

The Convention on the Contracts for the International Sale of Goods (CISG) and the Sustainable Supply Chain: Towards Ethical and Social Standards

Abstract

The Convention on the Contracts for the International Sale of Goods (1980) (CISG) has been praised as the greatest legislative achievement in the field of international private law due to its significant ratifications (currently by 98 States), and has also been cited and used widely in several judgments and arbitral awards. However, it has been 37 years since the CISG came into force, and the new century has witnessed more complex issues than the simple act of selling and buying. The question is whether the CISG continues to adapt to the emergence of new trends in the 21st century, especially as ethical and social problems related to human rights and environmental sustainability receive increasing attention. This at first sight seems to have no relevance to the area that CISG governs. Having said that, ethical and social standards can potentially affect several aspects of the sale contracts, particularly the conformity of goods regarding the social and ethical quality and purpose, and whether the CISG remedies regarding the violation of the contract due to the social and ethical standards are applicable. Given the increasing emphasis on sustainable global supply chains as a key trend in recent years, sales contracts in these chains that are governed by the CISG and that involve environmental, social, and human rights considerations throughout the production process require renewed scrutiny. In this context, assessing whether the CISG can be interpreted in light of social and ethical standards becomes increasingly important for re-evaluating its relevance and impact in this new era.

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KEYWORDS: CISG; sustainable supply chain; ethical goods conformity; contract remedies

1 | Overview of the Relationships between the Sustainable Supply Chain and the CISG

1.1. The Social and Ethical Standards as Part of the Sustainable Supply Chain

The accountability of supply chain agents for social responsibility initiatives has been widely recognized, which demands that supply chain management focus more on sustainable development. Sustainable supply chains encompass not only environmental performance, but also social and ethical expectations that protect workers and communities across the value chain. Two foundational international frameworks, the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Business Conduct, articulate the corporate responsibility to respect human rights and to conduct risk-based due diligence that spans the enterprise's operations and its business relationships.^[1] These frameworks have become reference points for both regulators and private governance in global supply chains.

Regulatory developments have reinforced the salience of social and ethical standards along supply chains. However, it can be observed that the codification of business ethics has been largely concentrated in Western jurisdictions, whereas other regions tend to rely more on soft-law instruments or customary practices. The EU Corporate Sustainability Due Diligence Directive, in force since 25 July 2024, requires covered companies to identify, prevent, mitigate, and account for adverse human rights

¹ Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (New York and Geneva: United Nations, 2011). https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf. [accessed: 14.8.2025]; Organisation for Economic Co-operation and Development, *OECD Due Diligence Guidance for Responsible Business Conduct* (Paris: OECD Publishing, 2018), <https://mneguidelines.oecd.org/due-diligence-guidance-for-responsible-business-conduct.htm>. [accessed: 14.8.2025].

and environmental impacts throughout their global value chains.^[2] Germany's Supply Chain Due Diligence Act likewise extends defined due diligence obligations to direct and indirect suppliers.^[3] In the United States, the Uyghur Forced Labor Prevention Act creates a rebuttable presumption that goods linked to Xinjiang involve forced labour and are therefore barred from import unless the importer produces clear and convincing evidence to the contrary. This regime effectively pushes traceability and documentation obligations upstream.^[4]

Alongside these legislations, private governance translates social and ethical expectations into operational standards. Multi-stakeholder and certification schemes, such as SA8000 for workplace and labour conditions and ISO 20400 on sustainable procurement provide auditable or process-oriented criteria, for example, the prohibition of child or forced labour, health and safety management, grievance mechanisms, procurement integration, transparency, and accountability.^[5] These instruments increasingly function as procurement baselines and are frequently incorporated into sourcing, tendering, and supplier management processes.

The academic and managerial literature converges on three enablers of ethical supply chains, namely transparency, traceability, and collaboration, as firm-level capabilities that mitigate risk and deliver competitive advantage through innovation and market positioning.^[6] Conversely, ethical

² European Union, Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence, Official Journal of the European Union, 25 July 2024. <https://eur-lex.europa.eu/eli/dir/2024/1760/oj/eng>. [accessed: 14.8.2025].

³ German Federal Ministry of Labour and Social Affairs, Act on Corporate Due Diligence Obligations in Supply Chains (LkSG). overview page. <https://www.bmas.de/EN/Home/home.html>. [accessed: 14.8.2025].

⁴ United States, Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, 135 Stat. 1525 (2021), § 3(b)(2). <https://www.congress.gov/117/plaws/publ78/PLAW-117publ78.pdf>.

⁵ Social Accountability International, SA8000 Standard, 2014. <https://sa-intl.org/programs/sa8000/>. [accessed: 14.8.2025]; International Organization for Standardization, *ISO 20400:2017 Sustainable Procurement Guidance* (Geneva: ISO, 2017). <https://www.iso.org/standard/63026.html>. [accessed: 14.8.2025].

⁶ Oluwafunmilayo Esan, Funmilayo Aribidesi Ajayi, Olufunke Olawale, "Supply Chain Integrating Sustainability and Ethics: Strategies for Modern Supply Chain Management" *World Journal of Advanced Research and Reviews*, No. 1 (2024): 1930-1953. <https://doi.org/10.30574/wjarr.2024.22.1.1259>; Janine M. Pierce, Donna M. Velliaris, "Sustainable Supply Chains: Ethical Challenges and Actions for Best Practice," [in:] *Emerging Applications in Supply Chains for Sustainable Business Development*, ed. M.

lapses trigger reputational harm, consumer backlash, and regulatory exposure. Monitoring and auditing also remain challenging in jurisdictions with weaker institutional frameworks.^[7]

Partnerships and certification networks support ethical and transparent supply chains by disseminating norms and creating credible signals, such as buyer codes of conduct, industry consortia, and third-party certification ecosystems. This literature highlights collaborative architectures between firms, civil society, and standard setters as practical vehicles for implementing and verifying ethical performance.^[8]

Mechanically, social and ethical standards travel through the chain via five channels. First, contractual incorporation of codes and standards. Second, representations and warranties concerning responsible sourcing. Third, cascading obligations that bind sub-suppliers. Fourth, traceability and documentation duties that evidence origin and conditions. Fifth, audits and monitoring together with grievance and remedy processes. The OECD Guidance expressly contemplates these leverage strategies as part of proportionate, risk-based due diligence, and procurement standards such as ISO 20400 reinforce integration into purchasing practice.^[9] In the field of management, the ISO standards are frequently seen as governance benchmarks for ethics, compliance, and social responsibility inside supply chains.

