Recognising the duty to cooperate in international commercial contracts[1]

I. Introduction

The duty of contracting parties to cooperate in the performance of commercial contracts is at once both intuitive, and utterly foreign. On the one hand, all commercial relationships require a degree of trust, and a party may reasonably expect that the other is committed to working together to carry out their bargain.[2] This applies *a fortiori* in international commerce, where distance and unfamiliarity between parties make it necessary to trust the other to uphold their contractual promises.[3] Yet, it may be argued that such expectations are unrealistic since all of commerce is motivated by self-interest.[4]

Despite this tension, it will be argued that the duty to cooperate is fundamental to international commercial contracts. This arises from the inherent nature of such contractual relationships, and is reflected in the increasing recognition of this duty in national legislation and transnational principles. This essay will begin by briefly discussing the scope and legal sources of a duty to cooperate (**Part II**). Following that, this essay will evaluate the importance of this duty to international trade, and weigh this against arguments that such a duty is problematic in theory and practice (**Parts III and IV**). It will ultimately be concluded that as international trade can *only* thrive upon cooperation, a duty to cooperate is and must be recognised as a fundamental obligation in all international commercial contracts (**Part V**).

II. Scope and sources of a duty to cooperate

It is often said that "the obligation to cooperate in good faith in the performance of a contract amounts to a general principle applicable in international trade".[5] While this is undoubtedly true, the applicability of a duty to cooperate in private contracts can only arise out of parties' agreement, or by operation of law.[6] Where can such an obligation be found, and what does it entail?

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[2] *Yam Seng Pte Ltd v International Trade Corp Ltd* [2013] EWHC 111 ("***Yam Seng***") at [135].
[3] Karla Shippey, *A Short Course in International Contracts* (World Trade Press, 2009) pp 4–5.
[4] *Walford v Miles* [1992] 2 AC 128 at 138.
[5] ICC Award 9593, December 1998, ICC International Court of Arbitration, available at <http://www.unilex.info/case.cfm?id=666> [accessed 9 November 2017].
[6] Francois Diesse, "The requirement of contractual co-operation in international trade" (1999) 7 IBLJ 737 at 738.

A duty to cooperate is often defined as a duty to take measures to help the other party perform the contract.[7] At the outset, it should be emphasised that while the duty to cooperate is part of the duty of good faith, the two concepts are not synonymous.[8] Good faith is a broad concept encompassing notions of honesty and loyalty between contracting partners, and often functions in a way that *prevents* parties from acting in bad faith.[9] A duty to cooperate, however, may be invoked as the more specific duty requiring parties to also take *positive* actions toward the joint fulfilment of their contracts.[10] Examples of such positive actions include the doing of acts that are necessary for the other party's performance, and the sharing of all relevant information between parties.[11] The determination of what mutual cooperation requires in each case is fact-centric; in international contracts, for instance, the need for cooperation is also influenced by the distance between the parties, the duration of the contract, and complexity of the transaction.[12]

The sources of a duty to cooperate are varied, but can be distilled to three main categories. First, the substantive law of the parties' contract may be the law of a national legal system that recognises duties of good faith and cooperation.[13] The doctrine of good faith, derived from Roman law, is entrenched in the codes of civil law systems such as Germany, France, Italy, Belgium.[14] The doctrine is also not foreign to common law systems, having been explicitly codified in the US' Uniform Commercial Code[15] and implicitly recognised by legislators in Canada.[16] It is worth noting that a domestic legal system may also be a contracting State to multilateral treaties such as the United Nations Convention on Contracts for the International Sale of Goods ("**CISG**")[17] which also stipulate duties of cooperation.[18] In this way, even in

