THE IMPLICATIONS OF GOOD FAITH AS A COGENT RULE IN INTERNATIONAL PROCEDURAL AGREEMENT IN LIGHT OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNACIONAL SALE OF GOODS OF 1980

AS IMPLICAÇÕES DA BOA-FÉ COMO REGRA COGENTE NOS NEGÓCIOS INTERNACIONAIS À LUZ DA CONVENÇÃO DE VIENA SOBRE COMPRA E VENDA INTERNACIONAL DE MERCADORIAS DE 1980

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ABSTRACT

This article aimed to analyze the objective good faith in international procedural agreement in light the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG). To perform this analysis, the study started, firstly, from the premise that good faith in the globalized era has been undergoing as a response of Law to the changes imposed by international commerce, researching its possible reasons. Once the motivations of such changes were clarified, the current configuration of good faith in globalized commerce was focused on, delimiting the institute in multiconnected relationships, which gathered distinct and

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sometimes almost opposite legal systems; therefore, CISG was essential, as it is an emblematic instrument of a standardization of the International Commercial Law, whose structuring allowed a relevant flexibility to the various systems that handle it. Considering that a specific cut of good faith was made from the CISG, the inductive method was applied to understand the impacts of this new configuration on transnational affairs in general, in order to understand the impacts that this new configuration has been generating. The conclusion focuses on this understanding and, in particular, on what is required from the contracting parties in light of this rethinking. Thus, the bibliographical research was used, mostly doctrinaire, however with some contributions from the normatization and dialogue of international sources, as well as jurisprudence, especially to corroborate the induction method.

Keywords: Good Faith. International Commercial Law. International procedural agreement. United Nations Convention on Contracts for the International Sale of Goods.

RESUMO

Este artigo teve por objeto a análise da boa-fé objetiva nos negócios internacionais à luz da Convenção das Nações Unidas sobre Contratos de Compra e Venda Internacional de Mercadorias de 1980 (CISG, sigla em inglês). Para realizar tal análise, o estudo partiu, primeiramente, da premissa de que a boa-fé da era globalizada sofreu e vem sofrendo transmutações como resposta do Direito às mudanças que o comércio internacional impõe, pesquisando suas possíveis razões. Aclaradas as motivações de tais mudanças, focou-se na atual configuração da boa-fé no comércio globalizado, desenhando-se os alcances e limites do instituto nas relações multiconectadas, reunidoras de sistemas jurídicos distintos e, às vezes, quase opostos; para tanto a CISG foi essencial, pois é instrumento emblemático de vocação uniformizadora do direito contratual internacional, cuja estruturação enseja uma flexibilização relevante aos diversos sistemas que a manuseiam. Para os fins do presente estudo, adotou-se, portanto, o método indutivo, eis que se parte de um recorte determinado, qual seja, a boa-fé à luz da CISG, para compreensão dos impactos que esta nova configuração da boa-fé gerou – e vem gerando – nos negócios transnacionais de forma geral. A título de conclusão foca-se nessa compreensão e, em especial, ao que se exige dos contratantes à luz dessa repaginação. No que toca ao procedimento, fez-se uso pesquisa bibliográfica, majoritariamente doutrinária, porém com alguns contributos da normatização e diálogo de fontes internacionais, bem como da jurisprudência, sobretudo para corroborar a indução ora adotada como método.

Palavras-chave: *Boa-fé objetiva. Direito do comércio internacional. Negócios jurídicos internacionais. CISG.*

1. INTRODUTION

The good faith, as a true objective expression of human conduct, as well as a form of externalization of ethics and standardization of conducts considered to be loyal[3], accompanies commerce long before it approaches to the borders of National States and, later, dissociates itself from them with the globalization movement.

As can be seen, even in Germanic medieval times[4], the objective feature of good faith was outlined by acting in the spirit of *treu und glauben*, gradually deviating from the subjective

3 From the perspective of interpretation arising from German Law and the connotation attributed in the countries of Common Law, Judith Martins-Costa (MARTINS-COSTA, 1995, p. 120), quoting Ernesto Wayar (WAYAR, Volume I, p. 19), describes a composition of elements of what objective good faith means in general: "(. ...) it means (...) model of social conduct, archetype or legal standard - according to which 'each person must adjust his own conduct to this archetype, acting as an upright man would act: with honesty, loyalty, probity'".

4 António Menezes Cordeiro (MENEZES CORDEIRO, 2011, p. 162-176) teaches that the oaths of honor during the Germanic medieval period are a landmark for the objective meaning of good faith.

sphere and readjusting the focus to the externalized conduct, regardless of intimate elements of the subject.

As it happens, multifaceted by definition - which reflects, in essence, human behavior - and a legal instrument increasingly recognized as capable of adding security to commercial relations, the objective good faith, over time, has been resized in relevance and, consequently, in imperativeness. And the vicissitudes and idiosyncrasies of globalization were, in particular, a potentiating context of this mutation.

It happens because the sharp and accelerated dissemination of commerce on a global scale, the virtualization of commercial relations, the consequent encounters - and clashes - of pluralities that are typical of cross-border trade and the huge economic transactions that have resulted from these new possibilities - added to the economic crises caused throughout this set – shapes the scenario where the objective meaning of good faith has gained a dimension not experienced until that time: good faith acquires, in this context, *locus* to reshape itself from legal principle to cogent rule; in other words, it ceases to merely "illuminate" the path and becomes the path itself - at least, the authentically legitimate one.

The United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG) is an emblematic expression of this mutation, because it enshrines objective good faith in its Article 7 expressly and unequivocally: "(1) In interpreting 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 commerce."[5].

By doing so, as a classic instrument of hard law, it positions good faith in a status of cogency and, therefore, mandatory compliance. This resignifies the role of good faith in legal affairs: under the aegis of this Convention, good faith is a norm of mandatory rule of compliance; and, as such as, an important limit to the autonomy of the will.

The dimensions gained by objective good faith in contemporary contracts was significant. Because of that, beyond the hard law - where cogency is the defining element - even soft law[6] instruments, so precious to the dynamics of cross-border trade and so manageable in the name of autonomy of the will, were impacted by this imperativeness to the point that they are only forbidden to remove the good faith clause.

