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Global Governance at a Distance:

A Socio-Legal Theory of Corporations and International Law-Making

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I. Introduction

While corporations have for many years been the subject of international regulation, their function as agents in global governance has been largely underexamined until recently. Businesses shape general law-making through multiple mechanisms, including lobbying legislators for policy changes, exerting influence over administrative rule-making, and using litigation to shape the interpretation of laws.[1] Legal scholarship has increasingly focused on the influence of corporations within the *international* law-making process. Scholars have examined the role of business entities in the development of public and private international law, including the making of international rules governing such areas as trade, investment, antitrust, intellectual property, and telecommunications.[2] They have also analysed the influential position of corporations in the drafting, negotiation, adoption, ratification, interpretation, and implementation of standards.[3] Yet while international legal scholarship is devoting increased attention to the important role of

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[1] Gregory C Shaffer, 'How Business Shapes Law: A Socio-Legal Framework' (2009) 42 Conn L Rev 147.

[2] See, eg, Jose Alvarez, 'Are Corporations Subjects of International Law?' (2011) 9 Santa Clara J Intl L 1; Paul B Stephan, 'Privatizing International Law' (2011) 97 Va L Rev 1573; Julian Arato, 'Corporations as Lawmakers' (2015) 56 Harv Intl L J 229; Melissa J Durkee, 'Astroturf Activism' (2017) 69 Stan L Rev 201.

[3] See, eg, Melissa J Durkee, 'The Business of Treaties' (2016) 63 UCLA L Rev 264; Jay Butler, 'The Corporate Keepers of International Law' [2020] AJIL 189; Ayelet Berman, 'Between Participation and Capture in International Rule-Making: The WHO Framework of Engagement with Non-State Actors' (2021) 32 Eur J Intl L 227; Melissa J Durkee, 'Interpretive Entrepreneurs' (2021) 107 Va L Rev 431.

corporations in global governance, insufficient attention has been devoted to the micro-level details by which corporations shape international law.

In this chapter, I apply a socio-legal approach to illuminate *how* corporations shape international law in practice. I aim to uncover technologies of governance, relations of power, and chains of translation in the transnational law-making process.[4] This approach primarily draws on anthropological theory and ethnographic studies, informed by participant observation and interviews. Anthropologists have called for an 'effort to pluralize, relativize, and contextualize corporate forms geographically and historically.'[5] Thus, my analysis disaggregates 'the corporation' into a range of legal entities and organizational roles (e.g., parent companies, subsidiaries, suppliers, platform firms, and consultancies), as well as social forms (e.g., their 'circulating narratives, rituals, practices, beliefs, and worldviews').[6] In order to understand how corporations shape international law, we need to analyse corporations as 'actors embedded in complex relations, and entities that produce and undergo transformation, with all the friction that entails.'[7]

An ethnographic lens focuses on the materiality and political instrumentality of laws by examining the practices, networks, and techniques through which governance unfolds. Moreover, it shines light on the seemingly invisible actors (e.g., industry associations, consulting firms, platform businesses, and the experts within them) who are operating in the background but may be wielding significant power in shaping how legal norms are interpreted in practice. I refer to 'experts' as a class of technocrats, including corporate managers, consultants, and accountants, who deploy specialized knowledge and 'scientific' authority through the use of technologies of governance such as audits and risk assessments.

Building on my research on global supply chain governance[8] as well as contemporary anthropological studies, this paper examines the role of corporations in international law-making

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[4] See Sally Engle Merry, 'Anthropology and International Law' (2006) 35 Ann Rev Anthro 99.

[5] Marina Welker et al, 'Corporate Lives: New Perspectives on the Social Life of the Corporate Form: An Introduction to Supplement' (2001) 52 Current Anthro S3, S6.

[6] Greg Urban & Kyung-Nan Koh, 'Ethnographic Research on Modern Business Corporations' (2013) 42 Ann Rev Anthro 139, 142.

[7] Welker et al (n 5) S4.

[8] See Galit A Sarfaty, 'Translating Modern Slavery into Management Practice' (2020) 45 L & Soc Inquiry 1027; Galit A Sarfaty & Raphael Deberdt, 'Supply Chain Governance at a Distance' (2024) 49 L & Soc Inquiry 1036.

through an ethnographic lens. I theorize this relationship as a 'global assemblage' by examining the underlying power dynamics, technical practices, value regimes, and forms of expertise that structure how corporations shape the transnational legal process.[9] According to Stephen Collier and Aihwa Ong, 'the term "global assemblage" suggests inherent tensions: global implies broadly encompassing, seamless, and mobile; assemblage implies heterogenous, contingent, unstable, partial, and situated.'[10] Thus, this concept problematizes the knowledge practices, forms of technology, and institutional mechanisms that undergird the relationship between corporations and international law. Here, I adopt sociologist Anthony Giddens' definition of technology as technique, referring to both material technology and specialized expertise.[11]

I argue that corporations, often with the acquiescence or collaboration of states and international institutions, are transforming global governance into a technocratic exercise as they 'mobilize new material practices, forms of affect and discursive strategies in pursuit of new markets and novel techniques for heading off new social and political challenges.'[12] As a result of this state-enabled corporate involvement in international law-making, what we see emerging is what I call: *global governance at a distance*.[13]

Global governance at a distance refers to the ways in which corporations exercise indirect power over the international legal process. The distance is not a strict separation between public authority and corporate power. Rather, it is a mediated relationship in which states preserve the appearance of public control while allowing corporate actors to shape the techniques, standards, and infrastructures of governance. I use the concept in a primarily descriptive sense to analyse infrastructures of indirect power—the corporate translation of international legal norms, the outsourcing of international legal compliance, and the diffusion of management technologies into global governance. At the same time, distancing has a normative dimension. The case studies of

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[9] See Aihwa Ong & Stephen J Collier (eds), *Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems* (Blackwell 2005).

[10] ibid 12.

[11] Giddens, 'Living in the Post-Traditional Society' in Ulrich Beck et al (eds), *Reflexive Modernization: Politics, Tradition and Aesthetics in the Modern Social Order* (Stanford UP 1994) 56-109.

[12] Catherine Dolan & Dinah Rajak, 'Introduction: Toward the Anthropology of Corporate Social Responsibility' in Dolan & Rajak (eds), *The Anthropology of Corporate Social Responsibility* (Berghahn Books 2016) 4.

