



# Nature, Environment, and Sustainable Laws

Deeksha Sharma and Tirtharaj Choudhury

Dr. Ram Manohar Lohiya National Law University

## Introduction

In modernity, the conception of nature has significant ramifications for the systems and mechanisms of social life. Despite its brief reference, nature can be seen as a fundamental though mostly unrecognised aspect of these dynamics. Nature is primarily conceptualised as a hurdle that human capabilities can conquer or use, notwithstanding whether humanity is found inside or beyond it.<sup>1</sup> “Nature” and “Environment” are not used consistently; in general, these terms are highly ambiguous. The conceptual history of “nature” harks back to classical antiquity, as the older of the two. “Environment” is a theoretical term to the extent that it not only relates specifically to the environment, but also to the social space that forms a unified whole around the living being.<sup>2</sup> However, here, the two connect in the ambit of global supply chain. The supply chain logistics have been far from promoting sustainability, the common ground between nature and environment.

Environmental governance has made significant progress in combatting environmental change over the past few decades but increasing urgency regarding certain environmental issues demands new developments in legislation, strategy, and governance. Although extensive legislative reform is unlikely to occur quickly, current laws have tapped a capacity to tackle environmental change, both by using adaptive and transformative capacities within the legislation itself to improve social-ecological resilience and by using such laws to enable adaptation and transformation of social-ecological structures.<sup>3</sup> The pitfalls of environmental law set out below will not encourage sustainability in global supply chains (trans-boundary supply chains for the supply of goods and finished products), the greatest contributor to carbon emissions.<sup>4</sup>

---

<sup>1</sup> Luke Godfrey, ‘How has Nature Been Conceptualised in Modernity?’, *E-International Relations* (2012) <<https://www.e-ir.info/2012/12/04/how-has-nature-been-conceptualised-in-modernity/>>.

<sup>2</sup> Nils Freytag, ‘Nature and Environment’, *European History Online* (2016) <<http://ieg-ego.eu/en/threads/backgrounds/nature-and-environment>>.

<sup>3</sup> Ahjond Garmestani, ‘Untapped capacity for resilience in environmental law’, *PNAS* (2019) <<https://www.pnas.org/content/116/40/19899>>.

<sup>4</sup> Carbon Trust, ‘Carbon footprints in the supply chain’, Carbon Trust (2006) <<http://www.fao.org/3/a-at345e.pdf>>.

## The law and the environment

The law applies only to the national territory and hence is restricted by the competence of the national authorities to control operations within their own territories. In the field of environmental policy, this has always been an issue because environmental problems are not limited to the territory of a single country, as is the case with global supply chains. The problem has been exacerbated by globalisation, as raw material mining, processing, consumption, and waste disposal are gradually globalised. The Ok Tedi case,<sup>5</sup> in which 30,000 Papua New Guinean landowners successfully sued the Australian company BHP before an Australian court for the contamination of river systems and surrounding land by the company's copper mine in Papua New Guinea, was one of the first lawsuits in this regard.<sup>6</sup> In the recent Probo Koala case,<sup>7</sup> toxic waste was unlawfully dumped in the African state of the Ivory Coast, which came from an on-board refining operation. Thus, it avoided the environmental regulations banning this process, by using naphtha from the US obtained by the multinational oil company Trafigura, from a Mexican trading company.<sup>8</sup> Cases like these show us that international environmental law is the most effective way of resolving global or transboundary sustainability problems, especially in view of the shortcomings of national law. At the international level, some shortcomings of national legislation can be resolved.

However, international law also has its weaknesses. Firstly, when international treaties between state governments are established, some of the aforementioned issues of state law persist. In an international agreement, non-governmental organisations (NGO) and transnational companies do play a part, but their institutional position is not solid. By extending their political influence to treaties, NGOs can influence the outcomes of international environmental laws.<sup>9</sup>

A profound paradox is embodied by the field of environmental law: it is a product of the state while the state is the primary agent of development. This contradiction brings together state-sponsored resource regimes that have long been agents of environmental erosion with resistance to democratic change which might properly protect the environment. The theoretical framework for planned ecological modernisation gets undermined as well. The consequence is that environmental regulation extends the fundamental environmental problem of culture instead of fixing it. This can now be seen in

---

<sup>5</sup> BHP lawsuit (re Papua New Guinea)

<sup>6</sup> 'Ethical Dilemma in Ok Tedi Case', StuDocu <<https://www.studocu.com/en-us/document/johnson-wales-university/professional-ethics/assignments/ok-tedi-case-study-this-is-a-mandatory-assignment-for-the-subject-of-ethics-csr-law-you-can/1875843/view>>.

<sup>7</sup> Amnesty International, "Trafigura: A Toxic Journey," <<https://www.amnesty.org/en/latest/news/2016/04/trafigura-a-toxic-journey/>>

<sup>8</sup> Ejolt, 'The Trafigura Case', Ejolt (2015) <<http://www.ejolt.org/wordpress/wp-content/uploads/2015/08/FS-45.pdf>>.

<sup>9</sup> Arts, 1998: 304. - The Political Influence of Global NGOs: Case Studies on the Climate and Biodiversity Conventions, Nijmegen: International Books.

institutional responses to climate change and the “green economy”: an economy that aims to reduce environmental sacrifices, and aims for sustainable development.

The international community faces a fractured and decentralised landscape relating to climate change justice, despite the substantial growth and numerous achievements in international environmental law in recent years. This fragmentation is due to the many relevant fields of international legal activity, and the vastness of international development and economic activity. Many aspects of international law are applicable to the challenges faced by climate justice, but the law, as it is, has not been developed to—and is not always well adapted to—meet the issue of climate change.

The United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol are the chief international environmental instruments devoted to resolving climate change issues. The concepts of inter-and intra-generational justice, common but differentiated responsibilities, precautionary principles and sustainable development are referred to in these treaties.<sup>10</sup> Article 38(1)(b)<sup>11</sup> of the International Court of Justice (ICJ) Statute defines Customary International Law as “evidence of a general practice accepted by Law”.<sup>12</sup> Within customary international law, various environmental standards are accepted to different degrees. The principle of no-harm, that a state is obliged to stop, minimise, and monitor the possibility of environmental harm to other nations, is one of the commonly accepted values.<sup>13</sup> Proof of customary international law requires confirmation of constant state activity and states’ own belief that they are legally bound by international law.<sup>14</sup> However, even after multiple discussions over the years, no “general obligation” has yet been required of states to avoid or mitigate the possibility of substantial transboundary damage beyond a particular treaty regime.<sup>15</sup> Such a non-acceptance by states makes it

---

<sup>10</sup> UNFCCC, 29 May 1992, A/AC.237/18 (Part II)/Add 1, reprinted in (1992) 31 ILM 849, Art 3; see the Kyoto Protocol to the UNFCCC, 10 December 1997, FCCC/CP/1997/L.7/add 1, reprinted in (1998) 37 ILM 22; Vienna Convention for the Protection of the Ozone Layer, Vienna 22 March 1985, UN, Treaty Series, Vol 1513, at 293; Montreal Protocol on Substances that Deplete the Ozone Layer, 1 January 1989, 1522 UNTS 3; 26 ILM 1550 (1987); UN Rio Declaration on Environment and Development, 14 June 1992, 31 ILM 874 (1992); see also ILA, The Hague Conference 2010, Legal Principles Relating to Climate Change; Rafael Leal-Arcas, *Climate Change and International Trade*, Part 2 (Edward Elgar, 2013).

