



The Emergence of Sustainability Norms in Supply Chain Laws Affecting International Trade

- Atharv Joshi (Batch of 2021)

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Like in any given period in history, the world currently faces several problems. The biggest being the climate change crisis, human rights abuses, wars, and fractures in the geopolitical landscape. Do international trade and the law governing it play a role in mitigating problems of environmental degradation or human rights abuses?

From the perspective of international trade law, as codified in various regional trade agreements and the agreements of the World Trade Organization, the answer is ambiguous. Under WTO law, agreements governing trade in goods and services provide conditional exceptions to protect public health, morals and the environment. In RTAs, most environment-related provisions are

limited to the preambular recitals of the treaty or in a specific provision laying down exceptions to pursue domestic environmental law policies. Neither WTO's law nor RTAs provide specific binding obligations on preventing human rights abuses in the course of trade.

But it seems that legislators across the world think that trade does play a role. Developed countries such as France, Germany, the UK, Canada, Norway, European Union, Japan, and others have passed laws which incorporate social and environmental due diligence in the supply chains of corporations operating in their territories. Based on two OECD and UN documents, these laws mandate covered corporations to ensure that their supply chains do not harm the environment or violate human rights. Companies must ensure that in the course of their business, they do not incentivize such harm by sourcing the goods or their components from those who perpetrate such abuses. Companies must explain if such violations exist in their supply chains and, if so, what steps they have taken to mitigate them. Failing to do so can attract heavy

News at a Glance

Canada launched an inquiry into allegations over the use of the Chinese minority Uyghur forced labor in Nike and Dynasty Gold production lines. While the initial evaluation stipulates that Nike has not engaged in the direct utilization of such labor, Nike's association with Chinese third-party entities does not absolve it of accountability. For more information, see [here](#).

The European Court of Human Rights (ECtHR) found that International Olympic Committee (IOC) rules that force female athletes to suppress their testosterone levels are discriminatory. Notably, the court's decision does not impose an obligation to revoke the IOC rules. As a result, participants may still be barred from participating unless they undergo suppression treatment. For more information, see [here](#).



finer or even criminal charges.

Take, for example, the Uyghur Forced Labor Prevention Act in the USA. Under this law, goods coming from the Xinjiang province of China into the USA are presumed to have been made with forced labor, and the importer of such goods has to prove the presumption wrong, or the goods won't be allowed into the country. The much-discussed CBAM puts a price on certain imported goods from outside the EU having direct/indirect carbon emissions embedded in them to equalize the carbon levy that EU manufacturers have to pay.

Traditionally, only states were responsible for protecting the public against social or environmental harm. The public will, enacted through the legislature, prefers "clean" over "dirty" goods. Corporations will have to make a decision between sourcing components from countries which have questionable labor and environmental standards but provide them cheaply and cleaning up their supply chains by changing their sourcing decisions to relatively "cleaner" places. Those who manage to do it will enjoy an edge in the developed country

markets. Exports from developing countries into these markets may face market competitiveness problems. The inclusion of corporations in this endeavour represents a new turn in international economic governance, and its effect on international trade is anyone's guess.

The International Law Commission Makes Law: Time for a Reality Check!

- Bhargav Bhamidipati (Batch of 2022)

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The role of the ILC is to codify and progressively develop international law. Its role is considered one under the oversight of the Sixth Committee of the General Assembly. One would assume that the role entails codification of existing rules and progressively developing it where existing rules are unclear. The Statute itself defines progressive development to mean preparation of draft conventions on unregulated areas of law.

News at a Glance

The conflict in Sudan has sparked a health crisis for the 3.4 million people forced to flee to safety, whether within the country or across its borders, according to the World Health Organization (WHO). Cases of infectious diseases and other illness have been reported among displaced populations who have sought shelter in hard-to-reach locations, where health services are limited. For more information, see [here](#).

Five prisoners were executed in Kuwait and two in Singapore this week, including the first Singaporean woman to be executed in nearly 20 years, prompting the UN human rights office (OHCHR) to issue a renewed condemnation of the death penalty, urging all Member States to end its use. "We deplore the multiple executions carried out this week in Kuwait and Singapore and oppose the death penalty under all circumstances," said OHCHR Spokesperson Seif Magango. For more information, see [here](#).



But as one member put it at the 74th Session, the ILC is to codify, progressively develop, and promote further progressive development of the law. In areas unaddressed and with a view to draft a convention, such an approach may make sense. For example, the recent work that has begun on a draft convention on piracy and armed robbery at sea. But in the last few years, the commission has seen a hasty approach to adopting draft “conclusions” to give clarity to existing rules of law. In doing so, one would expect a strict approach to the conclusions relying on State practice. The Commission has gone far in reading into the law, especially on defining customs, general principles of law, and subsidiary means of determination of law.