[13] The term 'governing at a distance' borrows from the framework of social theorists Nikolas Rose and Peter Miller. See *Governing the Present: Administering Economic, Social and Political Life* (Polity Press 2008). See also André Broome & Joel Quirk, 'Governing the World at a Distance: The Practice of Global Benchmarking' (2015) 41 Rev Intl Stud 819.

distancing that I examine tend to produce accountability gaps, promote a box-ticking approach to compliance, redistribute responsibility further down supply chains, and facilitate corporate capture of norm interpretation.

When I refer to the 'distancing' of global governance, I do not mean simply the privatization of public functions. While privatization describes the delegation of public functions to private actors, distancing refers to *how* governance is exercised. It is a modality of indirect governance in which legal norms are transformed through chains of translation, layers of intermediaries, and technocratic tools (e.g., indicators, audits, algorithms). My analytic focus is on the exercise of indirect power and the dispersion of responsibility, rather than on the formal boundary between public and private.

The remainder of this paper elaborates on three dimensions of global governance at a distance. First, I analyse the role of corporations in the interpretation, and translation, of international legal norms, particularly in contexts where there is an absence of sufficient state guidance. I present two case studies that focus on the legal norms around modern slavery and human rights due diligence. Second, I uncover how international legal compliance is being outsourced to private actors, which are implementing international legal standards and transnational law on behalf of states and supranational institutions. We see examples of regulatory outsourcing to corporations and industry associations in the field of global supply chain governance. Third, I examine how the corporate form has infused international law-making through the use of management techniques, quantitative metrics, and data analytics tools. This infusion of corporate logics into global governance is apparent in the prevalence of the multi-stakeholder management model within international institutions, the increased reliance on indicators in international law, and the use of data-driven technologies in supply chain compliance.

II. Corporations as Translators of International Legal Norms

A socio-legal analysis of corporations and global governance allows us to analyse the role of companies as translators of international legal norms, as well as the ways in which those norms are being interpreted in the context of corporate practice. Anthropologists have tracked the implementation of laws by following the 'chain of translation' whereby legal norms are

reformulated, distilled, and contextualized. According to Bruno Latour, a chain of translation refers to 'the set of practices whereby objects are identified, collected, registered, transferred, and interpreted' in various contexts.[14] Translating a norm from one realm to another 'changes the information itself: its technical appearance, the meaning it is inscribed with, the elements it is associated with, and the effects it is able to have.'[15] Thus, this process produces new meanings as information is transformed as it moves through the chain of translation.

Socio-legal studies offer a useful lens to understand the process by which international legal norms are interpreted, translated, and implemented on the ground, and the important role of corporations in driving this process when states fail to provide sufficient guidance. These studies examine how legal norms are 'vernacularized', or adapted to local meanings and cultural contexts.[16] Below are examples of how corporations have shaped the translation of two international legal norms—the prohibition against modern slavery as well as human rights due diligence—which have been central to the regulation of global supply chains.

A. Translating Modern Slavery

Management professionals are playing a significant role in interpreting ill-defined international legal norms around modern slavery that have been cited in supply chain legislation.[17] Despite the recent proliferation of supply chains laws on modern slavery—e.g., legislation in California (2010), the United Kingdom (2015), Australia (2018), and Canada (2023), which require companies to disclose their efforts to curb modern slavery within their supply chains—the legal norm against modern slavery remains undefined under international law and is ambiguous within recent legislative definitions.[18] In the absence of clear guidance from governments, the

[14] Marieke De Goede, 'The Chain of Security' (2017) 44 Rev Intl Stud 1, 4, citing Bruno Latour, *Pandora's Hope: Essays on the Reality of Science Studies* (Harv UP 1999) 24-79.

[15] Marieke De Goede & Gavin Sullivan, 'The Politics of Security Lists' (2016) 34 Envt & Planning D: Socy & Space 67, 79.

[16] Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (U of Chicago Press 2006).

[17] See Sarfaty, 'Translating Modern Slavery into Management Practice' (n 8).

[18] See, eg, Jean Allain (ed), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (OUP 2012); Janie A Chuang, 'Exploitation Creep and the Unmaking of Human Trafficking Law' (2014) 108 AJIL 609;

interpretation of modern slavery has been left to corporations to determine how the norm applies to their supply chains. Although the prohibition against slavery has the status of a *jus cogens* norm under international law, there is considerable debate over the definition of modern slavery.[19] While each of the component practices that may be included under modern slavery are defined within international law, the broad concept is not covered under a separate legal framework.[20] Governments have nonetheless embraced the concept of modern slavery in recent supply chain disclosure legislation, which is driving the interpretation of this vaguely defined concept in management practice.

Part of an ethnographic study of global supply chain governance is determining who has the power to shape its regulatory functions. In this case, the actors wielding such power are third-party service providers, which are providing tools for companies to perform risk assessments and due diligence in compliance with recent laws. Third-party service providers—and, in particular, platform businesses—are playing a critical role by offering guidance to companies on how to interpret, measure, and report on international legal norms around modern slavery. Platforms are business models that create value by facilitating exchanges of information and creating networks of users. One of the world's largest collaborative platforms for sharing responsible sourcing data on supply chains is the Supplier Ethical Data Exchange (Sedex), which is a not-for-profit organization that includes over 50,000 buyer and supplier members across 35 industry sectors and 150 countries. Sedex is the most frequently referenced third-party service provider in corporate disclosure statements issued under recent modern slavery laws. In this capacity, it is filling a vacuum left by governments, which have passed vague legislation lacking enforcement power and have failed to provide clear guidance on the interpretation and implementation of recent laws.

Janne Mende, 'The Concept of Modern Slavery: Definition, Critique, and the Human Rights Frame' (2019) 20 Human Rights Rev 229.

[19] The Vienna Convention on the Law of Treaties (1969, art 53) defines a *jus cogens* norm as 'a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.'

[20] There are several international legal frameworks that cover components frequently included in the category of 'modern slavery': the United Nations' two conventions on slavery and practices similar to slavery (Slavery Convention [1926] and the Supplementary Convention on the Abolition of Slavery [1956]); the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949); the International Labor Organization's (ILO) Convention Concerning Forced or Compulsory Labor (1930); the ILO's Convention Concerning Minimum Age for Admission to Employment (1973); the ILO's Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999); and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000).

