



# Transnational Voluntary Standards' Role in Global Governance

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## At a Glance

Transnational voluntary standards, as a form of legal pluralism in global governance, are gaining increasing recognition for their ability to bridge the regulatory gaps between domestic and international law. This article provides an introductory exploration of the contextual and theoretical foundations underpinning the rise of standards as instruments of global governance. It critically examines their necessity in promoting international regulatory coherence, the challenges posed by their non-binding and voluntary nature, and the principal legal and institutional obstacles they encounter as regulatory frameworks. Through this analysis, I provide a brief of the efficacy and limitations of standards in addressing contemporary legal and governance challenges.

*Keywords: Transnational voluntary standard, Global governance, Legitimacy, Accountability*

## Introduction

This article is structured into three principal sections. The first section offers a comprehensive introduction to transnational voluntary standards, conceptualising them as mechanisms of global governance and elucidating their roles in regulating transnational activities. The second section engages with critical discourses surrounding the legitimacy and accountability of standards, addressing the significant challenges these issues pose to their recognition as instruments of global governance or components of transnational law. Finally, a conclusion is drawn after summarising the findings and further research directions identified.

## What are Transnational Voluntary Standards?

To delineate the concept of “transnational voluntary standard”, it is crucial to unpack its linguistic and conceptual attributes from the subject. This involves distinguishing between its

components: “transnational” signifies a scope transcending national boundaries, differing from “domestic” and “international”; “voluntary” denotes a non-coercive framework, contrasting with binding obligations imposed by state authority, and “standards” broadly align with regulatory norms but lack the enforceability characteristic of formal laws. As such, transnational voluntary standards exist in a distinct regulatory space: neither as domestic nor international legal instruments but as non-binding frameworks shaped by non-governmental actors and operating across borders. If their voluntary nature was to be replaced with enforceability, these standards would instead become domestic or international legal instruments.

More precisely, transnational voluntary standards are norms developed outside the ambit of state authority, typically by industry groups, non-governmental organisations (NGOs), or multi-stakeholder bodies, and applied to participants in cross-border contexts. These standards often emerge in the form of sector-specific industrial rules, providing companies with the option to join based on anticipated benefits. They commonly incorporate mechanisms for membership entry, withdrawal, and self-enforcement, with participants playing an active role in compliance and enforcement processes.

Legal scholar Kenneth Abbott identifies voluntary standards by NGOs, corporate self-regulation, and multi-stakeholder organisations as modern forms of transnational regulation, creating and overseeing codes of conduct for members and non-members alike.<sup>1</sup> This framework captures the essence of transnational voluntary standards, particularly in the environmental domain. Transnational environmental standards, promoted by non-governmental entities, exemplify this model by fostering industry-driven adoption of voluntary commitments to environmental stewardship.

The distinctiveness of transnational voluntary standards lies in their non-coercive nature, reliance on private governance mechanisms, and ability to transcend jurisdictional boundaries. Their emergence reflects the evolving role of non-state actors in global governance, filling regulatory gaps where state authority is limited or ineffective. These standards, especially in environmental governance, underscore the growing interplay between voluntary compliance, private rule-making, and international regulatory frameworks, marking a significant shift from traditional state-centric approaches to private regulation.

## Why Transnational Standards?

Transnational standards, as products of globalisation, address regulatory gaps that arise from the limitations of traditional domestic and international legal frameworks. These standards function as governance mechanisms bridging regulatory lacunae, particularly in areas like environmental protection, where municipal and international laws often fall short.<sup>2</sup> For example, organisations such as the International Organization for Standardization (ISO) promulgate voluntary standards in diverse fields, including environmental practices, labour conditions, and product quality. Environmental challenges, such as global warming and transboundary pollution, exemplify the inadequacy of unilateral domestic regulation or consensus-driven interna-

tional treaties, such as the Paris Agreement, which often lack enforceable compliance mechanisms.

Voluntary transnational standards possess distinctive characteristics that contribute to their efficacy as regulatory tools. They exhibit plurality, allowing multiple frameworks within a specific regulatory domain; specialisation, offering industry-specific solutions grounded in expertise; and persuasiveness, functioning through voluntary adoption rather than state-backed coercion. Sociology scholars like Meyer conceptualise such standards as “best-practice models” embodying globalisation’s transformative impact on regulation.<sup>3</sup> Economist Brunsson highlights their ability to persuade stakeholders through consensus and voluntary engagement, contrasting with the directive nature of binding laws.<sup>4</sup>

These standards hold comparative advantages over traditional legal instruments. Adaptability enables them to function across borders, accommodating the interdependence of globalised markets. Acceptability derives from their voluntary nature, which respects state sovereignty by providing flexible mechanisms for participation and withdrawal. Flexibility reduces the likelihood of deadlocks, as their decentralised and non-binding structure allows diverse forums to address regulatory challenges.

