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ECONOMIC AND SOCIAL COUNCIL

STUDY GUIDE

TOPIC A: The Gig Economy

TOPIC B: Creating accountability for Multinational Companies

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Letter from the Chairs

To the dear attention of the delegates of the ECOSOC committee.

Good Day!

First and foremost, we wholeheartedly welcome you to the 2018 edition of the St. Gallen Model United Nations conference, and more specifically to the United Nations Economic and Social Council (ECOSOC). One conference, 20 hours of sessions, 4 days, 2 topics, and one shared vision: be present and involved, blossoming into sessions of fruitful, challenging and intellectually stimulating debates.

The Economic and Social Council of the United Nations is designed for the discussion of the world's most pressing economic and social issues. In such context, we have selected two topics which we believe will give you the opportunity to do just that. Topic A explores the challenges and opportunities of the “gig economy”, a new form of employment that relies on flexible labour and technology. Topic B revolves around the creation of accountability for Multinational Companies, so to ensure a solid sustainable development.

As a delegate of a country, we would ask you to have familiarized yourself before the conference with the position on the topics at hand of the country that you were assigned. As we are sure you already know, your task is to represent your country's interests diligently and accurately, arguing for their objectives and aims. Through formal debates and informal negotiations behind the scenes, you will push for your country's agenda and strike diplomatic deals with representatives of other sovereign states. Although, we trust in your sense of balance and we invite you to see these meetings as an opportunity for negotiation and the successful finding of an agreement that allows everyone to leave the room with a sense of satisfaction for the successes that have been achieved.

To conduct the debate, we will make use of the SgMUN 2018 Rules of Procedure (RoP) that you can find on the conference's website. Please do familiarize yourself with them so to ensure for yourself a pleasant and fruitful time in the committee. The conference will also offer a Rules of Procedure workshop, which we encourage you to attend.

A tight schedule is every student's blessing and, for the most part, curse. However, we would like to ask you to submit your position paper on due time, so to allow us to review it well and take it into consideration when assessing your level of preparation and competence on the matters discussed.



From our side, we will make sure that you are provided with the best possible environment and the trampoline that you need to achieve the goals that you posed for yourself. We will encourage a cooperative environment where you are allowed to lead and negotiate agreements that will satisfy the room as a whole. We will do our best to listen, communicate efficiently, be passionate and consistent, intervene only when and if it is necessary, have a good understanding of the synergy of the room, be rational and reasonable, trust but verify; and, above all, make sure that we constantly learn from you and enjoy the discussions.

We will be available at all times during session, of course; but please do not hesitate to contact us before the conference, should you have any question or concern.

Head-chair Ms. Debernardi Virginia (please call her Debe) – debe.debernardi@gmail.com

Co-chair Mr. Bertino Raffaele – raffaele.bertino@hotmail.com

Co-Chair Mr. Moes Youri – yourimoes1@gmail.com

We would like to wish you a fruitful preparation, while enthusiastically waiting for the fun that SgMUN 2018 will bring about.

Kind Regards;

Debe, Raffaele and Youri



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Introduction to the Committee

The UN Charter established ECOSOC in 1945 as one of the six main organs of the United Nations. ECOSOC stands for the Economic and Social Council, which could arguably be considered the heart of the United Nations; if the UN were to be pictured as a human body, the ECOSOC would be the hands. This Council was set up to advance the three dimensions of sustainable development – economic, social and environmental. This committee is the hub of debate and innovative thinking, forging consensus on opening the doors of tomorrow’s world, and join forces to achieve commonly agreed goals.

The ECOSOC is an umbrella council, serving as a link between many entities of the United Nations and as such, it is competent to ensure a sustainable development, and be the guide and coordinator (*‘ECOSOC at a glance’* un.org). The organogram of which the ECOSOC is at the lead, includes regional economic and social commissions, functional commissions facilitating intergovernmental discussions of major global issues, and specialized agencies, programs and funds at work around the world to translate development commitments into real changes in people’s lives.

However, the ECOSOC that we know today is not the Council that was set up in 1945. In September 2013, the General Assembly adopted resolution 68/1, “Review of the implementation of General Assembly resolution 61/16 on the strengthening of the Economic and Social Council”. The adoption of resolution 68/1 marked the most important reform of ECOSOC since 1991 and it has strengthened ECOSOC leading role in identifying emerging challenges, promoting innovation, and achieving a balanced integration of the three pillars of sustainable development, in the context of the new SDGs as well. (*‘ECOSOC at a glance’* un.org)

The ECOSOC is also the link between the UN and the non-governmental organizations that serve as an asset to the UN institution, for the coordination of productive dialogues among policymakers, parliamentarians, academics, foundations, businesses and youth. These NGOs with which the ECOSCO has established a cooperation are more than 3,200. (*‘UN ECOSOC calls for extended NGO cooperation’* ipra.org)



The most prominent tasks of the ECOSOC are the promotion of sustainable development, managing the transition from MDGs to SDGs, advancing policy integration, handling the Development Corporation Forum, coordinating the humanitarian actions, guiding operational activities for development, building partnerships, engaging youth, working with civil society and raising awareness on emerging issues. (*‘What does ECOSOC do?’* un.org/en/ecosoc/meetings/)



Topic A: The Gig Economy

HISTORY OF THE TOPIC

What is self-employment?

To understand the rise of the gig economy, one must first examine the trends and the development of self-employment. Self-employment is not a recent phenomenon and is unrelated with the rise of the internet. Self-employed workers operate throughout economies in a variety of sectors. Until recently, gig economy workers have mostly been considered as self-employed.

According to The Organisation for Economic Co-operation and Development, self-employment is defined as follows: *“the employment of employers, workers who work for themselves, members of producers' co-operatives, and unpaid family workers”* (OECD, 2018). Nonetheless this definition varies a lot depending on the country, for instance the US tax authority defines it as someone who *“carries on a trade or business as a sole proprietor or an independent contractor”* or *“a member of a partnership that carries on a trade or business”* or someone who owns its own business (IRS, 2017). By contrast, the EU defines self-employment as anyone *“pursuing a gainful activity for their own account, under the conditions laid down by national law”* (European Parliament, 2010). A multitude of countries include business owners as self-employed workers; others define these individuals simultaneously as “owners” and “employees” of their company.

Although there are major differences in the definitions of self-employed workers, they all share common elements. Self-employed workers are seen as autonomous, controlling who they work for, when they work and how much they charge for their services. Moreover, this definition encompasses workers who lack a formal contract to receive a fixed amount of income at regular intervals and workers who are responsible for covering the costs associated to the best practice of their activity such as business expenses or even hiring employees and contractors. The association of gig-economy workers with self-employed workers has been the subject of many controversies as their characteristics do not always fit. We will detail this later in the study guide.

At this point in time, in order to get an idea of the significance of self-employed workers for each country it is best to examine the histogram depicting the self-employment rate in the 35

OECD countries (OECD, 2018). The OECD found that there are significant differences in the proportion of workers who were self-employed between countries, ranging from 6.3% in the US to 34.1% in Greece. In general, it found that self-employment was more prevalent in countries with low per-capita incomes. Finally, it found that whilst self-employment remains a significant proportion of many labour markets, it has fallen slightly in two-thirds of countries.

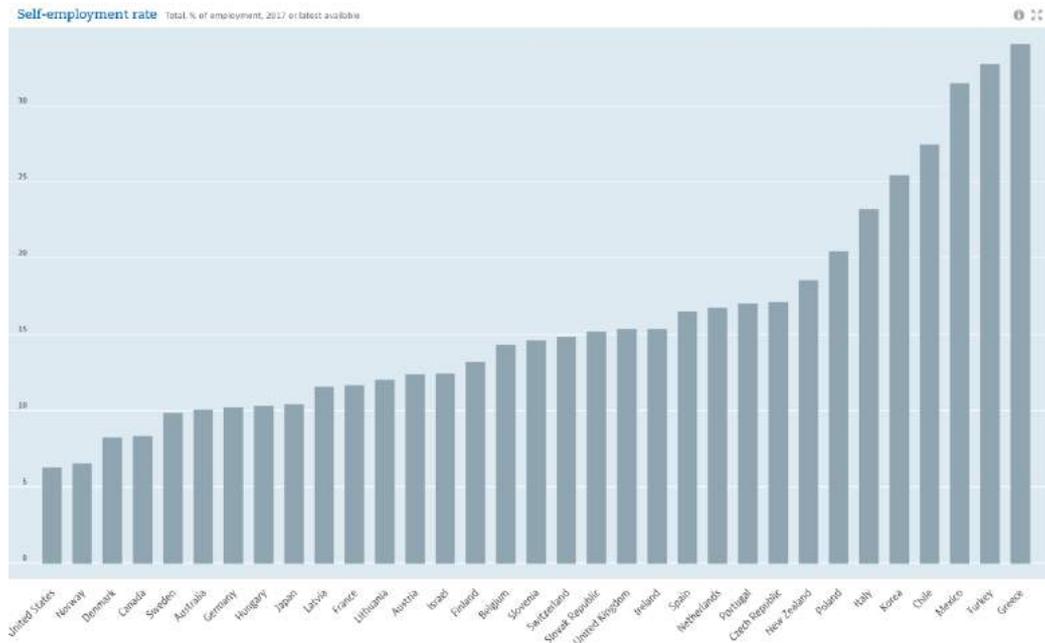


Figure 1: Self-employment rate, % of employment, 2017 or latest available. Source: OECD, 2018, ALFS Summary tables.

