



## **Derecho Internacional Privado y Desarrollo Sostenible: Perspectivas Globales y Latinoamericanas**

**Editoras:**

**Verónica Ruiz Abou-Nigm y María Mercedes Albornoz**





## **HACIA UN DERECHO INTERNACIONAL PRIVADO COMPROMETIDO CON LA MATERIALIZACIÓN DE SOLUCIONES “GLOCALES”**

**Verónica Ruiz Abou-Nigm, María Mercedes Albornoz**

## **SOSTENIBILIDAD Y DERECHO INTERNACIONAL PRIVADO**

**Ralf Michaels, Samuel Zeh**

## **DERECHO INTERNACIONAL PRIVADO Y DERECHO INTERNACIONAL AMBIENTAL EN AMÉRICA LATINA: UN FUTURO INELUDIBLE**

**Sebastián Paredes**

## **BUILDING SUSTAINABILITY INTO AGRICULTURAL SUPPLY CHAINS: WHAT ROLE FOR PRIVATE INTERNATIONAL LAW?**

**Jeannette M.E. Tramhel**

## **RETOS DEL DERECHO INTERNACIONAL PRIVADO FRENTE AL ODS 5 DE LA AGENDA 2030**

**Candela Noelia Villegas**

## **MIGRACIONES INTERNACIONALES Y DERECHO INTERNACIONAL PRIVADO: SU ENFOQUE DESDE EL DESARROLLO SOSTENIBLE EN LATINOAMÉRICA**

**Valesca Raizer, Inez Lopes**

## **ACCESS TO JUSTICE (SDG 16): THE ROLE OF THE HAGUE CONVENTIONS ON PRIVATE INTERNATIONAL LAW**

**Hans van Loon**

## **ACCESS TO REMEDY FOR VICTIMS OF CORPORATE HUMAN RIGHTS ABUSE: CIVIL LIABILITY LITIGATION IN EUROPE, ENFORCEMENT IN LATIN AMERICA**

**Mathilde Brackx**

Direito.UnB. Revista de Direito da Universidade de Brasília.

Programa de Pós-Graduação em Direito – Vol. 7 N. 3, T. I, Edição Especial (set./dez.2023) –Brasília, DF: Universidade de Brasília, Faculdade de Direito.

Quadrimestral. 2023.

ISSN 2357-8009 (VERSÃO ONLINE)

ISSN 2318-9908 (VERSÃO IMPRESSA)

Multilíngue (Português/Inglês/Espanhol/Francês)

1. Direito – periódicos. I. Universidade de Brasília,  
Faculdade de Direito.

CDU 340



**Revista de Direito da Universidade de Brasília**  
**University of Brasilia Law Journal**

Revista vinculada ao Programa de Pós-graduação  
em Direito da Universidade de Brasília

Setembro – Dezembro de 2023, volume 7, número 3, Tomo I, Edição Especial

---

**CORPO EDITORIAL**

**EDITORA-CHEFE**

Universidade de Brasília, Faculdade de Direito, Brasil – Inez Lopes Matos Carneiro de Farias

**EDITORES**

Universidade de Brasília, Faculdade de Direito, Brasil – Daniela Marques de Moraes

Universidade de Brasília, Faculdade de Direito, Brasil – Evandro Piza Duarte

Universidade de Brasília, Faculdade de Direito, Brasil – Fabiano Hartmann Peixoto

Universidade de Brasília, Faculdade de Direito, Brasil – Gabriela Garcia Batista Lima Moraes

Universidade de Brasília, Faculdade de Direito, Brasil – Janaína Lima Penalva da Silva

Universidade de Brasília, Faculdade de Direito, Brasil – Marcelo da Costa Pinto Neves

Universidade de Brasília, Faculdade de Direito, Brasil – Othon de Azevedo Lopes

Universidade de Brasília, Faculdade de Direito, Brasil – Simone Rodrigues Pinto

**CONSELHO CIENTÍFICO**

Universität Bielefeld, Alemanha – Ifons Bora

Universidade Federal do Rio Grande do Norte, Brasil – Ana Beatriz Ferreira Rebello Presgrave

Universidade Federal do Rio de Janeiro, Brasil – Ana Lúcia Sabadell

Universidade de Connecticut, Estados Unidos – Ángel Oquendo

Universidade de Glasgow, Escócia – Emiliós Christodoulidis

Universidade Federal de Goiás, Brasil – Francisco Mata Machado Tavares

Universität Flensburg – Hauke Brunkhorst

University of Luxembourg, Luxemburgo – Johan van der Walt

Universidade Agostinho Neto, Angola – José Octávio Serra Van-Dúnem

University of Glasgow – Johan van der Walt

Universidade de Helsinque – Finlândia Kimmo Nuotio

Universidade do Vale do Rio dos Sinos, Brasil – Leonel Severo Rocha

Universidade Federal de Santa Catarina, Brasil – Maria Leonor Paes Cavalcanti Ferreira

Universidade Meiji, Japão – Masayuski Murayama

Universidade Clássica de Lisboa, Portugal – Miguel Nogueira de Brito

Universidade Federal do Piauí, Brasil – Nelson Juliano Cardoso Matos

Universidade Federal do Pará, Brasil – Paulo Weyl  
Universidade Católica de Santos, Brasil – Olavo Bittencourt Neto  
Universidad de Los Andes, Colômbia – René Fernando Urueña Hernandez  
Universidade Federal de Uberlândia, Brasil – Thiago Paluma  
Universidade Johann Wolfgang Goethe, Alemanha – Thomas Vesting  
Universidade Federal do Espírito Santo, Brasil – Valesca Raizer Borges Moschen  
Universidade de São Paulo, Brasil – Virgílio Afonso da Silva

### **SECRETÁRIA EXECUTIVA**

Universidade de Brasília, Faculdade de Direito, Brasil – Ida Geovanna Medeiros da Costa

### **EQUIPE DE REVISÃO**

Universidade de Brasília, Faculdade de Direito, Brasil – Cleomara Elena Nímia S. Moura  
Universidade de Brasília, Faculdade de Direito, Brasil – Ida Geovanna Medeiros da Costa  
Universidade de Brasília, Faculdade de Direito, Brasil – Ingrid Kammyla Santos Bernardo  
Universidade de Brasília, Faculdade de Direito, Brasil – Lívia Cristina dos Anjos Barros  
Universidade de Brasília, Faculdade de Direito, Brasil – Luciana Pereira da Silva  
Universidade de Brasília, Faculdade de Direito, Brasil – Marcos Heleno Lopes Oliveira

### **EQUIPE DE EDITORAÇÃO**

Universidade de Brasília, Faculdade de Direito, Brasil – Ida Geovanna Medeiros da Costa  
Universidade de Brasília, Faculdade de Direito, Brasil – Ingrid Kammyla Santos Bernardo  
Universidade de Brasília, Faculdade de Direito, Brasil – Lívia Cristina dos Anjos Barros

### **DIAGRAMAÇÃO**

Universidade de Brasília, Faculdade de Direito, Brasil – Cleomara Elena Nímia S. Moura  
Universidade de Brasília, Faculdade de Direito, Brasil – Inez Lopes Matos C. Farias  
Universidade de Brasília, Faculdade de Direito, Brasil – Ingrid Kammyla Santos Bernardo  
Universidade de Brasília, Faculdade de Direito, Brasil – Marcos Heleno Lopes Oliveira

### **ASSISTENTES**

Universidade de Brasília, Faculdade de Direito, Brasil – Kelly Martins Bezerra

### **CAPA**

Universidade de Brasília, Faculdade de Direito, Brasil – Inez Lopes Matos Carneiro de Farias

### **IMAGEM**

Imagem de Manfred Loell por Pixabay, disponível em <https://pixabay.com/pt/illustrations/globo-vidro-arvores-meio-ambiente-8145439/>



# DIREITO.UnB

*Revista de Direito da Universidade de Brasília*  
*University of Brasilia Journal Law*

**V. 07, N. 03, Tomo I, Edição Especial**

Setembro-Dezembro, 2023

## SUMÁRIO

NOTA EDITORIAL	11
Inez Lopes	
AGRADECIMENTOS	19
Inez Lopes	
PREFÁCIO	23
HACIA UN DERECHO INTERNACIONAL PRIVADO COMPROMETIDO CON LA MATERIALIZACIÓN DE SOLUCIONES “GLOCALES”	23
Verónica Ruiz Abou-Nigm, María Mercedes Albornoz	
<b>DOSSIÊ TEMÁTICO</b>	<b>37</b>
SOSTENIBILIDAD Y DERECHO INTERNACIONAL PRIVADO	37
Ralf Michaels Samuel Zeh	
DERECHO INTERNACIONAL PRIVADO Y DERECHO INTERNACIONAL AMBIENTAL EN AMÉRICA LATINA: UN FUTURO INELUDIBLE	69
Sebastián Paredes	
BUILDING SUSTAINABILITY INTO AGRICULTURAL SUPPLY CHAINS: WHAT ROLE FOR PRIVATE INTERNATIONAL LAW?	101
Jeannette M.E. Tramhel	



RETOS DEL DERECHO INTERNACIONAL PRIVADO FRENTE AL ODS 5  
DE LA AGENDA 2030 137

Candela Noelia Villegas

MIGRACIONES INTERNACIONALES Y DERECHO INTERNACIONAL  
PRIVADO: SU ENFOQUE DESDE EL DESARROLLO SOSTENIBLE EN  
LATINOAMÉRICA 167

Valesca Raizer

Inez Lopes

ACCESS TO JUSTICE (SDG 16): THE ROLE OF THE HAGUE  
CONVENTIONS ON PRIVATE INTERNATIONAL LAW 201

Hans van Loon

ACCESS TO REMEDY FOR VICTIMS OF CORPORATE HUMAN RIGHTS  
ABUSE: CIVIL LIABILITY LITIGATION IN EUROPE, ENFORCEMENT IN  
LATIN AMERICA 227

Mathilde Brackx

# **NOTA EDITORIAL**

## NOTA EDITORIAL

A **Revista Direito.UnB** do Programa de Pós-graduação em Direito (PPGD) apresenta seu número especial com o dossiê temático “**Derecho internacional privado y desarrollo sostenible: perspectivas globales y latinoamericanas**”, organizado por Verónica Ruiz Abou-Nigm, professora Catedrática de Derecho Internacional Privado da Universidad de Edimburgo (Escocia, Reino Unido) e María Mercedes Albornoz, professora Investigadora Titular do Centro de Investigación y Docencia Económicas (CIDE, México).

Esta Edição Especial apresenta artigos sobre as pesquisas do dossiê temático, expostas nas *Jornadas da Associação de Direito Internacional Privado (ASADIP)* durante a XV Conferência realizada em Assunção, no Paraguai, em outubro de 2022<sup>1</sup>. Nessa conferência surgiu a ideia de organizar um dossiê temático na Revista Direito.UnB, visando publicar os trabalhos apresentados e divulgar as contribuições do direito internacional privado para o desenvolvimento sustentável a partir de perspectivas globais e latino-americanas.

Essa ideia foi inspirada nos trabalhos realizados em 2021, com o lançamento do livro intitulado **The Private Side of Transforming our World – UN Sustainable Development Goals 2030 and the Role of Private International Law**, editado por Ralf Michaels, Verónica Ruiz Abou-Nigm e Hans van Loon, cujo projeto foi coordenado por Samuel Zeh. Esta obra, de forma inovadora, desvendou a importância do direito internacional privado para a realização da Agenda 2030 para uma boa governança dos 17 objetivos de desenvolvimento sustentável (ODS) e de suas 169 Metas a serem alcançadas. Os organizadores trouxeram à baila uma equívoca “marginalização” do direito internacional privado, afirmando que:

---

1 Ver ASADIP. <https://www.asadip.org/v2/?p=6806>.

There is a near-complete absence of any reference to the role of private, including commercial, law, and the role it plays via private international law in our global economy and emerging world society. This is a significant gap. Most transactions, most investments, most destruction of our environment, happen not through public but through private action, and are governed not exclusively by public law but also, perhaps predominantly, by private law. Private law, therefore, has an important role to play in the quest for sustainability, and this is increasingly being recognised. What remains under the radar, so far, is private international law<sup>2</sup>.

Como resultado do projeto, todos os autores envolvidos convergiram para três pontos essenciais na interligação entre o direito internacional privado e o desenvolvimento sustentável. O primeiro ponto demonstra “o direito internacional privado tem um papel a desempenhar na realização da Agenda 2030”. O segundo aponta para “a subutilização, ou mesmo o desrespeito do direito internacional privado na estrutura de governança dos ODS”. Além disso, os autores “lamentam o ponto cego no que diz respeito à função do direito privado e do direito internacional privado nos instrumentos globais relevantes para os ODS”. Por fim, o terceiro ponto diz respeito à convicção de muitos autores “de que existe uma necessidade urgente de o direito internacional privado se tornar (muito) mais consciente e empenhado na realização dos ODS e, para esse fim, reorientar-se para estes objetivos e, se necessário, conceitualizar-se”<sup>3</sup>.

A partir desses estudos, a proposta desta edição especial é demonstrar a importância do direito internacional privado sob as lentes de pesquisadores globais e latino-americanos. Este número apresenta o prefácio “**Hacia un derecho internacional privado comprometido con la materialización de soluciones “glocales”**”, de autoria das professoras Verónica Ruiz Abou-Nigm y María Mercedes Albornoz. Além disso, agradeceram a edição com a organização e revisão dos sete artigos submetidos à **Revista Direito.UnB**, conectados ao eixo Derecho internacional privado y desarrollo sostenible.

O desenvolvimento sustentável pressupõe o acesso aos bens e serviços, sem comprometer os mesmos direitos às gerações futuras, promovendo um diálogo entre o direito internacional público e o direito internacional privado. Desse modo, “para que o direito internacional privado se comprometa com os objetivos globais da Agenda 2030 da

2 MICHAELS, Ralf; RUIZ ABOU-NIGM, Verónica; VAN LOON, Hans (eds.). **The Private Side of Transforming our World - UN Sustainable Development Goals 2030 and the Role of Private International Law**. Cambridge: Intersentia, 2021, <https://www.intersentiaonline.com/library/the-private-side-of-transforming-our-world-un-sustainable-development-goals-2030-and-the-role-of-p.9>.

3 MICHAELS, Ralf; RUIZ ABOU-NIGM, Verónica; VAN LOON, Hans (eds.). **The Private Side of Transforming our World - UN Sustainable Development Goals 2030 and the Role of Private International Law**. Cambridge: Intersentia, 2021, <https://www.intersentiaonline.com/library/the-private-side-of-transforming-our-world-un-sustainable-development-goals-2030-and-the-role-of-p.15>.



