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Secretariat
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Kingdom of Cambodia
Telephone: (+855) 99 345 567
Email: smonileak.lance@puc.edu.kh
Website: http://www.puc.edu.kh/index.php/institutes-centers/pannasastra-institute-of-academic-research-and-development

Cover designed by Monileak Sokunthika

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EDITOR'S NOTE

It is with great delight that I present this volume of the *Law Monograph*, a compilation of timely and thought-provoking legal scholarship by Cambodian academics and practitioners. This issue brings together a rich diversity of legal inquiry, ranging from constitutional reform and cross-border justice to comparative regulatory frameworks and labor rights.

This volume of the *Law Monograph* brings together a set of focused legal studies that engage with emerging and unresolved questions within Cambodia's domestic legal order and its regional context. The articles reflect both the complexity and the dynamism of legal reform, jurisprudence, and policy development in Southeast Asia.

The monograph begins with a critical reflection on the future of Cambodia's constitutional monarchy and its role in ensuring long-term political stability. It then explores constitutional limits on extradition in transnational criminal cases—an increasingly relevant issue in today's globalized legal order. The discussion moves across borders with a comparative study of legal structures governing Special Economic Zones in Cambodia and its neighbors, and a proposal for a new ASEAN maritime tribunal to address regional disputes in the post-UNCLOS era.

Migration and labor also take center stage. One article examines the recognition of foreign qualifications through a comparative lens, while others trace the development of the right to strike and the evolution of occupational safety standards under international norms.

Each contribution not only reflects a deep engagement with Cambodian legal realities but also situates them within broader regional and global contexts. Together, they offer insights that are both analytical and forward-looking—valuable to scholars,

policy-makers, and legal professionals alike. Collectively, these contributors provide a textured view of legal developments that are national in scope yet regionally and globally informed. It is hoped that this volume will stimulate further scholarly inquiry and policy dialogue at a time when legal institutions in Cambodia and beyond are facing pressing demands for adaptability and reform.

I extend my gratitude to the present volume guest editor for his generous time, the authors for their contributions, and to our readers for their continued support of critical legal scholarship in Cambodia.

July 8, 2025
Sam-Ang Sam, Ph.D.
Editor-in-Chief

Cambodia's Constitutional Monarchy: Reforming the Cambodian Monarchy for Constitutional Stability

Pheng Heng

Abstract

Cambodia's constitutional monarchy, reestablished under the 1993 Cambodian constitution, is widely respected as a symbol of national unity and historical continuity. However, the Constitution's strict limitations, especially Article 7, which mandates that "The King shall reign but shall not govern,"[1] have rendered the monarchy largely passive in moments of political crisis. This structural passivity has exposed deadlocks in nearly every general election since 1998, especially the 2013 general election, when public expectation for royal arbitration met constitutional silence. Unlike other constitutional monarchies such as Thailand and the United Kingdom, where monarchs retain symbolic function in moments of uncertainty, Cambodia provides no legal mechanism for the King to encourage dialogue or serve as a unifying force during political deadlocks.

This article argues that Cambodia's democratic stability would be strengthened, not weakened, by the creation of judicially supervised ceremonial functions for the monarch. It proposes two constitutional innovations: a "Crisis Clause," which would allow the King, with Constitutional Council approval, to issue a Royal Call for Dialogue in times of institutional inaction; and an "Advisory Prerogative," which would permit confidential, non-binding consultation between the King and the Prime Minister on matters of national unity. Both reforms respect the non-governing role of the monarch while equipping the institution with tools to fulfill the constitutional mandate as a guarantor of unity and protector of the state.

Taking on comparative constitutional practices from Thailand and the United Kingdom and incorporating legal mechanisms to ensure neutrality and oversight, these reforms offer a pathway toward reconciling Cambodia's ceremonial monarchy with the

[1] *Constitution of the Kingdom of Cambodia* art. 7 (1993).

functional demand of a modern constitution. Cambodia should establish a crisis mechanism to provide peaceful solutions when the nation needs unity within the framework of democratic legality.

Keywords: Cambodia’s constitutional monarchy, ceremonial authority, constitutional stability, national unity, democratic stability.

Cambodia's Constitutional Monarchy: Reforming the Cambodian Monarchy for Constitutional Stability

Introduction

Cambodia's transition to constitutional monarchy was marked by its re-establishment in 1993 after more than two decades of war, authoritarian rule, and foreign occupation. With the adoption of the Constitution of Cambodia, the monarchy was reborn not as a political authority but as a ceremonial institution, intended to represent the unity, continuity, and historical identity of the Cambodian state. Article 7 of the Constitution defines the role of the King: "The King shall reign but shall not govern."[2] This clause is unclear; it indicates the legal essence of the modern Cambodian monarchy, a symbol of sovereignty and permanence but removed from political power.

While the King's role is clearly limited by law, the expectations of the people and the pressures of political crises have, at times, pushed the boundaries of that definition. The King is described in Article 8 of the Constitution as "the symbol of unity and continuity of the nation" and as "the guarantor of national independence, sovereignty, and territorial integrity, and the protector of the rights and freedoms of all citizens."[3] These phrases, though primarily symbolic, suggest that the monarch holds more than symbolic value; they imply a moral and institutional responsibility to ensure the proper functioning of the state and its democratic system. However, Cambodia's constitutional and legal framework does not provide the King with any meaningful instruments to fulfill these functions in practice.

[2] *Id*. art. 7.
[3] *Id*. art. 8.

Unlike constitutional monarchies in countries such as the United Kingdom or Thailand, where the sovereign retains a limited and symbolic role in advising, encouraging, or warning elected leaders during political uncertainty, Cambodia's monarch is prohibited from even ceremonial intervention without prior governmental approval. Articles 21, 27, and 28 of the Constitution require that all royal acts be executed with the proposal or countersignature of the Prime Minister or relevant ministers.[4] These constraints ensure the monarchy's political neutrality but also paralyze the institution in moments when symbolic leadership is most needed, such as when democratic processes are disrupted or when the legitimacy of state institutions is questioned.

This disconnect between the people's perception of the monarchy as a source of unity and the legal system's prohibition against even symbolic action during crises was clearly evident during the 2013-2014 post-election standoff. When opposition lawmakers boycotted the National Assembly and nationwide protests engulfed Phnom Penh, many citizens and civil society actors appealed to the King to intervene, to delay the parliamentary swearing-in, to mediate between parties, or to issue a national appeal for dialogue. The King, constrained by constitutional terms and political precedent, remained silent and ceremonially neutral.

The question this article seeks to address is whether Cambodia's constitutional framework can evolve to allow the monarchy to exercise a modest, judicially supervised symbolic role during political crises, one that strengthens, rather than undermines, the monarchy's neutrality and the country's democratic institutions.

To explore this question, the article proceeds in five parts. Part II examines the legal architecture of the Cambodian monarchy and compares it with the roles of

[4] *Id*. arts. 21, 27-28.

constitutional monarchs in Thailand and the United Kingdom. It demonstrates how Cambodia's strict legal formalism, coupled with the absence of supporting conventions or jurisprudence, has effectively immobilized the monarchy during political crises. Part III presents a case study of the 2013 general electoral crisis to highlight the consequences of the monarchy's constitutional passivity and the missed opportunities for symbolic intervention. In contrast, it also examines Thailand's use of the monarchy as a unifying force during similar crises and draws lessons from its institutional safeguards and cultural norms. Part IV proposes two constitutional reforms: a Crisis Clause, which would allow the King to issue a Royal Call for Dialogue in times of institutional need with approval from the Constitutional Council, and an Advisory Prerogative, which would formalize confidential, non-binding consultations between the King and the Prime Minister on matters of national unity. Part V outlines an implementation strategy for these reforms, including legal drafting, civic education, institutional engagement, and judicial oversight. Part VI concludes by arguing that these reforms offer a path toward a more sustainable constitutional monarchy, one that honors Cambodia's legal commitments while providing the nation with a symbolic source of coherence and continuity during periods of political turmoil.

Finally, this article asserts that "judicially supervised symbolism" is not a contradiction but a constitutional innovation. It allows the Cambodian King to fulfill his symbolic mandate when the nation most needs unity, without transgressing the boundaries of democratic governance or the principle that the King shall not rule.

Legal Background and Institutional Challenges

Cambodia's constitutional framework grants the monarchy a respected but narrowly defined ceremonial role. The Cambodian Constitution was promulgated in 1993 and was heavily influenced by liberal constitutional models and the historical crisis of absolute rule. As a result, the drafters imposed significant legal constraints to

ensure that the re-established monarchy would not interfere with democratic governance. While the King remains the symbol of national unity, the legal structure—defined by strict textualism, rigid formalism, and a lack of constitutional conventions—has rendered the monarchy institutionally silent during critical political impasses.

Legal Constraints on the Cambodian Monarchy

The central legal provision governing the monarchy is Article 7, stated unambiguously: "The King of Cambodia shall reign but shall not govern."[5] This clause is not merely symbolic; it is part of the Constitution's "untouchable" core and is protected by Article 17, which prohibits amendment that would change the system of liberal democracy or the monarchy's non-governing status.[6]

To operationalize Article 7, the Constitution limits the King's activities through a series of articles that condition nearly all royal functions on prior governmental proposal or countersignature.

Specifically:

- Article 21 requires the King to act "upon the proposal by the Council of Ministers" in appointing, transferring, or ending the functions of high-ranking officials.[7]
- Article 27 entrusts the King with the right to grant amnesties[8], but in practice this power is exercised upon government request, as the prison law states in article 75 and article 77 on the pardon of the convicted prisoners, particularly the Prime Minister's, as part of political negotiations or agreements.[9]

[5] *Id*. art. 7.
[6] *Id*. art. 17.
[7] *Id*. art. 21.
[8] *Id*. art. 27.
[9] *Royal Kram No. NS/RKM/1211/021, Law on Prisons* arts. 75, 77 (Dec. 17, 2011) (Cambodia).

- Article 28 provides that all royal orders, including decrees and proclamations, must be issued only upon request and with the countersignature of the responsible minister.[10]
- Article 26 limits the King's treaty-making powers to the formal act of signing and ratifying agreements after legislative approval, with no independent discretion to negotiate or reject international obligations.[11]
- Article 22 allows the King to declare a state of emergency only after consulting and obtaining the agreement of the Prime Minister, the President of the National Assembly, and the President of the Senate.[12]

Collectively, these provisions reduce the King's role to a formal endorser of government decisions. The King performs a wide range of ceremonial duties—presiding over the opening of the National Assembly, appointing officials, receiving diplomatic credentials, and attending religious and cultural events—but he possesses no constitutional power to act independently, even in situations that test the viability of democratic governance.

This limitation stands in contrast to other constitutional monarchies that, while similarly limiting their sovereigns' political power, allow them symbolic, moral, or procedural roles in moments of constitutional uncertainty.

Absence of Interpretive Jurisprudence and Constitutional Conventions

In mature constitutional systems, gaps between legal text and political necessity are often bridged by constitutional conventions or judicial interpretation. These

[10] *Constitution of the Kingdom of Cambodia*, *supra* note 1, art. 28.
[11] *Id*. art. 26.
[12] *Id*. art. 22.

unwritten norms enable institutions to act prudently in exceptional situations without violating the law's spirit.

In the United Kingdom, for example, while the monarch reigns but does not govern, constitutional conventions allow the sovereign to play an indirect role in safeguarding the political system. Through weekly audiences with the Prime Minister, the monarch retains the right to be consulted, to encourage, and to warn, as famously stated by Walter Bagehot.[13] These conventions are not codified but are honored as vital components of the unwritten British constitution.

In Thailand, where the monarchy is likewise bound by a constitutional text, the sovereign has often assumed a more visible symbolic role in crisis periods. During the 1992 "Black May" crisis, for instance, the King summoned both the Prime Minister and opposition leaders to a televised audience,[14] urging reconciliation and effectively defusing a dangerous political standoff. Although this intervention lacked formal constitutional backing, it was accepted because of the monarch's moral authority and longstanding traditional role. In Thailand's 2014 political deadlock, the King's silent assent to a military-led transition, while controversial, was considered a symbolic stabilizer.

Cambodia, however, lacks both traditions and judicial interpretation to support any such informal expansion of royal functions. The Constitutional Council, established under Article 136 to serve as the ultimate interpreter of constitutional provisions, has never issued a ruling on the permissible scope of the King's symbolic functions, nor has it clarified the balance between Articles 7 (non-governing) and 9 (arbitrator role). Consequently, the absence of constitutional jurisprudence leaves the interpretation of

[13] *Walter Bagehot, The English Constitution* 103 (2d ed. 1873).
[14] *Guardian of the Nation*, *Bangkok Post*, https://www.bangkokpost.com/nation-in-mourning/guardian-of-the-nation.php (last visited May 11, 2025).

the monarchy's role to political custom, which is dominated by executive control and caution.

Moreover, Cambodia has not developed constitutional conventions similar to those in Westminster systems. There is no tradition of the King exercising authority in appointing governments, dissolving parliament, or advising leaders informally. Nor is there a consistent practice of the King serving as a ceremonial mediator during periods of tension.

Political Culture and the Monarchy's Vulnerability

The limitations of the monarchy's role are not only legal, but they are also shaped by the realities of Cambodia's political power structure. Since the early 2000s, the Cambodian People's Party (CPP) has consolidated effective control over all branches of government. In this context, the monarchy has become increasingly risk-averse.

The reigning monarch, the King, has adopted a consistently apolitical and discreet style, focused on cultural, religious, and humanitarian activities. While this posture has preserved the monarchy's formal neutrality, it has also limited its public relevance during national crises. The King's commitment to non-involvement has, in practice, become a form of institutional silence, even when his subjects or civil society groups appeal for symbolic unity.

The Constitutional Void During Political Deadlocks

The result of this legal and political configuration is a vacuum of authority during moments of political deadlock. When parliamentary boycotts, contested elections, or institutional paralysis occur, there is no constitutional actor empowered to symbolically

call for national dialogue, urge restraint, or facilitate compromise. The King, despite being the "symbol of unity," is unable to act without government instruction. The courts, often considered political tendencies, lack legitimacy to mediate disputes. And the legislature cannot function when its members refuse to meet or recognize each other's authority.

This void is not just theoretical—it has material consequences for democratic stability. The longer a crisis remains unresolved, the more likely it is that non-constitutional actors will attempt to fill the vacuum.

This article contends that Cambodia's Constitution can be amended to provide such a symbolic role for the King in a way that is both judicially supervised and constitutionally constrained. Doing so would not politicize the monarchy but would empower it to fulfill its constitutional mandate as an institution of national continuity.

The Monarchy's Role in the 2013-2014 Cambodia Crisis

Timeline of Key Events (July 2013-July 2014)

- July 28, 2013 National General Elections: Cambodia held the election, and the ruling party (CPP) was formally declared the winner with 68 seats vs. 55 for the Cambodia National Rescue Party (CNRP). The CNRP rejected the results and alleged that it was a widespread fraud, claiming it won. And then the CNRP filed complaints against election results, demanding an independent probe into irregularities.[15]

[15] *Cambodia Opposition Disputes Election Results*, *Global Times*, https://www.globaltimes.cn/content/803906.shtml (last visited May 12, 2025).

- August 2013, Royal Appeal for Restraint: As tensions rose, the King broke from his customary reserve with a rare public statement. On August 7, 2013, the King called on political parties to resolve disputed polls peacefully[16] and to continue to find the remaining issues for the sake of national "peace and stability, while urging the public to remain calm and "maintain national dignity. Following the King's appeal, the CPP and the CNRP agreed to preliminary talks on a joint committee to investigate election irregularities.

- September 2013—Lock and Assembly Boycott: After the NEC and the Constitutional Council upheld the CPP's victory, the first session of the new National Assembly was convened by the King on September 23, 2013. The National Assembly must open the session presided over by the King by the constitutional deadline of 60 days after the declaration of the election result. But the CNRP's 55 elected members boycotted the Assembly. The King presided over the swearing-in of the CPP legislators. The opposition condemned this one-party parliamentary session as "a violation of the constitution," arguing that a quorum of 123 MPs was required for such proceedings. The ruling party, however, asserted that under Article 76 of the Constitution, a simple majority, 63 seats out of 123 seats in total, sufficed to form a government. Notably, on September 14, 2013, Cambodia's King personally invited Hun Sen and Sam Rainsy to a short face-to-face meeting at the Royal Palace, a 20-minute discussion. This meeting, the first in years, ended with "no agreement.[17]

The monarchy, by design of the 1993 Constitution, "shall reign, but not govern" and serves as a symbol of unity rather than an active political arbiter. While Article 9

[16] *Cambodian King Called on Political Parties to Resolve Disputed Poll Peacefully*, *Global Times*, https://www.globaltimes.cn/content/802334.shtml (last visited May 11, 2025).
[17] *King Meets Hun Sen and Sam Rainsy*, *Radio Free Asia*, https://www.rfa.org/english/news/cambodia/cambodia-09122013180350.html (last visited May 11, 2025).

designates the King as "supreme arbiter to ensure the regular execution of public powers," in practice this provision has no implementing mechanisms and did not compel the King to mediate beyond moral appeals.

Negotiations and the July 22, 2014 Political Agreement: In the first half of 2014, irregular back-channel negotiations continued without a breakthrough, while the CNRP maintained its parliamentary boycott. Tensions flared again in July 2014 when minor clashes occurred as opposition activists attempted to reopen Freedom Park; this incident led to the arrest of eight CNRP politicians. Finally, on July 22, 2014, at a five-hour meeting at the Senate in Phnom Penh, the ruling party and opposition party agreed to end the year-long deadlock.[18]

The Constitutional Monarchy's Legal Silence in Cambodia

Through the 2013-2014 turmoil, the King's role was characterized by cautious neutrality and strict adherence to his constitutional boundaries, a stance that can be described as "legal silence." Unlike an absolutist or politically interventionist monarch. This restrained posture is rooted in Cambodia's constitutional framework. The 1993 Constitution carefully limits the King's powers: Article 7 provides that the King "shall reign, but not govern; Article 8 is the King as the "symbol of national unity and continuity" and guarantor of sovereignty and rights; and Article 9 assigns the King the role of "supreme arbiter to ensure the regular execution of public powers." In theory, this latter clause suggests a duty to facilitate resolution if state institutions reach an impasse or lock.

[18] *Cambodia Ends Political Standoff*, *Radio Free Asia* (July 22, 2014), https://www.rfa.org/english/news/cambodia/agreement-07222014154033.html (last visited May 11, 2025).

Since the 1990s, Cambodian monarchs have been expected to act on the advice of the prime minister and Council of Ministers in virtually all state affairs. Moreover, the King's inviolability under Article 7 means he is extremely hesitant to engage in political affairs that could damage the monarchy's apolitical image. The result in 2013-2014 was that the King remained legally silent on the core question of electoral justice; he neither endorsed the CNRP's demand for an independent inquiry nor second-guessed the CPP's insistence on moving forward. Instead, he toed a neutral line, encouraging "national unity" in abstract but never asserting his views on the disputed election. Even when violence broke out in January 2014, the King refrained from any direct public comment.

It is crucial to emphasize that the King's silence was lawful, as it aligned with the provisions of Cambodia's constitutional monarchy, which does not explicitly grant the King the authority to settle political disputes without a government request. Some analysts at the time argued that this was the appropriate course: an October 2013 commentary in the East Asia Forum even stated that "the Cambodian monarchy must step back from politics" to preserve stability. The legal silence of the Cambodian monarchy thus reflected both constitutional constraints and the King's personal preference to avoid politics, leaving the burden of conflict resolution on partisan institutions.

Comparative Perspective: The Thai Monarchy in the 2013-2014 Unrest

A useful comparison can be drawn with neighboring Thailand, which experienced a parallel political crisis in 2013-2014. Thailand's situation likewise featured a bitter standoff between a long-ruling government and a mass protest movement in a constitutional monarchy setting. However, the Thai monarchy's role in that period differed in important respects from Cambodia's, owing to historical and constitutional differences. Thailand's King was revered by much of the populace as a semi-divine figure and had occasionally intervened at critical moments in the past. Formally, the Thai King,

like the Cambodian King too, is a constitutional monarch with no governing authority; the Thai constitution states that the King "shall be enthroned in a position of revered worship"[19] and not be violated, and that he exercises his powers only through the National Assembly, Council of Ministers, and courts by constitution. There is no Thai equivalent of Cambodia's Article 9 "supreme arbiter" clause; rather, the Thai monarch's influence has derived from customary moral authority and behind-the-scenes networks.

King Bhumibol maintained a public detachment similar to that of King Sihamoni during the anti-government protests against the Prime Minister from November 2013 into May 2014. As demonstrations rocked Bangkok with protesters, the People's Democratic Reform Committee (PDRC) demanded that Yingluck's elected government be replaced by an appointed "People's Council," and the King made no direct interventions in the political negotiations. The crisis, in late 2013, escalated into deadly clashes; at least five people were killed and more than 270 injured.[20] While King Bhumibol's rare public comments were restrained, they did not address the ongoing political crisis. On December 5, 2013, in his annual birthday address to the nation, the ailing King avoided explicit mention of the protests but urged his politically divided citizens to stand united for the stability and security of the country.[21]

Behind the scenes, many in Thailand looked to King Bhumibol and the palace to resolve the impasse, but he avoided direct involvement in mediation. Unlike Cambodia's opposition, which petitioned the King for an investigation, the Thai anti-

[19] *Constitution of the Kingdom of Thailand B.E. 2560 (2017)*, *Gov't Gazette*, vol. 134, pt. 40A, Apr. 6, 2017 (Thai.).
[20] *Thailand: King Urges Unity in Birthday Address*, *The Guardian*, https://www.theguardian.com/world/2013/dec/05/thailand-king-bhumibol-appeal-people (last visited May 11, 2025).
[21] *Id*.

government movement did not formally ask the King to arbitrate; doing so directly would violate Thai norms that keep the monarch seemingly above politics. Instead, the PDRC appealed to unclear constitutional concepts, at one point suggesting that the Senate or judiciary might install an interim premier under the "extra-constitutional" reserve power, the so-called "Section 7" solution, which, in effect, would have needed royal blessing. But King Bhumibol gave no sign of approving such measures. He remained in the background as the crisis deepened. In contrast to Cambodia, where a negotiated settlement eventually involved the King's ceremonial endorsement, Thailand's deadlock ended through military intervention. Indeed, in Thailand, the monarch's approval is considered crucial to the success and legality of any coup. In this way, King Bhumibol indirectly resolved the 2013-2014 crisis by validating the military's takeover—in stark contrast to the Cambodian King's role, where the resolution came via a peaceful political compromise and the King pointedly did not step outside constitutional bounds.

Finally, the endgames underscore a fundamental difference: The Cambodian monarchy lent itself to legitimizing an internal political pact. Once the parties struck a deal, the King's role was to bless it and bring the opposition into the constitutional fold.[22] The Thai monarchy, by contrast, lent itself to legitimizing an extra-constitutional reset—the coup. In neither case did the King initiate or dictate the solution, but the Thai King's swift formal acceptance of the military takeover in the May 2014 coup d'état[23] was a decisive, if implicit, statement that the palace approved a change in government to quell the unrest.

[22] *Cambodia Ends Political Standoff*, *supra* note 18.
[23] *2014 Thai Coup d'État*, *Wikipedia*, https://en.wikipedia.org/wiki/Category:2014_Thai_coup_d%27%C3%A9tat (last visited May 11, 2025).

Cambodia's King made no such decisive move; he neither called for the Prime Minister's resignation as protesters wanted nor endorsed any emergency measures against the opposition. His quiet adherence to constitutional process means that the government still has office through the crisis. Overall, both monarchs refrained from making partisan statements, but the implications of their silence were different. The Thai King's constitutional role, signing orders and appointments, was used to formalize the altered political order under the junta. In sum, Cambodian and Thai monarchies in 2013-2014 both publicly respected constitutional limits, but the Thai palace's latent power still influenced outcomes more significantly. Cambodia's King's legal silence showed up a modern monarch who stays out of politics even during crisis.

This comparison highlights the divergent evolution of kingship in the two countries. Cambodia's monarchy, restored in 1993 after decades of turmoil, has been carefully depoliticized to the point of near inaction in crises to prevent royal interference in the fragile democracy. Thailand's monarchy, by contrast, has for most of the post-World War II era been deeply rooted in the state's legitimacy, even if indirectly. In their aftermaths, each monarchy continued in its constitutional role, the Cambodian King presiding over a resumed elected parliament in a ceremonial capacity and the Thai King as a revered but passive guardian of a new military regime. The silence of the monarchy in both cases speaks to the legal and practical evolution of kingship, where even revered monarchs must carefully balance their actions against constitutional norms and the political realities on the ground.

Reform Proposals

Addressing the structural passivity of the Cambodian monarchy during constitutional crises, this section proposes two interlinked reforms that would enable the King to perform limited but meaningful symbolic roles without violating Article 7. These reforms are 1st, the establishment of a "Crisis Clause," and 2nd, the

institutionalization of an “Advisory Prerogative.” Both proposals are designed to be judicially supervised, constitutionally constrained, and politically neutral.

The Crisis Clause

The first reform: The Crisis Clause would take the form of a constitutional amendment explicitly authorizing the King to issue a "Royal Call for Dialogue" during times of political deadlock, provided the Constitutional Council certifies that a national crisis exists. This clause is not intended to give the King governing authority but rather to enable him to fulfill his constitutional role as a symbol of unity and supreme arbiter.

The Advisory Prerogative

The second reform: It would institutionalize regular confidential meetings between the King and the Prime Minister, during which the King may offer non-binding counsel. This advisory role already exists in practice in other constitutional monarchies, such as the United Kingdom, where the sovereign holds weekly private meetings with the Prime Minister.

Implementation Strategy

The proposed constitutional reforms, the Crisis Clause and the Advisory Prerogative, must be carefully implemented to preserve legal legitimacy and political neutrality. This section outlines a four-phase implementation plan: (1) legal drafting and consultation, (2) political consensus-building, (3) constitutional and statutory amendment process, and (4) institutional integration and public education.

Legal Drafting and Expert Consultation

A joint working group should be established comprising members of the Constitutional Council, the Ministry of Justice, legal scholars, and advisors to the Royal Palace. This group would be responsible for drafting the precise language of the amendments and ensuring consistency with existing constitutional provisions, especially Article 7. Comparative constitutional experts could be invited to provide technical input, particularly on judicial review mechanisms.

Political Consensus-Building

Given Cambodia's political landscape, broad political support is crucial. The legitimacy requires the reforms to be framed as non-partisan institutional safeguards, not power redistributions. Engaging opposition voices, civil society, and religious leaders can help foster trust. Roundtables and parliamentary hearings could serve as forums for public input.

Constitutional Amendment Procedure

The amendments to the Constitution require a two-thirds vote in the National Assembly, followed by promulgation by the King. The implementation of organic laws, especially those defining the procedures of the Constitutional Council in certifying crises, would follow the same legislative process. To prevent misuse, a narrow definition of "political deadlock" should be constitutionalized.

Institutional Integration and Public Education

Following legal adoption, the reforms must be embedded institutionally:

- The Constitutional Council would need procedural rules for verifying deadlocks and reviewing royal speeches for neutrality.

- The Royal Palace Secretariat should designate staff to support the drafting and review of royal statements.
- The Prime Minister's office would coordinate the advisory meetings.

Simultaneously, a civic education campaign should explain the new roles to the public. Framing the King's enhanced function as a legal and ceremonial tool to strengthen democracy will prevent politicization.

Risk reduction and key safeguards include:

- All actions must be certified by the Constitutional Council.
- No royal message may contain partisan content.
- Royal action cannot be initiated unilaterally.
- Advisory meetings remain confidential and non-binding.

This cautious, legally bounded implementation process will ensure that the reforms achieve their purpose: reinforcing constitutional stability without disturbing the balance of powers.

Conclusion

Cambodia's constitutional monarchy finds itself in a crucial juncture. While the 1993 Constitution established a ceremonial monarchy rooted in liberal democratic values, the events of 2013-2014 revealed the vulnerabilities of a rigidly passive symbolic institution in moments of constitutional stress. The King, as Cambodia's unifying figure and respected leader, was constitutionally paralyzed—unable to convene dialogue, mediate impasses, or symbolically reaffirm democratic norms—precisely when his stature was most needed.

This article has argued that judicially supervised symbolic functions—specifically, a Crisis Clause and an Advisory Prerogative—can reconcile the monarchy's revered moral authority with Cambodia's legal commitment to democratic governance. By empowering the King to act in moments of deadlock, not to govern, but to gently guide political actors toward resolution, these reforms would breathe functional relevance into Articles 8 and 9 of the Constitution while preserving the core principle of Article 7.

The Crisis Clause would allow the King, upon approval by the Constitutional Council, to call for dialogue during crises, a ceremonial but powerful act of national reassurance. The Advisory Prerogative would institutionalize confidential consultation between the monarch and the Prime Minister, allowing the King to provide perspective, encouragement, or caution from a politically neutral position. Together, these innovations mirror practices in other constitutional monarchies, particularly the United Kingdom and Thailand, yet remain tailored to Cambodia's unique history and institutional context.

Importantly, both reforms are designed with legal safeguards: judicial review, procedural precision, and a strict bar against partisanship. They would not transfer power to the monarchy but instead integrate it within the constitutional system as a stabilizing force, a source of moral conviction rather than political decision-making.

In a fragile democracy, symbols matter. They can offer legitimacy, continuity, and assurance that the polity's foundations remain stable even when politics collapse. The Cambodian monarchy, if constitutionally equipped, can fulfill this role more fully. With measured reform, it can transition from a silent observer to a constitutionally guided source of unity. In doing so, the monarchy would neither rule nor recede but reign with relevance.

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No Extradition, No Impunity: Cambodian Constitutional Constraints and Cross-Border Criminal Accountability

Phann Vanrath

Abstract

This article examines the complex legal and constitutional dimensions of cross-border criminal jurisdiction in a recent high-profile murder case in Bangkok involving a Thai national, Cambodian accomplice, and a victim with dual Cambodian-French nationality. It looks at the concepts of territorial, active, and passive personality jurisdiction under Thai, Cambodian, and French criminal procedural laws as well as Cambodia's constitutional prohibition against extraditing its residents. This article looks at several legal paths for Cambodia to provide justice without violating its constitutional criteria by way of a doctrinal and comparative study, hence including domestic prosecution, mutual legal help, and cooperative enforcement. It concludes that while the territorial concept favors Thai jurisdiction, France and Cambodia maintain concurrent jurisdiction under established international law standards. The article emphasizes that constitutional limitations cannot be seen as impunity shields and offers best practices to harmonize local legal constraints with Cambodia's obligations under international law.

