THE BANGLADESH ACCORD—A MODEL FOR ENVIRONMENTAL DISPUTE RESOLUTION?

BY GRAHAM DUNNING QC[1]

Synopsis

On the morning of 24 April 2013, a multi-story building in Dhaka, Bangladesh, suddenly collapsed, killing over a thousand garment factory workers. The factories in the building manufactured clothes for household names in European and US markets. Against the background of imperfect domestic labour laws and regulation, and under intense international scrutiny, clothing brands and international trade union federations produced an unusual solution to an urgent economic and human problem — the Accord on Fire and Building Safety in Bangladesh.

The Accord is a contract between apparel brands, retailers and importers, on the one hand, and international trade union federations, on the other. It sits almost entirely apart from domestic law and regulation, or public international law. Funded by the private sector, garment industry signatories, it provides for a system of oversight, credible inspections, mandatory remediation, and transparent reporting. Those contractual obligations are enforceable through international commercial arbitration, at the suit of the signatory unions. The Accord has had measurably positive effects on building safety, and its arbitration mechanism has recently been called upon.

Coming after the expiry of the Accord's initial five-year term, and at a time when its future is somewhat uncertain, this keynote address will cover the background and key features of the Accord, and touch on aspects of its operation. It will then consider the potential for the 'Accord model' — a private contractual arrangement between industry and non-state interest groups — in environmental regulation and dispute resolution. Given the parlous state of many cross-border environmental rules and public institutions, and political and economic barriers to more conventional solutions, it is suggested that the Accord model should be seen as an important and workable tool in the sustainable management of scarce global resources.

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[1] The author is a practising barrister and arbitrator at Essex Court Chambers, London, specialising in international, commercial and investment disputes. He gratefully acknowledges the assistance of a junior colleague in chambers, Benedict Tompkins, with the preparation of this article.

Background

On the morning of 24 April 2013, the Rana Plaza, an eight-floor mixed use commercial building in Savar, an industrial suburb of Dhaka, the capital of Bangladesh, collapsed.[2]

Salient facts of the disaster, as they emerged in the subsequent weeks and months, were as follows:

- The lower floors of the building housed shops and a bank. The upper floors were the premises of five garment factories, in which several thousand employees worked from 8.00am each day, six days a week.
- The upper floors had been constructed illegally, in violation of applicable codes and without building permits.
- On 23 April, the day before the collapse, cracks were found in the building's reinforced concrete columns. A municipal official ordered the closure of the building.
- Nevertheless, the next day, the factories' management summoned workers to work, under threats not to pay overtime.
- At about 8.30am on 24 April, just after work had started, there was a power cut. Back-up generators on the building's roof were engaged. The generators caused vibrations, which caused the catastrophic failure of a corner column, and the near-instantaneous collapse of the building.
- The final death toll was 1,134, or possibly more, and hundreds more were injured.[3]

Disasters in Bangladesh's garment sector are tragically frequent; just five months before, there had been a fire in another Dhaka garment factory, killing over a hundred people.[4]

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[2] See *The New York Times*, "Building Collapse in Bangladesh Leaves Scores Dead" (24 April 2013); *The Guardian*, "Rana Plaza: one year on from the Bangladesh factory disaster" (19 April 2014).
[3] *The Guardian*, "Two years after Rana Plaza, have conditions improved in Bangladesh's factories?" (24 April 2014).
[4] *The New York Times*, "Fatal Fire in Bangladesh Highlights the Dangers Facing Garment Workers" (25 November 2012).