ONU, é necessário mais do que mapear as metodologias e técnicas existentes”<sup>4</sup>.

Por fim, na fase de editoração da Revista.Direito.UnB recebemos a triste notícia do falecimento da jovem pesquisadora Mathilde Brackx. Gostaríamos de registrar neste editorial a valiosa contribuição de seu artigo intitulado “Access to Remedy for Victims of Corporate Human Rights Abuse: Civil Liability Litigation in Europe, Enforcement in Latin America” (In memoriam Mathilde Brackx - 22/10/1998 - 10/10/2023). Descanse em paz! O legado da autora continuará a ressoar eternamente nas páginas deste periódico.

Boa leitura!

Inez Lopes

**Editora-chefe**

**Revista Direito.UnB**

---

4 MICHAELS, Ralf; RUIZ ABOU-NIGM, Verónica; VAN LOON, Hans (eds.). **The Private Side of Transforming our World - UN Sustainable Development Goals 2030 and the Role of Private International Law**. Cambridge: Intersentia, 2021, <https://www.intersentiaonline.com/library/the-private-side-of-transforming-our-world-un-sustainable-development-goals-2030-and-the-role-of-p.p.27>.

## NOTA EDITORIAL

La Revista Direito.UnB del Programa de Postgrado en Derecho (PPGD) presenta su número especial con el dossier temático **“Derecho internacional privado y desarrollo sostenible: perspectivas globales y latinoamericanas”**, editado por Verónica Ruiz Abou-Nigm, Profesora Titular de Derecho Internacional Privado de la Universidad de Edimburgo (Escocia, Reino Unido) y María Mercedes Albornoz, Profesora Investigadora Titular del Centro de Investigación y Docencia Económicas (CIDE, México).

Este Número Especial presenta artículos sobre las investigaciones del dossier temático, que fueron presentados en la Conferencia de la Asociación de Derecho Internacional Privado (ASADIP) durante las XV Jornadas celebradas en Asunción, Paraguay, en octubre de 2022<sup>1</sup>. De esta conferencia surgió la idea de organizar un dossier temático en la Revista Direito.UnB, con el objetivo de publicar los trabajos presentados y difundir las aportaciones del Derecho internacional privado al desarrollo sostenible desde perspectivas “glocales” y latinoamericanas.

Esta idea se inspiró en el trabajo realizado en 2021, con el lanzamiento del libro titulado **The Private Side of Transforming our World - UN Sustainable Development Goals 2030 and the Role of Private International Law**, editado por Ralf Michaels, Verónica Ruiz Abou-Nigm y Hans van Loon, cuyo proyecto fue coordinado por Samuel Zeh. Este innovador trabajo desvela la importancia del Derecho internacional privado para la realización de la Agenda 2030 para la buena gobernanza de los 17 Objetivos de Desarrollo Sostenible (ODS) y sus 169 metas a alcanzar. Los organizadores sacaron a la luz la idea errónea de que el Derecho internacional privado ha sido “marginado”, afirmando que:

---

1 Véase ASADIP. <https://www.asadip.org/v2/?p=6806>.

There is a near-complete absence of any reference to the role of private, including commercial, law, and the role it plays via private international law in our global economy and emerging world society. This is a significant gap. Most transactions, most investments, most destruction of our environment, happen not through public but through private action, and are governed not exclusively by public law but also, perhaps predominantly, by private law. Private law, therefore, has an important role to play in the quest for sustainability, and this is increasingly being recognised. What remains under the radar, so far, is private international law<sup>2</sup>.

Como resultado del proyecto, todos los autores participantes convergieron en tres puntos esenciales en la interconexión entre el derecho internacional privado y el desarrollo sostenible. El primer punto demuestra que “el derecho internacional privado tiene un papel que desempeñar en la realización de la Agenda 2030”. El segundo señala “la infrautilización, o incluso el desprecio del derecho internacional privado en el marco de gobernanza de los ODS. Además, los autores “lamentan el punto ciego en cuanto al papel del Derecho privado y del Derecho internacional privado en los instrumentos globales relevantes para los ODS”. Por último, el tercer punto se refiere a la convicción de muchos autores “de que existe una necesidad urgente de que el Derecho internacional privado sea (mucho) más consciente y se comprometa más con la consecución de los ODS y, para ello, se reoriente hacia estos objetivos y, si es necesario, se conceptualice a sí mismo”<sup>3</sup>.

Basándose en estos estudios, el propósito de este número especial es demostrar la importancia del Derecho internacional privado a través de la lente de investigadores mundiales y latinoamericanos. Este número cuenta con el prólogo “**Hacia un derecho internacional privado comprometido con la materialización de soluciones locales**”, escrito por las profesoras Verónica Ruiz Abou-Nigm y María Mercedes Albornoz. También colaboraron en la organización y revisión de los siete artículos presentados a la revista *Direito.UnB*, relacionados con el eje de derecho internacional privado y desarrollo sostenible.

El desarrollo sostenible presupone el acceso a bienes y servicios sin comprometer los mismos derechos para las generaciones futuras, promoviendo un diálogo entre el Derecho internacional público y el Derecho internacional privado. Así, “para que el Derecho internacional privado se comprometa con los objetivos globales de la Agenda 2030 de la

<sup>2</sup> MICHAELS, Ralf; RUIZ ABOU-NIGM, Verónica; VAN LOON, Hans (eds.). **The Private Side of Transforming our World - UN Sustainable Development Goals 2030 and the Role of Private International Law**. Cambridge: Intersentia, 2021, <https://www.intersentiaonline.com/library/the-private-side-of-transforming-our-world-un-sustainable-development-goals-2030-and-the-role-of-p.9>.

<sup>3</sup> MICHAELS, Ralf; RUIZ ABOU-NIGM, Verónica; VAN LOON, Hans (eds.). **The Private Side of Transforming our World - UN Sustainable Development Goals 2030 and the Role of Private International Law**. Cambridge: Intersentia, 2021, <https://www.intersentiaonline.com/library/the-private-side-of-transforming-our-world-un-sustainable-development-goals-2030-and-the-role-of-p.15>.

ONU, es necesario hacer algo más que mapear las metodologías y técnicas existentes”<sup>4</sup>.

Por último, durante la fase editorial de Revista.Direito.UnB, recibimos la triste noticia del fallecimiento de la joven investigadora Mathilde Brackx. Queremos dejar constancia en este editorial de su valiosa contribución en su artículo titulado “Access to Remedy for Victims of Corporate Human Rights Abuse: Civil Liability Litigation in Europe, Enforcement in Latin America” (In memoriam Mathilde Brackx (22/10/1998 - 10/10/2023). ¡Descansa en paz! Tu legado seguirá resonando para siempre en las páginas de esta revista.

¡Buena lectura!

Inez Lopes

**Jefa de Redacción**

**Revista Direito.UnB**

---

4 MICHAELS, Ralf; RUIZ ABOU-NIGM, Verónica; VAN LOON, Hans (eds.). **The Private Side of Transforming our World - UN Sustainable Development Goals 2030 and the Role of Private International Law**. Cambridge: Intersentia, 2021, <https://www.intersentiaonline.com/library/the-private-side-of-transforming-our-world-un-sustainable-development-goals-2030-and-the-role-of-p.p.27>.





Gostaria de submeter seu trabalho a **Revista Direito.UnB?**  
Visite <https://periodicos.unb.br/index.php/revistadedireitounb>  
e saiba mais sobre as nossas Diretrizes para Autores.

# AGRADECIMIENTOS

## **AGRADECIMENTOS**

A Revista Direito.UnB do Programa de Pós-graduação em Direito (PPGD) agradece às organizadoras desta edição especial, Verónica Ruiz Abou-Nigm, Professora Catedrática de Direito Internacional Privado da Universidade de Edimburgo (Escócia, Reino Unido), e María Mercedes Albornoz, Professora Investigadora Titular do Centro de Investigación y Docencia Económicas (CIDE, México), pelo tema “Direito internacional privado e desenvolvimento sustentável: perspectivas globais e latino-americanas». Agradecemos pela contribuição e pela revisão dos textos selecionados.

Expressamos nossa gratidão aos autores que contribuíram para a publicação desta edição especial. As contribuições vieram de professores de universidades do Brasil, da América Latina e da Europa, além de instituições como o Instituto Max Planck de Hamburgo e a Organização dos Estados Americanos (OEA).

À equipe editorial, nossos sinceros agradecimentos pela editoração dos textos. A dedicação e o empenho de todos foram cruciais para tornar esta edição possível.

O reconhecimento da qualidade da Revista Direito.UnB é fruto da contribuição contínua de nossos colaboradores, que nos incentivam a trabalhar incessantemente para manter e elevar os padrões de excelência com temas vitais à sociedade contemporânea.

Que esta publicação inspire, informe, incite novos caminhos e reflita as contribuições do direito internacional privado para o desenvolvimento sustentável.

**Gratidão!**



## AGRADECIMIENTOS

La Revista Direito.UnB del Programa de Postgrado en Derecho (PPGD) agradece a las editoras de este número especial, Verónica Ruiz Abou-Nigm, Profesora de Derecho Internacional Privado de la Universidad de Edimburgo (Escocia, Reino Unido), y María Mercedes Albornoz, Profesora Titular de Investigación del Centro de Investigación y Docencia Económicas (CIDE, México), por el tema **“Derecho internacional privado y desarrollo sostenible: perspectivas globales y latinoamericanas”**. Agradecemos a los autores sus contribuciones y la revisión de los textos seleccionados.

Expresamos nuestra gratitud a los autores que contribuyeron a la publicación de este número especial. Las contribuciones proceden de profesores de universidades de Brasil, América Latina y Europa, así como de instituciones como el Instituto Max Planck de Hamburgo y la Organización de Estados Americanos (OEA).

Nuestro sincero agradecimiento al equipo editorial por la edición de los textos. Su dedicación y compromiso han sido cruciales para hacer posible este número.

El reconocimiento de la calidad de la Revista Direito.UnB es el resultado de la continua contribución de nuestros colaboradores, que nos animan a trabajar sin cesar para mantener y elevar el nivel de excelencia con temas vitales para la sociedad contemporánea.

Que esta publicación inspire, informe, incite nuevos caminos y refleje las contribuciones del Derecho Internacional Privado al desarrollo sostenible.

**¡Muchas gracias!!**



Gostaria de submeter seu trabalho a **Revista Direito.UnB?**

Visite <https://periodicos.unb.br/index.php/revistadedireitounb>  
e saiba mais sobre as nossas Diretrizes para Autores.

# BUILDING SUSTAINABILITY INTO AGRICULTURAL SUPPLY CHAINS: WHAT ROLE FOR PRIVATE INTERNATIONAL LAW?

Recebido: 6/6/2023

Aceito: 31/07/2023

**Jeannette M.E. Tramhel**

Senior Legal Officer, Department of International Law,  
Secretariat for Legal Affairs, Organization of American States.

E-mail: [jtramhel@gmail.com](mailto:jtramhel@gmail.com)

*"If all the hands that reach across the globe could touch."*

- Anonymous

## ABSTRACT

This article considers certain private international law (PIL) instruments and how these might be used effectively to achieve greater sustainability in agricultural supply chains. After an overview of key concepts in sustainability, supply chains and the broader interpretation of PIL, investigation is made into the use of PIL as an immediate measure to keep supply chains open during crises such as pandemic or war. Taking the longer view, PIL instruments are considered for use to develop supply chains that are: 1) economically sustainable through improved access to credit; 2) environmentally sustainable through improved contract farming, and; 3) socially sustainable through land investment contracts. In the face of a governance gap for global supply chains, industry-led efforts through corporate social responsibility (CSR) are explored to consider whether agribusinesses that can demonstrate compliance with sustainable development parameters also meet the requirements of environmental, social and governance (ESG) factors to attract green finance and satisfy the demands of conscientious consumers through the use of Private Voluntary Standards (PVS). The question for reflection is what role PIL might have in strengthening such governance through the incorporation of international standards into binding contractual relationships to thereby foster sustainable agriculture and global food security.

**Keywords:** private international law; sustainability; agricultural supply chains.



Este é um artigo de acesso aberto licenciado sob a Licença Creative Commons Atribuição-NãoComercial-SemDerivações Internacional 4.0 que permite o compartilhamento em qualquer formato desde que o trabalho original seja adequadamente reconhecido.

This is an Open Access article licensed under the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License that allows sharing in any format as long as the original work is properly acknowledged.

## 1. INTRODUCTION

Our current global population of 7.7 billion is projected to reach 9.7 billion by 2050,<sup>1</sup> which is estimated to require an increase in food production of over 60%.<sup>2</sup> Although agriculture is affected by climate change, it is also a contributor to about one fifth of global emissions.<sup>3</sup> This challenge, to reduce emissions and simultaneously increase food production, requires consideration of how such increases will be achieved and it is widely acknowledged that this demand for greater production from the earth's finite resource base will require "profound changes in our food and agricultural systems."<sup>4</sup>

As the recent pandemic illustrated, a critical component of ensuring food security is the supply chain. Accordingly, scrutiny of the global food system with a view towards its transformation should include examination of this component, which comprises a series of contracts, domestic and/or international, governed by domestic and/or international law. This article will consider the potential influence of certain private international law instruments on supply chains and how this might be used to encourage a shift towards more sustainable practices. Part 1.0 provides an overview of the Sustainable Development Goals and a deconstruction of key concepts in relation to SDG#2, supply chains and the broader interpretation of private international law (PIL) as used in this article. Part 2.0 considers PIL instruments that can help during crisis to keep supply chains open during a pandemic and times of war. Part 3.0 takes the longer view and considers PIL instruments that could be used to develop supply chains that are: 1) economically sustainable through improved access to credit; 2) environmentally sustainable through better contract farming, and; 3) socially sustainable through improved land investment contracts. Part 4.0 investigates whether agribusinesses that can demonstrate compliance with these sustainable development parameters could be considered to meet the requirements of environmental, social and governance (ESG) factors in order to attract green finance and satisfy the demands of conscientious consumers. It explores the existing gap in governance of global supply chains and what role PIL might have in strengthening such

1 UNITED NATIONS, Department of Economic and Social Affairs, Population Division. **World Population Prospects 2022: Summary of Results**. UN DESA/POP/2021/TR/NO. 3. New York: UN, 2022.

2 FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO), ALEXANDRATOS, Nikos and BRUINSMA, Jella. **World Agriculture Towards 2030/2050: The 2012 Revision**. Working Paper No. 12-03. FAO Agricultural Development Economics Division. Rome: FAO, 2012. <https://www.fao.org/3/ap106e/ap106e.pdf>

3 FAO. **The State of Food And Agriculture**: Climate Change, Agriculture and Food Security. Rome: FAO, 2016, at p. 5. <https://www.fao.org/3/i6030e/i6030e.pdf>

4 FAO. **Building a Common Vision for Sustainable Food and Agriculture**: Principles and Approaches. Rome: FAO, 2014. <https://www.fao.org/3/i3940e/i3940e.pdf>



governance through the incorporation of international standards into binding contractual relationships. The article concludes with some reflections on the unrealized potential of PIL in contributing towards actualization of many of the goals and aspirations articulated by public international law instruments and ways that PIL might be more effectively engaged in the necessary shift towards a more sustainable global agri-food system.

