

Should Environmental ISOs Become Legally Binding for the International Community?

By Ella Irwin

This blog dives into the question of what International Organisation for Standardisation guidelines (ISO Standards) are, how they fit into international law disciplines, and whether incorporating environmental ISO Standards into treaties — such as the Paris Agreement — would be beneficial. A quick overview of some arguments both for and against the implementation of ISO Standards into new areas of international law is presented as a brief exploration into this nuanced topic.

Keywords:

ISO Standards, International Trade Law, International Environmental Law, Soft Law Instruments, Soft Law, International Law, Paris Agreement

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Introduction

International organisations and corporations are vast and complex processes involving ample parties collaborating to achieve desired outcomes. However, as many are aware, there is no global government or overarching international hierarchy governing international affairs, organisations, or standards without the express consent given by sovereign States. In this context, there are many soft law-like instruments, such as the International Organisation for Standardisation guidelines, which try to implement international standards and rules for the international community. However, consent-based ascension to being legally bound to such obligations is the way the international community currently works, making such international soft law instruments somewhat ineffective. This blog examines what ISO Standards are and explores the debate of whether they should become legally binding for the international community or not.

What Are ISO Standards and How Do They Relate to International Law?

ISO Standards are internationally recognised rules of conduct in various areas.¹ They are created by independent bodies of experts from different fields, such as manufacturers, trade associations, and regulators,² and allow for a collaboration of pooled experience and competence to determine the most effective practices, taking safety measures and efficiency into account, while carrying out tasks and processes.³ Such ISO Standards function as international sets of guidelines to result in safer, more consistent end results⁴ for mutual benefit of both corporations and customers.

Currently, there are over 24,000 ISO Standards worldwide⁵. Therefore, essentially ISO Standards are guidelines for the best ways of doing things for organisations, whether it is about making products, managing processes, supplying materials or anything within an extensive range of activities.⁶

For instance, ISO 14000 provides advice to companies and organisations while managing their environmental responsibilities by providing strategic approaches to such issues. The best-known standard within the ISO 14000 family is ISO 14001 which sets out the criteria for an environmental management system (EMS).⁷

ISO standards have not yet made big appearances in many international law treaties. However, ISO 14001 has appeared in the WTO Agreement on Technical Barriers to Trade (TBT Agreement). Under Articles 2.4 and 2.5 the WTO TBT Agreement encourages the use of these guidelines for all 166 parties⁸ of the treaty to set environmental regulations and to be used as justifications for environmental protection. As such, ISO Standards in these contexts can then serve as international benchmarks and as dispute settlement standards in cases of

¹ Foulis D, 'What Are ISO Standards?' (*Ideagen*, 2021) <<https://www.ideagen.com/thought-leadership/blog/what-are-iso-standards#:~:text=ISO%20is%20an%20abbreviation%20of,are%20experts%20in%20different%20areas>> accessed 11 March 2025

² 'Standards' (*ISO*, 24 January 2024) <<https://www.iso.org/standards.html>> accessed 11 March 2025

³ Foulis D, 'What Are ISO Standards?'

⁴ Foulis D, 'What Are ISO Standards?'

⁵ Foulis D, 'What Are ISO Standards?'

⁶ 'Standards' (*ISO*, 24 January 2024) <<https://www.iso.org/standards.html>> accessed 11 March 2025

⁷ 'ISO 14000 Family - Environmental Management' (*ISO*, 16 February 2024) <<https://www.iso.org/standards/popular/iso-14000-family>> accessed 11 March 2025

⁸ 'WTO Members and Observers' (*World Trade Organisation*, 2024) <https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm> accessed 11 March 2025

international standard disagreements between States.⁹

Legal Status of ISO Standards in International Law

As globalisation accelerated, ISO Standards started to gain a broader scope, such as in international law, human rights law, environmental law, and labour law.¹⁰ However, officially ISO Standards are not recognised as international law, as the three traditional sources of international law are international treaties, customary international law, and general principles of international law as laid out in the ICJ Statute Art. 38.¹¹ Therefore, ISO Standards do not make up hard law, but their relationship to soft law is also nuanced. ISO Standards share similarities with other soft law sources as they are non-binding legal agreements, and they emerge from non-state actors and hybrid organisations.¹²

However, ISO Standards differ from soft law due to their enforcement mechanisms, which prevent them from being entirely voluntary, such the WTO Dispute Resolution Mechanisms System.

Also, ISO Standards use precise legal language leaving little room for individual State interpretation.¹³ Additionally, ISO Standards are adopted by both producers but also States when it comes to international trade law for the assurance that products and standards are complied with — illustrating its nuanced scope of application which is also different from pure international law which targets only to States.

Arguments For Making ISOs Binding

As there has been a start of incorporating ISO Standards into international treaties within international trade law, the question arises whether the same should happen within international climate change law. Adding ISO Standards into international treaties on the environment, such as the Paris Agreement, would allow for global practices in sustainability and expected behavioural changes in line with climate change to be better regulated and predictable. Compliance with ISO standards would provide increased transparency for all States under the Paris Agreement as its detailed guidelines set out clear goals and achievements for

⁹ ‘World Trade Organisation’ (*WTO*, 2024) <https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm> accessed 11 March 2025

¹⁰ *International Standards as Part of International Law* (Cambridge University Press, online) <https://doi.org/10.1017/9781108591348.003> accessed 11 March 2025

¹¹ Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 33 UNTS 993

¹² *International Standards as Part of International Law*

¹³ *International Standards as Part of International Law*

specific processes. For instance, ISO 14064-2¹⁴ for greenhouse gas emission reductions or removal enhancements is directly applicable to Article 6 Paris Agreement Carbon crediting mechanisms.¹⁵ Effectively integrating ISO standards into international law treaties could make expectations and behaviour more predictable and enforceable.

Arguments Against Making ISOs Binding

Nevertheless, there are also evident counterarguments towards making ISO standards legally binding. Firstly, when it comes to climate change law, many international treaties like the Paris Agreement have adopted a facilitative model rather than an enforcement model. This leaves member states much more room and freedom to achieve their goals with fewer sanctions for breaching a rule or failing to meet an obligation. The impact this has is that more States are willing to ratify the treaty to begin with. This results in a slow but steady movement

towards implementation of actions and obligation of the treaty towards solving climate change issues. So, if ISO Standards with more strict and specific guidelines were implemented into international law this may result in some states withdrawing their consent from crucial environmental treaties like the Paris Agreement. Thus, increased legal regulation could reduce State consent and participation in international environmental treaties if they become too restrictive.

Conclusion

Thus, to conclude, ISO Standards are a vast concept prevalent in some international legal fields like international trade law. They could provide transparency benefits for expanding legal sectors like international climate change law, however not without drawbacks. Whether or not ISO Standards ever develop further into other areas of international law will be dependent upon States.

¹⁴ International Organisation for Standardisation, *ISO 26000:2010 Guidance on Social Responsibility* (ISO 2010) <https://www.iso.org/standard/66454.html> accessed March 11 2025

¹⁵ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTC No. 54113, art 6(4).

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