



Strengthening Trade and Investment across the Digital Economy-

India and Australia:

AI, Technology, Trade, Policy, Law Workshop & Roundtable

Organised by: -

National Law University Delhi

Victoria University

Gujarat National Law University

22nd November 2023

Time: 10:00 am to 3:30 pm

Venue: Room 406, Academic Block

National Law University Delhi

Sector 14 Dwarka, New Delhi-110078

Email: ai-tech-trade.law@nludelhi.ac.in

Hybrid mode

Zoom Link: <https://us06web.zoom.us/j/88693068708?pwd=RcDfLTaksMfuCTmdrVcV3WKgaDkz3e.1>



Concept Note

The aim of this project is to bring together, senior representatives who are members of the Australia-India Chamber of Commerce, industry leaders and professionals, state and national regulators to examine and discuss law, policy and standards for data, cybersecurity, AI and quantum technologies.

This project is cutting edge and is for India and Australia to work together to develop mutually agreed Principles for the future management and governance of artificial intelligence and quantum technology that will be used in trade and investment between the two countries.

This is an opportunity for you and your organisation to develop these important and urgent Principles. Following pages contain an **Information Pack with Questions and an Agenda** for discussion during the breakout rooms.

The outcome of this work is that Ethical Principles will be identified and embedded into standards, codes of practice and statutes, to strengthen trade and investment between Australia and India. This work will provide greater certainty, stability and coherence across the digital economy, in using new technology.

We look forward to working with you to further advance Australia and India's investment and trade bilateral arrangements.

N.B.: Chatham House Rules will be applicable to the deliberations to enable to free and frank dissemination of views.

Victoria University & Gujarat National Law University Collaborative Project funded by Government of Australia: Series of VU-GNLU Workshops (22 December 2023 to 09 December 2023) and PAN-India VU-GNLU Workshop (7 December 2023)

[https://gnlu.ac.in/GNLU/News/1811-23%252f1705%252f01%3a+Victoria+University+%26+Gujarat+National+Law+University+Collaborative+Project+funded+by+Government+of+Australia%3a+Series+of+VU-GNLU+Workshops+\(22+December+2023+to+09+December+2023\)+and+PAN-India+VU-GNLU+Workshop+\(7+December+2023\)](https://gnlu.ac.in/GNLU/News/1811-23%252f1705%252f01%3a+Victoria+University+%26+Gujarat+National+Law+University+Collaborative+Project+funded+by+Government+of+Australia%3a+Series+of+VU-GNLU+Workshops+(22+December+2023+to+09+December+2023)+and+PAN-India+VU-GNLU+Workshop+(7+December+2023))



Questions to be discussed and resolved during the workshop & roundtable

The questions below will be used to compare the gaps, synergies and differences between Australia and India, with respect to what should constitute high level ethical concepts and/or principles that need to be established to support critical technologies.

1. How do you define critical technologies?
 - What do they mean to your organisation?
2. Does your organisation use artificial intelligence (AI) or critical technologies?
 - Will your organisation be investing in either or both of these technologies to or from other countries?
3. Has your organisation thought about Quantum technology? Do you have an awareness of the implication of Quantum technology to trade and investment?
4. What are the **Opportunities** in your organisation related to international data, cybersecurity, AI, Quantum and critical technology transfers? (e.g., expansion of trade-investment, government-health, education, ITC, maritime, and other services)?
5. What are the **Risks** to your organisation from not understanding the current day and future risks from this technology on trade and investment?
6. Critical-Quantum technologies and AI are not regulated – what are 3 to 6 ethical issues that need to be considered in the governance of this technology to strengthen trade and investment (provide a higher level of transparency, accountability and certainty)? Another way to think about this is how do we shape the ethical concepts and principles so as Australia - India trade and investment is not only protected but has another level governance.
7. Are the following considered a starting point for Ethical concepts and principles (similar to those in the OECD Guidelines for Data, embedded into national law)? Will these be suitable for trade to trade – investment to investment between organisation-countries.
 - Rules based system
 - Rule of Law
 - Accountability
 - Transparency
 - Privacy
 - Responsibility
 - Reporting



