

TRANSNATIONAL SUSTAINABILITY LAWS

Transnational standards related to the environmental and social sustainability of production processes are becoming commonplace governance tools in the global economy. This book demonstrates how sustainability standards serve two fundamentally different functions: coordination and regulation. Standards can coordinate like-minded businesses in an industry by demarcating common sustainability commitments to distinguish between sustainable and unsustainable sectors of the industry. Yet, standards can also regulate businesses, requiring them to change production and trade practices to align with the sustainability demands of third-parties, including trading partners, advocacy groups, consumers, and other civil society constituencies. These two functions reflect the private and public lenses, respectively, through which legal scholars can assess standards as transnational sustainability laws. With key case studies in forestry standards, palm oil standards, and the ISEAL Alliance, this book demonstrates how socio-legal analyses of transnational rulemaking inform debates about global administrative law and the constitutionalization of the global economy.

Phillip Paiement is an assistant professor at Tilburg University and received his doctorate at Tilburg Law School in 2015. He has served as an editorial committee member of the journal *Transnational Legal Theory* since 2014, and as a Board Member of the Dutch Association for Law and Society since 2016. He is also an alumnus of the King's College London Transnational Law Summer Institute and the Harvard Law School's Institute for Global Law and Politics Regional Workshop. In 2015, he cofounded the Translocal Law Collaborative Research Group affiliated with King's College London.

Global Law Series

The series provides unique perspectives on the way globalization is radically altering the study, discipline, and practice of law. Featuring innovative books in this growing field, the series explores those bodies of law which are becoming global in their application, and the newly emerging interdependency and interaction of different legal systems. It covers all major branches of the law and includes work on legal theory, history, and the methodology of legal practice and jurisprudence under conditions of globalization. Offering a major platform on global law, these books provide essential reading for students and scholars of comparative, international and transnational law.

SERIES EDITORS

Morag Godwin
Tilburg University

Randall Lesaffer
Tilburg University

David Nelken
Kings College London

Han Somsen
Tilburg University

BOOKS IN THE SERIES

Intimations of Global Law Neil Walker
Legalized Families in the Era of Bordered Globalization Daphna Hacker

Transnational Sustainability Laws

PHILLIP PAIEMENT

Tilburg University, The Netherlands



Cambridge University Press
 978-1-108-41791-4 — Transnational Sustainability Laws
 Phillip Paiement
 Frontmatter
[More Information](#)

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
 One Liberty Plaza, 20th Floor, New York, NY 10006, USA
 477 Williamstown Road, Port Melbourne, VIC 3207, Australia
 4843/24, 2nd Floor, Ansari Road, Daryaganj, Delhi – 110002, India
 79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org
 Information on this title: www.cambridge.org/9781108417914
 DOI: 10.1017/9781108283694

© Phillip Paiement 2017

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2017

Printed in the United Kingdom by Clays, St Ives plc

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloguing in Publication data

Names: Paiement, Phillip, author.

Title: Transnational sustainability laws / Phillip Paiement.

Description: Cambridge [UK] ; New York : Cambridge University Press, 2017.

Series: Global law series | Includes bibliographical references and index.

Identifiers: LCCN 2017035938 | ISBN 9781108417914 (hardback)

Subjects: LCSH: Sustainable development—Law and legislation. | Environmental law, International. | Palm oil industry—Law and legislation.

Classification: LCC K3585 .P35 2017 | DDC 346.04/6—dc23 LC record available at <https://lccn.loc.gov/2017035938>

ISBN 978-1-108-41791-4 Hardback

ISBN 978-1-108-40599-7 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Contents

<i>List of Figures</i>	<i>page</i>	vii
<i>Acknowledgements</i>		ix
Introduction: A New Genus of Standards		1
1 Between Coordination and Regulation – The Dual Functions of Voluntary Sustainability Standards		20
2 A Socio-legal Analysis of Sustainability Standards		68
3 Governing Public Forests with Private Standards – The Case of the FSC in the Great Lakes Region		90
4 Certifying Global Palm Oil Production – The Case of the Roundtable on Sustainable Palm Oil		131
5 Meta-regulating Sustainability Standards – The Case of the ISEAL Alliance		164
6 The Politics of Transnational Sustainability Laws		201
Conclusion		237
Appendices		247
Bibliography		327
Index		343

Figures

1.1	The development of standard content	59
1.2	Reasons for participation	63
1.3	Effects of compliance	64
1.4	Topics of conflict or controversy	66
2.1	Generic relationship model depicting unit of analysis	70
2.2	Governance relationships in sustainability standard-setting	78
2.3	Template of a corrective action request	86
3.1	FSC International governance structure	94
3.2	The structure of the FSC's standards	97
3.3	Geographic scope of case study	101
4.1	The RSPO's organizational structure	133
4.2	The structure of the RSPO's standards	135
5.1	ISEAL's governance architecture	166

Acknowledgements

As with any book the pages that follow appear to be the sole product of the author, deceptively disconnected from the many discussions, exchanges, and relationships that have really made it possible. This project could only have been accomplished with the help, insight, and feedback of those with whom I have worked, and I would like to take the opportunity to express my utmost gratitude.

To begin with, I am grateful for the funding provided by the NWO and Tilburg Law School that made this research project possible. Along the same lines, I would like to extend my gratitude to many individuals I interviewed over the course of this research project. Without the stories shared by public forest managers in the Great Lakes region, palm oil producers associated with the Roundtable on Sustainable Palm Oil, and personnel from the sustainability standard setting bodies involved with ISEAL Alliance, this project would never have come to life.

I would like to thank my colleagues in the Department of Public Law, Jurisprudence, and Legal History. From my first day in October 2011, I have always felt welcome and I am delighted to have the opportunity to continue working with my colleagues in the future. In addition, I would also like to thank the Legal Philosophy and Environmental Law groups at Tilburg Law School for flouting formal divisions and including me in their discussions. Our seminars have been thought provoking and invaluable in the writing of this thesis. And I would also like to thank Jesse Reynolds, Victoria Daskalova, Marie-Claire Menting, and Ji Li, for many fruitful discussions on regulatory governance that we have shared.

Aside from the research groups with whom I worked closely over the past years, there are a number of other tangential relationships that have made a great impact on the outcome of the project. My teaching experiences have been at times both moments for escape from as well as moments for reflection

on the research project. In both cases, I would like to thank Morag Goodwin, David Janssens, and Gerhard van der Schyff for guiding me in my first foray in education; I have truly appreciated working with three of them. I would also like to thank Nick Piska for arranging my visiting researcher position at Kent Law School; it was a refreshing diversion from my otherwise daily rhythm. Furthermore, I would like to thank Jacco Bomhoff, Stepan Wood, Paul Verbruggen, and Donal Casey for their curiosity and engagement with my research.

Very importantly, I would like to thank my supervisors who have spent innumerable hours reading and discussing this project. In particular, I would like to thank Hans for welcoming me into his research group from day one and unconditionally supporting me in the last year of the project. Thanks to Anne for keeping this project on track and in motion. We have had to persevere through tough times together and I am proud to have been the first of many PhD students under her supervision. Finally, I would like to thank the late Willem Witteveen for his kindness, generosity, and trust in the first year of this project. His loss remains tragic but his spirit thankfully lives on in the work of his many students; I am glad to be included in those ranks.

Lastly, I would like to thank my parents for their never-ending belief and patience with me and my curiosities. My sisters, Renee and Claire, have been so considerate throughout my many years away from home, as well as loving and kind when we are together. Finally, this undertaking would have been impossible without Sacha's love, support, and companionship each day, and I am so thankful to have her in my life.