The Commission in its conclusions on identification of customs posits that practice of international organizations can lead to formation of customary rules, a proposal that was consistently opposed at the Sixth Committee. Further, Conclusion 12 states that resolutions of international organizations (IOs) do not form customary international law as of

themselves. A conjoint reading of the proposals suggests that the ‘practice of IOs,’ as State practice, refers to secretarial practice or other similar decisions of these IOs. This is flawed to the extent that even the commentaries to the conclusions have no citation to further such an application.

Similarly, while addressing general principles of law, the Commission has overstepped in proposing that general principles of law are formed at the international level. Many States expressed their concerns at the Sixth Committee and these concerns were constantly relayed at the Commission, especially by the Indian member. This conclusion will cause serious issues at litigation, when many provisions which have not crystallized as customs may be canvassed before courts as general principles of law. Its consequences in light of the pending ICJ and ITLOS advisory opinions would be far reaching wherein the customary nature of many rules is uncertain, such as the precautionary principle, ecosystem approach, common but differentiated responsibility, etc.. It may go to the extent of defining the judgment wherein the Court is

News at a Glance

A new UN report raised concerns about the excessive use of smartphones, calling for them to be banned in schools worldwide. According to the UN's education, science and culture agency UNESCO, the over-use of mobile phones impacts learning. It emphasises the need for a “human-centered vision” where digital technology serves as a tool rather than taking precedence. Speaking to UN News, UNESCO's Manos Antoninis also warned of the danger of data leaks. For more information, see [here](#).

The task of transferring a million barrels of oil from the stricken supertanker Yemen, will take some 19 days – preventing what would be the fifth largest spill in history, were the rusting tanker to break apart. But this process will not end with the oil transfer, because the FSO Safer will continue to pose an environmental threat, the UN is warning. And an additional \$22 million in funding is still needed to finish the job. For more information, see [here](#).



tasked to determine States' responsibility towards climate change. The ICJ and the ILC have been known to rely on each other's work for greater credibility, something a member referred to as the "ponzi normativity scheme."

While the first report on subsidiary means of determining international law has just been introduced, the rapporteur intends to finish the work in the coming three sessions, an unbelievably fast-tracked timeline compared to the commission's foundational work in other areas such as law of treaties, State responsibility etc. My critical view on the ILC making law today may be normative, but its ability to do so will become clear in the coming years. While resistance from States may put a check on the Commission, modern international law can clearly be made, amended, and developed by this "ponzi normativity scheme."

Contractors of Death: Examining the Regulation of Private Military and Security Companies under International Law

- Avanti Deshpande (Batch of 2022)

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Background

The recent events in relation to the rebellion by the Wagner group's mercenary fighters unfolding in the backdrop of the Russia-Ukraine war has been watched with concern around the world. As reported by several leading international news organisations, the Wagner group is a private military company, essentially a "private army of mercenaries" that has been operational in multiple countries apart from Ukraine, including Syria, Mali, Central African Republic, and others. Fighters from the Wagner group have been fighting with the Russian army in Ukraine, and the group played an instrumental role in the capture of the east Ukrainian city of Bakhmut. Prior to the events in the Russia-Ukraine war, the Wagner group was under scrutiny from international human rights organisations and governments

News at a Glance

The UN demanded the release of Niger's President Mohamed Bazoum "immediately and unconditionally," as military officers continue to hold the democratically-elected leader captive after declaring a coup. A group of officers from all branches of the military made the television announcement, after members of the president's own guard detained him inside his offices in the capital Niamey. For more information, see [here](#).

Insecurity and violence increased rapidly in the occupied West Bank over the last month. "This deterioration is taking place alongside ongoing unilateral steps that undermine a two-State solution, the absence of a peace process and the continuing economic challenges facing Palestinians and the Palestinian Authority (PA)," said Khaled Khiari, Assistant Secretary-General for Middle East, briefing ambassadors. For more information, see [here](#).



alike. As recently as in January 2023, the United States Department of Treasury sanctioned the Wagner group as a transnational criminal organisation and further noted that its personnel have perpetrated grave human rights violations that include mass executions, rape, child abductions, and physical abuse. These recent happenings have shone a light on the extent of influence wielded by private military and security companies ("PMSCs") who are private, unregulated, non-State armed players, and the threat they pose to global peace and security.

