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The Transformation of Environmental Regulation

1.1 THE QUEST FOR THE IDENTITY OF TRANSNATIONAL ENVIRONMENTAL REGULATION

Environmental regulation has undergone fundamental changes in the past forty years. A key factor in its transformation is the rapid expansion of environmental regulation 'beyond the state'. This is regulation that is not under the sole authorship and control of national public authorities which have received a mandate and competences to that effect in national law. This type of regulation is instead characterised by a pronounced and substantive involvement of non-state actors.[1]

The past decades have also taught us that what lies beyond the state is not a neat, discrete package of transnational regulatory regimes. Instead, we encounter a sprawling body of initiatives supported by public bodies, private commercial associations, public bodies operating in a private capacity, private bodies acting under a public mandate, independent agencies, offices attached to international, regional or national organisations, quasi legislative bodies, civil society organisations, networks of public and private actors, and any permutation imaginable. The initiatives, in turn, target a varied range of environmental protection goals, and are driven by a plethora of different motivations. Regulatory goals are pursued in a wealth of different instruments and addressed to an audience as diverse as their authorship.

The aim of this book is to develop a deep and systematic understanding of transnational environmental regulation (TER) as a model of regulation. It examines the intentions of transnational environmental regulators, the strategies through which they pursue their regulatory goals, the legal status of transnational environmental

[1] See Robert W. Hahn & Kenneth R. Richards, 'The Internationalisation of Environmental Regulation' (1989) 30(2) *Harvard International Law Journal*, pp. 421–446; Frank Biermann & Philipp Pattberg, *Global Environmental Governance Reconsidered* (2012, MIT Press); Neil Gunningham & Cameron Holley 'Next-generation Environment Regulation: Law, Regulation and Governance' (2016) 12 *Annual Review of Law and Social Science*, pp. 273–293.

regimes and the norms they generate, in order to build up a detailed picture of the distinctive character of environmental regulatory activity beyond the state. This picture will help to answer the vital question whether transnationality affects the functioning and impacts of environmental regulation in a knowable, predictable way. In response, the book confirms that, unsurprisingly, the quest for the identity of transnational environmental regulation does not yield simple or straightforward answers. TER initiatives are undertaken in pursuit of a various objectives; TER regimes deploy a range of regulatory strategies. The impacts of TER on law vary depending on the type of transnationality at issue, and TER embraces and proclaims a diversity of regulatory principles. Nevertheless, it is possible to discern a number of overlapping and recurrent characteristics which are sufficiently pronounced to justify and, indeed, demand the recognition of TER as a distinctive model of regulation. The motivations of TER regulators differ, but their desire to achieve regulatory authority outside the remit of the state will almost invariably result in coalition building and compromises that are likely to affect the speed and stringency of regulatory standard setting. Notwithstanding the variety in TER strategies, a number of distinctive regulatory techniques – such as frequent reliance on standardisation by reference, compliance building through reporting, and a heavy emphasis on facilitation – stand out. Some TER regimes frustrate conventional understandings of law more than others, but they are all 'irritants' to a degree. Principles for TER differ, but we see a clear trend towards both the proceduralisation and the managerialisation of regulatory principles across the board. In sum, notwithstanding its variety and complexity, TER constitutes a distinctive model of regulation.

Theorising TER makes an important contribution to both the practice and scholarship of law and regulation. Transnational terminology has deeply embedded itself in legal and regulatory parlance in the past fifteen years. A recent investigation by Gregory Shaffer indicates that, within the legal field alone, there are now fifty-four journals with the term 'transnational law/transnational legal' in the title. Journal articles with 'transnational' in the title have increased from sixty one in 1990 to over 1,500 in 2015.[2] Studies in environmental law and regulation are very well represented within this group. During the initial stages of this 'scholarly transnationalisation', it arguably would have been intellectually stifling to draw fixed definitional boundaries hemming in an emergent discipline that is still on a journey of self-discovery. Over time, however, the risk increases that the term 'transnational regulation' will become too ubiquitous and porous to retain any possible distinctive meaning. The development of an articulated understanding of what we mean when we say 'transnational environmental regulation' averts this risk and helps the scholarly community to recognise and explain the characteristic dynamics and functions of

[2] Gregory Shaffer, 'Theorizing Transnational Legal Ordering' (2016) 12 *Annual Review of Law and Social Science*, pp. 231–253.

transnational regimes. It thereby harnesses our ability to identify and predict strengths and weaknesses of different regulatory arrangements, to compare and critique regulatory strategies, and to formulate effective reform proposals.

