'REGARD IS TO BE HAD': THE LEGISLATIVE INTENT OF ARTICLE 7(1) OF THE CISG (Part 2)[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

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[1] "Regard is to be had': The Legislative intent of Article 7(1) of the *CISG* – Part 2' (2023) 15(2) *European Journal of Commercial Contract Law*, https://www.uitgeverijparis.nl/en/reader/212539/1001677451

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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 'aicraft'? 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.

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'.

1 *'Good faith': Article 7(1) of the CISG*

This study argues that 'regard is to be had' pertaining to 'good faith' means that the acts and omissions of the parties must be interpreted considering the principle that they observe good faith in international trade. Furthermore, 'good faith' was an implicit principle which would have had implications to the *CISG* interpretation and the contract between the parties even if not included in the text. However, if not included, the approach taken by UNCITRAL might be deemed as against 'good faith'. Additionally, 'good faith' was not built upon a prior uniform law.

During the legislative history there was a lengthy discussion which revealed a different viewpoint as to whether the principle of 'good faith' should be included in a new provision of the 1978 draft Convention (precedent of the *CISG*).[3] This principle was considered highly

[3] *Deliberations on the Formation Draft Convention,* UN Doc A/33/17, para 43; *Article 6 of the 1978 draft Convention is the precedent of Article 7(1) of the CISG and it was adopted as follows:* 'In the

desirable in international commerce.[4] However, there were two issues. The first issue was that the provision did not specify the consequences for not complying with the principle of 'good faith', so it was unclear in its effects.[5] The second one was that the concept of 'good faith' was vague. [6]

In relation to the first issue, the provision did not specify the consequences of non-compliance with 'good faith' principle when agreed as binding by the parties.[7] 'Good faith' stressed a moral exhortation that if it would acquire a formal legal status then it would become imperative to determine how it would be applied to particular transactions.[8] If these consequences were not specified, domestic laws would be left to determine the proper remedy, leading to a lack of a uniform system of legal sanctions.[9] On the other hand, it was not necessary to specify the

interpretation and application of the provisions of this Convention, regard is to be had to its international character and to the need to promote uniformity and the observance of good faith in international trade'.

[4] Australia; *Report of the Secretary-General: Analytical Compilation of Comments by Governments and International Organizations on the Draft Convention on the Formation of Contracts for the International Sale of Goods as Adopted by the Working Group on the International Sale of Goods and on the Draft of a Uniform Law for the Unification of Certain Rules Relating to Validity of Contracts for the International Sale of Goods Prepared by the International Institute for the Unification of Private Law*, UN Doc A/CN.9/14 (26 April 1978) para 70 ('*Report on the Draft Formation of the Formation and Validity by the Working Group'*).

[5] UK, Finland, Sweden and US; *Report on the Draft Formation of the Formation and Validity by the Working Group,* UN Doc A/CN.9/14, paras 67, 69; *Report of the Secretary-General: Analytical Compilation of Comments by Governments and International Organizations on the draft Convention on the Formation of Contracts for the International Sale of Goods as Adopted by the Working Group on the International Sale of Goods and on the Draft of a Uniform Law for the Unification of Certain Rules Relating to Validity of Contracts for the International Sale of Goods Prepared by the International Institute for the Unification of Private Law*, UN Doc A/CN.9/146/Add 1 (3 May 1978) para 21.

[6] Ibid.

[7] Finland, Sweden, UK and Australia; *Report on the Draft Formation of the Formation and Validity by the Working Group,* UN Doc A/CN.9/14, paras 67, 69, 70.

[8] The *Deliberations on the Formation Draft Convention,* UN Doc A/33/17 does not indicate which delegation made the comments.