A prominent example of voluntary standards influencing binding regulation is the “California effect.”<sup>5</sup> Under the 1970 *Clean Air Act Amendments*, California enacted stricter vehicle emissions standards than those federally mandated, exercising its unique authority to do so. Over time, these higher standards became benchmarks, prompting Congress in 1990 to align national emissions regulations with California’s while allowing other states to adopt its stricter framework. By 1994, several eastern states followed California’s lead, reinforcing its role as a regulatory pioneer. Automakers, motivated by the economic importance of the Californian market, adapted their production to meet these standards, which subsequently influenced national policy and fostered stricter emissions control across the US.

This example demonstrates the dynamic regulatory effect of voluntary standards. Jurisdictions with rigorous standards compel producers from less-regulated regions to align their practices for market access, incentivising investment in compliance and innovation. Over time, these producers, having made significant investments, may advocate for stricter standards in their domestic markets, leveraging compliance as a competitive advantage. Voluntary transnational standards thus emerge not only as pragmatic responses to regulatory gaps but also as catalysts for harmonisation and the evolution of legal norms across jurisdictions. This underscores their growing significance within the landscape of global governance and legal pluralism.

## Obstacles to Legitimacy and Accountability

The non-binding nature of transnational voluntary standards poses significant challenges to their legitimacy and accountability, which are fundamental principles underpinning traditional legal and regulatory frameworks. These principles ensure predictability, justice, and coherence in governance. Legitimacy, broadly, refers to the justification and acceptance of rules or stan-

dards by stakeholders, granting the right to govern. Authority/accountability, on the other hand, is the recognised power to enforce these rules, often derived from their legitimacy. Together, they form the backbone of both domestic and international legal systems, which rely on state apparatus and treaty-based frameworks for validation.

Transnational voluntary standards, however, deviate from these paradigms. They lack the formal backing of state sovereignty or international treaty obligations and instead operate through non-governmental mechanisms, driven by multi-stakeholder initiatives, industry consensus, and voluntary adherence. This raises critical questions: How can such standards claim legitimacy and accountability in the absence of state support or treaty-based authority?

From a legal positivist standpoint, laws are authoritative and binding when they derive legitimacy through recognised norms and democratic processes. This view emphasises the procedural and substantive dimensions of legitimacy and authority. Substantive legitimacy hinges on the moral or ethical justification of standards, ensuring they align with stakeholders' values and interests. Procedural legitimacy, meanwhile, depends on the transparency, inclusivity, and fairness of the processes by which standards are developed and enforced.

Legal scholar Fowler explores extending domestic environmental standards abroad, emphasising the challenge of balancing these practices with foreign sovereignty. He proposes that context-specific, limited applications can uphold legitimacy while respecting international norms.<sup>6</sup> In the realm of voluntary transnational standards, legitimacy often emerges through stakeholder acceptance and the perceived alignment of standards with best practices, ethical norms, and industry needs. Accountability, on the other hand, is achieved through mechanisms like independent auditing, certification processes, and transparent reporting, which substitute for state enforcement mechanisms. For instance, CertifHy, a voluntary green hydrogen certification in the EU, functions as a transnational environmental standard that, despite its non-binding nature, may attain quasi-legal status by fostering compliance through market incentives, reputational concerns, and the prospect of harmonising practices globally.

Whether such standards qualify as transnational environmental law remains debated, but the principles of legitimacy and accountability are indispensable for evaluating their role in governance. Applying these principles allows scrutiny of their substantive justice (ethical and practical justification) and procedural justice (fairness and inclusivity in development and enforcement), ensuring they contribute meaningfully to global regulatory frameworks.