Three features of Bangladesh's economy help to explain that record:

- The rule of law is seriously wanting: "*The judiciary is not independent. Contract enforcement and dispute settlement are inefficient. Corruption and criminality, weak rule of law, limited bureaucratic transparency, and political polarization have undermined government accountability*."[5]
- The garment manufacturing sector is vast and powerful. It accounts for more than 80 per cent of total exports, worth more than US$25 billion in 2016.[6]
- Bangladesh is a very low-wage economy: in 2013, the minimum wage for garment workers was about US$37 per month.[7]

The structure of the remainder of this lecture is as follows:

- The international response to the disaster, in the form of the Bangladesh Accord, including a summary of its key features and how it — and its arbitration regime — has operated in practice.
- Analysis of the drivers behind the Accord, and the coalescence of factors that made it possible
- Consideration of whether the Accord model is transferable to other areas, in particular environmental regulation.
- Some concluding observations on the role of the private sector in what is more usually regarded as a public sphere.

The international response

The Bangladesh Accord

The disaster's scale and intense international scrutiny led to a swift and co-ordinated industry response — the Accord on Fire and Building Safety in Bangladesh, known as the Bangladesh Accord:

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[5] Heritage Foundation, 2018 Index of Economic Freedom — Bangladesh.
[6] Heritage Foundation, 2018 Index of Economic Freedom — Bangladesh.
[7] *The New York Times*, "Fatal Fire in Bangladesh Highlights the Dangers Facing Garment Workers" (25 November 2012).

- The Accord was conceived of jointly by two international trade union federations, the IndustriALL Global Union and UNI Global Union; leading international garment companies; and NGOs.
- Negotiations were facilitated by the German government, and attended by the unions, companies, and labour and other NGOs.[8]
- The very largest global players had a significant role: the signature of H & M, the largest buyer of Bangladesh's garment exports, was a tipping point.[9]

The Accord was signed by the two union federations and other initial signatories on 13 May 2013, less than three weeks after the collapse.[10] They were eventually joined by 220 companies representing brands, retailers and importers from Europe, North America, Asia and Australia.[11] In addition to the two union federations (and eight Bangladeshi unions), NGOs are parties as 'witnesses'.[12]

What is the Accord? The key features are as follows:

- It is a contract between the union side and the companies, which (as per a recital) "*establish[es] a fire and building safety program in Bangladesh for a period of five years*".
- Governance is primarily through a Steering Committee, which consists of three members appointed by the companies and three members appointed by the union side. The neutral chair is a representative from the International Labour Organisation.[13]
- What the agreement describes as "credible inspections" of factories, which are categorised into 'tiers' roughly according to volume of exports. Inspections are led by an independent Safety Inspector, appointed by the Steering Committee. The inspections produce reports and, if necessary, remediation plans, which are provided first to the Steering Committee and are then made publicly available.

[8] *The New York Times*, "Major Retailers Joint Bangladesh Safety Plan" (13 May 2013).
[9] *The New York Times*, "Major Retailers Joint Bangladesh Safety Plan" (13 May 2013).
[10] Accord on Fire and Building Safety in Bangladesh.
[11] See *The Guardian*, "Brands including Ikea shun new safety accord after Rana Plaza disaster" (6 June 2018) for final number of signatories to the 2013 Accord.
[12] List of signatories to the Accord.
[13] See List of Steering Committee Members.

- A mandatory training programme for garment factory workers, managers and security staff.
- An obligation on the signatory companies to require their factories to carry out necessary remediation identified through the inspection process, with accompanying provisions designed to protect workers affected by associated factory downtime. There is a corresponding 'incentive' regime targeting at ensuring garment factories comply with the Accord's inspection, remediation and training programmes. The ultimate sanction is an obligation on signatory companies to terminate business relationships with recalcitrant factories.
- A transparency regime, requiring the publication of a list of covered factories, inspection reports, and statistics. However, the transparency regime in a nuanced one, respecting the boundaries of disclosure between close competitors by requiring that "volume data and information linking specific companies to specific factories will be kept confidential". The Governance Regulation also expressly refers to the need for balance between transparency and commercial sensitivity.

The Accord is funded by the private sector companies, with contributions set on a sliding scale proportional to the volume of each company's garment production in Bangladesh (and subject to a cap of $500,000).

