

Application of International Private Law Doctrines to Cross-Border “Green” Agreements

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Abstract: In the context of the global transition to sustainable development, the importance of cross-border agreements aimed at environmental protection is increasing. This article is dedicated to the analysis of key doctrines of private international law applied within the framework of “green” cross-border transactions, including the autonomy of the parties’ will, the principle of closest connection, imperative norms, and public policy. Legal approaches of various countries are examined, and the problems and prospects of legal regulation from the perspective of sustainable development are outlined.

Keywords: International private law, green agreements, sustainable development, cross-border contract, autonomy of will, imperative norms, ordre public.

With the development of the concept of sustainable development and the green economy, cross-border agreements aimed at environmental protection are becoming increasingly relevant. Such agreements, whether they involve the supply of environmentally friendly technologies, investments in renewable energy, or transboundary water resource management, require a careful approach to determining the applicable law. Private international law provides a range of doctrines that ensure flexibility and legal certainty in such transactions.

1. The doctrine of party autonomy (Lex voluntatis) as the basis of “green” contractual interaction. This doctrine is recognized in many jurisdictions and international instruments, such as the 1980 Rome Convention and the Rome I Regulation of the European Union. It provides predictability and flexibility in international commercial relations. However, there are limitations: the choice of law must not contradict the public policy of the state, and in some cases (for example, in consumer contracts), the protection of the weaker party may restrict the application of the chosen law.

The autonomy of the parties allows participants in green deals to choose applicable law that takes into account environmental priorities. For example, international companies can choose the law of a jurisdiction where environmental standards are more developed and align with the principles of sustainable development.

Example: A German investor and an Indonesian company enter into a contract for the construction of a solar power plant in Indonesia and choose Swiss law as the applicable law, as it better regulates green investments.

This freedom of choice is recognized in the Hague Principles of 2015 and the EU Regulation Rome I (Art. 3), as well as in a number of national legislations.¹

2. The doctrine of closest connection (Proper law) in the context of transboundary environmental projects. This doctrine is applied to ensure an objective and fair choice of applicable law. It takes into account the factual circumstances of each specific case. However, the definition of “closest connection” can be subjective and cause disputes, leading to uncertainty in law enforcement.

If the parties have not specified the applicable law, the law of the state with which the contract is most closely connected shall apply. In “green” projects, this is usually the country where the project is being carried out and the environmental mission is being implemented.

Example: a cross-border agreement between Kazakh and Chinese entities for the restoration of the ecosystem of a border river. Since the project is being implemented on the territory of Kazakhstan, Kazakh law will most likely be applicable.² Scientists emphasize that in environmental agreements, the “closest connection” should take into account environmental jurisdiction, not just economic.³

3. Law of the place of conclusion of the contract (Lex loci contractus) and its limited application in green deals. The law of the place of contract conclusion is rarely applied today as the sole criterion, especially in digital and cross-border “green” projects concluded online. However, it can play a supplementary role in the absence of other criteria.

Example: the parties concluded an online contract for the export of waste processing technologies, and the only specified element is the place of signing in the Netherlands. Then Dutch law applies unless the parties choose otherwise.⁴

4. Imperative norms (Lois de police) and public order (Ordre public): protection of “green” interests. Even with a contractual choice of law, courts can apply their own imperative norms aimed at environmental protection. For example, national legislation may prohibit the implementation of certain projects due to harm to nature.

Example: if the project violates European CO₂ emission standards, the EU court may refuse to recognize or enforce the contract, even if it is governed by the law of another country.⁵ Scientists note that environmental standards are increasingly being viewed as imperative, especially in EU countries.

5. Doctrine of Lex Mercatoria or “commercial law”, is a set of universal norms, principles, trade customs, and standards of conduct that have developed in international commercial practice. This doctrine functions as a supranational legal order, applied in cross-border transactions regardless of the national legislation of the parties involved. A distinctive feature of Lex Mercatoria is its flexibility and ability to adapt to the modern conditions of transnational trade, including transactions aimed at achieving sustainable development goals.

