

**TRANSNATIONAL ENVIRONMENTAL REGULATION
AND GOVERNANCE**

A large and growing proportion of contemporary environmental regulation is transnational, which means that it is impossible to understand environmental governance without a firm grasp of the nature of transnational environmental regulation (TER). In this illuminating work, Veerle Heyvaert offers readers a comprehensive discussion of TER, including international environmental agreements, regional and EU regulation, private environmental regulation and governance networks. She argues that TER is highly diverse but sufficiently cohesive to allow the identification of shared characteristics that establish TER as a model of regulation. The book uncovers the key features of TER and analyses the various intentions of TER regulators, TER's governance principles and compliance strategies, using a newly developed activity-based methodology for regulatory analysis. This book should be read by anyone seeking to understand the strengths and weaknesses of transnational environmental governance and its contribution to sustainability.

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Transnational Environmental Regulation and Governance

PURPOSE, STRATEGIES AND PRINCIPLES

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CAMBRIDGE
UNIVERSITY PRESS

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

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, 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/9781108415743

DOI: 10.1017/9781108235099

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First published 2019

Printed and bound in Great Britain by Clays Ltd, Elcograf S.p.A.

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

Library of Congress Cataloging-in-Publication Data

NAMES: Heyvaert, Veerle, author.

TITLE: Transnational environmental regulation and governance : purpose, strategies and principles / Veerle Heyvaert.

DESCRIPTION: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2018. | Includes bibliographical references and index.

IDENTIFIERS: LCCN 2018022104 | ISBN 9781108415743 (hardback)

SUBJECTS: LCSH: Environmental law, International. | Environmental policy—International cooperation. | International and municipal law—European Union countries.

CLASSIFICATION: LCC K3585 .H497 2018 | DDC 344.04/6—dc23

LC record available at <https://lcn.loc.gov/2018022104>

ISBN 978-1-108-41574-3 Hardback

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.

Cambridge University Press
978-1-108-41574-3 — Transnational Environmental Regulation and Governance
Veerle Heyvaert
Frontmatter
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To Ghislaine, Fons & Carla

Contents

<i>Preface</i>	<i>page</i> xi
<i>List of Abbreviations</i>	xiii
1 The Transformation of Environmental Regulation	1
1.1 The Quest for the Identity of Transnational Environmental Regulation	1
1.2 Drivers of Transnational Environmental Regulation	4
1.3 An Introduction to TER: The Case of Chemicals Control	12
1.4 Explanation of the Chosen Approach	17
1.5 The Transformation of Environmental Regulation: An Overview	21
2 The Concept of Transnational Environmental Regulation	25
2.1 Law and Regulation	25
2.2 When Are Law and Regulation Transnational?	28
2.3 Regulation in an Era of Transnational Governance	31
2.4 Five Continents of TER	37
2.4.1 Public TER	39
2.4.2 Private TER	43
2.4.3 Hybrid TER	47
2.5 Towards a Model of Transnational Environmental Regulation	49
3 Why Regulate beyond the State?	50
3.1 Why Regulate?	51
3.2 Why Regulate Transnationally?	53
3.3 The Intentions of Transnational Environmental Regulators	55
3.3.1 Overcoming Governance Challenges of National Environmental Regulation	55
3.3.2 Trade Facilitation	63
3.3.3 Addressing the State’s Failure to Regulate	70

3.3.4	Risk Management	77
3.3.5	Enhancing the Effectiveness of Environmental Regulation and Governance	82
3.4	Learning from the Regulator's Intentions	88
4	Strategies for Environmental Regulation: The Recursive Activities of Regulation	90
4.1	The Transformation of Environmental Regulatory Strategies	91
4.1.1	The Transformation of Regulatory Strategies: Development of the Standard Account	92
4.1.2	The Standard Account and Its Consequences	96
4.2	An Activity-Based Model of Regulatory Strategy	100
4.3	The Recursive Activities of Regulation	105
4.3.1	Defining Regulatory Goals	105
4.3.2	Normalisation	106
4.3.3	Engagement: Communication, Bonding and Facilitation	110
4.3.4	Learning	112
4.3.5	Response	115
4.4	The Standard Account Retold	118
4.5	The Strengths of the Activity-Based Model of Regulation	120
5	The Activity-Based Model for TER Strategies Illustrated in Five Easy Pieces	124
5.1	The Paris Agreement	126
5.1.1	Goal Setting	126
5.1.2	Normalisation	127
5.1.3	Engagement	130
5.1.4	Learning	131
5.1.5	Response	132
5.2	The Fuel Quality Directive	134
5.2.1	Goal Setting	134
5.2.2	Normalisation	135
5.2.3	Engagement	137
5.2.4	Learning	140
5.2.5	Response	141
5.3	The Carbon Neutral Protocol	143
5.3.1	Goal Setting	143
5.3.2	Normalisation	143
5.3.3	Engagement	145
5.3.4	Learning	147
5.3.5	Response	148

