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Creating Legitimacy in Global Private Governance

The Case of the Roundtable on Sustainable Palm Oil

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1 Introduction

In many global commodity chains nowadays, forms of private governance are in place. Private governance is broadly defined as “forms of socio-political steering in which private actors are directly involved in regulating - in the form of standards or more general normative guidance - the behavior of a distinct group of stakeholders” (Pattberg 2006, p.591). “They centre on rules and regulation, not on spontaneous, uncoordinated behavior such as market interactions; they may contain processes and instances of institutionalization beyond co-operation between different non-state actors; private governance potentially organises political spaces equivalent to public steering mechanisms” (Pattberg 2006, p. 581).

The emergence of private governance initiatives creates new governing patterns on a global scale. Using the concept of legitimacy helps us to unravel these new patterns. Legitimacy refers to the justification of authority; “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed systems of norms, values, beliefs and definitions” (Suchman 1995, p.574). “Theories of legitimacy attempt to specify what factors might serve as justifications – tradition, rationality, legality, and democracy, to name a few” (Bodansky 1999, p.601).

The concept of legitimacy is a vital concept in political science. First, legitimacy is an important precondition for efficacy and efficiency on which the scientific literature for a large part focuses. Legitimacy contributes to the effectiveness and stability of institutions and is regarded as a fundamental condition for rule acceptance. For states this is already recognized for a long time. Gilley (2006, p.499), for example, claims that “states that lack legitimacy devote more resources to maintaining their rule and less to effective governance, which reduces support and makes them vulnerable to overthrow or collapse”.

Second, the voluntary nature of private governance on the global level makes it more dependent on the justification of authority than other forms of domination. A government can use penalties or other means of enforcement as incentives for obeying the law. A voluntary private governance initiative cannot directly punish non-compliance and therefore needs other resources to ensure compliance, such as legitimacy.

Third, as private actors are acting in the private domain for the public good, their private and public goals may get into conflict. Private actors are not only accountable to the ones that are directly affected by their regulations, but are also accountable to their shareholders or members. This becomes particularly complicated in cases where private regulations designed in one part of the world suggest how issues should be dealt with in another part of the world.

A specific form of global private governance is the ‘roundtable’. A roundtable is a private arrangement with the aim to improve the sustainability of a specific global commodity chain. It is a multi-stakeholder

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platform where only private parties (business and NGOs) have decision-making power. Governmental agencies as well as scientists can only step in as observing members and advisors. The stakeholders of the roundtables are intended to match with the main private actors in the corresponding global commodity chain plus social and environmental NGOs. Examples of roundtables are the ones on sustainable palm oil (RSPO), responsible soy (RTRS), better cotton (BCI), sustainable cocoa (RSCE), and sustainable biofuels (RSB). Instead of creating an additional niche market, as is often the case with private global governance (Bitzer, Francken et al. 2008), the roundtables aim to make an entire commodity chain more sustainable.

Still little is known about how these private governance initiatives create legitimacy in their global commodity chain. This paper studies the processes of creating legitimacy as social practices through which an institutional form and a specific action strategy is developed. As a case study it takes the Roundtable on Sustainable Palm Oil (RSPO), which is a European driven initiative of WWF and Unilever, connects Southern production and Northern consumption, and is generally regarded as the one that set the trend for the initiation of roundtables in other commodity chains.

Global palm oil demand is growing rapidly and palm oil production has doubled over the past decade and is expected to double again in the next ten years. It is one of the emerging raw materials of importance for both producing and consumer countries (Vermeulen and Goad 2006). Palm oil is consumed globally and is the vegetable oil with the highest level of market penetration (Thoenes 2006). According to Tailliez and Griffon (2005) around 4 million people directly or indirectly earn a living from palm oil production. The products of the tropical oil palm have many usages for food, feed, fuel, cosmetics, detergents and the chemical industry.

Indonesia is the largest producer of palm oil in the world, producing 16.8 million tons of palm oil in 2007 and is directly followed by Malaysia, producing 15.8 million tons in 2007. With over 46% of total exports, Malaysia is the biggest exporter of palm oil in the world. Together, Indonesia and Malaysia account for over 88% of palm oil exports in 2007. China, the European Union, India and Pakistan are the largest importers of palm oil with respectively 5.7; 4.8; 3.7 and 1.7 million tons in 2007 (MPOB 2007).

However, the production of palm oil is, at least in Europe, associated with many sustainability issues. According to many NGOs the expansion of oil palm plantations is at the cost of tropical rainforests (deforestation), erosion of biodiversity, carbon dioxide emissions and pollution through pesticides. An analysis of Koh and Wilcove (2008) suggests that during the period 1990–2005, 55%–59% of oil palm expansion in Malaysia, and at least 56% of that in Indonesia occurred at the expense of forests.

Faced with many public NGO campaigns against the production methods and expansion of palm oil and convinced that a steady supply in the future would necessitate a more sustainable production, the RSPO was developed as a multi-actor arrangement to improve the conditions of production.

This paper aims to answer the question of how legitimacy is created by the RSPO from three perspectives that can be recognized in literature: the judicial approach, which focuses on legality, the political philosophical approach, which focuses on justifications, and the sociological approach, which focuses on the process of creating acceptance of a rule-system (Beetham 1991). Each of these perspectives highlights specific aspects of the process of legitimization. One of the ambitions of the paper is to show that a combination of perspectives might deepen our understanding of the factors influencing the processes.

The paper is based upon desk research of documents and minutes of the RSPO and other stakeholders (indicated by numbers in the text), and semi-structured interviews with experts and stakeholders of the palm oil chain.

2 Analytical framework

Legitimacy comes about in a multi-dimensional process of social interaction. We consider three essential elements of this process, which reflect the three perspectives on legitimacy mentioned above.

- Ensure legality of the institutional form
- Ensure moral justifications of the institutional form and activities.
- Ensure consent of different audiences

Many scholars see *legality* as the first step towards legitimizing a rule-system (e.g. (Beetham 1991; Gilley 2006; Bossche 2007; Beisheim and Dingwerth 2008). Legality is essentially the conformity of a rule-system to established rules; power should be acquired and exercised according to these rules. These rules may be unwritten, but in most cases are formalized in legal codes (Beetham 1991). In a constitutional state (ideally) no one can exercise authority without being accountable or without being checked; e.g. administrative bodies are politically accountable to representing bodies; civil servants (who hold certain powers) are accountable to their chiefs; an authority figure can be responsible under criminal law; people can appeal against certain decisions of governing bodies (Belinfante and Reede 2005).

A characteristic of such a state is also that it constitutes a clear division of labor between the public sphere (the state) and the private sphere (businesses and civil society groups). According to this division the state is the ultimate and exclusive agent in public affairs. The state designs the framework within which private activities, including forms of private governance, can take place and it is the only form of organization that can make binding decisions and enforce them with sanctions. These 'rules of power' secure the legitimacy of state behavior.

What is perceived as legitimate from this perspective differs across time, place and organizational context, which makes it impossible to determine a set of criteria for legality that is generally applicable to all governance institutions. However, some dominant legitimacy demands can be recognized in this time for (public) global governance organizations that are linked to Western democratic practices. There is an increasingly universal acceptance of these norms, also outside the 'Western world' (Beetham 1998; Koppell 2008). These norms include (Koppell 2008):

- *Representation*: those governed need to have a voice in decision-making and the right to be represented.
- *Participation*: those governed need to have the opportunity to observe and comment on the activities of the governance initiative.
- *Neutrality*: all involved stakeholders need to be treated equally and consistently.
- *Procedural regularity*: decision-making processes need to take place according to a set of general procedures: Decisions need to be transparent, open for public scrutiny, and there is a right of appeal.

Governance arrangements, such as a roundtable, have two opportunities to improve legality. First, they may develop functional equivalents for classical rules of power that are based on these norms. These functional equivalents should be understood as 'proxies' of the rules that fulfill the same functions as the rules of power in liberal democratic states. Second, they may connect to formal government regimes, be recognized by them as viable alternatives, and in this way create legality.

The second perspective on creating legitimacy focuses on *moral justifications* for an institution and the actions undertaken. Such justifications may be based on normative considerations as well as empirically observable belief systems. Political philosophers tend to focus on normative principles for rights to govern. In this approach governing is legitimate when it is morally justifiable according to some general principles. An example of such a principle is conformation to a minimal standard of justice, understood as the protection of basic human rights. This protection should be ensured by the content of the activities and the procedures through which this protection is ensured (Buchanan 2004).

