



A COMPARATIVE ANALYSIS  
OF THE UNITED NATIONS  
CONVENTION ON  
CONTRACTS FOR THE  
INTERNATIONAL SALE OF  
GOODS & SALE OF GOODS  
ACT 1930

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# **“A Comparative Analysis of the United Nations Convention on Contracts for the International Sale of Goods & Sale of Goods Act 1930”**

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## **ABSTRACT**

In the Era of Globalization, International Investment and Trade are the Lifeblood of Business, they have a Major Impact on the Economic Advancement of a Country, India being a Developing Nation and a Major Player in the Global Market consists of Businesses which are constantly engaging in Commercial Transactions across a Variety of Jurisdictions whose Legislations may seem Unfamiliar or Inconsistent with our own, which often leads to Disputes and Delay.

“Indian Contract Act 1872 & Sale of Goods Act 1930” are among the Finest Legislations Governing Commercial Transactions Inside India's territorial limits, CISG, on the Contrary, is a “Uniform Convention for the International Sales of Goods that will take Effect anytime a Contract for the Sale of Goods is reached between Individuals with a Business in a Contracting State”.<sup>1</sup> would reduce the Legal Barriers and Increase the Efficiency of International Trade.

India being a Participant to the Vienna Convention 1980, has not yet become a Signatory to CISG, it leads to the question, “**Should India Ratify the Vienna Convention 1980?**” for the same reasons, this Paper Aims to Provide a Short Outline of the Provisions of the Acts & Compare the Two Legal Regimes to Provide an Opportunity to Identify areas where they could be Harmonized to Provide for a More Coherent Legal Framework.

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<sup>1</sup> “United Nations Convention on contracts for the International Sale of goods (Vienna, 1980) (CISG) Commission on international trade law, United Nations Commission on International Trade Law, [https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)” (last visited Feb 18, 2023)

## I.) INTRODUCTION:

### Background on Vienna Convention & Sale of Goods Act 1930:

“The Convention on Contracts for the International Sale of Goods (CISG) or also known as the Vienna Convention 1980”, “Regulates International Trade in Goods between Individual Businesses, but not Sales to Customers or Sales of Services, or Sales of Specific Types of Goods”<sup>2</sup>. CISG is the Product of Scholars, Academia & International – Intergovernmental Negotiations Spanning Decades, we can Infer their Vision from the Preamble that it Aims to “Contribute to the Removal of Legal Barriers in International Trade and promote the Development of International trade”.<sup>3</sup>

“Two-thirds of all goods that are Traded Internationally Emanate in Nations that have adopted the CISG”<sup>4</sup> which currently comprises 95 Nations, which also includes the majority of India’s Trade Partners. Given its Widespread Adoption across the Globe & Increasing Corporate Transactions, CISG will become a Standard Norm for International Trade.

“Sections 76 to 123 of the ICA 1872 are Repealed and Replaced by the SGA 1930”<sup>5</sup>, but the Former Continues to Apply in Cases where it is Required Since the Latter lacks Certain Phrases and Expressions that have been Defined in the Former

The Act applies to all types of Movable property and does not apply to Immovable Property, such as Land and Buildings. It aims to “Establish a Thorough Legal Framework for the Sale of Goods in India, Provide Security to both Buyers and Sellers, and to Foster Fair and Transparent Business Operations”.

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<sup>2</sup> “United Nations Convention on contracts for the International Sale of goods (Vienna, 1980) (CISG) Commission on international trade law, United Nations Commission on International Trade Law, [https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)” (last visited Feb 18, 2023).

<sup>3</sup> “United Nations Convention on Contracts for the International Sale of Goods, , [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951\\_e\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf)” (last visited Feb 18, 2023).

<sup>4</sup> “SCHWENZER, I., & HACHEM, P. (2009). The CISG—Successes and Pitfalls. The American Journal of Comparative Law, 57(2), 457–478. <http://www.jstor.org/stable/25652649>”

<sup>5</sup> “Frederick Pollock, Dinshah Fardunji Mulla & Akshay Sapre, Preliminary, in Pollock & Mulla, The Sale of Goods Act (2021)”.

## **II.) OVERVIEW OF THE VIENNA CONVENTION AND SALE OF GOODS ACT 1930:**

### **A.) Brief Description of Provisions:**

#### **1.) Convention on International Sale of Goods :**

##### **“Part I – Sphere of Application and General Provisions (Article 1 – 13)”:**

CISG applies to both Sales of Goods and their International Carriage, provided the Contract Contemplates such Carriage.