## 2. THE GLOBAL GOAL AND SDG#2

At the core of the United Nations 2030 Agenda for Sustainable Development are 17 Sustainable Development Goals (SDGs) that came into effect on January 1, 2016.<sup>5</sup> SDG#2 - Zero Hunger seeks “to end hunger, achieve food security and improved nutrition and promote sustainable agriculture.”<sup>6</sup> As the SDGs are “integrated and indivisible,” achieving Zero Hunger is also dependent upon and interconnected with several of the other goals and requires an interdisciplinary and holistic approach.<sup>7</sup>

Each SDG has a set of associated targets, and each target has between 1 and 3 indicators.<sup>8</sup> In respect of SDG#2, while Targets 2.1 and 2.2 are more specific to ending hunger and improving nutrition, Targets 2.3-2.5 and 2.a-2.c are more closely associated with achieving food security and promoting sustainable agriculture.<sup>9</sup> Unfortunately, the most recent projections indicate that the world is currently not on track to meet Zero Hunger by 2030.<sup>10</sup>

5 UNITED NATIONS GENERAL ASSEMBLY (UNGA). **Transforming Our World: The 2030 Agenda for Sustainable Development**. Doc. A/RES/70/1. September 25, 2015. “Agenda 2030” <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>

6 *Id.*, at p. 15/35.

7 Consider the connection of food, for example, with SDGs 1, 3, and 8 through 15.

8 States have been encouraged to establish “practical ambitious national responses” for implementation that build on national development strategies. To track progress, a framework for follow-up and review has been outlined at global, regional and national levels. Agenda 2030, *supra* note 5, paras. 47, 74, 78 and 79.

9 Agenda 2030, *supra* note 5, at p. 15/35. The two that are most relevant to this discussion are the following:

Target 2.3: By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment.

Target 2.4: By 2030, ensure sustainable food production systems and implement resilient agricultural practices that increase productivity and production, that help maintain ecosystems, that strengthen capacity for adaptation to climate change, extreme weather, drought, flooding and other disasters and that progressively improve land and soil quality.

10 UNITED NATIONS. Department of Economic and Social Affairs. **The Sustainable Development Goals Report 2022**. New York: UN, 2022. <https://unstats.un.org/sdgs/report/2022/The-Sustainable-Development-Goals-Report-2022.pdf>

## 2.1 SDG#2 and the Right to Food

Although the SDGs are formulated as “goals” and are not legally binding, many are based on rights. Underpinning SDG#2 is the right to food (RTF), which has evolved over time from the initial concept expressed in the 1948 Universal Declaration of Human Rights.<sup>11</sup> Unlike SDG#2, the RTF does correspond with certain legal obligations and responsibilities on the part of States.<sup>12</sup> Whereas more immediate and urgent steps may be needed to ensure the fundamental right to freedom from hunger and malnutrition, the right to adequate food will have to be realized progressively.<sup>13</sup> Thus, these two rights directly correspond to and underpin the first three goals expressed in SDG#2 - to end hunger, improve nutrition and achieve food security.

## 2.2 Food Security

Food security is achieved “when *all people, at all times*, have physical, social and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life (emphasis added).”<sup>14</sup> This definition reflects the concept of sustainable development and “the notion of adequate food or food security, (implies) food being accessible for both present and future generations.”<sup>15</sup> This definition of food security is grounded in the right to adequate food and out of this articulation emerged the four pillars of food security - availability, access, utilization and stability.<sup>16</sup>

Availability refers to the physical availability of food through production, distribution and exchange.<sup>17</sup> The supply chain falls within this first pillar, availability through distribution.

11 Herein the RTF is recognized as part of the right to an adequate standard of living. **Universal Declaration of Human Rights** (1948) UN Doc A/RES/217(III) A, GAOR 3rd Session Part I 71, Article 25. It was further elaborated to recognize the right to adequate food and more specifically, the right to be free from hunger. **International Covenant on Economic, Social and Cultural Rights** (1966) UN Doc A/RES/21/2200, 993 UNTS 3, Article 11.

12 UN Committee on Economic, Social, and Cultural Rights. **General Comment 12**: The right to adequate food (Art. 11) (1999) UN Doc. E/C.12/1999/5, Article 2, para. 1.

13 *Id.*, paras. 1 and 6, respectively.

14 **FAO. Declaration of the World Food Summit** (November 16-18, 2009) FAO Doc. WSFS 2009/2.

15 **General Comment 12**, supra note 12, para. 12.

16 **Declaration of the World Food Summit**, supra note 14, at note 1.

17 **General Comment No. 12**, supra note 12, para. 12. “the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.”

Pillar two, access, encompasses physical, economic and social access.<sup>18</sup> Pillar three, utilization, encompasses consumption and metabolism of food, which includes food safety along the supply chain as well as during handling and preparation.<sup>19</sup> Pillar four, stability, considers food security over time and is largely dependent upon the first three. Reliable supply chains are also essential to ensure stability.

## 2.3 Global Agricultural Supply Chains

### 2.3.1 A Study in Contrasts

The global food system is a composite of contrasts. From one perspective, it looks like a horizontal hourglass: millions of farmers at one end with millions of consumers at the other, while “the agri-business corporations occupying strategic positions in the middle are exceedingly few.”<sup>20</sup> For example, coffee is produced by about 25 million farmers and purchased by about 500 million consumers, yet 45% of all coffee is roasted by only four firms.<sup>21</sup> About 90% of all global trade in grain is conducted by only four agri-business companies.<sup>22</sup> In this global system, one out of every five calories crosses a border.<sup>23</sup> But another perspective reveals a global food system comprised of 500 million smallholders who feed almost 2 billion consumers.<sup>24</sup> This duality prompts dialogue around the future of food systems and debates over whether to promote globalization or local economies, a

18 **General Comment No. 12**, supra note 12, paras. 4 and 13.

19 **General Comment No. 12**, supra note 12, paras. 8 – 11.

DE SCHUTTER, Olivier. Addressing Concentration in Food Supply Chains: The Role of Competition Law in Tackling the Abuse of Buyer Power. Briefing Note 03, December 2010. [http://www.srfood.org/images/stories/pdf/otherdocuments/20101201\\_briefing-note-03\\_en.pdf](http://www.srfood.org/images/stories/pdf/otherdocuments/20101201_briefing-note-03_en.pdf) (accessed March 28, 2023).

20 DE SCHUTTER, Olivier. **Addressing Concentration in Food Supply Chains**: The Role of Competition Law in Tackling the Abuse of Buyer Power. Briefing Note 03, December 2010. [http://www.srfood.org/images/stories/pdf/otherdocuments/20101201\\_briefing-note-03\\_en.pdf](http://www.srfood.org/images/stories/pdf/otherdocuments/20101201_briefing-note-03_en.pdf) (accessed March 28, 2023).

21 *Id.*

22 INTERNATIONAL PANEL OF EXPERTS ON SUSTAINABLE FOOD SYSTEMS (IPES-Food). **Too Big to Feed**: Exploring the Impacts of Mega-mergers, Consolidation and Concentration of Power in the Agri-food Sector. 2017 [http://www.ipes-food.org/\\_img/upload/files/Concentration\\_FullReport.pdf](http://www.ipes-food.org/_img/upload/files/Concentration_FullReport.pdf) (accessed March 28, 2023)

23 FAO. **A battle plan for ensuring global food supplies during the COVID-19 crisis**. <https://www.fao.org/news/story/en/item/1268059/icode> (accessed March 28, 2023.).

24 FAO, COMMITTEE ON WORLD FOOD SECURITY, High Level Panel of Experts. **Investing in smallholder agriculture for food security**. A report by the High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security. [http://www.fao.org/fileadmin/user\\_upload/hlpe/hlpe\\_documents/HLPE\\_Reports/HLPE-Report-6\\_Investing\\_in\\_smallholder\\_agriculture.pdf](http://www.fao.org/fileadmin/user_upload/hlpe/hlpe_documents/HLPE_Reports/HLPE-Report-6_Investing_in_smallholder_agriculture.pdf)

discussion that has become increasingly polarized.<sup>25</sup>

Common to both realities, however, is “the supply chain” and its vital role in distribution and food availability for the consumer, at both global and local levels. This distribution mechanism will only grow in importance as trends towards urbanization continue.<sup>26</sup>

### 2.3.2 A Deconstruction

What is a supply chain? It is commonly understood as a network of individuals and companies involved in the production of goods and delivery to the consumer.<sup>27</sup> Although supply chain management has been the subject of research, comparatively little exists on the theory of the supply chain itself.<sup>28</sup> From a legal perspective, the supply chain can be viewed as a series of contractual relationships: an agreement for the sale of goods, a bill of lading, a letter of credit, a shipping contract, a distribution agreement, and so on, although it may be this compartmentalization that has led to a governance gap for global supply chains, as will be discussed below. Nonetheless, a legal framework already exists that enables these transactions, whether or not a cross-border element is included.

## 2.4 Private International Law in the Broad Sense

Private international law, under its broader interpretation, refers to the body of law that governs relationships between private parties in cross-border situations, which expands upon and also encompasses its more limited traditional reference to conflict of laws rules for the resolution of disputes between such parties. It includes conventions, model laws, national laws, and other instruments that provide uniform substantive rules. This broader approach emerged out of the recognition that economic and other functions enabled by the domestic legal framework can be significantly enhanced when national

25 LAKHANI, Nina. Corporate colonization: small producers boycott UN food summit. **The Guardian**. September 23, 2012. <https://www.theguardian.com/environment/2021/sep/23/small-producers-boycott-un-food-summit-corporate-interests> (accessed March 28, 2023). UNGA. **The right to food. Note by the Secretary General**. Report of the Special Rapporteur on the right to food, Michael Fakhri. A/76/237. July 27, 2021. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/208/03/PDF/N2120803.pdf?OpenElement>

26 In 2018, 55% of the world's population lived in urban areas and is projected to rise to 68% by 2050. UN. **World Population Prospects 2022**, *supra* note 1.

27 HAYS, Adam. The Supply Chain: From Raw Materials to Order Fulfillment. July 30, 2022. **Investopedia**. <https://www.investopedia.com/terms/s/supplychain.asp> (accessed March 12, 2023).

28 CARTER, Craig R., ROGERS, Dale S. and CHOI, Thomas Y. Toward the Theory of the Supply Chain. **Journal of Supply Chain Management**. Volume 51:2, 2015. [https://keep.lib.asu.edu/\\_flysystem/fedora/c160/Carter\\_2015.pdf](https://keep.lib.asu.edu/_flysystem/fedora/c160/Carter_2015.pdf)

laws (including conflict of laws rules) are harmonized with those of other states.

To facilitate international trade and commerce, PIL instruments have been developed in a variety of topics that include international sale of goods, transport, electronic commerce, procurement and infrastructure development, international payments, security interests and alternative dispute settlement. Codifying international rules in these areas of the law improves the “legal lubricant” that enables the machinery of international commerce to operate. Many of these PIL instruments are essential to the operation of supply chains in the global food system.

### 3. ADDRESSING IMMEDIATE NEEDS - USING PIL TO KEEP SUPPLY CHAIN OPEN

As was noted above, one of the key pillars of food security is stability. Whereas chronic instability is the result of long-term and persistent lack of adequate food, transitory instability can occur periodically because of environmental factors (floods, droughts or seasonal change), social instability or changes in economic circumstances. It can also occur, as the world has recently witnessed, due to a pandemic-induced collapse in supply chains:

#### 3.1. Pandemic

As the COVID-19 pandemic began, it revealed vulnerabilities and weaknesses in supply chains across the global food system and calls were made to keep these “functioning well.”<sup>29</sup> Many contracts include a *force majeure* clause to the effect that neither party will be liable for non-performance due to an unforeseeable event beyond the party’s reasonable control (often with examples included). In a dispute over a domestic contract, interpretation of such a clause is made in accordance with the law of that jurisdiction. For contracts with an international component, there can often be a lack of consistency between the interpretation of the law in different states. For this reason, the International Institute for the Unification of Private Law (UNIDROIT) published a Note in which the UNIDROIT Principles of International Commercial Contracts<sup>30</sup> were identified as

<sup>29</sup> FAO, INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT (IFAD), WORLD FOOD PROGRAMME (WFP) and WORLD BANK. **Joint Statement on COVID-19 Impacts on Food Security and Nutrition**. On the Occasion of the Extraordinary G20 Agricultural Minister’s Meeting, April 21, 2020. <https://www.worldbank.org/en/news/statement/2020/04/21/joint-statement-on-covid-19-impacts-on-food-security-and-nutrition> (accessed March 28, 2023).

<sup>30</sup> UNIDROIT. **Principles of International Commercial Contracts**. 4th Edition. Rome: UNIDROIT, 2016.



a resource in the event of pandemic-induced contractual disruptions.<sup>31</sup> For example, as to whether COVID-19 may be invoked as an excuse for non-performance, it was suggested that parties refer to the interpretation of “*force majeure*” (Article 7.1.7) or “hardship” (Article 6.2.2-6.2.4). Similarly, the Instituto Hispano Luso Americano Derecho Internacional (IHLADI) issued recommendations concerning COVID-19 and frustration of international contracts that encouraged states, judges and arbitrators to allow recourse to instruments such as the UNIDROIT Principles.<sup>32</sup> These recommendations also encouraged recourse to the Guide on the Law Applicable to International Commercial Contracts developed by the Inter-American Juridical Committee of the Organization of American States;<sup>33</sup> as will be discussed below, the principle of party autonomy promoted therein is foundational in enabling contracting parties to make an appropriate choice of law. .

### 3.2. War in Ukraine

Shortly after the invasion of Ukraine in February 2022, the Ukrainian Chamber of Commerce and Industry issued a statement concerning the military aggression of the Russian Federation against Ukraine that led to the imposition of martial law, confirming that from February 24, 2022 until their official ending...these constitute “*force majeure* circumstances.”<sup>34</sup> While helpful, such a declaration may not necessarily be definitive. Any adjudicatory body would have to consider whether the event being invoked as an excuse for non-performance fits within the language of the *force majeure* clause; some jurisdictions may adopt a more narrow interpretation even though an “an act of war” has evolved over time from a rigid definition to a more flexible one. Another issue concerns foreseeability; depending upon when the contract was concluded in relation to the intervening event,

31 UNIDROIT. **Note of the Secretariat on the UNIDROIT Principles of International Commercial Contracts and the COVID-19 Health Crisis.** July 15, 2020. <https://www.unidroit.org/english/news/2020/200721-principles-covid19-note/note-e.pdf> (accessed March 28, 2023)

32 INSTITUTO HISPANO LUSO AMERICANO DERECHO INTERNACIONAL (IHLADI). **COVID-19 and Frustration of International Contracts.** IHLADI Recommendations, July 22, 2020. <http://ihladi.net/wp-content/uploads/2020/07/COVID-19-and-frustration-of-international-contracts.pdf> (accessed March 28, 2023).