Harnessing analytical strength is all the more important because, up to now, critiques of environmental regulation have been developed overwhelmingly with reference to state-based regulation. Our understanding of what amounts to 'good' regulation has been forged in a predominantly national context.[3] To gauge whether regulation is effective, we traditionally use indicators that were crafted to measure the performance of state regulation. The point here is not to disclaim the huge contribution that the state as regulator makes to the development of regulation theory. Neither is it to dismiss the usefulness of state-based environmental regulation as a comparator against which to eke out a first, rudimentary image of its transnational counterpart. However, state-based environmental regulation no longer offers the full picture, and this leaves us vulnerable to analytical blind spots. For example, if the reasons why transnational actors engage in regulation differ from those that traditionally motivate domestic regulators, then this will affect the choices made in regulatory design and implementation. If regulatory strategy is determined by different opportunities and constraints at the transnational level than at the national level, then those instruments that thrive in TER are not necessarily the most effective ones for national regulators to deploy, and vice versa. In both cases, a lack of awareness of the distinctiveness of TER cripples analytical capacity, which creates risks of misdiagnosis of regulatory challenges and raises the potential for regulatory failure. The lens of TER unlocks great potential for law and policymakers alike to think creatively and productively about optimal approaches towards effective environmental regulation in today's complex and fragmented regulatory landscape.

Theorising TER has potentially far-reaching benefits for lawmakers, policymakers and courts because it facilitates their understanding of the new circumstances in which they operate. It helps authorities to engage more effectively with new modes of environmental governance, but it is also vital in helping them manage environmental regulatory change at the national level. This book establishes TER as a model of governance that is distinctive from national environmental regulation. However, the rise of transnational regulatory activity inevitably reverberates domestically and thereby also changes the landscape of traditional, state-based environmental regulation. This is most obviously so where TER displaces national responses and thus redefines the state's regulatory mandate. For example,

[3] Cf. Anand Menon & Stephen Weatherill, 'Transnational Legitimacy in a Globalising World: How the European Union Rescues Its States' (2008) 31(3) *West European Politics*, pp. 397–416. Menon and Weatherill observe and challenge the prevailing attitude of measuring the EU's legitimacy against the yardstick of idealised notions of national democratic legitimacy. They offer the opposing view that the non-majoritarian features of EU decision making do not threaten but are instead constitutive of the EU's legitimacy, and that supranationalism boosts the legitimacy of its Member States.

commentators have explained the relative scarcity of national forest regulation measures in countries such as Guatemala and Bolivia as a consequence of the success of the Forest Stewardship Council (FSC) as an alternative regulatory force in these countries.[4] Secondly, transnational regulators' experimentation with new regulatory strategies that are different from those typically pursued at the national level does not only expand the regulatory toolbox in general terms, but it may also inspire state regulators towards a change of regulatory strategy.[5] Furthermore, evolving understandings of the meaning of environmental principles are likely to infiltrate discussions at the national level. This is evidently the case for contemporary scholarly inquiries; it is a rare work of environmental scholarship that does not at the very least show an awareness of the multiplicity of locations and scales at which environmental principles and decision-making standards are developed and applied. Beyond academic walls, in national policy-making documents, administrative decisions and court proceedings, too, authorities refer to and draw inspiration from transnational sources of legal interpretation.

The following sections offer a general discussion of the drivers behind the rapid growth of TER in recent times, followed by a sectoral introduction to the field. The latter consists of a sketch of the transnational dimensions of chemicals regulation. Later chapters will cover a much wider range of topics, running the gamut from climate change to sustainable banking, but the goal of the upcoming paragraphs on transnational chemicals regulation is to convey a first impression of the breadth and variety of transnational environmental regulatory activity. The introductory example is followed by an explanation of the methodological and normative choices embedded in this project. The final segment fleshes out the content of the different chapters of the book in greater detail.

1.2 DRIVERS OF TRANSNATIONAL ENVIRONMENTAL REGULATION

A wealth of different factors have been identified as contributing to the fast-growing field of TER, and views on the relevance and weight of different potential triggers diverge widely. Moreover, the relationship between TER and the social, economic, and political environment in which it unfolds is anything but linear. Hence, what is cause to some is effect to others. The brief overview that follows does not aim to deliver a definitive account of the transnationalisation debate, but it does identify and explain the most frequently cited drivers behind the proliferation of regulation beyond the state.