This data nonetheless has to be put into perspective knowing the difficulty of defining self-employed workers. In any case, the picture of self-employment is mixed, with no general trends in the evolution of this rate: in some countries it booms, in others it is in decline, in some the amount is important whereas in others it is lower.

Understanding the gig economy

Generally, the gig economy is a term used to refer to “*low paid, flexible work*” where people are offered piece-work, work with a fixed piece rate for each unit produced or action performed regardless of time, through a website or an app (Full Fact, 2017). The gig economy is composed of four fundamental aspects identified by Farrell and Greig (2016, p.05):

1. Connects workers or sellers directly to customers
2. Allows people to work when they want
3. “Sellers” are paid for a single task or good at a time

4. Payment passes through

The gig-economy, according to De Stefano (2015, p.01) is usually understood to include two forms of work: “*crowd work*” and “*work on-demand via apps*”. The first term refers to work that implies completing a series of tasks through an online platform that puts in contact organisations and individuals through the internet. “Work on-demand via apps”, instead, is a form of work in which the execution of traditional working activities (transport, cleaning etc...) is set through mobile applications managed by firms that also intervene in setting the minimum quality standards of service and in the selection and management of the workforce (De Stefano, 2015, p.01). Although there is a tendency to believe that jobs in the gig economy are mainly related to transportations and carriers, the types of work carried out in the gig economy are much more diverse. Rather, services including professional, creative, IT and skilled manual labour predominate. In developing countries in particular, where the domestic market for the gig economy may be underdeveloped, growth has centred around “digital” work: services that are delivered remotely via the internet to wealthier countries. This corresponds to an evolution from the outsourcing of IT support and services from wealth countries that occurred in the 2000s.

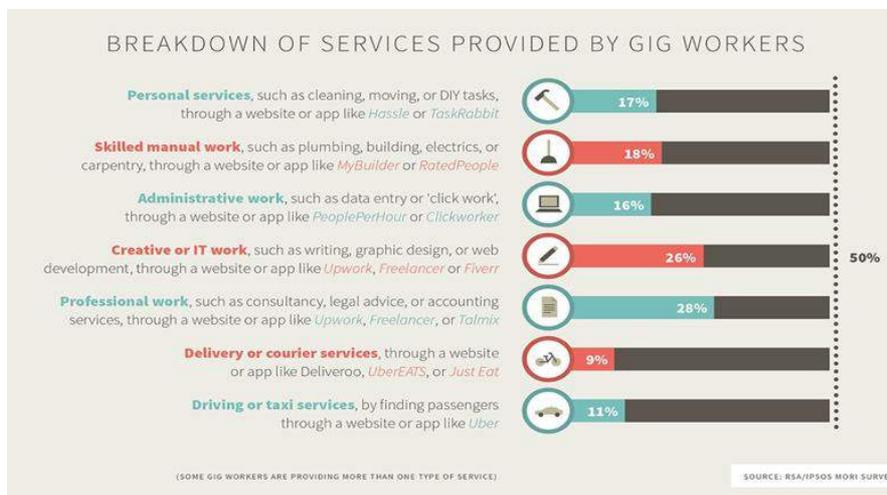


Figure 2: Services provided by gig economy workers, % of gig economy workers (UK). Source: RSA, 2017

But how big is the gig economy?

Factually, the extent of the gig economy varies greatly from country to country. Whilst the gig economy is often associated with developed countries, widespread internet access has allowed workers in poorer nations to bid for work via online platforms. Overall as it is a fairly recent phenomenon, data regarding its official scale is scarce and is largely based on estimates. In



general, however, it remains a small proportion of the overall workforce. For example, in the US and the UK, where the gig economy is seen as one of the most developed, research shows that gig economy workers represent roughly 3% of the workforce (Intuit, 2017). Intuit and Emergent Research predicts the number of people working on-demand jobs will grow to 6% by the year 2020 and to 7% by 2021. The rise of the on-demand economy is part of a broader long-term growth trend in the contingent workforce (i.e. people who work for a company but are not employed permanently), which has grown from 17% of the U.S. workforce 25 years ago, to 36% today, and is expected to reach 43% by 2020. Growth also appears to be more pronounced in large cities, where a concentration of population and therefore demand makes gig work more viable. London's gig economy is estimated to have grown by 72% between 2010 and 2016 (BBC, 2016). Again, estimates to the extent and the growth of the gig economy should be taken with a pinch of salt.

There appears to be significant growth potential for the gig economy in developing countries too. According to KellyOCG, the gig economy is booming in the Asia-Pacific region stating it will rapidly become the new norm for employment (KellyOCG, 2018). This has been driven by the rapid expansion of high speed internet and smartphone usage: 54% of citizens in developing countries reported using the internet in 2015, up from 45% only two years' prior (Poushter, 2016). Meanwhile, smartphone usage has increased from 21% in 2013 to 37% in 2016 (Ibid.). For example in Indonesia, where the number of users online, most of them through their mobile phone, grew from 2 million people to 130 million people in less than a decade (Bloomberg, 2018). Both are still far below the usage rates of developed countries leaving room for rapid growth: this could expand the use of the sharing platforms that the gig economy relies on. Platforms such as Ola, Grab, and Go-Jek are booming in Southeast Asia, where cheap mobile internet is widely available.

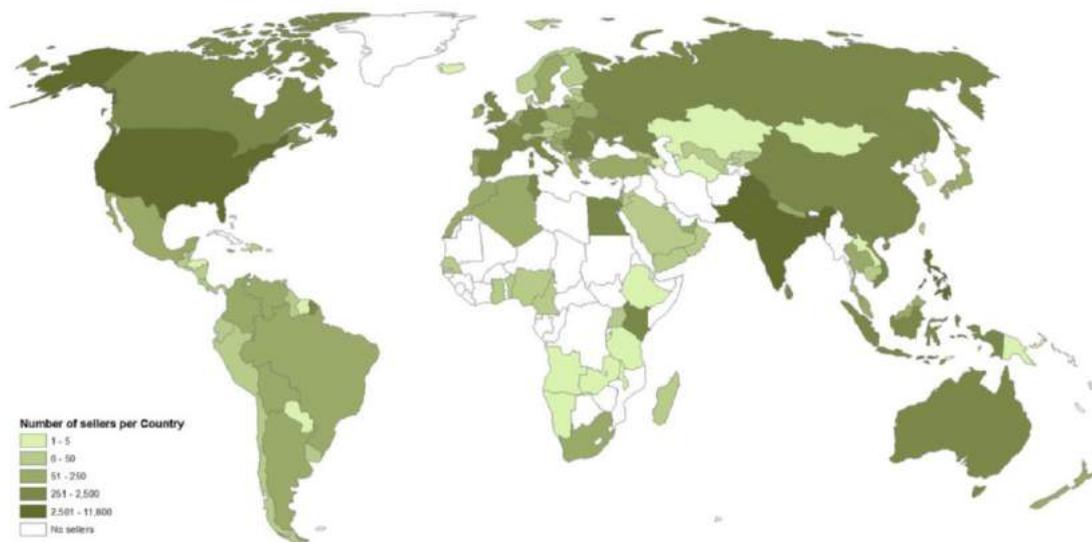


Figure 3. Number of sellers per country.

Figure 3: Number of workers using “digital work” platforms, by country. *Source: Graham, Hjorth, Lehdonvirta, 2017, p.143*

ISSUES AND ASPECTS OF THE TOPIC

Legal Status of Gig Economy Workers

The central controversy so far has been the appropriate classification of gig economy workers in employment. Until the recent series of court cases in the second half of 2017, primarily in the UK, gig economy workers have been treated by employers and tax authorities as self-employed contractors. This has been justified on the basis that gig economy workers have control over when they work and who they work for.

However, the dependence of many gig economy workers on particular platforms and the tendency of some platforms to exert a degree of control over workers has convinced some judges to rule that workers for certain platforms, like Uber, are employees.

In that case, should all gig economy workers be classed as employees? Many gig economy workers only earn a small percentage of their income from sharing platforms. Others may simply rely on sharing platforms for short periods of time in-between permanent jobs. Nor is it clear that platforms such as Taskrabbit exert the same degree of control as, say, Uber or Deliveroo.



