

‘REGARD IS TO BE HAD’: THE LEGISLATIVE INTENT OF ARTICLE 7(1) OF THE CISG (Part 1)¹

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ABSTRACT

The Convention on Contracts for the International Sale of Goods (‘*CISG*’) is the international legal framework that enables international sales, removing the legal barriers among countries and promoting legal uniformity. Arguably, Article 7(1) is the most important provision as establishes the interpretation guidelines that promote uniformity within the *CISG*. Article 7(1) reads: ‘In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade’.

However, this study argues that the interpretation of Article 7(1) is itself a legal obstacle to uniformity. The mandate ‘regard is to be had’ which is inextricably linked to its elements ‘international character’, ‘uniformity’ and ‘good faith’ is ambiguous and lead to a lack of uniformity. To address this issue, Article 7(1) should be critically analysed according to its legislative history or *travaux préparatoires*, a source of interpretation in private international law that overcomes the literal interpretation’s shortcomings. This study fills gaps in the scholarship by presenting a comprehensive legislative history of Article 7(1) and a critical analysis on the legal expression ‘regard is to be had’. This study states that the *CISG* should not be interpreted according to domestic law, *CISG* foreign decisions have strong persuasive authority, and the *CISG* should be interpreted with the promotion of the principle of good faith between the parties. The legal history of Article 7(1) can help to achieve more uniformity and

¹ “Regard is to be had’: The Legislative intent of Article 7(1) of the *CISG* – Part 1’ (2023) 15(1) *European Journal of Commercial Contract Law*, <https://www.uitgeverijparis.nl/en/reader/212367/1001668980>

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predictability across the *CISG* and all national and international laws that have adopted Article 7(1).

SUMMARY

Is a drone an ‘aircraft’? Is a software a ‘good’? How can we interpret ‘force majeure’? These are common questions for lawyers, courts, arbitral tribunals and scholars that deal with Private International Law. Article 7(1) of the *CISG* gives the interpretation guidelines to answer these questions in the *CISG* and all other national and international instruments that have adopted this rule. However, this study argues that Article 7(1) of the *CISG* is unclear and an ordinary interpretation of this rule leads to a lack of uniformity and greater uncertainty. This study finds out the meaning of the words ‘regard is to be had’ pertaining to the elements of ‘international character’, ‘uniformity’ and ‘good faith’ of Article 7(1) according to its legislative intent.

1 Article 7(1) of the *CISG*

Arguably, Article 7(1) is the most important provision of the *CISG* as it establishes the interpretation guidelines that promote uniformity within the *CISG*. Article 7(1) of the *CISG* reads: ‘In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade’.

The interpretation rule found in Article 7(1) is what makes the *CISG* unique. Previous international laws such as the Convention for the Unification of Certain Rules Relating to International Carriage by Air (‘Warsaw Convention’),³ the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (‘Hague Rules’) and the Convention Providing a Uniform Law For Bills of Exchange and Promissory Notes did not contain such a rule.⁴ They left the definition and interpretation of the terms to national

³ Opened for signature 12 October 1929, 137 LNTS 11 (entered into force 13 February 1933).

⁴ *International Convention for the Unification of Certain Rules of Law relating to Bills of Lading*, opened for signature 25 August 1924, 1412 UNTS (entered into force 14 February 1984); *Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes*, opened for signature 7 June 1930, 143 LNTS 257 (entered into force 1 January 1934).

legislators and courts, which led to divergent interpretations, contradictory provisions, overlapping and duplication.⁵

The *CISG* is the most successful uniform private law convention to unify commercial law at the international level to date, and the first convention to be accepted worldwide in private international law. It has been ratified by 94 countries and governs, by default, more than two-thirds of all international sales.⁶ Due to the *CISG*'s reach and success, Article 7(1) has been highly influential and adopted in domestic and international laws.⁷

⁵ *Progressive Codification of the Law of International Trade: Note by the Secretariat of the International Institute for the Unification of Private Law (UNIDROIT)*, UN Doc A/CN.9/L.19 (1969) para 6.

