

Chapter 13

Conclusions



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The complexity of current global challenges necessitates innovative and strategic solutions and, in particular, better models of governance. The twenty-first century began with the launch of the Millennium Development Goals (MDGs), followed by the adoption of the Sustainable Development Goals (SDGs) in 2015. This new set of goals has evolved from a governmental approach to a multi-stakeholder approach, introducing a comprehensive management framework for sustainable development worldwide that goes much beyond the aid-centred focus of the past.

International institutions such as the United Nations (UN) and the Organisation for Economic Co-operation and Development (OECD) have extended support to governments and other actors in achieving development and sustainability goals through various mechanisms and strategies. World summits such as Rio + 20 in 2012, the First High Level Meeting of the Global Partnership for Effective Development Co-operation in 2014 and the Third International Conference on Financing for Development in 2015¹ made it clear that any effort towards economic growth and combating poverty must be achieved with a commitment to environmental sustainability, human rights, inclusion, transparency, accountability and coherence.

Inclusive economic growth, poverty reduction and sustainable development are still considered to depend on “trade as an engine for development” (UNGA, 2015, p. 37) and the World Trade Organisation (WTO), despite the failure of the Doha

¹The Addis Ababa Action Agenda (AAAA) was agreed upon at this conference.

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Round and its other troubles, continues to be central to the trade agenda. In addition, we witness increasingly frequent interventions of the private sector in the global development agenda (Severino & Ray, 2010, pp. 8–10). Despite the projected importance of trade for development, when companies from emerging economies and developing countries enter the international markets, their products often face non-tariff barriers (NTBs), which could include a range of sanitary and phytosanitary measures (SPMs) as well as technical barriers to trade (TBTs). Mandatory sustainability regulations as well as voluntary sustainability standards (VSS) may amount to such barriers under certain circumstances. Trade statistics of the United Nations Conference on Trade and Development (UNCTAD, 2015, p. 17) reveal that TBTs impact almost 70% of world trade, whereas SPMs impact around 10% of world trade.

VSS, unless referenced in mandatory regulation, are not formally categorised as NTBs and therefore not covered by official trade rules. A market survey of the International Trade Centre (ITC) for 14 leading VSS found that “all standards in the report continue to show growth of total certified area, albeit not at the same pace as in the past” (Lernoud et al., 2017, p. ii). In the light of such trends, while there needs to be a better understanding of whether and how VSS could be used as a tool to achieve the SDGs, the extent to which they constitute barriers to market entry for emerging economies and developing countries and serve corporate opportunism, also needs to be examined. Within these countries, marginalised regions and small-scale producers seem to be at greatest risk of exclusion (UNFSS, 2016, p. 4). In either case, there exists a clear need to comprehensively review current normative and policy frameworks at the global level relating to sustainability standards and regulations.

The first section of this volume—“Global Governance Frameworks for Sustainability Standards”—introduced the 2030 Agenda for sustainable development as a governance framework, against which to measure the performance of sustainability standards. The 2030 Agenda, by guiding the design of sustainability regulations, standards and corresponding impact assessments, can strengthen the link between sustainable development and the use of sustainability standards and regulations. The mutually reinforcing relationship between the SDGs and human rights is emphasised in this context, as is the importance of implementing the UN Guiding Principles on Business and Human Rights (UNGPs) in order to operationalize corporate respect for human rights across global operations and value chains: “[T]he implementation of the UNGPs can be the single most important contribution by business to the realisation of the SDGs” (Morris et al., 2019, p. 9). Even though the UNGPs recommend a “smart mix” of voluntary and mandatory measures (OHCHR, 2011, p. 5), it remains to be seen whether VSS can play a role in supporting human rights (and environmental) due diligence—the key operational principle put forward by the UNGPs. A matter of concern is that the kind of audits used for certification and verification of VSS have not always proven reliable for detecting human rights and environmental abuses. Also, due diligence is about companies *internalising* processes for human rights and environmental risk assessment, mitigation action and monitoring across their value chains, as well as corresponding reporting and remediation, rather than outsourcing these steps. External VSS initiatives can at best support, but not replace,

companies' own due diligence policies and practices—and potentially legal obligation—to respect human rights and the environment across their global operations and value chains.