[9] Finland, Sweden, UK and Australia; *Report on the Draft Formation of the Formation and Validity by the Working Group,* UN Doc A/CN.9/14, paras 77-78; *Deliberations on the Formation Draft Convention,* UN Doc A/33/17, para 45.

consequences as the courts could determine these in a flexible manner regarding the particular facts of each case.[10] The development of a body of case law would reduce initial uncertainty as to the effects and scope of the provision.[11] The provision would draw the attention of the parties and the court to the fact that high standards of behaviour were expected in international trade transactions even without specific sanctions in the text.[12] Furthermore, the place for spelling out the consequences of the failure of a party to comply with the consequences was a Convention on validity of contracts rather than a Convention on formation.[13] For example, on the basis of 'good faith', it is possible to declare unenforceable contracts not entered into freely (e.g. under coercion) or unwittingly entered because of some mistake, misunderstanding or deceit and those matters deal with the validity of the contract.[14] Thus, the proper place for a provision on 'good faith' was a Convention which dealt with the validity of contracts.[15]

The second issue is that the principle of 'good faith' is so broad and lacking in precision that it would give rise to widely differing interpretations in the courts of different countries.[16] For example, 'good faith' has different functions in different legal systems. In certain countries, it only has a supplementary role over the rules of law governing relations between the parties. By contrast, in other countries, the principle of 'good faith' holds a derogatory effect, and therefore is able to any rule governing the relationship between the parties as a result of the contract. A distinction is conceivable in systems of the latter kind. In accordance, the 'good faith' concept

[10] *Deliberations on the Formation Draft Convention,* UN Doc A/33/17, para 47.

[11] Ibid.

[12] Ibid.

[13] Finland; *Report on the Draft Formation of the Formation and Validity by the Working Group,* UN Doc A/CN.9/14, para 77; *Deliberations on the Formation Draft Convention,* UN Doc A/33/17, para 45.

[14] Netherlands; *Report on the Draft Formation of the Formation and Validity by the Working Group,* UN Doc A/CN.9/14, para 72.

[15] Norway; *Report of the Secretary-General: Analytical Compilation of Comments by Governments and International Organizations on the draft Convention on the Formation of Contracts for the International Sale of Goods as Adopted by the Working Group on the International Sale of Goods and on the Draft of a Uniform Law for the Unification of Certain Rules Relating to Validity of Contracts for the International Sale of Goods Prepared by the International Institute for the Unification of Private Law*, UN Doc A/CN.9/146/Add 1 (3 May 1978), para 23; *Deliberations on the Formation Draft Convention,* UN Doc A/33/17, para 45.

[16] Australia; *Report on the Draft Formation of the Formation and Validity by the Working Group,* UN Doc A/CN.9/14, para 70.

may, in some cases, introduce some limitation to what has been agreed by the parties; on the other hand, it may permit departures from custom, from non-peremptory law or even from peremptory law. However, other legal systems might even recognise the jurisdiction of the court on amending or dissolving contracts on the grounds of 'good faith'.[17] In the latter case, domestic jurisdictions could be influential in the final decision-making process based on their own legal and social background when applying this provision, leading this to an unlikely development of a coherent case law system.[18] The subsequent uncertainty could be detrimental to international trade. It is likely that they give rise to excessive litigation.[19] On the other hand, while it is true that such vague concept as 'good faith' may cause some uncertainty in the legal application, this drawback is more than outweighed by the advantage that it enable fairer results to be achieved.[20] In order to reduce this uncertainty and lack of uniformity, the interpretation of 'good faith' would vary less across nations in the 1978 draft Convention if there is an interpretation rule such as Article 13 of the draft Convention on Sales.[21]

Nevertheless, if 'good faith' would not be included in the 1978 draft Convention, the requirement would still be implicit because 'good faith' is implicit in all laws governing business transactions.[22] The principle of 'good faith' was universally recognised.[23] For instance, 'good faith' was widely recognised in public international law as well as referred to in the Charter of the UN.[24] Additionally, a large number of national legislation codes contain similar provisions which play an important role in the development of rules governing trade

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[17] Netherlands; *Report on the Draft Formation of the Formation and Validity by the Working Group,* UN Doc A/CN.9/14, para 72.

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

[19] Australia; *Report on the Draft Formation of the Formation and Validity by the Working Group,* UN Doc A/CN.9/14, para 70.

