



Contents lists available at ScienceDirect

The Extractive Industries and Society

journal homepage: www.elsevier.com/locate/exis



Original article

Mandatory due diligence for 'conflict minerals' and illegally logged timber: Emergence and cascade of a new norm on foreign accountability

Lena Partzsch, PD, Dr.^{a,*}, Martijn C. Vlaskamp, Dr.^{b,c,1,2}

^a Sustainability Governance, Institute of Environmental Social Sciences and Geography, University of Freiburg, Tennenbacher Strasse 4, 79106 Freiburg, Germany

^b Marie Skłodowska-Curie Global Fellow at the Institut Barcelona d'Estudis Internacionals (IBEI), Spain

^c The Whitney and Betty MacMillan Center for International and Area Studies at Yale, United States

ARTICLE INFO

Article history:

Received 18 May 2016

Received in revised form 12 July 2016

Accepted 12 July 2016

Available online xxx

Keywords:

Accountability

Conflict

Minerals

Norm diffusion

Norm entrepreneur

Timber

ABSTRACT

The European Union, the United States, and a number of other state actors have adopted policies obliging companies to conduct supply chain due diligence regarding the import of natural resources. While several authors have analyzed the motives of these measures individually, this article provides a broader explanation for their diffusion. In empirical terms, it focuses on 'conflict minerals' and illegally logged timber.

Building on the classical norm life cycle, the article's argument is threefold. Firstly, it argues that these mandatory due diligence policies are the result of a new foreign accountability norm concerning the conditions under which natural resources are extracted. Secondly, it shows that the emergence of this norm is the result of strategic framing, in particular by moral entrepreneurs. International NGOs have successfully advocated the foreign accountability norm by placing it within already existing free market norms, instead of provoking open confrontation. Thirdly, in addition to the classical norm life cycle, the article shows that agency has also played a crucial role in the current phase of norm cascade. 'Fair business' entrepreneurs benefit from new markets for certified products, such as 'conflict free' phones, and their marketing enhances the norm cascade.

© 2016 Published by Elsevier Ltd.

1. Introduction

During the past decade, the European Union (EU), the United States, and a number of other state actors have adopted policies that oblige companies to conduct supply chain due diligence² concerning the origins of the natural resources they use (Bartley, 2014; Sarfaty, 2015). These regulations require companies to

conduct an ongoing, proactive, and reactive checking process in their supply chain in order to identify and manage the risk of contributing, directly or indirectly, to social and/or environmental harm (OECD, 2013; p. 13). As a result, companies are increasingly held morally, politically and legally accountable for their activities, or those of their suppliers, abroad. In some cases, these regulations are used to persecute enterprises for their connection to illegal activities, while in other cases these requirements only aim on permitting consumers to make informed decisions about their purchases. This new global foreign accountability norm, which connects the behavior of extractive industries with societal concerns, triggered off the puzzles that motivate this article: How did this new norm emerge and how can we explain the current diffusion? We focus on the two areas of 'conflict minerals' and illegally logged timber and the role of 'norm entrepreneurs', i.e. individual or collective agents who drive norm and policy change (Partzsch, 2015). In both areas, companies face legal obligations to disclose information about their practices abroad when importing to the EU (timber and soon minerals) and the United States (timber and minerals).

* Corresponding author.

E-mail addresses: lena.partzsch@ifp.uni-freiburg.de (L. Partzsch), mvlaskamp@ibeil.org, martijn.vlaskamp@yale.edu (M.C. Vlaskamp).

¹ <http://www.martijnvlaskamp.eu>.

² Current address: Yale University, MacMillan Center for International and Area Studies, Henry R. Luce Hall / 34, Hillhouse Ave / New Haven, CT 06511, United States.

² The US Lacey Act defines due care as "that degree of care which a reasonably prudent person would exercise under the same or similar circumstances". The EU Timber Regulation and the US Dodd-Frank Act section 1502 demand due diligence which requires the fulfillment of specific standards in order to meet the required due care (Leipold and Winkel 2016). For the sake of simplicity, 'due diligence' will be used as an umbrella term to cover the two methods of ensuring foreign accountability.

<http://dx.doi.org/10.1016/j.exis.2016.07.003>

2214-790X/© 2016 Published by Elsevier Ltd.

Requirements for disclosure can be seen as a response to an international environment in which the free trade norm dominates. Norms are understood as appropriate behavior in the international community (Björkdahl, 2009). In institutional terms, the free trade norm was fundamental to the establishment of the World Trade Organization (WTO), which enforces the unlimited exchange of goods between countries, without controlling any adherence to human rights or environmental standards abroad (Gabler, 2010). Due to this situation, multinational companies may often be involved in harmful practices abroad with impunity in the countries of production and of consumption. For example, the case of Shell in Nigeria gained a lot of attention. The multinational oil company was not held liable for human-rights violations and the devastation of the Ogoni people's lands through massive oil spills (Kohl 2014). This lack of legal foreign accountability has long been criticized by scholars of global governance (Grant and Keohane, 2005; Sachs and Santarius, 2005; Simons and Macklin, 2013).

