

## Global Value Chains and Transnational Private Law

### LSGL New collaborative research project

I would like to invite you to participate in an exciting new LSGL project that has received seed funding from the League. It spans several Working Groups, so it is truly trans-, multi- and/or interdisciplinary! We aim to have a **virtual kick-off meeting on 6 December this year** followed by a **hybrid workshop in Nairobi, Kenya, in February 2023 during the LSGL Meeting**.

As the current COP 27 in Egypt shows, we find ourselves in a disrupted world, with sustainability of life on this planet at grave risk. Bringing together hard law and soft law, and transcending the traditional divides in law, this project on global value chains aims to explore the legal dynamics and actions required to regulate and engage industry in workable solutions. Straddling public law and private law on a national and international level, infused by human rights considerations and sustainability imperatives, this project focuses on regulatory instruments and corporate governance and compliance, as well as the role of contract and tort/delict, and private international law in regard to venue and applicable law, to find innovative solutions. Issues, such as access to justice, operational safety and workers' health, anti-discrimination, diversity, unfair trading practices, minimum social standards, appropriate remedies, etc, loom large in the quest for justice, contextualized by the intricate and complex relationships between large MNCs and their subsidiaries, mainly in the Global South.

The project is led by Prof Elsabe Schoeman (University of Pretoria), Prof Michael Nietsch (EBS Wiesbaden) and myself. We would be delighted if you would like to become part of this exciting project, working together as legal scholars to do what we do best – contributing to finding solutions to these challenges effectively and efficiently in the interests of a better world for all.

When you confirm your interest to [v.ruiz.abou-nigm@ed.ac.uk](mailto:v.ruiz.abou-nigm@ed.ac.uk), we will send you an invitation to the virtual meeting on **December 6**, as well as the full project proposal.

## Proposal for a Research Initiative on Global Value Chains and Transnational Private Law

### I. Introduction

Business and human rights have been a long-standing topic of debate. Existing soft law frameworks such as the United Nations Guiding Principles on Business and Human Rights (UNGP), the UN Sustainable Development Goals Agenda (SDGs) or the OECD Guidelines on Multinational Enterprise (OECD Guidelines) have set out fundamental standards, benchmarks and aspirations. They have influenced reporting regimes, e.g. the Global Reporting Initiative (GRI) and they have also outlined a procedural framework for access to remedy.

Whereas human rights standards based on soft law have enjoyed a wide acceptance on a general level, current trends in legislation show a tendency towards mandatory (or “hard law”) obligations for companies. The first stage of this development could be described as a move to achieve a higher level of transparency. Examples include the EU Non-Financial Reporting Directive (2014/95), the California Supply Chain Transparency Act (2012) or the UK Modern Slavery Act (2015). This has been followed in a second phase by various provisions of law of substance. While the United States Federal Law strongly relies on import bans for goods tainted by human rights violations (among others see Sec. 1502 Dodd-Frank-Act and secondary legislation), other legal systems have engaged in supply chain due diligence requirements or have developed specific liability under Tort Law. Up to now, the most iconic examples for corporate liability in the case of human rights violations can be found in the UK where – since *Chandler v Cape* (EWCA 2012) – numerous cases have been decided and claims have been awarded against single entities as well as holdings. The French Loi de Vigilance (2017) has laid ground for a number of court proceedings against major companies, including Total and Danone S.A.. Germany followed suit with the “Lieferkettensicherheitsgesetz” in 2021. Similar legal approaches in Australia, the Netherlands, Norway and Canada in supply chain safety legislation of this kind point to the beginning of a global trend.

In February 2022, the EU Commission also submitted a Proposal for a Corporate Sustainability Due Diligence Directive in that very same context. Its far-reaching scope

will require all 27 EU member states not only to impose extensive risk management procedures along the entire value chains but the proposal also envisages individual and collective liability for noncompliance and severe sanctions based on the companies' turnover. It even reaches out to corporate governance structures by – at least in part – mandatorily redirecting directors' duties from stakeholder to shareholder concerns.

Supply chain regulation of the kind mentioned claims its position alongside existing legislation dealing with existing and already highly specified law in the context of production and value creation. This includes environmental laws, the overall legal framework dedicated to operational safety and workers' health, anti-discrimination, diversity, unfair trading practices, minimum social standards etc. Supply chain legislation uses new methodological approaches and gives rise to numerous questions affecting various areas of the existing legal framework. Among others concerns result from the fact that the concepts used are vaguely discussed (or not at all) and strongly politically driven. While this alone points to a need for further analysis and debate, such needs become even more apparent as the effects of such legislation could be detrimental to its objectives. Recent cases show that in a high-risk environment where alternative sourcing exists, industry tends to consider disengagement as a way of avoiding liability and reputational exposure. Furthermore, changing conditions for global trade must not be underestimated. Supply chain disruptions in the aftermath of the Covid 19-pandemic and the Russian attack on Ukraine have already, to some extent, led to reshoring of production. This trend, combined with high legal risks of engagement in the "Global South", could lead to austerity and detrimental effects for the affected countries, their people and markets.

## **II. Research from Private Law and Private International Law Perspectives**

The legal framework affected by supply chain legislation is of a broad nature and impacts all areas of the law including public, private and criminal law. The signatory applicants have identified the role of private international law in the given context as a set of methodologies and techniques designed to coordinate pluriversality in law and as such a potential subject of joint collaborative research. The realm reaches from establishing the points of reference for universal human rights to defining the role of contract law and tort law in this context. The norms of private international law identifying the applicable law as well as the rules of international civil procedures also need further consideration.

### III. Intended Research

The group intends a 3-pronged approach to research. As a preliminary initiative we would like to take the opportunity to advertise for colleagues from LSGL member institutions to sign up for joining the research project at the annual meeting in Brazil. This call for interest should be openly addressed and directed to scholars of every career phase. The research agenda should then be discussed and focus areas determined in more detail.

In a second phase, the initial results should be gathered and introduced to the group in a working meeting or a seminar. Depending on the group composition and the feasibility of the respective steps of research, this could be held as early as the first half of 2023.

The third and principal objective of the working group is the publication of its research. In an early stage publication in peer-reviewed journals is intended. Moving forward, compiling the resulting work in a book seems a desirable way of publication as well.

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