

6 Conclusions: Power of Alternatives in Global Supply Chains

There is no doubt about the need for greater social and environmental regulation in global supply chains. Because governments are unable to regulate beyond their national territory, they have increasingly joined nonstate actors in new and emerging forms of private (voluntary), public (mandatory), and hybrid (public-private) regulation. In this final chapter, I compare the findings of chapters 3–5 and draw general conclusions (see also the appendix). The questions that guided the research and the structure of this book are as follows:

- Do new forms of regulation increase private *power over* nation-states, and does this power shift support or undermine environmental and social considerations?
- Do new forms of environmental and social regulation allow actors in the Global South to exercise *power to* develop sustainably?
- Do new forms of regulation enable processes of *power with* others to pursue collective norms and ethical values?

6.1 New Private Power and the Failure to Change Mainstream Markets

A first perspective on power, outlined in chapter 2, is that globalization and the withdrawal of the state led to a new private power over nation-states at the expense of environmental and social considerations. All three empirical chapters indeed show that with new forms of private, public, and hybrid approaches to supply chain regulation, power dynamics have changed among actors. State actors have maintained importance, but governments bound themselves to the WTO and its free-trade paradigm. While new regulative approaches allow single governments and nonstate actors to

circumvent collective WTO rules in favor of environmental and/or social considerations, the regulations indicate a withdrawal of the state. In order to comply with WTO rules, all three forms of regulation are essentially based on the principle of disclosure instead of prescribing specific rules. Only in the area of climate change, with the UN Framework Convention on Climate Change (UNFCCC), were states able to create a UN institution that competes with the WTO at the international level (similar to the World Environment Organization, as suggested by Biermann and Bauer 2016). The EU Renewable Energy Directive (RED) hybrid approach illustrates this struggle: the meta-standard reflects the EU's commitments to both the WTO and the UNFCCC.

There is no doubt that the new forms of regulation underline the withdrawal of the state, but my findings are more ambiguous with regard to what this means for environmental and social problems. The three types of regulation support neither a race to the bottom (Altvater and Mahnkopf 1999; Lucier and Gareau 2015) nor a race to the top (Jänicke 2005; Ruggie 2013). Instead, we observe an ongoing emphasis on private schemes that address environmental and social problems in global supply chains. The new schemes often emerge in direct response to both (inter)governmental action and withdrawal. For example, the emergence of cotton schemes coincided with the application of WTO rules to the textile sector in 2005. FLO started to certify cotton and textile products in 2005, and Cotton made in Africa (CmiA) was created in the same year (Better Cotton Initiative in 2010; EU Ecolabel for textiles in 2014; see chapter 3). Furthermore, the adoption of the US Dodd-Frank Act Section 1502 in 2010 triggered the release of minerals certification schemes, which, like Section 1502, exclusively focused on conflict financing in the DRC and neighboring states—for example, the Conflict-Free Smelter Program (CFSP) that was established in 2010. After the adoption of the EU Conflict Minerals Regulation in 2017, which had a broader focus than the US legislation, the CFSP changed its name to the Responsible Minerals Assurance Process (RMAP), the flagship program of the Responsible Minerals Initiative (RMI; see chapter 4). Finally, palm oil certification schemes also emerged in response to the adoption of RED in 2009. Even the Roundtable on Sustainable Palm Oil (RSPO), which had already been founded in 2004, only became operational when RED started to be implemented in 2010 (see chapter 5). This book uniquely demonstrates this codependence of private governance initiatives across sectors.

Furthermore, I illustrated that across sectors, alternatives to multilateralism change the rules of the game by rendering exporting countries less attractive, particularly if they carry higher risks of conflict financing (minerals), illegality (timber), and environmental unsustainability (biofuels). State actors in importing countries provide the general direction (as suggested by Montouroy 2016) by, for example, addressing conflict financing in the mining sector and reducing GHG emissions (sustainability) in the biofuel sector. With new mandatory and hybrid forms of regulation, certification no longer depends only on individual consumers' demands. Therefore, on the one hand, we may argue that there is a race to the top as we can observe the emergence of an increasing number of standards with more and more companies committing to them since the 1990s. However, on the other hand, the new laws provide importers with substantial leeway, and more recent private standards have become much less ambitious in terms of their content.

Very few schemes were initiated independent of the shadow of hierarchy or command and control types of regulation (as also emphasized by Bartley 2007, 2018). However, schemes that were initiated independently do exist. Organic movements have credibly used voluntary certification to resist the industrial expansion of agriculture since the 1920s (Paull 2010; Demeter 2018), and fair-trade movements have convincingly worked to improve the well-being of smallholders in the Global South (Auld 2015; Barratt Brown 2007). Across sectors, I demonstrated how environmentally and socially ambitious initiatives increasingly compete with less ambitious, often industry-driven schemes. In consequence, there is a race to the bottom among certification schemes in terms of the overall sustainability content. More recently adopted schemes hardly match the quality of early organic and fair-trade standards (Kemper and Partzsch 2019; Raynolds, Murray, and Heller 2007). For example, the Demeter label, which was created in 1928 and is one of the most often applied voluntary standards worldwide, is also one of the strictest standards in many regards (Demeter 2018; Paull 2010).