In several approaches to legitimacy a related distinction is made between input and output legitimacy (e.g. (Scharpf 1997; Risse 2004; Bäckstrand 2006; Bekkers, Fenger et al. 2007; Brinkerhoff 2007; Schäferhoff, Campe et al. 2007). The concept of 'input legitimacy' refers to the participatory quality of a decision-making process and is assumed to be realized if actors who are affected by a decision have a say in the decision-making process. 'Output legitimacy' refers to the problem-solving quality of laws and rules, which can be observed by a researcher or interpreted by participants in a process. In democratic systems, both sources together ensure the legitimacy of the political order (Risse 2004).

From a sociological point of view an institution is legitimate in terms of justification when it is widely believed that it has the right to rule (Buchanan and Keohane 2008). These beliefs may regard what the rightful sources of authority are; the qualities that are needed to exercise power; and conceptions of common interests that the rule-system satisfies (Beetham 1991). What is considered to be legitimate according to these beliefs can change over time, differs from place to place, and different

actors may hold different belief systems. However, to be effective as a legitimizing force at least some basic consensus should be present or created in the governing processes.

Transnational governance arrangements, such as a round table, connect actors from widely separated locations throughout the globe and will be confronted with various belief systems. To improve legitimacy from the perspective of justification these actors need to fulfill at least two conditions. First, they need to define why they are the right actors to govern the commodity chain. In practice this will imply that different reasons for participation should be accepted and seen as an interconnected whole. Second, they need to create a basic understanding and common belief related to what they are trying to govern. This second prerequisite refers to the content of their common activities.

The third perspective on creating legitimacy focuses on *consent* of different audiences to the private governance initiative. This refers to the process of implementation and the acceptance of a rule-system. Consent is important in the analysis of legitimacy, because active expressions of consent confer legitimacy, while the withdrawal or refusal of consent will erode legitimacy (Beetham 1991). Cashore (2002) makes a distinction between first and second tier audiences that grant authority to private governance systems. Tier I audiences are “those organizations that have a direct interest in the policies and procedures of the organizations they legitimate” and “*Tier II* are those audiences within civil society that have a less direct but equally important role in granting legitimacy” (Cashore 2002, p.511).

Cashore follows Suchman (1995) by dividing between three types of legitimacy that audiences may give to private governance initiatives: The first being pragmatic legitimacy, which relies on self-interest of Tier I audiences. Here legitimacy granting depends on a direct benefit for the grantor. The second type is moral legitimacy which reflects a “positive normative evaluation of the organization and its activities. It rests not on judgments about whether a given activity promotes the goals of the evaluator, but rather on judgments about whether the activity is ‘the right thing to do’ ” (Suchman 1995, 579 in (Cashore 2002)). “Moral legitimacy finds its roots in values developed within Tier II audiences, but is often expressed in Tier I through different ideas about what is morally acceptable or unacceptable” (Cashore 2002, p.519). Achieving moral legitimacy by conforming often means “addressing principled ideals, rather than instrumental demands” (Suchman, 1995, 579 in (Cashore 2002)). Finally, *cognitive legitimacy* is based on comprehensibility or taken-for-grantedness. Legitimacy is given because “for things to be otherwise is literally unthinkable” (Suchman, 1995, 583 in (Cashore 2002)).” Thus, cognitive- and moral-legitimacy dynamics appear to go beyond immediate Tier I audiences and focus more on broader civil-society mobilization” (Cashore 2002, p.520).

This perspective regards the RSPO's ability to implement their criteria for sustainable palm oil as an indicator of consent from first Tier audiences. It also addresses the question in how far and in what way the RSPO managed to ensure consent of external NGOs (Tier II audiences).

Table 1 gives a summarized overview of our analytical framework.

Table 1

Elements of a legitimating process	Analytical Framework
Ensuring legality	Rules of power related to: - Representation - Participation - Neutrality - Procedural Regularity Connecting to formal policy regimes
Ensuring moral justifications	-On why 'they' are the right actor to govern (who) -On what they do in terms of content of the activities
Ensuring consent	-Consent of Tier I audiences. -Consent of Tier II audiences

3 The emergence of the RSPO – a historical overview

The sustainability issues in the palm oil industry were reason for WWF in the late 1990s to take up palm oil in their activities. WWF Switzerland was given the responsibility to develop strategies to bring

about a process of change. An external consultant was hired by WWF to explore the possibilities of private sector partnership for setting a standard for sustainable palm oil.

In September 2002, representatives of retailers (Migros, Safeway, Sainsbury and Marks & Spencer), food manufacturers (Unilever, Sustainable Agriculture Initiative), palm oil processors and traders (Karlshamns, Anglia Oils and FEDIOL), financial institutions (Rabobank, ABN-AMRO and CDC) and WWF-Switzerland came together in London. The idea was to develop a roundtable, a concept that was adopted to express a philosophy of collaboration and co-ownership to bring about change based on the following roles defined by WWF (15):

Market actors	WWF
<ul style="list-style-type: none"> • Co-own the process of developing standards for sustainable palm oil • Provide technical and industry expertise • Set up a process to coordinate activities amongst the different actors along the value creation chain and with NGOs (development of environmental and social standards) • Motivate other actors to join the development and implementation of standards for sustainable palm oil (e.g. other market actors, producers or consumers) • Implement standards for sustainable palm oil 	<ul style="list-style-type: none"> • Co-own the process of developing standards for sustainable palm oil • Provide expertise on environmental and social aspects • Develop tools and initiate multi-stakeholder land-use planning processes • Work with producers, market actors and investors on the implementation of standards • Coordinate NGO activities on the issue of palm oil and soy • Launch consumer awareness campaigns to create demand for sustainably produced palm oil and soy

At this meeting the participants agreed on the objective *to promote sustainable palm oil*, both related to the management of existing plantations and the establishment of new ones, and formulated three main objectives:

1. Criteria and standards for sustainable palm oil

The most important objective of the round table is to develop and to agree on criteria and standards for sustainable palm oil. It was agreed that these criteria/standards should be:

- a. broadly supported and credible,
- b. practical and realistic in a business context and
- c. easily understood and supported by stakeholders.

2. Implementation

A major objective of the round table is to promote implementation of these standards/criteria

- a. by the method of 'trial, measure, implement'
- b. on a wide global scale by broad acceptance in major producing countries.

3. Communication

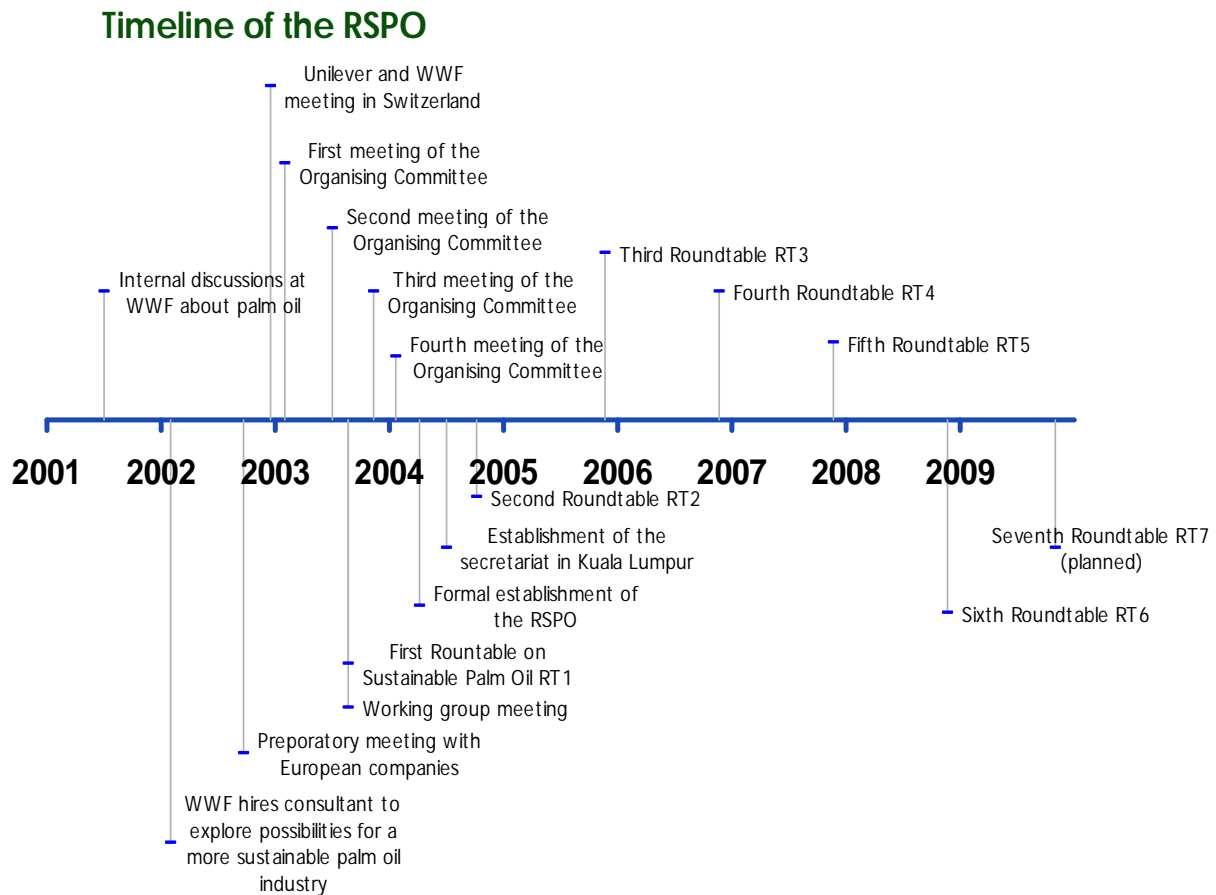
Communication was agreed to be essential and it was recognized that different forms of communication are needed to the consumers, stakeholders, etc.