In order to understand how corporate experts are translating ill-defined legal norms around modern slavery and interpreting them in practice, one needs to examine the chain of translation for these norms—i.e., the process by which supply chain information is transformed from qualitative, unstructured data replete with contestations over the determination of modern slavery on the ground, to quantitative indicators and scorecards of modern slavery risks, and, finally, to polished disclosure statements that summarize corporate efforts to eradicate modern slavery in their supply chains.

The chain of translation begins on the ground with the gathering of raw data on potential instances of modern slavery within supply chains. Corporations frequently outsource this process to private parties such as auditors and consulting firms, which conduct human rights risk assessments for companies in compliance with recent laws. The gathering of on-the-ground information on potential instances of modern slavery is a challenging process given methodological obstacles and the hidden nature of the abuses, and is thus fraught with politics and contestations over whether observations in fact qualify as violations. As part of the second step in the chain of translation, auditors convert raw qualitative data on modern slavery into quantitative metrics such as indicators and risk scorecards. These metrics appear as objective facts while overlooking the analytical and methodological challenges that auditors face when gathering the original qualitative data. These tools include forced labour operational indicators developed by such organizations as Sedex, which then calculate composite risk scores for companies to use when reporting on modern slavery. By serving as a platform for exchanging audit data among buyers and suppliers, Sedex has access to composite data and is thereby able to produce forced labour indicator reports for companies. The audience of these reports is companies, which extract information from the reports when they summarize their modern slavery risks in disclosure statements. This is final step in the chain of translation, whereby companies convert quantitative indicators and risk scorecards into a polished corporate disclosure statement.

This chain of translation thus hinges upon the important role of third-party service providers such as Sedex, which enable the flow of data, services, practices, and ideas across buyers and suppliers. While third-party agents of governance such as Sedex operate in the background, they are playing an important function in interpreting legal norms around modern slavery and shaping supply chain governance. By serving as a governance authority with respect to the interpretation of legal norms and the implementation of supply chain laws, Sedex is filling a

vacuum left by governments as they have failed to offer adequate guidance on vague modern slavery legislation. Yet Sedex's expansive role carries potential costs, including the promotion of superficial compliance through an overreliance on quantitative indicators and the dominance of business interests without sufficient citizen engagement.

B. Translating Human Rights Due Diligence

With the rise of economic globalization, industry associations are also playing a significant role in global governance. Their influence has expanded from political lobbying to standard-setting and lawmaking as part of transnational legal processes.[21] Yet while existing research has examined the self-regulatory actions of industry groups on their own members, scholarship has underemphasized the role of these groups in regulating the activities of non-member suppliers abroad. Anthropological insights can uncover how industry groups are shaping the transnational regulation of global supply chains and the interpretation of the international legal norm of human rights due diligence.

The Responsible Minerals Initiative (RMI) exemplifies the role of industry associations in norm generation, implementation, and diffusion with respect to transnational standards on responsible minerals sourcing and human rights due diligence.[22] With over 380 member companies across multiple industries ranging from electronics, automotive, aerospace, jewellery, and communications, the RMI was founded in 2008 to address concerns that the sourcing of 'conflict minerals' (tin, tungsten, tantalum, and gold) provided funding to armed groups in the Democratic Republic of Congo. Following the passage of conflict minerals legislation in the United States and European Union (U.S. Dodd-Frank Act's Section 1502, 2010; EU Regulation 2017/821), the RMI has facilitated the implementation of these laws by developing a reporting template and auditing standards targeting what are considered to be supply chain choke points—the smelters and refiners located abroad. By doing so, the RMI is interpreting the norm of human

[21] Gregory C Shaffer & Melissa Durkee, 'Introduction to Symposium on Trade Associations in Transnational Legal Ordering' (2017) 111 AJIL Unbound 103.

[22] See Sarfaty, 'Supply Chain Governance at a Distance' (n 8).

rights due diligence (as applied to global minerals supply chains) and translating it into corporate practice.

While initially an ambiguous and vague concept when it was introduced by the United Nations (UN) in 2011, human rights due diligence is now the cornerstone of the international legal framework to regulate corporate activity related to human rights.[23] The UN Guiding Principles on Business and Human Rights define the general parameters of human rights due diligence, which is aimed at identifying, preventing, mitigating, and accounting for potential adverse human rights impacts (Principles 17–21). Companies are expected to 'seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts' (Principle 13(b)). Business relationships are understood to include relationships with 'entities in [a company's] value chain' (Principle 13(b) cmt.). Thus, human rights due diligence requires a company to map its supply chain in order to identify potential human rights risks among its suppliers.

The Guiding Principles outline a four-step framework for conducting due diligence: 'assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed' (Principle 17). The process of conducting due diligence should be ongoing throughout the life of an activity, include all internationally recognized human rights as a reference point, and extend to a company's suppliers (Principles 17, 18 cmt.). The Guiding Principles further call on states to encourage, or where appropriate require, reporting by companies of their due diligence measures to prevent adverse human rights impacts (Principle 3 cmt.). The Guiding Principles' approach to due diligence was subsequently incorporated by the Organization for Economic Co-operation and Development (OECD) in its revised Guidelines on Multinational Enterprises (2011).

But what does human rights due diligence look like in practice and how should it be interpreted in various contexts? Scholars, activists, and corporate managers have debated this question as they struggle to operationalize this critical but vaguely defined legal norm. Given that human rights due diligence features 'ambiguous and imprecise language' and extensive scope for interpretation, it is prone to 'cosmetic compliance' and is open to corporate discretion.[24]

[23] See Ingrid Landau, 'Human Rights Due Diligence and the Risk of Cosmetic Compliance' (2019) 20 Melbourne J Intl L 1.

[24] ibid 15-16.

Articulated in a variety of legal instruments, the norm is taking shape in the technical practices of experts and under the leadership of industry associations. In the absence of guidance on what constitutes adequate human rights due diligence and which tools companies can use to achieve this standard, the RMI is providing critical tools to interpret this norm in the context of global mineral supply chains. Its reporting template and auditing standards have provided companies with guidance on how to conduct human rights risk assessments in compliance with the U.S. and EU conflict minerals legislation.

