

CHAPTER 10: Containing Conflict: Authoritative Transnational Actors and the Management of Company-Community Conflict

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Forthcoming (2017) as: Kate Macdonald, "Containing Conflict: Authoritative Transnational Actors and the Management of Company-Community Conflict", in David Malet and Miriam Anderson (eds), Transnational Actors in War and Peace, Georgetown University Press

Introduction

Amidst intensified competition for land available to private investors in sectors such as mining, agribusiness and forestry, disputes over land between transnational investors and local communities are emerging in many parts of the world as an increasingly visible form of transnational conflict. Whereas land conflicts were once seen as a quintessentially 'local' problem, to be managed by national or sub-national political authorities, they are now becoming transnationally politicized. Such conflicts may be expressed in episodes of violent confrontation between members of local communities and police, military or private security officials.¹ At other times, they take the form of non-violent resistance or protest, or are channeled through formal political, administrative or legal channels for managing social and political contestation.

Governance of such community-company land conflicts aims in part to channel these conflicts into non-violent forms, and to ensure their management by systems of legal and political rule. In many cases, such governance processes are dominated by national and sub-national agencies responsible for law and order and for the administration of land allocation and use. Increasingly, the governance of conflicts of these kinds has also been performed by *transnational authoritative actors*—reflecting increased recognition of the responsibilities of transnational companies or international agencies for such conflict, as a result of their links to contested land acquisitions through supply chain, financing or broader political relationships.

A number of institutional initiatives enable both state and non-state actors to take on transnational conflict management responsibilities. Some major International Financial Institutions have created independent accountability or grievance handling bodies, such as the World Bank Group's International Finance Corporation Compliance Advisor Ombudsman (IFC-CAO, or simply CAO). It has also become increasingly common for multi-stakeholder governance schemes that set standards for business activity in relation to particular commodities to adopt dispute handling entities of a similar kind. Establishment and ongoing development of a formal Complaints System by the Roundtable on Sustainable Palm Oil (RSPO) is a clear example of this trend.

In accordance with the core questions addressed by volume, this chapter begins by analyzing how such transnational authoritative actors are organized, and how they interact with both governments and other kinds of transnational actors in the course of their efforts to influence processes and outcomes of company-community land disputes. Analysis focuses on the role of the IFC-CAO and RSPO dispute resolution mechanisms in managing a series of interconnected conflicts in the Indonesian palm oil sector, involving the Singapore-based company Wilmar and local communities in both West Kalimantan and Sumatra.² Discussion draws on research conducted during 2012 and 2013 in Indonesia,³ where land conflicts involving companies and communities have posed a major governance challenge, and prompted extensive efforts to contain and manage conflict involving transnational as well as national and sub-national authorities. Indonesia's recent pathway to development has been characterized by significant changes to patterns of land ownership. Land that had previously been controlled by small-scale farmers has been appropriated for a range of commercial agricultural uses, notably palm oil, while there has also been extensive clearing of forests for new plantations. Conflicts

over land have proliferated, with estimates putting the number of land conflicts related to palm oil in the hundreds or even thousands. These conflicts are often driven by disputes over land boundaries, the legality of land purchasing or licensing processes, or the terms on which land-sharing arrangements between plantation owners and smallholders are established.

The chapter then focuses on the sources of influence that transnational authoritative actors such as the IFC-CAO and RSPO are able to draw on in shaping the dynamics and outcomes of company-community conflicts. Existing literature on transnational governance has generated significant insights into distinctive sources and limits of influence available to transnational authoritative actors, with a particular focus on ‘private’ transnational authorities. By examining together two transnational authoritative actors that have sought influence over localised land conflicts—one a private, multi-stakeholder scheme and one an intergovernmental entity—the chapter’s analysis reveals that private and public transnational actors can experience very similar challenges in establishing effective influence. Such challenges include reliance on incomplete and fragile ‘soft’ forms of authority, and on governance strategies that require cooperation among multiple authoritative actors. These difficulties are compounded by tensions between the expectations of audiences at different governance levels, whose deference and sometimes active cooperation is required for these strategies to succeed.

Finally, the chapter reflects on implications for wider analysis of transnationalism, focusing on the role of transnational actors in authoritative governance processes. Transnational authority is shown to be fragile and often transient, requiring transnational actors to rely heavily on collaborative and interactive strategies of influence, as they struggle to balance the competing demands of multiple constituencies. These findings have specific implications for our understanding of the sources and limits of influence that transnational authoritative actors can

exercise in containing and managing conflict. They also have broader implications for our understanding of the interactive character of governance processes within an environment of complex transnationalism, understood as “the increasing number, scope, interactions and influence of transnational actors on diplomatic and governance processes where states have invited as participants, been forced to respond to, or become reliant upon the expertise of transnational actors” (Anderson and Malet, this volume).

Transnational Actors in the Governance of Corporate-Community Land Conflict

Before exploring the dynamics and dilemmas of transnational influence in greater depth, it is useful to introduce the transnational character of the land conflicts, together with key attributes of the transnational actors that seek to assert authority in the governance of these conflicts.