⁶ See *Status: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG)* <https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status> at 11 October 2021; The States which ratified the *CISG* are Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Benin, Bosnia, Herzegovina, Brazil, Bulgaria, Burundi, Cameroon, Canada, Chile, China (PRC), Costa Rica, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea (N. Korea), Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, Fiji, France, Gabon, Georgia, Germany, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, Iraq, Israel, Italy, Japan, Korea (S. Korea), Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Mauritania, Mexico, Moldova, Mongolia, Montenegro, Netherlands, New Zealand, Norway, Palestine, Paraguay, Peru, Poland, Portugal, Republic of Congo, Republic of Korea, Romania, Russian Federation, Saint Vincent & Grenadines, San Marino, Serbia, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Syria, Turkey, Uganda, Ukraine, United States, Uruguay, Uzbekistan, Vietnam, Yugoslavia, Zambia, USSR; The United Kingdom, despite being a major trade nation, has never adopted the *CISG*'; The 94 countries of the *CISG* represent more than two-thirds of all world trade; Joseph M Lookofsky, *Understanding the CISG in the USA: A Compact Guide to the 1980 United Nations Convention on Contracts for the International Sale of Goods* (Kluwer Law International, 2nd ed, 2004).

⁷ For instance, the same rule is found in Article 20 of the *Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters 2019* (with the terms 'regard shall be had' instead of 'regard is to be had'); Article 1.6(1) of *UNIDROIT Principles on International Commercial Contracts 2016*; Article 1.6(1) of *UNIDROIT Principles on International Commercial Contracts 2010*; Article 4 of the *UNIDROIT Convention on Substantive Rules For Intermediated Securities 2009*; Article 2 of the *United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2008*; Article 53 of the *Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007* (with the terms 'regard shall be had' instead of 'regard is to be had'); Article 20 of the *Protocol on the Law Applicable to Maintenance Obligations 2007* (with the terms 'regard shall be had' instead of 'regard is to be had'); Article 13 of the *Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary 2006* (with

Article 7(1) establishes the interpretation guidelines that promote uniformity within the *CISG*. However, this study argues that the interpretation of Article 7(1) is itself a legal obstacle to uniformity which is the purpose of the *CISG* and creates legal uncertainty.⁸ Its key expression ‘regard is to be had’ is ambiguous and leads to an unreasonable result.

1 ‘regard is to be had’: Article 7(1) of the CISG

‘[R]egard is to be had’ is the crucial expression that outlines the purpose of the provision. This statement is inextricably linked with the ‘international character’, the need to promote ‘uniformity’ and the ‘observance of good faith’. ‘Regard is to be had’ is the mandate, but there is no guidance on how to comply with this duty and its elements: ‘international character’, ‘uniformity’, and ‘good faith’. The legal expression ‘regard is to be had’ is ambiguous. The

