Chapter 1

Introduction

Human development would not have been possible without the materials, which nature provides. Mindful of their crucial role, historians have named entire eras after the minerals that were being sourced at that time—be it the Neolithic Age, Bronze Age, or the Iron Age.¹

Today, we are living in a world of globalised markets. Close to no value creation would be possible without the use of natural resources, more precisely primary commodities.² The Sustainable Development (SD) agenda has become *the* universally accepted political agenda of our time.³ In view of the important challenges for global resource management, which will be elucidated throughout the course of this book, the field of Global Commodity Governance (GCG) has emerged over the past two decades. It describes a new turn in human history: towards a coordinated, transnational approach to regulating the complexities of commodity activity.

Now more than ever, global commodity management is subject to a large variety of multi-stakeholder initiatives and standards, which exhibit a conscious consideration of the particularities of commodity industries and share one goal: making the commodity sector work for SD. However, one can easily get lost in the complex net of international agreements, principles, transnational standards and domestic regulation, which govern commodity activity.⁴

Therefore, the present book investigates the following question: *How effective is the current legal framework in ensuring a functional commodity sector?* For the

¹Ruddiman et al. (2015), pp. 38–39.

²On exact definitions of these central terms, cf. Chap. 2 below.

³UN GA (2015) Resolution A/RES/70/1, 25 September 2015, Transforming our world: the 2030 Agenda for Sustainable Development. http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E (last accessed 14 May 2021); cf. instead of many Cordonier Segger and Weeramantry (2017). The core concept of SD ‘can be defined as the consolidation of socio-economic development and environmental protection’, Oehl (2019), p. 12; cf. Sects. 4.1 and 5.1 below.

⁴On the definition of *commodity activity*, cf. Sect. 3.2.2.1 below.

purpose of this investigation, the commodity sector will be characterised as *functional* where it exhibits a balance between the *five major interests* associated with commodity activity: economic gain; development; preservation; control; and participation. These interests as well as the *policy trade-offs* that arise in between them delineate the *commodity governance matrix*. In order to identify the legal framework applicable to commodity activities, we will conceptualise the field of Transnational Commodity Law (TCL).

As we shall learn, the principle of *sustainable use* not only constitutes one of the few *balancing norms*, which foster the effectiveness of TCL. Given the universal nature of the SD agenda, the specific normative quality of SD as a legal concept, and its status within a sizable series of international treaties, *sustainable use* can be defined as the *regulatory objective* of TCL. As our discussion will illustrate, it thus spearheads and coheres the legal framework applicable to commodity activities.

Certainly, one may critically ask whether the scope of this book, which covers commodities *per se*, is not too broad. An alternative approach would have been more specific, designed to portray the regulatory environment for specific commodity subsectors, such as agriculture or mining, or even singular commodities like cocoa or coal. The intention of this book, however, is to identify the commonalities of commodity governance in general—as well as its distinctiveness from related fields, such as natural resource or environmental governance.

Consequently, this treatise deliberately renounces a comprehensive display of the law regulating sustainable commodity use. Instead, it focuses on providing commodity governance and law with more definitional and conceptual clarity. This approach serves the purpose of intensifying the understanding of the normative patterns, regulatory challenges, and gaps associated with transnational commodity activity—which, in turn, shall inspire more targeted future research and lawmaking.

In order to provide the reader with an overview of the considerable *substance* of TCL, however, a corresponding *table* has been annexed to this work. The agreements, standards, and guidance documents referenced therein display the normative foundation on which the conceptualisations of GCG and TCL, as its legal framework, have been performed.

The investigation proceeds in six incremental steps:

First, it identifies, defines, and describes GCG as the transnational mode of governing commodity activities.

Second, it defines ensuring a functional commodity sector as the principal task of GCG.

Third, it defines a functional commodity sector by referring to the five major interests associated with commodity activity and the ‘matrix’ of policy trade-offs they create.

Fourth, in order to identify the current legal framework of GCG, it conceptualises Transnational Commodity Law (TCL).

Fifth, it assesses several normative patterns of TCL, which are instructive regarding its effectiveness.

Sixth, it provides suggestions on how the effectiveness of TCL in fostering a functional commodity sector may be improved.

These steps feature in the subsequent four chapters according to the following outline:

Chapter 2 describes the emergence of GCG as the governing mode of the commodity sector. It first defines the term ‘commodity’, portrays the political and economic circumstances of commodity activity, and determines what constitutes a functional commodity sector. Second, it exhibits the historical emergence of GCG and contours its balanced approach as a disruptive feature. Third, it addresses the role of the law for GCG, particularly in creating a ‘balanced’ commodity sector, and therefore establishes a basis for our discussions of the legal framework of GCG.

Chapter 3 is concerned with the conceptualisation of TCL as the legal framework of GCG. It first discusses the purpose of this undertaking. Second, it expounds some methodological underpinnings that have guided the conceptualisation. Third, it presents the organisational framework of TCL. Fourth and last, it displays sources and structure of the normative substance of TCL as well as its operation against the backdrop of the commodity governance matrix.

Chapter 4 expounds several patterns of TCL, which are instructive regarding its limited effectiveness in ensuring a functional commodity sector. It first demonstrates that the principle of Permanent Sovereignty over Natural Resources (PSNR) constitutes its central normative cornerstone. Subsequently, it highlights the fact that PSNR entails the central balancing norm of TCL—the sustainable use principle—and that, therefore, the effectiveness of TCL relates to the operationalisation of the latter. Moreover, it sets forth that TCL is largely ‘indirect’ in the sense that it does not reflect a conscious consideration of commodity interests and trade-offs—and that where it does, it is not balancing commodity interests comprehensively. In addition, it displays that ‘direct’ TCL is largely of ‘soft’ character or stems from private standards respectively. Furthermore, it portrays that the instruments of TCL are hardly integrated. Lastly, it unveils that the TCL framework is imbalanced in favour of economic objectives and exhibits several regulatory gaps.

To conclude this book, Chap. 5 provides suggestions on how to foster the effectiveness of TCL in ensuring a functional commodity sector. In this connection, it discusses the legal nature of SD and suggests defining *sustainable use* as the object and purpose of TCL. In addition, it advocates for using the technique of full integration in order to specify the normative contents of the sustainable use principle. Moreover, it analyses current International Commodity Agreements (ICAs) with a view to their quality as regulatory instruments *de lege ferenda* fostering the effectiveness of TCL. In doing so, it demonstrates how ICAs could serve to codify concrete ‘balancing norms’, which give more effective legal meaning to ‘sustainable use’.

References

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