Regarding other institutionalised frameworks, the WTO is of key importance even though it does not cover private VSS (Henson, 2008, p. 76). It has gathered vast experience in governing the use of SPS as well as technical regulations and standards from public and international sources. Annex 4 of the Second Triennial Review of the WTO's TBT Agreement establishes criteria for international standards: "transparency", "openness", "impartiality and consensus", "effectiveness and relevance", "coherence" and "development dimension" (WTO, 2000, p. 24). These have also been taken up and extended by the International Social and Environmental Accreditation and Labelling Alliance (ISEAL), an umbrella organisation for private standards schemes, notably in its "Credibility Principles" (ISEAL, 2013). Also, in the context of trade, it appears that stagnation at the WTO has led to an increase in bilateral and regional preferential trade agreements (PTAs), which may constitute a new framework of global governance and, as they become "greener", provide a conducive environment for sustainability standards and regulations.

Sustainability reporting, which is discussed as an instrument for sustainability governance in this volume, has also found mention in several other publications that have looked at global reporting as a "multi-stakeholder governance arrangement" (Flohr, Rieth, Schwindenhammer, & Wolf, 2010, p. 219). Legitimacy seems to be the key question here; in their analysis of the Global Reporting Initiative (GRI), Flohr et al. (2010, p. 221) emphasise "the high legitimacy potential of a highly institutionalised and consensus based transnational multi-stakeholder initiative in which corporations act as norm-entrepreneurs". Haufler, as early on as 2001, argued that "all sides view industry self-regulation as a potential new source of global governance", while highlighting that there is disagreement on "whether this is a legitimate and effective means to achieve public policy goals" (Haufler, 2001, p. 1). Several factors that hamper the legitimacy and effectiveness of industry-driven multi-stakeholder initiatives are addressed in this volume, ranging from the lack of means of implementation to the formal or de facto exclusion of crucial local actors and rights-holders from governance arrangements. When it comes to reporting in particular, it should be noted that even where sustainability and/or human rights reporting is required by mandatory national or regional regulation, governments are now being pushed to move towards legally mandating certain types of company *action* rather than mere *reporting*, as the latter has failed to drive real improvements in responsible business conduct across industries. A briefing put forward by the Corporate Responsibility (CORE) Coalition—and endorsed by many others—on the subject of the Modern Slavery Act in the United Kingdom (UK) reads: "[T]he UK Government must now look beyond reporting and introduce an additional legal requirement for companies to carry out human rights due diligence (HRDD) in their global operations, activities, products, services, investments and supply chains." (CORE, 2019, p. 3).

The International Labour Organisation (ILO) Conventions are referred to as concrete requirements in many sustainability standards and regulations, which again underlines their close global governance link. The statistical finding in this

volume that strengthening labour standards may in fact improve poorer countries' export performance is an important argument in favour of both public and private initiatives to effectively enforce and respect workers' rights.

While the second part of this volume—titled “Sustainability Standards in Sectoral and Country Contexts”—has a more local focus, implicit global governance linkages remain. The different challenges that are identified in this second part of the volume regarding the national/local implementation of globally operating VSS and their interplay with (local) mandatory regulations underline the need for further research and clarity on the global governance aspects of sustainability standards in the future. Challenges pertaining to sustainability standards take many different forms. In some contexts, there seems to be a contradiction between socioeconomic benefits for smallholders and large-scale environmental benefits such as reduced/halted deforestation. Those farmers that can afford certification may even cause more environmental damage by enlarging their cultivated area, which stands in contradiction to the general purpose of VSS (and at the same time proves that VSS cannot prevent over-production/consumption). The case of PEFC and FSC certification in Indonesia shows that, at a formal level, private standards can complement local regulation well if they comprise more detailed and far-reaching criteria than public stipulations. It seems likely, however, that out of the two VSS under review, more concession holders may opt for PEFC as it is less stringent than FSC.

Comparing various types of global and national food safety and quality standards for farmers, there is a challenge for emerging countries to comply with global standards, particularly in high-value supply chains both for foreign and local markets. Due to the market power of large retailers and supermarket chains, they may, in a purely commercial sense, become *de facto* mandatory and act as barriers to market entry. There is also a critique that global VSS such as GlobalGAP seem to benefit wealthier and more educated small-scale farmers, whereas local interpretations of the same standard may have broader coverage. However, local interpretations of VSS may also lead to parallel standards (e.g. there are both public and private local GAP versions in Thailand and India) resulting in high transaction costs without necessarily leading to better sustainability outcomes. There is thus a case for standards harmonisation among private and public actors at national levels. Public mandatory sustainability standards (i.e. sustainability regulations) from individual or groups of industrialised countries may have global implications, as the special case of vehicle efficiency standards implementation in China and Mexico shows. However, aligning emerging economies' fuel efficiency norms with EURO VI (European Union) and EPA 2010 (USA) does not always lead to the best results as there may be a mismatch with the specific economic and sectoral conditions on the ground.

