Reviewing the History and Application of Article 7

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Many commentators write that Article 7 of the Convention on the International Sale of Goods (CISG) forms its backbone. Reading the text and the history of the convention, it is easy to see why. The article is simple and easy to read:

> (1) 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.
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> (2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

But compliance with the terms of Article 7 is more easily said than done. To study Article 7 and understand its application, this article will briefly review Article 7's history and purpose, the development of commentary over time, and Article 7's use in the courts of Latin America.

I. History

Since initial attempts to create a uniform sales law in the Middle Ages, the problem of different interpretations by different courts has vexed users of commercial law. The *lex mercatoria* arose to solve many of these problems, functioning as a set of principles that tribunals can apply across borders and legal traditions. Indeed, in a nod to Article 7, one the

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principles of the *lex mercatoria* was its transnational character; it was not bound to any one legal system.[3]

Modern attempts to develop a uniform sales law trace back to conventions promulgated by the International Institute for the Unification of Private Law (UNIDROIT), which released a convention on the formation of contracts (ULF) and international sales (ULIS).[4] After nearly three decades of work, the drafters of these early conventions signed the 1964 Hague Convention on Sales that entered into force in nine countries.[5] This Hague Convention was the result of years of work, and even though it gained little acceptance outside Western Europe, it formed the basis for the CISG in 1980. Throughout this development of a uniform international sales law, the drafters consistently retained an article calling for an international interpretation of the law's provisions.

Article 7 built on general interpretive requirements expressed in the Uniform Law on International Sales (ULIS) Article 17, but the CISG addressed the problem differently from the ULIS. In the ULIS, the convention explicitly excluded private international law[6] and exhorted readers to interpret the law in accordance with the general principles on which it was based.[7] The drafters of the CISG wanted to keep the reference to general principles, but many delegates found the standard too vague and in need of clarity. A proposal to always apply the law of the seller as a gap filler was rejected by the drafters. Instead, the delegates reached a compromise, adding the policy aim of promoting uniformity in its application, the observance of good faith in international trade, and the law applicable by virtue of the rules of private international law.

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3 *See* Franco Ferrari, *Uniform Interpretation of the 1980 Uniform Sales Law*, 24 Georgia J. Intern. & Comp. L. 183, 185 (1994-95).

4 *See* Honnold, *Documentary History of the Uniform Law for International Sales*, 1 (1989).

5 *See id.*

6 *See* ULIS, Article 2.

7 *See* ULIS, Article 17.

Even though Article 7 is different than ULIS Articles 2 and 17, leading commentators note the differences do little more than add clarity to the interpretive process; they do not change the meaning or intent of the prior law. For example, the court precedents interpreting ULIS Article 17 are still useful for interpreting CISG Article 7.[8] Perhaps, the only thing CISG Article 7 specifically excludes is recourse to the law of the seller's country. As noted by the UNCITRAL Secretariat's Commentary, Article 7's history emphasizes the importance of an international, not domestic, interpretation of the CISG.

II. Interpretation of Article 7

When faced with interpreting any multilateral treaty, individual nations face a similar challenge: does the treaty merely fit within the country's domestic laws, or is it an autonomous instrument with an interpretation outside domestic laws? While the 1964 Hague Convention did not expressly decide this question, the CISG undoubtedly sided in favor of the autonomous approach.[9] This may not have presented the ideal approach. As one commentator has pointed out:

> From the outset it was argued that the application of Article 7 (1) could be unpredictable because it was inevitably vague and, as a consequence, would have been open to surprising result. On the other hand, it was also stressed that a considerable merit of the paragraph would lay in the fact that it proclaimed an up-to-date legal policy in harmony with the exigencies of world trade which postulated that no recourse to national law should be admitted in interpretation."[10]

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8 *See* Herber in *Commentary on the UN Convention on the International Sale of Goods*, Peter Schlechtriem ed. 66 (1998).

9 *See infra* note 3 at 199.

10 *See* Alexander S. Komarov, *Internationality, Uniformity and Observance of Good Faith as Criteria in Interpretation of CISG: Some Remarks on Article 7(1)*, 25(1) U. Pitt. J. L. & Comm. 75-76 (2005)

But the drafters did select the autonomous approach over any other. Furthermore, the autonomous approach does not solve all interpretive questions. Rather, it merely excludes domestic law to solve interpretive problems. In other words, readers of the CISG should interpret it using international standards, not domestic ones.

