



## Original article

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

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## 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.

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## 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 diligence<sup>2</sup> 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).

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E-mail addresses: [lena.partzsch@ifp.uni-freiburg.de](mailto:lena.partzsch@ifp.uni-freiburg.de) (L. Partzsch), [mvlaskamp@ibe.org](mailto:mvlaskamp@ibe.org), [martijn.vlaskamp@yale.edu](mailto:martijn.vlaskamp@yale.edu) (M.C. Vlaskamp).<sup>1</sup> <http://www.martijnvlaskamp.eu>.<sup>2</sup> Current address: Yale University, MacMillan Center for International and Area Studies, Henry R. Luce Hall / 34, Hillhouse Ave / New Haven, CT 06511, United States.<sup>2</sup> 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.

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).<sup>3</sup>

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

<sup>3</sup> 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).

this with the case of the Ottawa Treaty to ban anti-personnel land mines, which made compliance with this new norm of warfare mandatory for the signatory states (Finnemore and Sikkink, 1998). Thus, *norm entrepreneurs* are always simultaneously *policy entrepreneurs*, who seek to convince a critical mass of states (*norm leaders*) to embrace the promoted norms by enacting them as legislation. In other words: Norm change has a moral, political and legal dimension. With respect to the foreign accountability norm, the UN Guiding Principles on Business and Human Rights (UN, 2011) may be considered the final breakthrough at the international level. Further, we consider the adoption of the Dodd-Frank Act, in the area of 'conflict minerals', as the point at which the persuasion process successfully concluded and the United States became a norm leader. The US legislation obliges companies registered by the Securities and Exchange Commission (SEC) to file an annual report if they use tantalum, tin, tungsten, or gold (3TG) from the DRC or any of the nine adjoining countries in their products (US Congress, 2010). These companies are not explicitly prohibited from using potential 'conflict minerals', but are required to conduct due diligence in their reports to assess whether the minerals used are 'conflict-free' or not. In the area of timber, the adoption of AILPA, EUTR and LTPT made Australia, the EU, and the United States the norm leaders, as these legislations explicitly prohibit the import and use of illegally logged timber. In addition, this prohibition by the LTPT also obliges those involved with the production and sale of wood products to undertake 'due care' to avoid importing illegal wood products (Cashore and Stone, 2014). Likewise, the EUTR makes it mandatory for operators to conduct due diligence to avoid importing illegally logged timber (Leipold and Winkel, 2016). In Australia, importers and domestic processors are required to have a due diligence system in place to minimize the risk of importing or processing illegally logged timber (Brack et al., 2012).

For Finnemore and Sikkink, norm entrepreneurs are individuals who act beyond nation-state borders to provoke disruptive policy change (see also Partzsch 2015). However, they require some kind of organizational platform from and through which they can push for a new norm (Finnemore and Sikkink, 1998). Other scholars have also considered collective actors as norm entrepreneurs, such as NGO coalitions (Björkdahl, 2009). Therefore in this article, when we look at norm entrepreneurs in section four, we will consider individual as well as collective agents.

In the second phase of the Norm Life Cycle, *norm cascade*, states that have been convinced need to persuade additional states. For this phase, Finnemore and Sikkink (1998) use the term of 'contagion' to describe what occurs among states, meaning that international or regional demonstration effects become more important than domestic dynamics for effecting norm change. Empirical studies suggest that one-third of the total states in the system must accept a norm in order to 'tip' the process (Finnemore and Sikkink, 1998).

With regard to environmental policies, scholars have identified two contradictory dynamics that also offer two alternative explanations for diffusion (Özler and Obach, 2009; Simmons and Elkins, 2004). The first dynamic is the so-called 'Delaware effect', which is named after the US state with the lowest corporate taxes. According to this assumption, due to capitalist norms, such as the promotion of free trade, states seek to gain economic competitiveness by having lower environmental and social standards than their peers. As all states follow this logic, there is a 'race to the bottom', and a continuous lowering of protection standards (Özler and Obach, 2009). The alternative dynamic is the 'California effect', whose name is inspired by the state's 1970 Clean Air Act (Vogel, 1995). As California was by far the largest US market for new cars, the entire US automobile industry had to comply with the state's (higher) standards. Being a pioneer state, such as

California, can also provide first mover advantages for the domestic industry, as it obliges them to an earlier implementation of standards that will be required elsewhere at a later date (Jänicke, 2005). In consequence, we can observe both a regulative 'race to the top' and a respective policy diffusion, in particular with regards to environmental norms (Cashore and Stone, 2014; Holzinger, 2007).