The UNIDROIT Principles, for example, a classic instrument of soft law, although enshrining in its first article the freedom of contracting and autonomy of the will, provide, in Article 1.7, the duty of objective good faith as an unavoidable or even manageable obligation to contract-

5 The content of this article and other provisions of the CISG throughout this text are transcribed from Presidential Decree No. 8,327/2014, which internalized the convention to the Brazilian legal system. Considering that the Portuguese language is not part - until the publication of this work - of the six official languages of the United Nations (UN), and therefore there is no version in Portuguese from the institution itself, it choosed to extract the Brazilian legal text.
The soft law is the source of Law that, in the light of transnormativity, dialogues with the hard law, making its provisions more flexible and serving as an instrument to achieve the best interpretation of the legal rule. The soft law consists, therefore, of principles, model laws and other instruments that subsume these characteristics in international commerce. To deep in the theme, see Lauro da Gama e Souza Júnior. (SOUZA JÚNIOR, 2006, p. 245-250).

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ing parties: "(1) Each party must act in accordance with good faith and fair dealing in international commerce. (2) The parties may not exclude or limit this obligation."[7]

In this context, the Law could not remain unrelated and legal norms started to be interpreted considering good faith not only as a principle, however also as a legal rule of necessary applicability. This transmutation gives rise to a resignification of the autonomy of the will in the context of international contracts, causing, in cascade, effects in contemporary transnational deals: the autonomy of the will is no longer unlimited.

This new conception of contracting and, therefore, of the legal affairs is even more challenging, considering that good faith implies, inexorably, a business action portrayed in the legal appreciation of trust and cooperation - even if in minimal, or even passive, parameters.

This scientific study aimed to contribute to the materialization of this role of good faith in transnational procedural agreement, proposes, therefore, to analyze the changes perceived by good faith until its current format, understanding them, both in cause and consequence.

To this end, this article is structured so as to analyze and, as much as possible, respond to the contemporary problems surrounding good faith. It begins by studying the mention "legal mutation" of objective good faith, as well as its current status in cross-border trade relations, under the aegis of a specific cut: the CISG.

Next, it studied some of the implications that the resignification of good faith raises to the current procedural agreement, in other to assess its possible impacts on the contracts derived therefrom, and what, consequently, is required from international commerce players on behalf of objective good faith. It should be noted that this analysis occurred, in particular, by conclusions obtained in the scientific work developed by Renata Alvares Gaspar and Mariana Romanello Jacob (ALVARES GASPAR; JACOB, 2015)[8], concerning the pursuit of common material outline of objective good faith in transnational commerce that, being plural, demands legal certainty through points of convergence as to what is considered objective good faith in international commerce.

At the end of this scientific effort, there is a reflection in the form of conclusions about the direction in which the rethinking of objective good faith leads in the context of legal relations and, furthermore, its implications in commercial relations of the global world, particularly in the behavior of the subjects that generate and participate in these relations.

For this purpose, the inductive method was used, which shaped the efforts to promote an analysis performed first on a specific cut, the good faith by CISG, so that it could be expanded, from that point on, to an assessment of general conclusions, which are the implications of good faith in current transnational procedural agreement. This has demanded to know, in parallel, the construction of the limitation of the autonomy of will of the parties, precisely, in the contractual sphere; which, in principle, may appear as a paradox. The result of this research,

7 In the official comments to the UNIDROIT Principles (available on: https://www.unidroit.org/english/principles/contracts/principles2016/principles2016-e.pdf). Accessed on 06/06/2020) the annotation regarding the mandatory nature of the principle is elucidative and corroborates the understanding that this study sustains: "The duty of the parties to act in accordance with good faith and fair dealing is of such a fundamental nature that the parties may not contractually exclude or limit it." (p. 20-21, our translation of the English original).
This is a research concluded by the referred authors as the result of the Scientific Initiation institutional research (year 2014-2015) by the Pontifical Catholic University of Campinas, modality FAPIC/Rectory scholarship.

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then, is presented in this text as an academic contribution to the debate. As a method of procedure, it was adopted bibliographical research, mostly, doctrinaire, however with some contributions from the standardization and dialogue of international sources, as well as from jurisprudence, especially to corroborate the induction now adopted as a method.

It is also important to mention that this study is built within the method framework of human rights, understood here as a civilizing effort for the promotion and maintenance of social - and especially commercial - relations under the protective mantle of human dignity[9].

This method perspective implies affirming that, in a globalized world, where differences are on the agenda - which means that the actors of this global society are constantly characterized for their cultural and, therefore, legal differences - Law experiences daily challenges, not only to guarantee the legal certainty of transnational deals, however also, to ensure, in a conditional manner, that people - and their dignity do not turn the freedom to contract into a legal mechanism to violate their condition as people in the current society, marked by the expansion of cross-border trade, which on many occasions treats people and their rights, as elements of negotiation, in calculations of costs and profits.

It is, therefore, a matter of thinking and studying Law through a method perspective that gives new meaning to individual rights based on collective rights[10]. This article, supported by (underpinned on) this redefinition, uses the aforementioned method view with a focus on instrumentalizing the Law to reach points of convergence between the subjects and the plural systems, without loosing the right to difference, in an attempt to, provide balance and equity in transnational legal relations, to which every subject has a right, as regardless of differences and pluralities are always and inherently equal in dignity.

At the same time, when reflecting, at the end of this research, on what the current limits of objective good faith in international deals represent, the choice for this human-rights-based method allows conclusions that transcend the sphere of legal relations that are strictly a matter of negotiation, and for this reason, its adoption as a method conductor of the study.

9 This method was used by Renata Alvares Gaspar (ALVARES GASPAR, 2016) who, when dealing with mixed arbitration for foreign investment, finds that the arbitrator, arbitration tribunal or judge cannot disregard, when applying the appropriate legal regime, the right to development as a human and fundamental right, so that this perspective should method guide both the hermeneutic reading of the law, as well as its application.

10 This point of view, mainly, on the inferences obtained from the study developed by Jürgen Habermas (1997) who, when dealing with politics, power and Law, relates, among other aspects and concepts, private and public autonomy, and human rights in the perspective of their legitimacy in a democratic system. To deepen the theme, see this topic Jürgen Habermas (HABERMAS, 1997).