5.4 The Compact of Mayors/Global Covenant of Mayors for Climate and Energy	148
5.4.1 Goal Setting	149
5.4.2 Normalisation	149
5.4.3 Engagement	150
5.4.4 Learning	151
5.4.5 Response	151
5.5 The Regional Greenhouse Gas Initiative	152
5.5.1 Goal Setting	154
5.5.2 Normalisation	154
5.5.3 Engagement	156
5.5.4 Learning	157
5.5.5 Response	158
5.6 Concluding Remarks	158
6 The Transformation of Environmental Regulatory Strategies	160
6.1 Transnational Environmental Networks of Regulation	161
6.2 The Complexity of Transnational Environmental Regulation	163
6.2.1 Rules, Standards, Allowances and Prices in TER	164
6.2.2 Engagement Strategies	166
6.2.3 Learning and Response in TER	169
6.3 Revisiting Assumptions about Environmental Regulation in the Light of Regulatory Complexity	171
6.4 Rethinking Compliance and Deterrence in the Transnational Sphere	175
6.5 Concluding Remarks	180
7 Transnational Environmental Regulation and the Challenge to Law	182
7.1 TER and the Challenge to Law Illustrated	183
7.2 Mapping the Impacts of Transnational Environmental Regulation on the Conventional Attributes of Law	185
7.2.1 Location: Transnational Environmental Regulation and the ‘End of Geography’	185
7.2.2 Source: Transnational Environmental Regulation and the Triple Challenge to the State	189
7.2.3 Organisation: Transnational Environmental Regulation and the Dissolution of Disciplinary Divides	191
7.2.4 Function: Transnational Environmental Regulation and the Enhanced Reflexivity of Law	194
7.2.5 Structure: Transnational Environmental Regulation and Regime Polycentricity	197

7.3	Responding to Transnationalisation: Reclaiming, Reconstructing or Reconceptualising Law	198
7.3.1	Conservative and Defensive: Reclaiming Law	198
7.3.2	Conservative and Adaptive: Reconstructing Law	202
7.3.3	Creative and Adaptive: Reconceptualising Law	206
7.4	Concluding Remarks	213
8	Legal Principles for Transnational Environmental Regulation	215
8.1	The Challenges of Identifying Principles for TER	216
8.2	TER Principles: A Deductive Approach	220
8.2.1	International Environmental Law	221
8.2.2	Human Rights	223
8.2.3	Public Institutional Law: Constitutional Law, Administrative Law and International Public Law	226
8.3	TER Principles: An Inductive Approach	233
8.3.1	General Characteristics	233
8.3.2	Key TER Principles	238
8.4	A Managerial Turn in TER Governance	249
9	Environmental Regulation Transformed	252
9.1	The Identity of Transnational Environmental Regulation	252
9.2	TER and State Regulation	254
9.3	The Transformative Impact of TER: Reflections on Authority	258
9.4	The Transformative Impact of TER: Reflections on Legitimacy	260
9.5	The Transformative Impact of TER: Reflections on Effectiveness	264
9.6	Closing Remarks	266
	<i>Bibliography</i>	267
	<i>Index</i>	287

Preface

The study of environmental law and regulation is a rewarding but emotionally draining enterprise. The more we learn about the range, scale and intensity of environmental threats facing the planet, about the vulnerability of political processes to pressure from special interest groups eyeing short-term profits for an already grotesquely moneyed elite, about the difficulty and slowness of regulatory reform, and about the countless obstructions standing in the way of effective implementation and enforcement, the more environmental law and regulation resemble a battle-worn, exhausted David, facing an ever-regenerating Goliath with only a frayed catapult and no promise of divine intervention. Recent developments, including the election of a US President who is overtly hostile to environmental regulation and, in the European sphere, the potentially disruptive impact of Brexit on both UK and European Union environmental law and policy, do little to alleviate concerns that the coming years will be at least as challenging as the past.

It goes without saying that the environmental problems of the third millennium massively outstrip any individual's – or any institution's – capacity for problem solving. However, this does not relieve us from the responsibility of trying to make a small contribution, however incomplete and imperfect. This book is my attempt. It seeks to contribute to the prospect of better environmental governance by strengthening our understanding of transnational environmental regulation, which occupies an increasingly large space in the regulatory landscape. Better informed insights into why transnational environmental regulation happens, how it works, and how it is disciplined, support critical thinking and may ultimately help us formulate responses to transnational environmental regulation that harness its potential for good and mitigate its vulnerabilities.