8. Should there be two layers of ethical concepts and principles? What might this look like?
9. Is there a need for a sector-by-sector level of ethical principles and concepts in the same way as risk management frameworks? That said, a general risk management assessment can be applied to every sector.
10. Should they be embedded as a minimum standard in government regulation? Or should they exist only in industry (sector) self-regulation?
11. Is there a place for ethics in technology and AI to be enforced by both government and/or private sector e.g. ISO Audits?
12. What are the main influences and drivers that make **enforcement** successful or otherwise?
13. An enforcement mechanism could be **mandatory reporting** to the Regulator, similar to tax – is this a viable option, until the regulations and governance of critical technologies and AI is [relatively] settled?
14. In many countries the data laws require a point of contact within an organisation, such as, controller-processor. Should there be similar for cybersecurity-or the controller role expanded? Does this need to be in the law?
15. Whether The Digital Personal Data Protection (DPDP) Act, 2023 of India address the challenges of the adoption of new technologies? If so, please explain.
16. Do you think any amendments would be required in the DPDP Act, 2023 for addressing such issues related to AI, quantum and critical technologies? If so, please suggest.
17. Do you think the DPDP Act, 2023 would be a supportive law for the Digital economy? If so, please explain.

Background Reading on Ethics

The structure of an ethical theory is largely determined by how it is defined and connected to these two basic notions.¹

Ethics “is often formulated in formal codes or standards to which all members of a profession are held, such as those of medical or legal ethics. “² Simply put ethics assists everybody to choose the best decision within their work life in any situation including cooperation, productivity, and respect to others. Concepts and principles that have emerged include:

- AI for common and public good
- Placing humans first and well being
- Transparency
- Safety and Security
- Responsibility and Liability
- Accountability and Oversight
- Privacy
- Fairness, bias, and discrimination.³

On the other hand for an ethical hacker they will generally consider the implement the following practical steps:

- get *written permission* prior to stressing and assessing his or her client’s IT-security.
- act *honestly* and stay within the scope of his or her *client’s expectations*.
- *respect* his or her client’s as well as its employees’ *privacy*.
- use *scientific*, state-of-the-art and *documented processes*.
- *transparently communicate* to his or her client all the *findings* as well as a transcript of all his or her *actions*.
- remove his or her traces and will *not introduce* or keep any *backdoor* in the system.
- *inform* software and hardware vendors about *found vulnerabilities* in their products.⁴

The EU⁵ propose the following:

Autonomy Beneficence Dignity Equality Fairness Freedom Justice Privacy Responsibility	Human dignity Freedom Democracy Equality Non-discrimination The rule of law Respect for human rights Pluralism Tolerance Justice Solidarity Protection of EU citizens	Privacy Security Trust Suggested data protection goals: Availability Confidentiality Integrity Intervenability Transparency Unlinkability	Privacy Fairness Autonomy Practical goals of cybersecurity technology: Availability Confidentiality Integrity
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¹ John Rawls. A theory Of Justice, Harvard University, Press, 1999, 21. In Robert Walters Data, Cyber Laws of the Commonwealth, International Trade, Investment and Arbitration, forthcoming book.

² Shannon Vallor, An Introduction to Cybersecurity Ethics, 2. Santa Clara University. <https://www.scu.edu/media/ethics-center/technology-ethics/IntroToCybersecurityEthics.pdf>

³ Elonnai Hickok, *Ethics and AI in India*, 2018, <https://cis-india.org/internet-governance/files/ethics-and-ai>

⁴ Ibid, p 193.

⁵ Markus Christen, Bert Gordijn, Nadine Kleine, Gwenyth Morgan, Karsten Weber, *Cybersecurity and Ethics*, White Paper 1, 2020, European Commission Erasmus Funding Grant.