2. GOOD FAITH: FROM REGENT PRINCIPLE TO COGENT NORM

From a historical[11] perspective, as seen[12], it was not in contemporary times, nor with the expansion of global and multiconnected commerce, that a mutation in the principle of good faith as a rule governing legal relationships of a commercial nature was demanded.

As it happens, cross-border trade, in the roots of *lex mercatoria*[13], especially due to the process by which it is shaped - customs and traditions -, contributes significantly to the construction of a good faith behavior as a duty in relations. Such contribution, even before the CISG, had been expressly stated, "the principle of good faith had been applied to international commerce relations as a 'general principle of law of the *lex mercatoria*'" (MARTINS-COSTA, 1995, p. 121).

In the same view, Frederico Eduardo Zenedin Glitz, when dealing with customs, traditions and business practices, brings, as an example, good faith as a kind of ethics proper to the merchant class and its status as an international custom within these relations:

> Simply imagine for example, that the principle of good faith in deals has been identified as a typical social convention among merchants (as if it were an ethic restricted to a class, and, hence, other statements: guaranteed by the "mustache's thread" and "gentlemen's agreement"), becoming typical international custom (for example, enshrined by the CISG) [...] (Our translation from Spanish) (GLITZ, 2012, p. 156).

The ethics imposed by good faith in mercantile relations from that time onwards allows to infer that, judging by the commercial practices verified in the context, it was known that leaving the parties of a procedural agreement to the free will of an unrestricted freedom can lead, due to the power games that shape such relationships, to the oppression of one of the agents, who, for various reasons, sees their freedom minimized, if not totally subjugated, by the exclusive will of the other, who, for extra or meta-legal reasons, imposes, in a "natural" way, its deals decisions over others.

Therefore, it is needed to repeat, for emphasis, that good faith in its objective feature, as a guiding principle of legal relations in the international commerce scenario, has not originated in contemporary times, nor has it resulted from the numerous consequences of globalization. Nevertheless, the context of globalization has significantly contributed for the meaning and role of the principle of good faith to be modified in relevance and cogency, no longer merely guiding human behavior in these relationships, however becoming a general duty of behavior materialized in a legal rule.

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11 It should be noted that it is not the scope of this research to undertake an immersion in the history of good faith, it is also reckless to risk, in these brief lines. For this purpose, there are many eminent works that have dealt with this theme in the scope determined. To deep in the theme, see, for example: Judith Martins-Costa (MARTINS-COSTA, 2000); António Menezes Cordeiro (MENEZES CORDEIRO, 2011); Edward Allan Farnsworth (FARNSWORTH, 1963).

12 See note2.

13 The existence of a "first", a "new" and even of the *lex mercatoria* itself has no pacific opinion in the doctrine. Frederico Eduardo Zenedin Glitz (GLITZ, 2012, p. 126-132), for example, systematizes a series of distinctions between the first and contemporary *lex mercatoria*. However, since this is not the object of this study, this discussion will not be held, only admitting the existence of a specific regulation for transnational businessmen, an established theme for jurists, whose terminology, in this research, it is not necessary to explore.

When the expansion of cross-border trade reaches global scales and starts to unite or connect distinct - sometimes diametrically opposed - cultures, in an interconnection of unprecedented pluralities, good faith as a limit to party autonomy starts to be challenged so that some commerce agents are not subjected to others with their will based on greater economic power.

It happens because it is known that one does not contract in Brazil as one contracts in Japan, just as one does not contract in Morocco as one contracts in the United States. This plural scenario, therefore, also brings about a new level of legal uncertainty, which, as always, demands a response from the Law.

Undoubtedly, one of the answers – and, perhaps, the most complex and important - was the redefinition of the concept of good faith, causing the mutation of its nature to endow it with coercion, in a crucial point, once again, unknown in magnitude and in proportion - in the history of Private International Law. It no longer merely illuminates the path and becomes the very path to be followed, through a new conception, no longer being that one linked to subjective decisions of the actors of commerce, but rather, linked to the objective behavior of such actors.

Despite the efforts, over time, in the attempt to limit the unrestricted autonomy of the will of the parties and the opportunism that this limitlessness generates in commerce acts across borders, the contemporary turning point lies in the legal materialization - and this is where it begins the essence of this scientific work - Vienna Convention on the International Sale of Goods of 1980. This document is considered the historical-legal effort of the cogency in a uniform manner of the consolidated customary practices of international commerce, also receiving, as Vera Jacob Fradera (FRADERA, 2011: 2-3), inspiration from other written legal models, such as German Contract Law and the Uniform Commercial Code of the United States, under the auspices of the United Nations Commission on International Trade Law (UNCITRAL)[14]. This normative instrument, as taught by the author, is the result of a doctrinal and political movement arising, among other issues, from the need to "create solutions to adapt to an environment where the diversity of legal systems is always present and economic and political instability is, more often, the rule" (FRADERA, 2011, p. 2).

As an instrument of transnational vocation and, therefore, allegedly compatible with different legal systems, the CISG is, currently, the largest codified compilation by hard law[15] of uniform rules of international commerce, with a high degree of acceptance (considering the number of signatories[16]). Moreover, being a Convention, its cogency for those who ratify it is inescapable[17] and, therefore, less susceptible debates when compared to customs and traditions, which, even as rules, leave more room for volatility and substantive discussions.

In order to satisfy its foundations, one of the ways offered by the CISG to allow various systems to come together under the same regulation was the adoption of principles and open clauses that admitted, by vagueness, flexibility and identity. Judith Martins-Costa, when ana-

14 It cannot forget that UNCITRAL, as an organization linked to the UN, is responsible for the development of international commerce from the UN's point of view, that is, as an instrument for the maintenance of world peace, a perspective that is applied throughout this work.

15 It is emphatically said "codified by hard law" to distinguish it from the "codification" pleaded by the new *lex mercatoria* through soft law instruments, to which the CISG does not belong, since it is a classic hard law instrument.

16 Ninety-three signatories until the date of publication of this paper. List of signatories available at: https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status. Accessed on: 03 jun. 2020.