Yet the RMI's tools mask the underlying corporate interests that control how human rights due diligence is being interpreted and implemented in practice. For instance, the RMI's Risk Readiness Assessment is an online self-assessment and due diligence tool for companies to identify and assess environmental, social, and governance risks across fifteen minerals and metals in raw material supply chains. However, companies largely control the design, management, and revision of the risk assessment tool, which is based on industry norms primarily defined by experts with limited opportunities for public engagement. In addition, the tool relies on companies' own evidence that is not independently verified, as well as their own determination of supply chain risks that are based on sometimes vague categories and rankings that lack substantial differentiation. As a result, corporate-controlled human rights due diligence is building on a technocratic model of governance that is facilitated by an industry association.[25]

III. Outsourcing International Legal Compliance

Another dimension of global governance at a distance is the role played by private actors in serving as regulatory intermediaries, which implement international legal standards and transnational law on behalf of states and supranational institutions.[26] Governments are increasingly divesting power to private third-parties, which are governing at a distance by means of indicators, audits, and other

[25] See Cris Shore & Susan Wright, 'Audit Culture Revisited: Rankings, Ratings, and the Reassembling of Society' (2015) 56 Current Anthro 421.

[26] See Kenneth W Abbott et al, 'Introducing Regulatory Intermediaries' (2017) 670 Annals of the Am Acad Pol & Soc Sci 6. See also Graeme Auld & Stefan Renckens, 'Rule-Making Feedbacks through Intermediation and Evaluation in Transnational Private Governance' (2017) 670 Annals of the Am Acad Pol & Soc Sci 93; Luc Brès et al, 'Exploring the Formal and Informal Roles of Regulatory Intermediaries in Transnational Multistakeholder Regulation' (2019) 13 Reg & Gov 127; Luc Fransen & Genevieve LeBaron, 'Big Audit Firms as Regulatory Intermediaries in Transnational Labor Governance' (2019) 13 Reg & Gov 260.

technocratic tools (which I discuss in more detail in the next section). Regulatory intermediaries perform important functions in the implementation of rules: 'interpreting and elaborating them for specific circumstances; "translating" them into practical forms useful to targets; providing assistance to targets; and evaluating alternative modes of implementation.'[27]

A. Regulating Global Supply Chains

An excellent example of outsourcing international legal compliance is found in the regulation of global supply chains. In the world of 'supply chain capitalism' marked by enhanced mobility of labour and greater efficiency via subcontracting,[28] multiple legal orders coordinate and compete to shape the environmental, labour, and human rights practices of actors.[29] Anthropologists have theorized this form of supply chain management as an 'ethic of detachment,' where companies 'are constantly engaged in establishing limits and endpoints to relationships in their supply chain, ensuring that contracts are time-bound and spatially defined, resisting proximity and intimacy, and framing relationships around difference and distance.'[30] As part of this ethic of detachment, there are 'multiple nodes of authority' that complicate efforts to determine which actor is responsible for a particular decision or action, as responsibility is redistributed across a network of actors.[31]

Global corporations are more than just regulated entities; they also serve as regulators themselves, imposing international legal standards in such areas as labour, safety, human rights, and the environment on their third-party suppliers in other countries. Thus, regulation about outsourcing is itself being outsourced to companies, which are responsible for ensuring compliance with international standards by the firms within their multi-tiered supply chains. In this way, supply chain regulation exemplifies a distinct model of outsourcing that dilutes the host state's

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[27] Abbott et al (n 26) 7.

[28] Anna Tsing, 'Supply Chains and the Human Condition' (2009) 21 Rethinking Marxism: J Econ, Culture & Socy 148.

[29] See Bertram Turner, 'Supply-Chain Legal Pluralism: Normativity as Constitutive of Chain Infrastructure in the Moroccan in the Argan Oil Supply Chain' (2016) 48 J Leg Pluralism & Unofficial L 378.

[30] Jamie Cross, 'Detachment as a Corporate Ethic: Materializing CSR in the Diamond Supply Chain' (2011) 60 Focaal—J Global & Historical Anthro 34, 36.

[31] Lesley K McAllister, 'Regulation by Third-Party Verification' (2012) 53 BC L Rev 1, 32.

governing authority and grants inordinate power to corporate actors to regulate themselves and their suppliers.

As corporations implement and monitor international standards on directly employed and subcontracted subjects, they are creating new forms of 'supply-chain citizenship,' as theorized by Damani Partridge.[32] These relations of citizenship rely on transnational corporate enforcement of national laws.[33] Partridge finds that 'there are higher stakes for factory-owner compliance to the transnationally enforced global compliance standards (set not by one general body but by different kinds of corporations) than for compliance with the national laws or the demands of labour unions.'[34] As a result, ethical regimes enforced by businesses display 'corporate governmentality'—'a transnational governmental rationality that exceeds its own institutional, geographical, and legal limits, establishing its own "techniques of government."'[35]

While outsourcing regulation to companies is a means by which states can indirectly regulate firms and subjects in other countries, there are risks to public values when private actors perform functions conventionally reserved for government agencies.[36] Supply chain laws pose a notable risk given that the regulated entities themselves are often ill-equipped to monitor and enforce compliance by third parties. Companies may then outsource compliance to other private parties, such as consulting firms or suppliers themselves, which audit the tiers of suppliers below them. As the implementation of supply chain regulations becomes further removed from the state and gets outsourced first to companies and then to other suppliers and consultants, we see the creation of second-order regulation, third-order regulation, and so on.[37] This is an example of corporate detachment and disentanglement from compliance with supply chain regulations,[38]

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[32] Damani J Partridge, 'Activist Capitalism and Supply-Chain Citizenship: Producing Ethical Regimes and Ready-to-Wear Clothes' (2011) 52 Current Anthro S97.

[33] ibid S100.

[34] ibid.

[35] ibid S98. See also Michel Foucault, 'Governmentality' in Graham Burchell et al, *The Foucault Effect: Studies in Governmentality* (U of Chicago Press 1991).

[36] See Jody Freeman, 'The Private Role in Public Governance' (2000) 75 NYU L Rev 543; Symposium, 'New Forms of Governance: Ceding Power to Private Actors' (2002) 49 UCLA L Rev 1687; Symposium, 'Public Values in an Era of Privatization' (2003) 116 Harv L Rev 1211; Sidney A Shapiro, 'Outsourcing Government Regulation' (2003) 53 Duke LJ 389; Michael Vandenbergh, 'The Private Life of Public Law' (2007) 100 Colum L Rev 101.