Existing Framework under International Law for Regulating Private Military and Security Companies

At present, no specific treaty or binding international legal instrument exists to regulate the conduct of PMSCs. In 2010, an attempt was made when a United Nations Draft of a possible Convention on Private Military and Security Companies (PMSCs) ("Draft Convention") was drawn up by the Human Rights Council. The approach adopted by the Draft Convention however, was prohibitive rather than regulatory,

seeking to ban the outsourcing of "inherent State functions" that included direct participation in hostilities, waging war and/or combat operations, among numerous other activities outlined in the Draft Convention.

On the other hand, the other approach is regulation of PMSCs which has fared slightly better as evidenced by The Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict ("Montreux Document"), a non-binding document was drawn up as a joint initiative between the Government of Switzerland and the International Committee of the Red Cross (ICRC). Significantly, the Montreux Document does not seek to "*establish new regulations*", but simply aims to provide guidance, "*on the basis of existing international law*" and puts forward the responsibilities of contracting states, (countries that hire PMSCs), territorial states (countries on whose territory PMSCs operate), and home states (countries in which PMSCs are headquartered or based). Apart from the Montreux Document, the

News at a Glance

As wildfires raged across Southern Europe and North Africa, top UN climate scientists said that it was "virtually certain" that July 2023 will be the warmest on record.

Echoing that warning in New York, UN Secretary-General António Guterres said that "short of a mini-Ice Age" in coming days, July 2023 would likely "shatter records." "Climate change is here. It is terrifying. And it is just the beginning," said the UN chief, warning. For more information, see [here](#).

The recent wave of devastating Russian attacks targeting Odesa and other key Ukrainian port cities marks a "calamitous turn" in the 17-month war, a senior UN official told the Security Council. The Council meeting was convened following the missile strikes on Sunday which damaged the centuries-old Transfiguration Cathedral, the first and foremost Orthodox church in the historic city. For more information, see [here](#).



voluntary International Code of Conduct for Private Security Service Providers for the private military industry lays down principles regarding the conduct of personnel, governance, and management, thus essentially supporting self-regulation by PMSCs.

While these developments are encouraging, there is still an acute lack of any monitoring or oversight mechanism rooted in international law, that is armed with investigative and penal powers to oversee the conduct of PMSCs, both during armed conflict and peacetime. It is a cause of concern that the involvement of private actors in what is one of the most sensitive forms of the exercise of state authority have merited such little oversight across the world. As scholars have pointed out, it is a misconception that PMSCs are not used during peacetime, a point where the Montreux Document falls short, as it is applicable only during armed conflict. Thus, there is a grave need for a comprehensive, binding international legal instrument that would explicitly lay down and lay down their legal obligations and duties.

disaster risk information, and assessments by 2030.

In response to the earthquake, various nations including the United States of America, China, India, Japan, and Britain sent rescue personnel, tonnes of food supplies, and other essential medication. These actions reaffirm one's faith in humanity and assures us that the international community can keep away their political interests and rivalries when required.

The World is Gearing Up for a Major Overhaul in the International Tax Regime

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The international tax regime currently is witnessing a rare and perhaps once in a lifetime transition towards a globally coordinated and consented mechanism of taxing cross border digital transactions. The responsibility to formulate and

News at a Glance

Months of “potentially significant diplomacy” to resolve the crisis in Syria have not yielded any outcomes, according to the UN Special Envoy for the country. While there had been positive humanitarian gestures following the devastating earthquakes in February, it was disappointing that the UN cross-border relief operations which provoked a Russian veto and a failure to agree any resolution two weeks ago, could not be extended, he told ambassadors. For more information, see [here](#).

The UN launched an initiative for accelerated transformation in food systems, with the Deputy Secretary-General highlighting key objectives to help get the Sustainable Development Goals (SDGs) back on track. According to development indicators, almost half of the SDG targets are moderately or severely off track, and 37 per cent are showing no change. For more information, see [here](#).



coordinate the transition is shouldered by Organisation of Economic Co-operation and Development (“OECD”), as originally commissioned by G20, as part of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shift (“IF”).

The IF is aimed at addressing the global concerns on Base Erosion and Profit Shift (“BEPS”). To state briefly, BEPS refers to the actions of Multinational Entities (“MNEs”) to arrange its affairs in a cross-border scenario, in a manner that they erode the tax base from one jurisdiction and shifting the profits to low (or nil) tax countries. This is primarily achieved by exploiting the mismatches between different countries’ tax regimes. BEPS practices are estimated to cost countries USD 100-240 Bn. annually in lost revenue.