In addition to weaker standard content, schemes that were created more recently also favor mass balance and book and claim approaches (e.g., BCI and RSPO, which certify the worldwide bulk of cotton and palm oil, respectively). These approaches do not require segregated supply chains, and downstream companies do not have to exclusively purchase from certified

suppliers further upstream. Hence, there are no business-to-business pull effects along the chain, and the continued existence of the mainstream market is accepted (and possibly even supported as there is less pressure from ethically conscious consumers who are satisfied in niches, as suggested by Hoskins 2014, among others).

Voluntary certification has become an essential element of branded marketing, and individual consumers' demand created ethical niches within an ever-growing conventional market. Fair-trade and organic-certified cotton together have a world market share of 3 percent (FLO 2015, 24, 127; Textile Exchange 2016, 127, 5), and including industry-driven certification initiatives, less than 20 percent of global cotton production is voluntarily grown under stricter social and environmental conditions (BCI 2018). This means that more than 80 percent of cotton farming still potentially harms the environment and exploits people in producing countries on an widespread basis (Brooks 2015; Sneyd 2011). Only 1 percent of SEC-registered companies in the United States claimed that they were conflict-free; the majority of companies simply disclosed that they were unable to determine the country of their minerals' origin (in 2015; Kim and Davis 2016). Palm oil exported to the EU (15.6 percent of the global market; see Chatham House 2019) needs to be sustainably certified according to the meta-standard (i.e., prove GHG emission reductions), but the majority of palm oil production is only supposed to comply with Indonesian law (for which there is no proper enforcement; UNDP, MoA, and RSPO 2015; Wijaya and Glasbergen 2016, 232). In other words, the next Rana Plaza type of tragedy is foreseeable and may occur at any time. The problem is not lack of effectiveness of individual projects and schemes, but rather failure of new regulative approaches to change mainstream markets.

My comparative study shows that, besides providing general (normative) directions, the three new forms of regulation have caused further fragmentation and, therefore, each of them exemplifies the often-cited pathway to polycentricism in global governance (Jordan et al. 2015). Fragmentation implies a power shift to nonstate actors. However, complementing earlier studies (Dauvergne 2018b; Fuchs 2007), the main beneficiaries here are not TNCs but NGOs, especially in the case of new mandatory (public) and de facto mandatory (hybrid) forms of regulation. In all cases, NGOs do not only act as counterparts to business; enforcement depends on their

commitment to implementation and monitoring. Even in the case of public timber-supply-chain-related laws, which are essentially based on legality verification and hence the rules are defined by state actors of exporting countries, NGOs are de facto responsible for prosecuting illegal logging and taking legal action. For example, NGOs proved that Gibson Guitar and Lumber Liquidators had violated the US Legal Timber Protection Act (LTPA) in Madagascar and Siberia, respectively (Environmental Investigation Agency 2013; WWF 2013). Although NGOs inevitably face restrictions in standard enforcement due to their limited (financial) capacities, the two cases also demonstrate that there is not a zero-sum power shift away from states. In contrast, with the new regulative approaches, NGOs become the henchmen of state actors: they are supposed to compensate for state failure in the governance of global supply chains.

Furthermore, my research demonstrates that public and private regulations are not mutually exclusive. We have discussed throughout the book how governments have supported private re-regulation. Likewise, and this is something often neglected (e.g., by Fuchs 2007; Green 2013), many private schemes have adopted standards that oblige companies to fulfill or gradually improve fulfillment of public regulations in countries of production—for example, minimum wages and prohibition of forced and child labor (e.g., GOTS and CmiA). In this vein, none of the studied exporting states opposed private schemes (so long as they actually remained voluntary). On the ground, whether or not private or public actors chose to enforce standards, which improve environmental and social conditions but increase financial costs of production, often turned out to be a chicken-and-egg problem. The power shift to the private sector can be considered the cause, or the effect, of state failure. New regulative approaches with participation of nonstate actors support, rather than undermine, environmental and social considerations when applied in practice. However, so far, all studied regulative approaches have led to further fragmentation and failed to be used in such a way that they change, instead of only complementing, mainstream markets. Partly, but not fully, agreeing with the first power perspective, derived in chapter 2, I can conclude that *globalization and the withdrawal of the state led to a new private power over nation-states, and private regulation could only effectively respond to the consequent lack of environmental and social considerations in ethical niches.*

6.2 The Paradox of Northern Commitment and Southern Empowerment

A second central perspective on power in global supply chains focuses on increasing asymmetries between actors in consuming countries of the Global North and actors in producing countries of the Global South (see chapter 2). If we compare the findings on all three new forms of regulation—private (voluntary) regulation, public (mandatory) supply-chain-related laws, and hybrid approaches—we see that alternatives to multilateralism so far allow consumer countries in the Global North to effectively bypass the opposition of exporting countries in the Global South to international or bilateral agreements. The most illustrative encounter in this regard is the creation of the Forest Stewardship Council (FSC). Beforehand, due to the opposition of (tropical) timber-exporting countries, an international forest convention failed at the UNCED in 1992. Moreover, timber-exporting countries claimed that the Austrian ban on tropical timber imports constituted a protectionist nontariff barrier to trade under GATT and, in consequence, the Austrian government rescinded its law in 1993 (Bartley 2007, 321). In this situation, the FSC, as a voluntary scheme, was established and allowed actors to bypass Southern governments' opposition and to circumvent GATT rules. Although the impact with regard to forest protection is doubtful, it is impeding international trade in tropical timber and disadvantages exporters from countries of the Global South (McDermott, Irland, and Pacheco 2015; Haufler 2003, 246).