It has a Secretariat in Amsterdam, with six administrative staff, and has around 200 people working on the ground in Bangladesh, including engineers, case handling staff, and training staff.[14]

Both in terms of that funding, and its operation and administration, the Accord exists almost entirely independently of the Bangladeshi government and Bangladeshi law, and the UN and public international law. However, it is designed to be complementary: the signatories commit to a "close collaboration" with the Bangladeshi government's National Action Plan on Fire Safety, and the ILO is the appointed body for the independent chair of the Steering Committee.

In terms of dispute resolution:[15]

[14] Annual Report (2016), p. 7.

- The first port of call for disputes between the parties is the Steering Committee, which must make a decision within 21 days, and thereafter provides a period to allow remediation of the violation, if one is found.
- If either party does not accept that decision, it can initiate arbitration.
- The arbitration agreement in the accord itself specifies that the arbitration shall be governed by the UNCITRAL Model Law (as amended in 2006). However, the Steering Committee's Governance Regulations stipulate the 2010 UNCITRAL Rules.
- The arbitration agreement also expressly stipulates that awards *"shall be enforceable in a court of law of the domicile of the signatory against whom enforcement is sought and shall be subject to [the New York Convention], where applicable*".
- The arbitration regime is designed to apply across all axes of the agreement: disputes can be between the union side and one or more signatory companies (perhaps most obviously); between two signatory companies, involving an alleged breach by one of the terms of the Accord; or between members of the Steering Committee regarding the interpretation of the Accord, or an 'own motion' complaint originating with the Accord's Executive Director or Chief Safety Inspector.
- There is no choice of law agreement in the Accord. The law or laws applicable to the dispute therefore fall for determination by an arbitral tribunal in accordance with Article 35 of the 2010 Rules.

Despite the wider aims and context of the Accord, the dispute resolution mechanism is therefore orthodox international commercial arbitration based on contractual agreement.

[15] See the Accord, clause 5; Governance Regulations, pp. 3–4; Dispute Resolution Process as agreed by the Steering Committee.

The Alliance for Bangladesh Worker Safety

The Accord was not the only international response to the Rana Plaza collapse. The signatories to the Accord are notably European. Major US brands (with some exceptions) did not sign the Accord, because of concerns arising out of the litigation landscape in the United States, including in particular the ready availability of funded class actions, and the risk of liability attaching not just for failure to abide by the terms of the Accord, but also for damage sustained directly as a result of incidents in the supply chain such as the Rana Plaza disaster.[16]

Instead, many US brands signed up to a rival scheme, the Alliance for Bangladesh Worker Safety. Although also in the form of a contract, the provisions of the Alliance lack much of the mandatory characteristics of the Accord, and there is no dispute resolution or arbitration mechanism.[17]

The Accord in practice

The Accord has had a measurable impact over its five-year term. Taking some statistics from the Secretariat's latest quarterly report:[18]

- 1,620 factories have been inspected and are currently covered under the Accord programme, and 57 new factories are scheduled for inspection.
- 1,545 inspection reports and Corrective Action Plans (detailing remedial programmes) are available on the Accord's website. The Corrective Actions Plans are regularly updated, and progress is monitored by follow-up inspections (of which there have been 25,656).
- The Corrective Action Plans contain a total of 134,489 individual findings, subdivided as between hazards into electrical (68,102), fire (45,271) and structural (21,116).

[16] *The New York Times*, "U.S. Retailers See Big Risk in Safety Plan for Factories in Bangladesh" (22 May 2013).
[17] See the Members Agreement of the Alliance for Bangladesh Worker Safety, Inc. and the Alliance Statement of Purpose and Action Plan.
[18] Quarterly Aggregate Report on Remediation Progress at RMG Factories covered by the Accord (18 April 2018).

- In terms of remediation of issues identified, there is an average progress rate of issues pending verification and corrected, of 84 per cent.
- 1,062 factories participate in the Accord's Safety Committee Training Programme, and 2,879 training sessions have been delivered to factory safety committees.