- a. the round table should develop a joint communication strategy
- b. the round table should implement this communication strategy.

Unilever at this meeting mentioned not to aim for certification of palm oil and urged that if the roundtable would be about the single issue of rain forest protection they would not participate. Only if the overall sustainability of palm oil was addressed they were willing to participate in the roundtable. Unilever and WWF decided to establish an organizing committee to set up the first roundtable conference and which had to decide on funding. In December 2002, the consultant, WWF and Unilever had a meeting in Switzerland, where they further worked out the idea of a roundtable. Unilever at that time still owned palm oil plantations and was (and still is) one of the largest purchasers of palm oil in the world.³ Figure 1 outlines the history of the process.

³ Unilever, the company, even exists because of palm oil. "Unilever was created in 1930 by the merger of British soapmaker Lever Brothers and Dutch margarine producer Margarine Unie, a logical merger as palm oil was a major raw material for both margarines and soaps and could be imported more efficiently in larger quantities" (<http://correlator.sandbox.yahoo.net/index.php/people/Unilever>).

Figure 1



The first roundtable meeting RT1: Defining the basics

The first roundtable meeting, on 21 and 22 August 2003, brought together over 200 delegates from industry and interest groups from 16 countries around the world. Two central issues in this first roundtable meeting were the Charter or later ‘Statement of Intent’ (SOI) and research done by ProForest with input from a variety of stakeholders in the palm oil industry. The research products included a general paper on issues, particularly relating to oil palm and forests and a paper with mechanisms for defining and verifying sustainable oil palm. The SOI was a non-legally binding document that explained the intentions of those committed to sustainable palm oil. The SOI was an interim instrument and its validity expired at the end of RT2 (1).

At this meeting the basics of the RSPO were decided upon. It was agreed to together define and implement best practices by means of an industry code or something similar. There was also agreed that sustainability entails three dimensions: profitability to the growers and the entire supply chain; the interests of people, especially rural communities in developing countries; and the interests of the environment (forests). The best practices to be developed should be widely adopted and everybody should be able to learn from these proven methodologies.

After RT1, the Organizing Committee further developed a governance structure and established RSPO as a formal and legal entity (1). On April 8 2004, the Roundtable on Sustainable Palm Oil (RSPO), was formally established under Article 60 of the Swiss Civil Code. The seat of the association is in Zurich, Switzerland, while the secretariat is based in Kuala Lumpur, Malaysia. An interim Executive Board (EB), chaired by a representative of Unilever was appointed to manage the organization until the first General Assembly (GA) on the 6th of October 2004. The secretariat was foremost raising stakeholder awareness of RSPO, recruiting members, putting in motion a process to develop criteria for sustainable palm oil and making preparations for the organization of the 2nd roundtable meeting (1).

A group of technical experts on various issues related to sustainable palm oil, coordinated by ProForest and funded by the GTZ (an organization that supports the German Government in achieving its development-policy objectives), was assembled by the EB to deliberate and identify criteria for sustainable palm oil. This group produced the 'Framework for Drafting Criteria for Sustainable Palm Oil' (3). The framework consists of five components: a legal component, a technical component, an environmental component, a social component, and a plantation establishment component (3). It drew on many existing documents produced for oil palm and for good agricultural practice in general. It circulated for review and many comments were included (9).

The second roundtable meeting RT2: Discussion on the criteria for sustainable palm oil

The second roundtable meeting took place from 4-6 October 2004 and attracted around 300 participants from 17 countries (1). At the time of RT2 the RSPO had 55 members (44 ordinary members and 11 affiliate members) and another 5 organizations applied for membership during RT2.

The objectives of RT2 were:

1. To provide a platform for exchange of views and experiences among stakeholders in developed and developing countries to obtain greater clarity and to work towards the definition of sustainable palm oil.
2. To identify and start to implement practical projects to facilitate implementation of sustainable best practices along the palm oil supply chain.
3. To strengthen the co-operation and support of stakeholders and international agencies in promoting the production and use of sustainable palm oil.

During the meeting of RT2 four breakout groups (producers, supply chain actors and investors, environmental interests and social interests) were formed where the draft criteria for sustainable palm oil (draft prepared by Proforest) were discussed that directly related to their own constituent groups, before reporting back to the assembly. There was common concern in all groups on the use of language and definitions, it was suggested that the role of the government should be in the criteria, and there was some concern about the role of smallholders. Also monitoring was raised as an issue (2).

At RT2 it was agreed that it was necessary to have a mechanism for linking RSPO certified palm oil produced to users of palm oil. This was seen as critical to the success of the criteria as they were more likely to be implemented in plantations if there was a clear market demand for the oil produced (13). Aarhus United presented the book and claim system, whereby certified palm oil is represented by certificates, which are traded separately from the physical product.

After RT2 at the GA the first official EB was chosen. The EB up till that moment was just an interim EB (6).

The third roundtable meeting RT3: Discussing implementation approaches

RT3 was attended by over 300 individuals from 28 countries representing all interest groups along the palm oil supply chain. At RT3 five approaches on how to trade and trace certified palm oil in the supply chain were explained by ProForest (12).

- The first is the Bulk Commodity approach, in which the RSPO oil is kept separate from conventionally produced palm oil. The RSPO oil cannot be traced back to a specific oil palm plantation.
- The second approach is the Identity Preserved (IP) approach. Unlike the Bulk Commodity approach, the palm oil can be traced back to a specific plantation or primary processor. The support from the industry and other interested parties was by far highest for the first approach, because of the lower costs, but the IP approach is found acceptable for those who want it (12).
- The third approach is the Percentage-in Percentage-out approach. This approach allows mixing of RSPO with non-RSPO oil, provided that the quantities are controlled. The percentage of RSPO oil entering production is monitored and an equivalent percentage of the product is labeled as RSPO oil, so no direct link is required between the raw material and the product. This approach is much cheaper than the previous two, which require segregation.
- The fourth approach is that of the Percentage Based Claims. This approach also allows mixing of RSPO and non-RSPO oil at any stage in the production process, provided that the quantities are controlled. All oil can then be labeled a X% RSPO. This provides the basis for the end-user to claim that a product contains X% RSPO oil. The approaches that allow mixing were not preferred by industry as well as NGOs.

- The last approach is Book and Claim. It relies on providing a link between the volume of RSPO oil produced at the beginning of the chain and the volume of oil purchased at the end of the chain. So the actual oil delivered could be from any source. Certified palm oil is represented by certificates, which are traded separately from the physical product. This last approach was also not preferred by industry and NGOs, because they felt it lacks credibility with regard to RSPO procurement, there is inadequate guarantee of RSPO materials in the supply chain, the mechanisms may not be transparent, and it may encourage corruption (13).

After this third Roundtable meeting, at the second General Assembly, the P&C were ratified by the members, 95 at the time, which represented one third of global palm oil production according to the RSPO (11). Of the 56 votes cast, 55 were in favor of adoption of the P&C and 1 member abstained (14). More than 10 plantation companies from all over the world committed themselves to conduct pilot testing of these Principles and Criteria over the next 2 years (11).

In February 2006 the testing of the criteria started. The first meeting of the Smallholder Task Force (STF) and the first meeting of the Verification Working Group (VWG) were both held on February 22nd 2006. The STF had been set up to include smallholders better into the RSPO process. The VWG had been established in order to provide detailed recommendations on verification arrangements.