Keywords: Extradition, impunity, Cambodian constitutional law, cross-border criminal jurisdiction, international criminal law.

No Extradition, No Impunity: Cambodian Constitutional Constraints and Cross-Border Criminal Accountability

Introduction

Particularly in Southeast Asia, where transnational movement and overlapping legal systems often meet, the globalization of criminal activity poses serious legal issues to national authorities. One recent murder in Bangkok perfectly captures this intricacy. The case concerned a Thai national as the main offender, numerous Cambodian nationals as accessories, and a victim with dual Cambodian-French nationality. Although the conduct occurred on Thai territory, the participation of foreigners—both as offenders and as victims—quickly set off overlapping jurisdictional claims from at least three governments. Fundamentally, this legal puzzle is based on a constitutional restriction: Article 38 of Cambodia's Constitution clearly forbids the extradition of its citizens.[1]

Especially in light of constitutional restrictions, diplomatic cooperation, and international legal commitments, this case clarifies important questions about the extent and limitations of cross-border criminal jurisdiction. The primary legal question is as follows: Which state—or states—possesses jurisdiction to prosecute, and how can Cambodia fulfill its international obligations when its own Constitution bars the extradition of implicated nationals?

Territorial jurisdiction, long regarded as the bedrock principle of criminal law, unequivocally favors Thailand.[2] Yet both Cambodia and France can also assert valid

[1] *Constitution of the Kingdom of Cambodia* art. 38 (1993) ("No Cambodian citizen shall be extradited to a foreign country except in case of mutual agreement.").
[2] *Penal Code of Thailand*, § 4 (B.E. 2499) (1956) (Thai.) (granting Thai courts jurisdiction over offenses committed within the territory of the Kingdom).

extraterritorial jurisdiction—Cambodia on the basis of its nationals' alleged complicity, and France through the passive personality principle given the victim's French citizenship.[3] This results in a situation of concurrent jurisdiction, which must be navigated carefully to avoid impunity, duplicative prosecution, or diplomatic friction.[4]

Cambodia's position is further complicated by its constitutional safeguard against the extradition of Cambodian citizens.[5] This prohibition, while designed to protect national sovereignty and civil liberties, potentially limits the state's ability to participate in broader regional or international criminal justice frameworks—particularly where the accused are Cambodian nationals sought by foreign jurisdictions.[6] The constitutional bar must therefore be analyzed not merely as a legal boundary but as a normative and political constraint within a multilateral justice context.

Limitation

It is important to clarify the scope of this article concerning the specific Bangkok case that serves as its primary illustration. While this case highlights critical issues in cross-border criminal accountability, this paper does not aim to offer a predictive analysis of its particular judicial outcome or to comment on the specifics of any ongoing investigation for which full details may not be publicly available. Such an endeavor would be speculative and extend beyond the article's focus on doctrinal and

[3] *Code pénal* [C. pén.] art. 113-7 (Fr.) (providing jurisdiction for crimes committed abroad against French nationals); see also *Criminal Code of the Kingdom of Cambodia* art. 9 (2009) (permitting prosecution of Cambodian nationals for acts committed abroad that are punishable under Cambodian law).

[4] Robert Cryer et al., *An Introduction to International Criminal Law and Procedure* 45–47 (3d ed. 2014).

[5] See *Constitution of the Kingdom of Cambodia*, supra note 1, art. 38.

[6] Mirjan Damaška, The Shadow Side of Command Responsibility, 49 *Am. J. Comp. L.* 455, 459 (2001) (arguing that domestic constraints often conflict with transnational legal accountability).

comparative legal analysis. The primary objective here is to dissect the existing legal frameworks, identify the challenges posed by Cambodia's constitutional constraints, and propose viable legal and policy avenues to ensure accountability in such transnational scenarios, rather than to adjudicate or predetermine the resolution of the referenced case.

Objective

This paper examines the jurisdictional competence of Cambodia, Thailand, and France under their individual criminal procedure statutes in light of international legal standards. It looks at Cambodia's constitutional restrictions on extradition and finds legal routes via which Cambodia can nonetheless meet its responsibilities to guarantee accountability The paper ends with a set of suggestions meant to assist Cambodia in harmonizing its domestic law with its international obligations, drawing from comparative law, ASEAN practice, and multilateral treaties, including the United Nations Convention against Transnational Organized Crime (UNTOC).

Legal Background: Criminal Law's Jurisdictional Framework

Jurisdictional Principles

Traditionally, the exercise of criminal jurisdiction rests on certain basic ideas acknowledged in both domestic and international law. These ideas—territoriality, nationality, passive personality, protectiveness, and universality—guide the legal determination of which state may prosecute a criminal act.[7]

[7] Kenneth C. Randall, Universal Jurisdiction Under International Law, 66 *Tex. L. Rev.* 785, 788–89 (1988); Cedric Ryngaert, *Jurisdiction in International Law* 89–104 (2d ed. 2015).

Everyone agrees that the territorial concept is the main foundation for jurisdiction.[8] A state has a natural right to prosecute crimes committed inside its geographic borders.[9] In the Bangkok murder case, Thailand obviously claims jurisdiction under this doctrine.

The active personality concept lets a country claim jurisdiction over crimes committed by its residents living abroad.[10] This is especially crucial in situations when the state has a strong interest in preserving legal and moral responsibility for its citizens' behavior even when it extends outside its borders.[11] This kind of jurisdiction is specifically mentioned in Cambodia's penal code.[12]

Though more contentious, the passive personality concept allows a state to prosecute crimes committed against its residents even when such acts take place overseas.[13] Given the victim's French nationality in the Bangkok case, France, for example, can depend on this concept. For example, France can depend on this idea given the victim's French citizenship in the Bangkok incident.[14]

The protective concept lets a government punish foreign actions endangering its national security, including espionage or counterfeiting.[15] Though less important in this context, it is still included in the jurisdictional matrix.

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[8] *Restatement (Fourth) of the Foreign Relations Law of the United States* § 402(1) (Am. L. Inst. 2018).
[9] Malcolm N. Shaw, *International Law* 657 (8th ed. 2017).
[10] Ryngaert, *supra* note 7, at 89–92.
[11] M. Cherif Bassiouni, *International Extradition: United States Law and Practice* 475–77 (6th ed. 2014).
[12] *Criminal Code of the Kingdom of Cambodia* art. 9 (2009) (allowing prosecution of Cambodian nationals for crimes committed abroad).
[13] Antonio Cassese, *International Criminal Law* 277–78 (2d ed. 2008).
[14] *Code pénal* [C. pén.] art. 113-7 (Fr.).
[15] *Restatement (Fourth) of the Foreign Relations Law of the United States* § 402(3) (Am. L. Inst. 2018).

Finally, universal jurisdiction says that some terrible crimes—such as genocide, torture, and piracy—are of such severity that any country may prosecute them regardless of their location or involvement of others.[16] Ordinary crimes like homicide are excluded from this concept unless they are committed in the setting of more general international crimes.

Cross-Border Criminal Justice in Action

Practically, applying jurisdictional ideas is seldom simple. Multiple countries in transnational criminal prosecutions frequently claim simultaneous jurisdiction, which could cause disputes and require negotiation, coordination, or deference.[17] In such situations, the decision of which state moves forward with prosecution is greatly influenced by effectiveness, access to evidence, fairness to the accused, and diplomatic relations.[18]

The interaction of domestic legal systems, constitutional restrictions, and regional accords like the ASEAN Mutual Legal Assistance Treaty (2004) further complicates problems in Southeast Asia.[19] The Bangkok assassination case highlights the pragmatic challenge of striking a balance between legal sovereignty and regional collaboration in guaranteeing justice.

Furthermore, a dual-national victim and the involvement of accomplices from another country generate conflicting legal interests. This calls for a concerted, good-

[16] *Arrest Warrant of 11 April 2000* (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 3, 60–61 (Feb. 14).
[17] Cryer et al., *supra* note 4, at 45–50.
[18] Robert J. Currie & Joseph Rikhof, *International & Transnational Criminal Law* 123–27 (2d ed. 2013).
[19] *ASEAN Treaty on Mutual Legal Assistance in Criminal Matters*, Nov. 29, 2004, https://asean.org/?static_post=treaty-on-mutual-legal-assistance-in-criminal-matters.

faith approach grounded on comity, mutual respect, and respect for international legal responsibilities.[20]

Jurisdictional Analysis in the Bangkok Assassination Case

The assassination in Bangkok presents a textbook case of concurrent criminal jurisdiction, where at least three states—Thailand, Cambodia, and France—may legally assert authority to prosecute based on their domestic criminal laws and established principles of jurisdiction in international law. This section examines the legal basis for jurisdiction in each country and the practical consequences of overlapping authority.

Thailand's Jurisdiction under Thai Criminal Procedure Law

Thailand enjoys its primary and strongest jurisdiction over the case under the territoriality principle, given that the crime occurred on Thai soil. Article 4 of the Thai Penal Code provides, "Whoever commits an offense within the Kingdom shall be punished according to the law."[21]

This territorial jurisdiction encompasses both Thai and foreign nationals as perpetrators, accomplices, or even accessories before or after the fact, so long as the act or its consequences occurred within Thailand.[22]

Moreover, Thai criminal procedure permits the prosecution of foreign nationals involved in crimes committed domestically, including in cases of transnational

[20] Dapo Akande, International Law Immunities and the International Criminal Court, 98 *Am. J. Int'l L.* 407, 408–09 (2004).
[21] *Penal Code of Thailand* § 4 (1956).
[22] *Id.*; see also *Criminal Procedure Code of Thailand* §§ 15–17 (on criminal jurisdiction over co-conspirators and accomplices).

conspiracy.[23] This means that Cambodian accomplices physically present in Thailand during the crime or found to have participated remotely may fall within Thailand's criminal jurisdiction.

Thailand's capacity and interest in prosecuting the principal offender, coupled with its legal infrastructure and investigative control, reinforce its legal and moral right to take the lead in criminal proceedings.[24] However, challenges may arise if accomplices flee to Cambodia, which is constitutionally barred from extraditing its citizens.[25]

Cambodia's Jurisdiction under Domestic Law

Cambodia may assert extraterritorial jurisdiction under Article 9 of the Cambodian Criminal Code, which provides:

"An offense committed outside the territory of the Kingdom of Cambodia by a Cambodian national may be prosecuted and judged in the Kingdom of Cambodia if such offense is punishable by imprisonment of at least six months."[26]

Given the serious nature of the crime—murder, conspiracy to murder, or being an accessory before or after the fact—Cambodian law clearly allows for domestic prosecution of Cambodian accomplices.[27] This application of the active personality

[23] Vitit Muntarbhorn, Criminal Justice Reform in Thailand, 9 *J. Southeast Asian Hum. Rts.* 22, 33 (2021).
[24] *Id*.
[25] See *Constitution of the Kingdom of Cambodia*, *supra* note 1, art. 38.
[26] *Criminal Code of the Kingdom of Cambodia* art. 9 (2009).
[27] *Id.* arts. 27, 28 (accomplice and accessory liability).

principle is consistent with international standards and has been affirmed in Cambodian jurisprudence, though rarely tested in transnational cases.[28]

In addition, while not explicitly codified, Cambodia may arguably assert jurisdiction under the passive personality principle because the victim held Cambodian nationality.[29] Although this basis is less common in Cambodian legal practice, it has increasing relevance in the context of dual nationality and international crimes.[30]

In practice, however, Cambodia may face several procedural challenges in prosecuting extraterritorial crimes: access to evidence located in Thailand, reliance on foreign law enforcement cooperation, and limitations in extraterritorial investigative powers.[31]

France's Jurisdiction under French Criminal Law

France can assert jurisdiction over the crime through Article 113-7 of the French Penal Code, which provides:

"French criminal law is applicable to felonies and misdemeanors punishable by imprisonment committed abroad against a French national."[32]

[28] Ky Tech, The Scope of Cambodian Criminal Jurisdiction, 5 *Phnom Penh L. Rev.* 91, 102 (2018).
[29] Roger O'Keefe, Universal Jurisdiction: Clarifying the Basic Concept, 2 *J. Int'l Crim. Just.* 735, 739 (2004).
[30] H.E. Kim Sathavy, Interpretation of the Cambodian Constitution in Transnational Criminal Matters, 12 *Cambodia L.J.* 75, 80–81 (2021).
[31] Currie & Rikhof, *supra* note 12, at 154–60.
[32] *Code pénal* [C. pén.] art. 113-7 (Fr.).

Given the victim's French nationality, France is entitled under the passive personality principle to prosecute all individuals involved in the crime, even if none are French and the offense took place outside French territory.[33]

France also retains the option to assert universal jurisdiction under Article 689 of the French Code of Criminal Procedure, but this would not typically apply unless the crime rises to the level of an international offense such as torture, war crimes, or terrorism.[34]

France may choose to open an investigation under the authority of the Public Prosecutor (*Procureur de la République*), especially if there are concerns about impunity or if the crime remains unpunished in Thailand or Cambodia.[35] Alternatively, France may exercise diplomatic protection by requesting updates or guarantees from the Thai or Cambodian authorities regarding the status of the proceedings.[36]

The Cambodian Constitutional Bar on Extradition

Article 38 of the Cambodian Constitution

At the heart of Cambodia's limitations in international criminal cooperation lies Article 38 of the Constitution of the Kingdom of Cambodia, which provides:

"Extradition of Cambodian citizens to a foreign country shall not be permitted except under a mutual agreement."[37]

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[33] *Id.*; see also Bassiouni, *supra* note 5, at 503–05.
[34] *Code de procédure pénale* [C. pr. pén.] art. 689 (Fr.).
[35] Mireille Delmas-Marty, Criminal Law in France, 6 *Eur. J. Crime Crim. L. & Crim. Just.* 310, 321 (1998).
[36] Vienna Convention on Consular Relations art. 36, Apr. 24, 1963, 596 U.N.T.S. 261.
[37] See *Constitution of the Kingdom of Cambodia*, *supra* note 1, art. 38.

This constitutional clause establishes an express bar on the extradition of Cambodian nationals, reflecting a sovereignty-based policy rooted in historical sensitivities and national self-determination. In practice, this provision has been interpreted as a categorical prohibition unless overridden by a bilateral extradition treaty or mutual agreement ratified by the Cambodian Parliament.[38]

No such extradition treaty currently exists between Cambodia and Thailand.[39] Even if one were negotiated in the future, its application would remain limited without a constitutional amendment or a narrowly interpreted exception within the Constitution itself. In contrast, Cambodia does have extradition agreements with a few states, such as China and Vietnam, though their execution remains discretionary and often politicized.[40]

The Cambodian government has consistently upheld this principle, refusing to extradite Cambodian nationals even in politically sensitive or internationally scrutinized cases.[41] As a result, Cambodia must prosecute its nationals domestically to avoid violating international obligations to prevent impunity.

This constitutional safeguard, while consistent with Cambodia's civil law tradition and regional practices, limits flexibility in responding to international or

[38] Kong Phallack, The Development of Cambodian Constitutional Law, 2 *Cambodian J. Legal Stud.* 35, 45 (2016).
[39] Council of Ministers of Cambodia, *List of Extradition Treaties and Agreements* (unpublished internal report) (on file with author).
[40] Press Release, Ministry of Justice of Cambodia, *Bilateral Extradition Cooperation with China and Vietnam* (July 2022).
[41] Julia Wallace, Cambodia Refuses Extradition of Former Soldiers in 1997 Attack Case, *N.Y. Times* (Jan. 18, 2017), https://www.nytimes.com.

bilateral requests for legal cooperation—especially in transnational criminal cases involving serious offenses.[42]

Historical and Doctrinal Justifications for the Extradition Bar

The origin of Cambodia's constitutional provision reflects a broader post-colonial aspiration to preserve national autonomy and protect citizens from foreign penal systems. The prohibition is grounded in the belief that Cambodian nationals should be subject only to Cambodian justice, based on familiar legal norms, linguistic access, and protection from potential bias in foreign courts.[43]

This principle resonates with similar doctrines in other civil law jurisdictions, such as Germany, Italy, and Brazil, which limit or prohibit extradition of their nationals.[44] In most of these jurisdictions, however, the bar is complemented by a **positive obligation to prosecute** domestically, known as the principle of *aut dedere aut* judicare (extradite or prosecute).[45]

Scholars have debated whether Cambodia's Article 38 should be interpreted strictly as a shield against foreign prosecution or more progressively as a duty to ensure accountability through domestic mechanisms.[46] The latter interpretation is more consistent with Cambodia's commitments under international treaties such as the UN

[42] Thomas R. Snider, International Cooperation and Extradition in ASEAN Legal Systems, 37 *Fordham Int'l L.J.* 1121, 1130 (2014).
[43] Bunthoeun Sovan, The Constitutional Identity of Cambodia, 9 *Asian J. Const. L.* 215, 229–30 (2021).
[44] Neil Boister, *An Introduction to Transnational Criminal Law* 139–41 (2d ed. 2021); see also Cassese, *supra* note 7, at 283.
[45] *Restatement (Fourth) of the Foreign Relations Law of the United States* § 475 (Am. L. Inst. 2018).
[46] Chak Sopheap, *Extradition and the Rule of Law in Cambodia*, Cambodian Ctr. for Hum. Rts. Blog (Feb. 2023).

Convention against Transnational Organized Crime (UNTOC) and the International Covenant on Civil and Political Rights (ICCPR).[47]

Prosecuting Cambodian nationals who commit crimes abroad is necessary; otherwise, the failure to do so—justified by their non-extradition—may lead to accusations of creating a safe haven for impunity. This would run counter to Cambodia's legal and diplomatic obligations to cooperate in the fight against transnational crime.[48]

The doctrinal challenge is thus twofold: (1) upholding constitutional sovereignty and citizen protection while (2) fulfilling Cambodia's obligation to contribute to global justice by prosecuting crimes that cross national borders.

Legal and Diplomatic Alternatives to Extradition

In light of Cambodia's constitutional bar on extraditing its nationals, the state must rely on alternative legal and diplomatic mechanisms to ensure criminal accountability, particularly in transnational cases involving serious offenses like homicide. These alternatives allow Cambodia to comply with both domestic legal constraints and its international obligations under treaty law and customary norms.

Domestic Prosecution of Cambodian Nationals

[47] United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2225 U.N.T.S. 209 [hereinafter UNTOC]; International Covenant on Civil and Political Rights art. 2(3), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

[48] M. Cherif Bassiouni, International Cooperation in Penal Matters and the Principle of *Aut Dedere Aut Judicare*, 5 *Int'l Crim. L. Rev.* 321, 331–32 (2005).

The most direct and constitutionally compliant method is for Cambodia to prosecute its nationals under domestic law for crimes committed abroad. As established under Article 9 of the Cambodian Criminal Code, such prosecution is permissible when:

- The accused is a Cambodian citizen;
- The crime is punishable by at least six months' imprisonment under Cambodian law; and
- The act is criminal in the place where it was committed.[49]

This principle, rooted in the active personality doctrine, enables the Cambodian judiciary to exercise jurisdiction over extraterritorial crimes, provided that substantial evidence can be collected and evaluated in accordance with Cambodian procedural standards.[50]

The main challenge lies in the practical execution of such prosecution. Given that the crime occurred in Thailand, Cambodian prosecutors must rely heavily on international cooperation to access the scene of the crime, gather witness statements, collect forensic evidence, and obtain official Thai police reports. Without such cooperation, effective prosecution is unlikely.[51]

Cambodia's judicial authorities may also face institutional and logistical limitations in handling complex cross-border cases, including a lack of investigative autonomy abroad, absence of treaties governing inter-jurisdictional cooperation, and

[49] *Criminal Code of the Kingdom of Cambodia* art. 9 (2009).
[50] Bassiouni, *supra* note 5, at 478–81.
[51] Ky Tech, *supra* note 8, at 103–04.

resource constraints.[52] Despite these challenges, domestic prosecution remains the most viable legal path in the absence of extradition.

Mutual Legal Assistance and Regional Treaties

In order to bridge the legal and practical gap, Cambodia can invoke mutual legal assistance (MLA) mechanisms. The most significant legal instrument in this context is the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (2004), to which both Cambodia and Thailand are parties.[53]

The treaty provides a legal framework for:

- Obtaining witness testimony;
- Executing search and seizure requests;
- Sharing forensic and investigative evidence;
- Facilitating temporary transfer of detainees or experts;
- Serving judicial documents across jurisdictions.[54]

Under Article 5 of the ASEAN MLAT, a party may decline assistance if it violates its constitutional principles, but such provisions are rarely invoked.[55] In practice, Cambodian authorities may submit formal MLA requests to Thailand's Office of the Attorney General, seeking evidence for domestic prosecution.

Cambodia may also pursue bilateral cooperation frameworks, whether through existing MOUs or ad hoc diplomatic arrangements. These approaches have become

[52] U.N. Off. on Drugs & Crime, *Legal and Institutional Barriers to Mutual Legal Assistance in Southeast Asia* 34–36 (2021), https://www.unodc.org.
[53] *ASEAN Treaty on Mutual Legal Assistance in Criminal Matters* art. 1, Nov. 29, 2004, https://asean.org/?static_post=treaty-on-mutual-legal-assistance-in-criminal-matters.
[54] *Id.* arts. 7–12.
[55] *Id.* art. 5(1)(a).

increasingly common in Southeast Asia, particularly where formal extradition treaties are absent.[56]

Enforcement of Foreign Judgments and Trial in Absentia

Another possible, though more complex, approach is for Cambodia to enforce foreign criminal judgments against its nationals rendered in absentia. Under Cambodian law, the recognition and enforcement of foreign criminal judgments are not clearly codified, but principles of comity and reciprocity may allow limited application.[57]

This would require:

- A final conviction in Thailand (or France);
- Evidence that due process was respected;
- A Cambodian court's willingness to recognize and domestically enforce the sentence.[58]

Alternatively, Thailand or France may try the accused in absentia and request that Cambodia recognize the judgment. This raises due process concerns and would likely require legislative clarification or a new treaty to permit enforcement within Cambodia's borders.[59]

Bilateral and Trilateral Cooperation Strategies

[56] Snider, *supra* note 6, at 1138.
[57] Kalyan Phalla, *Recognition of Foreign Criminal Judgments in Cambodia: A Doctrinal Gap*, 7 *Cambodia L.J.* 81, 86–87 (2022).
[58] *Id*.
[59] Ryngaert, *supra* note 7, at 162–63.

Given the overlapping interests of Cambodia, Thailand, and France in the case at hand, diplomatic negotiations may yield more effective outcomes than reliance on formal legal doctrines alone. Cambodia can explore the following strategies:

- Establishment of a joint prosecutorial task force between Cambodian and Thai authorities;
- Creation of a trilateral commission to coordinate investigative efforts and legal standards;
- Negotiation of a prisoner transfer agreement, should Cambodian nationals be convicted abroad in future cases;
- Exchange of liaison officers or prosecutors, modeled after successful cooperation in anti-trafficking and anti-narcotics cases.[60]

Such cooperative mechanisms would demonstrate Cambodia's commitment to fighting transnational crime while avoiding constitutional violations and promoting regional trust.

Comparative Views from Other Jurisdictions

Although Cambodia's constitutional ban on extradition seems limiting, it is neither unusual nor incompatible with international practice. Though several civil law countries, including Germany, Italy, and Brazil, have similar restrictions, they have created strong legal systems to guarantee responsibility by means of domestic prosecution and foreign collaboration. For Cambodia, facing diplomatic and judicial issues resulting from transnational crimes, these comparative models provide insightful direction.

Civil Law Jurisdictions with Extradition Restrainers

[60] ASEAN Secretariat, *Best Practices in Transnational Criminal Investigations* 44–48 (2020).

The Basic Law (*Grundgesetz*) forbids the export of German nationals to non-EU nations in Germany unless authorized by treaty and constitutional exception.[61] Germany makes up for this restriction, though, by rigorously following the *aut dedere aut judicare* principle, therefore guaranteeing that German citizens accused of crimes abroad are punished domestically.[62] Germany's Code of Criminal Procedure (StPO) has clauses allowing for starting investigations depending on foreign behavior affecting citizens.[63]

Italy also forbids citizen extradition under Article 26 of the Italian Constitution but permits it inside the EU or under treaty-based due process.[64] Under its criminal code, Italy routinely exercises extraterritorial jurisdiction and aggressively charges crimes carried out overseas when the culprit is Italian and the victim is Italian or a major offense is involved.[65]

Article 5 of the 1988 Constitution specifically forbids the extradition of persons born in Brazil.[66] Brazil tackles this restriction by punishing nationals locally should credible foreign evidence be given, particularly in situations involving human

[61] *Grundgesetz* [*GG*] [Basic Law], art. 16(2), translation at https://www.gesetze-im-internet.de/englisch_gg/.
[62] Kai Ambos, Punishment Without Borders: The Principle of *Aut Dedere Aut Judicare* and the Duty to Prosecute, 23 *Eur. J. Int'l L.* 1103, 1110 (2012).
[63] *Strafprozessordnung* [*StPO*] [Code of Criminal Procedure], § 7, https://www.gesetze-im-internet.de/stpo/.
[64] *Costituzione* [*Constitution*] *della Repubblica Italiana*, art. 26, https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.
[65] Stefano Manacorda & Adán Nieto, Criminal Law Between War and Peace: Justice and Cooperation in Criminal Matters, 17 *Eur. J. Crime Crim. L. & Crim. Just.* 141, 152 (2009).
[66] *Constituição da República Federativa do Brasil de 1988*, art. 5(LI), translation at https://www.stf.jus.br/.

trafficking, drugs, and financial crimes.[67] Brazilian courts have created processes to welcome and include foreign country evidence into local trials for local crimes.[68]

These countries show how, with a working legal system for domestic responsibility and international cooperation, a constitutional ban on extradition need not lead to impunity.

ASEAN Problems and Practice

Legal systems vary greatly throughout Southeast Asia, and the approach to extradition and mutual legal help reflects different political, constitutional, and institutional goals. Although ASEAN encourages regional cooperation with tools like the ASEAN MLAT, extradition treaties are still few and scattered.[69]

Thailand, for example, permits extradition based on the Extradition Act B.E. 2551 (2008) but generally requires dual criminality and reciprocity.[70] It has extradition treaties with the United States, Australia, and neighboring states, but none with Cambodia.[71] In the absence of a treaty, Thailand may resort to executive agreements or political negotiations, though such approaches lack consistency and transparency.[72]

Vietnam restricts the extradition of its nationals under Article 3 of its Law on Mutual Legal Assistance but has cooperated in returning fugitives through political

[67] Rafael Mafei Rabelo Queiroz, Extradition in Brazil: Between Sovereignty and International Obligations, 19 *Rev. Direito Internacional* 37, 40, 45–47 (2022).
[68] *Id.* at 45–47.
[69] *ASEAN Treaty on Mutual Legal Assistance in Criminal Matters*, Nov. 29, 2004, https://asean.org/?static_post=treaty-on-mutual-legal-assistance-in-criminal-matters.
[70] *Extradition Act*, B.E. 2551 (2008) (Thai.).
[71] Thai Ministry of Foreign Affairs, *List of Bilateral Extradition Treaties*, https://www.mfa.go.th.
[72] Muntarbhorn, *supra* note 3, at 35.

channels.[73] It has also prosecuted Vietnamese nationals domestically for crimes committed abroad when extradition was not feasible.[74]

Singapore, by contrast, maintains a liberal extradition policy under the Extradition Act and has signed over forty bilateral treaties.[75] It also routinely cooperates under the ASEAN MLAT and Interpol mechanisms. However, Singapore does not extradite its nationals without a treaty or legislative authorization.[76]

The broader ASEAN legal culture remains state-centric and sovereignty-sensitive, often prioritizing political discretion over formal legal obligation. This creates a patchwork of practices that complicate regional responses to crimes involving multiple jurisdictions.[77] Cambodia, situated within this legal mosaic, must thus develop mechanisms aligned with regional realities while ensuring adherence to international norms.

International Legal Obligations and Cambodia's Responsibility

While Cambodia's constitutional bar on extraditing its nationals is a matter of domestic law, it does not exempt the state from complying with its international legal obligations to combat impunity and ensure accountability for serious crimes. As a member of the international community, Cambodia has ratified several treaties that impose duties related to cross-border criminal cooperation, particularly the United

[73] *Law on Mutual Legal Assistance*, No. 08/2007/QH12, art. 3 (Viet.).
[74] Nguyen Hong Thao, Vietnam's Engagement in Transnational Criminal Law, 4 *Asian J. Int'l L.* 267, 271 (2014).
[75] *Extradition Act* 1968 (Sing.), https://sso.agc.gov.sg.
[76] *Id.* § 3(2).
[77] Simon Chesterman, Asia's Ambivalence About International Law and Institutions: Past, Present and Futures, 27 *Eur. J. Int'l L.* 945, 949–52 (2016).

Nations Convention against Transnational Organized Crime (UNTOC) and the International Covenant on Civil and Political Rights (ICCPR).

This section examines Cambodia's international obligations and highlights the legal doctrine of *aut dedere aut judicare*—extradite or prosecute—as a normative bridge between domestic constitutional law and transnational legal responsibility.

UNTOC and Treaty-Based Cooperation

Cambodia ratified the UN Convention against Transnational Organized Crime on December 12, 2005.[78] The Convention sets out a comprehensive framework for international legal cooperation, including extradition, mutual legal assistance, and domestic prosecution of transnational crimes.[79]

Article 16 of UNTOC governs extradition and provides that if a state party does not extradite its nationals, "it shall, at the request of the State Party that has requested the extradition, be obliged to submit the case to its competent authorities for the purpose of prosecution."[80] This provision effectively enshrines the principle of *aut dedere aut judicare* and ensures that the prohibition of extradition does not create safe havens for offenders.

UNTOC also encourages states to "strengthen international cooperation," "adopt measures to establish jurisdiction," and ensure that the criminalization of conduct extends to aiding and abetting, attempt, and conspiracy in organized criminal

[78] United Nations Convention Against Transnational Organized Crime art. 15–19, Dec. 12, 2000, 2225 U.N.T.S. 209 [hereinafter *UNTOC*].
[79] *Id.* arts. 15–19.
[80] *Id.* art. 16(10).

activity.[81] In this sense, the Convention imposes both negative and affirmative duties: states may refuse extradition in limited circumstances but must still take affirmative prosecutorial action to avoid impunity.[82]

Customary International Law and the Duty to Prosecute

Beyond treaty law, the duty to prosecute or extradite has been recognized as a customary norm, particularly in relation to international crimes such as war crimes, torture, and terrorism.[83] While ordinary crimes such as murder may not always reach this threshold, their transnational character and impact on international peace and justice increasingly bring them within the scope of international concern.[84]

The International Law Commission (ILC), in its Draft Articles on the Prevention and Punishment of Crimes Against Humanity, has proposed codifying the duty to prosecute or extradite for such offenses.[85] While Cambodia is not bound by these Draft Articles, they reflect the emerging trend in customary law to reject impunity in favor of international accountability.