[4] Errol Meidinger, 'Beyond Westphalia: Competitive Legalization in Emerging Transnational Regulatory Systems', in Christian Brütsch & Dirk Lehmkuhl (eds.), *Law and Legalization in Transnational Regulation* (2007, Routledge), p. 131.

[5] Cf. Stuart Bell, Donald McGillivray & Ole W. Pedersen, *Environmental Law*, 8th edn. (2013, Oxford University Press), p. 288.

Before reviewing the key 'real-life' events that are commonly associated with the rise of TER, we should reflect on the important role of perception in the maturation of 'new' realities. After all, the state has never been the sole purveyor of environmental regulatory content.[6] Private governance and transnational initiatives have long played a part in steering our behaviour vis-à-vis the world around us, including the natural world.[7] Conversely, it would be myopic to dismiss the continuing importance of the state in environmental regulation today. The national is still prominent, but, in the past decades, our intellectual curiosity and attention has increasingly been diverted towards those modes of regulation that do not fit the classical mould. Stronger awareness of alternatives to state regulation sharpens our alertness to their existence and reduces the likelihood that non-state regulatory structures, formerly more easily dismissed as atypical disturbances in the regulatory landscape, will escape attention. The stronger our awareness of transnational regulation, the more frequently we will spot its manifestations, which lends further credence to our initial impression that there is more of it about. This process of mutual corroboration, moreover, does not only help to consolidate the phenomenon of transnational regulation itself, but equally characterises a number of its chief causes. The more we are aware of globalisation, the more readily we see its imprint in the conduct of daily life; the more we reflect on the emergence of new environmental risks with global reach, the more we realise that old risks, too, can reverberate across the planet. Understanding social transformations as a tight entanglement of shifts in reality and perception is important because it reminds us that, as the spotlight moves on, structures that are now in the penumbra do not cease to exist and continue to merit scholarly attention. Yet for the purpose of understanding regulatory transformations, it is equally important to appreciate that a change in perception can be as impactful as a shift in real-life events. If lawmakers, regulators, judges, private actors and commentators are sensibilised and react to the rise of transnational regulation – in their planning, decision making, and discussions – then its impact is very real, regardless of whether the initial realisation was predominantly a product of real or of perceived change. To study and contribute to our knowledge about these very real impacts lies at the heart of this book's mission.

Moving from the perceived to the tangible, a significant factor contributing to the rise of TER is the ongoing legalisation of world politics. The past fifty years have witnessed an explosion in reliance on law and regulation as instruments to manage cooperation between states. In *Law and Legalization in Transnational Regulation*, editors Christian Brütsch and Dirk Lehmkuhl report that, since 1946, the number of

[6] See, e.g., on the subnational roots of environmental regulation in France, Pierre Claude Reynard, 'Public Order and Privilege: Eighteenth-Century French Roots of Environmental Regulation' (2002) 43(1) *Technology and Culture*, pp. 1–28, at 6–10.

[7] See, e.g., Jonathan Lurie, *The Chicago Board of Trade 1895–1905: The Dynamics of Self-Regulation* (1979, University of Illinois Press); Daniel Bodanksy, *The Art and Craft of International Environmental Law* (2010, Harvard University Press), pp. 18–30.

bi- and multilateral treaties has risen from around 2,000 to over 55,000.[8] This data may seem to be a resounding confirmation of ever-expanding state power, which would disprove frivolous claims about rapidly expanding transnationalisation and the demise of the state as regulator. Counterintuitively, however, the data also lends itself to an alternative interpretation. The dramatic increase in laws and rules may be an indicator not so much of the growing prowess of the state, but of the growing popularity of the instruments themselves. In fact, growing reliance on law and regulation could be the signature of a weakening state, which governs through commanding and steering rather than through ownership and occupation.[9] In line with this reasoning, the turn to lighter-touch, facilitating regulatory instruments over more direct, intrusive forms of regulation in the past decades becomes a further manifestation of the gradual alienation of the state from its regulated subjects; it represents the next degree of separation in state governance as the state resorts to ever more indirect mechanisms through which to exercise its control. Moreover, the now favoured mechanisms depend less on the unique attributes of the state to function, namely the power to coerce and the monopoly of violence. This shift towards less coercive, more flexible modes of control fosters opportunities for non-state actors to get in on the game and to assume regulatory functions alongside or even instead of the state. Hence, as its functionality depends less on the unique attributes of the state, legalisation opens the door to the rise of non-state, transnational regulators.[10]

