GOOD FAITH? GOOD GRIEF!

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Abstract

Good Faith — International Sales — Transnational Jurisprudence — Harmonisation — Uniform Commercial Law

One of the trickiest aspects of the convergence of differing legal systems and cultures into so-called 'uniform' commercial law is the question of how to deal with legal principles which are incongruent in domestic practices. The Contract for the International Sale of Goods (CISG) purports to be a uniform sales law, joining almost 80 legal systems with Brazil now joining, and while it has managed to advance more successful uniform standards in specific areas, the question of what to do with 'good faith' as it is presented in art 7 of the CISG is still a very delicate one.

In 2000, Prof Bruno Zeller bestowed upon the principle of good faith the apt nick-name 'scarlet pimpernel',[1] referring to the following classic quote from the book of the same name:

> *They seek him here they seek him there ... everywhere. Is he in heaven, is he in hell, that ... elusive Pimpernel?*[2]

This label has stuck in many CISG commentaries, because it strikes a chord with all commercial lawyers familiar with the concept in their own legal systems, let alone those trying to pin down good faith on a transnational scale. The fact remains, that while good faith is elusive at best in the confines of one system, this elusiveness is magnified a thousand fold when trying to find an acceptable transnational definition. It therefore seems appropriate to pick this topic in a tributary volume to honour Bruno — I know he will appreciate the controversy; this paper aims to make the point that good faith has ceased to be useful, despite its universal palpability, in the contexts of international commercial law and calls for its abolition or its clarification.

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1 B Zeller, 'Good Faith — The Scarlet Pimpernel of the CISG' (2001) 6 *International Trade and Business Law Annual* 227.

2 Baroness Orczy, 'The Scarlet Pimpernel' adapted by B Cross, (London, New York, S French, 1988), quoted in B Zeller, 'Good Faith — The Scarlet Pimpernel of the CISG' (2001) 6 *International Trade and Business Law Annual* 227.

I INTRODUCTION

Good faith is a popular concept. Of that there can be no doubt. It is the drafters darling, the palatable vagueness of choice in many contexts. There are clear benefits of operating with a concept of good faith in domestic or regional contexts, and the intrinsic relationship with commercial expectations is undeniably attractive. At a regional level, this is difficult (and somewhat pointless) to attempt to challenge. Various regions of law have developed their own relationship to good faith, in theory as well as in practice. And — to the extent that one is willing to engage with normatively simple operatives in law like 'what works' — it works well. But it must be emphatically pointed out that this only applies at a regional level.

Good faith may be pinned down regionally or for specific legal systems or traditions to a greater degree — but at a global level where uniform law is concerned, it remains as elusive as ever. A commonly accepted component of commercial law, perhaps (although even that can be debated) but not generally accepted as a general principle, as a specific interpretational tool, or as a guideline for morality. And by having differing regional or traditional meanings, it then becomes more than just a difficult concept. It risks becoming the most hated enemy of the uniform law enthusiast: the *fauxs amis.* The false friend, who — as pointed out by Bailey in his rather negative view of the role of the *CISG* in unifying sales law — misleads those who share law into believing they understand one another only to find that they do not.[3]

This paper will honour Bruno Zeller by dissecting the utility of his elusive pimpernel, arguing that good faith is simply too tainted by regional diversity to be of any constructive use on a global transnational playing field like the one the *CISG* occupies (or attempts to occupy).

This will be done by first briefly examining the concept of good faith in a comparative context, presenting some of the different guises under which it assumes its vague identity across some selected jurisdictions. The paper will then analyse some of the diverse *CISG* case law which abounds due to these regional differences, demonstrating the so-called 'homeward trend' interpretation of good faith in the *CISG* on this topic. The paper will then discuss the academic contributions to the confusion, and how the continued use of a concept such as good faith can only lead to *fauxs amis* problems of

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3 J Bailey, 'Facing the Truth: Seeing the Convention on Contracts for the International Sale of Goods as an Obstacle to a Uniform Law of International Sales' (1999) 32 *Cornell International Law Journal* 273.

uncertainty and non-uniformity. This embodies a utopian call for the abolition of good faith (which is about as likely to succeed as my sons attempts to learn to fly), so the conclusion will instead focus on a more realistic proposal: a call to arms for further research into a uniform standard of good faith.