The two parts of this volume have sought to shed light on global governance and sustainability standards from within and beyond the analytical mainstream. Not all institutions and processes have got the attention they deserve in this context, such as the UN Treaty process. Negotiations to develop a treaty on business and human rights started in 2015 with the first meeting of the UN Human Rights Council's open-ended intergovernmental working group on transnational corporations and other business

enterprises with respect to human rights (OEIWG).² It has a mandate to elaborate an international legally binding instrument, requiring companies to respect human rights in their operations including value chains. While negotiations have been difficult so far, this treaty has the potential to become an important global governance framework for responsible business conduct in line with human rights and the SDGs.

Apart from the UNGPs, which have been mentioned above, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO, 2017a) as well as the OECD Guidelines for Multinational Enterprises (OECD, 2011) also deserve attention. These sets of principles, guidelines and recommendations all strive to promote responsible and sustainable business conduct and must thus even be characterised as global public meta-standards, bridging the gap between public and private actors in global governance. For instance, the ILO Tripartite Declaration is “the only global instrument in this area that was elaborated and adopted by governments, employers and workers from around the world” (ILO, 2017b). The OECD Guidelines, first adopted in 1976, were updated in 2011 to incorporate the UNGPs’ notion of human rights due diligence. A more recent OECD document, the Due Diligence Guidance on Responsible Business Conduct (OECD, 2018), spells out the possible steps and design of human rights due diligence in greater detail. It is likely to be “the most authoritative international elaboration of due diligence that is likely to be available for many years” according to civil society network OECD Watch (OECD Watch, 2018, p. 1).

Three of the above-mentioned guidelines are also highlighted in the Group of 20 (G20) Leaders’ Declaration adopted at the 2017 Hamburg Summit:

In order to achieve sustainable and inclusive supply chains, we commit to fostering the implementation of labour, social and environmental standards and human rights in line with internationally recognised frameworks, such as the UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Those countries that adhere to the OECD Guidelines for Multinational Enterprises (OECD MNE Guidelines) commit to fostering them and welcome others to follow. (G20, 2017, p. 4)

The Think 20 (T20), one of the G20’s outreach groups meant to provide policy advice, suggests a “Global Pact for Sustainable Trade” in its policy brief on “Fostering the Sustainability of Global Value Chains (GVCs)”:

Our proposal is to bring this process of governmental regulations strategies to govern responsibility in complex GVCs in different countries to the global stage, possibly with the participation of the major international institutions, government, business, especially SMEs [small and medium-sized enterprises], and other non-state actors. This would take the form of a Global Pact for Sustainable Trade, which would set minimum standards for environmental protection as well as for labor conditions and human rights protection. (Blumenschein et al., 2017, p. 7)

VSS are covered in the policy brief in the context of both opportunities and challenges. For instance, the authors find that issues of “cost/benefit sharing yet have

²See the Business & Human Rights Resource Centre’s web portal and blog series on a “Binding treaty” at <https://www.business-humanrights.org/en/binding-treaty>.

to be overcome within and across voluntary standards systems” (Blumenschein et al., 2017, p. 7).

Governments who, for often legitimate reasons, were sceptical of importing countries’ sustainability standards and regulations, dismissing them as (Western) protectionism in disguise, seem to have become more open towards them, including private VSS, which bear distinct risks, as some of the chapters discussed. The co-creation of semi-governmental VSS platforms in India (March 2016), Brazil (May/June 2017), China (June 2017) and Mexico (April 2018) for coordination, knowledge-sharing and stakeholder support has been a strong signal that emerging economies, through their national standards bodies, are ready to critically and constructively address the issue of VSS. They are generally moving from being standards-takers to being standards-makers. These platforms as well as other institutions looking into the issue should now ensure proper worker and rights-holder engagement, and also explore legislative options.

The new national VSS platforms were founded jointly with the UNFSS, an initiative of five UN agencies born of the WTO’s initial inaction on private standards (UNFSS, 2017; see also Sect. 2). Under UNFSS auspices and with additional support from the Managing Global Governance (MGG) programme of the German Development Institute/*Deutsches Institut für Entwicklungspolitik* (DIE), a global community of experts and stakeholders has started to form, connecting national VSS platforms and actors. Momentum for similar semi-governmental platforms—to address potentials and pitfalls—is also building in South Africa and Indonesia.