During the phase of norm cascade, it also matters which states adopt the norm, as not all of them are equally critical for its diffusion (Finnemore and Sikkink, 1998). 'Market power' makes the EU (and the United States) critical states and potential norm leaders (Damro, 2012). Once critical states adopt mandatory due diligence requirements, other states may follow. The EU agreement on 'conflict minerals' as well as the Chinese guidelines on timber and minerals may be crucial in this regard. One motive is 'socialization' (Finnemore and Sikkink, 1998) and another is based on economics (Vogel, 1997): without being able to provide the required information regarding the origin of the natural resources used, states may lose access to the critical state's market. However, the adoption of norms during the norm cascade almost never happens without domestic pressure from groups, such as NGOs, industry groups or bureaucracies, as an emerging norm always needs to compete and stand up to other established norms (Risse et al., 1999). For this reason, new norms need to be translated, then reinterpreted and modified in a local context (Lessa and Payne, 2012; Zimmermann, 2012). This process is not a linear and may include serious setbacks (Risse et al., 1999).

Although there is some controversy about the Dodd-Frank Act (Arikan et al., 2015; Radley and Vogel, 2015) and the implementation of LTPA and EUTR (McDermott et al., 2015; Springate-Baginski et al., 2014), in the two areas of minerals and forestry, we can currently observe a diffusion and enhancement of foreign accountability policies. The most noteworthy follow-up to the Dodd-Frank Act is the fast spread of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (first edition 2011). Businesses, NGOs and a large number of states have worked together on this Guidance, which gives very detailed instructions on how to act as an extraction company to mitigate the risk of buying 'conflict minerals' (OECD, 2013). The OECD Due Diligence Guidance incorporates a five-step risk-based due diligence procedure. These recommendations are voluntary and non-binding in nature, but are generally seen as a benchmark for complying with foreign accountability requirements. Besides serving as a formula for the implementation of the US Dodd-Frank Act (2012), the OECD Due Diligence Guidance has served as a blueprint for the formulation of further draft regulations on 'conflict minerals' in Canada (Canadian Parliament, 2013) and the EU (Council of the European Union, 2016; Silná and Kittová, 2014), and for official guidelines in Australia, China, Turkey and the United Arab Emirates (Australian Government, 2015; OECD, 2015). Furthermore, on part of the affected (exporting) countries, the International Conference on the Great Lakes Region, with twelve African Member States, has also set up a Mineral Tracking and Certification Scheme based on these standards (ICGLR, 2015). While these schemes are often considered to have little or no impact on the ground,<sup>4</sup> Congolese authorities suspended two Chinese companies from trading minerals in 2012 on the basis of these schemes (Pickles, 2012).

To comply with these provisions, the Dodd-Frank Act has also stimulated the emergence of public-private initiatives and the creation of voluntary certification systems, such as the US Public-Private Alliance for Responsible Minerals Trade (PPA) and the

<sup>4</sup> Authors' interview with official at Belgian Federal Service of Foreign Affairs, Brussels, November 25, 2013

Conflict Free Smelter Program (CFS) (Hofmann et al., 2015; Manhart and Schleicher, 2013; Young, 2015). Mineral companies such as Placer Dome and Noranda had been actively seeking to improve their environmental and social practices through corporate social responsibility measures at the firm level before (Dashwood, 2007; Sydow, 2016). As a result of the "market pull" from the electronic industry, jewelers and other manufacturers for "conflict-free" minerals, these new private initiatives are not restricted to the firm-level or to particular conflict regions anymore (Airike et al., 2016; Hofmann et al., 2015; Young, 2015). In 2012, the Dutch government started the Conflict-Free Tin Initiative (CFTI), similar to the PPA, with almost all the same companies and NGOs. CFTI finances 'best practice' downstream suppliers, i.e. mines in DRC and Malaysia. The aim of this initiative is to develop mechanisms that systematically support companies that comply with responsible sourcing standards (CFTI, 2016; US Government, 2015).