17 Excepted only if, in a concrete case, the parties adopt its Article 6, which allows the CISG to be set aside, even if it is a ratified treaty: "The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions."

lyzing some of the factors that make the CISG a successful source for the development of a uniform Contract Law, emphasizes that:

> Among these various vectors is, equally, the fact that the Convention has harbored a fertile principiology, in order to allow - by reason of the very character of certain principles that it adopts - its own constant flexibilization, thereby reducing the unalterability that usually marks and stiffens regulatory texts. (MARTINS-COSTA, 1995, p. 118)

One of the open clauses adopted was the objective good faith in Article 7 of the Convention, which requires the interpretation of the CISG to take into account the need to ensure respect for good faith in international commerce. Therefore, in a clear, express, and uniform manner, the international society has decided to adopt an important limit to the will of the commerce actors, which does not go unnoticed by them and by the jurists who dedicate themselves to this area of human experience.

In other words, even with the characteristics of a principle - evoked to perform functions of interpretation, implementation and control (FRADERA, 2011, p. 14), the good faith, definitively objective at this point, gains, with this commandment, status of a cogent rule. It happens because it is determined by a Convention - the classical form of codifying International Law - concluded both to support any player in transnational commerce, regardless of its legal origin, and to limit the actions of more powerful actors, tempted to impose their wishes and desires to the other partners of this game. Therefore, good faith, with the status of a cogent norm at the core of the CISG, becomes, obligatorily, as global as the commercial relations that demanded it.

With coercive nature and as an imperative rule of conduct, good faith, in the relationships regulated by the CISG functions as a guideline and a controller of the parties' behavior. Therefore, it acquires true restraining force of unlimited wills among the agents of commerce.

Under the given circumstances, the list organized by Judith Martins-Costa (MARTINS-COSTA, 1995, p. 121-122) is explanatory in regard to the articles of the Vienna Convention that are impacted by the good faith printed in article 7, concerning the creation of lateral rights and duties of the contracting parties (and, therefore, containment of unlimited postures as argued here). The article. 77[18] is an example. It dictates the duty of cooperation for the good performance of the contract and the assumption of the necessary measures not to increase the damage (which, moreover, is an incorporation of the duty of mitigation, typical of Anglo-Saxon Law).

At the end, the renowned author concludes:

> As it can be seen, the list of duties that result from good faith is extensive and its breach may even lead to the configuration of contractual debt, even when the main obligation is fulfilled. Hence, it constitutes a source of optimization of the contractual conduct, in the view of the full and effective fulfillment of the purpose for which the bond was created, that is the contractual performance. (Author's emphasis) (MARTINS-COSTA, 1995, p. 122)

18 A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

It is worth mentioning that the understanding of good faith as necessary to commerce relations and its consequent coercive imposition does not occur only in the transnational sphere. In the United States, for example, a country belonging to the Common Law, the phenomenon becomes clear with the materialization of the duty of good faith in commerce relations by its codification in the Uniform Commercial Code[19]. Luciano Benetti Timm teaches that the principle of objective good faith "does not properly derive from the Common Law tradition, however from legislation, in other words, from the UCC, paragraph 1-304, combined with paragraph 1-201(20)" (TIMM, 2012, p. 536).

The strength of the right to freedom in this legal system and the contractual relationship based intensely on economic efficiency did not give room to the cooperative and guaranteeing vision of good faith of other legal systems (especially Civil Law and Islamic Law). Harold Dubroff (DUBROFF, 2012, p. 571) notes that, before the adoption of the UCC, the Common Law of most American states had not yet recognized an implicit duty of good faith, and that it was a creation of the New York Common Law (a jurisdiction, not known for its liberal approach to contract interpretation).

Thus, the general imposition of good faith came to occur with the force of rule, in an explicit recognition of its essentiality to procedural agreements[20]. The model law represented a turning point because it included the obligation of good faith within the scope of all commercial contracts and, roughly half a century after the enactment of the UCC, the implied duty of objective good faith eventually became accepted as part of the common law in most states (DUBROFF, 2012, p. 571).

Once understood that, in addition to being an imperative legal rule under the CISG, in a context where its concept and scope are not univocal, as seen by the example above, it is now important to investigate, its scope and limits in international affairs. Such investigation should consider the different perspectives of this legal institute in order to finally enable a universalizing - and/or standardized - concept that is capable of contemplating all the differences and all the protection that this norm is designed to provide. The reason is that no clause in theory and form is authentically valid if it lacks material contours suitable for its practical application.

3. CURRENT REACH AND LIMITS OF GOOD FAITH

As can be seen, faith to a cogent rule takes an emblematic stage in the legal regency of cross-border trade relations, plural by nature. This important step, however, becomes empty if the players in international commerce. It is worth saying, those directly impacted by the provisions of the CISG - do not find, in the good faith stamped in theory, the feature of identity when it is applied to practice; with this, it will lack credibility and, in a "domino effect" and a worst-case scenario, it will lack the legitimacy of its resulting legal rule.

19 Model law promulgated in 1951, for National Conference of Commissioners on Uniform State Laws and for the American Law Institute.

20 It should be noted, at this point, that, as Harold Dubroff (DUBROFF, 2012, p. 564-571) teaches, there was indeed jurisprudential recognition of its implicit existence in domestic contracts (the author mentions the case of Kirk La Shelle Co. v Paul Armstrong Co., 1933, often cited as the main initial case regarding the duty of good faith), however in a more punctual and localized manner.

It is known as one of the worst scenarios because, especially in a context where consensus is the maximum, the absence of legitimacy practically causes the loss of concrete validity of the norm, since, even when defined on a treaty or convention, if its content is not known, there is no way to expect its practice. Thus, a scenario could be drawn in which the parties would tend to apply article 6 (see note 15) with the intention of distancing themselves from the Convention.

At this point, a brief parenthesis is important to emphasize that the criterion of the legitimacy of the norm as an essential element of its validity (transcending the mere legality) is proper to an insurer view, adopting, ultimately, the protection of human dignity (in accordance with the method conductor applied to this study.

It happens because, from other perspectives, the legitimacy criterion is not necessarily applied. According to Ricardo Manoel Oliveira Morais and Adriana Campos Silva, for example, the "fact that liberalism adopts the criterion of utility as the principle of valuation means that no instance, not even infra-constitutional legislations, has to submit to the criterion of legitimacy"[21] (MORAIS; SILVA, 2017, p. 240).

From the perspective of legitimacy, therefore, it is necessary to find a concept for the good faith stamped in the CISG as a legal rule, a concept that achieves such legitimacy among all parties adhering to it.