##### **“Part II – Formation of Contract (Article 14 – 24)”:**

It Establishes Guidelines for Contract Formation, such as Offer and Acceptance, the Utilization of General Terms and Conditions, and Contract Amendment.

##### **“Part III - Sale of Goods (Article 25 – 77)”:**

The Substantive Rights and Duties of Both Parties Arising from the Contract is covered in Part Three<sup>6</sup>.

##### **Chapter 1: “General Provisions (Article 25 – 29)”:**

Articles 25-29 contain the Fundamental Provisions that both the Buyer and the Seller use to Determine the Nature of their Remedies.

##### **Chapter 2: “Obligations of Seller (Article 30 – 52)”:**

“The Seller must Deliver the Goods, provide the Necessary Documents, and Transfer Ownership of the Goods as Stated in the Contract and this Convention. If there are no Specific Agreements in the Contract, this Convention provides Additional Rules to Follow”<sup>7</sup>.

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<sup>6</sup> “United Nations Convention on contracts for the International Sale of goods (Vienna, 1980) (CISG) Commission on international trade law, United Nations Commission on International Trade Law, [https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)” (last visited Feb 19, 2023).

<sup>7</sup> “United Nations Convention on contracts for the International Sale of goods (Vienna, 1980) (CISG) Commission on international trade law, United Nations Commission on International Trade Law, [https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)” (last visited Feb 19, 2023).

### **Chapter 3: “Obligations of Buyer (Article 53 – 65)”:**

“As a Buyer, it's Important to Meet the Obligations Set Out in the Contract and Convention, this includes Paying the Agreed-Up-On Price for the Goods and Ensuring Timely Delivery”<sup>8</sup>.

### **Chapter 4: “Passing of Risk (Article 66 - 70)”:**

“The Parties must Agree on the Point at which the Risk of Loss or Damage Passes to the Buyer, to Ensure that Both Parties are Aware of their Respective Responsibilities and Liabilities”<sup>9</sup>. The Concerned Parties can use something as INCOTERMS to address such issues, In the absence of the same, the Convention provides with a set of guidelines<sup>10</sup>.

### **Chapter 5: “Provisions Common to the Obligations of the Seller and Buyer (Article 71- 88)”:**

The Articles cover Instalment Contracts, which are Contracts Performed in Parts over Time, Anticipatory Breach, and the Effects of Avoidance & Preservation of Goods, which Address the “Legal Consequences of Avoiding a Contract and the Parties Rights to the Goods & Damages with Interest”.

### **“Part IV: Final Provisions (Article 89- 101)”:**

The Convention's Last Provisions Address Issues Including “How and When it came into Operation and How it Applies to International Sales When both States Involved Operate under Identical or Similar laws”<sup>11</sup>.

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<sup>8</sup> “United Nations Convention on contracts for the International Sale of goods (Vienna, 1980) (CISG) Commission on international trade law, United Nations Commission on International Trade Law, [https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)” (last visited Feb 19, 2023).

<sup>9</sup> “Who bears the costs and risk of goods being lost or damaged during transport? Milosevic (2021), <https://milosevic-law.com/who-bears-the-costs-and-risk-of-goods-being-lost-or-damaged-during-transport-incoterms-clauses/>” (last visited Feb 19, 2023).

<sup>10</sup> “United Nations Convention on contracts for the International Sale of goods (Vienna, 1980) (CISG) Commission on international trade law, United Nations Commission on International Trade Law, [https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)” (last visited Feb 19, 2023).

<sup>11</sup> “United Nations Convention on contracts for the International Sale of goods (Vienna, 1980) (CISG) Commission on international trade law, United Nations Commission on International Trade Law, [https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)” (last visited Feb 19, 2023).

## **2.) Sale of Goods Act 1930 :**

### **Chapter 1: Preliminary (Section 1-3):**

It Consists of the Title & Extent Followed by Definitions of Terms used in the Act and States that “The Provisions that have not been Repealed in Indian Contract Act 1872 will be Applicable if they Align with the Provisions Stated in this Act”.

### **Chapter 2: Formation of Contract (Section 4-17):**

It Outlines the Key Differences Between a “Sale and an Agreement to Sell, explains how a Contract for Sale is Formed, and Discusses about the Topics Covered by a Contract, such as Price, Conditions, and Warranties”.

### **Chapter 3: Effects of the Contract (Section 18-30):**

Consists of Clauses that Deal with how Goods and Title are Transferred between Both the parties.

