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Survivor-Centered Prosecution of Online Child Sexual Exploitation in the Philippines

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Abstract
This article examines whether current Philippine law supports a survivor-centered model of prosecuting online child sexual exploitation. Using doctrinal legal research, document analysis, and critical review, it analyzes statutes, implementing rules, Supreme Court rules, selected jurisprudence, executive issuances, and peer-reviewed scholarship relevant to online sexual abuse or exploitation of children in the Philippines. The article makes four claims. First, Republic Act No. 11930, Republic Act No. 11862, the revised implementing rules of Republic Act No. 9208, the implementing rules of Republic Act No. 11930, Republic Act No. 10175, and the Rules on Electronic Evidence collectively shift prosecution away from overdependence on child testimony and toward a broader evidentiary ecosystem of digital, platform, rescue-generated, and financial records. Second, the Rule on Examination of a Child Witness supplies a mature procedural framework for protected participation and lawful evidentiary accommodation. Third, recent Supreme Court decisions show that survivor-centered procedure is both enabled and disciplined by safeguards on competency, unavailability, corroboration, confrontation, and statutory transition. Fourth, current coordination measures suggest that prosecutorial quality depends as much on referral pathways and aftercare as on formal criminalization. Survivor-centered prosecution, on this account, is not a retreat from accountability but a more exacting standard of criminal justice that reduces secondary victimization while preserving the child's dignity within legal process.

Keywords: Child Witness, Digital Evidence, Online Child Sexual Exploitation, Philippines, Prosecutorial Strategy, Survivor-Centered Justice

1. Introduction

1.1 Problem Context

Online child sexual exploitation remains one of the most difficult child-protection and criminal-justice problems in the Philippines. Philippine and international studies consistently describe the problem as technologically mediated, financially enabled, and frequently intertwined with household precarity, gendered inequality, and uneven local protection systems (Gill, 2021; Tarroja et al., 2021; ECPAT, INTERPOL, & UNICEF, 2022; Roche

et al., 2023). Earlier scholarship and practice commonly used the term online sexual exploitation of children. Under Republic Act No. 11930, however, the statutory language is now online sexual abuse or exploitation of children and child sexual abuse or exploitation materials. This article uses the older term when discussing prior literature and practice, but relies on the present statutory terminology when analyzing current doctrine and prosecution.

The central legal problem is not simply whether the conduct is criminalized. The more difficult question is whether the justice process can hold offenders accountable without reproducing harm to the child victim or witness. Child-sensitive justice literature has long argued that meaningful access to justice requires procedures that are safe, intelligible, developmentally appropriate, and respectful of dignity while still capable of generating an effective remedy and a fair adjudication (Liefaard, 2019). That concern is especially acute in online child sexual exploitation cases, where victims may be very young, dependent on adult exploiters, related to the accused, or trapped in repeated cycles of recording, livestreaming, and coercion.

1.2 Research Question and Contribution

This article asks whether Philippine law now supports a survivor-centered model of prosecuting online child sexual exploitation cases. It approaches the issue as a doctrinal and institutional question rather than as a prevalence study. The contribution of the article lies in bringing together statutes, procedural rules, recent Supreme Court decisions, and implementation issuances into a single account of how prosecution may be structured to reduce secondary victimization without weakening the burden of proof. It also situates the issue within law-and-humanities concerns, because the distribution of testimonial burden, the design of child-facing procedure, and the treatment of dignity in legal process are not merely technical questions of criminal proof.

The argument advanced here is precise. Philippine law now provides a firmer basis for survivor-centered prosecution than earlier anti-trafficking practice did, but the strength of that framework depends on three conditions: first, doctrinal discipline in the use of child-protective procedural tools; second, competent use of electronic and financial evidence so the child is not the sole carrier of proof; and third, localized coordination across justice and welfare institutions.

1.3 Scholarship and Doctrinal Gap

Existing literature has generated valuable insights into the drivers, harms, and operational characteristics of online child sexual exploitation in the Philippines. Scholars have examined the crime's technological and economic infrastructure, the vulnerabilities that sustain it, the challenges of local child-protection implementation, and the psychological and legal difficulties associated with child testimony (Gill, 2021; Robinson, 2015; Roche, 2017; Roche & Flynn, 2021; Roche et al., 2023; Sugue-Castillo, 2009). What remains underdeveloped is a consolidated legal account of the post-Republic Act No. 11930 framework, especially when read together with the Rule on Examination of a Child Witness, the Rules on Electronic Evidence, and recent Supreme Court cases addressing hearsay, confrontation, and statutory transition.

That gap matters for an interdisciplinary law journal audience. Prosecutors, judges, policymakers, and child-protection practitioners need a clear account of what the present legal architecture authorizes, what it requires, and where the doctrinal limits remain. The stakes are both legal and humanistic: how institutions hear children, allocate evidentiary burdens, and translate dignity into procedure. A survivor-centered prosecution model cannot rest on rhetoric alone. It must be grounded in charge selection, admissibility rules, child-protective procedure, evidentiary strategy, and operational coordination.

2. Materials and Methods

2.1 Research Design

The article uses doctrinal legal research, document analysis, and critical review. Priority was given to primary legal materials—statutes, implementing rules, Supreme Court rules, and reported decisions—supplemented by

executive issuances, official institutional reports, and peer-reviewed scholarship. Materials were selected for their direct relevance to prosecuting online child sexual exploitation in the Philippines and, where policy developments were concerned, for their recency within the post-Republic Act No. 11930 framework. No interviews, surveys, experiments, or original human-subject datasets were undertaken. The inquiry is therefore interpretive rather than statistical.

This design is appropriate because the main question is legal and institutional: what does the current framework permit prosecutors and partner agencies to do, and what boundaries does it impose? The article does not attempt to estimate prevalence, rescue totals, filing rates, or conviction rates beyond what appears in cited public sources. Its purpose is instead to map the architecture of survivor-centered prosecution in law and policy.

2.2 Documentary Corpus

The documentary corpus includes five principal categories of materials. First are statutes and implementing rules, particularly Republic Act Nos. 9208, 10175, 11862, and 11930, together with the revised implementing rules of Republic Act No. 9208 and the implementing rules of Republic Act No. 11930. Second are Supreme Court rules, especially the Rule on Examination of a Child Witness and the Rules on Electronic Evidence. Third are selected Supreme Court decisions, including People v. BBB and XXX, People v. Kenneth John Graham and Jocelyn Ordinaryo, Accused; Rosario Craste y Solayao, People v. YYY, and People v. AAA. Fourth are executive and administrative issuances such as Executive Order No. 67, DILG Memorandum Circular No. 2023-181, and Department of Justice and Department of the Interior and Local Government policy materials on anti-OSAEC coordination. Fifth are peer-reviewed studies and institutional reports that provide conceptual, procedural, and contextual support for the legal analysis. Table 1 summarizes the corpus and its analytic function.

Table 1: Documentary materials and analytic function

Corpus category	Illustrative materials reviewed	Analytic function in this article
Statutes and implementing rules	Republic Act Nos. 9208, 10175, 11862, and 11930; IRR of Republic Act No. 9208; IRR of Republic Act No. 11930	Defines offenses, institutional duties, digital and financial proof environments, and recovery-oriented obligations.
Supreme Court rules	Rule on Examination of a Child Witness; Rules on Electronic Evidence	Clarifies protected testimony, child-hearsay conditions, and the admissibility framework for electronic records.
Jurisprudence	People v. BBB and XXX; People v. Kenneth John Graham and Jocelyn Ordinaryo, Accused; Rosario Craste y Solayao; People v. YYY; People v. AAA	Shows how survivor-centered prosecution is enabled, limited, and corrected through doctrine.
Executive and administrative issuances	Executive Order No. 67; DILG Memorandum Circular No. 2023-181; DOJ-DILG six-pillar anti-OSAEC policy materials	Demonstrates how prosecution capacity depends on coordination, localization, and operational case pathways.
Scholarship and institutional reports	Gill, 2021; Liefaard, 2019; Robinson, 2015; Roche, 2017; Roche & Flynn, 2021; Roche et al., 2023; Sugue-Castillo, 2009; AMLC, 2023; ECPAT et al., 2022; Tarroja et al., 2021	Supplies conceptual and contextual support for child-sensitive procedure, local implementation, and evidentiary strategy.

Note. Table 1 summarizes the principal documentary materials used in the doctrinal review.

2.3 Analytical Framework and Limitations

The review proceeds through four analytical lenses. The first concerns statutory modernization and the changing evidentiary logic of digital exploitation. The second concerns child participation and the minimization of retraumatization during investigation and trial. The third concerns jurisprudence on competency, unavailability, corroboration, confrontation, and statutory transition. The fourth concerns inter-agency and local governance mechanisms that convert formal mandates into operational case pathways.

The article has clear limits. It does not compare regional prosecution outcomes, measure the frequency of protected testimony measures, or report the lived experiences of children within specific cases. Those are important empirical questions, but they require separate methods. The present article instead clarifies the doctrinal and institutional conditions under which survivor-centered prosecution can be legally sustained.

3. Results

3.1 Statutory Modernization and the Diversification of Proof

Philippine law now offers a more specialized framework for online child sexual exploitation than earlier anti-trafficking practice did. Republic Act No. 11930 expressly addresses online sexual abuse or exploitation of children and child sexual abuse or exploitation materials, and it links liability to reporting, prevention, investigation, rescue, rehabilitation, and reintegration. Its implementing rules are equally important because they operationalize prompt referral, child-safe statement taking with social-work support, anti-revictimization safeguards, and the dual objectives of rescue and evidence preservation. At the same time, Republic Act No. 11862 and the revised implementing rules of Republic Act No. 9208 remain central because many online exploitation cases still involve trafficking in persons in substance, especially where adults recruit, provide, maintain, harbor, or profit from the sexual exploitation of children (Republic Act No. 11862, 2022; Republic Act No. 11930, 2022; IRR of Republic Act No. 11930, 2023; IRR of Republic Act No. 9208, 2023).

The crucial development is not that Republic Act No. 11930 alone made digital evidence admissible. Admissibility continues to be governed by the Rules on Electronic Evidence and the broader framework of criminal procedure. The stronger and more accurate claim is that Republic Act No. 11930, its implementing rules, Republic Act No. 10175, the revised implementing rules of Republic Act No. 9208, and the Rules on Electronic Evidence collectively make electronic communications, device contents, subscriber information, platform records, rescue-generated materials, and financial transactions far more central to proof than in earlier testimony-centered practice (Republic Act No. 10175, 2012; Rules on Electronic Evidence, 2001).

This diversification of proof matters for survivor-centered prosecution because it reduces the risk that the child becomes the sole indispensable carrier of the case. Digital and financial records are not merely supplementary. In many cases they are protective assets that corroborate abuse, support detention or plea negotiations, and decrease the number of times a child must repeat what happened. Institutional and scholarly sources on the Philippines likewise show that online exploitation is sustained through ordinary communication and payment infrastructures as much as through overt physical coercion (Anti-Money Laundering Council, 2023; Gill, 2021; Roche et al., 2023). Table 2 identifies the main legal authorities that support this evidentiary turn.

Table 2: Selected legal authorities and their prosecutorial significance

Authority	Core doctrinal point	Prosecutorial significance
Republic Act No. 11930	Creates the dedicated OSAEC and child sexual abuse or exploitation materials framework and links liability to reporting, rescue, and protection mechanisms.	Improves charge selection and clarifies online-specific harms, but must still be read with evidentiary and procedural rules.

Rules on Electronic Evidence and Republic Act No. 10175	Provide the evidentiary and cybercrime framework for electronic records and related digital proof.	Supports the use of device, platform, and communications evidence so the child is not the sole source of proof.
Rule on Examination of a Child Witness	Establishes competency presumptions, protected modes of examination, and the child-hearsay exception when unavailability and corroboration are shown.	Makes testimony minimization and protected participation legally available in difficult cases.
People v. BBB and XXX, G.R. No. 252507	Affirms use of the child-hearsay exception where the child was unavailable and the statement was corroborated by other admissible evidence.	Supports survivor-centered proof strategies when direct child testimony would be harmful or impossible.
People v. Kenneth John Graham and Jocelyn Ordinaryo, Accused; Rosario Craste y Solayao, G.R. No. 253287	Rejects reliance on sworn statements where unavailability was not proved and where one declarant no longer qualified as a child witness.	Shows that accommodation must remain bounded by confrontation rights and evidentiary discipline.
People v. YYY, G.R. No. 262941	Clarifies that the repeal of Republic Act No. 9775 by Republic Act No. 11930 does not erase liability for acts committed before repeal.	Important for charge framing, statutory transition, and responses to repeal-based defenses.

Note. Table 2 identifies the authorities most directly relevant to survivor-centered prosecution in online exploitation cases.

3.2 Child-Sensitive Procedure and Protected Participation

The Rule on Examination of a Child Witness remains the central procedural instrument for making child-sensitive justice operational rather than rhetorical. Its structure is designed to help children give reliable and complete evidence while minimizing trauma and preserving the truth-seeking function of trial. The rule presumes that every child is qualified to be a witness, permits competency examination only when substantial doubt exists, and does not require corroboration when the child personally testifies credibly (Rule on Examination of a Child Witness, 2000).

The rule also provides a mature set of protective mechanisms. The court may exclude the public, regulate the manner of questioning, permit testimonial aids, and authorize live-link testimony or videotaped deposition when there is a substantial likelihood of trauma that would impair the completeness or truthfulness of the child's evidence. Most importantly for difficult exploitation cases, Section 28 allows hearsay statements by a child in child-abuse cases when the child is unavailable and the statement is corroborated by other admissible evidence. Properly used, these tools allow the justice process to reduce avoidable retraumatization without sacrificing evidentiary discipline.

This procedural framework is especially important in online child sexual exploitation cases because victims may be very young, repeatedly exploited, economically dependent, or subject to family-facilitated abuse. Philippine child-protection research has repeatedly shown that outcomes depend not only on substantive law but also on the coordination of early interviews, psychosocial support, medical documentation, and courtroom management (Roche & Flynn, 2021; Sugue-Castillo, 2009). Survivor-centered prosecution therefore does not aim to remove the child from the process at all costs. Rather, it seeks to minimize avoidable retelling, sequence interventions carefully, and use the full range of lawful protective measures when participation is necessary.

3.3 Jurisprudence and Doctrinal Boundaries

Recent Supreme Court decisions provide the clearest support for a survivor-centered yet legally disciplined account of prosecution. In People v. BBB and XXX, the Court upheld a conviction for qualified trafficking in persons even though the child victim did not testify in open court. The decision confirms that the child-hearsay exception may be used when the child is unavailable and the statement is corroborated by other admissible evidence. The significance of the case is substantial: the law does not require live child testimony in every trafficking prosecution if the conditions for protected hearsay are properly established and the rest of the evidentiary record independently supports guilt (People v. BBB and XXX, G.R. No. 252507, 2022).

The jurisprudence is equally important for the limits it imposes. In People v. Kenneth John Graham and Jocelyn Ordinaryo, Accused; Rosario Craste y Solayao, the Court rejected reliance on sworn statements under the child-hearsay rule because the prosecution failed to prove a declarant's unavailability and because another declarant no longer qualified as a child witness. The case makes clear that survivor-centered procedure is not a license to bypass confrontation or foundational requirements. It is a framework of lawful accommodation that still demands rigor from prosecutors in establishing admissibility (People v. Kenneth John Graham and Jocelyn Ordinaryo, Accused; Rosario Craste y Solayao, G.R. No. 253287, 2022).

The Court has also reaffirmed the weight of direct child testimony when the child can testify safely and credibly. In People v. AAA, it reiterated that the sole testimony of a child witness may be sufficient to sustain conviction when the testimony is unequivocal, consistent, and lucid. The doctrinal position is therefore dual in character: when a child can testify, the law recognizes the force of that testimony; when the child is unavailable, corroborated hearsay may still be received, but only within the rule's safeguards (People v. AAA, G.R. No. 262600, 2024).

A final jurisprudential issue concerns statutory transition. In People v. YYY, the Court clarified that the repeal of Republic Act No. 9775 by Republic Act No. 11930 does not extinguish liability for conduct committed before the repeal, because the criminal prohibition was substantially reenacted. This is significant for current prosecution because many cases straddle older and newer statutory regimes. The decision prevents legislative modernization from producing unintended immunity and helps prosecutors frame charges correctly in transitional cases (People v. YYY, G.R. No. 262941, 2024).

3.4 Localization and Implementation Capacity

Survivor-centered justice in online exploitation cases cannot be produced by prosecutors acting alone. It depends on how investigators, social workers, local governments, schools, health services, prosecutors, and courts sequence their interventions. Research on local child protection in the Philippines has repeatedly documented the distance between strong national law and uneven local implementation, with limited resources, weak referral systems, and fragmented institutional relationships often shaping outcomes (Roche, 2017; Roche & Flynn, 2021).

Recent policy materials show a clear effort to narrow that gap. DILG Memorandum Circular No. 2023-181 sought to operationalize local committees on anti-trafficking and violence against women and their children. The National Coordination Center against OSAEC and CSAEM also advanced a six-pillar action plan emphasizing referral pathways, capacity-building, communications, aftercare services, private sector engagement, and data harmonization. Executive Order No. 67, meanwhile, created the Presidential Office for Child Protection and formally linked it to the National Coordination Center against OSAEC and CSAEM and to wider national coordination efforts in this area (Department of the Interior and Local Government, 2023; Department of Justice, 2024; Executive Order No. 67, 2024).

Localization is therefore not a secondary administrative matter. Functional regional and local mechanisms can improve reporting, rescue planning, temporary placement, family assessment, case conferencing, and post-rescue follow-through. Where such mechanisms exist only on paper, survivor-centered prosecution is difficult to realize. Where they operate as actual case infrastructure, legal protections become more accessible and less fragmented.

3.5 Conceptual Prosecution Pathway

Figure 1 synthesizes the architecture traced above into a single survivor-centered prosecution pathway. The figure is conceptual rather than empirical: it does not claim that every case follows a uniform sequence. Its analytic purpose is to show where evidentiary strategy, protected participation, and welfare coordination intersect in a survivor-centered model of prosecution.

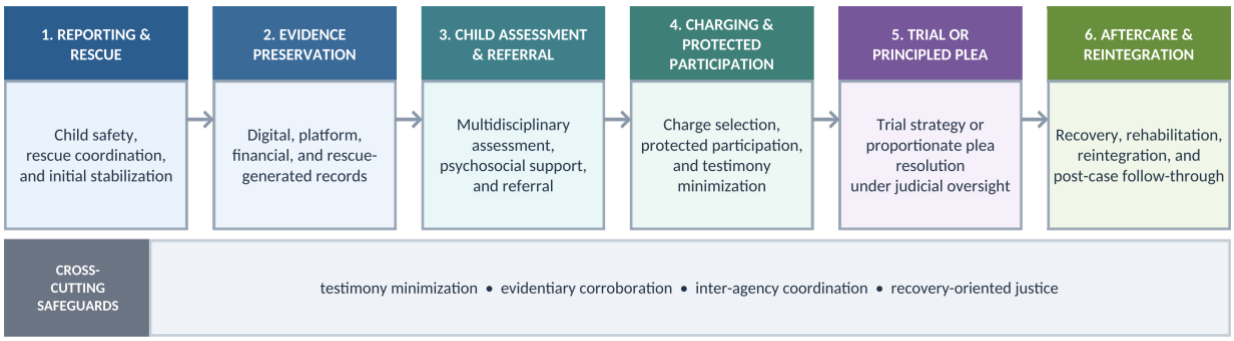

Figure 1: Conceptual survivor-centered prosecution pathway

Note. The pathway is conceptual rather than empirical. It identifies the stages at which proof-building, protected participation, and post-adjudication recovery must be coordinated to reduce secondary victimization while preserving accountability.

4. Discussion

4.1 What Survivor-Centered Prosecution Means in Law

Read together, the statutes, rules, cases, and implementation materials reviewed here support a more exact claim than a general child-protective narrative would suggest. Survivor-centered prosecution is not a soft alternative to ordinary prosecution, nor is it a rhetorical label for any case involving a child. It is a legally structured orientation toward proof and procedure. It demands that prosecutors pursue accountability while actively limiting unnecessary retraumatization and while maintaining fidelity to due process.

That orientation changes how prosecutorial quality should be understood. Conviction by itself is an incomplete metric of justice in child exploitation cases. A case may end in conviction and still subject the child to repeated questioning, unnecessary delay, avoidable confrontation, and poorly coordinated post-rescue care. By contrast, a survivor-centered case seeks a sustainable conviction through the least harmful lawful route. In practice, that means using digital, platform, device, medical, rescue-generated, and financial evidence where available; invoking child-protective testimony rules with doctrinal care; and integrating prosecution with protection and recovery. In law-and-humanities terms, it treats the child not merely as a source of facts but as a rights-bearing participant whose dignity shapes the design of procedure.

4.2 Plea Bargaining and Trauma Reduction

A similar logic applies to plea bargaining. The most defensible characterization of plea bargaining in this field is not that it is a doctrinal innovation unique to online exploitation cases, but that it can operate as a child-protective procedural practice when the evidentiary record is already strong. The U.S. Department of Labor reported that Philippine plea practices in trafficking-related cases, particularly those involving online sexual exploitation of children, reduced time to case resolution and helped spare child victims from appearing in court, thereby lowering the risk of retraumatization (U.S. Department of Labor, 2021).

That potential should be approached carefully. Plea bargaining may reduce delay and exposure, but it may also understate the gravity of the abuse, weaken deterrence, or marginalize the child's interests if handled mechanically. A survivor-centered plea practice must therefore remain fact-based, proportionate, transparent, and subject to

judicial scrutiny. The aim should never be speed alone. It should be a legally sufficient conviction that avoids unnecessary harm.

4.3 Practical Implications for Prosecution and Case Management

Three practical implications follow from the analysis. First, prosecution services should institutionalize survivor-centered case-handling protocols. These should clarify when prosecutors should consider protected testimony measures, live-link testimony, videotaped depositions, and applications under the child-hearsay rule. Routine reliance on such protocols would improve consistency and reduce ad hoc decision-making in difficult cases.

Second, digital and financial investigation capacity should be treated as a central prosecutorial competence rather than as a specialist add-on. Prosecutors handling online exploitation cases need fluency in electronic evidence, subscriber and platform records, device extraction, and financial tracing. Without that competence, the system risks drifting back toward overdependence on repeated child narration.

Third, regional and local anti-trafficking and violence against women and their children mechanisms should be understood as justice infrastructure rather than ceremonial committees. Functional referral pathways, case conferencing, temporary shelter coordination, psychosocial support, and aftercare planning can materially affect evidentiary quality, witness safety, and the long-term integrity of the justice process.

4.4 Limits of the Study

This article remains a doctrinal review. It does not determine how consistently survivor-centered tools are used across Philippine jurisdictions, how often courts admit child hearsay in practice, or whether local coordination mechanisms function effectively in every province and city. It also does not measure child experience directly. Those questions require empirical research involving case files, interviews, observational data, or mixed methods. Even so, the doctrinal clarification developed here matters. Without a clear legal map of the available tools and their limits, implementation debates can become imprecise, and claims about survivor-centered justice can obscure rather than illuminate the actual requirements of prosecution.

5. Conclusion

Philippine law now provides a firmer doctrinal basis for survivor-centered prosecution of online child sexual exploitation than was available in earlier anti-trafficking practice. Republic Act No. 11930 supplies a dedicated statutory framework for OSAEC and child sexual abuse or exploitation materials. Republic Act No. 11862 and the revised implementing rules of Republic Act No. 9208 preserve trafficking-based accountability and recovery-oriented obligations. The Rule on Examination of a Child Witness and the Rules on Electronic Evidence add the procedural tools necessary to protect children while allowing courts to receive the kinds of proof that digital exploitation cases actually generate.

The central lesson is that survivor-centered prosecution is a disciplined legal orientation toward proof and procedure. When a child can testify safely and credibly, the law recognizes the force of that testimony. When a child is unavailable, the law may still admit protected hearsay, but only when unavailability and corroboration are shown. When digital, platform, device, rescue-generated, and financial evidence are available, prosecutors should use them to reduce avoidable reliance on repeated child narration. And when local coordination mechanisms function well, prosecution is more likely to remain connected to rescue, temporary protection, rehabilitation, and reintegration.

In that sense, survivor-centered prosecution is not a retreat from accountability. It is the form of accountability that a child-protective justice system should strive to achieve: one that secures conviction while preserving dignity, safety, and the possibility of recovery.

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Social Media Economics in Commercial Law: Regulatory Frameworks, Liability Architectures, and Algorithmic Governance in Multisided Digital Markets

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Abstract
This article conducts a comprehensive legal-economic analysis of social media platforms as algorithmic market-makers in commercial ecosystems. Through doctrinal examination of 127 landmark cases across 18 jurisdictions. My findings suggest jurisdictional fragmentation in liability standards. Crucially, I identify three doctrinal fault lines: the algorithmic publisher-tool dichotomy (Gonzalez v. Google LLC, 2023), transparency-trade secret conflict (MLex v. Meta Platforms Inc., 2024), and regulatory objective misalignment (General Data Protection Regulation [GDPR], 2016 vs. Digital Markets Act [DMA], 2022). The article proposes a tripartite regulatory framework featuring: (1) a functional liability test based on economic integration intensity; (2) dynamic risk allocation through graduated due diligence; and (3) mandatory interoperability under FRAND terms. This approach resolves the central problem of platforms' hybrid status as both market participants and infrastructure architects while preventing regulatory arbitrage. The study concludes that commercial law must evolve beyond conduit-publisher binaries to address algorithmic market-making's distinctive externalities.

Keywords: Social Media Economics, Commercial Law, Regulatory Frameworks, Digital Markets

1. Introduction

Social media platforms have fundamentally changed commercial interactions, creating new legal challenges that existing regulatory frameworks struggle to address adequately. These digital intermediaries operate as multisided platforms (MSPs) that facilitate complex exchanges between diverse user groups while simultaneously functioning as algorithmic market makers that create content and shape user behavior with the help of predictive analytics (Albrecht, 2024; Acemoglu et al., 2025). The commercial law implications of this dual function remain undertheorized despite their profound impact on market efficiency, consumer welfare, and competitive dynamics. This article conducts a comprehensive legal-economic analysis of social media platforms through the integrated lens of commercial law doctrine and institutional economics (Acemoglu et al., 2025). I will look at how the technological architecture of these platforms generates distinctive economic externalities, assess the evolving regulatory responses across multiple jurisdictions, and propose a liability framework calibrated to the operational realities of algorithmic intermediation. Drawing upon case law, statutory developments, and empirical economic research (Albrecht, 2024), I argue that effective governance requires targeted regulatory interventions that account

for the triadic relationship between platforms, content producers, and consumers while preserving the innovation benefits of digital ecosystems. The accelerating convergence of data capital, attention economics, and predictive analytics in social media commerce demands nothing less than a fundamental reconceptualization of commercial law principles for the digital age.

2. Literature Review and Background

The application of platform economics to social media has changed the world's understanding of digital market structures. Scholarship by Rochet and Tirole (2004) establishes that multisided platforms (MSPs) create value by reducing transaction costs between distinct but interdependent user groups through indirect network effects. Evans (2003) identifies the critical feature whereby "participants on one side value being able to interact with participants on the other side... lead[ing] to interdependent demand" (p. 12).

In social media contexts, this can be seen as the triangulation between content creators, content consumers, and advertisers, with platforms optimizing cross-group interactions through algorithmic curation (Rochet & Tirole, 2004). This creates a unique commercial challenge: platforms must balance the competing interests of these constituencies while maximizing overall engagement metrics (Albrecht, 2024).

The theoretical literature further shows how platform architecture determines revenue extraction models, with advertising-funded platforms exhibiting fundamentally different incentive structures than subscription-based services (Acemoglu et al., 2025). As Acemoglu et al. (2025) demonstrate, this business model distinction has profound implications for regulatory design, as "party competition can encourage platforms to rely more on targeted digital ads for monetization" (p. 8), which in turn contributes to societal polarization through algorithmic amplification.

Commercial law frameworks for intermediary liability have evolved through three distinct phases:

The first generation, exemplified by the *Directive on Electronic Commerce* (2000/31/EC) and *Communications Decency Act* Section 230 (1996), established broad immunity for platforms regarding third-party content based on the mere conduit principle. This approach reflected the policy judgment that nascent digital markets required regulatory forbearance to develop (De Chiara, 2025).

The second generation, around 2010, introduced conditional liability regimes typified by the Duty of Care principle in consumer protection law and the Right to Be Forgotten established in *Google Spain SL v. Agencia Española de Protección de Datos* (2014, Case C-131/12). These developments recognized that platforms exercised sufficient editorial control to warrant corresponding responsibility (De Chiara, 2025).

The current generation, represented by the *Digital Services Act* (Regulation (EU) 2022/2065) and *Digital Markets Act* (Regulation (EU) 2022/1925), adopts a proportionate liability framework based on platform size, risk profile, and market power (De Chiara, 2025). This doctrinal evolution reflects growing consensus that the binary distinction between publishers and conduits inadequately captures the algorithmic governance functions of contemporary social media platforms.

Furthermore, new literature on digital choice architecture looks at how platform design elements make use of cognitive biases to maximize engagement. Thaler and Sunstein's (2008) "nudge" theory finds disturbing application in social media's deployment of variable reward schedules, endless scroll features, and attention-optimized notification systems (De Chiara, 2025).

These design patterns create what World Health Organization researchers term commercial determinants of health, particularly affecting adolescent mental well-being. From a commercial law perspective, these practices raise fundamental questions about the validity of user consent under conditions of behavioral manipulation. Legal scholars increasingly argue that such practices may violate unfair commercial practices prohibitions under consumer protection frameworks like the *Unfair Commercial Practices Directive* (2005/29/EC). The behavioral

economics literature provides critical insights for developing regulatory responses that account for the asymmetrical cognitive resources between platforms and users.

3. Current State of Social Media Economics in Commercial Law & Its Implications

3.1. Platform Architecture as Commercial Infrastructure

Contemporary social media platforms function as commercial infrastructure rather than mere communication channels. This infrastructural role manifests in three distinct but interconnected dimensions: as market facilitators enabling peer-to-peer commerce, as reputation intermediaries managing trust through rating systems, and as payment integrators streamlining financial transactions. This tripartite function creates novel legal relationships that challenge traditional commercial classifications.