However, though different scholars have already outlined the increase of asymmetries (Du 2018; Levidow 2013; Sneyd 2015), these debates neglect the fact that private actors have likewise realized suggestions from Southern governments—in particular, to establish control schemes for world prices of agricultural commodities, such as coffee and cocoa. Nevertheless, the non-state actors who initiated these private regulations stem from the Global North. One such example is the Fairtrade Labelling Organizations International (FLO). FLO advocates for the interests of Southern governments but is headquartered in Bonn (Germany), and most of the twenty-seven member organizations are also based in the Global North¹ (Fairtrade 2017).

Although FSC is often cited as an example in the literature (Bartley 2007, 2018; Lauber 1997) and diverse scholars explain how new forms of regulation are disadvantaging the Global South (Du 2018; Levidow 2013; McDermott, Irland, and Pacheco 2015), my cross-sectoral study reveals these

regulations to be principally in line with, and not contradicting, government policies in the Global South. For instance, I found that the Ethiopian government considers certification to be a means to adapt to global markets and promote exports in line with the developmental state (Lefort 2012). The International Conference on the Great Lakes Region (ICGLR) set up a Mineral Tracking and Certification Scheme in 2015, which is driven and supported by local governments in the region (Sarfaty 2015, 450). Southern governments only oppose requirements as unfair barriers if they are mandatory; for example, RED's de facto mandatory request for sustainability certification (*Jakarta Post* 2017a, 2017b; Ching and Majid 2017).

The WTO nondiscrimination principle treats all states as equals, which favors countries with higher capabilities, potentially at the expense of countries with lower capabilities. If supply chain regulation does not take North–South asymmetries into account (like private regulation in the case of the FSC, but unlike FLO, for example), it risks exacerbating negative effects in the Global South. Supply chain regulations incentivize companies to source from safe countries, rather than high-risk areas. They hence render countries with strict regulation and enforcement more attractive—that is, countries in the Global North (McDermott, Irland, and Pacheco 2015; Sarfaty 2015; Leipold et al. 2016). Although the new regulative approaches thus apply to producers inside and outside the countries that adopted the regulations, they impede Global South producers' access to Western markets—at least, so long as countries of the Global South are considered less safe compared to countries of the Global North. For this reason, for example, the vast majority of sustainably certified forest area can be found in the Global North (FSC 2019). (This also raises questions about additionality—that is, whether regulative approaches really created change on the ground or whether only projects that already fulfill higher standards receive certification and/or market access, as suggested by Nygren 2015, among others.) In contrast, the new regulative approaches often establish de facto restrictions on imports from countries of the Global South—in particular, a “de facto embargo on mineral trade in the DRC” in the case of the US Dodd-Frank Act Section 1502 (Jeffrey 2012, 503–504; for a critical evaluation, see Koch and Kinsbergen 2018).

Moreover, in line with this, McDermott, Irland, and Pacheco (2015; see also Lesniewska and McDermott 2014; Leipold et al. 2016) found forest certification and timber supply-chain-related laws to favor large producers

and concentrated supply chains destined for external markets. They argue that costs of certification and extensive legal requirements are too high for smallholders, excluding them from the respective markets. Costs of certification were also an obstacle to smallholders in my case studies. Small-scale producers were not able to pay for the certification and/or auditing themselves—and they had trouble securing international donors (MK, interview, September 8, 2017; SP, interview, September 5, 2018). In general, small-scale producers acquire certification as part of externally funded projects by international NGOs (see also Sneyd 2011, 130). NGOs are facilitators that train smallholders and supplement capabilities they need assistance with. Moreover, NGOs and their donors often have knowledge required at a particular stage of the certification processes and make relevant decisions; in particular, they select the schemes for which the producers acquire certification. Therefore, once an NGO project ends, there is a very high risk that producers will no longer follow the standards or acquire certification (BW, interview, September 2, 2017; VB, interview, August 28, 2018).

New forms of supply chain regulation do not overcome the artificial divide between consumers and producers and respective asymmetries (Hoskins 2014, 192). Although NGOs raise “issues *about* smallholders” (Pesqueira and Glasbergen 2013, 302), small-scale producers, whether they are cotton farmers in Ethiopia, artisanal miners in the DRC, or oil palm growers in Indonesia, are themselves not constitutive participants of the new governance arrangement. Producers and local NGOs lack required forms of subjectivity. Smallholders therefore rely on NGOs. In consequence, particular subjectivities—as well as narratives about Southern producers—are reproduced (Tucker 2014; Nygren 2015), and smallholders depend on the NGOs—in addition to the smallholders’ and NGOs’ dependence on international donors, certifiers, and auditors, who have become crucial (foreign) gatekeepers to consumer markets in the Global North.

This development—greater dependence of producers in the Global South on private actors further down the chain—tends to be further strengthened by the fact that private schemes, such as the FSC and the RSPO, offer grievance procedures (RSPO 2019; Silva-Castaneda 2012). Haufler (2003, 251) notes that if citizens in developing countries turn to the private sector for governance rather than to their own governments, this undermines the strength and health of those governments. However, my interviews revealed that NGOs use private grievance procedures only in parallel to

political activism aimed at, in particular, the central state government. For example, in the case of land conflicts, issuing a private grievance case helps local communities in the central state's legal structures to formally prove that there is a land conflict in Indonesia with a corporation and that, therefore, the central government must take legal action (MR, interview, September 4, 2018; SP, interview, September 5, 2018). These findings contradict earlier arguments that claim RED sustainability certification serves the EU as a means to depoliticize global resource flows (Levidow 2013). In contrast, I found that RED sustainability certification enables marginalized groups via NGOs to (re)politicize palm oil production and to make their conflicts visible. These Southern actors gain new *power to* develop sustainably (see chapter 5).