A *Comparative Look at Good Faith*

As any good comparative lawyer will know, a transnational analysis of terms and concepts will invariably unearth both differences and similarities, depending on the level of analysis engaged with. Good faith has long been an interesting nut to crack for comparative law, to such an extent that comparative lawyers will often try to avoid it — pointing instead to broader concepts which can comfortably house the various transnational interpretations and ideas equated with it, or to some of the more limited components which it comprises of in most applications.

Below are a few examples of the diversity of good faith and some of the transnational concepts it has been equated to. These are very brief snapshots, but help to illustrate the lack of uniform understanding in interpreting and applying the concept.

In German law — the cradle of the concept as a general principle — they operate with the term *Treu und Glauben*, which covers ideals of 'good will' (*Gutwilligkeit*) and 'good belief' (*Gutgläubigkeit*)[4]. It is essentially an open doctrinal norm, found in the *German Civil Code* (*Burgerliche Gezetsbuch*, hereinafter refer to as *BGB*) para 242 (requirement of good faith) and *BGB* para 157 (interpretation in good faith). But it is almost indefinable. As Zeller puts it:

> ... it is impossible to find in German law a definition of what exactly good faith means despite the fact that the observance of 'Treu und Glauben mit Rücksicht auf die Verkehrssitte' as noted in §§ 242 and 157 BGB has been enacted since 1900.[5]

There are numerous German cases which hinge on the application of this principle in deciding the outcome. One textbook illustration is an example of a house on a hill, purchased at a high price, having a glorious view which is unmentioned in the contract. When the same seller commences building on a neighbouring lot of land, obstructing the view of the first house, this was

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4 Author's translations.

5 B Zeller, 'The Observance of Good Faith in International Trade' in Andre Janssen and Olaf Meyer (eds), *Methodology of the CISG* (Sellier, 2009) 133.

deemed contrary to good faith. German academics expend extreme fervour in attempting to pin down the concept.[6]

A similar principle, albeit a theoretical norm which is not rooted in legal text, is found in Danish law, *god tro's begrebet*, the principle of good faith reflects the notion that no one can be protected from an act if acting contrary to good faith and noble intentions. The text book example here is a case of mislabelled prices on televisions in a shop window. In Scandinavian law, famously, unilateral promises can be binding. This means that price promises and advertised deals are binding, as long as the accepting party acts in good faith. The case of the mislabelled TVs hinged on the fact that the buyer — when passing the window with the mislabelled low prices of the TVs — went home to get his camera to photograph it, thus indicating to the judge that if he felt the need to interrupt his evening to obtain proof of these low prices, he *must* have known there was a mistake and that this pricing was indeed too good to be true. The seller was thus entitled to refuse to sell at the advertised low price, as the buyer was not acting in good faith.

In Italy, behavioural norms can also be decisive via a concept of good faith, but here it is anchored in three separate aspects of the *Civil Code*; art 1337 concerns negotiation of contracts in good faith, with no view to misrepresenting or abusing, art 1366 allows parties to objectively interpret contract terms and behaviour in accordance with good faith and art 1375 requires contracts to be performed in good faith. There is no general principle as such, except where authorised by the *Civil Code* and there are no instances of cases being decided solely on an interpretation of good faith outside these specific parameters. It is very much governed by a general concept of fairness and openness, which is even labelled 'social solidarity'.[7]

In Muslim majority jurisdictions, where the *Sharia* is an important element of law, good faith also plays a key role, as the *Sharia* hinges on morality and good behaviour. There are specific fundamental functions of good faith like *Zakat* (requiring financial co-operation/support in Islamic society) and *al-Mustaffifin* ('woe to those that deal in fraud'). These operate as general guidelines for behaviour in a prohibitive sense.