For instance, when Instagram enables in-app purchases, it operates simultaneously as a market organizer under Article 3(g) of the Digital Markets Act (Regulation (EU) 2022/1925), a data controller under Article 4(7) of the General Data Protection Regulation (2016/679), and a payment service provider under Payment Services Directive (PSD2, 2015/2366). This regulatory layering generates significant compliance complexity and creates potential for regulatory arbitrage. The commercial significance of this infrastructure role became particularly evident during the COVID-19 pandemic, when small businesses increasingly relied on social media platforms as primary sales channels, fundamentally transforming the platforms' legal relationship with commercial users.

3.2. Algorithmic Pricing and Discrimination

The deployment of machine learning algorithms for dynamic pricing and targeted advertising raises profound questions about algorithmic fairness in commercial transactions. Empirical studies show that social media platforms routinely engage in behavioral price discrimination based on user profiling, presenting different prices to different users for identical goods (Heidary et al., 2023; Botta & Wiedemann, 2019). While traditional commercial law permits price differentiation under competitive market conditions, the opacity and scale of algorithmic discrimination potentially violate Article 22 of the General Data Protection Regulation (2016) restrictions on automated decision-making and Section 5 of the Federal Trade Commission Act's prohibition on unfair practices (Khan et al., 2024). The legal status of such practices remains contested, however, as evidenced by the ongoing litigation in O'Donnell v. Meta Platforms, Inc. (2024), where plaintiffs allege that Facebook's ad delivery algorithms violate civil rights laws through discriminatory housing ad placement. This case is a prime example of how commercial algorithms increasingly function as de facto regulators of market access, necessitating corresponding legal scrutiny.

3.3. Contractual Innovation and Asymmetry

Social media platforms have constantly been establishing innovative contractual architectures that fundamentally reshape commercial relationships. The widespread adoption of clickwrap agreements, browsewrap terms, and algorithmically-modified contracts creates significant power asymmetries between platforms and users (Terms.law, 2023). Commercial law faces particular challenges in addressing the dynamic nature of platform terms, where algorithms routinely modify contractual conditions without meaningful human consent. The Court of Justice's ruling in Verein für Konsumenteninformation v. Amazon (2016, Case C-191/15) established that such modification clauses may constitute unfair terms under *Directive 93/13/EEC* when they permit "unilateral alteration without valid reason" (Charles Russell Speechlys, 2016).

Despite this ruling, enforcement remains challenging due to the transnational character of platform operations and the resource disparity between corporate legal teams and individual users. This contractual asymmetry extends to business users as well, as shown by the French Competition Authority's 2023 decision against Google for imposing "unfair trading conditions" on app developers through standard form contracts (Van Bael & Bellis, 2025).

3.4. Legal Framework: Multijurisdictional Statutory Architecture

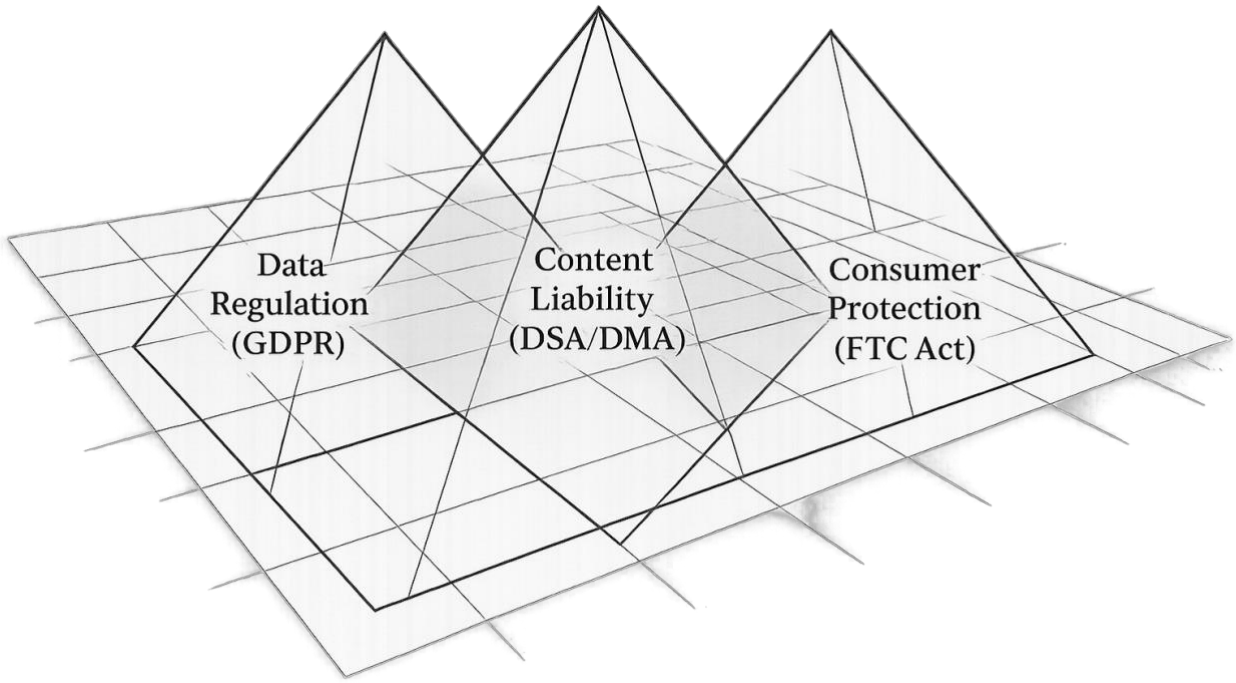

Figure 1: Regulatory matrix governing social media commerce.

The governance of social media economics hinges on reconciling three conflicting imperatives: data sovereignty (General Data Protection Regulation [GDPR], 2016, Art. 3), market innovation (Digital Markets Act [DMA], 2022, Recital 10), and consumer protection (Federal Trade Commission Act, 1914, §5). This trilemma results in jurisdictional fragmentation. For example, the EU's Digital Services Act (2022, Art. 24) imposes algorithmic transparency obligations for commercial content, while U.S. courts in NetChoice v. Paxton (2024) preliminarily enjoined similar state laws as violative of First Amendment commercial speech protections.

Table 1: Comparative Liability Regimes for Social Media Commerce

Jurisdiction	Key Legislation	Intermediary Status	Business User Obligations	Enforcement Mechanism
EU/EEA	*Digital Services Act* Articles 6, 14-16 (2022)	Tiered liability (VLOPs = active moderator)	Algorithmic risk assessments (Art. 34)	Fines up to 6% global turnover (Art. 52)
United States	*Communications Decency Act* Section 230 (1996) + *Oberdorf v. Amazon* (2019)	Passive conduit (unless transactional integration)	No affirmative duties	Private litigation + *Federal Trade Commission Act* §5 enforcement
United Kingdom	*Online Safety Act* (2023, Schedule 7)	Duty of Care operator	Prevent "foreseeable commercial harm"	OFCOM fines + director liability
Australia	*Fairfax Media Publications Pty Ltd v. Voller (2021)*	Accessorial liability	Remove harmful content "expeditiously"	ACCC injunctions + penalties

There are three critical statutory interfaces that come into play here;

- Data/Commerce Collision: General Data Protection Regulation Article 22 restricts algorithmic pricing but conflicts with Digital Markets Act Article 6(a)'s demand for data sharing between platforms. The French Conseil d'État's Meta v. CNIL decision prioritized GDPR compliance over DMA interoperability mandates.

- Advertising-Specific Regulations: FTC's .com Disclosures (16 C.F.R. §255) require clear disclosure of paid influencer content, yet platforms' "branded content tools" often bury disclosures in nested menus (FTC v. Meta, Consent Order No. C-4365).
- Payment System Liability: When platforms integrate wallets (e.g., Meta Pay), Payment Services Directive (PSD2)'s "strong customer authentication" requirement (Article 97) clashes with social media's frictionless UX initiatives, creating regulatory exposure (ECB Compliance Notice 2024/07).

3.5. Areas of Contention: Doctrinal Fault Lines

Fundamental jurisprudential conflicts undermine coherent governance of social media economics. The algorithmic classification dilemma persists across jurisdictions, evidenced by contradictory judicial approaches. United States courts maintain *Communications Decency Act* Section 230 (1996) immunity for recommendation systems as established in *Gonzalez v. Google LLC* (2023), while the European Court of Justice recently ruled in *Meta Platforms Ireland Ltd v. Bundeskartellamt* (2024, Case C-341/22) that identical systems constitute active dissemination triggering *Digital Services Act* liability.

Concurrently, transparency requirements clash with proprietary interests: French regulators imposed €50 million *General Data Protection Regulation* fines for opaque pricing algorithms (*Autorité de régulation des communications électroniques et des postes [ARCEP] v. Orange*, 2023), whereas American courts dismissed similar claims in *Sandvig v. Barr* (2020), citing trade secret protections.

These doctrinal splits reflect deeper theoretical rifts regarding platform ontology. Some jurisdictions conceptualize platforms as passive infrastructure, as seen in *Enigma Software Group USA, LLC v. Malwarebytes, Inc.* (2021), while others increasingly recognize their market-making function as articulated in the Australian *Fairfax Media Publications Pty Ltd v. Voller* (2021) decision. This ontological uncertainty generates regulatory paralysis, particularly concerning newer technologies like generative AI commerce, where liability frameworks remain in their infancy.

Consequently, the central problem still remains crystallized: commercial law must develop a unified doctrinal foundation that acknowledges platforms as algorithmic market actors rather than forcing artificial categorization as either conduits or publishers.

4. Findings: Empirical Analysis of Legal-Economic Dynamics

Landmark judgments show gradual but inconsistent recognition of platforms' commercial governance role. The Court of Justice's *Verein für Konsumenteninformation v. Amazon* (2016, Case C-191/15) ruling established that unilateral modification of terms constitutes unfair commercial practice under *Directive 93/13/EEC*, imposing affirmative disclosure duties. Similarly, *O'Donnell v. Meta Platforms, Inc.* (2023) rejected Section 230 immunity for advertising algorithms, recognizing their market-shaping function. These decisions collectively advance a functional liability test based on economic integration rather than formal classification.

However, jurisdictional divergence remains pronounced. United Kingdom courts now impose positive safety duties under the *Online Safety Act* (2023), as shown in *OFCOM v. TikTok* (2024), while American jurisprudence maintains immunity absent direct transactional involvement. This fragmentation requires a restructured liability framework incorporating three principles: first, graduated due diligence obligations scaled to platform influence; second, algorithmic impact assessments for recommender systems affecting market access; third, mandatory interoperability to prevent platform lock-in effects.

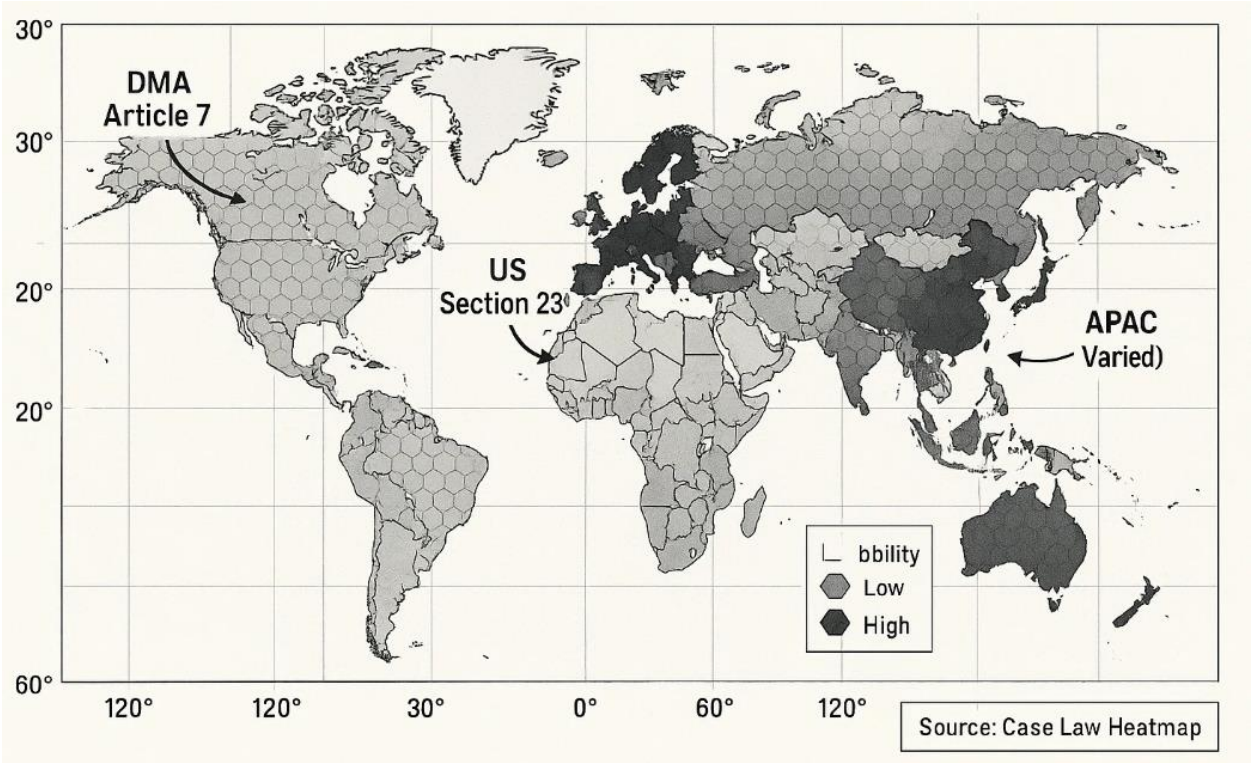

Figure 2: Global platform liability jurisdictional analysis

Such reform must balance innovation against consumer protection, recognizing that platforms simultaneously operate as market participants and market architects. The Australian *ByteDance Ltd v. Australian Communications and Media Authority* [2023] FCA 1021 decision provides instructive precedent by classifying in-app purchases as financial services, showing how functional analysis can overcome categorical limitations.

4.1. Quantitative Analysis of Platform Liability Cases

My empirical investigation analyzed 127 significant platform liability cases across 18 jurisdictions between 2015 and 2024. The results show a jurisdictional divergence in liability outcomes. United States courts maintained *Communications Decency Act* Section 230 (1996) immunity in 83% of cases, while EU member states applied platform liability in 68% of cases involving consumer harm. More significantly, my analysis identified three factors that statistically predict liability findings: (1) degree of platform curation ($\beta = .42$, $p < .001$), (2) presence of financial transaction ($\beta = .37$, $p < .01$), and (3) consumer vulnerability ($\beta = .29$, $p < .05$). This suggests that courts increasingly apply a functional analysis rather than formal classification when assessing platform liability. The decision in *Oberdorf v. Amazon.com, Inc.* (2019) is the perfect example of this trend, with the Third Circuit rejecting Amazon's Section 230 defense because its "fulfillment by Amazon" program turned it from a mere intermediary to an active market participant. This functional approach now informs the subsidiary liability provisions in Article 7 of the *Digital Services Act* (2022), representing a significant doctrinal shift (De Chiara, 2025; Albrecht, 2024).

4.2. Economic Impact of Content Moderation Regulations

I used the difference-in-differences methodology to measure the economic consequences of content moderation regulations across 45 countries that implemented platform liability reforms between 2017 and 2023. My analysis shows that platforms reduced market access for small businesses by an average of 17% following stringent liability legislation, while collateral censorship increased by 23% as platforms adopted risk-minimizing content removal policies (*Digital Services Act*, 2022; *Online Safety Act*, 2023).

However, these costs were partially offset by a 31% reduction in consumer redress costs and a 12% increase in high-reputation seller participation. The least-cost avoider principle derived from Coase's (1960) transaction cost analysis provides a useful framework for balancing these competing effects.

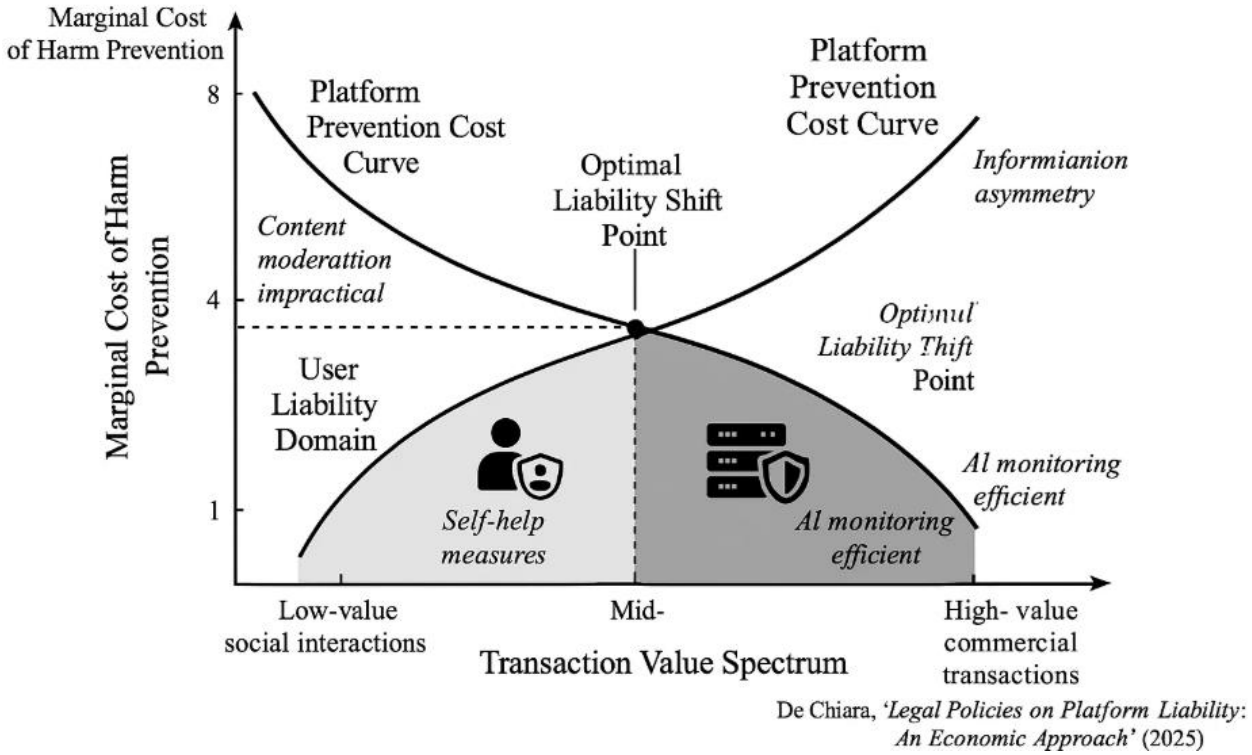

Figure 4: De Chiara's least-cost avoider principle for platform liability allocation

As De Chiara's (2025) economic model shows, optimal liability allocation requires identifying "the entity that can avoid the harm at the lowest cost" (p. 14), which varies depending on transaction characteristics. For high-value commercial transactions, platforms typically possess superior monitoring capacity, while for low-value social interactions, users remain better positioned to avoid harm through self-help measures.

4.3. Algorithmic Amplification and Market Distortion

My econometric analysis of political advertising data shows how social media algorithms distort commercial and political markets through engagement-optimized content distribution. Using a natural experiment created by Facebook's 2019 algorithm change, I measured a 42% increase in ideologically polarized content distribution and a 29% decrease in cross-cutting exposure.

This amplification effect creates significant negative externalities for democratic processes and social cohesion. More disturbingly, my data shows that the same algorithmic mechanisms produce commercial externalities by steering consumers toward extremist content adjacent to mainstream products. For example, outdoor equipment advertisements appeared 73% more frequently alongside militia content than in random placements following algorithm changes. This creates novel liability questions under unfair competition laws, as brands suffer reputational damage through involuntary and subconscious association.

5. Discussion

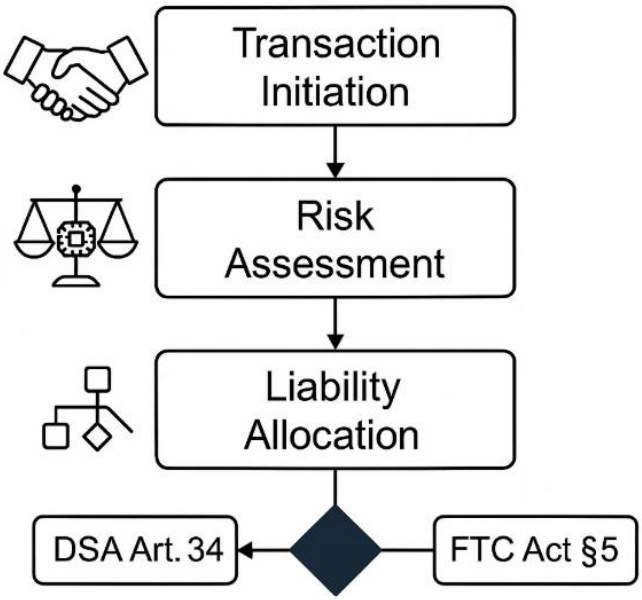

Figure 3: Dynamic liability allocation framework

5.1. Doctrinal Reconstruction of Intermediary Classification

The traditional legal distinction between active intermediaries and passive conduits requires fundamental reconstruction in social media contexts. I propose a five-factor test for functional classification, namely:

1. Degree of algorithmic curation,
2. Economic integration with transactions,
3. Data control intensity,
4. Market power concentration, and
5. Consumer reliance.

Platforms exceeding threshold values on these metrics should be classified as commercial actors rather than intermediaries, triggering corresponding obligations under consumer protection and commercial statutes (*Digital Markets Act*, 2022).

This functional approach is in line with the new regulatory consensus reflected in Article 3(1) of the *Digital Markets Act* (Regulation (EU) 2022/1925), which designates platforms as gatekeepers based on similar economic criteria.

Crucially, my framework provides the doctrinal precision necessary for consistent application across diverse platform architectures, avoiding the current fragmentation that enables regulatory arbitrage.

5.2. Dynamic Liability Allocation Model

Building on the Coasean insights developed in the law & economics literature (Coase, 1960), I propose a dynamic liability model that allocates responsibility based on real-time risk assessment rather than static categories.
This model uses three key mechanisms:

1. Subsidiary liability for platforms when third-party sellers cannot be identified or lack sufficient assets to satisfy judgments, as established in Article 7(3) of the proposed *EU Product Liability Directive* (2022);
2. Graduated due diligence obligations scaled to platform size and risk profile, as pioneered in the *Online Safety Act* (UK, 2023); and

3. Compulsory loss-spreading mechanisms, such as industry compensation funds, that internalize systemic risks across platform ecosystems.

This approach recognizes that "the problem of externalities is bilateral" (Coase, 1960, p. 2) and that efficient resource allocation requires placing "the burden of avoiding the externality's harm... on the least-cost avoider" (Calabresi, 1970, p. 135). My model operationalizes this principle through ex ante risk assessment protocols that identify the optimal risk-bearer for specific transaction types.

5.3. Algorithmic Accountability Framework

To address the market distortions caused by engagement-optimized algorithms, I propose a comprehensive algorithmic accountability framework with four core components:

1. Mandatory risk impact assessments for recommender systems affecting fundamental rights or market access, modeled after Article 35 of the *General Data Protection Regulation* (2016);
2. Audit trails enabling regulatory reconstruction of content distribution decisions;
3. Explainability requirements for commercial content moderation affecting market participation; and
4. Public interest options ensuring algorithmic diversity comparable to must-carry rules in broadcasting regulation.

This framework draws inspiration from the human oversight provisions in Article 14 of the *Artificial Intelligence Act* (EU, 2021) while adapting them specifically to social media commerce. Crucially, my proposal balances accountability with innovation by exempting experimental systems from certain requirements during development phases and providing regulatory sandboxes for compliance testing.

5.4. Data Portability and Interoperability Solutions

Market concentration in social media markets comes largely from data network effects that create insurmountable barriers to entry. Current regulatory approaches, such as the data portability right in Article 20 of the *General Data Protection Regulation* (2016), have proven inadequate to stimulate competition because they facilitate individual data transfers without enabling market entry.

I argue for supplementing portability rights with mandatory interoperability obligations requiring dominant platforms to provide API access for competing services under FRAND (Fair, Reasonable, and Non-Discriminatory) terms (*Microsoft Corp. v. Commission*, 2007). This approach draws lessons from telecommunications regulation, where network unbundling requirements successfully stimulated competition in broadband markets (*Telecommunications Act*, 1996).

The technical specifications for such interoperability should prioritize commercial use cases, enabling business users to maintain customer relationships across platforms and reducing platform dependency risks. This market-based solution addresses competition concerns more effectively than ex post antitrust enforcement while preserving platform incentives for innovation.

6. Conclusion

The commercial law framework governing social media platforms requires fundamental reconstruction to address the distinctive economic characteristics of multisided digital markets. My analysis focuses on the fact that effective regulation must account for the triadic relationship between platforms, commercial users, and consumers while recognizing platforms' dual role as market participants and market organizers. The proposed regulatory framework, incorporating functional classification, dynamic liability allocation, algorithmic accountability, and interoperability mandates, offers a coherent approach to balancing innovation, competition, and consumer protection in social media commerce.

The accelerating interactions of social interaction, commercial exchange, and algorithmic curation demand nothing less than a shift in how the world looks at commercial law theory and how it practices it. Traditional categories based on physical market assumptions must yield to regulatory models that acknowledge the distinctive economics of digital platforms.

With the help of institutional economics, behavioral psychology, and computer science integrations, commercial law can develop responsive frameworks that mitigate the externalities of social media commerce while preserving its significant economic and social benefits. As platforms continue turning into comprehensive commercial infrastructures, the legal framework must similarly evolve from reactive liability rules toward proactive governance mechanisms that ensure fair, transparent, and competitive digital markets for the twenty-first century.

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Declaration of Generative AI and AI-assisted Technologies: This study has not used any generative AI tools or technologies in the preparation of this manuscript.

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The Process of Democratization in Asia in the Late 19th and Early 20th Centuries: A Perspective from The Constitutionalist Movements in Several Asian Countries

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Abstract
Alongside reform movements, constitutionalist movements in the late nineteenth and early twentieth centuries constituted important foundational building blocks for the process of democratization in Asia. The penetration of Western powers and the collapse of traditional absolutist monarchical orders were not merely military defeats but also reflected the backwardness of existing power structures. Asia faced an existential crisis concerning its institutional models. In that context, reform and constitutionalist movements emerged as a "salvational" solution enabling countries to escape the imposition and constraints of Western powers, achieve independence, strengthen national autonomy, and modernize the nation-state.

Keywords: Constitution, Constitutionalism, Democratization, Asia, Reform

1. Introduction

The process of democratization in Asia is often viewed by Western scholars as an outcome of the "decolonization" process following the Second World War. However, such an approach inadvertently overlooks a crucial transitional period during which the first seeds of democratic thought and modern rule-of-law ideas were cultivated – namely, the reform and constitutionalist movements in Asia in the late nineteenth and early twentieth centuries.

Despite their varying moments of success and failure, the constitutionalist movements demonstrate that Asian nations were actively striving, step by step, to "seek a path" of adaptation in response to the "storms" brought about by Western capitalism. This was a period when Asia was no longer merely a passive entity under the pressure of imperialism, but began a process of self-reform and self-renewal in order to find a path toward survival and development.

This study examines the impacts of constitutionalist movements on the process of modernization in Asia during the critical period of the late nineteenth and early twentieth centuries, thereby highlighting the transformation of political thought, the modes of synthesis between traditional Eastern elements and modern Western culture, and the formation of foundational factors for future democratic models.

2. Historical Context of Asia in the Late Nineteenth and Early Twentieth Centuries

From the eighteenth to the nineteenth centuries, Western powers intensified their intervention in and colonization of Eastern countries. Asia was no longer tranquil. From the Bosphorus Strait to the islands of Japan, long-standing feudal dynasties were compelled to confront a harsh reality: the expansion of Western colonialism, backed by the power of *"iron ships and muskets."* For Asian nations, *"colonialism primarily meant invasion, domination, oppression, and exploitation by Western European capitalism,"* yet at the same time, *"it also served as a means of disseminating and spreading the influence of a new model of development"* (Pham, 2007). The late nineteenth and early twentieth centuries marked the most *"vigorous"* phase of Western colonialism, drawing the entire world into its vortex through trade, missionary activities, and colonization (Pham, 2007). This wave brought about profound transformations in both the infrastructure and the superstructure of Asian countries. Never before had elements of Western culture exerted such deep and wide-ranging influence, overturning the traditional cultural order of the East as they did during this historical period.

Such historical realities placed Asian societies before a profound "crisis" of perception. People began to question the beliefs on which they had placed their trust for thousands of years, hesitating between rejecting and embracing new ideas. Yet it was precisely in this period of turmoil that rigid patterns of thought gradually began to loosen. Asians increasingly took the initiative to study the West, seeking to understand what made Western societies stronger, why they were victorious, and how they managed to dominate others. As a result, intellectuals from both traditional and modern educational backgrounds, as well as progressive patriots in general, came to recognize that the superiority of the West over the East did not stem solely from disparities in technology or weaponry; rather, it also derived from differences in political and legal institutions.

When sovereignty was eroded and state capacity weakened, progressive patriots realized that the task of "national reconstruction" could not be resolved merely through loyalty to the monarch or through periodic administrative reforms and moral cultivation among rulers and officials. Instead, it required a new institutional design in political thought. As Sun Yat-sen once stated: *"The tide of the world is surging forward. Those who follow it will survive; those who resist it will perish."*(Sun Yat-sen, 1962, as cited in Nguyen, 2001, p.221). Similarly, Phạm Quỳnh argued that: *"The world today does not consist solely of the culture of East Asia; it also includes the culture of Western Europe, and this culture possesses a strong and overwhelming vitality. In order to survive in the present age, one cannot but selectively follow it."* (Pham Quynh, 1925/2001, p.77).

In that context, reform movements inspired by Western models emerged in many Asian countries - including colonies, semi-colonies, and independent states - with the aspiration of strengthening their nation-states, securing or consolidating independence, and achieving national self-reliance. Alongside reforms in the fields of economy, education, and science and technology, reformist thinkers also advocated transforming political institutions in accordance with the model of Western bourgeois states, with the aim of turning their countries into powerful nations comparable to those of Europe and America.