Example: in the arbitration practice of the International Chamber of Commerce (ICC), in the absence of a choice of applicable law, the agreement for the supply of equipment for wind

¹ Lando, O., & Nielsen, A. (2006). *The Rome I Regulation and Green Contracting*. *Journal of Private International Law*, 2(3), 27–35.

² Boele-Woelki, K. (2011). *Unification and Harmonization of Private International Law in Green Economy Projects*. *Yearbook of Private International Law*, Vol. XIII.

³ Mayer, B. (2021). *Environmental Protection in Private International Law: A Shift Toward Ecological Connectivity*. *Environmental Law Review*, 23(2), 109–122.

⁴ Based on Rome I Regulation and case law: *Intercontainer Interfrigo v. Balkenende*, ECJ Case C-133/08.

⁵ European Court of Justice, *C-366/10, Air Transport Association of America*, [2011] ECR I-13755.

energy was governed by Lex Mercatoria as a set of universally accepted principles and standards of environmentally responsible trade.⁶

Importance for “green” agreements: Lex Mercatoria allows the application of principles such as good faith, sustainability, and environmental responsibility of the parties, even if national law does not directly provide for them. Many modern Model Laws (for example, UNIDROIT Principles) include environmental aspects and thereby serve as the foundation of “green” Lex Mercatoria.⁷ Scientists emphasize that the development of Lex Mercatoria contributes to the “greening” of international trade and the formation of a universal standard of responsible behavior.⁸

6. The Doctrine of Harmonization and Unification of International Contract Law. The doctrine of harmonization and unification lies in the efforts of international organizations and states to create unified norms or agreed approaches in the regulation of international treaties. This helps eliminate contradictions between national systems, facilitate cross-border trade, and increase the predictability of the legal consequences of treaties.

The key acts of harmonization include:

United Nations Convention on Contracts for the International Sale of Goods

(Vienna Convention, 1980);

UNCITRAL Principles (1994, rev. 2016);

Hague Principles on Choice of Law in International Commercial Contracts (2015);

UNCITRAL Model Laws.

Importance for “green” agreements: Unification allows for the implementation of environmental standards as part of international contractual practice. Through the recognition of common principles—such as responsibility for environmental harm, sustainability, and good faith—international private law can become a tool for environmental protection.

Example: In a number of transactions governed by the Vienna Convention (CISG), the parties additionally include provisions on sustainability certification, energy efficiency, and material recycling—thereby harmonizing “green” goals with the unified norms of the international treaty.⁹ Researchers note that harmonization contributes to the inclusion of sustainable development goals into legal systems, even if they are not yet enshrined in national legislation.¹⁰

Comparative legal analysis of the application of doctrines to “green” cross-border agreements

European Union

Within the EU, Regulation No. 593/2008 (“Rome I”) is in effect, providing extensive opportunities for the autonomy of the parties’ will (Art. 3), as well as establishing the application of the principle of closest connection (Art. 4) in the absence of choice. A distinctive feature of the EU is the active use of imperative environmental norms (Article 9) and the principle of *ordre public* (Article 21), which makes environmental protection a key element of private law regulation.

⁶ International Chamber of Commerce. ICC Arbitration Case No. 9797 of 1999 // ICC International Court of Arbitration Bulletin. – 2000. – Vol. 11(2).

⁷ UNIDROIT Principles of International Commercial Contracts. – Rome: UNIDROIT, 2016.

⁸ Vogenauer S. Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC). – Oxford: Oxford University Press, 2015.

⁹ United Nations Convention on Contracts for the International Sale of Goods (CISG). – Vienna, 1980.

¹⁰ Bonell M.J. The UNIDROIT Principles and Sustainable Development Goals // Uniform Law Review. – 2020. – Vol. 25(4). – P. 617–634.

