

Prof. Dr. Michał Balcerzak (Dr. hab. iur.)

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Faculty of Political Science and Security Studies
Nicolaus Copernicus University in Toruń

Faculty of Law and Administration
University of Szczecin

R E V I E W

of the doctoral thesis submitted by Ms. Jennifer Alexandra Katharina Maaß: „The Influence of the UN Sustainable Development Goals on Standardisation in Transnational Law. A Legal Analysis of Steering Effects on the Extractive Industries”

(Doctoral Supervisor: Prof. Dr. Winfried Huck, Second Supervisor: Dr. Paweł Kowalski,
Braunschweig 2024, ss. 205+LII)

Pursuant to Article 183 of the Act of July 20, 2018, Law on Higher Education and Science (Journal of Laws of 2018, item 1668, as amended) and in connection with SWPS University entrusting me with the role of reviewer for Ms. Maaß's doctoral thesis (title as above), I hereby present my review of her doctoral dissertation.

1. Assessment of the selection and formulation of the topic (title) of the dissertation

The choice of topic and its formulation are appropriate. The author clearly defines the research field, focusing on the impact of the Sustainable Development Goals (SDGs) on transnational law standards. The subtitle offers further specification by relating the analysis to the effects of standardization on the mining industry. The author's use of the term "transnational law" is intentional, and its relevance is later explained in the work.

2. Research goals and methodological assumptions

In the "Introduction" the author provides an overview of the topic, highlighting the exploitative use of natural resources and the complex interplay between legal and political factors that underpin the global discussion of the subject. The author indicates that the SDGs, adopted by the UN General Assembly in 2015, "have acted as a global guise aiming to mitigate (social) distributional injustices and negative environmental impacts while forwarding economic progress" (p. 2). I concur with the

author's assertion that, nearly a decade after their adoption, the SDGs "remain poorly understood outside relevant professional circles" and "even lesser have they been analysed from a legal point of view" (p. 2). Indeed, the essence and effects of SDGs have been predominantly discussed within a large "academic bubble" focused on development studies, political science, and economic, social and cultural rights. However, they attracted less attention in public international law and transnational law. This gap in legal analysis is particularly noteworthy, given the importance of transnational regulatory frameworks in addressing global challenges related to sustainability and resource management.

The author raises the well-known dilemma of the EU's demand for strategic raw materials and the challenge of sourcing them from states with varied standards in human rights and the rule of law. She notes that "this thesis will be devoted to identifying and classifying the progress made in standard-setting based on or initiated by the SDGs in this areas" (p. 3). This is an ambitious goal, particularly since the EU's efforts to set and enforce standards in its external relations largely pre-date the adoption of the SDGs. This raises the pertinent question: to what extent have the SDGs genuinely influenced these standards? It is widely recognized that the EU's approaches in this domain are primarily guided by the EU foundation treaties and other key pillars, such as the EU Charter of Fundamental Rights (having the treaty status). Interestingly, the author mentions the Charter later in her thesis, though only briefly. It is indeed a compelling question: to what extent has the EU incorporated the SDGs in its standard-setting processes, especially since the SDGs represent an additional and non-binding layer of norms compared to the EU treaties or the Charter.

Further in the "Introduction," the author outlines the gaps in existing research on the SDGs from a legal perspective and presents the approach and scope of her study. She declares that "the aim of this thesis is therefore to show the extent to which the SDGs have influenced the sensitive areas mentioned, the legal conditions under which they unfold their potential as a governing instrument, and the interconnectedness with private groups and organisations as well as their work and impact on transnational law" (p. 5). Several research questions follow, focusing on the SDGs' influence on standard-setting and the EU's efforts to integrate them in its legal framework. Even more ambitious questions are raised, notably "How could standard setting in the extractive industries be changed or simplified in transnational law in the future and made more resilient and sustainable?" and "Are the SDGs the factor that unites different areas of law in joint sustainability law, due to their extensive scope, their interdependencies and their holistic approach?" (p. 5). I find these questions highly relevant for exploring the dissertation's chosen topic.

The author further elaborates on the research methods and justifies her "initial perspective of European law". I agree that this perspective is well-founded. However, a question arises whether

this perspective should not be reflected in the title of the thesis. Be it as it may, in the “Introduction” the author clarifies the notion of ‘transnational law,’ beginning with the well-known definition by Philipp Jessup as ‘all law which regulates actions or events and that transcend national frontiers,’ and providing some further reflections. These remarks adequately explain the author’s approach, set in the parameters of “transnational law”.