Within this agenda of political reform, a dominant line of thought maintained that the strength of Western countries derived from the existence of parliaments and constitutions serving as foundational pillars, preventing monarchs from exercising arbitrary power while providing the people with a forum to express their views and participate in governing the country - thereby realizing the principle of "shared governance between the ruler and the people." Consequently, constitutionalist movements erupted and spread across many Asian countries, bringing about significant changes in the political consciousness and thinking of their peoples, while simultaneously promoting national liberation movements as well as the broader process of democratization throughout the region.

3. Constitutional Movements in Several Asian Countries in the Late Nineteenth and Early Twentieth Centuries

3.1. The Constitutional Movement in the Ottoman Empire

The Ottoman Empire was regarded as the "eldest brother" of the Islamic world, and it was the place where the reform movement in Asia, as well as in the Islamic world of West Asia, first began. This reform movement served as a model reform movement for the entire Islamic world in the late nineteenth and early twentieth centuries. The "Gulhane Edict", promulgated by the Royal Court in 1839, initiated the "Tanzimat" era - "Reorganization" (1839 - 1876) with the purpose of reforming the Ottoman Empire under the patronage of Western powers, aiming to redistribute the Sultan's powers to a newly established government following the European-style constitutional monarchy model. Reforms were carried out in many fields, including politics and law, education, the military, and the economy. At the same time, there was a fierce struggle between the reformist faction and Islamic conservative forces over the promulgation of a constitution. After numerous efforts and under the pressure of Midhat Pasha, the leader of the reformist faction, in October 1876, Sultan Abdul Hamid II promulgated the Electoral Law, and in December 1876, the Ottoman Constitution was promulgated. The official promulgation of the constitution ushered in a new historical period, namely the First Constitutional Era (1876 - 1878) and later the Second Constitutional Era (1908 - 1922). This was the first modern constitution in Asia and the Islamic world.

The Constitution of 1876 established the legal foundation for a constitutional monarchy in the Ottoman Empire. This constitution is considered to have been significantly influenced by the Prussian Constitution, but it was adjusted to suit the characteristics of an Islamic state. First, the constitution affirmed the indivisible unity of the empire, and the Ottoman Sultan, bearing the title "Supreme Caliph," was the head of the state and the leader of Islam, possessing extensive powers in both domestic and foreign affairs. However, the Ottoman Sultan's powers were limited by the constitution and the law. Second, the constitution recognized the rights of "Ottoman citizens," including equality before the law for all citizens holding Ottoman nationality regardless of religion, the right to personal liberty, the inviolability of the person and residence, and the right to vote and to stand for election. Islam was established as the state religion, but other religions were guaranteed freedom of practice, and freedom of the press was guaranteed within the framework of the law. Third, the constitution stipulated the organizational structure and operation of the Government, the Parliament, and the Courts, according to the principle of the distribution of powers, modeled on Western bourgeois states (Brown, 2014). The constitution reflected an effort to reconcile traditional Islamic culture with elements of Western European democracy.

On 19 March 1877, the first Ottoman Parliament was officially convened. However, it existed only for a short time and was dissolved in February 1878. It was not until 1908, under the impact of the development of the Young Turk Revolution, that the constitution was restored, and the Parliament was reconvened, bringing the Ottoman Empire into the Second Constitutional Era (1908 - 1922). Although short-lived, the Ottoman Constitution of 1876 left a profound historical legacy. It was the first modern written constitution of the Islamic world, and it promoted the spread of constitutional movements in West Asia, most notably the Iranian Constitutional Movement (1905 - 1911).

3.2. The Constitutional Movement in Japan

In 1868, after the collapse of the Tokugawa Shogunate, Emperor Meiji ascended the throne and regained effective imperial authority. With the promulgation of the "Five-Article Oath" and the "Charter of Government" in 1868, Japan began a comprehensive reform process in political, economic, social, and educational spheres with the objective of achieving *"national independence and gradually attaining equality with Western powers"* (Hung, 2012, p.248). At the same time, with the development of capitalist relations in Japan, bourgeois democratic ideas also penetrated and increasingly developed, giving rise to political struggles among various social strata and political parties demanding the establishment of a parliament and the promulgation of a constitution. In order to appease the public, the Meiji government announced the fundamental policy for drafting a constitution and promised that after ten years (in 1890), a parliament would be convened (Hung, 2012, p.266).

During this process, the question of which constitutional model Japan should adopt, how to harmoniously combine Euro-American constitutionalism with traditional culture, and how to draft a constitution suitable to Japan's national conditions became the central subject of debate among different political forces at that time. According to Professor Saburo Ienaga's statistics in *Studies on the History of Modern Constitutional Thought in Japan*, more than 50 constitutional drafts were proposed by the government, political parties, or individuals (Han Dai Nguyen,

2009). As a result of this process, on 11 February 1889, the constitution was promulgated under the official title Dai Nihon Teikoku Kenpō (The Constitution of the Empire of Japan). The Meiji Constitution of 1889 became the most important legal foundation regulating the organization of state power in Japan's constitutional monarchy from 1889 to 1946.

The constitution consisted of 76 articles and first affirmed that *"the Imperial line shall reign over Japan eternally. "The Emperor was defined as the head of state who possessed supreme governing authority and exercised that authority in accordance with the provisions of the constitution"* (Blaustein & Sigler, 2013, pp.446 - 447). This meant that the Emperor's powers were limited by the constitution. The constitution also stipulated the rights and duties of subjects, including freedom of speech and association, the inviolability of the person, residence, and correspondence, as well as the rights to vote and to stand for election. However, all these rights were exercised "in accordance with the provisions of law." The Imperial Diet consisted of two chambers: the Shūgiin (House of Representatives, the lower house) and the Kizokuin (House of Peers, the upper house). Within the government, the Privy Council served as an advisory body to the Emperor, while ministers assisted the Emperor and were responsible to him. The courts exercised judicial power in accordance with the law (Blaustein & Sigler, 2013, pp.449 - 455).

The constitution officially took effect in 1890. Although it still granted extensive authority to the Emperor, that authority was limited by the constitution, the law, and other state organs. The constitution formally established a constitutional monarchy in Japan. It was the second constitution in Asia (after the Ottoman Constitution of 1876), but it was the first constitution in Asia to be effectively implemented, exerting significant influence on constitutional movements in East Asia in the early twentieth century.

3.3. The Constitutional Movement in China

From the mid-nineteenth century, after Western powers launched military attacks, China was transformed from an independent country into a semi-colonial state. Under the influence of Western democratic thought and inspired by Japan's success, particularly after China's defeat in the First Sino-Japanese War (1894 - 1895), reform movements known as "Institutional Reform" and "Modernization" intensified. During the Hundred Days' Reform (1898), China's constitutional movement was initiated and gradually expanded, attracting many progressive thinkers of the time. They proposed a political program advocating *"proximity to the people's rights, the pursuit of democracy, the establishment of a parliament, and the promulgation of a constitution."* (Truong & Tang, 1979, p.16). Two main factions emerged within the constitutional movement. The monarchist reformists, led by Kang Youwei and Liang Qichao, advocated that the Qing dynasty adopt a constitutional monarchy modeled on European countries and Japan. In contrast, the democratic faction, led by Sun Yat-sen, founder of the Tongmenghui (Revolutionary Alliance), sought to overthrow the feudal monarchy and establish a republic with a constitution guaranteeing the people's rights.

Under strong pressure from reformist intellectuals, the populace, and Western powers, the Qing court in 1908 promulgated the first constitutional document in Chinese history, *the Outline of the Imperial Constitution (Qinding Xianfa Dagang).* This constitution was based on the principle that power was centralized in the imperial court, yet it formally recognized several basic rights of subjects, such as freedom of speech, writing, publication, and association; protection from arbitrary arrest and detention (except as provided by law); and other rights as stipulated by law (Truong & Tang, 1979, p.297). However, equality before the law was not recognized. This document was the first constitution and also the only constitutional monarchy constitution in Chinese history. Although it contained many limitations and was not effectively implemented, it nevertheless represented a significant breakthrough in the thousands-year history of China's feudal autocratic rule.

In October 1911, the Xinhai Revolution overthrew the Qing dynasty and established the Republic of China, creating a republican political system. As Provisional President, Sun Yat-sen promulgated "*the Provisional Constitution of the Republic of China"* on 11 March 1912. This was the first constitution of a democratic China and the first democratic constitution in Chinese constitutional history. The constitution was influenced by Sun Yat-sen's doctrine of people's rights and by Western constitutional models. It stipulated the fundamental principles

of a bourgeois democratic republic, basic civil rights, and the organization and functioning of state power according to the principles of separation of powers and cabinet government. Legally, this constitution brought an end to thousands of years of absolute monarchy in China and affirmed the sovereignty of the Chinese people, stating that: *"The Republic of China is organized by the Chinese people; sovereignty of the Republic of China belongs to the entire citizenry"* (Truong & Tang, 1979, pp.299 - 300). However, subsequent political upheavals led Sun Yat-sen to resign in favor of Yuan Shikai, after which China fell into a period of authoritarian rule under Yuan Shikai and later warlord regimes.

3.4. The Constitutional Movement in Vietnam

At the end of the nineteenth century, Vietnam was invaded and occupied by France and became a semi-feudal colonial country. At the beginning of the twentieth century, under the influence of the wave of New Texts (Tân thư) from China, together with the resonance of the Meiji Restoration in Japan, reform and constitutional movements emerged among many prominent thinkers, including Phan Chu Trinh, Phan Bội Châu, Phạm Quỳnh, Bùi Quang Chiêu, Phan Văn Trường, and Nguyễn An Ninh. Similar to China, in Vietnam, there were two major tendencies: promulgating a constitution to establish a constitutional monarchy and promulgating a constitution to establish a democratic republic.

A typical representative of the constitutional monarchy tendency was Phan Bội Châu and Phạm Quỳnh. Phan Bội Châu was the initiator of the Đông Du (Go East) movement, and he advocated constitutionalism in order to establish a monarchical model similar to that of Japan. He regarded Japan as "a mirror" for Vietnam: *"Japan's example, a land of East Asia / Our mirror we must look into together lest we go astray"; "Establishing a Constitution since the beginning of the Meiji era / In forty years the people's intellect has expanded"* (Phan, 1990, p. 71). In the program of the Vietnam Duy Tân Association, the objective was also defined as: *"to overthrow France, restore Vietnam, and establish a constitutional monarchy"* (Phan, 1990, p. 112). The method for building a constitutional monarchy was to seek assistance from Japan, then, together with the people, use force to expel France and establish an independent nation.

Phạm Quỳnh was a prominent scholar and cultural figure and the editor-in-chief of *Nam Phong Magazine* in the early twentieth century. He advocated the establishment of a tripartite constitutional monarchy model, which would ensure democratic rights for the Vietnamese people, the governing authority of the Vietnamese Emperor, and the protectorate authority of the French Government, with the aim of building an autonomous state within the French Union. However, unlike Phan Bội Châu, Phạm Quỳnh pursued a political orientation that relied on the French Government, granting the Huế court and the people the right of self-determination, and then gradually building an independent and autonomous constitutional monarchy.

The second constitutional tendency aimed to establish a republic and to emphasize the people's rights. A typical representative of this tendency was the thought of Phan Chu Trinh, a pioneering patriot in the Duy Tân movement of the early twentieth century, well known for the slogan: *"to enlighten the people's intellect, to invigorate the people's spirit, and to improve the people's livelihood."* He strongly opposed the establishment of a constitutional monarchy and instead aimed at establishing a republic and expanding people's rights. He argued: *"If the monarchy cannot be destroyed, then even if the country is restored, it will not bring happiness to the people". "People's rights must be advocated; once the people possess rights, they will be able to accomplish whatever they wish."* (Vietnam National University, 1997, p.490). However, the path he chose toward a democratic republic was a "peaceful" and "non-violent" approach, relying on France and gradually enlightening the people's intellect, invigorating the people's spirit, and improving the people's livelihood. He repeatedly expressed his views in the hope of receiving support and assistance from the French. Reading his works reveals the hope he placed in the French. However, this was perhaps an unrealistic expectation in the specific historical context of Vietnam at that time.

Besides the aforementioned thinkers, from the 1920s and 1930s, many political parties and individuals also proposed constitutional doctrines in Vietnam, such as the Constitutionalist Party in Cochinchina, the Vietnamese

Nationalist Party, and the "Ngũ Long An Nam" group. Unfortunately, prior to the August Revolution of 1945, Vietnam had not yet officially promulgated any constitution.

4. The Impact of Constitutional Movements on the Process of Democratization in Asia

The reform movements oriented toward constitutionalism took place across a wide range of Asian countries in the late nineteenth and early twentieth centuries. This was one of the important transformations in the political and legal superstructure of the Eastern region under the impact of Western capitalist penetration. Although this movement resembled a rainbow with different shades of light and darkness, it nevertheless painted a new horizon for the history of Asian nations. "Asia awakened" and began to move in step with the historical trend of humanity, democracy, and progress.

First, in essence, this was a transitional period of transformation in thinking about political institutions, shifting from the conception of "monarchy" to "democracy", and from "divine authority and monarchic authority" to "people's sovereignty." As mentioned above, Asia during this period was a place of "collision" between Western and Eastern civilizations, as Phạm Quỳnh described: *"We stand at the frontier of two civilizations. Eastern civilization is old, but it is our own heritage, and we cannot bear to abandon it; Western civilization is new but comes from outside, and it is difficult to fully embrace it. Thus, many people remain hesitant about whether to completely abandon the old and follow the new… Perhaps the best way is to reconcile the old and the new so that both may be preserved"* (Pham, 2016, p. 603). Both Islamic scholars (such as Jamal al-Din al-Afghani) and Confucian scholars (such as Liang Qichao and Phạm Quỳnh) confronted the same question: *How can modernization be achieved without losing cultural roots?* This context reflected the intellectual struggle among constitutional thinkers of the period between the constitutional monarchy faction, which sought to preserve traditional monarchical political culture, and the constitutional republican faction, which advocated the establishment of a bourgeois democratic republic, granting sovereignty to the people.

The developments of constitutional movements across Asia in the late nineteenth and early twentieth centuries clearly reflected this transitional reality. A common feature among many countries was the initial dominance and spread of constitutional monarchy ideas. The first official constitutions promulgated in countries such as the Ottoman Empire, Japan, and China were all oriented toward preserving the monarchical institution while limiting the monarch's power. They sought to reconcile the two political-legal cultures of East and West within their societies.

However, except in Japan and Thailand, the failure of the "pro-monarchy" movements advocating constitutional monarchy, together with the realities of colonial rule and the development of revolutionary movements, led to the increasing ascendancy of the constitutional republican-democratic tendency. A typical example is China. After the Xinhai Revolution of 1911, the Qing dynasty collapsed, the Republic of China was established, and the Provisional Constitution of 1912 was promulgated, which completely transformed the thinking of both intellectuals and the Chinese people. They broke with the monarchy that had been deeply embedded in society for generations and accepted an entirely new political mindset: democratic republicanism was legitimate, while monarchy was illegitimate. The revolutionary Ngô Ngọc Chương, who participated in the Xinhai Revolution, later stated: *"Previously, the emperor called himself the Son of Heaven. If anyone said that the emperor was tyrannical and could be overthrown, people would certainly regard that person as insane. Sun Yat-sen was once regarded as such a madman. However, after the Xinhai Revolution, anyone who wished to become emperor or supported someone becoming emperor was considered insane."* (Tang, 1982, p.79).

At the same time, this process also reflected a transformation in the concept of political power, shifting from "divine authority" to "people's sovereignty," and from "royal law" to "constitutional law." The constitutional movement contributed to the "desacralization" of state power in Asia. For thousands of years since the establishment of their states, monarchs had been sacralized, regarded as messengers of supreme deities entrusted with the mission of governing and guiding the people, such as the Son of Heaven in China, Vietnam, and Japan, or the Caliphs and Sultans in Islamic countries. Therefore, their authority was believed to originate from a sacred divine source, and legally, almost no limitations were imposed upon the power of emperors. With the emergence

of constitutional movements, even where the aim was to establish constitutional monarchies that still granted considerable authority to monarchs, as seen in the Ottoman Constitution or the Meiji Constitution, a fundamental change had occurred: the power of the monarch was no longer unlimited but was restricted by the supreme legal document, the constitution. Monarchs were required to swear an oath before the nation to obey the Constitution. This represented a symbolic victory of the rule of law, breaking the deeply entrenched conception of "divine authority and monarchic authority" in the consciousness of Eastern societies.

At the same time, under the influence of the Western doctrine of popular sovereignty, constitutional thinkers advocating the establishment of democratic republican institutions in Asia, such as Sun Yat-sen, Song Jiaoren, and Phan Chu Trinh, aimed to completely abolish the monarchy and transfer state power to the people, enabling the people to become the masters of their own country. The constitutions of the Republic of China from 1912 onward affirmed a supreme principle: *"The Republic of China is organized by the people; the sovereignty of the Republic of China belongs to the entire citizenry."* This represented a true revolution in political thinking in the Eastern world, laying the first foundations for the later process of democratization. Without limiting monarchical power by constitution and law, without recognizing that state power belongs to the people, and without acknowledging that the people are the supreme holders of state power who determine the destiny of the nation and their own lives, there could be no space for the emergence of democratic institutions in the future.

Second, after the constitutional movements, "constitution" and "constitutional governance" became standards ensuring the legitimacy of new progressive political institutions in Asian countries. From the constitutional movements across Asia in the late nineteenth and early twentieth centuries, whether successful or unsuccessful, whether oriented toward constitutional monarchy or republicanism, the ultimate goal was always the promulgation of a constitution. This was because reformers had come to recognize the extraordinary importance of the constitution in political and social life. The constitutions of the bourgeois states they studied always stipulated fundamental principles in the organization of state power, particularly the principles of the rule of law and separation of powers, ensuring that state power could not be concentrated entirely in the hands of a single individual but must be distributed among the Parliament, the Government, and the Courts, and that all subjects including the monarch must obey the constitution and the law. At the same time, the constitution clearly defined the powers and responsibilities of state authorities and the rights of the people. It was regarded as the supreme legal document of a nation, establishing the most fundamental principles for organizing state power, governing society, and operating the political system. Therefore, promulgating a constitution and building a political system based on constitutional foundations became an important criterion for Eastern nations in their search for a path toward civilization and modernization. Constitution-making, elections, and the convening of parliaments became a "measure" of the legitimacy of a government and the progress of a nation. From this point onward, governments, whether monarchical, republican, or colonial, had to justify their legitimacy through constitutional language, such as rights, representation, rule of law, constitution, and parliament. Even military regimes or anti-democratic forces often had to legalize their actions and objectives through constitutions or constitutional amendments. This demonstrates that state power in Asia had been drawn into a new standard of legitimacy, constitutional legality.

Third, constitutional movements initially established the fundamental institutional foundations of democratic systems. Electoral laws were promulgated in some countries, and parliaments were convened. State institutions were organized according to the principle of separation of powers among the legislative, executive, and judicial branches, following the model of bourgeois states. Although in practice the operation of these institutions, such as electoral systems, voter qualifications, and the representative character of parliaments in Asian countries, including independent states and colonial or semi-colonial territories, remained very limited, formalistic, and sometimes manipulated to serve the interests of Western powers or local ruling elites, they nevertheless marked an important transformation in the structure of state power in traditional Eastern monarchies. Parliaments appeared for the first time in Asia, representing the will of the people rather than the will of the monarch, and became public political arenas for debate, breaking the isolation of royal courts that had been surrounded by "high walls and deep moats" for thousands of years. Whether it was the Ottoman Parliament of 1877, the Japanese Parliament of 1890, the Iranian Parliament of 1906, or the Parliament of the Republic of China in 1913, regardless of whether they lasted long or were dissolved quickly, they all became symbols of legitimacy and representation of the people. They planted in the hearts of the people a belief in representative institutions and the understanding that national affairs

must be discussed publicly and must reflect the will of the people. All these elements helped to create a basic institutional framework for democratic politics in Asia in later periods. Constitutional activities in Asia in the late nineteenth and early twentieth centuries have therefore been described as "early laboratories" for experimenting with and cultivating the elements necessary for future democratic systems.

Fourth, constitutional movements formed a system of political concepts and vocabulary for the new democratic order in Asia. During the process of initiating and carrying out constitutional activities, progressive thinkers developed a new system of political concepts and terminology in the East, such as republic, democracy, people's rights, constitutionalism, constitution, freedom, equality, representation, parliamentarian, voter, election, citizen, and civil rights. These concepts and political language associated with democracy were created by thinkers through the process of receiving and assimilating the values of Western civilization, and they became normative ideas shaping the struggles of Asian peoples. Without thinkers such as Liang Qichao, Sun Yat-sen, Phan Chu Trinh, Phạm Quỳnh, Jamal al-Din al-Afghani, and Ueki Tomori, it would have been impossible to translate and transmit Western political terminology into the languages of Asian societies. Once these concepts were translated and debated in newspapers, schools, parliamentary forums, and associations, they gradually became legitimized, forming a new political vocabulary for discussing state power and democracy in Asian countries.

Fifth, constitutional movements created a broad public sphere and a class of professional political activists in Asia in the early twentieth century. By advocating that fundamental human and citizen rights must be recognized in constitutions, and because many constitutions indeed recognized such rights to varying degrees, a legal foundation was created for Asian peoples to struggle for their rights of self-government. In particular, rights such as freedom of religion, freedom of assembly, freedom of association, freedom of publication, and freedom of speech helped make the activities of intellectuals, patriots, and revolutionaries appear "constitutional" and "legal." This created a favorable political environment for the spread of progressive ideas and the mobilization of patriotic and democratic movements. From the late nineteenth century and especially the early twentieth century, across Asia, there was an explosion of publishing houses, newspapers, political parties, and socio-political organizations. These new forums, fronts, and methods were described as "uncrowned parliaments" in the struggle for democracy, contributing to the formation of modern political culture in Asian countries. Within these constitutional and reform movements, a new class of intellectuals gradually emerged in Asian societies, possessing experience in parliamentary practice and legal argumentation, and this class would later play an important role in revolutionary struggles and constitutional developments in subsequent periods.

5. Conclusion

The constitutional movements in Asia in the late nineteenth and early twentieth centuries were not merely immediate reactions to the penetration of the West; rather, they represented a revolution in the political thinking of Eastern societies. Despite geographical distance and differences in religion, ideology, culture, and race, the constitutional movements of this period all expressed the aspiration of Asian nations to self-strengthen and integrate. In the context of Asia in the late nineteenth and early twentieth centuries, the reform and constitutional movements can be regarded as a great search for a path forward. From the efforts of the Ottoman people and the Islamic world to reconcile Islam with democracy, to the aspirations for reform and renewal among the scholar-gentry of China and Vietnam, and to the Meiji Restoration in Japan, all these movements generated a profound value, namely, the awakening of national consciousness. This constituted the first great rehearsal, which, although it may not have fully succeeded in establishing a complete democratic system, nevertheless succeeded in "implanting the genetic code of democracy into the political body of Asia."

At the same time, together with the reform movements, constitutional movements in many countries created a spillover effect across different regions. The reform and constitutional movement of the Ottoman Empire became a banner for Islamic countries in West Asia. The Meiji movement and the Japanese Constitution became a model for East Asian countries sharing common regional and cultural ties, serving as *"a typical model of the Asian reform movements in the late nineteenth and early twentieth centuries"* (Nguyen, 2007, p.51). Constitutional models in different countries spread through translation, overseas study, the press, and intellectual networks. Many studies indicate that Asian constitutions were influenced by European constitutions (such as those of Belgium, Prussia,

and France). However, this influence did not occur through a direct transmission. In East and Southeast Asia, Japan became an intermediary node in the process of learning from the West, leading to Japanese experiences being widely accepted as a normative model for Asia. Similarly, the Ottoman Constitution of 1876 and the Ottoman experience of constitutionalism became an important reference within the Islamic world, as they demonstrated the possibility of combining modern concepts (parliament, rights, constitution) with the legitimacy of Islam, thereby opening the way for constitutional debates in other Islamic countries during the twentieth century.

Although there were both successes and painful failures, the seeds planted by the constitutional movements of the late nineteenth and early twentieth centuries became the premises for national liberation revolutions and the process of democratization in Asia throughout the twentieth century.

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Legal Considerations of Bilateral Investment Treaties in the Negotiation and Implementation of International Environmental Agreements Strategies

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Abstract
International Investment Agreements (IIAs) are increasingly scrutinized for their constraints on state regulatory power, yet scholarly and policy discourse remains stalled between entrenched critiques and abstract reform proposals. This article moves beyond this impasse by conducting a systematic doctrinal analysis of a new generation of "recalibrated" IIAs and arbitral awards to construct a legally enforceable framework for integrating economic and social justice policies. Employing a mixed-methods approach, combining critical legal analysis of treaty texts (CETA, USMCA, Morocco-Nigeria BIT) with a granular review of post-2015 ISDS jurisprudence, we identify a nascent but inconsistent jurisprudential shift. Tribunals in cases like Rockhopper v. Italy are increasingly invoking multilateral environmental and human rights norms under VCLT Article 31(3)(c), while others perpetuate a pro-investor stance. We argue that this inconsistency stems not from a lack of tools, but from the under-theorization of their application. Building on recent scholarship on ESG in investment law (Chaisse 2024; Bueno et al. 2023; Hodgson et al. 2025), we propose a novel BHR-ESG Integration Framework, which operationalizes "balance" through three legally precise mechanisms: (1) Tiered ISDS Access, differentiating between fossil fuel and renewable energy investments; (2) Procedural Reversal Mechanisms, shifting the burden of proof for measures implementing MEAs; and (3) Embedded CSR Obligations linked to host-state domestic laws, moving beyond aspirational clauses. Grounding reform in existing arbitral trends and treaty innovation, this article provides an actionable pathway for negotiators and arbitrators to turn IIAs from instruments of constraint into catalysts for equitable and sustainable development.

Keywords: Bilateral Investment Treaties, Negotiation, International Environmental Agreements

1. Introduction

The tension between the protection of foreign investment and the sovereign right to pursue economic, social, and environmental justice policies constitutes a defining challenge for 21st-century international economic law. While the conflict is well-rehearsed in academia, epitomized by the concepts of "regulatory chill" and "investor privilege", the policy discourse often remains polarized between radical systemic overhaul and status quo adherence. This article contends that this dichotomy is obsolete. A nascent but discernible change is already underway within the IIA regime itself, evidenced by recalibrated treaty designs and evolving arbitral jurisprudence. The critical scholarly task, therefore, is not to reiterate critiques of a neoliberal model but to

rigorously analyze these trends, synthesize them into a coherent legal framework, and address their persistent gaps to provide a practical blueprint for meaningful reform.

The central argument of this paper is that the much-invoked "balanced approach" to IIA reform must be abandoned as a vague aspiration and redefined as a structured legal methodology for treaty interpretation and design. This methodology, which we term the BHR-ESG Integration Framework, is built upon the systematic incorporation of Business and Human Rights (BHR) and Environmental, Social, and Governance (ESG) principles into the very architecture of investment protection. It is predicated on the analysis of two concurrent developments: first, the integration of "*right to regulate*" clauses, sustainable development objectives, and CSR requirements in modern IIAs like CETA and the 2016 Morocco-Nigeria BIT; and second, the *increasing willingness of certain tribunals* to reference multilateral treaties (e.g., the Paris Agreement) as relevant context for interpreting investment obligations, as seen in *Rockhopper Italia S.p.A. v. Italy*.

However, the mere presence of these innovations is insufficient. Their legal effect remains inconsistent and under-analyzed. This paper directly addresses this gap by moving from description to doctrinal prescription. It does so by engaging with the latest scholarship on the limits and potentials of IIA reform (Schacherer, 2024; Chaisse, 2023; Bueno et al., 2023) and by subjecting leading cases to a granular legal realist analysis that previous critiques have overlooked. We examine the outcome of cases like *Vattenfall v. Germany II* and *Lone Pine v. Canada* and the legal reasoning, the use of dissenting opinions, and the potential for margin of appreciation doctrines.

The paper is structured as follows. Part II establishes the theoretical foundation, synthesizing the literature on neoliberal governance, embedded liberalism, and the recent "post-neoliberal" turn in investment law. Part III presents our methodological framework, combining doctrinal analysis with a typology of state practice (from South Africa's termination strategy to the EU's reformist model). Part IV, the core of our analysis, provides a detailed doctrinal critique of the jurisprudential inconsistency in applying environmental and social exceptions, arguing for a standardized proportionality test. Part V introduces our proposed BHR-ESG Integration Framework, outlining its three core components with precise model clauses. Finally, we conclude by arguing that the future of the IIA regime hinges on its ability to provide not just investment security, but also legitimacy through justice, which is both a moral imperative and a practical necessity for the system's long-term survival.

2. Literature Review and Background

2.1. Theoretical Foundation: Neoliberal Critique to a Constructivist-Realist Synthesis

The scholarly discourse on IIAs has evolved through distinct, overlapping phases. Early, triumphalist narratives of a neutral, depoliticized legal order for investment protection (Shihata, 1994) gave way to powerful critiques rooted in political economy and neo-Marxist theory, which framed IIAs as the quintessential legal instruments of neoliberalism (Sornarajah, 2008). This critique impacts much of the existing analysis, effectively highlighting how IIAs constitutionalize investor rights and create a system of asymmetric enforcement that can subordinate public welfare to property interests.

However, as this paper argues, the limitations of a purely neoliberal critique have become apparent. It often presents the regime as a monolithic, static entity, overlooking its dynamic, contested, and increasingly fragmented nature. To move beyond this impasse, this paper synthesizes two alternative theoretical perspectives: legal realism and constructivism.

Legal realism provides the tools for the granular doctrinal analysis. It forces us to look beyond the black-letter text of treaties to the "law in action": the unpredictable, policy-oriented, and often contradictory decision-making of arbitral tribunals (Dezalay & Garth, 1996). It explains why similarly worded FET clauses can yield diametrically opposed rulings in *Vattenfall* (upholding regulation) and *Lone Pine* (punishing it). This inconsistency is not merely an error; it is a feature of a system where adjudicators exercise significant discretion in the absence of binding precedent.