<sup>11</sup> Statute of the International Court of Justice, Art. 38(1)(b).

<sup>12</sup> Statute of the International Court of Justice, Art. 38(1).

<sup>13</sup> Initially expressed in the Trail Smelter Arbitration, and most recently recognised as part of the corpus of international law relating to the environment in the ICJ Advisory Opinion on the Legality or Threat of Use of Nuclear Weapons (ICJ Rep 1996 at 20). (“Taken together, these provisions embody a general obligation to protect the natural environment against widespread, long-term and severe environmental damage; the prohibition of methods and means of warfare which are intended, or may be expected, to cause such damage; and the prohibition of attacks against the natural environment by way of reprisals.”)

<sup>14</sup> Roth, M and Happ.R., “Interpretation of the CISG According to Principles of International Law”, *International Trade and Business Law Annual*, Vol, IV (1999), 1-5.

<sup>15</sup> The ICJ espoused this “preventive” dimension of the no-harm rule in *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Judgment, ICJ Rep 2010 (20 April 2010). The ILA, *Legal Principles Relating to Climate Change: Draft Articles (April 2014)*, usefully progress this by including in Draft

difficult to effectively regulate global supply chains which span over countries that do not accept international environmental laws. This problem can be dealt with only when sustainable approaches for development are incorporated for a period of time as to become internationally recognised as customary law. In the 1992 Rio Declaration on Environment and Sustainability, a progressive approach to the definition of sustainable development was incorporated to define it as the need to balance environmental and developmental concerns.<sup>16</sup> Nevertheless, there is no clear reference in the Rio Declaration to this definition as a right or duty of states.<sup>17</sup> Taking this into account, there is no straightforward solution to the issue of whether international law requires all construction to be sustainable or if so, what this would mean.<sup>18</sup>

The rights most significantly affected by climate change are economic, social, and cultural rights. States have legal duties under the ICESCR to “respect, protect and fulfil” the rights laid down in that treaty, including citizens’ rights to water, “adequate food”,<sup>19</sup> shelter and the “highest attainable standard of healthcare”. The UN Independent Expert on the issue of human right obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment concluded in December 2013 that human rights obligations require states “to adopt and implement legal frameworks to protect against environmental harm that may infringe on enjoyment of human rights; and to regulate private actors to protect against such environmental harm”.<sup>20</sup> Nevertheless, before man-made climate change was accepted as a global issue, human rights legislation had already evolved, and its rules do not readily extend to the particular losses due to climate change-related incidents.

Water scarcity is one of the most crucial factors for sustainable development. Failure to address this issue can have severe consequences on human security and geopolitical stability. Given the rising scarcity, water used in the production of key water-intensive commodities, i.e., virtual water (VW), coupled with a strategic trade of the same, might be a potential resolution. A more attractive approach for meeting environmental requirements

---

Art 3.5: “Where social and economic development plans, programs or projects may result in significant emissions of GHGs or cause serious damage to the environment through climate change, States have a duty to prevent such harm or, at a minimum, to employ due diligence efforts to mitigate climate change impact.” Also Draft Art 7A: “States have an obligation to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction, including damage through climate change.”

<sup>16</sup> Rio Declaration on Environment and Development, June 13, 1992, reprinted in 31 ILM 876 (1992).

<sup>17</sup> Boyle, ‘International Law & The Environment’, Oxford University Press, (2009), p.115.

<sup>18</sup> Boyle International Law and Sustainable Development, ‘International Law and Policy of Sustainable Development’, 65 BYIL (1994), p.303.

<sup>19</sup> See, for example, CESCR, General Comment 12, the right to adequate food, paras 14–16, 12 May 1999, UN Doc E/C.12/1999/5; CESCR General Comment No 15, the right to water, paras 17, 20, 20 January 2003, UN Doc E/C.12/2002/11; CESCR, General Comment 14, the Right to the Highest Attainable Standard of Health, paras 30–33, 11 August 2000, UN Doc E/C.12/2000/4.

<sup>20</sup> See John H Knox, ‘Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’, Mapping Report, para 26 (30 December 2013) UN Doc A/HRC/25/53.

may be found in the Product Water Footprint concept. Product Water Footprint is the impact that a commodity has on the freshwater supplies of a given region. It can vary based on the supply of freshwater in different regions.

Before understanding how Water Footprint could be made an essential part of the contract, this article highlights a case study where ethical considerations made a company responsible for damages. A customer called Kasky purchased Nike sports shoes. In order to get the "Nike feeling", he was willing to pay the high price. One aspect of the "Nike feeling" which Kasky felt justified the price was Nike's supposedly being an ethical company. On its website, Nike released a CSR policy that claimed that Nike did not use child labour. It turned out that children were used by one of Nike's sub-suppliers in the making of Nike sports shoes. With regards to the shoes themselves, Kasky had issues: they looked terrific, they performed perfectly. Yet the emotion had disappeared. Could Kasky claim the shoes were flawed? Should he be allowed to cancel the sale? Was he entitled to any damages or changes in prices?<sup>21</sup> The court held Nike liable to pay damages for misleading information. This brings us to the question of ethics and environmental considerations in commercial contracts.

The majority of businesses place certain kinds of requirements for sustainable growth and development on their suppliers. BT Plc., a British Multinational Telecommunication company, requires the following minimum expectations of its contracted suppliers:

- That the supplier has a strategy to tackle climate change;
- That the supplier actively monitors and updates itself about carbon and other greenhouse gas emissions;
- That the supplier has set challenging emissions mitigation goals and reports on progress.<sup>22</sup>

According to paragraph 10 of the General Policies of the Guidelines by Plc, businesses should "encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines."<sup>23</sup> Novartis provides certain ethical principles such as animal rights, child labour, workplace safety, and various environmental standards as an indication of trade usage. While choosing the vendors, it is part of a generic rule Novartis uses and a clear example of how a CSR policy is part of a series of common words.