The IF initially addressed specific BEPS practices through various Action Plans (“AP”), which included measures on tax practices by Controlled Foreign Companies (AP 3), Harmful tax practices (AP 5), Prevention of treaty abuses (AP 6), Transfer pricing (AP 8-10), Mutual Agreement Procedure (AP 14) to name a few. The outcome of, or

measures devised, under these Action Plans were implemented through a Multilateral Instrument (“MLI”). The MLI was signed by countries to implement different anti-BEPS measures. As many as over 135 countries agreed to the APs under IF.

The international tax regime currently, is governed by bilateral treaties between two countries, called as Double Taxation Avoidance Agreements (“DTAAs”). The DTAAs allocate the tax rights on various income earned by residents of the respective countries, while also containing mechanism to provide relief from double taxation of the same income. Interestingly, on signing of MLIs as stated above, it had the effect of amending the bilateral DTAAs between the parties based on matching principle, i.e., if two countries agreed to a particular clause in the MLI and they also notify the DTAA with the each other as an agreement covered under MLI, their bilateral DTAA shall stand amended to that extent.

In the second phase, the IF has devised a “Two-Pillar Solution to Address the Tax Challenges Arising

Upcoming Activities

Call for Papers: 16th Melbourne Doctoral Forum on Legal Theory: Translation, Transformation and Transgression

DLFT-16 invites reflection on the activities on crossing (trans-) and law—the work of translation, transformation and transgression in all their forms, emphasising the importance of approaching these tasks with the utmost care. The deadline for submission of abstracts is 22nd August, 2023. For more information, see [here](#).

Call for Papers: NLSIR Special Issue Vol 35(2) – Reimagining Jurisdiction and Sovereignty Through TWAIL Perspectives

NLSIR is releasing a Special Issue focusing on the interactions of TWAIL with ideas of jurisdiction, extraterritoriality, statehood, and sovereignty. The deadline for submitting the entries is 1st September, 2023. For more information, see [here](#).



from the Digitalisation of the Economy” (“Two-Pillar Solution”) with the aim to end tax avoidance. The Two-Pillar Solution will ensure fairer distribution of profits and taxing rights among countries and jurisdiction with respect to world’s largest MNEs. The broad theme of the Pillars under this Two-Pillar Solution are discussed below:

Pillar One – Pillar One initially would cover roughly top 100 MNEs in terms of turnover and profits. This Pillar allows the country where the end consumers are located or where the goods and services are consumed, to tax a share of profit of such MNE. This marks a significant departure from the current century old practice of allocating taxing right to a country only when a physical presence is established in such country (popularly known as Permanent Establishment), with only a few exceptions. This Pillar also consists of mechanism to streamline taxation of baseline marketing and distribution activities.

Pillar Two – Pillar Two marks the globally coordinated effort to address the issue of tax havens with minimal or low tax rates, that is, the race-to-the bottom. This

Pillar ensures that, the MNEs covered within its scope, are taxed at a minimum rate of 15% globally. This pillar also consists of agreement to levy minimum tax (currently agreed at 9%) on certain specified income like interest, royalty etc. earned from connected persons (“Subject-to-tax Rule”).

The changes in the international taxation system basis the Two-Pillar solution shall be carried out through a Multilateral Convention leading to amendments in the bilateral DTAA’s or through amendments in the domestic tax laws of the respective countries.

In a recent statement dated 12th July 2023, the OECD specified that as many as 138 member countries of the IF, representing over 90% of global GDP have agreed to implement the Two-Pillar solution while agreeing on the timelines to implement the solutions. The Two-Pillar solution is likely to take full effect by end of 2024 or early 2025.

India currently levies unilateral tax on income from certain cross-border digital services consumed in India, in the form of “Equalisation Levy.” Adoption of Two-Pillar Solution would entail

Upcoming Activities

Call for Submissions - 12th UN Research Colloquium “Back to the Future: Revisiting the Past to Enable our Future”

It offers the opportunity to present and discuss research and student projects related to the United Nations. Lectures and discussions can be held in German as well as in English. The deadline for submission of abstracts is 1st August, 2023. For more information, see [here](#).

Comparative Constitutional Law and Administrative Law Journal (Vol VIII, Issue I)

CALJ is pleased to invite manuscripts (articles, notes, case comments, and book reviews) for publication in the upcoming issue of our Journal, Volume VIII Issue I. The last date for submission of manuscripts is 15th August, 2023. For more information, see [here](#).



the following effects for India:

Pillar One – Pillar one validates India's levy of tax on digital services. However, India shall have to withdraw "Equalisation Levy", which contributed upto Rs. 4,000 crores to the exchequer in FY 2021-22. The introduction of Pillar One is not likely to result in substantial tax revenue to India, considering its current shape and form.