Cyberethics has also emerged to include:

- Philosophy;⁶
- Societal Norms;⁷
- Environmental Ethics;⁸
- Political Ethics;⁹
- Economic Ethics;¹⁰ and
- Religious Ethics.¹¹

Further concepts that have also been developed and include:

- *Confidentiality*: It refers to protecting the information from disclosure to unauthorised parties. It is associated with the protection of details which should be visible or accessible to people who have appropriate privileges.
- *Integrity*: It is responsible for ensuring trustworthiness, accuracy, an completeness of the sensitive information. The main objective of integrity is to protect information from being altered by unauthorised or unintended parties and individuals.
- *Availability*: It is responsible for ensuring that only authorized parties can access the information when at the time of need.
- *Authentication*: It refers to the process of ensuring and confirming the identity of a user.
- *Non-Repudiation*: It can be used to ensure that a party involved in a communication cannot deny the authenticity of their signature on a document or the sending of a message that they originated.¹²

These are being adopted on a sectorial approach. We are wanting to scale these up, to establish standardisation.

⁶ Ishaani Priyadarshini, Chase Cotton, *Cybersecurity Ethics, Legal, Risks, and Policies*, CRC Press Taylor Francis (2022), pp 14-15, It explores the philosophical aspect behind ethics that includes life between birth and death. Gaining unauthorized access to someone's account or compromising the privacy of an account are situations that are unethical and Ethics as Philosophy could avert such situations.

⁷ Ibid, It deals with Community Ethics. These underpin questions of bad and good of social media, how it has an impact on the community life and chances of global communication. It also takes into account abuse in terms of cyber bullying, mobbing, etc. It manifests the core values and virtues that usually have their source in the family.

⁸ Ibid, It deals with the impact of cyber technology on human-nature relations. It also highlights the environmental negative impact of energy use as well as the positive impact of environmental advantages of weather forecast, scientific research, etc. It deals with questions like whether it is ethical to jeopardize natural resources in order to carry out research.

⁹ Ibid, It is concerned with changes in political systems. These may be in the form of elections, security, armies with autonomous weapons, need, and limits of regulation of cyberspace on international and national levels, etc. Elections have been known to get manipulated over cyberspace; Ethics from the political perspective may be one of the ways to avoid it.

¹⁰ Ibid, It explores the positive and negative impacts of cyberspace. The factors taken into account are economic growth, job creation or job losses, financial investments in cybersecurity research, etc. The financial sector is frequently hit by data breaches and monetary losses. Economic Ethics could be followed while dealing with such situations.

¹¹ Ibid, It looks at the ethical and unethical impact of cyberspace on culture, music, art, dance, language diversity, cultural inclusion or discrimination, religious respect or hate messages through the internet, etc. Social media provides platforms for religious and cultural disputes. Keeping in mind Religious Ethics may be a way of avoiding it.

¹² Ishaani Priyadarshini, Chase Cotton, *Cybersecurity Ethics, Legal, Risks, and Policies*, CRC Press Taylor Francis (2022), p 5.