It is important to recognize at the outset that political analysis at national and sub-national levels remains very important in understanding both the drivers of company-community land conflict, and institutional efforts to prevent or contain that conflict. Conflict dynamics are closely linked to both historical patterns of land dispossession and capitalist development, and to more recent political and economic shifts in the post-Suharto era—since 1998. Land conflicts are often compounded by weaknesses and contradictions in government regulation at sub-national, national and sometimes international levels, in relation to land and forest regulations, customary land rights, environmental protection, and climate policy. Despite the weaknesses of national and sub-national governance processes for managing land conflicts linked to palm oil production, there exist a range of mechanisms at these levels for managing such disputes, which analysis of transnational interventions must take into account. These include administrative grievance channels linked to the National Land Agency, Plantation Department, Ministry of Environment, courts and court-sanctioned mediation processes, the national human rights institution Komnas

HAM, customary dispute resolution processes, as well as a range of more *ad hoc* and locally distinct mechanisms involving district Bupatis, provincial Governors, district or provincial representative councils or police and security agencies.

These land conflicts are also underpinned by overlapping transnational structures of different kinds. The first kind encompasses the transnational organization of finance, investment and supply chains in the sector. The palm oil sector in Indonesia has many foreign as well as Indonesian companies operating, and draws on significant levels of foreign finance.⁴ The sale of palm oil is also highly international, with Asian markets figuring strongly, alongside those in Europe and elsewhere. Large transnational companies such as Nestlé and Unilever play an important role in shaping palm oil supply chains, as well as the mega-processing and trading companies that dominate global palm oil trade, alongside large numbers of smaller growers, processors, retailers and other players. Sophisticated transnational coordination and governance is required to sustain broader transnational financing and supply chain relationships within the sector, illustrating the high levels of complex, transnational interdependence within a globalizing political economy emphasized by early writing on transnationalism.⁵

The transnationalization of these conflicts also involves mobilization by NGOs and associated social actors. NGO mobilization seeking to contest corporate land appropriation has often been connected to wider campaigning and policy work on issues of human rights, support for smallholder livelihoods, deforestation and related concerns regarding biodiversity and climate change. Such issues have been taken up by a number of prominent international NGOs, including WWF, Greenpeace, Friends of the Earth, some national affiliates of Oxfam, and more issue-specific NGOs such as the UK's Forest People's Program.⁶ International NGOs have worked together with a number of NGOs at national and sub-national levels within Indonesia.

Amongst many others, the Indonesian NGO Sawit Watch is devoted to scrutiny of the palm oil sector, while others such as the environmental forum WALHI have been active in tackling interconnected social, environmental and indigenous issues. Connections among international, national and local NGOs working on these issues have tended to be held together through a small core of intensively coordinated organizations, such as the close and sustained coordination between Sawit Watch and the Forest Peoples Program, linked to broader but much looser networks organized around particular issues, events or campaigns.

Transnational actors have played important roles in placing conflicts of these kinds on the international agenda, thus shaping the wider political environment in which transnational governance emerges. Moreover, as we will see, networks of national and international NGOs have played important roles in brokering links between transnational mediators and local communities, enabling intervention of transnational authorities where this would otherwise not be possible. Nonetheless, these actors are distinct from the *authoritative* transnational actors that are the subject of this chapter. Who then are these actors, and over whom and what do they exercise or assert authority? How are these transnational actors organized, and how do they interact and communicate with other actors?

The first transnational authoritative actor examined here is the World Bank Group's IFC-CAO, an independent accountability and grievance handling body designed primarily to manage conflicts associated with business activity funded by the World Bank's private sector lending arms, the IFC and the Multilateral Investment Guarantee Agency (MIGA). As its name suggests, the IFC-CAO comprises three elements: a Compliance auditor, which assesses the IFC's adherence to its own social and environmental policies; an Advisory arm, which advises the World Bank Group on how IFC/MIGA's social and environmental performance can be

improved; and an Ombudsman arm, which provides recourse for people affected by IFC or MIGA projects, and facilitates mediation between companies, communities and other affected parties.⁷

The Ombudsman arm of the IFC-CAO – the most directly involved in managing individual land disputes – does not adjudicate the merits of any individual complaint, nor impose solutions. Rather, it provides dispute resolution specialists, who work with disputing parties to “identify and implement their own solutions”.⁸ In performing its mediation function, it requests parties to recognize its authority as an expert and independent mediator, and to respect the ground rules of mediation worked out on a case by case basis through the mediation process. The most direct addressees of such authority claims are companies financed through IFC loans, who are expected as a condition of their loans to comply with the IFC’s Performance Standards, which lay out detailed social and environment expectations regarding business activity. Addressees also include other parties to land disputes, such as members of local communities, other companies within palm oil supply chains, and government agencies involved in managing land disputes at the local level.

The second significant transnational authoritative actor engaged in governing these company-community conflicts is the RSPO, a multi-stakeholder organization that sets social and environmental standards for business activity in the palm oil sector. The RSPO has established a formal Complaints System that incorporates a Dispute Resolution Facility, designed to facilitate the mediation of individual conflicts, and a Complaints Panel, which is empowered to adjudicate disputes arising from complaints, and provide recommendations to the RSPO Board on appropriate remedies.⁹ Corporate members of the RSPO are central targets of the RSPO’s authority; it also directs more limited claims of authority at external parties to specific disputes,

such as landowners, workers or smallholders affected by the business activity of RSPO members. Member companies are expected to adhere to the RSPO's social and environmental standards,¹⁰ and to submit to its complaint handling procedures when disputes arise. Other parties are expected to follow RSPO procedures in documenting and submitting complaints, and through following relevant procedures designated by RSPO appointed mediators.