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6 According to leading (German) CISG commentator Peter Schlechtriem, Dr Weber expends over 500 pages on this in the leading German law commentary 'Staudinger', see Peter Schlechtriem, *Uniform Sales Law — The UN-Convention on Contracts for the International Sale of Goods* (Manz, 1986).

7 Nicola Palmeiri, 'Good Faith Disclosures Required During Precontractual Negotiations' (1993) 24 *Seton Hall Law Review* 70, 204.

In the USA, the *Uniform Commercial Code* (*UCC*) codifies a duty to follow good faith in 'conduct and transaction' in para 1-203 and in 'performance and enforcement' in the restatement para 205, but these are only two of over 50 references to good faith. These are generally taken to refer to objective standards of conduct introduced to the American legal system by Karl Llewellyn who had a deep admiration for the German *Treu und Glauben*. There are three main schools of interpretation, including Summers' 'excluder principle' outlined above,[8] as well as Farnsworth's restrictive interpretation limiting good faith to a benchmark for implied terms,[9] and finally the limitation of legal discretion in maintaining contract interests.[10] However, despite the proliferation of the concept in the UCC, there seems to be very little discretionary room to exercise a general obligation of good faith.

In the so-called piecemeal approach of English common law, it is often debated whether there even *is* a principle of good faith, but given that it has been codified in statute as early as 1881 in the *Bills of Exchange Act*, it seems pointless to dispute that it exists in some form. It does not exist as a general German-style principle, but it certainly exists as an embodiment of objective standards; 'for value' and 'without notice' replacing the more indefinable norms as specific benchmarks of knowledge and fair pricing. Given that the UK is not a *CISG* signatory their inclusion in this comparison may seem surprising. However, given that there are many other *CISG* states which are common law jurisdictions who have based much of their initial legal development on communal statues such as the *Bills of Exchange Act*, it becomes relevant.

Throughout these different approaches to good faith, there is a common core of behavioural norm, but it is very varying how it can be applied, what influence it may have, and whether it can be used in determining the outcome of a case. The latter is one of the key reasons for arguments in favour of abandoning it. It seems to encourage more non-uniformity than any other concept, and may even be guilty of frightening away selected prospective *CISG* member states.[11]

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8 Robert S Summers, '"Good Faith" in General Contract Law and the Sales Provisions of the Uniform Commercial Code' (1968) 54 *Virginia Law Review* 195.

9 Allan E Farnsworth, 'The Concept of "Good Faith" in American Law', Centro di studi e ricerché di diritto comparato e straniero, Saggi, Conferenze e seminari. 10, 1.

10 Steven Burton, 'Breach of Contract and the Common Law Duty to Perform in Good Faith' (1980) 94 *Harvard Law Review* 369.

11 Sally Moss links the uncertainty of good faith in the CISG to the UK's failure to ratify, see Sally Moss 'Why the United Kingdom Has Not Ratified the CISG' (Fall 2005/Spring 2006) 25 *Journal of Law and Commerce* 1, 483–5.

II HOMEWARD TREND OFFENDERS

As evidenced above, a comparative analysis of the concept of good faith wields a very untidy picture of very varying domestic approaches to how to accommodate and apply such a term.

However, this is not merely an interesting exercise in comparative law. Due to the directly observable so-called 'homeward trend',[12] the differing domestic understandings of good faith is often directly mirrored in the domestic court decisions when the *CISG* is applied and the question of good faith arises.

The most recognisable culprit in this regard is German law. As outlined briefly above, German law is comfortable with its own flexible doctrine of good faith, as developed over centuries and embodied in the *BGB* since 1900. When looking at art 7 of the *CISG* it is therefore tempting for a German judge, familiar and comfortable with his own domestic doctrine, to assume that the same is embodied herein. Section C below discusses the accuracy of this point briefly. But the cases stand out from those of other jurisdictions. In one case from 1995, the German court uses a general doctrine of good faith to support an objective standard of interpretation of correspondence and thus finds for the German buyer who had changed the type of glass for test-tubes in the contract.[13]