The Arrest Warrant Case before the International Court of Justice (ICJ) further emphasized that states cannot invoke domestic legal doctrines—such as immunity or constitutional bars—as a justification for failing to cooperate in international criminal

[81] *Id.* arts. 5, 6, 27.
[82] Neil Boister, *An Introduction to Transnational Criminal Law* 250–52 (2d ed. 2021).
[83] M. Cherif Bassiouni, The Duty to Prosecute and the Right to Know, 12 *L. & Prac. Int'l Cts. & Tribunals* 3, 6–7 (2013).
[84] Kai Ambos, The Legal Core of International Criminal Law, in *The Oxford Companion to International Criminal Justice* 289–90 (Antonio Cassese ed., 2009).
[85] Int'l Law Comm'n, *Draft Articles on the Prevention and Punishment of Crimes Against Humanity*, U.N. Doc. A/74/10 (2019).

matters.[86] Although that case involved universal jurisdiction and high-ranking officials, the principle remains that national sovereignty must yield when core obligations to prosecute serious crimes are at stake.[87]

Cambodia's Good Faith Obligation Under International Law

International law requires states to act in good faith when fulfilling treaty obligations. The refusal to extradite Cambodian nationals must therefore be paired with a credible and effective domestic prosecutorial process, failing which Cambodia may be accused of violating its international commitments.

In the context of the Bangkok assassination case, Cambodia has a dual obligation: (1) to honor its Constitution by refusing extradition and (2) to act on the basis of international law by prosecuting those implicated in the crime. Cambodia must demonstrate that it takes the allegations seriously, conducts a thorough investigation, and cooperates meaningfully with Thai and French authorities.

Failure to act would undermine international cooperation and damage Cambodia's reputation in the region, particularly as ASEAN seeks to promote the rule of law and legal integration across member states.[88]

Cambodia must therefore view its constitutional safeguard not as a shield for inaction, but as a call to proactive engagement with international partners through domestic prosecution, evidence sharing, and legal innovation.

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[86] *Arrest Warrant of 11 Apr. 2000* (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 3, 58–60 (Feb. 14).
[87] *Id.* at 61; *see also* Dapo Akande, *supra* note 14.
[88] ASEAN Secretariat, *ASEAN Rule of Law and Criminal Justice Cooperation Report at* 14–15 (2022), https://asean.org.

Conclusion and Recommendations

The assassination case in Bangkok—committed by a Thai national, aided by Cambodian accomplices, and resulting in the death of a victim holding both Cambodian and French nationality—has brought to the forefront critical questions about cross-border criminal jurisdiction, constitutional limits, and international legal obligations.

This article has demonstrated that while Thailand possesses primary jurisdiction under the territoriality principle, both Cambodia and France maintain secondary but legitimate jurisdictional claims. Cambodia's right to prosecute stems from the active personality principle, and France's from the passive personality principle. However, Cambodia's constitutional bar on extradition, enshrined in Article 38, prevents it from transferring its nationals to face justice abroad. This domestic safeguard must not become a tool for impunity, especially in cases implicating serious transnational offenses.

To resolve this tension, Cambodia must align its constitutional position with its obligations under international law, including the UNTOC and the ASEAN MLAT, and adhere to the emerging customary duty to prosecute or extradite. Other civil law jurisdictions with similar constitutional constraints have demonstrated that robust domestic prosecution, combined with international cooperation, is not only feasible but essential.

Accordingly, this article offers the following recommendations to help Cambodia balance sovereignty, legality, and accountability:

Legislative Reform

- Codify the principle of *aut dedere aut judicare* in Cambodian criminal procedure law to reflect Cambodia's duty to prosecute when extradition is refused.
- Establish clear procedures for enforcing foreign judgments in criminal matters, subject to Cambodian judicial oversight and human rights protections.

Institutional Strengthening

- Create a specialized cross-border crimes unit within the Ministry of Justice or the Office of the Prosecutor General, tasked with prosecuting Cambodian nationals implicated in foreign offenses.
- Develop a database and legal desk to track extradition and MLA requests and ensure compliance with treaty obligations.

Regional and Bilateral Cooperation

- Expand Cambodia's participation in the ASEAN Mutual Legal Assistance Treaty by developing implementing legislation and model request templates for rapid response.
- Negotiate bilateral agreements with Thailand and France on evidence sharing, detainee transfer, and cooperation in serious criminal cases.

Diplomatic Engagement

- Propose the formation of a trilateral task force—Cambodia, Thailand, and France—to manage the investigation and coordinate the prosecution of transnational crimes affecting mutual interests.

- Use Cambodia’s platform within ASEAN to promote regional standardization of practices regarding extradition, prosecution, and enforcement of judgments.

Judicial Practice

- Train judges and prosecutors in international criminal cooperation, including evidence admissibility standards, digital forensics, and remote witness testimony.
- Encourage the judicial recognition of dual nationality and the passive personality principle, particularly where Cambodian victims are harmed abroad.

In conclusion, Cambodia stands at a critical intersection of national sovereignty and global legal integration. By reinforcing domestic legal mechanisms, embracing cooperative enforcement, and engaging in regional diplomacy, Cambodia can ensure justice for victims while respecting its constitutional framework. Upholding justice in such complex transnational scenarios elevate Cambodia's legal credibility and reinforce its commitment to the rule of law, accountability, and international cooperation.

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Comparative Legal Frameworks Governing Special Economic Zones: Toward Harmonized Regulatory Practices in Cambodia, Thailand, Vietnam, and China

Sar Sarn

Abstract

This article presents a comparative legal analysis of Special Economic Zones (SEZs) in four selected countries, namely Cambodia, Thailand, Vietnam, and China, with the objective of identifying legal gaps and proposing reforms to enhance Cambodia's SEZ governance. SEZs function as critical engines for industrialization, foreign direct investment (FDI), and regional integration, often operating under special legal regimes that diverge from national laws. The effectiveness and sustainability of these zones, however, rely heavily on the clarity, coherence, and enforceability of their legal frameworks.

Cambodia's SEZs, while contributing significantly to employment and export growth, are governed primarily through sub-decrees and executive policies under the Council for the Development of Cambodia (CDC), lacking a comprehensive, codified legal statute. This fragmented legal architecture results in regulatory opacity, limited judicial oversight, and weak integration of labor and environmental protections. In contrast, Thailand's Eastern Economic Corridor (EEC) Act of 2018 and Vietnam's Decree No. 82/2018/ND-CP offer clear statutory mandates, public institutional governance, and enforceable investor rights. China's SEZs, particularly the Pilot Free Trade Zones (FTZs), are characterized by legal experimentation and localized discretion, offering lessons in flexibility but also posing risks in transparency and rule-of-law consistency.

Using a comparative legal methodology grounded in regional integration theory, this article identifies critical legal gaps in Cambodia's current SEZ framework to examine five key dimensions: legal foundation, institutional autonomy, investor protections, integration of social safeguards, and dispute resolution.

The article concludes that Cambodia's SEZ framework requires a substantial legislative overhaul to align with ASEAN neighbors and global investment standards for the best practices. Recommended reforms include enacting a unified SEZ law, decentralizing oversight through inter-ministerial boards, institutionalizing dispute resolution mechanisms, and workers' rights and environmental clearance rules in SEZs. Such reforms would enhance legal certainty, institutional accountability, and the country's attractiveness as a competitive and equitable investment destination.

Keywords: Special Economic Zones, Comparative Law, legal reform, investment protection, regulatory governance.

Comparative Legal Frameworks Governing Special Economic Zones: Toward Harmonized Regulatory Practices in Cambodia, Thailand, Vietnam, and China

Introduction

Special Economic Zones in Cambodia are delineated geographic areas established by the Royal Government of Cambodia (RGC) to advance industrialization, attract foreign direct investment (FDI), and integrate the national economy into regional and global value chains. As instruments of economic policy, SEZs are central to Cambodia's broader development strategy, particularly under the 2015–2025 Industrial Development Policy (IDP). Legally, SEZs are governed primarily by the Law on Investment (2021) and Sub-Decree No. 148 ANKr.BK (2005) on the Establishment and Management of Special Economic Zones.

SEZs have emerged as pivotal instruments in Asia's economic modernization strategies, offering geographically delimited spaces with preferential fiscal, regulatory, and administrative regimes designed to attract foreign direct investment (FDI), promote export-oriented industrialization, and integrate local economies into global markets.[1] Among these, China's Shenzhen SEZ stands as an international benchmark, exemplifying how a well-coordinated legal and institutional framework can catalyze rapid economic reform, industrial upgrading, and technological innovation.[2] Inspired by China's success, Southeast Asian countries, particularly Cambodia, Thailand, and Vietnam, have adopted SEZ models with varied structures, incentives, and institutional

[1] Thomas Farole, *Special Economic Zones in Africa* 23 (World Bank Grp. 2011).
[2] Douglas Zhihua Zeng, *Building Engines for Growth and Competitiveness in China* 12–14 (World Bank Grp. 2016).

designs, yielding diverse outcomes in investment promotion, governance, and sustainable development.[3]

Despite their proliferation, the legal frameworks governing SEZs across these jurisdictions differ significantly in statutory clarity, regulatory scope, enforcement mechanisms, and integration with broader economic and environmental policies. In Cambodia, legal fragmentation, overlapping mandates, and executive dominance have resulted in ambiguities and inefficiencies that undermine investor confidence and the long-term sustainability of its 54 SEZs, which by 2020 contributed $2.688 billion in export value.[4] Yet, comparative legal scholarship analyzing how these differences shape SEZ performance remains underdeveloped.[5]

This paper seeks to address this research gap by conducting a comparative legal analysis of SEZ frameworks in Cambodia, Thailand, Vietnam, and China, with the goal of identifying key divergences and exploring pathways toward harmonized regulatory practices. Specifically, it investigates three research questions: (1) How do the legal frameworks for SEZs differ across these four countries? (2) What are the main deficiencies in Cambodia's SEZ legal regime? (3) How can Cambodia align its SEZ policies with regional best practices to enhance effectiveness and sustainability?

Methodologically, the study employs doctrinal legal research combined with comparative analysis to examine statutory provisions, institutional governance structures, investor rights protections, labor and environmental regulations, and dispute resolution mechanisms across these jurisdictions. This approach facilitates a clear understanding of how legal design influences SEZ outcomes and provides a basis for

[3] *Id*. at 16–18.
[4] Nathan Grimsditch & Megan Henderson, *Initial Assessment of Cambodia's Special Economic Zones* 5–7 (2009) (unpublished report).
[5] See *id*. at 8–9.

proposing concrete strategies to strengthen Cambodia's SEZ legal framework. By mapping out legal dissimilarities and their practical ramifications, the paper aims to equip policymakers with actionable insights for improving regulatory coherence, enhancing investor trust, and contributing to broader regional integration efforts.

Comparative Perspective on SEZ Development

The development of SEZs in Asia has been extensively explored by both multilateral institutions and academic researchers, focusing on their role in trade liberalization, industrial upgrading, and governance experimentation. In the Greater Mekong Subregion (GMS), SEZs have been promoted as vehicles for accelerating regional integration and enhancing competitiveness through infrastructure and institutional development. Yet, there remains limited comparative legal literature that rigorously evaluates SEZ frameworks across Cambodia, Thailand, Vietnam, and China.

SEZ Typologies and Models

Special Economic Zones (SEZs) represent a diverse policy instrument aimed at fostering industrialization, trade facilitation, and economic modernization through preferential fiscal, regulatory, and administrative regimes.[6] Scholars have categorized SEZs into typologies such as export processing zones, free trade zones, industrial parks, technology parks, and eco-industrial zones, each shaped by host countries' developmental priorities and legal traditions.[7] Early SEZ models prioritized export-led growth and tariff exemptions, while contemporary approaches incorporate broader

[6] Thomas Farole & Gokhan Akinci, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* 1–2 (World Bank Grp. 2011).
[7] *Id*. at 3–4.

objectives, including technological innovation, environmental sustainability, and urban development.[8]

Legal frameworks underpinning SEZs are pivotal in defining operational boundaries, incentives, investor obligations, and institutional accountability.[9] The World Bank emphasizes that successful SEZs integrate clear statutory foundations with adaptive governance, balancing central oversight and local autonomy to ensure flexibility and policy coherence.[10] Zeng identifies strategic location, integration with national development plans, and a business-friendly legal environment as critical success factors, citing China's Shenzhen SEZ as a case where experimental reforms matured into institutionalized legal systems.[11] In contrast, ASEAN countries such as Thailand and Vietnam have adopted hybrid models combining centralized policy oversight with decentralized incentives to attract foreign direct investment (FDI).[12] The ASEAN Guidelines for SEZ Development further point out the need for statutory clarity, delegated authority, and continuous monitoring to maintain competitiveness and transparency.[13]

Cambodia's SEZ Experience

Cambodia's SEZ regime was formalized in 2005 through Sub-Decree No. 148 ANKr.BK, aiming to diversify its garment-centric economy, boost exports, and attract foreign investment.[14] As of 2024, Cambodia hosts 54 approved SEZs, largely export-

[8] Douglas Zhihua Zeng, *Building Engines for Growth and Competitiveness in China: Experience with Special Economic Zones and Industrial Clusters* 17–19 (World Bank Grp. 2016).
[9] *Id*. at 22–24.
[10] FIAS, *Special Economic Zones: Performance, Lessons Learned, and Implications for Zone Development* 8–10 (World Bank Grp. 2008).
[11] Zeng, *supra* note 2, at 25.
[12] Zeng, *supra* note 2, at 26-27.
[13] ASEAN Secretariat, *ASEAN Guidelines for Special Economic Zone Development* 5 (2016).
[14] *Sub-Decree No. 148 ANKr.BK on the Establishment and Management of Special Economic Zones* (2005) (Cambodia).

oriented and privately managed under the oversight of the Council for the Development of Cambodia (CDC).[15] Empirical studies note positive spillover effects, including increased employment opportunities, particularly for female workers, yet they also highlight persistent challenges.[16]

Chief among these challenges are legal fragmentation, overlapping administrative mandates, and an over-reliance on executive decrees that undermine statutory clarity and institutional accountability.[17] Critics argue that Cambodia's absence of a dedicated SEZ statute results in regulatory ambiguity, inconsistent enforcement, and diminished investor confidence.[18] Warr and Menon contend that weak governance structures and executive dominance limit transparency and legal predictability, deterring long-term investment.[19] Comparative analyses point to China's cohesive statutory framework and Thailand's investor-friendly legal reforms as illustrative of how legal clarity and institutional coherence can underpin effective SEZ governance.[20]

Regional Comparators

Regional comparators provide helpful parameters when evaluating Cambodia's SEZ legal framework. Thailand's SEZ regime operates under the Investment Promotion Act of 1977, complemented by the establishment of the Board of Investment (BOI) and the Industrial Estate Authority of Thailand (IEAT), providing institutional mechanisms to facilitate investment and industrial development.[21] Recent border SEZ policies

[15] Council for the Development of Cambodia, *SEZ Development Statistics* 3 (CDC 2020).
[16] Grimsditch & Henderson, supra note 4, at 6–7.
[17] *Id*. at 8–9.
[18] *Id*. at 9–10.
[19] Peter Warr & Jayant Menon, Cambodia's Special Economic Zones, 44 *Asian Econ. J.* 45, 55–57 (2016).
[20] *Id*. at 58–60.
[21] Investment Promotion Act, B.E. 2520 (1977) (Thai.).

further emphasize infrastructure reliability and labor mobility.[22] Vietnam's SEZ governance is integrated into national planning frameworks through Decree No. 82/2018/ND-CP and the 2017 Law on Special Administrative-Economic Units, offering robust investor protections and statutory clarity.[23] China's SEZs exemplify a hybrid legal structure, combining municipal-level regulatory autonomy with supportive national policies, enabling dynamic regulatory experimentation and localized policy adaptation.[24] Collectively, these frameworks reflect differing degrees of legal centralization, institutional autonomy, and investor safeguards, offering important lessons for potential harmonization efforts in Cambodia.

Comparative Legal Framework Analysis

This section evaluates five legal dimensions across Cambodia, Thailand, Vietnam, and China to understand the extent to which Cambodia's SEZ legal framework aligns with regional models and international best practices.

Legal Foundation and Statutory Clarity

The legal foundation of SEZs is critical in ensuring statutory clarity, investor confidence, and regulatory predictability. Cambodia's SEZ framework is governed primarily by Sub-Decree No. 148 ANKr.BK (2005) and the general Law on Investment (1994), lacking a dedicated SEZ statute.[25] This fragmented legal architecture leads to

[22] *Id*.
[23] *Decree No. 82/2018/ND-CP on the Management of Industrial Zones and Economic Zones* (2018) (Viet.).
[24] Zhen Zhang, *The Legal Structure of Special Economic Zones in China: A Comparative Study*, 12 *J. Chinese L.* 105, 108–10 (2019).
[25] *Sub-Decree No. 148 ANKr.BK on the Establishment and Management of Special Economic Zones* (2005) (Cambodia); *Law on Investment of the Kingdom of Cambodia* (1994) (Cambodia).

ambiguities, overlapping mandates, and inconsistent enforcement, creating uncertainty for investors navigating multiple regulations.[26]

In contrast, Thailand anchors its SEZ regime in the Investment Promotion Act (1977) and the Industrial Estate Authority of Thailand Act (1979), providing a coherent statutory basis that codifies incentives, governance structures, and investor protections.[27] Vietnam's Decree No. 82/2018/ND-CP offers an integrated legislative framework that clearly delineates jurisdictional competencies, investment criteria, and regulatory obligations, aligning SEZ operations with national economic policies.[28] China's SEZs, initially established through State Council administrative decrees (e.g., 1984 Administrative Decree), have progressively developed a tiered legal structure where municipal-level statutes complement national policy, offering both clarity and adaptive capacity.[29]

Institutional Governance and Autonomy

Institutional governance shapes the operational efficiency and responsiveness of SEZs. Cambodia's SEZs are centrally administered by the Cambodian Special Economic Zone Board (CSEZB) under the Council for the Development of Cambodia (CDC), concentrating decision-making at the national level and limiting zone-level

[26] Nathan Grimsditch & Megan Henderson, *Initial Assessment of Cambodia's Special Economic Zones* 8–9 (2009) (unpublished report).
[27] *Investment Promotion Act, B.E. 2520 (1977)* (Thai.); *Industrial Estate Authority of Thailand Act, B.E. 2522 (1979)* (Thai.).
[28] *Decree No. 82/2018/ND-CP on the Management of Industrial Zones and Economic Zones* (2018) (Viet.).
[29] Zhen Zhang, *The Legal Structure of Special Economic Zones in China: A Comparative Study*, 12 *J. Chinese L.* 105, 108–10 (2019).

autonomy.[30] This centralized governance fosters bureaucratic inertia and slows responsiveness to investor and market needs.[31]

Thailand delegates substantial operational authority to the Industrial Estate Authority of Thailand (IEAT), empowering zone-specific management with regulatory autonomy to expedite administrative processes.[32] Vietnam's SEZ governance features provincial-level management boards endowed with delegated legislative powers, enabling localized regulatory adaptation while maintaining alignment with national economic strategies.[33] China's SEZs, exemplified by Shenzhen, embody an experimental governance model wherein municipal authorities possess legislative discretion to modify national laws for localized innovation, balancing local flexibility with central oversight.[34]

Investor Rights and Protections

Investor protection mechanisms directly influence SEZ attractiveness and sustainability. Cambodia's investor protections derive from the 1994 Law on Investment, offering fiscal incentives such as tax holidays and 100% foreign ownership allowances but lacking SEZ-specific statutory safeguards and consistent enforcement.[35] The absence of robust legal remedies, coupled with perceptions of judicial inefficiency and political interference, diminishes investor confidence.[36]

[30] Council for the Development of Cambodia, *SEZ Development Statistics* 3 (CDC 2020).
[31] Peter Warr & Jayant Menon, *Cambodia's Special Economic Zones*, 44 *Asian Econ. J.* 45, 55–57 (2016).
[32] *Id*.
[33] Nguyen Van Thanh, *Decentralized Governance in Vietnam's Special Economic Zones*, 15 *Asian Pub. Admin. Rev.* 22, 28 (2018).
[34] Douglas Zhihua Zeng, *Building Engines for Growth and Competitiveness in China: Experience with Special Economic Zones and Industrial Clusters* 25–27 (World Bank Grp. 2016).
[35] *Law on Investment of the Kingdom of Cambodia* (1994) (Cambodia); *Council for the Development of Cambodia, supra* note 6.
[36] Grimsditch & Henderson, *supra* note 2, at 10.

Thailand and Vietnam codify investor rights within SEZ-specific legislation, guaranteeing protections against expropriation, repatriation of profits, and streamlined dispute resolution channels.[37] Vietnam further reinforces investor safeguards through bilateral investment treaties and transparent administrative procedures.[38] China provides layered investor protections via bilateral investment agreements, SEZ-specific guidelines, and ongoing judicial reforms that enhance legal predictability, including access to investor-state dispute settlement (ISDS) mechanisms.[39]

Labor and Environmental Law Integration

The integration of labor and environmental protections into SEZ legal frameworks reflects a country's commitment to sustainable development. Cambodia's SEZs have faced critiques for weak enforcement of labor standards, limited inspection capacity, and absent environmental compliance mandates, resulting in gaps in worker protections and ecological safeguards.[40]

Thailand's SEZs incorporate labor protections under national labor codes while assigning inspection authority to IEAT for local enforcement.[41] Vietnam mandates Environmental Impact Assessments (EIAs) and labor compliance as statutory requirements within SEZ operations, though challenges persist in uniform implementation.[42] China's SEZs have progressively strengthened environmental and labor regulatory integration, with Shenzhen's evolution into an eco-industrial park illustrating the institutionalization of sustainability within SEZ governance.[43]

[37] Warr & Menon, *supra* note 7, at 58–60; Nguyen, *supra* note 9, at 29.
[38] *Id*.
[39] Zhang, *supra* note 5, at 112–114.
[40] Grimsditch & Henderson, *supra* note 2, at 11–12.
[41] Warr & Menon, *supra* note 7, at 60.
[42] Nguyen, *supra* note 9, at 30.
[43] Zhang, *supra* note 5, at 116–18.

Dispute Resolution Mechanisms

Efficient dispute resolution mechanisms are essential for maintaining legal certainty and investor trust. Cambodia lacks SEZ-specific dispute resolution systems, relying instead on general judicial procedures that are often slow, opaque, and perceived as susceptible to political influence.[44] This reliance undermines timely and impartial resolution of investor disputes.

Thailand's SEZs authorize IEAT to facilitate arbitration and mediation services within zones, offering alternative dispute resolution (ADR) pathways that bolster investor confidence.[45] Vietnam's SEZ regime establishes arbitration panels under provincial management boards, institutionalizing dispute resolution at the zone level.[46] China's SEZs feature specialized arbitration centers, such as the Shenzhen Court of International Arbitration, providing fast-track adjudication tailored to the commercial realities of SEZ investments.[47]

Findings & Discussion

The comparative legal analysis reveals significant divergence between Cambodia's SEZ legal framework and the more cohesive, institutionalized systems in Thailand, Vietnam, and China. Three central findings emerge, highlighting critical challenges that impede the effectiveness and sustainability of Cambodia's SEZs.

Legal Fragmentation and Executive Dominance in Cambodia

[44] Warr & Menon, *supra* note 7, at 61.
[45] *Id*.
[46] Nguyen, *supra* note 9, at 31.
[47] Zeng, *supra* note 10, at 28–29.

Cambodia's SEZ governance is characterized by a fragmented legal architecture, relying heavily on Sub-Decree No. 148 ANKr.BK (2005) and ancillary executive decrees without a comprehensive legislative statute.[48] This reliance fosters legal fragmentation and overlapping mandates, undermining statutory clarity and predictability for investors.[49] Unlike Thailand's codified regime under the Industrial Estate Authority of Thailand Act (1979) or Vietnam's Decree No. 82/2018/ND-CP, Cambodia lacks a unified legal instrument delineating SEZ operational guidelines, jurisdictional authority, and investor rights.[50]

The dominance of executive agencies, particularly the Cambodian Special Economic Zone Board (CSEZB) under the Council for the Development of Cambodia (CDC), further concentrates decision-making power, limiting transparency and institutional accountability.[51] By contrast, China's decentralized governance model, granting municipal governments legislative discretion within national policy frameworks, fosters local innovation and adaptability while maintaining policy coherence.[52] Cambodia's centralized and fragmented approach thus creates regulatory uncertainty and constrains dynamic policy responses.

Lack of Independent Oversight and Dispute Resolution

A second major finding is the absence of independent oversight and specialized dispute resolution mechanisms in Cambodia's SEZ governance. Oversight remains centralized under the CDC, with no autonomous management boards or zone-level

[48] *Sub-Decree No. 148 ANKr.BK on the Establishment and Management of Special Economic Zones* (2005) (Cambodia).
[49] Nathan Grimsditch & Megan Henderson, *Initial Assessment of Cambodia's Special Economic Zones* 8–9 (2009) (unpublished report).
[50] *Decree No. 82/2018/ND-CP on the Management of Industrial Zones and Economic Zones* (2018) (Viet.); *Industrial Estate Authority of Thailand Act, B.E. 2522 (1979)* (Thai.).
[51] Council for the Development of Cambodia, *SEZ Development Statistics* 3 (CDC 2020).
[52] Douglas Zhihua Zeng, *Building Engines for Growth and Competitiveness in China: Experience with Special Economic Zones and Industrial Clusters* 25–27 (World Bank Grp. 2016).

regulatory bodies empowered to monitor compliance or mediate conflicts.[53] Investors must rely on Cambodia's general judiciary for dispute resolution, a system often criticized for political interference, procedural delays, and limited expertise in commercial matters.[54]

By contrast, Thailand's Board of Investment (BOI) and Vietnam's provincial SEZ Management Boards operate with autonomous authority, enhancing regulatory responsiveness and accountability.[55] Both countries provide dedicated dispute resolution mechanisms, including arbitration panels and administrative tribunals tailored to SEZ operations.[56] China's SEZs benefit from specialized arbitration centers, such as the Shenzhen Court of International Arbitration, offering expedited, impartial, and commercially attuned dispute resolution.[57] Cambodia's failure to establish comparable structures exposes investors to protracted, unpredictable legal disputes, reducing investor confidence.

Weak Integration of Labor and Environmental Protections

The third key finding concerns Cambodia's weak integration of labor and environmental protections within its SEZ legal framework. While economic imperatives have driven SEZ expansion, legal mechanisms for safeguarding worker welfare and environmental sustainability remain underdeveloped.[58] Cambodia lacks mandatory Environmental Impact Assessments (EIAs) and robust inspection systems

[53] Peter Warr & Jayant Menon, *Cambodia's Special Economic Zones*, 44 *Asian Econ. J.* 45, 55–57 (2016).
[54] *Id*.
[55] *Id*.
[56] Nguyen Van Thanh, *Decentralized Governance in Vietnam's Special Economic Zones*, 15 *Asian Pub. Admin. Rev.* 22, 28–30 (2018).
[57] Zhen Zhang, *The Legal Structure of Special Economic Zones in China: A Comparative Study*, 12 *J. Chinese L.* 105, 116–18 (2019).
[58] Grimsditch & Henderson, *supra* note 2, at 11–12.

for enforcing labor standards in SEZs, contributing to gaps in compliance and reputational risks.[59]

In contrast, Thailand and Vietnam embed labor and environmental standards within SEZ statutory provisions, backed by dedicated monitoring bodies and inspection mandates.[60] China's SEZs have progressively institutionalized environmental governance, with Shenzhen transitioning toward an eco-industrial park model integrating sustainability as a core regulatory principle.[61] Cambodia's deficiencies in these areas risk eroding social trust, attracting international scrutiny, and undermining the long-term viability of its SEZ program.

Policy Recommendations

Based on the comparative legal analysis, this study proposes a set of policy recommendations to strengthen Cambodia's SEZ legal framework, drawing from best practices observed in Thailand, Vietnam, and China. These recommendations aim to address the key legal deficiencies identified, promote sustainable development, and enhance investor confidence.

Enact a Dedicated SEZ Law

Cambodia should enact a comprehensive, parliament-approved SEZ statute that consolidates Sub-Decree No. 148 ANKr.BK (2005), related sub-decrees, investment guidelines, and fiscal incentives into a unified legal instrument.[62] Such a law should clearly define jurisdictional authority, governance structures, investor rights, fiscal

[59] *Id*.
[60] Nguyen, *supra* note 9, at 30.
[61] Zhang, *supra* note 10, at 116–119.
[62] *Sub-Decree No. 148 ANKr.BK on the Establishment and Management of Special Economic Zones* (2005) (Cambodia).

incentives, and compliance obligations.[63] By reducing legal fragmentation and executive dominance, a dedicated statute would enhance statutory clarity, legal predictability, and transparency, aligning Cambodia's legal foundation with models like Thailand's Industrial Estate Authority of Thailand Act (1979) and Vietnam's Decree No. 82/2018/ND-CP.[64]

Decentralize and Professionalize Zone Governance

Cambodia should decentralize SEZ governance by establishing autonomous, professionally managed local zone authorities, modeled after Thailand's IEAT and China's municipal governance in Shenzhen.[65] Empowering SEZ-level management bodies with delegated regulatory and administrative authority would increase operational flexibility, improve responsiveness to local market dynamics, and reduce bureaucratic bottlenecks.[66] Professionalization should be reinforced through merit-based appointments, transparent recruitment, capacity-building programs, and institutional accountability measures, fostering a governance culture that attracts sustainable investment.[67]

Establish SEZ-Specific Dispute Resolution Mechanisms

To overcome the deficiencies of Cambodia's reliance on the general judiciary for SEZ disputes, this study recommends the creation of specialized arbitration and

[63] Nathan Grimsditch & Megan Henderson, *Initial Assessment of Cambodia's Special Economic Zones* 8–9 (2009) (unpublished report).
[64] *Industrial Estate Authority of Thailand Act, B.E. 2522 (1979)* (Thai.); *Decree No. 82/2018/ND-CP on the Management of Industrial Zones and Economic Zones* (2018) (Viet.).
[65] Douglas Zhihua Zeng, *Building Engines for Growth and Competitiveness in China: Experience with Special Economic Zones and Industrial Clusters* 25–27 (World Bank Grp. 2016).
[66] Peter Warr & Jayant Menon, Cambodia's Special Economic Zones, 44 *Asian Econ. J.* 45, 55–57 (2016).
[67] *Id*.

mediation centers dedicated to SEZ-related conflicts.[68] Drawing inspiration from China's Shenzhen Court of International Arbitration, such mechanisms would provide expedited, impartial, and cost-effective dispute resolution tailored to commercial disputes within SEZs.[69] Cambodia could further leverage ASEAN's investment agreements to integrate Investor-State Dispute Settlement (ISDS) frameworks, enhancing alignment with regional dispute resolution practices and strengthening legal remedies for foreign investors.[70]

Integrate Labor and Environmental Compliance

Cambodia should embed mandatory labor protections and environmental safeguards directly into SEZ legal instruments. This includes statutory requirements for Environmental Impact Assessments (EIAs) prior to SEZ project approval, labor compliance audits, and the establishment of dedicated inspection units to monitor adherence to labor and environmental laws.[71] Aligning Cambodia's SEZs with sustainable development goals following the regulatory integration seen in Vietnam and China would bolster Cambodia's international reputation, mitigate social and ecological risks, and enhance access to global investment markets prioritizing ethical business practices.[72] International organizations, such as the International Labor Organization (ILO), could further support enforcement and capacity-building efforts through partnerships.[73]

Create a Legal Observatory for SEZs

[68] *Id*.
[69] Zhen Zhang, *The Legal Structure of Special Economic Zones in China: A Comparative Study*, 12 *J. Chinese L.* 105, 116–18 (2019).
[70] *ASEAN Comprehensive Investment Agreement* art. 29, Feb. 26, 2009.
[71] Grimsditch & Henderson, *supra* note 2, at 11–12.
[72] Nguyen Van Thanh, *Decentralized Governance in Vietnam's Special Economic Zones*, 15 *Asian Pub. Admin. Rev.* 22, 30 (2018).
[73] International Labour Organization, *Better Work Programme Annual Report* 4–5 (ILO 2023).