the terms ‘regard shall be had’ instead of ‘regard is to be had’); Article 5 of the *United Nations Convention on the Use of Electronic Communications in International Contracts 2005*; Article 23 of the *Convention on Choice of Court Agreements 2005* (with the terms ‘regard shall be had’ instead of ‘regard is to be had’); Article 1.6(1) of *UNIDROIT Principles on International Commercial Contracts 2004*; Article 5(1) of the *Convention on International Interests in Mobile Equipment 2001*; Article 7 of the *United Nations Convention on the Assignment of Receivables in International Trade 2001*; Article 8 of the *UNCITRAL Model Law on Cross-Border Insolvency 1997*; Article 3 of the *UNCITRAL Model Law on Electronic Commerce 1996*; Article 5 of the *United Nations Convention on Independent Guarantees and Stand-by Letters of Credit 1995*; Article 1.6(1) of *UNIDROIT Principles on International Commercial Contracts 1994*; Article 14 of the *United Nations Convention on the Liability of Operators of Transport Terminals in International Trade 1991*; Article 6(1) of the *UNIDROIT Convention on International Financial Leasing 1988*; Article 4(1) of the *UNIDROIT Convention on International Factoring 1988*; Article 4 of the *United Nations Convention on International Bills of Exchange and International Promissory Notes 1988*; Article 16 of the *Convention on the Law Applicable to Contracts for the International Sales of Goods 1986*; Article 2A(1) of *UNCITRAL Model Law on International Commercial Arbitration 1985*; Article 6(1) of the *Convention on Agency in the International Sale of Goods 1983*; The formative change from ‘regard shall be had’ to ‘regard is to be had’ will be indicated in this thesis; Pilar Perales Viscasillas, ‘Article 7’ in Stefan Kröll, Loukas A Mistelis and Pilar Perales Viscasillas, *UN Convention on Contracts for International Sale of Goods (CISG)* (Verlag C H Beck, 2011) 140 [62]-[63].

⁸ The purpose of the *CISG* is evidenced in the preamble and reads: ‘Being of the opinion that the adoption of uniform rules which... take into account the different social, economic and legal systems (will) contribute to the removal of legal barriers in international trade and promote the development of international trade’; John Honnold and Curtis R Reitz, *Sales Transactions: Domestic and International Law: Cases, Problems, and Materials* (Foundation Press, 3rd ed, 2006) 20; Sonja Kruisinga, *(Non-)Conformity in the 1980 UN Convention on Contracts for the International Sale of Goods: A Uniform Concept?* (Intersentia, 2004) 13.

expression is arguably mandatory, but it could also be permissive. The ordinary definition of ‘regard’ requires only ‘to consider’ or ‘to look carefully’ at the elements of ‘international character’, ‘uniformity’ and ‘good faith’ when interpreting and applying the *CISG*.⁹ Accordingly, ‘regard is to be had’ does not state: ‘to follow’, but rather requires only to consult or consider.¹⁰ It requires to have ‘regard for’ but it does not specify how much weight (or how much ‘regard’) for ‘international character’, ‘uniformity’ and ‘good faith’ must be given in the *CISG*’s interpretation and application.¹¹ Moreover, it does not specify upon whom this obligation is imposed. Furthermore, it is ambiguous because it does neither explain how to consider nor the consequences of the consideration. There is a question about the process or test that a court should use to determine whether the interpreter has in fact ‘regarded’ (considered or looked carefully) at the ‘international character’, ‘the need to promote uniformity’ and the ‘observance of good faith’.

Additionally, ‘regard’ is a weak mandate, so it is not persuasive. The mandate ‘regard’ does not indicate an absolute obligation.¹² A stronger mandate would have been ‘must’, ‘shall’ or ‘should’. ‘Regard for’ demands at a minimum to consider the elements of ‘international character’, ‘uniformity’ and ‘good faith’.¹³ Also, the legal expression ‘regard is to be had’ is not as strong as, for example, ‘regard must be had’ or ‘regard shall be had’. This ambiguity and lack of persuasiveness of the mandate ‘regard is to be had’ of Article 7(1) is an open-door

⁹ *Regard* (13 April 2022) Cambridge Dictionary <<https://dictionary.cambridge.org/dictionary/english/regard>>; ‘Regard is to be had’ is not found in the ‘Encyclopaedic Australian Legal Dictionary’ neither in ‘AustLII: Australasian Legal Information Institute’.

¹⁰ Liu Qiao and Xiang Ren, ‘CISG in Chinese Courts: The Issue of Applicability’ (2017) 65 *American Journal of Comparative Law* 873, 874.

¹¹ Joseph Lookofsky, ‘The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the UN Sales Convention’ (European Law Publishers, 2009) 217; Steven D Walt and Bruno Zeller, ‘Interpretation Revisited—Has Transnational Law Complicated the Interpretive Mandate?’ (2021) 36 *Virginia Public Law and Legal Theory Research Paper* 16, 16.