Turning to the actual text of Article 7, it contains two rules: (i) interpretation of the CISG is autonomous and should promote uniformity and good faith in international trade, and (ii) the CISG contains its own rules for necessary gap-filling.[11] We address each of these rules in turn.

A. The Interpretation of the CISG is Autonomous and Should Promote Uniformity and Good Faith in International Trade

The first part of this rule is unremarkable. As discussed above, a treaty of uniform sales law must have an autonomous interpretation in order to function properly.[12] Without such an interpretation, the CISG would be divided into a series of domestic decisions, each one pulling the CISG's terms closer to its own legal tradition. This defeats the purpose of the CISG and the expectations countries create and merchants should have when they transact business internationally.

The second part of the rule encourages the promotion of good faith in international trade draws more controversy. Some commentators argue the good faith standard in Article 7 applies to the actions of the parties, not the interpretation of the CISG. Most commentators disagree with this position, asserting the words "good faith" refer to the manner of interpreting the CISG's provisions. But the result still leaves open many issues for further discussion. An exact description of good faith defies simple definition, and scholarly writings, collections of legal

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[11] *See* Peter Schlectriem & Ingeborg Schwenzer, *Commentary on the UN Convention on the International Sale of Goods*, Art. 7, ¶ 5 (2005).

[12] *See* John Felemegas, *An International Approach to the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law*, 5 (2007).

principles, and court decisions contribute to the meaning of good faith. In addition, there are standards of conduct existing between the parties that must be considered through Articles 8 and 9.[13] Regardless, good faith exists as an instrument for interpreting the CISG, and where called upon to use the principle, it should apply to interpreting the terms of the CISG in light of its overriding goals of uniformity and autonomous interpretation.

B. The CISG Contains Its Own Rules for Necessary Gap Filling

Article 7 forms the cornerstone of interpreting the CISG. As acknowledged above, any interpretation should remain faithful to the CISG's broader goals of uniformity and autonomous interpretation, but there is still an interpretive process grounded in the CISG. This process starts with the text of the convention and encompasses any rules necessary for gap filling.

The parties must first determine if the CISG applies to their contract. This occurs through either selecting the CISG as a contractual provision or adhering to the automatic application of the CISG through the terms of Article 1. A full discussion of the Article 1 falls outside the scope of this article, but the parties or tribunal must first meet this threshold test.

Assuming the CISG applies, the next step is to ensure its terms do not exclude application. The drafters of the CISG recognized some elements of contract law should not be part of the convention, and they intentionally excluded those issues. Article 4 contains an overview of these exclusions, and they undoubtedly govern.

After passing these two threshold inquiries, the third step is to apply the terms of the CISG where directly binding. The CISG provides a complete set of law governing the general obligations of the parties and the formation of the contract.[14] Where necessary, these provisions should apply. In the event the terms do not directly apply, then the CISG's provisions can apply

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13 *See infra* note 11 at Art. 7, ¶¶ 17-18.

14 *See infra* note 3 at 214-215.

by analogy.[15] Whether using the text of the CISG or applying the articles by analogy, there should be no question the CISG excludes domestic law.

If after this three step process any doubt remains, Article 7 addresses the next steps. When a matter is governed by the CISG but not resolved by the CISG, then the general principles forming the foundation of the CISG apply. Because Article 7 requires regard for the CISG's international character, the application of general principles must be a reference to international, not domestic, law.[16] This is especially relevant when one seeks to apply a narrow interpretation of the CISG in order to allow the application of domestic interpretations. As stated by a leading scholar:

> Contrary to ordinary domestic legislation, which courts may still consider an infringement of 'their' case law, the Convention, once adopted, is intended to replace all the rules in their legal systems previously governing matters within its scope, whether deriving from statutes or from the case law. This means that in applying the Convention there is no valid reason to adopt a narrow interpretation.[17]

Within this framework, the next question turns to the general principles of law that can apply.

Through the terms of the CISG, modern commercial codes, scholarly works, and judicial and arbitral decisions, a set of general principles has emerged. When interpreting the CISG, the best place to start identifying general principles is the terms of the Convention. The CISG contains many general principles in its articles that are obvious to even a casual observer. For example, the CISG incorporates the principle of good faith in Article 7(1). Another general principle is that of party autonomy. The CISG respects the parties' rights to exclude its application and choose the rules governing their contract, embodying the general principle of

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15 *See infra* note 3 at 221; note 11 at 25.