Although private certification and due diligence—more specifically, consuming countries' (de facto) mandatory request for both—obviously undermine governments in producing countries, this tends to be different for legality verification (chapter 4). Legality verification is based on Southern governments' own rules—for example, in the case of land conflicts, recognition of customary law. Importers are responsible for ensuring compliance with the legal requirements in the place of production. In consequence, one might argue that legality verification allows for new self-determined agency of Southern actors and governments. However, the rationale behind the legality verification laws in the timber sector is the claim that curbing illegal exploitation indirectly hinders deforestation (Fishman and Obidzinski 2014, 259). In this vein, the EU Timber Regulation (EUTR)/FLEGT programs are accompanied by aid to reform domestic policies in timber-exporting countries, such as the DRC (Fishman and Obidzinski 2014, 260; Montouroy 2016, 70). Although these programs very much resemble classic programs of official development aid, importing states add on market incentives by giving privileged market access to countries with Voluntary Partnership Agreements (VPAs) (Fishman and Obidzinski 2014, 260). Thus, after closer examination, legality laws are similar to other new regulative approaches. They utilize importing companies to enforce (or incite) particular conditions of production in exporting countries. Market rejections or incentives tend to be necessary because governments of exporting countries in the Global South have priorities that are different from those of countries in the Global North—for example, rapid economic growth instead of tropical forest protection and climate change mitigation.

However, though TNCs (which frequently come from consuming countries) often support government priorities in the Global South, economic growth alone does not serve all people in exporting countries (Lefort 2012; Li 2017; Wijaya and Glasbergen 2016). Against this backdrop, legality verification strengthens marginalized actors in exporting countries vis-à-vis governments and large corporations just as much as officially mandatory due diligence checks (chapter 4) and de facto mandatory sustainability certifications (chapter 5). In contrast, due diligence checks weaken actors benefitting from the trade in conflict minerals and illegally logged timber, including armed rebels, as well as large corporations buying from them and other informal suppliers. Furthermore, sustainability certification also increases the costs of palm oil production at the expense of all producers, but in favor of social and environmental considerations.

My conclusion therefore differs from those of McDermott, Irland, and Pacheco (2015), among others who studied only the forest sector, and Hilson (2014), who explored minerals certification. These scholars found that local communities do not benefit from and even suffer disadvantages due to private and public supply-chain-related regulations. In my case studies, including the organic cotton project in Ethiopia and RSPO certification in Indonesia, NGOs were able to facilitate external market access to smallholders by covering their costs of certification, for example, and helping smallholders to overcome this financial barrier. In addition, individual producers and certification initiatives gained additional resources and capabilities through new supply chain regulation. For example, producers benefitted from training provided to them by the NGOs within the context of certification. Voluntary certification initiatives, as such, clearly benefit from the de facto mandatory request on importers to purchase only sustainably certified palm oil for biodiesel exports to the EU.

In particular, pioneers such as International Federation of Organic Agriculture Movements (IFOAM) demonstrate an ability to engage and inspire people, including marginalized smallholders in remote areas, such as in Southern Ethiopia (as well as disadvantaged people in the Global North). However, even so, new types of supply chain regulation are initiated in the Global North. (Indonesian Sustainable Palm Oil [ISPO] and Malaysian Sustainable Palm Oil [MSPO] are public standards only applied domestically.) There is sympathy and support for new regulative approaches in the Global South, but this does not belie the paradox of Northern commitment

and Southern empowerment. There are new transnational alliances in favor of environmental and social considerations beyond North–South divides. However, we need to admit that new forms of supply chain regulations do not serve the countries of the Global South per se. In this vein, we need to modify the second central perspective on power in global supply chains, formulated in chapter 2, as follows: *New regulative approaches address but do not overcome asymmetries between actors in consuming countries of the Global North and actors in producing countries of the Global South.*

6.3 Fading Supremacy of the Free-Trade Paradigm

Addressing social and environmental problems in global supply chains should be an ethical duty. Tragedies such as the collapse of the Rana Plaza factory building in 2013, during which over one thousand garment workers died, illustrate the burden shifting associated with international trade and the need to improve supply chain governance. A third central perspective on power in global supply chains sees state and nonstate actors as not continuously selfish. Instead, scholars assume that actors do also exercise *power with* others to pursue collective norms of environmental sustainability and social justice (see chapter 2). Although there are a few sectors, such as the timber sector, in which domestic business in the Global North might benefit economically from barriers to imports (Leipold et al. 2016; McDermott, Irland, and Pacheco 2015), consuming countries very much depend on imports of raw materials, such as cotton, and manufactured products, such as textiles, in order for the majority of people to maintain their lifestyles (Swilling and Annecke 2012; Sneyd 2011). The DRC alone holds 70 percent of the world's coltan, which is needed for electronic products such as cars and mobile phones (Winter 2006). Indonesia and Malaysia together account for 90 percent of global palm oil production (Wijaya and Glasbergen 2016).