[20] Netherlands; *Report on the Draft Formation of the Formation and Validity by the Working Group,* UN Doc A/CN.9/14, para 72.

[21] Netherlands; *Report on the Draft Formation of the Formation and Validity by the Working Group,* UN Doc A/CN.9/14, para 72; Article 13 of the draft on Sales reads:

> In the interpretation and application of the provisions of this Convention, regard is to be had to its international character and to the need to promote uniformity.

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

[23] Ibid, para 46.

[24] Ibid.

and commerce.[25] In case it would be removed, the UNCITRAL would in all likelihood be criticised as those principles are mostly required in international trade, particularly in relation to trade with developing countries.[26]

'[R]egard is to be had' to the need to 'the observance of good faith in international trade' of Article 7(1) of the *CISG* means that courts must interpret the acts and omissions of the parties in light of the principle that they observe 'good faith' in international trade.[27] It draws the attention of the courts and parties to the fact that high standards of behaviour are expected in international trade.[28] Courts must determine the consequences of the violation of the principle of 'good faith' in a flexible manner with regard to the particular facts of each case.[29]

'Good faith' is a universally recognised principle that has implications on the *CISG* interpretation and the contract of sales between the parties.[30] It is implicit in all laws and regulations governing any business activity, and it was unnecessary to include it in the 1978 draft Convention.[31] However, if not included, the UNCITRAL might be deemed as against 'good faith' which is a key principle in international trade, especially with regard to trade and commerce relations with developing countries.[32]

The concept of 'good faith' is vague and thus it may cause uncertainty in its legal application. However, this drawback is more than outweighed by the advantage that 'good faith' would enable fairer results as it would achieve lesser undesirable or discriminatory trade practices.[33] The development of a body of case law would reduce initial uncertainty as to the effects and

[25] Ibid.

[26] Ibid.

[27] *Deliberations on the Formation Draft Convention,* UN Doc A/33/17, para 57.

[28] Ibid, para 47.

[29] Ibid, para 47.

[30] Ibid, para 46.

[31] Ibid, para 44.

[32] Ibid, para 46.

[33] Netherlands; *Report on the Draft Formation of the Formation and Validity by the Working Group,* UN Doc A/CN.9/14, para 72; *Deliberations on the Formation Draft Convention,* UN Doc A/33/17, para 48.

scope.[34] Accordingly, to develop a coherent body of case law, national courts should not be influenced by their own legal and social traditions when interpreting the principle of 'good faith'.[35]

2 *'International character' and 'uniformity': Article 7(1) of the CISG*

This study states that the *CISG* interpreter cannot resort to domestic law. Also, *CISG* foreign case law that complies with the 'international character' should acquire some de facto authority, even without a supranational jurisdiction. Finally, this study shows that the *CISG* is also rooted in the *Limitation Convention.* This is because the principles of 'international character' and 'uniformity' were taken from Article 7 of the *Limitation Convention*.

The legislative history foresaw the issue that common law systems would resist to adopt a broad interpretation because they traditionally employed a narrow approach to interpret treaties such as the *CISG*.[36] In practice, common law countries were inclined to ignore the legislative history and the opinion of scholars.[37] However, it appears that common law is moving towards a more purposive approach.[38] For instance, the 'four corners' doctrine was rejected in *Prenn v Simmonds* by adopting a new contextual approach.[39] The drafters' legal intention of Article 7(1) of the *CISG* was to have a broad interpretation perspective, and a not restrictive one. The legislative history shows that the interpretation of the terms of the *CISG* should be gathered from all its own provisions, its legislative history and any commentary referred to them.

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[34] Ibid.

[35] Ibid, para 44.

[36] Henning Lutz, 'The CISG and Common Law Courts: Is There Really a Problem?' (2004) 35(3) *Victoria University of Wellington Law Review* 711, 715.

[37] Ibid, 724.

[38] Ibid, 717; Benjamin Hayward, Bruno Zeller and Camilla Baasch Andersen, 'The CISG and the United Kingdom - Exploring Coherency and Private International Law' (2018) 67(3) *International and Comparative Law Quarterly* 607, 626–627.

