International Journal of Law in Context (2025), 1–12
doi:10.1017/S1744552325100050

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SPECIAL ISSUE ARTICLE

Contracts: reterritorialising the (global) exercise of authority

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Abstract

Contemporary practices of authority by states and non-state actors alike are at odds with international law's orthodox time-spaces, causing disciplinary anxiety. As a result, although there is a sense of the importance of global value chains (GVCs), these are invisible to the disciplinary gaze. This is not limited to international law; neo-formalist contract law and private international law suffer the same fate. There is for some a turn to 'the global' to understand alterity. In this paper, I argue that understanding the time-spaces created by the practice of contracting can offer important reflection on, among other things, what 'the global' is. The paper explores the practice of exercising authority through contractual relations at the level of the individual contract, the chain as a whole, and the use of standardised contractual clauses and model contracts. The article suggests these contractual relations are constitutive not only of spatiality but of territoriality. As such, it is possible to reterritorialise global phenomena, and 'the global', that have until now been understood to have deterritorialised from state or international legal orders.

> 'the global isn't produced up there. It's not always somewhere else.
> It's not some kind of ethereal sphere that just exists nowhere.'
> (Doreen Massey speaking at Serpentine Galleries, London, UK, 2006)[1]

1 Beyond the 'beyond the state' box

There is little consensus about global law and its practices, many of which get put into a box bursting at the seams of things that are 'beyond the state' – an idea conveying practices and actors which are at odds with state territoriality, as well as at odds with the concepts and theories that come baked in, such as sovereignty, jurisdiction and territorial sovereignty.[2] This is especially true for international lawyers, many of whom may react to such phenomena by re-entrenching international law and its doctrines, rejecting the very idea of a global law, while others may move to take over global law space without rethinking much of their disciplinary training; more still will turn to different methods and approaches to make visible what orthodox international law's disciplinary gaze cannot see, while others could leave international law in the rear-view mirror.

[1]Reproduced in Allen, Gunaratnam and Lisiak (2022).

[2]This has been explored in some depth elsewhere. To understand what underpins this 'beyond the state' narrative I offer an alternative account of territoriality (Lythgoe, 2024a).

However, what is common to both 'global law' and international law is that their *spaces* are underexplored, imprecise and often misunderstood. There are multiple points wrapped up in this claim so I will take time to spell them out. First, the turn to 'the global' is often associated with a spatial turn, precisely because orthodox international law is perceived as offering limited insights into contemporary 'beyond the state' phenomena. International lawyers can usually only see states and their spaces. In international law discourse, this often appears as a claim that these phenomena as somehow 'deterritorial' because they do not obey the logics of state territoriality (Lythgoe, 2024a, ch. 2). Yet state territoriality is not terribly well theorised in international law. Second, and in addition, in many discourses, legal and otherwise, 'the global' as a concept is *also* not always spatially legible and precise. Third, both the globe at large and state space continue to shape imaginaries of what is possible in many disciplines, including international law (Lythgoe, 2024b).[3] This imaginary is produced by assumptions of space as fixed and static, informed by the spatial imaginary of Euclidean modernity (Deleuze and Guattari, 1987, p. 371; Elden, 2005, p. 12; Curtis, 2011, p. 1942). Both state territory and the global-at-large are quintessentially such fixed and static spaces, dominating legal imaginaries and, as a result, any analysis and ideas about what it is possible to imagine differently. The globe and state territories form the background maps for most lawyers, against which 'global' interactions happen, whether this is the movement of people, such as refugees, workers or tourists, or of things, such as raw materials or components. These background maps – and indeed background assumptions about the very nature of space as static – frame what scholars and practitioners imagine, making visible and invisible contemporary patterns and future possibilities. Fourth, it is as a result of the domination of these two spaces that many practices of law and governance 'beyond the state', especially those adjudged to have 'sped up'[4] due to the well-recognised idea of time-space compression, are perceived as taking place across the globe at large; if they are not within the state, they are global. And, finally, adopting a globe-at-large reference point for specific practices and phenomena may as well be aspatial for all the good it does. It is necessary therefore to explore this concept of 'the global' and what it is used to explain.