In the area of forestry, voluntary sector-wide initiatives preceded mandatory due diligence requirements. The Forest Stewardship Council (FSC) was already founded in 1993 and the Programme for the Endorsement of Forest Certification (PEFC) was established in 1999 to promote sustainable management of the world's forests. These initiatives did not accomplish a norm change regarding foreign accountability (Bartley, 2003; Chan and Pattberg, 2008). In reaction to the LTPA and EUTR, however, even China, one of the largest laggards in this field, has "made considerable progress towards tackling the trade in illegal timber" (Wellesley, 2014, 22) and, amongst other measures, is working on a national timber legality verification system. Another indicator of 'contagion' is the growing interest of producing states in Voluntary Partnership Agreements (VPAs) with the EU to improve their forestry governance: Before the EUTR, only six states were negotiating such agreements with Brussels; now negotiations with nine further countries have been opened, and talks with eleven additional states are in preparation (EU Flegt Facility, 2016).

The second phase of norm cascade concludes at the stage where norms are internalized by all actors and achieve a taken-for-granted quality. In the third phase of the Norm Life Cycle, *norm internalization*, norms are considered 'normal' and norm conformance is evident (Finnemore and Sikkink, 1998, p. 900). This does not mean that nobody acts against the norm, however, the international community stigmatizes the violation of these norms as inappropriate behavior. Once the foreign accountability norm has reached this 'taken-for-granted' stage, it becomes self-evident that information regarding supply chains is completely transparent. However, so far this phase has not been reached as a number of 'critical states' do not embrace this norm yet.

### 3. Fitting the foreign accountability norm in the established norm environment

Emerging norms are never merely *new*, as they must resonate with the broader public understanding of what is considered appropriate behavior (Finnemore and Sikkink, 1998, pp. 896–897). In the international norm environment, we mostly observe incremental change accompanied by continuous norm conflicts (Panke and Petersohn, 2016). This section discusses how norm entrepreneurs, who intend to promote the foreign accountability norm for extractive industries and society, have made this norm fit into the established international norm environment. More specifically, it explains how they have framed it in a manner that would avoid conflict with the dominating paradigms of the Washington Consensus, such as free trade.

Since its establishment, the WTO has rigorously enforced these paradigms in its dispute-settling decisions, and neither the UN nor NGOs have been able to promote the prioritization of alternative

environmental and human-rights norms (Bartley, 2003; Gabler, 2010). Furthermore, measures that require compliance with certain social and environmental standards have also been interpreted by the global South as a form of hidden protectionism (Biermann, 2001). For example, mandatory due diligence requirements in global supply chains may protect domestic industries in the global North from potentially harmfully processed, but also less expensive, imports from the global South (Fishman and Obidzinski, 2014; Smillie, 2013). However, the recent precedents of the Tuna II-case may have paved the way for measures that influence free trade on the grounds of animal welfare or labor rights (Jakir, 2013). The WTO has acknowledged in its rulings that Member States can implement 'technical regulations', such as the 'dolphin safe' label for tuna products, as long as they do not discriminate against products with a different country of origin, or form an unnecessary obstacle to free trade (WTO, 2015).

In the area of timber, the legislations in Australia, the EU and the United States make companies accountable for the legal origin of timber and timber products they import to these markets. The choice of the focus on legality, and not on more conceptually vague terms, such as 'sustainability' or 'environmental-friendliness', was made to avoid problems with WTO rules.<sup>5</sup> Legality is a clearly defined term and, consequently, a recent Chatham House report concluded that, despite any legal precedents, 'there are good reasons for thinking that trade measures taken against illegal timber can be compatible with WTO rules' (Brack et al., 2012).