The fourth roundtable meeting RT4: Discussing Verification

The fourth roundtable Meeting on Sustainable Palm Oil (RT4) was held in Singapore on 21-22 November 2006. In total 388 representatives from over 28 countries participated (17). In working sessions the verification protocol was discussed as well as the results of the P&C field testing projects. At this point in time, divisions between sectors became sharper and more defined (Nikoloyuk 2009). Producers were concerned about the costs and implementation of the P&C, which was expressed several times at RT4. NGOs were concerned about the verification options paper and it became clear in the Executive Board meeting at the 20th of November that the work of the VWG could not be finished at RT4 (17). Andrew Ng, the Secretary General of the RSPO at that time stated in his summary of RT4 that: "sectoral concerns surfaced and each side asserted their positions while the stakes have risen" (17). "Up to and including RT3, we witnessed a level of cohesion by stakeholders, with the Criteria Working Group (CWG) epitomising this spirit. One year down, that spirit is being challenged. RSPO has been a topic of hot debate and opinion, from producer stalwarts who are defending industry interests to civil society groups pressing for urgent action to save the magnificent Orang Utan. It will be a time to close ranks and rebuild working relations between sectoral members in key working groups and discussions. The ability to conclude with workable, agreed and robust tools for furthering RSPO's goals means making concessions as well as cooperating to define what is the best compromise" (17).

The fifth roundtable meeting RT5: Launch of the RSPO certification system

The fifth Roundtable Meeting was held from 20th to 22nd November, 2007 in Kuala Lumpur, and was attended by about 540 participants from 28 countries. RT5 was organized around two themes: the RSPO Certification System and its relevant implications and the advancement of the RSPO P&C at various levels (18). RT5 witnessed the launch of the RSPO Certification System for Sustainable palm oil (18). The first Certified Sustainable Palm Oil (CSPO) was expected to be available on the market in the first quarter of 2008, but became really available in November 2008. At RT5 also the work of the VWG was presented. The VWG had prepared a workable auditing scheme and the RSPO began to accredit the first certification bodies to carry out audits.

The sixth roundtable meeting RT6:

The sixth Round Table Meeting, from 18-20 November, 2008, was attended by 551 participants from 27 countries around the world. RT6 was organized around four key issues: the trading in RSPO certified sustainable palm oil and keeping track of it; promoting honest communications about RSPO certified sustainable palm oil; bringing smallholders more centre stage in sustainable production; working closer with governments (19). The Indonesian minister of Agriculture was present as well as a large delegation from China. RT6 also saw participation from India and South America (19). NGOs present, both RSPO members and non RSPO members, highlighted issues of climate change and deforestation.

At the General Assembly two resolutions were passed presenting new obligations for RSPO members. The resolution entailed an addition to the Code of Conduct, which specified that RSPO members have

to produce annually a time-bound plan of working towards producing or buying certified sustainable palm oil (20). The second resolution was in reaction to NGOs⁴ criticizing the RSPO and entailed the introduction of new requirements for producers to guarantee compliance with the P&C regarding new plantations (20). Before new expansion begins, producers should demonstrate compliance with the new plantings criteria. This resolution proved to be more controversial than the first and some stakeholders even walked out of the meeting at some point in the discussion (20). A compromise was reached by establishing a multi stakeholder working group which will come up with recommendations. Depending on the unanimity in the RSPO EB on the recommendations of the working group, the EB will either endorse or take the recommendations to GA6 in November 09 to take immediate effect if accepted (20).

Summarizing, the roundtable process was initiated by WWF and Unilever who remained the leading actors throughout the entire process. The representative of Unilever has been the president of the EB from the start. The RSPO managed within six years, through a - sometimes difficult - process, with many stakeholders, to develop principles and criteria for palm oil production and to get certified sustainable palm oil on the market.

4 Creating legitimacy: the perspective of legality

From the legality perspective we need to study the RSPO from two angles:

- a) The way the arrangement developed rules of power (regarding representation, participation, neutrality and procedural regularity).
- b) The formal relationships of the arrangement with the broader political systems it is part of.

4.1 Rules of power

One of the first issues to be dealt with was to decide on who should be in. At the first (preparatory) meeting of the RSPO in London (2002), only representatives of European companies and WWF-Switzerland were present. While at first the initiative was thought by WWF to include only European demand-side actors, it was felt that the influence of a purely European initiative would be limited, because two third of global palm oil production comes from Asian markets and “that a round table can only be effective if it is organized in close co-operation with palm oil producers who see economic advantages for themselves” (15).

Already at this first meeting, instigated by Unilever, it was decided that the roundtable would involve all actors in the palm oil chain. WWF contacted the Malaysian Palm Oil Association (MPOA), which joined early 2003. Including Indonesian producers in the RSPO proved to be more difficult than including Malaysian producers. The Malaysian palm oil industry in general is more developed and better organized. The MPOA managed to get into contact with GAPKI, the Indonesian Palm Oil Association and convince them of the importance of joining the RSPO in 2004. One of the reasons for GAPKI to join the RSPO was not to have the Indonesian palm oil industry look bad in comparison to the Malaysian industry.

From that moment on the development of RSPO shows a process from informal to more informal rules of the game. This led to a specific organizational structure, which ensures that RSPO activities are generated through a process that is structured by well-known requirements.

At the end of 2002 an Organizing Committee (OC) was established to plan an industry-wide Roundtable to gain support for the RSPO. At the first meeting of the organizing committee the - at that time all European - participants agreed on first ‘rules of the game’:

“The participants agree that special attention must be given to completely open and transparent communication within the committee to be formed as well as towards any other interested party. The following terms were unanimously accepted:

- *Decisions are taken on the basis of consensus*
- *Everything communicated out of this group must be agreed to by all the participants*
- *The group should strive to a maximum of transparency*
- *Every impression of forming a cartel must be avoided”* (16)

⁴ Specifically Greenpeace

These first 'rules of the game' of the RSPO have two striking features which have remained important throughout the roundtable process, namely consensus and transparency.

The second important issue was to decide on the internal organization of the RSPO. On April 8, 2004 the RSPO was formally established under Article 60 of the Swiss Civil Code. It was very simple at that time to establish an association in Switzerland and the statutes and by-laws were downloaded from the website of the Swiss government and adjusted to the context of the RSPO. The goal of the RSPO is stated in the statutes of the RSPO: "RSPO's objectives are to promote the growth and use of sustainable palm oil through co-operation within the supply chain and open dialogue with its stakeholders" (RSPO by-laws).

The RSPO consists of a General Assembly (GA), an Executive Board (EB), a Secretariat and Working Groups (WG), which all have different functions. The General Assembly is the highest decision making body of the RSPO and consists of all ordinary members, who all have one vote. Decisions are taken by majority vote with the president having a casting vote. Ordinary⁵ GA meetings are held annually. If no representative of a member can be present at a meeting, a proxy can be given to another member in writing.⁶ The General Assembly has the power to take all necessary or useful actions to accomplish the purpose of RSPO⁷. The table below presents membership in 2009.

Category	No. of members
Banks and Investors	9
Consumer Goods Manufacturers	56
Environmental or Nature Conservation Organisations (NGOs)	15
Oil Palm Growers	90
Palm Oil Processors and Traders	139
Retailers	25
Social or Development Organisations (NGOs)	10
Affiliate Members	113

The Executive Board is chosen by the General Assembly and consists of representatives of ordinary members. The EB acts by consensus vote. The Executive Board elects a President, a vice-President(s) and a Treasurer. They are designated for a period of two years (bylaws art. 6.1). The Executive Board in collaboration with the Secretary-General may adopt all policies and procedures necessary for the management of its activities and may, within the frame of its powers, delegate part of its powers and responsibilities to either Technical Committee or Working Groups⁸. The Executive Board appoints the Secretary-General and the Secretariat Staff, in agreement

with the Secretary-General.

After the success of the first roundtable (with 200 participants from 16 countries), the OC members had to face the challenge to realize consensus on how the RSPO would be further governed internally. This challenge was solved by distinguishing between seven different groups within the RSPO: oil palm growers; palm oil processors and/or traders; consumer goods manufacturers; retailers; banks/investors; environmental NGOs; and social/development NGOs. Organizations wanting to become member of the RSPO had to apply for one of these groups or as affiliate member⁹. Each group would be represented in the Executive Board. The division of seats for each group in the Executive Board was reason for extensive discussions in Kuala Lumpur at the offices of the MPOA. It was one of the most difficult issues in the history of the RSPO¹⁰. "The negotiations quickly moved past the idea of equal representation from each group and the MPOA argued for more weight for producers and NGOs also wanted more seats due to their importance as opinion makers" (Nikoloyuk 2009, p.56).