3. The structure and layout of the thesis

The thesis consists of an “Introduction” and three parts. The first part is titled “Towards a Network of Independencies: Outlining Framing Elements of Standard Setting in European and International Law”. I am not convinced that the word ‘Framing’ adds substantive value here; instead, it seems to complicate an already obscure title. Nevertheless, this part contains two chapters, although the Author does not explicitly refer to these sections as ‘chapters’.

The second part of the thesis is entitled “Standard Setting and Steering Effects in Application and Practice: Sustainability in the Extractive Industries”, while the third part’s title is: “Gaining Knowledge and Some Clarity: About Needs and How to Achieve Urgent Action”. The reference to “clarity” in the title of the final part of the thesis offers the reader a sense of hope and optimism, as the overall structure of the thesis is over-complicated and may lead to confusion. The introduction of additional subheadings (A, B, C, etc.) within specific sections seems to obscure rather than enhance the navigation of the subject matter.

This over-complicated structure is a notable concern and gives an impression of disorganization, particularly in Part II, which comes across as eclectic. Despite this, the substance of the thesis is what ultimately matters; therefore, this reviewer will refrain from dwelling too much on the structural deficiencies. It is sufficient to note that the structure should have been simplified. It would have been more effective to separate the elements of legal analysis from the otherwise exciting discussion on sustainability standards in the raw materials sector rather than combining them indiscriminately.

4. Substantive evaluation

Part I of the thesis begins with a chapter entitled “The Level Playing Field – Scientific Data and Facts of Anthropocene Struggles”, in which the Author intends to “outline the basic factors that affect humanity and influence its development” (p. 8). The author claims that “it is essential to at least outline current environmental conditions of human beings”. I am not convinced whether starting with such a broad perspective was necessary in a dissertation explicitly focused on the influence of the SDGs on standard-setting. The subsequent reflections on the environment, trade,

and investment serve as an introduction advocating for a “common vision” to achieve sustainable development in the international context. The author places particular emphasis on the “common vision of the EU” regarding sustainability. These remarks are thorough and well-founded, leading into an analysis of interactions between the EU and China concerning Critical Raw Materials (CRM). This analysis is useful in explaining complex trade interrelations from economic and socio-political perspectives.

Chapter II of Part I (pp. 27-72) focuses extensively on the UN SDGs which are central to the thesis. Given their significance, it is understandable that the author dedicated much attention to them. Overall, the analysis of the SDGs’ background and legal character is well-performed; however, I also have some reservations and critical observations regarding specific points. For instance, it is unclear what the author means by stating that by asserting that the international law-making process is facing challenges such as “the often lengthy processes of law enforcement, for example, in order to comply with and manifest the sources of law listed in Art. 38 of the Statute of the International Court of Justice (...)” (p. 28). What exactly does the author mean by “law enforcement” in this context? Moreover, how does one “comply with and manifest the sources of law listed in Art. 38 of the ICJ Statute”? By the way, it is worth noting that the list of sources provided in Article 38 is not exhaustive. Perhaps this nuance should have been acknowledged in the analysis.

The subchapters addressing the intersections of human rights and sustainable development, as well as the right to development, are of particular significance. These areas are indeed closely aligned with both the spirit and the letter of the SDGs. The notes that “human rights have been, and continue to be, treated at times as a legal subject matter detached from sustainable development”. While there may have been some separation in the academic discourse on human rights and sustainable development in the past, I would argue that this statement is overly critical in the context of today. Recent developments increasingly highlight the convergence between these two fields in scholarship and policy frameworks.

There is some awkwardness and legal imprecision in the statement that the two principal UN human rights treaties, i.e. the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Political Rights, “were added to the UDHR” (Universal Declaration of Human Rights) (p. 32). These covenants were not simply additions to the UDHR but rather distinct, legally binding treaties. Equally problematic is the sentence referring to these treaties that begins: “While not formally binding, these covenants (...) came into force in 1976”. The last part of the sentence contradicts the former. The Covenants are indeed legally binding and took effect in 1976.

I find it correct to assert that “human rights not only provide individuals with existential protection but also aim to create opportunities for development” (p. 32). The author references sources supporting the thesis that the right to development can be derived from the UDHR. However, this interpretation largely depends on how we define “development”. The UDHR does not explicitly refer to the right to development as a “state’s right”. However, it does refer to the human right of “free development of [one’s] personality” in the context of the realization of the economic social and cultural rights (Article 22 of the UDHR).