As a US judge noted, trying to apply current classifications of employment to the gig economy is like being, “*handed a square peg and asked to choose between two round holes*” (Prassl, 2016). As such, there have been calls for the creation of an alternative employment status to cover gig economy workers.

Employment Rights and Benefits

The crucial difference between whether someone is a full-time employee, or a self-employed contractor is their access to statutory rights. Statutory rights, in the context of employment law, are rights guaranteed to all employees by law, regardless of the contract they have signed with their employer. These rights vary from country to country but typically include the right to a minimum wage, the right to paid annual and sick leave and protection from discrimination (Slater and Gordon Lawyers, 2016). These statutory rights are typically only enjoyed by full-time employees. As a result, self-employed contractors only enjoy any protections set out in their contract. These “*contractual rights*” are often less generous than statutory rights because each individual worker has very little bargaining power.

At present, most gig economy workers remain classified as self-employed contractors. As the gig economy work becomes more prominent this could mean more workers losing their statutory rights, effectively eroding labour market standards. However, it can also be argued that because firms enjoy less control over gig economy workers, they should not be obliged to provide the same level of employment protection as their permanent employees.

Tax

Firms which hire self-employed contractors do not typically have to make social security contributions in the same way that firms who hire employees do. In theory, this is because self-employed individuals are not eligible for employment-based social security. In the UK, hiring gig economy workers will result in £3.5bn in lost tax revenue by 2020/21 (BBC, 2016).

This problem could be solved if gig economy workers were classified as employees. This would force the platforms they work on to foot the tax bill, like any other employer. But this may not be appropriate for workers who only use gig economy platforms intermittently or for short amounts of time. Some have proposed levying a transaction fee on gig economy platforms that could either fund “*portable benefits*” for gig economy workers or replenish general tax revenues. Such a system has been proposed by the Independent Drivers’ Guild in New York

City. They argue that a 5% transaction fee could be accrued into a benefits pot that follows a worker from job to job, regardless of which platform they use (Semuels, 2017).

Economic Growth

Naturally, different countries have different concerns about the gig economy. Whilst the focus in wealthier countries has been the potential for gig work to undermine employment rights, the governments of developing countries such as Malaysia and Nigeria have made encouraging gig economy work, specifically digital work, a key part of development and poverty reduction programmes (Graham, Hjorth, Lehdonvirta, 2017, p.138). They see the gig economy as crucial to reducing underemployment in their workforce, thus boosting incomes and economic growth.

Overbearing regulation may reduce the growth of the gig economy and the jobs that it has created. The business models of sharing platforms have so far relied on recruiting large numbers of both buyers and sellers onto the platform at minimum cost to the business. Requiring businesses to pay extra per employee could limit the growth of the sharing economy, and with it, the potential economic gains of reducing unemployment and underemployment. However, there has been little research into the effects of the gig economy on macroeconomic performance, because the sector is so new.

PAST ACTION OF THE INTERNATIONAL COMMUNITY

The issues and aspects developed previously have led to a series of legal challenges from gig economy workers against the platforms and companies that they work for, with the most polemical one being Uber. As an answer to these clashes, the international community has started to take actions upon.

Uber

Uber has spent much of 2017 and 2018 in the headlines as it lost a series of court cases in Europe over its relationship with its drivers. In the UK, this led to Uber losing its license to operate in London in September 2017 (BusinessInsider, 2017). The current mayor of London, Sadiq Khan expressed himself on the topic saying “[...] *all companies in London must play by the rules and adhere to the high standards we expect – particularly when it comes to the safety of customers. Providing an innovative service must not be at the expense of customer safety*

and security.”. Moreover, as a result of losing an appealed decision in November 2017, British Uber drivers are now considered “*employees*” and therefore Uber has been obliged to guarantee a minimum wage for drivers and provide them with paid holiday and sick leave (Independent, 2017).

This ruling has major implications for all gig economy workers and the companies that “employ” them: this leaves companies like Uber, Deliveroo and CitySprint liable to pay employment taxes and pension contributions. Such costs have the potential to upturn the business models of these companies entirely.



Figure 4: Greek taxi drivers shout slogans during a protest against taxi-hailing apps such as Uber in Athens, Greece March 6, 2018. Source: REUTERS/Alkis Konstantinidis.

A further blow was delivered by the European Court of Justice at the end of 2017. It found that Uber should be classed a transportation service rather than an “*intermediation service*” as Uber had argued (Court of Justice of the European Union, 2017). This has further undermined Uber’s claim that it merely provides a platform to connect drivers and riders and, therefore, does not “employ” its drivers.

Similar cases have been brought against Uber in its largest market: the US. In 2016, Uber agreed to pay out \$100m to Uber drivers in California and Massachusetts who argued that they were incorrectly classified as independent contractors (Farivar, 2016). However, past court decisions have favoured the classification of Uber drivers and other gig economy workers as independent



contractors, including a US district court decision in early April 2018 that was said to be the first classification of Uber drivers under federal law (The Verge, 2018). More recently New York became the first major American city in August 2018 to halt new vehicle licenses for Uber, this legislation will cap the number of ride-hailing vehicles for a year as well as set a minimum pay rate for the drivers (The New York Times, 2018).

Pimlico Plumbers

Far from the high-tech world of Uber, but with no-less consequence for the gig economy, is the case of London-based Pimlico Plumbers. It employs its plumbers as contractors who are self-employed. However, when Gary Smith, who had worked exclusively for the company for six years' (2005 to 2011), suffered a heart attack and asked to reduce his hours, Pimlico refused.

The case was heard by the UK's Supreme Court in June 2018 in favour of Gary Smith. The fact that Pimlico had tight administrative control over Smith, imposed conditions around how much it paid him and on his clothing and appearance for work, and restricted his ability to carry out similar work for competitors if he moved on from the company, all supported the conclusion that he was a "worker" and not genuinely self-employed. Like Uber, Pimlico plumbers is able to reduce costs because it is not required to pay employment taxes, provide pensions or guarantee basic workers' rights for its self-employed contractors. Since it lost its appeal at the Supreme Court, many more gig economy workers could claim their status as "employees".

Beyond the US and UK

Case law regarding the gig economy is most established in the UK and the US. It is highly likely, however, that countries across the globe will soon experience similar legal battles. There have been some attempts to investigate how similar cases would go over under current employment law in other countries. Willis (2017) posed the case of a hypothetical bicycle courier:

"The courier works for her company for nearly all her working time although the written contract between them says she is free to work for other organisations. . . She does not have to accept jobs but if she does, the price is fixed by the company and there are fixed routes for the delivery. She provides her own transport. She must wear a uniform and have insurance"

He finds that in many countries, including numerous EU nations, Switzerland, South Africa and Australia, the courier would likely be able to claim employment rights such as holiday pay and sick leave. This is due to the importance of “hidden employment” to employment law, which looks beyond signed contracts to the true nature of work and conditions. Moreover, employment law in many countries places a great deal of importance on the extent of control over the worker by the company: the greater this is, the more likely the workers should receive employment rights. However, Willis (2017) points out that the exact outcome from country to country, even within the EU, is not entirely consistent and that this investigation is entirely hypothetical.

CONCLUSION

Not a traditional employment, not a zero-hour contract, not a guarantee of sick pay, no holiday leave, but it is as simple as it is logical: you only get paid if and proportionally to how much you work. A pure and magnificent form of logical thinking; however, not exactly fitting in the legal framework in which we find ourselves living in. Our employment rules are not up to date to reflect and create space for “new ways of working”. Governments keep issuing press releases stating how important gig economy workers are to the economic growth of countries; yet almost nothing is being done to increase the legal protection of the rights of these workers.

Arguably it would be easier to simply classify all gig economy workers as traditional ‘employees’ in the light of the law. However, this would defeat the nature of the gig economy and create a big disadvantage to the (alleged) employer, who opted for the gig economy business model mainly for the availability of cheaper labour. Perhaps it would be a discard of responsibility of governments and other legislative bodies, to simply force the gig economy workers to adapt to the current legislative system, thereby hindering the economic growth that we are witnessing (partially due to this cheap labour character of the gig economy), instead of taking action in modernizing the legal frameworks.

In this light, it can be concluded that the legal status of the gig economy workers is a problem that needs to be addressed. However, it does not end there. Lacking an up-to-speed legal system also implies that traditional employment rights and benefits do not apply to the gig economy workers. This creates important problems; mainly, the lack of access to statutory rights (paid leave, sickness, social security and other employment relationship rights) which by default are



guaranteed in all employment relationship, despite of potential contractual deviations. The statutory rights granted to employees serve to protect the weaker party in the context of negotiations over employment contract. If employers lose these rights, they lose the legal protection that we much fought for since the miss-treatments of the factory workers in the industrial revolutions. To these day, with such lack of protection, we could very well see these miss-treatments rise again.