This article explores a practice often put into this 'beyond the state' box. That practice is contracting, especially the imaginary of *contrat sans loi*, crucial in constituting global value chains (GVCs).[5] Some GVCs, especially in manufacturing, can bring 'together hundreds if not thousands of suppliers in decentralised networks administered through contract governance. The semiconductor chip manufacturer Intel, for example, uses no less than 19,000 suppliers in over 100 countries to provide direct material but also tools, machines, logistics, and packaging'

[3]From 'beyond international law', see, for example, 'The market economy is global. But the political system is inter-national; that is, it is divided among nation states' (Strange, 1994, p. 49). This explanation sees the globe as the place of the market. See also 'The end of geography, as a concept applied to international financial relationships, refers to a state of economic development where geographical locations no longer matters in finance, or matters much less' (O'Brien, 1991) – but perhaps it is just a *different* geography that has until now mostly been undetected and unmapped (with all the trappings of modernist knowledge that this process of mapping brings). *Geographical locations still matter*.

[4]However, perhaps it is more helpful to think of distance in the interaction of time-space as having been refashioned. See discussion by Massey (2005, pp. 90–91).

[5]There are obviously many more types of contracts than just contracts constituting global value chains; however, these will be the focus of this article and its analysis. In some ways, I am picking up on the call from The IGLP Law and Global Production Working Group to think about the legal geography of GVCs in more detail (The IGLP Law and Global Production Working Group, 2016). However, much of the analysis can be equally, but differently, applied to other contracts. See in particular, for example, Riles (2008, p. 14), who examines 'the consequences of standardized contracts such as ISDA [International Swaps and Derivatives Association] documents for the authority, legitimacy and power of privatized law in a global market'. It would also be interesting to apply this thinking to decentralised blockchains and smart contracts.

Further, we can use alternative terminology, such as 'global supply chains'. However, I prefer 'global value chains' as they emphasise the *extraction of value* at each stage and especially by any lead firm. The richest man in Scotland, where my home institution, the University of Edinburgh, is based, is Anders Holch Povlsen, who founded Asos. He is also Scotland's largest private landowner – with 13 estates, amounting to more than 220,000 acres (Jackson, 2024). Asos has never been known for its expensive or luxury clothing. Value is quite often extracted through chains of contracts with suppliers and a consumer sales model that encourages large volumes of sales.

https://doi.org/10.1017/S1744552325100050 Published online by Cambridge University Press

(Eller, 2021, p. 521). Contracts often form the core of decentralised and deterritorialised legal trends. Contracts are perceived of as deterritorialised for many reasons, such as their use of English as a language and common-law associations (Uliasz, 2024), but mostly because of their ability to 'to free themselves from the specific determinations of a particular territory' (Craviotti, 2016, p. 332). This is seen as a problem because there are labour, environmental, wealth and human rights implications of these GVCs, which otherwise rely on the 'static' state territory for their application and enforcement. The contract is increasingly the 'principal infrastructure of social ordering', and the chain of contracts '[binds] a multitude of actors and [spans] the globe' (Eller, 2021, p. 529).

Yet, as many understand in relation to another often perceived deterritorialised object of study, money (Corbridge, Martin and Thrift, 1994; Leyshon and Thrift, 2005), contracts have time-spaces[6] – or at least this is the claim of this paper. They not only act within or against existing spaces such as state territories, but they are spaces; of course, they are practices with spatialities, that can disrupt or perpetuate existing spaces, but the main point is that they are relations constitutive of the spatial all on their own, especially when understood as a practice of governance and authority rather than in a neo-formalist approach. What is more, it is possible to take not only the spaces of a contract as a singular unit but to understand the spatiality of chains of contracts taken together. If spaces are understood as relationally constructed where 'time unfolds as change [and] space unfolds as interaction' (Massey, 2005, p. 61), it is vital to understand the spatialities of contractual relations (Macneil, 1977),[7] especially chains of relations, because it is these relations that matter for understanding the spaces of GVCs as a whole. Territoriality can be understood as 'the disposition to act . . . according to given patterns (generally, aggressive/defensive patterns) under given circumstances' (Brighenti, 2006, p. 67) – a definition of territoriality which allows us to think of contractual governance as constitutive of territoriality.[8]

To that end, this paper will outline the familiar narrative of the spaces, first of the global and then of the contract in sections 2 and 3 respectively. This is to show in detail the claims made above about 'how we think' and why it creates issues. It then seeks to respatialise and even 'reterritorialise' contracts, individually, as a chain and as customary global contract law in the form of standardised clauses and model contracts. Finally, it examines the insights this understanding of GVCs can bring to bear on an understanding of 'the global'.