Finally, Cambodia should establish a Legal Observatory for SEZs to serve as an institutional platform for continuous monitoring, evaluation, and policy dialogue.[74] This body could include representatives from government agencies, academia, civil society, and private sector stakeholders, tasked with benchmarking Cambodia's SEZ legal framework against regional peers, producing policy reports, and recommending reforms based on evolving legal, economic, and environmental dynamics.[75] The Legal Observatory could collaborate with international organizations such as the United Nations Conference on Trade and Development (UNCTAD) to incorporate global best practices, institutionalizing a mechanism for adaptive legal governance in the SEZ sector.[76]

Conclusion

This comparative legal analysis has revealed significant disparities between Cambodia's Special Economic Zone (SEZ) legal framework and the more mature, comprehensive systems of Thailand, Vietnam, and China. These neighboring countries have benefited from long-standing peace, institutional maturity, and well-established legal systems, enabling them to develop coherent SEZ regimes. In contrast, Cambodia only achieved full peace in recent decades and has since been in the process of rebuilding its legal and institutional foundations. This historical context is vital to understanding Cambodia's current SEZ framework and its trajectory.

Despite facing legal fragmentation, centralized administrative structures, and the absence of zone-specific dispute mechanisms, Cambodia's SEZ program has made notable progress. Since the adoption of Sub-Decree No. 148 ANKr.BK in 2005,

[74] ASEAN Secretariat, *ASEAN Guidelines for Special Economic Zone Development* 5 (2016).
[75] *Id*.
[76] United Nations Conference on Trade and Development, *World Investment Report 2023: Investing in Sustainable Development* 82–84 (UNCTAD 2023).

Cambodia has approved 54 SEZs by 2024. These zones have contributed significantly to export growth, industrial development, and job creation, especially for women, demonstrating the Royal Government's commitment to economic transformation and regional integration.

While gaps remain, such as the lack of a unified SEZ statute, weak enforcement of labor and environmental standards, and limited institutional autonomy, the Royal Government of Cambodia is actively addressing these deficiencies as part of its national agenda for legal modernization and sustainable development. In alignment with its obligations under the Sustainable Development Goals (SDGs), the government has shown increasing attention to enhancing legal certainty, strengthening institutional accountability, and attracting responsible foreign direct investment (FDI).

Improving the SEZ framework is not merely a legal necessity; it is a strategic imperative for achieving inclusive and sustainable economic growth. The enactment of the 2021 Law on Investment, revisions to trade and industrial policies, and the mid-term review of the Industrial Development Policy (2015–2025) are evidence of Cambodia's gradual but determined legal reform process. These developments demonstrate a serious commitment to ensuring that the legal environment supports both economic competitiveness and social progress. Future research should further examine the political economy of SEZ reform, focusing on how institutional dynamics, stakeholder interests, and implementation capacities shape legal outcomes. Additionally, empirical assessments of SEZ reforms across ASEAN would provide valuable insights to guide evidence-based policymaking.

In light of the analysis, this study offers five key policy recommendations:

1. Enact a dedicated SEZ Law that consolidates all relevant decrees and policies into a unified statute to ensure legal clarity and consistency.

2. Decentralize SEZ governance by empowering local zone authorities with operational autonomy and professional capacity, modeled after best practices from Thailand and China.
3. Establish SEZ-specific dispute resolution mechanisms such as arbitration or mediation panels to provide efficient and impartial remedies for investors.
4. Integrate labor rights and environmental protections directly into the legal instruments governing SEZs to ensure responsible and sustainable development.
5. Create a National SEZ Legal Observatory that brings together government agencies, the private sector, academia, and civil society to monitor legal developments, evaluate policy outcomes, and support evidence-based legal reform.

Together, these reforms aim to build a transparent, reliable, and competitive legal framework that can foster resilient economic zones and long-term investor confidence. Cambodia's path toward harmonizing its SEZ legal framework with regional and international standards is not only achievable but also essential to realizing its national development goals and its role as a responsible member of the international community.

If successfully implemented, these legal reforms will position Cambodia not only as an attractive investment destination within ASEAN but also as a country that is firmly aligned with the global agenda for inclusive and sustainable growth. As a member of the Sustainable Development Goals (SDGs), Cambodia's continued efforts to modernize its SEZ legal regime will help bridge the legal and institutional gaps that currently exist, transforming these zones into powerful drivers of economic resilience, job creation, and environmentally responsible industrialization.

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Legalizing Regionalism: Designing an ASEAN Maritime Tribunal in the Post-UNCLOS Era

Ya Navuth

Abstract

This article proposes the creation of an ASEAN Maritime Dispute Settlement Tribunal (AMDST) to address the region's long-standing institutional deficiency in resolving maritime disputes. While ASEAN member states are parties to the United Nations Convention on the Law of the Sea (UNCLOS), the absence of a regional adjudicatory body has left critical legal obligations unenforced. The AMDST is conceived as a treaty-based, opt-in tribunal designed to reconcile ASEAN's commitment to sovereignty and consensus with the need for binding dispute resolution. Drawing on comparative experiences from the ECOWAS Court, the Caribbean Court of Justice, and UNCLOS Annex VII arbitration, this article outlines a phased, modular institutional model grounded in legal positivism, regional institutionalism, and comparative legalism. It argues that the AMDST would strengthen ASEAN's credibility as a rules-based community by enhancing conflict prevention, legal harmonization, and regional legal capacity. While acknowledging political and structural challenges, the article concludes that the AMDST is both a necessary and feasible innovation to elevate ASEAN's normative architecture and maritime governance in the post-UNCLOS era.

Keywords: AMDST, UNCLOS, regional institutionalism, legal harmonization, rule of law

Legalizing Regionalism: Designing an ASEAN Maritime Tribunal in the Post-UNCLOS Era

Introduction

The maritime domain in Southeast Asia is characterized by overlapping sovereignty claims, contested Exclusive Economic Zones (EEZs), joint development zones, and enduring disputes such as those involving the South China Sea and the Gulf of Thailand. Despite the complexities and sensitivities surrounding maritime entitlements, ASEAN lacks any standing judicial or quasi-judicial mechanism to resolve such disputes. While the ASEAN Charter and related documents articulate aspirations for a rule-based community and peaceful conflict resolution, these aspirations remain largely rhetorical without institutional enforcement mechanisms.[1]

ASEAN's reliance on informal consensus, diplomatic consultations, and avoidance of legal confrontation—the so-called "ASEAN Way"—has inhibited the creation of regionally embedded mechanisms that could authoritatively interpret and enforce international legal obligations, especially those derived from the United Nations Convention on the Law of the Sea (UNCLOS).[2] All ten ASEAN member states are parties to UNCLOS,[3] yet their interpretations and applications of maritime law vary widely. In some instances, states resort to international litigation outside of ASEAN frameworks. Notable examples include the Philippines' recourse to UNCLOS Annex VII arbitration in the 2016 Philippines v. China case[4] and the Pedra Branca territorial dispute adjudicated by the International Court of Justice (ICJ) between Malaysia and

[1] Charter of the Association of Southeast Asian Nations art. 1(7), Nov. 20, 2007, 2624 U.N.T.S. 223.
[2] Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* 56–59 (3d ed. 2014).
[3] United Nations Convention on the Law of the Sea art. 279, Dec. 10, 1982, 1833 U.N.T.S. 397.
[4] In re Arbitration Between the Republic of the Phil. and the People's Republic of China, PCA Case No. 2013-19, Award (July 12, 2016).

Singapore in 2008.[5] While these avenues provide formal resolution, they are disconnected from ASEAN's own institutional landscape and highlight the bloc's deficiency in handling intra-regional disputes through its own legal structures.[6]

This article proposes the establishment of the ASEAN Maritime Dispute Settlement Tribunal (AMDST)—a treaty-based, modular, and opt-in judicial body that would gradually build capacity to resolve maritime disputes within the ASEAN region. The proposal responds to the current impasse in regional dispute resolution and offers an alternative trajectory rooted in legal institutionalism. The AMDST would begin with narrow jurisdiction and advisory functions, expanding in scope and authority through incremental phases. Such a design ensures that the tribunal is consistent with ASEAN's values of consensus and state sovereignty while gradually introducing enforceable legal norms.

The article proceeds in eight sections. Section 1 introduces the problem, context, and justification for the proposed ASEAN Maritime Dispute Settlement Tribunal (AMDST). Section 2 critiques the existing ASEAN legal architecture, highlighting the enforcement gap and the failure of the High Council under the Treaty of Amity and Cooperation (TAC) to serve as a conflict resolution body. Section 3 outlines the institutional design of the AMDST, emphasizing its opt-in nature, modular jurisdiction, phased implementation, and compliance mechanisms. Section 4 conducts a comparative institutional analysis, drawing lessons from existing regional courts and international tribunals. Section 5 develops the normative and theoretical justifications for the AMDST, drawing on legal positivism, regional institutionalism, and comparative legalism. Section 6 discusses the tangible benefits and strategic value of such a tribunal, including its impact on conflict prevention, legal harmonization, and

[5] Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malay. v. Sing.), Judgment, 2008 I.C.J. 12, 14 (May 23).
[6] Kentaro Nishimoto, Institutional Deficits in ASEAN, 12 *Asian J. Int'l L.* 235, 240 (2022).

investor confidence. Section 7 addresses potential limitations and challenges, including political resistance, legal capacity disparities, and compliance risks. The article concludes in Section 8 with a reflection on future directions and the role of legal innovation in sustaining ASEAN's legitimacy as a regional organization. Through this comprehensive analysis, the article demonstrates that the AMDST is not only a legally viable and politically feasible innovation but also a necessary institutional evolution for ASEAN in the post-UNCLOS era.

ASEAN's Fragmented Legal Architecture

Despite decades of formal commitment to the rule of law, ASEAN continues to lack an internal binding mechanism for resolving disputes between its member states. The region's principal legal instruments—including the ASEAN Charter and the Treaty of Amity and Cooperation in Southeast Asia (TAC)—outline the goal of peaceful dispute settlement but fail to provide an enforceable legal forum.[7] In particular, the High Council mechanism envisioned under Article 14 of the TAC has never been invoked,[8] rendering it functionally dormant. ASEAN's legal infrastructure remains dependent on voluntary diplomacy and non-binding consultation, with no standing judicial organ capable of interpreting or enforcing regional commitments. This absence is especially critical in the maritime domain, where timely and authoritative legal decisions are often required to prevent escalation.

The ASEAN Charter formally reiterates the commitment to uphold international law and peaceful settlement of disputes. Article 2(2)(e) declares that ASEAN and its member states shall act "in accordance with the principles of peaceful settlement of disputes."[9] However, ASEAN's core decision-making principle—consensus—

[7] Treaty of Amity and Cooperation in Southeast Asia art. 14, Feb. 24, 1976, 1025 U.N.T.S. 261.
[8] Nishimoto, *supra* note 6, at 240.
[9] Charter of the Association of Southeast Asian Nations art. 2(2)(e), Nov. 20, 2007, 2624 U.N.T.S. 223.

undermines the ability to implement such commitments in practice. Article 20(1) and (2) of the Charter explicitly require consensus in all decisions, allowing even one member to veto a proposal.[10] As a result, states with vested interests in the status quo or those involved in maritime disputes can obstruct the institutionalization of legal solutions.

In several high-profile cases, ASEAN states have opted to bypass regional frameworks altogether. As discussed earlier, the Pedra Branca case was resolved by the ICJ rather than any ASEAN mechanism. Likewise, the 2016 Philippines v. China arbitration was conducted under UNCLOS Annex VII through the Permanent Court of Arbitration (PCA). While these routes yielded definitive rulings, they highlight ASEAN's structural failure to offer a viable internal alternative.[11] Moreover, such international adjudications do not develop ASEAN-specific legal norms or regional jurisprudence, missing opportunities to strengthen regional legal coherence.

This lack of an internal dispute settlement body has had broader ramifications. First, it undermines ASEAN's credibility as a rules-based organization. Without demonstrable internal mechanisms to enforce international law, ASEAN's claim to regional centrality appears symbolic rather than functional. Second, the absence of adjudicatory options contributes to the persistence of unresolved maritime disputes, increasing the risk of conflict. Finally, the reliance on bilateral diplomacy over legal resolution often benefits stronger states, leaving smaller or less-resourced ASEAN members with limited avenues for redress.

Without a dedicated tribunal, ASEAN's legal architecture remains fragmented, reactive, and politically constrained. The legal framework exists in aspiration but lacks

[10] *Id.* art. 20(1)–(2).
[11] Alan Khee-Jin Tan, The ASEAN Way and the Rule of Law in the South China Sea Disputes, 40 *Ocean Dev. & Int'l L.* 204, 212–15 (2009).

operational teeth. The AMDST proposal responds directly to this institutional vacuum by offering a regionally embedded, opt-in tribunal designed to evolve from voluntary participation toward binding authority. Its design seeks to fill the legal void at the heart of ASEAN's normative structure, transforming ASEAN's declaratory commitments into enforceable legal obligations.

Institutional Blueprint of the AMDST

The ASEAN Maritime Dispute Settlement Tribunal (AMDST) is envisioned as a modular, opt-in, treaty-based institution grounded in international legal principles and designed to function within ASEAN's sovereignty-sensitive political framework. This section outlines the core components of the tribunal's institutional structure, focusing on its treaty basis, jurisdictional flexibility, phased development, and compliance mechanisms. The proposed model ensures that ASEAN states can incrementally adopt legal adjudication practices without compromising core regional norms such as consensus and non-interference.

Opt-in Treaty Basis

The AMDST would be established through a multilateral treaty or protocol open to all ASEAN member states. Importantly, it would not impose jurisdiction automatically upon all ASEAN members. Instead, participation would be strictly voluntary and conditional upon each state's signature and ratification. Such a model respects the sovereignty concerns that have historically impeded deeper legal institutionalization within ASEAN. This design mirrors the opt-in approach used by the

Caribbean Court of Justice (CCJ), which permits CARICOM member states to accede incrementally to its appellate jurisdiction.[12]

The tribunal's jurisdiction would be rooted in the legal obligations ASEAN members have already accepted under UNCLOS, particularly Articles 279–282, which require the peaceful settlement of disputes.[13] Additionally, ASEAN's own Charter reaffirms these principles in Article 2(2)(e).[14] The AMDST would thus not create new obligations but rather serve as a regional mechanism to interpret and apply existing ones. Establishing the tribunal under ASEAN's legal cooperation framework, such as through the ASEAN Law Ministers' Meeting (ALAWMM), would foster institutional legitimacy and promote regional legal integration.[15]

Modular Jurisdiction

To promote early participation and gradual trust-building, the AMDST would adopt a modular jurisdictional structure. Initially, its competence would be limited to less politically contentious maritime issues such as EEZ and continental shelf delimitation, fisheries conflicts, marine environmental disputes, and the interpretation of existing maritime agreements and joint development arrangements. Excluding matters of territorial sovereignty—historically the most sensitive disputes—would allow states to participate without the fear of ceding core sovereign claims.

This modularity reflects the strategy of other regional tribunals, notably the ECOWAS Community Court of Justice, which began with narrow jurisdiction before

[12] Winston Anderson, The Caribbean Court of Justice: A Work in Progress, 28 *Wis. Int'l L.J.* 421, 429–30 (2010).
[13] United Nations Convention on the Law of the Sea arts. 279–282, Dec. 10, 1982, 1833 U.N.T.S. 397.
[14] Charter of the Association of Southeast Asian Nations art. 2(2)(e), Nov. 20, 2007, 2624 U.N.T.S. 223.
[15] *Id*. art. 13(1).

expanding to include human rights litigation.[16] ASEAN states could negotiate protocols that progressively expand the scope of the AMDST, allowing the institution to evolve in tandem with regional political confidence and legal capacity.

Staged Implementation

The establishment of the AMDST is best conceptualized as a three-phase process designed to accommodate ASEAN's gradualist approach to regional integration:

Phase I: Advisory Opinions and Mediation. In the tribunal's initial stage, its role would be confined to issuing non-binding advisory opinions and facilitating mediation between member states. States or ASEAN institutions could request legal interpretations of UNCLOS provisions or ASEAN maritime arrangements. This phase would serve to demonstrate the tribunal's technical competence and neutral character.

Phase II: Optional Binding Adjudication. In the second phase, consenting states could submit disputes to the tribunal for binding adjudication on a case-by-case basis. Jurisdiction would be consensual, with each party required to accept the tribunal's authority for a particular case. The tribunal could operate on an ad hoc basis with judges appointed per case, reflecting the model used in UNCLOS Annex VII arbitrations.[17]

Phase III: Compulsory Jurisdiction and Permanent Bench. The final phase would see the establishment of a permanent bench of judges with compulsory jurisdiction over ratifying states for defined categories of disputes. This structure would

[16] Erika de Wet, The Role of Human Rights Courts in Enhancing Domestic Rule of Law: Lessons from the ECOWAS Court of Justice, 14 *Nw. J. Int'l Hum. Rts.* 54, 59–60 (2016).
[17] In re Arbitration Between the Republic of the Phil. and the People's Republic of China, PCA Case No. 2013-19, Award (July 12, 2016).

mirror the International Court of Justice for those states that have accepted its compulsory jurisdiction. Moving to this stage would depend on demonstrated tribunal success and sustained political will among ASEAN members.

Compliance and Oversight Mechanisms

Given ASEAN's tradition of non-interference, the AMDST must rely on non-coercive yet effective compliance mechanisms. First, compliance could be monitored through an ASEAN legal affairs body reporting to the ASEAN Summit or Foreign Ministers' Meeting. Second, peer review processes and regional legal scorecards could be used to track implementation of tribunal decisions.

Reputational incentives would be key. States that comply with judgments could be granted leadership roles in ASEAN's maritime and legal working groups, while persistent non-compliance could lead to reputational costs such as diminished influence in ASEAN consensus-building forums.

To enhance enforceability, the AMDST treaty could require states to domesticate tribunal rulings through national legislation or recognize judgments as enforceable through their domestic courts. This is similar to how international arbitral awards are recognized under the New York Convention.

Finally, transparency measures, such as the public dissemination of rulings and compliance reports, would ensure that both ASEAN member governments and civil society actors are informed of each state's adherence to legal obligations.

Comparative Institutional Analysis

To appreciate the feasibility and strategic design of the ASEAN Maritime Dispute Settlement Tribunal (AMDST), it is useful to examine analogous institutions in other regions and legal regimes. Comparative institutional analysis offers insights into what features have worked elsewhere, which pitfalls to avoid, and how to tailor global legal models to Southeast Asia's distinct political and legal culture. This section considers three case studies: the ECOWAS Community Court of Justice (ECCJ), the Caribbean Court of Justice (CCJ), and UNCLOS Annex VII arbitration. Each of these bodies illustrates the institutional trade-offs and opportunities involved in regional legal design.

ECOWAS Community Court of Justice (ECCJ)

Established in 1991 and operational since 2001, the ECCJ initially focused on interpreting and enforcing the Revised Treaty of ECOWAS, with jurisdiction limited to disputes between member states and ECOWAS institutions.[18] Over time, the ECCJ expanded its jurisdiction to include individual complaints about human rights violations, particularly under a 2005 Supplementary Protocol.[19] Notably, this expansion occurred despite West Africa's strong state-sovereignty norms, demonstrating that regional courts can gain legitimacy and relevance even in sovereignty-sensitive environments.

The ECCJ's growth trajectory provides a lesson for ASEAN: an initially modest tribunal can mature into a vital guardian of regional legal norms. Although the ECCJ has faced compliance challenges, several landmark decisions—including those involving political rights and unlawful detentions—have been implemented, indicating that regional peer pressure and political dynamics can sustain court authority even

[18] Protocol A/P.1/7/91 on the Community Court of Justice art. 9(1), ECOWAS.
[19] Supplementary Protocol A/SP.1/01/05 Amending the Preamble and Arts. 1, 2, 9 & 30 of Protocol A/P.1/7/91, ECOWAS.

without coercive enforcement powers.[20] ASEAN could adopt a similar incrementalism by beginning with narrow jurisdictional mandates for the AMDST and expanding only after demonstrated success.

Caribbean Court of Justice (CCJ)

The CCJ, established in 2001, serves both as a regional treaty court interpreting the Revised Treaty of Chaguaramas and as a final court of appeal for certain CARICOM member states that have chosen to replace the Judicial Committee of the Privy Council.[21] The CCJ's appellate jurisdiction remains optional, and only a few states—like Barbados, Belize, and Guyana—have adopted it to date.

Despite its limited adoption, the CCJ has earned respect for its impartiality, procedural innovation, and high-quality judgments. A key feature of the CCJ is its financing mechanism: a permanently endowed trust fund designed to insulate the court from political interference.[22] This financial model ensures the court's independence and is a best practice ASEAN might consider in funding the AMDST.

The CCJ also embraces procedural flexibility, including e-filing and mobile hearings, which bring the court closer to litigants. ASEAN, similarly, could embed technology and accessibility as core components of the AMDST's design, ensuring that its procedures are transparent, efficient, and regionally responsive.

UNCLOS Annex VII Arbitration

[20] Karen J. Alter et al., International Adjudication in Africa: Progress, Challenges, and Innovation, 44 *Law & Soc'y Rev.* 871, 874–76 (2010).
[21] Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy arts. 211–222, July 5, 2001, https://caricom.org/documents/4906-revised_treaty-text.pdf.
[22] Winston Anderson, The Caribbean Court of Justice: A Work in Progress, 28 *Wis. Int'l L.J.* 421, 431–32 (2010).

In the absence of regional dispute resolution bodies, UNCLOS provides a mechanism for compulsory dispute settlement under Annex VII. This option allows a state to unilaterally initiate proceedings against another state party to UNCLOS. The tribunal is ad hoc: each party appoints one arbitrator, and the remaining members are selected by agreement or designated by the President of the International Tribunal for the Law of the Sea (ITLOS).[23]

The Philippines v. China arbitration is the most notable example of Annex VII proceedings. Although China refused to participate, the tribunal issued a binding award in 2016 that clarified numerous aspects of UNCLOS, including the legal status of features in the South China Sea and the nature of Chinese activities within the Philippines' EEZ.[24] Despite China's non-compliance, the case significantly shaped regional and global understanding of maritime law and demonstrated that binding legal outcomes can be produced even in contentious geopolitical environments.

However, Annex VII arbitration is limited in two respects: it lacks continuity of jurisprudence (each panel is disbanded after ruling), and it exists outside of any regional context. ASEAN member states litigating under Annex VII do not strengthen ASEAN's legal framework, and rulings do not contribute to the development of ASEAN-specific norms. This fragmentation points out the need for a standing regional tribunal like the AMDST to provide continuity, regional identity, and cumulative legal development.

Synthesis and Lessons for ASEAN

From the ECCJ, ASEAN can learn that incremental jurisdictional expansion—starting with narrow, consensual mandates—can eventually yield a robust and

[23] United Nations Convention on the Law of the Sea, Annex VII, arts. 3–5, Dec. 10, 1982, 1833 U.N.T.S. 397.
[24] *PCA Philippines v. China*, *supra* note 4.

authoritative court. With the CCJ, the importance of judicial independence, trust fund financing, and procedural accessibility becomes clear. According to UNCLOS arbitration, ASEAN sees the power of binding legal determinations but also the limits of relying on ad hoc, external institutions.

The AMDST, by combining elements of these models, can position itself as a regional institution that balances legal enforceability with political realism. It would offer states a forum embedded in ASEAN's normative culture, yet capable of applying international legal standards. In doing so, the AMDST would foster a distinctive regional jurisprudence and elevate ASEAN's capacity to resolve its own disputes without external dependency.

Legal Theoretical Framework

Any proposal to institutionalize a regional tribunal must be grounded in compelling legal and normative theory. Without such a foundation, the creation of an ASEAN Maritime Dispute Settlement Tribunal (AMDST) may be considered merely aspirational or utopian. This section outlines three principal frameworks that support the establishment of the AMDST: legal positivism, regional institutionalism, and comparative legalism. These theoretical lenses justify the tribunal's creation and help calibrate its design to ASEAN's distinctive political and legal character.

Legal Positivism

Legal positivism holds that legal validity is derived from the consent of sovereign states, not from moral or metaphysical principles. ASEAN states are already bound by international legal obligations through treaties such as UNCLOS and the ASEAN Charter. These instruments require peaceful dispute resolution and adherence

to the rule of law.[25] However, without an enforcement mechanism, these obligations remain normatively potent but practically ineffective.

The AMDST is conceived as a tool to give operational meaning to those legal obligations. As Hans Kelsen argued, law becomes effective not simply through its existence but through its institutionalization.[26] The tribunal would function as a juridical expression of obligations ASEAN states have already accepted, thereby preserving sovereignty while enhancing compliance. Importantly, participation in the AMDST would be voluntary, consistent with positivist principles of state consent. Such an arrangement removes the specter of supranational imposition and reinforces the idea that states remain the authors of their legal commitments.

Regional Institutionalism

Regional institutionalism posits that international institutions can shape state behavior through the development of shared norms, procedures, and expectations. Institutions like the European Court of Human Rights and the ECOWAS Court demonstrate that regional bodies can socialize member states into a culture of legal accountability.[27] Although ASEAN's consensus-based model differs from European supranationalism, it still exhibits institutional features that can support gradual legal integration.

The ASEAN Charter proclaims the rule of law as a foundational principle. Yet the absence of a regional adjudicatory body renders this proclamation toothless. The AMDST would fill this gap by providing a structured mechanism through which

[25] United Nations Convention on the Law of the Sea arts. 279–282, Dec. 10, 1982, 1833 U.N.T.S. 397; Charter of the Association of Southeast Asian Nations art. 2(2)(e), Nov. 20, 2007, 2624 U.N.T.S. 223.
[26] Hans Kelsen, *Pure Theory of Law* 202–03 (Max Knight trans., 2d ed. 1967, Springer Int'l Publ'g).
[27] de Wet, *supra* note 16, at 61–64.

ASEAN states can interpret and apply shared legal norms. Over time, repeated interaction with the tribunal could create jurisprudential expectations and institutional habits that reinforce legal compliance. The tribunal would thus serve as both a legal and normative actor, strengthening ASEAN's identity as a rules-based community.[28]

Comparative Legalism

Comparative legalism is the process by which legal systems adapt successful institutional models from other jurisdictions to suit local conditions. ASEAN does not have to create its own tribunal. As demonstrated in Section 4, the CCJ, ECCJ, and UNCLOS arbitration each offer instructive examples.[29] ASEAN can draw on these models while tailoring institutional design to reflect its own political culture.

Sujit Choudhry argues that legal ideas are not static; they migrate across systems, mutate, and localize.[30] The AMDST represents such a migration—a regional adaptation of global dispute resolution principles. By adopting a phased jurisdiction, opt-in participation, and regional accountability mechanisms, ASEAN can embed legalism in ways that are politically feasible and culturally congruent. In this way, comparative legalism legitimizes the tribunal's structure while reinforcing the universality of international legal norms.

Together, these three frameworks—positivism, institutionalism, and comparative legalism—construct a robust theoretical basis for the AMDST. They show that the tribunal is not a legal anomaly but a logical and necessary institutional evolution rooted in ASEAN's existing commitments, regional identity, and global legal trends.

[28] Acharya, *supra* note 2, at 63–64.
[29] Anderson, *supra* note 12, at 429–31.
[30] Sujit Choudhry, Migration as a New Metaphor in Comparative Constitutional Law, in *The Migration of Constitutional Ideas* 1, 3–4 (Sujit Choudhry ed., Cambridge Univ. Press 2006).

Benefits and Strategic Value

The establishment of the ASEAN Maritime Dispute Settlement Tribunal (AMDST) offers a range of compelling legal, strategic, and institutional benefits. Beyond providing a mechanism for resolving specific maritime disputes, the tribunal would contribute to broader regional stability, reinforce legal predictability, and enhance ASEAN's normative and geopolitical credibility. This section outlines the key advantages of institutionalizing the AMDST and the positive ripple effects it would generate across ASEAN.

Conflict Prevention and Legal Deterrence

A standing tribunal for maritime disputes would serve as a powerful deterrent against unilateral or provocative actions. The very existence of a credible forum where states can seek legal recourse reduces the likelihood that disputes escalate into military confrontation.[31] As seen in other regions, dispute settlement bodies institutionalize dialogue and provide structured alternatives to coercion. By offering timely legal clarification of ambiguous maritime boundaries or contested claims, the AMDST could diffuse tensions before they reach a flashpoint. In this way, the tribunal would be a cornerstone of preventive diplomacy in Southeast Asia.

Rule of Law and Legal Harmonization

ASEAN's member states interpret and apply UNCLOS and other maritime instruments in divergent ways. A regional tribunal would help unify interpretations by developing jurisprudence that reflects regional consensus. Over time, the AMDST's

[31] Robert Beckman, The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea, 107 *Am. Soc'y Int'l L. Proc.* 261, 263 (2013).

decisions would contribute to the development of a regional acquis—a body of legal principles and precedents that harmonize the application of maritime law across ASEAN.[32] Such an arrangement would reduce legal uncertainty, discourage contradictory claims, and encourage joint ventures based on shared legal understanding. The tribunal could also help clarify regional approaches to fisheries, marine environmental protection, and transit passage—areas where ambiguity breeds conflict.