For this, it is important that this identification transcends its generic material contours in order to find the specific and carefully established legal circumstances, which safeguards legitimacy, due to mutual recognition, of all actors involved, considering the essential internationality element of this Convention, so that it can effectively make sense. With this, good faith is endowed with legitimacy for all actors who have to apply it as a legal rule for their deals, shielding it, as much as possible, from distortions arising from the diversity of legal systems in question.

In this regard, Francisco Augusto Pignatta, when dealing with the general application of the rules of the CISG, is clear when he says that "to obtain the uniform application of the Convention, the judge should be attentive to international notions of a uniform character and avoid notions of national character contained in its national Law." (PIGNATTA, 2011, p. 23).

In other words, it seems fundamental, for the proper functioning of the CISG, to identify the real conduct that, in the practices of commerce considered in the plurality of the International Community[22] , any actor recognizes as such and, therefore, identifies as worthy of social and legal observance in the name of objective good faith, in cross-border trade relations.

Also, this task loses its simplicity if objective good faith is understood, for the players in international commerce, as an important limit of their alleged unrestricted autonomy in the procedural agreements.

21 It is not meant that other viewpoints do not also aim at the protection of human dignity, according to the structuring scientific means themselves. It is only intended to clarify that, given the method applied to this work, the adoption of the criterion of legitimacy of the norm is mandatory.

22 The expression. International Community is used, in this research, in accordance with the progress of studies on the subject. The term International Society was used according to the Westphalian paradigm of coexistence among States, this paradigm has been overcome (TOMUSHAT, 1999, p. 59-63).

It is possible to affirm - based on the scientific work developed by Renata Alvares Gaspar and Mariana Romanello Jacob (ALVARES GASPAR; JACOB, 2015)[23] - that the answer is in the common denominators of the various legal systems existing in the International Community, which reveals that there is a common behavior among the players involved in international commerce, which can be found both in the observance and in the unfolding of a specific method.

The method adopted by the mentioned authors refers to the study of systems, considering the specificities of its internal regulations on the analyzed theme under analysis, based on the method of diatopical hermeneutics, popularized by Boaventura de Sousa Santos (SANTOS, 1997)[24]. Such method, as known, is understood, in the context of this research, to maximize the differences between the legal systems under analysis and, conversely, to identify their convergences.

As the referred scientific work reveals, this is not an easy task, since its accomplishment necessarily implies an observation of the legal systems from "within" and not the contrary. It happens because, from the outside to the inside, one would research, from the beginning, one system based on another, provoking a comparative study, which, for the intended purposes, would not be adequate, because it would lead to an analysis based on preconceptions imprinted, by the researcher, from the dogmas of their own system. This method approach requires important precautions, under the risk of being offensive - in substance and in form - to the truths materialized in the legal systems analyzed.

After, therefore, a detailed research about the conception of good faith in the mentioned scientific work[25], the authors found, as a common denominator, the legal figure of abuse of right, which is considered by the current that develops it from good faith and also studies it in its objective meaning. This legal phenomenon, as known, reflects a negligent posture regarding good faith: which means those who act in abuse of rights act commissively or omissively in a way that is contrary to objective good faith.

On the other hand, it is understood that the regular exercise of the right has, for different[26] legal systems, the same connotation: the one who acts regularly within the limits of the right itself, acts with objective good faith. Such conduct, in a commercial relationship by itself, essentially established by the autonomy of the will, is naturally relevant, since every freedom has its limit. This limit points, universally, at least to the respect for the other part of the agreement. In other words: not everything is worth to achieve commercial objectives.

When, however, this idea of relational good faith is transported to the international scenario of different pluralities, decentralized and horizontal - where, in theory, the imposition of one legal system over another should not be admitted and where the players interacting there should be obliged to dialogue, to ensure that everyone knows and reaches a consensus on the limits of each one's actions makes the regular exercise of the law, as a universal expres-

23 See note 6.

24 The distinguished jurist, based on the philosophical conception of diatopical hermeneutics inaugurated by Raimon Panikkar (PANIKKAR, 1984, p. 28), proposes this hermeneutic modality in order to find a multicultural conception of human rights. Nevertheless, the essence of the method can be transported to other perquiries, as it was done in the work alluded to. For further information on this subject, see Boaventura de Sousa Santos (SANTOS, 1997, p. 23 and following).

25 See notes 6 and 24.

26 In the scientific work in reference, in which this analysis was carried out, the study was based on three *locus* (representing three legal systems): i) Roman Germanic, with the exception of French Law, given its specifications; ii) Islamic Law, in which the generalization can be understood in the field of commerce, since the Prophet had commerce as his profession; and, iii) Anglo-Saxon Law, with a specific analysis of the American subsystem (considering that English Law is different in many aspects).

sion of objective good faith, gain new and emblematic proportions of relevance and practical functionality.

Based on the arguments presented above and supported by the aforementioned scientific work, finding in the regular exercise of the right a common denominator related to good faith as a demonstration of non-harmful behavior, leads to a second denominator, this one concerning background: acting with otherness.

It happens because the requirement of regularly exercising rights as demanded by a rule of objective good faith, even if it is under minimum terms that, when contracting, the objective of reaching, at any price, individual advantages from freedom of action, so proper of international commerce, should be taken into account, as well as the obtainment of advantage by the deals are shaped by respect for the advantages that the other party is also pursuing, because the other has an equal right to pursue them.

Otherwise, it would be an unbalanced relationship and, therefore, legally illegitimate, from the point of view of the method adopted in this research, that is, the human rights protection framework as a method tool, leading to the result obtained.

This implies, therefore, an obligation to, even if only minimally, take the other contracting party into consideration. This means that the parties involved must, at least, cooperate with each other, ensuring that their freedom of action will not interfere, directly or indirectly, with the counterpart's right to act.

It should be noted that, in the figure of abuse of rights, the otherness is a condition *sine qua non* of the legal transaction, since abuse is only represses when the other's right has been affected. The perception of the other ceases, therefore, to be a merely moral or subjectively ethical conduct; it becomes an imperative, because it is determined by a legal instrument that regulates rules of conduct; therefore, a cogent norm.