16 *See infra* note 3 at 199-200.

17 *See* Michael J. Bonell, *Introduction to the Convention, in* Commentary on the International Sales Law; The 1980 Vienna Sales Convention 73 (1987).

party autonomy. Readers can identify other general principles, including the principle of adopting widely accepted usages in international trade and others.[18]

The issue becomes slightly murkier when moving outside the terms of the CISG. Recently, a growing chorus of commentators has supported the application of the UNIDOIT Principles of International Commercial Contracts ("UNIDROIT") and the Principles of European Contract Law ("PECL"). The two collections of contract principles operate similar to Restatements in the United States, seeking to state widely held notions of contract law. The drafters of both UNIDROIT and PECL drew on the CISG, and many of the drafters of the CISG also worked on UNIDROIT and PECL. In addition, the drafters of both UNIDROIT and PECL counted on noted academics and practitioners, embarking on a lengthy and detailed process of setting down the respective documents with commentary and notations. The result were two documents containing a wider set of rules than the CISG, and the provisions of UNIDROIT and PECL often mirrored or fleshed out articles of the CISG. Because of this history, scholarly dedication, and compatibility, UNIDROIT and PECL have earned recognition as some of the general principles discussed in Article 7(2).

In applying UNIDROIT and PECL, parties and tribunals must not stray from the overriding message of Article 7, which reverts only to general principles as a next to last step. Both UNIDROIT and PECL can have provisions that conflict with the CISG, and where there is any conflict, the terms of the CISG control. One commentator has suggested a systematic process whereby any interpretation using UNIDROIT and PECL under the following rubric assigns relevance or weight in descending order:

(1) PECL provisions that are *identical* to counterpart CISG provisions and either (a) go no further than their CISG counterparts, or (b) ones that embellish, add to or make more

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[18] For a list of others, please *see infra* note 3 at 223.

explicit that which is implicit in the CISG provisions. Just as one regards the UCC as more detailed than the CISG, the latter categories of PECL material are more detailed than their CISG analogs;

(2) PECL provisions that are *substantially the same* as or similar to the CISG provisions;

(3) PECL provisions that are *somewhat similar* to the CISG provisions; and

(4) PECL provisions that are *substantively different* from the CISG counterparts.[19]

This rubric has a commendable purpose and reasonable conclusion. It adheres to the text of Article 7, giving greatest importance to those provisions of PECL (or UNIDROIT) that mirror or complement the CISG. When using UNIDROIT or PECL, this rubric can give parties and tribunals a valuable tool for interpreting the general principles underlying the CISG.

While the application of UNIDROIT and PECL makes sense, not all commentators would rush to apply these principles. Notably, Peter Schlectriem has urged an interpretation focused more on Articles 8 and 9 than Article 7, exhorting interpreters of any factual scenario to seek their answers in the conduct of the parties and the expectations created by this conduct.[20] Although Schlectriem does not take a particularly strong stance on the issue, in the latest edition of his commentary on the CISG, he discourages the use of UNIDROIT and PECL in favor of the other interpretive methods.

Regardless of the order in which one invokes general principles like UNIDROIT and PECL, the overriding objective is to use the text of the CISG and strive for a uniform, autonomous interpretation. Other sources of commentary can aid in this process. There are countless scholarly writings on the subject, maintained in databases such as the website of the Institute of International Commercial Law of the Pace Law School and CISG-online. Other

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19 *See infra* note 12 at 31.

20 *See infra* note 11 at Art. 7, ¶¶ 30-31.

websites collect cases, such as the CLOUT (Case Law on UNCITRAL Texts) database maintained by the United Nations Commission on International Trade Law ("UNCITRAL"), UNILEX, CISG-online, and the website of the Pace Law School. While each of these databases is important, none of the cases or writings contained in those databases can act as controlling on other courts and tribunals. After all, there is no court with general jurisdiction on the CISG throughout the world, and the decisions and writings from one country are little more than persuasive authority in another location.[21]

Finally, Article 7 directs the interpreter to the applicable rules of private international law. This final step has drawn significant criticism, and most commentators steer away from using it. The text was the product of compromise, and it presents a challenge to national courts and arbitral tribunals. At this stage, the interpreter must use conflict rules to direct itself to the correct national law. There are international instruments aiding in this conflict of laws decision, such as the Rome Convention on the Law Applicable to Contractual Obligations of 1980.[22] But in most circumstances the court or tribunal must apply the conflict rules where it is located. This creates a variety of different results that are outside the scope of this article, but the general aim of uniformity must still remain.

