



Task Force 8
Multilateralism and Global Governance

Policy brief

GLOBAL LEGAL STANDARDS: PATHWAYS TO REORGANISE GLOBALISATION

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ABSTRACT

Haphazard efforts to renationalise economic activity after the recent economic and financial crisis and during the ongoing pandemic have fragmented the global economy. To correct this, we propose that the G20 call for the elaboration of Global Legal Standards (GLS) as a framework of convergence. To begin, such standards could apply in areas like global value chains, finance and taxation, and corporate governance. Once consolidated in these three areas, GLS could foster positive externalities capable of providing new impetus to multilateralism, and reshape the global order of tomorrow.



CHALLENGE

WHERE DO WE STAND?

The economy is global, but rules are not. There are roughly 2,000 global regulatory regimes and over 200 supranational quasi-judicial bodies (Cassese 2016). This has long been the case. In this policy brief, we argue that building Global Legal Standards to bring greater transparency, compatibility and integrity to the current international system can promote greater equality and justice among nations.

This is not a new suggestion. The first proposal of this kind was made in 2009, at the G8 under the Italian presidency (Tremonti 2012). Subsequently the establishment of the Financial Stability Board and the adoption of voluntary standards prevailed. Today the G20 – representing 90% of global GDP, 80% of trade and two-thirds of the world population – offers a better vehicle for success on a global scale. No other configuration has the legitimacy and capabilities to establish Global Legal Standards, as well as the political impetus to push them forward.

HOW DID WE GET HERE?

The consequences of the Great Recession of 2008-2009, the on-going COVID-19 pandemic and the decade-long unfolding of a planetary environmental crisis, have shaken the belief in a supposedly “natural order” for the global economy. People are disoriented. Too many are left behind (*The Economist* 2017). Populism and protectionism are gaining strength, threatening the international system almost as much as they did in the 1930s (Eichengreen 2018).

There is a moral need to “[re-write] the rules” in a way that avoids market failure and strengthens accountability (Stiglitz 2020), and the current approach that relies heavily on growth must be remodelled in favour of social inclusion and environmental sustainability (World Economic Forum 2014). As the on-going pandemic has further demonstrated, re-thinking the international order is not just a matter of financial stability but also an “anthropological” and “ecological” challenge (Tooze 2020a).

WHERE DO WE GO?

Indeed, it is time to reinforce convergence again rather than allow the world’s economies to diverge further. In this policy brief, we propose Global Legal Standards as a framework of convergence to foster a “cleaner, fairer and stronger” international system. Such standards can help to re-bundle an otherwise fragmenting global economy, addressing various forms of inequality and imbalances, and deflecting from the risk of differential, local-standards-based globalisation (or rather de-globalisation).



To achieve the goal, we need multiple perspectives, drawing upon historians, jurists, economists, political scientists and practitioners. To illustrate what promises to be an evolutionary process, we begin by looking at three interconnected areas – global value chains, finance and taxation, and corporate governance. The aim is to provide an initial set of concrete policy proposals within a broad and evolving framework of Global Legal Standards, where consensus building is key and success could beget success.



PROPOSAL

GLS AS FRAMEWORK OF CONVERGENCE

The globalisation of the world economy has fractured responsibility and diluted incentives. To fix that, we need greater transparency, consistency and integrity – which means developing a shared set of comprehensive standards for identifying and communicating the things that are important. Here, Global Legal Standards could provide an overarching framework of convergence, moving forward. This is not a new aspiration. Many initiatives aimed at a “standardisation of standards” already exist. ESG (Environment, social responsibility, and corporate governance) is but one salient example.

To start anew, we believe three areas warrant particular attention: global value chains, finance and taxation, and corporate governance. These three areas have the greatest influence on trade, growth and development, from one end of the world to the other, with powerful implications for people, prosperity and the planet. Note as well, these dimensions are not collectively exhaustive. They leave out, for example, the movement of people, whether as migrants or refugees. Focusing on these three areas, for illustrative purposes, will nonetheless introduce greater coherence into the conversation about Global Legal Standards, which in turn will facilitate meaningful political decision-making about how governments around the world should coordinate activity across jurisdictions and distribute responsibilities.

GLS ALONG GLOBAL SUPPLY CHAINS

The process of producing goods, even for digital commodities and services, is increasingly fragmented and carried out wherever the necessary skills and materials are available at a competitive cost and quality (OECD 2017). That is why we believe supply chains deserve particular attention in the development of Global Legal Standards, as their transnational and multidimensional nature renders them a catalyst for the gradual construction of a new multipolar global order.