[39] [1971] 3 All ER 237, 239 by Lord Wilberforce; Gordon Wade, 'A Matter of Interpretation: Constructing and Interpreting Commercial Contracts under the Common Law and the Convention on the International Sale of Goods' (2015) 4(1) *Global Journal of Comparative Law* 1, 5.

Finally, this point of the legislative history shows that courts must interpret and apply the *CISG* autonomously.[40] It also reveals the intent to have an independent interpretation rule for the *CISG* which would not depend on any other legal system nor tradition. In this regard, the interpretation was not concerned on how, for instance, civil law countries or common law countries interpreted the norms. The interpretation rule instead set out its own system, so the terms of the *CISG* must be interpreted considering the principles of 'international character', 'uniformity' and 'good faith'.

(a) Domestic Law is an Obstacle to International Trade

UNIDROIT submitted a report to the UNCITRAL outlining the salient features of a study about the progressive codification of international trade law.[41] This report highlighted the need for an interpretation standard rule in the new draft as domestic laws might become an obstacle to the deployment of international trade.[42] It also stressed the difficulties caused by differing interpretations of common concepts such as 'fault', 'good faith', 'force majeure', 'cause' and 'equity' and how these differences might be detrimental to the certainty of the interpretation of the law.[43] Therefore, it became necessary to promote the idea that international trade should be based on its own principles and without resorting to domestic law.[44] In other words, international trade needed its own legal system with its own particular principles and provisions.[45]

A sole system of private international law may be capable of governing the international sale of goods.[46] For this reason, one should bear in mind that international trade was formed and developed in an international background with its own unique economic, social, and technical issues. International contracts extend beyond any domestic legal system and thus

[40] *Note Submitted by the International Institute for the Unification Private Law (UNIDROIT),* UN Doc A/CN.9/WG.2/WP.2 (5 January 1970) p 16.

[41] *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) p 1.

[42] Ibid, para 1.

[43] Ibid, para 7.

[44] Ibid, para 3.

[45] Ibid, para 4.

[46] Ibid, para 5.

it is necessary for rules to promote their international characteristics and purposes.[47] International trade requires a sort of regulation different from domestic law.[48] This international character places the legal relationships out of domestic jurisdictions and makes them governable by a law not dependent on any national contingency.[49] That is an ordinary law of international trade, which can provide by itself the legal framework required for international trade in order to develop.[50] They considered that international trade law needed a real *ius commune mercatorum,* a material law which could govern this kind of international relations.[51] It was also pointed out that differences of interpretation could prejudice the certainty of law.[52] In conclusion, the creation of an interpretation rule was suggested, a special provision which might specify the purpose of codification to develop international trade on a secure basis, and clear definitions of certain legal expressions.[53]

UNIDROIT pointed out the importance and purpose of the legal intention behind the interpretation rule in the *CISG*. Article 7(1) of the *CISG* provides an international legal framework with its own stipulations capable of regulating the international sale of goods. If the interpretation of the *CISG* is based on domestic law, then the *CISG* would not be removing the obstacles of international trade. It would not be harmonising and unifying the law of international sales, and the legal framework would not meet the needs of international trade satisfactorily. For this reason, the 'international character' was used in Article 7(1) of the *CISG* so that the interpretation of its terms would be based on private international law and not on domestic law. '[R]egard is to be had' pertaining the 'international character' reminds the interpreter to 'bear in mind' that international trade was formed and developed in an international setting within a unique economic, social, and technical background. Therefore, the interpretation given extends beyond any domestic legal system and keeps the characteristics and purposes of international trade. The terms 'regard is to be had' to the 'international character' requires avoiding national legislation to interpret the *CISG*. This

[47] Ibid, para 6.

[48] Ibid.

[49] Ibid.

[50] Ibid.

[51] Ibid.

[52] Ibid, para 7.