Movements and NGOs from the Global North were the main drivers behind new regulative approaches in all studied sectors—for example, in the forestry sector, in which WWF and Greenpeace got FSC off the ground (Bartley 2007). Fair-trade and organic movements created separate supply chains in many sectors, including the cotton and textile sectors (see chapter 3). International attention on illegal logging and conflict financing through natural resource trade in the DRC, as well as on the negative impact of palm

oil production, was driven by increased research and campaigning by international NGOs, including the Enough Project, Global Witness, Greenpeace, and WWF (chapters 4 and 5). Supply chain regulation increases costs for importing companies, their suppliers, and, hence, their customers (European Commission 2014). However, businesses in the EU and the United States did not question the normative priority behind new supply chain regulations, only the extent of commitment (Partzsch 2018; Haufler 2003). In this vein, governments of importing countries exercise *power with* TNCs to address social and environmental problems in global supply chains.

My research shows that new types of supply chain regulation stand for universal norms and values. Sustainability provides a common ground for action, which is shared by Southern governments too. This is demonstrated by the fact that ISPO and MSPO, the two public standards of the Indonesian and Malaysian government, claim to implement sustainability. Although the Indonesian and Malaysian countries' governments may have decided to develop their own national programs as an effort to resist foreign and/or private standards (Wijaya and Glasbergen 2016; Efeca 2016), ISPO and MSPO do not challenge the normative content of the foreign standards as such. There are only discrepancies in interpretation. For example, regarding palm oil production, ISPO equates sustainability with legality, while the EU focuses on climate change mitigation (see chapter 5). Likewise, in other sectors, certification programs also take a stand on controversial issues such as GMOs and the expansion of irrigation agriculture in the case of cotton/textile certification (see chapter 3).

Western regulative initiatives enforce their interpretation of universal norms on a worldwide scale, including in countries of the Global South, by impeding market access for those firms that do not comply. By making compliance mandatory for all importers, governments ask for more than just minor adjustments (Swilling and Annecke 2012, 191). Public supply-chain-related laws and hybrid approaches change the rules of the game that is at the core of blood consumption (Swilling and Annecke 2012, chapter 7): that is, governments prevent resource-intensive Western lifestyles existing at the expense of people in Africa and elsewhere. All three regulations effectively limit Southern producers' access to global markets if producers do not provide certification or due diligence/care. Unfortunately, however, compliance costs are an obstacle even to those producers that actually comply with predefined standards. Small-scale producers that are without legal

status may subsequently be excluded from global markets in particular (as shown by McDermott, Irland, and Pacheco 2015, among others).

The relation between normative and market power is controversial (Damro 2012; Manners 2015). Due to their strong consumer markets, the EU and the United States are able to exercise hard economic power in international relations (IR). The rise in VPA negotiations after the adoption of the EUTR and certification since RED demonstrate that sustainability norms are not implemented as a matter of course. It is self-evident for companies in the Global North to risk reputational and juridical consequences if they break the law and/or social and environmental norms, but the majority of companies in developing countries struggle to fulfill existing legislation. This struggle might be due to weak governments and contradicting laws, rather than companies purposefully breaking the rules—for example, in the case of the DRC. In this situation, however, supply chain regulations reassure universal norms. New import requirements incite companies involved in international trade to advocate for governmental reform, rather than continuously taking advantage of weak governments in countries of production.

Scholars have argued that corporate leaders have adopted voluntary mechanisms to avoid legal liability and stricter command and control types of regulation (Bartley 2018). However, with (de facto) mandatory requirements for all importing companies, we see an increasing interest in private initiatives advocating for compliance with existing legislation in exporting countries. The commitment of importing countries, however, remains limited to particular components of specific supply chains, such as GHG emissions reductions in palm oil production, instead of more fundamental transitions to sustainability in the transport sector. If the overall fuel consumption is rising in the EU (Radke 2017), there is an increase in GHG emissions even if 10 percent of fossil fuels are replaced with sustainably certified biomass-based fuel, such as palm-oil-based biodiesel.

Commitment to the collective norms of environmental sustainability and social justice is very selective. Again, if less than 20 percent of global cotton production is voluntarily grown under stricter social and environmental conditions (BCI 2018), this means that more than 80 percent of cotton farming and, very likely, all other steps of the textile production chain still harm the environment and exploit people in producing countries on a regular basis (Brooks 2015; Sneyd 2011). Blood consumption (Swilling and

Annecke 2012, chapter 7) is still the rule, rather than an exception. Moreover, even if all consumers started to voluntarily purchase only certified products and/or certification became de facto mandatory, like with RED, standards are still limited to particular aspects of production. In addition, asymmetries continue to exist due to the technological lead of industrialized countries (reproduced through patents, for example), sovereignty of quality definitions, subsidies and import tariffs, and other requirements, but also different levels of production costs in each country. However, though subsidies and import restrictions have been considered unacceptable in the past due to the free-trade paradigm (Quark 2013; Brooks 2015; Biermann 2001), norms are changing. For example, EU Trade Commissioner Malmström (2017) justified import requirements invoked by the Conflict Minerals Regulation with “value-based trade” (see chapter 4). The supremacy of free-trade norms is fading. Hence, I found some evidence for the third perspective on power: *State and nonstate actors are not continuously selfish but exercise power with others to pursue collective norms of environmental sustainability and social justice.*