Taken together, these public and private regimes increasingly crystallise social and ethical expectations into the commercial substance of cross-border transactions. When such expectations are framed as attributes of goods or as process-based assurances that are essential to the bargain, they can shape the parties' legitimate expectations in downstream sales contracts, which sets up the later analysis of conformity and remedies under the CISG that will be further discussed.

Vijaya Kumar, Goran D. Putnik, K. Jayakrishna, V. Madhusudanan Pillai, Leonilde Varela (Hershey, PA: IGI Global, 2019), 115-129.

⁷ Mariia Sandul, "Social and Ethical Aspects of Global Supply Chains: Risks and Opportunities" *Scientific Bulletin of Uzhhorod National University. Series: International Economic Relations and World Economy*, No. 48 (2023): 61-64.

⁸ Pierce, Velliariis, "Sustainable Supply Chains," 115-129.

⁹ OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*; International Organization for Standardization, *ISO 20400:2017 Sustainable Procurement – Guidance*.

1.2. Social and Ethical Standards in the Contract Law Field

Contracts traditionally seem to have no relevance to maintaining and promoting ethical and social quality. However, with the focus on development initiatives in the new century, it has become more common for businesses to include social and ethical requirements in their contracts.^[10] Menscher argues that business ethics extends beyond legal requirements, and trust and honesty are foundational to contractual relationships that should be designed into both the bargain and its performance architecture, including disclosure duties, candour in negotiations, and cooperation in performance.^[11] In international sales, ethical standards can enter CISG-governed contracts through specific stipulations, through usages of trade, and through the Convention's interpretive and conformity provisions. The doctrinal gateways are Articles 8 and 9 on intent, practices, and usages, together with Article 35 on conformity by description, specification, or particular purpose. When supplier codes, certification schemes, and process-based assurances are incorporated in this way, failures may amount to nonconformity and can trigger the CISG's remedies. The literature underscores that the Convention is sufficiently flexible to address such ethical concerns when the parties have juridified them in their agreement.^[12]

The absence of motivation to establish a hard policy for entrepreneurs enables a good-faith, practical mechanism for ethical conduct in relationship contexts. Data from the construction sector suggests that explicit terms regarding good faith and collaboration can help mitigate ongoing integrity issues and enhance professional ethical standards, without replacing them. In the context of cross-border sales, well-defined good faith clauses, accompanied by audit rights, obligations for rectification and remediation, and responsible departure strategies, can enhance performance while upholding ethical standards.^[13] Recent practice also indicates

¹⁰ Katerina Mitkidis, "Sustainability Clauses in International Supply Chain Contracts: Regulation, Enforceability and Effects of Ethical Requirements" *Nordic Journal of Commercial Law*, No. 1 (2014).

¹¹ Barbara Mescher, "Business Ethics and the Law of Contract" *Journal of Law and Financial Management*, No. 2 (2009): 8-12.

¹² Ingeborg Schwenzer, "Ethical Standards in CISG Contracts" *Uniform Law Review*, No. 1 (2017): 122-131.

¹³ Jim Mason, "Delivering Ethical Improvement through Contractual Good Faith," [in:] *Ethics for the Built Environment*, ed. Peter Fewings (Abingdon-New York: Routledge, 2008), 281-290.

a growing incorporation of ethical clauses in commercial contracts, including in French contracting, even though cultural and implementation challenges remain. This supports the view that existing private law techniques can operationalise ethical expectations across sectors and jurisdictions.^[14]

1.3. The Relationship between the Supply Chain Contract and the CISG

The relationship between supply chain contracts and the CISG is considered complex and evolving. The CISG governs international sales contracts, yet, since the mid-1990s, its practical applicability appears to have declined as trade has reorganised around supply chains rather than one-off spot sales. One explanation is structural. Modern supply networks are built on layered agreements, such as framework procurement, manufacturing and quality agreements, logistics and vendor managed inventory arrangements, codes of conduct, and audit or traceability protocols that regulate performance beyond a single delivery. A recent study argues that this diffusion of supply chain contracting helps to explain the downward trend in case law applying the CISG.^[15]

From a functional perspective, supply chain contracts operate as coordination mechanisms that align incentives among parties and optimise system performance. Classic instruments include revenue sharing, buy-backs, rebates, and option contracts. The literature treats these devices as tools to induce effort, allocate risk, and move decentralised channels toward near first-best outcomes.^[16] At the same time, contracts structure inter-organisational relationships by regulating partner behaviour and allocating tasks, timing, and information, so they serve as governance devices within the chain.^[17] Properly designed, such contracts do not displace

¹⁴ A. Duflo, “Ethical Clauses in French Commercial Contracts,” *Courier of the Kutafin Moscow State Law University (MSAL)*, No. 1 (2022): 72-78.

¹⁵ Eriko Taoka, “Policy Proposals for the Formulation of International Uniform Sales Law Based on a Supply Chain Sales Model” *Impact*, No. 2 (2025): 42-43.

¹⁶ Charles X. Wang, “A General Framework of Supply Chain Contract Models” *Supply Chain Management: An International Journal*, No. 5 (2002): 302-310.

¹⁷ Dorsaf Zouari, Karine Evrard-Samuel, “Toward a Relational Structuring within the Supply Chain: The Contract as a Coordination Mechanism” *Logistique & Management*, No. 2 (2013): 7-18.

the CISG. They can complement it. INCOTERMS rules, for example, work in tandem with the Convention on delivery and risk allocation, and thereby strengthen the legal framework for international sales.^[18]

Scope remains a matter of transaction type. Many upstream documents, such as framework agreements, supplier codes, or audit protocols, are not themselves sales and therefore fall outside the CISG. By contrast, call off purchase orders or individual supply contracts placed under a framework are sales and ordinarily fall within the CISG unless the parties exclude it. Mixed contracts are filtered by Article 3. Contracts for goods to be manufactured or produced are treated as sales unless the buyer supplies a substantial part of the materials, and contracts in which the preponderant part of the seller's obligations is services fall outside the Convention. Authoritative commentary elaborates these boundaries.^[19] Because the CISG primarily addresses obligations of performance between seller and buyer at the sales node, a growing share of supply relationships will lie beyond its reach, which in turn elevates the importance of well-drafted coordination contracts to manage complex international trade.^[20]

In practice, parties should separate the framework or coordination layer from the sales layer, decide expressly whether the CISG applies to the sales layer, and cascade the obligations that matter into the sales contracts. Those obligations can include technical quality, ethical and social standards, documentation and traceability, and audit rights. Once incorporated, they can be analysed as conformity and remedy questions under the Convention, while the broader coordination architecture continues to govern the relationship outside it.