However, such weak formulation in the form of guidelines and CSR policies was heavily criticised by NGOs and International Organisations as it did not lead to any tangible

---

<sup>21</sup> Kasky v Nike, Inc. 27 Cal. 4th 939 (2002).

<sup>22</sup> BT Plc., 'Generic Standard 20 Climate Change Procurement Standard', Version 2.0 (2012).

<sup>23</sup> Ibid. p.255.

results.<sup>24</sup> This is because without any sanctions in place, it was easier for manufacturers to flout these rules and encourage greenwashing.

## CISG

This brings us to the United Nations Convention on Contracts for the International Sale of Goods (CISG). The CISG is the most widely adopted treaty providing substantive contract rules. The 84 CISG states account for more than 75% of world trade.<sup>25</sup> The CISG's provisions cover the treaty's scope of application, contract formation, obligations of the contractual parties, remedies, passing of risk, damages, etc.<sup>26</sup> This article will now attempt to analyse this Convention, identifying loopholes, in order to encourage sustainable development in supply chains, since there is no solution to controlling the environmental degradation caused in the entire supply process. It should be remembered that the term "sustainable development" or "environment" is excluded from the drafting papers and the bare provisions of the Convention.<sup>27</sup> By analysing the sustainability in supply chains, this article hopes to provide an effective means for those living under conditions of food or water poverty to not only realise their right to water but also their right to food.

### Article 35.1 CISG: 'Quality' of Goods

Article 35.1 points out the quality required for goods to comply with any contract. To date, there has been no case which talks about environmental values being a part of quality of goods, but there have been debates about whether it is the product or production process that need be environmentally friendly. Scholars suggest, if the contract requires ethical and environmental values, then they are contained under the concept of 'quality' when assessing conformity under Article 35(1).<sup>28</sup> This means that Article 35 is not limited to physical attributes of the goods but may encompass certain production standards and practices.<sup>29</sup> The CISG embodies freedom of contract and therefore parties are entitled to receive exactly what they settled for, including environmental requirements.<sup>30</sup> The parties may agree on any additional requirement to be met by the goods for its conformity under the contract.<sup>31</sup> When the contract requires documentation of the production methods or the goods' origin, the buyer has a duty to examine the goods and to provide notice quickly.

---

<sup>24</sup> OECD WATCH (ed.), 'The OECD Guidelines for Multinational Enterprises and Supply Chain Responsibility -- A Discussion Paper', (2004), p. 2 <[http://www.corporate-accountability.org/eng/documents/2004/oecd\\_guidelines\\_and\\_supply\\_chain\\_responsibility.pdf](http://www.corporate-accountability.org/eng/documents/2004/oecd_guidelines_and_supply_chain_responsibility.pdf)>.

<sup>25</sup> [https://www.nyulawglobal.org/globalex/International\\_commercial\\_contracts.html](https://www.nyulawglobal.org/globalex/International_commercial_contracts.html)

<sup>26</sup> UN, 'UNCITRAL Texts and Covid-19 Response and Recovery', United Nations Commission on International Trade Law (2020) <<https://uncitral.un.org/>>.

<sup>27</sup> Cristina Poncibo, 'The Law and Practice of International Sale Contracts: Protecting the environment for future generations', Unicitral Conference, (2017) <[https://www.uncitral.org/pdf/english/congress/Papers\\_for\\_Congress/78-PONCIBO-The\\_Law\\_and\\_Practice\\_of\\_International\\_Sale\\_Contracts.pdf](https://www.uncitral.org/pdf/english/congress/Papers_for_Congress/78-PONCIBO-The_Law_and_Practice_of_International_Sale_Contracts.pdf)>.

<sup>28</sup> Schwenger/Hachem/Kee, (2012), p 381 para 31.87.

<sup>29</sup> Kröll/Mistelis/PeralesViscasillas (2011), p 495 para 25; Saidov (2017), p 29.

<sup>30</sup> Saidov (2013), p 529; Williams (2015), p 304.

<sup>31</sup> Kröll/Mistelis/PeralesViscasillas (2011), p 492 para 12; Magnus, in Staudinger Kommentar (2005), Art. 35 para 15; Granulated Plastic Case.



In the Organic Barley case of 2002, the barley was deemed non-conforming when the seller could not provide certification that the barley was organically produced. The court stated that even though the claim was correct, the buyer was under a duty to examine the certificates immediately upon delivery. The buyer lost their right to rely on the non-conformity because it did not send notice of the non-conformity in time, CISG Article 39(1). The deliveries took place between November and September and the buyer gave notice of non-conformity in February the following year. But the principle laid down in the case suggests that goods produced under conditions that violate the methods of environmental sustainability are not of the quality implicitly required under the contract due to a breach of the ethical quality of the good(s).<sup>32</sup> Such considerations could be harnessed to provide for provisions on the water footprint of products, allowing only goods with a low water footprint to comply with the contract.

Even better, for these purposes, is the strict compliance requirement under CISG Article 35. Strict compliance in the environmental context would entail that if one of the goods is produced using unsustainably sourced ingredients, or ingredients farmed in an environmentally unfriendly manner, or if there is any other breach of the requirements set out for the supply chain, then the goods are nonconforming under Article 35 CISG.<sup>33</sup>

Decisions by courts and arbitral tribunals have held that the CISG's general rules for determining the content of the party agreement should utilise Article 8 CISG to determine whether the contract requires goods of a particular quantity, quality, description or packaging.<sup>34</sup> Article 8(1) stipulates that "statements made by a party are to be interpreted according to his intent where the other party knew or could not have been unaware of what that intent was". These statements are to be interpreted according to the understanding a reasonable person would have made in similar circumstances. Pre-contractual negotiations are relevant to ascertain the intention of the parties and the meaning of the contractual provisions.<sup>35</sup>

The importance of ethical practices and risks associated with unethical behaviour is significant, and parties publicly advertising their adherence to the UN Global Compact Principles<sup>36</sup> have been bound to their representations, as has been illustrated by class action cases reflecting the importance of minimum ethical standards.<sup>37</sup> A putative class action plaintiff argued in *McCoy v Nestlé* that food suppliers were unable to ensure that their supply chain was free of slave labour and child labour. According to the complainant, the false advertisement laws of California essentially required, and the Court should order,

---

<sup>32</sup> Poncibò (2017), p 70; Organic barley case (2002).

<sup>33</sup> Schwenzer/Leisinger, *Ethical Values* (2007), p 267; Schwenzer (2016), p 596; Huber/Mullis (2007), p.132.