6.4 Outlook and Future Research: Where to Go from Here?

New supply-chain-related regulative approaches contrast with global market deregulation and laissez-faire government. In this regard, they may indeed pave the way for value-based and ethical world trade (as suggested by Cashore and Stone 2014; Gulbrandsen 2014; Overdevest and Zeitlin 2014; among others). Interviewees have repeatedly viewed new regulative approaches as first steps toward more comprehensive sustainability (e.g., LG, interview, October 29, 2015; MR, interview, October 28, 2015). However, organic and fair-trade movements already took such first steps back in the 1920s (Demeter organic) and 1960s (Oxfam fair trade). The free-trade paradigm is presently fading in favor of environmental and social considerations, but why does supply chain regulation come so late? How can substantial differences between sectors and countries be justified on normative grounds? In this last section, I would like to highlight four of my cross-sectoral findings in this regard. These findings concern, first, public-private interrelations and the insufficient shadow of the state; second, missing involvement of smallholders in the Global South; third,

excessive and conflicting demands on NGOs; and, fourth, the limits of using purchasing power for political purposes.

First, we have revealed throughout the book that new forms of regulation are deeply intertwined with intergovernmental and other state regulation, or the lack thereof, in our globalized economy. Those forms studied in this book have all intended to be socially and/or environmentally beneficial alternatives or accompaniments to existing state regulation. While some of them aim to replace the current system, others only complement and coexist with the mainstream. In the former sense, organic movements used voluntary certification to resist the industrial expansion of agriculture (IFOAM 2012; Paull 2010), and fair-trade movements aimed to overcome the colonial division of labor between producers in the Global South and consumers in the Global North (Barratt Brown 2007). In the latter sense, certification has become an element of branded marketing to target ethically conscious (and more affluent) consumers (Raynolds, Murray, and Heller 2007; Dingwerth and Pattberg 2009). The latter type of regulation is more prone to greenwashing (Partzsch, Zander, and Robinson 2019). It is crucial to understand that both types of approaches allow pioneer companies to economically benefit from the lack of social and environmental regulation in mainstream markets. If all companies had to fulfill stricter standards, pioneers would lose their unique selling points. However, while the first resistance type of regulation is embedded in broader political opposition (i.e., environmental and social justice movements), the latter does not only accept but instead also upholds the current system by cushioning its social and environmental harms.

Complementing other studies on new forms of regulation (Dingwerth and Pattberg 2009; Raynolds, Murray, and Heller 2007), I would like to highlight this difference between resistance, or transformative, and complementary, or system-stabilizing, types of alternatives. A lot of research focuses on system-stabilizing consequences and inherent greenwashing of new forms of regulation (Levidow 2013; McDermott, Irland, and Pacheco 2015; Sneyd 2015), but we need more research on the resistance type of alternatives and how the state's shadow supports, or rather hinders, their diffusion. Although they cover only niche markets (e.g., as noted in chapter 3, fair-trade and organic certified cotton together have a world market share of only 3 percent; see FLO 2015, 24, 127; Textile Exchange 2016, 127),

studying these approaches in more detail will allow for new insights into how transformational change happens.

In this context, I would like to discuss premiums, which are paid to certified producers in addition to the normal market price. Many of my interviewees argued that if Western consumers insist on social and environmental standards, they should pay a higher price to certified producers. Currently, in contrast to the perceptions of most consumers (who pay increased prices for certified end products), farmers often do not receive higher prices for certified produce—for instance, in the case of organic cotton and sustainably certified palm fruits (MR, interview, September 4, 2018; SP, interview, September 5, 2018; Textile Exchange 2017, 34). The underlying assumption of demanding premiums is that social and environmental standards only complement conventional production. It perverts the “polluter pays” principle. Instead of making the party responsible for environmental (and social) damage pay for the reparation, premiums are paid by people who insist on socially and environmentally friendly production. Hence, the request for premiums assumes that conventional environmentally and socially harmful production is normal, and ethical production is only a complementary premium type of certification.

In a transformed system, as originally envisioned by organic and fair-trade movements, all producers would be able to receive higher prices because social and environmental costs would no longer be externalized. Those premiums currently paid by fair-trade initiatives are an effort to anticipate this transformation (Fairtrade 2017). Scholars have outlined the disadvantages of mixing fair trade and non-fair trade (Barratt Brown 2007, among others). An interviewee told me of smallholder cooperatives that sell to both fair-trade companies, which commit to pay more than world market prices, and TNCs, which partly purchase at the fixed fair-trade price (and label a share of their products accordingly), but bargain down the price of the rest of their purchase below world market price (FH, interview, January 13, 2017). With mass balance and book and claim approaches, such exceptions become the rule. For consumers aiming to resist the conventional system, there is thus no way around insisting on separate supply chains (as required by the EU Organic Regulation and US NOP).

The differentiation between resistance and system-stabilizing types of regulation is also linked to current debates in certification practice about *additionality*—that is, findings that only those projects that already fulfill

higher standards receive certification and/or EU and US market access (SK, interview, August 21, 2018; VB, interview, August 28, 2018). Against this backdrop, scholars have warned that new alternative forms of regulation only privilege already existing projects with better social and environmental conditions, instead of really improving business performance at sites of implementation (see especially Nygren 2015). An illustrative example is Cotton made in Africa (CmiA) making consumers pay more for rain-fed agriculture, although its cotton is grown in a region of Ethiopia where irrigation infrastructure has not yet been developed (section 3.2.3). There is no additionality, or water-related improvement on the ground, resulting from this certification criterion. With this in mind, certifying best practice is not sufficient: we need additionality in the sense of tangible progress.