One final note that I think is important to deal with: I am very aware of the dangers of territorial thinking. By this I refer to the idea that territorialising thinking still operates within the episteme of the modern; it centres concepts of control and domination (Hallaq, 2018, ch. 2). For many, the very idea of 'territoriality' will always imply domination over physical geography, activities, practices, people, relations and even time. I try to offer here and elsewhere (Lythgoe, 2024a), through a relational understanding of space, a more post-modern sensibility, but it is still, I am sure, limited and not without its blindspots. This paper thus attempts to straddle two epistemological viewpoints. First, given contracts and GVCs operate within this territorial impulse, I think it important to capture and explain them. Rather than seeing these practices as escaping authority, I see them as modes of authority and spaces of authority that need to be understood before being able to challenge them either within the modern episteme or otherwise. *If* this is plausibly how the actors involved in GVCs seek to exercise control – and escape the control of others, notably states (as the conventional wisdom goes) – it must be known and exposed to be challenged. Otherwise, seeing contracts as abstract deterritorial or aspatial legal practices, as not concrete, makes it more difficult to understand them. Yet I do not think that we should stop there.

[6]I understand time and space as always existing together. However, for ease for the rest of this article, I will refer to space where that is the primary focus of analysis of the two.

[7]See on Macneil's work more generally, Campbell (2024).

[8]I have written about this extensively elsewhere (Lythgoe, 2024a). For others writing on this in international law discourse, see Jones (2016), Pearson (2008) and Rajkovic (2018) in particular.

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For once we understand contracts in these terms, we can deconstruct them. We can either offer a different conceptualisation of territoriality comprising different assumptions of the relations between subjects or between subjects and nature or abandon the term entirely in search of old and new concepts. I have found Petersmann's thinking of a shift between territorial to terrestrial space to be productive in this regard (Petersmann, 2025).

2 Problematising 'the global'

The global is a concept which has diverse and unclear usages. It is not clear, for example, when the term 'global' is employed whether the individual scholar's referent point is indeed simply the scale of the planetary and if so, how they imagine that. It is one of the most commonly used terms in contemporary law (and anthropology and politics and economics . . .) literature. And yet this ambiguity persists. It is therefore vital to reflect on this concept. 'The global' does a lot of heavy lifting in many discourses. And what lawyers, or any scholar, imagines, spatially and temporally, when referring to the global makes visible and invisible different practices, actors, institutional arrangements, patterns, frames and futures – in short, political and legal imaginaries are made possible by spatial imaginaries.

There is, I have a hunch, a turn to the global in political and legal discourses, as I have hinted above, because if the phenomenon, such as the practice of contracting or the actor in question, is not (state) territorial – by which I mean undertaken within or by a territorial state – then it appears as if the only answer is that it takes place at the scale of the global. This ontological pattern can be seen in the likes of 'the state must sometimes give up authority to . . . global non-territorial and non–state-based social units' (Trachtman, 2013, p. 4) and '[g]lobalization pressures transform issues that formerly were national in scope into global ones' (Shaffer, 2012, p. 692). It is also seen in the idea that '[a] global economy is largely replacing and overwhelming national and regional economies' (Henkin, 1999, p. 5) and that 'goods and functions that escape State control are regulated at the global level' (Cassese, 2005, p. 671) – but what is that 'global level'?

There are many different imaginaries of the global, and the cause and effect of each is different. Like many disciplines with roots in the nineteenth century, international law absorbed the cartographic worldview uncritically and enthusiastically. Its standard assumptions about geography and the organisation of space to this day remain disciplined by the cartographic view (Rajkovic, 2018). As a result, the spatiality of the concept of globe is often a product of the cartographic worldview and very often its theoretical construction is premised on the model of state space.

Further, not only is the globe cartographically informed but it is also often understood as simply a particular *type* of space – that of state space – that, upon being put together, creates the imagined global space.[9] Thus, the spatiality of the globe is defined by the fact of its *difference from*, but also its *essential similarity to*, the concept of the state space – homogenous, static, flat and smooth. Indeed, the 'wiping clean' of hierarchical state relations and the creation of an imaginary of flatness is constitutive of ideas about the equality of states and key to the universalist ambition of many political projects.[10]

This is certainly not an attempt to answer which came first: state space or global space. As Bartelson remarks, for example, it is a common assumption that the global legal space has simply 'emerged out of intensified interaction and increased interdependence between states', a view which indicates that 'the global realm' is basically 'epiphenomenal in relation to the international system of states' (Bartelson, 2010, p. 219). An alternative read, however, is that 'the construction of such a single space on a planetary scale both antedated and conditioned the emergence of the modern international system, by providing the conceptual resources necessary for both territorial demarcation and national identity construction' (Bartelson, 2010, pp. 219–20). Other scholars

[9]On this point more generally, see Bartelson (2010).
[10]For more on this discussion, see Lythgoe (2024b).