¹² Shani Salama, ‘Pragmatic Responses to Interpretive Impediments: Article 7 of the CISG, an Inter-American Application Comment’ (2006) 38 *University of Miami Inter-American Law Review* 225, 233; Harry M Flechtner, ‘The Several Texts of the CISG in a Decentralized System: Observations on Translations, Reservations and Other Challenges to the Uniformity Principle in Article 7(1) Symposium - Ten Years of the United Nations Sales Convention’ (1997) 17(2) *Journal of Law and Commerce* 187, 205, 211.

¹³ Walt and Zeller, above n 11, 16.

mechanism for courts not to comply, or comply differently, with the requirements of ‘international character’, ‘uniformity’ and ‘good faith’. As a result, some courts interpret the *CISG* from the perspective of their domestic legal system; some courts do not follow *CISG* foreign decisions to comply with the uniformity element; and some courts interpret the *CISG* without the promotion of ‘good faith’ between the parties.¹⁴ This issue leads to a lack of uniformity and creates uncertainty which is an unreasonable result. The mandate ‘regard is to be had’ of Article 7(1) of the *CISG* is an obstacle to uniformity. On the other hand, this could allow flexibility and granting a margin of appreciation to domestic authorities and traditions.

Case law adopted a literal interpretation of ‘regard is to be had’ and did not solve this issue. The Italian and US courts interpreted ‘regard is to be had’ to simply mean ‘take into account’.¹⁵ Those cases deal with the expression ‘regard is to be had’ concerning ‘the need to promote uniformity in its application’ which, according to scholars, implies to ‘have regard’ to foreign *CISG* precedents to promote uniformity.¹⁶ These cases dealt with the question of the value that foreign *CISG* decision should have.¹⁷ The answer was that foreign court decisions ‘merely have

¹⁴ Alexander S Komarov, ‘Internationality, Uniformity and Observance of Good Faith as Criteria in Interpretation of CISG: Some Remarks on Article 7(1) Remarks’ (2005) 25(1) *Journal of Law and Commerce* 75, 78; Petra Butler, ‘The Use of the CISG in Domestic Law Uniform Sales Law’ (2011) 2011 *Annals of the Faculty of Law in Belgrade - International Edition* 7, 12-13, 22-27.

¹⁵ Lookofsky, above n 11, 218; *Al Palazzo SRL v Bernardaud SA* [2002] CLOUT No 608 (26 November 2002) (Tribunale di Rimini); *Rheinland Versicherungen v SRL Atlarex and Allianz Subalpina SPA* [2000] CLOUT No 378 (12 July 2000) (A Rizzieri J) (Tribunale di Vigevano) reported in 2000 *Giurisprudenza italiana*, 280-290; Tribunale di Pavia [Italian Court], CLOUT No 380, 29 December 1999 reported in [2000] *Corriere Giuridico*, 932-933; *Chicago Prime Packers, Inc v Northam Food Trading Co*, 320 F Supp 2d 702, 11 (ND Ill, 2004).

¹⁶ Peter Schlechtriem, *Commentary on the UN Convention on the International Sale of Goods (CISG)* (Clarendon Press, 2nd ed (in translation), 1998) p 62, [14]; Michael Bridge, *The International Sale of Goods: Law and Practice* (Oxford University Press, 1999) pp 57-58, 2.30; Lookofsky, above n 11, 219.