⁵ The extraordinary General Assembly meeting, for whatever reasons unless stated otherwise in the present by-laws or in any other regulations is called: 1. By the President of the Executive Board; 2. By the President of the Executive Board at the request of at least one fifth of the Ordinary members of the association; this request must contain the items of discussion for the proposed meeting.

⁶ Such a proxy is valid only for a specific meeting date and a specific topic on the agenda.

⁷ In particular, but without any limitation, it has the power to: Elect the members of the Executive Board within their own sector; Elect the auditor of RSPO; Establish the principle guidelines for the general policy of RSPO; Take into consideration and decide on proposals of the Executive Board; Make all recommendation to the Executive Board in view of the establishment of any useful Committee or Working Group; Approve RSPO annual accounts and budgets (RSPO Bylaws).

⁸ The Executive Board in collaboration with the Secretary-General has the power to: Direct and control the management of RSPO; Execute the decisions of the General Assembly meeting and take all measures to reach the established objectives; Establish guidelines for the programs of the Technical Committee and the Working Groups and to submit them to the approval of the General Assembly meeting; Control RSPO expenses; Prepare the budgets and the annual accounts which will be submitted to the General Assembly; In case of urgency, take all decisions normally assigned to the General Assembly, and submit them subsequently to the ratification of the General Assembly; Appoint secretarial staff.

⁹ Affiliate members cannot vote in the GA.

¹⁰ Source: Interview data

Sector	No. of seats
Oil Palm Growers	4
Palm Oil Processors	2
Consumer Goods Manufacturers	2
Retailers	2
Banks/investors	2
Environmental NGOs	2
Social/development NGOs	2

The results of the negotiations are listed in the table. The producers were very comfortable with the fact they were the only group with four seats¹¹ in the EB, while the NGOs were happy about the fact they together got as many seats as the producers. And for both the producers and NGOs there are always another 8 seats to consider in the negotiations.¹²

The third issue of importance regards participation in internal decision-making. Participation is closely related to representation, but goes beyond it. Participation is about offering constituents the

opportunity to observe and comment upon the activities of the organization. Working groups are important mechanisms for participation in the RSPO. A Working Group exists of Ordinary and Affiliate members and possibly other stakeholders. Members may participate in different Working Groups at the same time or may not participate in any Working Group. The Executive Board, through the Secretary-General, will consult the interested parties in order to prepare a proposal for the activities to be carried out, including the timing and costs thereof. Working Groups are financed by interested RSPO members and/or by external donors. Each working group elects a chairperson who is responsible towards the Executive Board for the management of his Working Group. Each Working Group needs to submit a report on its activities and financial situation to the annual General Assembly meeting (Bylaws). RSPO Working Groups are listed in the text box below.

RSPO Working Groups
Criteria Working Group
Smallholder Task Force
Dispute Settlement Facility Working Group
Greenhouse Gas Working Group
Trade and Traceability Working Group
Communication and Claims Working Group
National Interpretation Working Group(s)
Consumer and Branding Working Group
Verification Working Group
Biodiversity Technical Committee

An example of the use of working groups and other forms of participation is found in the development of the principles and criteria for sustainable palm oil. This has been a long and complicated process. The first phase of this process was the production of a report in March 2004 by two consultants of ProForest: The Framework for Drafting Criteria for Sustainable Oil Palm: A discussion paper to begin the process of developing criteria for the Roundtable on Sustainable Oil Palm. This report set out the framework for drafting criteria together with a suggested process for developing the final criteria. It circulated for review and many comments were included (9).

This kind of public consultation is a common mechanism within the RSPO. As a next step the EB appointed a Criteria Working Group (CWG). The CWG consisted of producers, supply chain actors and investors, environmental NGOs and Social NGOs. The EB selected the members from 70 candidates nominated by stakeholders involved. The selection criteria were: relevant expertise and experience; ability to consult with their constituent groups; and geographic scope of oil palm production (9). On October 4 2004, the first meeting of the RSPO Criteria Working group was held (2). The 'Framework for Drafting Criteria for Sustainable Palm Oil' provided the foundation of the work of the Criteria Working Group (CWG) (3). In this first meeting the composition of the CWG was extensively discussed (2). As a problem it was recognized that there was no representation of Indonesian producers, that social and environmental groups were outnumbered against producers, and that processors and some social sectors were not directly represented, such as trade unions, smallholders, indigenous people and women groups. At this first meeting it was decided that the procedures for consultation and decision-making should overcome the imbalances in representation (2). The criteria development took approximately 12 months. The process by which they were

¹¹ 1 Representative for Malaysia, 1 Representative for Indonesia, 1 Representative for the smallholder sector, 1 Representative for "Rest of the World"

¹² Source: Interview data

developed included considerable opportunity for input from any interested person or organization¹³. This was facilitated by at least two rounds of public consultation as well as through CWG members contacting key stakeholders and directly asking for feedback (RSPO.org).

The fourth issue of importance relates to accountability and neutrality. Rules developed in this area are a direct consequence of the Musim Mas case in 2005, which led to the adoption of a Code of Conduct and a Grievance Procedure in which membership of the RSPO was further formalized.

The Musim Mas case

This case regards workers of a Musim Mas plantation in Pelalawan who went on strike, which led to the dismissal of 701 employees, the eviction of their families from plantation estate housing, and expelling their children from estate schools. After these events the International Federation of Building and Wood Workers (IFBWW) contacted WWF, alleging that PT Musim Mas had acted illegally and immorally throughout the formation of the union and during the strike, and called on the RSPO to address the situation. Musim Mas, a member of the EB at that time, in a presentation to the EB refuted all the claims made by IFBWW and also argued for a code of conduct and a grievance procedure. The executive board was not sure what the IFBWW expected from the RSPO if the allegations came indeed out to be true. There was still no certification system for sustainable palm oil at that time and the membership requirements were still unclear. Board members agreed that the RSPO should not become overly involved in this type of dispute. WWF sent a response to IFBWW stating that it seemed as though both parties in the dispute were following appropriate legal channels and that the RSPO's mandate did not warrant any further involvement.

The Code of Conduct lists all the requirements for membership of the RSPO. The most important is that every member supports, promotes and works towards the production, procurement and use of Sustainable Palm Oil. Members should work towards implementation and certification of the P&C. Members procuring palm oil will integrate implementation and independent verification of the P&C as a positive performance measure when assessing supplier performance. Furthermore, members are required to report annually on progress against this Code. Breaches of this Code, or the by-laws and statutes of the RSPO may lead to exclusion from the organization. In practice, however, very few members submit annual reports, and the requirement of reporting has not been enforced. Moreover, the Code of Conduct does not contain any provisions for measuring, verifying, or enforcing members progress.

The Grievance Procedure the RSPO introduced was a way to further guarantee accountability. The objectives of Grievance Process are: to provide a platform for RSPO to address complaints against all RSPO members; to ensure that 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 and RSPO Code of Conduct are impartially and transparently addressed; and in cases where deemed necessary and appropriate, provide recommendations for action through forming of a Grievance Panel (RSPO.org). Aside from the Grievance Process, individual RSPO members are also expected to have their own functioning grievance/complaints mechanisms at the individual site level to resolve disputes (RSPO.org).

4.2 The RSPO and the wider policy arena

Next to formulating rules of the game, legality can be induced by creating formal connections between the RSPO and governmental organizations. One way to do so was closed from the start; representatives of governmental agencies had been excluded as RSPO members.

Despite the aim of many European governments to make global value chains more sustainable, national regulations concerning the sustainability of imported products are not in place. This is partly because the legal and political space for imposing trade barriers within WTO law is limited: a threat to sustainability in a producing country is regarded not to count as a valid reason for an importing country to set a trade barrier (Hospes, Stattman et al. 2009). This factor has been one of the reasons not to include governments in the RSPO process. Because of its voluntary nature, the RSPO does not need to comply with WTO rules. Another reason not to include governments was the feeling that including them would make the process slower and much more politicized.

¹³ Members and non-members

Despite the fact that governments cannot become ordinary members of the RSPO, there are still multiple relationships between governments, the RSPO and RSPO members. Though governments are not directly participating in the roundtable, indirectly they often do.