33 ORGANIZATION OF AMERICAN STATES (OAS), INTER-AMERICAN JURIDICAL COMMITTEE (IAJC). **Guide on the Law Applicable to International Commercial Contracts in the Americas.** OAS/Ser.Q, CJI/RES. 249 (XCIV-0/19), February 21, 2019. [http://www.oas.org/en/sla/iajc/docs/Guide\\_Law\\_Applicable\\_to\\_International\\_Commercial\\_Contracts\\_in\\_the\\_Americas.pdf](http://www.oas.org/en/sla/iajc/docs/Guide_Law_Applicable_to_International_Commercial_Contracts_in_the_Americas.pdf)

34 UKRAINIAN CHAMBER OF COMMERCE AND INDUSTRY. **Regarding the Certification of Force Majeure.** No. 2024/02.0-7.1 Dated February 28, 2022. <https://uccr.org.ua/uploads/files/621ce831ac29f951072237.pdf> (accessed March 28, 2023).



the outcome might be different.<sup>35</sup> Although UNIDROIT has not issued any guidance on contractual non-performance specific to the war, the aforementioned Note could be useful as it “guides the reader through the process” of evaluation.<sup>36</sup> Since the invasion, there has been an explosion in the number of articles online concerning “*force majeure*” and “hardship” concepts and other forms of contractual defense,<sup>37</sup> which in common law include the doctrines of impossibility, frustration of purpose and illegal performance.<sup>38</sup>

The Convention on the International Sale of Goods (CISG) provides protection for contracting parties that is similar to *force majeure*. Under article 79 of the CISG, “a party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.” Consequently, if an international contract references or is governed by the CISG, a party may be able to invoke this temporary defense of non-performance.<sup>39</sup>

What this illustrates is that such PIL instruments and guidance can provide greater certainty in the interpretation of contracts during a crisis – in times of pandemic or war – and thereby help to keep supply chains open and maintain free flow of international trade. All of this contributes towards strengthening and preserving stability for global food security.<sup>40</sup>

#### 4. TAKING THE LONGER VIEW - USING PIL TO BUILD RESILIENT SUPPLY CHAINS

35 PERRY, Daniel, YANEZ, Melanie, BENZ, Stephen. Russian Invasion of Ukraine: Potential Litigation Issues. **Harvard Law School Forum on Corporate Governance**. April 12, 2022. <https://corpgov.law.harvard.edu/2022/04/12/russian-invasion-of-ukraine-potential-litigation-issues/> (accessed March 28, 2023).

36 UNIDROIT Note, *supra* note 31, para. 4.

37 “[G]overning law may be pivotal. If no choice of law provision exists, parties should thoroughly evaluate which potentially applicable law provides the most protection under the circumstances.” BAKERHOSTETLER. **FAQs: Ukraine-Russia Conflict: Force Majeure and Other Defenses to Contractual Performance**. April 25, 2022. <https://www.bakerlaw.com/FAQs-Ukraine-Russia-Conflict-Force-Majeure-and-Other-Defenses-to-Contractual-Performance> (accessed March 28, 2023).

38 PERRY, *supra* note 35.

39 *Id.*

40 None of this negates the tragic impact of the war on Ukraine and beyond. Disruptions in grain exports have led to increased incidences of food insecurity and hunger, despite targeted policy measures and the UN-brokered Black Sea Grain Initiative, discussion of which is beyond the scope of this article. UN, Department of Economic and Social Affairs, Economic Analysis. **World Economic Situation and Prospects**: March 2023 Briefing, No. 170. <https://www.un.org/development/desa/dpad/publication/world-economic-situation-and-prospects-march-2023-briefing-no-170/> (accessed March 23, 2023).

## 4.1. Economic Sustainability

As noted above, the SDGs are integrated and indivisible, which requires a “balance (of) the three dimensions of sustainable development: the economic, social and environmental.”<sup>41</sup> Just as the interpretation of “sustainable development” continues to evolve, each of its dimensions are subject to evolving interpretations as well.<sup>42</sup> While the risk of brevity is oversimplification, a more comprehensive definition requires investigation beyond the scope of this paper. Expressed in its simplest form, economic sustainability concerns how an entity “stays in business.”<sup>43</sup> One aspect of economic sustainability that is critically important to staying in business is access to credit.

### 4.1.1. Access to Credit

In the purchase and sale transaction that is familiar to consumers, all three elements of the contract converge simultaneously – parties, payment, performance. By contrast, this is the exception in commercial transactions, where payment is frequently made after performance, sometimes long after the goods have been shipped. In the interim, however, the operator needs to cover its business expenses, such as the cost of labor, inputs, transport, etc. This time differential between performance and payment is known as the “financing gap” and the operator must either be able to cover business expenditures from its own resources or through access to credit. The tools that have been developed by the financial industry and accompanying legal instruments that enable business to function under such circumstances are what help to keep supply chains operating smoothly.

In the agricultural sector, this financing gap is exacerbated due to the unique features of agricultural production. Unlike other commodities that can be produced on a continuous basis in accordance with a production schedule accompanied by a fixed income stream,

41 Agenda 2030, *supra* note 5, preambulatory paras. 3-4.

42 For example, the United Nations has developed its own Sustainability Strategy II that “explicitly provides principles related to environmental and social sustainability.” It also states that “(t)he correlated economic dimensions of sustainability is implicitly encompassed.” (para. 11). These 10 principles are inextricably linked, in the same manner as the SDGs. UNITED NATIONS, Chief Executives Board for Coordination. **Sustainable Management in the United Nations System: 2020-2030**. Phase II: Towards Leadership in environmental and social sustainability. CEB/2021/2/Add.1 29 October 2021. <https://unsceb.org/strategy-sustainability-management-united-nations-system-2020-2030>

43 DOANE, Deborah, MACGILLAVRAY, Alex. **Economic Sustainability: The business of staying in business**. New Economics Foundation, The Sigma Project, R&D Report. 2001. [https://www.researchgate.net/profile/Deborah-Doane/publication/237302235\\_Economic\\_Sustainability\\_The\\_business\\_of\\_staying\\_in\\_business/links/5440f98d0cf2a6a049a356ff/Economic-Sustainability-The-business-of-staying-in-business.pdf](https://www.researchgate.net/profile/Deborah-Doane/publication/237302235_Economic_Sustainability_The_business_of_staying_in_business/links/5440f98d0cf2a6a049a356ff/Economic-Sustainability-The-business-of-staying-in-business.pdf)

production of agricultural commodities is subject to “lumpiness.” Significant inputs are required at the outset of the season, such as the purchase of seeds or young animals, even though no income may become available until harvest several months later. At harvest, however, there is frequently an abundance of supply that typically forces prices to their lowest levels. And without credit, producers may have no alternative other than to sell their crops immediately in order to pay debts and/or buy inputs for the next season.

While credit is important for all businesses, large and small, access to credit is particularly difficult for MSMEs across all sectors because of limited collateral. In many countries, MSMEs without land are unable to obtain credit at all, or only in “unsecured” form at very high rates of interest and sometimes outside the protection of the law.<sup>44</sup> This is especially relevant for women, whose ownership of immovable property is frequently disproportionate to that of men. Expanding the range of acceptable collateral to include movable assets would enable smallholders to weather price volatility and, in the context of this discussion, expand their operations and move up the supply chain.

Secured Transactions: One of the first instruments to encourage a modern secured transactions regime was the Model Inter-American Law on Secured Transactions (2002) and its accompanying Model Regulatory Regulations (2009).<sup>45</sup> This was followed by the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Secured Transactions (2016) plus a number of supplementary tools that include legislative guides and practice guides.<sup>46</sup> Today, states around the world are initiating reforms of their domestic legislation on the basis of these models and supplementary tools. In the Americas, such reforms are well underway across the region.<sup>47</sup>

Although secured transactions reforms do not target the agricultural sector per se, these reforms have significant impact across all sectors of the economy. With a modern secured transactions regime as a foundation, other lending vehicles can be added to even further expand credit availability. The expectation is that greater market competition among lenders resulting from certainty in the legal rules that govern these practices, in both domestic and cross-border transactions, will lead to better terms of credit for all.

---

44 OAS, Department of International Law. **Improving Access to Credit – A Video Explanation**. [http://www.oas.org/en/sla/dil/newsletter\\_Access\\_to\\_Credit\\_Feb-2017.html](http://www.oas.org/en/sla/dil/newsletter_Access_to_Credit_Feb-2017.html) (accessed March 28, 2023).

45 OAS. **Model Inter-American Law on Secured Transactions**. OEA/Ser.K/XXI.6, CIDIP-VI/RES.5/02, February 8, 2002.

46 UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL). **Model Law on Secured Transactions** (2016) [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-08779\\_e\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-08779_e_ebook.pdf)

47 (OAS) MORAN BOVIO, David. **Ley Modelo Interamericana sobre Garantías Mobiliarias: Su Implementación**. OAS & Marcel Pons, 2020. [https://www.oas.org/es/sla/ddi/docs/publicacion\\_Ley\\_Modelo\\_Interamericana\\_sobre\\_Garantias\\_Mobiliarias\\_Su\\_Implementacion.pdf](https://www.oas.org/es/sla/ddi/docs/publicacion_Ley_Modelo_Interamericana_sobre_Garantias_Mobiliarias_Su_Implementacion.pdf)

**Warehouse Receipts:** Warehouse receipts financing enables the owner of goods (the farmer) to deposit goods with a licensed warehouse operator in exchange for a receipt that represents title to those goods; that receipt enables financing secured by the stored goods as collateral.<sup>48</sup> By this method the producer can receive cash to meet immediate needs at harvest and defer sale until prices improve. Although warehouse receipts financing has significant potential for the agricultural sector,<sup>49</sup> lenders need to have confidence in both the integrity of the physical warehousing infrastructure and the underlying legal regime.

Concern over lack of available credit in the agricultural sector prompted the Inter-Ameri

can Juridical Committee (IAJC) to consider this topic and to develop Principles for Electronic Warehouse Receipts for Agricultural Products.<sup>50</sup> These principles laid the groundwork for further work and the development of a draft Model Law on Warehouse Receipts by a joint Working Group of UNCITRAL and UNIDROIT.<sup>51</sup> What remains to be seen, however, is whether warehouse receipts financing will serve primarily large commodity traders or if smallholders will also be empowered to obtain credit on the basis of their own yields.

**High Value Equipment:** Another key instrument is the Convention on International Interests in Mobile Equipment (2001)<sup>52</sup> and its accompanying protocols. The Cape Town Convention, as it is known, facilitates the purchase of high-value equipment through asset-based financing and an international registry system. The recent Protocol for Mining, Agricultural and Construction Equipment (MAC Protocol) provides certain adaptations to meet the particular requirements of these three sectors.<sup>53</sup> Together, the Cape Town Convention and the MAC Protocol establish an international legal regime for financing such equipment when there is a cross-border element involved.

48 GABRIEL, Henry D. Warehouse Receipts and Securitization in Agricultural Finance. **Uniform Law Review**. Volume 17, 369-376, 2012.

49 WORLD BANK. **Enabling the Business of Agriculture 2019**. Washington DC: World Bank, 2019. <https://doi.org/978-1-4648-1387-0>

50 OAS, INTER-AMERICAN JURIDICAL COMMITTEE (IAJC). Electronic Warehouse Receipts for Agricultural Products. CJI/doc. 427/13. In IAJC **Annual Report of the IAJC to the General Assembly**. OEA/Ser.Q CJI/doc.443/13 at 105.

51 The draft Model Law is in the final stages of development. UNIDROIT. **Work in Progress: Model Law on Warehouse Receipts**. <https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts/> (accessed March 28, 2023).

52 UNIDROIT, Convention on International Interests in Mobile Equipment (adopted November 16, 2001) 2307 UNTS 285. <https://www.unidroit.org/english/conventions/mobile-equipment/mobile-equipment.pdf>

53 UNIDROIT. **Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Mining, Agricultural and Construction Equipment** (adopted November 22, 2019) <https://www.unidroit.org/english/conventions/mobile-equipment/mac-protocol-e.pdf>

### 4.1.2. Summary on Credit

Any efforts to liberalize credit for international trade and commerce in general will undoubtedly also benefit the agri-food sector. The expectation is that the competition generated in credit markets as a result of these reforms will, over time, reduce the cost of credit and improve credit terms for all borrowers, including smallholders. Access to credit is essential for economic sustainability. It enables businesses to keep supply chains open during times of crisis and to build resilient supply chains for the longer term. The importance of credit for agricultural development and financial inclusion is recognized in Target 2.3, which calls for secure and equal access to productive resources, financial services and opportunities for small-scale food producers, particularly women and other marginalized groups.<sup>54</sup> Thus, improved access to credit in the agricultural sector, for producers large and small, can be said to contribute towards more economically sustainable agricultural supply chains.

## 4.2. Environmental Sustainability

A second dimension of sustainable development is environmental sustainability, another term that is subject to various interpretations. In its simplest form, it means that natural capital must be maintained,<sup>55</sup> and can be described as the ability of an ecosystem to maintain the same levels of productivity and biodiversity over time. One of the means by which more sustainable agricultural production methods can be introduced is through their incorporation into contract farming agreements. To do so, parties should be at liberty to select the governing law.

### 4.2.1. Choice of Applicable Law

In the cross-boundary context, an issue that invariably arises is over which law should govern the contract. Most states adhere to the principle of party autonomy pursuant to which the contracting parties are at liberty to decide on the applicable law that will govern their contractual relationship, subject to mandatory rules or overriding public policy.

<sup>54</sup> *Supra* note 9.