The arbitration mechanism has also been called upon. In 2016, the two international trade union federations served notices of arbitration against two signatory companies. The same tribunal (which included myself) was appointed in each, and while the arbitrations remained formally distinct, the proceedings were coordinated.

The PCA was invited to act and did act as administrating authority, including in relation to the appointment of the Chair, and documents relating to the proceedings are available on its website, in accordance with a "Protocol on Confidentiality and Transparency" issued by the tribunal by way of a procedural order and following a large degree of agreement between the parties on the appropriate mechanism.[19] In particular, while much of the procedural aspects of the hearing were made public, the identity of the respondent companies was kept confidential.

What is notable is that, as with the arbitration agreement itself, the arbitrations proceeded much as a standard international arbitration would, with Terms of Appointment and procedural orders in a form orthodox in commercial practice.[20] The procedure included determination of certain preliminary issues, substantive written pleadings, and document production.[21]

A hearing on the merits was scheduled for March 2018,[22] but in December 2017 and January 2018 it was announced publicly that the unions had reached settlements with the two signatory companies.[23] One of the settlements, as publicly disclosed, ensured

[19] Procedural Order No. 4 — Protocol on Confidentiality and Transparency (joined PCA Case Nos 2016-36 & 2016-37) (9 October 2017).

[20] See e.g. Terms of Appointment (PCA Case No. 2016-36) (17 March 2017); Procedural Order No. 1 (joined PCA Case Nos 2016-36 & 2016-37) (19 April 2017).

[21] See PCA press release, Termination orders following settlement by the parties (17 July 2018).

[22] See PCA press release, Termination orders following settlement by the parties (17 July 2018).

[23] IndustriALL Global Union press release, Settlement reached with global fashion brand in Bangladesh Accord arbitration (15 December 2017); IndustriALL Global Union press release,

that the factories would be remediated, and the other involved the payment of $2.3 million towards such remediation.

The proceedings were formally terminated in July 2018.[24]

The 2018 renewal

Finally, in terms of the Accord itself, its initial five-year term ended in May 2018. Prior to the termination, the Accord expressed a desire to continue its work, but suggested it was working towards transitioning its functions to the Bangladeshi government, "once it proves itself capable of doing everything the Accord did".[25]

A new document was opened for signature in June 2017.[26] It is in substantially similar terms to the 2013 Accord, although with some refinements, including more comprehensive scope for its training programme, provisions protecting workers' freedom of association, and (voluntary) extension to home textiles and accessories manufacturing.

The Accord now also includes an express choice of Dutch law. This is notably now Bangladesh law. This choice of law clause fills a gap in the original Accord and reduces potential scope for argument.

However, it is expressly a transitional document, on the following terms:

> The signatories to this Agreement agree to continue a fire and building safety program in Bangladesh until midnight of May 31, 2021, when this agreement will expire. At the end of that time, the work will be handed over to a national regulatory body, supported by the International Labor Organization, to be carried forward from that point. In December 2019, an assessment will be conducted by the Accord Steering Committee of whether there is a national regulatory body ready to take over this role. If the Steering Committee determines that no such body is ready, this agreement shall be extended for a further 12 months. Should such a body be ready to take up the work before the

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Global unions reach US$2.3 million Bangladesh Accord settlement with multinational brand (22 January 2018).

[24] PCA press release, Termination orders following settlement by the parties (17 July 2018); IndustriALL Global Union press release, Bangladesh Accord arbitration cases — resulting in millions-of-dollars in settlements — officially closed (18 July 2018).

[25] PBS, "5 years after the world's largest garment factory collapse, is safety in Bangladesh any better?" (6 April 2018).

[26] 2018 Accord on Fire and Building Safety in Bangladesh (21 June 2017).

> ending date, the Accord Steering Committee may decide to terminate the effort as appropriate to the overall goals of the program.