Much has already been done (ILO 2017b; OECD 2011; UN 2011), and the principles of Responsible Business Conduct (OECD 2018) are a good illustration of how common rules or standards can enhance transparency, consistency and integrity along global supply chains. The challenge is to push that influence even further and in a synergistic fashion.



GLOBAL VALUE CHAINS

Too often multinational firms responsible for the final product do not know the provenance of specific raw materials, components or other intermediates. This makes it challenging for them to assert responsibility over adherence to standards – especially for environmental protection and labour (Walk Free Foundation 2014; ILO 2017a). Companies should act responsibly not only in their own operations but also in their entire value structure. The establishment of common rules or standards is fundamental to connect first-tier suppliers to lower-tier suppliers that otherwise have no direct contractual relations between them.

In this connection, Global Legal Standards offer a better approach than deepening vertical integration or restructuring supply chains. Going down the supply chain rather than the trade deal route can still have the same adverse side effect of taking production and jobs away from developing countries. And unlike labour standards in trade deals, it will apply only to those parts of the economy where western companies are operating or sourcing, possibly creating islands of well-treated workers in seas of oppression and pollution. The elaboration of standards could and should eventually culminate in the recognition of supply chains as a peculiar transnational legal entity in international law.

We live in a world in which resource-hungry multinational companies can exploit impoverished rural communities both socially and environmentally, as they have different standards for how they do business in different regions of the world. There are 25 million people in forced labour, 152 million are victims of child labour and 2.78 million workers around the world die from work-related accidents or disease every year (ILO 2017). Depriving workers of their rights puts downward pressure on social conditions globally and fuels people's disenchantment with globalisation. Establishing standards for "duty of care" could thus change how multinationals are held to account and how they operate globally. It is important that the G20 incorporate the concerns of developing regions such as Africa into the way it determines global rules (Mabera 2019).

Global Legal Standards are easier to introduce in response to shared global threats or concerns. Here, the Paris agreement on climate change as a framework of convergence offers insights. With attention to the readiness and vulnerability of developing countries, broad legal standards with NDCs (nationally-determined contributions) for mitigation and adaptation could actually speed up the process of convergence across domestic jurisdictions. Indeed, this is an area where G20 could learn and its initiatives could spill over to a sort of G40, since countries like Bangladesh, Ethiopia, Iran, Pakistan, Egypt and Nigeria are crucial in shaping and implementing climate policy (Tooze 2020b). The application of standards may need to vary for countries at different stages of development, but such variance should ideally be transparent, structured and predictable.

More specifically, as positive contributions can arise from a "taxonomy" for environmentally sustainable economic activities, Global Legal Standards can harmonise national environmental taxonomies and establish a framework for setting the criteria and conditions to determine



whether an economic activity qualifies as environmentally sustainable. Indeed, this is crucial for developing green financing, including green loans, green bonds and green insurance. European regulation offers a possible template to establish a framework to facilitate sustainable investments (EU-TEG-SF 2020, Regulation 2020/852).

FINANCE AND TAXATION

The structure of global finance creates dilemmas just as manufacturing does. Gone are the days when financial relationships involved only two counterparties. Now they involve complex instruments and institutions. This makes it difficult to understand where money has come from and where it is ultimately being invested. That challenge goes beyond traditional know-your-customer considerations to include many different dimensions of risk exposure that are difficult to capture.

Financial integrity is a global public good. There is a need for standards of accountability, transparency and fairness in global finance. Taxpayers, especially multinational corporations, should pay their fair share of taxes. The recent G7 agreement on a global corporate tax rate goes some distance in this direction, but fairer rules and stronger incentives must be created to combat tax competition, tax avoidance and tax evasion. Failing to mobilise these additional resources will take resources away from the financing of the ecological transition that international public opinion is increasingly demanding.

Governments in the world lose more than half a trillion dollars annually to tax manoeuvres that circumvent the intentions of legislatures by exploiting loopholes and discrepancies in the law (UN-FACTI 2021). “Fighting for financial integrity is not a distraction from other goals, but a means to achieve them” (Sandbu 2021). Part of the challenge is to establish common accounting standards for the treatment of internal pricing structures, the remuneration of intellectual property, and the jurisdictional location of corporate revenues and profits. But part of the challenge also has to do with the accurate measurement of base erosion and profit shifting, and with the distribution of tax privileges as well as obligations. Such tax considerations not only influence corporate governance, but also finance and manufacturing.