Pillar Two – The Indian corporate tax rate being higher than 15%, India shall not lose out on tax revenue to any other jurisdiction. If the income from outbound investments from India are taxed at a rate lower than 15% in the foreign jurisdiction, India shall gain the rights to tax the shortfall upto the 15% effective tax rate. India also stands to gain from the implementation of subject-to-tax Rule, with specified incomes being taxed at an agreed minimum tax rate (currently at 9%).

While a substantial portion of the underlying legal framework was released by IF for public comments, the final legal framework is yet to be released. With the Two-Pillar likely to be

implemented shortly from now, the world is all set to experience this significant development unfolding. Many countries including Malaysia, Singapore have officially initiated the discussion on implementation of an effective tax rate of 15% in view of Pillar Two developments. UAE also has recently introduced corporate income tax.

For the professional community, the upcoming developments provide great opportunity to bolster their career prospects by gaining proficiency while the legal framework is in its nascency, especially considering the challenges that lie ahead in implementing these complex legal frameworks.

The Responsibility to Protect Doctrine and TWAIL

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The International Commission on Intervention and State Sovereignty laid out the Responsibility to Protect in their [2001 Report](#). The

Upcoming Activities

Call for Papers: Latin American SIL Biennial Conference

SLADI has issued a call for papers for its biennial conference on "Latin American International Law," which will take place from 29 November, 2023 - 1 December, 2023. For more information, see [here](#).

Call for Applications: Centre for Studies and Research in International Law and International Relations of The Hague Academy of International Law

Applications are open for the 2024 edition of the Centre for Studies and Research in International Law and International Relations of The Hague Academy of International Law. The topic is 'International Institutions in the Face of International Crises.' For more information, see [here](#).



report affirmed that sovereignty is not just protection from outside interference. Instead, it is a matter of states having positive responsibilities for their population's welfare and assisting each other. Thus, if a State were unwilling or unable to protect its people, it would be the duty of other States to provide aid.

It is important to note that neither the original ICISS Report nor the subsequent report of the High-Level Panel on Threats, Challenges and Change authorised the use of force by states to satisfy the Responsibility placed on them. However, this principle has been used multiple times by States to justify direct or indirect military intervention within the territory of other States.

Third World Approaches to International Law is a reconstructive movement that seeks a new compact of International Law. It proposes that International Law is conservative, western-centric, and a tool for exploitation by those in power. The approach thus tries to bring a Global South perspective to international law issues, critically analysing its various concepts and

norms. A principle such as the Responsibility to Protect, which has been used to justify illegal military action, such as the Responsibility to Protect, has thus come under much scrutiny by this critical approach. Sue Robertson's paper on the doctrine presents the various perspectives on the doctrine and lays down two primary criticisms- one, that the doctrine reinforces the inequality of power relations between States and two, the doctrine lends itself to the rebuilding as per more powerful States.

The first criticism comes from the nature of the doctrine itself. Since the Responsibility is placed on each State without stemming from an external authority or organisation, an intervention will only be applied selectively by those States in a position of power. The United States, for example, has often used double standards to further its economic interests, and even international organisations such as the UN have failed to intervene in global crises successfully. The 2001 report also precluded using military force against any of the Security Council's Permanent members.

Upcoming Activities

BIICL Training Programme: Autumn 2023

The British Institute of International and Comparative Law (BIICL) has launched its programme of training courses for autumn 2023. The programme will cover cyber law, migration and refugee law, artificial intelligence, law and ethics, public international law in practice, climate change law, climate change litigation, cultural heritage law, labour law, law of the sea, energy law and business and human rights. For more information, see [here](#).

Call for Papers: The Central Asian Yearbook of International Law and International Relations

The Central Asian Yearbook of International Law and International Relations is inviting submissions to be published in Volume 2 (2023). For more information, see [here](#) and [here](#).



The second criticism concerns the terms the doctrine uses- those of 'human rights abuser' or 'authoritarian regime.' Without any definition for them, these words may be applied to delineate certain States when not in accordance with the rest of the global community. Following this terminology, Global South scholars have also propounded fears regarding the reconstruction and rebuilding of a State after any intervention. External policies which fail to take into account a country's political and social character may result in the worsening of already existing inequalities.

The Responsibility to Protect Doctrine aims to provide a reasoned framework for foreign intervention. However, it is still incomplete and requires guidelines and safeguards to prevent abuse.

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Upcoming Activities

Call for Submissions: German Yearbook of International Law

The German Yearbook of International Law is published annually by the Walther Schücking Institute for International Law at the University of Kiel and contains contributions on topics addressing all aspects of public international law. The General Articles section of the GYIL is open to submissions from the entire academic community and is independently peer-reviewed. For more information, see [here](#).