The situation is somewhat different in the area of 'conflict' minerals. The Dodd-Frank Act and the OECD Due Diligence Guidance aim for *conflict-free* supply chains, which is a more vague term as there is no universally accepted definition of 'conflict' (see also Ille, 2016). A broader understanding of 'conflict' could include not only armed conflicts in other parts of the world, but also social and environmental conflicts related to natural resource exploitation.<sup>6</sup> Which resources can be considered 'conflict-free' or not, was therefore a contentious issue in the negotiations of new EU regulation.<sup>7</sup> A focus on legality is less controversial, however it depends on the exact definition of the term 'conflict' to determine whether it covers more or less resources than a focus on conflict-free production does.

According to the US legislation, 'conflict minerals' are 3TG minerals or "any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the DRC or an adjoining country" (US Congress, 2010). This narrow definition ensures that the measure can be justified with existing UN-sanctions against "(i)ndividuals or entities supporting the illegal armed groups in the eastern part of the Democratic Republic of the Congo through illicit trade of natural resources" (UN Security Council, 2008). Article XXI of the General Agreement on Trade and Tariffs (GATT), on security exceptions, states explicitly that "nothing in that agreement shall be construed (. . .) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security" (WTO, 2016). These measures can therefore be justified as a tool to comply with UN-sanctions. The EU Conflict Minerals Regulation is not limited in scope to the Great Lakes Region, but for this reason, WTO rules are also no longer an issue.<sup>8</sup> Moreover, it is important to keep in mind that there is no explicit prohibition on the import of 'conflict minerals' to the United States, only an obligation to

<sup>5</sup> Authors' interview with EU Official, Brussels, November 7, 2013.

<sup>6</sup> Authors' interview with European External Action Service, Brussels, November 5, 2013.

<sup>7</sup> Author's interview with NGO representative 1, Freiburg, September 28, 2015.

<sup>8</sup> Author's interview with NGO representative 2, by phone, October 9, 2015; author's interview with NGO representative 3, by phone, November 3, 2015.

execute due diligence and to disclose the origins of the minerals used (Kim, 2015).

The innovation of mandatory due diligence lies in the fact that companies can be held accountable for socially and environmentally harmful behavior committed by other actors at an earlier stage of the supply chain (Sarfaty, 2015). In the area of timber, it serves as a tool to detect illegal activities abroad and to discourage these by closing significant end markets for related products. The US measures against 'conflict minerals' work, as in the case of the tuna label, as a nudge: the expectation is that consumers will shy away from products which cannot guarantee that they have not contributed to war funding. Even in cases in which no laws have been broken, due diligence requirements create an additional incentive for companies to take the social and environmental conditions under which their natural resources have been extracted into account, due to possible consumer backlash and damages to their reputation. As a reaction, industries need to create mechanisms that guarantee transparency in their supply chains and isolate perpetrators of undesirable behavior.

In summary, these policies do not challenge the free-trade paradigm, but use "disclosure as governance" (Haufler, 2010): the power remains with the 'markets' and consumers, but states seek to steer their behavior toward a certain direction (Gabler, 2010; Jakir, 2013). By influencing multinational companies and host governments, mandatory due diligence requirements are expected to provide an answer to the 'global governance gap' and structurally transform global politics.

#### 4. The role of norm entrepreneurs

This section will analyze in more detail the role of norm entrepreneurs in the emergence of the foreign accountability norm in the areas of 'conflict minerals' and 'illegally logged timber'. Following this, the section will discuss the recent developments toward the 'tipping point' that prelude a norm cascade. In both cases a critical mass has not yet been achieved, although policy decisions in different places indicate a broader diffusion of that norm.

##### 4.1. 'Conflict' minerals and deforestation: creating foreign accountability

In the area of 'conflict minerals', if we ask for a state that was pioneering foreign accountability, we can identify the United States as a norm leader due the adoption of the Dodd-Frank Act. The provisions of section 1502 not only affect 6000 companies directly (including numerous non-US corporations that are SEC-registered), they also have an effect on their suppliers from the United States and overseas (Sarfaty, 2015, pp. 19–23). Furthermore, California and Maryland have strengthened the provisions of Dodd-Frank by prohibiting units of state government from entering into contract with a company that fails to comply with these federal regulations (Sarfaty, 2015, pp. 20–21).