<sup>34</sup> Bullet-proof vest case (2009); CLOUT abstract no. 1389 (2007); Frozen fish case (2003).

<sup>35</sup> Art. 8(3) CISG; Vogenauer/Kleinheisterkamp (2009), Art 2.1.19, para 13; Poncibò (2017), p.7.

<sup>36</sup> Principles espoused by the United Nations to drive businesses towards ethical and an environmental conscious behaviour.

<sup>37</sup> Schwenzer (2017), p.125.

a mark on Nestlé goods revealing that they were expected to be sourced from manufacturers using child and/or slave labour. Nestlé claimed that even if such a declaration was compelled by the law of California, its constitutionality should not be checked under the recent more lenient standard. This question was eventually avoided by the Court by withdrawing the lawsuit on other grounds.<sup>38</sup>

This indicates that there is room to embed the interests of ethical customers in the supply chain of water-intensive goods and to keep the Water Footprint as low as possible.

### **Article 35.2(a): Unfit for the purpose required**

Pursuant to Article 35(2) CISG, goods are unfit for purpose when they do not have the required characteristics or they have defects that lessen their value and affect their trade use.<sup>39</sup> Goods produced under conditions violating the methods of environmental sustainability are not of the quality implicitly required under the contract.<sup>40</sup> Where goods are accompanied by false documentation regarding their origin, they are considered to lack conformity under Article 35 CISG.<sup>41</sup> In a notable case, the Belgian authorities decided that it was forbidden to sell pork produced in a certain manner. The court stated that in international wholesale and intermediate trade, the resale ability (tradability) of the goods is one aspect of being fit for the purpose of ordinary use in terms of Article 35(2)(a). This may lay the foundations for establishing that, if a higher Water Footprint reduces a product's tradability on the market, especially among consumers, and in areas with tight regulations, it could become non-compliant under Article 35(2)(a). Further, several cases have suggested that the reputation attached to goods and their production may form part of their "ordinary purpose". Therefore, negative reputation arising from initial non-conformity may render any remaining shipments non-conforming, like in the Pocket Ashtray case.

On the other hand, the German Supreme Court established in the New Zealand Mussels case that the supplier cannot be expected to be informed about special requirements or legislation in the state about intended usage of the goods. Nor does it create obligations for the supplier if the purchaser informs the supplier about the destination of the goods.<sup>42</sup> This case is in direct contravention to the upheld beliefs of the World Trade Organisation as laid out through International Trade Law, as is discussed in the following section.

### **Article 7 CISG: Good Faith**

Although Article 7, which says that this convention must be interpreted in good faith keeping in view its international character and the object and purpose, is used to fill the

---

<sup>38</sup> David Kluff, 'Food Advertising and Compelled Commercial Speech, Case Test (2017) <[https://casetext.com/analysis/food-advertising-and-compelled-commercial-speech-in-2017-1?resultsNav=false&PHONE\\_NUMBER\\_GROUP=P&sort=relevance&q=>](https://casetext.com/analysis/food-advertising-and-compelled-commercial-speech-in-2017-1?resultsNav=false&PHONE_NUMBER_GROUP=P&sort=relevance&q=>)>.

<sup>39</sup> Poikela (2003), para 5.2.1.

<sup>40</sup> Poncibò (2017), p.7.

<sup>41</sup> DiMatteo (2014), p.216.

<sup>42</sup> Sonja Kruisinga, 'Rechtbank Rotterdam', *European Journal of Commercial Contract Law*, 41 (2009) <<http://cisgw3.law.pace.edu/cases/081015n2.html>>.



gaps in CISG, it only addresses the basic characteristics and aims of the implementation of the Convention, but does not mention the methods of interpretation.<sup>43</sup> In such a scenario, the Vienna Convention of the Law of Treaties (VCLT) has to be used. A lot of scholars argue that VCLT would not apply to CISG, as the use of the VCLT as an instrument relating to the relationships between states and state sovereignty puts the CISG in the sense of international public law rather than in the context of international commercial practice, where it is properly located.<sup>44</sup> Nevertheless, as FA Mann, an acclaimed British jurist, puts it, in law there is no difference between such treaties and those contemplating relations between private persons. VCLT applies to the entire convention, even Article 35.<sup>45</sup>

The use of VCLT can also be omitted by the Parties. Article 31(4) of the VCLT states that a word shall have a special meaning if it is defined according to what the parties so intended.” However, Article 31(4) applies only to basic terms of the treaty. It confirms that states may lay down their own interpretative rules for a treaty except the VCLT, although there is a need for more proof that the states party to the CISG intended to lay down a special interpretative regime.<sup>46</sup> Indeed, the preamble to the CISG states that in part, the goals of the Current International Economic System need to be met. Article 31(1) of the VCLT, the general rule of interpretation, states that “a treaty shall be interpreted in good faith in compliance with the ordinary sense to be given to the terms of the treaty in their context and in the light of its object and intent.”

Instead of strictly sticking to the terms of VCLT, this article would attempt to provide an evolving interpretation of treaties. An evolving interpretation is an interpretation where a term is given a meaning that changes over time.

These aforementioned VCLT Articles<sup>47</sup> permit evolving interpretation. A term’s “ordinary meaning” may change over time, however, VCLT does not address how the same would be resolved. The following points need to be considered. “Good faith” and “object and purpose” may require that a term is interpreted in an evolving manner, and may affect how it evolves.<sup>48</sup> Non-evolving terms may be given a “special meaning” with time and the changing circumstances. “Preparatory works” and circumstances of a treaty’s conclusion may support an evolving interpretation. Beyond permitting evolving interpretations,

---

<sup>43</sup><https://www.cisg.law.pace.edu/cisg/biblio/visser.html>

<sup>44</sup>[https://www.uncitral.org/pdf/english/congress/Papers\\_for\\_Congress/78-PONCIBO-The\\_Law\\_and\\_Practice\\_of\\_International\\_Sale\\_Contracts.pdf](https://www.uncitral.org/pdf/english/congress/Papers_for_Congress/78-PONCIBO-The_Law_and_Practice_of_International_Sale_Contracts.pdf)

<sup>45</sup>Francis Mann, 'Uniform Statutes in English Law' (1983) 94 *Law Quarterly Review* 376 at 377. See also M Roth and R Happ, 'Interpretation of Uniform Law Instruments According to Principles of International Law' (1997) 2 *Uniform Law Review* 700 at 705-708 and Basedow (n 10).

<sup>46</sup> See Richard Gardiner, *Treaty Interpretation* (OUP 2008) 298.