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have noted the same theme: 'the globe was [first] rendered [into a] political space in the Iberian competition for trade routes to India during the second half of the fifteenth century' – only after that did 'Europeans create a unified cartographic representation to incorporate [this] spatial totality' (Strandsbjerg, 2010, p. 116).[11]

This understanding potentially thinks of the global scale as a totality. Thinking in scales can and has been problematised; thinking in scales can 'produce a very simple, transparent, abstract and hierarchical space that elides [] complex spatial relations' (Berg, 2010, p. 554). An example of an imaginary of the global scale which then informs an understanding of 'the global' can perhaps be seen in Walker's outstanding work on global law. Walker defines global law as 'any practical endorsement of, or commitment to, the universal or otherwise global-in-general warrant of some laws or of some dimensions of law . . . It can . . . be either universal or merely planetary in scope or ambition, provided it meets a threshold requirement of not being confined by and to any particular sub-global territorial jurisdiction' (Walker, 2015, p. 55)

Many discourses concerning international or global law and governance habitually imagine their spaces as a smooth space of continuity, of flatness: a dynamic space that never settles.[12] This is often a symptom of imagining the globe to exist at the scale of the planetary. And there are different political projects that can be associated with this: as Massey observes, 'the imagination of globalization [is] in terms of unbounded free space', and she points to the language and spatial imagining of 'free trade' as evidence of this (Massey, 2005, p. 83).

Quite clearly, however, the contracts of *global* value chains are not truly global. Almost nothing in social life is. For example, many projects may idealise the scope of international human rights law as global, at least concerning all state spaces, but through different extraterritorial hooks this increasingly includes non-state spaces such as the high seas. Yet as a matter of experience not all human rights are global-meaning-universal even in this sense. However, returning to the primary focus of this piece, the *global* of global value chain contracts, it might first be helpful to reflect on the spaces of contracts before returning to what these insights might mean for 'the global'.

3 The spaces of contracts

3.1 What we think we know about contracts

The usual thinking about GVCs and the contracts constituting these is that they traverse the imaginary of global space, especially in the understanding of global reach or global scale as totality. Each chain or contract is often understood as deterritorialised from others and from any 'local' – that is, state – system of accountability. Private and public (international) law and practices seem irreconcilable and whatever protections (state or international) public law, such as human rights, might offer are subverted.

It can be seen in the following diagnosis of the issue:

> 'Production chains are not new. However, a consensus is emerging within the multilateral trade community . . . that "value chain" trade, propelled by the functional "fractionalization" and geographical "dispersion" of production, is replacing "classic" international trade. Specifically, whereas "classic" international trade consisted of the exchange of products manufactured for the most part within national borders, "value chain" trade is characterized by products made through parts, components and tasks that originate in different parts of the world.' (Alessandrini, 2022, p. 619)

These contractual chains are typically understood as 'disembedded from background justice provided for by nation states' (Eller, 2021, p. 515). The issue here is the imposition of the classic

[11]See similar themes in Benton (2010).

[12]For a leading examination of how ocean space is understood in legal discourses, see Jones (2016).

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binary of state space and global/international space *that still analytically prioritises state space*. Let us deconstruct this thinking: what underlies this is that when supply chains were internal to the state, the space of the contract, the corporation and the state did not need to be dissected, and their interaction was quite simple and easy to explain. The space of the state dominated, and the spaces of other actors faded from view. How can we tell this? It is expressed in the ideas of the concepts of 'fractionalisation' and 'geographical dispersion' – because the geography that forms this background, against which the analysis is conducted, is the geography of the state, not the geography of the corporate actor or the contract. These 'other' geographies still existed but were analytically flattened into the space of the state.