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-India and Australia:**

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22nd November 2023

Room 406, Academic Block, National Law University Delhi

Agenda Item	Time	Responsibility	Designation
Welcome Address	10:05- 10:15	Professor Dr. G. S. Bajpai	Vice-Chancellor, NLU Delhi
Special Address	10:15- 10:25	Professor Dr. S. Shanthakumar	Director, GNLU
Special Address	10:25- 10:35	Professor Dr Lidia Xynas	Dean, Victoria Law School
Special Address	10:35- 10:45	Ms. Georgina McKay	1 st Secretary, Australian HC
Special Address	10:45- 10:55	Mr. Mahaveer Singhvi	Joint Secretary, NEST, Ministry of External Affairs
Technical session 1 Best Practices in designing an institutional AI- Technology Policy	11.05 -11:15 11:15-11:25 11:25-11:35 11:35-11:45	Ms. Diana Angeles, Dr. Akhil Prasad Shri Arvind Kumar Mr. Kavindra Taliyan	AI Tech Policy Wipro Group Counsel, Boeing DG, STPI Member- Steering Committee, Ministry of Communications
Technical session II Ethical Principles within Regulation for use of Technology in Trade and Investment	11.50- 12:10 12:10-12:20 12:20-12:30	Dr Robert Walters Bill Cole Dr. Risham Garg	Principal and Chief Investigator, Victoria Univ. International Trade Expert Associate Professor of Law, NLU Delhi, Co-Investigator
Lunch Break	12.30 pm		
Round Table – Breakout sessions Discussion of Attached Questions	13.15 pm	Mr. Bahram K. Vakil Dr. Satya N. Gupta Mr. Amar Pal Meena Mr. Shivam Sahay Mr. Dhruv Garg	Founding Partner, AZB & Co Secretary General, ITU APT Under Secretary NEST MEA HCL Tech Legal-Tech Policy
Break	14.45		
Close and Networking Next Steps Vote of Thanks	15.00 -15:30	Dr. Robert Walters Gujarat National Law University National Law University Delhi	Preliminary Findings

RSVP: Dr. Risham Garg, Chair of the Roundtable **email:** ai-tech-trade.law@nludelhi.ac.in

Zoom Link: <https://us06web.zoom.us/j/88693068708?pwd=RcDfLTaksMfuCTmdrVcV3WKgaDkz3e.1>

Meeting ID: 886 9306 8708 **Passcode:** 322769

Roundtable Participants:

Expert	Designation/ Institution
Mr. Bahram K. Vakil	Founder Partner, AZB & Co.
Dr. Satya N. Gupta	Secretary General, ITU APT
Mr. Amar Pal Meena	Under Secretary NEST MEA
Mr. Shivam Sahay	HCL Tech
Mr. Dhruv Garg	Legal-Tech Policy
Dr. Shilohu Rao N J P	Senior Vice-President (Legal, Contract and Procurements), Goods and Service Network (GSTN)
Mr. Pranay Kotasthane	Deputy Director Takshashila Institution, Chair of High-Tech Geopolitics Programme
Ms. Garima Prakash	Deputy Manager, Public Policy, NASSCOM
Prof. Dr. Reshma Nasreen	Dean, School of Management and Business Studies, Jamia Hamdard
Dr Anjali Kaushik	Dean- Strategic Initiatives & Professor, Management Development Institute
Shri Sudhir K.J.	Legal Officer, Ministry of External Affairs
Ms. Amshuly Chandran	Centre for Trade Law Ministry of Commerce
Mr. Sandeep Puri	ALP Overseas
Mr. Aditya Kashikar	International Trade & Strategy, Trade Winds Consulting
Mr. Krishaank Jugiani	CUTS International
Ms. Sanchita Chatterjee	CUTS International
Mr. Ujjwal Kumar	CUTS International
Mr. Divyam Agarwal	Partner, JSA
Mr. Dheeraj Nair	Partner, JSA
Ms. Shahana Chatterjee	Partner, SAM
Mr. Anshuman Singh	Legal Tech Policy
Mr. Purushottam Anand	Legal Tech Policy
Mr. Nishant Bhaskar	Legal Tech Policy
Mr. Aman Poras	Legal Tech Policy
Ms. Lakshmi Menon	Legal Tech Policy
Ms. Arushi Dua	Legal Tech Policy
Ms. Harshita Garg	Legal Tech Policy
Mr. Mannu Rai	Trade Policy
Ms. Niharika Singh	Legal Tech Policy
Mr. Anant Singh	Legal Tech Policy

NB.: All the participants are requested to email their responses to the 17 questions and any additional views to ai-tech-trade.law@nludelhi.ac.in