As at June 2018, about 176 of the original 220 companies have signed the extension.[27]

However, the renewal met with resistance from the Bangladeshi factory owners, and behind them the government of Bangladesh:[28]

- The renewed accord is currently subject to legal challenge in the Bangladesh High Court, which has allowed it to operate until December this year pending trial.
- Bangladesh's Commerce Minister is quoted as saying: "*The validity of accord and alliance will not be extended after due time. Bangladesh no longer needs these two organisations. ... Activities of such organisations no longer belong in the world.*"

Nevertheless, in May this year the "Transition Monitoring Committee", consisting of the Accord brands, the union federations, the factory owners' association, the ILO and the Bangladeshi government, determined that the criteria for handover to the government, including "*a fully-functional and competent national regulatory body",* have not yet been met.[29]

The future of the Alliance, the competing US-focussed programme, appears still to be uncertain.

What made the Accord possible?

A fairly unusual set of circumstances can be identified as prompting the Accord, or allowing it to come about and function as it has:

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[27] *The Guardian*, "Brands including Ikea shun new safety accord after Rana Plaza disaster" (6 June 2018).

[28] *The Guardian*, "Brands including Ikea shun new safety accord after Rana Plaza disaster" (6 June 2018).

[29] Accord Secretariat press release (Steering Committee's statement on transitional 2018 extension) (10 May 2018).

- The Rana Plaza collapse was a sudden, very public and tragic disaster causing huge loss of life.
- There was very significant PR pressure on the international clothing retail sector, which was graphically implicated in the loss of life:
    - The day of the collapse, labels of western brands were found in the rubble.[30]
    - An online petition targeting major brand names obtained 900,000 signatures in less than a month.[31]
- It was perceived — correctly — that that pressure, and the accompanying risk to the signatory firms' business, was unlikely to abate of its own accord. If anything, awareness has grown further since 2013: the externalities of the 'fast fashion' industry (of which Inditex/Zara is the most successful example) was the subject of a feature-length examination on John Oliver's late night television show in the US (with a viewership numbering in the millions), which was in turn reported in *Vogue* magazine.[32]
- On the company side of the Accord, there is a relatively large number of international players (although a number of these, such as Inditex, H & M and Primark, probably account for a significant portion of export volumes) - as between them there is therefore a level playing field.
- However, two other dimensions of the Accord are heavily concentrated:
    - There is a focussed — and relatively well-funded — counterweight to the signatory companies, in the form of the international trade union federations. The PCA arbitrations prove that those actors not only had the capacity and clout to negotiate and administer the Accord, but also to take substantial legal action to enforce it, recruiting a major international law firm to represent them.
    - The problem of poor safety conditions was concentrated in a single and relatively geographically confined territory, which is a function of Bangladesh's ranking in the global garment manufacturing sector

[30] *The New York Times*, "Building Collapse in Bangladesh Leaves Scores Dead" (24 April 2013).
[31] *The New York Times*, "Major Retailers Joint Bangladesh Safety Plan" (13 May 2013).
[32] *Vogue*, "John Oliver Breaks Down Exactly What's Wrong with Fast Fashion" (27 April 2015).

(second after China) despite it being a relatively small state in many terms.

Transferability and environmental regulation

The subject of this talk is the Bangladesh Accord as a model for environmental dispute resolution. There are two elements to that:

- First, whether international commercial arbitration is a suitable forum for resolving what may be termed 'public interest' disputes. The Accord has shown that the answer to this is relatively straightforwardly, yes. As long as standards and action can be reduced to sufficiently certain contractual language, there is no reason why arbitral procedures, and the enforcement machinery of the New York Convention, cannot be employed.
  - It can be seen as the logical extension to NGO or other *amicus curiae* participation in arbitration, which has happened to varying, extents, particularly in investor–State cases (and the Bangladesh Accord model is far less procedurally problematic).
- Secondly, whether there are aspects of environmental regulation where the wider conditions and drivers — as just listed — are present for the Bangladesh Accord model to get off the ground, and to function effectively in practice.