An understanding of the area of 'conflict minerals' requires a review of the issue of 'blood diamonds' during the 1990s and 2000s. Global Witness founders Charmian Gooch, Patrick Alley and Simon Taylor were crucial individual norm entrepreneurs in issuing links between natural resources, international trade and armed conflict. They met on a research trip to Cambodia while working for an environmental NGO. During their investigations on deforestation, they realized that the Khmer Rouge was financing their weapons through international sales of timber (Global Witness, 1995; Skoll Foundation, 2016). While Global Witness' first campaigns on 'conflict timber' had only a limited effect, its activities against 'blood diamonds' were much more successful. Its reports revealed how gems contributed to the civil wars in Angola

and Sierra Leone, and how existing UN sanctions on rough diamonds without a government certificate were being structurally violated (Global Witness, 1998, 2000). These findings were subsequently corroborated by reports to the UN Security Council Sanction Committees on Angola and Sierra Leone that named companies, weapon dealers, and even heads of state (the presidents of Togo and Burkina Faso) for their continued involvement in trafficking diamonds and weapons (Mollander, 2000).

In response to the UN reports, the Kimberley Process Certification Scheme (KPCS) was set up as the first scheme throughout industry (Smillie, 2013). The KPCS resulted from a multi-stakeholder process initiated by South Africa. Since 2003, the KPCS requires all participating states to issue certificates for extracted rough diamonds that declare that they have not contributed to the financing of rebel groups and only permits the trade in gems that comply with this requisite. Higher transparency and a tracking system shall hinder rebels from leaking money for arms sells and corruption (Kehl, 2010). 81 states signed the agreements, and member states agreed that they would not trade with non-members (Smillie, 2013).

The UK government started a more comprehensive but voluntary initiative in the same year the KPCS was set up: the Extractive Industries Transparency Initiative (EITI, 2016). EITI is a global standard to promote open and accountable management of natural resources. The initial group of participants included 20 governments (including the United States and major EU members, such as France and Germany), 18 companies, three industry associations, dozens of NGOs, a number of international organizations, and a statement of support by over 40 institutional investors. EITI members disclose information on tax payments, licenses, contracts, production and other key elements around resource extraction in annual reports. It was intended from the very beginning to be a voluntary program (Gillies, 2010; Haufler, 2010).

For a long time, many companies and importing states were hiding behind deliberate indifference with respect to the origins of diamonds and minerals. While norm entrepreneur Global Witness brought into question the effectiveness of the Kimberly process because of insufficient enforcement mechanisms and pulled out of the scheme in 2011, the creation of the KPCS established the norm that these actors could also be held legally accountable for the conditions under which a natural resource had been extracted abroad (Smillie, 2013). In other words, due to the case of 'blood diamonds', norm entrepreneurs could refer to the foreign accountability norm while campaigning against 'conflict minerals' from the Great Lakes Region.

Just as in the case of 'blood diamonds', Global Witness is playing an important role in creating awareness for the issue of 'conflict minerals'. In the United States, the NGO coordinated its activities with the domestic NGO Enough Project. Launched in 2007 by the influential and progressive think-tank Center for American Progress, one of Enough Project's priorities is the issue of the DRC and the role of 'conflict minerals' in the ongoing conflict in the country's east (Ille, 2016; Radley and Vogel, 2015). The moral activists suggested that cell phone and computer producers had to be held accountable for ongoing conflict in the country's east, as they were using 'conflict minerals' in their products. In particular, the campaign 'Raise Hope for Congo' was carried out in a highly professional manner, using a range of celebrities, such as George Clooney and Angelina Jolie, in order to catch the attention of the media (Collins, 2013). Being connected to the Center for American Progress, the Enough Project possessed, in addition to a powerful narrative, the required political contacts to lobby effectively for the inclusion of section 1502 in the Dodd-Frank Act (Custers, 2013). The norm entrepreneurs in the United States built on the existing norm that companies should carry some responsibility for the

conditions under which the natural resources they used had been extracted (Sarfaty, 2015). In their campaigning, they did not openly confront the procedural requirements with the free-market norm. As previously described, the current US legislation does not prohibit ‘conflict minerals’, it only mandates disclosure about the supply chain. The expectation is that information matters, and that companies will nevertheless look for ‘conflict-free’ minerals.