In order to add credibility to this argument, it is possible to think, as an example, about the institute of damage mitigation[27] having good faith as its foundation. Christian Sahb Batista Lopes, when searching for the justification of the mitigation rule in Brazilian Law, and placing the abuse of rights as one of the possible grounds, explains that[28]:

> Acting in good faith implies, in the Law of obligations, a cooperative attitude between creditor and debtor. Therefore, a creditor who claims to be compensated despite not having acted in good faith, in other words, who did not act in a cooperative manner to prevent the damage from occurring through reasonable efforts, abuses the right to compensation. In the event of a debt, good faith requires that the creditor cooperate with the debtor and avoid damage to its own assets, in order to avoid the waste of economically and socially relevant resources. If it is possible to avoid the damage by means of reasonable efforts, the socially expected conduct of the noble man is to act in a way that such damage does not occur. If, however, the creditor violates this rule

27 A widely accepted figure in international commerce - subject to specificities and divergences as to the consequences of its application to different legal systems - the mitigation of losses is, in general, an obligation imposed on the creditor that, harmed by a debt, must avoid or make reasonable efforts to prevent the losses and damages resulting from the breach, under penalty of not being compensated for the losses that could have been mitigated. On the subject see Christian Sahb Batista Lopes (LOPES, 2011).

28 It should be noted that the author argues that the abuse of rights is a possible foundation of damage mitigation, especially as a ratification that mitigation it is based in good faith, however, does not see it as the only foundation. For further information on the subject see Christian Sahb Batista Lopes (LOPES, 2011, p. 153-161).

> imposed by good faith and subsequently seeks compensation for the damage suffered, the exercise of his right to compensation is abusive, as it manifestly exceeds the limits set by good faith. (Our emphasis) (LOPES, 2011, p. 158).

Thus, it is deduced that the counterpart, even if in debt, is placed, in the last analysis, as a measure of the creditor's right, above all, of the limits to be respected and that outline the perimeters for abuse. After all, if the holder of the right were allowed to remain inert and permit the damages to reach vertiginous numbers. It would be disregarded the figure of the debtor, who would be able to be obliged to excessive reparations, possibly not consistent with the debt itself and that, with measures driven by the creditor's good faith, could be avoided. Thus, under the cloak of objective good faith, the perception of the other becomes mandatory, hence the otherness sustained here.

Otherness is, therefore, the "minimum" - which will be referred as a standard, not in the sense of value judgment, however as an indispensable quality within the principle of objective good faith. Having a posture - even if passive - of good faith in a contractual relationship requires the perception of the counterpart as a subject. A subject who is free and, therefore, bearer of rights in the same condition and order.

Thus, from this argumentative construction carried out since the analysis of the reality object of the referred study - which, as indicated, aimed to finding the universalizing common denominator of the concept of objective good faith in order to mark its limit and scope in international procedural agreement - the figure of abuse of rights was found which, when not observed, will irradiate legal effects on the international deals in question, conditioning the application of the legal rules applicable in the concrete case, to demarcate and indicate responsibilities and their legal consequences.

Nevertheless, what has been defined here as a standard does not prevent it from gradually being differently apprehended in terms of increased protection and scope of understanding, which would be a gain for humanity. But what is defended here is that the "extra" is not the starting point. It is in the standard that the common material contours and new global behavioral expressions of contractual objective good faith begin to be unraveled. Considering that, its reach and limits can be revealed in the scope of international procedural agreement, allowing a clearer visualization of human behaviors and legal responses that will grant more legal certainty to cross-border relations.

4. IMPLICATIONS IN INTERNATIONAL PROCEDURAL AGREEMENT

With the exception of criticism or reverence, a debate not covered by this work, even though it is tangential to the analysis made here, it is a well-known fact that the capitalist model is not only the essential channel for obtaining profits, but also for its maximization, from the individual advantages obtained in a free market[29]. In this space, contemporarily, there is a

29 On the topic, indispensable to see Thomas Piketty (PIKETTY, 2014).

dispute between freedom as something absolute and as something that needs to be considered relative.

It happens because, *a priori*, the incessant search for the maximization of individual advantages (which materializes in profit) can cause thoughts and attitudes that claim individual freedom as unlimited by those who consider that maximum profitability that can only be obtained if the freedom to act is also maximum, that is, without the restrictions and, therefore, the "obstacles" that the Law imposes when it turns individual freedom into something relative in the name of others' rights.

Thus, questioning the absolute individual freedom - considering that the capitalism finds its best realization in a full freedom (fictitious by nature) -, imposing on it intrinsic limits of a relative perspective reveals itself as the only possibility that such maximization occurs, however, coexisting with the (re)signification of individual rights based on collective rights. In this regard, Jürgen Habermas teaches that:

> The conscious conduct of the life of the singular person is measured by the expressivist ideal of self-realization, the deontological idea of freedom, and the utilitarian maxim of the multiplication of individual life chances. Whereas the ethics of collective forms of life are measured, on the one hand, by utopias of a non-alienated, solidarity-based coexistence within the horizon of consciously assimilated and critically continued traditions, on the other hand, by models of a just society, whose institutions configure in order to regulate behavioral expectations and conflicts in the symmetrical interest of all actors; a variant of this are the ideas of the increase and just distribution of social wealth, cultivated in the Welfare State. (HABERMAS, 1997, p.132)

It consists, briefly, in the only possibility of guaranteeing the realization and construction of a collective ethic.

This debate is not, therefore, unscathed by the regulation of good faith in its objective facet that, as a cogent legal rule imposes, for pleasure or displeasure, limits to the maximization of profits arising from solely individual advantages, since it forces the consideration of the other, the counterpart of the deals, whose contempt or disrespect are not allowed, nor considered by ethics that, as seen, is increasingly built in a collective way.

It is important to notice that when one seeks accumulation, the tendency, inexorably, is to focus on oneself. Individual efficiency, in theory, would have to be taken to the extreme for the supposed systemic guarantee. The reason is that, as known, within the concept of capitalism, there is no accumulation that is collective.

In a business relationship, this is evident; each party, more often, dedicated to taking care of what is its own, safeguarding its interests and turning to everything that will pave the way in the search for the "pot of gold" that lies in the outcome of negotiations. In this aspect, profit at any price is, as demonstrated, understood in an improper way, since it is interpreted purely as business efficiency. Thus, at first sight, the called "law of survival" seems to lead more to the motto of "every man for himself".