<sup>55</sup> GOODLAND, Robert. The Concept of Environmental Sustainability. **Annual Review of Ecology and Systematics**. Volume 26, 1-24, 1995. <https://are.berkeley.edu/courses/ARE298/Readings/goodland.pdf>



In the Americas, efforts to enshrine the principle resulted in the 1994 Inter-American Convention on the Law Applicable to International Contracts (“Mexico Convention”). Twenty years later, given ongoing disparities among domestic laws within the region, the IAJC revisited the topic with a view towards encouraging harmonization. As a result, the IAJC approved the 2019 Guide on the Law Applicable to International Commercial Contracts in the Americas with the primary purpose to clarify and strengthen adherence to the principle of party autonomy across the region.<sup>56</sup> It is a soft law instrument grounded in the Mexico Convention that also incorporates subsequent developments in the field, in particular, the 2015 Hague Principles on Choice of Law in International Commercial Contracts.<sup>57</sup>

The guidance offered therein on the law on international commercial contracts has important consequences for the region. First, it fosters confidence that a choice of law will be recognized and upheld, which generates greater certainty for businesses involved in international commercial transactions, trade in agricultural commodities and the agri-food supply chain. Secondly, the principle of party autonomy serves as an important foundation for other PIL instruments that are specific to the agricultural sector, such as contract farming and land investment contracts.

Two aspects concerning choice of law have particular significance for contract farming agreements. One concerns *dépeçage* and the Guide recommends that “the domestic legal regime on the law applicable to international commercial contracts should admit the ‘splitting’ of the law (*dépeçage*), consistent with the provisions of Articles 7 and 9 of the Mexico Convention and Article 2.2 of the Hague Principles.”<sup>58</sup> This enables parties to a contract farming agreement to choose the law of a jurisdiction with stricter environmental provisions to govern production specifications, while the majority of the contract can be governed by the law of the jurisdiction of performance. The second aspect concerns non-state law and the Guide recommends that “the domestic legal regime on the law applicable to international commercial contracts should recognize and clarify choice of non-state law.”<sup>59</sup> This enables parties to include references to international standards where domestic standards are weak or non-existent. Both of these aspects will be discussed below.

#### 4.2.2. Contract Farming

56 OAS/IAJC. **Contracts Guide**, *supra* note 33. See Para. 8 and 9. Purpose and Objectives.

57 HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (HCCH). **Principles on Choice of Law in International Commercial Contracts**. Approved on March 19, 2015. <https://www.hcch.net/en/instruments/conventions/full-text/?cid=135>.

58 OAS/IAJC. **Contracts Guide**, *supra* note 33, Recommendation 14.1

59 *Id.*, Recommendation 6.1.



*Background:* Contract farming is the procurement of agricultural goods under an agreement made between producers and a buyer in advance of production. The terms usually specify price, quantity and quality of the product, date for delivery and may also include specific production methods and whether inputs (such as seeds, fertilizers and pesticides) and technical advice will be provided.<sup>60</sup> The approach can have both advantages and disadvantages for buyers, producers and consumers.<sup>61</sup>

RTF as Foundational: In order to foster the benefits of contract farming and ensure that the practice serves in the actualization of the RTF, an extensive study was undertaken by the UN Special Rapporteur on the RTF that led to certain preliminary findings.<sup>62</sup> First, to avoid overspecialization and unsustainable agricultural practices, incentives should be included to encourage more diverse farming systems according to the principles of agroecology. Secondly, to minimize vulnerability of smallholders in the shift from food crops to cash crops, contract farming agreements should allow farmers to use a portion of their cropland to grow food for their own consumption and should also include a provision that a certain percentage of the cash crops be sold on the local market. Third, it is important to guard against “the transformation of small-scale farmers into false wage-earning agricultural laborers on their own land.” This risk arises as farmers lose control over decisions on what to grow and production methods. Fourth, it is important to consider the gender effects of contract farming. In general, women have fewer land rights and little authority over production choice, but may nevertheless remain responsible for the household’s food after a shift from food crops to cash crops. Fifth, small farmers can be at risk for becoming trapped in cycles of debt as they become increasingly dependent on the contracting company for inputs, machinery, etc. Sixth, there is a risk of inequitable contracts resulting from inequality in bargaining power and lower levels of legal literacy, not only in the negotiation of the contract, but throughout its lifecycle.<sup>63</sup> The study led

60 FAO. **Contract Farming Resource Center**. <http://www.fao.org/in-action/contract-farming/background/en/> (accessed March 28, 2023).

61 UNIDROIT. **Selected Web and Bibliographical References on or relevant for Contract Farming Operations**. <https://www.unidroit.org/instruments/contract-farming/web-bibliographical-references/> (accessed March 28, 2023).

62 UNGA. **The right to food. Note by the Secretary General**. Interim Report of the Special Rapporteur on the right to food, Olivier de Schutter. A/66/262, August 4, 2011. [https://www.ohchr.org/sites/default/files/Documents/Issues/Food/A.66.262\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Food/A.66.262_en.pdf)

63 *Id.*

to several recommendations to states that address these findings<sup>64</sup> with an overarching conclusion that whether contract farming contributes towards realization of the RTF will be very much dependent on the particular context, the specific contractual arrangements and to what extent a human-rights-based approach is adopted.<sup>65</sup>

*Legal Guide:* On the heels of these recommendations, UNIDROIT, FAO and IFAD collaborated to develop the Legal Guide on Contract Farming (CF Guide) “to promote more stable and balanced relationships and to assist parties in designing and implementing sound contracts, thereby generally contributing to building a conducive environment for contract farming.”<sup>66</sup> Building on earlier principles,<sup>67</sup> the CF Guide is intended to provide practical assistance to those engaged in capacity-building in support of contract farming. While its primary focus is the bilateral relationship between buyer and producers throughout the process from negotiation to dispute settlement, the first chapter also provides an overview of the relevant domestic legal framework within which contract farming is conducted.<sup>68</sup>

Contract Farming for Environmental Sustainability: Many of the recommendations made by the Special Rapporteur were incorporated into the CF Guide and a Model Agreement for Responsible Contract Farming<sup>69</sup> was subsequently developed to operationalize these provisions. Specifically in relation to environmental sustainability, it is recommended that contract farming agreements “should ideally encourage a reduction in the use of chemical fertilizers and pesticides, greater efficiency in their application and

---

64 UNITED NATIONS GENERAL ASSEMBLY (UNGA). **Final Report: The transformative potential of the right to food**. Report of the Special Rapporteur on the right to food, Olivier de Schutter. A/HRC/25/57. January 24, 2014. [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A\\_HRC\\_25\\_57\\_ENG.DOC](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A_HRC_25_57_ENG.DOC)

For example, reservation of a portion of land for the production of food crops for self-consumption; link support for contract farming to compliance with environmental conditions, such as reduced use of chemical fertilizers or the planting of trees, or to the adoption of a business plan that provides for a gradual shift to more sustainable types of farming; and forums in which the fairness of food chains could be discussed among producers, processors, retailers and consumers to ensure that farmers are paid fair prices for the food they produce.

65 UNGA, **The right to food**, Interim report, supra note 62, para. 12.

66 UNIDROIT, FAO and IFAD. **Legal Guide on Contract Farming**. Rome: UNIDROIT/FAO/IFAD, 2015. <http://www.fao.org/3/a-i4756e.pdf>.

67 FAO. **Guiding Principles for responsible contract farming operations**. Rome: FAO, 2012. <https://www.fao.org/3/i2858e/i2858e.pdf>

68 This overview is elaborated upon extensively in a subsequent legislative study. (FAO) VIINIKAINEN, Teemu and CARO, Carmen Bullon. **Enabling regulatory frameworks for contract farming**. FAO Legislative Study 111. FAO Legal Office, Development Law Service. Rome: FAO, 2018. <http://www.fao.org/3/I8595EN/i8595en.pdf>

69 FAO and INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT (IISD). **Model Agreement for Responsible Contract Farming**. With Commentary. Rome: FAO/IISD, 2018. <https://www.fao.org/3/CA1772EN/ca1772en.pdf>

increased use of biological inputs.”<sup>70</sup> It is encouraged that technical advice and training focus on promoting sustainable farming practices and that production methods to support such a shift should be clear, preferably with reference to specific standards or annexed documents. On the one hand, contract farming can be instrumental by introducing new standards and offering technical advice and inputs as necessary to help producers adjust to new methods of production. On the other hand, caution is needed so that such stringent requirements do not act as barriers to entry with the result of excluding smaller or marginalized farmers.<sup>71</sup>

The value of improved market access for smallholders, which can potentially be achieved through better contract farming practices, is recognized in Target 2.3, which calls for secure and equal access to markets and opportunities for value addition, particularly for women and other marginalized groups.<sup>72</sup> Similarly, the importance of introducing environmentally sustainable agriculture is recognized in Target 2.4, which calls for implementation of resilient agricultural practices that help maintain ecosystems, strengthen capacity for adaptation to climate change, extreme weather, drought, flooding and other disasters and that progressively improve land and soil quality.<sup>73</sup> Thus, improved contract farming practices that result in more sustainable products contributes towards more environmentally sustainable agricultural supply chains.

### 4.3. Social Sustainability

The third dimension of sustainable development is social sustainability. At the risk of oversimplification yet again, in general terms social sustainability refers to “a society that is socially just, equal, without social exclusion and with a decent quality of life, or livelihood for all” and as such, encompasses both the ends and the means.<sup>74</sup> It has also been described as “social capital” that is achieved through community participation, strong civil society, and replenishment of shared values through interaction.<sup>75</sup> A topic where this can be illustrated is private sector land investment.

<sup>70</sup> *Id.*, at 14.

<sup>71</sup> WILL, M. GlobalGAP smallholder group certification: Challenge and Opportunity for smallholder inclusion into global value chains, in VAN DER MEULEN, B. (Ed.). **Private Food Law: governing food chains through contract law, self-regulation, private standards, audits and certification schemes.** The Netherlands: Wageningen Academic Publishers, 2011.

<sup>72</sup> *Supra* note 9.

<sup>73</sup> *Id.*

<sup>74</sup> KONING, Juliette. Social sustainability in a globalizing world: context, theory and methodology explored. **Proceedings of the UNESCO/MOST meeting**, The Hague, The Netherlands. 2001, at p. 9. <https://www.researchgate.net/profile/Juliette-Koning/publication/242642851>

<sup>75</sup> Robert Goodland, *supra* note 55.

### 4.3.1. Agricultural Land Investment Contracts

*Background:* Recognizing the need for more and better investment in agriculture, many governments and communities have entered into contracts transferring the rights to use large parcels of land to foreign investors. Sometimes this is achieved through sale but more frequently by means of long-term lease. In practice, some of these arrangements have been problematic and have not led to the desired outcomes.

*ALIC Guide:* Given the challenges inherent in such contracts and to encourage consistency with international standards, UNIDROIT, FAO and IFAD embarked upon a collaborative undertaking that resulted in the Legal Guide on Agricultural Land Investment Contracts.<sup>76</sup> The ALIC Guide, as it is known, encourages long-term investments such as leases, and provides guidance on the entire process from the pre-contractual phase through to possible breach and termination. It seeks to operationalize certain key international principles and standards, namely, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT),<sup>77</sup> the Principles for Responsible Investment in Agriculture and Food Systems (RAI Principles),<sup>78</sup> and the UN Guiding Principles on Business and Human Rights (Ruggie Principles),<sup>79</sup> and builds upon the UNIDROIT Principles and CF Guide discussed above.

*Choice of Law:* In Chapter 1 concerning sources of law, it is noted that whereas the domestic law of some states might not be sufficiently developed in some subject areas that intersect with ALICs (e.g., human rights, environmental regulation), the Guide might supplement these gaps. Similarly, where the domestic law falls short in respect of certain investor obligations, such as due diligence or disclosure, it is suggested that the contract stipulates compliance with the laws of the investor's own state or with specified

<sup>76</sup> UNIDROIT and IFAD. **Legal Guide on Agricultural Land Investment Contracts**. Rome: UNIDROIT/IFAD, 2021. <https://www.unidroit.org/wp-content/uploads/2023/02/ALIC-Guide-links-pgs.pdf> The FAO was a collaborating partner throughout the project.

<sup>77</sup> FAO, COMMITTEE ON FOOD SECURITY. **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security**. Endorsed by the CFS at its 38th (Special) Session on 11 May 2012 (VGGT).

<sup>78</sup> FAO, COMMITTEE ON FOOD SECURITY. **Principles for Responsible Investment in Agriculture and Food Systems**. Endorsed by the CFS at its 41st session on 15 October 2014 (RAI Principles).

<sup>79</sup> UNITED NATIONS HUMAN RIGHTS COMMISSION. **Guiding Principles on Business and Human Rights**: Implementing the United Nations "Protect, Respect and Remedy" Framework. A/HRC/17/31 21 March 2011 (Ruggie Principles).

international standards.<sup>80</sup> These exemplify both aspects of choice of law that were described above, *dépeçage* and non-state law, demonstrating the value of these basic principles of party autonomy as foundational building blocks.

*VGGT and RAI as Foundational:* Chapter 2 places particular emphasis on protecting and respecting the rights of legitimate tenure right holders, described as “not only a holder whose rights to land are formally recognized by domestic law, but also a holder whose rights, while not currently protected in the formal written law, are informally recognized and considered to be socially legitimate in local societies.”<sup>81</sup> If national laws do not provide adequate protection to these holders, reference can be to the relevant international standards as outlined in the RAI Principles and VGGT.

An important mechanism for ensuring that agricultural land investment contracts will comply with both the RAI Principles and the VGGT is through the appropriate and timely use of impact assessments. The VGGT recommends that States “strive to make provisions for different parties to conduct prior independent assessments on the potential positive and negative impacts that those investments could have on tenure rights, food security and the progressive realization of the right to adequate food, livelihoods and the environment....through consultation with all affected parties.”<sup>82</sup> This recommendation is carried through into the ALIC Guide, which describes impact assessments as “an essential part of managing risks and mitigating potential negative impacts” and that advocates a holistic, integrated and participatory approach centered around sustainability.<sup>83</sup> In particular, concerning Right to Food Impact Assessment, it is pointed out that this may “help meet the goal of encouraging States and investors to acknowledge that sustainable investments are essential... [and] not only protect the right to food, but also safeguard against dispossession of right holders and environmental damage, support local communities, create employment and diversify livelihoods.”<sup>84</sup>

*Land Investment for Social Sustainability:* By incorporating the RAI Principles and VGGT, the ALIC Guide operationalizes these important public law principles and builds on the basic principle of party autonomy, described above. It serves as a bridge between two worlds – private international law and its constituents (traditionally those engaged in international commerce and investment) and public international law and its constituents (which includes marginalized groups that, until recently, have not been the focus of PIL

---

80 **ALIC Guide**, supra note 76. Text accompanying note 22.

81 *Id.*, Intro.30, citing the VGGT 3A General Principles.

82 *Id.*, Para. 12.14

83 *Id.*, paras. 3.42 and 3.44.

84 *Id.*, para 3.63.



instruments). In this way, the ALIC Guide encourages agricultural land investment that complies with the requirements for social sustainability.