[37] See Vandenbergh (n 36) 101.

[38] See José-María Muñoz & Philip Burnham, 'Subcontracting as Corporate Social Responsibility in the Chad-Cameroon Pipeline Project' in Dolan and Rajak (eds), *The Anthropology of Corporate Social Responsibility* (Berghahn Books 2016) 154.

which facilitates 'the devolution of risk, uncertainty and responsibility to the weaker "partners" in the [supply] chain.'[39] The outsourcing of compliance enables corporations to manage, control, and limit their attachments to suppliers and thereby deflect accountability.[40]

A chain of outsourcing has thus developed involving layers of monitoring and enforcement, and often competing systems of incentives. The limited accountability along the supply chain is especially disconcerting given that the purpose of these regulations is to enhance corporate accountability to the public and hold companies responsible for human rights violations in which they are complicit, whether wittingly or unwittingly. This chain of outsourcing creates 'legal black holes of responsibility' by which agency is distributed to unaccountable private actors.[41] In her study of the transnational oil industry in Equatorial Guinea, Hannah Appel describes how the industry aims to disentangle the production of profit from offshore sites and 'to structure liability and responsibility in such a way that it can seem to remove itself from social, legal, political, and environmental entanglements.'[42] In this way, offshoring, subcontracting, and the outsourcing of legal compliance create a disentangling of responsibility and a distancing of global governance.

B. Industry Associations as Extraterritorial Regulators

Industry associations are also emerging as influential actors in transnational supply chain regulation, not only as norm-generators, but also as norm-implementers with respect to third-party suppliers located abroad. The example of the RMI described above is particularly compelling because of its extraterritorial reach in implementing transnational law—specifically, supply chain due diligence laws in the United States and European Union with respect to conflict minerals—and developing voluntary standards on the responsible use of cobalt. Rather than applying norms only on its own members (as has been common in the self-regulatory activities of industry groups),

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[39] Geert De Neve, 'Power, Inequality, and Social Responsibility: The Politics of Ethical Compliance in the South Indian Garment Industry' in Dolan and Rajak (eds), *The Anthropology of Corporate Social Responsibility* (Berghahn Books 2016) 107.

[40] Cross (n 30).

[41] Julia Eckert & Laura Knöpfel, 'Legal Responsibility in an Entangled World' (2020) 4 J Leg Anthro 1, 2.

[42] Hannah Appel, 'Offshore Work: Oil, Modularity, and the How of Capitalism in Equatorial Guinea' (2012) 39 Am Ethnologist 692, 693. See also Hannah Appel, *The Licit Life of Capitalism: US Oil in Equatorial Guinea* (Duke U Press 2019).

the RMI designs, implements, and enforces standards on its members' third-party suppliers that operate around the world. The RMI has further expanded its regulatory power through a grievance platform, which monitors stakeholder complaints regarding the due diligence processes of its member companies and their smelters and refiners located abroad. By doing so, the RMI is engaging in the diffusion and translation of transnational sourcing requirements to companies all the way down the minerals supply chains. The growing diversity of corporate members within the RMI—in terms of size, industry, country, and location in the supply chain (e.g., as upstream, midstream, or downstream companies)—has also led to internal tensions within the organization as it struggles to answer to a broad array of sometimes divergent interests. These dynamics define not only the orientation and structure of the organization, but also its regulatory mission of advancing responsible minerals sourcing in global supply chains.

There are important accountability implications associated with industry associations such as the RMI playing such a central role in the implementation of transnational laws. The RMI is serving as a regulatory authority in the absence of clear guidance from national legislators. Yet, the legitimacy of the RMI in this governance role is questionable given its lack of public accountability, an absence of oversight mechanisms, and the fact that it is controlled by particular business interests. The RMI, like other industry associations, is largely invisible to regulatory oversight, thus resulting in little opportunity for public deliberation over the construction and application of its tools and its extraterritorial implementation of transnational laws. Moreover, as the RMI has emerged as a dominant market player in responsible minerals sourcing, there are concerns over its potential monopoly power and a question of whose interests the association represents.

IV. From Regulation to Management: Corporate Logics in Global Governance

A final dimension of global governance at a distance is the ways in which the corporate form is shaping the practice of international law. Anthropological analyses of corporate forms have uncovered 'how people have broken off and mobilized ideas, language, and technologies created within corporations and brought them into new sites.'[43] With the rise of corporate power and the

[43] Welker et al (n 5) S6.

reconfiguring of state sovereignty, there is an infusion of corporate logics into global governance through the use of technologies of management control—e.g., data analytics, performance indicators, audits, benchmarking, and other management tools that measure and facilitate international legal compliance.[44] These corporate forms are being applied not only by companies themselves, but also by non-governmental organizations (NGOs), states, and international institutions. While these tools have their origins in corporate business models, they have been transplanted into international law. For instance, they have become increasingly common in the fields of international human rights law and international environmental law with the rise of such management practices as due diligence procedures and risk assessments.

Anthropologists and socio-legal scholars have analysed the diffusion of technologies of governance, including administrative techniques, expert knowledge practices, and audit cultures, which have migrated into the field of international law.[45] These tools imitate the effects of governmental regulations while echoing private sector interests and needs. This is an example of 'instrumental antipolitics' that 'aim[s] at placing technocratic experts on the throne of politics.'[46] A guise of neutrality and objectivity exists behind these tools and masks underlying power relations. Their effectiveness depends on experts with specialized skills and esoteric knowledge—'[e]xperts hold out the hope that problems of regulation can remove themselves from the disputed terrain of politics and relocate onto the tranquil yet seductive territory of truth.'[47] Such practices render domains calculable and susceptible to evaluation and intervention.

The appeal of quantitative metrics lies in their ability to simplify legal norms and translate them into a numerical representation that is transparent, easy to understand, and comparable across actors. Quantitative tools can offer a number of apparent benefits: they can measure accountability to standards and norms; assess compliance with policies; and evaluate performance with respect

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[44] See, eg, Kevin E Davis et al, 'Introduction: Global Governance by Indicators' in Kevin E Davis et al (eds), *Governance by Indicators* (OUP 2012) 12; Kevin E Davis et al, 'Introduction: The Local-Global Life of Indicators: Law, Power, and Resistance' in Sally Engle Merry et al (eds), *The Quiet Power of Indicators* (CUP 2015) 1.