Institutional Credibility and ASEAN Centrality

ASEAN often promotes itself as the central hub of regional diplomacy in Asia. However, its lack of binding legal institutions undermines this claim.[33] Establishing the AMDST would reinforce ASEAN's credibility as a capable and self-reliant regional organization. It would demonstrate that ASEAN can manage complex intra-regional problems without relying on external courts or ad hoc processes. This institutional maturity would bolster ASEAN's standing in global governance forums and affirm its relevance in maritime security dialogues with major powers such as the United States, China, and the European Union.

Economic Confidence and Investor Security

Maritime stability is essential for trade, investment, and resource development. Overlapping claims and uncertain legal regimes deter investment in offshore energy, fisheries, and transport infrastructure.[34] By providing a predictable legal environment, the AMDST would enhance investor confidence. Joint development zones and regional resource-sharing agreements are more likely to succeed when there is a neutral legal

[32] Tara Davenport, Bridging Troubled Waters: Dispute Resolution in the South China Sea, 13 *Asian J. Int'l L.* 1, 4–7 (2023).
[33] Alan Khee-Jin Tan, The ASEAN Way and the Rule of Law in the South China Sea Disputes, 40 *Ocean Dev. & Int'l L.* 204, 212–15 (2009).
[34] Anderson, *supra* note 12, at 432–33.

forum to resolve implementation disputes. Furthermore, the tribunal would give smaller ASEAN states legal recourse in the face of pressure or dominance from larger actors, leveling the playing field and encouraging inclusive economic cooperation.

Normative Integration and Legal Culture

The AMDST would also contribute to the evolution of ASEAN's internal legal culture. Its existence would normalize legal recourse as a method of dispute resolution within the region. States would become accustomed to legal reasoning, judgment compliance, and jurisprudential development as part of regional governance.[35] This cultural shift is critical to sustaining long-term regional peace and cooperation. By embedding dispute resolution into ASEAN's institutional framework, the AMDST would help transform ASEAN from a diplomatic club into a more fully realized legal community.

In sum, the AMDST is more than a tribunal—it is an instrument of regional integration, legal development, and strategic coherence. By fulfilling ASEAN's declared commitments to law, peace, and community-building, the tribunal would anchor the region's legal order and provide a vital tool for managing future maritime challenges.

Limitations and Implementation Challenges

While the establishment of the ASEAN Maritime Dispute Settlement Tribunal (AMDST) offers significant benefits, its realization is not without challenges. Institutional design alone is insufficient unless accompanied by sustained political commitment, legal capacity building, and mechanisms to address normative

[35] de Wet, *supra* note 16, at 61–64.

skepticism. This section outlines four key challenges—sovereignty sensitivities, uneven legal capacities, enforcement limitations, and cultural resistance—and proposes ways to mitigate them.

Sovereignty Sensitivities

Perhaps the most formidable challenge to the AMDST is ASEAN's deep-rooted commitment to sovereignty and non-interference. The consensus principle gives every member state de facto veto power over any initiative perceived to infringe upon national autonomy.[36] Even an opt-in tribunal may face resistance from states wary of binding adjudication or adverse publicity.

To address this, the AMDST must emphasize that participation is voluntary, jurisdiction is modular, and states remain in full control of their consent to being bound. The design could also include procedural safeguards such as optional confidentiality clauses or provisions allowing parties to exclude certain categories of disputes. ASEAN's experience with non-binding mechanisms such as the TAC and the ASEAN Intergovernmental Commission on Human Rights shows that political comfort with legal institutions can be nurtured over time.[37] Early buy-in from smaller or legally progressive states could build precedent and gradually encourage wider participation.

Uneven Legal Capacities

ASEAN member states exhibit wide disparities in their legal infrastructure, human resources, and familiarity with international litigation. Some states may lack maritime lawyers, trained negotiators, or even coherent national policies on maritime

[36] Charter of the Association of Southeast Asian Nations arts. 2(2)(a), 20(1)–(2), Nov. 20, 2007, 2624 U.N.T.S. 223.
[37] Nishimoto, *supra* note 6, at 240.

law. Such variation creates an uneven playing field and deters participation in adjudicatory processes.

To overcome this, ASEAN could establish a Legal Capacity-Building Unit under the ASEAN Secretariat or in collaboration with external partners. Training programs, resource centers, and regional legal networks can empower all member states to participate effectively.[38] Drawing lessons from the CCJ and ECCJ, ASEAN could also mandate that the AMDST include rotating judges from all sub-regions and offer pro bono legal support to under-resourced litigants.

Compliance and Enforcement Weaknesses

As with many international tribunals, the AMDST would lack coercive enforcement powers. Compliance with judgments would depend on peer pressure, reputational incentives, and the goodwill of national governments. Such circumstances may embolden some states to ignore unfavorable rulings, especially in politically sensitive cases.

The tribunal's design must therefore incorporate robust compliance mechanisms embedded in ASEAN's political architecture. This could include formal reporting of implementation progress to the ASEAN Summit, diplomatic follow-up by the ASEAN Secretary-General, and periodic public review of compliance through published scorecards.[39] States that uphold rulings could be rewarded with leadership roles or preferential access to legal cooperation projects. Transparency and reputational costs have proven effective even in regions with weak enforcement tools.

[38] de Wet, *supra* note 16, at 61–64.
[39] Davenport, *supra* note 32, at 4–7.

Cultural Resistance to Legalism

ASEAN has traditionally resolved disputes through informal diplomacy, emphasizing face-saving, consensus, and behind-the-scenes negotiation. A tribunal that issues public rulings and legal judgments may be considered alien to ASEAN's political culture.[40]

This resistance can be mitigated by integrating the AMDST into existing ASEAN processes and institutions. For example, the tribunal's advisory opinions could be formally requested by ASEAN bodies, embedding them within the community's consultative framework. Furthermore, by limiting early jurisdiction to technical and non-sovereignty issues, the tribunal can build legitimacy without threatening ASEAN norms. Over time, as jurisprudence develops and member states gain confidence, the AMDST could gradually shift from a marginal to a central institution.

In sum, the challenges to implementing the AMDST are real but surmountable. They require political foresight, strategic design, and patient coalition-building. If properly addressed, the tribunal could evolve from a bold proposal into a foundational element of ASEAN's legal architecture.

Conclusion and Future Research

The proposal for the ASEAN Maritime Dispute Settlement Tribunal (AMDST) emerges from a critical need to institutionalize the peaceful resolution of maritime disputes within Southeast Asia. As this article has demonstrated, ASEAN's current framework, though normatively committed to international law and peaceful settlement, lacks the institutional capacity to operationalize these principles. Without a

[40] Acharya, *supra* note 2, at 63–64.

regional adjudicatory body, member states continue to depend on external tribunals or ad hoc mechanisms, which do not contribute to ASEAN's internal legal cohesion or identity.

The AMDST offers a pragmatic and sovereignty-conscious solution. Its opt-in design, phased jurisdictional development, and integration into ASEAN's existing political and legal structures ensure that it complements rather than contradicts regional norms. Modeled on comparative examples such as the CCJ and ECCJ and grounded in theoretical frameworks of legal positivism, regional institutionalism, and comparative legalism, the AMDST provides a tailored institutional innovation for ASEAN. It enhances conflict prevention, promotes legal harmonization, supports rule-of-law norms, and positions ASEAN as a credible regional legal actor.

Still, the road to implementation is fraught with challenges. Sovereignty concerns, disparities in legal capacity, weak enforcement tools, and ASEAN's informal dispute resolution culture must all be addressed strategically. The solutions lie in coalition-building among like-minded states, sustained legal capacity development, and embedding compliance within ASEAN's diplomatic and political framework.

Future research should explore several areas in greater detail. First, legal scholars can develop a draft statute for the AMDST, including procedural rules, jurisdictional triggers, and enforcement clauses. Second, empirical studies can examine how ASEAN member states have engaged with UNCLOS dispute mechanisms in the past and assess their readiness for regional adjudication. Third, interdisciplinary research could explore how public opinion, civil society, and regional legal education might shape or respond to the tribunal's emergence. Finally, policy dialogue with ASEAN institutions and dialogue partners is essential to build consensus and political support for such an initiative.

In the post-UNCLOS era—where legal norms exist but enforcement remains uneven—the creation of a regionally grounded tribunal is not merely desirable; it is necessary. The AMDST would provide ASEAN with the legal infrastructure it currently lacks and transform its declaratory commitments to international law into enforceable realities. In doing so, ASEAN would affirm its identity as a rules-based community and take a decisive step toward institutional maturity, regional legal autonomy, and global credibility. The time has come for ASEAN to move from consensus to credibility—by institutionalizing its legal commitments through a regional maritime tribunal.

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Recognition of Foreign Qualifications and Skills: A Comparative Glance at Australian and Cambodian Migration Law

Soth Sang-Bonn

Abstract

This article examines the legal and institutional frameworks governing the recognition of foreign qualifications and skills in Australia and Cambodia. As global labor mobility increases, the ability of countries to evaluate and accept international credentials becomes essential for workforce development, migration governance, and social integration. Australia represents a well-developed, legally grounded model with sector-specific assessment bodies, a national qualifications framework (AQF), and participation in global and regional mutual recognition agreements. In contrast, Cambodia's system remains promising and fragmented, lacking a centralized authority, legal appeal mechanisms, and consistent verification processes. Despite these limitations, Cambodia is progressively engaging in regional initiatives such as the ASEAN Qualifications Reference Framework (AQRF) and has received technical support from organizations like UNESCO and the ILO. Through comparative legal analysis, the article highlights Australia's strengths in institutional capacity and transparency while identifying opportunities for Cambodia to enhance its legal infrastructure. Policy recommendations include establishing a national qualifications framework, investing in digital credential verification, and fostering bilateral cooperation. The article concludes that effective recognition systems must be legally coherent, technologically supported, and regionally harmonized to enable equitable labor mobility and sustainable development.

Keywords: Recognition of qualifications, migration law, Australia, Cambodia, ASEAN, labor mobility, AQF, AQRF, UNESCO, legal frameworks, skills assessment, education policy.

Recognition of Foreign Qualifications and Skills: A Comparative Glance at Australian and Cambodian Migration Law

Introduction

Globalization has significantly transformed the dynamics of labor migration, education, and international cooperation. As the flow of people across borders increases, one pressing issue emerges: how to effectively recognize the qualifications and skills that migrants bring with them. Without proper recognition, migrants, despite being highly educated or skilled, often face significant barriers to employment, economic mobility, and social integration. This mismatch between qualifications and actual employment leads to inefficiencies in labor markets and reinforces socioeconomic disparities. Recognition systems, therefore, are not just about credentialing; they are about inclusion, equity, and legal certainty.[1]

In the Asia-Pacific region, the need for effective recognition systems is particularly critical due to the region's diverse educational structures, varied regulatory standards, and rapidly evolving labor markets. Two countries that highlight this regional diversity are Australia and Cambodia. Australia is a high-income, immigrant-receiving country with a well-institutionalized migration framework. It attracts thousands of skilled workers annually through its General Skilled Migration (GSM) program and employer-sponsored visas. In contrast, Cambodia is a lower-middle-income country that has historically been a sender of migrant workers but recently has also emerged as a recipient of skilled labor, particularly in construction, education, and development sectors.[2]

[1] *See* Migration Act 1958 (Cth) (Austl.).
[2] Sub-Decree No. 190 on the Management of Foreign Workforce (2011) (Cambodia).

The contrast between these two legal systems offers a unique lens through which to explore how states can manage the recognition of foreign qualifications. Australia has adopted a comprehensive legal and institutional approach, grounded in transparency, sector-specific authority, and international benchmarking.[3] Cambodia, while in the early stages of institutional development, presents a different challenge: building capacity and legitimacy within its recognition processes while aligning with ASEAN and international best practices.[4]

This paper explores the legal frameworks governing the recognition of foreign qualifications in Australia and Cambodia, analyzing the strengths, gaps, and possible reforms in each system. It begins by outlining the legal basis and institutional mechanisms in Australia, followed by a detailed discussion of Cambodia's legal regime and implementation challenges. A comparative section then explores the similarities and differences, followed by an examination of relevant international frameworks, including the UNESCO Global Convention and ASEAN's Qualifications Reference Framework. The paper concludes with specific policy recommendations or options aimed at strengthening recognition systems in both jurisdictions.

There is more to understanding these legal dimensions than just academic curiosity. In practice, the recognition of qualifications impacts real lives, institutional effectiveness, and broader migration governance. It is an issue that sits at the intersection of law, education policy, human rights, and labor economics.[5] By comparing the Australian and Cambodian experiences, this article contributes to a broader discourse on harmonizing qualifications systems, facilitating fair labor mobility, and promoting inclusive legal infrastructure.

[3] *See also* Global Convention on the Recognition of Qualifications concerning Higher Education, Nov. 25, 2019, UNESCO.
[4] ASEAN Secretariat, *ASEAN Qualifications Reference Framework* (2015).
[5] *See* OECD, *Labour Market Integration of Immigrants and Their Children: Developing, Activating and Using Skills* (2014).

Australia's Legal Framework for Qualification Recognition

Australia's migration and labor frameworks are internationally regarded as among the most structured and robust. This reputation is owed in large part to the country's comprehensive approach to the recognition of foreign qualifications and skills. The process is governed by a mixture of statutory law, regulatory frameworks, and administrative procedures involving numerous governmental and professional bodies. At the heart of this system lie the Migration Act 1958[6] and the Migration Regulations 1994, which together set the legislative foundation for Australia's General Skilled Migration (GSM) program.[7]

The Department of Home Affairs manages Australia's visa and migration program, while the assessment of foreign qualifications is carried out by independently designated assessing authorities. Each of these authorities specializes in evaluating credentials for particular occupations. For example, Engineers Australia is responsible for engineering professionals,[8] while the Australian Medical Council (AMC) evaluates doctors.[9] The Australian Computer Society (ACS) handles assessments for IT professionals, and the Australian Nursing and Midwifery Accreditation Council (ANMAC) oversees nurses and midwives. These assessments are usually mandatory for migrants applying for skilled visas and often include a review of academic transcripts, work experience, English language proficiency, and sometimes written or practical competency exams.[10]

[6] Migration Act 1958 (Cth) ss 140GB, 501 (Austl.).
[7] Migration Regulations 1994 (Cth) schs 1–2 (Austl.).
[8] Engineers Australia, *Migration Skills Assessment Booklet* (2021).
[9] Australian Med. Council, *Assessment Pathways to Registration for International Medical Graduates* (2022).
[10] Dep't of Home Affs. (Austl.), *General Skilled Migration Program Guide* (2023).

At the institutional level, the Australian Qualifications Framework (AQF) serves as the overarching structure for comparing overseas qualifications. The AQF includes ten levels, from Certificate I to Doctoral Degree, and functions as a benchmark for equivalency.[11] This provides a standardized approach for assessing foreign education systems against Australia's national standards. Previously, the National Office of Overseas Skills Recognition (NOOSR) played a central role in advising on equivalency, but its functions have been largely absorbed by the Department of Education, Skills and Employment and other bodies.

The role of the Administrative Appeals Tribunal (AAT) is also worth noting. Applicants who believe that their qualifications were unjustly assessed or undervalued have the legal right to appeal such decisions. This option adds an important layer of procedural fairness and access to justice within the recognition process. The AAT operates independently of assessing authorities and provides a quasi-judicial mechanism for dispute resolution.[12]

Further, Australia is party to a number of Mutual Recognition Agreements (MRAs) through its membership in organizations like APEC. These MRAs simplify recognition procedures for professionals originating from countries with equivalent standards. Australia's involvement in international agreements ensures alignment with global best practices and facilitates the international mobility of its workforce.[13]

Despite these strengths, Australia's recognition system is not without criticisms. Stakeholders have pointed to excessive documentation requirements, high assessment fees, and long processing times as barriers for many applicants. Moreover, although the

[11] Dep't of Educ. (Austl.), *Australian Qualifications Framework* (2d ed. 2013).
[12] Administrative Appeals Tribunal Act 1975 (Cth) s 25 (Austl.).
[13] APEC Secretariat, *Mutual Recognition Agreements for Engineers* (2021).

system is decentralized to ensure specialization, the separation of duties can sometimes lead to inconsistent practices and a lack of uniform guidance.

Overall, Australia's framework reflects a mature legal and administrative structure that prioritizes transparency, fairness, and occupational competency. It is particularly well suited to the high-skilled nature of Australia's migration intake and is frequently referenced as a model for other nations seeking to build similar systems.

Cambodia's Legal Framework for Qualification Recognition

Cambodia's legal and institutional framework for the recognition of foreign qualifications and skills is still in a formative stage.

Unlike Australia, Cambodia does not yet possess a fully structured national qualifications recognition system with standardized procedures.

Instead, the recognition of foreign qualifications is largely governed through administrative decrees and circulars issued by individual ministries, primarily the Ministry of Labour and Vocational Training (MLVT) and, in the case of academic qualifications, the Ministry of Education, Youth and Sports (MoEYS).

The most significant regulatory instrument is Sub-Decree No. 190 on the Management of Foreign Workforce (2011). This sub-decree outlines the procedures for foreign nationals seeking employment in Cambodia and stipulates those foreign workers must submit proof of relevant educational qualifications and professional experience.[14] However, the sub-decree does not specify the standards or methods by which foreign qualifications are assessed. In practice, employers often accept foreign

[14] Sub-Decree No. 190 on the Management of Foreign Workforce (2011) (Cambodia).

qualifications at face value, and recognition is discretionary. For foreign professionals working in regulated sectors such as healthcare, law, and engineering, there are additional sector-specific requirements, but these are not always consistently enforced.

Prakas No. 352 issued by the MLVT provides further administrative detail on the documentation required for foreign labor. It calls for authentication of diplomas and certification from relevant embassies or home governments.[15] However, Cambodia lacks an autonomous qualifications authority, and there is no central database or accreditation mechanism to verify the legitimacy of foreign credentials. Such an arrangement creates a situation where recognition is often subjective and vulnerable to corruption or misinterpretation.

In the education sector, MoEYS has limited capacity for recognizing higher education degrees from abroad. Recognition is granted on a case-by-case basis and often depends on bilateral agreements or historical precedent. A Cambodian student returning from a foreign university, for example, may need to submit diplomas for notarization, translation, and review by the Department of Higher Education.[16] However, there are few transparent criteria or published guidelines governing the decision, and the Guidelines for Foreign Degree Equivalency are not yet officially codified or uniformly applied.[17]

Cambodia is a participating member of the ASEAN Qualifications Reference Framework (AQRF), which aims to promote mutual understanding and trust among ASEAN member states.[18] Despite its participation, Cambodia has not yet completed its National Qualifications Framework (NQF), nor has it established formal linkages

[15] Prakas No. 352/12 on the Employment of Foreign Labor (2012) (Cambodia).
[16] UNESCO Bangkok, *Country Report: Cambodia—National Qualifications Systems* (2020).
[17] Ministry of Educ., Youth & Sport (Cambodia), *Guidelines for Foreign Degree Equivalency* (unofficial trans., 2022).
[18] ASEAN Secretariat, *ASEAN Qualifications Reference Framework* (2015).

between its qualifications system and the AQRF. This limits its ability to engage in effective regional or international recognition agreements.

Challenges to Cambodia's recognition system are both institutional and legal. The lack of clear legal standards, insufficient trained assessors, and weak inter-ministerial coordination all contribute to a system that is inconsistent and opaque. Moreover, the absence of an appeal mechanism means that individuals denied recognition have no formal pathway for redress.

Nonetheless, recent reforms suggest growing awareness of the issue. The Royal Government of Cambodia has expressed interest in developing a comprehensive NQF and integrating digital credential verification systems. International development agencies such as UNESCO and ILO have provided technical support, and pilot projects have been initiated to explore streamlined recognition protocols.[19] However, for such initiatives to be institutionalized, legislative reform, capacity building, and political will remain essential.

Comparative Legal and Policy Analysis

A comparative analysis of the recognition systems in Australia and Cambodia reveals stark differences in legal development, institutional capacity, and policy objectives. These differences are a reflection of each country's economic standing, migration trends, and regulatory environments.

While Australia's system is comprehensive, technically advanced, and legally entrenched,[20] Cambodia's approach remains fragmented, under-resourced, and policy-

[19] Int'l Labour Org., *Recognition of Skills and Qualifications in ASEAN: Regional Synthesis Report* (2019).
[20] Org. for Econ. Co-operation & Dev., *Recruiting Immigrant Workers: Australia* 4–5 (2012).

limited. Despite these contrasts, there are also common goals, such as the need to ensure qualification validity, uphold workforce standards, and facilitate labor mobility.

In Australia, the recognition process is grounded in statutory law and administered through specialized assessing authorities. This allows for sector-specific expertise and harmonization with national qualifications frameworks. Regulatory bodies such as Engineers Australia, the AMC, and ANMAC apply clear procedures and competency standards for recognizing foreign credentials. The presence of appeal mechanisms like the Administrative Appeals Tribunal adds procedural fairness and reinforces the rule of law.

Cambodia, on the other hand, operates without a national regulatory agency specifically tasked with evaluating foreign qualifications. Recognition procedures are often informal and implemented differently across ministries. For example, the Ministry of Labour and Vocational Training may accept foreign diplomas with embassy verification, while the Ministry of Education applies less consistent standards. This results in legal uncertainty and a lack of predictability for both workers and employers. Moreover, Cambodia lacks a systematic mechanism for verifying qualifications, increasing the risk of fraud and inefficiency.

Both systems reflect their migration contexts. Australia seeks to attract high-skilled labor through its General Skilled Migration program, emphasizing rigorous screening of foreign qualifications. This demand-driven model is designed to fill specific labor shortages and requires precise credential assessments. Cambodia's context is more mixed. It is both a labor-sending and labor-receiving country. Its foreign workforce is primarily concentrated in specialized sectors such as education,

construction, and tourism. Consequently, Cambodia's system is more flexible but lacks safeguards and institutional coherence.[21]

In terms of alignment with international standards, Australia performs well. It participates in Mutual Recognition Agreements (MRAs), follows the Australian Qualifications Framework (AQF), and aligns with UNESCO and APEC policies on mobility.[22] Cambodia's commitment to the ASEAN Qualifications Reference Framework (AQRF) shows promise, but its lack of a completed National Qualifications Framework (NQF) impedes full engagement.[23]

One key comparative lesson is that decentralization, as practiced in Australia, can be effective if guided by overarching national standards and coordinated oversight. Cambodia's centralized but underdeveloped model demonstrates that without institutional strength and legal clarity, centralization may lead to administrative inefficiency. Australia's system is more resilient to political interference due to the statutory independence of assessing bodies, while Cambodia's bureaucratic discretion leaves room for irregularities.

In summary, Australia's recognition regime is marked by structure, legal formality, and accountability. Cambodia's model remains aspirational, with pockets of innovation overshadowed by weak enforcement and capacity. However, Cambodia's participation in regional initiatives and its reformist agenda could gradually narrow the gap, particularly with international support and technical cooperation.[24]

Regional and International Standards

[21] Int'l Labour Org., *Migrant Workers in Cambodia: A Baseline Survey on Working Conditions and Access to Rights* (2020).
[22] APEC Secretariat, *Education Strategy and Mutual Recognition Framework* (2021).
[23] UNESCO Bangkok, *Strengthening National Qualifications Frameworks in ASEAN* (2018).
[24] ASEAN Integration Monitoring Directorate, *Implementation Report on AQRF* (2022).

Foreign qualifications and skills are not automatically recognized by law. Both Australia and Cambodia operate within a broader regional and international context that includes legal norms, agreements, and cooperative frameworks. These transnational mechanisms serve as important reference points for domestic policy development and offer tools for comparability, transparency, and mutual trust.

Australia has been a global leader in integrating its domestic qualification system into international recognition frameworks. As a signatory to the UNESCO Global Convention on the Recognition of Qualifications concerning Higher Education, Australia has committed to principles of fairness, transparency, and non-discrimination in assessing foreign credentials.[25] It has also entered into a series of Mutual Recognition Agreements (MRAs) under the Asia-Pacific Economic Cooperation (APEC) and bilateral treaties with countries such as New Zealand, Canada, and the United Kingdom.[26] These MRAs enable streamlined processes for recognizing qualifications in regulated professions such as medicine, engineering, and accountancy.

Australia's Australian Qualifications Framework (AQF) aligns with international best practices and is referenced by multiple educational institutions globally.[27] The AQF's tiered levels and clearly defined learning outcomes make it easier to compare with foreign systems.

Moreover, Australia participates in the Lisbon Recognition Convention and supports the National Academic Recognition Information Centres in the European

[25] United Nations Educ., Sci. & Cultural Org., *Global Convention on the Recognition of Qualifications Concerning Higher Education* (2019).
[26] APEC Secretariat, *Cross-Border Education Cooperation in the Asia-Pacific* (2021).
[27] Dep't of Educ. (Austl.), *International Engagement Strategy* (2021).

Union (ENIC-NARIC Network),[28] enhancing its ability to evaluate foreign qualifications with consistency and fairness.

Cambodia, as a member of the Association of Southeast Asian Nations (ASEAN), is a party to the ASEAN Qualifications Reference Framework (AQRF).[29]

The AQRF aims to enable comparison of national qualifications systems across ASEAN members and facilitate mobility within the region. While Cambodia's engagement with the AQRF is promising, its practical implementation has been slow. Cambodia has yet to finalize its National Qualifications Framework (NQF), which is a prerequisite for full AQRF compatibility.

Despite this gap, Cambodia has received technical assistance from UNESCO, the ILO, and the ASEAN Secretariat. Pilot programs have focused on skills verification, digital credentialing, and curriculum alignment.[30] The Ministry of Labour and Vocational Training (MLVT) and the Ministry of Education, Youth and Sports (MoEYS) have participated in regional dialogues and conferences to share experiences and set implementation targets.

Another important initiative is the ASEAN Mutual Recognition Arrangement (MRA) for selected professions. While Cambodia is formally a participant, the country faces capacity constraints in implementing the requirements of these MRAs. Professions like nursing, tourism, and engineering are covered under ASEAN-level MRAs, but the absence of domestic assessment infrastructure and legal codification of

[28] UNESCO & Council of Eur., *European Network of Information Centres in the European Region/National Academic Recognition Information Centres in the European Union (ENIC-NARIC Network)*, https://www.enic-naric.net/ (last visited May 15, 2025).
[29] ASEAN Secretariat, *ASEAN Qualifications Reference Framework* (2015).
[30] UNESCO Bangkok, *Regional Guidelines on Quality Assurance and Recognition* (2020).

standards limits Cambodia's ability to fully benefit.[31] International cooperation remains vital. Both Australia and Cambodia are part of UNESCO's Bangkok-based initiatives to develop regional strategies for qualification recognition. These efforts are essential for ensuring that recognition systems are not only nationally consistent but also regionally harmonized.

In conclusion, regional and international standards provide a blueprint for national reforms. Australia has made effective use of these frameworks to advance its domestic recognition mechanisms and global credibility. Cambodia, while still in early stages, is building momentum through its ASEAN commitments and international partnerships. For Cambodia, the AQRF, MRAs, and UNESCO support offer a path forward to institutionalize legal norms and build an effective recognition regime.

Policy Options

Based on the comparative and legal analysis of Australia and Cambodia, several policy options could be considered to strengthen the recognition of foreign qualifications and skills in each country. These recommendations are aligned with international best practices, regional cooperation frameworks, and national development goals.

For Cambodia, the most immediate priority could be the establishment of a National Qualifications Framework (NQF) that is legally binding, transparent, and operationally functional. This NQF should be aligned with the ASEAN Qualifications Reference Framework (AQRF) and should include sector-specific benchmarks to guide ministries, employers, and academic institutions in evaluating foreign credentials.[32]

[31] Int'l Labour Org., *Skills Recognition and Employment Mobility in ASEAN* (2019).
[32] UNESCO Bangkok, *National Qualifications Frameworks: Guidelines and Good Practices* (2013).

A legally independent National Recognition Authority should be established to centralize the process and ensure consistency across different fields. This body would be responsible for verifying credentials, managing appeals, maintaining databases of accredited foreign institutions, and liaising with international counterparts.[33]

Cambodia should also invest in digital infrastructure to support credential verification. Digital tools, such as blockchain-based certificates and cloud-based repositories, can reduce fraud, improve efficiency, and enhance public trust. Technical and vocational education and training (TVET) sectors should be given particular attention to match ASEAN labor mobility priorities. Furthermore, Cambodia's government should codify legal appeal processes to allow individuals to contest negative recognition decisions, thereby strengthening accountability and access to justice.[34]

Ongoing and quality capacity-building initiatives for ministry staff, assessors, and academic officials are essential. These initiatives should include training in comparative education systems, international standards, and document verification practices. Cambodia should continue to leverage support from international organizations such as UNESCO, the ILO, and the ASEAN Secretariat to facilitate these reforms.

Australia, while advanced, can also benefit from specific reforms. The current recognition process can be burdensome in terms of documentation, cost, and processing times. Streamlining these processes, especially for occupations experiencing chronic shortages, would enhance efficiency and encourage skilled migration.[35] In particular,

[33] Int'l Labour Org., *Policy Brief on Skills Recognition in ASEAN* (2019).
[34] *Id.* at 33.
[35] Austl. Productivity Comm'n, *Skilled Migration Study Report* (2016).

greater harmonization among assessing bodies and reduction of overlapping requirements would benefit applicants.

Australia should expand its recognition frameworks to include emerging professions and qualifications from developing countries.

Enhanced bilateral engagement with ASEAN member states, including Cambodia, could promote labor exchange, knowledge transfer, and mutual economic development. Investments in digital credentialing, cross-border academic cooperation, and research in skills assessment methodologies will further strengthen Australia's global leadership.[36]

Finally, both countries should collaborate to establish bilateral agreements on qualification recognition in targeted sectors.

Such agreements could be embedded within broader labor mobility pacts or educational cooperation treaties. These agreements would ensure that skills acquired abroad are respected and leveraged, supporting development goals on both sides.[37]

Conclusion

The recognition of foreign qualifications and skills is a critical pillar of effective migration governance, labor market integration, and national development. It reflects a country's legal capacity to balance domestic workforce standards with the realities of global mobility. Australia and Cambodia represent two ends of the spectrum—Australia with a legally entrenched and decentralized regime and Cambodia with an evolving framework still under development.