Minerals are not the only natural resource that has been linked to the financing of armed conflicts. Timber is, according to UN estimates, currently a more lucrative source of income for armed groups in the DRC compared to 3TG (UNEP-MONUSCO-OSESG, 2015). And yet, the emergence of the foreign accountability norm in the timber sector has not been driven so much by this aspect, but rather by the social and environmental harm caused by illegal logging.

As in the area of ‘conflict’ minerals, it is also helpful to examine the campaigns in this area that preceded the discussions on illegal logging. NGOs raised these campaigns in the broader context of unsustainable logging practices that had caused the massive destruction of tropical rain forests. During the 1980s, NGOs were already running effective campaigns in Western Europe and the United States, in which they encouraged consumers to boycott tropical wood products (Bartley, 2003). These campaigns put direct pressure on companies involved in the timber trade, and contributed to the emergence of private certification systems for sustainably produced timber, such as FSC and PEFC (Bartley, 2003; Chan and Pattberg, 2008). While these certification systems are widely used in North America and Europe, they are still only sparsely implemented in places with poor forestry governance (Wasseige et al., 2014). The World Bank, the EU and a number of other actors (among them environmental NGOs) work on improving this situation by supporting Forest Law Enforcement and Governance (FLEG) processes in different regions of the world. In 2003, the EU set up the Forest Law Enforcement, Governance and Trade (FLEGT) Action plan, which included the possibility of VPAs between the EU and third countries to improve forestry governance in the countries of timber harvest (EU Flegt Facility, 2016).

In parallel to these bi- and multilateral efforts, moral activists continued their campaigns and found an unlikely ally in parts of the timber industries. Illegally logged imported timber is often cheaper than domestic production and therefore causes economic harm to domestic producers in Australia, the EU and the United States (Li et al., 2008, p. 448). This situation led to ‘Baptists and Bootleggers’-coalitions in these three markets, in which advocacy NGOs and the timber industry favored similar policy outcomes for different reasons (Bartley, 2014; Leipold and Winkel, 2016).

To summarize the phase of norm emergence for ‘conflict’ minerals and illegally logged timber: In both cases we can see how norm entrepreneurs, originating from the NGO sectors have promoted the foreign accountability norm as a way of confronting a problem arising abroad in places with poor governance records. In the area of timber, unlike minerals, they allied with domestic industries, which benefitted economically from import restrictions.

#### 4.2. Explaining the diffusion of the foreign accountability norm

According to Finnemore’s and Sikkink’s norm cycle, persuaded states become ‘norm leaders’ and start to convince other states, which leads toward a norm cascade. To some extent, the developments in the area of ‘conflict minerals’ support their argument that international and regional demonstration effects are also playing an important role in the further diffusion of a norm. The European Parliament welcomed the Dodd-Frank Act and explicitly requested “a legislative initiative along these lines”

(European Parliament 2010). The OECD Due Diligence Guidance further added momentum for similar legislation in the EU.<sup>9</sup> Trade Commissioner Karel de Gucht took a significant lead in this, in part due to his personal interest – as a Belgian national – in the DRC.<sup>10</sup> As he publically explained “We (Europe) have acted before on diamonds and forest products. There is no principled reason why we cannot do so again here” (De Gucht, 2013). In Canada, Dewar (2014), sponsor of the Conflict Minerals Act, stated that “This is about doing something that the Americans have done; and it is being done, implemented, and looked at in the European Union. This is just a matter of our getting in line”. While NGOs in both places were somewhat surprised by the developments in the United States, they soon tried to capitalize on this momentum by creating a critical mass for similar legislation.<sup>11</sup>