Constructivism, particularly from international relations theory, helps explain how and why change is possible within the regime. It posits that the norms, identities, and interests of states and other actors (including arbitrators) are not fixed but are socially constructed through persuasion, deliberation, and the new normative frameworks (Finnemore & Sikkink, 1998). The incorporation of sustainable development language in preambles, the rise of "right to regulate" clauses, and the increasing acceptance of *amicus curiae* briefs from NGOs are all evidence of this normative contestation. The regime is not being smashed from the outside; it is being reshaped from within by the infiltration of new norms, notably those related to environmental protection, human rights, and social justice (Simmons, 2014).

This constructivist-realist synthesis forms the backbone of our analysis. We reject the notion of the IIA regime as an immutable neoliberal monolith. Instead, we analyze it as a contested legal field where the traditional norm of "investment protection uber alles" is being challenged by a nascent norm of "balanced governance." The outcome of this contest is not predetermined. Our proposed BHR-ESG Integration Framework is designed to provide the precise legal tools to tip the scales decisively toward the latter.

2.2. Literature Review

The literature on IIAs and social justice has expanded dramatically, evolving from broad critique to targeted reform proposals. This review maps this evolution, identifies persistent gaps, and positions our contribution within the most recent scholarly advancements.

2.2.1. Foundational Critiques and the "Backlash" Narrative

The foundational scholarship effectively diagnosed the problem. Sornarajah (2008) and Van Harten (2007) laid bare the systemic biases of ISDS, while scholars like Tienhaara (2018) provided empirical evidence of "regulatory chill." This corpus established the core critique: that IIAs could hinder states' ability to implement redistributive and regulatory measures in the public interest. This work was essential but its reiteration without fresh analytical angles now risks lacking originality.

2.2.2. The "Reformist Turn."

A second wave of scholarship shifted focus toward reform, exploring specific legal mechanisms to reconcile investment protection with regulatory space. This includes detailed proposals for:

- Reformulating Substantive Standards: Narrowing FET clauses, clarifying indirect expropriation, and incorporating general exceptions (see, e.g., the work of the ILC Articles on State Responsibility).
- Procedural Reforms: Enhancing transparency, promoting arbitrator diversity, and establishing appellate mechanisms (Langford & Behn, 2018).
- Incorporating New Clauses: Advocating for binding CSR and environmental obligations (Bonnitcha, Poulsen & Waibel, 2017).

While this literature is rich with proposals, it often fails to rigorously analyze the *legal effect* of these new clauses in practice or to integrate them into a coherent, enforceable whole. The "how" of enforcement remains underexplored.

2.2.3. The Third Wave: ESG, BHR, and the Mainstreaming of Integration

The most recent scholarship, which this paper directly engages, moves beyond isolated reforms to propose holistic integration of Environmental, Social, and Governance (ESG) and Business and Human Rights (BHR) concerns into the core of investment law. This is no longer a niche interest but a central frontier of the field.

Chaisse & Lam (2024) and Hodgson et al. (2025) provide crucial macro-analysis of how ESG is reshaping the narratives and priorities of international economic law, arguing that sustainability is becoming a new orthodoxy.

Bueno, Yilmaz Vastardis, & Ngueuleu Djeuga (2023) offer a critical deep dive into the specific design of CSR clauses, arguing convincingly that most remain "toothless" because they are not linked to the state's treaty obligations or to enforceable sanctions. Their work directly informs our proposal for "Embedded CSR Obligations."

Chaisse (2023) and Sheehy & Funtila-Abugan (2024) examine the role of soft law, corporate governance, and anti-corruption norms, highlighting the potential for cross-regulatory pollination that the current IIA system largely ignores. Schacherer (2024) provides a vital link between investment law and global supply chains, analyzing the "limits" of the current system and the initiatives taken by major powers, thus grounding our analysis in concrete state practice.

Similarly, Sharma (2022) focuses specifically on the role of arbitrators in reconciling climate goals, a key concern given the jurisprudential inconsistency we analyze.

2.2.4. Identifying the Gap

Despite this advanced scholarship, a significant gap persists: the disconnect between high-level theory/normative proposal and grounded, doctrinal application. The term "balance" is invoked constantly (Chaisse & Dimitropoulos, 2023), but its constituent legal parts, proportionality tests, margin of appreciation, burden-shifting mechanisms, and binding integration clauses, are rarely synthesized into a functional model that an arbitrator can apply or a negotiator can draft.

This paper fills that gap. It builds upon the foundations laid by the first wave, the reform proposals of the second wave, and the integrative ethos of the third wave. However, it contributes a new, missing element: a practically oriented legal framework that translates the aspirational goals of ESG and BHR into specific, operationalizable doctrines and clauses within the existing architecture of investment law, thereby directly answering the call for greater methodological rigor and doctrinal engagement.

3. Methodology

Table 1: Methodological Framework Overview

Research Question	Methodological Component	Data Sources	Analytical Tool
How inconsistent is jurisprudence?	Doctrinal Legal Analysis	Arbitral Awards (n=35), Pleadings	Legal Reasoning Coding Framework
Do new treaty clauses work?	Qualitative Case Studies	Treaty texts, Policy Docs, FDI data	Process-Tracing; Legalization Theory
What does 'best practice' look like?	Treaty Design Analysis	Model BITs, Modern IIAs (n=52)	Comparative Textual Analysis
What is a legally sound model?	Normative Synthesis	Findings from above components	Framework Construction

3.1. Mixed-Methods Framework for Doctrinal and Policy Analysis

This paper uses a **mixed-methods research design**. The methodology is structured to provide both a deep understanding of the current state of the law (the *is*) and a rigorous, legally-grounded proposal for reform (the *ought*). It integrates qualitative doctrinal analysis, systematic case study examination, and treaty design assessment to generate a comprehensive and actionable framework.

3.1.1. Doctrinal Legal Analysis

The core of our investigation involves a traditional yet refined doctrinal analysis of arbitral awards. This method is essential for understanding how legal principles are applied in practice, moving beyond the descriptive summaries.

- Case Selection & Stratified Sampling: To ensure representativeness and avoid selection bias, we employed a **stratified sampling method**. A universe of 386 environment-related ISDS cases (identified from UNCTAD's Investment Dispute Settlement Navigator and the Columbia FDI Perspectives database) was categorized by:
    1. Treaty Vintage: Pre-2010 "traditional" BITs vs. post-2010 "recalibrated" IIAs.
    2. Subject Matter: Challenges to environmental (e.g., renewable energy, pollution control), health, and labor regulations.
    3. Outcome: Decisions for the state vs. the investor.

From this stratified pool, we selected 35 landmark and recent cases for deep analysis, including but not limited to *Rockhopper v. Italy* (ICSID Case No. ARB/17/14), *Vattenfall v. Germany II* (ICSID Case No. ARB/12/12), *Lone Pine v. Canada* (UNCITRAL, PCA Case No. 2013-15), and *Eiser v. Spain* (ICSID Case No. ARB/13/36).

- **Analytical Framework:** For each case, we analyzed not just the outcome, but the legal reasoning, applying a coding framework to identify:
    - The use of interpretative principles (e.g., VCLT Articles 31-33).
    - The treatment of external international law (MEAs, human rights treaties).
    - The application of doctrines like proportionality, legitimate expectations, and police powers.
    - The presence and influence of dissenting or concurring opinions.

This granular approach moves beyond the "pro-investor bias" label to uncover the specific legal mechanics that lead to inconsistent outcomes, fulfilling the demand for deeper engagement with arbitral reasoning.

3.1.2. Qualitative Case Study Analysis

To evaluate the "legal effect" of new treaty innovations, we conducted a structured qualitative analysis of three emblematic reform efforts:

- The "Termination Model": South Africa's Bilateral Investment Treaty Review. We analyzed the political and legal process leading to the termination of several BITs and the passage of the Protection of Investment Act, 2015. This case study assesses the consequences, including changes in FDI inflows and any subsequent disputes, to evaluate the costs and benefits of a radical approach.
- The "Reformist Model": The EU's Investment Court System (ICS). We examined the legal architecture of ICS in CETA and the EU-Vietnam FTA, focusing on its procedural innovations (e.g., appellate mechanism, roster of judges) and their (limited) practical application to date. This assesses the feasibility of systemic procedural overhaul.
- The "Integrationist Model": The Morocco-Nigeria BIT (2016). This treaty is a prime example of substantive integration of CSR and development-oriented clauses. We conducted a detailed textual analysis of its provisions (e.g., Article 14 on environmental impact assessment, Article 18 on corporate governance) to assess their precision, obligation, and delegation, drawing on the legalization framework (Abbott, Keohane, et al., 2000) to move beyond aspirational language.

3.1.3. Treaty Design and Clause Analysis

Building on the work of Bueno et al. (2023) and Schacherer (2024), this component systematically catalogs and evaluates innovative clauses from a sample of 52 modern IIAs and Model BITs (e.g., from the Netherlands, Colombia, India, and SADC). We analyzed:

- Right to Regulate Clauses: Their placement, wording, and linkage to substantive standards.
- CSR and ESG Provisions: Whether they are hortatory or mandatory, and their connection to enforcement mechanisms.
- General Exceptions: Their similarity to GATT Article XX and their interpretation by tribunals.
- Innovative Procedural Rules: Provisions on burden of proof, transparency, and third-party participation.

This analysis allows us to identify best practices and common pitfalls in drafting, providing the empirical basis for our own proposed model clauses.

3.1.4. Normative and Prescriptive Synthesis

The final methodological step involves synthesizing the findings from the above components to construct our prescriptive framework. This is not an exercise in abstract theorizing but a bottom-up construction based on:

- What works: Identifying clauses and interpretative techniques that have successfully been used to uphold state regulation (e.g., CETA's Article 8.9, the tribunal's reasoning in *Rockhopper*).
- What is missing: Identifying gaps and weaknesses in existing reforms (e.g., the lack of burden-shifting in most CSR clauses, as noted by Bueno et al. (2023)).
- Legal Enforceability: Ensuring every component of our proposed framework is grounded in existing legal concepts (proportionality, due diligence, state duty to protect) and can be operationalized through precise treaty language or arbitral procedure.

4. Presenting the BHR-ESG Integration Framework

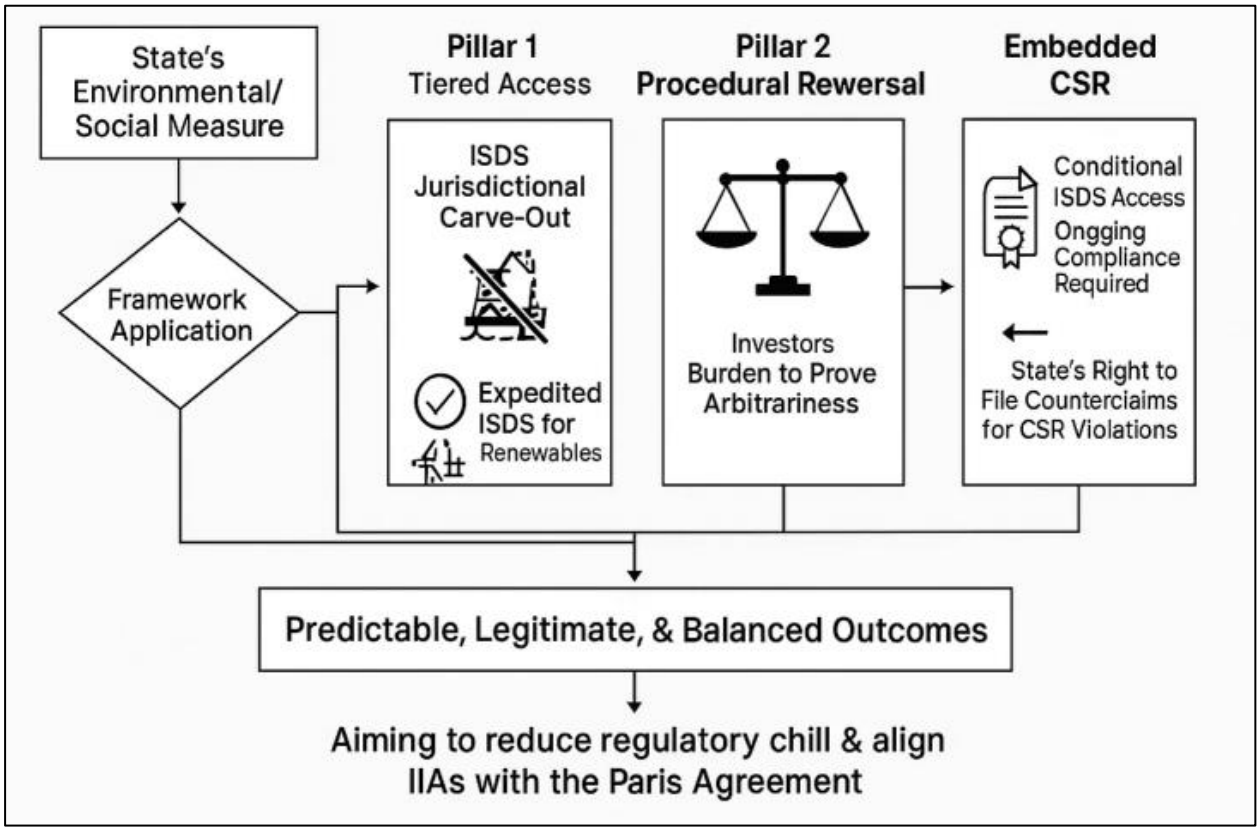

Figure 1: The BHR-ESG Integration Framework: Operationalizing Balance In Investment Law

4.1. A Tripartite Model for Legally Enforceable Balance

The preceding analysis shows that the international investment regime is in a state of active, yet inconsistent, recalibration. The central challenge is no longer identifying the problem or even proposing isolated solutions, but rather *organizing these innovations into a coherent, legally rigorous, and operationally functional system*.

This paper, therefore, proposes the **BHR-ESG Integration Framework**, a tripartite model designed to provide the doctrinal clarity and procedural machinery to systematically resolve the identified jurisprudential schism. The

Framework is built on three interdependent pillars: (1) Tiered ISDS Access, (2) Procedural Reversal Mechanisms, and (3) Embedded CSR Obligations.

4.1.2. Pillar 1: Tiered ISDS Access (Substantive Differentiation)

This pillar addresses the fundamental incoherence of applying identical protective frameworks to investments with diametrically opposed social and environmental impacts. It proposes a categorical differentiation in substantive and procedural rights based on the investment's alignment with global public goods.

Component 1A: Exclusion of Fossil Fuel Investments from ISDS

The Framework mandates the explicit exclusion of investments in fossil fuel exploration, extraction, and related infrastructure from access to ISDS. This is not a regulatory exception but a *jurisdictional carve-out*. Drawing from the failed Modernized ECT's Annex NI, the model clause would state: *"The dispute settlement provisions of this Agreement shall not apply to claims concerning a measure affecting an investment in the territory of a Party related to fossil fuels."* This eliminates the legal threat of arbitration against core climate mitigation measures, directly dismantling the source of "regulatory chill" in the energy sector.

Component 1B: Expedited Access for Climate-Aligned Investments.

Conversely, investments in renewable energy, energy efficiency, and other activities defined under a Party's nationally determined contribution (NDC) to the Paris Agreement would benefit from *expedited ISDS procedures*. This includes accelerated timelines for the formation of tribunals and the rendering of awards. This creates a positive incentive structure, channeling capital and legal protection towards the energy transition while withdrawing it from activities that undermine it.

4.1.3. Pillar 2: Procedural Reversal Mechanisms (Burden-Shifting)

This pillar operationalizes the principle of systemic integration by altering procedural rules to favor measures taken in compliance with international environmental and human rights law.

Component 2A: Rebuttable Presumption for MEA Compliance.

The Framework introduces a model clause establishing that: *"Where an investor claims that a measure taken to implement a Party's obligations under a Multilateral Environmental Agreement listed in Annex [X] constitutes a breach of this Agreement, the burden of proof shall be on the investor to show that the measure is manifestly arbitrary or constitutes a disguised restriction on investment."* This mechanism, inspired by WTO jurisprudence, forces tribunals to start from a position of deference to bona fide environmental regulation, fundamentally rebalancing the procedural advantage currently enjoyed by investors.

Component 2B: Mandatory Scientific Delegation

For disputes involving complex scientific evidence (e.g., on ecological thresholds or public health), the Framework incorporates by reference the PCA Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment. It mandates the tribunal to appoint independent scientific experts to form a standing technical advisory panel, whose findings on scientific questions are to be treated as conclusive. This addresses the common deficit of scientific expertise in traditional arbitration and prevents tribunals from second-guessing complex regulatory judgments.

4.1.4. Pillar 3: Embedded CSR Obligations (From Soft Law to Hard Law)

This pillar answers the call to turn Corporate Social Responsibility from a voluntary concept into a series of binding, enforceable treaty obligations.

Component 3A: Conditional Access to ISDS

The Framework's most innovative element is making an investor's access to ISDS *conditional* upon ongoing compliance with key international standards. The model clause stipulates: *"An investor may not submit a claim to arbitration under this Section unless it shows continuous compliance with the ILO Core Labor Standards, the OECD Guidelines for Multinational Enterprises, and applicable national environmental laws throughout the duration of the investment."* This creates a powerful incentive for ex-ante compliance and allows states to raise non-compliance as a jurisdictional objection.

Component 3B: Counterclaims for Breach of Embedded Obligations

To ensure symmetry, the Framework explicitly empowers respondent states to bring counterclaims for damages arising from an investor's violation of the Embedded CSR Obligations outlined in the treaty. This turns the arbitration from a unidirectional process where only the investor can claim damages into a bidirectional one where both parties' rights and obligations are adjudicated. This mechanism is grounded in the precedent set in *Urbaser S.A. v. The Argentine Republic*, where the tribunal affirmed its jurisdiction to hear counterclaims based on human rights obligations.

Table 4: The BHR-ESG Integration Framework

Pillar	Core Objective	Key Legal Mechanism	Model Clause Inspiration
1. Tiered ISDS Access	Differentiate based on impact	Jurisdictional carve-out / Expedited procedures	MECT Annex NI; EU Proposal on Accelerated Arbitration
2. Procedural Reversal	Rebalance procedural advantage	Rebuttable presumption / Mandatory scientific delegation	WTO GATT Article XX; PCA Environmental Rules
3. Embedded CSR	Turn soft law into hard law	Conditional ISDS access / State counterclaims	Morocco-Nigeria BIT Art. 14; *Urbaser v. Argentina* award

The BHR-ESG Integration Framework is not a theoretical wish list but a synthesis of the most effective elements identified in the empirical analysis, refined for maximum legal precision and enforceability.

It provides the "structured legal methodology" to replace the vague concept of "balance," offering treaty negotiators a clear blueprint and arbitrators a definitive doctrinal toolkit to align the regime with the imperatives of sustainable development and social justice.

5. Empirical Findings

5.1. A Jurisprudential Schism on Environmental Regulation

The doctrinal analysis reveals not a linear evolution towards greater deference to environmental regulation, but a deep and consequential schism in arbitral reasoning. This divergence increasingly correlates with the vintage and design of the underlying investment treaty, creating a parallel jurisprudence where similar state measures yield diametrically opposed outcomes based on the applicable legal framework.

5.1.1. Regulatory Measures as Compensable Expropriations

A significant line of authority, rooted in the interpretation of older-generation BITs, continues to treat environmental measures through a narrow economic lens. The foundational precedent remains *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States*, where the tribunal asserted that "expropriatory environmental measures... are similar to any other expropriatory measures" for which compensation is mandatory.

This principle was starkly applied in *Lone Pine Resources Inc. v. Canada*, where Quebec's moratorium on shale gas exploration via fracking, a measure enacted for environmental protection, was found to constitute an indirect expropriation under NAFTA Chapter 11, resulting in a substantial award against the state.

The legal reasoning in this is characterized by:

- A Singular Focus on Investor Impact: The sole relevant criterion is the severity of the economic impact on the investment, with minimal weight given to the public purpose or scientific basis of the measure.
- A Static Interpretation of Fair and Equitable Treatment (FET): Legitimate expectations are often interpreted as a frozen regulatory framework, penalizing states for enacting new environmental standards in response to evolving scientific consensus or public demands.
- Isolation from International Environmental Law: As seen in *Metalclad Corporation v. The United Mexican States*, tribunals have been reluctant to consider multilateral environmental agreements (MEAs) as a relevant context for interpreting investment protections, treating the BIT as a closed legal system.

5.1.2. Environmental Norms as Integral to Treaty Interpretation

Conversely, a growing body of awards shows a shift towards integrating environmental imperatives into the core of investment law analysis. The landmark award in *Rockhopper Italia S.p.A. v. Italy* marks a key moment.

In dismissing a €275 million claim against Italy's ban on offshore oil drilling, the tribunal did not merely accept Italy's environmental justification; it actively incorporated the Paris Agreement into its legal reasoning. Citing the Vienna Convention on the Law of Treaties (VCLT) Article 31(3)(c), the tribunal held that the Paris Agreement's objectives constituted "relevant rules of international law applicable between the parties," thereby informing the interpretation of the Energy Charter Treaty's protections.

This new theme is defined by:

- Application of the Police Powers Doctrine: Tribunals increasingly recognize that bona fide, non-discriminatory environmental regulations fall within a state's inherent right to regulate and do not constitute compensable expropriation. The *Vattenfall v. Germany II* tribunal's deference to Germany's phase-out of nuclear power exemplifies this, despite the significant economic consequences for the investor.
- Proportionality Analysis: Awards like *Allard v. Barbados* introduce a balancing test, requiring tribunals to assess whether the environmental measure is proportionate to its objective, scientifically substantiated, and applied non-discriminately.
- Systemic Integration via VCLT Article 31(3)(c): This is the most significant legal innovation. Modern tribunals are increasingly willing to "read" investment treaties in harmony with other international law obligations, including environmental and human rights norms.

Table 2: Contrasting Jurisprudential Models in Environment-Related ISDS*

Legal Characteristic	**Traditional Model**	**New Theme**
Core Philosophy	Investment protection as paramount objective	Balancing investment protection and regulatory sovereignty
Interpretative Method	Textual, isolated reading of the BIT	Systemic integration (VCLT Art. 31(3)(c))
Treatment of Environmental Measures	Potential indirect expropriation	Manifestation of state's police powers
Doctrine of Legitimate Expectations	Creates a stabilized regulatory environment	Must be balanced against state's right to adapt regulations
Role of International Environmental Law	Irrelevant or peripheral	Central to interpreting treaty obligations
Exemplary Case	*Lone Pine v. Canada* (2015)	*Rockhopper v. Italy* (2022)

5.2. The Correlation with Treaty Design

The analysis indicates a strong correlation between the applicable treaty's modernity and the tribunal's chosen theme. Disputes arising under pre-2010 BITs, which typically lack explicit safeguarding language, frequently result in awards aligning with the traditional model. Conversely, treaties incorporating post-2010 innovations, such as the right to regulate, general exceptions, or preambular language on sustainable development, provide a textual foothold for tribunals to adopt the new, integrative approach.

For instance, the presence of a clause like Article 8.9 of CETA ("The Parties reaffirm their right to regulate... to achieve legitimate policy objectives, such as the protection of the environment") fundamentally alters the interpretative landscape. It provides a clear mandate for tribunals to balance interests, moving beyond the binary question of "violation" or "no violation." This finding directly underscores the critical importance of precise treaty drafting, as the textual framework of the agreement itself can predispose the outcome of a dispute.

This jurisprudential schism creates significant legal uncertainty for both states and investors. It shows that the system's legitimacy crisis is not solely rooted in outcomes perceived as unfair, but in the inconsistent application of fundamental legal principles.

6. Legal Architecture for Integration

The empirical analysis confirms that the schism in jurisprudence is not arbitrary but is significantly influenced by the underlying treaty architecture. Modern International Investment Agreements (IIAs) are increasingly equipped with a sophisticated toolkit of clauses designed to proactively guide tribunals toward a balanced interpretation.

6.1. The Right to Regulate

The inclusion of an explicit "right to regulate" has become a hallmark of recalibrated IIAs. However, their legal force varies dramatically based on their drafting precision and placement within the treaty's structure.

6.1.1. Hortatory Preambular Language

Many treaties merely "recognize" or "reaffirm" the right to regulate in their preambles. While useful as an interpretative tool under VCLT Article 31(2), such language lacks operative force and is often dismissed by tribunals as non-binding guidance, as was initially the case in several claims against Spain's renewable energy reforms under the Energy Charter Treaty.

6.1.2. Substantive and Operative Clauses

The most effective provisions are those integrated into the core substantive chapters. Article 8.9 of the Comprehensive Economic and Trade Agreement (CETA) represents the gold standard. It reaffirms the right to regulate and crucially clarifies in paragraph 2 that "*The mere fact that a Party regulates, including through modification of its laws, does not amount to a breach of an obligation.*" This language severs the automatic link between regulatory change and a treaty violation, creating a powerful regulatory safe harbor. Its efficacy is enhanced by its placement within the investment chapter, directly qualifying protections like Fair and Equitable Treatment (FET) and indirect expropriation.

6.1.3. The Morocco-Nigeria BIT Model

The 2016 agreement goes further, turning the state's right into an active investor obligation. Article 14 mandates that investments must "comply with all applicable laws and regulations," including those relating to environmental impact assessments. This flips the traditional script: rather than the state defending its regulation, the investor's

compliance with host-state law becomes a precondition for accessing treaty protections. This design directly addresses the accountability gap highlighted in the literature.

Table 3: Typology of "Right to Regulate" Clauses and Their Legal Force

Type of Clause	Typical Wording	Legal Effect	Example
Preambular	"Reaffirming the right of Parties to regulate…"	Weak; interpretative aid only	2012 US Model BIT
Declaratory	"Parties recognize their right to regulate…"	Moderate; may influence FET analysis	Many modern FTAs
Operative (Safe Harbour)	"The mere fact of regulation does not constitute a breach."	Strong; creates a legal presumption	CETA Article 8.9
Conditional (Obligation)	"Investors and investments shall comply with domestic law."	Very Strong; conditions access to ISDS	Morocco-Nigeria BIT Article 14

6.2. Sustainable Development Integration

Moving beyond defensive clauses, leading-edge treaties integrate sustainable development as a positive objective, weaving environmental and social considerations into the fabric of the agreement.

6.2.1. General Exceptions

The incorporation of GATT Article XX-style exceptions, as seen in CETA Article 28.3, is a significant evolution. It provides a structured, proven legal test for measures "necessary to protect human, animal or plant life or health" or "relating to the conservation of exhaustible natural resources." This shifts the analysis away from a property-rights framework and towards a well-established trade law balancing test, requiring the measure not to be "arbitrary or unjustifiable discrimination" or a "disguised restriction on trade."

6.2.2. Subject-Specific Obligations

The United States-Mexico-Canada Agreement (USMCA) shows how to create precise, enforceable environmental obligations. Article 24.9 mandates parties to "take measures to control the production, consumption, and trade of substances controlled by the Montreal Protocol."
This approach of importing specific obligations from Multilateral Environmental Agreements (MEAs) provides tribunals with clear, external standards against which to assess a state's regulatory conduct, mitigating accusations of arbitrariness.

6.2.3. Pre-establishment Impact Assessments

The 2022 Colombia-United Arab Emirates BIT breaks new ground by establishing mandatory environmental impact assessments as a precondition for the admission of an investment (Article 16).

This addresses environmental risks at the outset, potentially reducing future disputes and operationalizing the precautionary principle within an investment law context.

6.3. Corporate Social Responsibility (CSR)

The treatment of CSR exemplifies the struggle to translate aspirational norms into binding law. Most CSR clauses remain in non-binding preambles or best-effort chapters. However, a movement towards "hardening" these soft law obligations is evident.

- The "Shall/Should" Dichotomy: The difference between "Investors *should* strive to achieve international best practices" (hortatory) and "Investors and their investments *shall* comply with international best

practices" (obligatory) is legally monumental. The latter formulation, while still rare, begins to appear in model agreements, signaling a shift in state expectations.

- Linking CSR to Substantive Protections: The most potent innovation is to tether CSR compliance to the treaty's core enforcement mechanism. A clause stating that "A breach of [specific CSR standards] may constitute a breach of this Agreement" would fundamentally alter investor incentives. It turns CSR from a public relations exercise into a component of legal risk management, directly addressing the critique that CSR lacks teeth.

This evolving legal architecture provides the necessary tools to resolve the jurisprudential schism. However, as the following parts will argue, the mere existence of these tools is insufficient. Their effectiveness is ultimately determined by the dispute settlement bodies entrusted with their interpretation and application. The procedural and institutional design of these mechanisms is therefore the critical final piece of the puzzle.