[36] World Bank, *Blockchain and the Future of Credential Verification* (2020).
[37] ASEAN Secretariat, *Strengthening Regional Labor Mobility through Mutual Recognition* (2022).

Australia’s strengths lie in its transparent procedures, sector-specific expertise, and institutional accountability. Yet, it faces challenges of complexity, redundancy, and occasional rigidity. Although Cambodia's journey is still in its early stages, its growing involvement in regional cooperation and international technical support has set the groundwork for future advancement.

This comparative study highlights that successful recognition systems require not just legal instruments, but also administrative infrastructure, political will, and sustained international collaboration. Recognition systems that are fair, efficient, and transparent can enable migrants to realize their potential, support national economic needs, and contribute to regional cohesion.

As ASEAN continues to promote labor mobility and educational cooperation, both countries have a shared interest in harmonizing standards, improving verification systems, and embedding recognition practices within broader human development strategies. Legal reform, technological innovation, and strategic partnerships will remain key to building resilient recognition frameworks that meet the demands of a globalized world.

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Historical Development and Evolution of the Right to Strike

Chea Sophal

Abstract

This article provides a detailed analysis of the historical progression and transformation of the right to strike, tracing its development from the early stages in the pre-industrial era to its current legal standing within both international and domestic frameworks. The article begins by describing the origins of strikes during the industrial revolution, when labour disputes arose in reaction to exploitative working conditions in factories. Subsequently, the article explores the gradual evolution of the right to strike through significant international legal instruments, with a particular emphasis on conventions established by the International Labour Organization (ILO), as well as global and regional treaties. Moreover, the article examines the fundamental principles that support the right to strike, describing its purpose, various forms, and its roles in collective labour actions. It also explores different categories of industrial actions, including economic strikes, political strikes, and strategic alternatives like go-slows or work-to-rule, in terms of their legitimacy and legal consequences.

The article also emphasizes the critical limitations and regulatory considerations surrounding the right to strike. This includes strikes in essential services, the obligation for minimum service, procedural requirements, and the balance between the rights of striking workers and non-striking workers. Based on a desk review of available research, studies, reports, international labour standards, conventions, treaties, and relevant regional instruments, this article offers a comprehensive understanding of the right to strike as a fundamental legal and social means for workers. This right is essential for collective labour action and industrial relations; it will serve the Cambodian audience by exposing them to international scholars about the right to strike and its development.

Keywords: Right to strike, strikes, ILO conventions, industrial actions, industrial relations, collective bargaining, and essential services

Historical Development and Evolution of the Right to Strike

Introduction

The right to strike has long served as a powerful means of collective labour protest and negotiation for trade unions and workers. A strike is defined as any form of collective action of workers taking place from a labour dispute in which working hours are lost.[1] Although the right to strike is not explicitly mentioned in any ILO Conventions, it is noticed that it arises from the necessary implication of the two ILO Conventions, namely, the 1948 Convention No. 87 on the Freedom of Association and Protection of the Right to Organize and the 1949 Convention No. 98 on the Right to Organize and Collective Bargaining. Sean Cooney defined the right to strike as the right to withdraw one's labour in order to improve working conditions.[2]

Historically, the strike evolved from an act of rebellion before it was a legally protected component of collective labour rights. The development of the right to strike reflects broader economic, political, and social transformations through history. In the earlier times, collective work stoppages were often considered illegal or morally unacceptable, but the rise of industrialization in the 18th and 19th centuries marked a shift in both the perception and legal treatment of strikes.[3] As workers organized in response to exploitative conditions, the strike became a crucial mechanism for asserting economic, social, and political demands. In general, in the workplace, employment relations and contract obligations mean workers as employees are subject to subordination and control at the workstation to perform the assigned duties and tasks.

[1] Better Work**,** *Legal Brief Underlying Better Work's Compliance Assessment Tool: Freedom of Association and Collective Bargaining* 16 (2012), https://labordoc.ilo.org/discovery/fulldisplay/alma995319362002676/41ILO_INST:41ILO_V2.
[2] Sean Cooney, *International Labour Court to Decide if We Have a "Right to Strike"*, *Pursuit* (Oct. 2, 2024), https://pursuit.unimelb.edu.au/articles/International-court-to-decide-if-we-have-a-right-to-strike.
[3] E.P. Thompson, *The Making of the English Working Class* 189–92 (Vintage Books 1966).

The ILO Recommendation No. 198 on Employment Relationship suggests defining the conditions clearly for determining the existence of an employment relation, such as subordination or dependence for their job reporting line between employers and workers.[4]

The right to strike is a fundamental pillar of collective labour rights and industrial relations, as it represents a dynamic interaction between the collective labour rights and collective power of workers and the regulatory authority of the state. It has evolved in response to the changing economic development, political pressures, and the gradual recognition of workers as a crucial actor in the industry production process. In the early stages, such as the pre-industrial period, any form of work mobilization was often criminalized and seen as a threat to economic stability and public order. However, the economic development and industrial revolution gave a turning point as the mass wage labour force organized and formed trade unions, which enabled organized strikes by trade unions as a tool of resistance and negotiation.[5]

As the movement of labour evolved globally, the right to strike gained international recognition, particularly through several instruments of both the International Labour Organization (ILO) and various regional and international human rights instruments. These developments laid out the legal frameworks to define and safeguard strike actions that focus on the practice of collective bargaining and the defense of collective labour interests.[6]

This article explores the historical development of the right to strike, from its primary establishment in pre-industrial development to its evolution in modern legal

[4] Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, Int'l Lab. Org., https://normlex.ilo.org/dyn/nrlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312535.
[5] Russell Hollander, *Law and the Shaping of the American Labour Movement*, 11 N.Y.L. Sch. J. Hum. Rts. 421, 421–47 (1994).
[6] Convention (No. 87) Concerning Freedom of Association and Protection of the Right to Organise, July 9, 1948, Int'l Lab. Org.; Convention (No. 98) Concerning the Right to Organise and Collective Bargaining, July 1, 1949, Int'l Lab. Org.

systems. It analyzes the global evolution of legal standards governing the right to strike and strikes through examining ILO conventions and international instruments. The article further explores the essential principles and classifications of industrial actions—ranging from economic and political strikes to various forms such as go-slow and work-to-rule. It also explores the legal limitations imposed to balance this right with the need for continuity in essential services and the protection of non-striking workers. By tracing this progression, the article aims to provide a comprehensive foundation for understanding the right to strike as a historically important instrument of labour right.[7]

Development and Evolution of the Right to Strike

This section will explore the development and evolution of the right to strike with a focus on the pre-industrial era, the industrial revolution, and the rise of strikes, as well as the recognition and framework of the right to strike.

Pre-Industrial Era

The right to strike has evolved considerably over the past centuries. In the pre-industrial era, the concept of a legally protected right to strike was essentially non-existent. At that time, collective labour rights or actions were rare and often faced with severe punishment due to the societies being largely organized around guild-based labour systems that discouraged dissent, and the economic relationships were deeply hierarchical and rooted in obligation rather than contract.[8] Workers were typically bound by obligation that left little room for negotiation or disagreement.

[7] Bernard Gernigon, Alberto Odero & Horacio Guido, *ILO Principles Concerning the Right to Strike*, 137 Int'l Lab. Rev. 441 (1998).
[8] *Id.* at 60–65.

The pre-industrial labour protests, such as work stoppages or coordinated denials to work, which took place in the form of riots or disturbances, were often treated as criminal conspiracies under the early common law. Although there was potential for the protests to spread, they lacked formal organization and did not have the legal framework that modern strikes possess. It was seen that any form of worker collective action was not only rare but often regarded as criminal.[9] One could imagine how difficult it was for workers back then to join collective or industrial action, as they were subject to management subordination, which required them to be under the employer's direction and control, follow instructions and rules, and perform duties outlined in their employment contracts. In relation to the subordination, the employers have managerial decision-making power to invest, hire or lay off employees, and make work rules and processes. In this case, the employers and managers have control or oppression over their employees.[10]

Industrial Revolution and the Rise of Strikes

The Industrial Revolution, initiated in Britain in the late 18th century and subsequently extending to other regions of Europe and North America in the 19th century, marked a pivotal moment in the development of the right to strike, as economies transitioned from agricultural systems to industrial production. It led to mass production of goods, mechanization, and the rise of enterprise labour.[11] It was witnessed with a dramatic shift in the relationship between employers and workers.

In this transition period, the factory system introduced long working hours, poor working conditions, and low wages, which prompted workers to establish their defense

[9] *Id.* at 64–65.
[10] Alex Gourevitch, The Right to Strike, 112 Am. Pol. Sci. Rev. 908 (2018).
[11] Robert C. Allen, *The British Industrial Revolution in Global Perspective* 1–5 (Cambridge Univ. Press 2009).

of their interests. Unlike the situation in the pre-industrial era, the rise of large-scale industrial enterprises nurtured a new form of collective movement seeking joint identity among workers. Therefore, it led to an increase in strikes as a tool for demanding better working conditions, wages, benefits, as well as recognition of labour rights.[12] There were several reasons why there was growing unrest among workers, including the disparity between industrial capitalists and the working class and the exploitation of workers, often including children, who were subjected to hazardous environments and exploitative wages.[13]

In response, the 19th century saw the development of organized labour movements and strikes became a means for workers to demand better wages, reduced working hours, and safer workplaces.[14] Strikes—once considered criminal conspiracies—became a central tactic in labour disputes. The legal system, which was initially sided heavily with the employers, often used injunctions and criminal charges to suppress labour actions. However, gradually, public policy was shifted due to the persistent organizing and public sympathy for labour struggles. The Labour Movement laid the groundwork for future reforms, including collective bargaining rights and labour legislation.[15]

International Recognition and Legal Framework on the Right to Strike

ILO Conventions

[12] Christopher L. Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1880–1960* 15–17 (1985).
[13] David Montgomery, *The Fall of the House of Labor: The Workplace, the State, and American Labor Activism, 1865–1925* 25–30 (Cambridge Univ. Press 1987).
[14] Philip Foner, *History of the Labor Movement in the United States* vol. 1, at 41–50 (Int'l Publishers 1947).
[15] William E. Forbath, *Law and the Shaping of the American Labor Movement* 75–82 (Harvard Univ. Press 1991).

The right to strike is a fundamental principle recognized within the framework of international labour standards by the International Labour Organization (ILO). Although it is not explicitly stated in the ILO core conventions, this right is derived from the broader principles of freedom of association and the right to collective bargaining. These principles are stipulated in the 1948 Convention No. 87 on Freedom of Association and Protection of the Right to Organize and the 1949 Convention No. 98 on the Right to Organize and Collective Bargaining.[16]

The Committee on Freedom of Association (CFA) of the ILO and the Committee on the Application of Conventions and Recommendations (CEACR) have consistently interpreted these conventions as encompassing the right to strike as an essential means by which workers and their professional organizations may defend their economic and social interests.[17] Despite the absence of an explicit reference in the text of Convention No. 87, the supervisory bodies regard the right to strike as intrinsic to the right to organize due to its importance in ensuring effective collective bargaining.[18]

However, this interpretation has not been without controversy. The employers' organizations, through their representatives within the ILO's tripartite structure, have periodically challenged the existence of a legal basis for the right to strike within Convention No. 87, arguing that such a right must be explicitly stated to be binding.[19] In response, worker representatives and their organizations maintain that the ILO's

[16] Convention (No. 87) Concerning Freedom of Association and Protection of the Right to Organise, June 9, 1948, and Convention (No. 98) Concerning the Right to Organise and Collective Bargaining, July 1, 1949, Int'l Lab. Org.
[17] Int'l Lab. Org., *Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association* 521–23 (6th ed. 2018), https://www.ilo.org.
[18] Comm. of Experts on the Application of Conventions & Recommendations (CEACR), *General Survey on the Fundamental Conventions Concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), Int'l Lab. Conf., 101st Sess. 144–53 (2012).
[19] Int'l Lab. Conf., *Report of the Committee on the Application of Standards*, Provisional Record No. 20, 104th Sess. 91–97 (2015).

long-standing jurisprudence has effectively established a customary understanding of the right to strike under international labour law.[20]

In practice, while the right to strike is widely recognized and protected in many jurisdictions, its exercise is often subject to national regulations, including procedural requirements, restrictions in essential services, and limitations during emergency situations. Typically, this reflects the development of the right to strike from unlawful revolt to lawful industrial relations—workers can go on strike, but they cannot do exactly whatever they want to do. The ILO supervisory bodies have acknowledged such restrictions as permissible only when they are consistent with international standards and not used to undermine the essence of the right itself.[21] The ILO Committee on Freedom of Association indicated the basis for the right to strike covered by Articles 2, 3, 8, and 10 of the ILO Convention No. 87 on the grounds of giving workers full freedom to join their professional organization by their choice so that the organizations can exercise the right to organize their activities and defend their interests.[22]

International Instruments

The right to strike is recognized in several international human rights as a critical component of the broader right to freedom of association, collective bargaining, and peaceful assembly. While this right is not universally absolute, it is widely acknowledged as essential to protecting workers' interests in democratic societies.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) explicitly recognizes the right to strike in Article 8(1)(d), subject to lawful restrictions

[20] Klaus Lörcher, The Right to Strike and the ILO: The Legal Foundations of the Recognition of the Right to Strike, 153 *Int'l Lab. Rev.* 1, 2–7 (2014).
[21] Int'l Lab. Org., *Digest of Decisions of the Committee on Freedom of Association* 576–96 (6th ed. 2018), https://www.ilo.org.
[22] Janice R. Bellace, The ILO and the Right to Strike, 153 *Int'l Lab. Rev.* 29 (2014).

in the interest of national security, public order, or the rights and freedoms of others.[23] This provision affirms the importance of strike action in realizing economic and social rights, linking it directly to the functioning of free trade unions and collective bargaining processes. The restrictions on the strike action should be consistent with democratic principles and international standards. The supervisory mechanisms under this treaty, such as the UN Committee on Economic, Social, and Cultural Rights has emphasized that any limitations must not render the right ineffective.[24]

Additionally, although the International Covenant on Civil and Political Rights (ICCPR) does not clearly mention the right to strike, it grants a foundation for related rights that support collective action for strikes, such as freedom of association and peaceful assembly. Article 21 of the ICCPR enshrines the right to peaceful assembly, which is often invoked in the situation where workers or their organizations organize protests and demonstrations. Article 22 guarantees the right to freedom of association, including the right to form and join trade unions.[25]

Regional Instruments

There are some regional human rights frameworks, such as Europe, which has the European Social Charter. The Charter provides one of the most comprehensive protections of the right to strike. Article 6(4) grants workers the right to collective action, including the right to strike in cases of dispute of interest.[26] Furthermore, the European Committee of Social Rights (ECSR), the supervisory body for the Charter,

[23] *International Covenant on Economic, Social and Cultural Rights* art. 8(1)(d), Dec. 16, 1966, 993 U.N.T.S. 3.
[24] U.N. Comm. on Econ., Soc. & Cultural Rts., *General Comment No. 23 on the Right to Just and Favourable Conditions of Work (Art. 7)*, ¶ 56, U.N. Doc. E/C.12/GC/23 (2016).
[25] *International Covenant on Civil and Political Rights* arts. 21–22, Dec. 16, 1966, 999 U.N.T.S. 171.
[26] *European Social Charter (Revised)* art. 6(4), May 3, 1996, E.T.S. No. 163.

has interpreted this provision broadly and emphasized the need to ensure that restrictions on strike action are necessary and proportionate in a democratic society.[27]

The Charter of Fundamental Rights of the European Union also mentions the right to strike in Article 28, which recognizes the right of both workers and employers to take collective action, including strike action, in the context of protecting their interests, respectively.[28] Although this Charter applies only within the framework of EU law, it reinforces the growing consensus that strike action is a fundamental social right.

In the inter-American context, the Protocol, a supplementary treaty to the American Convention on Human Rights, recognizes the right to strike in Article 8(1)(b) as part of trade union rights, which are essential to the realization of labour protections in the Americas, although the American Convention on Human Rights (ACHR) does not explicitly mention the right to strike.[29] The ACHR provides provisions on freedom of association that serve as the legal basis for labour rights including organizing collective labour actions. Article 16(1) of the ACHR provides that everyone has the right to freely associate for ideological, religious, political, economic, labour, social, cultural, sports, or other purposes.[30]

The ASEAN Charter, unlike some other regional human rights frameworks, such as the American Convention on Human Rights, its Protocol of San Salvador, and the European Social Charter, does not recognize the right to strike and provides only general principles related to human rights, democracy, and social justice without

[27] Eur. Comm. of Soc. Rts., *Conclusions I*, Council of Eur. 25–27 (1969); see also Eur. Comm. of Soc. Rts., *Digest of the Case Law of the ECSR* (2022), https://www.coe.int.
[28] *Charter of Fundamental Rights of the European Union* art. 28, Dec. 7, 2000, 2000 O.J. (C 364) 1.
[29] *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)* art. 8(1)(b), Nov. 17, 1988, O.A.S.T.S. No. 69.
[30] *American Convention on Human Rights* art. 16(1), Nov. 22, 1969, 1144 U.N.T.S. 123.

mentioning any specifical labour rights.[31] Furthermore, the ASEAN Declaration on Human Rights, which is not binding, references labour rights but does not include the right to strike. The Declaration ensures the right to "safe and fair working conditions" and "the right to form and join trade unions" but stays silent on strike action. Therefore, the right to strike at the ASEAN regional level remains unsolved, and it is left entirely to the national law of the ASEAN member states.[32] The ASEAN Guidelines on Good Industrial Relations Practices do not mention the right to strike or strikes. However, the Guidelines reiterate that one of the main principles of the ASEAN Charter is the respect for fundamental freedoms, the promotion and protection of human rights, and social justice. It mentions that the practice of ASEAN member states on international conventions is relevant to the principle of freedom of association and the effective recognition of the right to collective bargaining, which is one of the fundamental principles at work.[33]

General Principles of the Right to Strike

Definition and Aim of the Right to Strike

The right to strike is not explicitly defined in the two ILO Conventions, No. 87 and No. 98. However, the common understanding is that the right to strike refers to the collective action by workers or workers' organizations to cease working temporarily as a means of indicating their grievances, asking for better working conditions, or defending their interests. The right to strike is recognized by the Committee as a legitimate means for workers to defend their economic and social interests. The right to strike is seen and legally recognized as a tool for economic pressure that allows

[31] *Charter of the Association of Southeast Asian Nations* arts. 1(7), 14, Nov. 20, 2007, 2624 U.N.T.S. 223.
[32] *ASEAN Human Rights Declaration* art. 27, Nov. 18, 2012.
[33] ASEAN Secretariat, *ASEAN Guidelines on Good Industrial Relations Practices* 3 (Nov. 2012).

workers, through their workers' representatives, such as trade unions, to negotiate with employers. It is a manifestation of workers' collective action and a vital approach in industrial relations.[34]

The main objective of the right to strike is to promote fair and effective collective bargaining and defend the social and economic interests of trade unions and workers.[35] The right to strike is the counterbalance to the economic power of the employer, as the workers could apply pressure through strikes, asking for better working conditions and better wages and protecting their labour interests.[36] Workers consider the right to strike as a crucial tool for meaningful negotiation, and they should only resort to a strike after negotiation or mediation have failed. However, strikes should align with the principles of freedom of association. It is a safeguard that ensures that workers are not forced to accept unjust conditions and reinforces the broader principle of freedom of association.[37] For example, Article 13 of ILO Convention No. 155 on Occupational Safety and Health mentions that a worker is entitled to remove themselves from a work situation that presents an imminent and serious danger to their life, and they should be protected from undue consequences.[38]

The Role of the Right to Strike in Collective Action

[34] Int'l Labour Org., *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* 520–23 (5th ed. 2006).
[35] Sopanha Mao, *Right to Collective Bargaining and to Strike in Cambodia's Apparel Industry: A Legal Implication of the Labour Law and Law on Union of Enterprises* (JAMM07 Master's thesis, Lund Univ. 2018) (on file with Lund Univ.).
[36] *Regulating Strikes in Essential Services: A Comparative "Law in Action" Perspective* 20 (Moti Mironi & Monika Schlachter eds., Kluwer Law Int'l B.V. 2019).
[37] *Id.* at 526–31.
[38] Convention (No. 155) Concerning Occupational Safety and Health and the Working Environment art. 13, June 22, 1981, Int'l Labour Org., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312300.

Collective action plays a very important role for trade unions in ensuring the efforts to demand better working conditions, safer workplaces and better wages. In doing so, workers can assert their interests in negotiating and collective bargaining with employers. Historically, over the past centuries, from the 19th and 20th, the strike has evolved into a core mechanism of their industrial relations in putting collective pressure when they fail in collective bargaining or negotiations. The right to strike and strikes empower trade unions to balance their power with the employers and to ensure workplace safety, rights, and standards. The right to strike plays a very important role in several aspects, as follows:

Balancing Power

The right to strike is a crucial tool in industrial relations, which is considered a collective action for workers to demand their interests in the case of economic imbalance between workers and employers. Although it is used as the mechanism of last resort, going on strike could enable the workers as well as trade unions to use pressure on employers during labour disputes or collective bargaining. They do so in order to balance their power dynamics in the labour relations. They exercise the right to strike not only as a means of economic leverage but also as a form of political expression and solidarity among workers. One reason workers and trade unions need the right to strike is to create a better balance of power between them and employers.[39]

Safeguarding Worker Rights

The right to strike plays a very important role in protecting the interests and rights of workers in the workplace, including the right to associate, the right to organize, the right to collective bargaining, and other labour rights. Furthermore, workers

[39] IndustriALL, *5 Reasons Why We Still Need the Right to Strike* (Feb. 7, 2024), https://www.industriall-union.org/5-reasons-why-we-need-the-right-to-strike.

perform the right to strike to address grievances, protest unfair labour practices, and advocate for better working conditions and benefits. Article 3 of the Convention No. 98 on the Right to Organize and Collective Bargaining stipulates the establishment of machinery appropriate to country conditions in order to safeguard the right to organize. It covers protection of workers against anti-union discrimination and protection of organizations against acts of anti-union discrimination.[40]

Promoting Social Dialogue

There are two main conventions promoting the social dialogue between workers, employers, and the government, including ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize and No. 98 on the Right to Organize and Collective Bargaining. There are several forms of social dialogue, such as negotiations, consultation, and information sharing between or through workers, employers, or their respective organizations and the government institutions.[41]

The right to strike helps facilitate meaningful social dialogue between workers, employers, and government institutions. Workers and trade unions can have a platform for solving conflict and negotiations through social dialogue, which will enhance their working conditions. It is a fundamental right of workers and their unions that their social and economic interests can be legitimately represented and defended through social dialogue.[42]

[40] Convention (No. 98) Concerning the Right to Organise and Collective Bargaining art. 3, July 1, 1949, Int'l Labour Org., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098.
[41] Keelia Fitzpatrick et al., *Contemporary Cambodian Labour and Employment Law, Digital Economy and Post-Pandemic Society* 20–21 (Solidarity Ctr. & PUC Fac. of L. & Pub. Affs. 2022).
[42] European Trade Union Confederation (ETUC), *Emergency Resolution—The Right to Strike Is a Democratic and Universal Right* 2 (2023).

Enhancing Collective Bargaining Power

The right to strike strengthens the bargaining power of workers and trade unions during their negotiations with employers. Trade unions can utilize the right to strike as a final recourse when collective bargaining fails. They use this tactic in order to put pressure on employers to meet their demands or return to the negotiation table and also to regulate the relations between workers and employers and to set terms and conditions of employment.[43] By doing so, the strike can lead to improved wages, better working conditions, and other terms of employment.

Industrial Actions

The right to strike is a basis of collective rights for workers and trade unions, which enables them to withhold their work as a means of protest or leveraging negotiations or collective bargaining. The right to strike is recognized in the international labour standards and many domestic legal systems; it is fundamental to balancing the power dynamics between workers and employers.[44] There are several common forms of industrial actions or strikes. They are as follows:

Strikes against Unfair Labour Practices

The ability of workers to go on strike in order to seek any protection against acts of anti-union discrimination is an important aspect of the right to strike. The principle of freedom of association guarantees the workers or trade unions should not be dismissed or penalized for taking part in the strike. Article 1 of Convention No. 98

[43] Niko Tatulashvili, *Freedom of Association as a Foundation for Trade Union Rights: A Comparison of EU and ECHR Standards* 59 (Ph.D. thesis, Univ. of Essex, 2015).
[44] *Supra* note 41.

mentions that "workers shall enjoy adequate protection against acts of anti-union discrimination…"[45]

Economic Strikes

The workers or their organizations organized an economic strike when they stopped their work in order to bargain for or demand better wages, shorter working hours, benefits, or better working conditions from their employer.[46] This means that not all strikes are motivated by the employer's violations of national law or labour law but strikers go on strike due to their demand for economic interests such as higher wages or better working conditions.[47]

Political Strikes

Political strikes are referred to as strikes carried out by workers or their organizations in order to pressure the government to change policies such as increasing minimum wage, labour regulations or unemployment benefits, or political issues affecting their social or economic interests.[48] In relation to the definition of "workers' organizations" in Article 10 of ILO Convention No. 87, the Committee on Freedom of Association indicates that the scope of the principles of freedom of association does not cover political strikes.[49] This is so that strikes of a purely political nature are not protected under the freedom of association.[50]

[45] *Supra* note 41, art. 1.
[46] Info. Inst., *Strikers*, Cornell L. Sch. (June 2024), https://www.law.cornell.edu/wex/strikers.
[47] Ahmed White, *Its Own Dubious Batter: The Impossible Defense of an Effective Right to Strike* (2018), https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=2369&context=articles.
[48] Jorge Andrés & Leyton García, The Right to Strike as a Fundamental Human Right: Recognition and Limitation, 44 *Rev. Chilena de Derecho* 795, 795–96 (2017).
[49] *Supra* note 7, at 14.
[50] *Supra* note 44, at 51.

Go-Slow Strike

Workers conduct a go-slow strike when they involve a slow-down working manner in their work. They do that in order to reduce the pace of their work, but they physically remain at their workstation.[51] However, some scholars argue that workers must complete the tasks outlined in their employment contracts. If they protest, they need to cease their work completely. They suggest going slow should not be considered a strike, as it should be unlawful collective action because there is no complete stoppage of their work.[52]

Work-to-Rule Strike

When workers are involved in the work-to-rule strike, workers just carry out their tasks in accordance with their contract, and they do not do more than the minimum. In this case, they do not breach the terms and conditions of their contract.[53] The ILO supervisory bodies accepted the work-to-rule strike as one of the industrial actions, including complete strikes, go-slows, work-to-rules, and sit-ins.

Limitations and Considerations

Although the right to strike is the collective labour right, it is not an absolute right and is subject to some limitations and considerations, such as in essential services and minimum services.

Essential Services

[51] See Jorge Andrés & Leyton García, *supra* note 49, at 794.
[52] *The Right to Strike: A Comparative Perspective: A Study of National Law in Six EU States* 37 (Arabella Stewart & Mark Bell eds., Inst. of Emp. Rts.).
[53] Mohamed Alli Chicktay, *Defining the Right to Strike: A Comparative Analysis of International Labour Organization Standards and South African Law* 268 (2012).

The ILO Committee on Freedom of Association describes the situation for essential services in which a strike could be prohibited when the situation or essential services pose "a clear and imminent threat to the life, personal safety, or health of the whole or part of the population."[54] There are some categories of services that could be considered as essential services, such as the hospital sector, electricity service, water supply services, the telephone service, the police and the armed forces, the firefighting services, public or private prison services, the provision of food to pupils of school age, the cleaning of schools, and air traffic control.[55]

Minimum Services

There is also a requirement for maintaining minimum service for workers to offer the basic needs so that the facilities can operate safely and not have any disruptions. They also need to negotiate between the two parties to ensure that measures are put in place to ensure minimum services to avoid any danger that might happen to the public health and safety.[56]

Freedom of Non-Strikers

Workers who do not want to take part in the strike have the freedom to continue to work while others or unions are going on strike. At the same time, the enterprise management could also have access to the premises. Striking workers should not be involved in using violence or failing to respect the choice of non-striking workers who

[54] Int'l Lab. Org., *Compilation of Decisions of the Committee on Freedom of Association, Right to Strike* 836, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:70002:0::NO::P70002_HIER_ELEMENT_ID%2CP70002_HIER_LEVEL:3945742%2C3 (last visited May 11, 2025).
[55] *Id.* at 840.
[56] Int'l Lab. Org., *Compilation of Decisions of the Committee on Freedom of Association: Right to Strike—A Minimum Operational Service Could Be Required* 867, 870, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:70002:0::NO::P70002_HIER_ELEMENT_ID%2CP70002_HIER_LEVEL:3945998%2C2 (last visited May 11, 2025).

wish to continue to work.[57] The Committee on Freedom of Association considered a strike could be a violation of freedom of work for non-striking workers and could affect the basic needs of the enterprise, such as maintaining the equipment and the right of enterprise management to access their premises.[58]

Peace Obligation under CBA

There are certain requirements for the right to strike, including peace obligations, which indicate that the strike should be the last resort and after the failure of both parties' conciliation.[59] In most cases, the collective agreement includes a "peace obligation" clause that prohibits calling a strike for issues already addressed in the collective agreement or closely related to existing regulations. If the collective agreement is still valid, the call for a strike could be illegal.[60]

Conclusion

The right to strike experienced a significant journey of evolution throughout the different stages of the pre-industrial to industrial revolution. It transitioned from being considered criminalized and suppressed to internally recognized collective labour rights in many parts of the world and in international and regional legal instruments.

At the beginning of its stage, striking was considered an act of rebellion against the employers or authorities. However, during the industrial revolution, workers began to organize and conduct strikes to protest against exploitation while demanding better

[57] See Better Work, *supra* note 1, at 18.
[58] Int'l Lab. Org., *General Survey on the Fundamental Conventions Concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization* 60, Int'l Lab. Conf., 101st Sess., Report III (Part 1B) (2012).
[59] See Arabella Steward & Mark Bell, *supra* note 53, at 5.
[60] *Id.* at 60.

wages and improved working conditions. Although workers made all those efforts, they still faced severe legal consequences. However, through their persistent collective labour advocacy and increased awareness among the public, there were changes of perceptions that led to the legal reforms and the creation of labour unions.

By the 20th century, with the establishment of the International Labour Organization, the right to strike was recognized as a fundamental labour right under its two conventions, Convention No. 87 and Convention No. 98, linked to the principles of freedom of association. A number of international and regional instruments started to incorporate the right to strike into their legal systems. In some countries, the right to strike is part of the collective bargaining that gives workers the possibility to negotiate in more of a balanced power with employers.