German Supreme Court considered good faith in the *CISG* in 2001 and used it to impose a substantive obligation on parties to disclose information, including standard trade terms.[14] While it is generally accepted that a good faith interpretation of the contract conclusion provisions of the *CISG* means that 'a party that wishes to incorporate standard terms must show good faith efforts to communicate those terms to the other party',[15] the German Supreme Court extend this principle even further. Despite the fact that a contract referred clearly to standard contract terms, the Court found that these did not apply

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12 In the context of the CISG, this concept was first labelled by Ferrari to illustrate how courts are influenced by their domestic laws in interpreting the CISG, see Franco Ferrari, 'Have the Dragons of Uniform Law been Tamed? Ruminations on the CISG's Autonomous Interpretation by Courts' in Camilla B Andersen and Ulrich G Schroeter (eds), *Sharing International Commercial Law Across National Boundaries* (Wildy, Simmonds & Hill Publishing, 2008), 134; Franco Ferrari 'Homeward Trend: What, Why and Why Not' 9(1) *Internationales Handelsrecht* 8.

13 Oberlandesgericht [Court of Appeal Frankfurt am Main], 25 U 185/94, 31 March 1995 <http://cisgw3.law.pace.edu/cases/950331g1.html>.

14 Bundesgerichtshof [German Federal Supreme Court], VIII ZR 60/01, 31 October 2001 <http://cisgw3.law.pace.edu/cases/011031g1.html>.

15 Larry A DiMatteo et al 'The Interpretive Turn in International Sales Law: An Analysis of Fifteen Years of CISG Jurisprudence' (2004) *Northwestern Journal of International Law and Business* 299, 346.

because they had not been provided, despite the fact that the buyer never requested them. The Court stated:

> It would ... contradict the principle of good faith in international trade (art 7(1) *CISG*) as well as the general obligations of cooperation and information of the parties ... to impose on the other party an obligation to inquire concerning the clauses that have not been transmitted and to burden him with the risks and disadvantages of the unknown general terms and conditions of the other party.[16]

Not only is this a surprisingly protective stance to take in a commercial relationship but the assumption of this general principle with no reference to a *CISG* provision to be interpreted is troubling.

In the most extreme German good faith case from 2007, the Cologne Appellate Court also pronounced the existence of a general principle of good faith in the *CISG*. In doing so, they use a combination of art 7 and art 8 and refer to '*eine aus dem - auch im UN-Kaufrecht geltenden - Grundsatz von Treu und Glauben folgende allgemeine Pflicht, die Interessen des Vertragspartners bei der Vertragsabwicklung zu wahren*'.[17] In other words, they presume the existence of a general principle of good faith in the *CISG* and while they do base it on the interpretation of a *CISG* provision, they *equate it to the German principle.*[18] This clear homeward trend is uncharacteristic for German cases on the *CISG*, which usually demonstrate a great awareness of not mixing domestic law directly with *CISG* interpretation (unlike the infamous US cases which do so with regular impunity).[19]

Interestingly, an Italian case from 2001 also decided a case based on a general principle of good faith in the *CISG* without even referring to any provisions of the *CISG*:

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16 Bundesgerichtshof [German Federal Supreme Court], VIII ZR 60/01, 31 October 2001 <http://cisgw3.law.pace.edu/cases/011031g1.html>, William M Barron and Birgit Kurtz translation.

17 Author's translation: a general duty to respect the business interests of the other party in the performance of the contract; such a duty is based on the principle of *Treu und Glauben* (good faith), which is *also* applicable in *CISG*.

18 Oberlandesgericht [Appellate Court Köln] 16 U 5/07, 2 July 2007 <http://cisgw3.law.pace.edu/cases/070702g1.html>.

19 For a humorous exposition of a particularly bad example of US Courts using domestic law as a substitute for the *CISG*, see J Lookofsky and H Flechtner, 'Nominating Manfred Forberich: The Worst CISG Decision in 25 Years?' (2005) 9 *Vindobona Journal of International Commercial Law and Arbitration* 199.