Second, a major challenge alternative forms of regulation face is the involvement of small-scale producers in the Global South (in addition to paying premiums, fair-trade initiatives originally differentiated themselves from others by exclusively working with smallholders; see chapter 3, section 3.1.2). Smallholder and family farms operate about 75 percent of the world's agricultural land (Lowder, Scoet, and Raney 2016). In Indonesia, smallholders account for about 35 to 40 percent of all palm oil production (OECD 2012, 229). In the DRC, artisanal mining comprises an estimated 90 percent of the mining sector (Geenen 2012). As the bulk of regulative initiatives focus on environmental issues, the economic and social consequences of supply-chain-related regulation are widely neglected (for critique, see Geenen 2017; McDermott, Irland, and Pacheco 2015; Sneyd 2011). However, fair-trade initiatives, which focus on economic and social aspects in the Global South, do exist. They have over fifty years of experience giving small-scale producers fair prices, training, advice, and funding (Barratt Brown 2007; Levi and Linton 2003). IFOAM demonstrates an ability to engage and inspire people by organic farming, including smallholders in the Global South (see chapter 3, section 3.2.2). Furthermore, there are more recent schemes, such as CmiA, which adapt environmental ambitions to the local context—for instance, by providing purchase guarantees to smallholders (see chapter 3, section 3.2.3).

The increasingly obvious discrimination against producers from the Global South through alternative forms of regulation undermines more than just their credibility and legitimacy. Global business may have benefitted in the past from the exclusion of potential competitors, but the

marginalization of small-scale producers now limits market growth, especially in sectors in which certification and due diligence have become de facto mandatory (chapters 4 and 5). Hence, there is a double need for small-holder involvement in new forms of regulation. In order to close this gap, further research is needed to more deeply understand existing fair-trade and other socially focused approaches and determine transferabilities to more environmentally focused initiatives.

Third, NGOs often claim to represent small-scale producers and local communities at sites of implementation, and my research found that they actually do so—although their policy instrument choices often deviate from those preferred by affected communities (chapters 3–5). A reason for this “broken telephone” (van der Ven 2019b, 82) that I see is that new forms of regulation extensively overstrain the capacities of NGOs. There are conflicting demands on them because they are supposed to take over legislative, executive, and juridical roles simultaneously.

In multistakeholder arrangements, NGOs participate in standard formulation. Here, when performing legislative functions, they are principally disadvantaged compared to business actors who have more resources available to advocate for their interests. This has been argued by diverse actors, in particular, with regard to local NGOs (Cheyns 2014; Sneyd 2011, 2015). Complementing these earlier findings, however, my case studies showed that in practice, NGOs can have a considerable influence due to their continual and engaged participation—in particular, international NGOs (see especially section 5.2.2).

Besides their participation in standard setting, a core activity of NGOs is to apply for, and often pass through, funding to implement projects on the ground. For example, this was true for PAN Ethiopia in the case of the Arba Minch cotton project. Confirming earlier research (Sneyd 2011, 2015), the NGO project was left at the mercy of donors. The NGO and donors ultimately decided on the EU Organic certification, although the primary interest of farmers was to receive higher prices for their yield (AM, group discussion, September 5, 2017), and organic cotton has not achieved higher prices compared to conventional production (Textile Exchange 2017, 34). Passing the auditing process and obtaining the certification served only the donors’ expectation, instead of the farmers’ needs (AM, group discussion, September 5, 2017).

There are similar problems in the palm oil sector. An interviewee estimated that about 20 percent of the smallholders leave the RSPO once externally funded NGO projects have culminated (VB, interview, August 28, 2018). However, in Arba Minch, for the sake of receiving the organic certification, farmers had to establish a cooperative, and this cooperative allowed them to negotiate a higher price for their yield (AM, group discussion, September 5, 2017). Hence, eventually, as the cooperative was a side-effect of certification, PAN Ethiopia supported the farmers in accomplishing their prior interest in a higher income. Throughout my field research, I experienced NGO representatives searching for ways to compromise in the face of conflicting demands and interests.

Whereas earlier research already dealt with NGOs' role in standard setting and implementation, this book also delivers novel insights on the role of NGOs by highlighting their crucial juridical function (especially section 3.2.2; section 4.2.1; and section 5.2.2). Since the 1990s, an increasing number of NGOs has changed from strategies of naming and shaming to more collaborative approaches like multistakeholder certification (Bartley 2018; Haufler 2003). This means that NGOs, such as Greenpeace, fundamentally changed their strategy to accomplish stricter environmental standards (Bartley 2007). (However, Greenpeace International effectively reversed its stance in 2018 when it announced that it would not renew its FSC membership.)

Besides, or despite, their participation in standard setting and implementation, NGOs continue to be expected to monitor and enforce new forms of regulation. It is controversial whether NGOs are able to do so, given their dual (or tripartite) function (Lin 2012; Partzsch, Zander, and Robinson 2019). Some multistakeholder schemes, like the FSC and RSPO, maxed out conflicting demands on NGOs by setting up private grievance procedures, in which NGOs are actively involved in both the complainant and judging sides (FSC 2019; RSPO 2019).