The gig economy provides for independent workers to offer their services to (most commonly) an undertaking that comes to the market in the form of an app. This means that there is no employer that pays the taxes for the employee, nor does the gig economy worker pay taxes for him\herself as they normally do not have a VAT registered number and therefore cannot be taxed on facturation since they do not qualify as professionals rendering services to clients. This creates a big loss in the national tax revenues, which is only destined to increase.

Loads of questions and no answers. Adopting the conservative approach seems to be dumping responsibility, just another way to postpone a problem that will need to be sooner or later addressed. We cannot live in the same legal framework for forever, completely ignoring what innovation brings to society. However, changing the system can be dangerous and defeat the nature of the gig economy: it works so well because it is flexible, if we force it to fit into a(n adapted and improved) legal system it may reduce its growth and all the jobs that it created, thereby substantially reducing its very positive social impact. Should we regulate? Or should we not? Either way, how do we go about it?

To end on a quote of the good old Albert, “technological progress is like an axe in the hands of pathological criminal”. But shall we not forget that “you cannot solve a problem with the same thinking that you used to create it”. May you all do of this what you will, but the best and the best only.

Hope you enjoyed the reading. Buckle up because from here, it only gets more intense.

GUIDING QUESTIONS

Below you can find a set of questions. These should serve as a guideline for the debate, so to keep it on track. Please bear in mind that it is not necessary for all these questions to find an



answer in the resolution. However, for the sake of completeness, please do make sure that the main topics here presented are covered. During your preparation for the conference, you can use these as a starting point for your personal research. Note that the questions are in no particular order.

1. What are the different types of national legal framework (currently in place) on the traditional understanding of employment law?
2. What are the available theories of legal innovation? How can these be applied to the employment law field? Which theory suits your country's legislation and policy best?
3. Should the philosophical theories of technology in society have consideration in this debate? If so, what is your country's policy on the matter?
4. What are the main pitfalls of your national employment law, generally speaking? Could these be tackled by a gig-economy-friendly legislation?
5. Is there space in your national legal system for adapting the law, or perhaps even creating a new set of regulations?
6. Are there any regional alliances (EU, AU etc..) that your country is part of and that national policy makers could turn to for expertise, advice and support?
7. Policy wise, is your national government willing to adapt its legal framework to the gig economy? If yes, how so? If not, how come?
8. What is your proposed solution to the national lost tax revenue? Would the levying of a transaction fee be an option? If so, how would you limit it and under which circumstances would you allow a deviation?
9. Are there other options for providing safety-net benefits to workers (other than the traditional employment regulations) who are not connected to a traditional full-time employer? Who should administer them? Should they be opt-in or opt-out?

POSITION PAPERS

Position Papers will have to be sent to ecosoc@sgmun.org by midnight (24:00) of the 8th of November 2018.

ADDITIONAL SUGGESTED READINGS

Additionally to this study guide, the chairing body would advise you to read over this literature. It will not only grant you a better understanding of the topics discussed, it will also serve for you as a basis to good critical and creative thinking of solutions. We also encourage you to go through the list of references and read the original sources.

- Case C-434/15, *Asociación Profesional Élite Taxi v Uber Systems Spain SL*, 20.12.2017 [ECLI:EU:C:2017:981]. See annex 1 for the questions referred to the court and annex 2 for the reasoning and judgement.
- Supreme Court, *Pimlico Plumbers Ltd and another (Appellants) v Smith (Respondent)*, 13.06.2018, [UKSC 2017/0053]. See annex 3 <https://www.supremecourt.uk/watch/uksc-2017-0053/judgment.html>
- Jesse Butler, 'Gigging 'Round the World: Regulating the Global Gig Economy' (Labor and Employment Blog, Apr 4, 2017) <<https://www.bna.com/gigging-round-world>> accessed 27 September 2018
- Diane Mulcahy, *The Gig Economy: The Complete Guide to Getting Better Work, Taking More Time Off, and Financing the Life You Want* (1st edn, American Management Association 2016)
- Marion McGovern, *Thriving in the Gig Economy: How to Capitalize and Compete in the New World of Work* (1st edn, Career Press 2017)
- Olga Mizrahi, *The Gig Is Up: Thrive in the Gig Economy, Where Old Jobs Are Obsolete and Freelancing Is the Future* (1st edn, Greenleaf Book Group Press 2018)

Annexes

1. CJEU references of case *Asociación Profesional Élite Taxi v Uber Systems Spain SL*
2. CJEU judgement of *Asociación Profesional Élite Taxi v Uber Systems Spain SL*
3. UK supreme court case, *Pimlico Plumbers Ltd and another (Appellants) v Smith (Respondent)*



REFERENCES

BBC, 2017, *Uber is not part of the gig economy, firm argues*,
<http://www.bbc.co.uk/news/business-41400745>

BBC, 2017, *Uber loses court appeal against drivers' rights*,
<http://www.bbc.co.uk/news/business-41940018>

BBC, 2016, *London's 'gig' economy sees 72% growth*, <http://www.bbc.co.uk/news/uk-england-london-38248949>

Bloomberg, 2018, *Indonesia's Booming Gig Economy Means Big Tradeoffs for Workers*,
<https://www.bloomberg.com/news/articles/2018-08-06/indonesia-s-booming-gig-economy-means-big-tradeoffs-for-workers>

Business Insider, 2017, *Uber has lost its licence to operate in London*,
<https://www.businessinsider.nl/uber-lost-licence-operate-london-2017-9/?international=true&r=US>

Business Insider, 2017, *British Uber drivers are employees entitled to minimum wage and holiday pay, tribunal rules*, <https://www.businessinsider.nl/british-uber-drivers-entitled-to-minimum-wage-holiday-pay-lodon-tribunal-rules-2016-10/?international=true&r=UK>

Chartered Institute of Personnel and Development, 2017, *To gig or not to gig? Stories from the modern economy*, <https://www.cipd.co.uk/knowledge/work/trends/gig-economy-report>

Court of Justice of the European Union, 2017, *PRESS RELEASE No 136/17*,
<https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-12/cp170136en.pdf>

De Stefano, V., (2015). *The rise of the just-in-time workforce: On-demand work, crowdwork, and labor protection in the gig-economy*. *Comp. Lab. L. & Pol'y J.*, 37, 471.



http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_443267.pdf

Farrell, D. and Greig, F., 2016, *Paychecks, Paydays, and the Online Platform Economy*, JP Morgan Chase, <https://www.jpmorganchase.com/corporate/institute/document/jpmc-institute-volatility-2-report.pdf>

Full Fact, 2017, *Who's working in the 'gig economy'?*, <https://fullfact.org/economy/whos-working-gig-economy/>

Full Fact, 2017, *What is the gig economy?*, <https://fullfact.org/economy/what-gig-economy/>

Graham, Hjorth, Lehdonvirta, 2017, *Digital labor and development: impacts of global digital labour platforms and the gig economy on worker livelihoods*, *European Review of Labour and Research*, <http://journals.sagepub.com/doi/pdf/10.1177/1024258916687250>

Independent, 2017, *What Uber's defeat in court means for drivers and customers in the long-run*, <https://www.independent.co.uk/news/business/analysis-and-features/uber-court-defeat-prices-customers-surge-drivers-full-rights-employees-ride-sharing-app-a8048051.html>

Intuit, 2017, *On-demand Economy Helps Reduce Income Volatility*, Build Economic Security, <http://investors.intuit.com/Press-Releases/Press-Release-Details/2017/Intuit-Study-On-Demand-Economy-Helps-Reduce-Income-Volatility-Build-Economic-Security/default.aspx>

KellyOCG, 2018, *The Gig Economy is Thriving in Asia-Pacific*, <https://www.kellyocgapac.com/news/the-gig-economy-is-thriving-in-asia-pacific>

OECD, 2018, *Self-employment rate*, <https://data.oecd.org/emp/self-employment-rate.htm>

Poushter, J., 2016, *Smartphone Ownership and Internet Usage Continues to Climb in Emerging Economies*, Pew Reserach Center,



<http://www.pewglobal.org/2016/02/22/smartphone-ownership-and-internet-usage-continues-to-climb-in-emerging-economies/>

Samuels, A., 2017, *Could a Tax Fix the Gig Economy*, The Atlantic,

<https://www.theatlantic.com/business/archive/2017/11/gig-economy/544895/>

Supreme Court, 2018, *Pimlico Plumbers Ltd and another (Appellants) v Smith (Respondent)*,

<https://www.supremecourt.uk/cases/uksc-2017-0053.html>

The Internal Revenue Service, 2017, <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>

The New York Times, 2018, *Uber Hit With Cap as New York City Takes Lead in Crackdown*,

<https://www.nytimes.com/2018/08/08/nyregion/uber-vote-city-council-cap.html>

The Verge, 2018, *Uber and Lyft drivers could get employment status under California court*

ruling, <https://www.theverge.com/2018/5/1/17308178/uber-lyft-drivers-california-court-classification-dynamex>

World Bank, 2017, *ILOSTAT Database*, <https://data.worldbank.org/indicator/SL.EMP.SE>



Topic B: Creating accountability for Multinational Companies

HISTORY OF THE TOPIC

Throughout modern history globalization has made the world closer through technology and international travel. This does not just apply to cultures and nations, but to the global economy as well. Since the Second World War many companies have made the transition to operating on an international level, some just into neighbouring countries, whereas others diversified and expanded on a global scale. Companies like Coca Cola, mining operations among others are some of the most prevalent companies that operate on this level. For many years a global free market and the increased rate of decolonized countries with weak legislation made it easy for Multinational Companies (MNCs) to gain footholds and conduct business in these countries.