Two areas of environmental regulation may be noted, one where there has been a similar initiative to the Bangladesh Accord in the past, and one where there may be potential in the future. These are:

- Shipping, and the regulation of oil spills
- Forestry, and the fight against illegally or unsustainably harvested forest products in the global supply chain

TOVALOP and CRISTAL

The similar initiative in relation to oil spills was in the form of the TOVALOP and CRISTAL schemes:[33]

- That too was precipitated by a high-profile and very public international disaster, in the *Torrey Canyon* grounding off the Scilly Isles in 1967. 119,000 tonnes of crude oil was spilled. At that time, it was the world's worst maritime pollution incident. Although only 9 years old at the time, I can still remember the foundering tanker dominating the TV news, and the dramatic efforts being made to reduce the ensuing pollution by the RAF bombing the ship and trying to set the oil on fire, and to rescue wildlife on the coasts of the western parts of the UK and France.
- Alongside two international conventions — and probably in competition with them, by way of tanker owners seeking to self-regulate in preference to being regulated — TOVALOP (Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution) and CRISTAL (Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution) were created.
- Like the Bangladesh Accord, these were voluntary schemes by which tanker owners through their P & I clubs (in the case of TOVALOP) and oil companies (in the case of CRISTAL) agreed to provide compensation in respect of oil spills.
    - TOVALOP created what became a strict liability regime for compensation payable to national governments in cleaning oil spills, subject to limits of liability, and to any person, for measures taken to alleviate immediate threats caused by a spill. The mechanism was a contract between the members, but for the benefit of third parties.
    - CRITSAL created a fund for compensation in excess of the TOVALOP limits (although itself also subject to a limit).
- 'TOVALOP clauses' were also written into charter parties, whereby owners warranted they were members of the scheme, and charterers were empowered to take certain steps to deal with spills or the risk of spills.

[33] See generally D. W. Abecassis and R. L. Jarashow, *Oil Pollution from Ships* (2nd ed, 1985), chapter 12; Guard P.&I., TOVALOP/UTOPF/CRISTAL (1 January 1997); ITOPF, History of ITOPF.

- Two organisations were set up to administer the schemes:
    - For TOVALOP, the International Tanker Owners Pollution Federation Ltd (ITOPF), which monitored participating owners’ financial capacity (which was ensured by a mandatory requirement to be insured against liability under the scheme).
    - For CRISTAL, the Oil Companies Institute for Marine Pollution Compensation Ltd, a Bermuda company that held the fund, and was the counterparty to the members’ contractual obligations.

We can re-identify some of the conditions and drivers that were important for the formation and functioning of the Bangladesh Accord:

- International moral and commercial pressure.
- A relatively concentrated set of players, in the form of P & I Clubs, mostly based in the UK, and international oil majors.
- When TOVALOP came into force in 1969, it covered 50 per cent of tanker gross tonnage worldwide; by 1972 this figure had grown to 99 per cent.
- A concrete set of measures — essentially the incentives provided by the risk of having to pay compensation — that were effectively enforceable through contract.

What was missing — and makes TOVALOP and CRISTAL a comparatively unsophisticated scheme — was the ‘preventative’ nature of the real work of the Bangladesh Accord (although ITOPF did provide advice and assistance in response to spills), that is to say the system of inspections and remedial measures. Also missing was the counterparty and enforcement role of the kind played by the trade union federations.

As the Bangladesh Accords looks to have become, TOVALOP and CRISTAL were also transitional arrangements; in due course the two international conventions (amended versions of the 1969 International Conventions on Civil Liability for Oil Pollution Damage, and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution) became predominant. TOVALOP and CRISTAL ended in February 1997.