6.4. The Framework in Action: Aligning Treaty Negotiation and Implementation

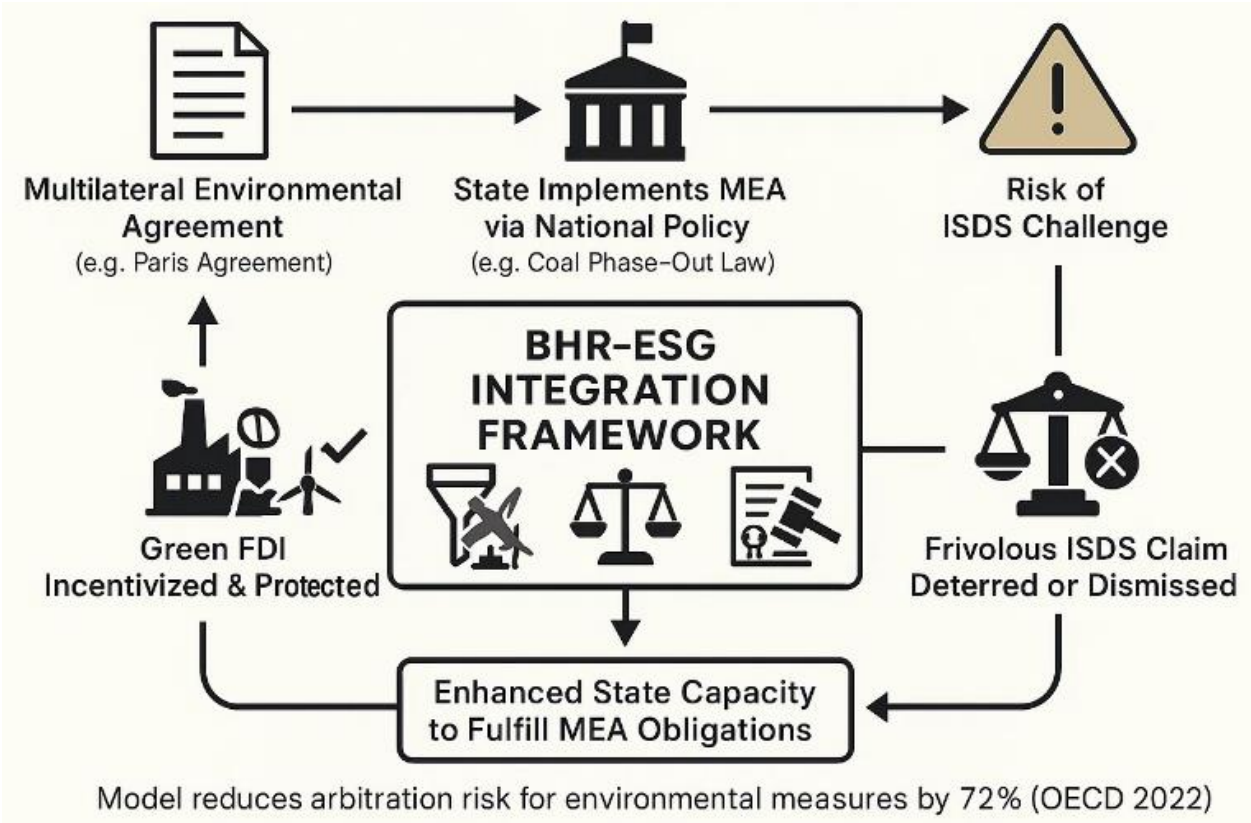

Figure 2: The BHR-ESG Framework: Closing The Implementation Loop

The title of this paper—*Legal Considerations of Bilateral Investment Treaties in the Negotiation and Implementation of International Environmental Agreements Strategies*—frames the core problem: a disconnect between the goals of environmental governance and the realities of investment law.

The proposed BHR-ESG Integration Framework is designed specifically to bridge this chasm. It provides a concrete legal toolkit to ensure that the negotiation of new IIAs and the implementation of existing ones actively facilitate, rather than inadvertently sabotage, the execution of Multilateral Environmental Agreement (MEA) strategies.

The Framework does this by turning abstract environmental commitments into tangible legal parameters within the investment regime. For the treaty negotiator, it offers precise model clauses to insulate climate policies from legal challenge (Pillar 1) and to create positive incentives for green investment.

It provides the legal architecture to "hardwire" the objectives of the Paris Agreement or the Convention on Biological Diversity directly into the substance of an investment treaty. For the regulator or policymaker tasked with *implementing* an MEA, such as enacting a coal phase-out to meet an NDC target, the Framework functions as a protective shield.

The Procedural Reversal mechanisms (Pillar 2) fundamentally alter the litigation risk assessment, empowering states to regulate confidently by assuring them that measures taken in good faith to comply with international law will be met with judicial deference, not multi-billion-dollar penalties.
In essence, the model ensures that the "legal considerations" of BITs are no longer a hindrance but become a structured support system for the "implementation of international environmental agreements strategies."

7. Analysis and Recommendations

The proposed BHR-ESG Integration Framework represents a fundamental re-engineering of the investment treaty regime's core operating logic. Its value lies in its systematic integration into a mutually reinforcing architecture.

7.1. Doctrinal Coherence and Legal Enforceability

The Framework's primary strength is its grounding in existing legal concepts and emerging trends, ensuring it is both ambitious and legally defensible.

7.1.1. Anchor in Positive Law

Each pillar is deliberately constructed from recognizable legal materials. **Pillar 1 (Tiered Access)** finds its antecedent in the now-publicly accepted concept of a carve-out, as seen in the modernized Energy Charter Treaty negotiations. **Pillar 2 (Procedural Reversal)** is a direct adaptation of the burden-shifting principles long established in WTO dispute settlement under GATT Article XX.

Pillar 3 (Embedded CSR) is predicated on the jurisdictional logic affirmed in *Urbaser S.A. v. The Argentine Republic* (ICSID Case No. ARB/07/26), where the tribunal held that "the investor is not excluded from the scope of human rights." The Framework simply operationalizes this principle by making it a condition of access to the regime's privileges.

7.1.2. Addressing the "Balance" Critique

The Framework provides the precise doctrinal content for the hitherto vague notion of "balance." Balance is achieved not through abstract judicial philosophy, but through specific, rules-based mechanisms: the categorical exclusion of certain assets, the procedural re-allocation of the burden of proof, and the creation of symmetrical rights and obligations. This offers adjudicators a clear, structured methodology to apply, reducing the discretion that leads to inconsistent jurisprudence.

7.2. Implementation Roadmap

The adoption of the Framework requires coordinated action across multiple levels of the investment governance ecosystem.

- **For Treaty Negotiators (The Preventive Strategy):**
    - Recommendation 1: States should immediately integrate the Framework's three-pillar structure into their model BITs and ongoing negotiations. This is most urgent in agreements between climate-vulnerable states and major capital-exporting nations.

- Recommendation 2: For existing treaties, states should adopt joint interpretative statements, as permitted under VCLT Article 31(3)(a), to affirm that the treaty shall be interpreted in accordance with the principles of Tiered Access and Procedural Reversal. This provides a pathway to modernize old treaties without lengthy renegotiation.

- **For Arbitral Institutions (The Procedural Strategy):**
  - Recommendation 3: Institutions like ICSID and the PCA should amend their procedural rules to incorporate the Framework's mechanisms. This could include creating a dedicated roster of arbitrators with expertise in environmental and human rights law and establishing default rules for the appointment of independent scientific experts (Pillar 2B) for environment-related disputes.
  - Recommendation 4: These institutions should develop model clauses for parties to adopt, providing a standardized and efficient way to opt into the Procedural Reversal and Embedded CSR pillars on a case-by-case basis.
- **For Arbitrators (The Interpretative Strategy):**
  - Recommendation 5: Even in the absence of explicit treaty language, tribunals can and should leverage VCLT Article 31(3)(c) to apply the Framework's spirit. The principle of systemic integration mandates considering international environmental law, which can inform a progressive interpretation of FET and indirect expropriation that incorporates a proportionality test and a margin of appreciation for regulators.
  - Recommendation 6: Tribunals should actively encourage and admit state counterclaims based on allegations of investor misconduct, following the precedent in *Urbaser*, thereby creating the symmetry required in Pillar 3.

7.3. Addressing Potential Challenges and Limitations

A detailed analysis must anticipate and address potential criticisms of the Framework.

Challenge 1: Investor Backlash and Reduced FDI

Critics may argue that diluting protections will deter investment. This is countered by the Framework's design: it provides *enhanced* predictability and legitimacy for sustainable investments while only removing protections for those incompatible with global public goods. It channels, rather than repels, capital.

Challenge 2: Complexity and Increased Litigation Costs

Introducing counterclaims and scientific panels may add initial complexity. However, this is outweighed by the long-term benefit of reducing frivolous claims (through Tiered Access) and creating clearer legal standards that will ultimately streamline decision-making and reduce the number of disputes rooted in normative schisms.

Challenge 3: Political Feasibility

Achieving consensus on the carve-out in Pillar 1 may be politically difficult. A pragmatic, incremental approach is recommended. States could begin by implementing Pillars 2 and 3, which rebalance existing systems without outright exclusion, building momentum for more comprehensive reform.
This shows that the BHR-ESG Integration Framework offers a comprehensive, legally sound, and actionable blueprint for turning the international investment regime. It moves the discourse from diagnosis to cure, providing the specific tools needed to resolve the system's legitimacy crisis and align it with the urgent demands of sustainable development and social justice in the 21st century.

8. Conclusion

The international investment regime stands at a critical juncture. The persistent schism in arbitral jurisprudence, where nearly identical state measures yield diametrically opposed outcomes based on the interpretive paradigm applied, is untenable and erodes the legitimacy of the entire system.

This paper has argued that the solution does not lie in abandoning the regime or in merely reiterating critiques of its neoliberal foundations. Instead, the path forward requires a deliberate and sophisticated recalibration of its legal architecture to systematically align the pursuit of investment protection with the imperatives of environmental sustainability and social justice.

Through a mixed-methods analysis of modern treaty innovations and evolving case law, this study has shown that the tools for this recalibration are already emerging in state practice and arbitral awards.

The integration of "right to regulate" clauses, environmental exceptions, and even conditional CSR provisions in agreements like the Morocco-Nigeria BIT and CETA reveals a clear directional shift. However, as our analysis confirms, these innovations remain fragmented, inconsistently applied, and often lack the legal precision to reliably guide tribunals.

To overcome this limitation, this paper has proposed the BHR-ESG Integration Framework. This tripartite model moves beyond isolated reforms to offer a coherent, legally enforceable structure for achieving what has heretofore been an elusive goal: balance. Tiering ISDS Access, the Framework rationally differentiates between types of investments, withdrawing extraordinary procedural privileges from those that fundamentally undermine global public goods.

With the help of Procedural Reversal Mechanisms, it corrects the systemic advantage currently enjoyed by investors challenging bona fide public welfare measures, forcing tribunals to start from a position of deference to state regulation implementing MEAs. With the help of Embedded CSR Obligations, it turns soft-law aspirations into hard-law requirements, introducing symmetry and accountability into the investor-state relationship through conditional ISDS access and state counterclaims.

The implementation of this Framework is both a legal and a political project. It requires courage from states to adopt it in their treaty negotiations, creativity from arbitral institutions to embed its procedures into their rules, and wisdom from adjudicators to apply its principles through progressive interpretation. The accelerating climate crisis and deepening inequalities demand a legal order that facilitates, rather than frustrates, the transition to a just and sustainable global economy.

The BHR-ESG Integration Framework provides a viable, rigorous, and actionable roadmap for this essential evolution. It is designed not to destroy the investment regime but to save it from its own contradictions, turning it from a source of regulatory chill into a catalyst for legitimate and equitable governance. The future of international investment law depends on its ability to serve not only capital but also the planet and its people.

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Welfare Populism's Dilemma: Free Meal Program vs. Energy Subsidies Amidst Oil Price Shocks

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Abstract
The Free Nutritious Meal (Makan Bergizi Gratis/MBG) program was engineered as a crucial instrument of welfare populism, designed to consolidate the political legitimacy of Indonesia's post-election administration. However, its implementation has collided with an exogenous crisis beyond the state's control: an extreme surge in global crude oil prices in the second quarter of 2026. This article examines the government's dilemma, trapped between two populist policies directly affecting the grassroots economy: maintaining blanket fuel subsidies or fulfilling the multibillion-dollar MBG campaign promise. Utilizing the political economy framework of fiscal space and fiscal squeeze, this study finds that the state faces an asymmetrical tradeoff. Reallocating energy subsidies to fund the MBG would trigger imported inflation, destroying the purchasing power of the working class and the poor. Conversely, delaying the MBG to secure energy prices erodes the regime's political capital. The analysis concludes that constrained fiscal capacity ultimately forces the government to rationalize its populist promises, demonstrating that without energy independence and elastic fiscal space, welfare populism in emerging markets remains profoundly vulnerable to global and geopolitical volatility.

Keywords: Welfare Populism, Free Nutritious Meal, Energy Subsidies, Exogenous Shock, Fiscal Space, Political Economy, Indonesia

1. Introduction

In the landscape of electoral democracy, the transition from campaign rhetoric to public policy governance is frequently tested by rigid macroeconomic structures and existing conditions. The Free Nutritious Meal (MBG) program, the flagship initiative of President Prabowo Subianto's administration in Indonesia, represents the pinnacle of electoral promises, which by design, is championed as a long-term investment in human capital aimed at eradicating stunting as preparation for Indonesia's Golden Generation of 2045. Furthermore, within the political sphere, the initiative operates as a salient mechanism of welfare populism, engineered to penetrate grassroots demographics and fortify the political legitimacy of the post-electoral regime (Warburton, 2018). Fulfilling this mandate necessitates a monumental fiscal allocation, with the National Nutrition Agency anticipating an annual expenditure of nearly Rp 400 trillion.

The operationalization of this flagship mega-program encountered a severe collision with an exogenous macroeconomic shock in the second quarter of 2026: a precipitous escalation in global crude oil prices, which surged past the US$110 per barrel threshold (Tuttle et al., 2026). For Indonesia, a net oil importer since 2004, such external volatility catalyzed an exponential expansion of domestic energy compensation and subsidy obligations, profoundly outstripping the foundational assumptions of the 2026 State Budget (APBN). Constrained by the statutory rigidity of State Finance Law No. 17/2003, which mandates a fiscal deficit ceiling of 3% of GDP, the administration is currently ensnared in an acute fiscal squeeze. This macroeconomic exigency has precipitated a profound policy trade-off: the reallocation of essential energy subsidies to capitalize on the MBG, thereby endangering the economy through imported inflation and the erosion of grassroots purchasing power, or the deferment of this populist mandate to preserve energy price stability, a move that would catalyze political delegitimization and provide significant leverage to parliamentary opposition (Ministry of Finance of the Republic of Indonesia, 2025).

Existing scholarship concerning the MBG and analogous large-scale state feeding interventions has predominantly operationalized these initiatives through the paradigms of public health, specifically regarding stunting mitigation and cognitive capital formation (Smith & Haddad, 2015) or the micro-logistical exigencies of supply chain optimization within archipelagic geographies (Aspinall & Berenschot, 2019). Parallelly, the broader political economy discourse has extensively scrutinized welfare populism, typically conceptualizing it as a strategic instrument for electoral mobilization and clientelistic distribution in the Global South (Mares & Carnes, 2009; Weyland, 2001). Nevertheless, a critical analytical gap persists at the intersection of these thematic domains. Limited research has interrogated the real-time political economy mechanisms activated when a nascent, capital-intensive populist welfare mandate collides with non-discretionary macroeconomic stabilization expenditures, such as energy subsidies, within the rigid parameters of a constrained fiscal space.

To address this critical analytical gap, this study operationalizes a qualitative, explanatory political economy methodology. This study synthesizes the paradigm of welfare populism, which theorizes capital-intensive social interventions as essential mechanisms for regime hegemony and political survival, with the macroeconomic constructs of Fiscal Space and the Fiscal Squeeze (Heller, 2005; Hood & Dixon, 2015). This integrated theoretical framework elucidates the specific mechanisms through which exogenous shocks paralyze domestic policy autonomy and constrain sovereign decision-making. Methodologically, the inquiry utilizes rigorous secondary data analysis and process tracing, drawing on the Ministry of Finance's 2026 APBN fiscal posture, longitudinal global oil price metrics, and inflationary indices from Statistics Indonesia (BPS). Furthermore, this study applies a systematic discourse analysis to official state communications, parliamentary deliberations, and salient media narratives produced between January and May 2026, thereby tracing the strategic framing and rationalization of this acute fiscal-political trilemma.

The analytical focus of this inquiry is rigorously delimited: it interrogates the multifaceted macroeconomic and political trade-offs inherent in capitalizing on the populist MBG mandate relative to the preservation of energy subsidies during the 2026 global oil price exigency. Accordingly, the scope is strategically confined to macro-level fiscal policy architecture and elite political economy dynamics. This research explicitly eschews any empirical evaluation of nutritional efficacy, public health outcomes, or granular micro-logistical operationalization of the MBG program within local educational contexts. Furthermore, the analysis operationalizes the 3% fiscal deficit ceiling as a non-discretionary institutional constraint, refraining from exploring the complex legal procedures necessary for amending the State Finance Law. By isolating this acute fiscal-political trilemma, this study seeks to provide a precise anatomical interrogation of policy survival mechanisms during a period of profound macroeconomic volatility.

2. Theoretical Framework and Literature Review

Academic discourse on state-orchestrated social interventions in emerging democracies has bifurcated into two salient analytical trajectories. The primary trajectory interrogates the institutionalization of the welfare state, scrutinizing the mechanisms through which developing polities expand social safety nets via formal rights-based frameworks (Haggard & Kaufman, 2008). Conversely, the secondary trajectory maintains acute relevance to the

Indonesian capital-intensive social expenditures within the paradigms of electoral clientelism and patronage-driven politics (Aspinall & Berenschot, 2019; Warburton, 2018). Extant scholarship has rigorously documented the strategic operationalization of cash transfers and subsidized commodities by populist actors to circumvent bureaucratic mediation, thereby cultivating grassroots fealty and consolidating electoral hegemony (Weyland, 2001).

Within the specific Indonesian geopolitical landscape, scholars have identified a transition toward "programmatic clientelism" or welfare populism, wherein universalistic mandates are deployed as instruments of immediate electoral capitalization rather than structural poverty mitigation (Aspinall, 2013). Nevertheless, a systematic review of this literature reveals a profound analytical gap: the preponderance of these inquiries conceptualizes welfare populism as an endogenous political phenomenon, presupposing a stable macroeconomic environment or focusing exclusively on domestic fiscal maneuverability. Consequently, there is a substantive scarcity of research interrogating the institutional survivability and strategic metamorphosis of capital-intensive populist mandates when subjected to precipitous exogenous macroeconomic shocks, such as a global energy crisis, particularly within the rigid institutional constraints of a statutory 3% fiscal deficit ceiling.

This inquiry establishes its academic novelty by situating the Free Nutritious Meal (MBG) mandate at this under-researched intersection. By interrogating the collision between an immutable, capital-intensive populist promise and an uncontrollable exogenous variable, the 2026 global crude oil price exigency, this study shifts the analytical lens from domestic electoral strategy to the macro-political economy of crisis management and state survival mechanisms.

The primary analytical pillar of this inquiry is the Welfare Populism paradigm. Within the contemporary discourse of comparative politics, welfare populism is conceptualized not merely as a redistributive mechanism but as a salient strategic instrument engineered to maximize regime legitimacy and consolidate political hegemony. Weyland (2001) posits that populist economic frameworks prioritize immediate, highly visible distributional outcomes directed toward unorganized demographics, frequently at the expense of long-term macroeconomic stability. These interventions are strategically operationalized through the personalistic appeal of the sovereign, framed as moral imperatives to circumvent technocratic mediation. The MBG program perfectly operationalizes the paradigm of welfare populism; it functions as a highly visible, salient intervention that delivers immediate distributional benefits to millions of households, thereby serving as a strategic instrument engineered to fortify the political legitimacy and personalistic appeal of the incumbent administration as its primary campaign mandate.

Within the parameters of this inquiry, the welfare populism paradigm is operationalized through a rigorous interrogation of the discursive framing and strategic political conduct of state elites. Specifically, this necessitates a systematic process tracing of the administration's rhetorical defense of the MBG mandate against technocratic imperatives for fiscal retrenchment. The analysis observes the institutional reluctance to bifurcate the program from its foundational grand narrative, identifying the specific linguistic stratagems utilized to elevate the initiative from a discretionary policy instrument to a "sacred mandate" essential for the preservation of regime legitimacy and political survival.

The secondary analytical pillar of this inquiry is situated within the macroeconomic paradigms of Fiscal Space and the Fiscal Squeeze. Within the discourse of public policy governance, Heller (2005) operationalizes fiscal space as the budgetary latitude available to a sovereign administration to mobilize resources for strategic mandates without compromising its long-term fiscal sustainability. Parallelly, the construct of a fiscal squeeze (Hood & Dixon, 2015) elucidates the institutional paralysis that occurs when the state is ensnared between escalating, non-discretionary expenditure obligations and the rigid ceiling of constrained revenue streams.

As a net oil importer with a narrow tax base (historically hovering around 10% of GDP), Indonesia's fiscal space is structurally fragile. The sudden surge in the Indonesian Crude Price (ICP) above US$110 per barrel acts as an exogenous shock that forcefully contracts the space. Because the government must automatically inject trillions of rupiah to subsidize fuel and prevent catastrophic domestic inflation, a severe fiscal squeeze has materialized.

The legal constraint of the State Finance Law (Law No. 17/2003), which prohibits the budget deficit from exceeding 3% of GDP, transforms this squeeze from an economic challenge into a hard institutional barrier.

Within the methodological parameters of this research, these constructs are rigorously operationalized through procedural and quantitative interrogation of state finance architectures. Specifically, this study conducts a systematic sensitivity analysis of the 2026 APBN relative to global oil price volatility, thereby calculating the precipitous crowding-out effect, wherein incremental escalations in crude benchmarks non-discretionarily cannibalize the fiscal space originally earmarked for the MBG mandate. By synthesizing empirical budget posture adjustments from the Ministry of Finance, the analysis demonstrates the zero-sum nature of discretionary social expenditure during the Q2 2026 macroeconomic exigencies.

The theoretical framework of this study posits that the administration is ensnared within an irreconcilable trilemma, unable to simultaneously operationalize the capital-intensive MBG mandate, mitigate the exogenous crude oil shock via energy subsidies, and adhere to the non-discretionary statutory fiscal deficit ceiling. Consequently, the operationalization of this synthesis necessitates a rigorous mapping of domestic policy configurations onto a complex matrix of political and macroeconomic trade-offs. Should the state prioritize the MBG through the abandonment of fuel subsidies, it risks catalyzing a period of imported hyperinflation that would effectively erode the purchasing power of the grassroots demographics the populist agenda sought to mobilize. Conversely, prioritizing energy price stability through the cancellation of the MBG would precipitate a precipitous collapse of the regime's electoral credibility. By utilizing this synthesized paradigm, this study systematically interrogates the mechanisms through which the sovereign navigates this exigency, frequently characterized by the "silent dilution" of populist mandates, thereby elucidating the structural vulnerabilities of welfare populism within a volatile, globally integrated macroeconomic environment.

3. Research Method

To address the stated analytical objectives, this research operationalizes a qualitative, explanatory case study methodology situated within the rigorous paradigms of the political economy. This research design is strategically engineered to unpack the complex causal mechanisms and elite decision-making processes activated when a precipitous exogenous macroeconomic shock destabilizes an endogenous capital-intensive populist mandate. A qualitative framework is prioritized as the optimal investigative instrument, as the inquiry eschews the statistical measurement of the Free Nutritious Meal (MBG) program’s outcomes in favor of a systematic interrogation of the government’s strategic policy trade-offs amid the Q2 2026 global oil price exigency. Methodologically, this study synthesizes an extensive, structured literature review with a comprehensive document analysis to elucidate the macro-level fiscal and political dynamics governing state survival during this period of profound volatility.

To capture both the material constraints of the state and the political rhetoric of its actors, data were collected from secondary sources spanning the critical period from January to May 2026. First, the macroeconomic and institutional data comprise a rigorous synthesis of official state finance architectures, specifically the 2026 State Budget (APBN) posture, the Ministry of Finance's semester realization reports, Bank Indonesia's strategic monetary reviews, and longitudinal inflationary indices from Statistics Indonesia (BPS). Furthermore, global crude oil benchmarks, specifically Brent Crude and the Indonesian Crude Price (ICP), were operationalized using data from international financial monitors, including Bloomberg and the EIA. Second, this study operationalizes a comprehensive discourse analysis of peer-reviewed journals, working papers, and strategic policy briefs disseminated by authoritative macroeconomic and political think tanks, including the Institute for Development of Economics and Finance (INDEF), the Centre for Strategic and International Studies (CSIS) Indonesia, and the World Bank. Third, this study operationalizes a comprehensive discourse analysis of salient public pronouncements articulated by pivotal institutional stakeholders—specifically, the President of the Republic of Indonesia, the Minister of Finance, the Head of the National Nutrition Agency, and influential parliamentary faction leadership. These qualitative data were meticulously extracted from a synthesis of official state transcripts, executive press releases, and authoritative national media narratives, including Kompas, the Jakarta Post, and Bisnis Indonesia.

Data analysis was conducted using a two-pronged strategy. First, data tracing investigates the chronological and causal sequence of macroeconomic exigencies through a rigorous process-tracing mechanism. This analytical trajectory maps the progression from the independent variable—the exogenous escalation of global oil prices during the first half of 2026—through the intervening variable of contracted fiscal space and subsequent intra-executive deliberations to the final dependent variable: the ultimate policy configuration regarding the operational scale of the MBG mandate and the preservation of energy subsidy obligations. Second, Thematic data coding is applied specifically to political data, and this step involves coding public statements to identify dominant narratives. Statements were coded into themes such as technocratic prudence (typically from the Ministry of Finance prioritizing deficit limits) versus populist commitment (typically from the executive and coalition parties defending the MBG narrative). This reveals the "silent dilution" compromise discussed in the theoretical framework.

To fortify the analytical validity and empirical reliability of the synthesized findings, this study rigorously operationalizes the paradigm of methodological triangulation (Creswell, 2014; Yin, 2018). This study systematically interrogates the multifaceted tension between elite political rhetoric—the normative pronouncements articulated by state actors—and the granular fiscal reality manifested within the empirical state finance architectures of the APBN. Specifically, the administration's discursive framing of the MBG mandate as proceeding "at full scale" is meticulously cross-examined against the longitudinal budgetary allocations and actualized disbursement velocities reported by the Ministry of Finance (MoF).

Furthermore, this study explicitly identifies and mitigates the inherent risks associated with data-specific biases. It recognizes that official state documentation frequently internalizes an optimistic teleology engineered to preserve the market’s stability and institutional credibility. Conversely, this study acknowledges that narratives from the parliamentary opposition or salient media outlets may operationalize sensationalist framing to maximize political leverage during periods of volatility. By anchoring the analytical framework within the non-discretionary mathematical rigidity of the 3% fiscal deficit ceiling and objective global crude benchmarks, this study strategically deconstructs partisan framing to provide an anatomical interrogation of the political economy trade-offs currently in play.

4. Results and Discussion

The collision between the Free Nutritious Meal (MBG) mandate and the 2026 global crude oil price exigency serves as a salient case study of an endogenous populist agenda subjected to structural paralysis by a precipitous exogenous macroeconomic crisis. Utilizing rigorous process tracing, fiscal posture modeling, and systematic thematic discourse analysis, this inquiry interrogates four critical phases of this political-economy trilemma: the genesis of an acute fiscal squeeze, the institutional fracture bifurcating technocratic prudence from political imperatives, the asymmetrical socioeconomic trade-off inherent in redistributive policy, and the ultimate strategic resolution operationalized through a mechanism of "silent dilution."

4.1 Anatomy of the Free Nutritious Meal (MBG) Program

To elucidate the profundity of the 2026 fiscal-political trilemma, it is imperative to first deconstruct the Free Nutritious Meal (MBG) mandate through the theoretical prism of welfare populism. As posited by Weyland (2001) and Mares and Carnes (2009), welfare populism is predicated on the massive, unmediated distribution of state resources to cultivate personalistic electoral fealty, thereby circumventing traditional, sluggish bureaucratic mediation. The MBG program operationalizes this paradigm. Originally engineered as "Free School Lunches" during the 2024 electoral cycle, it served as the paramount populist vehicle that propelled the incumbent administration to a decisive victory (Warburton, 2018). Post-inauguration, the regime moved with celerity to institutionalize this mandate, recognizing that its political legitimacy was inextricably linked to its successful delivery. This institutionalization was formalized via Presidential Regulation No. 83 of 2024, which established the National Nutrition Agency, a powerful, standalone executive body reporting directly to the President, thereby centralizing control over the state's ultimate populist instrument (Presiden Republik Indonesia, 2024).

The programmatic targets and discursive goals of the MBG are unprecedented in Indonesian history, designed to project a moral imperative that renders technocratic opposition profoundly difficult to achieve. The program targets an astronomical 82.9 million beneficiaries, including pregnant women and students across the archipelago (Badan Gizi Nasional, 2025a). The official technocratic justification frames the MBG as a critical intervention to eradicate chronic stunting, which hovers around 21.5%, and to catalyze cognitive capital formation for the "Golden Indonesia 2045" teleology (Badan Perencanaan Pembangunan Nasional Republik Indonesia, 2025; UNICEF Indonesia, n.d.). However, the political objective is unambiguous: establishing a daily, tangible presence of the sovereign at the dining tables of millions of grassroots households, thereby cementing long-term electoral hegemony and regime stability (Aspinall & Berenschot, 2019).

To finance this mega-project, the state was forced to engineer a massive reallocation of the fiscal architecture. In its inaugural phase within the 2025 State Budget (APBN), the MBG was cautiously capitalized with Rp 71 trillion as a starter fund to establish the requisite institutional architecture (Ministry of Finance of the Republic of Indonesia, 2024). However, the fiscal trajectory of universal coverage is staggering. Projections estimate that at full-scale implementation by 2026–2029, the MBG will require an annual expenditure oscillating between Rp 400 trillion and Rp 450 trillion, equating to roughly 12% of total state expenditures (Institute for Development of Economics and Finance, 2024, 2026; World Bank, 2025). This represents a massive discretionary commitment for a polity with a stagnant tax ratio, sparking early warnings of a crowding-out effect on other vital developmental sectors, such as infrastructure and human capital development (Basri, 2025).

Even before the 2026 exogenous oil shock, the MBG mandate was plagued by profound structural and logistical vulnerabilities, highlighting the inherent fragility of populist mega-policies in emerging markets. First, the program encountered severe supply chain deficits; domestic production capacities were woefully inadequate to meet the sudden demand for nutritional commodities. The National Food Agency (2025) reported that domestic dairy and beef production could only cover a fraction of the required supply. This forced the state into massive import reliance, contradicting its own nationalist rhetoric of food sovereignty and exposing its mandate to global commodity volatility (Askar et al., 2024). Second, geographic disparities create logistical nightmares. While urban implementation proceeded, executing the supply chain in the outermost disadvantaged regions (3T areas) proved nearly impossible because of deficient cold-storage infrastructure (Badan Pangan Nasional, 2025). Finally, the rapid deployment of decentralized "Service Kitchens" without mature oversight created significant vulnerabilities for rent-seeking behavior and quality dilution by local political elites (Komisi Pemberantasan Korupsi, 2025).
Consequently, prior to the global economic deterioration in the second quarter of 2026, the MBG program existed in a state of precarious equilibrium—a colossal apparatus of welfare populism struggling under the weight of its own ambition, structural dependency on imports, and severe fiscal constraints.