[45] See, eg, Marilyn Strathern (ed), *Audit Cultures: Anthropological Studies in Accountability, Ethics and the Academy* (Routledge 2000); Annelise Riles, 'New Agenda for the Cultural Study of Law: Taking on the Technicalities' (2005) 53 Buffalo L Rev 973; Annelise Riles, *Collateral Knowledge: Legal Reasoning in the Global Financial Markets* (U of Chicago Press 2011); Sally Engle Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (U of Chicago Press 2016); Fleur Johns, 'Data, Detection, and the Redistribution of the Sensible in International Law' (2017) 111 AJIL 57; Gavin Sullivan, 'Taking on the Technicalities of International Law' (2017) 111 AJIL Unbound 181.

[46] Andreas Schedler, *The End of Politics?: Explorations into Modern Antipolitics* (Palgrave Macmillan 1997) 12.

[47] Rose and Miller (n 13) 69.

to stated objectives. In order to command scientific authority, these tools of global governance rely on numbers, as they serve as second-order abstractions of complex phenomena. Numbers serve as a 'technology of distance,'[48] whose authority comes from 'their capacity to create and overcome distance, both physical and social.'[49] They construct new categories and relations among people and things through standardization and commensurability and, in the process, 'profoundly transform what we choose to do, who we try to be, and what we think of ourselves.'[50] Commensuration is a means of managing uncertainty, depersonalizing relations, imposing control, securing legitimacy, and enforcing discipline.[51]

However, technologies of global governance are not neutral instruments that can be applied mechanically. They are normative tools that embed certain values and shape behaviour. The emphasis on statistical data can reify power inequalities, lead to a concentration of decision-making power in the hands of technical experts, and risk distorting or obscuring the phenomena they are meant to represent.[52] According to recent anthropological scholarship on the role of technologies of governance, these tools imbue a technocratic rationality into decision-making that masks underlying power relations as well as the methodologies in producing the metrics.[53] The use of metrics can also produce a box-ticking approach to compliance, which entails superficial or cosmetic changes without any substantive effects on behaviour.

Socio-legal literature includes multiple examples of the infusion of corporate logics into global governance through the use of management technologies. Below, I first discuss the diffusion of the multi-stakeholder management model within international institutions. I then analyse the use of indicators in international law as a quantitative technique of governance.

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[48] Theodore M Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton UP 1995) ix.

[49] Wendy Nelson Espeland, 'Authority by the Numbers: Porter on Quantification, Discretion, and the Legitimation of Expertise' (1997) 22 L & Soc Inquiry 1107, 1107.

[50] Ian Hacking, *The Taming of Chance* (CUP 1990) 3.

[51] See Wendy Nelson Espeland & Mitchell L Stevens, 'Commensuration as a Social Process' (1998) 24 Ann Rev Soc 313, 316.

[52] See Margaret L Satterthwaite, 'Rights-Based Humanitarian Indicators in Post-Earthquake Haiti' in Kevin E Davis et al (eds), *Governance by Indicators* (OUP 2012) 391; David Nelken, 'Conclusion: Contesting Global Indicators' in Sally Engle Merry et al (eds), *The Quiet Power of Indicators* (CUP 2015) 318-19.

[53] See Strathern (n 45); Riles, 'New Agenda for the Cultural Study of Law: Taking on the Technicalities' (n 45); Riles, *Collateral Knowledge: Legal Reasoning in the Global Financial Markets* (n 45); Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (n 45); Johns (n 45); Sullivan (n 45).

Finally, I examine data-driven technologies for supply chain compliance, which operationalize and extend this turn to indicator-based governance.

A. Multi-Stakeholder Management within International Institutions

A corporate form that has permeated global governance is multi-stakeholder management.[54] With roots in organizational and stakeholder theories, multi-stakeholderism is a proliferating form of governance that brings affected 'stakeholders' together to collaboratively engage in dialogue and decision-making over the development of norms and standards. It was originally developed by scholars in corporate management to reframe the relations between corporations, society, and the state in an effort to support inclusivity and participation as part of a consensual framework.[55] In the 1990s, the multi-stakeholder model migrated from corporate boardrooms to public administration, as governments and international institutions embraced this regulatory approach.[56] A key player in the diffusion of multi-stakeholderism has been the Davos-based World Economic Forum, which has promoted the redesign of global governance through multi-stakeholderism by 'redefining the international system as constituting a wider, multifaceted system of global cooperation in which intergovernmental legal frameworks and institutions are embedded as a core, but not the sole and sometimes not the most crucial, component.'[57]

Yet, critics argue that this mechanism is a 'new technology of neoliberalism,'[58] which enables companies to 'bolster their legitimacy subvert coercive state regulation by promoting voluntary alternatives and subdue resistance to their operations.'[59] Multi-stakeholder governance places corporations, states, civil society organizations, social movements, technical experts, and

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[54] See Brid Brennan et al (eds), *The Great Takeover: Mapping of Multistakeholderism in Global Governance* (People's Working Group on Multistakeholderism 2021); Harris Gleckman, *Multistakeholder Governance and Democracy: A Global Challenge* (Routledge 2018).

[55] See Matthew C Canfield, *Translating Food Sovereignty: Cultivating Justice in an Age of Transnational Governance* (Stanford UP 2022).

[56] ibid 162.

[57] World Economic Forum, 'Everybody's Business: Strengthening International Cooperation in a More Interdependent World' (World Economic Forum 2010) 7.

[58] See Brennan et al (n 54).

[59] Matthew C Canfield, 'The Anthropology of Legal Form: Ethnographic Contributions to the Study of Transnational Law' (2023) 48 L & Soc Inquiry 31, 39.

affected communities within the same category of 'stakeholder,' within a structure that assumes formal equality among different stakeholders. In doing so, it obscures the fact that these actors occupy radically different positions of power. Corporations often have the resources, expertise, and institutional access needed to shape agenda and define problems, while civil society groups often struggle to participate on the same terms. Multi-stakeholderism thus promotes a neoliberal rationality that treats interest groups as market actors rather than rights holders who are demanding accountability from state and private actors.