<sup>47</sup> Ronald Dworkin, *Taking Rights Seriously* (Duckworth 1978) 24- 25

<sup>48</sup> ILC, 'Report on the Work of its Sixty-Third Session' (26 April to 3 June and 4 July to 12 August 2011)

however, the VCLT Articles 31-33 provide limited guidance. The intention of this article is to give the word “quality” under Article 35 CISG an evolving meaning.<sup>49</sup>

The International Court of Justice in the Nicaragua-Costa Rica case<sup>50</sup> gave the following eligibility guidelines to check if the particular convention needs to be interpreted in an evolving manner. First, the parties must have used “generic terms” (in which case the parties have “necessarily been aware that the meaning of the terms was likely to evolve over time”. This is certainly true of “quality” given that the meaning of “quality” has become generic overtime with the onset of the ethical supply chain conundrum. Second, the treaty must have “been entered into for a very long time” or is “of continuing duration” (CISG came in during 1980 and is of a continuing duration). Applying the ingredients to CISG, “quality” under Article 35 is a generic term and parties ought to be aware that with the coming of UN Global Compact and Multilateral Environmental Agreements, and with an ever-increasing importance given to climate change, the meaning of the term might change over time.

In Gabcikovo-Nagymaros<sup>51</sup> case, the Court labelled certain treaty provisions “evolving”, and is open to adapt to emerging norms of international law’, including the “current standards” of environmental protection. Accordingly, Article 7 CISG must be understood in the context of the mandatory principles of customary international law, and the right to contractual rights found in Article 7 must be restricted by such rules, irrespective of whether they apply to a subject beyond the scope of the CISG.<sup>52</sup> Sustainable development and a person's right to water are part of customary international law, as stated above. It follows that under the CISG, this law places a restriction on group sovereignty. However, many authors argue that this form of limitation is just a type of responsibility as set out in the UN Global Compact and the seller is exempt from any fines if the products in question do not support sustainable production or environmental conservation.

### **International Trade Law**

Even certain systems in International Trade Law evolved over time to keep in view the contemporary importance of climate change and the environment.

As mentioned previously, the entire debate rests upon the Water Footprint of goods. In International Trade Law the relevance of water footprint is with Process and Production Methods (PPM). Put simply, these refer to the method of production of any good. They are

---

<sup>49</sup> Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua) [2009] ICJ Reports 213, para 64- 66.

<sup>50</sup> Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua) <<https://www.icj-cij.org/en/case/133>>

<sup>51</sup> CASE CONCERNING GABC~KBVO-NAGYMAROS PROJECT (HUNGARY/SILOVAKIA) <<https://www.icj-cij.org/public/files/case-related/92/7377.pdf>>

<sup>52</sup> Simon Wilson, ‘ETHICAL STANDARDS IN INTERNATIONAL SALES CONTRACTS: CAN THE CISG BE USED TO PREVENT CHILD LABOUR?’, LAWS 525: International Commercial Contracts, Victoria University of Wellington (2015)

<<https://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/4622/thesis.pdf?sequence=2>>

further divided into product related PPM and Non-Product Related PPM (NPRPPM). NPRPPM refers to those methods of production that have no bearing on the physical attributes of a product. PRPPM have a bearing on the physical attributes of a product. The concern of nature and environment relates to NPRPPMs. International Trade Law says that like products cannot be discriminated against.<sup>53</sup> In the past the WTO was very adamant to interpret the definition of likeness apart from the physical attributes of the product. Recently, however, environmental concerns have found themselves a place in interpreting “likeness”.

The Appellate Body (AB) in the European Communities (EC)-Asbestos<sup>54</sup> concluded that the “likeness” assessment is basically a determination of the existence and degree of the competitive relationship between goods. The AB also emphasised that “likeness” denotes an environment that contains “an inevitable aspect of discretionary judgement” and all the features, consistency, essence of the goods, their end-uses, tastes and desires of consumers are considered. How goods are made can influence customer tastes and the competitive relationship between the products well. This sets a good precedent for differentiating goods on the basis of the respective water footprints as that could be a decisive factor for a consumer to select a particular product. Moreover, the US Shrimp<sup>55</sup> Controversy offers a fascinating example of justifiable discrimination based on PPMs between goods. The disagreement involved the way shrimp were collected, causing injury to turtles. The numerous techniques used by different countries during the processing of shrimp were part of the PPM, according to the AB, and therefore a determinant of the similarity between items.

### **Article 9 CISG: Trade Usage**

According to the majority of CISG scholars, if a trade usage is commonly recognised and frequently practiced by the majority of traders engaged in a certain area of exchange and the parties knew or should have known about it, then trade use becomes an implicit part of the contract, without being explicitly mentioned by the parties. In *Geneva Pharmaceuticals Tech Corp v Barr Labs Inc.*, the court held that “the usages and practices of the parties or the industry are automatically incorporated into any agreement governed by the Convention, unless expressly excluded by the parties.”<sup>56</sup> Two situations where there are no explicit ethical terms in the contract will be analysed.

---

<sup>53</sup> Article III, GATT

<sup>54</sup> Panel Report, European Communities — Measures Affecting Asbestos and Asbestos-Containing Products, WT/DS135/R and Add.1, adopted 5 April 2001, as modified by the Appellate Body Report, WT/DS135/AB/R

<sup>55</sup> United States - Import Prohibition of Certain Shrimp and Shrimp Products - Appellate Body Report and Panel Report pursuant to Article 21.5 of the DSU - Action by the Dispute Settlement Body WT/DS58/23

<sup>56</sup> *Geneva Pharmaceuticals Tech Corp v Barr Labs Inc.*, Federal District Court New York, USA, 10 May 2002 (CLOUT Case No 579).

Professor Ingeborg Schwenzer and Peter Schlechtriem, both of whom are known to be highly prominent in the understanding of the CISG, claim that once both parties have committed to the United Nations Global Compact (or other private initiatives) for example, it must be concluded that at least indirectly, the parties have made this standard part of their inter-party partnership arrangement.<sup>57</sup> Ultimately the UN Global Compact can become a usage without ever being mentioned by the parties. Nevertheless, the wording of the UN Global Compact's ten principles is articulated as "businesses should": hence, especially considering principle 7, this girds parties to prevent environmental harm.<sup>58</sup> It is not "businesses shall, must, will or are required to".<sup>59</sup> However, the drafters of the Equator Principles have chosen the word "will" in their initiative.<sup>60</sup> This suggests a commitment to the principles. This might give an added emphasis to causing the least impact to the freshwater resources of a particular area, as is shown by the water footprint of a product.