[7] Laureano Fallas, "Good Faith in Commercial Law and the UNIDROIT Principles of International Commercial Contracts" (2005) 23(3) Penn State Int'l Law Review 507 at 508–509.
[8] F Rongeat-Oudin & M Oudin, "The Reception of the UNIDROIT Principles by the Lex Mercatoria: The Example of Good Faith" (2009) 6 IBLJ 697 at 713.
[9] Diesse, *supra* n 6, at 738; *Bhasin v Hrynew* (2014) SCC 71 (Supreme Court of Canada).
[10] *Ibid*; Fallas, *supra* n 7, at 508–509.
[11] Thomas Neumann, *The Duty to Cooperate in International Sales* (Sellier European Law Publishers, 2012) pp 110–111.
[12] Diesse, *supra* n 6, at 738.
[13] *Id*, at 748.
[14] Ter Kah Leng, "Good Faith in the Performance of Commercial Contracts Revisited" (2014) 26 SAcLJ 111 at 120.
[15] Uniform Commercial Code (United States), §1-203 (amended 2003).
[16] Ontario Law Reform Commission, *Report on the Amendment of the Law of Contract* (1987) p 166.
[17] United Nations Convention on Contracts for the International Sale of Goods (11 April 1980), 1489 UNTS 3 (entered into force 1 January 1988) ("**CISG**").
[18] CISG, *id*, Arts 7(1), 80.

common law systems like Singapore which have traditionally been reluctant[19] to impose obligations of cooperation in good faith, an international sales contract is governed first by the provisions of the CISG that do impose such a duty.[20]

Secondly, a duty to cooperate may be located within the terms of the contract itself as a product of the intentions of the parties. Where parties expressly agree on an obligation of good faith as a term in their contract, courts are often willing to uphold the requirement of cooperation barring any problems of uncertainty.[21] It is also possible to imply a duty of good faith on a case-by-case basis based on the parties' presumed intentions.[22]

Thirdly, the duty to cooperate is also supplied by the *lex mercatoria*. These are non-binding transnational principles arising out of the long practice of merchants in international trade.[23] The applicability of the *lex mercatoria* is seen most frequently in international arbitrations, where parties agree to the application of "general principles of international trade law" or "international trade usages".[24] Arbitrators vested with the power to decide on the appropriate rules of law to be applied have similarly resorted to these principles.[25] The most well-known example of such principles in use is the UNIDROIT Principles of International Commercial Contracts ("**UNIDROIT Principles**"),[26] which is seen as a successful attempt at codifying the *lex mercatoria*.[27] Article 5.1.3 of the UNIDROIT Principles, which explicitly articulates the duty of cooperation, states: "Each party shall cooperate with the other party when such cooperation may reasonably be expected for the performance of that party's obligations."

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[19] See, *eg*, *The One Suites Pte Ltd v Pacific Motor Credit (Pte) Ltd* [2015] SGCA 21; *AREIF (Singapore I) Pte Ltd v NTUC Fairprice Co-operative Ltd* [2015] SGHC 28.

[20] Ter, *supra* n 14, at 136; *RJ & AM Smallmon v Transport Sales Limited and Grant Alan Miller* [2011] NZ CA 340.

[21] *Mid Essex Services Hospital NHS Trust v Compass Group UK and Ireland Ltd* [2013] EWCA Civ 200 at [105]; *Berkeley Community Villages Ltd v Pullen* [2007] EWHC 1330 at [97].

[22] *Yam Seng*, *supra* n 2; *Globe Motors v TRW Lucas Varity Electric Steering Ltd* [2016] EWCA Civ 396 at [67].

[23] Jan Ramberg, *International Commercial Transactions* (Kluwer Law International, 3rd Ed, 2004) p 20; Neumann, *supra* n 11, at p 43.

[24] Award of 5 Nov 2002, International Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, available at <http://www.unilex.info/case.cfm?id=857> [accessed 9 November 2017]; ICC Award 12040, 2003, ICC International Court of Arbitration, available at <http://www.unilex.info/case.cfm?id=1418> [accessed 9 November 2017].

[25] *Société FORASOL v Société mixte Franco-Kazakh CISTM* (1998) Cour d'appel de Paris (1er Ch.C.), available at <http://www.unilex.info/case.cfm?id=1034> [accessed 9 November 2017]; *Petrobart v Kyrgyz Republic*, Award of 29 March 2005, Stockholm Chamber of Commerce, available at <http://www.unilex.info/case.cfm?id=1039> [accessed 9 November 2017].

[26] International Institute for the Unification of Private Law (UNIDROIT), *UNIDROIT Principles of International Commercial Contracts 2016*, available at <http://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016> [accessed 9 November 2017].

[27] Michael J Bonell, *UNIDROIT Principles in Practice: Case Law and Bibliography* (Transnational Publishers, 2006) pp 1065–1066.