¹⁸ Juana Coetzee, "The Interplay between Incoterms and the CISG" *Journal of Law and Commerce*, No. 1 (2013): 1-22.

¹⁹ United Nations, United Nations Convention on Contracts for the International Sale of Goods (1980), arts. 1, 3, 6; CISG Advisory Council, Opinion No. 4: Contracts for the Sale of Goods to Be Manufactured or Produced and Mixed Contracts (Article 3 CISG) (2004); Secretariat Commentary on the 1978 Draft Convention on Contracts for the International Sale of Goods, Commentary to article 3.

²⁰ Taoka, "Policy Proposals for the Formulation of International Uniform Sales Law," 42-43.

1.4. The Relationship between the Sustainable Supply Chain and the International Sale of Goods Contract

Coming into a more specific contract law field, particularly international sales contracts, the relationship between sustainable supply chains and the international sale of goods contract is both doctrinally intricate and institutionally evolving. The CISG supplies a uniform regime for cross-border sales, but its remedial architecture operates *inter partes* and does not itself give workers, communities, or other third parties standing to enforce sustainability undertakings embedded in buyer and seller agreements.^[21] As a result, private contracts have become crucial tools for implementing transnational sustainability standards along global value chains. They complement public regulation and allocate compliance risks across supplier tiers.^[22] Sustainability contractual clauses, including supplier codes, traceability and audit obligations, no forced labour warranties, and ecolabel or specification requirements, aim to close regulatory gaps and shield firms from reputational, regulatory, and supply disruption risks associated with unethical supplier conduct, although enforceability can falter where clauses are aspirational, indeterminate, or lack verification and remedy scaffolding.^[23]

Within the framework of CISG, the most important question is whether sustainability aspirations have become sales requirements at the sales node. With the growing initiatives of companies to comply with corporate social

²¹ United Nations, *United Nations Convention on Contracts for the International Sale of Goods (CISG)*, opened for signature April 11, 1980, 1489 U.N.T.S. 3 (entered into force January 1, 1988), arts. 1, 3, 4, 6, 7, 8, 9, 25, 35, 38-39, 49, 50, 74-77. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf.

²² Fabrizio Cafaggi, "Regulation through Contracts: Supply-Chain Contracting and Sustainability Standards," *European Review of Contract Law*, No. 3 (2016): 218-258. <https://doi.org/10.1515/ercl-2016-0013>.

²³ Katerina Peterkova Mitkidis, "Sustainability Clauses in International Supply Chain Contracts: Regulation, Enforceability and Effects of Ethical Requirements" *Nordic Journal of Commercial Law*, No. 1 (2014). <https://journals.aau.dk/index.php/NJCL/article/view/2888>. [accessed: 14.8.2025]; Priscila Pereira de Andrade, "The Limited Contribution of the United Nations Convention on Contracts for the International Sale of Goods to the Application of Biofuel «Sustainability Clauses»" *Canadian Yearbook of International Law/Annuaire Canadien de Droit International*, 53 (2016): 119-143.

responsibility and to adapt to sustainability awareness, they may opt to adhere to international standards and codes, or even draft their own code of conduct.^[24] For example, many companies, including big suppliers such as Nike^[25] and Walmart,^[26] publish the Supplier Code of Conduct on their website, stipulating that the suppliers' working conditions are safe and hygienic, child labour is not used, and standards to protect the environment are complied with.^[27] And, since international sales contracts are one of the important instruments in the supply chain process, they play an important role in implementing those standards.^[28] In fact, codes of conduct do not appear as the main text of the international sale contracts or are negotiated by the parties.^[29] They can potentially be a part of a sales contract if the parties referred to them in the contracting documents or on their websites. However, to what extent the sustainability standards are integrated as part of the binding obligations for the buyers and the sellers in a sale contract governed by CISG depends on how these standards are incorporated, including expressed terms in the contract or implied terms through practices. If sustainability attributes are written as descriptions or specifications or are linked to a specific objective that the seller knows about, not following them may be considered a lack of conformance under Article 35. Trade usages and established practices can turn private standards into legally binding obligations. Documentary performance may be necessary for delivery to include certifications, audit summaries, and chain of custody data. If they are missing or incorrect, a conformity claim can be made, and the CISG remedy suite can be opened.^[30]

Strategically, evidence suggests that firm-level internationalisation, green innovation, and sustainable supply chain management are significantly associated and complement each other. This reinforces the business

²⁴ Fabrizio Cafaggi, "Regulation through Contracts: Supply-Chain Contracting and Sustainability Standards," 220.

²⁵ Nike Facility Code of Conduct. <https://about.nike.com/en/resources/nike-supplier-code-of-conduct>. [accessed: 10.8.2025].

²⁶ Walmart: Our Code of Conduct. https://www.walmartethics.com/content/walmartethics/en_us/code-of-conduct.html. [accessed: 10.8.2025].

²⁷ Bin Jiang, "Implementing Supplier Codes of Conduct in Global Supply Chains: Process Explanations from Theoretic and Empirical Perspectives" *Journal of Business Ethics*, No. 1 (2009): 77.

²⁸ Cafaggi, "Regulation through Contracts: Supply-Chain Contracting and Sustainability Standards."

²⁹ Schwenzer, Muñoz, "Sustainability in Global Supply Chains Under the CISG."