### **Chapter 4: Performance of Contract (Section 31-44):**

Outlines the Obligations of the Parties, Provisions for the Delivery of the Goods, including the Time and Location of Delivery and the Implications of Failure to Deliver.

### **Chapter 5: Rights of Unpaid Seller against the Goods (Section 45-54):**

Laws Pertaining to the Rights of an Unpaid Seller, such as the Right to Withhold Delivery, Lien, and Stoppage in Transit.

### **Chapter 6: Suits for Breach of Contract (Section 55-61):**

Consists of Several Remedies in the Event of a Breach, such as the Right to Sue for Damages, Order Specific Performance, and Repudiate the Contract.

### **Chapter 7: Miscellaneous Section (62-66)**

Exclusion of Implied Conditions of Sale, Reasonable Time, Auction Sales, Taxes, and Savings are Addressed. Section 65 is Repealed<sup>12</sup>.

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<sup>12</sup> “[Rep. by the Repealing Act, 1938 (1 of 1938), sec. 2 and Sch.]”

## **B.) Comparative Analysis of CISG & Sale of Goods Act 1930 :**

### **1.) Scope of Application:**

Article 1 to Article 6 discusses the Extent of Application of the CISG, where it explicitly states that “This Convention applies to Contracts of Sale of Goods between Parties whose Places of Business are in different States”<sup>13</sup>, Article 1(3) states that “The Nationality of the Parties nor Character of the Parties of the Contract is to be taken into account while Determining the Applicability of this Convention”<sup>14</sup>.

The Convention includes a list of the Different kinds of Sales that are not Covered by it Due to their “Nature, Purpose, or Type of Goods, or Because Some or All of them are Regulated by Special Rules by Respective States”<sup>15</sup>.

The Establishment of Contract and the Parties Rights and Responsibilities that Result from Such a Transaction Constitute the Subject Matter of this Convention.

“Section 1 of the Sale of Goods Act 1930 States that it Shall Extend to the Whole of India and Will come into Force on 1<sup>st</sup> July 1930”<sup>16</sup>, its application is limited to the Territory of India and every Contract which is executed concerning the Sale of Goods in India will be Governed by the Same. However, the Parties are free to choose the Law Governing the Contract of Supply of Goods provided that One of the Parties is from another Jurisdiction. “The Authority to Enact Laws Governing the Contract for the Sale of Goods rests with both the Parliament and the State Legislatures”<sup>17</sup>.

Section 3 Explicitly Provides that “The Unrepealed Provisions of the Indian Contract Act, 1872, save in so far as they are Inconsistent with the Express Provisions of this Act, shall continue to Apply to Contracts for the Sale of Goods”<sup>18</sup>

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<sup>13</sup> “United Nations Convention on contracts for the International Sale of goods (Vienna, 1980) (CISG) Commission on international trade law, United Nations Commission on International Trade Law, [https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)” (last visited Feb 19, 2023).

<sup>14</sup> “United Nations Convention on contracts for the International Sale of goods (Vienna, 1980) (CISG) Commission on international trade law, United Nations Commission on International Trade Law, [https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)” (last visited Feb 19, 2023).

<sup>15</sup> “Ref Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on Contracts for the International Sale of Goods”

<sup>16</sup> “The Sale of Goods Act, 1930 - Legislative, , [https://legislative.gov.in/sites/default/files/A1930-3\\_0.pdf](https://legislative.gov.in/sites/default/files/A1930-3_0.pdf)” (last visited Feb 19, 2023).

<sup>17</sup> “Frederick Pollock, Dinshah Fardunji Mulla & Akshay Sapre, Preliminary, in Pollock & Mulla, The Sale of Goods Act (2021)”.

<sup>18</sup> “The Sale of Goods Act, 1930 - Legislative, , [https://legislative.gov.in/sites/default/files/A1930-3\\_0.pdf](https://legislative.gov.in/sites/default/files/A1930-3_0.pdf)” (last visited Feb 19, 2023).

## **2.) Formation of Contract:**

According to Section 5 of SGA 1930, a Contract for Sale comes to being when “A Contract of Sale is made by an Offer to Buy or Sell Goods for a Price and the Acceptance of Such Offer”<sup>19</sup>. However, in CISG, “Offer” & “Acceptance” alone satisfy the requirements to Establish a Contract. We can infer that Consideration is not a Pre-Requisite in CISG which Diverges from the Stand of the Indian Legal Regime<sup>20</sup> which states there must be Lawful Consideration<sup>21</sup> apart from Instances mentioned under Section 25 of ICA 1872.