Both the IFC-CAO and RSPO also assert authority over a range of state and non-state actors with whom they interact, and from whom they seek 'deferential conduct' in the form of political support, as well as the provision of resources to support their ongoing operation. The IFC-CAO seeks such support from the member governments who authorize and resource its activities. The RSPO seeks similar forms of support: all RSPO members pay financial membership fees, staff from some member organizations contribute considerable time to support RSPO governance and policy activities, and the RSPO receives significant sources of funding from other state and private donors.¹¹ More broadly, both authorities seek political support for their activities from NGOs and other actors involved in public advocacy on relevant issues.

Being constituted as part of an intergovernmental entity, the IFC-CAO is not strictly a 'transnational actor', according to a definition that stresses non-state constitutive character as a critical feature. Nonetheless, it can be understood as a transnational actor in a number of salient dimensions: the public purposes it promotes are cross-border in nature, and focused on governance of the private entities that the IFC and MIGA finance. The key constituencies with which the IFC-CAO engages in carrying out these purposes are likewise non-state and cross-border, and as we will see, access to the resources and authorization that enable them to act in accordance with their mandate depend on their ability to mobilize support from a range of non-state as well as governmental actors. The RSPO conforms more straightforwardly to the

definition of a transnational actor used in this volume, insofar as it not only pursues transnationally oriented governance objectives, but is constituted as a wholly non-state entity, and its sites of operation and modes of communication, coordination and governance operate across national borders.

Transnational influence over the management of company-community conflict

This chapter's analysis of the role of such transnational actors in governing conflict focuses on the management of disputes between the Singapore-based palm oil company Wilmar and local communities in Indonesia. The IFC-CAO has played a particularly important role in these disputes. Three complaints about Wilmar were made to the IFC-CAO by a coalition of community organizations and NGOs between 2007 and 2011. These complaints relate to alleged specific instances and wider patterns of social and environmental abuses by Wilmar, including illegal use of fire to clear lands, clearance of primary forests and areas of high conservation value, and the take-over of indigenous peoples' customary lands without due process or their free, prior, and informed consent. The RSPO has had a more minor role in brokering dialogue between conflicting parties at certain stages of the dispute, as well as providing reference standards around which dialogue between parties has sometimes been framed. Intervention by these dispute resolution bodies has contributed to the partial resolution of conflict in two of the Indonesian locations (Sambas and Riau), but has failed to achieve much influence over outcomes in the complex and protracted disputes in Jambi Province. Influence on wider policy and practice in the sector has likewise been discernable, but small. Central analytical focus here is on trying to make sense of both the sources and limits of the influence that transnational actors bring to bear on local conflicts, and the distinctive dilemmas and challenges they face in attempting to do so.

We first examine the sources and dynamics of authority that transnational actors have drawn on as a basis for influencing the management of localised company-community conflicts. Their influence has depended, firstly, on ‘soft’ forms of authority, grounded with reference to moral standards or claims to expertise.¹² Second, they have made use of interactive strategies involving collaboration or coordination with other actors at national and sub-national levels.

Soft forms of authority have underpinned the ability of transnational dispute handling institutions to induce deference from addressees through a number of interconnected channels. First, moral authority linked to codified standards propagated by these institutions can play an important role in framing broader processes of dialogue. For example, the authority that comes from the public affirmation of RSPO standards, together with the multi-stakeholder processes within the RSPO, creates a space within which brokerage of dialogue and dissemination of ideas can take place. In a dispute between Wilmar and communities in the Province of West Kalimantan that was brought to the RSPO, RSPO standards set the normative backdrop for dialogue between the company, the complainants and the RSPO, as reflected in the letters sent back and forth through the RSPO at key points of the dispute.¹³ Although moral authority of this kind does not provide sufficient leverage to induce companies to engage with negotiations if they are otherwise reluctant to do so, such moral standards can influence negotiations by shaping the terms within which reason giving occurs, “requiring justification and persuasion in terms of applicable rules and relevant facts”.¹⁴

Both RSPO standards and the IFC’s own social and environmental Performance Standards loosely framed the subsequent mediation process that was carried out by the IFC-CAO—though this framing process was often subtle and indirect.¹⁵ According to one IFC-CAO mediator, “In my observation, in negotiations it was rarely discussed about the standards. So,

maybe, this is like the standard, something that is already in your head. And when there is an issue that is difficult to settle, sometimes one of the parties or one of us will remind everybody: ‘hey don’t forget that ... this standard asks you to do this or that’.”¹⁶