In addition to this ‘contagion’, further diffusion was also motivated by the ‘California effect’. According to the estimates of the European Commission, between 150,000 and 200,000 European companies have been affected by the Dodd-Frank Act (European Commission, 2014). This means that up to 17 per cent of European companies working with 3TG are obliged to take heed of these measures because they supply US customers (European Commission, 2014). For example, Philips, one of the world’s largest electronics groups, headquartered in Amsterdam, realized that it had to comply with these US regulations in any case: “At Philips we have around ten thousand direct suppliers. ( . . . ) Most of them do use some of these metals, and this means you’re supposed to ask every supplier to prove whether their products contain minerals from the Congo” (Theeuwes cited in Muambi, 2014, p. 2). The European industry asked the European Commission for assistance, as they feared that US companies may “seek and switch to other suppliers that are better able to trace back the source of the minerals used” (European Commission, 2014).<sup>12</sup> This argument played a smaller role in Canada, as most major global Canadian companies are SEC-registered anyway, and therefore subject to the provisions of the Dodd-Frank Act. However, similar considerations were, for example, an important incentive for the Chinese Chamber of Commerce of Metals, Minerals and Chemical Importers & Exporters, which is supervised by the Ministry of Commerce, to develop mineral supply guidelines for its more than 6200 members (Brühlhart Banyiyezako, 2015).

In the area of forestry, timber exporting countries lose access to important markets if they cannot provide the required legality documentation. In the case of the EU, an important provision of the EUTR states that a VPA is a green lane for compliance with the required due diligence standards (EU Flegt Facility, 2016). This provision created a strong economic incentive for a number of timber exporting states to open negotiations with Brussels, confirming the California Effect.

During this phase of further norm diffusion non-state actors are also taking agency. As a result of the Dutch government’s Conflict Free Tin Initiative, in 2013, Boukje Theeuwes, Supply Chain Sustainability Manager of Philips, arranged the production of fluorescent lamps containing Congolese ‘conflict-free’ tin, and Bas van Abel founded the Fairphone company in Amsterdam. Fairphone aims to develop a cell phone that does not contain any ‘conflict minerals’ and that ensures fair labor conditions for the workforce along the supply chain.<sup>13</sup> ‘Fair business’ entrepreneurs

<sup>9</sup> Author’s interview with EU Official, Brussels, November 7, 2013 (Belgium had colonial control over Belgian Congo (now DRC) between 1885 and 1960).

<sup>10</sup> Author’s interview with Member of European Parliament, Brussels, November 13, 2013.

<sup>11</sup> Author’s interview with NGO representative 1, by phone, September 28, 2015.

<sup>12</sup> Author’s interview with business representative 1, by phone, November 20, 2015.

<sup>13</sup> Authors’ interview with NGO representative 1, by phone, September 28, 2015.

benefit from new markets for certified products, and their marketing raises consumer awareness of problems related to the international trade in natural resources. Although the second, and most recent, batch of Fairphones was limited to the rather moderate number of 35,000 units, the company received a lot of public attention (e.g. McEachran, 2013) and helped cascade the foreign accountability norm with regard to the mining sector. By creating awareness, these companies have achieved that the use of (voluntary) labels is no longer confined to a niche market of 'green enterprises', but now a "normative obligation" (Kalfagianni, 2015) for large corporations in 'sensitive' markets.

In particular, with regard to 'conflict-free' minerals, we find that while norm entrepreneurship from advocacy NGOs has been crucial during the first phase of norm emergence, the marketing of 'fair business' entrepreneurs is important during the current phase, in which policies based on the new norm diffuse. Some companies are actually very aware of their importance for the further diffusion of this norm and, therefore, even request direct financial support from European governments for the realization of 'conflict-free' sourcing in DRC and other high risk areas.<sup>14</sup>

The foreign accountability norm is currently in the phase of cascade. In the field of forestry, scholars have discussed intensely whether the "re-centering of the state" (Bartley, 2014), in the form of mandatory requirements, should be considered a step backwards or an improvement, as compared to earlier voluntary schemes. On the one hand, such voluntary schemes are more ambitious by certifying sustainability instead of legality. On the other hand, only a small percentage of timber carries such certificates, while the binding regulations require legality for all imports to Australia, the EU and the United States (Bartley, 2014). Further, Cashore and Stone (2014) argue that these measures reinforce, rather than detract, from private schemes of sustainability certification. Looking forward, they hypothesize that mandatory due diligence systems may pave the way for a 'race to the top', a nuanced California effect. However, other scholars have shown that implementation has so far been dragging behind these expectations (McDermott et al., 2015; Springate-Baginski et al., 2014).