III. Application of Article 7 by Latin American Courts

A review of the prominent collections of CISG case law does not reveal many cases coming from Latin America. This is strange considering the high amount of commodities sold by Latin American economies and the trade between Latin American countries and their major trading partners, such as the United States, China, Germany, Spain, and France, all of whom adhere to the CISG. In addition, many nations within Latin America are signatories to the CISG,

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21 *See id*. at Art. 7, ¶ 14.

22 *See id*. at Art. 7, ¶ 35.

including Argentina, Chile, Colombia, Cuba, Ecuador, El Salvador, Honduras, Mexico, Paraguay, Peru, and Uruguay.[23] But there are still a few decisions from Latin American courts applying Article 7. Because this article initially forms part of the CISG database in Brasil, it will focus on these cases to show the way regional courts interpret the CISG. As mentioned above, an individual case is not binding on other courts, but it can prove persuasive in showing current trends or lead to a greater connection among courts in Latin America on topics related to the CISG.

To study the development of case law in Latin America over time, this analysis begins with the oldest decision and moves forward in time. Because of the relatively small number of decisions from any one country, the analysis does not divide the decisions by country.

A. *Bettcher Industries Inc. v. Elastar Sacifia*[24]

In this first decision, the Argentine court of first instance evaluated a contract for the purchase of gloves. The seller was from Ohio, and the buyer was from Buenos Aires. A dispute arose concerning payment, and the court looked to the CISG, which had entered into force three years prior in 1988. The seller sought damages and interest based on the terms of the invoice exchanged between the parties.

The court noted the expansiveness of the CISG and its application through Article 1. It then went on to apply Article 7 to one of the arguments from the seller, finding the argument inapplicable because it relied on Argentine domestic law, not the CISG. The court then declared it would apply the CISG, turning only to the law of the State of Ohio in the event the CISG did not resolve the questions.

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[23] As of April 22, 2010. Venezuela signed the CISG, but it has not taken the necessary steps for it to be in force in Venezuela.

[24] Docket No. 50272 (Juzg. Nac. 1o Inst. Comm. No. 7).

But when dealing with the issue of interest, the court struggled to apply the CISG, as many other courts have also struggled. The court considered the relevance of INCOTERMS, noting they hold a place in international commerce superior to the CISG. The court also looked at the interest rate contained in the parties' agreement. Considering the ability of the parties to choose their own interest rates and the existence of such a figure in the parties' contract, the court awarded interest to the seller, but only for the 180 days buyer had to pay seller.

Considering the difficulties many courts and commentators have encountered when determining interest, it is unsurprising the court here failed to find a full answer within the CISG. But the court did not consider any approach encouraging unity in the interpretation of the applicable interest rate. While it is almost impossible to know the extent to which counsel aided the court in its determination, the court ultimately relied on a mixture of commentators on international trade, the INCOTERMS, and the contract to devise an interest rate deemed appropriate. It is difficult to argue this is the desired result emerging from the drafting of the CISG.

B. *Alejandro Mayer v. Onda Hofferle GmbH & Co.*[25]

In another decision from Argentina, the commercial appellate court for Buenos Aires analyzed a claim for the value of the goods by an Argentine seller and counterclaim for damages arising from poor quality of the goods by a German buyer. After a lengthy study of the applicability of the CISG, the court decided to apply it, but the court promptly looked to the Argentine Commercial Code when faced with a gap in the CISG. Specifically, the court found the CISG did not apply to determine whether the quality of the goods met the standards of the contract.

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[25] [No docket number indicated] (Cam. Nac. Comm. Bs. As. Sala E 2000). Contact the authors for a copy of the case, or research the CLOUT database at abstract no. 701.

Looking at Article 7, the court correctly cited its provisions, but it jumped over application of any general principles or desire to promote uniformity. Instead, the court applied the standards for inspecting goods prescribed by the Argentine Commercial Code. Finding the buyer had failed to properly comply with these standards, the court refused to accept the testimony of the buyer's expert. Strangely, the court then jumped back to the CISG to criticize the expert's report. The buyer's expert had testified the goods had a commercial use, and the court found this to meet the requirements of Article 35(2)(a) as an alternative ground to uphold the lower court's decision in favor of the Seller. Without touching on the rest of Article 35, the court focused solely on the existence of a commercial use for the product, not whether the goods conformed with contract according to Article 35(1) or had a particular purpose as required by Article 35(2)(b).