This book has benefited from the support of many colleagues and peers, who have been generous with their feedback on draft chapters, presentations, and scores of half-formed ideas. To avoid inadvertent omissions, I am taking the easy way out with a blanket statement: I am deeply grateful to you all. I do want to single out a few

people who have been especially important to me in writing this manuscript: Jonathan Golub, for supporting this work and supporting me, always and unconditionally; Thijs Etty, for shouldering the lion's share of *Transnational Environmental Law* editorial work during the last crucial months of readying the book for submission; Robert Baldwin, for giving stacks of constructive feedback and safeguarding me from 'dead words'; Joana Setzer, for her dedicated guardianship of my 'Law and the Environment' course which freed up invaluable writing time; Jacob and Lia Rose Golub, for putting up with (and only occasionally taking advantage of) epic levels of distraction and Sroyon Mukherjee, for swift and effective research assistance. Last but not least, I owe a special debt of gratitude to my wonderful students, past and present, at the London School of Economics and Political Science. Their intellectual curiosity, enthusiasm and desire to contribute to a better world are a powerful source of inspiration and hope.

Abbreviations

ACCCRN	Asian Cities Climate Change Resilience Network
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
CAC	Codex Alimentarius Commission
CBD	Convention on Biological Diversity
CCR	Cost Containment Reserve
CCRF	Code of Conduct for Responsible Fisheries
CDM	Clean Development Mechanism
CDM EB	CDM Executive Board
CDP	Carbon Disclosure Project
CEN	European Committee for Standardization
CENELEC	European Committee for Electrotechnical Standardization
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CJEU	Courts of Justice of the European Union
CLRTAP	Convention on Long-Range Transboundary Air Pollution
CNP	Carbon Neutral Protocol
COATS	CO ₂ Allowance Tracking System
COMO	Covenant of Mayors Office
COP	Conference of the Parties
CSR	Corporate Social Responsibility
CSSD	Centre for Sustainable Shale Development
DECC	UK Department of Energy and Climate Change
DNA	Designated National Authority
DOE	Designated Operational Entity
DVGW	Deutsche Vereinigung des Gas- und Wasserfaches eV
EC	European Community
ECHA	European Chemicals Agency

ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEC	European Economic Community
EMA	European Medicines Agency
EMAS	Eco-management and Audit Scheme
EP	Equator Principles
EPA	Environmental Protection Agency
EPFI	Equator Principles Financial Institutions
ERA	early reduction allowance
ESM	environmentally sound management
EU	European Union
EU ETD	EU Emissions Trading Directive
EU ETS	EU Emissions Trading System
EWG	Environmental Working Group
FAO	Food and Agriculture Organisation
FLEGT	Forest Law Enforcement, Governance and Trade Facility
FQD	Fuel Quality Directive
FSA	Fish Stocks Agreement
FSC	Forest Stewardship Council
GAL	global administrative law
GHG	greenhouse gas
GHS	Globally Harmonised System of Classification and Labelling of Chemicals
GSTC	Global Sustainable Tourism Council
IAHTS	International Agreement on Humane Trapping Standards
ICANN	Internet Corporation for Assigned Names and Numbers
ICCA	International Council of Chemicals Associations
ICGN	International Corporate Governance Network
ICLEI	Local Governments for Sustainability
IFOAM	International Federation of Organic Agricultural Movements
IGO	intergovernmental organisation
ILO	International Labour Organisation
IMO	International Maritime Organisation
IMPEL	EU Network for the Implementation and Enforcement of Environmental Law
IOC	Inter-American Convention for the Protection and Conservation of Sea Turtles
IOMC	Inter-Organisational Programme for the Sound Management of Chemicals
IOTC	Indian Ocean Tuna Committee
IPCC	Intergovernmental Panel on Climate Change
IRMA	Initiative for Responsible Mining Assurance

Abbreviations

xv

ISEAL	International Social and Environmental Accreditation and Labelling
ISO	International Organisation for Standardisation
LDC	least developed country
MARPOL	International Convention for the Prevention of Pollution from Ships
MEA	multilateral environmental agreement
MNE	multinational enterprise
MSC	Marine Stewardship Council
MSPEA	Maldives Seafood Processors and Exporters Association
NDC	Nationally Determined Contribution
NGO	non-governmental organisation
NSMD	non-state market-driven
OECD	Organisation of Economic Cooperation and Development
PA	Paris Agreement
PEFC	Programme for the Endorsement of Forest Certification
POP	persistent organic pollutant
PPMs	process and production methods
REDD	Reductions in Environmental Deforestation and Forest Degradation
RFMO	regional fisheries management organisation
RGGI	Regional Greenhouse Gas Initiative
RSPO	Roundtable on Sustainable Palm Oil
SADC	Southern African Development Community
SBT Convention	Southern Bluefin Tuna Convention
SEAP	Sustainable Energy Action Plan
SFI	Sustainable Forestry Initiative
SIDS	small island developing states
SIEF	Substance Information Exchange Forum
SRI	Socially Responsible Investment
TAC	total allowable catch
TED	turtle exclusion device
TER	transnational environmental regulation
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund

UNITAR	United Nations Training and Research Program
US	United States
VPA	Voluntary Partnership Agreement
WCI	Western Climate Initiative
WHO	World Health Organisation
WTO	World Trade Organization