In a first reaction to the Dodd-Frank Act, companies refrained from sourcing minerals in the DRC, and scholars compared this de facto boycott to sanctions against the country (Manhart and Schleicher, 2013; Radley and Vogel, 2015; Sarfaty, 2015). President Kabila suspended artisanal mining activities in Eastern DRC from September 2010 to March 2011, and this led to a collapse of the mining industry in these regions (while mining continued especially in the Katanga region) (Manhart and Schleicher, 2013; Radley and Vogel, 2015). Economic costs of due diligence, technological constraints of tracing minerals' origin, difficulties of proper data collection, contradictions and lack of specifics in audit requirements are the issues hotly debated among affected stakeholders (Burgis, 2015; Hofmann et al., 2015; Jeffrey, 2012; Young, 2015). Business groups successfully claimed that the section 1502 violated companies' free speech rights under the US Constitution's First Amendment by in essence forcing them to condemn their own products, and an US appeals court struck down parts of the regulation in 2014. Despite the free speech finding, however, the SEC continues to require companies to carry out due diligence and report findings to the agency (Lynch and Hurley, 2014). At the same time, there is a broad consensus among Congo experts that minerals are not a root cause of the violence and – at best – fuel an already existing conflict (Radley and Vogel, 2015; Tegera and 70 Congo experts, 2014).

## 5. Conclusions

We do not know whether the new approach of mandatory due diligence for natural resources will effectively lead to less armed conflict, less deforestation and more sustainability in countries of origin. We do know that there is a new foreign accountability norm, which considers it 'normal' for extractive industries to be held accountable for harmful practices abroad. US and European companies are legally responsible for the import of illegally logged timber that has potentially caused social and environmental problems abroad. If SEC-registered companies use 'conflict minerals' from the African Great Lakes region, they must be open about this and thus fear reputational consequences. Our research question was how we can explain such a shift in norm and policy.

We found non-state agency to be crucial in explaining the emergence and cascade of the new norm. There have been individual and collective norm entrepreneurs who have had strong notions regarding the inappropriateness of foreign non-accountability for natural resource depletion and the finance of armed conflicts in countries, such as the DRC. By 'naming and shaming', in public campaigning and through advocacy, NGO activists have exercised their power in a very professional manner to increase the reputational risks to companies involved in harmful sourcing. In the area of forestry, NGOs have been able to build upon boycotts of tropical wood since the 1980s. In the area of minerals, the Raise Hope for Congo campaign employed a range of celebrities and caught a lot of media attention in the United States, while building on the ideas established in the discussions on 'blood diamonds'. Norm entrepreneurs successfully framed the new norm in an existing normative environment and thus avoided an open confrontation with the free-trade paradigm. In the area of 'conflict' minerals, producers can still use them in their products, and in the area of timber, only the legality of the product, rather than its sustainability, determines whether it can be imported or not.

In addition to earlier findings on norm change in global politics, we found norm entrepreneurs to be equally relevant in the phase of norm cascade or policy diffusion. Individual actors, such as Boukje Theeuwes at Philips, who was responsible for the first product with Congolese 'conflict-free' tin, and Bas van Abel, who started the company Fairphone, are leading the norm diffusion by example. For the moment, such 'fair trade' initiatives target mainly profitable niche markets. However, such initiatives have proven that due diligence is possible, even in one of the most conflict-prone regions in the world, and therefore more pressure is mounted onto mainstream business. As a result, these business entrepreneurs are contributing to a further diffusion of the new foreign accountability norm.

Promoting mandatory due diligence measures as a response to social and environmental problems is not without criticism. Critics argue that promoting this norm would imply a recognition of a structurally socially and environmentally harmful capitalist economic system. As an interviewee explained: "If Fairphone was serious, they would stop producing new phones in China and reduce their business to the repair and recycling of old phones".<sup>15</sup> However, voluntarism has proven to be limited in competitive global markets, while mandatory due diligence measures are compatible with the dominant ideas of market efficiency and corporate responsibility. If the foreign accountability norm is able to spread to those markets that so far are more critical, such as China, granting transparency about the conditions under which natural resources have been extracted, will eventually become a global normality.

<sup>14</sup> Authors' interview with NGO representative 2, by phone, October 9, 2015.

<sup>15</sup> Authors' interview with NGO representative 2, by phone, October 9, 2015 (citation is a translation from German).

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