> The duty of both contractual parties to observe good faith exists in international law as well. [Buyer]'s avoidance of the contract at the time of testing would consequently mean an explicit demonstration of bad faith.[20]

This is particularly interesting as there is a duty in Italian law to perform a contract in good faith — but no such provisions in the *CISG*.

As a stark contrast, in the more state-neutral forum of arbitration, the ICC arbitral tribunal has had numerous opportunities to consider the concept of good faith, but continuously seem to refuse to apply it as a decisive principle, which in these authors' view is correct.[21] It is applied as an interpretive tool for conduct in applying art 8, but never to the extent that good faith in itself is decisive.

Moreover, interestingly, aside from one case from New Zealand,[22] there are no *CISG* cases concerning good faith which surface from any jurisdictions which can be (crudely) labelled as common law or ex-common law.

III THE BIG BAD *FAUXS AMIS* OF GOOD FAITH

German scholars and some German and Italian cases as outlined above would have us believe that there is a general principle of good faith conduct in the *CISG*. Others will vehemently deny this, fighting tooth and nail to maintain the more narrow interpretation of art 7.[23]

I will engage briefly with these arguments, but it must be kept in mind that the main proposition here is not to decide the correct academic position, that is whether *CISG* should or should not be interpreted dynamically to accommodate a general principle of good faith. Rather, this will demonstrate that as there can be no agreement on such a dynamic interpretation transnationally, the more prudent and uniform course of action is to avoid it altogether.

Some academics support the German view above that a dynamic interpretation of the *CISG* should allow arts 7 and 8 to combine into a general duty of good

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20 Tribunale di Busto Arsizio [Italian District Court], 13 December 2001 <http://cisgw3.law.pace.edu/cases/011213i3.html>, translation by Maja Perpax, edited by Pedro Martini.

21 ICC Arbitration Case No 7331 of 1994; ICC Arbitration Case No 7645 of March 1995 <http://cisgw3.law.pace.edu/cases/957645i1.html>; ICC Arbitration Case No 8611 of 23 January 1997) <http://cisgw3.law.pace.edu/cases/978611i1.html>; ICC Arbitration Case No 8786 of January 1997 <http://cisgw3.law.pace.edu/cases/978786i1.html>.

22 *Bobux Marketing Ltd v Raynor Marketing Ltd* [2002] 1 NZLR 506 <http://cisgw3.law.pace.edu/cases/011003n6.html>.

23 Aside from the present authors, see M J Bridge 'Does Anglo-Canadian Contract Law Need a Doctrine of Good Faith?' (1984) 9 *Canadian Business Law Journal* 385.

faith, as it is known in German law. It is in itself interesting to note that the early proponent of this were Italian and German scholars — one could suggest a scholarly home ward trend in this.[24] I take the firm standpoint that this is simply not correct. The drafting history of the *CISG* makes it clear that they rejected the notion of good faith as a general principle. Article 7 of the *CISG* allows good faith to be used in interpreting the provisions of the *CISG*. It is not a general principle in itself; certainly not one with the power and flexibility to determine outcomes of cases. Arguably — and as pointed out by many, good faith cannot exist in a vacuum and must be anchored to parties' behaviour if used to interpret provisions.[25] But dynamic interpretation can only stretch so far — given the nature of the *CISG* as a convention of public international law, no interpretational principle should stretch so far as to include concepts which were deliberately rejected by the drafters.

A narrower reading of the *CISG*, as containing a duty to interpret provisions in accordance with good faith, may apply Farnsworth's theory to literally ensure that there is no bad faith in misapplication of the *CISG* and its provisions.[26] The difficulty of determining good faith on a domestic arena is all the more confusing when attempting to transplant a uniform concept to a transnational playing field. Simply put, the various jurisdictions are not looking for the same thing, making it even more unlikely that any uniform pattern will emerge. Some hunt for a diffuse general principle, some hunt for an embodiment of a commercial expectation and some hunt for an interpretational guideline. The *CISG* did not mean to implement the concept of good faith as anything but the latter — this is evident in its drafting history. But the fact remains that national courts will take a homeward trend approach to deciding what level of good faith they are comfortable with. Zeller's pimpernel of good faith remains ever elusive, but it is becoming dangerously predictable in terms of homeward trend interpretation. Safeguarding the uniformity of a transnational instrument like the