MNCs often targeted these nations for several reasons, firstly being cheap labour for manufacturing jobs. Especially relevant in South Asia and parts of Africa, companies use weak labour laws and the lack of worker protection to create products for almost nothing, paying workers a fraction of what they would be paying for labour in countries with stronger legislation (Schneidman, 2017). This is often a silently ignored problem with consumers in western countries not asking the question of how the products can be so cheap. However, when a commercial building called Rana Plaza in Bangladesh collapsed in 2013 the media ran with the story. Over 1000 people died and when it was found that several companies such as Walmart and JCPenney were producing their clothes in unsafe conditions, the international community took action. Under pressure these companies signed the Accord on Fire and Building Safety in Bangladesh. This agreement aimed to make their workplaces safer in Bangladesh over the next 5 years. However, it was not required to sign the agreement. Many North American firms did not sign the accord, citing that under American law they were not liable for the damage in Bangladesh (Nittie, 2018).

Outside of manufacturing other companies have seen the opportunity of using countries with weaker environmental protection laws to their advantage. Countries in Latin America, South East Asia, and Africa have fallen prey to these tactics. Companies set up operations in these countries through exploiting government loopholes and corrupting officials through bribery. These operations usually are present in countries for several years, paying bribes throughout. Operations which operate like this include mining, logging and plantation industries such as palm oil. Palm oil specifically has begun to receive bad press with their exploitation of

environmental resources. Southeast Asian nations have begun to cooperate against these companies through modern environmental policy, however this is opening these nations up to a new problem, companies suing nations (KPMG, 2015). This will be further explored below.

While these issues have been plaguing the world economy for decades, the international community remained and is still undecided on the solution to the problem. Some nations do not acknowledge that there is a problem at all. The question posed to the committee revolves around whether there is the possibility to create a Common Frame of Reference of the legislation for the protection of workers of MNCs so for national governments to have a guideline from which national laws can be developed. The ECOSOC in its SGMUN summit, is called to discuss this topic on the agenda and decide on whether to provide the national governments with an advisory piece of legislation for the implementation of these discussions in the national legal systems, whether to give an indirect binding character to this proposal,¹ including enforcement measures; and within this context, whether to grant legal personality under international law to MNCs

ISSUES AND ASPECTS OF THE TOPIC

A problem like this has many facets and requires a nuanced approach, which is why the problem should be split into the following issues and aspects.

International Legal Framework

While this problem has existed for a while there is still no official legal standard that these companies need to adhere to. (Honke, 2017) While the UN organ tasked to creating one this has not been approved yet. The question of international guidelines for companies to follow is an important question especially since many still wonder if it is necessary. Many nations are against the notion that companies from their countries could be held accountable by laws from other nations. This belief is mainly held by western nations. Some developing nations are also

¹ See the CJEU case *Van Colson (C-14/83)* and *Marleasing (C-106/89)* to have an idea of how it is possible for a regional union to grant indirect binding character to legislative measures that are in principle advisory. The court, in these cases, has reasoned that EU Directives are capable of producing (vertical) indirect effect on Member States. The court has therefore ruled that there is an obligation on national courts to interpret national law consistently with EU law. However, the court did set 2 conditions that need to be met by the EU legislation for it to produce indirect effect; namely, the National government need to be given a reasonable time to transpose such EU legislation into national law, and no interpretation shall happen *Contra Legem*. See annexes 4 and 5 to read the full CJEU reasoning and gain a better understanding. Do bear in mind that the EU has completely different powers on national states, then the ones that the ECOSOC (or the UN) has. Such CJEU reasoning can therefore not be applied to the discussion at hand, however can be used as a reference model.



not in favour of these guidelines since they fear that western focussed international organizations will create laws favouring their economic interests. The committee must find a medium ground between these two perspectives.

National laws and their application

Many nations have oriented their national business law to protect their companies from libel while abroad. This is mainly from companies registered in the USA. Their laws have been questioned many times by international bodies. Due to the structure of their laws and the composition of their legal bodies the US is able to circumvent international guidelines or punishment by countries other than itself. (Iqbal, 2016) An example of course was Rama Plaza and companies who were complicit in the collapse allowing to continue business without a repercussion. Instead of facing legal action these firms simply moved production to another country, namely Myanmar. A solution to this must also be discussed, and to how far national sovereignty can protect against illegal action.

Assistance to improving national policy

One of the main reasons why MNCs can do their illegal business so easily is through the lack of regulation and high levels of corruption within countries. This is something that any possible solution must take into consideration. Some nations attempt to solve this through including local populations more in enforcement and accountability or turning to regional solutions like ASEAN. (Choy, 2018) Both of these solutions are valid and have been shown to improve the situation. The committee must consider these options or devise new solutions to the issue.

Should stronger national policies be implemented, creating a stronger and more secure legal framework?

Corporate crime and Corporate criminal liability.

Corporate criminal liability is a field of law and social protection that is developed under the umbrella structure of the national systems of criminal liability. This is an important issue and is becoming more and more important every day. After hundreds of years of living in denial over how much damage corporations can create both on the environment and on the society as a whole, we can definitely see that in the past 20 years many states have started to criminalize corporations that violate the law. However, this development is very recent, perhaps too recent for us to conduct a proper assessment on whether such national laws work or not (Clifford Chance, 2016). For example, taking continental Europe, France has only criminalized



corporations that break the law in 1994, Belgium in 1999. The Netherlands was the first continental system that created criminal liability for enterprises, in 1976. This shows that the idea of keeping corporations criminally accountable, is a rather recent policy, comparatively at least. (Dorrenbacher, 1994)

The issue that we are hereby dealing with, is not the liability of individual officers for crimes committed within and by an enterprise but creating accountability for the corporation/legal entity itself. These two issues are very different and, in the case at hand, we will only be dealing with the latter. However, many systems do combine the two issues, but, at least theoretically, they remain separate.

Keeping enterprises liable for their criminal activity has always been problematic, mainly because how can you hold a legal entity, which is an artificial legal construct (an entity that exists in law only, in fact a company does not exist in the human physical sense), liable? There is no body to be jailed, there is no soul to be blamed.

Some corporate crimes that should be kept in mind when conducting this debate are fraud, serious violation of labour laws,² environmental pollution, insider trading, food and drug safety,³ financial crimes, tax evasion, public corruption, etc. These are just some examples of how a MNC can be damaging to society, and a few fields that MNCs liability should/could perhaps be regulated.

According to Roef 2016, the first reason for which the criminalization of corporate crime has happened so late and so little, is that the discussion was never on the national political agendas. Criminologists argue that this is because the people who are behind the corporate crimes are the people who belong to the same social class as the one of the legislators. Hence, why these are called the white-collar crimes. The second reason could arguably be that corporate crime (ex. Environmental pollution) does not give a sense of ‘being the victim’ to society: when an MNC commits a crime, no one in society feels to be the *one* victim of that crime (aside from

² These can create lethal accidents on the work floors. Recent statistics show that people die more of accidents on the work floor by violations of safety regulations, than people that are killed by ordinary crime. Nota that this is the case in continental Europe, let alone all the national states in which safety regulations are non existent. Indeed, looking at the numbers, MNCs can be much more damaging than individuals can. Yet, we mainly criminalize and punish individuals, while letting companies do what they like best.

³ See the Ford Pinto Case for motr insight: <https://users.wfu.edu/palmitar/Law&Valuation/Papers/1999/Leggett-pinto.html>

some specific circumstances of breaches of labour law), while if someone is robbed, they immediately feel a victim and demand the state to do something about it. No one feels personally attacked when a company does not pay its one million dollars' worth of taxes. There is a huge divide in the perception of what is crime by the public and the actual crime that does damage to society. Indeed, for white collar crimes, there are no imminent victims, just long-lasting disasters. The third reason for the late coming of corporate criminal liability is that for a very long time, the legal expertise owned by the undertakings was much better and more sophisticated than the one owned by the states. An example can be found in the Netherlands: Until 1990, the Dutch were very proud of their ecological consciousness but did not even have a specific unit to fight environmental crime in the Public Prosecutor Office (this was only brought about in the 1990s).