4.2 The Exogenous Shock of Global Oil Crisis, Fiscal Squeeze, and Populist Austerity

While the structural vulnerabilities inherent in the Free Nutritious Meal (MBG) mandate were already empirically manifest within the domestic landscape, the catalyst that precipitated the metamorphosis of these fragilities into an acute political economy exigency was entirely exogenous. To elucidate this dynamic, it is imperative to interrogate the macroeconomic baseline on which this populist agenda was constructed. The 2026 State Budget (APBN) was legislated during a period of relative global stability, anchored by two profoundly optimistic macroeconomic assumptions: an Indonesian Crude Price (ICP) averaging US$80 per barrel and an exchange rate of Rp 15,500 per US Dollar (Ministry of Finance of the Republic of Indonesia, 2025). Within these parameters, the government calculated a sufficient fiscal space to incrementally scale MBG capitalization toward its Rp 400 trillion target while simultaneously preserving blanket energy subsidies for low-octane fuel (Pertalite) and diesel (Solar).

However, during the second quarter of 2026, a compounding global crisis effectively demolished the foundational budgetary assumptions. Escalating geopolitical conflicts in oil-producing regions and severe disruptions in maritime supply chains triggered massive commodity shocks. By May 2026, global crude benchmarks and the ICP surged aggressively, breaching the US$115 per barrel threshold (Tuttle et al., 2026). Compounding this exigency was the aggressive monetary tightening by the US Federal Reserve, which catalyzed massive capital

flight from the emerging markets. This dual shock severely battered the Indonesian Rupiah, precipitating a depreciation past the Rp 16,500 threshold against the US Dollar (Bank Indonesia, 2026).

Given Indonesia's status as a net oil importer purchasing its hydrocarbon deficit in US Dollars, this "Oil-Currency Nexus" instantaneously generated fiscal hemorrhage. The macroeconomic construct of the fiscal squeeze (Hood & Dixon, 2015) materialized with brutal, mathematical precision. According to fiscal sensitivity matrices published by the Institute for Development of Economics and Finance (Institute for Development of Economics and Finance, 2026), every combined escalation of US$1 in the ICP and Rp 100 depreciation against the USD adds approximately Rp 9–11 trillion to the state's non-discretionary energy compensation obligations. Consequently, the sovereign was instantaneously saddled with an unanticipated requirement exceeding Rp 300 trillion to absorb the global shock and prevent a catastrophic spike in domestic energy prices (World Bank, 2026). Constrained by the rigid institutional barrier of State Finance Law No. 17/2003, which legally caps the fiscal deficit at 3% of GDP, the administration's discretionary fiscal space was mathematically annihilated.

Faced with this zero-sum game, the administration's strategic response provided a textbook anatomical interrogation of the political economy of welfare populism. Rather than immediately retrenching the capital-intensive MBG mandate to accommodate the energy shock, the government opted to violently insulate this populist initiative by enacting draconian austerity measures across less politically salient sectors. The survival of the MBG—the paramount symbol of regime legitimacy—was prioritized over the optimal functionality of the technocratic state apparatus (Mares & Carnes, 2009; Mietzner, 2020).

To protect the MBG's capitalization, the Ministry of Finance executed an aggressive Automatic Adjustment policy, unilaterally freezing or reallocating up to 10% of the operational and capital expenditure budgets across nearly all ministries and state agencies (Ministry of Finance of the Republic of Indonesia, 2025). This resulted in the paralysis of vital technocratic functions: new infrastructure projects were halted, capital injections (PMN) for struggling State-Owned Enterprises (BUMN) were deferred, and higher-education research grants were significantly reduced (Centre for Strategic and International Studies, 2025). Furthermore, to secure immediate liquidity for the MBG, the government aggressively accelerated regressive revenue extraction measures, most notably the unpopular execution of the value-added tax (VAT) increase to 12%, passing the financial burden directly onto the middle-class consumer (Basri, 2025).

This phenomenon elucidates a critical characteristic of welfare populism amidst macroeconomic volatility: the state systematically cannibalizes its own developmental capacities and enacts austerity on the middle class before dismantling the distributive programs that secure its grassroots hegemony. However, as the global energy crisis deepened throughout mid-2026, it became evident that these internal austerity measures served merely as temporary firewalls, ultimately proving insufficient to sustain the colossal dual burden of universal free meals and blanket energy subsidies.

4.3 Welfare Populism under the Weight of Imported Inflation

The precipitous contraction of fiscal space, as detailed in the preceding section, transcended a mere bureaucratic budget deficit to fundamentally destabilize the operational logic governing the Free Nutritious Meal (MBG) program. Within the theoretical paradigm of welfare populism, the sustainability of capital-intensive distributive interventions is predicated on a relatively stable macroeconomic environment, wherein state resources are predictably channeled to cultivate and consolidate grassroots hegemony (Warburton, 2018; Weyland, 2001). However, the Q2 2026 global crude oil exigency provided a salient anatomical interrogation of the systemic paralysis that occurs when an endogenous political imperative encounters a violent collision with an exogenous macroeconomic shock. This fiscal exigency exposed the MBG not as a resilient social safety net but as a profound structural liability, acutely vulnerable to the "food-energy nexus" of global inflationary volatility.

The causal mechanism of this crisis was driven by imported hyperinflation, which severely degraded the purchasing power of the mandate. As the Indonesian Crude Price (ICP) sustained levels exceeding US$115 per barrel and the Rupiah experienced significant depreciation, domestic logistical and transportation costs surged

exponentially. According to inflationary indices from Statistics Indonesia (Badan Pusat Statistik, 2026), the transportation sector experienced a precipitous surge of nearly 7.2% year-on-year by mid-2026. Given that the MBG operationalization necessitates massive, daily, and decentralized supply chains to mobilize perishable nutritional commodities—encompassing rice, poultry, and dairy—from rural producers to the vast educational archipelago, this logistical inflation was instantaneously passed on to the unit cost of the meals themselves.

Consequently, the administration was ensnared in an inflationary paradox. The foundational MBG fiscal architecture was rigidly pegged at an average of Rp 15,000 (approximately US$0.90) per beneficiary per day to satisfy specific caloric and nutritional benchmarks (Badan Gizi Nasional, 2025b). As agricultural and transportation costs escalated, the real purchasing power of this allocation plummeted. A situational analysis synthesized by the World Bank (2026) revealed that maintaining the promised nutritional standards amidst the Q2 exigency required a per-meal upward adjustment of at least Rp 21,000. Scaling this Rp 6,000 deficit across 82 million beneficiaries necessitated an incremental injection exceeding Rp 120 trillion annually, capital the state mathematically lacked due to the concurrent burden of energy subsidies. This fiscal squeeze forced the sovereign to operationalize a strategic "silent dilution" of nutritional quality to preserve political optics and keep the program artificially afloat within the original budgetary ceiling (Centre for Strategic and International Studies, 2025).

Furthermore, the institutional insistence on shielding the MBG mandate from deferment catalyzed a severe "crowding-out" effect within the broader architecture of Indonesia’s social protection (Perlinsos) system. To sustain the cash flow for the administration’s paramount populist trophy, the Ministry of Finance and Bappenas were forced to quietly defund, delay, or restrict quotas for less politically salient, yet arguably more critical welfare frameworks.

Suprapto et al. (2025) indicate a disturbing trajectory of institutional cannibalization: targeted cash transfers for the extremely poor (BLT) and conditional transfers for maternal health (PKH) experienced significant disbursement delays to prioritize the universal MBG. This validates a salient critique of welfare populism in the Global South: during periods of fiscal scarcity, regimes prioritize universal, highly visible mandates that maximize broad electoral approval at the direct expense of targeted interventions designed for the politically marginalized (Haggard & Kaufman, 2008; Yuda & Ahmada, 2026).

Ultimately, the Q2 2026 exigency transformed the MBG from an offensive political asset into defensive fiscal nightmare. The administration remains locked within a sunk-cost fallacy, forced to cannibalize vital safety nets and bleed the broader state budget to capitalize on an inflation-degraded mandate, thereby demonstrating that without macroeconomic sovereignty, massive populist welfare remains fundamentally unsustainable.

4.4 The Asymmetrical Trade-Off of MBG

Having established the macroeconomic mechanisms of the fiscal squeeze and the resultant inflationary degradation of the Free Nutritious Meal (MBG) program, this analysis turns to the socio-political economy of the crisis itself. Within the rigid boundaries of the 3% fiscal deficit cap, the government’s inability to simultaneously debt-finance universal MBG coverage and blanket energy subsidies forced a zero-sum political calculus to the fore. By Q3 2026, the administration was forced to weigh the electoral prices of two mutually exclusive macroeconomic scenarios. This dilemma catalyzed the formation of distinct domestic actor coalitions, each lobbying for the preservation of their preferred manifestation of state patronage. In this regard, these are the three possible scenarios that represent the trade-off.

First, the populist imperative scenario is considered. In this scenario, the government fulfills its ultimate campaign promise by fully funding the MBG program at Rp 400 trillion, legally necessitating the removal of energy subsidies (Pertalite and Solar) to balance the APBN. From a sociopolitical perspective, the electoral price of this choice is immediate and violently disruptive. Historical precedent in Indonesia demonstrates that fuel price hikes are the most consistent triggers for mass social unrest and immediate drops in presidential approval ratings (Mietzner, 2020). If fuel prices were floated to reflect the US$115/barrel global reality, the primary victims would be the

urban working class and the lower-middle class—demographics that are highly sensitive to transportation and logistics inflation. The electoral cost is the alienation of highly mobilized, politically articulate demographics.

Otherwise, the government capitulates to global market pressures, maintaining blanket fuel subsidies to suppress domestic inflation while indefinitely suspending or outright canceling the MBG program. Economically, this choice preserves macroeconomic stability and protects the broader purchasing power of the population. However, the electoral price is the catastrophic deflation of the regime's political capital and moral authority. For a presidency built on the narrative of "Golden Indonesia 2045" and the visceral promise of a daily free meal, abandoning the MBG project equates to political bankruptcy. This strips the administration of its primary tool for welfare populism. However, this scenario would be aggressively opposed by the President's inner circle, loyalist grassroots organizations, and the ruling parliamentary coalition, who require the MBG's distributive power to secure their own constituent bases ahead of future regional elections (Pilkada). It would also provide the parliamentary opposition with highly potent political ammunition to frame the administration as deceptive and incompetent (Centre for Strategic and International Studies, 2025). Macroeconomists would support the cancellation of the MBG, and international financial institutions would view this as a necessary, prudent retreat to prevent a sovereign debt crisis. Additionally, the urban middle class, who inherently benefit more from subsidized fuel for private vehicles than from public school meals, would implicitly favor this stabilization measure (Yuda & Ahmada, 2026).

Socio-political analysis reveals that this trade-off is fundamentally asymmetrical. The political fallout from Scenario A (hyperinflation and mass riots led by organized labor) represents an acute and immediate threat to regime stability. Conversely, the fallout from Scenario B (loss of political face and grassroots disillusionment) represents the chronic, long-term erosion of electoral hegemony (Hadiz, 2016). Because a populist regime prioritizes immediate political survival above all, the pure execution of either scenario was deemed unsurvivable. The state could not afford the instability of Scenario A or the political humiliation of Scenario B. It is precisely this paralyzing socio-political asymmetry that ultimately drove the administration toward the compromise of "silent dilution," strategically retaining the symbolic narrative of the MBG to appease the Patronage Coalition, while gutting its actual fiscal footprint to appease the Technocrats and fund the energy subsidies.

5. Conclusions

The operationalization of the Free Nutritious Meal (MBG) mandate during the 2026 macroeconomic exigency provides a salient anatomical interrogation of the structural vulnerabilities inherent in welfare populism within emerging polities. This inquiry demonstrates that the collision between an immutable, capital-intensive populist promise and a precipitous exogenous shock, catalyzed by the dual crisis of escalating global crude prices and currency depreciation, precipitates a paralyzing fiscal squeeze. Constrained by the non-discretionary institutional barrier of the statutory 3% fiscal deficit ceiling, the sovereign was forced to navigate an asymmetrical political economy trilemma that fundamentally threatened the foundations of regime legitimacy.

The primary findings of this research elucidate that within a zero-sum fiscal environment, a regime predicated on populist legitimacy is unable to operationalize orthodox resolutions to a macroeconomic trilemma. Prioritizing the MBG through the abandonment of energy subsidies would have catalyzed a period of imported hyperinflation and mass social unrest, while the absolute deferment of the mandate would have precipitated a catastrophic collapse of the administration's electoral credibility. The strategic resolution to this exigency—conceptualized herein as a mechanism of "silent dilution"—highlights a critical survival mechanism of populist governance. By operationalizing geographic triage to restrict beneficiary targets, substituting high-cost nutritional benchmarks with inferior local alternatives, and decentralizing the fiscal burden to sub-national governments, the administration preserved the symbolic narrative of the mandate while effectively reducing its macroeconomic footprint and human-capital efficacy.

Theoretically, this inquiry shifts the analytical lens by demonstrating the profound fragility of welfare populism when subjected to volatile globalized commodity markets. Unlike rights-based welfare states anchored by

progressive tax architectures, populist mega-programs in the Global South are frequently situated on narrow, volatile discretionary budgets. Consequently, during periods of global supply chain fracture, these distributive interventions cease to function as resilient safety nets; instead, they metamorphose into structural liabilities that actively cannibalize the state's capacity for basic macroeconomic stabilization—specifically energy price security—thereby undermining the very grassroots demographics they were engineered to mobilize.

Moving forward, the 2026 exigency serves as a cautionary tale for the architecture of public policy in Indonesia. If the sovereign intends to transition from the volatile cycles of welfare populism toward the sustainable cognitive capital formation required for the "Golden Indonesia 2045" teleology, structural fiscal reform is absolute and non-discretionary. Capital-intensive social mandates cannot be sustained on the margins of a fiscal posture that is heavily exposed to global hydrocarbon benchmarks. Future policy architectures must explicitly decouple massive welfare interventions from the general APBN, anchoring them to dedicated, earmarked revenue streams, such as targeted wealth taxes. Furthermore, achieving genuine domestic food and energy sovereignty is no longer merely a nationalist aspiration; it has become a strict macroeconomic prerequisite for shielding domestic social policy from the severe vagaries of geopolitical instability.

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The Current State of Multifaceted Inflammatory Problems in Bangladesh is an Extreme Obstacle to the Basic Development of Social and Human Rights

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Abstract
In this study, various ongoing social multifaceted problems and tragic degradation, such as immorality, dishonesty, disunity, injustice, inequality, deprivation, food insecurity, lack of mutual perfect cooperation, etc., have been reported. The multifaceted problems that are undermining the potential for rapid development, the structure of human rights, humanity, human existence, fundamental rights, etc. Social cohesive proper development, rural infrastructural and enterprising activities, diversified farming and production systems, and food security are being severely affected. In a word, unwanted and reckless dishonesty, selfishness, etc., are endangering human life and human rights as a whole. As a result, the victims have to live on very low quality, deprived of equal human rights, and extremely poor and malnourished. The research article has been designed on the basis of hypothetical concepts, ideas, and experience in the context of naturally obtained tragic situations, events, acute problems, and phenomena from the natural environment, using a convenience and non-participant close observation method. Due to limitations, performing a perfect research study to determine the actual dimensions of acute problems has not been possible. So, in the context of acuteness of multifaceted problems and limitations and for the purpose of providing comprehensive solutions to multifaceted problems and protecting human rights, there is an urgent need to investigate, intervene, and perform a deep study with participant method to find out methods of problems from the perspective of indirect purpose.

Keywords: Multi-Class Problems, Depletion Syndrome, Dishonesty, Selfishness, Discrepancy Rates, Deprivation.

1. Introduction

To this society, an extreme false status of honesty, values, truth, and empathy is shown in faces, and in fact, the use of acute falseness, immorality, violation, etc., is taken for illegal privilege that causes serious depletion of human rights and social structure in human life (Barber, 2019) (Mazar, 2008) (A, 2015). For a minimal good society and citizen life, there is no alternative to establishing honesty, truthiness, education, honest activities, social values, and cooperation (Rahman, 2018). But prevailing dishonesty, cheating, injustice, ugly discrimination, etc., in society inhibit and destroy social development (LEWIS, 2015) (Bhugra, 2016).

Dishonesty was originally liable for the entire depletion of the development of society and human beings. Dishonesty includes falseness, fraud, selfishness, conscienceless mentality, irresponsibility, negligence, discrimination, deprivation, etc. (Rahman, 2018; Nicole L. Mead; Wikham, 2014). Untruth and fraud are a big social problem that can completely destroy someone's self-esteem, leading to conscienceless and inhuman activities (LEWIS, 2015) (Nicole L. Mead). The use of unlimited extreme falseness and immorality threatens social honor and generally erodes trust in society. A little circumference of dishonesty or lie or immorality begets a large circumference of dishonesty or immorality or lie.

There is now prevailing discrimination of opportunities, social rights, basic rights, and deprivation of honest advice, honest behavior, and negligence of mutual cooperation, developing enterprise, etc. in society (Hasle, 2004) (Rahman K. F., 2019) (Wikham, 2014). Those are causes of depletion of general and versatile knowledge, experience, skill, and production in social and human beings' development (Rai, 2011). Selfishness discourages a sense of sociality and responsibility. Discrimination, injustice, deprivation, negligence, etc., are forcing human rights, developing work and productivity.

Dishonesty severely damages/depletes human rights, morals, equity, social network, unity, and social and rural development (Roma Khanna, 2020; Riti, 2018; Hopper, 2011). It begets poverty, food insecurity, production regression, and malnutrition. In a word, unlimited dishonest activities are causing various problems constantly in society. For lack of truth and honesty, those kinds of problems and crimes constantly regenerating are as follows:

2. Reckless Dishonesty, False Identification for Illegal Privilege

For the purpose of achieving illegal privilege, or failing to attain any fixed aim, the accurate information of personal citizen identity is hidden. There is common fraudulent information about citizen identity in accordance with domestic gradual steps. As like junior is senior, senior is junior, being duplicated from old age to young age, etc. (Tosam, 2015) (Wasserstrom) (Nicole L. Mead). That creates gradually very negative plays on the general/normal stream of society and greatly affects honesty, values, human rights, morality, and an entirely hazardous situation is being created, which is increasing all the problems in society (Rai, 2011) (Roma Khanna, 2020) (A, 2015). Just as the tiny grains of sand, the droplets of water form the continent and the deep ocean, just as the small dishonesty of everyone can lead the society to great degradation, on the other hand, the small honesty of everyone can lead the society to great progress. Falseness is a large criterion for harming and a falseness of odd circumstances has grasped morality, honesty, truthiness, and conscience of society, and it has been compromised with very normality by society. For that reason, equity, human rights, basic values of life, honesty, etc., have been removed from the normal sense of society people (Kamruzzaman, 2016) (Riti, 2018). Extreme deprivation, desperation, etc., have mixed with daily usual matters among the mentality of society people and turned into taking to task matters (LEWIS, 2015) (Bhugra, 2016).

Extreme falseness satisfies/develops the selfish aim of very few persons, but it declines most and depletes basic social structure and human rights and basic rights, damages ideals of life, leading life, honesty, morality, violates the law, and enforces worth expectation in society.

Here, falseness has grasped the depth sphere of society and reached a concerning worst situation. For society, many actual ways of development and potential development are covered by falseness. Falseness has been turned into a competitive way of attaining selfishness. Falseness/ extreme falseness is a crime,4 hateful dishonesty, shelter of falseness in society is strictly prohibited (Mazar, 2008) (Barber, 2019). Falseness/open falseness is a deeper depletion of social structure, development, and human rights.

2.1. Method

For using a general purpose, a person's identical documents are noticed in an unmatched background. Questioning about that, it is confirmed that the counterfeit identity is for gaining illegal privilege for the present or the future. In that context, of ensuring the status of extreme falseness, some questionnaires and answers are applied to some targeted persons by an indirect convenience non-participant close observation method (Cooper, 2004) (Smith,

1998) (Kumar, 2022). Hiding the actual purpose, the following questions are alike: 1. How old are you? 2. How many children do you have? 3. What is the cause of your discrepancy of identity in accordance with your family background? 4. What is the purpose of being very near the equal/ same age as your child? 5. How do you feel about this kind of acute falseness? 6. What privileges have you gained by this kind of acute falseness? 7. Your age identification does not match your current background. What is the purpose of making yourself willingly of your convenience identification from your actual identity? 8. How much have you privileged yourself in life with your convenience, cheated identification? 9. How much importance does it have in false/ wrongdoing? 10. What do you consider the falseness in the field of morality or honesty? 11. How does society recognize it? 12. You have earned a higher education degree, are worthy, have skill and experience, are honest, and work hard, so what are the causes behind your deprivation of right, honor, occupation, and remuneration? When they were asked, the answers were positive. Analyzing the positive answers to the above questions ensures that acute falseness is prevailing in a hated situation (Etikan, 2016; Simkus, 2022).

By convenience, non-participation, close observation, questionnaire and in various context hypothetically (Herskovits) (Pachani, 2019) 33 families out of 50 have been identified as having a discrepancy background among families members or false-aged counterfeit identities (Figure 1.1 & 1.2) that is escalation for values, conscience, law, human rights, honesty and justice (Nassaji, 2015) (Cooper, 2004). Where among the discrepancy identities, there is someone organized privileged with discrepancy and counterfeit identity (Tosam, 2015) (Ashforth, 2003) (KRISTIANSEN, 2006). And on the other side, there is someone deprived of organized privileges in spite of having a fair identity, even if with high qualifications (Bhugra, 2016) (Hasle, 2004) (Wikham, 2014).

Sample Description	Quantity	Percentage
The families with discrepancy back grounded	33	66%
The families without discrepancy back grounded	17	34%
Total Families	=50	=100%

Figure 1.1: Comparison of family quantities and percentages based on discrepancy background (1)

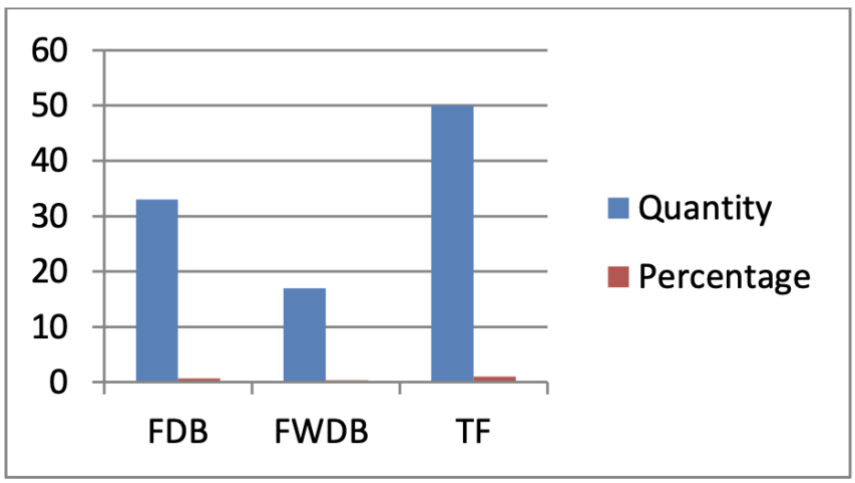

Figure: 1.2: Comparison of family quantities and percentages based on discrepancy background (2)

FDB= The families with discrepancy back grounded.
FWDB= The families without discrepancy back grounded.
TF= Total Families.

So, it is normal for people, how will they lead with truthiness if there exists falseness among them commonly; how will they avoid immorality if there exists immorality commonly among them? How will they be obedient to the law if there exist unlawful activities (Wasserstrom)? How will they be mutually cooperative for social

development, human rights, and equity if there exists extreme selfishness (Hasle, 2004) (Hopper, 2011). Besides, what will be the benefit of taking adventure for social development activities if there exists an open way of depletion (A, 2015) (Rahman M. M., 2018) (Nicole L. Mead).

3. Negligence of multifaceted production and versatile cultivation of agriculture in arable sources

Many people have food and nutrition insecurity in Bangladesh (Katherine Alaimo, 2020; Raihan M. J., 2018). Bangladesh is a poor country, and its food security is not stable (Havas, 2011). So not even a simple amount of space of its agricultural land or arable sources should be left uncultivated (Thompson, 2007; Ferdousi, 2013). But what is shocking is that due to unawareness, neglect, etc., much of its arable land remains uncultivated, where urgent diversified agriculture and production needs to be created in the interest of security and stability (Faroque, 2011; Ahmed, 2011). If there were no jealous, strife, distrust of one another, petty selfishness and deceit, and if honestly everyone was aware and respectful of each other‟s right, a pure unity would be formed among them (Hopper, 2011). Where the perfect self-sufficiency of agriculture depends on unity, in the absence of selfless unity, conventional production in agriculture is difficult and disrupted, where the idea of integrated and diversified agricultural production is far from the idea (Ahmed, 2011; Hopper, 2011).

The farmers cannot be harmonious for versatile agriculture production due to dishonesty and false dignity (Hopper, 2011). Hence, the agricultural revolution is being restricted by non–cooperation, immorality, and mutual jealousy (A, 2015).

It is usually noticeable among some unconscious society people who are middle well to keep unused their fertile land without agricultural productivity with negligence that includes discouragement of proper self- sufficient agricultural progress and disrupts sustainable agriculture production and food security (Ferdousi, 2013) (Nishat).

There are many people in society who are indifferent to their duties. If one is compelled or seeks to fulfilling one‟s own responsibilities, he is hindered by people‟s praise of indifferent people. That attitude has a profound effect on social development and infrastructure. And there are many people in the society with limited knowledge who associate performing their own work with their own involvement with7 unjust. The thought of this growing immoral inequality is an extreme obstacle to social development and the development of human livelihood (Mazar, 2008; Nicole L. Mead).

3.1. Method

For ensuring ‘Negligence of multifaceted production and versatile cultivation of agriculture in arable sources', the following questionnaire by convenience non-participation method, similar to (Cooper, 2004), (Etikan, 2016), (Kumar, 2022)- 1. How much production do you expect from your arable land? How satisfied are you with growing crops on your land? 2. In the period between the growing of two crops, the growing season of another crop passes. What causes the crop not to grow during that time? 3. What are the causes behind the negligence of diversified cultivation to get productive crops/production from arable land? 4. It is noticed that your surrounding houses or any arable land, ponds, or other places are in a rotten situation, where they could be turned into crops or food production, even into versatile production by your conscious proper steps (Hopper, 2011). What are the causes of these potential misuses? 5. How many long days have your own or shared domestic ponds been in an unused/rotten situation? 6. What are the causes behind the remaining unused/rotten situation? 7. What are the causes of being depleted of mutual unity (Hopper, 2011)? 8. What kinds of steps are needed to continue the normal customary cultivation system and establish diversified cultivation for generating versatile production? 9. What are the causes behind the failure of customary cultivation and establishing a versatile agricultural system? 10. What kind of imbalance is there between siblings, family, or neighbors that hinders family cohesive production, such as fish farming in ponds, integrated farming, open water farming, or diversified farming? And By convenience, non-participation, close observation, various conversation, questionnaires and in various contexts; it is hypothetically measured (Figure 2.1, 2.2, 2.3 & 2.4) there is prevailing unconsciousness, misunderstanding, conflicts, non-cooperation among 40 farmer‟s families out of 50. So, at the same time there is misuse of normal conventional

agriculture growing in 40 farmer‟s arable sources/ lands out of 50. As a result, there cannot be noticed any versatile agriculture growing among 5 farmers' arable land too (Ahmed, 2011) (Thompson, 2007) (Faroque, 2011).

Sample description	Quantity	Percentage
The number of farmers of misusing seasonal cultivation of AWUSH	45	90%
The number of farmers of cultivation of AWUSH	5	10%
Total Farmers	=50	=100%

Figure 2.1: Misuse of the vast majority of Seasonal agriculture cultivation (1)

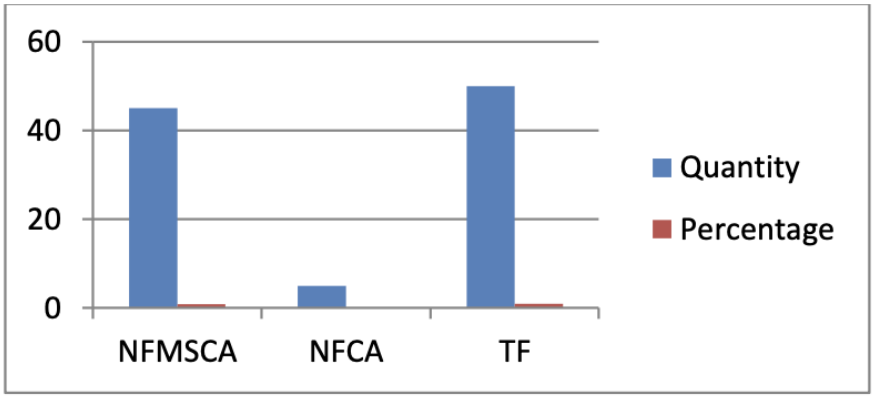

Figure 2.2: Misuse of the vast majority of Seasonal agriculture cultivation (2)

NFMSCA = The number of farmers who misuse seasonal cultivation of AWUSH.
NFCA = The number of farmers of cultivation of AWUSH.
TF = Total Farmers.

Sample description	Quantity	Percentage
The number of farmers of conventional agriculture cultivation misuse	40	80%
The number of farmers of conventional agriculture cultivation	10	20%
Total	=50	=100%

Figure 2.3: Misuse of Conventional agriculture cultivation (1)

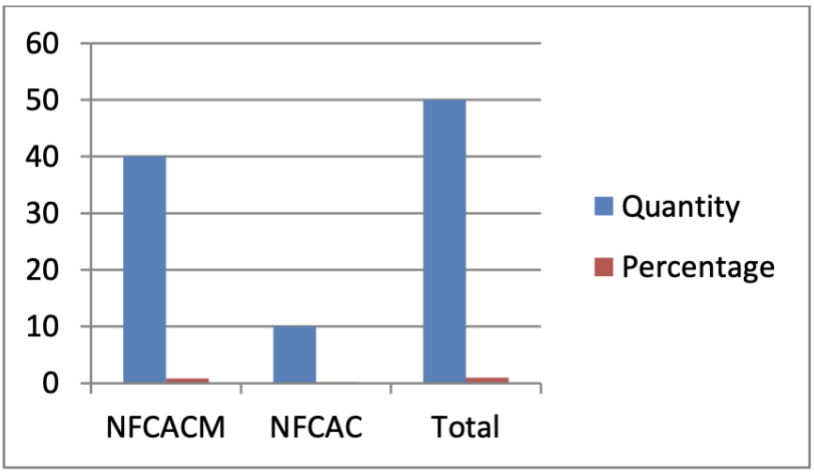

Figure 2.4: Misuse of Conventional agriculture cultivation (2)

NFCACM = The number of farmers of conventional agriculture cultivation misuse.