¹⁷ Lookofsky, above n 11, 219; ‘UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods’ (United Nations, 2016) p 54, para 8, fn 28; *Al Palazzo SRL v Bernardaud SA* [2002] CLOUT No 608 (26 November 2002) (Tribunale di Rimini); *Rheinland Versicherungen v SRL Atlarex and Allianz Subalpina SPA* [2000] CLOUT No 378 (12 July 2000) (A Rizzieri J) (Tribunale di Vigevano) reported in 2000 *Giurisprudenza italiana*, 280-290; Tribunale di Pavia [Italian Court], CLOUT No 380, 29 December 1999 reported in [2000] *Corriere Giuridico*, 932-933; *Chicago Prime Packers, Inc v Northam Food Trading Co*, 320 F Supp 2d 702, 11 (ND Ill, 2004).

persuasive, non-binding value'.¹⁸ However, according to this reasoning, courts need not follow foreign *CISG* cases even if they represent the 'majority view'. This reasoning leads to increased uncertainty and is unreasonable.¹⁹ As mentioned above, this happened because 'regard is to be had' is ambiguous and the *CISG* does not establish a system or 'scale' to evaluate the 'weight', for example, of 'the need to promote uniformity'.²⁰

The literature has also identified the complexity of the interpretation of Article 7(1) of the *CISG*.²¹ For instance, this provision has been considered unclear and vague from its inception and therefore open to surprising results.²² However, they have not solved the issue of the mandate 'regard is to be had'. Scholars have interpreted 'regard is to be had' differently revealing its ambiguity issue. For instance, they refer to 'regard is to be had' as 'take into account',²³ 'have to be considered',²⁴ 'have regard',²⁵ 'having regard to',²⁶ 'to have regard to',²⁷ 'having regard for',²⁸ 'regard for',²⁹ 'regard must be had',³⁰ 'must have regard to',³¹ 'must

¹⁸ Lookofsky, above n 11, 219; 'UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods' (United Nations, 2016) p 54, para 8.

¹⁹ Lookofsky, above n 11, 219.

²⁰ Ibid, 218.

²¹ James P Quinn, 'The Interpretation and Application of the United Nations Convention on Contracts for the International Sale of Goods Comment' (2005) 9 *International Trade and Business Law Review* 221, 221; Salama, above n 20, 76; John Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* (Kluwer Law International, 3rd ed, 1999) 90, [87].

²² Michael P Van Alstine, 'Dynamic Treaty Interpretation' (1997) 146 *University of Pennsylvania Law Review* 779, 779; Camilla Baasch Andersen, 'The Uniform International Sales Law and the Global Jurisconsultorium' (2004) 24(2) *The Journal of Law and Commerce* 159, 165.

²³ Lookofsky, above n 11, 217.

²⁴ Ingeborg Schwenzer and Christiana Fountoulakis, *International Sales Law* (Routledge-Cavendish, 2007) 63.

²⁵ Schlechtriem, above n 16, 62, [14].

²⁶ Bruno Zeller, *CISG and the Unification of International Trade Law* (Routledge-Cavendish, 2007) 26.

²⁷ Michael Bonell 'Art. 7 – Interpretation of Convention' in C Massimo Bianca and Michael Joachim Bonell, *Commentary on the International Sales Law: The 1980 Vienna Sales Convention* (Giuffrè, 1987) 72, 2.2.1.

²⁸ Kruisinga, above n 8, 15.

²⁹ Honnold and Reitz, above n 8, 20.

³⁰ Schlechtriem, above n 16, 61, [10].

³¹ Michael Bonell, above n 27, 74; Honnold, above n 21, 88.

be borne in mind',³² 'must be interpreted',³³ 'must be considered'³⁴ and 'must be observed'.³⁵ In conclusion, there is no consensus about the meaning of 'regard is to be had' pertaining 'international character'; no consensus about the meaning of 'regard is to be had' pertaining 'uniformity'; and no consensus about the meaning of 'regard is to be had' pertaining 'good faith'.

This study argues that the most appropriate method to discover the meaning of Article 7(1) of the *CISG* is to apply the purposive interpretation of the legislative history as it allows for finding the reasons that justify normative standards and ascertains its true meaning. Accordingly, this study shows the legislative history or *travaux préparatoires* of Article 7(1) of the *CISG* which is a guideline for interpreting the *CISG* and all subsequent international and legal documents that have adopted it. This guideline should be followed by national courts, arbitral tribunals and practitioners or, at least, they should explain why they depart from it.