[53] Ibid.

principle is essential as uniformity will not be achieved otherwise if judges do apply domestic law when interpreting the *CISG*. According to 'regard is to be had' the 'international character' and its legislative history, resorting to domestic law must be avoided. Courts must not read the *CISG* in a narrow domestic scope.[54] Quite the opposite, terms are to be interpreted independently taking into account its function within the context of the *CISG*.[55] Case law on domestic provisions is attached to national roots and domestic interpretations are accordingly not adequate to interpret the *CISG* when there are similarities in the terms, or when a term appears to be adopted from a specific domestic system.[56] An identical wording in the *CISG* and domestic law could actually mean different things and might have been developed differently.[57]

Additionally, UNIDROIT cautioned about the uncertainty that differences in interpretation may lead to. The interpretation of a specific term can really comply with the 'international character' requirement but might in contrast differ from previous interpretations causing differences of interpretations and a lack of uniformity. These differences should be avoided as they lead to a legal uncertainty which would undermine the UNCITRAL's aim of unification and harmonisation of the law. This is the reason why Article 7(1) of the *CISG* requires 'regard' to 'the need to promote uniformity' so that there might be no difference of interpretation. Thus, judges, arbitral tribunals and practitioners should follow the interpretation of the *CISG* in foreign cases that comply with the 'international character' requirement. This viewpoint was also adopted by scholars which state that the fabrication of divergent autonomous interpretations should be diminished.[58]

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[54] Pilar Perales Viscasillas, 'Article 7' in Stefan Kröll, Loukas A Mistelis and Pilar Perales Viscasillas (eds), *UN Convention on Contracts for International Sale of Goods (CSIG)* (Verlag C H Beck, 2011) 117, [19].

[55] Peter Schlechtriem, *Commentary on the UN Convention on the International Sale of Goods (CISG)* (Clarendon Press, 2nd ed (in translation), 1998) 62, [13].

[56] Pilar Perales Viscasillas, above n 54, 117, [19].

[57] Ibid.

[58] Larry A DiMatteo et al, *International Sales Law: A Critical Analysis of CISG Jurisprudence* (Cambridge University Press, 2005) 23.

3 *Clarification of the Duty 'regard is to be had': Article 7(1) of the CISG*

This study argues that the mandate 'regard is to be had' is weak and diminishes the real intention of the legal drafters. Therefore, this mandate is an open door for courts, arbitral tribunals, and parties to not comply with the principles of Article 7(1) of the *CISG*.

Arguably, 'regard is to be had' can be interpreted as a mandatory duty, but it could also be permissive. It seems that there is no *CISG* case law or *CISG* literature that dealt directly with the semantic clarification of 'regard is to be had'.

In light of the legislative history, the principles of 'international character', 'uniformity' and 'good faith' have been considered essential for the success of international trade. Such principles target the objective of the *CISG* and specify the purpose of codification to develop international trade on a secure basis.[59] Arguably, Article 7(1) of the *CISG* is the most important provision of the whole *CISG* and, according to the legislative history, it remarks the purpose of the *CISG*. In conclusion, 'regard is to be had' should be understood as an imperative.

There is a High Court case in the UK that deals with the clarification of the meaning of the duty 'to have regard'.[60] This is not a *CISG* case, and the context is national. However, this is an example of a case that looks at the issue of the semantic meaning of the duty 'to have regard'. Some reasoning and issues of the case dealing with the duty 'to have regard' can be considered equivalent to the duty 'regard is to be had'. This is because it seems that the duty 'to have regard' and 'regard is to be had' is the same, or at least, they have similar meaning. In fact, one of the proposals in the legislative history refers to 'regard is to be had' as 'having regard'.[61]

[59] *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) p 1, para 7.

[60] *R (The Governing Body of the Oratory School) v The School Adjudicator, the British Humanist Association & Secretary of State for Education* [2015] EWHC 1012.

[61] *Norway,* UN DOC A/CONF.97/C.1/L.28.

