

Self-regulating safeguard guideline with accountability mechanism (communication procedure)

as element of legally binding instrument on transnational corporations and other business enterprises with respect to human rights

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I propose that new legally binding instrument on transnational corporations and other business enterprises with respect to human rights (hereinafter referred as “new instrument”) must establish the following provisions among other elements:

- 1) Self-regulating safeguard guideline which is legally obliged to be established within transnational corporations and other business enterprises,
- 2) Accountability mechanism such as complaint mechanism accessible for any individuals against human rights violations caused by transnational corporations and other business enterprises.

The recent radical development of science and technology such as blockchain, AI, bigdata and robotics is transforming the landscape of modern industries and increasing interconnectedness within and among corporations makes conventional centrally controlled stick and carrot mechanism insufficient.

We need new legally binding system for increasingly interconnected and complex socio-technical system.

Leading examples of this new regulatory system are Internet, Blockchain, Airbnb and Uber. They have no centrally controlled authority and operate with decentralized peer monitoring and controlling mechanism.

In this connection, we should keep our eyes open for diverse, non-conventional institutional arrangements which has been emerging in the East Asia.

As José E Alvarez arguably elaborated² and demonstrated by the recent development of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Rights of Women and Children (AIWC), we observe

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² José E Alvarez, Institutionalised legalization and the Asia-Pacific “Region”, *New Zealand journal of public and international law*, vol.5, 2007, pp.9-28.

a wide range of non-traditional legal formulas emerging in the region.

In this connection, Alvarez emphasized³;

International legal sources are no longer confined to treaty, custom, or general principles but include a welter of “soft law” whose content and legal effects very much involve the discourse of law. Relevant law-making actors are no longer just states but international civil servant, private parties, non-governmental organizations, business groups, and experts. International law’s interpreters are, most often, not judges, even in this age of proliferating international tribunals. International legal mechanisms now deploy many other interpreters, including private parties and municipal officials. Its enforcers include “the market” as well as a welter of bureaucrats, national and international.

In my account, in increasingly interconnected world, multilayered governance system is emerging together with several non-traditional mechanisms for human rights protection and multiple channels for much wider participation of people in decision-making process.

For instance, Asian Development Bank has developed the Safeguard Policy Statement (SPS) and Accountability Mechanism which aims at protecting human rights of the people affected by ADB funding and providing them with channels for filing complaints against recipient states as well as ADB.

Many codes of conduct in different sectors, a great number of memorandums of understanding (MOUs) signed by multi-stakeholders and even de-facto standards in new technologies established by private companies constitute the human rights protection arrangements in addition to numerous NGO networks in the region.

However, it is also observed that Asian states do not refrain from engaging in legal disputes if deems necessary as demonstrated in the recent case of the South China Sea Arbitration and many cases of WTO dispute settlement procedures. As Hisashi Owada submitted, aversion to formal legal procedures on specific issues seems to be the consequence of strategic calculation of governments in the region⁴.

Reflecting the above-mentioned socio-technical transformation, I would submit that

³ J. E Alvarez, Institutionalised legalization and the Asia-Pacific “Region”, p.26.

⁴ Hisashi Owada, The Rule of Law in a Globalizing World-An Asian Perspective, Washington University Global Studies Law Review, vol.8, Issue.2, 2009, 187-204, p.203.

we need a good combination of conventional inter-governmental law enforcement mechanism such as treaty and corporate-led self-control accountability mechanism including communication procedure in the legally binding instrument on transnational corporations and other business enterprises with respect to human rights.