The importance of agricultural land investment that is socially sustainable is implicitly recognized in Target 2.3, which calls for secure and equal access to land, particularly for women, indigenous peoples, family farmers, pastoralists and other marginalized groups.<sup>85</sup> Thus, improved agricultural land investment can be said to contribute towards more socially sustainable agricultural supply chains.

## 5. PROGRESSING TOWARDS SUSTAINABILITY SUPPLY CHAIN

Despite these strides forward in what a cynic might consider sustainable development rhetoric, it begs the question whether any real progress is being made. In the absence of domestic measures that would incorporate provisions from the CF Guide and ALIC Guide as legal requirements, these remain as recommendations for consideration by contracting parties and other stakeholders. Although there are indicators to measure progress towards the targets associated with the SDGs,<sup>86</sup> measuring progress is challenging in what has become known in broad terms as Corporate Social Responsibility (CSR). Also described as “international business self-regulation,”<sup>87</sup> CSR refers to the internal management framework used by a company to integrate social and environmental concerns with its business operations and interactions with stakeholders.<sup>88</sup> As this may raise questions over the need for self-regulation, the next step should be investigation of the governance gap.

### 5.1 The Governance Gap

It might be a surprise to learn that governance of global supply chains has been

---

85 *Supra* note 9.

86 For example, indicators for Target 2.3 are 2.3.1 - volume of production per labor unit by class of farming/pastoral/forestry enterprise size; 2.3.2 - average income of small-scale food producers, by sex and indigenous status. UN, Department of Economic and Social Affairs. **Sustainable Development Goals**. <https://sdgs.un.org/goals/goal2> (accessed March 28, 2023).

87 SHEEHY, Benedict. Defining CSR: Problems and Solutions. **Journal of Business Ethics**. Volume 131:3, 625–648, 2015. <https://doi.org/10.1007/s10551-014-2281-x>

88 UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION (UNIDO). **What is CSR?** <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr> (accessed March 28, 2023)



understudied in existing literature.<sup>89</sup> Other studies also support this view that “law has been marginalized in the analysis of supply chain theory.”<sup>90</sup> One reason for this might be because the supply chain is seen as a series of contractual relationships between “seemingly independent entities” located in different jurisdictions – a company, a supply agreement, a labor contract – indeed, as had been suggested at the outset of this article. Viewed through that lens, there is no overarching instrument of governance *per se* because each individual segment is subject to its own set of rules. From this perspective, the traditional PIL approach seems fitting; if the contract straddles two or more jurisdictions, in the event of a dispute, conflict of laws rules will enable the determination of which state should take jurisdiction and which law should be applied. This view, however, might hamper further analysis because in some instances it might be more accurate to describe the supply chain as a network of interconnected entities enabled by the governance of a “lead firm.”<sup>91</sup> Of course, “no one size fits all” and there are many different kinds of supply chains that vary by sector, product, and region.

Ruhmkorf suggests that one of the reasons why law has played such a limited role in governance analysis is because, through global supply chains, transnational corporations are not only able to outsource their production but also their legal liability.<sup>92</sup> This resulting “governance gap” allows transnational corporations at the top of global supply chains – the “lead firms” - to operate with impunity irrespective of violations in their supply chains.<sup>93</sup> Stated slightly differently, Sarfaty points out that such multinational companies are more than just regulated entities; they also serve as regulators themselves by imposing standards on their suppliers in other states.<sup>94</sup>

With sufficient social pressure, CSR emerged to fill this governance gap.<sup>95</sup> However, after more than two decades of private governance initiatives to promote CSR, reports

89 SARFATY, Galit A. Shining Light on Global Supply Chains. **Harvard International Law Journal**. Volume 56:2, 419-463, 2015, at p. 421. [https://commons.allard.ubc.ca/fac\\_pubs](https://commons.allard.ubc.ca/fac_pubs)

90 INSTITUTE FOR GLOBAL LAW AND POLICY (IGLP) AND GLOBAL PRODUCTION WORKING GROUP. The Role of Law in Global Value Chains: A Research Manifesto. **London Review of International Law**, Volume 4, 57, 2016, cited in RÜHMKORF, *infra* note 93.

91 SALMINEN, Jaakko, and RAJAVUORI, Mikko. Private International Law, Global Value Chains and the externalities of transnational production: towards alignment? **Transnational Legal Theory** Volume 12:2, 230-248, 2021, at p. 233. <https://doi.org/10.1080/20414005.2021.1970470>

92 RÜHMKORF, Andreas. Global supply chain governance: The search for ‘what works’. **Deakin Law Review**. Volume 23: 63-82, 2018. <https://doi.org/10.21153/dlr2018vol23no0art806>

93 *Id.* at 68. In his analysis, this is “based on legal concepts and principles such as the territoriality of the law and the low legal standards or weak enforcement systems in the countries where the production sites are located.” SARFATY, *supra* note 89.

94 SARFATY, *supra* note 89.

95 CSR is the current successor to movements in this direction that date back to the 1960s, if not before, and that led to initiatives such as the Sullivan Principles and similar corporate codes of conduct. A full discussion of that history is beyond the scope of this article.

of human rights violations within global supply chains are ongoing.<sup>96</sup> It is not surprising that consumers and others have raised concerns over the effectiveness of industry-led private governance.<sup>97</sup> It also raises the question as to how the scope of CSR can best be delineated and to what extent firms should be responsible for the practices of their suppliers.<sup>98</sup> Efforts to compartmentalize CSR responsibilities to a particular company or within particular geographical boundaries is exacerbated by direct and indirect corporate linkages in global supply chains.<sup>99</sup> Nevertheless, the Ruggie Principles stipulate that a company's responsibility to respect human rights applies not only to the company's own activities but also to those impacts that are "directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."<sup>100</sup> Although this does require companies to acknowledge that their responsibility goes beyond the bounds of their own enterprise, such responsibility falls short of legal accountability. Of course, to impose such accountability would challenge the traditional corporate law framework which promotes limited liability and the separate entity doctrine.<sup>101</sup> By contrast, some view CSR more as grounded in moral responsibility and suggest that the more powerful party in the relationship could exert influence by setting standards, serving as a role model, or through training and value orientation.<sup>102</sup>

## 5.2 Some Attempts at Domestic Legislation

In light of dissatisfaction with CSR, some states have introduced domestic legislation in an attempt to regulate global supply chains operated by firms based in their

96 LEBARON, G. and RÜHMKORF, Andreas. Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance. **Global Policy**. Volume 8:53, 15-28. 2017. <https://doi.org/10.1111/1758-5899.12398>

97 Some suggest that the customer is the most powerful determinant of corporate behavior and this is why the CSR focus should be on the consumer. MORRISON, Edward, and BRIDWELL, Larry. Consumer social responsibility: the true corporate social responsibility. **Competition Forum**. American Society for Competitiveness, Volume 9:1, 1-6, 2011.

98 AMAESHI, K., OSUJI, O. & NNODIM, P. Corporate Social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility? Clarifications, Exceptions and Implications. **Journal of Business Ethics**. Volume 81:1, 223-234, 2008. <http://hdl.handle.net/10871/10041>

99 NOLAN, Justine. Business and human rights: The challenge of putting principles into practice and regulating global supply chains. **Alternative Law Journal**. Volume 42:1, 42-46, 2017. <https://doi.org/10.1177/1037969X17694783>

100 Ruggie Principles, *supra* note 79, Principle 13 (b). The commentary explains that "business relationships" include relationships with business partners and entities in the value chain.

101 NOLAN, *supra* note 99 at p. 44.

102 AMAESHI, *supra* note 98.

own jurisdictions. Examples include legislation in California,<sup>103</sup> the United Kingdom<sup>104</sup> and most recently in Germany.<sup>105</sup> Some consider that such legislation is designed to strengthen and steer CSR rather than replace it.<sup>106</sup> Others argue that domestic law could significantly shape corporate behavior and is not going far enough.<sup>107</sup> Ruhmkorf suggests that what is needed is empirical (legal) research to assess how companies react to these different forms of “chain law” in order to identify best practices which then could be replicated in other jurisdictions.<sup>108</sup>

Over the last decade, and perhaps in response to the rather qualitative, internal framework of CSR, there has been a growing interest in the (possibly) more quantitative, external framework of Environmental, Social and Governance.

### 5.3 What is ESG?

Environmental, social and governance (ESG) factors consider performance of an organization in these three areas, although there is no consensus about the precise meaning of neither ESG nor CSR.<sup>109</sup> Broadly speaking, environmental factors consider performance in relation to climate change, greenhouse gas emissions, energy efficiency, natural resource management, and waste management, among others. Social factors refer to relationships with various stakeholders (employees, customers, communities) concerning human rights, labor conditions, health and safety, inclusion. Governance factors concern organizational or corporate governance on issues such as internal controls, shareholder rights, transparency, board diversity, conflicts of interest, and cybersecurity. Despite

103 CALIFORNIA. **California Transparency in Supply Chains Act of 2010**. Companies subject to the Act must disclose their efforts in these areas: verification, audits, certification, internal accountability, and training. <https://oag.ca.gov/SB657> (accessed March 28, 2023).

104 UNITED KINGDOM. Modern Slavery Act 2015, UK Public Acts, 2015, c. 30. <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

105 FEDERAL MINISTRY FOR ECONOMIC COOPERATION AND DEVELOPMENT. **More Fairness in global Supply chains: Germany leads the way**. The Act on Corporate Due Diligence in Supply Chains came into force on January 1, 2023. It requires larger German and German-based companies to identify and assess rights and environmental violations within their supply chains, and develop risk management, monitoring and reporting strategies, with stiff fines for non-compliance. <https://www.bmz.de/en/issues/supply-chains> (accessed March 28, 2023).

106 LEBARON, *supra* note 96.

107 SARFATY, *supra* note 89.

108 RUHMKORF, *supra* note 92.

109 POLLMAN, Elizabeth. Corporate Social Responsibility, ESG, and Compliance. In VAN ROOIJ, Benjamin & SOKOL, Daniel (Eds.) **The Cambridge Handbook of Compliance**. Cambridge: Cambridge University Press, 2021. [https://scholarship.law.upenn.edu/faculty\\_scholarship/2568](https://scholarship.law.upenn.edu/faculty_scholarship/2568); GILLAN, Stuart L., KOCH, Andrew and STARKS, Laura T. Firms and social responsibility: A review of ESG and CSR research in corporate finance. **Journal of Corporate Finance**. Volume 66, 1-45, 2021. <https://doi.org/10.1016/j.jcorpfin.2021.101889>

the lack of uniform description, interest in ESG seems to have exploded over the past decade as offering a set of parameters to guide or re-direct investment.<sup>110</sup> For example, as of 2017 ESG investing accounted for about 20% of the total assets under professional management in the U.S.<sup>111</sup> Three changes have been identified as driving this growth: first, policy changes that require companies to report ESG on an annual basis (for example, the European Union (EU) reporting directive<sup>112</sup>); secondly, a growing number of empirical studies have found a positive relationship between ESG factors and corporate financial performance; and thirdly, standards for ESG performance, measurement and reporting are being developed by the investment industry.<sup>113</sup>

## 5.4 Standardizing ESG Disclosure and Indicators

These rapidly developing changes indicate the need for standardization. In what might possibly be the most recent global initiative in this regard, the International Sustainability Standards Board (ISSB) has been established to develop “a comprehensive global baseline of sustainability disclosures focused on the needs of investors and financial markets” in response to calls for companies “to provide high-quality, globally comparable information” in the face of “a fragmented landscape of voluntary, sustainability-related standards.”<sup>114</sup> At the same time, similar standards are being developed by the European Financial Reporting Advisory Group (EFRAG).<sup>115</sup> Companies that are subject to the new

---

110 This is despite concerns that ESG is problematic because it calls for qualitative data that is not readily quantifiable in monetary terms and therefore difficult to verify. TAYAN, Brian. ESG Ratings: A Compass without Direction. **Harvard Law School Forum on Corporate Governance**. August 24, 2022. <https://corpgov.law.harvard.edu/2022/08/24/esg-ratings-a-compass-without-direction/> (accessed March 28, 2023).

111 ECCLES, Robert G., KASTRAPELI, Mirtha D. and POTTER, Stephanie J. How to integrate ESG into investment decision-making: Results of a global survey of institutional investors. **Journal of Applied Corporate Finance**. Volume 29:4, 125-133, 2017. <https://www.viex-america.com/wp-content/uploads/2022/04/How-to-Integrate-ESG-into-Investment.pdf>

112 EUROPEAN UNION. **Non-Financial Reporting Directive (NFRD)**. Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. <http://data.europa.eu/eli/dir/2014/95/oj> Under this directive, public-interest companies with more than 500 employees must publish information related to environmental, social and human rights and other matters. (It continues in force until companies have to apply the new rules of the Corporate Sustainability Reporting Directive (CSRD), starting in 2024. See *infra*, note 116.

113 ECCLES, *supra* note 111.

114 About the International Sustainability Standards Board. <https://www.ifrs.org/groups/international-sustainability-standards-board/> (accessed March 28, 2023).

115 TETTAMANZI, Patrizia, VENTURINI, Giorgio, MURGOLO, Michael. Sustainability and Financial Accounting: A Critical Review on the ESG Dynamics. **Environmental Science and Pollution Research**. Volume 29:16758–16761. <https://doi.org/10.1007/s11356-022-18596-2>

EU Corporate Sustainability Reporting Directive<sup>116</sup> will be required to comply with EFRAG's European Sustainability Reporting Standards. Accordingly, this will require disclosure about a broad range of environmental, social, and governance matters on a "double materiality" basis, that is, "(i) how the company is affected by external factors that influence its position, development, and performance (outside-in materiality) and (ii) the extent to which the company generates significant effects on the environment and the society (inside-out materiality)."<sup>117</sup> This broader EU approach to reporting differs significantly from the direction that is emerging in the United States, specifically at the US Securities and Exchange Commission, which proposes to include only climate-focused disclosures.<sup>118</sup> As various efforts advance contemporaneously, the need for uniform standardization is becoming self-evident.

## 5.5 Connecting ESG with Sustainable Development and Private Standards

Assuming satisfactory standardization can be achieved, does compliance with ESG equate with sustainable development? Do ESG factors equate to indicators for sustainable development? Yes and no. While the data collected may be similar, it is used for different purposes. As noted above, ESG factors are typically used to evaluate the performance of a company, often in comparison with competitors, and as a means to secure financing. The information is directed towards potential investors. By comparison, the indicators used to determine whether company performance is consistent with sustainable development - specifically, environmental, social and economic sustainability - although possibly based on the same data used to measure compliance with ESG, are directed to a different audience and with a different objective.