The second and undoubtedly most discussed trigger for transnationalisation is economic globalisation.[11] With goods, services, capital and enterprises moving more freely across the globe, the impact of domestic regulation is no longer a local affair.[12] High levels of domestic regulation are cast as potential barriers to trade; low levels of environmental regulation transform into 'leakage risks' that could siphon off investment and defeat the purpose of stricter standards elsewhere.[13] Economic globalisation thus creates powerful incentives for international harmonisation. Inter-state

[8] Christian Brütsch & Dirk Lehmkuhl, 'Complex Legalization and the Many Moves to Law', in Brütsch & Lehmkuhl, *Law and Legalization*, p. 13.

[9] Eric Windholz & Graeme A. Hodge, 'Conceptualising Social and Economic Regulation: Implications for Modern Regulators and Regulatory Activity' (2012) 38(2) *Monash University Law Review*, pp. 212–237, at 213.

[10] Meidinger, 'Beyond Westphalia', p. 129.

[11] Christoph Knill & Dirk Lehmkuhl, 'Private Actors and the State: Internationalization and Changing Patterns of Governance' (2002) 15(1) *Governance*, pp. 41–63; David Held & Anthony G. McGrew (eds.), *Governing Globalization: Power, Authority and Global Governance* (2002, Polity Press); David Miliband, 'The New Politics of Economics', in Colin Crouch & David Marquand (eds.), *Ethics and Markets: Co-Operation and Competition within Capitalist Economies* (1993, Oxford Blackwell), pp. 21–30.

[12] See, e.g., Joanne Scott, 'From Brussels with Love: The Transatlantic Travels of European Law and the Chemistry of Regulatory Attraction' (2009) 57(4) *American Journal of Comparative Law*, pp. 897–942.

[13] Jonathan Baert Wiener, 'Global Environmental Regulation: Instrument Choice in Legal Context' (1999) 108(4) *The Yale Law Journal*, pp. 677–800, at 693.

negotiation and rule making, however, are a slow and cumbersome mechanism through which to channel this demand.[14] This fosters a call for transnational institutions (such as the European Commission, the World Trade Organization General Council) to manage and expedite harmonisation initiatives, as well as oversee their implementation.[15] In this process, national governments arguably trade off a degree of direct control over the regulatory agenda in exchange for participation in a more expedient transboundary regulatory regime.[16] At the same time, the globalisation of communication greatly facilitates the establishment of transnational networks of commercial enterprises, civil society organisations, epistemic communities, national public sector administrators, and so on.[17] At times, initiatives that start as 'like-minded communities' desirous to share common experiences, interests and expertise, gradually transform into bodies with transnational regulatory responsibilities.[18] In other cases, networks are established with the express purpose to develop new, shared standards of behaviour. The combination of a vibrant demand for transboundary rule making, the inability of state regulators effectively to meet this demand through international co-operation and agreement and the proliferation of transnational networks with the means and motives to fill in the regulatory gap, constitutes an environment in which TER flourishes.

The ascent of global environmental risks, such as climate change, ozone depletion and marine pollution add more fuel to the demand for regulatory responses that transcend the national level.[19] In determining climate change policies, for example, individual governments face a debilitating prisoner's dilemma: if state A opts for proactive and thorough climate change control measures but states B, C and D no not, or fail to make good on earlier statements of intent, A may place itself at a competitive disadvantage and risks incurring the ire of its domestic fossil fuel producing and dependent sectors. What is more, in the absence of globally

[14] Wade Jacoby & Sophie Meunier, 'Europe and the Management of Globalization' (2010) 17(3) *Journal of European Public Policy*, pp. 299–317.

[15] Jessica F. Green, *Rethinking Private Authority. Agents and Entrepreneurs in Global Environmental Governance* (2014, Princeton University Press), pp. 54–77.

[16] Eyal Benvenisti, 'The Conception of Law as a Legal System' (2008) Tel Aviv University Law School Faculty Papers 83/2008, p. 12.