While significant progress has been made, the right to strike continues to encounter a challenging landscape today. Employers have been consistently arguing that the right to strike is not explicitly stipulated in the ILO Conventions No. 87 and No. 98. Legal constraints and debates regarding essential services, public safety, and order have made the process of initiating strike actions increasingly difficult for workers who seek to advocate for their labour rights. Through the historical development of the right to strike, it is seen that workers need to stay strong and united to make collective efforts for their ongoing struggle for workers' rights to protect their economic and social interests.

Through the examination of different attitudes towards strikes across different regions, comparing ASEAN, certain United Nations instruments, and some European Conventions on Human Rights, the absence of explicit references to strikes in the ILO Conventions can definitely be problematized and discussed. Additionally, employer prerogatives, or the desire for subordination, as well as rules about when, who, and how

to strike, are fair tools for legitimizing strikes while also capturing the most aggressive and "violent" elements of trade unions.

It is essential to evaluate the balance of advantages and disadvantages for both employers and employees. There should be established, structured and reliable methods for developing sound industrial relations, such as industrial action management, which could be crucial for the right to strike and collective labor rights. This balance must weigh the peace obligations against the improved working conditions, real wage growth, and the recognition of trade unions.

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The Evolution of Global Standards on Occupational Safety and Health

Yin Sarom

Abstract

This article offers a comprehensive legal-historical and policy-based analysis of the evolution of global standards on Occupational Safety and Health (OSH), with a particular emphasis on the role of the International Labour Organization (ILO) since its founding in 1919. It charts the development of international labour standards on OSH from early industrial tragedies and public health crises to their modern-day recognition as a fundamental human right. The study places OSH within a larger context of social justice, human rights, and sustainable development by drawing on landmark treaties including the 1906 Berne Convention, the foundational Treaty of Versailles, and ILO Conventions No. 155 & 187.

The article contends that OSH has transformed from being viewed merely as a technical field dealing with workplace accidents and injuries to a dynamic, interdisciplinary domain that encompasses physical, mental, and environmental health. Through a detailed examination of ILO conventions, codes of practice, and guidelines, the article reveals how the concept of "preventive safety and health culture" has become central to OSH governance. It also looks at how the ILO's particular tripartite structure uniting governments, companies, and workers has allowed efficient standard-setting, implementation, and monitoring at both international and national levels.

Considering technological advances, demographic changes, climate risks, and the rise of informal and precarious employment, the article underlines the need for adaptive and anticipatory governance. It highlights OSH not only as a component of decent work but also as integral to achieving the Sustainable Development Goals (particularly SDG 8 on decent work and economic growth). In 2022, the elevation of OSH as a Fundamental Principle and Right at Work (FPRW) confirmed its importance

to global labour rights and emphasized the universal responsibilities of ILO member states, regardless of ratification status.

Furthermore, the paper examines the enforcement mechanisms, the roles and responsibilities of states, businesses, and workers, and the normative tools employed to protect OSH across jurisdictions. It emphasizes the importance of responsive regulatory systems, efficient labour inspections, social dialogue, and capacity building to guarantee compliance and responsibility. Particular attention is given to the needs of vulnerable groups, including migrant workers, women, young people, and those in high-risk or informal sectors who are usually more exposed to occupational hazards.

The paper concludes by urging a renewed worldwide commitment to creating resilient, rights-based OSH systems able to handle both legacy challenges and future hazards. It supports OSH being integrated into public health, environmental, and economic policies; ongoing research and education; and intersectoral cooperation. Ultimately, ensuring safe and healthy working environments is not just a legal or regulatory requirement; it is a moral and developmental imperative foundational to human dignity, economic stability, and social progress.

Keywords: Occupational Safety and Health (OSH), international labor standards, ILO conventions, fundamental principles and rights at work, preventive safety culture.

The Evolution of Global Standards on Occupational Safety and Health

Introduction

Since its inception in 1919, the International Labour Organization has maintained and developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security, and dignity. In today's globalized economy, international labour standards are an essential component in the international framework for ensuring that the growth of the global economy provides benefits to all.[1]

The rapid industrialization of the 19th and 20th centuries directly shaped occupational safety and health (OSH) into a worldwide governance issue. Factory-based production's growth brought about a surge in worker chronic diseases, fatal accidents, and workplace injuries. Early attempts to mitigate these hazards concentrated mostly on high-risk sectors like mining and textile manufacturing, scattered across national legal systems. But as the world economy grew and labour hazards crossed frontiers, these scattered strategies fell short.[2]

Early in the 20th century, when terrible industrial accidents like mining explosions and factory fires stirred public opinion and policy reformers, a turning point arrived. Marking the first effort to coordinate labour standards globally, these occurrences helped to found the International Association for Labour Legislation (IALL) in 1900.[3] Under the Treaty of Versailles, this movement peaked in 1919 with

[1] Int'l Lab. Org. [ILO], *International Labour Standards*, https://www.ilo.org/international-labour-standards (last visited Apr. 20, 2025).
[2] Int'l Lab. Org., *Safety and Health at the Heart of the Future of Work: Building on 100 Years of Experience* 6–8 (2019), https://www.ilo.org/safework.
[3] Thorsten Kalinowski, *The Genesis of Global Labour Standards*, in *Globalizing Labour* 23, 25–27 (2007).

the founding of the International Labour Organization (ILO), expressly aimed at fostering "universal and lasting peace... based upon social justice."[4] Declaring the defense of workers against sickness, disease, and injury as a main goal, the ILO included OSH in its founding constitution.[5]

From its founding, the ILO has adopted over 40 standards directly pertaining to OSH, including conventions and recommendations that underlie national OSH legislation all over the world.[6] These criteria not only control physical safety conditions but also cover psychosocial risks, work-related stress, gender-sensitive concerns, and new technology-related emerging hazards.[7] OSH has therefore developed into a vibrant, multidisciplinary field integrated in sustainable development policy, human rights, and public health.

Particularly since its inclusion in the ILO Declaration on Fundamental Principles and Rights at Work, the acknowledgment of OSH as the fundamental principle and right at work (FPRW) has strengthened its vital importance.[8] Furthermore, its compatibility with Sustainable Development Goal 8, which advocates fair work and economic development, underscores that OSH is not only a legal or technical concern but also a basis for dignity and fair development.[9]

Global Trends in Safety and Health at Work

[4] Treaty of Versailles art. 427, June 28, 1919, 225 Consol. T.S. 188.
[5] Int'l Lab. Org., *Constitution of the International Labour Organization* pmbl. (1919), https://www.ilo.org/dyn/normlex/en/.
[6] Int'l Lab. Org. [ILO], *NORMLEX: Information System on International Labour Standards*, https://www.ilo.org/dyn/normlex/en (last visited May 11, 2025).
[7] World Health Org. & Int'l Lab. Org. [ILO], *Occupational Health: A Manual for Primary Health Care Workers* 3–5 (2011).
[8] Int'l Lab. Org. [ILO], *ILO Declaration on Fundamental Principles and Rights at Work* (1998, amended 2022), https://www.ilo.org/declaration.
[9] G.A. Res. 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, U.N. Doc. A/RES/70/1, at Goal 8 (Oct. 21, 2015).

The knowledge and application of Occupational Safety and Health (OSH) criteria globally has undergone a paradigm change over the last several decades. Once seen mostly as a question of technical compliance and physical hazard prevention, OSH today is widely recognized as a fundamental human right and developmental issue/concern. Such an evolution is mainly propelled by globalization, technological change, demographic shifts, and increased international cooperation, especially under the framework set by the International Labour Organization (ILO).[10]

The most notable worldwide trends, among others, are the change from a reactive culture to a proactive, preventive one. Governments and businesses are rather prioritizing risk assessment, hazard prediction, and the application of systematic controls.[11] Regulatory frameworks, labour inspection systems, and enterprise-level management plans now include preventive measures.[12] For instance, Convention No. 187 of the ILO on the Promotional Framework for OSH clearly encourages the creation of a "national preventative safety and health culture."[13] In addition, the inclusion of OSH into more general socio-economic and development agendas is another important development. Particularly Goal 8, which aims to encourage "inclusive and sustainable economic growth, employment, and decent work for all," OSH has been aligned with the United Nations Sustainable Development Goals (SDGs) in recent years. Such alignment guarantees OSH is regarded as a basic element of sustainable development and poverty reduction.[14]

[10] Int'l Lab. Org. [ILO], *Global Trends and Challenges on Occupational Safety and Health* 2 (2021), https://www.ilo.org/safework.
[11] Int'l Lab. Org., *A Global Strategy on Occupational Safety and Health* 12–18 (2003), https://www.ilo.org/public/english/protection/safework/global.htm.
[12] Int'l Lab. Org., *Labour Inspection and Occupational Safety and Health*, https://www.ilo.org/labadmin/info/pubs/WCMS_249278/lang--en/index.htm.
[13] *Promotional Framework for Occupational Safety and Health Convention* (No. 187), June 15, 2006, 2456 U.N.T.S. 197.
[14] *Supra* note 9

The guarantees of OSH compliance have encountered fresh difficulties with the globalization of supply chains. Many multinational companies now run their business operations via complex supplier networks in countries with different levels of enforcement power. Consequently, projects of corporate social responsibility (CSR) and international labour standards have become more important instruments in spreading OSH protections across frontiers.[15] Instruments, including the ILO's Tripartite Declaration of Principles on Multinational Enterprises and Social Policy and the UN Guiding Principles on Business and Human Rights, advocate for responsible business behavior, including guaranteeing reasonable and safe working conditions in worldwide operations.[16]

The increasing emphasis on emerging risks, especially those connected to psychosocial hazards, technological innovation, and climate change, is another important trend to note. Reflecting the evolving nature of work in the digital and service-based economies, concerns such as stress, burnout, workplace violence, and harassment have taken center stage in OSH debates.[17] Moreover, the Fourth Industrial Revolution, marked by automation, robotics, and artificial intelligence, creates fresh challenges for workers' physical and mental health, so requiring adaptive and future-ready OSH systems.[18]

Significant Industrial Accidents Preceding ILO's 1919 Formation

[15] Org. for Econ. Co-operation & Dev. [OECD], *Due Diligence Guidance for Responsible Business Conduct*, https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm.
[16] Int'l Lab. Org., *Tripartite Declaration of Principles Regarding Multinational Enterprises and Social Policy* (5th ed. 2017), https://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm; U.N. Human Rights Council, *Guiding Principles on Business and Human Rights*, U.N. Doc. A/HRC/17/31 (2011).
[17] World Health Org. & Int'l Lab. Org., *Preventing Stress at Work* (2020), https://www.who.int/occupational_health/publications/stress/en/.
[18] Int'l Lab. Org., *OSH and the Future of Work: Emerging Trends and Policy Responses* 8–13 (2021), https://www.ilo.org/global/topics/safety-and-health-at-work/lang--en/index.htm.

A series of terrible industrial accidents and the mounting agreements that labour conditions have to be handled on a worldwide scale spurred the International Labour Organization's (ILO) formation in 1919. Workers, especially in the mining, textile, and chemical sectors, faced terrible conditions in the 19th and early 20th centuries. Common and catastrophic industrial fires, chemical poisoning, and mine collapses often revealed the inadequacy of national safety standards. Often highlighting the failure of national safety rules, industrial fires, chemical poisoning, and mine collapses were common and terrible.[19]

The formation of the International Association for Labour Legislation (IALL) in 1900 was a vital forerunner to the ILO's founding. Founded in Basel, Switzerland, the IALL was the first effort to harmonize labour standards worldwide.[20] It supported consistent policies on working hours, pay, and occupational safety, therefore promoting European nations' cooperation. Its success underlined the viability and need of international labour control.

Among the IALL's major accomplishments was the 1906 Berne Convention, which sought to eradicate two particular hazards: the use of white phosphorus in match production and the practice of night work by women in industry.[21] In match factory employees, white phosphorus produced "phossy jaw," a necrotic disease. The event was a significant turning point in avoiding hazardous exposures in the workplace.

High-profile tragedies in the United States and Europe highlighted even more the worldwide need for occupational safety. Notably, locked exit doors and inadequate fire procedures caused the Triangle Shirtwaist Factory fire in New York City in 1911

[19] Christopher Sellers, *Hazards of the Job: From Industrial Disease to Environmental Health Science* 22–30 (1997).
[20] *Supra* note 3.
[21] *Berne Convention on White Phosphorus and Women's Night Work*, Sept. 26, 1906, 1 L.N.T.S. 43.

to kill 146 garment workers, most of them women and young immigrants.[22] This catastrophe was a touchstone in the worldwide debates on labour rights, and it spurred major changes in U.S. labour law.

Labour strife and social upheaval shot up worldwide following World War I. Included in the League of Nations system, the Treaty of Versailles acknowledged that social justice was necessary for peace to be maintained and therefore established the ILO.[23] The ILO was the first international organization with a tripartite structure, bringing together governments, employers, and workers to guarantee dialogue and cooperation on labour standards, especially occupational safety and health.

Creation of the International Association for Labour Legislation

The first international organization devoted to advancing labour law reform and enhancing working conditions through cross-border collaboration was the International Association for Labor Legislation (IALL), which was founded in Basel, Switzerland, in 1900. The organization was founded during Europe's rapid industrialization era, which was marked by long workdays, low worker protections, and poor occupational safety. Politicians, intellectuals, and reformers aimed for a concerted global response to labour violations that national laws alone were unable to sufficiently address.[24]

With the help of reform-minded individuals in Germany, France, and Britain, Swiss law professor Édouard Lardy founded the IALL. Studying labour conditions around the world, putting forward model legislation, and promoting the enactment of protective labour laws were its initial goals. The IALL laid the groundwork for a system of international labour standards by forming national sections and holding frequent

[22]David von Drehle, *Triangle: The Fire That Changed America* (2003).
[23] *Supra* note 4.
[24] Hugh D. Hindman, *The World of Child Labor: An Historical and Regional Survey* 385 (2009).

international congresses, which provided a forum for discussion on workplace regulation.[25]

Promoting the 1906 Berne Convention, which sought to control night work for women and ban the use of white phosphorus in the match industry, a major source of health issues for workers, was one of the IALL's noteworthy accomplishments. This convention was one of the earliest multilateral attempts to address gender equity and occupational health in labour law.[26] The groundbreaking work of the IALL anticipated the emergence of international labour governance in the 20th century and demonstrated that defending workers' rights was not only a domestic issue but also a global necessity.[27]

The 1906 Berne Convention on Preventing the Use of White Phosphorus and Night Work for Women

One of the first international labour treaties to promote occupational safety and health was the 1906 Berne Convention, formally known as the Berne Convention on the Prohibition of the Use of White (Yellow) Phosphorus in the Manufacture of Matches. Adopted under the International Association for Labor Legislation's (IALL) auspices, the Convention addressed the harmful health effects of industrial chemicals and began to protect women in the workplace, marking a turning point in global labour standards.[28]

[25] Werner Sengenberger, *Globalization and Social Progress: The Role and Impact of International Labour Standards* 45 (Friedrich-Ebert-Stiftung 2005).
[26] Daniel Maul, *Human Rights, Development and Decolonization: The International Labour Organization, 1940–70* 20 (Palgrave Macmillan 2012).
[27] Int'l Lab. Org., *International Labour Standards: A Global Approach* 17 (2004).
[28] *Supra* note 25, at 47.

Eliminating the use of white phosphorus, also referred to as a hazardous chemical compound that was then frequently used in matchmaking, was one of the main objectives of the Convention. The debilitating condition known as "phossy jaw"—a necrosis of the jawbone caused by chronic inhalation or ingestion of phosphorus fumes—was commonly developed by workers exposed to white phosphorus, especially in factories with inadequate ventilation.[29] Match workers, many of whom were women and children working in hazardous conditions for long hours and meager pay, were particularly prone to this illness. By requiring signatory states to forbid the production, importation, and distribution of white phosphorus matches, the Berne Convention forced businesses to switch to safer substitutes like red phosphorus.[30]

The 1906 Convention included the prohibition on phosphorus as well as preliminary measures to control women's night labour. During the Industrial Revolution, night shifts were more prevalent in the manufacturing and textile industries, exposing women workers to increased risks to their health, safety, and family life in addition to physical exhaustion. The Convention established the idea that gender-specific workplace protections could be a valid topic of international labour regulation by prohibiting women from working at night.[31]

The Convention was a revolutionary recognition of the social and health aspects of work, even though its gendered framework is criticized by contemporary standards for encouraging protective rather than equal legislation. It represented a larger trend toward "social Europe," where labour standards were viewed as social justice and public health tools in addition to economic ones.[32]

[29] Mark Aldrich, *Safety First: Technology, Labor, and Business in the Building of American Work Safety, 1870–1939* 56–58 (Johns Hopkins Univ. Press 1997).
[30] *Supra* note 26, at 22.
[31] Carolyn M. Moehling, State Child Labor Laws and the Decline of Child Labor, 55 Explorations in Econ. Hist. 117, 124 (2015).
[32] Sandrine Kott, Constructing a European Social Model: The Fight for Social Insurance in the Interwar Period, 16 Comp. Lab. L. & Pol'y J. 112, 120–21 (1995).

In terms of chemical safety, occupational health, and gender-sensitive labour protections, the 1906 Berne Convention established the groundwork for subsequent ILO conventions and national labour laws. It is considered by many to be among the first instances of global agreement on the necessity of addressing workplace dangers and worker vulnerability internationally.[33]

Establishment of the League of Nations and ILO

Founded in 1919 as part of the Treaty of Versailles ending World War I, the League of Nations was the first worldwide effort to build a permanent organization dedicated to the advancement of peace, international cooperation, and collective security. Though mostly intended to stop future wars by means of diplomacy and arbitration, the League was also distressed about social and economic justice, especially as it pertained to the state of labour all over the world. The League's founding was a turning point in world government since it realized that permanent peace could not be attained without first addressing the suffering of workers in an increasingly industrialized and linked society.[34]

Political theorists and peace activists had long discussed the idea of an international body to promote cooperation and prevent war; the terrible destruction of World War I gave the idea genuine political urgency. Stressing the importance of a collective security system that would dissuade aggression and promote peaceful conflict resolution, U.S. President Woodrow Wilson supported the creation of the League as one of his Fourteen Points.[35] Though the United States finally did not join,

[33] Int'l Lab. Org., *Rules of the Game: A Brief Introduction to International Labour Standards* 11–13 (2014).
[34] Patricia Clavin, *Securing the World Economy: The Reinvention of the League of Nations, 1920–1946* 15–19 (Oxford Univ. Press 2013).
[35] Woodrow Wilson, *Fourteen Points Speech*, Cong. Rec., 65th Cong., 2d Sess. (Jan. 8, 1918); see also Thomas J. Knock, *To End All Wars: Woodrow Wilson and the Quest for a New World Order* 124–28 (Oxford Univ. Press 1992).

Article I of the Covenant of the League of Nations formally created the League, signed on 28 June 1919.

Importantly, the League of Nations created the International Labour Organization (ILO) as a specialized agency. The Treaty of Versailles included the founding ideals of the ILO, as articulated in the ILO Constitution. The ILO's inclusion in the League's structure showed the acknowledgment that peace relied not only on the end of military conflict but also on "social justice" and equitable labour conditions all around.[36] The drafters of the treaty contended that inequality, exploitation, and labour unrest were not only national issues but also global threats to political order and economic stability.[37]

The unusual institutional setup of the ILO under the League operated with a tripartite structure that included representatives from government, business, and labour. Unprecedented at the time, this system reflected a novel approach to international policymaking and established a normative framework for cooperative governance of labour standards at the worldwide level.[38] By means of the ILO, the League supported various early treaties on working hours, child labour, and occupational safety, therefore establishing the basis for contemporary international labour law.

Though the League was disbanded in 1946 and could not stop the start of World War II, its contributions to institution-building and the evolution of international law were fundamental. Surviving as the League's social policy arm, the ILO became the first specialized agency of the United Nations. Therefore, the legacy of the League, especially in the area of social policy and labour protection still shapes world

[36] *Supra* note 5.
[37] E. Phelan, *The International Labour Organization: Its Origins, Development and Future* 23–27 (Int'l Lab. Off. 1946).
[38] Antony Alcock, *History of the International Labour Organisation* 22–25 (Macmillan 1971).

government and the quest for human rights to this day. The League's legacy—especially in the area of labour protection and social policy—still shapes world governance and the quest for human rights to this day.[39]

Development of ILO International Labour Standards on OSH

The International Labour Organization (ILO) has developed one of the most ambitious and lasting worldwide projects to safeguard the health, safety, and dignity of workers through international labour standards on occupational safety and health (OSH). The ILO has regarded OSH not just as a technical concern but as a basic element of social justice, human rights, and sustainable development since its founding in 1919. The organization has created a rich corpus of conventions, recommendations, codes of practice, and guidelines meant to guarantee that all workers, regardless of sector or nationality, enjoy the right to a safe and healthy working environment over the last century.[40]

ILO standards on OSH have their roots in its Constitution, which states that a main goal of international labour control is "the protection of the worker against sickness, disease, and injury arising out of his employment."[41] Many workplace dangers, like accidents and exposure to harmful substances, led to strong calls for better OSH rules right after World War I. Early treaties, like the 1921 White Phosphorus Convention (No. 13), mirrored this concern and set the foundation for later, more all-encompassing standards.

[39] Daniel Maul, *The International Labour Organization: 100 Years of Global Social Policy* 30–34 (De Gruyter 2019).
[40] Int'l Lab. Org., *Fundamental Principles of Occupational Safety and Health* 1–3 (2d ed. 2013).
[41] *Supra* note 5.

The ILO has, over time, embraced several important conventions and recommendations, especially relating to OSH. These consist of 1. Convention No. 155 (1981) on Occupational Safety and Health, which sets a general policy framework for national OSH programs and preventive actions; 2. Convention No. 161 (1985) on Occupational Health Services, which encourages the integration of health services into companies and workplaces; and 3. Convention No. 187 (2006) on the Promotional Framework for Occupational Safety and Health, which underlines the need to develop a "preventive safety and health culture" via national strategies, institutional cooperation, and continuous improvement.[42]

Complementing these standards are recommendations (non-binding guidelines), such as Recommendation No. 197 (2006), which supports the execution of Convention No. 187 and underlines the participatory involvement of workers and businesses in OSH control. Apart from these official tools, the ILO develops technical guidelines and codes of practice on particular OSH issues—from hazardous chemicals and biological agents to machinery safety and stress management. National governments, businesses, trade unions, OSH experts, and others use these tools extensively to convert international standards into feasible workplace policies.[43]

A distinguishing feature of the ILO's method is its dedication to tripartism—the equal involvement of governments, businesses, and workers in standard-setting and execution. This inclusive framework ensures that OSH standards adapt to the realities of various sectors and nations, reflecting diverse perspectives. Globalization, technological change, and climate-related risks create new kinds of occupational hazards, so the creation of ILO OSH standards has become more relevant in the 21st

[42] Int'l Lab. Org., *ILO Standards on Occupational Safety and Health: Promoting a Safe and Healthy Working Environment* 8–12 (2021).
[43] Int'l Lab. Org., *ILO Codes of Practice on Occupational Safety and Health* (2009), https://www.ilo.org/safework/info/standards-and-instruments/codes/lang--en/index.htm.

century. The ILO has included OSH in its Decent Work Agenda and officially acknowledged OSH as a fundamental principle and right at work in 2022, therefore raising it to the same level as freedom of association and the eradication of child and forced labour.[44]

The ILO International Labour Standards on OSH

To safeguard workers' safety and health worldwide, the International Labour Organization (ILO) has developed a tiered normative framework that categorizes instruments as binding and non-binding. The binding instruments comprised of conventions and their accompanying recommendations set minimum legal obligations for ratifying states. Non-binding instruments include codes of practice, and technical guidelines translate those legal concepts into thorough, practical advice for regulators, businesses, and employees.[45]

Core OSH Conventions and Recommendations

The umbrella conventions mandate every ratifying nation to develop a national policy, institutional machinery, and prevention culture that form the foundation of the ILO's OSH system. Occupational Safety and Health Convention No. 155 (1981) defines the fundamental responsibility of states to create, carry out, and evaluate a consistent national OSH policy spanning all sectors of economic activity.[46]

Occupational Health Services Convention No. 161 (1985). Emphasizing surveillance, advice, and promotion of worker involvement requires companies to

[44] Int'l Lab. Conf., *Resolution Concerning the Inclusion of a Safe and Healthy Working Environment in the Framework of Fundamental Principles and Rights at Work*, 110th Sess. (June 2022); see also *ILO Centenary Declaration for the Future of Work*, Int'l Lab. Conf., 108th Sess. (June 2019).
[45] *Supra* note 33, at 31-32.
[46] *Occupational Safety and Health Convention (No. 155)*, June 22, 1981, 1331 U.N.T.S. 279.

provide workers multidisciplinary health services.[47] The Promotional Framework for Occupational Safety and Health (OSH) is outlined in Convention No. 187, established in 2006. This framework shifts states from a focus on "reactive compliance" to fostering a "preventive safety and health culture." In 2022, the International Labour Conference validated that a safe and healthy working environment, along with freedom of association and the abolition of forced and child labour, is now a fundamental human right by raising Conventions 155 and 187 to the list of Fundamental Conventions.[48]

Among these Fundamental Conventions are two related to occupational safety and health: the Occupational Safety and Health Convention, 1981 (Convention No. 155, entered into force in 1983 and ratified by 83 countries to date), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (Convention No. 187, entered into force in 2009, ratified by 69 countries to date).[49]

ILO Codes of Practice on OSH

The ILO has published over 40 sector- or hazard-specific codes of practice to put its conventions into effect. Though not legally binding, these writings reflect tripartite agreement on "best practice" and are often included in private standards or domestic law: Minimum standards on scaffolding, excavation, and personal protective equipment (PPE) are set by the Code of Practice on Safety and Health in Construction (2d ed., 1995).[50] The 2011 Code of Practice on Safety and Health in Agriculture provides guidelines on machinery guarding, pesticide handling, and migrant farmworker accommodation.[51] Other codes cover rising risks, including biological

[47] *Occupational Health Services Convention (No. 161)*, June 26, 1985, 1759 U.N.T.S. 283.
[48] *Supra* note 13.
[49] Int'l Lab. Org. [ILOSTAT], *The Right to Occupational Safety and Health: Still Unrealized*, https://ilostat.ilo.org/the-right-to-occupational-safety-and-health-still-unrealized/ (last visited May 7, 2025).
[50] *Supra* note 44.
[51] Int'l Lab. Org., *Safety and Health in Construction: Code of Practice* IV (2d ed. 1995).

agents and nanomaterials, as well as mining (2006), port operations (2005), and chemicals (1993).[52] Lately, the 2022 Code of Practice on Safety and Health in Textile, Clothing, Leather, and Footwear provides practical guidance for both public and private sectors, which have obligations, responsibilities, duties, and rights regarding safety and health in the industries.[53] Codes are a quick response tool for new technologies and hazards since they are more readily changed than conventions; hence, they maintain worldwide consistency with the treaty framework.

ILO Guidelines on OSH

Guidelines on Occupational Safety and Health Management Systems, ILO-OSH 2001. The guidelines present the "Plan-Do-Check-Act" (PDCA) cycle, the risk assessment hierarchy, worker involvement, and ongoing improvement concepts that are subsequently reflected in ISO 45001.[54] Regulators and businesses can handle psychosocial and non-traditional risks using topic-specific rules (e.g., stress prevention, HIV/AIDS at work, and ergonomics for home-based telework).[55]

Toward a Culture of Prevention

At the core of the ILO's long-term plan to safeguard workers worldwide is the shift from reactive to proactive strategies to occupational safety and health (OSH). Shared attitudes, beliefs, and practices that give top priority to anticipating, spotting, and removing occupational hazards before they cause damage define a culture of prevention. The ILO claims it means that all parties—governments, businesses,

[52] *Id.* at 51.
[53] Int'l Lab. Org., *Code of Practice on Safety and Health in the Textiles, Clothing, Leather and Footwear Industries*, https://www.ilo.org/resource/other/code-practice-safety-and-health-textiles-clothing-leather-and-footwear (last visited Apr. 17, 2025).
[54] Int'l Lab. Org., *Safety and Health in Agriculture: Code of Practice* 12 (2011).
[55] Int'l Lab. Org., *Guidelines on Occupational Safety and Health Management Systems (ILO-OSH 2001)* 9–15 (2001).

employees, and the general public—acknowledge work-related accidents and diseases are not unavoidable but rather can and should be avoided by means of proactive planning, consultation, and investment.[56]

This method is based on the ILO's Promotional Framework for OSH Convention, 2006 (No. 187). It requires ratifying nations to create and carry out national OSH policies, systems, and programs encouraging preventive safety and health practices. The Convention underlines the creation of a national preventative safety and health culture, defined as one in which "the right to a safe and healthy working environment is respected at all levels" and "where governments, employers, and workers actively participate in securing a safe and healthy working environment."[57]

The 2001 ILO Rules on Occupational Safety and Health Management Systems (ILO-OSH 2001) operationalize the prevention culture even more. By means of hazard identification, risk assessment, and employee participation, these policies support a Plan-Do-Check-Act (PDCA) model, guaranteeing ongoing improvement by integrating OSH into all facets of business management. Many aspects of ILO-OSH 2001 have since been included in national laws and international standards, including ISO 45001, therefore strengthening its worldwide impact.[58]

Education, awareness-raising initiatives, and the observance of the World Day for Safety and Health at Work, celebrated yearly on 28 April, help to promote preventive culture as well. Started by the ILO in 2003, this day emphasizes new OSH trends and encourages global discussion on efficient preventive measures.[59]

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[56] *Supra* note 11, at ¶¶ 5–7.
[57] *Supra* note 13, at arts. 1–3.
[58] *Supra* note 55, at 4-9.
[59] Int'l Lab. Org., *World Day for Safety and Health at Work*, https://www.ilo.org/safework/events/safeday/lang--en/index.htm (last visited May 2025).