In *Mayer*, the court took a rather domestic approach to the issue. While the CISG does not contain the precise procedure for quality testing of goods, it certainly addresses the issue of the quality of the goods and provides a framework for dissolving the dispute. The court's decision to look to the procedure in the Argentine Commercial Code and apply it to testing in Germany especially defeats the purpose of Article 7 to unify international trade law. Foreign parties should not be held to domestic expectations, especially when neither party appeared to agree these standards applied. The application of Article 35 also leaves much to be desired. Instead of reading the article as a whole within the CISG, the court appeared to pick the line supporting its conclusion, not engaging the broader analysis necessary.

C. *Cervecería y Maltería Paysandú S.A. v. Cervecería Argentina S.A.*[26]

Another case from the same court in *Mayer* analyzed a similar situation, a challenge to the quality of goods delivered. A Uruguayan seller sold malted barley to the Argentine buyer. The buyer accepted the goods but refused to pay the purchase price, alleging lack of conformity of the goods. The seller sued the buyer in Argentina, and it prevailed in the court of first instance. The court of first instance found the buyer liable under the Argentine Commercial Code.

On appeal, the court came to a nearly identical conclusion as the *Mayer* court regarding application of the Argentine Commercial Code. This is hardly surprising; the judge authoring the opinion in *Cervecería y Maltería Paysandú* also voted for the same result in *Mayer*. Applying the same reasoning as *Mayer*, the court in *Cervecería y Maltería Paysandú* found the Argentine Commercial Code applied to the proper testing procedure of the quality of the goods. Similar to *Mayer*, the court ruled the buyer's testing inadmissible and found in favor of the seller.

Because of the commonalities between *Mayer* and *Cervecería y Maltería Paysandú*, there is little to add to the analysis that was not already discussed above. The result in *Cervecería y Maltería Paysandú* may seem more just because the court held the Argentine buyer to the standards of the Argentine Commercial Code, a much more reasonable expectation. But the court's failure to work through the language of Article 35 and then default to Argentine domestic law does little to advance the core understanding of Article 7.

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[26] Registro de Cámara, No. 105665 (Cam. Nac. Comm. Bs. As. Sala E 2002).

D. *Kolmar Petrochemicals Americas, Inc. v. Idesa Petroquímica Sociedad Anónima de Capital Variable*[27]

In a case from the Mexican courts, the court looked at the good faith language in Article 7, applying it as a rule when interpreting the relationship of the parties. *Kolmar Petrochemicals* originated with a dispute between an American buyer and a Mexican seller. The parties were negotiating a sale of mono-ethylene glycol[28] when the negotiations broke down and delivery never occurred. The buyer sued the seller for damages in the first instance court of the Federal District of Mexico City. The first instance judge found in favor of the seller, and the buyer appealed to the Eighth Civil Division of the Superior Justice Court. The appellate court upheld the judgment of the first instance court in all respects. Again, the buyer appealed, going this time to the First Appellate Court on Civil Matters of the First Circuit, Federal District of Mexico City.

On appeal, the court sorted through a slew of emails to find the lower court had misapplied the principle of good faith embodied in Article 7. With little introductory analysis, the court cited Article 7 as the foundation for implying good faith in the relations of contracting and negotiating parties. To the court, good faith in international commerce means enforcing contracts negotiated by parties and interpreting contractual clauses in favor of upholding the contract, not breaching. Looking at the case, the appellate court found the lower court erred when it did not apply Article 7 to hold the parties to their initial contract. Further, the appellate court faulted the lower court for interpreting the parties' actions so as to allow the seller to escape from its contractual obligations instead of fulfilling them. As such, the appellate court overruled the lower court and found in favor of the buyer.

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27 Case No. 127/2005 (1o Trib. Civil 1st Cir. 2005).