As a result of this thinking, and the domination of static state space and traditional conceptions of territoriality, the methods of tackling GVCs usually take three main forms. The first is a 'public' response trying to 'capture' the issues within the public law net, what might be described as a solutionist state response (Mignot-Mahdavi, 2024). Examples of this include state and EU responses to create obligations of due diligence in supply chains (*Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859*), tackling company law and corporate responsibility as and when the opportunities arises within the state (Beckers, 2024) or attempts to tackle specific problems, such as the US *Uyghur Forced Labor Prevention Act* (2021), which seeks to ensure that goods made in the Xinjiang Uyghur Autonomous Region are not made using forced labour, placing the burden on the multinational company to ensure this. This is the first instinct for many lawyers. Not that this is a problem per se – as a good bricoleur would, we throw what we can at problems of human rights abuses and environmental degradation. Yet the response may be limited by the fact it fails to understand private autonomy and the production of its spaces. Such responses by states try to create due-diligence obligations from within their territories – to capture the actors within their jurisdiction; they work to drag the actor within the net of state jurisdiction and state territoriality.

Another response, one in which the state legal system continues to dominate but belongs to 'private law', is to bring labour and human rights issues, including slavery (*Nestle USA, Inc. v. Doe et al and Cargill, Inc. v. Doe et al.*, 2021) and working conditions (*Hugh Hall Campbell KC v James Finlay (Kenya) Limited*, 2023), or environmental issues before courts. There are numerous examples of this in private international law and domestic civil law proceedings. These approaches will always fail to see 'collective' (Salminen and Rajavuori, 2021) entities and their spaces by focusing on the space of the state. This is because these spaces are the only spaces that are relevant for judges hearing a case; they are not empowered to understand and indeed are completely blind to the spaces of the private – the multinationals – that are constituted by contracts.

The final response, which does exist within the space of the private, is the 'private responses', such as codes of conduct and standards – for example, the Bangladesh Accords, which were agreed after the horrors of the Rana Plaza disaster. The last of these Accords expired on 31 October 2023 and were not renewed (*International Accord for Health and Safety in the Textile and Garment Industry*, 2021, para. 54). These may end up before domestic courts where they form part of a contract that is subject to a dispute before a court, but they areincreasingly are settled using arbitration. The Permanent Court of Arbitration dealt with two arbitrations arising under these (PCA Case No. 2016-36 and PCA Case No. 2016-37). That is not so say state law is irrelevant – for example the Bangladesh Accords were governed by the law of The Netherlands (*Bangladesh Accord 2018*, para. 23). As can be seen, these are usually ad hoc solutions to GVC issues, not least due to the sanctity of private-party autonomy. Yet they do exist with the 'private' space of GVCs and contracts, especially when they form part of the contract – and could be a clause modifying the spatiality of the contract (see below).

What we can note here for now is that other than this third option, the first two make visible only the law of the state. From these perspectives, private actors 'escape', 'fragment', 'flee' or 'subvert' the state – in other words, in some way deterritorialise from the state. If we are beginning

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to think about the reterritorialisation contracts, this needs to be examined – a subject to which I now turn.

3.2 Reterritorialising contracts

First, we should establish that one of the reasons we do not see the space of contracts is that these practices are dominated by an understanding of the contract as a private activity. This underlies much of these debates and should therefore be tackled first. Disciplines have tended to associate territoriality with the public realm, most obviously the state, but also at times, if a little incoherently, the EU and other international institutions, and as such the idea and quality of private *space* is entirely invisible. This is especially true for international lawyers. The ideal of the private is for the legal person to organise however they choose – it is essential to the idea of autonomy, which in turn is essential to neo-formalist understandings of the contract. Many would nuance that claim with an understanding that contracts are subject to public rules, private property often requires public planning permission, etc. – such practices are indeed 'embedded in broader and deeper social [and legal] relations' (Cutler and Dietz, 2017, p. xi), but it is still often imagined that the private is the sphere of invisibility, beyond the point into which the public reaches. This only re-entrenches the invisibility and opacity (Dindial and Voss, 2024) of private space. Therefore, if we continue to take seriously any distinction between the public and the private, which positivist law as a discipline does, private spaces, their norms and actors should be examined on their own terms, rather than on how far the public reaches into them.

Rather than only seeing the space of the state, as lawyers limited to the horizons of state law do, we could take seriously the idea that 'multinationals fabricate a kind of deterritorialized smooth space' (Deleuze and Guattari, 1987, p. 492). And if 'deterritorialization on a stratum always occurs in relation to a complementary reterritorialization' (Deleuze and Guattari, 1987, p. 5) then we can seek to reterritorialise private spaces and in this article contracts – *not* in the space of the state, but as the space of the multinational.