116 **Corporate Sustainability Reporting Directive.** Directive 2022/2464/EU of the European Parliament and of the Council of 14 December 2022 amending Regulation No 537/2014/EU, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting. <http://data.europa.eu/eli/dir/2022/2464/oj> This new directive, which entered into force January 5, 2023, modernizes and strengthens the earlier rules under the NFRD and extends reporting requirements to a broader set of companies. Under the new rules investors and other stakeholders will have access to information to assess investment risks relating to sustainability, such as climate change.

117 STEHL, Kolja, NG, Leonard and FEEHILY, Matt. EU Corporate Sustainability Reporting Directive – What do Companies Need to Know. **Harvard Law School Forum on Corporate Governance.** August 23, 2022. <https://corpgov.law.harvard.edu/2022/08/23/eu-corporate-sustainability-reporting-directive-what-do-companies-need-to-know/> (accessed March 28, 2023).

118 *Id.* It appears that in the US, incorporation of ESG considerations is turning into (another) politically-charged topic. Recently, President Biden vetoed a decision by the Republican-led House of Congress that would have disallowed the Biden administration's rule allowing retirement plan fiduciaries to take ESG factors into consideration. Message to the House of Representatives: President's Veto of H.J. Res. 30. <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/03/20/message-to-the-house-of-representatives-presidents-veto-of-h-j-res-30/> (access March 28, 2023).



One such example to demonstrate sustainability is through use of private labels. Consumers around the globe have seen a growing prevalence in the use of terms such as “organic,” “free-range,” “fair-trade” to indicate that goods have been produced in accordance with certain standards or production methods. Known as “private (voluntary) standards,” PVS act as conditions of purchase established by the buyer. Although not mandated by law, the standards are *de facto* compulsory for the supplier who may have no alternative. While PVS might encourage improved production practices, this may require significant up-front costs which can act as a significant barrier to market access, especially for smaller producers.

Whether or not PVS have concrete impacts on sustainability, remains “empirically uncertain.”<sup>119</sup> Limited evidence of the impact of PVS standards on environmental practices, particularly in the agri-food sector, might be due to the proprietary nature of such information.<sup>120</sup> In one case study where company-led PVS did result in better practices, it was noted that these had been “coupled with capacity building and a long-term relationship.”<sup>121</sup>

Despite limited evidence of the impact on sustainability, support for the use of PVS is widespread.<sup>122</sup> In large measure, PVS have emerged in response to consumer concerns over the environmental and social aspects of production. As Saumier points out, “eco-labels target both consumers and producers, thus potentially jointly contributing to furthering sustainable consumption and production.”<sup>123</sup> This offers hope that PVS might serve as a bridge to connect consumers reaching out to producers half-way around the globe.

---

119 SAUMIER, Genevieve. Sustainable Consumption and Production. In: MICHAELS, Ralf; RUIZ ABOU-NIGM, Verónica; VAN LOON, Hans (eds.). **The Private Side of Transforming our World - UN Sustainable Development Goals 2030 and the Role of Private International Law**. Cambridge: Intersentia, 2021, at p. 405. <https://www.intersentiaonline.com/library/the-private-side-of-transforming-our-world-un-sustainable-development-goals-2030-and-the-role-of-p>.

120 THORLAKSON, Tannis, HAINMUELLER, Jeans, LAMBIN, Eric, F. Improving Environmental Practices in Agricultural Supply chains: The Role of Company-led Standards. **Global Environmental Change**. Volume 48, 32-42, 2018. <https://doi.org/10.1016/j.gloenvcha.2017.10.006>  
By contrast, it appears from the literature that there is more effectiveness by multi-stakeholder and NGO-led certification schemes on promoting environmental practices.

121 *Id.*

122 SAUMIER, *supra*, note 119.

123 *Id.*



## 5.6 International Guidance for Agricultural Supply Chains

Within this context, an initiative has emerged specific to global agricultural supply chains. The OECD and FAO have developed Guidance for Responsible Agricultural Supply Chains with the aim of ensuring that firms “observe internationally agreed standards of responsible business conduct along agricultural supply chains in order to prevent the adverse impacts of their activities and contribute to sustainable development, and in particular, poverty reduction, food security and gender equality.”<sup>124</sup> Not surprisingly, these international standards include, among others, the RAI Principles and VGGT discussed above. This Guidance applies to all enterprises operating along agricultural supply chains, including domestic and foreign, private and public, small, medium and large-scale enterprises; it is also directed towards banks and investors involved in funding their activities. The Guidance comprises a model enterprise policy and five-step framework for risk-based due diligence. The model policy is intended to be incorporated into an entity’s existing CSR or similar policies and includes language such as confirmation that “we will respect legitimate tenure right holders.” As to impact assessment, it is noted that these “should involve a representative number of all relevant stakeholder groups.” As to food security, “we will strive to ensure that our operations contribute to food security and nutrition. We will give attention to enhancing the availability, accessibility, stability and utilisation of safe, nutritious and diverse foods.”<sup>125</sup>

Although this Guidance is not legally binding, by referencing the RAI Principles and VGGT, it serves to reiterate and re-enforce the overarching principles that should guide agri-food multinationals in their supply chain operations.

## 5.7 A Confusing Array

Amidst these efforts to fill the governance gap, there is a proliferation of choices; an interplay between international guidance and contemporaneous standardization that is still evolving, a plethora of private voluntary standards and attempts at domestic legislation. Although CSR is not a legal issue *per se* but one of policy that remains at the discretion of individual companies, nonetheless “law resides at the heart of the [global value chain] phenomenon.”<sup>126</sup> The literature on the interaction of public and private governance

124 ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD) AND FAO. **OECD-FAO Guidance for Responsible Agricultural Supply Chains**. Paris: OECD Publishing, 2016. Recommendation I. <https://doi.org/10.1787/9789264251052-en>.

125 *Id.*

126 RÜHMKORF, *supra* note 92, at p. 69.

in supply chains indicates that the roles of the state on the subject remain largely underdeveloped. In the absence of a binding international legal framework governing transnational companies in their supply chain activities, what has been suggested is a hybrid regulatory system – in which private law, public law, soft law standards (developed by private actors as well as international organisations) and private regulation by and between companies, all interact with each other.<sup>127</sup> In such a system, what is the role for private international law?

## 6. REFLECTIONS

Reflecting upon how to achieve SDG#2 - Zero Hunger, the tasks that spring to mind might not include achieving greater sustainability in agricultural supply chains. But given the dominance of supply chains in the way our global food system is currently structured, it is indeed an important yet challenging task and PIL can be used in this endeavor. In times of crisis, such as during a pandemic or armed conflict, greater clarity in the rules that apply to *force majeure* and other excuses for non-performance can contribute towards keeping supply chains open. Taking the longer view, PIL can contribute towards improved economic sustainability in supply chains through better access to credit for a wide range of participants, large and small; PIL offers a variety of models and guides that can assist states in modernizing their domestic regimes for secured lending. Secondly, an important mechanism to encourage environmental sustainability in supply chains is through improved contract farming practices; in this regard, the CF Guide and accompanying Model Agreement provide practical guidance that operationalize the CF Principles and guidance on the actualization of the right to food. Thirdly, greater social sustainability can be realized through agricultural land investments that align with international standards, specifically the RAI Principles and VGGT as operationalized in the ALIC Guide. These PIL softlaw instruments align with the objectives of SDG#2, in particular with Target 2.3, which calls for secure and equal access to land and market opportunities, particularly for women and other marginalized groups, and with Target 2.4, which calls for implementation of resilient agricultural practices.

Notwithstanding such advances, agricultural supply chains fall within a global governance gap. Private firms have stepped in with PVS and other initiatives to fill this gap under the rubric of CSR, which more recently evolved into ESG. As interest in ESG has grown, efforts to standardize the description of ESG factors have emerged and continue to evolve. In some instances, these are being incorporated into disclosure and reporting

<sup>127</sup> *Id.*, at p.81

required by law. Increasingly, ESG is used by the investment industry to encourage a shift towards green financing and therefore this sector, too, has an interest in standardization.

These divergent efforts to fill the governance gap have resulted in a hodge-podge of self-regulation, international guidance, and domestic legislation. In the work that is required to bring greater coherence to the governance of agricultural supply chains, what is the role of private international law? Can it serve as a bridge to connect consumers reaching out to producers half-way around the globe?

## REFERENCES

AMAESHI, K., OSUJI, O. and NNODIM, P. Corporate Social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility? Clarifications, Exceptions and Implications. **Journal of Business Ethics**. Volume 81:1, 223-234, 2008. <http://hdl.handle.net/10871/10041>

BAKERHOSTETLER. **FAQs: Ukraine-Russia Conflict: Force Majeure and Other Defenses to Contractual Performance**. April 25, 2022. <https://www.bakerlaw.com/FAQs-Ukraine-Russia-Conflict-Force-Majeure-and-Other-Defenses-to-Contractual-Performance> (accessed March 28, 2023).

CALIFORNIA. **California Transparency in Supply Chains Act of 2010**. Companies subject to the Act must disclose their efforts in these areas: verification, audits, certification, internal accountability, and training. <https://oag.ca.gov/SB657> (accessed March 28, 2023).

CARTER, Craig R., ROGERS, Dale S. and CHOI, Thomas Y. Toward the Theory of the Supply Chain. **Journal of Supply Chain Management**. Volume 51:2, 2015. [https://keep.lib.asu.edu/\\_flysystem/fedora/c160/Carter\\_2015.pdf](https://keep.lib.asu.edu/_flysystem/fedora/c160/Carter_2015.pdf)

**Corporate Sustainability Reporting Directive**. Directive 2022/2464/EU of the European Parliament and of the Council of 14 December 2022 amending Regulation No 537/2014/EU, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting. <http://data.europa.eu/eli/dir/2022/2464/oj>

DE SCHUTTER, Olivier. **Addressing Concentration in Food Supply Chains: The Role of Competition Law in Tackling the Abuse of Buyer Power**. Briefing Note 03, December 2010. [http://www.srfood.org/images/stories/pdf/otherdocuments/20101201\\_briefing-note-03\\_en.pdf](http://www.srfood.org/images/stories/pdf/otherdocuments/20101201_briefing-note-03_en.pdf) (accessed March 28, 2023).

DOANE, Deborah, MACGILLAVRAY, Alex. **Economic Sustainability: The business of staying in business**. New Economics Foundation, The Sigma Project, R&D Report. 2001. [https://www.researchgate.net/profile/Deborah-Doane/publication/237302235\\_Economic\\_Sustainability\\_The\\_business\\_of\\_staying\\_in\\_business/links/5440f98d0cf2a6a049a356ff/Economic-Sustainability-The-business-of-staying-in-business.pdf](https://www.researchgate.net/profile/Deborah-Doane/publication/237302235_Economic_Sustainability_The_business_of_staying_in_business/links/5440f98d0cf2a6a049a356ff/Economic-Sustainability-The-business-of-staying-in-business.pdf)

ECCLES, Robert G., KASTRAPELI, Mirtha D. and POTTER, Stephanie J. How to integrate ESG into investment decision-making: Results of a global survey of institutional investors. **Journal of Applied Corporate Finance**. Volume 29:4, 125-133, 2017. <https://www.viex-americas.com/wp-content/uploads/2022/04/How-to-Integrate-ESG-into-Investment.pdf>

ERRY, Daniel, YANEZ, Melanie, BENZ, Stephen. Russian Invasion of Ukraine: Potential Litigation Issues. **Harvard Law School Forum on Corporate Governance**. April 12, 2022. <https://corpgov.law.harvard.edu/2022/04/12/russian-invasion-of-ukraine-potential-litigation-issues/> (accessed March 28, 2023).

EUROPEAN UNION. **Non-Financial Reporting Directive (NFRD)**. Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. <http://data.europa.eu/eli/dir/2014/95/oj>

FAO and INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT (IISD). **Model Agreement for Responsible Contract Farming**. With Commentary. Rome: FAO/IISD, 2018. <https://www.fao.org/3/CA1772EN/ca1772en.pdf>

FAO, COMMITTEE ON FOOD SECURITY. **Principles for Responsible Investment in Agriculture and Food Systems**. Endorsed by the CFS at its 41st session on 15 October 2014 (RAI Principles).

FAO, COMMITTEE ON FOOD SECURITY. **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security**. Endorsed by the CFS at its 38th (Special) Session on 11 May 2012 (VGGT).

FAO, COMMITTEE ON WORLD FOOD SECURITY, High Level Panel of Experts. **Investing in smallholder agriculture for food security**. A report by the High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security. [http://www.fao.org/fileadmin/user\\_upload/hlpe/hlpe\\_documents/HLPE\\_Reports/HLPE-Report-6\\_Investing\\_in\\_smallholder\\_agriculture.pdf](http://www.fao.org/fileadmin/user_upload/hlpe/hlpe_documents/HLPE_Reports/HLPE-Report-6_Investing_in_smallholder_agriculture.pdf)

FAO, INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT (IFAD), WORLD FOOD PROGRAMME (WFP) and WORLD BANK. **Joint Statement on COVID-19 Impacts on Food Security and Nutrition**. On the Occasion of the Extraordinary G20 Agricultural Minister's Meeting, April 21, 2020. <https://www.worldbank.org/en/news/statement/2020/04/21/joint-statement-on-covid-19-impacts-on-food-security-and-nutrition> (accessed March 28, 2023).

FAO. **A battle plan for ensuring global food supplies during the COVID-19 crisis**. <https://www.fao.org/news/story/en/item/1268059/icode> (accessed March 28, 2023.).

FAO. **Building a Common Vision for Sustainable Food and Agriculture: Principles and Approaches**. Rome: FAO, 2014. <https://www.fao.org/3/i3940e/i3940e.pdf>

FAO. **Contract Farming Resource Center**. <http://www.fao.org/in-action/contract-farming/background/en/> (accessed March 28, 2023).

FAO. **Declaration of the World Food Summit** (November 16-18, 2009) FAO Doc. WSFS 2009/2.

FAO. **Guiding Principles for responsible contract farming operations**. Rome: FAO, 2012. <https://www.fao.org/3/i2858e/i2858e.pdf>

FAO. **The State of Food And Agriculture: Climate Change, Agriculture and Food Security**. Rome: FAO, 2016. <https://www.fao.org/3/i6030e/i6030e.pdf>

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO), ALEXANDRATOS, Nikos and BRUINSMA, Jella. **World Agriculture Towards 2030/2050: The 2012 Revision**. Working Paper No. 12-03. FAO Agricultural Development Economics Division. Rome: FAO, 2012. <https://www.fao.org/3/ap106e/ap106e.pdf>

GABRIEL, Henry D. Warehouse Receipts and Securitization in Agricultural Finance. **Uniform Law Review**. Volume 17, 369-376, 2012.