Relatedly, *expertise* can play an important role in underpinning transnational authority and leverage over local conflict dynamics. For example, the IFC-CAO’s authority in its role as mediator has depended importantly on recognition by the addressees of its expertise and experience in this role, and its claim to independence and neutrality in the management of disputes. In this case, addressees have deferred to the IFC-CAO’s authority at least in part because of the latter’s capacity to influence the former’s beliefs about the right way to go about mediating conflicts. According to one local government official: “Many parties had tried, but not resolved [the conflict] ... Maybe we missed something, we don’t understand. So if there is another party that is more professional in mediation, we really welcome that... [and] the biggest role is from the CAO, because they have more experience. They understand how this mediation process works.”¹⁷ Of relevance here is not only expertise in the sense of knowledge, but also functional capacity derived from accessible resources. According to one government official involved in management of the conflict, “We don’t have certain people that work on [conflicts] full time. We can’t, so the manpower is lacking. We know that the government has so many things to do ... and there are also other conflicts ... So when this one came along, we said ‘wow, thank God, there is a party that would like to help!’”¹⁸

Such soft forms of authority are mainly useful in enabling the IFC-CAO to encourage the parties to the conflict to participate in a CAO-facilitated mediation process; they give the CAO little direct influence over the outcomes of negotiations between parties. Nonetheless, the CAO’s ability to establish an authoritative role in brokering communication between conflicting parties

can help facilitate processes of dialogue and negotiation through which broader dynamics of persuasion or the reshaping of interests may be set in train.

Significant limits to the direct influence over conflict dynamics and outcomes able to be derived from soft authority demand that transnational actors rely extensively on *interactive strategies of influence*, in which transnational actors enlist the resources of broader networks of actors in support of their goals. Such collaborative strategies are illustrated by the IFC-CAO's approach to managing mediation between a subsidiary of the company Wilmar and communities in Indonesia's Jambi province. After a prolonged mediation between companies and communities facilitated by the local NGO Setara ran aground, the CAO established what they referred to as a Joint Mediation Team, involving direct collaboration between the CAO and selected participants from local government. The team included members of the provincial government drawn from several relevant ministries, as well as from the Batang Hari District government.

Building relationships with government actors is an important means through which transnational actors can try to influence conflict outcomes, since governments typically retain key sources of authority and influence. For instance, they physically control distributions of land, and decisions about who can access it on what terms (both through the licensing process, and through broader frameworks for allocating land rights), and they can impose such decisions coercively through the use of police and security forces, both of which have been actively deployed on behalf of the company at several points in the conflict between Wilmar's subsidiary and local communities in Jambi. Collaboration with government can also help to confer legitimacy on the IFC-CAO process itself, enabling the final agreement to "gain recognition from the government, and also to gain legitimation and legalization from the government".¹⁹

This collaboration was explicitly founded on voluntary terms of engagement: the IFC-CAO mediators were clear that they lacked authority to compel government actors to participate, indicating that they therefore relied on the involvement of individual government officials who are “moved by their personal and institutional visions” to share responsibility for participating in the mediation process. In this sense, the IFC-CAO’s moral authority and expertise importantly underpinned its capacity to motivate voluntary engagement by government officials with CAO mediation procedures. By enlisting government participation in mediation processes, the CAO mediation team was able to benefit from the specialized knowledge of government actors regarding the intricacies of local land management practices, thereby strengthening the efficacy of mediation processes. Conversely, CAO mediators also hoped to contribute to effective conflict management by strengthening the capacity of local government, through supporting the development of networks, relationships and information sharing between departments and between government and communities, promoting visits of government bureaucrats to local communities, and developing individual and institutional capacity specifically with regard to complaint handling.

The Limits of Transnational Influence

Sources of authority of the kinds described above can be important in enabling transnational actors to exert influence over the dynamics and outcomes of local company-community conflicts, despite these conflicts remaining deeply embedded in national and sub-national politics. However, reliance on moral authority, expertise and collaborative strategies—often characteristic of transnational authority—also entails distinctive constraints on such influence. As the below discussion illustrates, such challenges are experienced in very similar ways by the IFC-CAO—an inter-governmental entity—and the non-governmental RSPO. This

analysis has important implications for understanding both mechanisms and effects of transnational efforts to influence conflict management at the local level.

First, reliance on ‘soft’ authority entails familiar constraints associated with its non-legal character, and consequent challenges of securing compliance.²⁰ Although accepting an IFC loan entails binding obligations on companies to comply with the IFC Performance Standards, participation in mediations under the IFC-CAO’s Ombudsman arm is voluntary, and the conflicting parties need to appoint CAO mediators by mutual agreement. Companies are incentivized to engage with such mediation processes either to avoid compromising their ongoing access to IFC finance, or to guard against broader adverse reputational effects. The RSPO likewise lacks the capacity to command compliance, relying instead on the mobilization of other incentives or pressures. If a member company fails to engage constructively with attempts to mediate conflicts to which it is a party, the RSPO has the option of decertifying them. The extent to which companies are encouraged to comply with RSPO directives then depends on the degree of market pressure to achieve RSPO certification from palm oil purchasers such as Unilever, or financial institutions involved in financing the palm oil sector.