All the problems so far mentioned, are criminology and policy-based issues; however, these reflect themselves in law. The legal problem is how to adapt the current understanding of Criminal law to a corporation. According to Colvin (1995), traditionally only humans can be subject to criminal law: only humans have a will that can construct a *Mens Rea* (= guilty or innocent intention to commit a crime, this being the state of mind of the offender) and a body to produce an *Actus Reus* (= the physical act of committing a crime consciously). In this light, can legal entities/corporate actors be held criminally liable? Legally speaking, there are three possible answers: (1) no, only individual humans can act blameworthy - this psychological approach to guilt leads to the potential creation of corporate liability by establishing personal liability of corporate directors;⁴ (2) yes, we keep corporations liable and we do that using a **nominalistic (atomic)** approach, this approach understands corporations as nothing more than collectivities of individuals and as such should be punishable; and (3) yes, and we use a **realistic (organic)** approach - corporations have an existence independently of their individual members – they are “living” systems and therefore should be subject to criminal law. The first option is easy to understand: just say no. The second option is more interesting. It is indeed true that we are people and Coca Cola (for example) is not, but within Coca Cola there are people, without which the company would not exist, making decisions that eventually result in crime. However, the nominalistic or atomic approach can be problematic because it requires the Public Prosecutor to find individual fault of one person or more within the corporation, for the crime of the enterprise. In big companies, this can be very difficult; not to mention the fact that at

⁴ Until the 90s, this was the answer in almost all legal systems, for all the policy reasons mentioned above.



times, crimes are committed not as a result of a decision but because of the general corporate culture of a company, in which case there is no individual fault and there is no liability under this model. The third option is the realistic or organic approach, largely supported by organization criminologists, consisting in an understanding of a corporation as a living entity in itself because of the sociological argument that an organization is much more than the subtotal of its parts. Indeed, a corporation as a whole can have a corporate culture and environment that allow for crimes to be committed, without the specific fault of an individual only.⁵ (Colvin, 1995).

To gain a better understanding of how the nominalistic and the realistic approach work in practice, here we can have a quick look at some national systems individually. German law follows a nominalistic approach; however, corporate criminal liability is a separate field of law outside criminal law. The relevant provisions can be found in Section 30 *German Administrative Offences Act*. The German solution is an administrative finding of companies via identification doctrine. A Similar approach is taken by the legal systems in England and Wales, see for example the reasoning of the House of Lords in the *Tesco Supermarkets Ltd v. Natrass case* (full reasoning in annex 6). Oppositely to these two national systems, we have the Netherlands, which has a more realistic approach. See, for example the *Slurry decision (Drijfmest arrest)* [2003] landmark decision regarding criminal liability of legal entities. (Roef, 2016)

Despite all the steps ahead, there are still many unanswered questions. What qualifies as an *Actus Reus* of a company? Substantively speaking, what are the crimes that a company can commit and for which it should be held blameworthy? How can we assess the *Mens Rea* of a company, in light of the realistic approach? Can we identify a mental state in a legal fiction (such as an undertaking)? Should there be criminalization of corporate negligence or intention?

⁵ Say, for example, that a journalist notices that in a law firm, female secretaries do not work very long. Than the journalist finds out that female secretaries in that firm are treated as sex objects, subject to sexual intimidation and harassment. Perhaps this journalist can then prove that one specific lawyer in this firm has physically assaulted his female secretary. This can be tackled in two ways: (a) let's prosecute that lawyer as an individual for the crime he committed, but (b) then he journalist finds out that it is the corporate culture that objectifies women, it is how people in that culture have seen women for decades now. The risk with going for the first option is to avoid solving the issue (arrest the one lawyer but the corporate culture will remain) and to misunderstand the nature of the crime completely (the reason for which that one lawyer did it, is because he is enabled and encouraged by his corporation).



These questions need answers, people need to be reassured that they are protected by their state and by the international organization in which their state participates. The Volcano is erupting, to you all the task to contain the damage and find a way to put it asleep.

PAST ACTION OF THE INTERNATIONAL COMMUNITY

Global Compact

Established in 2000 the UN Global Compact is the UN organ which deals with the private sector to incentivize responsible growth and conduct on a global scale. It is the world's largest corporate sustainability group with over 13.000 companies being a part of it. Through this organ projects like the Sustainable Development Goals are implemented to the private sector. The Global Compact works with the following 10 principles.

- **Human Rights: Businesses should;**
 - Principle 1: Support and respect the protection of internationally proclaimed human rights; and
 - Principle 2: Make sure that they are not complicit in human rights abuses.
- **Labour Standards: Businesses should;**
 - Principle 3: the freedom of association and the effective recognition of the right to collective bargaining;
 - Principle 4: the elimination of all forms of forced and compulsory labour;
 - Principle 5: the effective abolition of child labour; and
 - Principle 6: the elimination of discrimination in employment and occupation.
- **Environment: Businesses should;**
 - Principle 7: support a precautionary approach to environmental challenges;
 - Principle 8: undertake initiatives to promote environmental responsibility; and
 - Principle 9: encourage the development and diffusion of environmentally friendly technologies
- **Anti-Corruption: Businesses should;**
 - Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.



“Protect, Respect and Remedy” Framework

As part of the guidelines proposed by UN Special Representative John Ruggie and endorsed by the UN Human Rights Council, the “Protect, Respect and Remedy” Framework (PRR) was the first ever corporate human rights responsibility initiative. This document in its essence divides responsibility between states, companies and the people for the protection of people. States must protect the people, and thus have a social security system. Companies must respect these human rights in their operation. People must be given opportunity to remedy either of these responsibilities by talking to another party.

There were several problems with this initiative however. Firstly, it was not legally binding, using a soft law approach to the problem. Because of this it was often criticized. Ultimately it was built further by an initiative by the delegate of Ecuador to the UNHRC by proposing a working group to create a legally binding solution.

Resolution 26/9

Resolution 26/9 was a huge step forward for this issue since it created a group to discuss the creation of a legally binding agreement mandating human rights be respected by companies. It resulted in the “Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.” This body has since its conception come out with a zero draft of a legal framework. This will be discussed between 15-19 October 2018. We suggest that this document be seriously considered by the committee on whether it is acceptable as a legal mandate.

DANGERS AND CONTROVERSIES

Economic downturn

MNCs can be a large contributor to the national economy of many countries. Governments may see a downturn in revenue because the company is making less profit with renewed labour requirements and environmental protection laws. This will affect developing countries since if not all nations follow the guidelines, companies could move their business to another nation. It will also be of influence in developed nations since the income tax on these companies will decrease. Nations with a high GNI might feel this especially harshly. (The Economist, 2017)



Foreign Direct Investment

With the arrival of MNC's several aspects usually follow. Industrial companies often require a large amount of labour, resulting in a massive employment opportunity for thousand of people around the site of an expansion. These new jobs are usually better paying than average wages. This influx of new salaries and increased purchasing power is often reflected in the development of a country as a whole. Additionally many MNC's make huge investment in infrastructure in the surrounding areas, to ensure that their goods or services can be reached easily and effectively. This has positive upsides for many people, as these MNC's often can do this more efficiently and effectively than their host governments. This increase in infrastructure can also result in a positive improvement in living conditions for local populations. With more easy access to medical facilities, education and neighbouring villages. This can be done concioualy by an MNC as well, often to a large success. Companies who commit to projects like this alongside their business interests should be seen as a model for other companies to follow. (Ruggie,2004)

Companies suing countries

With the increased notion of a company having legal personality, comes its ability to sue nations for changing laws that affect their profit margin. This has become common place in the Asia Pacific region as well as Latin America. Companies can put forward a project to a national government, it is the right of a country to deny these project proposals however in recent years we have been seeing the increased use of investor state dispute settlements (ISDS). These settlements allow a company to sue a country for "recklessly" denying a project. These are usually the result of trade deals between nations that the private sector will fulfil. In the future it is essential for this body to find a solution to these lawsuits, through the use of a fund or legal action, or any other means. (Van Ho, 2017)

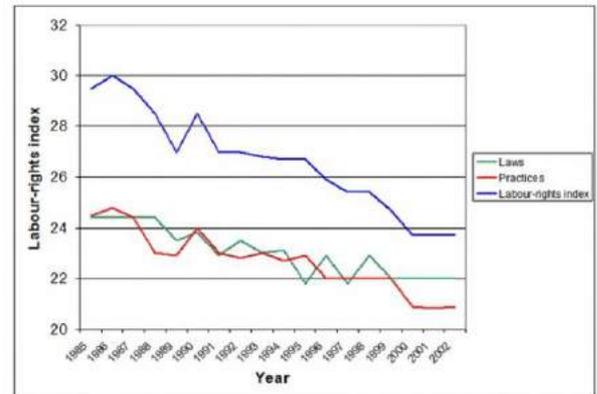
Race to the bottom

Legal systems are currently racing each other in a 'race to the bottom'. The least protection you give to your workers, the more appealing you are for undertakings, the more undertakings that are based in your country, the higher you Gross National Product will be, and the more tax payment you will receive. Making sure that a national legal system is appealing to MNCs is very much impactful and beneficial for a state; however, it is so, only in the short term. What is the 'race to the bottom' and how are workers affected by it?