For no other reason, reviewing all the reality exposed above in light of the CISG, it can be understood that in international contractual relations, by imposing the principle of objective good faith as a cogent rule, the scenario that is faced gains other contours and, therefore, another perception from the legal point of view and - as it could not be - from the human point of view.

It happens because being the regular exercise of rights - and the duty of otherness resulting therefrom - the standard of transnational objective good faith, what this whole context has shown is that, in the end, the construction of profit, at first strictly individual, is in fact only achieved if it occurs with the look on the other, through the observance of this collective ethic. This will be the legal way to endow deals operations with legitimacy in a sustainable manner.

Thus, by the logic of the system there is a great tendency toward individualism. The standard, as an imperative rule of conduct of one of the world's largest[30] transnational agreement conventions, imposes a partial deviation and demands a panoramic acting, in which noticing the role, the position, and the right of the other must necessarily condition one's own acting.

Thus, ethics - intrinsic to contractual good faith - has the character of responsibility, where the right to freedom of action can be exercised in its amplitude, but never outside its outline. The ethics is responsible, in order words, for considering the other as a condition for one's own action/performance in the deals.

And all this fits into this system. In the current economic model, the figure of the counterpart (seller, purchaser, supplier, service provider, carrier and other business parties), like other factors of production and market, is *conditio sine qua non* for obtaining profit. The figure of the "other", therefore, is nothing new, since the barter, this knowledge is had.

Taking otherness as a premise of the cogent norm, the framework results in the imposition of humanizing the other[31] and recognizing their dignity.

It cannot, therefore, under the aegis of the CISG, admit the objective allocation of the counterpart as a thing, cost or expense, which admits transaction, accepting, for example, the offense to their right and the mere compensation of this choice. The reparation, of course, will arise, in addition to the damage caused, also from the breach of the hermeneutic guideline of the Convention itself and the duties arising from good faith, thus configuring two forms of non-compliance.

An emblematic example of this double debt is the recent decision of the Court of Justice of Rio Grande do Sul[32] known as "the case of the chicken feet" which, applying to the CISG (and also the UNIDROIT Principles), maintained the declaration of the rescission of the purchase and sale contract, the purchase and sale of frozen chicken feet, and the restitution of the amount determined in the first instance, based on the seller's breach of the main obligation to deliver the goods (art. 30 of the CISG[33]), and also of good faith[34] itself:

> In the present case, the judicial declaration of termination of the contract does not dissociated itself from the recognition of the flagrant offense, by the seller /defendant, of the duty of the contracting parties to proceed according to the dictates of good faith, the highest canon of international relations governed by the new *lex mercatoria*, as infering from the reading of

30 When one of the "largest" is said, it means one of the highest numbers of signatory countries. See note 14.

31 It is not being said that this lack of humanity necessarily happens in the current model of market relations. What is intended to demonstrate is that the cogency of the principle of objective good faith through the CISG does not give room or opening for this to occur and represses it if it does.

32 BRAZIL. Court of Justice of Rio Grande do Sul. Civil Appeal number 70072362940. 12th Civil Chamber. Appellant: *Anexo Comercial Importação e Distribuição Ltda. - EPP*. Appellee: *Noridane Foods S.A*. Reporting Judge: Umberto Guaspari Sudbrack. Porto Alegre, RS, Brazil, Publication: February 14, 2017.

33 Article 30: The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

34 Since this is not the scope of this work, other possible judgments on the subject (national and international) were not cited.

> article 1.7 of the Unidroit Principles and artlice 7.1 of the Vienna Convention of 1980 - the latter, moreover, is an explicit command to the Judges (state or arbitration) that apply the Convention. In effect, in order to create a uniform of rules for the treatment destined to international commercial relations, the Vienna Convention of 1980 structured the notion of contract based on two fundamental pillars, that is, private autonomy and objective good faith, from which is is deduced, among others, their duty to act with negotiating loyalty, imposing the comprehension that the international sales contract of goods must be understood as a cooperative relationship between the parties. In the present case, as can be seen, there was a frontal violation of the pillar of good faith, leading to the resolution of the contract, in accordance with the other rules in this regard dictated by the Convention. (Reporter's emphasis, pages 28-29 of the judgment).

It is inferred that the non-performance of the essential obligation (in this case, the delivery of goods) was not considered in isolation as the only reason to give rise to contractual resolution. The good faith, considered as a command to the judge, one of the pillars of the Convention, was considered in the analysis of the seller's conduct towards the purchaser and limits the second pillar: the private autonomy.

The limitation exposed here, of course, is not that intimate imposition, where subjective convictions are affected; irrelevant aspect for objective good faith. It is necessary to consider, in compliance with Article 7 of the CISG, the exteriorized conduct. It must reflect an action directed, even if passively, to the other, recognizing them as a subject of rights in international commerce.

The implication of this in international procedural agreement is remarkable, since with the cogency of the principle of good faith, obtaining profit takes a new path: understanding and respecting the position of the other party. It happens because the respect of the Convention necessarily involves the obligation to transcend the exclusivity of the individual, and only then, to reach the much sought-after "pot of gold". Conquering it, therefore, goes through the obligation to find in the other party the beginning and the end of the right themselves.

Another implication is the reformulation of the system from other conceptual limits and above all, of an economic nature, since maximizing individual advantages within free commerce is limiting factor that permanently marks internal and, in the case of this analysis, international transactions.

Compliance with transnational rules imposes the disregard of the motto "every man for himself", not only regarding to profits, however also about the duration of international deals. In order to survive and remain, one must necessarily consider the other and their rights. The fact is that everyone is interested in the existence of good contracting parties - understood to be those who objectively act as such - and the legal certainty resulting from this fact, which favors the Law. The role of the CISG, therefore, is to implement this notion.

An illustrative parallel of this panorama can be made from the work developed by Renata Alvares Gaspar and Felipe Castro (ALVARES GASPAR; CASTRO, 2018) which, although related to International Investment Law and, therefore, different scope of the present article, brings conclusive notes that are applicable to the various areas of the contemporary globalized market; such as, profitability, foreign investments and contracts - these directly covered by the present study.