Such soft authority is particularly constrained because of the ability of companies targeted by CAO and RSPO authority to exit voluntarily the market relationships in which the authority of these institutions is grounded. Companies can repay their IFC loans early as a means of concluding formal contractual obligations to adhere to the IFC’s Performance Standards, as the company Wilmar did following a prolonged IFC-CAO mediation in the Indonesian Jambi province. Companies also have the option of selling subsidiaries that become embroiled in particularly difficult conflicts—a strategy also employed by Wilmar in this case. Wilmar sold the relevant subsidiary in April 2013 to a company that was not an RSPO member, leading to the

loss of RSPO as well as IFC-CAO authority over the dispute.²¹ Moreover, many companies have shown themselves to be willing to leave the RSPO if they feel that the obligations of membership are becoming too demanding, as illustrated in the Indonesian context by the palm oil producer association GAPKI leaving the RSPO in 2011 in response to disagreement with certain standards.²²

Such examples highlight the contingency and transience of the authority wielded by transnational dispute resolution institutions in land conflicts. In this sense, the leverage of these transnational bodies over companies remains highly contingent on the concerned company's choices about the patterns of business relationships it enters into, and on what terms it chooses to exit. In effect then, patterns of wider pressures and incentives arising from the broader social, political and market environment in which the companies act place structural limits on the potential scope of IFC-CAO and RSPO authority.

These limits to the authority and influence of transnational actors not only have adverse implications for the effectiveness of these actors in helping to contain and appropriately manage company-community conflicts, but can also be detrimental to their legitimacy. Particularly from the perspective of NGO constituents of the RSPO (including both members and observers or critics), a major source of criticism of the RSPO's grievance handling processes has focused on the RSPO's failure to decertify companies that neglect to deal properly with ongoing disputes. Even those NGOs that are more sympathetic and supportive of the RSPO are themselves under pressure from their own constituents to take a strong stance on this issue.²³

Endorsement from these NGO constituencies contributes importantly to legitimizing RSPO processes amongst consumer, investor and government audiences, thereby influencing the

market incentives of the companies to stay involved. As a result, where such authorization is undermined, a destabilizing vicious cycle may be created, whereby a withdrawal of NGO legitimation weakens the market value of remaining in the RSPO, thus weakening the incentives for companies to bear costs of complying with RSPO standards, and in turn further weakening the capacity of the RSPO to exercise leverage in support of its mandate.

Vicious cycles of weakening authority can also be observed with regard to the resources and operational autonomy available to the RSPO. Limited material resources and organizational capacity are major challenges for operation of the RSPO's complaint handling process, and its credibility and capacity also suffer as a result of the low independence of the Complaints Panel from the RSPO Board, and sometimes also from parties to particular disputes.²⁴ More broadly, the weak institutionalization and autonomy of RSPO complaint processes has tended to push dialogue between parties outside formal RSPO procedures, further undermining the credibility and authority of the process. Yet mobilizing external resources, and convincing members to entrust the procedures with greater delegated authority and autonomy, is difficult to achieve when levels of credibility and trust in the process are low. Moreover, there are some immediate practical imperatives for the grievance panel to maintain little autonomy from its members, not only because the willingness of members to delegate to the RSPO is weak, but also because the direct engagement of companies and NGOs in the grievance process can help ensure that negotiated outcomes are sufficiently in accordance with these parties' interests to be sustainable. To the extent that weak autonomy compromises the independence and associated authority of the mechanism itself, these dynamics confront transnational actors with significant dilemmas.

In the case of the IFC-CAO also, failures to satisfy the expectations of NGO constituencies as a result of constrained authority can undermine both legitimacy and

effectiveness. For example, national and international NGOs involved in bringing complaints to the IFC-CAO sometimes view its mandate as encompassing attempts to influence corporate practices and government policy frameworks in the palm oil sector as a whole, to the extent that these are actively facilitated or tacitly endorsed by IFC lending. Although the IFC-CAO has undertaken some *ad hoc* attempts to engage with the RSPO, government agencies or other intergovernmental bodies on such policy issues, the IFC-CAO has generally interpreted its mandate as being limited to a narrower focus on managing specific disputes.²⁵ Resulting disappointment with IFC-CAO processes amongst some NGOs and others can mean that such groups are less willing to invest in supporting these processes, or to encourage others to do so. This can further undermine the CAO's effectiveness, because of the CAO's reliance on collaborative networks or other interactive governance strategies that often include NGOs alongside government. For example, the IFC-CAO sometimes relies on local, national and international NGOs to help communities to access the CAO mechanism, or build sufficient capacity to engage meaningfully in mediation processes. The CAO is therefore able to carry out its role more effectively if it can secure ongoing support from these groups.

Reliance on interactive strategies of influence can also generate significant challenges for transnational efforts to influence conflict management processes to the extent that strategies of stakeholder management are seen to undermine actors' *impartiality or neutrality*. For example, the IFC-CAO has sometimes undertaken capacity building activities targeting communities involved in the disputes, in the form of support for community knowledge of land registration and boundary mapping processes, local organizational capacity building or negotiation strategies. The IFC-CAO may also perform an implicit brokerage role: by conferring legitimacy on NGOs that work closely with local communities, the CAO can help these organizations gain enhanced

credibility or visibility in the local political environment, in turn enabling them to build new channels of dialogue with companies or government actors. The new roles and relationships that the local NGO Setara was able to build with company and local government actors through participation in the CAO mediation in Jambi illustrates this potential. Yet intervening in ways that redistribute capacities or resources among parties to the conflict has the potential to undermine a key ground of the IFC-CAO's claim to authority, namely its claim to neutrality. This is a dilemma that CAO mediators were keenly aware of:

“[T]he mediator ... is facing a dilemma ... between his role as mediator with the need to improve competency, capacity, capability ... If we do not hold ourselves back from the desire to help one party in increasing their capacity, this may be considered as being on one side ... Increasing their capacity means increasing their power, and this might be considered as a threat to the other party. It's a dilemma, isn't it?”