- For example, the Malaysian Palm Oil Association (MPOA) reports to the Malaysian minister of plantations and GAPKI - the Indonesian Palm Oil Association -, reports to the Indonesian minister of agriculture. Representatives of MPOA and GAPKI have regular meetings at the ministerial level about the role and future of the RSPO.

- Another example of interaction between governments and the RSPO is that of China. In China the import of palm oil goes through COFCO, a state-owned enterprise, which is an ordinary member of the RSPO. A delegation of 12 people lead by the Chinese chamber of commerce attended the sixth Roundtable conference in Bali.

- Governments also play another important role: part of RSPO's work is funded by government money. For example, The Task Force for Smallholder Certification Support Network could start with the money received from the Dutch government's Sustainable Trade Initiative. The 'framework for drafting criteria for sustainable palm oil' was funded with money from GTZ, a German development cooperation organization owned by the German federal government.

- An important principle within the RSPO is the conformance of members to local laws.

- Last, in several Roundtable Conferences, government officials have given speeches, in that way they expressed their recognition of the value of the RSPO.

The text box below shows a question by a member of the Dutch 'House of Representatives' in 2008 and the answer by the Dutch minister of Agriculture, Nature and Food Quality, also on behalf of the Dutch minister of Development Cooperation (28).

Do you share the view that to effectively address the import of palm oil of plantations which negatively affect orang-utan habitat, regulatory and legislative frameworks should be formulated, because the use of voluntary initiatives of importers and buyers of palm oil has had no effect yet?

No. The RSPO is an example of a promising international voluntary initiative of producers, consumers and NGOs, currently setting up certification of sustainable palm oil. Forty percent of all palm oil production in Indonesia falls now under the RSPO and this percentage is still growing. Expected is that at the end of this year the first RSPO certified palm oil will be on the market.

The minister in the same documents also stated that the Indonesian government is primarily responsible for the conservation of species and their habitats on their own territory. It illustrates how the Dutch government deals with sustainability issues in value chains.

Conclusions on legality

The RSPO managed to develop (formalized) rules of power concerning representation, participation, neutrality, and procedural regularity. The division of seats in the Executive Board was the most difficult part of this process. In practice it proved to be difficult to represent every stakeholder group in the roundtable, specifically the representation of smallholders is still regarded as problematic. In Indonesia 30% of palm oil is produced by smallholders (2). It may be concluded that representation as well as participation are taken seriously in the RSPO. There are multiple ways in which stakeholders can participate and even non-members of the RSPO are invited to participate through public consultations. There are also strict regulations on decision-making processes in place in which transparency and consensus are key concepts. The RSPO also has a Code of Conduct and Grievance Procedure in place, which warrants neutrality, though implementation of the Code is difficult regarding some of the requirements. RSPO is also recognized by several governments, including the producing countries, as an important organization in the palm oil industry and keeps many more or less informal relationships with them. It might also be concluded that the consequence of the voting system is that in theory one group can dominate the General Assembly; there are now 139 members in the processors and trader-category, but only 25 NGOs. However, the way of working with working groups secures that this will not easily happen and it did not do so up to now.

5 Creating legitimacy: moral justifications

From the perspective of morally justifying the RSPO and its activities the partners in the governance arrangement need to justify why they are the right actors to govern as well as the content of what they are trying to govern. This perspective refers to internal belief systems and attempts to connect them.

5.1 Morally justifying why they are the right actors

The RSPO is an initiative of NGOs in cooperation with businesses. Such an arrangement is generally not regarded to make rules concerning the public sphere; this is usually seen as the task of governments. So why did these private actors consider themselves the right actors to take up the sustainability issues in the palm oil industry?

Though all partners share a common interest in a more sustainable palm oil industry they do so with a different degree and motivations differ from very pragmatic to very principal. At the preparatory meeting of the RSPO (September 20, 2002) the different stakeholders present gave their justifications for joining the roundtable. These justifications all fit the mission statements of these individual organizations. WWF justified its initiative from its objective to protect the environment, more concretely to stop the conversion of high conservation value forests. Unilever informed that ensuring long term supply of palm oil was their main reason to join the initiative. The retailers Migros and Safeway explained they joined the process to improve their business reputation.

“Customers expect Migros to become active, even if the overall contribution to sustainability is rather small. Raising consumer awareness can lead to results. Maybe it does not make a difference on a global scale, but it does make a difference for the individual companies” (15).

These justifications to start a process of collaboration already show a mix of idealistic and economic arguments. This pattern of justifications becomes even more complex if we take the producer argumentations into account. The MPOA, representing Malaysian producers, saw a need to engage with RSPO to counter NGO campaigns about deforestation and land clearing. At first they hesitated to join the RSPO, because they thereby acknowledged that there were bad practices occurring in the industry, but thought that if they could engage with NGOs and provide them with proper information, maybe they could isolate the ‘bad’ producers. Moreover, the European market is significant, and with the EU biodiesel requirements, the producers expected it to grow significantly. Particularly producers from Malaysia thought that the RSPO could link them to the European market more strongly. The Indonesian Palm Oil Association, GAPKI, was convinced to join the RSPO, even though many Indonesian plantations sell their palm oil to Asian markets, because GAPKI did not want the Indonesian industry compared unfavorably to Malaysia’s (Nikoloyuk, 2009).

Though every actor in the roundtable had its own individual justifications to take part in the process, they also shared a justification. This justification is based on the idea that together they are the right actors to tackle the problems present in the palm oil industry. They all recognized that governments were not very active on sustainable palm oil, that there is a risk of many not coordinated government regulations in the future, as well as a growing consumer pressure for sustainable palm oil. The RSPO is organized in such a way that in theory all actors in the palm oil commodity chain as well as environmental and development NGOs can become a member and can participate in the roundtable. They all have a vested interest in palm oil, which was assumed to make the roundtable the right institution to govern the palm oil industry. This almost culturally neutral belief reflects the internalization of the main elements of the legality issue: representation, participation, neutrality and procedural regularity as founding characteristics of an organization that aims to change a commodity chain..

5.2 Morally justifying their goal

At the heart of the RSPO activities lies the concept of sustainability. From the first meetings onwards the concept of sustainability has been discussed.

Environmental problems in the palm oil industry were reason for WWF to start the initiative and they thus focused on the environmental aspects of sustainable palm oil. However, at the preparatory meeting in London, it was already agreed that sustainability for palm oil includes also social and economic factors and that the discussion on sustainable palm oil could not be limited to forest conversion questions only. It was stressed (by a representative of Unilever) that palm oil production did not only have negative environmental effects, but it has brought people out of poverty as well.

Representative of Unilever: "We have to take into account that palm oil is an important element of economic development in the production countries and that a growth in plantation acreage may be a good thing" (15).

WWF emphasized that it fully recognized the social dimension of sustainability and therefore it was not against the development of new plantations but warned to "be mindful about where you establish these plantations" (15).

While European actors focused mostly on deforestation and biodiversity loss, Malaysian actors had a strong focus on poverty and the way palm oil can contribute to poverty alleviation. This became very clear in the speech of a representative of the Malaysian producers at the first roundtable.

"We cannot save the freshness of the air or the purity of the water or the goodness of the earth, we cannot save the forests or the elephants or the tigers, unless we save the people."

"Poverty threatens the survival of the poorest. To appeal them to join in saving the planet is pointless unless we link it to their own survival. Simply to tell those at the margin of existence not to cut down the forest or not to have many children when they see both as necessary to their survival is to be not only insensitive to their predicament but also downright provocative."

"The poor need to share in the human commitment to change so that life on the planet can be sustainable for all. But to make an appeal for that commitment credible, the rest of the world must address not merely its own salvation but the relief of poverty as well. We must save the many who are poor because they are poor; it may well be the surest way of saving the few who are rich."

"We must be conscious to the fact that poverty is an incentive to neglect the environment."
(27)

Another view on sustainability, from Malaysia, stressed the fact that the palm oil industry existed already for over 100 years, which was seen as the ultimate proof that the industry was sustainable.

From the beginning of the collaborations it was clear that the different opinions on the contribution of palm oil to deforestation could not be reconciled. Malaysian palm oil producers opined they were not destroying virgin forest, as most of the land converted to oil palm plantation used to be agricultural land used for rice or rubber production. Environmental campaigners referred that while Malaysia might not be destroying any more virgin rainforest, there is a huge expansion of oil palm in Kalimantan and that much of this is driven by Malaysian-owned companies (Johnston 2008).