A race to the bottom is the situation in which companies and countries try to compete with each other by cutting wages and living standards for workers, and the production of goods is moved to the place where the wages are lowest and the workers have the fewest rights.⁶ In a nutshell, It is a race between the legal system, to give less and less protection, so to attract more companies and more cash flow. (Chan, 2006)

Racing to the bottom

Countries skimp enforcement of decent working conditions to get FDI



Globalization sceptics often warn of the pernicious effects on labour standards of international competition for investment. In the race for foreign business, countries cut back on regulation and enforcement of decent working conditions in order to lower labour costs. But are tragedies like the Rana Plaza collapse in Bangladesh in April that freak occurrences, or is the currency volatility a sign of a wider problem of falling labour standards? A recent paper makes for uncomfortable reading on this matter.⁷ The paper looks at data for 135 countries over 18 years. It focuses on measures of labour rights: such as whether workers can bargain collectively, the right to protest and the elimination of all forms of forced labour. The authors conduct a series of regressions and reveal the factors that influence the labour-standards index. And there is evidence of between-country competition. If the labour standards across all other countries decline, those of the excepted country also tend to fall. The regressions also show that membership in the World Trade Organisation, a multilateral institution which aims to promote trade, leads to a lower labour-rights index. (Davies, 2013)

But the race to the bottom operates more subtly than most people suppose. The regressions suggest that while countries do compete with each other by instituting laws that are unfriendly to workers, such competition is not that pronounced. The real problem is that countries compete by enforcing labour laws less vigorously than they might—leading to increases in violations of

⁶ The Financial Times definition of ‘Race to the Bottom’.

⁷ Davies, R. B., & Vadlamannati, K. C. (2013). 'A race to the bottom in labour standards? An empirical investigation'. *Journal of Development Economics* (103) 1-14.



labour rights prescribed in local laws. Competition between countries to attract investment is less in rules than in their practical application.⁸

Avoiding tariffs and quotas

MNCs have a very good reason to become ‘Multinational’: if there is import duty, a firm will produce its selling product inside the foreign market in order to avoid import duty. It is known to us that tariffs protect the firms engaged in production in the foreign market, irrespective of the fact that the firm is a foreign one or indigenous one. MNCs tend to avoid import and export tariffs and/or measures having equivalent, by moving their production strategically. This becomes very problematic for a few reasons. Firstly, workers receive less protection as the countries that offer cheaper labour and low taxation, by default normally have a weaker social security system. Secondly, the governments established the import taxes and expect these to be paid, but with the moving around of production, unexpected holes in national budgets are created. Thirdly, the differentiation between where a company has its headquarters legally registered and where it has production factories becomes problematic because the legal registration of companies (without which they do not exist in the eyes of the law) is national (each state has its own register except for regional alliances like the EU); therefore, if a company is not recognized in a state in which it conducts production, it does not exist in the eyes of that national law and is therefore not prosecutable for any breach. Fourthly, due to the fact that there is no globally recognized registrar of companies, the moving around of production complicates the process of recognition and prosecution. States like to prosecute tax evasion and allow tax avoidance, at the cost of having a bankrupt country. (Bradsher, 2018)

Growth of MNCs

Sometimes it is said that multinationals may make the foreign exchange market volatile. A firm may avoid sanctions simply by operating through overseas subsidiaries. For this, multinational corporations present a potential for conflict between national governments and positional for conflict even arises within international or multinational trade unions. (Pantzalis, 2001)

It may also be stated that multinationals can use monopoly power against the increase in prices for their products. The data collected and presented by the MNCs are accepted by the

⁸ Find more information @ <https://www.economist.com/free-exchange/2013/11/27/racing-to-the-bottom> and <https://www.economist.com/free-exchange/2013/11/27/racing-to-the-bottom>



government as they have extensive operations. The collected data may or may not be correct but there is no way to control or punish the culprits. (Fin24, 2016)

Another significant problem of MNCs is that it tends to concentrate and specialise their good as well as “bad” activities within areas which means Research and Development work within the home country. Hence, highly trained technical school graduates would prefer locally owned and organised firms who think their employment and promotion opportunities diminished in their own country. (Farrell, 20014)

Outside of regional alliances such as the EU, there is little regulation on Competition laws. This is a problem when MNCs become too large. Competition is needed to ensure quality and freedom within the market. Or is it just another western capitalistic valued imposed on the rest of the world? (Singh, 2002)

BLOCKS/COUNTRIES

China

The government of the People’s Republic of China has grown very fast in the last few decades, producing vast numbers of goods through its manufacturing industry. These industries are naturally quite resource heavy. Over the past 15 years the Chinese government has begun opening its market to many developing nations, most notably African nations. Chinese companies, often partially owned by the Chinese government, have begun to expand to these economies looking for many materials, most notably precious metals for electronics production. Cobalt mines have sprung up in countries like Zambia and the conditions of the work there are very much below regulations. On top of this when the mines are dry they are left to contaminate the groundwater due to the lack of proper clean up. Could this perhaps be the reason for which the Chinese government has been a pioneer against progress on these matters?

ASEAN

The countries of ASEAN, most notably Indonesia, Malaysia and Thailand have all been struck by the same industry, palm oil. For thousands of miles palm oil is the only crop growing in these countries. The product is used in toothpaste, foodstuffs, shampoos, plastics and many other industries. However, the business practices of the industry are appalling in regard to social, economic and environmental consequences. Any effort that is made to make policy



changes has also been met with ISDS lawsuits, so much so that a regional body has been established to discuss how these lawsuits can be better avoided.

Latin American States

As mentioned before the search for a legally binding solution to the abuse of the loopholes of the legal systems by the MNCs, was led by the delegate of Ecuador, supported by an unanimity of the states from Latin America. This should be kept in mind when debating this issue. While these countries do get a lot of foreign direct investment, it has not stopped them from looking out for their own people first.

USA

The United States has been a large opposing force to any kind of legally binding treaty and has said that it will not sign it if there are too many concessions for free business. The US has many firms abroad and wants to ensure those profits remain high, so they can collect higher tax revenue. While the USA does not have any kind of veto power in the ECOSOC committee a vote of little confidence will greatly impact the practicality of any proposed solutions.

EU

While the EU often votes with the USA on this matter the last 10 years have changed this mindset. Due to more lawsuits from companies to Eastern European nations, the EU sees a danger of losing money to companies that are too powerful and can demand money from them. Since then, more EU regulations on labour and environmental conditions have been applied. These laws could be seen as potential inspiration for legislation this body make.

CONCLUSION

Researchers have concluded that, at least theoretically, the Less Economically Developed Countries (LEDCs) need to develop more indigenous industries that are capable of competing on a global scale, in a market full of MNCs. Only by restoring a good level of free competition in the market, will we equalize the opportunities and minimize the exploitation of people and resources by the MNCs. Less developed countries should focus internally and improve basic areas, so as to better compete against mega organizations and prevent them from dominating the market. Should the More Economically Developed Countries help the LEDCs doing so? Multinational Companies are a reality and they are here to stay for the foreseeable future. It is



time for countries which have been exploited to start making changes and amend their ways for the better and the sooner the better.

If MNCs live by one rule, however, it's that there's always another place to go where profits are higher, oversight friendlier, and opportunities more plentiful. This belief has helped nimble, mobile, and smart corporations outgrow their original masters, including the world's reigning superpowers.

Some thoughts on "Multinational Corporations in Developing Countries", by four different random people, different background, different nationality, different age, different level of education. Just four average world citizens. Arguably, the time has come to listen to the voice of the unheard, to listen to the people that will actually be affected by our decisions, the people for whom we preach to be working for. The reliability and impact of a statement is often established by the name of the person who gave it, for once, let the content of a statement speak to us, despite of how important, powerful or well-known its author is.

"Nice try but no matter what happens, the side debating the negatives of MNCs in LDCs will always win..."