[17] Manuel Castells, *The Rise of the Network Society: The Information Age*, 2nd edn. (2010, Wiley Blackwell); Lars H. Gulbrandsen, *Transnational Environmental Governance: The Emergence and Effects of the Certification of Forests and Fisheries* (2010, Edward Elgar), p. 7.

[18] See e.g., Rieneke Slager, Jean-Pascal Gond & Jeremy Moon, 'Standardization as Institutional Work: The Regulatory Power of a Responsible Investment Standard' (2012) 33 (5–6) *Organization Studies*, pp. 763–790, at 768, regarding the FTSE4GOOD Responsible Investment standard, which started as a financial index to facilitate measurement of investment behaviour, but evolved into a de facto standard for investment behaviour.

[19] Wiener, 'Global Environmental Regulation', p. 686.

shared mitigation efforts, A's costly and unpopular mitigation efforts will be utterly in vain.[20] The stock answer to the 'state as prisoner' dilemma is international treaty making. In the case of climate change, this resulted in the adoption of world's best-known and, arguably, most influential multilateral environmental agreement (MEA), the 1992 United Nations Framework Convention on Climate Change (UNFCCC).[21] The UNFCCC is an international agreement, but it is also a vivid illustration of how internationalisation and transnationalisation feed off each other.[22] The implementation and day-to-day management of the UNFCCC regime has sparked an explosion in transnational committees, working groups, expert advisers, standing bodies and countless networks that assume an ever-expanding array of facilitating, administrative and (quasi) regulatory functions.[23] Moreover, the UNFCCC is much more than a collection of general climate stabilisation targets, environmental principles and (fairly minimal) commitments to which the member countries have signed up. It is also the world's busiest meeting place for a wealth of public and private actors and networks that seek to share ideas and launch initiatives on particular aspects of the climate change complex. Some of the initiatives that bubble up around the 'coral reef' of the UNFCCC are carried out within the framework of the Convention, but others develop outside the UNFCCC compact. The argument has been made that offering such a coral reef for the germination of thematically linked initiatives is an overlooked but crucial function of contemporary international environmental law.[24]

An alternative account of the relation between inter-state treaty negotiation and the emergence of transnational environmental regulators focuses less on the synergistic and more on the complementary aspects of the relationship. With the possible exception of the Vienna Convention for the Protection of the Ozone Layer,[25] MEAs have not exactly established a reputation as nimble instruments for managing complex environmental problems. Arguably, the 'high politics' format, the rigid infrastructure and the consensus-based model of treaty decision making are

[20] Cf. Aynsley Kellow & Anthony R. Zito, 'Steering through Complexity: EU Environmental Regulation in the International Context' (2002) 50(1) *Political Studies*, pp. 43–60, at 45.

[21] New York (US), 9 May 1992, in force 21 Mar. 1994, available at: http://unfccc.int.

[22] Kal Raustiala, 'The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law' (2002) 43(1) *Virginia Journal of International Law*, pp. 1–92.

[23] Robert O. Keohane & David G. Victor, 'The Regime Complex for Climate Change' (2011) 9(1) *Perspectives on Politics*, pp. 7–23.

[24] Jessica F. Green, 'Order Out of Chaos: Public and Private Rules for Managing Carbon' (2013) 13(2) *Global Environmental Politics*, pp. 1–25, at 15 & 22.

[25] Vienna (Austria), 22 Mar. 1985, in force 22 Sept. 1988, available at: http://ozone.unep.org/en/handbook-vienna-convention-protection-ozone-layer/2205.

anathema to the rapidly evolving nature of global environmental challenges.[26] With regard to climate change, for instance, Liliana Andonova and others observe that

> climate change is characterized by unenviable complexity and the need for policy coordination vertically, horizontally, and across sectors. Unlike many other environmental policies that often focus on one industry or several sets of actors, climate governance has to involve multiple sectors, often with divergent interests and roles. As a result, interests are more likely to be disaggregated around narrowly defined climate-related issues (e.g., adaptation, carbon markets, renewable energy, reporting), which in turn facilitates collective action across borders within specific governance niches.[27]

Climate change has come to represent the epitome of a complex problem which, even if political willingness abounded, cannot be sufficiently governed by any one regime at any level of governance, but instead clamours for a multitude of governance initiatives, unfolding across the private-to-public, local-to-global spectrum.[28] But the case can equally be made for problems ranging from biodiversity depletion to environmental waste control. The inadequacy or perceived failure of national and international regulatory responses spurs a quest for alternative, transnational responses.