GERMANY, FEDERAL MINISTRY FOR ECONOMIC COOPERATION AND DEVELOPMENT. **More Fairness in global Supply chains: Germany leads the way**. <https://www.bmz.de/en/issues/supply-chains> (accessed March 28, 2023).

GILLAN, Stuart L., KOCH, Andrew and STARKS, Laura T. Firms and social responsibility: A review of ESG and CSR research in corporate finance. **Journal of Corporate Finance**. Volume 66, 1-45, 2021. <https://doi.org/10.1016/j.jcorpfin.2021.101889>

GOODLAND, Robert. The Concept of Environmental Sustainability. **Annual Review of Ecology and Systematics**. Volume 26, 1-24, 1995. <https://are.berkeley.edu/courses/ARE298/Readings/goodland.pdf>

HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (HCCH). **Principles on Choice of Law in International Commercial Contracts**. Approved on March 19, 2015. <https://www.hcch.net/en/instruments/conventions/full-text/?cid=135>.

HAYS, Adam. The Supply Chain: From Raw Materials to Order Fulfillment. July 30, 2022. **Investopedia**. <https://www.investopedia.com/terms/s/supplychain.asp> (accessed March 12, 2023).

HEEHY, Benedict. Defining CSR: Problems and Solutions. **Journal of Business Ethics**. Volume 131:3, 625–648, 2015. <https://doi.org/10.1007/s10551-014-2281-x>

INSTITUTO HISPANO LUSO AMERICANO DERECHO INTERNACIONAL (IHLADI). **COVID-19 and Frustration of International Contracts**. IHLADI Recommendations, July 22, 2020. <http://ihladi.net/wp-content/uploads/2020/07/COVID-19-and-frustration-of-international-contracts.pdf> (accessed March 28, 2023).

INTERNATIONAL PANEL OF EXPERTS ON SUSTAINABLE FOOD SYSTEMS (IPES-Food). **Too Big to Feed: Exploring the Impacts of Mega-mergers, Consolidation and Concentration of Power in the Agri-food Sector**. 2017 [http://www.ipes-food.org/\\_img/upload/files/Concentration\\_FullReport.pdf](http://www.ipes-food.org/_img/upload/files/Concentration_FullReport.pdf) (accessed March 28, 2023)

INTERNATIONAL SUSTAINABILITY STANDARDS BOARD. <https://www.ifrs.org/groups/international-sustainability-standards-board/> (accessed March 28, 2023).

KONING, Juliette. Social sustainability in a globalizing world: context, theory and methodology explored. **Proceedings of the UNESCO/MOST meeting**, The Hague, The



Netherlands. 2001. <https://www.researchgate.net/profile/Juliette-Koning/publication/242642851>

LAKHANI, Nina. Corporate colonization: small producers boycott UN food summit. **The Guardian**. September 23, 2012. <https://www.theguardian.com/environment/2021/sep/23/small-producers-boycott-un-food-summit-corporate-interests> (accessed March 28, 2023).

LEBARON, G. and RÜHMKORF, Andreas. Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance. **Global Policy**. Volume 8:53, 15-28. 2017. <https://doi.org/10.1111/1758-5899.12398>

MORAN BOVIO, David. **Ley Modelo Interamericana sobre Garantías Mobiliarias: Su Implementación**. OAS & Marcel Pons, 2020. [https://www.oas.org/es/sla/ddi/docs/publicacion\\_Ley\\_Modelo\\_Interamericana\\_sobre\\_Garantias\\_Mobiliarias\\_Su\\_Implementacion.pdf](https://www.oas.org/es/sla/ddi/docs/publicacion_Ley_Modelo_Interamericana_sobre_Garantias_Mobiliarias_Su_Implementacion.pdf)

MORRISON, Edward, and BRIDWELL, Larry. Consumer social responsibility: the true corporate social responsibility. **Competition Forum**. American Society for Competitiveness, Volume 9:1, 1-6, 2011.

NOLAN, Justine. Business and human rights: The challenge of putting principles into practice and regulating global supply chains. **Alternative Law Journal**. Volume 42:1, 42-46, 2017. <https://doi.org/10.1177/1037969X17694783>

OAS, DEPARTMENT OF INTERNATIONAL LAW. **Improving Access to Credit – A Video Explanation**. [http://www.oas.org/en/sla/dil/newsletter\\_Access\\_to\\_Credit\\_Feb-2017.html](http://www.oas.org/en/sla/dil/newsletter_Access_to_Credit_Feb-2017.html) (accessed March 28, 2023)

OAS, INTER-AMERICAN JURIDICAL COMMITTEE (IAJC). Electronic Warehouse Receipts for Agricultural Products. CJI/doc. 427/13. **Annual Report of the IAJC to the General Assembly**. OEA/Ser.Q CJI/doc.443/13

OAS. **Model Inter-American Law on Secured Transactions**. OEA/Ser.K/XXI.6, CIDIP-VI/RES.5/02, February 8, 2002.

ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD) AND FAO. **OECD-FAO Guidance for Responsible Agricultural Supply Chains**. Paris: OECD Publishing, 2016. Recommendation I. <https://doi.org/10.1787/9789264251052-en>.

ORGANIZATION OF AMERICAN STATES (OAS), INTER-AMERICAN JURIDICAL COMMITTEE (IAJC). **Guide on the Law Applicable to International Commercial Contracts in the Americas**. OAS/Ser.Q, CJI/RES. 249 (XCIV-0/19), February 21, 2019. [http://www.oas.org/en/sla/iajc/docs/Guide\\_Law\\_Applicable\\_to\\_International\\_Commercial\\_Contracts\\_in\\_the\\_Americas.pdf](http://www.oas.org/en/sla/iajc/docs/Guide_Law_Applicable_to_International_Commercial_Contracts_in_the_Americas.pdf)

POLLMAN, Elizabeth. Corporate Social Responsibility, ESG, and Compliance. In VAN ROOIJ, Benjamin & SOKOL, Daniel (Eds.) **The Cambridge Handbook of Compliance**. Cambridge: Cambridge University Press, 2021. [https://scholarship.law.upenn.edu/faculty\\_scholarship/2568](https://scholarship.law.upenn.edu/faculty_scholarship/2568)



RÜHMKORF, Andreas. Global supply chain governance: The search for 'what works'. **Deakin Law Review**. Volume 23: 63-82, 2018. <https://doi.org/10.21153/dlr2018vol23no0art806>

SALMINEN, Jaakko, and RAJAVUORI, Mikko. Private International Law, Global Value Chains and the externalities of transnational production: towards alignment? **Transnational Legal Theory** Volume 12:2, 230-248, 2021. <https://doi.org/10.1080/20414005.2021.1970470>

SARFATY, Galit A. Shining Light on Global Supply Chains. **Harvard International Law Journal**. Volume 56:2, 419-463, 2015. [https://commons.allard.ubc.ca/fac\\_pubs](https://commons.allard.ubc.ca/fac_pubs)

SAUMIER, Genevieve. Sustainable Consumption and Production. In: MICHAELS, Ralf; RUIZ ABOU-NIGM, Verónica; VAN LOON, Hans (eds.). **The Private Side of Transforming our World - UN Sustainable Development Goals 2030 and the Role of Private International Law**. Cambridge: Intersentia, 2021. <https://www.intersentiaonline.com/library/the-private-side-of-transforming-our-world-un-sustainable-development-goals-2030-and-the-role-of-p>.

STEHL, Kolja, NG, Leonard and FEEHILY, Matt. EU Corporate Sustainability Reporting Directive – What do Companies Need to Know. **Harvard Law School Forum on Corporate Governance**. August 23, 2022. <https://corpgov.law.harvard.edu/2022/08/23/eu-corporate-sustainability-reporting-directive-what-do-companies-need-to-know/> (accessed March 28, 2023)

TAYAN, Brian. ESG Ratings: A Compass without Direction. **Harvard Law School Forum on Corporate Governance**. August 24, 2022. <https://corpgov.law.harvard.edu/2022/08/24/esg-ratings-a-compass-without-direction/> (accessed March 28, 2023).

TETTAMANZI, Patrizia, VENTURINI, Giorgio, MURGOLO, Michael. Sustainability and Financial Accounting: A Critical Review on the ESG Dynamics. **Environmental Science and Pollution Research**. Volume 29:16758–16761. <https://doi.org/10.1007/s11356-022-18596-2>

THORLAKSON, Tannis, HAINMUELLER, Jeans, LAMBIN, Eric, F. Improving Environmental Practices in Agricultural Supply chains: The Role of Company-led Standards. **Global Environmental Change**. Volume 48, 32-42, 2018. <https://doi.org/10.1016/j.gloenvcha.2017.10.006>

UKRAINIAN CHAMBER OF COMMERCE AND INDUSTRY. **Regarding the Certification of Force Majeure**. No. 2024/02.0-7.1 Dated February 28, 2022. <https://ucci.org.ua/uploads/files/621ce831ac29f951072237.pdf> (accessed March 28, 2023).

UN, Department of Economic and Social Affairs, Economic Analysis. **World Economic Situation and Prospects**: March 2023 Briefing, No. 170. <https://www.un.org/development/desa/dpad/publication/world-economic-situation-and-prospects-march-2023-briefing-no-170/> (accessed March 23, 2023).

UN, DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS. **Sustainable Development Goals**. <https://sdgs.un.org/goals/goal2> (accessed March 28, 2023).

UNGA. **The right to food. Note by the Secretary General**. Interim Report of the Special Rapporteur on the right to food, Olivier de Schutter. A/66/262, August 4, 2011. <https://>

[www.ohchr.org/sites/default/files/Documents/Issues/Food/A.66.262\\_en.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/Food/A.66.262_en.pdf)

UNGA. **The right to food. Note by the Secretary General.** Report of the Special Rapporteur on the right to food, Michael Fakhri. A/76/237. July 27, 2021. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/208/03/PDF/N2120803.pdf?OpenElement>

UNIDROIT and IFAD. **Legal Guide on Agricultural Land Investment Contracts.** Rome: UNIDROIT/IFAD, 2021. <https://www.unidroit.org/wp-content/uploads/2023/02/ALIC-Guide-links-pgs.pdf>

UNIDROIT, Convention on International Interests in Mobile Equipment (adopted November 16, 2001) 2307 UNTS 285. <https://www.unidroit.org/english/conventions/mobile-equipment/mobile-equipment.pdf>

UNIDROIT, FAO and IFAD. **Legal Guide on Contract Farming.** Rome: UNIDROIT/FAO/IFAD, 2015. <http://www.fao.org/3/a-i4756e.pdf>.

UNIDROIT. **Note of the Secretariat on the UNIDROIT Principles of International Commercial Contracts and the COVID-19 Health Crisis.** July 15, 2020. <https://www.unidroit.org/english/news/2020/200721-principles-covid19-note/note-e.pdf> (accessed March 28, 2023)

UNIDROIT. **Principles of International Commercial Contracts.** 4th Edition. Rome: UNIDROIT, 2016.

UNIDROIT. **Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Mining, Agricultural and Construction Equipment** (adopted November 22, 2019) <https://www.unidroit.org/english/conventions/mobile-equipment/mac-protocol-e.pdf>

UNIDROIT. **Selected Web and Bibliographical References on or relevant for Contract Farming Operations.** <https://www.unidroit.org/instruments/contract-farming/web-bibliographical-references/> (accessed March 28, 2023)

UNIDROIT. **Work in Progress: Model Law on Warehouse Receipts.** <https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts/> (accessed March 28, 2023).

UNITED KINGDOM. **Modern Slavery Act 2015**, UK Public Acts, 2015, c. 30. <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL). **Model Law on Secured Transactions** (2016) [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-08779\\_e\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-08779_e_ebook.pdf)

UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS. **General Comment 12:** The right to adequate food (Art. 11) (1999) UN Doc. E/C.12/1999/5.

UNITED NATIONS GENERAL ASSEMBLY (UNGA). **Final Report: The transformative potential of the right to food.** Report of the Special Rapporteur on the right to food, Olivier de Schutter. A/HRC/25/57. January 24, 2014. [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A\\_HRC\\_25\\_57\\_ENG.DOC](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A_HRC_25_57_ENG.DOC)

UNITED NATIONS GENERAL ASSEMBLY (UNGA). **Transforming Our World: The 2030 Agenda for Sustainable Development**. Doc. A/RES/70/1. September 25, 2015. "Agenda 2030" <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>

UNITED NATIONS HUMAN RIGHTS COMMISSION. **Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework**. A/HRC/17/31 21 March 2011 (Ruggie Principles).

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION (UNIDO). **What is CSR?** <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr> (accessed March 28, 2023)

UNITED NATIONS, CHIEF EXECUTIVES BOARD FOR COORDINATION. **Sustainable Management in the United Nations System: 2020-2030**. Phase II: Towards Leadership in environmental and social sustainability. CEB/2021/2/Add.1 29 October 2021. <https://un-sceb.org/strategy-sustainability-management-united-nations-system-2020-2030>

UNITED NATIONS, DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, POPULATION DIVISION. **World Population Prospects 2022: Summary of Results**. UN DESA/POP/2021/TR/NO. 3. New York: UN, 2022.

UNITED NATIONS. DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS. **The Sustainable Development Goals Report 2022**. New York: UN, 2022. <https://unstats.un.org/sdgs/report/2022/The-Sustainable-Development-Goals-Report-2022.pdf>

UNITED NATIONS. **International Covenant on Economic, Social and Cultural Rights** (1966) UN Doc A/RES/21/2200, 993 UNTS 3.

UNITED NATIONS. **Universal Declaration of Human Rights** (1948) UN Doc A/RES/217(III) A, GAOR 3rd Session

UNITED STATES OF AMERICA. Message to the House of Representatives: President's Veto of H.J. Res. 30. <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/03/20/message-to-the-house-of-representatives-presidents-veto-of-h-j-res-30/> (access March 28, 2023).

VIINIKAINEN, Teemu and CARO, Carmen Bullon. **Enabling regulatory frameworks for contract farming**. FAO Legislative Study 111. FAO Legal Office, Development Law Service. Rome: FAO, 2018. <http://www.fao.org/3/i8595EN/i8595en.pdf>

WILL, M. GlobalGAP smallholder group certification: Challenge and Opportunity for smallholder inclusion into global value chains, in VAN DER MEULEN, B. (Ed.). **Private Food Law: governing food chains through contract law, self-regulation, private standards, audits and certification schemes**. The Netherlands: Wageningen Academic Publishers, 2011.

WORLD BANK. **Enabling the Business of Agriculture 2019**. Washington DC: World Bank, 2019. <https://doi.org/978-1-4648-1387-0>



Gostaria de submeter seu trabalho a **Revista Direito.UnB?**

Visite <https://periodicos.unb.br/index.php/revistadedireitounb>  
e saiba mais sobre as nossas Diretrizes para Autores.