"The government says that capitalism is better than a communist policy, but when I get close to a MNC, I hide my kids and hide my wives, because I know that the slavery will begin"

"Without multinationals, think about all of the people who would be unemployed and starving. Sure, some multinationals don't pay enough VAT, but being a little hungry is better than starving to death."

"For sure multinationals will transfer skills, but that does not even compare to the level of physical and emotional exploitation that we suffer"

This topic is for sure uncomfortable to speak of, given the relevance of the interests at stake, how tight the hands of government are all the emotions and lives lost involved. The ball is steaming and flaming and it's now in your hands. Be sure not to catch on fire.



GUIDING QUESTIONS

Below you can find a set of questions. These should serve as a guideline for the debate, so to keep it on track. Please bear in mind that it is not necessary for all these questions to find an answer in the resolution. However, for the sake of completeness, please do make sure that the main topics here presented are covered. During your preparation for the conference, you can use these as a starting point for your personal research. Note that the questions are in no particular order.

1. What kind of national protection laws should countries pass to protect themselves from exploitation?
2. Should national laws come above international laws in regard to unlawful conduct?
3. What should a legal framework for holding companies accountable include?
4. What should change about the Zero Draft by the working group?
5. How do we classify companies in the eyes of the law?
6. How does this body protect governments from ISDS lawsuits? Is it necessary to set up a set of laws as regards to State Liability?
7. Should the states be responsible for damages created by MNCs if the national legal system does not provide for company's liability? Should the state bear the damages and pecuniary compensation?
8. How do we incentivize companies to adhere to national law?
9. Given the Cross-border character of most of the white collar crimes (environmental/social and tax evasion disasters), should we create an international company registration system, so for the legal personality of an enterprise not to be limited to a state only (or to all the states in which it is registered), but have an international legal personality and therefore be internationally accountable for all the damages caused everywhere?
10. Should there be an international code for the corporate criminal liability? If so, what enforcement measures would your country recommend? Would your government stretch the discussion to the institution of 'Blue Helmets' but for the protection of citizens against corporate crimes?
11. Do the citizens of your country see the advantageous impact of MNCs? Matters such as increased investments, Technological transfers, transfer of skills, increased tax revenue, the reduced gap between capital and labour, the encouraged competition and the



improved balance of payment - are these important to your government? Do these ought to be protected at the cost of a Race to the Bottom?

12. Or do your citizens value more the civic protection and therefore fear the negative effects of the MNCs on your nation? Negative effects such as the idea of colonialism, the unmatched influence, the technological fraud, the little to no accountability, the undermining of social and economic rights, the weakened competition, the human rights abuses and the disastrous environmental impacts.
13. What is more important to your country? Which pole of the spectrum does your country lean more towards? Is your focus to make sure that your legal system remains appealing to MNCs, or is it to ensure a strong and protective legal system? And why so?
14. How many MNCs are established in your national register? How much tax revenue do they bring to the state? In return, have MNCs caused any damage in your country (violation of labour safety, environmental disaster, tax evasion etc.)?
15. What does the public opinion and press think of the impact of MNCs in your state?

POSITION PAPERS

Position Papers will have to be sent to ecosoc@sgmun.org by midnight (24:00) of the 8th of November 2018.

SUGGESTED READINGS

Additionally to this study guide, the chairing body would advise you to read over this literature. It will not only grant you a better understanding of the topics discussed, it will also serve for you as a basis to good critical and creative thinking of solutions. We also encourage you to go through the list of references and read the original sources.

Zero Draft by the Open Working Group:

<https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf>

“Protect Respect and Remedy” Framework

https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Rana Plaza Collapse Documentary



<https://www.youtube.com/watch?v=9Fkhzdc4ybw>

Follow up Policy Strategy by John Ruggie

https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/RPP_2015_04_Ruggie.pdf

Six Talent Dilemmas Facing Multinational Companies in China

<http://www.russellreynolds.com/insights/thought-leadership/six-talent-dilemmas-facing-multinational-companies-in-china>

Roef D., ‘Corporate Criminal Liability’, in J. Keiler and D. Roef (Eds.), *Comparative Concepts of Criminal Law*, Intersentia, 2016, Chapter X, p. 281-304.

Colvin E., ‘Corporate Personality and Criminal Liability’, *Criminal Law Forum*, 1995, p. 1-44. (not in the reader, please consult e-journals)

Annexes:

4. ECJ, Case 14/83 *Sabine Von Colson and Elisabeth Kamann v. Land Nordrhein-Westfalen* (North-Rhine Westphalia) [1984].

5. ECJ, Case C-106/89, *Marleasing SA v. La Comercial Internacional de Alimentación SA* [1990]

6. House of Lords UKHL 1, *Tesco Supermarkets Limited v. Natrass* [HL/PO/JU/4/3/1215] (1971)

REFERENCES

Bradsher, K (2018). *Tariff Dodgers Stand to Profit Off U.S.-China Trade Dispute*. Retrieved from: <https://www.nytimes.com/2018/04/22/business/china-trade-tariffs-transshipment.html>

Chan, A (2006). *A “Race to the Bottom”*. Retrieved from: <https://journals.openedition.org/chinaperspectives/259>

Choy, T. (2018). *MNCs in South East Asia* [Ebook]. Retrieved from <http://www.aseanconnections.com/pdf/ASEAN-MNCs-in-Southeast-Asia.pdf>



- Clifford Change (2016) Corporate Criminal Liability. Retrieved from:
https://www.cliffordchance.com/briefings/2016/04/corporate_criminalliability.html
- Davies, R. B., & Vadlamannati, K. C. (2013). 'A race to the bottom in labour standards? An empirical investigation'. *Journal of Development Economics* (103) 1-14.
- Dörrenbächer, C., & Wortmann, M. (1994). Multinational companies in the EU and European Works Councils. *Intereconomics*, 29(4), 199-206. doi: 10.1007/bf02926439
- D. Roef, 'Corporate Criminal Liability', in J. Keiler and D. Roef (Eds.), *Comparative Concepts of Criminal Law*, Intersentia, 2016.
- E. Colvin, 'Corporate Personality and Criminal Liability', *Criminal Law Forum*, 1995.
- Farrell, D (2014). Beyond Cheap Labor: Lessons for Developing Economies. Retrieved from:
<https://yaleglobal.yale.edu/content/beyond-cheap-labor-lessons-developing-economies>
- Fin24 (2016). MNCs up against aggressive local competition - report. Retrieved from:
<https://www.fin24.com/Economy/mncs-up-against-aggressive-local-competition-report-20160215>
- Homepage UN Global Compact. (2018). Retrieved from <https://www.unglobalcompact.org/>
- Hönke, J., & Thauer, C. (2014). Multinational Corporations and Service Provision in Sub-Saharan Africa: Legitimacy and Institutionalization Matter. *Governance*, 27(4), 697-716. doi: 10.1111/gove.12072
- Iqbal, B., Rahman, M., & Hassan, M. (2016). MNCs and their role and contribution in Latin American countries. *Transnational Corporations Review*, 8(2), 151-164. doi: 10.1080/19186444.2016.1197476
- KPMG (2015) MNCs in Southeast Asia – The view of multinationals in ASEAN. Retrieved from: <http://www.aseanconnections.com/pdf/ASEAN-MNCs-in-Southeast-Asia.pdf>
- Nittle, N (2018), What the Rana Plaza Disaster Changed About Worker Safety. Retrieved from: <https://www.racked.com/2018/4/13/17230770/rana-plaza-collapse-anniversary-garment-workers-safety>
- OHCHR | WGTransCorp IGWG on TNCs and Human Rights. (2018). Retrieved from <https://www.ohchr.org/en/hrbodies/hrc/wgtranscorp/pages/igwgontnc.aspx>



Pantizalis, C (2001). Does Location Matter? An Empirical Analysis of Geographic Scope and MNC Market Valuation. Retrieved from:

<https://link.springer.com/article/10.1057/palgrave.jibs.8490942>

Ruggie, J. (2004). Guiding Principles on Business and Human Rights [Ebook]. New York City. Retrieved from

https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Schneidman, WW (2007), 'Multinational Corporations and Economic Development in Africa'. Retrieved from: <https://www.csis.org/analysis/multinational-corporations-and-economic-development-africa>

Singh, A (2002). Competition and Competition Policy in Emerging Markets: International and Developmental Dimensions. Retrieved from:

https://unctad.org/en/docs/gdsmdpbg2418_en.pdf

The Economist (2017). The Retreat of the Global Company. Retrieved from:

<https://www.economist.com/briefing/2017/01/28/the-retreat-of-the-global-company>

Van Ho, T (2017). International Legal Personality of Corporations: How Investment Law Answers the Supreme Court Question in Jenner. Retrieved from:

<https://www.justsecurity.org/45543/international-legal-personality-corporations-investment-law-answers-supreme-court-question-jesner/>

Annexes