This study argues that 'regard is to be had' pertaining to 'international character', 'uniformity' and 'good faith' indicates that the interpretation must exclude resort to domestic law, must contribute to the principle of uniformity and must promote the principle of good faith between the parties unless there are objectively 'clear' and 'proper' reasons for not doing so. The outcome is to achieve consistency and more uniformity in the interpretation of the *CISG* and all other legal instruments that have adopted Article 7(1).

2 The 1980 Vienna Diplomatic Conference – 'good faith' in Article 7(1) of the CISG

This chapter argues that 'regard is to be had' pertaining to 'good faith' applies to the *CISG* interpretation and the formation and performance of the contract of sales between parties. Article 7(1) of the *CISG* made explicit that 'international character', 'uniformity, 'good faith' are general principles on which the *CISG* was based.

During the Diplomatic Conference, a lengthy discussion took place concerning the application, effect, and scope of the principle of good faith. Delegates argued either the

³² Peter Schlechtriem, above n 16, 61, [11].

³³ Henry D Gabriel, *Contracts for the Sale of Goods: A Comparison of Domestic and International Law* (Oceana, 2004) 50.

³⁴ Walt and Zeller, above n 11, 16.

³⁵ *Ibid.*

principle should apply to the interpretation of the 1978 draft Convention and/or to the contract between the parties.³⁶ It was stated that the interpretation of the 1978 draft Convention and the law of contract were two completely different issues.³⁷ Even one delegate argued that ‘good faith’ had three possible areas of application.³⁸ The first area concerned the interpretation and application of the provisions of the 1978 draft Convention. The second one related to the relationship between the parties to a contract of sale and the third area entailed the determination of the intent of such parties.³⁹ It was believed that the application of the principle of good faith should be restricted to the relationship between the parties to a contract of sale.⁴⁰ Furthermore, other representative stated that it would be desirable to refer to the principle of good faith not only at the time of the performance of the contract but also at the time of its formation.⁴¹ From the three areas of application, this study argues that ‘good faith’ is an implicit principle that applies to the interpretation and application of the *CISG* and to the relationship between the parties to a contract of sale.⁴²

‘[R]egard is to be had’ pertaining to ‘good faith’ applies to the *CISG* interpretation and the contract of sales between the parties. Parties to a contract of sale should act in good faith in the formation and performance of their contract.⁴³ However, ‘good faith’ is not concerned with the intent of the parties but sought to lay down a standard of behaviour to which the parties must conform.⁴⁴ ‘Good faith’ is implicit in any legal transaction.⁴⁵ It was not necessary to have any provision on the subject of the observance of good faith as it was already implied.⁴⁶ This

³⁶ Ibid, paras 41, 44, 51.

³⁷ Chile; *Summary of the First Committee*, UN Doc A/CONF.97/C.1/SR.5, para 51.

³⁸ Republic of Korea; *Summary of the First Committee*, UN Doc A/CONF.97/C.1/SR.5, para 43.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Italy; *Summary of the First Committee*, UN Doc A/CONF.97/C.1/SR.5, para 56

⁴² Concerning the performance and formation of the contract of the parties.

⁴³ United Kingdom and United States; *Summary of the First Committee*, UN Doc A/CONF.97/C.1/SR.5, paras 47, 50; Canada; *Summary Records of Meetings of the First Committee*, 1st Comm, 3rd mtg, UN Doc A/CONF.97/C.1/SR.3 (12th March 1980) para 59.

⁴⁴ *Deliberations on the Formation Draft Convention*, UN Doc A/33/17, para 54.

⁴⁵ Brazil; *Summary of the First Committee*, UN Doc A/CONF.97/C.1/SR.5, para 53.