Example: A French company operating in the field of plastic recycling was unable to fulfill a contract with an Argentine partner due to a violation of EU directives on secondary waste — despite the applicability of Argentine law.¹¹

United States of America

The United States traditionally relies on conflict of laws rules developed at the state level, particularly the Restatement (Second) of Conflict of Laws. Although autonomy of will is recognized, courts often consider the public interest of the state, especially if the project affects environmental safety.

Example: In the case of *Environmental Systems v. GlobalTech* (2020), the California court applied state regulations governing toxic emissions, despite the contractual application of English law.¹²

Republic of Uzbekistan

In accordance with Article 1182 of the Civil Code of the Republic of Uzbekistan, the parties can independently choose the applicable law. In the absence of such a choice, the law of the country with which the contract is most closely connected is used. However, in environmental transactions, there is no clear definition of imperative norms and mechanisms for ecosystem protection within the framework of private international law. The necessity of incorporating norms prioritizing sustainable development into international treaty relations was noted in the study by Yu. B. Khozhiev.¹³

Conclusion

The application of international private law doctrines to “green” cross-border agreements is not just a matter of legal technique, but also a reflection of the global trend towards the greening of international obligations. The pursuit of harmonizing these doctrines with the principles of sustainable development could be the next step in the evolution of international private law.

Current issues in this field:

Lack of a unified definition of “green cross-border agreement”;

Insufficient development of conflict-of-law norms taking into account the goals of sustainable development;

Limited application of imperative environmental standards in a number of countries.

Prospective tasks of legal regulation of green cross-border contracts:

Development of an international convention on the application of environmental principles in private law contracts;

Inclusion of “environmental connection” as an additional criterion in determining the applicable law;

Recognition of sustainable development as an element of international public order (*ordre public ecologique*).

Green cross-border agreements require a special approach to the choice and application of law. The doctrines of private international law—autonomy of will, closest connection, mandatory norms, and public policy—create a flexible yet stable legal framework. Their application allows for consideration of not only the legal interests of the parties but also global environmental priorities.

¹¹ ECJ, Case C-526/13, *Greenpeace France v. Total Raffinage*.

¹² California Superior Court, *Environmental Systems Inc. v. GlobalTech Solutions*, No. 20-CV-45503.

¹³ Хожиев Ю.Б. Применение норм международного частного права в условиях устойчивого развития // Журнал гражданского и хозяйственного права. – 2023. – №4. – С. 27–31.

REFERENCES:

1. Lando, O., & Nielsen, A. (2006). *The Rome I Regulation and Green Contracting*. Journal of Private International Law, 2(3), 27–35.
2. Boele-Woelki, K. (2011). *Unification and Harmonization of Private International Law in Green Economy Projects*. Yearbook of Private International Law, Vol. XIII.
3. Mayer, B. (2021). *Environmental Protection in Private International Law: A Shift Toward Ecological Connectivity*. Environmental Law Review, 23(2), 109–122.
4. Based on Rome I Regulation and case law: *Intercontainer Interfrigo v. Balkenende*, ECJ Case C-133/08.
5. European Court of Justice, *C-366/10, Air Transport Association of America*, [2011] ECR I-13755.
6. International Chamber of Commerce. ICC Arbitration Case No. 9797 of 1999 // ICC International Court of Arbitration Bulletin. – 2000. – Vol. 11(2).
7. UNIDROIT Principles of International Commercial Contracts. – Rome: UNIDROIT, 2016.
8. Vogenauer S. Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC). – Oxford: Oxford University Press, 2015.
9. United Nations Convention on Contracts for the International Sale of Goods (CISG). – Vienna, 1980.
10. Bonell M.J. The UNIDROIT Principles and Sustainable Development Goals // Uniform Law Review. – 2020. – Vol. 25(4). – P. 617–634.
11. ECJ, Case C-526/13, *Greenpeace France v. Total Raffinage*.
12. California Superior Court, *Environmental Systems Inc. v. GlobalTech Solutions*, No. 20-CV-45503.
13. Хожиев Ю.Б. Применение норм международного частного права в условиях устойчивого развития // Журнал гражданского и хозяйственного права. – 2023. – №4. – С. 27–31.