While multi-stakeholderism is often presented as a means of addressing the democratic deficits of global governance, its corporate form lies in the way it repositions corporations as partners in governance— as participants in designing standards, norms, and policy frameworks— rather than as subjects of regulation. This reflects a managerial model in which i questions about how corporations should be regulated are turned into discussions about how different 'stakeholders' can work together, giving corporate actors a legitimate role in shaping the rules that are meant to govern them.

Matthew Canfield's ethnography of the UN Committee on World Food Security (CFS) reveals how multi-stakeholderism is 'a market-oriented model of governance that fails to recognize the differential responsibilities, needs, and obligations of different actors.'[60] While the CFS invited governments, civil society groups, and the private sector to participate as interested stakeholders in the policy-making process over global food governance, the reality was that not all participants were on equal footing. Canfield argues that beneath the horizontal, networked structure of multi-stakeholder governance lies implicit hierarchies within a veneer of consensus.[61] While the corporate form of multi-stakeholderism seemingly celebrates inclusive governance, it is masking unequal power relations and the corporate capture of international institutions.[62]

[60] ibid 38.

[61] ibid 43. See also Birgit Müller, *The Gloss of Harmony: The Politics of Policy Making in Multilateral Organizations* (Pluto Books 2013).

[62] ibid 40.

B. The Use of Indicators in International Law

International law has increasingly relied on the use of indicators to operationalize global norms and thereby improve compliance.[63] Indicators facilitate the process by which legal norms are interpreted and implemented, particularly in areas of international law where norms may be ill-defined and traditional enforcement mechanisms are absent. As a second-order abstraction of statistical information, indicators rely on numbers to represent social phenomena and evaluate performance. The growing reliance on indicators in global governance is 'an instance of the dissemination of the corporate form of thinking and governance into broader social spheres.'[64] Indicators promote a particularly corporate form of governance through a focus on audit, benchmarking, performance evaluation, and self-reporting. These techniques are familiar from business management, where organizational conduct is monitored through measurable targets and reported performance. When imported into international law, they translate public values such as the rule of law or human rights into measurable outputs that can be ranked, compared, and managed.

Backed by technical expertise and designed to produce comparability, these tools have been shaping decision making by global regulatory bodies. For instance, the World Bank for many years relied on its Doing Business indicators to produce a ranking of developing countries based on the quality of their business laws and legal institutions.[65] When determining eligibility for aid, the Bank has also relied on indicators produced by NGOs (e.g., those on corruption by Transparency International and on human rights by Freedom House).[66] In addition to international institutions like the Bank, private regulatory bodies also rely on indicators to shape global

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[63] See Kevin E Davis et al (eds), *Governance by Indicators: Global Power Through Quantification and Ranking* (OUP 2012); Kevin E Davis, Benedict Kingsbury & Sally Engle Merry, 'Indicators as a Technology of Global Governance' (2012) 46 L & Socy Rev 71; Sally Engle Merry et al (eds), *The Quiet Power of Indicators: Measuring Governance, Corruption, and Rule of Law* (CUP 2015).

[64] Sally Engle Merry, 'Measuring the World: Indicators, Human Rights, and Global Governance' (2011) 52 Current Anthro S83, S83.

[65] See Kevin E Davis & Michael B Kruse, 'Taking the Measure of Law: The Case of the *Doing Business* Project' (2007) 32 L & Soc Inquiry 1095, 1114; Alvaro Santos, 'Labor Flexibility, Legal Reform, and Economic Development' (2009) 50 Va J Intl L 43, 51.

[66] See Freedom House, 'Freedom in the World 2024' (2024) available at <https://freedomhouse.org/sites/default/files/2024-02/FIW_2024_DigitalBooklet.pdf>; Transparency International, 'Global Corruption Barometer' (2017) available at <https://www.transparency.org/en/gcb/global/global-corruption-barometer-2017>.

governance in a variety of fields (e.g., the Global Reporting Initiative's corporate sustainability reporting guidelines include indicators for environmental, social, and economic performance).[67]

Although indicators are common tools of state administration and economic policy, their use in human rights governance reflects the broader spread of audit culture into international law. The migration of business management techniques into the field of human rights represents a managerial approach to assessing compliance—defining problems through measurable outputs and evaluating performance through standardized benchmarks. For instance, the Office of the UN High Commissioner for Human Rights has developed human rights indicators to assist treaty bodies in their monitoring of major human rights conventions.[68] The UN treaty bodies can thereby more efficiently process state party reports and monitor countries' performance over time.[69] Sally Engle Merry has studied the power of quantification in her study of indicators to measure human rights, violence against women, and sex trafficking.[70] For instance, indicators on violence against women were designed to be used by countries when reporting on their compliance with human rights treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women. Quantification, according to Merry, carries an aura of objectivity that 'camouflage[s] the political considerations that shape the collection and representation of data.'[71] Merry describes contestations over what should be counted, what categories to rely upon, the type of expertise involved, and who funds data collection, all of which ultimately affect how international legal norms are conceived and what solutions are proposed. Merry argues that we must analyse the politics by which indicators are constructed and the forms of knowledge they produce, which ultimately shape the allocation of resources, assessments of legal compliance, and broader decisions of global governance.

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[67] See Galit A Sarfaty, 'Regulating through Numbers: A Case Study of Corporate Sustainability Reporting' (2013) 53 Va J Intl L 575.

[68] See Office of the UN High Commissioner for Human Rights, 'Report on Indicators for Promoting and Monitoring the Implementation of Human Rights' (6 June 2008) UN Doc HRI/MC/2008/3.

[69] For a critique of this development, see AnnJanette Rosga & Margaret L. Satterthwaite, 'The Trust in Indicators: Measuring Human Rights' (2009) 27 Berkeley J Intl L 253, 281–85.

[70] Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (n 45).

[71] ibid 20.