Second, the space of a singular contract is deserving of study to understand the specific space of the specific contract. The space most lawyers would associate with a contract would be the legal jurisdiction relevant for settling disputes under the contract – or the choice of law or forum clause. This is often understood to be one of the deterritorialisable elements of contracts (Arcuri and Violi, 2016, p. 2). Usually, the analysis stops here. Yet it is possible to understand this process as deterritorialising away from the legal jurisdiction of either party to the contract and reterritorialising to the jurisdiction of another state or similar territorial regime, often England and Wales or New York. This reterritorialised space is reassuringly familiar to lawyers – good old state space again. What is perhaps then unsettling, for example, is Riles's account of collateral as a 'self-help' mechanism in swaps agreements. In many of the circumstances Riles discusses this *displaces* any such choice of law clauses because 'there is *no need* for dispute resolution in the first place' and, as a result, lawyers must understand the spatialities of collateral as a technology of private law (Riles, 2008, pp. 622–23).

Contracts are made up of many more clauses than just the choice of law clause. As Arcuri and Violi's work shows, 'petrification' or 'stabilisation' clauses can create legal 'enclaves' exempting a foreign investor from any amendments to the host state's domestic law. In other words, such clauses offer the opportunity to opt out of any unfavourable changes which might affect the investment (Arcuri and Violi, 2016). It is possible to exempt further by creating human rights exceptions to such clauses. Such exemption clauses are crucial to the time-space of a contract. This time-space, although interesting, is much more familiar to lawyers as it is still really the space of the state, just supposedly from a different time period. Other clauses may limit the assignation of contractual rights or sustainability contractual clauses. The former prevent the exercise of the contract from being assigned to another entity in the same or a different jurisdiction, which also has the effect of determining, or rather confirming, the space of the exercise of contractual rights.

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The latter may bring in different domestic and international hard and soft law into the contract. They are all constitutive of space.

The space of the contract could be much more complicated than this if we adopt a 'contextual' view of contractual relations, especially an examination of the political economy of the individual contract (or chain of contracts): examining the spaces of the actors, why they have chosen to create headquarters, parent or subsidiary companies in x jurisdiction, why they have chosen not to create a subsidiary but to contract with an external company, etc. These reasons can vary from labour conditions, such as minimum wage and occupational health and safety, to tax regimes or ideas of risk (Johns, 2013, pp. 136–37). Such an understanding of contracts as relational rejects a neo-formalist view of contracts, which tends to put emphasis on (private) party autonomy.

It is therefore important to understand contracts as 'form[ing] miniature legal orders in and of themselves' (Eller, 2021, p. 516) such that although, as the story goes above, 'parties seek to depart deliberately from the procedural, institutional, and democratic framework of a national contract law', this is only part of the story, for they do so 'by creating project-, market-, or institution-specific legal orders themselves' (Eller, 2021, p. 518). As Eller suggests, these legal orders 'can no longer be assessed in individualistic terms alone but in light of their aggregate and broader societal effects' (Eller, 2021, p. 516). I therefore turn to this idea of aggregation, which can manifest in two ways, through a) standardisation or b) contractual chains. However, both phenomena often appear as many GVCs rely on standard clauses and model contracts.

Standard clauses or model contracts might be thought of as 'transnational contract law', which is best described in the following terms:

> 'Unlike contracts that merely link parties across jurisdictions, conventionally labelled "international" contracts and governed by the rules of private international and procedural law, "transnational" contracts and their law abstract from national references to an even greater extent. The search for an applicable national law as "definite seat of a legal relation" as posited by *Savigny* then becomes epistemologically reductive. As a general tendency, this is echoed in a gradual shift away from efforts to harmonize contract *laws* at an interstate and business sectoral level to an understanding of *contracts* as genuine transnational institutions.' (Eller, 2021, p. 517)

Standard clauses and even contracts are adopted or imposed in many GVCs, often by a lead or dominant firm that has the power to assert the terms of contracts to parties they subcontract with, and also of the contracts that their subcontractors can make with others within the same chain. The very idea of standard clauses, never mind the influence of a lead firm able to impose their own terms, means 'there is really no bargaining going on between parties, which defies the fundamental liberal understanding of contractual governance as a "meeting of minds"' (Cutler and Dietz, 2017, p. xix). There is a 'limited extent to which it is possible for people to consent to all the terms of a transaction, even a relatively simple and very discrete one' (Macneil, 1977, pp. 883–84). As such standard clauses and model contracts should themselves be understand as creating deterritorialising and reterritorialising dynamics – reterritorialising in the likes of UNIDROIT or International Swaps and Derivatives Association constituted territories.