The RSPO has also faced tensions between attempts to influence conflict dynamics and outcomes through persuasion, brokerage or network building, and its ability to secure authority based on claims of neutrality and independence. For the RSPO, these tensions have centered on the challenges of managing the perceived appropriateness of its relationship with government. Many of the conflicts that the RSPO and member companies are mandated to manage are pervasive throughout the palm oil sector, and their underlying causes are deeply connected to gaps and contradictions within government policy and regulatory frameworks. If the RSPO were to fulfil the expectations of some NGO constituencies regarding strengthened standards and conflict prevention in the sector as a whole, it would need to build strong collaborative relationships with producing country governments.

Yet in the cases examined here, establishing authorization from the Indonesian government for its operations demands that the RSPO refrain from activities that might encourage perceptions that it threatens the government's authority or national sovereignty. According to staff from the RSPO, “you might not see this written anywhere, but the RSPO has strict understandings that we don’t get involved in national legislation because we are not elected, we are strictly voluntary, so we don’t interfere in government legislation or rules and that sort of thing. That is for members to do. We don’t have anything to do with government”. Refraining from any perceived challenge to state authority is also important for maintaining authorization from producer organizations who often have a preference for policy agendas to remain under the control of their own governments, rather than what they see as a foreign controlled entity.²⁶

Although manifested in differing ways, these challenges can all create tensions between the desire of transnational authoritative actors to adopt governance strategies that would enable them to pursue their mandates effectively, and the need to satisfy stringent and often contradictory conditions of authorization from government, business and civil society audiences.

These tensions can give rise to significant structural constraints on the capacity of transnational authoritative actors to influence conflict dynamics and outcomes. The capacity of transnational actors to establish and exercise authority over those they seek to influence depends importantly on the degree of alignment between stakeholder understandings of mandates to be pursued, and the roles, powers and resources that are authorized for such purposes. Constraints on the influence of transnational authoritative actors can thus be understood in one important sense as linked to misalignment in these structures of authorization and legitimation.

One significant challenge results from conflicts among the terms of authorization conferred by different constituents. Dispute resolution bodies need to construct authority relations with multiple constituencies, each of which may recognize authority on different terms (on different grounds, with different understandings of mandates, and with different ideas about the limits to justified power associated with these mandates and grounds). In other words there is a disjuncture or incongruence between grounds of authority required to satisfy different addressees of the authority relationship, with no established means of seeking resolution across these through a unified process of public discourse, negotiation or aggregative decision rules. The lack of institutional means of resolving these tensions contributes to a persistent disconnect between the expectations placed on these actors, and the outcomes they are able to deliver.

The disappointment of stakeholder expectations that results can take a number of forms, depending on which aspects of the expectations are unmet and which stakeholders are concerned. First, expected mandates might not be achieved, as in the case of NGOs being disappointed that the IFC-CAO has failed to tackle broader conflict in the sector, or that the RSPO has neglected to enforce designated requirements of certification. Second, the limits of authorized power might be overstretched, as in the case of companies resisting the imposition of what they see as excessively demanding obligations concerning conflicts in which they are involved. Third, the conditions or grounds on which authority has been granted may be violated, as can occur when attempts by transnational actors to engage and influence wider governance networks are called into question for lacking appropriate forms of neutrality or independence. These potential sources of stakeholder dissatisfaction sit in tension with one another, as transnational actors often lack the capacity to deliver on what some stakeholders consider to be appropriate mandates

without deploying strategies and powers that other stakeholders consider outside the scope of their authority.

The consequences of these tensions can vary, depending in turn on the responses of different stakeholders to such scenarios. When the direct parties to the conflict (palm oil companies and communities) are dissatisfied, on the grounds that public purposes are not being adequately advanced and/or that appropriate limits on powers are being overreached, they can simply exit the relationship – either by withdrawing from the mediation, or withdrawing altogether from the economic relationships to which the mediation bodies are attached. Both the RSPO and the IFC-CAO suffer from this problem in similar ways – the RSPO through the ability of companies to exit the RSPO, and the IFC-CAO through the ability of companies to prepay loans and seek alternative sources of finance. Communities in both cases can simply decline to use transnational mechanisms to seek redress for their grievances.

