory as Safe Before Disaster, *New York Times*, September 19, 2012.

<sup>3</sup> [http://www.globalgap.org/uk\\_en/what-we-do/](http://www.globalgap.org/uk_en/what-we-do/) Last accessed November 8<sup>th</sup> 2013.

<sup>4</sup> Most certification programs seem to allow choice in the auditor. Notable exception is the FLO-cert (the inspection and certification body for labelled Fairtrade) which is the sole auditor that works with Fairtrade International.

<sup>5</sup> [http://laborrightsblog.typepad.com/international\\_labor\\_right/2013/09/by-hunter-king-today-september-11th-we-commemorate-multiple-tragedies-it-is-not-only-the-anniversary-of-the-fall-of-the-t.html](http://laborrightsblog.typepad.com/international_labor_right/2013/09/by-hunter-king-today-september-11th-we-commemorate-multiple-tragedies-it-is-not-only-the-anniversary-of-the-fall-of-the-t.html)

<sup>6</sup> Source: Company website, visited on June 25, 2013, <http://www.ul.com/global/eng/pages/aboutul/>

<sup>7</sup> Zuverlässiger Lieferant, [Reliable Supplier] Der Spiegel, October 22, 2012. <http://www.spiegel.de/spiegel/print/d-89234400.html>

<sup>8</sup> Various approaches to defining first-to-fourth party certification and multi-party regulation appear in the scholarly and practitioner-oriented literatures, complicating the making of meaningful distinctions among different regulatory approaches, especially where they prove significant in discerning the reputational credibility or likely effectiveness of a given scheme. In third party-regulation, both the activities of rule-making and acting as rule-intermediary are technically placed outside the firm; in principle, with third-party regulation, the firm is only a rule-taker, with rule-making activity (standards) crafted by non-state actors and ultimate evaluation of compliance with those rules undertaken by a presumably independent third-party auditor (rule-intermediary). Yet these are only ideal types, and as we have seen with the availability of venue-shopping, the actors involved are not singular in purpose and interest. The presumed rule-taking firm (the buyer) is increasingly not the firm whose behavior is the focus of evaluation and scrutiny; rather, it is the subcontracted producer of manufactured goods (the supplier). Moreover, given their power to increasingly structure the rules of global production, these multinational firms retain power as both rule-makers and rule-takers. And the rule-intermediaries—purportedly independent third parties—have their own interests and are often also firms themselves—further subcontracting the tasks of monitoring and oversight to other third parties with vested interests in generating profits from their auditing and inspection business activities.

<sup>9</sup> Two examples in this direction are efforts to strengthen social regulation commitments and clauses in the WTO regime (Chan, 2003) and the efforts to increase the pressure on rough governments via the suspension of trade privileges for Bangladesh over concerns about safety problems and labor rights violations as done by the Obama administration. See “Obama to Suspend Trade Privileges With Bangladesh,” *The New York Times*, 27 June 2013, <http://www.nytimes.com/2013/06/28/business/us-to-suspend-trade-privileges-with-bangladesh-officials-say.html?pagewanted=all&r=0>