Mandatory due diligence requirements have now become a central answer to this global governance gap by imposing transparency standards that permit holding companies legally accountable for their activities abroad (Bartley, 2014; Douma and van der Velde, 2016; Radley and Vogel, 2015). While discourses on foreign accountability are not of recent origin and the rapid adoption and spread of voluntary certification over the last two decades have already reflected a new moral commitment (Dashwood, 2007; Gillies, 2010; McHenry et al., 2015; Sydow, 2016), we argue that the adoption of mandatory requirements have been a quantum leap and demonstrate the emergence of a new norm. Whereas the background and development of the regulations on 'conflict minerals' and illegally logged timber have received substantial attention (Bartley, 2014; Gillies, 2010; Haufler, 2010; Radley and Vogel, 2015; Wanvik, 2016; Young, 2015) and there have been at least a few legal studies comparing the two areas of timber and minerals (Douma and van der Velde, 2016; Sarfaty, 2015), this paper's original contribution is to ask how the foreign accountability norm has emerged and been diffused by comparing the two areas. To us, this norm is expressed by the fact or condition of companies being legally required to disclosure information that allows holding them accountable for socially and/or environmentally harmful practices regarding natural extraction in their supply chain abroad (for the sake of readability we will refer to this norm in the remainder of the article only as 'foreign accountability norm').

The two selected empirical cases, 'conflict minerals' and illegally logged timber, are the only areas in which this norm so far has been translated in mandatory due diligence requirements for global supply chains. In the area of 'conflict minerals', the activities are mainly motivated by their role as a source of income for criminal and armed groups in the ongoing conflict in the eastern Democratic Republic of the Congo (DRC) (Kim, 2015; Radley and Vogel, 2015; Young, 2015). In order to stop this trade, section 1502 of the 2010 US Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act) obliges companies to conduct due diligence when placing minerals from the DRC or neighboring countries (US Congress, 2010). The EU agreed upon a similar regulation in June 2016 (Council of the European Union, 2016).

In the field of timber, most measures target illegally logged timber, which is often linked to social and environmental problems, such as deforestation and loss of biodiversity. Studies have estimated the share of illegally logged timber on the world market in 2009 at between 7 and 17 percent (Dieter et al., 2012). In order to tackle this issue, the 2008 US Legal Timber Protection Act (LTPT), the 2010 European Union Timber Regulation (EUTR) and the 2012 Australian Illegal Logging Prohibition Act (AILPA) require companies to make sure that they only import timber or timber

products from legal sources (Leipold et al., 2016). These measures are no toothless paper tigers, as illustrated by the penalty levied against US hardwood retailer Lumber Liquidators, which had imported hardwood flooring from China that had been made with illegally logged timber from far eastern Russia. The fine of over US\$ 13 million is, so far, the largest financial penalty for violating the LTPT (US Department of Justice, 2015).³

Methodologically, we rely on theories regarding norm and environmental policy diffusion, which we discuss in the first section of the article. In the article's second section we elaborate on the question of how the foreign accountability norm relates to the international free trade paradigm. The third section compares the role of moral activists and entrepreneurs in the areas of 'conflict minerals' and illegally logged timber. In the article's final section we bring these different aspects together and summarize our argument. Our empirical findings are based on secondary literature and document analyses, participation in practitioners meetings and 32 semi-structured interviews with public officials, and representatives from businesses and NGOs, from 2013 to 2015.

The contributions of this article are threefold. Firstly, we demonstrate the establishment of a new global foreign accountability norm with regard to extractive industries and society. Secondly, we illustrate how the emergence of this norm is the result of strategic framing, especially by moral activists. International NGOs have successfully promoted the norm by framing it within the free trade norm instead of provoking an open norm confrontation. Thirdly, we show that agency is not only important during the norm emergence phase, but also crucial during the current phase of norm cascade. In particular, 'fair business' entrepreneurs are benefitting from these new markets for socially/environmentally responsible products, such as 'fair' phones, and their marketing contributes to further norm diffusion.

2. The norm life cycle and the new foreign accountability norm

One of the best-known models of international norm change is Finnemore and Sikkink's *Norm Life Cycle* (1998). In their seminal article, they use this circular model to explain how norms themselves change, and how they change other features of the political landscape. Their model includes processes of strategic social construction, in which actors strategize rationally to reconfigure preferences, identities, or social context (Finnemore and Sikkink, 1998; Partzsch, 2015). As our article discusses how the foreign accountability norm has entered the international system and has been converted into concrete policies with a particular focus on norm entrepreneurship, this model is a useful start for our analysis.

The Norm Life Cycle consists of three phases: (1) norm emergence, (2) norm cascade and (3) norm internalization. In the first phase, *norm emergence*, agency plays a significant role. New norms never enter a normative vacuum but, instead, emerge in a highly contested normative space, where they must compete with other perceptions of what is considered appropriate behavior (Finnemore and Sikkink, 1998; Florini, 1996). Therefore, in the phase of norm emergence, *norm entrepreneurs* need to call attention to or even create issues, in a sense of framing, using language that names, interprets and dramatizes: "Norms do not appear out of thin air; they are actively built by agents having strong notions about appropriate or desirable behavior in their community" (Finnemore and Sikkink, 1998; pp. 896–897).

When scholars examine norm change, they look at legal change in the final analysis. For example, Finnemore and Sikkink illustrate

³ Lumber Liquidators had a gross profit of US\$ 279 million and a net (loss) income of US\$ 56 million in 2015, see Lumber Liquidators (2016, p. 50).

Download English Version:

<https://daneshyari.com/en/article/5114426>

Download Persian Version:

<https://daneshyari.com/article/5114426>

[Daneshyari.com](https://daneshyari.com)