Authority can be further undermined if such forms of dissatisfaction lead support to be withdrawn by wider stakeholder audiences such as corporate or financial entities, NGOs and governments, all of which confer authority and resources on transnational dispute resolution bodies in important ways.²⁷ This is also a concern for both the RSPO and the IFC-CAO, though it presents more intense dilemmas for the RSPO. The character of its multi-stakeholder governance gives it less operational autonomy from these wider external stakeholders, meaning that the resources and leverage underpinning its operations depend in very immediate ways on the ongoing authorization of market and NGO audiences. Legitimation from these wider audiences is still important for the IFC-CAO, but such wider forms of influence are filtered through a state-based governance structure, creating higher immediate levels of operational

autonomy. Despite this difference of degree, however, the basic structure of the dilemmas of transnational action is the same for both actors.

These dynamics and dilemmas have distinctive consequences for the strategies that transnational actors need to undertake if they want to enhance their influence over local conflict dynamics and outcomes. Attempts to enhance their own authority and resources are important, but are usually insufficient to enable them to fulfil their mandates. Rather, the limits to the influence and authority that transnational dispute resolution bodies wield autonomously mean that they also need to undertake interactive governance strategies, which involve enlisting and weaving together external sources of authority to promote their objectives.

Many collaborative governance strategies can easily be interpreted as overstretching the boundaries of what some stakeholders recognize as the legitimate scope of authoritative actors' powers or roles. Their influencing strategies thus seek to weave together sources of authority that are not only limited in scope in problematic ways, but also fragile, and liable to dissolve when they attempt to use them. They are forced to build strategies based on interaction with actors who sometimes work to support them, but can easily be switched to divert, neutralize or undermine their sources of authority. Navigating this contested and complex political environment requires that these actors build nested strategic games, in which leverage must be exercised not only directly over regulatory subjects, but also over the wider social and political environments that in turn condition the preferences, incentives and available choices of such actors.

Analysis of these dynamics and dilemmas of transnational action helps us to understand why transnational interventions in local land conflicts are often so difficult, frustrating and riven with controversy. Conflicting expectations and hopes are built into the negotiations around

mandates, and to some extent the existence of contradictory expectations seems to be a precondition for the establishment of the authority—an organized hypocrisy of sorts. Such tensions among different constituencies appear hardwired in some senses into the structure of transnational governance arrangements of these kinds—reflecting the contradictory configurations of power and interest that are present within the divergent market and political environments in which transnational bodies intervene.

Conclusion

This chapter has focused on two specific transnational actors—the RSPO and IFC-CAO—both of which have played an important role in attempting to manage company-community land conflicts in the Indonesian palm oil sector. Analysis of their internal organization and external interactions has focused on their operation as *authoritative* transnational actors, seeking to govern conflicts associated with transnational business activity. This focus resonates strongly with the examination of transnational governance presented by Haufler in this volume, in which transnational civil society and business actors were shown to have adopted common, interactive approaches to governing conflict linked to transnational business activity.

While the transnational authoritative actors examined in this chapter were shown to exercise some significant forms of influence over the course and outcomes of company-community conflicts, such influence was also revealed to be structurally constrained. Transnational authority remains contested and fragile, as transnational actors struggle to balance the conflicting demands and expectations of their multiple constituencies. Effective influence by transnational actors has thus often depended on their ability to deploy collaborative or interactive governance strategies—enlisting resources and political support from other state and non-state actors in support of their goals.

The importance of interactive strategies in a multi-level, transnational governance context has often been recognized by scholars of transnational network governance, and from within an emergent literature that examines ‘steering mechanisms’ within complex, multi-layered governance systems. Such interactive strategies are acknowledged to be complex, and difficult to execute effectively. The analysis presented in this case has highlighted an additional challenge, based on the need for transnational actors to juggle contradictory expectations regarding the proper boundaries of their mandates, the range of resources and powers that constituencies are willing to authorize, and the exigency of authority claims that subjects of authority are willing to accept.

Under these circumstances, disappointment by some constituents of transnational authoritative actors seems inevitable, creating forms of authority that are fragile, underdeveloped, and beset with persistent legitimacy dilemmas. Yet demands for transnational actors to take responsibility for the social conflicts created in part as a result of their own transnational activities mean that efforts to construct and sustain transnational authority oriented towards the management of such conflict is likely to persist. Understanding these dilemmas, and how these difficult balancing acts can be managed, is not only of importance to practitioners concerned with the effective and legitimate management of transnational social and economic conflicts. It is also of broader theoretical interest for scholars of transnationalism.

END NOTES:

¹ For example in the Indonesian context, see Patrick Anderson Colchester Marcus, Asep Yunan Firdaus, Fatilda Hasibuan and Sophie Chao, "Human Rights Abuses and Land Conflicts in the Pt

Asiatic Persada Concession in Jambi: Report of an Independent Investigation into Land Disputes and Forced Evictions in a Palm Oil Estate," ed. Forest Peoples Program (Forest Peoples Program, 2011.; Institute for Policy Analysis of Conflict, "Indigenous Rights Vs Agrarian Reform in Indonesia: A Case Study from Jambi," (Jakarta: Institute for Policy Analysis of Conflict, 2014).

² Wilmar is a large company with palm oil plantations in many countries around the world, including in multiple locations in Indonesia, and there is documentation of many such conflicts throughout its operations. See for example Lembaga Gemawan Milieudensiasi and KONTAK Rakyat Borneo, "Policy, Practice, Pride and Prejudice: Review of Legal, Environmental and Social Practices of Oil Palm Plantation Companies of the Wilmar Group in Sambas District, West Kalimantan (Indonesia)," (Amsterdam: Milieudensiasi (Friends of the Earth, Netherlands), 2007).