There is an indication that sustainability standards, including VSS, are increasingly engaging the attention of policy makers, companies and certification agencies, while awareness of their limitations is also rising. Sustainability standards generally, complemented by multi-stakeholder structures for their national and global governance, can potentially evolve into tools for the realisation of the 2030 Agenda, but reinforced co-operation and, in part, legislation is required on issues of financing, technical co-operation, impact evaluation, multi-stakeholder dialogue, worker voice, as well as accountability and liability. The escalating proliferation of sustainability standards and regulations has the potential to translate into asymmetric compliance burdens for the developing and emerging economies, if simply passed down supply chains, and an effective rationalisation is clearly the need of the hour, along with an assessment of what really works best for workers, communities and the environment. Further, one of the main constraints for smallholders and SMEs in emerging markets, independent of the sector, is the lack of financing for standards implementation, considering that cost-sharing arrangements are still very nascent. Several options may be explored to bridge this gap, such as combining public and private standards to reduce transaction costs or launching funding lines with multilateral development banks and local financial institutions. For instance, “[e]mbedding standards compliance into the terms and conditions of lending contracts would facilitate access to finance on the part of sustainability-oriented SMEs” (Sommer, 2017, p. 61). It will need to be ensured, however, that this does not translate into excessive technical burdens for these SMEs in developing countries and emerging markets but

truly supports them in addressing their human rights and environmental risks, while maximizing positive impacts.

The implementation, especially of environmental standards, almost always requires technical skills, appropriate equipment, knowledge of supply chain characteristics and market data, etc. Again, development agencies, local governments and international institutions such as ITC, UNFSS or UNCTAD could provide assistance, complemented by South–South and triangular co-operation. In addition, private enterprises and large-scale producers should offer support to small farmers, through fair purchasing practices and proper supplier engagement, and possibly supported by fundamentally reformed VSS schemes or national multi-stakeholder VSS platforms. While this book has taken shape over the past years, mandatory human rights due diligence and environmental legislation in line with the UNGPs has become a tangible opportunity in European countries, at EU-level and other countries of the world. The objective is to make sure companies' respect for human rights and the environment, including in their global value chains, is no longer an externalized and voluntary option, but an internalized and legal requirement.

There is still a lack of evidence-based assessment of the real impacts of VSS across different sectors and countries. At first sight, it seems obvious that the adoption of standards can potentially have positive impacts on the environment, on society and on the economy. However, as some of the chapters in this volume show, there may be trade-offs and contradictions. It is therefore necessary to collect, compare and analyse more data on the benefits and pitfalls of VSS, shedding light on critical issues such as possible market exclusions at the microlevel and macrolevel, as well as (social) audit failure and lack of accountability. In terms of processes and resources, sustainability standards impact assessment seek synergies with national SDG monitoring and evaluation, for instance, by using joint indicators and data.

There are many concerns at all levels regarding the legitimacy, fairness, quality and effectiveness of multi-stakeholder dialogues, e.g. for the setting or implementation of standards. Power asymmetries are often visible, and some brands and companies may use these initiatives to 'free-ride' on leading practice by others while actually not changing much in the way they do business. Local chambers of commerce, national standards bodies and international organisations should seek to establish mechanisms for better assurance and against unnecessary proliferation, duplication or overlap of standards as this may imply an extra burden of work and extra costs especially for small-scale producers, without necessarily improving developmental, social and environmental outcomes. Coordination tasks may also be undertaken by public–private VSS platforms in more countries under the auspices of the UNFSS. Some of the necessary resources could be channelled through South–South co-operation. UNFSS-facilitated exchange across existing and future platforms may improve the interplay of globally operating private VSS with public VSS and mandatory public regulations in different countries, maximising their contribution to SDG implementation. A network of sustainability standards platforms could also promote public support mechanisms at the national, regional and global scale for smaller producers seeking to implement sustainability standards and practices. And last but not the

least, such a network may evolve into a “Southern” building block for global multi-stakeholder governance of sustainability standards, including VSS, based on common guidelines, rules and “standards for standards”.

In the end, it must be remembered that the issue of standards and regulations is not simply a technical issue that can be planned and operationalised in an objective, scientific and neutral way to bring out the optimal results as planned. Standards, in their entire lifecycle—from the moment of conception till the time of operationalisation—are defined by the political and economic environment in which they exist. There are power asymmetries—between the rich and the poor countries, between the large and the small firms, between the large-scale farmers or foresters and the smallholders, between employers and formal or informal workers, and between the cause of growth and that of social and environmental protections—that define the terms of the debate around standards. There are dynamic interfaces—between the public and the private, between states and intergovernmental organisations, between the government and the non-governmental sector and among the host of standardisation agencies—that keep this issue area in a continuous state of flux. Additionally, definitional ambiguity, normative uncertainty and ideational divergences further complicate an already complex canvas. The use of standards as a tool and driver of global governance for sustainable development is commended as well as contested. There is much scope for further research in this issue area and this book, it is hoped, represents an early milestone in a long exploratory journey ahead.

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