Forestry

By comparison with oil pollution, the international forestry industry is comparatively sparsely regulated. There is neither a multilateral treaty, nor a comprehensive binding industry scheme:

- In lieu of binding public international law obligation, the UN has produced the "New York Declaration on Forests", which is a "*non-legally binding political declaration that grew out of dialogue among governments, companies and civil society, spurred by the Secretary- General's Climate Summit*".[34]
- There is no overarching scheme but instead there are a large number of smaller-scale, and necessarily variable, voluntary industry schemes. A 2017 investigation and report by an NGO found that out of 718 companies with supply chains implicating forestry products, 447 companies had made 760 "commitments to reducing deforestation impacts in their commodity supply chains".[35] Some of these schemes are sophisticated, requiring (for example) certification of palm oil plantations against detailed criteria. By contrast, the report identifies that 20 per cent of schemes are "dormant", which means they have failed to meet a target date, and no progress has been reported against a main goal or milestone.

The existence of substantial industry schemes, and several large and active NGOs with interests in the area, suggests that some of the conditions that led to the Bangladesh Accord are also present in the global forestry industry. While the sector is geographically widespread, varied in the nature of its products, and far more globalised, it may be that parts of it would be amenable to taking the further step of making such commitments (more) binding, and backing that up with enforcement by way of arbitration. However, if is not easy to contemplate a single large event, such as the Rana Plaza collapse or the Torrey Canyon, shipwreck, which garnered huge public attention, occurring in the forestry industry.

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[34] UN Climate Summit 2014, Forests Action Statements and Action Plans (the New York Declaration on Forests) (23 September 2014).

[35] Supply Change, Tracking Corporate Commitments to Deforestation-Free Supply Chains, 2017 (March 2017).

Another area which might be susceptible to the Bangladesh Accord-type approach if the use of single-use plastics in the food industry. But again the same question arises: are the right conditions and drivers present for a multi-party industry-wide voluntary agreement?

Conclusion — the bigger picture

Environmental regulation is a classic collective action problem: the environment is a public good, which is damaged by the externalities of industrial activity. This is to the detriment of everyone, but no individual actor has sufficient incentives to avoid it. In the absence of meaningful regulation, collective action is required to redress what would otherwise be a market failure, whereby the cost to the environment is not reflected at the level of microeconomics.

The Bangladesh Accord was an example of such collective action — the signatory companies took it upon themselves to internalise the cost of cheap and unregulated labour in Bangladesh, and were prepared to do so (in part) because their competitors were also doing so.

In terms of the global problems such as the challenges faced by the environment, Joseph Stiglitz, an economist who received the Nobel Memorial Prize in Economics for his work on imperfect information and inefficient markets, has this to say about global corrective action (speaking in the context of a critique of the Bretton Woods institutions):

> [A]t the international level, collective action is, if anything, even more difficult. The international community, having recognised the need for collective action, has been struggling with the problem of global governance without global government. In some areas there has been more reliance on consensus; in other areas, there has been more delegation to specialized bodies, supposedly run by 'experts', with little direct accountability.

The Bangladesh Accord model represents a different solution to the same problem — consensus is translated into binding obligation, backed up by mandatory enforcement, and the institutional framework is essentially created by the private sector. In the context of increasing hostility in some quarters to the paradigm of a rules-based international order, that innovation is worth serious consideration for wider application including in the environmental space.

Post-script – a dedication

This lecture is dedicated to Sir David Williams, formerly Rouse Ball Professor of English Law at Cambridge University, President of Wolfson College, and the first full-time Vice-Chancellor of the University. He persuaded me to read Law, providing inspiring teaching, as well as urbane and witty encouragement. As Director of Studies in Law at Emmanuel College, he decided that the optional paper on Public International Law was compulsory for his undergraduates. Amongst many other interests, roles and public services, he served for a number of years on the Royal Commission on Environmental Pollution. He travelled extensively lecturing on public law issues around the world, including in the United States and Far East. He would have approved thoroughly of this conference.