In general, the author effectively explains the “nexus between peace, sustainable development and human rights” (p. 34), as well as the connection between right to development and sustainable development. She correctly traces the right to development back to the 1986 Declaration, but then leaps directly to the Global Agenda 2030. In doing so, the author overlooks significant processes regarding the conceptualization or even codification of the right to development over the past 40 years. For instance, the author could have enriched her analysis by discussing the activities of the Working Group on the Right to Development – an inter-governmental forum established by the UN Commission on Human Rights and the Economic and Social Council back in 1998 (resolution E/DEC/1998/269). This Working Group is still active and has produced a draft Covenant on the Right to Development. It would have been interesting to explore whether and to what extent the discourse surrounding the Sustainable Development Goals has influenced the works of the Working Group.

Regarding the author’s analysis of the SDGs, she provides detailed remarks on their structure before focusing on their “legal classification” (p. 40). She correctly observes that the resolution A/RES/10/1 “is to be understood as a recommendation to states, lacking mandatory implementation or self-control mechanism”. While her reference to Article 10 of the UN Charter is accurate, it could have been clearer in this context. After establishing that the resolution mentioned above “cannot be deemed legislatively binding” (perhaps ‘legally binding’ would fit better), the author poses the question: “Does it represent merely the viewpoint of a UNGGA resolution, or, alternatively, a form of organizational law-making”. She then claims that this introduces “a dichotomy between the rule of law and soft law”, but this comparison is somewhat unclear. The subsequent reflections, invoking the Yale School of thought and teleological interpretation, do not necessarily clarify the issue. As is widely known, the notion of “rule of law” may have various interpretations, but juxtaposing it with “soft law” is somewhat unorthodox, to say the least.

Nevertheless, the claim that “the SDGs themselves are inherently normative, embedded in legal principles, rules, and drawing from international law and all other levels of law” appears to be valid. This conclusion could have been reached through less complicated and more direct reasoning.

However, I also acknowledge the author's effort to engage in a deeper theoretical discussion, including references to constructivism, which adds a layer of intellectual exploration to the analysis.

Then, the author presents a "transnational perspective of sustainable development and the SDGs" (p. 43 et seq.), discussing investment law, finance law, human rights law, transnational law, and "Sustainable Development Law". In separate subchapters on each of these domains, the author follows a consistent pattern: she begins with a "brief historical context", then moves to "systematic structure", and concludes with an analysis of their "meaning, significance and gravity". This overview may be considered a valuable introduction to the subject matter of the thesis and would have been more effectively placed prior to the discussion of the SDGs.

The author rightly asserts that human rights law is a "basing building block and legal embedding of sustainable development" (p. 56). However, I have some reservations about the "brief historical context" of human rights discussed on page 57. Tracing human rights back to figures such as the King Hammurabi of Babylon (1750 BC) and referring to the "Cyrus Cylinder" (6th century BC) as a human rights document is problematic, not to say wrong, at least from a legal standpoint. It is essential to emphasize that not every reference to a specific freedom or right in antiquity equates to the relatively modern concept of "human rights". Nevertheless, the author effectively explains the contemporary connections between human rights law and sustainable development. The subchapters discussing investment law, finance law, and transnational law are also of good research quality.

In Part II the author focuses on the standard setting an sustainability in the extractive industries. It is in this eclectic part that she first engages in the analysis of the notion of Critical Raw Materials (pp. 72-101) before proceeding to the analysis of "legal principles of standard setting in transnational law". The chapter on Critical Raw Materials discusses, among other things, the economic significance of cobalt, lithium, antimony, and vanadium, the methods of their extraction, and their impact on world trade and international relations. I do not have specific reservations about this chapter. Still, I also need to note that some parts of the chapter, referring to the specificity of the CRMs and their extraction methods, exceed my field of legal expertise. On the other hand, the author's discussion of these issues through the lens of international economic law provides more clarity.

The chapter on "Legal Principles of Standard Setting in Transnational Law" explains the concept of "standards" but does not adequately address the notion of "legal principles". In fact, the title may be somewhat overstated, as a simpler reference to "standard setting" would suffice. The author discusses standard setting in both private and public international law, focusing on the

creation of standards and processes that lead to their adoption. While I do not object to the inclusion of these reflections, it must be noted that the analysis is conducted in an overly complex manner. At times, the author presents views or statements that, while neither incorrect nor controversial, lack substantive clarity. For instance, the discussion of “International Law and its Role in Global Standard Setting” (p. 124) is surprisingly brief and includes the following sentence: “(...) the foundations of international law, in conjunction with the international standard-setting bodies acting within its framework, represent the boundaries for subsequent developments within the legal area. (...)”. Although the sentence is linguistically clear, its core meaning remains elusive, leaving the reader uncertain about the author's intended message.