### *Legitimacy*

The normative legitimacy of global institutions cannot simply replicate the extent of domestic bureaucratic accountability, since they possess distinct normative constructions. Legitimacy is originally based on moral law which legal philosopher, Allen Buchanan argues that moral reasons provide a more enduring foundation for legitimacy compared to coercive mechanisms or self-interest motivations. Self-interest is subject to change, and coercive mechanisms often lack sustained credibility, whereas moral reasons are comparatively stable and lasting. He further

contends that equating legitimacy with perfect justice is both impractical and counterproductive. First, the inherent disagreements over the definition of justice make it nearly impossible to garner coordinated support for institutions if legitimacy is contingent on meeting a singular, contested standard of justice. Second, even if consensus on justice were achievable, withholding support from imperfect institutions would impede progress toward justice, as effective institutions are necessary for achieving and sustaining justice over time.<sup>7</sup> Hence, legitimacy should prioritise enabling coordinated support and gradual improvement over demanding perfection.

This infers that the legitimacy of standards set by global governance institutions depends on how far their goals and accountability mechanisms are exposed to informed, ethical, and ongoing public scrutiny. In other words, their legitimacy is rooted in active, principled engagement and critique by stakeholders, not in unquestioned acceptance. Alternative conceptions of legitimacy should incorporate elements of domestic democratic models, addressing challenges such as bureaucratic discretion and the tendency of democratic states to disregard the legitimate interests of foreign stakeholders.

However, as global governance continues to thrive, these critiques often fail to recognise that the world is increasingly interconnected and interdependent, forming a collective entity of shared interests. Modern democracies themselves rely significantly on the effective functioning of transnational institutions. For example, transnational organisations play a critical role in addressing issues that transcend national borders, such as climate change, international trade, human rights, and challenges that individual nation-states are often ill-equipped to tackle alone. Based on this, modern democracies operate within a global context where their actions inevitably influence, and are influenced by, other nations and their populations.

### *Accountability*

Transparency is often presented as essential for addressing accountability concerns in global governance. However, transparency alone is insufficient. First, for narrow accountability ensuring accurate evaluation within current frameworks to be effective, Buchanan and Keohane held the view that information about institutional operations must be (a) reasonably accessible, (b) well-integrated and interpreted, (c) directed to accountability holders, and (d) utilised effectively by motivated accountability holders.<sup>7</sup> Second, legitimacy also requires the capacity to critique and revise accountability terms, necessitating that information be accessible not only to current accountability holders but also to potential challengers of those terms.

Standards usually consist of three key players: standard setter, standard user, standard regulator. They are usually independent of each other to avoid a conflict of interest. This structure is similar to the separation of powers in some governments, which are broken into legislative, executive and judicial branches. Further, this structure clearly defines standards for performance, encourages industry experts to set those standards, provides access to information that allows evaluation against those standards, and grants the authority to impose sanctions for noncompliance. By maintaining this tripartite structure, standards can enhance both legitimacy and

accountability.

Although standards typically have a tripartite structure, the main obstacle to their accountability rests on standard-setters' attempts to immunise themselves from being held accountable for potential defects. First, the standard is voluntary, which means it is selected by users from paralleled standards. Second, setters might only focus on technocratic issues without any other considerations may have an obstruction on decision-makings. Finally, the standard setting can be often decoupled from its enforcement procedure. This is often employed by the standard setter to exempt them from accountability errors. Besides, this kind of separation, brings the independence of the 'legislator' and the 'administrator'. This separation often enhances the binding nature of standards while shielding standard setters from accountability.<sup>8</sup>

## Conclusion

Standards, as a form of legal pluralism in global governance, are gaining increasing recognition for their ability to bridge the gaps between domestic and international law, particularly in areas that are under-regulated or difficult to address through traditional legal frameworks. These standards have limits but they also offer advantages over conventional international and domestic law in certain contexts, due to their quick responsiveness, flexibility in entry and exit, pluralistic approach to choices, and specialised expertise in narrow fields. While some scholarly debates suggest that these standards could qualify as a form of transnational environmental law, there are still challenges related to their legitimacy and accountability. Although some suggestions have been made to address these obstacles, they do not go far enough and remain fragmented. Despite such challenges, the recognition of standards as a form of transnational law remains a work in progress. A more rigorous ontological analysis will be necessary to fully understand their potential and to resolve ongoing issues.

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## *Declaration of Interests*

Nothing to declare.

## Author Bio

XIONG Yiyang is a first-year PhD in law student at the law school, University College Cork. His PhD research tries to develop an ontological analysis of transnational law, examining the fundamental nature of transnational law and synthesising its relationship with other laws. Besides transnational law, his research interests include environmental law, energy law, global governance, and philosophy.

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