⁴⁶ Romania, Sweden, UK, Kenya, US, Chile, German Democratic Republic, Brazil; *Summary of the First Committee*, UN Doc A/CONF.97/C.1/SR.5, paras 45-53.

principle is essential in international trade.⁴⁷

Looking at the legislative history during this debate, the following conclusion can be made. The reference to the principle of ‘good faith’ in the interpretation rule represented a useful compromise between the delegates, although having caused such a difficulty to the common law countries. However, the location of the principle of good faith was not the main issue as it was already understood to be an underlying principle of law and an implicit principle in any legal transaction of the *CISG*. The proposals on changing the reference to ‘good faith’ for another provision did not add much to the original formulation as the reference of ‘good faith’ in Article 7(1) of the *CISG* made it already explicit that ‘good faith’ was a general principle on which the *CISG* is based. The advantage to include it in the *CISG* is that it allowed some flexibility to courts to interpret it in the interests of furthering international trade. By contrast, the disadvantage was that it was liable to eventual misinterpretation. ‘[R]egard is to be had’ to the need to the observance of ‘good faith’ in international trade means that ‘good faith’ is a general principle of the *CISG* which is relevant to the interpretation and application of the whole *CISG* and is implied to the formation and performance of the contract of sale. The obligation to comply with the principle of ‘good faith’ is addressed to the courts as well as to the parties. However, courts must deal with the subject of the sanctions.

Article 7(1) of the *CISG* made explicit that ‘good faith’ is a general principle on which the *CISG* was based.⁴⁸ As a general principle, the reference of ‘good faith’ in Article 7(1) has implications in all provisions of the *CISG*. The legislative history shows some specific examples of its implication in Articles 14, 19(2), 35, 52, 65, 71 and 86 of the *CISG* which must be followed by courts, arbitral tribunals, and parties. Ideally, pointing out to specific examples in all other provisions of the implication of ‘good faith’ from Article 7(1) would have been useful to avoid the danger of interpreting ‘good faith’ differently from one country to another.⁴⁹ However, specific examples of its application would have to be mentioned in every provision, and this was practically impossible.⁵⁰ The principle of ‘good faith’ was set out once and for all

⁴⁷ Greece; *Plenary Meetings*, UN Doc A/CONF.97/SR.6, para 43.

⁴⁸ Chile; *Summary of the First Committee*, UN Doc A/CONF.97/C.1/SR.5, para 51.

⁴⁹ Denmark; *Summary of the First Committee*, UN Doc A/CONF.97/C.1/SR.28, para 58.

⁵⁰ Switzerland; Denmark; *Summary of the First Committee*, UN Doc A/CONF.97/C.1/SR.28, paras 55, 58.

in Article 7(1) of the *CISG*.⁵¹ The reference to ‘regard is to be had’ ‘to the need to’ ‘the observance of good faith in international trade’ in Article 7(1) of the *CISG* allows some flexibility in interpreting ‘good faith’ in the interests of furthering international trade.⁵² Nevertheless, national law conceptions of ‘good faith’ are not appropriate to international trade transactions.⁵³ The subject of sanctions for not complying with the principle of ‘good faith’ are left to the courts and not to the parties to a contract.⁵⁴

In relation to the question about to whom the obligation of Article 7(1) of the *CISG* is imposed to, the legislative history clarifies that the obligation is imposed to all those called on to apply the *CISG*, whether parties, arbitrators or courts of law.⁵⁵

⁵¹ Switzerland; Denmark; *Summary of the First Committee*, UN Doc A/CONF.97/C.1/SR.28, para 55.

⁵² German Democratic Republic; *Summary of the First Committee*, UN Doc A/CONF.97/C.1/SR.5, para 52.

⁵³ *Deliberations on the Formation Draft Convention*, UN Doc A/33/17, para 50.

⁵⁴ United Kingdom; *Summary of the First Committee*, UN Doc A/CONF.97/C.1/SR.5, para 47.

⁵⁵ Italy; *Plenary Meetings*, UN Doc A/CONF.97/SR.6, para 44.