The author summarizes her analysis on pages 136-138, which includes similar difficult-to-follow lines of reasoning. For example, she writes: “The structures within this established raw materials law in conjunction with the transnational realities of the supply and value chains also showed that a balance of the respective sovereignties is not always given. Rather, sovereignty must be firmly established and is, therefore, merely a principle that is not unassailable. The interplay of these parameters in a hyper-globalised world also offers opportunities for new types of regulation. This regulation, which should at best be simplified to an easily utilizable extent, also highlights the need for transnational standardization. This in turn follows its own mechanisms and works differently depending on the actor that initiated it. (...)” (p. 137). Due to convoluted fragments like the one cited above, it would be difficult to assert that the chapter on standard setting is straightforward or easy to comprehend. Nevertheless, the author successfully addresses the “transnational realities” of the topic, as she refers to them.

Chapters “D” and “E” of Part II address standard-setting in the areas of finance (“D”) and investment law (“E”). These extensive sections (pp. 138-193) offer a detailed analysis of how sustainability standards impact both fields. The author provides specific examples, such as the EU Regulation 2020/852 of the European Parliament and the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment (p. 143). The author also discusses numerous examples of soft-law standards, which are predominant insofar in the areas under consideration. Significant attention is given to standards developed by Chinese financial institutions (p. 153 et seq.). The chapter on sustainability standard-setting in investment law is similarly in-depth, highlighting the controversies and lack of coherence within this area of law. The issue of sustainability in the context of investment agreements is particularly important and it is commendable that the author devotes considerable attention to it (p. 184 et seq.).

Part III of the thesis consists of only 12 pages (193-205), raising the question of whether it would be more appropriately titled as “Conclusions” rather than given a separate status as a full

Part". Nonetheless, this section provides a summary of the analysis, final comments and some forward-looking predictions. The author addresses topics such as new technologies and developments in industry and extraction mining. The concluding remarks (pp. 201-205) offer a clear and concise summary of the analysis and findings. In my view, the author's conclusions are well-considered, significantly more transparent, and more understandable than many of the preceding sections of the dissertation.

The author concludes: "The overarching question of this study must therefore be answered as follows: The SDGs have a clearly perceptible effect on standardisation in transnational law, but this frequently remains limited so far. Nine years since the adoption of the SDGs are still too short to measure the actual success and extent of their effect. However, my findings stand and can only be measured by the coherence of the thought processes and the realities that will emerge in the future (...)" (p. 205). The author's conclusion seems somewhat self-critical, given that, for obvious reasons, she could not have assessed the full period of the 2030 Agenda for Sustainable Development. Rather than viewing this as a limitation, her work can be seen as a thorough mid-term review of the SDGs' impact on standardization in transnational law, particularly within the context of extractive industries. Moreover, she provided insights into specific areas of law, such as finance and investment law, which are integral to her analysis. Overall, the author has contributed substantially to understanding the evolving role of the SDGs in this domain.

The final sections of the reviewed thesis include annexes and a bibliography that conforms to academic standards. However, the bibliography could have been improved by listing all legal sources under a separate heading, categorized according to the type of legal act. This would have enhanced clarity and made it easier for readers to locate specific legal references.

5. Formal assessment

The reviewed thesis meets the formal criteria for a doctoral dissertation. The author employs a sound methodology and the proper construction of footnotes. However, as previously mentioned, the present reviewer has some reservations regarding the thesis' structure, finding it overly convoluted and eclectic – an approach that may be acceptable in the arts but is not always suitable in legal scholarship. A second reservation relates to the style in certain parts of the text, which sometimes appears unintelligible. Despite these reservations, they do not detract from my overall positive assessment of the thesis.

6. Final remarks and conclusion

The thesis submitted by Ms. Maaß should be regarded as meeting the substantive and formal requirements for the degree of Doctor of Law. It represents a thorough study of the influence of the UN Sustainable Development Goals on standardization in transnational law, providing a good-quality analysis of how the SDGs are reflected in several specific sub-disciplines of international law. The content of the dissertation demonstrates the author's intellectual engagement with the research topic, as well as her diligence and efforts toward a comprehensive examination of the issues under investigation.

In light of the above, I express the opinion that the doctoral dissertation submitted by Ms. Jennifer Alexandra Katharina Maaß, LL.M., meets the conditions specified in Art. 187 of the Act of 20 July 2018 Law on Higher Education and Science (Journal of Laws of 2018, item 1668, as amended). The reviewed dissertation presents an original solution to a scientific problem. It demonstrates the candidate's comprehensive theoretical knowledge in the discipline of legal sciences, as well as her ability to conduct independent scientific work. Therefore, the dissertation may serve as a basis for taking further steps in the doctoral proceedings at SWPS University.

Prof. Dr. Michał Balcerzak (Dr. hab. iur.)

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