³⁰ Cafaggi, "Regulation through Contracts," 218-258.

case for drafting sustainability clauses that are CISG operable.^[31] As sustainability awareness rises in lead markets, importers are increasingly compelled to ensure supplier compliance with sustainability regulations and private standards. In this environment, the contractual tool is not only helpful, but indispensable for the international trade of sustainable products.^[32]

1.5. The Need for the CISG to Govern Ethical and Social Standards

Despite the growing trends of integrating social standards into policies for the sustainability goals analysed, the CISG does not contain any norms or instructions on how the sustainability goals and social standards can be integrated into the sale of goods contract. This is understandable since the CISG was drafted in the 1970s, and at that time, international ethical rules and sustainable policies were not mainstream among lawyers and traders.^[33] There are both doctrinal and practical reasons to read the CISG in a way that accommodates ethical and social standards in international sales contracts. Doctrinally, this interpretation advances the Convention's aims of uniformity, predictability, and the protection of legitimate expectations in cross-border trade. Practically, buyers increasingly bargain for environmental, social, and governance attributes as contracted qualities of goods, and consumers in lead markets reward products that comply with sustainability expectations. Placing these expectations outside the CISG risks fragmented outcomes across domestic systems and undermines the Convention's international character.^[34]

³¹ Najam Akber Anjum, Zubair Ali Shahid, Muhammad Shujaat Mubarik, and Ummad Mazhar, "Role of Green Innovation and Sustainable Supply Chain Management in Firm Internationalization" *Review of International Business and Strategy*, No. 2 (2024): 292-310.

³² Cafaggi, "Regulation through Contracts," 218-258; Mitkidis, "Sustainability Clauses in International Supply Chain Contracts"; De Andrade, "La contribution limitée de la Convention," 119-143.

³³ Ingeborg Schwenzer, Edgardo Muñoz, "Sustainability in Global Supply Chains Under the CISG" *European Journal of Law Reform*, No. 3 (2021): 309.

³⁴ United Nations, United Nations Convention on Contracts for the International Sale of Goods (CISG), opened for signature 11 April 1980, 1489 U.N.T.S. 3 (entered into force 1 January 1988), arts. 4, 7(1), 7(2), 8, 9, 35, 74. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf.

Recent papers converge on the same conclusion that the CISG can host ethical and social standards when parties juridify them. Schwenger argues that the Convention is flexible enough to accommodate ethical expectations that are included through specific stipulations or that arise from usages of trade.^[35] Wilson examines how the Convention's rules on conformity and damages can be deployed to address child labour risks, provided that the expectation is written into the contract and supported by evidence.^[36] Zatorski contends that sustainable development may be treated as an internationally recognised trade standard that can inform analysis under Article 35 when assessing what goods ordinarily conform to or what specifications are reasonably assumed.^[37] Lee analyzes goods whose market value is linked to compliance with environmental, social, and governance criteria and suggests that a failure to meet such criteria can amount to nonconformity under the Convention.^[38] Taken together, this literature indicates that the CISG can and should address ethical and social standards in international sales contracts, which reflects the growing demand for ethically produced goods in lead markets.

To preserve uniformity and prevent overreach, a clear guardrail test is appropriate. An ethical or social standard should fall within CISG conformity where it is expressly incorporated or demonstrably a usage of trade, where it is stated in objective and verifiable terms, where it is material to the bargain or to the commercial identity of the goods, and where the contract supplies documentary pathways and a graduated remedy structure that includes cure or replacement, price reduction, damages, and avoidance for fundamental breach. When these conditions are met, noncompliance is nonconformity and the Convention's remedies apply. Where they are not, claims should be channelled to domestic law or treated as collateral representations with limited consequences under the Convention.^[39] The details

³⁵ Schwenger, "Ethical Standards in CISG Contracts," 122-131.

³⁶ Simon Wilson, "Ethical Standards in International Sales Contracts: Can the CISG Be Used to Prevent Child Labour?" Master's thesis, Victoria University of Wellington, 2015.

³⁷ Daniel Zatorski, "Sustainable Development as a New Trade Usage in International Sale of Goods Contracts," [in:] *Law and Development: Balancing Principles and Values*, ed. Piotr Szwed, Richard Peltz-Steele, Dai Tamada (Singapore: Springer, 2019), 227-241.

³⁸ Byung Mun Lee, "ESG and Emotional Non-conformity of Goods in Contracts for International Sale of Goods" *Journal of Korea Trade*, No. 1 (2024): 149-164.

³⁹ Schwenger, "Ethical Standards in CISG Contracts," 122-131; Wilson, "Ethical Standards in International Sales Contracts."

on how the CISG can be interpreted under social and ethical terms shall be discussed further.

2 | Interpretations of the CISG under Social and Ethical Standards in International Supply Chain Contracts

2.1. The Potential of Incorporating Social and Ethical Standards through CISG Interpretation under Article 7

It is necessary to first examine whether Article 7 of the CISG, which is the “gap-filling” provision, can be the key to assess whether the CISG can be the potential bridge to enable “an interpretative path that allows the achievement of public policy goals through private means” by incorporating the social and ethical standards implicitly.^[40] Article 7 of the CISG stated that the Convention shall be interpreted to promote uniformity in its application and the observance of good faith in international trade.^[41] It has been observed that many courts cited this Article in solving cases to make contemporary moral or ethical considerations,^[42] however this is more like a private perspective. Taking into consideration social and ethical standards and sustainable policies, it indeed serves a public purpose in addition to a private objective.^[43] For example, unsustainable practices, such as corruption, environmental destruction, and human rights violations during the supply chain process, which are matters that public policy and legislation must address, can impact the conformity level of final goods in the sale of goods contract.^[44] The CISG, unfortunately, remains silent on

⁴⁰ Nevena Jevremovic, “Unified Law in a Fragmented World: CISG and Conformity in Global Production” *Journal of Law & Commerce*, No. 229 (2025): 249.

⁴¹ Article 7(1), The Convention on the International Sale of Goods 1980 (CISG).

⁴² Ben Kohler, “For an Independent Development of the CISG Beyond Article 7 (2): A Stocktake and a Proposal,” [in:] *Balkan Yearbook of European and International Law 2020* (Springer, 2021).

⁴³ Jevremovic, “Unified Law in a Fragmented World: CISG and Conformity in Global Production.”

⁴⁴ Schwenzer, Muñoz, “Sustainability in Global Supply Chains Under the CISG.”

the extent to which Article 7 can be interpreted to allow the achievement of public policy goals.