After exhaustive analysis of the foreign investment contract and the scope of its effective and legitimate legal certainty, from its social function in the globalized scenario, the mentioned authors conclude that the protection of citizenship and human dignity are essential conditions for the maintenance of a stable market for international investments, since without this protection, social collapse would ensue, affecting the system cycle necessary for the healthy financial market desired by the investors (ALVARES GASPAR; CASTRO, 2018, p. 334-339). Taking that into consideration:

> (...) As has been widely substantiated in this paper, foreign investment can only enjoy effective legal certainty when entering a national state if it is attentive to the interests of citizenship, in order to avoid social collapse capable of destabilizing all protection to the economic effects of the investment made. The legal certainty that is conferred by the Rule of Law to foreign investment is only achievable if justice and social welfare are observed; outside this dictum, the risk to the investment is unpredictable. (...) (ALVARES GASPAR; CASTRO, 2018, p. 334, emphasis added)

Establishing a parallel with the present work, it is inferred that the relative conditions and limitations found nowadays in the globalized market regarding the achievement of maximum profitability and the autonomy of the will demonstrate that the Law has been configured as an instrument for the equalization of forces that, in a classic liberal conception, used to oppose each other, and are nowadays understood and regulated by the Law as symbiotic and necessary for the maintenance of the system itself.

In this present context, the CISG is the materialization of this mister and places the objective recognition of the human dignity of the other (materialized by contractual good faith) as the central element for legal transactions to be considered valid and legitimate under the major regulatory norms of cross-border trade (for example and in this study, the CISG).

And all this, in plural and multiconnected relations, where so many differences and - as a consequence - disagreements tend to appear, providing a promising scenario: the opening for what is here called fraternity in international procedure agreements.

It should be emphasized that objective good faith does not require an affectionate, intimate, subjective fraternity. Nor could it, since this is part of the individual sphere. Rather, a fraternity that imposes the consideration of the other in their intrinsic dignity, from specific negotiating actions, which denote respect and, therefore, their humanity, so that the contractual relationship is really balanced and fulfills as many objectives as there are people involved in it.

5. CONCLUSION

The entire scientific effort undertaken within these brief lines has led to the identification and the comprehension of certain aspects of objective good faith in regard of international procedural agreements, being the CISG the ideal expression of the cogence of principle in these relations in the global world.

Primarily, some reasons for the mutability in the juridical nature of the institute of objective good faith have been verified, such as the rule of imperative conduct.

Also, the range and the limits of good faith in its objective aspect and as a cogent rule have been inquired, ensuring the importance of finding its material configuration, because the subjects of international commerce are plural and, as an expression of legal certainty, need minimally common concepts of the legal institutes that rule their International affairs, in a global society.

As one of the common denominators regarding to the scope and limits sought, the regular exercise of the right was identified as an act of good faith. In other words, in the transnational scenario, those who do not abuse their rights act in accordance with the rule of objective good faith.

In these lines, it has also been identified that otherness, as a minimum standard, imposes on the international commerce agent the obligation of a minimally objective consideration for the other; the recognition, although not subjective, that the other is as equal in the right to freedom to pursue profit, as in the duty to observe the limits of this pursuit.

Finally, the implications raised by the scope and limits of good faith in international procedural agreement were verified, inferring that the search for something valuable only appears to be individual. But, in the context of the evolution of deals relations in the International Community, it is no longer possible to legitimately seek it without considering the other as an integral and equal part of this search; in order words, it is not possible to disregard the objective of the party with whom one is negotiating.

These findings, although of great relevance, are, as said, punctual and it is necessary, in order to achieve what is intended by the present work, an effort to understand what these scores represent when analyzed as a whole. In other words, what they mean, in practical terms, and where all these consideration guide global commerce relations, given the undeniable moment of transition of human life in all its perspectives.

As mentioned, the formal elevation of objective good faith as a cogent rule, because it is expressly imposed by the CISG, is, in fact, a great reflection of what, in practice, was required as a response of the Law (customs and traditions) as a way to provide a minimum of legal certainty in the international commerce relations (most of the times of high risk due to the nature of the operations).

This means that the option to oblige its legal observance resulted from a practical need that started to be perceived by the international commerce players themselves and seen as a condition for the coexistence of all. Thus, from a legal and objective aspect, these players are subject only to the challenges that are inherent to market relations immersed in fair play, and not to the insecurity of behaviors, omissive and commissive, that, when manifested, contrast with, over time, has being expected of a fair and balanced commercial relationship.

This observation leads to another: in a context in which, due to the logic of the system, there are tendencies towards individual and exclusivist perceptions and motivations, it becomes mandatory, as a cogent rule, to recognize the other party's position, its rights and duties, and to condition the limits of one's own actions having the other party as a parameter, thus, representing a paradigm overcoming[35].

35 The verb overcome is chosen instead of the traditional expression "paradigm break" because it is based on the premise that the previous truths have undergone a process of maturation, practical and theoretical, resulting in the overcoming of the issue and not in its breaking - which brings the connotation of destruction, rupture.

Such overcoming provides, as indicated, what is called fraternity in international deals. A fraternity, of course, in an objective sense, which does not cover the sphere of religions, ethnicities or individual choices. Yet, it requires, in legal terms, that all those that are acting in cross-border deals recognize the other as equal in dignity and that the conduct of their actions reflect this recognition, even if it does not exist at the intimate.

The fraternity, therefore, requires the same dignity recognized in oneself to be recognized in the other. Furthermore, in a context where the individual, for so long, seemed to be the only rule and where freedom was claimed for, having rules that impose this perspective of otherness makes it possible to think of a step towards fraternity in multiconnected commercial relationships, which can be understood as a scenario of changes. The changes in perceptions and paradigms allow for a reanalysis of the system, about what is necessary, permitted and desired for commercial relations and, of course, for the Law and its much pursued legal certainty.

Finally, these changes confirm the international *jus cogens*, to which human rights belong, with emphasis on the first of all the commands of the Universal Declaration of Human Rights of 1948, a well-known landmark of international normatization regarding human rights in world history: "Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." (Emphasis added).

It is possible to infer, therefore, that these changes in cross-border trade relations, especially when put into practice, make the protection of dignity feasible, becoming an important instrument for the implementation of such protection and of the spirit of fraternity in the field of transactional legal affairs.

Finally, an exercise of fraternity exteriorized as a thought resulting from the urgency of reflecting humanity as a species, detached from the idea of individualization, nationality, and social class is indispensable, as the former president of Uruguay, José Mujica, pointed out[36].

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