The emphasis on new OSH trends and global discussions on effective preventive measures is crucial for changing public perceptions of OSH and making workplace health and safety a public issue, rather than just a private one. Building a culture of prevention at the national level calls for institutional capacity, legal enforcement, and social dialogue. Investment in training, data collection, and technology is especially needed for small and medium-sized businesses (SMEs) and in informal sectors, where occupational hazards are usually greatest.[60]

Importantly, the ILO places prevention culture within the larger framework of the Decent Work Agenda and the 2030 Sustainable Development Goals (SDGs), especially SDG 8 on "promoting inclusive and sustainable economic growth, employment, and decent work for all." Rather than just legal requirements, preventive OSH systems are now regarded as catalysts for public health, productivity, and economic resilience.[61]

The Role of ILO and OSH in the New Millenium

The ILO and OSH in the New Millennium: Their Role As a key pillar of decent work, sustainable development, and inclusive globalization, the International Labour Organization (ILO) has greatly increased its strategic and operational involvement in advancing Occupational Safety and Health (OSH) in the new millennium. Framed by the wider goals of the Decent Work Agenda, started in 1999, which combines four strategic goals—employment creation, social protection, rights at work, and social dialogue—the ILO's OSH agenda in the new millennium addresses. As it deals with the prevention of occupational injuries, diseases, and fatality risks that disproportionately

[60] Int'l Lab. Org., *OSH Management Systems: A Tool for Continuous Improvement* 21–25 (2013).
[61] Int'l Lab. Org., *Decent Work and the 2030 Agenda for Sustainable Development* 7–8 (2017), https://www.ilo.org/global/topics/sdg-2030/lang--en/index.htm.

affect workers in the informal economy, developing countries, and high-risk sectors, OSH is integrated into all four pillars, especially in the area of social protection.[62]

Formally expressed in its Global Strategy on Occupational Safety and Health, adopted in 2003 by the International Labour Conference, the ILO envisions OSH in the twenty-first century. The strategy stressed a "preventive safety and health culture" and advocated national OSH systems based on legislation, enforcement, tripartism, and education. It also proposed the idea of integrating OSH into national development priorities, including public health systems and poverty reduction plans. It is also presented the idea of mainstreaming OSH into national development agendas, including public health systems and poverty reduction policies.[63]

The ILO stepped up its creation of codes of practice, technical recommendations, training manuals, and knowledge platforms in reaction to the rising need for useful tools. Widely adopted by national regulators and multinational companies, the ILO-OSH 2001 Guidelines on Occupational Safety and Health Management Systems have become one of the most powerful tools.[64]

The ILO's increased involvement in capacity building and technical cooperation has been another important development. The ILO helps nations by means of its SafeWork initiative to improve their OSH institutions, strengthen labour inspection systems, and train OSH experts. These initiatives are particularly aimed at low-income and fragile countries, where the lack of regulatory infrastructure exposes workers to exploitation and damage.[65]

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[62] Int'l Lab. Org., *Decent Work Agenda* (1999), https://www.ilo.org/global/about-the-ilo/mission-and-objectives/decent-work-agenda/lang--en/index.htm.
[63] *Supra* note 11, at ¶¶ 4-7.
[64] *Supra* note 58, at 5-10.
[65] Int'l Lab. Org., *SafeWork Programme: Building a Culture of Prevention on OSH* (2020), https://www.ilo.org/safework/lang--en/index.htm.

The ILO officially acknowledged a safe and healthy working environment as a Fundamental Principle and Right at Work in 2022, maybe the most changing event. This put OSH on the same normative level as freedom of association and the eradication of forced and child labour. All ILO member countries, not only those that have ratified OSH conventions, will be bound by this decision to honor, advance, and fulfill the right to occupational safety and health.[66]

World Day for Safety and Health at Work

The World Day brings tripartite strength to the International Commemoration Day for Dead and Injured. The ILO World Day focuses international attention on the magnitude of the global problem of death, disease, and injuries arising out of work and how promoting and creating a safety and health culture can help to prevent this tragedy. Each year a different topic has been highlighted.[67]

Observed yearly on 28 April, the World Day for Safety and Health at Work is a worldwide campaign run by the International Labour Organization (ILO) to raise awareness and inspire action on the need to prevent occupational accidents and diseases. Not only a memorial event, the World Day, founded in 2003, is a strategic tool that fosters a culture of prevention in occupational safety and health (OSH) worldwide.[68]

Every year, the ILO chooses a topic that reflects present or developing OSH issues. These topics have covered climate-related occupational hazards (2023), vulnerable workers in the informal economy (2019), and stress and mental health at

[66] *Supra* note 44.
[67] Int'l Lab. Org. [ILO], *Safety and Health at the Heart of the Future of Work: Building on 100 Years of Experience* (2019).
[68] Int'l Lab. Org., *World Day for Safety and Health at Work: Background*, https://www.ilo.org/safework/events/safeday/lang--en/index.htm.

work (2016). The World Day aims to convert scientific research and international labour standards into public debate and policy discussion by means of reports, global webinars, campaigns, and national-level activities.[69]

Often relying on empirical research and expert input, the flagship ILO report's launch is a central element of World Day. Grounded in ILO conventions and guidelines, these studies not only draw attention to the extent of workplace dangers but also offer practical advice. The 2019 report, "Safety and Health at the Heart of the Future of Work," for instance, looked at the OSH effects of demographic change, artificial intelligence, and digitalization.[70]

Furthermore, the World Day closely corresponds with Sustainable Development Goal 8, which underlines "inclusive and sustainable economic growth, full and productive employment, and decent work for all." Achieving this objective depends on preventing work-related injuries and diseases; the World Day highlights that link for a broad worldwide audience.[71]

The ILO Supports Its Constituents Through the Development of Numerous Publications and Training Packages on OSH

In 2017 and 2018, By creating a great variety of publications and training resources suited to the needs of its tripartite members—governments, businesses, and workers—the International Labour Organization (ILO) has persistently reaffirmed its dedication to occupational safety and health (OSH). These tools are meant to help

[69] *Id.*; see also Int'l Lab. Org., *A Safe and Healthy Working Environment as a Fundamental Principle and Right at Work: 2023 Report* 3–7 (2023).
[70] *Supra* note 2, at 10-15.
[71] *Supra* note 61, at 7-9.

international labour standards be implemented, strengthen OSH governance, and promote a preventive safety culture in companies in many different economic sectors.

From technical manuals to practical guides, codes of practice, policy briefs, and academic reports, the ILO's OSH publications cover various formats. Among the many series worth mentioning is the ILO Encyclopaedia of Occupational Health and Safety, a thorough reference tool offering scientific, legal, and practical knowledge on OSH issues pertinent to many sectors and hazards. A useful tool for legislators and practitioners all around, this encyclopaedia is often updated to reflect current research and new OSH field hazards.[72]

Apart from written content, the ILO has created many training packages, usually created in partnership with regional and national organizations, meant to strengthen OSH professionals, inspectors, and workplace safety representatives. These cover the SOLVE program, which combines OSH with policies on health promotion, workplace violence, and substance abuse prevention to tackle psychosocial hazards.[73]

OSH as Fundamental Principles and Rights at Work (FPRW)

Increasingly, occupational safety and health (OSH) has been acknowledged as the fifth category of the ILO's Fundamental Principles and Rights at Work (FPRW). OSH was included with other fundamental labour rights by this choice: freedom of association and the appropriate acknowledgment of the right to collective bargaining; the abolition of child labour; the elimination of forced or compulsory labour; and the

[72] Int'l Lab. Org., *ILO Encyclopaedia of Occupational Health and Safety*, https://www.ilo.org/encyclopaedia (last visited May 12, 2025).
[73] Int'l Lab. Org., *SOLVE: Integrating Health Promotion into Workplace OSH Policies* (2012), https://www.ilo.org/safework/projects/WCMS_108563/lang--en/index.htm.

elimination of discrimination in relation to employment and occupation.[74]

Historically important is this OSH promotion to the FPRW framework. The ILO has long advocated OSH as a fundamental component of fair labour. All ILO member states, whether or not they have ratified the pertinent OSH conventions, now have an obligation to respect, promote, and realize the ideals of a safe and healthy working environment under FPRW's formal inclusion.[75] This entails harmonizing national legal systems, enforcement strategies, and institutional practices with international labour standards. This entails harmonizing national legal systems, enforcement tools, and institutional practices with international labour standards.

The OSH conventions now formally linked to FPRW are:

- Convention No. 155 (Occupational Safety and Health Convention, 1981), which outlines the framework for national OSH policies and responsibilities of employers and workers.
- Convention No. 187 (Promotional Framework for Occupational Safety and Health Convention, 2006), which emphasizes continuous improvement of OSH systems and national frameworks.[76]

State Obligations and Enforcement Mechanism

States are supposed to implement and keep national OSH policies, programs, and systems, including legal measures, institutional infrastructure, and enforcement mechanisms. This covers suitable sanctions applications, violation investigations, and compliance monitoring by means of labour inspection systems. States also have the

[74] *Supra* note 44.
[75] Int'l Lab. Org. [ILO], *ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-up* (1998, amended 2022), https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm.
[76] *Supra* notes 46 & 13.

responsibility to gather and distribute OSH data, engage with social partners, and guarantee that OSH issues are integrated into vocational training and education.[77]

Member States of the International Labour Organization (ILO) have a legal and moral duty to respect, promote, and realize the right to a safe and healthy working environment under the framework of Occupational Safety and Health (OSH) as a Fundamental Principle and Right at Work (FPRW). By virtue of the 2022 amendment to the ILO Declaration on Fundamental Principles and Rights at Work, this duty exists whether or not states have ratified the pertinent ILO conventions. This duty stems from the 2022 revision of the ILO Declaration on Fundamental Principles and Rights at Work; therefore, it holds whether or not states have ratified the pertinent ILO Conventions.[78]

Employers' Obligations and Responsibilities

Legally and morally, companies have to offer a safe, risk-free environment. This covers worker training, emergency preparedness, and guarantees of OSH decision-making involvement; it also covers the evaluation and reduction of occupational hazards and the supply of personal protective equipment (PPE). In OSH management, the hierarchy of control measures—elimination, substitution, engineering controls, administrative controls, and PPE—directs employer behavior.[79]

Employers have the first responsibility to guarantee the health, safety, and welfare of their staff members at work. Under both international labour standards, especially those of the International Labour Organization (ILO), and national occupational safety and health (OSH) laws worldwide, this duty is fundamental. The

[77] *Supra* note 58, at 3-5.
[78] *Supra* note 44.
[79] *Id.* at 13–15.

responsibilities of companies have become more normative with OSH designated as a Fundamental Principle and Right at Work (FPRW) in 2022, so transforming the safe and healthy working environment from a legal obligation to a fundamental human right.[80]

Employees' Obligations and Responsibilities

Although OSH systems place obligations on workers, employers have the first responsibility of care. These consist of following safety procedures, properly using protective equipment, notifying hazards or accidents, and attending training courses. Workers have the right to decline hazardous work free of fear of retribution; they should also be included in OSH committees or representative bodies. Incorporating OSH into the FPRW framework shows a worldwide agreement that health and safety are non-negotiable elements of good work.[81]

Including OSH in the FPRW system shows a worldwide agreement that health and safety are non-negotiable elements of good work. This change builds a rights-based basis for safer workplaces all over the world by empowering people and improving government and business responsibility.

Although companies have the main responsibility for guaranteeing occupational safety and health (OSH), workers also have vital roles that help to avoid unsafe conditions, illnesses, and accidents at work. Any OSH management system's efficacy depends mostly on the active involvement, awareness, and compliance of workers. Employees' responsibilities are in line not only with safety procedures but also with maintaining a universal human right to safe work, as OSH is now acknowledged as a

[80] *Supra* note 44.
[81] *Supra* note 2, at 62-66.

Fundamental Principle and Right at Work under the International Labour Organization (ILO) framework.[82]

The Implications of OSH in the Transformations of Technology, Demographics, Climate Change, and Changes in Work Organization

Occupational Safety and Health (OSH) systems have to change to handle new and developing hazards as work environments evolve in reaction to globalization, technological progress, demographic changes, climate concerns, and changing organizational models. These changes provide chances as well as difficulties for protecting the health, safety, and well-being of employees. The International Labour Organization (ILO) underlines the need for an anticipatory, proactive attitude to OSH within the more general context of Decent Work and Sustainable Development Goals (SDGs).[83]

Technology

Digitalization and Information and Communication Technologies (ICT)

The increasing use of ICT, including remote work platforms, artificial intelligence, and cloud-based management tools, has blurred the lines between work and home, possibly raising psychosocial hazards like stress, burnout, and digital fatigue.[84] While guaranteeing access to support services and digital ergonomics, employers have to create policies to control work-life balance and reduce stress connected to monitoring.

[82] See ILO, *Resolution*, *supra* note 80.
[83] *Supra* note 67, at 5-7.
[84] *Id.* at 35–37.

Automation and Robotics

Although automation lowers human exposure to hazardous activities, it also brings new kinds of risks, such as system failures, complicated human-machine interactions, and anxiety about job displacement.[85] Workers have to be educated on robot safety procedures, and companies have to keep an eye on the cognitive and emotional consequences of operating in very automated environments. Employees have to be educated on robot safety procedures; companies have to keep an eye on the emotional and cognitive consequences of operating in very automated environments.

Demographics

Young Workers

Young workers (aged 15–24) often lack experience and training, making them more vulnerable to injuries and exploitation. They are overrepresented in precarious and informal sectors.[86] Employers must provide age-appropriate training and mentorship programs.

Aging Worker Populations

Especially in high-income nations, more older workers stay on the job as populations age. This calls for ergonomic changes, chronic disease management, and

[85] Int'l Lab. Org. [ILO], *Working Safely with Robot Systems: Implementation Guidance*, ILO Doc. ILO-ROBOT-GUIDE/2020, at 11–15 (2020), https://www.ilo.org/global/publications/WCMS_754940/lang--en/index.htm.
[86] Int'l Lab. Org. [ILO], *Improving the Safety and Health of Young Workers*, ILO SafeYouth@Work Project Rep., at 8–10 (2018), https://www.ilo.org/safework/projects/WCMS_625223/lang--en/index.htm.

task changes to fit lower physical capacity.[87] For longevity at work, OSH systems have to change from reactive to preventive health promotion.

Gender and Migrant Workers

Women and migrant workers often work in sectors with inadequate OSH protections (e.g., domestic work, agriculture, garment factories). Women are more exposed to reproductive hazards, ergonomic strain, and workplace violence, while migrant workers face linguistic and cultural barriers to safety training.[88] Integrating gender-responsive and culturally sensitive approaches is essential for inclusive OSH policies.

Development and OSH

Climate Change, Air Pollution, and Environmental Degradation

Especially for outdoor workers in construction and agriculture, among others, extreme weather, heat stress, air pollution, and vector-borne diseases are generating new occupational risks.[89] Rising heat-related diseases call for heat prevention criteria, hydration policies, and rest planning.

The Green Economy

[87] Int'l Lab. Org. [ILO], *Older Workers and Occupational Safety and Health: A Review*, ILO Doc. ILO-OLDER/2013, at 5–9 (2013), https://www.ilo.org/safework/info/publications/WCMS_211571/lang--en/index.htm.
[88] Int'l Lab. Org. [ILO], *Gender and Occupational Safety and Health: A Toolkit for Gender-Responsive OSH Policies*, ILO Doc. ILO-GENDER/2013, at 12–16 (2013), https://www.ilo.org/safework/info/publications/WCMS_240524/lang--en/index.htm.
[89] Int'l Lab. Org. [ILO], *Working on a Warmer Planet: The Impact of Heat Stress on Labour Productivity and Decent Work*, at 19–22 (2019), https://www.ilo.org/global/publications/books/WCMS_711919/lang--en/index.htm.

The shift toward green jobs in renewable energy, sustainable agriculture, and waste recycling presents OSH challenges like chemical exposure, heavy lifting, and new machinery use. Green jobs must be safe jobs, and OSH standards must evolve alongside sustainability transitions.[90]

ILO Instruments and Sustainable Development

Particularly SDG 3 (good health and well-being) and SDG 8 (decent work and economic growth), the ILO connects OSH to the 2030 Agenda for Sustainable Development. Through policies, conventions, and alliances, the ILO encourages integrated approaches for occupational safety and climate resilience.[91]

Change in Work Organization

Excessive Hours of Work and Non-Standard Forms of Employment

Non-standard work arrangements such as platform-based labour, zero-hour contracts, and gig work often fall outside conventional OSH rules. These employees usually have little access to medical treatment, no social protection, and long hours.[92] Regulatory systems have to broaden OSH protections to cover all workers, irrespective of job category. Regulatory systems have to cover all workers, not only those in certain kinds of employment, under OSH protections.

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[90] Int'l Lab. Org. [ILO], *Greening with Jobs: World Employment and Social Outlook 2018*, at 56–58 (2018), https://www.ilo.org/global/research/global-reports/weso/greening-with-jobs/lang--en/index.htm.

[91] Int'l Lab. Org. [ILO], *Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All*, at 27–30 (2015), https://www.ilo.org/global/topics/green-jobs/publications/WCMS_432859/lang--en/index.htm.

[92] Int'l Lab. Org. [ILO], *Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects*, at 72–77 (2016), https://www.ilo.org/global/publications/books/WCMS_534326/lang--en/index.htm.

Working Time Arrangements

Unpredictable schedules, night work, and irregular hours disturb circadian rhythms and cause sleep disorders, heart issues, and mental anguish. Companies should implement fatigue risk management systems and make sure maximum working hours are followed.[93]

The Example of Digital Labour Platforms

Digital platform workers (e.g., ride-hailing, food delivery) often operate in isolation without workplace protections, increasing the risk of accidents and mental health deterioration. Some jurisdictions are introducing algorithmic transparency and collective bargaining rights for platform workers to improve OSH outcomes.[94]

Responding to the OSH Challenges and Opportunities of the Future of Work

Governments, companies, and workers in the field of Occupational Safety and Health (OSH) must respond proactively and adaptively to the fast-evolving character of work shaped by technological disruption, climate change, demographic shifts, and new business models. These changes create new challenges and complicated uncertainties, but they also offer chances to update and improve OSH systems. To meet these difficulties in ways that guarantee decent work and protect basic rights, the International Labour Organization (ILO) advocates a forward-looking, integrated, inclusive approach.[95]

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[93] Int'l Lab. Org. [ILO], *Working Time and Work-Life Balance Around the World*, at 43–45 (2022), https://www.ilo.org/global/publications/books/WCMS_846253/lang--en/index.htm.
[94] Int'l Lab. Org. [ILO], *Digital Labour Platforms and the Future of Work: Towards Decent Work in the Online World*, at 118–25 (2021), https://www.ilo.org/global/publications/books/WCMS_771749/lang--en/index.htm.
[95] *Supra* note 67, at 5–6.

Anticipation of New OSH Risks

Future OSH plans have to give risk anticipation first priority to find and handle problems before they materialize. This calls for constant monitoring of emerging trends, including automation, nanotechnology, platform work, and psychosocial stressors. To forecast and reduce health and safety hazards in real time, governments and organizations have to spend on horizon scanning tools, research and development, and occupational epidemiology.[96]

Predictive modeling and big data analytics can be used to forecast workplace incidents and direct policy changes. Such anticipation also includes the inclusion of inclusive risk assessments, which consider the different vulnerabilities of workers across age, gender, and occupational categories.[97]

Multi-disciplinarity in Managing OSH

The multifaceted hazards of the future of work call for cross-disciplinary cooperation. OSH has to stop being viewed as the territory of safety engineers or inspectors only. Public health authorities, psychologists, IT experts, sociologists, and lawyers should all be included.[98] It has to include legal professionals, sociologists, IT specialists, psychologists, public health experts, and others.

[96] Int'l Lab. Org. [ILO], *Anticipating and Preparing for Emerging Risks in OSH*, ILO Doc. ILO-RISK/2018, at 9–12 (2018), https://www.ilo.org/global/topics/safety-and-health-at-work/WCMS_625226/lang--en/index.htm.
[97] Int'l Lab. Org. [ILO], *Risk Assessment and Management in the Future of Work*, ILO Tech. Rep., at 14–17 (2020), https://www.ilo.org/global/publications/WCMS_739671/lang--en/index.htm.
[98] Int'l Lab. Org. [ILO], *Multi-disciplinary Approaches to OSH Challenges*, Pol'y Brief No. 9, at 2–4 (2021), https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_814268.pdf.

Addressing mental health concerns connected to remote work or digital monitoring, for instance, calls for input from psychology, human resources, and information security. Likewise, climate-related risks call for environmental science and occupational health integration to produce all-encompassing protection plans.

Building Competence in OSH

Building capacity is one of the mainstays of future-readiness. New technologies and hazards call for training and retraining for workers, companies, and authorities. The ILO advocates vocational training and lifelong learning, embedding OSH ideas and skills in sector-spanning curricula.[99]

Digital tools such as mobile learning platforms, virtual reality for hazard training, and online simulations provide scalable ways to increase outreach and impact. Employers have to include OSH training in their plans for organizational development, therefore guaranteeing continuous adaptation to evolving circumstances and legal obligations.

International Labour Standards and Other Instruments on OSH

The national law still finds basic direction in international labour standards, particularly Conventions No. 155 and 187. These tools, therefore, have to be updated, contextualized, and supplemented with revised codes of practice, technical recommendations, and sector-specific tools. However, we must use current codes of practice, technical recommendations, and sector-specific tools to modernize, contextualize, and enhance these instruments.[100]

[99] Int'l Lab. Org. [ILO], *Skills for a Safer Future: Integrating OSH into Training and Education*, ILO Toolkit (2019), https://www.ilo.org/safework/info/publications/WCMS_727657/lang--en/index.htm.
[100] *Supra* note 46 & 13.

National laws have to reflect these standards by requiring preventive OSH systems, worker involvement, rights-based approaches, and efficient enforcement tools. Including OSH as a fundamental principle and right at work also strengthens states' universal duty to maintain workplace safety and health regardless of ratification status.[101]

Enforcement and Sanction on the Failure of Compliance

Ultimately, the efficacy of occupational safety and health (OSH) systems relies on strong enforcement and responsibility mechanisms. Weak compliance or unpunished infractions will cause even the most progressive laws or policies to fall short. Ensuring OSH obligations are followed thus calls for a well-organized enforcement mechanism supported by suitable penalties, legal remedies, and institutional supervision. Particularly under the newly confirmed status of OSH as a Fundamental Principle and Right at Work (FPRW), the International Labour Organization (ILO) emphasizes that enforcement is a central pillar of national OSH systems.[102]

Fundamental Instruments[103]

The ILO Governing Body had initially identified eight “fundamental” Conventions, covering subjects that were considered to be fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These principles were also covered by the ILO

[101] *Supra* note 8.
[102] *Supra* note 44.
[103] *Supra* note 44.

Declaration on Fundamental Principles and Rights at Work (1998).[104] Following the adoption of the Protocol of 2014 to the Forced Labour Convention, 1930, a ninth ILO instrument was then considered as "fundamental." At the 110th Session of the International Labour Conference in June 2022, the ILC adopted a Resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work.[105] As a result, the ILO Declaration on Fundamental Principles and Rights at Work, 1998, has been amended to this effect, and the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), are now considered as fundamental Conventions within the meaning of the 1998 Declaration, as amended in 2022.

The eleven fundamental instruments are:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol);
- Abolition of Forced Labour Convention, 1957 (No. 105);
- Minimum Age Convention, 1973 (No. 138);
- Worst Forms of Child Labour Convention, 1999 (No. 182);
- Equal Remuneration Convention, 1951 (No. 100);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- Occupational Safety and Health Convention, 1981 (No. 155); and
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

[104] *Supra* note 75, (last visited Apr. 27, 2025).
[105] Int'l Lab. Org. [ILO], *Resolution on the Inclusion of a Safe and Healthy Working Environment in the ILO's Framework*, https://www.ilo.org/resource/ilc/110/resolution-inclusion-safe-and-healthy-working-environment-ilo%E2%80%99s-framework (last visited Apr. 27, 2025).

Occupational safety and health is an essential aspect of decent work. Indeed, it was recognized in 2022 as a Fundamental Principle and Right at Work. From the 191 ILO Conventions existing to date, 10 are fundamental. These Fundamental Conventions include two related to occupational safety and health: the Occupational Safety and Health Convention, 1981 (Convention No. 155, entered into force in 1983 and ratified by 83 countries to date), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (Convention No. 187, entered into force in 2009, ratified by 69 countries to date).[106]

As of June 2022, the ILO designated two key OSH instruments as "fundamental":

- C155 (Occupational Safety and Health Convention, 1981); and
- C187 (Promotional Framework for OSH Convention, 2006).[107]

All ILO member states are bound to respect, promote, and realize their principles by raising these to basic status, even if they have not ratified them. This approach supports the legal and normative foundation for enforcement and improves responsibility under the ILO's supervisory systems, including the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

Complaint Procedures for Violation and Failure of Compliance

Once a standard is adopted, Member States are required under Article 19(6) of the ILO Constitution to *submit* it to their competent authority (normally Parliament) within a period of twelve months for consideration. In the case of Conventions, this means consideration for *ratification*. If it is ratified, a Convention generally comes into

[106] *The Right to Occupational Safety and Health: Still Unrealized*, ILOSTAT, https://ilostat.ilo.org/the-right-to-occupational-safety-and-health-still-unrealized/ (last visited May 7, 2025).
[107] *Supra* note 8.

force for that country one year after the date of ratification. Ratifying countries undertake to apply the Convention in national law and practice and to report on its application at regular intervals. Technical assistance is provided by the ILO, if necessary. In addition, representation and complaint procedures can be initiated against countries for violations of a Convention that they have ratified.[108]

When OSH rights are violated, workers and their representatives must have access to formal complaint mechanisms. These include:

- Internal grievance procedures within the enterprise;
- Labor inspectorates or OSH authorities, where complaints can trigger inspections;
- Administrative tribunals or labour courts, where legal remedies (e.g., reinstatement, compensation, criminal prosecution) can be sought.[109]

Internationally, the ILO offers several supervisory mechanisms for enforcement:

- Article 22 Reports: Member States submit periodic reports on convention application.
- Representations (Article 24) and Complaints (Article 26): Employers' and workers' organizations may allege failures to comply with ratified conventions.

[108] *Id.*; see also Int'l Lab. Org. [ILO], *Conventions, Protocols and Recommendations*, https://www.ilo.org/international-labour-standards/conventions-protocols-and-recommendations (last visited Apr. 27, 2025).
[109] Int'l Lab. Org. [ILO], *Complaints Procedures under the ILO Constitution*, ILO Guide, at 10–15 (2018), https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/complaints/lang--en/index.htm.

- Commission of Inquiry: For persistent or egregious violations, the ILO may establish a high-level body to investigate and recommend sanctions or reforms.[110]

Additionally, OSH violations may trigger claims under international human rights law, particularly where state negligence leads to deaths or serious illness.

Conclusion

Occupational Safety and Health (OSH) has evolved from a narrowly defined technical issue into a globally recognized cornerstone of human dignity, decent work, and sustainable development. This article has traced the historical origins of OSH, examined the pivotal role of the International Labour Organization (ILO) in shaping international standards, and explored the multifaceted challenges facing OSH in the 21st century. From the foundational work of the International Association for Labour Legislation to the ILO's elevation of OSH to a Fundamental Principle and Right at Work in 2022, the international community has made clear that a safe and healthy working environment is not a privilege but a universal human right.

Globalization, technological disruption, demographic changes, and climate change are all reshaping today's workplaces, creating new risks and demanding agile, anticipatory governance. Strong legal frameworks, inclusive social dialogue, and multidisciplinary cooperation support a shift from reactive compliance to proactive prevention, which defines OSH's future. Governments, businesses, and employees have to adopt integrated and forward-looking policies that protect vulnerable populations,

[110] Int'l Lab. Org. [ILO], *Handbook of Procedures Relating to International Labour Conventions and Recommendations*, ILO Doc. GB.282/LILS/7/1 (2001), https://www.ilo.org/public/libdoc/ilo/2001/101B09_168_engl.pdf.

adjust to new types of employment, and make sure no one is left behind in the quest for safe and decent work.

Safeguarding workers' rights and creating resilient economies depend on a strong culture of prevention backed by enforceable standards, ongoing education, and international solidarity. By aligning OSH with the Sustainable Development Goals (SDG 8 in particular), the ILO provides both a normative foundation and a strategic pathway to ensure that workplace safety and health are central to social justice and fair globalization. In the end, the dedication to safe and healthy work is a moral need for a just and human future of work, not only a legal or institutional duty. By embracing OSH as a legal, social, and ethical imperative, the international community can ensure that progress does not come at the cost of human life and health—but rather, advances because of it.

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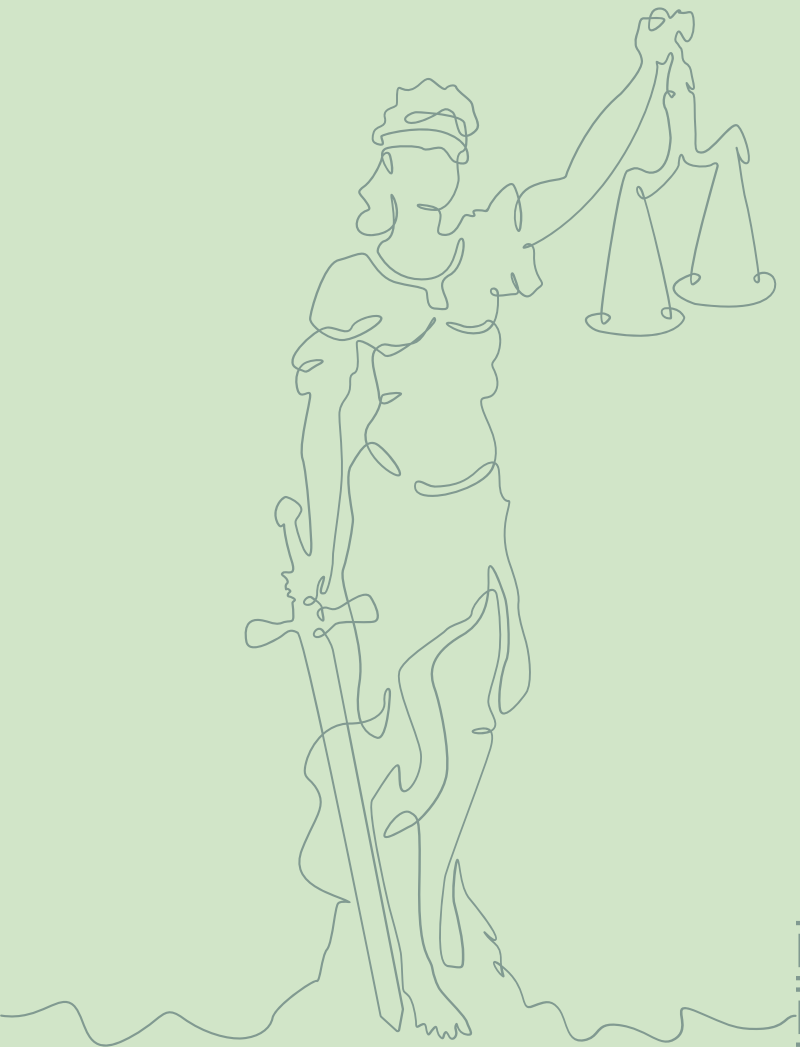

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