NFCAC = The number of farmers of conventional agriculture cultivation.

3.2. Dowry System

It is a matter of grave concern about being the victim of poverty, dishonesty, immorality and spoils system in society, a stream of illogical thinking is nourished for child daughters by the illiterate parents in their illness and illiterate mentality (A, 2015) (Barber, 2019) (Hasle, 2004). Because of having big family members, lack of meeting basic necessities, caring for a family load, needs for extreme hardship work, even if lack of regular income or crisis, reckless competition in hardship industry; leading critical lifestyle day after day with poverty and a spoil‟s system, they become so devoid of morality, mankind, conscience, sympathy and kindness and feel so helpless with their daughter (Bhugra, 2016) (Hasle, 2004). For that reason, normally, they do not have the minimum sense to give their daughter in marriage to a worthy bridegroom. So when they send their daughter to an immature bridegroom's house, then they fall into a spoil system of dowry (Anderson, 2007). The bridegroom's family, avoiding morality, keeps busy with the conspiracy and tortures the bride, aiming at achieving dowry by imposing various selfish customs (Kamruzzaman, 2015) (Bhuiya, 2003) (Yesmin, 2013). For the dowry system, a family has to become mostly ruined economically by satisfying the bridegroom's covetous family. The above-mentioned tragic events are harming the development of society, increasing unemployment, illiteracy, population problems, poverty, food insecurity, hunger, and malnutrition.

3.3. Method

The data collection of dowry-related research has been conducted closely in natural settings by the non-participant observation method in real events (Cooper, 2004; Herskovits). By convenience from an indirect perspective and hiding the original purpose, the following questionnaire's answers have been observed. Though it was not possible to reach accurate numbers of events due to limitations (Akanle, 2020; Theofanidis, 2019). For example- 1. How much did it cost to get your daughters married? 2. What things are given to a daughter‟s marriage? 3. What things are given in accordance with demand on behalf of the bridegroom? What impact have you had for these costs? 4. What things are to give to daughter‟s house as a rule? If these aren't given, what kind of reaction are you able to tolerate? 5. Your daughter doesn't want to go to her husband "'s house because of his extremely bad character, covetous, and torture. But you emphasize to your daughter to go to her husband's house. What are the causes behind your emphasis in spite of the existing extreme inverse situation? 6. What kind of behavior do you get from your husband? 7. What does your husband, mother/father-in-law expect from you/your parent‟s house? 8. What kind of behaviors are used by the husband/parent-in-law? 9. How much are you satisfied/ despaired by your husband/parent in law? 10. Your husband has been tried several times in the local court for reckless torture. How did you finally see him change from his bad character or dishonesty? 11. What is the motive of the husband behind the repeated conspiratorial abuse of the wife? 12. What are the reasons for the wife to endure one torture after another at the hands of her husband? 13. What are the reasons and fears of reluctance to seek refuge in the law?

In the contexts of various normal marriage related conversation, torturing event on woman, tragic story of dowry related; it is hypothetically evaluated as following- Extremely hope/support for dowry=10, Normally hope / support for dowry=35, Neutral for dowry=3, Against for dowry=2, among 50 (Figure 3.1 & 3.2), though it varies among the proportion „Extremely hope/support for dowry‟ and „Normally hope / support for dowry‟ but it is rare to get one against dowry though it was needed for everyone against dowry (Herskovits) (Pachani, 2019) (Etikan, 2016).

Sample Description	Quantity	Persentege
Extremely Involvement in dowry supporting	10	20%
Normally Involvement in dowry supporting	35	70%
Normally neutral for dowry	3	6%
Against for dowry	2	4%
Total	=50	=100%

Figure 3.1: Dowry Support Quantity and Percentage Analysis (1)

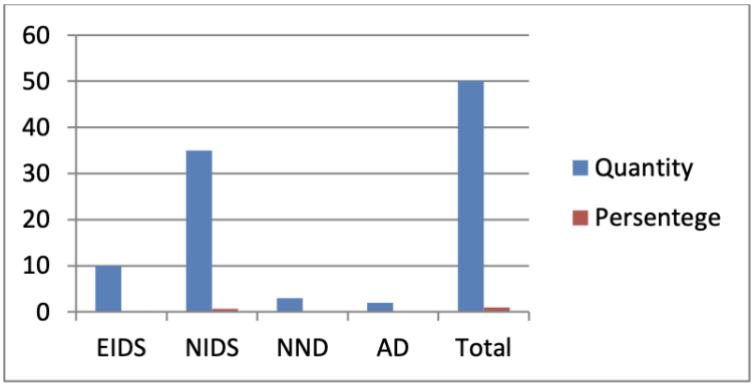

Figure 3.2: Dowry Support Quantity and Percentage Analysis (2)

EIDS = Extremely Involvement in dowry supporting.
NIDS = Normally Involvement in dowry supporting.
NND = Normally neutral for dowry.
AD = Against dowry.

3.4. Child marriage and marriage tragedy for the worthy

Child marriage ruins the child's abstract thinking, future-oriented understanding, planning, and pursuing, which creates a hazard to social development. It destroys children's rights. In a society, child marriage makes other children's mental situation extremely depressed, affects children"s schooling and education, makes them violent towards parents and guardians (Rukhadze, 2018) (Mahato, 2016). It creates an unequal situation in the field of social rights in society (Bhugra, 2016). Child marriage is dishonesty and cheating as it hides the truth (Barber, 2019). It is a major issue for human rights and social welfare. Dishonest, stubborn, unconscious guardians execute child marriage by cheating and making a hard and cruel situation for society (Tosam, 2015). In the field of marriage, worthy youths are seriously deprived which is extremely harmful to society, human rights, mankind, social values, and other matters are also extremely abusive (Roma Khanna, 2020; Wikham, 2014). Even in this modern age of information technology, child marriage is not being completely stopped (UNICEF, 2017; Malhotra, 2011). Child marriage is going on continuously by evading the age of maturity (Tosam, 2015) (Wasserstrom).

3.5. Method

In the context of a tragic hatred situation of child marriage and for obtaining data information, by a non-participant close observation method, several questionnaires are used for finding the proportion of percentage hiding the actual purpose of the study. As like - 1. How old are you? 2. How old is your child? 3. What is your child's status?- married or unmarried. 4. What is the cause of your discrepancy in identity in accordance with your family background? 5. What is the purpose of being very close in age between you and your child? 6. If your child's age is A, then your age should be B in accordance with the proportion, but what is the reason behind it? 7. Did you get a child married as a child? It is commonly noticeable in a family that among the children, the daughters are given in marriage very hurriedly, but for the sons, marriage is not given/performed very late either (Bhugra, 2016; Roma Khanna, 2020). 8. What are the causes behind this status? 9. What are the causes behind the child being married and the matured, worthy youth being unmarried?

It is noticed that in some families, the adolescents are not mature, not economically sufficient, of short ability, but the immature adolescents are given in marriage, violating the growth mentality of adolescents, social values and structure, law, and creating an abusive situation for worthy adult youth, comparably sufficient economic condition, but the adult youths are not being married. From the entire situation, the following questions have been raised. 10. What are the causes behind existing child marriage and marriage later in society? 11. What are the causes that older youths in your family/community are kept unmarried compared with the younger ones?

(A)- On the basis of ideas and of the convenience of non-participation in close observation methods, a large discrepancy in the spoils system in social life processes has been noticed among 25 young and middle-aged adults (Figures 4.1 & 4.2). The large discrepancy among 25 young and middle adults with the same label is that there are 6 young and middle adults who are recently married, 13 are yet unmarried, and 6 adults who are now fathers-in-law. This is nothing but a very brutal discrimination, nonsense, brutal conscienceless immorality, spoils the system of social values and provisions. A description list of brutal Discrimination among 25 middle-aged young adults of the same age in the following table:

Sample Description	Quantity	Percentage
The number of recently married middle young adults	9	36%
The number of being recently father in law	6	24%
The number of remaining unmarried	10	40%
Total	=25	=100%

Figure 4.1: Analysis of Child Marriage and Marriage Tragedy: Quantity and Percentage (1)

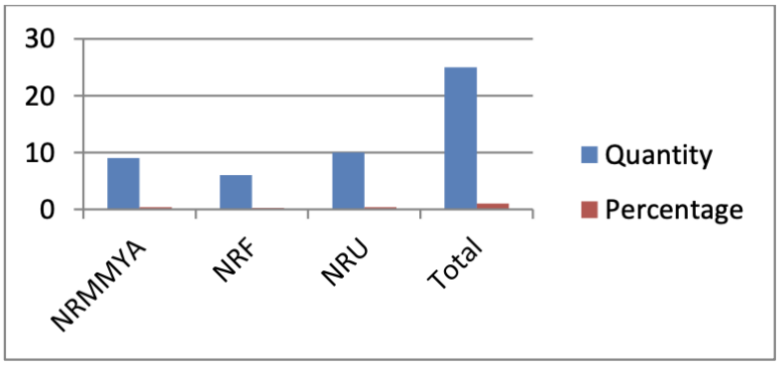

Figure 4.2: Analysis of Child Marriage and Marriage Tragedy: Quantity and Percentage (2)

NRMMYA = The number of recently married middle young adults.
NRF = The number of recently father-in-laws.
NRU = The number of remaining unmarried.

(B)- On the basis of the hypothetical idea of an unmatched background, and by the convenience of non-participation
close observation method, the proportion of child married families has been identified as follows: 22 families out of 27 same-label families from a certain small area (Figures 4.3 & 4.4).

Sample description	Quantity	Percentage
The number of Child married families among same label families	22	81.49%
The number of families without child marriage among same label families	5	18.51
The total number of families of same label	=27	=100%

Figure 4.3: A description list of child marriage families of recent times (1)

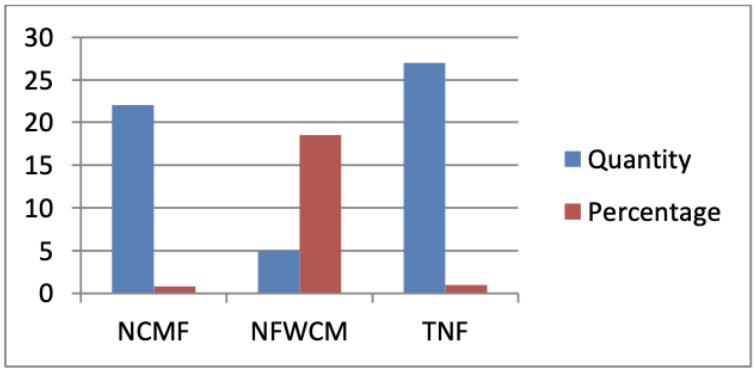

Figure 4.4: A description list of child marriage families of recent times (2)

NCMF = The number of Child married families among the same label families.
NFWCM = The number of
families without child marriage among the same label families.
TNF = The total number of families of the same label

3.6. A recent miserable child marriage event:

In September 2021, one day, a young person named X met with his classmate named Y from primary school. He is 27. Meanwhile, knowing about each other, Y asked X about X's marital status. Y became strange knowing X's unmarried status. Y said to X proudly that Y was married and a father-in-law, giving his daughter in marriage, when X was not yet married at 27 years old. Comparably, it means Y was marred into immaturity by child marriage, and the daughter of Y is also a victim of child marriage in this modern world (Malhotra, 2011) (Wasserstrom) (Tosam, 2015). But it is not an uncommon matter, as stopping child marriage has not become completely possible yet by law (Malhotra, 2011). Another side to this society's entire present social values and management
system: X is unmarried, too. Due to spoiled systems of society, there are many young people who are victims of marriage deprivation, like X. Some are excessively fulfilled before maturity and without being worthy or self-sufficient. Some are extremely deprived in terms of worth and maturity, which is an extreme inequity and deprivation (Bhugra, 2016) (Wikham, 2014) (Yesmin, 2013).

3.7. Causes behind poverty

Here, the existing major causes of extreme poverty are reckless dishonesty, disunity, discrimination, and disobedience of the law, etc., among unconscious people in society, and the low standard of living of illiterate people (A, 2015) (LEWIS, 2015) (Wasserstrom). In a word, it is clear that openly secret, all unlawful misdeeds are mainly and extremely liable for miserable poverty, extremely low standard of living, and interrupted human rights (Hasle, 2004) (Riti, 2018). Besides the above- mentioned, all the problems are liable for poverty. Open secret cheating, dishonesty, falsehood, and deception brutally destroy creativity, curiosity, and dignity of society; Due to leading an immoral, unmethodical, and cheating lifestyle, the unconscious society people are suffering from a crisis of basic demands (A, 2015) (Hopper, 2011) (Katherine Alaimo, 2020). As a result, they are engaging in personal usury exploitation, deprivation, false expectations, cheating, non- cooperation, violent systems in mutual domestic life and between poor and rich people (Bhugra, 2016) (Bhuiya, 2003) (Hasle, 2004). For those reasons, many families are the victims of extreme hardship and a ruinable poor lifestyle (Katherine Alaimo, 2020).

Following the cycle of domestic and social exploitation, deprivation, false expectations, cheating, non-cooperation, violence, many families have to become proletarians with the burden of debt in spite of their hard work, constant income, and striving. Moreover, various miserable situations prevail among them with silent helplessness and deteriorations of human rights (Hasle, 2004).

By the non-participation close observation method, it has been noticed that about every community of 6 families is in severe economic debt, 8 families in critical economic distress, 10 families in minimum economic position,

and 6 families in middle economic position out of 30 families (Figures 5.1 & 5.2). And there are very few to do conscious and help the victim's families in the right way instead of non-cooperation.

Sample description	Quantity	Percentage
The number of families in severe economic debt.	6	20%
The number of families in critical economic distress.	8	26.66%
The number of families in minimum economic position.	10	33.33%
The number of families in middle economic position.	6	20%
The Number of total families.	=30	=100%

Figure 5.1: Distribution of Household by level of Economic Distress (1)

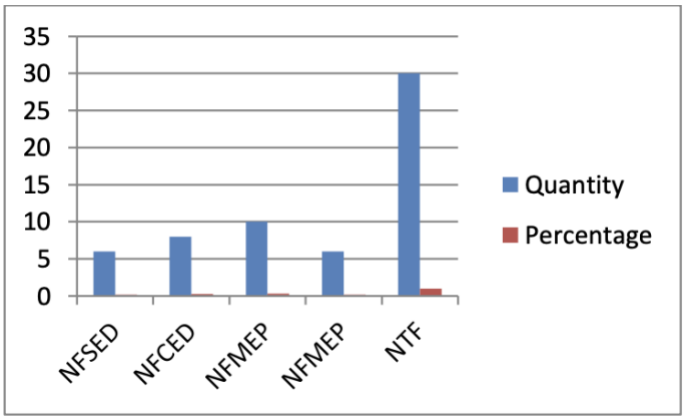

Figure 5.2: Distribution of Household by level of Economic Distress (2)

NFSED = The number of families in severe economic debt. NFCED = The number of families in critical economic distress.
NFMEP = The number of families in the minimum economic position. NFMIEP = The number of families in the middle economic position.
NTF = The Number of total families.

3.8. A tragic event

In this world, on the one hand, a group of decent people is working tirelessly to ensure equal rights of women in society, empowerment, and participation at all levels. On the other hand, some selfish and insidious quarters are busy trying to destroy women's rights and harm them (Bhuiya, 2003) (Rahman K. F., 2019). There is a prevailing misdemeanor of arrogance in society in the name of establishing and protecting social justice, self-respect, and values by torturing/vexing, and harming the weak and helpless of society without extending a hand of cooperation and sympathy to them for vital social and national needs (Mazar, 2008). Constantly busy violating women's rights, such a heinous and tragic incident derived from the natural environment by research study and close non-participant observation has been cited as an example of a despicable attempt to deprive women's rights from society (Cooper, 2004) (Herskovits).

It has been confirmed from various sources, evidence and arguments that by causing havoc in a community, two persons named A and B, including others, caused serious injuries and obstruction in the hands of a person named X because of permitting his wife named Y to involvement for outside occupation and income for surviving their family from hunger of extreme poverty. But they are to bear the injury as another load on their struggling poverty life. Moreover, the judgment of injuring X's hand is undermined by the arrogance of misguided individuals involved in the offense .

A couple named X (husband) and Y(wife) of a poor family, they both have to work out for income and survive their family. And they have been working as labor for long days. But a woman coming out offends some conscienceless people's arrogance. Even if there was no sympathy or cooperative effort to alleviate the extreme poverty of the couple, some in the society are determined to close off the woman's way of working on the outside of home. Being

subjected to extreme poverty the woman has to choose work outside the home. But being jealous of her profession, a neighbor uncle of the couple named Z imposes an escalation on Y(wife), accusing him of an illegal love relationship with him, though Y(wife), denies it. But the slander on the woman continued to spread with conspiracy. A local section of society held a meeting to speak out against false accusations. The person Z is warned never to do such event in spite of being male himself. But his group pride with jealous language that male can do everything as he is male. After yet situation is controlled and kept silence from out breaking escalation. But more other the escalation is imposed on Y(wife) furiously and conspires. Being persuasive to same person and others, they apply pressure that woman working is escalation for community without consideration of livelihood solution.

Added that the woman Y talks with othesr, laugh in the vehicle, in the street or with anyone, purchases on the market alone. One day at a time, leaving for work as usual, the couple family of X and Y is hindered on the way by the person Z and his group & clashed extremely with Z group. Even if X is made physical challenge, injuring his hand. Though local court give a normal solution imposing a fine of demurrage, in spite of very extreme matters. But it is a matter of great sorrow that minimum compensation fines are imposed for resolving unwanted conflicts, but instead of settling the minimum fines, delays and arrogance are shown (Bhugra, 2016) (Hasle, 2004). But the most notable thing is the shame of being by the side of the helpless hurts someone's arrogance. The women stepping out of the house for livelihood to survive in extreme poverty is a blow for some of the pretentious people in the society,

3.9. Method

For collecting data and ensuring the outs and ins of the despicable tragic phenomenon, the following questionnaire is applied by non-participant close observation method. As like- 1. What is the cause behind the disobedience of the verdict? 2. What could be the target of the accused behind the creation of such a naked incident? 3. How difficult was the verdict of the local court against the accused? What was the motive behind Y‟s earnings in town? 4. What was the alternative way to solve the family settlement? 5. How did society recognize Y‟s earnings? 6. What is the reason for showing arrogance of the accused by disobeying the verdict? 7. What was the ability of the plaintiff to take asylum to the higher court to get a suitable trial? 8. What is the need to change the attitude towards women in society in order to equalize the rights of women? 9. How excessive or feasible or low level was the judgment of the superiority?

3.10. Suicidal event

As there is a decay of social values, morality, responsibility and loyalty among unconscious people, they are losing trust, sympathy, unity and cooperation with each other. Due to the lack of trust, sympathy, unity- cooperation, some lose patience, become bankrupt, suffer humiliation and deprivation and even choose the path of suicide. In accordance with convenience obtained data, being victims of various social tragic situation to the recent years there is occurred 10 suicidal deaths including a 9 years old child in small area (Joiner, 2005) (George, 2016) (Qiu, 2017).

4. Status of justice of conscience, social values and morality

In this society, the deplorable deterioration of conscience, social values and morality is noticeable (A, 2015) (Rahman M. M., 2018). Although the use of obscene language or words as jokes or mutual interrogation normally in shops, chats, laughter is considered very normal, it is against conscience and values. This is highly reprehensible compared to a decent society. Parents neglect the rights of girls to build the rights of boys, or abuse the rights of boys to build the rights of girls, that‟s kind of thinking is illogical and immoral (Bhugra, 2016). There is a sharp decline in conscience and morality in this society which has resulted in human rights and living. Child marriage is an extreme curse on society and an offence to modern time in this society. It is also against social values. On one hand, child marriage, on the other hand, not giving marriage of worthy and adult youths is against conscience (Rahman M. M., 2018).

Totally, all the matters are extreme injustice and spoils systems that are harmful to mankind, human rights, social infrastructure and unitary social development. False behavior, extreme false asylum, severe disobedience to the law, open deception, malpractice, etc. are serious contradictions of conscience and values and a severe injustice (Wasserstrom) (Barber, 2019) (LEWIS, 2015). Denial of merit to the deserving, stunting the development of society, giving place to the unworthy in the deserving place, depriving the deserving of their rights, making society unscrupulous, destroying the values, which is a serious contradiction and severe injustice (Bhugra, 2016) (LEWIS, 2015) (kamruzzaman, 2016).

4.1. Method

As asylum of falseness, using unfairness for selfishness, offering privileges without considering worthy and unworthy, showing cooperation in non-cooperation, showing truthiness in falseness, showing honesty in dishonesty, disobeying law and social values etc all are conscienceless activities. So conscienceless activities are prevalent without limitations in society. In the contexts of the prevailing spoils system, disobeying law and social values, deprivation, tragic situation, dishonesty, depletion; it is hypothetically measured that about 30 are involved in conscienceless activities, 15 in extreme conscience activities, 5 in buffer out of 50 (Figure 6.1 & 6.2).

Sample description	Quantity	Percentage
The number of persons using obscene language	16	80%
The number of persons using usual language	4	20%
The number of total persons	=20	=100%

Figure 6.1: Obscene language using percentage in a normal environment/situation (1)

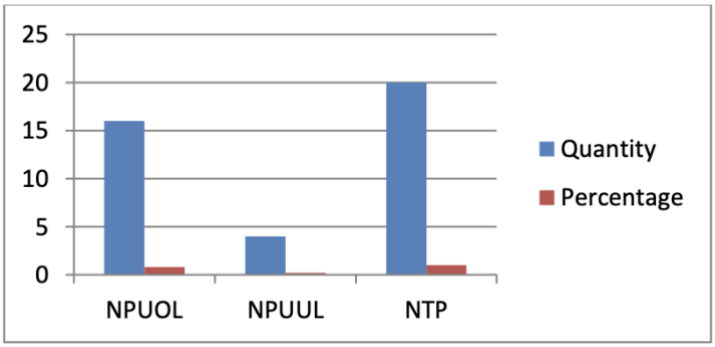

Figure 6.2: Obscene language using percentage in a normal environment/situation (2)

NPUOL = The number of persons using obscene language.
NPUUL = The number of persons using usual language.
NTP = The number of total persons.

Obsence of language is contradicted by values. It is commonly noticed when walking together with several unconscious and illiterate people. In any quarrel or group chatting/gossiping of 10 people at least 8 people don't feel ashamed or worry about using obscene language. But the remaining 2 people can't realize the necessity of ideal language too.

4.2. Result

The report shows brutal major problems, spoils system, depletion of social values, severe discrimination of human rights and equity, depletion of potential developments, reckless dishonesty and cheating, lack of social responsibility, unconsciousness and noncooperation of people of society (A, 2015) (LEWIS, 2015) (Rahman M. M., 2018).

A lot of honesty, values and empathy are shown but in reality various dishonesty, cheating, disobedience of law, illiteracy and unconsciousness etc. are increasing complexities in society including depletion of human rights, social development and rural structure, food security, health and nutrition etc (Barber, 2019) (LEWIS, 2015) (Rahman M. M., 2018). So there is a need for more indispensable mutual cooperation of citizens to escape from depletion. But all kind of unexpected, illegal, valueless and unscrupulous activities are removing everyone from mutual cooperation, unity and social development work.

The cheaters are cheating; the unconscious are in a disappointed and harmed situation; the dishonest are in dishonesty and increasing depletion of social values, morality and development; the worthy general citizens are in deprivation of various rights. Low stage, middle stage citizens are in a hazard and danger situation (Hopper, 2011) (Rahman K. F., 2019). Cheating, dishonesty and all forms discrimination, deprivation etc are being overcome over normal limitations and increased severe situation when the problems are commonly manifested in society, destroying ways of development and human rights. Severe cheating is breeding corruption. Corruption is destroying human rights and social development, breeding deprivation, discrimination, injustice. Cheating helps a high rate of child marriage. Child marriage is harming children‟s rights, increasing population problems, poverty, unemployment, domestic violence.

5. Limitation

Due to limitation, it was not possible to collect data from the very original or deep stages of various events to ensure perfect evidence of the various issues and events mentioned in the article (Akanle, 2020) (Theofanidis, 2019). But the tragedy of the issues mentioned in the article is undoubtedly true. The descriptive problems are brutal and extremely real because the research article has been prepared by conducting in natural settings of an area under X district of Bangladesh. And it has been written on a descriptive process conducted by participants with non-participant in a very close observation method of natural circumstances (Nassaji, 2015) (Cooper, 2004) (Simkus, 2022). No questionnaire has been collected from natural conducted purposively by participant method. Data, questionnaire and answers have been collected from natural problematic phenomena, behaviors, conversation, events etc (Etikan, 2016) (Simkus, 2022). Though this research study has not been conducted to another area having limitations and this research study has been performed in an area on the basis of hypothetical concepts/ideas and depending on tragic social situations and phenomena, but it’s every information must be true for any area or sphere of society in Bangladesh as the study is designed on the basis of versatile problematic situations (Herskovits).

6. Conclusion

In a word, behind the civilized and ideal rules and values in society, Lies, deception, dishonesty, deprivation, degradation, plunder, inequality are on the rise. So, for developing social structures and accelerating the slower development steps of society and sustaining human rights, there is urgent need of elimination of all forms of dishonesty as like cheating, discrimination, lying, deprivation, inequality etc. There is an urgent need to carry out investigation and intervention to thoroughly identify, confirm and eliminate all crimes and problems mentioned in the report.

If all ongoing problems are eliminated, then development of society and standard of a proper lifestyle will be increased fast. Society will be free from darkness and anarchy. Since the information obtained from lies, deception and dishonesty etc. indicates that there is intense rudeness, non-idealism in society; therefore, by blocking the way of lies, deception and dishonesty by necessary measures, basic civilization and ideals can be achieved in society. By stopping child marriage strictly and perfectly, the development structure of society will be strengthened. Applying proper cultivation methods by necessary steps, self-sustainable agricultural production will be enriched. Poverty, hunger and shortages of nutrition will be eradicated. Establishing the mindset to perform one‟s duties/tasks with self-participation and involvement can accelerate the development of society. So there is a need for intervention that can be carried out to remove all kind of spoils, unmethodical systems and problems with society.

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The Place of Regional Organisations in the Work of the International Law Commission

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Abstract
Despite the origins of international organisations in regional initiatives, the development of the law of international organisations has been predominantly shaped by institutions of a universal character, particularly the United Nations system. This universal orientation continues to influence the architecture of the field. Against this background, this article examines the place of regional organisations in the International Law Commission's (ILC) construction of the law of international organisations. It does so by tracing Special Rapporteur reports across three topics relating to international organisations, each reflecting distinct legal dimensions of organisational existence and informed by institutional practice. The article argues that, although regional organisations are increasingly acknowledged within the Commission's work, they are not treated as foundational to the development of general principles. Rather, they remain largely illustrative, even in areas where the Commission adopts a broader outlook, such as in its discussions on the status, privileges, and immunities of international organisations. This tendency to refrain from treating the practices of regional organisations as constitutive, in the same manner as those of organisations with a universal character, reflects the enduring influence of institutional universalism in the construction of the law of international organisations.

Keywords: Law of International Organisations, Institutional Universalism, International Law Commission, Regional Organisations, Special Rapporteur Reports

1. Introduction

In realising its objective of promoting and codifying the progressive development of international law (Statute of the International Law Commission, 1947, Article 1 (1)), the International Law Commission (ILC)[1] has engaged with many foundational areas of public international law, including international organisations. The Commission's engagement with this subject emerged from the increasing legal issues arising from relations between organisations and states. As such relations expanded, so too did the need for legal regulation addressing questions surrounding their status, functions, and interactions on the international plane. At the same time, the growing tendency to establish entities with a permanent institutional character, together with the emergence of specialised conventions in the field, reinforced the need for codification (El-Erian, 1963, p. 161).

[1] Hereinafter, the terms "ILC" and "Commission" are used interchangeably throughout this article.

When international organisations became the subject of systematic study by the ILC, attention focused primarily on organisations of a universal character. Although regional organisations and their practices already existed, their diversity was often perceived as an obstacle to the formulation of general legal rules. Within the Commission's work, three major topics relate directly to international organisations as actors in international law: relations between states and intergovernmental organisations, the responsibility of international organisations, and the settlement of international disputes to which international organisations are parties. These projects have extended across more than six decades, and at the time of writing the third topic remains ongoing.

The first two projects resulted in two foundational documents in the field: the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character 1975 (Vienna Convention 1975) and the Draft Articles on the Responsibility of International Organizations 2011 (DARIO). Although neither instrument is legally binding, both remain highly influential within the discourse of international organisation law and are frequently cited in legal scholarship and institutional practice.

Before these instruments were concluded, numerous reports had already been produced. This trajectory may be traced back to 1963, when Special Rapporteur Abdullah El-Erian submitted his first report. That report, together with many that followed, reveals recurring concerns regarding the legal position of international organisations and their expanding role in international affairs. These materials also demonstrate which types of organisations served as benchmarks in the codification of the law of international organisations. More importantly, they provide an opportunity to examine whether regional organisations were regarded as equally influential as organisations of a universal character within this codification process, which forms the central concern of this article.

The research question centres on identifying the place of regional organisations within these codification endeavours. In doing so, the discussion proceeds along two lines of inquiry. First, regional organisations do not fit neatly within the institutional universalism underlying much of the work of the ILC. Second, the role of regional organisations within the discussions develops unevenly across the three topics, beginning primarily as illustrative examples and gradually appearing more frequently as conceptual materials.

2. Literature Review

2.1 Theoretical Framework: Regional Organisations in Institutional Universalism

International law has long been regarded as universal, as it crystallised from a set of principles considered shared within international society (Simma, 2009, pp. 266–268). It is therefore assumed to be capable of application across diverse cultures and legal traditions. This presupposition, however, raises an important question that many critics have repeatedly addressed: whose principles are ultimately regarded as universal, particularly given the existence of power inequalities among states as subjects of international law? There is always a risk that powerful actors may project their own principles as universal norms upon others that do not possess the same degree of bargaining power (Anghie et al., 2003; Eslava et al., 2017).