C. Data-Driven Technologies in Supply Chain Compliance

A final example of the corporatization of global governance is the use of data-driven technologies for supply chain compliance, which build on and extend developments in indicator-based governance. With the rise of international standards and domestic legislation on corporate accountability, there is an increased reliance on technocratic tools, audit techniques, and data analytics to assess, measure, and monitor compliance. Anthropologists have examined the 'techno-politics' behind corporate social responsibility, referring to the set of knowledge practices, administrative techniques, and relations of power that underlie governance.[72] Marina Welker, for example, describes how Newmont Mining Corporation launched an integrated assessment process to audit safety, labour, environmental, and social performance among subcontractors in its mine in Batu Hijau, Indonesia.[73] Newmont's assessment process converted international standards such as the Universal Declaration of Human Rights into items in its risk register.[74] Potential human rights, labour, and environmental violations by its contractors would then be translated into future economic 'risks.' The assessment thereby served as an 'ethical technology,' constructed around discourses of transparency, accountability, and rationality to bureaucratize and depoliticize social and environmental impacts while ensuring subcontractor compliance with international standards.[75] As Welker demonstrates, risk assessments and social audits 'push responsibility downward while creating new upward demands for knowledge, bringing distant sites and actors closer to corporate headquarters and enabling "action at a distance."'[76]

We also see the use of metrics and risk assessment tools in the implementation of supply chain regulations around modern slavery, which demonstrates the techno-politics through which

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[72] Brian Larkin, 'The Politics and Poetics of Infrastructure' (2013) 42 Annu Rev Anthro 327; see, eg, Dinah Rajak, *In Good Company: An Anatomy of Corporate Social Responsibility* (Stanford UP 2011); Stuart Kirsch, *Mining Capitalism: The Relationship Between Corporations and Their Critics* (U of California Press 2014); Marina Welker, *Enacting the Corporation: An American Mining Firm in Post-Authoritarian Indonesia* (U of California Press 2014); Catherine Dolan & Dinah Rajak (eds), *The Anthropology of Corporate Social Responsibility* (Berghahn Books 2016); Appel, *The Licit Life of Capitalism: US Oil in Equatorial Guinea* (n 42).

[73] Marina Welker, 'We Should Be Like Starbucks' in Catherine Dolan & Dinah Rajak (eds), *The Anthropology of Corporate Social Responsibility* (Berghahn Books 2016) 183.

[74] ibid 204.

[75] ibid 184.

[76] ibid 189, quoting Bruno Latour, *Science in Action: How to Follow Scientists and Engineers Through Society* (Harvard UP 1987).

global supply chain governance is assembled.[77] Sedex, the third-party platform business described above, has developed forced labour operational indicators as well as forced labour indicator reports that calculate composite risk scores based on a weighted calculation of the number of indicators identified at specific supplier sites and their strength. These tools provide guidance to companies on how to interpret norms around modern slavery and measure compliance with those norms. An ethnographic examination of Sedex reveals that technical experts—mostly business professionals from the United Kingdom rather than social scientists or legal experts—are playing a critical role in the platform's decision-making, design of measurement tools, and interpretation of legal norms.[78] While the specialized knowledge and political neutrality afforded by Sedex can be a benefit, it is difficult for stakeholders to challenge the power of these experts and their assumptions in producing indicators. For instance, despite limited opportunities for public and NGO participation in Sedex's governance, there remains a lack of transparency as to the methodology behind its metrics to allow for comment and critique.

In addition to the use of risk assessments, the field of supply chain governance is increasingly relying on big data analytics, artificial intelligence, algorithmic techniques, and related technologies to conduct human rights diligence. A notable example is the use of data-driven tools by states and corporations to implement recent forced labour import bans. Since 2020, the United States-Mexico-Canada Agreement commits the three state parties to prohibit the importation of goods produced in whole or in part by forced labour. In addition, in 2021 the United States passed the Uyghur Forced Labor Prevention Act, which aims to ensure that no product made wholly or in part in China's Xinjiang Uyghur Autonomous Region gets imported into the country. In order to facilitate compliance with these laws, the U.S. government has partnered with risk intelligence platform firms (e.g., Altana AI and Sayari) to map complex multi-tiered supply chains, screen for forced labour indicators in public corporate and trade data from over 65 countries, and identify high risks of forced labour through graph analytics tools.[79] The use of data-driven techniques to enforce compliance will significantly expand in the coming years as the European Parliament has recently approved a forced labour import regulation.

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[77] Larkin (n 72) 328. See also Ong & Collier (n 9).

[78] See Sarfaty, 'Translating Modern Slavery into Management Practice' (n 8).

[79] See Sayari, 'Sayari Awarded $7.8M Enterprise Trade Analytics Contract to Support U.S. Contract to Support U.S. Customs & Border Protection' (15 November 2022) available at <https://sayari.com/resources/sayari-awarded-7-8m-enterprise-trade-analytics-contract-to-support-u-s-customs-border-protection/>.

As governments and firms increasingly rely on data analytics and AI-powered platforms for conducting supply chain due diligence and enforcing/complying with recent regulations, it is critical to examine the methodologies behind these tools, the experts who design them, and the unintended consequences of relying on technology firms to interpret the legal norm of human rights due diligence. A socio-legal lens can shed light on how these 'algorithmic assemblages,' which involve partnerships between states and technology firms and the centrality of digital infrastructures in regulation, are shaping global supply chain governance.[80] Research in this area demonstrates that although AI can enhance companies' ability to conduct human rights due diligence, AI-driven corporate accountability threatens to outsource legal responsibility to algorithms, privatize human rights, and deemphasize stakeholder engagement.[81]

V. Conclusion

By revealing local variations and cultural contexts within which international legal norms circulate, a socio-legal lens can offer important insights into the relationship between corporations and international law. Drawing on anthropological theory and ethnographic studies, this approach uncovers the power dynamics, technocratic practices, chains of translation, and forms of expertise that shape the role of global corporations in international law-making. It reveals how businesses are engaging in 'global governance at a distance' in three dimensions—(1) the corporate translation of international legal norms, (2) the outsourcing of international legal compliance, and (3) the diffusion of management practices and technologies into global governance. These examples demonstrate the extent to which business interests are influencing how international law is being interpreted and implemented in practice. It also illuminates critical accountability concerns associated with private actors playing such a central role in transnational governance.

[80] See Nick Seaver, 'What Should an Anthropology of Algorithms Do?' (2018) 33 Cultural Anthro 375; Maria Sapignoli, 'The Mismeasure of the Human: Big Data and the "AI Turn" in Global Governance' (2021) 37 Anthro Today 4; Gavin Sullivan, 'Law, Technology, and Data-Driven Security: Infra-Legalities as Method Assemblage' (2022) J L & Socy 1.

[81] See Galit A Sarfaty, 'Corporate Accountability by Algorithm' Business and Human Rights J (2026).

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