Several debates have been made about whether public international law could be invoked to affect the private aspect of sales through the interpretation methods of Article 7. Some scholars argued that Article 7(1) is understood to reinforce the purposes mentioned in the Preamble, including the development of international trade and the removal of legal barriers.^[45] Particularly, the Vienna Convention on the Law of Treaties (1969) mentioned that in the interpretation of conventions, the preparatory work of the treaty and the circumstances of its conclusion can be supplementary means; thus, the Preamble can be one source.^[46] Consequently, in the application of the CISG, it not only extends to the concept of international sale contracts, but also serves the purpose of providing international trade with a viable body of rules for the effective governance of international sales contracts.^[47] Public law has indeed been considered in the interpretation of the CISG, as reflected in the famous New Zealand Mussels case of the German court.^[48] The German court, in solving the case, must interpret whether the “conformity” requirements of goods that the seller must meet in Article 35 CISG should be affected by the public law standards of the seller or buyer in a sale contract. While this case elicited criticism concerning the extent of legal certainty available to buyers and sellers,^[49] as considered from multiple angles, it underscored that the demarcation between private sales law and broader public regulatory frameworks is less distinct than often presumed.

Other viewpoints argue that the Preamble is a mere statement between Contracting States, thus it should bear no supplement on the interpretation of the CISG’s provisions.^[50] Indeed, the Preamble was included in the CISG

⁴⁵ Maren Heidemann, “Object and Purpose as Interpretation Tool in International Commercial Law Conventions: How to Make the ‘Top Down Approach’ Work,” [in:] *The Future of the Commercial Contract in Scholarship and Law Reform* (Springer, 2018).

⁴⁶ Article 32, The Vienna Convention on the Law of Treaties 1969.

⁴⁷ Kohler, “For an Independent Development of the CISG Beyond Article 7 (2): A Stocktake and a Proposal.”

⁴⁸ New Zealand Mussels Case (Bundesgerichtshof (German Supreme Court) 8 March 1995). <https://cisg-online.org/search-for-cases?caseId=6122>.

⁴⁹ Meredith P. Jones, “Whose Mussels Carry the Burden?: Public Law Standard Conformity under the CISG” *Florida Journal of International Law*, No. 3 (2016): 353.

⁵⁰ Kohler, “For an Independent Development of the CISG Beyond Article 7 (2): A Stocktake and a Proposal.”

at a very late stage without substantial discussion, consequently, its relevance for interpreting the CISG is in doubt.^[51] Moreover, neither the CISG does not act as a standalone jurisdiction nor does it have any explanations for the end-users to interpret it autonomously, allowing a wide interpretation that can lead to the “homeward trend” where the interpretation can be influenced by national or regional tradition.^[52]

Any viewpoint has merit, however, the viewpoint that principles outside of the CISG, including public standards or provisions, can be referred to in the interpretation of the CISG, in an appropriate case, if necessary, in compliance with Article 7, is more influenced by the authors’ perspective. Since the sale of goods across borders is not always merely governed by private international law, it can result in some aspects being governed by public requirements, such as pollution or personal injury.^[53] Especially in an international sale contract involved in several stages of the global supply chain process, the sustainable policy regarding goods can act as an implied part of a sale contract. As Mazzacano stated, “focusing on the private aspect, such as the substantive rules within the CISG that govern international sale of goods transactions, without regard for the public law component would neglect an important, complex and symbiotic interplay between these two bodies of law”.^[54]

⁵¹ John Honnold, Harry M. Flechtner, *Honnold’s Uniform Law for International Sales under the 1980 United Nations Convention*, 5th ed. (Alphen aan den Rijn: Kluwer Law International, 2021).

⁵² Kohler, “For an Independent Development of the CISG Beyond Article 7 (2): A Stocktake and a Proposal.”

⁵³ Peter Mazzacano, “Public International Law vs. Private International Law: Competing or Complimentary Intersectionalities in the CISG?,” [in:] *Public International Law and Private International Law: Charting a Blurry Boundary – Towards Convergence or Still Divergence?* (Springer Nature, 2022).

⁵⁴ Mazzacano, “Public International Law vs. Private International Law: Competing or Complimentary Intersectionalities in the CISG?”.

2.2. The Application of the Sustainable Standards Included in the Code of Conduct

2.2.1. Sustainability Standards are Expressed in the Contract through Standard Terms

In a sales contract, the buyer may indicate the code of conduct or any sustainability standards in the acceptance made to the seller, in other words, the code of conduct is made and known during the formation of the contract between the parties. This code of conduct can potentially set the requirements for the quality of goods that the seller shall conform to. And the intention to be bound by those standards shall be governed by Article 8 of the CISG concerning the rule of interpretation. Article 8(1) of the CISG states that any statements made by and other conduct of 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. Thus, if the parties are well aware of the existence of the ethical or sustainable standards included in the Code of Conduct, through the expressed statement or annex of the contract, then it shall become part of the contract and can potentially be a vital part to determine the obligations of the parties with the conformity of goods or breach of the contract.

Those mentioned are considered the ideal situation. In fact, the sustainability terms are not always expressed in the offer, acceptance, or in parts of the contract. With the development of technologies and media today, the code of conduct is mostly posted on the suppliers' websites, available in different languages, taking Nike,^[55] Walmart,^[56] Hershey,^[57] and Unilever's Codes of Conduct^[58] as examples. Thus, the question is whether those terms contained on the websites can be part of the sale of goods contract,^[59] although they can be considered as expressed terms. The CISG does not

⁵⁵ "Nike Facility Code of Conduct."

⁵⁶ "Walmart: Our Code of Conduct."

⁵⁷ Ethics and Compliance. https://www.thehersheycompany.com/en_us/home/sustainability/sustainability-issues/ethics-and-compliance.html. [accessed: 10.8.2025].

⁵⁸ Unilever Code of Business Principles and Code Policies. <https://www.unilever.com/files/92ui5egz/production/a7ad961ef886a578ab4dd316b4e5195cbc0965a0.pdf>. [accessed: 10.8.2025].

⁵⁹ Schwenzer and Muñoz, "Sustainability in Global Supply Chains Under the CISG."

provide any requirements or instructions on how the Code of Conduct is to be considered when referred to by the parties in the offer and formation of the contract.