According to the same reasoning of the UK case,[62] the duty 'regard is to be had' requires to 'take into account'.'Regard is to be had' is an instruction, so there is a direction with which the interpreter must comply.[63] However, it does not connote obsequiousness or deference on every occasion.[64] Therefore, it is possible to not to follow this obligation in a particular situation.[65] It can be seen that there is a difference between the obligation 'regard is to be had' and an obligation to follow it which it is not clear.[66] 'An obligation to have regard to a policy is not the same as an obligation to follow it'. 'The obligation to have regard to' recognises that there may be circumstances when 'it does not have to be applied to' but 'there must be very good reasons indeed for not applying it'.[67] To deal with this difference, the legislative history, the context and statutory provision in question are vital.[68]

Looking at the legislative history and at the reasoning of the UK case,[69] 'regard is to be had' should have greater weight to just a mere advice which the interpreter is free to follow or not. '[R]egard is to be had' should be considered with great weight. The principles of 'international character', 'uniformity' and the 'good faith' should ordinarily be followed. However, the obligation 'regard is to be had' may recognise that there may be circumstances when the interpretation and application of the *CISG* could not comply with the principles of 'international character', 'uniformity' and 'good faith'. Nevertheless, according to the legal intent, these circumstances should be exceptional, and the interpreter must have very good reasons for not complying with them.

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[62] *R (The Governing Body of the Oratory School) v The School Adjudicator, the British Humanist Association & Secretary of State for Education* [2015] EWHC 1012, [50] by Cobb J; Privy Council *in Barber v Minister of Environment* 9th June 1997 at page 5.

[63] Ibid, [53].

[64] Ibid.

[65] Ibid.

[66] Ibid, [54].

[67] Ibid; *Royal Mail Group plc v Postal Services Commission* [2007] EWHC 1205, [33] by Collins J.

[68] Ibid.

[69] *R (The Governing Body of the Oratory School) v The School Adjudicator, the British Humanist Association & Secretary of State for Education* [2015] EWHC 1012, [52], [54]; *R (Munjaz) v Mersey Care NHS Trust* [2006] 2 AC 148 [21].].

(a) *Test – 'regard is to be had': Article 7(1) of the CISG*

The standard 'regard is to be had' also opens a question about what is the process or test that a court should use to determine whether the interpreter has in fact complied with this duty.

As a solution and to promote a consistent interpretation and uniformity within the *CSIG*, this study proposes to follow the reasoning of the English High Court case of *R v School,*[70] which deals with the meaning of the duty 'having regard'. This is not a *CISG* case, and the context is national. However, this case is an example of a test for a similar wording 'having regard' and such test could promote a consistent interpretation and uniformity within the *CISG*.

If applying the reasoning in this case,[71] the judge, arbitral tribunal or practitioner must comply with the principles of Article 7(1) of the *CISG* unless it has objectively 'clear' and 'proper' reasons for not doing so. In the absence of 'clear' and 'proper' reasons to deviate from the instruction, the duty 'regard is to be had' must be followed.[72] 'Clear reasons' means that the reasons must be spelled out clearly and logically. [73] 'Proper reasons' means that the interpreter must demonstrate that it has considered and engaged to the relevant matters pertaining the requirements of 'international character', 'uniformity' and 'good faith' and have a proper evidential basis for its decisions to depart from the instruction 'regard is to be had'.[74] What amounts to objectively 'clear' and 'proper' reasons would depend on the individual circumstances of each case.[75] Nevertheless, only exceptional cases should be the ones which can objectively prove 'clear' and 'proper' reasons to not comply with the duty 'regard is to be had' pertaining to the 'international character', 'uniformity' and 'good faith'. This suggestion will allow interpreters to quickly identify what are those exceptional circumstances which do not meet the requirements of 'international character', 'uniformity' and/or 'good faith' and their clear justification. Also, this test avoids interpreting the mandate 'regard is to be had' in a permissive way as an excuse to escape the obligations in

[70] *R (The Governing Body of the Oratory School) v The School Adjudicator, the British Humanist Association & Secretary of State for Education* [2015] EWHC 1012.

[71] Ibid, [52].

[72] Ibid, [56].

[73] Ibid, [52].

[74] Ibid, [59].

[75] Ibid, [60].

Article 7(1) of the *CISG* according to the legislative history.