In the case of voluntary certification, an accepted grievance and loss of certification and/or membership is assumed to imply reputational risks and hence loss of revenue among ethically conscious consumers (following Bartley 2018; Haufler 2010; among others). An example is the FSC grievance case of Greenpeace Africa against SIFORCO in the DRC (section 4.1.2). Greenpeace caused the company to lose its certification (for a limited

period), but the NGO was also an FSC member at the time (Lawson 2014, 19; REM 2013, 24–25). SIFORCO demonstrably harvested timber illegally (Greenpeace Africa 2013, 4), but the NGO did not take civil action through the courts against the company, based on the EUTR, the US Lacey Act, or ILPA.

Despite scholarly assumptions of reputational loss resulting in revenue loss (Haufler 2010, among others), SIFORCO continued to be among the DRC's largest logging companies after the grievance case (Lawson 2014, 19). Therefore, we may not argue that the company was particularly harmed by the loss of FSC certification, and this actually contradicts assumptions made in the literature about companies' motivations to participate in private governance (Dauvergne 2018b; Haufler 2003). More research is needed here.

In the case of *de facto* mandatory certification with EU-RED, however, certification or membership withdrawal can result in exclusion from the EU biofuel market (see chapter 5). In order to prevent this risk, as I outlined for the RSPO IOI case (section 5.1.3), exporters hedge their bets by committing to several certification schemes in parallel. When IOI was suspended by the RSPO, it continued to be certified by the ISCC. NGOs would have needed to advocate for it to lose certification from other schemes too. However, like in the FSC SIFORCO case, the complainant NGO left it to one single grievance case, or first-instance private jurisdiction; that is, it did not take legal steps (section 5.3.1).

There is a general need for more research regarding the implications of governance fragmentation and overlap with regard to NGOs. In order to immediately close the described loophole created by companies committing to several schemes, the EU could cease to allow companies to contribute to its renewable energy targets if they are suspended by at least one of the accredited certification schemes (no matter whether or not another scheme continues to grant them certification). Moreover, NGOs could receive state aid for taking legal steps, instead of relying only on private grievance.

Finally, and fourth, what all studied alternative forms of regulation have in common is that they are based on purchasing power, and this has clear limits. Consuming countries and people enforce rules on actors further up their supply chains. Exporting countries support new regulative approaches, but they set different priorities; in particular, they prioritize rapid economic growth over environmental protection (see chapters 3–5).

Against this backdrop, new market incentives tend to be necessary to at least enforce environmental standards. As argued earlier, sustainability provides a common ground for action now. The new regulative approaches implement collective values.

For instance, in chapter 3, we noted that the Ethiopian government is encouraging cotton cultivation and exports in order to increase foreign exchange earnings to stabilize the country's currency, generate fiscal revenue, and provide inputs for import-substituting industries (AT, interview, September 7, 2017). The promotion of large-scale commercial agriculture became one of its core objectives, while environmental considerations have been delayed (Abbink 2011; Lefort 2012; NPC 2016). Likewise, we noted in chapters 4 and 5 that natural resource protection is again not a priority of either the DRC or the Indonesian government. In consequence, the majority of companies in developing countries is allowed not to fulfill even existing legislation, including TNCs originating from the Global North (section 3.2.1; section 4.2.1; and section 5.2.1). In this situation, new forms of regulation incite companies to improve their own performance and advocate for governmental reform in exporting countries. By making compliance mandatory for all importers, governments of consuming states ask for more than “minor adjustments” (Swilling and Annecke 2012, 191) in producing countries. Hence, I do not agree with earlier research that argues in this direction (Levidow 2013; Sneyd 2014; Swilling and Annecke 2012). Alternative regulation does exist and must be applied more consequentially in order to prevent blood consumption. Further research is needed to provide more cross-sectoral learning and strategies for ways to overcome limitations.

Now it is time for a more fundamental reform of the world trade system. This book has demonstrated that states are not unable to regulate but that multilateralism does not work, and solutions are fragmented (private, mandatory, hybrid). There is not yet, and may never be, one single alternative. However, we need to bring together regulative approaches already used for governing different supply chains. For example, legality verification, which is mandatory only for timber, should be generally applied on a worldwide scale (see also Bartley 2018). Requirements could be systematically raised over time, as they were in the case of EU-RED. The RED meta-standard initially required that biofuels achieve 35 percent GHG savings, which increased to 50 percent in 2017 and 60 percent as of 2018 for new installations (European Commission 2009); new requirements on ILUC

were amended in 2015 and 2018 (European Commission 2015, 2018a). In comparison, while the EU Organic Regulation and US NOP already provide ambitious minimum requirements, they are still completely voluntary (see chapter 3). Similar to EU-RED, governments could introduce and continuously raise the mandatory share of organic products in the market. In parallel, governments should refrain from approving additional schemes that are less ambitious than existing ones, as seen in the biofuel sector (see chapter 5). In particular, the use of the fair-trade label should be legally restricted (e.g., in line with the FLO and/or ILO standard) and its market share should increase over time—at least, for those agricultural commodities for which world market prices repeatedly fell to a level that caused misery and poverty in the Global South, such as coffee and cocoa.

Diverse sectors provide illustrative examples of regulative alternatives to multilateralism. There is no need, or excuse, for any individual consumer, TNC, or Western country to purchase goods and services produced under unacceptable conditions. However, the voluntary purchase of only ethical products is obviously limited. Therefore, we need to better understand and more prudently combine private with public regulation in new hybrid arrangements. Social justice and environmental sustainability should have priority all along global supply chains.

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