## **3.) Time & Delivery of Goods:**

***Burden Pertaining to Request for Delivery of Goods:*** Section 35 of SGA & Article 60 of CISG both agree on the context that it's the buyer's responsibility to request delivery of the goods, it is important to remember that the CISG's purview is wider in relation to the same <sup>22</sup>.

***Time of Delivery of Goods:*** Section 36 of SGA and Article 33 of CISG discusses the “Time Stipulated” in the Contract but additionally “Reasonable Time Criteria” <sup>23</sup> is discussed in Section 63 of SGA.

***Place of Delivery:*** Section 36 of SGA & Article 31 of CISG contain provisions concerning Future Goods, but it is noted that Rules Related to Delivery are Broader in CISG compared to SGA, in that Manner, CISG is on Par with Modern Contractual Standards.

***Relationship between Delivery & Payment:*** Section 32 of SGA States that Delivery & Payment are Based on the Buyer and Seller's Willingness to make Payment & Part with the Goods, The Indian Regime is Vocal, Whereas CISG does not discuss any such Relationship<sup>24</sup>.

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<sup>19</sup> “Section 5 of The Sale of Goods Act, 1930 - Legislative, , [https://legislative.gov.in/sites/default/files/A1930-3\\_0.pdf](https://legislative.gov.in/sites/default/files/A1930-3_0.pdf)” (last visited Feb 22, 2023).

<sup>20</sup> “Parvathy Giri, CISG, 1980 and the Indian Legal Sphere, 4 INT'L J.L. MGMT. & HUMAN. 1388 (2021)”.

<sup>21</sup> “Section 10 of Indian Contract Act, 1872”

<sup>22</sup> “Abhishek Negi, *Dissecting the CISG Framework and the Indian Sale of Goods Regime* (6) IJLSI Page 373 - 393 (2021), DOI: <https://doi.org/10.1000/IJLSI.111224>”

<sup>23</sup> “Section 12(2) of The Sale of Goods Act, 1930 - Legislative, , [https://legislative.gov.in/sites/default/files/A1930-3\\_0.pdf](https://legislative.gov.in/sites/default/files/A1930-3_0.pdf)” (last visited Feb 22, 2023).

<sup>24</sup> “Abhishek Negi, *Dissecting the CISG Framework and the Indian Sale of Goods Regime* (6) IJLSI Page 373 - 393 (2021), DOI: <https://doi.org/10.1000/IJLSI.111224>”

#### **4.) Breach of Contract:**

Section 37 of ICA states “Parties to a Contract are Required to Offer to Perform or to Carry out their Respective Obligations set forth in the Contract, Unless excused by Provisions of the Act or Another Law”, applying the same “A Condition is a Stipulation Essential to the Main Purpose of the Contract, the Breach of which gives rise to a Right to Treat the Contract as Repudiated”<sup>25</sup> , Contrarily, Article 25 of the CISG, which Deals with Contractual Breaches, has Two Major Problems, The Concept of “Fundamental Breach” lays down that “Unless the Party in Breach did not Foresee (Foreseeability Test<sup>26</sup> ) and a Reasonable Person of the same kind in the same circumstances would not have foreseen such a Result”<sup>27</sup>.

It does not Contemplate the Degree to which the Buyer Must be “Substantially Deprived” to become a Fundamental Breach. Every Jurisdiction Presenting its Own Views on How the Regime Ought to be Interpreted Destroys the Fundamental Objective of Uniformity.

#### **5.) Damages:**

Section 73 of ICA Deals with “The Damages the Party must be put in the Same Situation as if the Contract had been Fulfilled if it weren’t for the Breach”. Reasonable Precautions to be taken to Mitigate the Further Damages. According to Article 74 “Only the Party in Contravention is Required to Anticipate, or should have Anticipated, the Damage that May Come from the Breach”<sup>28</sup>. It also consists of “Doctrine of Mitigation”, which is present in Article 77 which states that “Failure to take such Measures to Mitigate Losses, the Party in Breach may Claim a Reduction in the damages”<sup>29</sup>.

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<sup>25</sup> “Section 12(2) of The Sale of Goods Act, 1930 - Legislative, , [https://legislative.gov.in/sites/default/files/A1930-3\\_0.pdf](https://legislative.gov.in/sites/default/files/A1930-3_0.pdf)” (last visited Feb 22, 2023).