In order for an international trade usage to apply it must—firstly—be "acknowledged and widely observed by parties to contracts of the type involved in the particular trade concerned."<sup>61</sup>

In the 2003 Austrian Tantalum case, an Austrian purchaser bought metal powder from a supplier, a private limited company with its headquarters in Hong Kong. For a guide written in English on the front page to the general terms and conditions on the back, English order forms were used. The terms and conditions in general were in German. The seller was unable to detect that under its general terms and conditions, the buyer wished to terminate the deal. Since the metal powder did not have the consistency expected, the buyer avoided the deal on the basis of the general terms and conditions. The price was claimed by the seller. The Supreme Court ruled that the German general terms and conditions were part of the contract because according to Article 9 (1) of the CISG, the use of such terms and conditions was a procedure which the parties had established among themselves, even though not expressly stated otherwise.<sup>62</sup>

Article 9 supplements the provisions of the contract and Article 35 (1) with respect to the implicit terms of quality.<sup>63</sup> In addition, unlike Article 9 (1) which entails the parties' intention, Article 9 (2) of the CISG supplements the contract independently of the intent of the parties, according to the reasonable person standard by imposing the necessity to consider trade usages, which are "rules of commerce which are regularly observed by

---

<sup>57</sup>Ingeborg Schwenzer & Benjamin Leisinger, 'Ethical Values and International Sales Contracts', 264, <<http://cisgw3.law.pace.edu/cisg/biblio/schwenzer-leisinger.html#iii>>

<sup>58</sup>United Nations Global Compact, 'The ten principles of UN Global Compact', <<https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-7>>

<sup>59</sup>Christian Dysted, 'Ethical Defects in Contracts under United Nations Convention on Contracts for the International Sale of Goods', (2015), 24, <<https://cisgw3.law.pace.edu/cisg/biblio/dysted.pdf>>

<sup>60</sup>Idid.

<sup>61</sup>BP Int'l Ltd. v. Empresa Estatal Petroleos de Ecuador, 332 F.3d 333 (5th Cir. 2003)).

<sup>62</sup>Austrian Tantalum Case (2005), <<https://cisgw3.law.pace.edu/cases/050831a3.html>>

<sup>63</sup>Supra at 58.

those involved in a particular industry or marketplace".<sup>64</sup> So even if the parties tried to avoid considering environmental harm in the contract, Article 9 (2) would include sustainable development as a trade usage, if either the parties have signed up for the UN Global Compact or a similar initiative.

## **Sustainability Contract Clauses (SCC)**

Sustainability Contract Clauses (SCCs) are clauses in contracts that oblige the seller to follow certain minimum sustainability standards as required by the buyer. Vandenberg analysed the commercial activities of businesses in eight retail and manufacturing industries in relation to environmental problems and noticed that over 50% of companies have some forms of environmental conditions in their company contracts. Such companies represent around 80% of the overall revenue in the given sectors.<sup>65</sup> However, the binding existence of SCCs is contingent on the type and specificity of the applicable clause.<sup>66</sup> Secondly, if an SCC is broken, non-pecuniary damage most likely occurs, usually reputational damage. Few businesses have also sought to enforce the violation of manufacturers by implicitly using labour law instruments and where applicable, consumer law, with special emphasis on false adverts, to conform to the SCC. For example, the one which points to a situation in which a German company marketed its goods on the grounds that they were made in line with certain minimum social standards: violation of Section 5 (1) (2) of the German Anti-Unfair Competition Act was perceived to be a norm.<sup>67</sup>

With the support of blockchain and smart contracts, enforcement may be made more binding. The blockchain runs on a structure based on a peer-to-peer public ledger (witnessed by hundreds of individuals involved in the blockchain.) This means that any operating system that is part of the network is accessed and stored on the information sent to the ledger. In addition, smart contracts are intelligent as they operate on the execution of specified regulatory compliance commands, removing room for human intervention.

For cross-border trades, the UN Convention on the Use of Electronic Communications regulates the use of smart contracts. Article 12 specifies that in compliance with this Convention, contracts established because of electronic communications are legally binding and enforceable. There is, however, no legal provision which includes any

---

<sup>64</sup>Cristina Poncibò , 'The Law and Practice of International Sale Contracts: Protecting the environment for future generations ' , (2017), <[https://www.uncitral.org/pdf/english/congress/Papers\\_for\\_Congress/78-PONCIBO-The\\_Law\\_and\\_Practice\\_of\\_International\\_Sale\\_Contracts.pdf](https://www.uncitral.org/pdf/english/congress/Papers_for_Congress/78-PONCIBO-The_Law_and_Practice_of_International_Sale_Contracts.pdf)>

<sup>65</sup>Vandenberg, 'The New Wal-Mart Effect: The Role of Private Contracting in Global Governance', *UCLA Law Review*, 54(4) 2007, 913-970. The results are based on an analysis of contractual texts publicly available from the database of the U.S. Securities and Exchange Commission.

<sup>66</sup>Supra at 63.

<sup>67</sup> E. Kocher, 'Codes of Conduct and Framework Agreements on Social minimum Standards. Private regulations?', in O. Dilling, M. Herberg and G. Winter ed., *Responsible Business. Self-Governance and Law in Transnational Economic Transactions* (Oxford and Portland Oregon: Hart 2008) p. 67.

evidence of liability in the electronic contract and from which the injured party may be given relief.<sup>68</sup> The authors propose the filling up of this lacuna through CISG and UNCITRAL Model Law on Electronic Commerce (MLEC).

In the Frigalment case, the buyer and seller had agreed to specify precisely whether the chicken would be deemed to adhere to the agreement in a smart contract, that is, the observable characteristics of the goods.<sup>69</sup> Or in assessing its accuracy and conformity, in terms of its chemical composition and volume, a certain chemical raw material may be correctly measured. Furthermore, by informing consumers about the origins of products, providing promises on sustainability and authenticity, and providing a platform to enforce claims through the block chain's smart contract functionality, the block chain will improve sustainability.<sup>70</sup> The key to ensuring compliance with environmental projects in the process will be the blockchain "dispersed testing" tool or the validation of the timely and full submission of environmental data. It may also become key for the user to check the status of his UEEE.