Taking into consideration the CISG Advisory Council Opinion No. 13, it states that standard terms are included in the contract if the parties have expressly agreed to the inclusion at the time of the formation of the contract, and the other parties had a reasonable opportunity to take notice of the terms.^[60] This Opinion can be relevant in this case, since the Codes of Conduct may include terms that are quite similar to the standard terms. Consequently, there are several ways that the Codes of Conduct, via the internet, can be incorporated into a sales contract, such as an offer or contract clause providing a hyperlink to the websites containing the Code of Conduct.^[61]

To meet the condition of “reasonable opportunity” for other parties to take notice of the terms, the hyperlink or the attachment of the codes shall be made noticeable to the sellers. Another problem is that those codes of conduct are quite long, with various terms, approximately 30-50 pages, which creates difficulties for the supplier to decide which ones shall be incorporated in the contract. Accordingly, to avoid any arising disputes, the interested parties should address specific terms to be incorporated into the contract.^[62] The provisions on the codes of conduct can be divided into mandatory and quasi-mandatory provisions. The application of each type should be assessed on a case-by-case basis. However, provisions that directly impact the quality of goods in a sales contract, such as public law standards regulating the supply chain in the production of goods, should be treated as mandatory, and sellers must comply with these obligations. Noteworthy, the languages of the codes of conduct should also be the languages that the supplier could reasonably be expected to understand.^[63]

⁶⁰ “CISG Advisory Council Opinion No.13: Inclusion of Standard Terms under the CISG,” 20 January 2013. <https://cisgac.com/opinions/cisgac-opinion-no-13/>.

⁶¹ Schwenger, Muñoz, “Sustainability in Global Supply Chains Under the CISG.”

⁶² Ingeborg Schwenger, Benjamin Leisinger, “Ethical Values and International Sales Contracts,” [in:] *Commercial Law Challenges in the 21st Century: JanHeller in Memoriam* (Uppsala: Iustus Forlag, 2008).

⁶³ Schwenger, Muñoz, “Sustainability in Global Supply Chains Under the CISG.”

2.2.2. Sustainability Standards are Implied through Practices

Although not being expressed, the code of conduct can potentially be incorporated in the parties' contract under Article 9(2) CISG, which regulates that the parties are bound by any usage to which they have agreed and by any practices which they have established between themselves. It can be understood from this Article that, in a situation where the code of conduct is known to the parties through past sales, it may meet the standard of evidence to be incorporated into a present contractual relationship.^[64]

Article 9(2) of the CISG also mentions that the parties are considered to have implicitly made applicable to their contract a usage of which the parties knew or ought to have known and which in international trade is widely known. Whether the implied code of conduct can amount to trade usage to apply Article 9(2) may depend on the types of codes. To meet the requirement of being "known or ought to be known" by the parties, standards in the codes of conduct must be widely applied by large companies and bear international characteristics similar to the Incoterms. Some standards are established by international organisations, such as the ISO,^[65] with a variety of codes in a wide range of areas concerning human rights, child labour, and other labour standards that can be considered applicable in this case.^[66] However, the application of implied ethical standards through codes of conduct in sales contracts can be challenging, as each court may have different viewpoints on whether the codes are sufficiently known to the parties, and the interpretation of Article 9(2) of the CISG may depend on case-by-case analysis.

⁶⁴ Ibidem.

⁶⁵ "ISO: Global Standards for Trusted Goods and Services," <https://www.iso.org/home.html>. [accessed: 11.8.2025].

⁶⁶ Schwenzer, Muñoz, "Sustainability in Global Supply Chains Under the CISG."

2.3. The Conformity of Goods under Article 35 CISG and Liability Scope

2.3.1. The Conformity of Goods under Article 35 CISG

Under Article 35(1) of the CISG, the seller is required to deliver goods that are of the quantity, quality, and description required by the contract. This Article does not specifically mention whether the seller must conform to the ethical standards in the process of producing, packaging, and shipping the goods to know whether they are liable for any remedies relevant to ethical defects accordingly. However, the spirit of Article 35(1) is more likely to deal with “express” conformity obligations, which correspond to the descriptions in the contractual agreements between parties.^[67] Thus, the goods are considered conforming not when they meet subjective standards, but rather when they meet the requirements that the parties made in their contract. This notion of interpretation is supported to promote the uniform and autonomous interpretations of the CISG. Wherefore, in the contract that the buyer made clear about the requirements for the goods to conform to their codes of conduct, obviously, the ethical and sustainability standards included in the codes are factors to consider whether the supplier complies with their obligations. How the codes can be considered expressed in the sale contracts between parties has been mentioned above, involving the analysis of Articles 7, 8, and 9 regarding the rules of interpretation.

Besides the expressed terms, the seller is bound to implied contractual agreements regarding good conformity. A leading case of an Austrian court in 2023 ruled that, regardless of contractual provisions, international business customs must be presented as the minimum standard of quality.^[68] However, although CISG recognises these implicit behaviours, as Luca states, “it is first and foremost important to underline that they have a limited scope”.^[69] Particularly, in cases where the parties have no prior agreement, the goods must be fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, as set out in Article 35(2). The question raised is to what extent

⁶⁷ Villy de Luca, “The Conformity of the Goods to the Contract in International Sales,” *Pace International Law Review*, No. 1 (2015): 22.

⁶⁸ Oberster Gerichtshof 2 Ob 48/02a (Austrian Court, 27 February 2003). https://cisg-online.org/files/cases/6722/abstractsFile/794_89814552.pdf.

⁶⁹ Luca, “The Conformity of the Goods to the Contract in International Sales.”

the standards in the codes or ethical terms can be understood as “made known” to the seller to be seen as part of the contract.