The OECD-based Common Reporting Standard, developed in response to a request from the G20, calls on tax jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. Taxation must be equitably applied on services delivered digitally (OECD 2020a and 2020b).

CORPORATE GOVERNANCE

Greater transparency is necessary in the structure of corporate governance as well. The question is not just who benefits from specific holdings, but also who has decision-making authority over the conduct of business or the disposition of assets.



Four lines of action can be suggested: ensuring executive pay is aligned with long-term performance and corporate aims; strengthening the role of boards (by looking at how independent directors can be more effective, e.g., by increasing their proportion in listed companies); making core management more diverse; and improving mandatory disclosure on environmental impact, consistent with previous considerations.

The creation of a “Human Development Index” for listed companies could bring us a step closer to those goals. A global standard for reporting climate change risk is also required. Recently there has been an explosion in the number of companies promoting ESG standards, but at the same time there is also a risk of “greenwashing” (Mooney 2021). The rise in corporate rhetoric hides a significant gap in how companies account for the risk of climate change. Indeed, investors have complained that the proliferation of voluntary standards prevents them from being able accurately to assess risks across different sectors.

It is time to establish a global MRV (monitoring, reporting and verification) system for ESG. This should not only harmonise the patchwork of rules governing how companies disclose sustainability risks, but also set legal requirements that their financial statements be consistent with the Paris agreement to hold down the rise in global temperatures. The end goal would be to establish a robust global MRV system based on common definitions of what a sustainable finance product is – so as to complement the existing framework of International Financial Reporting Standards. Doing so, however, will depend upon the development of standard metrics (Carney 2021).

GLS: FUNCTIONS AND AIMS

Establishing Global Legal Standards will be a gradual process. By focusing on the three tangible areas of global value chains, finance and taxation, and corporate governance, we aim to:

- a. Bring together in a single framework instruments and processes which were previously unconnected, thus strengthening them individually and collectively by adding political weight and legal coherence;
- b. Expand to all the world’s largest economies, including the emerging ones, the network of commitments and cooperative processes which, until now, have concerned a more limited number of countries;
- c. Launch new processes and fill gaps in international cooperation and legislation, either by improving existing instruments and processes or by developing new rules;
- d. Put issues of transparency, integrity and sustainability in business at the top of the international political agenda.

Each instrument contained in the Global Legal Standards will have its own compliance process, for which a wide range of tools can be used, such as peer review, indicators and benchmarks and, in the event of non-compliance, peer pressure, “naming and shaming” and black-listing. Global Legal Standards as a framework for convergence will be an evolving tool to be periodically reviewed and, when necessary, updated to integrate new areas of concern.



CONCLUSION

Facing the threat of sliding towards a G0 world where divergence predominates over convergence, our proposal for the elaboration of Global Legal Standards can be a catalyst for the T20 and a flagship project for the G20. Signing up to the idea of developing such standards will constitute a political pledge taken at the highest level. Through this pledge, compliance with existing instruments will be reinforced at political level and new processes will be launched. By virtue of GLS as a framework for convergence – where transparency, consistency, integrity and equity are both the processes and overarching goals – there will be wider implications for reshaping the global order.

Much has already been achieved. The major work remaining is synthetic. Today, *ars combinatoria* rather than purely *ars inveniendi* is needed to foster the process of harmonisation and arbitration of the national and regional legal standards and articulate a stronger system of enforcement of the emerging Global Legal Standards. This will not be easy. In the real world, tensions always exist between normative and empirical propositions, and it takes wise and strong leadership to manage the tensions and move forward, one step at a time.

To this end, we propose the establishment of a G20 High-Level Group to frame a first set of GLS by 2022 (India) or 2023 (Indonesia), and for the T20 to integrate the topic of the GLS explicitly into Task Force 8, to be renamed “Multilateralism, Global Governance and Global Legal Standards”, to ensure continuity and drive until 2024 (Brazil). The next three G20s (India, Indonesia, Brazil) offer a rare opportunity to shape the global order of tomorrow under the guidance of “new” stakeholders in the international community. Inclusiveness and multilateral dialogue are paramount to achieve a just and fair harmonisation of interests and regional taxonomies across the global community. Operating within the framework of the G20, this body would foster the institutionalisation of the G20, and ensure greater legitimacy to its proceedings and governance, by involving the wider global community (Benson and Zürn 2019).



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