## **Africa**

Before emphasising the importance of such trade through CISG or International Trade Law, we need to look at Africa. Africa has remained an attractive destination for farmland investments by foreign investors. Scientists have projected that if the entire agricultural land in Africa is given to foreign investors, it would turn out to be a catastrophe as the amount of water required for these agricultural lands and intensive agriculture is much more than that is available in the entire Nile river basin.<sup>71</sup> Moreover, International Investment Law protects the right of these foreign investors to exploit the water resources. Trade, added with contractual sanctions as explained in this article is the only possible way out to not only realise the right to water and environmental protection but also the right to food. Because of extensive farmland investments, a lot of indigenous people lose the right over their farmlands and hence are not able to grow even the meagre produce that they earlier did and hence either depend upon the government or rely upon bush meat, the main originator of the Ebola virus.<sup>72</sup>

---

<sup>68</sup> Sara Hourani, 'Cross Border Smart Contracts', 2, <[https://www.uncitral.org/pdf/english/congress/Papers\\_for\\_Programme/11-HOURANI-Cross-Border\\_Smart\\_Contracts.pdf](https://www.uncitral.org/pdf/english/congress/Papers_for_Programme/11-HOURANI-Cross-Border_Smart_Contracts.pdf)>

<sup>69</sup> Frigalment Importing Co. v. B.N.S. International Sales Corp, f. supp. 116 (s.d.n.y. 1960).

<sup>70</sup> William Nikolakis, LijoJohn, Harish Krishnan. 'How Blockchain Can Shape Sustainable Global Value Chains: An Evidence, Verifiability, and Enforceability (EVE) Framework', Sustainability, 10(11), 2018, p.2-7.

<sup>71</sup> Makane Moïse Mbengue Susanna Waltman , 'Farmland Investment and Water Rights', (2015), p.39-45, <<https://www.iisd.org/system/files/publications/farmland-investments-water-rights-legal-regimes-at-stake.pdf>>

<sup>72</sup> Centres for Disease Control and Prevention, 'Bushmeat', (2018), 1, <<https://www.cdc.gov/importation/bushmeat.html>>



## Conclusion

Environmental and climate change law suffer from the vice of persuasiveness and obligation as explained earlier. The efficacies in the implementation of green finance warrant the need for solutions in commercial and economic law. Although CISG is a great mechanism in protecting the environment and nature, a lot depends upon the parties' will. UN Global Compact has made a tremendous contribution in making the companies' supply chains sustainable. Finally, International Trade Law serves the function of gap-filling in CISG and opens the floodgates of applying even International Environmental Law for interpreting CISG, as all the aforementioned decisions have been interpreted by the WTO keeping in view International Environmental Law.

## Bibliography

Amnesty International. "Trafigura: A Toxic Journey". Accessible from:

<https://www.amnesty.org/en/latest/news/2016/04/trafigura-a-toxic-journey/>

Arts, 1998: 304. - The Political Influence of Global NGOs: Case Studies on the Climate and Biodiversity

Austrian Tantalum Case. 2005. Accessible from:

<https://cisgw3.law.pace.edu/cases/050831a3.html>

BHP lawsuit (re Papua New Guinea). Accessible from: <https://www.business-humanrights.org/en/latest-news/bhp-lawsuit-re-papua-new-guinea/>

Boyle. International Law and Sustainable Development 65 BYIL (1994). 'International Law and Policy of Sustainable Development'. p.303.

Boyle. Oxford University Press, (2009). 'International Law & The Environment'. p.115.

BP Int'l Ltd. v. Empresa Estatal Petroleos de Ecuador, 332 F.3d 333 (5th Cir. 2003)).

BT Plc., 'Generic Standard 20 Climate Change Procurement Standard', Version 2.0 (2012).

Bullet-proof vest case. 2009. Accessible from:

<https://cisgw3.law.pace.edu/cases/094505gr.html#cd>

Carbon Trust. 2006. "Carbon footprints in the supply chain". Carbon Trust. Accessible from:

<http://www.fao.org/3/a-at345e.pdf>

Centres for Disease Control and Prevention. 2018. "Bushmeat" Accessible from:

<https://www.cdc.gov/importation/bushmeat.html>

CESCR. General Comment 12. 12 May 1999. "The right to adequate food" paras 14–16 UN Doc E/C.12/1999/5.

CESCR. General Comment 14. 11 August 2000. "The Right to the Highest Attainable Standard of Health". p.30–33. UN Doc E/C.12/2000/4.

Christian Dysted. 2015. "Ethical Defects in Contracts under United Nations Convention on Contracts for the International Sale of Goods". Accessible from:

<https://cisgw3.law.pace.edu/cisg/biblio/dysted.pdf>

Conventions, Nijmegen: International Books.

- Dworkin, Ronald. 1978. Taking Rights Seriously . Duckworth 24- 25.
- Ejolt. 2015. "The Trafigura Case". Accessible from: <http://www.ejolt.org/wordpress/wp-content/uploads/2015/08/FS-45.pdf>
- EU. 2001. "Panel Report - Measures Affecting Asbestos and Asbestos-Containing Products" WT/DS135/R.
- Freytag, Nils. 2016. "Nature and Environment". European History Online. Accessible from: <http://ieg-ego.eu/en/threads/backgrounds/nature-and-environment>
- Frigalment Importing Co. v. B.N.S. International Sales Corp, f. supp. 116 (s.d.n.y. 1960).
- Frozen fish case. 2003. Accessible from: <https://cisgw3.law.pace.edu/cases/030227a3.html#cd>
- Gardiner, Richard. 2008. Treaty Interpretation. Oxford: Oxford University Press 298.
- Garmestani, Ahjond. 2019. "Untapped capacity for resilience in environmental law". PNAS. Accessible from: <https://www.pnas.org/content/116/40/19899>
- Geneva Pharmaceuticals Tech Corp v Barr Labs Inc., Federal District Court New York, USA, 10 May 2002 (CLOUT Case No 579).
- Godfrey, Luke. 2012. "How has Nature Been Conceptualised in Modernity?". E-International Relations. Accessible from: <https://www.e-ir.info/2012/12/04/how-has-nature-been-conceptualised-in-modernity/>
- ICJ. "Case concerning Gabcykovo-Nagymaros project (Hungary/Silovakia)". Accessible from: <https://www.icj-cij.org/public/files/case-related/92/7377.pdf>
- ICJ. 2009. "Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)". Accessible from: <https://www.icj-cij.org/en/case/133>
- ILA. 2010. The Hague Conference. "Legal Principles Relating to Climate Change". Accessible from: <https://ila.vettoreweb.com/storage/download.aspx?dbstorageid=1257&storagefileguid=9d76d2d3-94fa-4f95-88b4-4b73e24ca361>
- ILC. 2011. 'Report on the Work of its Sixty-Third Session'. Accessible from: <https://legal.un.org/ilc/reports/2011/>
- Kasky v Nike, Inc. 27 Cal. 4th 939 (2002).
- Kee & Hachem & Schwenzer. 2012. Global Sales and Contract Law. OUP Oxford.
- Kluft, David. 2017. "Food Advertising and Compelled Commercial Speech" . Case Test. Accessible from: [https://casetext.com/analysis/food-advertising-and-compelled-commercial-speech-in-2017-1?resultsNav=false&PHONE\\_NUMBER\\_GROUP=P&sort=relevance&q=](https://casetext.com/analysis/food-advertising-and-compelled-commercial-speech-in-2017-1?resultsNav=false&PHONE_NUMBER_GROUP=P&sort=relevance&q=)
- Knox, J.H. "Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment". UN Doc A/HRC/25/53.
- Kocher, E. 2008. "Codes of Conduct and Framework Agreements on Social minimum Standards. Private regulations?" In O. Dilling, M. Herberg and G. Winter ed., Responsible Business. Self-Governance and Law in Transnational Economic, Oxford and Portland Oregon: Hart 2008.