³ Analysis draws on 62 interviews and focus groups involving over 150 individuals, including staff of companies and NGOs working on land management issues in the palm oil sector, Indonesian government officials, staff and Board Members of the RSPO and IFC-CAO, and members of communities affected by palm oil production.

⁴ Precise figures are unreliable, due to complex patterns of indirect financing through the intermediation of multiple regional banks.

⁵ Joseph S Nye and Robert O Keohane, "Transnational Relations and World Politics: An Introduction," *International Organization* 25, no. 3 (1971).

⁶ Pye details configurations of local and transnational activists in the palm oil sector in greater depth: Oliver Pye, "The Biofuel Connection—Transnational Activism and the Palm Oil Boom," *The Journal of Peasant Studies* 37, no. 4 (2010).

⁷ Rukaiyah Rofiq and Rian Hidayat, "Mediation: A Strategy or a Final Objective? Some Notes Based on the Experience of Mediating Conflicts between Pt Asiatic Persada and the Suku Anak Dalam (Batin Sembilan) in Jambi Province," (Forest Peoples Programme, 2013).

⁸ The Office of the Compliance Advisor/Ombudsman, "How We Work : Ombudsman," <http://www.cao-ombudsman.org/howwework/ombudsman/>.

⁹ The Office of the Compliance Advisor/Ombudsman, "About the Cao : Who We Are," <http://www.cao-ombudsman.org/about/whoweare/index.html>.

¹⁰ The standards against which complaints can be brought are defined as "any alleged breaches of specified RSPO Statutes, By-laws, motions approved by the General Assembly, or any other approved articles, including the Principles & Criteria for Sustainable Palm Oil Production, Certification System and RSPO Code of Conduct." See Herakles Farms, "Letter to Rspo," http://www.rspo.org/file/PDF/Complaints/NPP_APPLICATION_LETTER.pdf.

¹¹ Interview with CAO Mediator, Jambi, February 2013.

¹² Kenneth W Abbott et al., "The Concept of Legalization," *International Organization* 54, no. 3 (2000); Nico Krisch, "The Structure of Postnational Authority," *Available at SSRN 2564579* (2015).

¹³ Endorsement of RSPO standards played a particularly important role in framing a series of letters sent from Wilmar to the RSPO General Secretary between October 2007 and January 2008, as well as in earlier written responses by the company to a Friends of the Earth report that had documented some of the complaints against the company.

¹⁴ Kenneth W Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," *International organization* 54, no. 3 (2000).

¹⁵ The IFC's performance standards are of greater relevance to the IFC-CAO's compliance function, where interpretation of specific rules and identification of violations is the central function being performed.

¹⁶ Interview with CAO mediators, Jambi, February 2013.

¹⁷ Interview with Provincial Plantation Department Office, Jambi, February 2013.

¹⁸ Ibid.

¹⁹ Roundtable on Sustainable Palm Oil, "Complaints System Components & Terms of Reference," www.rspo.org/publications/download/33dc47007811e3d.

²⁰ Abbott and Snidal, "Hard and Soft Law in International Governance."

²¹ Rofiq and Hidayat, "Mediation: A Strategy or a Final Objective? Some Notes Based on the Experience of Mediating Conflicts between Pt Asiatic Persada and the Suku Anak Dalam (Batin Sembilan) in Jambi Province."

²² In Cameroon also, the company Hercules Farms withdrew from RSPO membership after a complaint was brought against under the RSPO's New Planting Provisions by a coalition of NGOs. Roundtable on Sustainable Palm Oil, "Financial Institutions," <http://www.rspo.org/en/finance>.

²³ There are a number of examples in which NGOs such as Oxfam Novib and WWF who have been supportive of the RSPO have been criticised by media and other NGOs for failing to push the RSPO hard enough on such issues. See Grassroots, "Beyond Certification: Reforming Rspo's Complaints System to Meet Stakeholder Expectation," (Kuala Lumpur: Grassroots, 2013).

²⁴ Throughout the duration of the Wilmar-community conflicts discussed here the RSPO Complaints Panel was comprised largely or exclusively of RSPO Executive Board members,

sometimes (as in the Wilmar case) including direct parties to the complaints. This has been a major source of public criticism of the grievance procedure.

²⁵ For example, one IFC-CAO staff member interviewed cited the issue of health impacts on agricultural workers in Nicaragua where they tried to get other international organisations to pick up the issue, despite it being outside of their mandate.

²⁶ Elements of the producer associations in both countries have expressed hostility to NGOs, and in both countries there have been prominent attempts to establish government-controlled rivals to the RSPO.

²⁷ This distinction resonates with Cashore's distinction between tier 1 and tier 2 audiences, though the distinction is between those who are and are not direct parties to the conflict, not those who are members of a particular governing entity. See Benjamin Cashore, "Legitimacy and the Privatization of Environmental Governance: How Non-State Market-Driven (Nsmd) Governance Systems Gain Rule-Making Authority," *Governance* 15, no. 4 (2002).