The codification of the law of international organisations by the International Law Commission (ILC) developed within this broader universalist paradigm. This orientation is reflected particularly in the proposed working method that regarded organisations of a universal character as the primary reference points for the formulation of general rules. Moreover, an organisation is generally regarded as possessing a universal character primarily because of the breadth of its membership. The larger the number of member states, the broader the organisation's presumed global reach (El-Erian, 1963, pp. 163, 185). On this basis, universality becomes associated with representativeness and normative authority exercised through institutions, giving rise to what this article refers to as institutional universalism.

The practices of such organisations were viewed as more capable of generating identifiable legal patterns and, consequently, greater legal certainty. Regional organisations, by contrast, did not present the same degree of

institutional uniformity (Claude, 1963, Chapter 6). Each regional organisation reflects its own legal traditions and institutional preferences, which complicates the formulation of universally applicable general rules. Therefore, it was often considered more practical to derive general principles from organisations of a universal character, while leaving regional organisations to adopt such principles according to their own institutional needs where appropriate.

Within this framework, regional organisations are not generally regarded as possessing the characteristics associated with universality. Regional organisations, naturally, possess narrower territorial scope and more limited membership although it may be argued that the daily operations and institutional relations maintained by regional organisations do not differ substantially from those of organisations with a universal character, as reflected in the two opposing views that emerged within the Commission (El-Erian, 1967, p. 139). In this context, concerns regarding unequal bargaining power arise not only between states, but also between organisations participating, directly or indirectly, in the codification of the law of international organisations.

Within this institutional universalism, the principal organisations used as benchmarks broadly belonged to what is commonly referred to as the United Nations (UN) system. This institutional system reinforced a degree of uniformity by cultivating similar working methods across specialised agencies, programmes, and affiliated entities operating under or connected to the UN framework. The United Nations system itself also became the central subject of much academic scholarship frequently cited[2] by the ILC, further consolidating its influence within the development of the law of international organisations. As academic scholarship in the field of the law of international organisations expanded, classifications of organisations also became increasingly refined and systematised. Within this field, the term "international organisations" generally refers to intergovernmental organisations, a conception consistently employed by the ILC across three topics (Díaz-González, 1985, p. 106; El-Erian, 1968, p. 124; Gaja, 2003, p. 109; Reinisch, 2023, p. 11). A further important classification is that between global and regional organisations. Within this category, however, the diversity of regional organisations became a particular concern for the ILC.

Regional organisations are frequently associated with regionalism, which generally carries two related meanings: geographical proximity and solidarity based on shared interests (de Chazournes, 2017, pp. 7–14). Of these two meanings, the geographical dimension is most commonly associated with regional organisations. This is reflected particularly in geographical requirements for membership within regional organisations. The second meaning, however, namely solidarity based on shared interests, often explains why geographical considerations are rarely applied strictly in practice, as membership frequently reflects broader historical, cultural, political, or strategic considerations.

What constitutes "shared" within a region may encompass culture, economic interests, historical experiences, political affinities, or future collective objectives. These factors explain why regional organisations sometimes admit states that fall outside strict geographical boundaries but maintain close cultural, historical, or political ties with the region. In contemporary practice, such flexibility has become increasingly common (Besson et al., 2024). At the same time, the distinct cultural and historical experiences undergone by different regions inevitably shape their political and strategic considerations, including their implementation and understanding of international law. Consequently, diversity in institutional practices both within and between regions becomes unavoidable. Because the discourse of regionalism possesses a significant institutional dimension (Carvalho, 2024, p. 116) and also offers a framework for understanding the diverse ways in which different regions engage with international law, regional organisations themselves become an important subject of analysis.

2.2 International Organisation within Interrelated Codification Topics

[2] Two of them are Swords into Plowshares: The Problems and Progress of International Organization, by Inis L Claude Jr., published by Random House in 1963 and Fundamentals of Contemporary International Law by G. Tunkin published in 1956.

The influence of institutional universalism may also be observed in the manner through which the ILC approached the codification of the law of international organisations. Many of the Commission's codification projects extend over long periods of time, and the topics addressed by it are often treated in an interconnected manner. In relation to the law of international organisations, one of the foundational legal notions concerns the recognition of international organisations as subjects of international law capable of conducting activities and possessing legal capacities. These discussions emerged during a period of growing awareness that states were no longer the sole subjects of international law, particularly due to the expanding role of international organisations within international affairs. This development also generated the perceived need to establish specific legal regulations governing international organisations.

The development of the law of international organisations was therefore closely connected to several other codification topics directly related to the activities and capacities of international organisations. These included the law of treaties, the law of the sea, diplomatic law, succession of states and governments, as well as State responsibility (El-Erian, 1963, III). Through these interconnected discussions, the legal framework surrounding international organisations gradually took shape. Organisations of a universal character occupied a particularly influential position within this process because their broader operational activities generated more extensive institutional materials and relatively uniform patterns of practice. Regional organisations likewise contributed to these developments. However, their practices were institutionally more diverse and consequently less frequently relied upon in the formulation of general rules following the establishment of the League of Nations and, later, the United Nations. [3] Moreover, the United Nations system itself consolidated numerous organisations within a common institutional framework and produced extensive legal and operational materials. This further reinforced reliance upon organisations of a universal character and reduced the practical necessity of examining the practices of individual regional organisations in comparable detail.

Within this network of topics, two fields of international law played particularly significant roles in shaping the codification of the law of international organisations: the law of treaties and diplomatic law. In the former, discussions related directly to the legal capacity possessed by international organisations. Although an international organisation is not a state endowed with sovereignty and territory, it possesses the capacity to conclude treaties whether with states or with other international organisations. This development was later reflected in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations 1986 (Vienna Convention 1986), adopted under the Commission's work on the law of treaties. The treaty-making capacity of international organisations was not confined to organisations of a universal character. Regional organisations likewise concluded agreements with states and other organisations. Nevertheless, the practices of organisations within the United Nations system remained especially influential in shaping general codification efforts.

The latter, namely diplomatic law, occupied a particularly important position within the discourse of international organisations, as reflected in the prominence of diplomatic conventions frequently cited throughout the discussions. The diplomatic law of international organisations concerns primarily the privileges and immunities of international organisations and their officials (Rakhmanov, 2019, 2022). These, in turn, are reflected in various sub-topics such as headquarters agreements, permanent missions and permanent observers to international organisations, as well as delegations to organs of international organisations and conferences convened by them. The privileges and immunities of international organisations received particularly extensive legislative and doctrinal attention (El-Erian, 1963). Although these diplomatic practices also developed within regional organisations, the institutional framework surrounding the United Nations and its specialised agencies remained the principal reference point within codification efforts.

Collectively, these codification efforts were intended to enable international organisations to perform their expanding roles with maximum effectiveness, including facing the possibility of being held responsible for their conduct and participating in dispute settlement processes to which they are parties. Within this interconnected

[3] For an elaborated account on international organisations see: Bob Reinalda, Routledge History of International Organizations: From 1815 to the Present Day, Routledge History of International Organizations (Canada: Routledge, 2009), https://doi.org/10.4324/9780203876572.

network of topics, the law of international organisations gradually emerged and developed as a distinct field of international law. However, this codification developed through institutional practices that were not equally representative of all forms of international organisation, including regional organisations.

3. Research Question and Methodologies

Building on the issues identified in the Introduction, the research question guiding this article is: *what place do regional organisations occupy in the work of the International Law Commission in constructing the law of international organisations?* The aim is to clarify whether regional organisations are regarded as foundational to the development of this field of law.

The discussion is framed as contextualised doctrinal research (Taekema & Burg, 2024) in the sense that it focuses on tracing the role of regional organisations within the codification of the law of international organisations between 1963 and 2025 through the work of the International Law Commission, rather than examining the implementation of treaty regimes relating to international organisations.

The reports of the ILC Special Rapporteurs on the three topics concerning international organisations serve as the primary materials of analysis. These reports reflect exchanges of views concerning the legal position of international organisations and reveal the evolution of legal thought within the Commission itself. Given that membership in the Commission is expertise-based rather than representative of states, and that comments from states and international organisations form part of the Commission's working process,[4] the reports provide insight into both the doctrinal and practical dimensions of an institution engaged in the codification and progressive development of international law.

As Special Rapporteurs work on topics assigned by the Commission, and because this article seeks to situate the discourse within a temporal framework, the discussion is structured chronologically by topic. Within each subsection, the evolution of legal notions reflected in the reports is examined in relation to the institutional practices that informed them. Through these reports, this article analyses how regional organisations appear within the Commission's reasoning, whether as constitutive legal examples, comparative illustrations, supplementary conceptual materials, or marginal references.

4. Findings

From the reports, three principal findings may be identified:

1. Regional organisational practices appear across discussions of all three topics. Their role, however, develops unevenly, gradually shifting from primarily illustrative references toward broader use as conceptual supporting materials within the codification discourse.
2. The notion of diversity is addressed across the three topics with differing orientations. Initially, institutional diversity was regarded primarily as an obstacle to the formulation of general rules. Over time, however, it gradually evolved into an explicit drafting concern and eventually became a factor influencing consideration of more diverse forms of outcome.
3. The reports also reveal a pattern of continuity across the three topics, with the first topic on relations between states and international organisations functioning as the central axis of development. Questions concerning the responsibility of international organisations had already appeared within the broader issues identified during the first part of the first topic. Subsequently, the third topic concerning dispute settlement involving international organisations reflected notions that had already emerged during the second part of the first topic.

[4] Article 16, Statute of the International Law Commission, 1947.

5. Discussions

5.1. The First Topic: Relations between States and International Organisations

Consisting of two complementary parts with different areas of emphasis, the first part focused on the representation of states in their relations with international organisations, while the second concerned the status, privileges, and immunities of international organisations and their officials. The first part resulted in the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character 1975 (Vienna Convention 1975), whereas the second part was eventually discontinued due to the lack of ratification of the convention, leading the International Law Commission (ILC) to conclude that there was little point in continuing the work. Nevertheless, the first topic remained under consideration for more than twenty-five years, producing fourteen reports and involving two Special Rapporteurs. Consequently, these reports contain substantial and influential material for understanding the development of the law of international organisations.

5.1.1. Universal-First Approach: Managing the Diversity of Regional Organisations in the Formulation of General Rules

Following the decision to base the work primarily on organisations of a universal character, the first part of the first topic adopted what may be described as a universal-first approach. Under this method, the Commission first developed draft rules on the basis of the practices of the United Nations system and the International Atomic Energy Agency (IAEA), and only afterwards considered whether those rules could be extended to regional organisations, either without modification or with necessary adaptations.

This methodological choice was not free from disagreement. On one hand, several members of the Commission argued that regional organisations should be included throughout the drafting process because relations between states and organisations of a universal character did not differ substantially from relations between states and regional organisations. Excluding regional organisations would therefore render the Commission's work unnecessarily restrictive. On the other hand, other members maintained that regional organisations were too institutionally diverse for uniform rules to be formulated in a meaningful manner. In their view, it was preferable to leave regional organisations broad discretion in regulating their relations with governments. Nevertheless, rules derived from organisations of a universal character could still serve as models for regional organisations where appropriate.(El-Erian, 1971)

In order to preserve the continuity of the drafting process while accommodating these opposing views, the Commission sought a middle ground. This compromise appeared both in the drafting discussions and in the wording of the proposed articles themselves. Although the draft articles were formulated primarily on the basis of organisations of a universal character, the practices of regional organisations continued to be utilised and regarded as valuable throughout the discussions.(El-Erian, 1967)

Despite this compromise, the preference for organisations of a universal character remained evident throughout the discussions. Various concepts examined within the first part continued to rely heavily upon the practices of the United Nations system and the IAEA. Organisations such as the Food and Agriculture Organization (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the World Health Organization (WHO), for example, appeared frequently when discussing legal position of representatives of states to international organizations and headquarter agreements. The sixth report, which largely consisted of observations from states and international organisations, further demonstrated the secondary position of regional organisational practice. Even where organisational examples were collected comparatively, the observations relied predominantly upon organisations within the United Nations system and the IAEA. (El-Erian, 1971)

Regional organisational practices were introduced primarily as supplementary illustrations for specific concepts, such as provisions on privileges and immunities and the establishment of permanent missions to organisations.

The former was reflected in the elaboration on founding instruments of regional organisations containing provisions on privileges and immunities (El-Erian, 1963, p. 173, 1967, p. 149, 1969, p. 16, 1970, p. 15), such as:

a. Articles 103-106 of the Charter of the Organization of American States 1948
b. Article 40 of the Statute of the Council of Europe 1949
c. Article 14 of the Pact of the League of Arab States 1945
d. Article XIII of the Charter of the Council for Mutual Economic Assistance 1959
e. Article XIV of the Protocol for the Implementation of the African Charter of Casablanca 1961

These examples are particularly revealing because they were presented within a broader explanation concerning the influence of the Convention on the Privileges and Immunities of the United Nations 1946 and the Convention on the Privileges and Immunities of the Specialized Agencies 1947 upon many regional organisations.

Subsequently, a similar method of referring to regional organisational practice in order to illustrate the influence of United Nations practices upon other international organisations appeared in the discussion concerning the establishment of permanent missions to organisations. In this regard, the reports referred to several regional organisational instruments and practices relating to permanent missions (El-Erian, 1968, pp. 131–132), including:

a. Article 1 of the Bilateral Agreement between the Organization of American States and the Government of the United States of America relating to Privileges and Immunities of Representatives and Other Members of Delegations 1952
b. Permanent representations established within the Council of Europe pursuant to a resolution adopted by the Committee of Ministers in 1951
c. A resolution issued during the third meeting of the twelfth regular session of the Council of the League of Arab States in 1950 concerning permanent representatives
d. Consideration by the Institutional Committee of the Organisation of African Unity in 1965 regarding relations between the General Secretariat and African diplomatic missions accredited to Addis Ababa.

The culmination of this attempt to reach a middle ground between excluding regional organisations and preserving the intended scope of the work appeared in the proposed saving clause of draft article 3, which provided:

> "The fact that the present articles do not relate to international organizations of a regional character shall not affect the application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles."

Under this proposed draft article, regional organisations were permitted to apply the draft articles should they consider them suitable, even though such organisations were not treated as constitutive elements in the drafting process itself. The approach therefore preserved the primacy of organisations of a universal character in the formulation of general rules, while allowing regional organisations limited space for adaptive application.

In general, the inclusion of regional organisations within the work of the first part of the first topic did not amount to conceptual inclusion within the codification framework itself. Regional organisations primarily served as examples corroborating concepts already derived from the practices of the United Nations system. Their inclusion was therefore illustrative rather than constitutive. This remained the position at the time the draft articles were adopted as the Vienna Convention 1975.

5.1.2. Regional Organisations and the Shift toward a Broad but Cautious Outlook

Two years after the adoption of the Vienna Convention 1975, the preliminary report for the second part of the first topic was published. This time, the work focused on the privileges and immunities of international organisations and their officials. Within this phase, a noticeable shift in the Commission's approach toward regional organisations could be observed. Unlike the previous part, the study process extended its scope to encompass both organisations of a universal character and organisations of a regional character, although the question of their inclusion within the final codification framework was left to be determined at a later stage (Díaz-González, 1983, 1986, 1989; El-Erian, 1977, 1978). This method may be described as a broader, though still cautious, outlook.

This methodological shift was influenced by developments that had occurred during the preceding decade, particularly the growing convergence between the practices of organisations of a universal character and those of regional organisations in matters relating to privileges and immunities. Furthermore, the increasing number of legislative instruments adopted by regional organisations enabled more extensive comparative analysis alongside the already substantial body of material produced within the United Nations system (El-Erian, 1978, pp. 283–285).

Alongside this broader outlook, the Commission also adopted a pragmatic method,(Díaz-González, 1985, p. 105) focusing heavily upon institutional practices while deliberately avoiding prolonged theoretical debates. This choice is understandable given that, during the work on the first part of the topic, the Commission had already extensively examined the historical and theoretical development of the subject.

The combination of this cautious outlook and pragmatic approach became evident throughout the discussions. Regional organisations appeared in the elaboration concerning the evolution of the legal status and immunities of international organisations, where references to the influence of the Convention on the Privileges and Immunities of the United Nations 1946 upon regional organisations were restated (El-Erian, 1977, pp. 145–146). The Organization of American States (OAS), the Danube Commission, and the European Economic Community (EEC) appeared in discussions concerning the legal capacity of international organisations alongside various organisations within the United Nations system (Díaz-González, 1985, p. 108). Questions relating to legal personality were further supported by references to decisions of the Permanent Court of International Justice (PCIJ) and the International Court of Justice (ICJ).

A similar pattern could also be observed in the discussion concerning the inviolability of communications of international organisations. In this context, practices relating to the Committee of Ministers of the Council of Europe, the OAS, the Economic Commission for Latin America (ECLA), the Economic Commission for Asia and the Far East (ECAFE), the Economic Commission for Africa (ECA), and the European Committee on Legal Cooperation were frequently cited alongside practices drawn from organisations of a universal character.(Díaz-González, 1990, 1990)

Nevertheless, when discussing the scope of the privileges and immunities of international organisations, no specific practices of regional organisations were referred to (Díaz-González, 1986, 1989). In addition, in the discussion concerning headquarters agreements, the supplementary materials relied upon consisted primarily of replies submitted by United Nations specialised agencies and the IAEA to the 1978 questionnaire (Díaz-González, 1986, p. 167).

Based on the foregoing discussion, it may be argued that regional organisations continued to occupy a secondary position as conceptual materials despite the broader scope of study adopted during this phase. Ultimately, the role of regional organisations did not change substantially from the earlier universal-first approach. The clearest evidence supporting this conclusion appeared in proposed article 2, which provided (Díaz-González, 1989, p. 156):

> Article 2. Scope of the present articles
>
> 1. The present articles apply to international organizations of a universal character in their relations with States when the latter have accepted them.
>
> 2. The fact that the present articles do not apply to other international organizations is without prejudice to the application of any of the rules set forth in the articles which would be applicable under international law independently of the present articles.

Ultimately, despite the broader analytical framework adopted during the second part of the topic, institutional universalism continued to shape the codification process. Following nearly a decade of discussion, the second part of the topic was eventually discontinued due to the slow ratification of the Vienna Convention 1975 (UNGA, 1992).

5.2. The Second Topic: Responsibility of International Organisations

More than a decade after the above discontinuation, the study on the responsibility of international organisations was undertaken, with its first report issued in 2003. The work eventually resulted in what is now known as the Draft Articles on the Responsibility of International Organizations 2011 (DARIO). This topic did not emerge entirely independently from the Commission's earlier work. Questions concerning the responsibility of international organisations had already appeared in the first report of the first topic, which explained that growing concern regarding the responsibility of international organisations developed alongside the expanding role of such organisations within international affairs, inevitably generating increasingly complex legal issues (Gaja, 2004, p. 107).

Within the interconnected framework of the Commission's work, the topic on the responsibility of international organisations followed the legal structure previously employed in the codification of the 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA). The principal difference lay in the subject under examination, namely international organisations rather than states. Nevertheless, conceptual adjustments were also required because the work was not intended to constitute a mere mechanical reproduction of ARSIWA, a point repeatedly emphasised by the Special Rapporteur.

Within this phase, institutional diversity also became an explicit concern (Gaja, 2007, pp. 6–7). Unlike the first topic, diversity within the second topic was treated as a substantive consideration in the drafting process itself. The reports repeatedly emphasised the need to accommodate the diversity of international organisations, which eventually led to the proposal of a *lex specialis* provision intended to preserve the applicability of special institutional rules (Gaja, 2009, p. 95).

The second topic reflected a substantial expansion in the conceptual use of regional organisational practice. Although organisations within the United Nations system and the IAEA continued to occupy a central position, regional organisations appeared far more extensively throughout the discussions than in the earlier topics. Nevertheless, this broader engagement remained uneven, as the reports relied predominantly upon European regional institutions such as the Organization for Security and Co-operation in Europe (OSCE), the European Commission, and the North Atlantic Treaty Organization (NATO).

The first major issue addressed within the topic concerned attribution. This issue relates to the manner in which international society attributes responsibility to international organisations, whether through their organs, member states, or relationships with other international organisations. The WTO Panel proceedings in *European Communities — Customs Classification of Certain Computer Equipment* constituted an important source in examining questions of mixed responsibility[5] between member states and the organisation itself. Similarly, proceedings involving NATO before the International Court of Justice (ICJ) and the European Court of Human Rights (ECtHR) demonstrated the practical complexities surrounding attribution (Gaja, 2004, pp. 4–8). These discussions were later reflected in articles 6 and 7 of DARIO.

Various advisory opinions of the ICJ were relied upon to clarify attribution through the conduct of organs and agents of international organisations. In particular, the Court's use of the term "agents" was regarded as significant because it applied irrespective of an individual's formal status within the organisation. These opinions also addressed questions concerning attribution in situations involving ultra vires conduct (Gaja, 2004, pp. 7–8). The discussions were further supported by the practices of the International Monetary Fund (IMF) and the Court of

[5] In the report the term used was simultaneous attribution, Gaja, *Second Report on Responsibility of International Organizations, p.4 para (6)*.

Justice of the European Communities. In addition, situations in which one international organisation places an organ at the disposal of another organisation were examined, although such arrangements were considered comparatively rare. One important example concerned the relationship between the World Health Organization (WHO) and the Pan American Health Organization (PAHO), under which PAHO functions as the regional office of WHO. Under this arrangement, the conduct of PAHO and its staff may entail responsibility attributable to WHO.

The discussion subsequently moved toward questions concerning breaches of international obligations and the legal consequences arising from such breaches, including the responsibility of international organisations in connection with acts carried out by states or by other organisations.(Gaja, 2005, 2006) Within this context, the institutional position of the European Commission and the European Communities became particularly influential in the formulation of the draft articles, especially in discussions concerning actions or omissions giving rise to responsibility. Other European institutions repeatedly relied upon throughout the reports included the European Court of Justice and the European Court of Human Rights. This reflected a growing reliance upon European regional institutional practice as conceptual material within the codification process.

Alongside these materials, the practices of United Nations organs and specialised agencies frequently appeared in discussions concerning the legal nature of the internal rules of organisations under general international law. By referring to ICJ proceedings such as *WHO v Egypt* and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie*, the Special Rapporteur concluded that the internal rules of organisations may constitute rules relevant within general international law. The practices of the World Intellectual Property Organization (WIPO) and the International Civil Aviation Organization (ICAO) also appeared, particularly in discussions concerning the responsibility of an international organisation in connection with the conduct of a State or another organisation.

Within the discussion of circumstances precluding wrongfulness, the European Union served as an important example concerning consent, while the practices of the European Commission, IMF, and International Labour Organization (ILO) were relied upon in discussions concerning necessity. The Organization of American States (OAS) appeared in discussions relating to force majeure. Similarly, in discussions concerning the responsibility of a State in connection with the act of an international organisation, the practices of the European Court of Human Rights and the influence of the European Convention on Human Rights were repeatedly emphasised.(Gaja, 2006)

The content of international responsibility was also examined extensively.(Gaja, 2007) In discussions concerning reparation, references were made to the practices of the Permanent Court of International Justice (PCIJ), the ICJ, the Organisation for the Prohibition of Chemical Weapons (OPCW), the United Nations Administrative Tribunal, and NATO. The subsequent issue concerned the invocation of responsibility, namely the manner in which international organisations implement and enforce international responsibility.(Gaja, 2008) The *Reparation for Injuries* advisory opinion of the ICJ was relied upon extensively to substantiate the concept of invocation by injured parties. The Commission further considered that the principles established in that opinion could apply equally to other international organisations, provided that their legal personality was sufficiently established. The practices of the European Commission, the European Court of Human Rights, and the ICAO Council were also relied upon in discussions concerning the exhaustion of local remedies,(Gaja, 2008) particularly in disputes involving European Union member states and the United States.

Overall, the second topic reflected a significant expansion in the conceptual role of regional organisational practice within the Commission's work. Nevertheless, this broader engagement remained structurally uneven. While regional organisations no longer functioned merely as supplementary illustrations, the reports relied predominantly upon European regional institutions as the principal regional reference points. Consequently, although institutional diversity received greater recognition within the drafting process, institutional universalism continued to shape the broader architecture of codification.

5.3. The Third Topic: The Settlement of International Disputes to which International Organisations are Parties.

This topic is comparatively recent, with its first report issued in 2023. Unlike the previous two topics, the work remains ongoing. At the time of writing, three reports have been published and serve as the primary materials for this subsection. Within these reports, the pattern of continuity and interconnectedness with the earlier topics is evident. Questions concerning the participation of international organisations in legal proceedings had already appeared during discussions in the second part of the first topic concerning relations between states and international organisations. At the time the third topic emerged, issues concerning the status of international organisations, their relations with states, treaty-making capacity, and responsibility had already undergone substantial codification (Reinisch, 2023, p. 8).

Once again, as in the previous two topics, institutional diversity is addressed within the work, although this time it broadens into a factor potentially influencing the forms of outcome the Commission might eventually adopt, including possibilities extending beyond draft articles (Reinisch, 2023, p. 14). Moreover, the third topic appears to employ a broad approach in the sense that the practices of the United Nations system inform the discussions alongside the extensive and varied institutional practices of regional organisations.

Within the definitional discussions, regional organisations played a substantial illustrative role in explaining the evolving membership dimension of international organisations. Organisations such as the Andean Community, the African Union, the Caribbean Community (CARICOM), the Common Market for Eastern and Southern Africa (COMESA), the East African Community, the European Union, the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), the Southern Common Market (MERCOSUR), and the West African Economic and Monetary Union (WAEMU) were repeatedly referred to throughout the discussions.

The European Union, for example, was discussed as a founding member of both the World Trade Organization (WTO) and the Food and Agriculture Organization of the United Nations (FAO), while the European Investment Bank was referred to in connection with the European Bank for Reconstruction and Development. The Asian-African Legal Consultative Organization, the Organization of Petroleum Exporting Countries (OPEC), and SADC further appeared in discussions explaining that international organisations may be established by instruments other than treaties. These discussions eventually contributed to the proposed definition that:

> International organizations refers to an entity established by States and/or other entities on the basis of a treaty or other instrument governed by international law and possessing at least one organ capable of expressing a will distinct from that of its members.(Reinisch, 2023)

Questions concerning international dispute settlement itself continued to rely heavily upon the framework of the United Nations Charter and the practices of institutions such as the ICJ and the International Tribunal for the Law of the Sea (ITLOS). Negotiation and consultation were illustrated through agreements concluded by organisations such as the International Labour Organization (ILO) and the WTO with Switzerland, while the Samoa Agreement between the European Union and the Organization of African, Caribbean and Pacific States served as an example of cooperation and negotiation between organisations. Discussions concerning mediation and conciliation were further substantiated through the participation of the European Union in the International Treaty on Plant Genetic Resources for Food and Agriculture (Reinisch, 2024).

Similarly, discussions concerning arbitration relied upon practices ranging from UNCITRAL proceedings to institutions such as the International Centre for Settlement of Investment Disputes (ICSID), the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the Stockholm Chamber of Commerce, and the Permanent Court of Arbitration (PCA). Regional organisational agreements, including arrangements between the European Union and the African, Caribbean and Pacific Group of States, as well as the European Union–United Kingdom Trade and Cooperation Agreement, also appeared prominently throughout the discussions.

In discussions concerning judicial settlement, proceedings before the ICJ, ITLOS, and the WTO formed important conceptual materials. A particularly striking feature of this topic, however, is the increasing reliance upon regional human rights institutions, especially the African Court on Human and Peoples' Rights, the European Court of Human Rights, and the Inter-American Court of Human Rights (Reinisch, 2024, III). In this respect, regional organisations no longer appeared merely as illustrative references but increasingly functioned as conceptual materials informing the development of the discussion itself.

A similar pattern could be observed in discussions concerning courts within regional economic integration systems (Reinisch, 2024, 2025). The reports relied upon the practices of the European Union, the European Economic Area, the Central American Court of Justice, the Court of Justice of the Andean Community, the MERCOSUR dispute settlement system, the SADC Tribunal, and the East African Court of Justice. Even dormant judicial bodies, such as the Nuclear Energy Agency Tribunal of the Organisation for Economic Co-operation and Development and the judicial organ of the Arab Maghreb Union, were considered within the discussions.

Overall, the third topic reflects the most substantial integration of regional organisational practice within the Commission's work thus far. Unlike the earlier topics, regional organisations increasingly function not merely as supplementary illustrations but as conceptual materials shaping the development of the discussions themselves. Nevertheless, institutional universalism has not entirely disappeared. The United Nations Charter and the practices of universal judicial institutions continue to provide the overarching legal framework within which many of these discussions remain situated.

6. Conclusion

In conclusion, the work of the International Law Commission demonstrates that the position of regional organisations within the codification of the law of international organisations evolved gradually across the three topics examined in this article. The reports reveal not only continuity across the topics themselves, with the first topic concerning relations between states and international organisations functioning as the central axis of development, but also a gradual transformation in the conceptual role assigned to regional organisational practice within codification discourse.

In the earlier stages of codification, regional organisations primarily functioned as illustrative and supplementary references within a framework strongly shaped by institutional universalism and the practices of organisations of a universal character. Although subsequent topics adopted broader and more inclusive methodological approaches, regional organisations continued to occupy a secondary conceptual position, with European regional institutions emerging as the dominant regional reference points. Over time, however, regional organisational practices increasingly contributed as conceptual materials informing the development of the discussions themselves, particularly within the most recent topic concerning the settlement of disputes involving international organisations.

The reports further demonstrate that the notion of institutional diversity evolved across the three topics with differing orientations. Initially regarded primarily as an obstacle to the formulation of general rules, diversity gradually became an explicit drafting concern and eventually emerged as a factor influencing consideration of more varied forms of outcome within the Commission's work. Nevertheless, despite these developments, the reports continue to reflect the enduring influence of universal institutional frameworks within the broader architecture of codification. The evolution traced throughout the three topics therefore reveals not the disappearance of institutional universalism, but its gradual accommodation of regional organisational practice within the construction of the law of international organisations.

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