The second example of lead firms exerting their authority, with or without the standard clauses or contracts, is constitutive of territoriality. These actors govern the chain, with the contracts 'becom[ing] a means of coordination and safeguarding . . . combin[ing] elements of legislative, administrative, and adjudicative power' (Eller, 2021, pp. 522–23) – and in exercising such powers typically associated with the state, they smooth the route (spatial) for their own enrichment. It is not necessary that they act like a state for them to constitute territoriality. This is merely for emphasis – and to affirm why I adopt the concept of territory in this way (see also the argument in Lythgoe, 2024a, pp. 9–11). It is not only public actors that are constitutive of space and whose spaces should matter for understanding legal, political and economic affairs.

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For GVCs, it is possible to take both the individual contracts and the contracts as a whole – as a 'unit of analysis' in its own right (Sobel-Read, 2014, p. 367) – to understand that something new, a socially meaningful artefact, has been produced through these relations. '[I]t is a system. Design, production and retail are integrated components [read smooth space], mutually constituting the given product or service across multiple firms – sometimes a few, sometimes a few thousand' (Sobel-Read, 2014, p. 369). Additionally, if we take seriously the idea of a transnational customary contract law, or *lex mercatoria*, that is global in scope, then we should understand it as constitutive of spatialities in its own right – and so turn our attention to understand its space(s) and which relations constitute these – rather than just the lens of the state, which otherwise makes invisible these relations.

4 What does this mean for 'the global'?

The central insight from GVCs and contracts for our purposes here is 'the significance of the "global" in global value chains: a global value chain cannot be properly understood – whether descriptively or conceptually – without an understanding of which links are in which countries and, most importantly, how the peculiarities of those particular countries affect the chain' (Sobel-Read, 2014, p. 365). Yet this does not go far enough to understand what that 'the global' is. It does not yet offer an account of the spaces of the great many public and private actors, whether international organisations (Lythgoe, 2022) or multinational companies, and how these interact with and create the idea of the global. There is a hint, perhaps, that the global does not assume a global-space-totality in every value chain. The totality of the global scale instead perhaps appears at the level of *potential* scale. The global is a *could be* – it could be anywhere within that spatial extent, but we need to examine the concrete to discover the concrete time-space of an event, institution, system, practice, GVC, etc.

This is, however, still driven by an underlying physical imaginary of the globe. At times this is driven in turn by an 'imagining [of] "the global" as somehow always "up there", "out there", certainly somewhere else' (Massey, 2005, p. 61). To assume this is to first imagine the global as empty in the first instance, as waiting to be filled with specific content. Massey's plea here is that when this 'anti-spatial' strategy plays out, it 'evades the challenge of space as a multiplicity' (Massey, 2005, p. 61).

The global is not empty or always smooth. It is also unevenness, discontinuities, particularities and localities. But its smooth or striated nature is the result of political projects and legal infrastructures and artefacts to discipline activities, values and futures. Law is realised and implemented in concrete places – and many of these, indeed many more, will be privately constituted. *Values*, such as human rights, are held and shared not in bounded containers but across networks and intellectual, activist or epistemic communities. *Value* is extracted by relations that constitute space. Being present within the space of one actor or network does not preclude the possibility of being simultaneously enrolled within the spaces of others or, for that matter, other non-networked spaces. There is a failure, in other words, as Massey argues, 'to recognise the multiplicities of the spatial', and instead of understanding globalisation as 'a single all-embracing movement' she advocates understanding it as 'a making of space(s), an active reconfiguration . . . through practices and relations of a multitude of trajectories' (Massey, 2005, p. 83). There is a need to see, explore, critique and deconstruct all activities rather than just what the spatial frames of orthodox legal discourses drive and limit us to imaging and understanding. Massey's proposition of 'understanding [] the world in terms of relationality, a world in which the local and the global really are "mutually constituted"' (Massey, 2005, p. 184) is also seen in the work of the likes of Saskia Sassen, Milton Santos (for whom 'there is no global space; there are only spaces of globalization' (Santos, 2021, p. 234)) and Eve Darian Smith (see especially Darian-Smith and McCarty, 2017).