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24 C M Bianca and M J Bonell (eds), *Commentary on the International Sales Law: The 1980 Vienna Sales Convention*, 1987, Giuffré, Milan and Schlectriem, Peter, *Einheitliches UK-Kaufrecht. Das Ubereinkommen der Vereinten Nationen uber internationale Warenkaufvertrage - Darstellung und Texte* [Uniform UN Sales Law. The CISG: Description and Tests], 1981, Mohr, Tubingen.1

25 See Troy Keily, 'Good Faith and the Vienna Convention on Contracts for the International Sale of Goods (CISG)' (1999) 3 *Vindobona Journal of International Commercial Law and Arbitration* 1, 15–40, citing Phanesh Koneru 'The International Interpretation of the UN Convention on Contracts for the International Sale of Goods: an Approach Based on General Principles' (1997) 6 *Minnesota Journal of Global Trade* 105.

26 A E Farnsworth, 'Duties of Good Faith and Fair Dealing under the UNIDROIT Principles, Relevant International Conventions and National Laws' [1995] *Tulane Journal of International and Comparative Law* 47 at <http://www.trans-lex.org/122100>.

CISG is a multivalent challenge and varying degrees of uniformity must necessarily be accepted as unavoidable. But, as earlier writings established, a minimum standard of uniformity must be established in ensuring that domestic interpretations are not so predictably warped as to encourage forum shopping. It is submitted that good faith has become a *fauxs amis* subject to justify that.

It is for this very reason that one extreme view which can be advanced is simply that the term is indefinable, vague and unsuited for multijurisdictional usage. As eloquently put by a Harvard law student 12 years ago:

> while some semblance of an international doctrine may finally emerge, this would be an extremely long time in coming and would undermine the certainty, predictability and stability of international transactions in the meantime ... [minimizing its role] is far better than having to contend with the 'wild-card' of an uncertain general principle of Good Faith.[27]

We now have the empirical evidence of homeward trend cases emerging with alarming predictability to support the above proposal. On that basis, the chaos and lack of certainty which now prevails must be best avoided by eliminating this vague, unhelpful concept. No test can define it transnationally, and no national court can escape its own domestic parameters in attempting to apply it. Bruno's pimpernel has become a full blown burly highway bandit — no longer a sophisticated elusive gentleman, but an ogre of out-dated practices and an ugly one at that.

IV Conclusion

Getting rid of good faith is certainly tempting. On a transnational arena, it is undoubtedly causing difficulties in interpretation, predictability, certainty and uniformity. However, regardless of the extreme view above, it is very difficult to support an approach to business that negates the utilisation of good faith. Good faith is so very palatable and very likeable. And — perhaps more importantly — so very entrenched in commercial reality however it is interpreted.

Commerce, like life in general, necessitates interactions between different persons (legal or natural) and such interactions often occur between persons who have had no previous contact with each other. In such situations, one party

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27 D Sim, 'The Scope and Application of Good Faith in the Vienna Convention on Contracts for the International Sale of Goods' (2002-2003) *Review of the Convention on Contracts for the International Sale of Goods* 19 at <http://cisgw3.law.pace.edu/cisg/biblio/sim1.html> (this is her LLM thesis, winner of the Addison Brown Prize).

must be able to trust the other.[28] It is for this reason that good faith actions are a necessary minimum function of social interaction.[29] And it is of little use to consider the variant meanings of good faith within different linguistic contexts. While it is clear that good faith (*Treu und Glauben*) and *bonne foi* are not linguistically synonymous, this does nothing more than tell us that linguistic differences exist. Now it may be that these linguistic differences reveal (or mask) cultural distinctions, in which case it is the task of the lawyer (the *comparative lawyer*) to investigate the content and effect of such cultures. But be that as it may, as for the linguistic differences, Summers' warning (paraphrasing Wittgenstein) should suffice:

> Lawyers too must fight against the bewitchment of their intelligence by means of language.[30]

Good faith is all too bewitching. To all of this and with the stark realisation that the abolition of good faith is not a realistic goal, I finally offer a two-pronged and more balanced solution to the issue.