There are several viewpoints on this aspect. One viewpoint is that the New Zealand Mussels Case should be revisited. This case assessed the scope of the seller’s obligations under Article 35(2), and, indeed, the Court ruled that it is unreasonable for the seller to know the public law requirements in the buyer’s place of business.^[70] Thus, considering the standards and sustainability terms, as abovementioned, there are many levels for codes of conduct, including codes that bear national scopes, such as the British Retail Consortium, providing standards for retail businesses in the United Kingdom.^[71] This leads to the same discussion relevant to the Mussels Case, which is when the supplier is from another country, whether they should know and comply with the BRC standards that the buyer subscribed to if it is not noticed in the first place. Following the ruling in the Mussels Case, it can be understood that ethical and sustainability terms are hard to become conformity requirements if they are not notified by the interested parties in the first place, since it is considered “unreasonable” for the other parties to know about such rules. However, from the authors’ viewpoint, with the rising needs for sustainable protection, especially the emergence of human rights and ethical standards into the supply chain, the interpretation of Article 35(2) should be more open for adaptation.^[72]

Indeed, another viewpoint, which is reflected through the CISG Advisory Council Opinion No. 19, agreed with a broad interpretation of the quality of goods under Article 35.^[73] The Opinion has expanded the scope of conformity assessment of goods, encompassing compliance with standards that govern the use of goods, such as public law regulations and industry codes.^[74] To prevent differences in interpretation, the Opinion also noted the limited scope within which the implied standards under Article 35(2) need to be interpreted in the context surrounding the contract.^[75] For example, if the mandatory application were the standard, which is incorporated

⁷⁰ *New Zealand Mussels Case.*

⁷¹ “BRC: About Us,” <https://brc.org.uk/about-us/#>. [accessed: 8.12.2025].

⁷² Jevremovic, “Unified Law in a Fragmented World: CISG and Conformity in Global Production.”

⁷³ “CISG Advisory Council Opinion No 19.” <https://cisgac.com/opinions/cisgac-opinion-no-19/>. [accessed: 12.8.2025].

⁷⁴ “CISG Advisory Council Opinion No 19.”

⁷⁵ “CISG Advisory Council Opinion No 19.”

into a national regulatory framework, which directly affects the use of goods in a given market, then such compliance should be expected.^[76]

Having said that, CISG does not have a standalone jurisdiction, thus, one of the main goals of CISG is to achieve uniformity in its application. The CISG Advisory Council serves this purpose by giving guidance, primarily to legislators, implementing the CISG, or acts that might in turn have any impact on the application of the CISG.^[77] For this purpose, the Advisory Opinion in fact does not have a legally binding effect, and the courts or arbitral tribunals can decide whether to refer to the Opinion when deciding a case governed by the CISG. Although it possesses and encourages States to interpret the CISG in certain ways, the only authority that is truly binding on a court is the prior decision of a superior court in its jurisdiction on the same issue.^[78] Thus, the outcome on whether the courts or arbitral tribunals recognise the incorporation of ethical terms and standards under Article 35(2) depends on the courts' reception.^[79] Accordingly, whether ethical values can be considered as the conformity requirements for the liability side is still in doubt.

In the authors' view, it can be observed that the contract can be a legal link for global supply chains because contracts are also legal instruments, thus, the commitments and performance standards they contain are binding, even in the absence of binding legislation.^[80] And since human rights, especially the rights of labor in the supply chains, as well as the prevention of the abuse of human rights, and many sustainable standards, the viewpoint following the Advisory Opinion No.19 should be taken into consideration to adapt to the new developments in international trade, especially the rise of the supply chain governance to meet the ethical and social standards. Since the sales contract is embedded in the global supply chain process potentially relates to the entire production process.^[81]

⁷⁶ "CISG Advisory Council Opinion No 19."

⁷⁷ Ingeborg Schwenzer, *The CISG Advisory Council Opinions*, vol. XXIII (The Hague: Eleven International Publishing, 2017).

⁷⁸ Joshua D.H. Karton, Lorraine de Germiny, "Has the CISG Advisory Council Come of Age?" *Berkeley Journal of International Law*, No. 2 (2009): 475.

⁷⁹ Karton, Germiny, "Has the CISG Advisory Council Come of Age?"

⁸⁰ "RCP Policy Brief What the EU Corporate Sustainability Due Diligence Directive Says About Contracts," https://media.business-humanrights.org/media/documents/RCP_Policy_Brief_CSDDDContracts_July_8_final.pdf. [accessed: 13.8.2025].

⁸¹ Fabrizio Cafaggi, "Sales in Global Supply Chains: A New Architecture of the International Sales Law," [in:] *Unity and Diversity in the Law of the (International) Sale of Goods* (Cheltenham: Edward Elgar, 2019).

For instance, the CO₂ requirements associated with carbon programmes may require coordination among contracts and contractual performances to minimize carbon emissions along the entire chain.^[82]

2.3.2. Liabilities for Breach of Contract under the Conformity Obligations

Regarding liabilities concerning the non-conformity of goods, parties may resort to usual remedies, including specific performance, avoidance of the contract, price reduction, or a damage claim.^[83] However, these possible remedies also raise the question of how to apply them in connection with the non-conformity resulting from violations of ethical standards.^[84] Since the violations of ethical and sustainability standards are non-physical, such as goods that are a result of the supply chain of illegal labor usage or failing to comply with the sustainable standards. This creates difficulties in the process of examining non-conforming goods and notifying the other parties about such defects.

If the parties express to incorporate the standard terms into their contract for liabilities for non-conforming goods, Articles 38 and 39 of CISG state that the buyer must first notify the seller of the defaults. Taking the ethical and sustainable standards into consideration, the violations of ethical and sustainable standards normally result in the process in which the goods are manufactured,^[85] accordingly, the examination of the non-conformity can be challenging. Moreover, the extent of damage is difficult to ascertain and quantify, as ethical and sustainability violations within production chains often manifest in abstract or theoretical forms. The assessment of whether the non-conformity of goods contributes to a fundamental breach in Article 25 can also be detrimental to considering the remedies. These problems have not yet been solved with any instructions on interpreting the CISG.

Taking into consideration the supply chain process, it is a series of business transactions starting with raw materials and ending with the sale of

⁸² Cafaggi, “Sales in Global Supply Chains: A New Architecture of the International Sales Law.”

⁸³ Articles 46, 77, CISG.

⁸⁴ Schwenger, Leisinger, “Ethical Values and International Sales Contracts.”