The practice of contracting offers a helpful perspective to study the spaces of the global legal orders. The spaces of contracts are a neglected but essential feature structuring governance and

https://doi.org/10.1017/S1744552325100050 Published online by Cambridge University Press

ordering. Value extraction does not happen at random across the globe; each step of a supply chain is driven by actors with their own spatial logics; each business entity and vehicle is set up in a way that takes advantage of the likes of different tax and other regimes in a way that benefits and suits the profit-seeker in question. The geography of these contracts and the chains they create are not some 'an abstract substance . . . that is either transcendent or somehow extrinsic to human experience' (Arboleda, 2020, p. 52); it consists of concrete and connected spaces, converging to, for example, serve consumers and extract value. There is a connection between the seemingly random spaces of customers in high street or online stores, synthetic fibres found in Antarctica, and Xintang, 'the jeans capital of the world' (Thomas, 2019, p. 77), in Guangdong Province (and many more spaces beside); these spaces all service, *and were designed in this way in order to service*, a particular project of fast fashion and its politics. Through contracts, we can study issues relating to the world order, developing a more nuanced insight of the many 'law-generating social forces' (de Sousa Santos, 2020, p. 196) operating at complex and multidirectional levels.

As such, perhaps we can learn to see the global as a 'multiplicity of trajectories' (Massey, 2005, p. 63) – and, importantly, to reterritorialise that which we have thrown into the global just because it does not conform to our state-territorialised imaginaries. Actors do not operate at random nor move 'through space like billiard balls' (Sack, 2009, p. 26). Actors, whether these be the public–private partnerships of global health, multinational companies (like (fast) fashion companies) and crypto miners or traders, do not act through accidental means around the globe. Their power and the system of power they operate within do not float freely and unsystematically around the globe. They follow their own territorialising logics.

5 More questions than answers

The particular spatial logics of non-state actors are almost entirely missing from most accounts of law and governance. What sort of territorial logic informs the exercise of governance by non-state private actors? What are their precise spatial characteristics? Where are they in space and why? The answers to these questions are not only missing, but the questions themselves are precluded. The geographical imaginary that dominates the discipline structures the very questions and research inquiries we understand as relevant; it creates blind spots. State space[13] and global space dominate. If our legal orders, including international and domestic law, are indeed undergoing such a radical transformation due to shifts in 'global' law and governance and globalisation, it seems all the more crucial that the geographies and spatial frameworks implied and produced by the various processes of globalisation are subjected to critical scrutiny.

There are perhaps two main takeaways from this foray in GVCs. First, there is no right or wrong way to imagine the globe, but it is important to be aware of what is driving our imaginaries. Imagined geographies are political. Those geographies that escape our imaginaries are often the result of political projects trying to retain opacity and avoid liberal-state mechanisms and discourses of accountability and responsibility. As such, then, we endeavour to be critical of our own imaginaries of the global and its effects on our understanding of an issue, as well as critical of the political projects of others.

The second is not to be hypnotised by complexity and instead seek to understand concretely the time-space of legal, political and economic activities – here of GVCs. Indeed, it is because of the unclear understanding of their time-spaces that we are hypnotised by complexity in the first place. Thus, I disagree with this starting point: 'understanding GVCs in legal terms must start from a perspective of fragmentation. In the first place, it is indispensable to accept that value chains, as a whole, are complex, largely incomprehensible, and invisible structures that make up global trade'

[13]This is reflective of a wider issue: generally, where the subject of space is raised in any international law context, the course of theoretical discussions typically turns either to the analysis of the concept of state territory or to spaces whose construction is a direct reference to the concept of state territory, such as the High Seas and *terra nullius*.

https://doi.org/10.1017/S1744552325100050 Published online by Cambridge University Press

(Beckers, 2024, p. 325). Instead, thinking with Deleuze and Guattari (1987), let us try to understand the smooth space of GVCs and what constitutes them; instead, switch the lens and change what is in view and see the spaces being constituted by actors, their activities and relational dynamics. Analytically prioritising the space of state actors can only ever leave us in a redundant place, where GVCs are seen as a means to escape state-territorial control, and contracts are the infrastructure through which this is achieved.

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Cite this article: Lythgoe G (2025). Contracts: reterritorialising the (global) exercise of authority. *International Journal of Law in Context*, 1–12. https://doi.org/10.1017/S1744552325100050