Kröll & Mistelis & Viscasillas. 2011. UN Convention on Contracts for the International Sale of Goods (CISG): Commentary. Hart Publishing.

Kruisinga, Sonja. 2009. "Rechtbank Rotterdam", European Journal of Commercial Contract Law". Accessible from: <http://cisgw3.law.pace.edu/cases/081015n2.html>

Makane Moïse Mbengue Susanna Waltman. 2015. "Farmland Investment and Water Rights". Accessible from: <https://www.iisd.org/system/files/publications/farmland-investments-water-rights-legal-regimes-at-stake.pdf>

Mann, Francis. 1983. "Uniform Statutes in English Law". Law Quarterly Review 94.

Nikolakis, William & John, Lijo & Krishnan, Harish. 2018. "How Blockchain Can Shape Sustainable Global Value Chains: An Evidence, Verifiability, and Enforceability (EVE) Framework". Sustainability, 10(11) 2-7.

OECD WATCH. 2004. "The OECD Guidelines for Multinational Enterprises and Supply Chain Responsibility -- A Discussion Paper". Accessible from: [http://www.corporate-accountability.org/eng/documents/2004/oecd\\_guidelines\\_and\\_supply\\_chain\\_responsibility.pdf](http://www.corporate-accountability.org/eng/documents/2004/oecd_guidelines_and_supply_chain_responsibility.pdf)

Organic barley case. 2002. Accessible from: <https://www.cisg.law.pace.edu/cisg/wais/db/cases2/021113g1.html#cd>

Poikela. 2003. "Quality of the goods". In Conformity of Goods in the 1980 United Nations: Convention of Contracts for the International Sale of Goods. Nordic Journal of Commercial Law.

Poncibò, C. 2017. "The Law and Practice of International Sale Contracts: Protecting the environment for future generations". In UNCITRAL Conference Papers

Poncibò, Cristina. 2017. "The Law and Practice of International Sale Contracts: Protecting the environment for future generations". Accessible from: [https://www.uncitral.org/pdf/english/congress/Papers\\_for\\_Congress/78-PONCIBO-The\\_Law\\_and\\_Practice\\_of\\_International\\_Sale\\_Contracts.pdf](https://www.uncitral.org/pdf/english/congress/Papers_for_Congress/78-PONCIBO-The_Law_and_Practice_of_International_Sale_Contracts.pdf)

Poncibo, Cristina. 2017. "The Law and Practice of International Sale Contracts: Protecting the environment for future generations". Unicitral Conference. Accessible from: [https://www.uncitral.org/pdf/english/congress/Papers\\_for\\_Congress/78-PONCIBO-The\\_Law\\_and\\_Practice\\_of\\_International\\_Sale\\_Contracts.pdf](https://www.uncitral.org/pdf/english/congress/Papers_for_Congress/78-PONCIBO-The_Law_and_Practice_of_International_Sale_Contracts.pdf)

Rio Declaration on Environment and Development, June 13, 1992, reprinted in 31 ILM 876 (1992).

Roth, M & Happ, R. "Interpretation of the CISG According to Principles of International Law "International Trade and Business Law Annual", Vol, IV (1999),1-5.

Roth, M. & Happ, R. 1997. "Interpretation of Uniform Law Instruments According to Principles of International Law". Uniform Law Review 2:10.

Saidov. 2013. Article 35 of the CISG: Reflecting on the Present and Thinking About the Future. In Villanova Law Review. Accessible from: <https://digitalcommons.law.villanova.edu/vlr/vol58/iss4/5/>

Sara Hourani. "Cross Border Smart Contracts". Accessible from: [https://www.uncitral.org/pdf/english/congress/Papers\\_for\\_Programme/11-HOURANI-Cross-Border\\_Smart\\_Contracts.pdf](https://www.uncitral.org/pdf/english/congress/Papers_for_Programme/11-HOURANI-Cross-Border_Smart_Contracts.pdf)

Schwenzer & Leisinger. 2007. Ethical Values and International Sales Contracts. Accessible from: <https://cisgw3.law.pace.edu/cisg/biblio/schwenzer-leisinger.html>

Schwenzer, Ingeborg & Leisinger, Benjamin. "Ethical Values and International Sales Contracts". Accessible from: <http://cisgw3.law.pace.edu/cisg/biblio/schwenzer-leisinger.html#iii>

Schwenzer. 2017. Principles by the United Nations to drive businesses towards ethical and an environmental conscious behaviour<sup>125</sup>.

Statute of the International Court of Justice, Art. 38(1)(b).

Statute of the International Court of Justice, Art. 38(1).

StuDocu. "Ethical Dilemma in Ok Tedi Case". Accessible from: <https://www.studocu.com/en-us/document/johnson-wales-university/professional-ethics/assignments/ok-tedi-case-study-this-is-a-mandatory-assignment-for-the-subject-of-ethics-csr-law-you-can/1875843/view>

UN. 2020. "UNCITRAL Texts and Covid-19 Response and Recovery". United Nations Commission on International Trade Law. Accessible from: <https://uncitral.un.org/>

United Nations Global Compact. "The ten principles of UN Global Compact" Accessible from: <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-7>

Vandenbergh. 2007. "The New Wal-Mart Effect: The Role of Private Contracting in Global Governance", *UCLA Law Review*, 54(4) 913-970.

Visser, E. "Gaps in the CISG: In General and with Specific Emphasis on the Interpretation of the Remedial Provisions of the Convention in the Light of the General Principles of the CISG". Available at: <https://www.cisg.law.pace.edu/cisg/biblio/visser.html>

Wilson, S. 2015. "Ethical Standards In International Sales Contracts: Can The Cisg Be Used To Prevent Child Labour?" Victoria University of Wellington. Accessible from: <https://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/4622/thesis.pdf?sequence=2>



© 2021 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution (CC BY) license (<http://creativecommons.org/licenses/by/4.0/>).