<sup>26</sup> “Yasutoshi Ishida, Identifying Fundamental Breach of Articles 25 and 49 of the CISG: The Good Faith Duty of Collaborative Efforts to Cure Defects - Make the Parties Draw a Line in the Sand of Substantiality, 41 MICH. J INT’L L. 63” (2020).

<sup>27</sup> “United Nations Convention on contracts for the International Sale of goods (Vienna, 1980) (CISG) Commission on international trade law, United Nations Commission on International Trade Law, [https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)” (last visited Feb 19, 2023).

<sup>28</sup> “Parvathy Giri, CISG, 1980 and the Indian Legal Sphere, 4 INT’L J.L. MGMT. & HUMAN. 1388 (2021)”.

<sup>29</sup> “United Nations Convention on contracts for the International Sale of goods (Vienna, 1980) (CISG) Commission on international trade law, United Nations Commission on International Trade Law, [https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg)” (last visited Feb 19, 2023).

### III.) Should India Ratify the Vienna Convention of 1980?

#### A.) Potential Benefits of Adopting CISG:

***Uniformity & Increase in International Trade:*** Uniformity helps to reduce the Complexity and Uncertainty of International Trade. The CISG Standardises a Set of Regulations that can be applied across Different Countries, which makes it easier for businesses to engage in Cross-Border Trade Reducing the Need for Companies to Comply with Various Legal Systems.

The Adoption of CISG by India is likely to cause a series of “*Domino’s Effects*” which in turn will enable the Neighbouring Countries as Well as Existing Trade Partners who haven’t adopted CISG yet to become Signatories to the Convention, “Substantial Increase in Trade Volumes of Singapore after adopting CISG can be Inferred from KLRI-UNICITRAL Report”<sup>30</sup>.

***Better Protection for Indian Businesses:*** The Rules are designed to be fair and impartial, which helps to ensure that both parties are treated fairly in the event of a dispute. This provides better protection for Indian businesses engaged in International Trade, CISG provides for both Court Proceedings and Arbitration as methods of Dispute Resolution.

***Improved Access to Foreign Markets & Reduced Legal Costs:*** By Ratifying CISG Indian businesses would have Access to a Standard Set of Rules that would be Recognized by many Countries. This helps to Reduce the Need for Companies to engage in Costly Legal Battles to Resolve Disputes Reducing their Overall Operating Costs making it easier for Indian Companies to operate in Foreign Markets.

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<sup>30</sup> “CISG Implementation in Asia Pacific, 문서뷰어,  
[https://www.klri.re.kr/viewer/skin/doc.html?fn=rpt\\_3124922164973432612\\_Gobal\\_TF13-22-8-6.pdf&rs=%2Fdoc\\_convert%2FFILE\\_000000000019895EPzVp](https://www.klri.re.kr/viewer/skin/doc.html?fn=rpt_3124922164973432612_Gobal_TF13-22-8-6.pdf&rs=%2Fdoc_convert%2FFILE_000000000019895EPzVp)” (last visited Feb 23, 2023).

## **B.) Conclusion:**

Ratifying the Vienna Convention of 1980 is a Complex Decision that requires a Careful Analysis. While Ratification may Provide Greater Legal Certainty and Predictability for Indian Businesses Operating in Foreign Markets and attract more Foreign Investment to India, there are also Potential Drawbacks, such as the Need for changes to India's existing Legal System and Initial costs associated with Implementing the same. It is also worth Noting that the World of International Trade and Commerce is Ever Evolving, and what may be the Best Decision for India today May not necessarily be the Best Decision in the Future.

The Intentional Imprecision of the Drafters of the CISG is to create a General, Universal Convention that could be used as a Base for Global Business Transactions leaves the CISG Vulnerable to Misuse and Uncertain Results of Disputes, as Interpretation is left to National Courts rather than an International Appellate Instance, Resulting in Contradicting Interpretations destroying the Fundamental Objective of Creating Uniform Sales Law.

“A Global Tribunal may well be established to serve as a unified platform for addressing international trade disputes, Setting Minimum Standards for the Quality & Safety of Goods Sold Internationally. Making Mandatory Disclosure Requirements for Companies Engaged in International Trade can Ensure that Businesses can Operate with Confidence in Global Marketplace”.

It is Vital that the Indian Government discusses with the Relevant Stakeholders before Reaching an Agreement on this Subject. Furthermore, India's Long-Term Interests should be taken into Account as well as a Careful Balancing of the Prospective Benefits and Drawbacks while Determining Whether to Ratify The Vienna Convention 1980.