28 Mono-ethylene glycol is an industrial compound used in antifreeze and other coolants.

It is difficult to fault the appellate court for its ruling in *Kolmar Petrochemicals*. In an ideal world, the court would have made a distinction in its good faith analysis, splitting the application of good faith in interpreting the convention from the rights and obligations of the parties. Also, it would have helped if the court derived more of the requirements of good faith from sources outside Mexican law, but it is unclear the court ever had this option presented by the parties. In many ways, the court followed the interpretation urged by most commentators, applying notions of good faith to the behavior of the parties. The court also strived for an international interpretation, stating "[t]he good faith [principle] in international trade prescribes that negotiations should be given the interpretation most favorable for the business to have effects." Compared with decisions in the Argentine appellate courts, this is much more desirable result than defaulting to domestic law when faced with a lack of directly applicable text.

E. *Barros v. Gares*[29]

In the final reported case, the Argentine court took a studied, careful approach to the application of the CISG, contributing an important decision to the development of private international law in the region. A Chilean seller sued an Argentine buyer for damages arising from the sale of a shipment of peanuts. The buyer refused to pay, alleging a defect in quality, and the seller sued. The court of first instance found in favor of the seller, and the appellate court affirmed this judgment in all respects.

Returning to the commercial appellate court for Buenos Aires, a different panel of judges than those involved in the two cases above reached a different conclusion regarding the interpretation of the CISG and applicability of the Argentine Commercial Code. To determine the correctness of the attack on the goods' quality, the court looked at Article 7, which pointed it

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[29] Registro de Cámara, No. 102876/2002 (Cam. Nac. Comm. Bs. As. Sala A 2007).

to Articles 35-39. Analyzing these articles, the court found they contained a complete set of rules to decide the parties' dispute. In contrast to the decisions in *Mayer* and *Cervecería y Maltería Paysandú,* the court rejected the finding by the first instance the CISG lacked sufficient detail to define the behavior of the parties:

> "It is also true, as the judge stated from which the Convention [CISG] does not expressly regulate the procedure to ascertain the difference in quality in the delivered merchandise, nevertheless, the rules that determine the method in which the party should proceed are already stated."[30]

The court therefore noted the lack of complete regulations but still looked to the CISG to define the rights and obligations of the parties. Applying the CISG, the court then found the buyer liable for failing to comply with its terms regarding inspection.

The difference between *Barros* and the prior cases cannot be more striking. *Barros* takes the correct approach, turning away from a reflexive default to domestic legislation and attempting to hold the parties to the terms of the CISG where at all possible. Although not discussed by the court, this approach is infinitely simpler for the parties engaged in international trade. Instead of forcing either party to rely on the domestic legislation of the other party, the court puts them on equal footing through the terms of the CISG, respecting their obligations but creating an international standard of behavior. In all fairness to prior decisions, the *Barros* court had the benefit of a more developed set of commentary, which it used with great success. But as courts and commentators look for persuasive approaches and reasoning for their application of the CISG, they could do worse than study the decision in *Barros*.

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[30] Free translation: "Es cierto también, como lo expresa la juez *a quo* que la Convención no regla expresamente el procedimiento para constatar la diferencia de calidad en la mercadería entregada, sin embargo, son claras las directivas que proporciona sobre el modo en que se ha de proceder, a la luz de lo ya expresado."

IV. Conclusion

The interpretation by commentators of Article 7 is increasingly finding a unified approach. Prior disputes seem to have found a resolution, and the remaining issues revolve around the proper transnational sources to create an autonomous interpretation, not on the correct way to default to domestic legislation. This is undoubtedly an advance in the interpretation of Article 7.

For the most part, courts in Latin America have not used the CISG often. With international trade and the use of arbitral clauses on the rise in Latin America, expectations point to a steady increase in the use of the CISG in the near future. For example, the authors have been involved in some arbitration proceedings where the parties chose the CISG as the applicable law on the merits, even when one of the parties comes from Brazil, which is not yet a CISG country. But for the time being, a lack of reported cases hurts the development of strong jurisprudential standards and leaves other courts and tribunals with little guidance. This is apparent from some of the earlier decisions from the Argentine courts that shied away from the requirements of Article 7 to find an autonomous interpretation. But if the decision in *Barros* is any indication, there are courts willing to do the necessary work to appropriately interpret and apply the CISG. As the economies of Latin America modernize and grow, courts and arbitral tribunals should look to develop the autonomous interpretation urged by commentators and embodied by the *Barros* decision. Not only is such a direction faithful to the language of the CISG, it also fulfills the expectations parties should have when dealing with international norms existing in international trade and commerce.