1. The first is the ever-present and oft banged drum of observing the jurisconsultorium of the *CISG*.[31] If different national courts observe the fact that they are sharing a uniform law and thus share sources, scholarship and cases in the same vein, then much non-uniform application can be avoided. This may — at least — help to minimise the homeward trend interpretations — although on this particular issue of good faith I remain sceptical.

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28 R Pound, *An Introduction to the Philosophy of Law* (1922) 188: 'Men must be able to assume that those with whom they deal in the general intercourse of society will act in good faith'; *Phoenix Insurance Co v De Monchey* (1929) 141 LT 439 (HL) 445 (Lord Atkin): 'Business men habitually … trust to luck or to the good faith of the opposite party'.

29 Summers, above n 8, 195: 'That persons should behave in good faith is a minimal standard rather than a high ideal'. Cf Bridge, above n 23, 395–6: 'If s 205 [the good faith obligation in the Restatement (Second) of Contract] were concerned to police irreducible standards of human decency, the consent of the "victim" should make no difference since the ethical values of society, injured by the bad faith behaviour, could not traded away for someone else's mess of potage.'

30 Summers, above n 8, 201; Cf L Wittgenstein, *Philosophical Investigations* (1953) §109: 'Philosophy is a battle against the bewitchment of our intelligence by means of our language.'

31 See C B Andersen, 'The Uniform International Sales Law and the Global Jurisconsultorium' (2005) 24 *Journal of Law and Commerce* 159; see also Camilla Baasch Andersen, *Uniform Application of the International Sales Law: Understanding Uniformity, the Global Jurisconsultorium and Examination and Notification Provisions of the CISG* (Kluwers Law International, 2007); see also Camilla Andersen, 'The Global Jurisconsultorium of the CISG Revisited' (2009) 13 *Vindobona Journal of International Commercial Law and Arbitration* 43.

2. The second is a call for more research, beyond the scope of the present brief homage paper, into the common core of good faith and its components at a global level. This would necessitate a comparative analysis of all *CISG* states and their legal systems, with a view to establishing commonly acceptable delimitations on the scope and contents of a good faith principle. Simply put, if we have to live with good faith — and it would seem we do — then its utility must be promoted by a more thorough exploration into three main aspects:
    i. Components of good faith: What can aid in defining it? What elements of contractual morality are relevant? Aspects such a 'for value' and 'without notice' from UK law spring to mind, but there is so much more such as communication, miscommunication, non-disclosure and motivation; both open and hidden motivation. This research need not be exhaustive, but establishes a framework for components.
    ii. Process of establishing good faith: Isolating acceptable standards for proving or disproving good faith. An exclusionary test like the one defined above would seem appropriate to determine where there are issues of good faith, based on the components which have been isolated. But case law and comparative analysis in the field teaches us that a unified standard of establishing good faith is needed. Must there be a set standard of proof? What degree of causality and standards of culpability.
    iii. Consequences of good faith problems: The delimitation of what consequences this may then have is needed. Must an issue it be tied to a specific provision, ie, must it be limited to interpretation in the *CISG*? Or can a more flexible good faith obligation principle be considered palatable transnationally within defined parameters? What consequences may it have if a party is in bad faith in specific scenarios?

This list of questions is very incomplete. This paper does not attempt to provide all the answers, but merely attempts to establish the need to question the utility of good faith as it stands today in a uniform transnational context like that of the *CISG*. The future will tell if this invitation to delimitate good faith is popular, useful or palatable. And the future will tell if Bruno Zeller is provoked by my tribute to him into launching both and a global research team into a massive project to undertake this quixotic task. If he does, I shall welcome it. The only thing more intellectually stimulating and fun than good research is good research with good friends. And Bruno has long shown his ability to do both — Happy Birthday, old friend!