A final factor for consideration concerns the relation between risk regulation and transnationalisation. Risk regulation has become the dominant regulatory paradigm for environmental protection, which represents a shift from the previously prevailing model of welfare regulation.[29] Arguably, the pursuit of risk control objectives lends itself better to transnational organisation than the pursuit of welfare. The latter is an explicitly political concept; its meaning is contested and the consequences of attributing a different meaning to what constitutes aggregate welfare, and how it should be achieved, have a direct, visceral impact on the distribution of wealth. Risk, by contrast, is perceived to belong to the world of economics. It presents itself as relatively neutral since risks can be identified according to universalisable criteria; risks are measurable and lend themselves to ranking and rational prioritisation regardless of scale. To be sure, risk's pretensions to objectivity and neutrality have been comprehensively skewered in a torrent of sociological, socio-legal and

[26] Joost Pauwelyn, Ramses A. Wessel & Jan Wouters, 'When Structures Become Shackles: Stagnation and Dynamics in International Lawmaking' (2014) 25(3) *European Journal of International Law*, pp. 733–763, at 734–735.

[27] Liliana Andonova, Michele Betsill & Harriet Bulkeley, 'Transnational Climate Governance' (2009) 9(2) *Global Environmental Politics*, pp. 52–73, at 57–58.

[28] Jacqueline Peel, Lee Godden & Rodney J. Keenan, 'Climate Law in an Era of Multi-Level Governance' (2012) 1(2) *Transnational Environmental Law*, pp. 245–280.

[29] Julia Black, 'The Role of Risk in Regulatory Processes' in Robert Baldwin, Martin Cave & Martin Lodge (eds.), *The Oxford Handbook of Regulation* (2010, Oxford University Press), pp. 302–307; Veerle Heyvaert, 'Governing Climate Change: Towards a New Paradigm for Risk Regulation' (2011) 74(6) *The Modern Law Review*, pp. 817–844, at 822–827.

governance studies,[30] but it is nonetheless a representation that holds sway in governmental, regulatory and also judicial circles. Claims to neutrality and universality, however ill-founded they may be, help to legitimise decision making by actors who would not have the required representational credentials or gravitas to make political decisions. To the extent that risk regulation de-politicises decision making, it enables transnational regulators, whose weak ties to domestic democratic processes and weak representative accountability no longer stand in the way of their ambitions for governance.

In sum, legalisation, globalisation, the prominence of global environmental risks and the consolidation of risk governance as a regulatory objective all play a part in creating an environment conducive to the emergence of TER. Greater awareness of the phenomenon moreover increases the likelihood that a broader range of non-state initiatives are recognised as transnational and regulatory in nature.

The image of TER rising and flourishing across the regulatory landscape is highly evocative, but it is also open to criticism. The framing of environmental regulation as an increasingly transnational phenomenon has an admittedly Eurocentric bent. From a postcolonial perspective, particularly, the emphasis on the transnational raises difficult political questions, as it arguably downplays the importance of national sovereignty just at a time when many former colonies are coming into their own as regulatory states. Compared to European Union (EU) countries, the proportion of, for instance, Indian law that directly interacts with or derives from international or regional law is considerably smaller. Indian lawmakers, policy makers, researchers and practitioners are far more likely to characterise environmental law as a primarily national discipline, and to qualify transnational developments as ancillary to the main event.

Moreover, even in the EU, which represents the most advanced model of environmental regulation beyond the state, national regulation retains a key role in the pursuit of environmental protection goals. Indeed, there is a strong argument to be made that, just as internationalisation and transnationalisation feed off each other, TER is at least as likely to shore up state regulation as to displace it. For example, the Forest Law Enforcement, Governance and Trade Facility (FLEGT) is a transnational initiative for the prevention of illegal logging.[31] The reference to illegality assumes the existence of national and international laws that regulate the harvesting, processing, transporting, buying or selling of timber. The FLEGT Voluntary Partnership Agreements (VPAs) incorporate acceptable logging standards that result from multi-partite negotiations between the Commission, developing countries and stakeholders, but these negotiations happen against the backdrop of domestic and European conceptions of illegality. Indeed, a broad range of TER regimes treat compliance with national environmental regulation as a minimum criterion for

[30] For a succinct overview, see Black, 'The Role of Risk', pp. 309–314.
[31] See also Chapter 2.4.1.