However, this potential conflict of interest, which created a risk for the development of the RSPO, was solved pragmatically. Instead of continuing the debate on a common definition of the abstract concept of sustainability, and look at the exact contribution of the palm oil industry to environmental degradation, it was decided to turn the debate to criteria for sustainable palm oil. The ultimate definition of sustainable palm oil production, according to the RSPO, can be found in the principles and criteria. As a consequence, palm oil that is produced according to the P&C is seen as sustainable.

"The roundtable includes a range of stakeholder groups. Each group has a different understanding of what 'Sustainable Palm Oil' means. A definition is needed to ensure that there is a clear common understanding. Agreed that the most effective way was through the development of a set of criteria" (9).

The development of the P&C started with the Framework for drafting criteria for sustainable palm oil (3) prepared by Proforest with input of different stakeholders¹⁴ in the palm oil chain and NGOs. From that time on the debates in the RSPO were directed towards the formulation of specific Principles and Criteria. The development of the P&C took over one year. The main areas of contention were related to the use of agrochemicals, and the use of paraquat was the main issue (Nikoloyuk, 2009). Producers

¹⁴ Fausta Borsani, John Buchanan, Anne Casson, Chew Poh Soon, Patrick Cooper, RH Corley, Matthias Diemer, Erich Dumelin, Gan Lian Tiong, Billy Ghansah, Andrew Hamilton, Simon Lord, Ian McIntosh, Alvaro Ocampo-Durán, Junaidi Payne, Teoh Cheng Hai, Gert Vandersmissen, Jan-Kees Vis, and additional comments from James Ackworth, Doris Günther and Bernard Tinker

insisted that it was essential to their business, while NGOs stressed the risks to human health and safety. The definition of sustainability in the form of the P&C in the end is, while still in a process of change, widely accepted within the RSPO.

The P&C document consists of seven main principles with accompanying criteria for each of them. Indicators and guidance are again defined for each criterion. "Indicators are specific pieces of objective evidence that must be in place to demonstrate or verify that the criterion is being met. Guidance consists of useful information to help the grower/miller and auditor understand what the criterion means in practice, including in some cases specific guidance for national interpretation of the criterion and for application by smallholders" (RSPO P&C).

The seven principles of the P&C document

Principle 1	Commitment to transparency
Principle 2	Compliance with applicable laws and regulations
Principle 3	Commitment to long-term economic and financial viability
Principle 4	Use of appropriate best practices by growers and millers
Principle 5	Environmental responsibility and conservation of natural resources and biodiversity
Principle 6	Responsible consideration of employees and of individuals and communities affected by growers and mills
Principle 7	Responsible development of new plantings

The P&C is a living document; it is still subject of negotiations and alterations to the document are still made. A greenhouse gas working group is currently working on the definition of criteria on greenhouse gas emissions for palm oil.

Conclusions on justification

The justifications underlying the work of the RSP are different for different participants. However, they could create a common ground for collaboration by pragmatically accepting the differences, refrain from what might turn rather easily into an ideological debate on sustainability, leave out the controversial issue of the amount of deforestation related to palm oil production, and by looking ahead instead of backwards. There was a minimal consensus that they were the right actors to act, because they each had a stake, they had the feeling that the stakes were connected, and they could further justify the RSPO as an organization with reference to the way they structured participation and representation.

6 Creating Legitimacy: Consent

The third perspective addresses two questions: (a) did the RSPO manage to change the palm oil market (Tier I audiences); and (b) did the RSPO manage to ensure consent of external NGOs (Tier II audiences)?

6.1 Changing the palm oil market

In November 2008, the first shipment of certified sustainable palm oil (CSPO) arrived in Europe. Although CSPO is available for a rather short period, we are still able to give some characteristics of the market for CSPO.

By mid-2009, RSPO certified plantations were able to supply 1.75 million tones of sustainable palm oil per year, which represents more than one third of Europe's annual uptake of palm oil (WWF scorecard, p. 3) and about 4% of global palm oil production¹⁵. As of November 2009, the RSPO has 445 members of which 90 are palm oil growers. In 2008 RSPO represented around 40% of global palm oil production (Greenpeace 2008). 60% of global palm oil production is thus not represented within the RSPO. On the demand side the RSPO represents a much smaller percentage (interview data). Up till now 11 of these producing companies are RSPO certified. 79 of the 90 oil palm growing members of the RSPO are not certified at this moment and the ones that have certification do not necessarily need to have certified all of their operations.

After one year 200.000 tonnes of CSPO has been traded as such; only 15% of total CSPO produced. The latest numbers indicate that by September and October the market uptake of CSPO, for which a

¹⁵ The sole uptake of palm oil by Unilever is also around 3-4 % of global palm oil production.

price premium is paid, rose to about 50 percent of total CSPO supply (22). This is 2% of global palm oil production. According to Unilever one reason why the supply of CSPO exceeds the demand is that most companies in commodity markets, like palm oil, have covered their demand up front. These contracts can be for 3-12 months in the future. So the actual uptake of CSPO lags behind supply of CSPO. At the GA in 2008 a resolution was adopted that obligates all members of the RSPO to submit public plans of their time-bound sourcing targets and certification plans. Until now only a few companies have made their sourcing targets public, making it hard to predict CSPO demand and making it hard for producers to know how sincere end-users are in their commitment to using sustainable palm oil (Nikoloyuk 2009). Unilever for example has indicated that by 2015 they want all of their palm oil to be RSPO certified. The second factor often mentioned for the low demand for CSPO is the economic crisis which became apparent around the same time CSPO came available. The premium was more than buyers were willing to pay at that time and by now the premium for CSPO declined. The low uptake of CSPO is a conformation for producers in the RSPO that have always been agitated by the fact that there is a lack of commitment of the demand side and that as producers they bear the full burden of the certification..

Furthermore, up to now the demand for CSPO only comes from Western countries. Part of the palm oil producers export their palm oil to parts of the world with none or less interest in or demand for CSPO, like India or China, do not see a need to participate in the certification program (interview data). That is why Unilever, WWF and others are trying to engage Indian and Chinese stakeholders to engage with the RSPO. China seems interested and has attended some RSPO meetings, but these interests have not yet turned into concrete commitments. Indian stakeholders seem to be even less interested in the roundtable process than China (interview data).

Although palm oil is used in approximately 50% of products in European supermarkets (WWF scorecard, p. 1) it is often not visible to consumers due to the character of the product. Palm oil is used as an ingredient in a variety of products, but on the ingredient clarification in the EU it often just says 'vegetable oils' and does not specify which specific oil is used. Thus far consumers do not seem to play an important role in the market for CSPO.

The RSPO constantly made efforts to engage new actors from the value chains as well as NGOs which were believed to bring the roundtable process forward. The secretariat is mainly responsible for the recruitment of new members.

6.2 Broader societal consent

In the beginning of the RSPO, in 2002, WWF hosted a meeting for environmental NGOs interested in the palm oil issue. Several organizations expressed their critical view on the industry and also of the roundtable process at that time (16). In November 2009, 10 social and development NGOs were members of the RSPO (4 Dutch, 2 Indonesian, 1 from the UK, 1 Malaysian and one Brazilian) and 14 environmental NGOs (3 from the UK, 3 Swiss, 2 from the US, 2 Malaysian, 1 Indonesian, 1 from the Philippines) . Four of the environmental NGOs are WWF divisions.

Not all NGOs interested in a more sustainable palm oil industry support the RSPO and become members of the roundtable. Some NGOs are actually rather negative about the RSPO. External NGOs have two main criticisms related to the RSPO which they express through negative publicity, campaigns and actions against the RSPO and its members. The first criticism is that the principles and criteria are not strict enough. Moreover, being a member of the RSPO does not guarantee compliance with the RSPO. Many external NGOs doubt the degree in which a private initiative is able to make the palm oil industry more sustainable.

In 2008, Greenpeace's Tim Birch dismissed the RSPO as a green-washing exercise: "Five years on and there isn't one drop of sustainable palm oil on the market. They talk about sustainability, but the destruction continues. There is no sense of urgency. By the time we achieve sustainability there will be nothing to be sustainable about" (Johnston 2008). Hardi Baktiantoro of the Centre for Orangutan Protection, an Indonesian NGO said about the RSPO: "All this talk of sustainability is lies" (Johnston 2008). In Australia, the Palm Oil Action Group is expressing its disagreement with the palm oil industry and the RSPO. The palm oil action group has four member groups and 19 supporting NGOs.