⁸⁵ Ingeborg Schwenger, “Ethical Standards in CISG Contracts.”

a finished product.^[86] Therefore, for the production of finished goods, there is significant involvement of parties in both upstream and downstream parts. The fact is that detection of non-conforming goods may give rise to potential liability on the part of multiple stakeholders, rather than solely implicating the seller.^[87] From the recognition to the evaluation of whether the non-conformity constitutes a minor or fundamental breach, the effect the defaults impose on the entire chain should be considered, instead of only focusing on the traditional standards, such as quality or quantity. In the context of a sales contract, buyers often acquire goods for further distribution within the market. Accordingly, when assessing defects concerning liability, it is necessary to consider not only the immediate non-conformity, but also any consequential losses arising therefrom. Such losses may include, for example, the buyer's inability to resell the goods in question, to utilise a particular raw material in production, or the exposure to legal claims initiated by downstream customers.^[88]

3 | The Suggestions of Interpretations of the CISG in Relation to the Social and Ethical Standards in International Supply Chain Contracts

As abovementioned, CISG does not create a self-standing jurisdiction.^[89] Opening the scope of interpretation can be an opportunity for CISG to govern a shift in the contract's paradigm, which focuses more on the ethical and sustainable developments rather than merely private notions. Yet it creates the challenge that if the scope of interpreting the CISG can not be determined, it can lead to the diversity of application, or the "homeward

⁸⁶ Vibe Ulfbeck et al., *Law and Responsible Supply Chain Management Contract and Tort Interplay and Overlap* (London: Routledge, 2019).

⁸⁷ Cafaggi, "Sales in Global Supply Chains: A New Architecture of the International Sales Law."

⁸⁸ Florian Mohs, "Enforcing Compliance with Ethical Standards in the Supply Chain: Contractual Remedies under the CISG" *Vindobona Journal of International Commercial Law and Arbitration*, No. 1 (2018): 64.

⁸⁹ Jan M. Smits, "Problems of Uniform Laws," [in:] *International Sales Law: A Global Challenge* (Cambridge: Cambridge University Press, 2014).

trends” which detrimentally affect its goal from the outset. From the analytical viewpoint abovementioned on the notions of the sale contract that might potentially affect the application and interpretation of CISG, it can be seen that the incorporation of social and ethical standards into contracts governed by the CISG is still vague and the discussion has thus far remained at a theoretical level, without any definitive references regarding the method of application.

To prevent the diversity and unpredictability in the interpretation of the CISG, the extension must be well considered. By resorting to codes of conduct or other public law regarding the sustainable supply chains to evaluate the social and ethical impact on the quality of goods and liabilities of parties in the sale contract, it can be considered as a gap-filling system for the external gap in the CISG. Filling external gaps means trying to cover the areas of law intentionally not covered by an instrument.^[90] CISG is one of the instruments that is considered owing to longevity and usefulness through its gap-filling mechanism, particularly through Article 7, which “keeps the Convention sufficiently flexible to accommodate the new needs and circumstances of international trade by providing adequate normative solutions.”^[91] However, instead of resorting to national law, especially with the developments of several legislations regarding the supply chain process for sustainable developments in the EU or the US analysed in the previous part, this gap-filling without a clear determination of the scope can potentially lead to harmful trends. These difficulties can be most effectively overcome by recourse to established mechanisms, particularly Advisory Opinions or scholarly articles, which not only facilitate, but also actively safeguard the uniform interpretation and application of the Convention across jurisdictions.^[92]

Moreover, closely aligning with the purpose of the CISG from the outset is to promote uniformity in application, which reduces the difficulties in international trade and lowers the transaction costs for the parties involved in the international sales contract.^[93] And, since sales contracts are a vital part of the global supply chain, the interpretation of the CISG

⁹⁰ Ulrich Magnus, “Interpretation and Gap-Filling in the CISG and in the CESL” *Journal of International Trade Law and Policy*, No. 3 (2012): 275.

⁹¹ Marko Jovanović, “Forever Young: The Gap-Filling Mechanism of the CISG As a Factor of Its Modernization,” [in:] *Balkan Yearbook of European and International Law* 2020 (Springer Nature, 2020).

⁹² Ibidem.

⁹³ Preamble, CISG.

should not be assessed merely by private contractual notions. From a supply chain perspective, to avoid an overly expansive interpretation and the incorporation of social and ethical considerations into contracts for the sale of goods, limitations may be established by distinguishing between ordinary sales contracts and sales contracts arising from supply chains, thereby determining the conformity of goods and the parties' liabilities in the event of a breach. As Cafaggi suggested, one of the solutions is to have distinct legal regimes for isolated sales and sales embedded in supply chains,^[94] and only the latter can go beyond the incorporation of social and ethical standards. This suggestion indeed might need to be discussed further, but still worth looking at.

4 | Conclusion

Sustainable supply chains now embed social and ethical expectations, alongside environmental performance. Public frameworks have mainstreamed risk-based due diligence, transparency, and traceability across corporate groups and supplier tiers, while regulatory regimes and import controls push documentation and verification obligations upstream. Private governance translates these expectations into auditable practice through codes, certification schemes, and procurement standards, and firms build the capabilities of transparency, traceability, and collaboration to manage risk and capture advantage. In contract law, ethics is part of contract design and performance. Normative grounding comes from Integrative Social Contracts Theory, which recognises local commercial norms bounded by universal hypernorms, and sector practice shows that expressing good faith clauses can uplift behaviour.

As a long-standing instrument, the CISG must adapt to new commercial trends of incorporating ethical and sustainable standards through its gap-filling mechanism in Article 7. Especially when the international sale contracts act as the instrument for the operation of a global supply chain. The discussion on how this uniform law extends by emerging social and ethical values in Codes of Conduct into the parties' sales contract, as

⁹⁴ Cafaggi, "Sales in Global Supply Chains: A New Architecture of the International Sales Law."

well as the conformity of goods under Article 35, is still diverse. With the confirmation from CISG Advisory No. 19 that conformity of goods can be interpreted beyond traditional and physical quality, it can be seen that the interpretation of the CISG can potentially go beyond the private sales aspect, especially on the liabilities of parties in violating social and sustainable standards in the process of manufacturing the goods. However, to prevent being a double-edged sword, the gap-filling mechanism in interpreting the ethical and sustainable standards, especially in sales contracts embedded in the supply chain process, should be well considered to avoid any unpredictability and divergence in application.

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