The Palm Oil Action Group stated on their website: "We believe that the RSPO is merely an attempt to greenwash palm oil production to keep the industry growing at any cost - and until they
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agree to INDEPENDENTLY VERIFIED sustainable palm oil plantations being a member of the RSPO is **no guarantee at all** that the palm oil being used is sustainable, no matter what the companies wish you to believe" (23)

Greenpeace stated that: "The international voluntary industry initiative for 'sustainable' palm oil, the Roundtable on Sustainable Palm Oil (RSPO), represents 40% of palm oil production. Currently, it is not sufficiently robust to address deforestation and peatland degradation in Southeast Asia. For instance, current RSPO Principles and Criteria do not address GHG emissions resulting from the establishment of oil palm plantations. More broadly, certification is delivered at a plantation level, not a company level; consequently, the initiative risks failing to check the destructive expansion of sector. In numerous cases, RSPO producer members are establishing plantations in peatlands or High Conservation Value forest areas." (Greenpeace 2008)

The first company certified was United Plantations. Greenpeace, very critical of the certification process, investigated its non-certified plantations in Central Kalimantan. They alleged that the United Plantations holdings did not meet RSPO minimum criteria and that the RSPO therefore amounts to a disingenuous industry greenwashing attempt that allows companies to "have their RSPO certification of Malaysian plantations but continue with business as usual in their Indonesian concessions" (24). When the first ship of CSPO arrived in Europe, Greenpeace activists tried to enter the ship (25). Sawit Watch, an Indonesian NGO, filed a complaint against the auditing company that granted the RSPO certificate, on the basis of the minimum criteria that were not met (Nikoloyuk 2009).

The second criticism of the RSPO by external NGOs is that governments use the RSPO as an excuse not to take action. When for example the Dutch minister of agriculture gets questions on the import of palm oil and related sustainability problems, she points out that the Dutch government supports the RSPO and that that is the way the Dutch government believes to solve the issues.

The loud accusations of greenwash demonstrate that the RSPO certification system is not accepted by many parties outside of the process (Nikoloyuk 2009). Nonetheless, there are multiple relationships between external and internal stakeholders. External and internal NGOs share information and discuss issues concerning palm oil together. Internal NGOs are content with the fact that external NGOs check the actions of the RSPO and put the RSPO under pressure by means of campaigns and actions when they see a danger of greenwash. This external pressure on the RSPO gives the NGOs within the roundtable more negotiation power, which they otherwise would have much less.

Conclusions on consent

It can be concluded that the RSPO has not (yet) been able to create cognitive legitimacy, because for none of the audiences doing without or otherwise than the RSPO is unthinkable. Thus far, only pragmatic and moral legitimacy is granted to the RSPO. The RSPO did not, at least not yet, manage to change the palm oil market, with currently only 4% palm oil production certified and only 2% sold as CSPO. Furthermore, the supply of CSPO currently still exceeds the demand for it. For the supply of CSPO to grow, the demand for CSPO needs to increase as well. First of all within the RSPO and secondly new stakeholders should be included within the RPSO, because big parts of the world are not participating. The RSPO has not been able to ensure consent of external NGOs because of two reasons. The first being that external NGOs think the RSPO principles and criteria are not strict enough and they distrust the degree in which the RSPO, as a private initiative, is able to make the palm oil industry more sustainable. Secondly, external NGOs feel the RSPO is used by governments as an excuse not to take action. Despite these negative views of external NGOs on the RSPO, there are numerous relationships between internal and external NGOs, which are very influential for the outcome of debates within the RSPO. The outside pressure on the RSPO from external NGOs leads to more negotiation power for internal NGOs.

7 Conclusions

Studying the process of creating legitimacy from three combined perspectives (legality, moral justifications and consent) gives us a deeper insight in the creation of legitimacy than using the perspectives separately. It showed us that the RSPO managed to create legitimacy to a different degree, depending on the perspective chosen. The RSO was able to develop widely accepted rules of power concerning representation, participation, neutrality and procedural regularity. To practically implement and use these rules of power was sometimes difficult; the equal representation of stakeholders is still regarded as problematic. It may be concluded that representation as well as

participation are taken seriously in the RSPO. There are multiple ways in which stakeholders can participate and even non-members of the RSPO are invited to participate through public consultations. Transparency and consensus are key concepts in decision-making processes. There are multiple linkages between the RSPO and governments of exporting and importing countries. The RSPO is by many governments recognized as a very relevant actor in governing the palm oil industry. The RSPO is surrounded by a complex of justifications; justifications differ for different stakeholders. However, they could create a common ground for collaboration by pragmatically accepting the differences, refrain from what might turn rather easily into an ideological debate on sustainability, leave out the controversial issue of the amount of deforestation related to palm oil production, and by looking ahead instead of backwards. There is a minimal consensus that they were the right actors to act, because they each had a stake, they had the feeling that the stakes were connected, and they could further justify the RSPO as an organization with reference to the way they structured participation and representation. However, the RSPO was, at least not yet, able to change the whole palm oil market. Furthermore it was not able to ensure consent of some external NGOs. Our analysis also reveals that the three perspectives do not refer to factors that independently contribute to legitimacy; an order of sequence has become visible, in which creating legality must be regarded as the basis in the process. Interwoven with legality is the creation of justifications. If both are secured this is a necessary but not a sufficient condition for legitimacy as creating consent asks for additional activities in a new process.

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List of secondary literature

1 = from Summary of RT2 results by C.H. Teoh

[http://www.rspo.org/PDF/RT2/Proceedings/Day%202/Summary%20of%20Results%20\(TCH\).pdf](http://www.rspo.org/PDF/RT2/Proceedings/Day%202/Summary%20of%20Results%20(TCH).pdf)

2 = Minutes of the first CWG meeting: <http://www.rspo.org/PDF/CWG/CWG%201%20minutes.pdf>

3= Framework for drafting criteria for sustainable palm oil:

<http://www.rspo.org/PDF/RSPO%20Oil%20Palm%20Criteria%20Discussion.pdf>

4= RT2 Welcome address by Mr Derom Bangun

[http://www.rspo.org/PDF/RT2/Proceedings/Day%201/Welcome%20Address%20\(DB\).pdf](http://www.rspo.org/PDF/RT2/Proceedings/Day%201/Welcome%20Address%20(DB).pdf)

5= Press statement RT1:

<http://www.rspo.org/PDF/RT1/Proceedings/Press%20Statement%20RT1.pdf>)

6 = Session IV discussion at the RT2

[http://www.rspo.org/PDF/RT2/Proceedings/Day%202/Discussion%20\(Session%20IV%20-%20Conclusion\).pdf](http://www.rspo.org/PDF/RT2/Proceedings/Day%202/Discussion%20(Session%20IV%20-%20Conclusion).pdf)

7= Session II RT2 Development of Criteria for Sustainable Palm Oil. Overview of Approach to Break-out Group Work

[http://www.rspo.org/PDF/RT2/Proceedings/Day%201/RT2%20Session%20II%20Process%20\(TCH\).pdf](http://www.rspo.org/PDF/RT2/Proceedings/Day%201/RT2%20Session%20II%20Process%20(TCH).pdf)

8= Paper Presentation to Second Roundtable Meeting on Sustainable Palm Oil: Friends of the Earth (EWNI)

[http://www.rspo.org/PDF/RT2/Presentations/Friends%20of%20the%20Earth%20Presentation%20\(FoE\).pdf](http://www.rspo.org/PDF/RT2/Presentations/Friends%20of%20the%20Earth%20Presentation%20(FoE).pdf)

- 9= Presentation at RT2 of ProForest: Developing Criteria for Sustainable Palm Oil
[http://www.rspo.org/PDF/RT2/Proceedings/Day%201/Framework%20for%20Drafting%20Criteria%20\(ProForest\).pdf](http://www.rspo.org/PDF/RT2/Proceedings/Day%201/Framework%20for%20Drafting%20Criteria%20(ProForest).pdf)
- 10= RT2 Session 1 Plenary Discussion: Developments since RT1
[http://www.rspo.org/PDF/RT2/Proceedings/Day%201/Discussion%20\(Session%20I%20-%20Framework\).pdf](http://www.rspo.org/PDF/RT2/Proceedings/Day%201/Discussion%20(Session%20I%20-%20Framework).pdf)
- 11= Press Release RT3:
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[http://www.rspo.org/PDF/RT3/Proceedings/Supply%20Chain%20Discussion%20Papar%201%20\(ProForest\).pdf](http://www.rspo.org/PDF/RT3/Proceedings/Supply%20Chain%20Discussion%20Papar%201%20(ProForest).pdf)
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- 26= Presentation by ProForest at RT1: Introduction
<http://www.rspo.org/PDF/RT1/Proceedings/ProForest%20introduction.pdf>

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