That the duty to cooperate in international commercial contracts is widely recognised both expressly or impliedly, therefore, is not in doubt. However, this alone does not resolve the deeper question: is the duty to cooperate fundamental, and why? This turns on the role played by a duty to cooperate in the practical context of international commercial transactions.

III. The importance of a duty to cooperate in international commerce

The duty to cooperate features at many stages of an international sales transaction. Such transactions are often based on a series of interrelated contracts, which contain not only obligations relating to the supply of goods, but also obligations relating to the arranging of contracts of carriage and insurance.[28] Through the paradigm of an international sales contract, the role of a duty to cooperate at each of these stages will be illustrated.

A. Cooperation in the underlying sales transaction

The need for cooperation in carrying out the "interlocking steps" of an international contract of sale is clear.[29] This is because the failure of one of the parties to perform any intermediate steps could easily thwart the other party's performance of his own obligations.[30] In a contract concluded on free on board ("**FOB**") INCOTERMS 2010 for instance, the seller names the port of shipment and the buyer then arranges for the carriage of goods from the port of shipment to the port of destination at his expense.[31] However, in the *Propane Case*,[32] which concerned the sale of propane between an Australian seller and a German buyer, the seller omitted to name the place of loading as agreed, causing the buyer to be unable to open a letter of credit or nominate a vessel.[33] The Austrian Supreme Court held that the seller could not rely on the buyer's non-performance to avoid the contract, given that it was the seller's own acts that affected the buyer's ability to carry out his obligations.[34] It is worth noting that this case was

[28] Indira Carr and Peter Stone, *International Trade Law* (Routledge, 5th Ed, 2014) at p 6.
[29] Albert H Kritzer, *Guide to Practical Applications of the CISG* (Deventer, 1989) at p 113; see also Neumann, *supra* n 11, at p 111.
[30] See, *eg*, CISG, *supra* n 17, Art 80.
[31] Indira Carr and Peter Stone, *International Trade Law* (Routledge, 5th Ed, 2014) p 46.
[32] *Propane Case* (1996) Supreme Court of Austria, Case No 10 Ob 518/95, available at <http://cisgw3.law.pace.edu/cases/960206a3.html> [accessed 9 November 2017].
[33] *Ibid*.
[34] *Ibid*.

decided based on Art 80 of the CISG, a provision which commentators agree "expresses a common duty to cooperate with the other party".[35]

The need for cooperation, however, could also extend to actively assisting the other party to comply with relevant laws and regulations. In the *Steel Channels Case*,[36] the Chinese buyer was legally obligated to obtain customs clearance for the goods.[37] However, it was the seller that had sent forward irrelevant documentation to the buyer, and then failed to take further action when it learnt that the goods had been questioned twice at customs.[38] Thus, the tribunal reduced the buyer's liability to pay damages to the seller on account of the seller's lack of cooperation.[39]

B. Cooperation in the carriage of goods

The international contract of sale also contains obligations relating to the transport of goods from the seller to the buyer. For instance, in a contract concluded on cost, insurance and freight ("**CIF**") terms it is the seller's obligation to arrange for the shipment of goods.[40] Whether it is the buyer or seller in the underlying sales transaction who must act as shipper in the particular transaction, it is arguable that a duty to cooperate also exists between the shipper and the carrier of the goods to ensure safe transportation.[41]

The duty to cooperate requires the shipper and carrier to provide any information to the other that is relevant to their performance of the contract.[42] Among the various international conventions regulating the carriage of goods, this duty is made most explicit in Article 28 of the 2008 Rotterdam Rules,[43] which provides:

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[35] Harry Flechtner and John Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* (Kluwer Law International, 4th Ed, 2009) at pp 646–648.
[36] *Steel Channels Case*, Decision of 18 November 1996, China International Economic & Trade Arbitration Commission (CIETAC), available at <http://cisgw3.law.pace.edu/cases/961118c1.html> [accessed 9 November 2017].
[37] *Ibid*.
[38] *Ibid*.
[39] *Ibid*.
[40] *Johnson v Taylor Bros* (1920) 122 LT 130 at 155; Indira Carr, *supra* n 28, at p 7.
[41] See, *eg*, Meltem Güner-Özbek, *The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea: An Appraisal of the Rotterdam Rules* (Springer, 2011) at p 220.
[42] United Nations Commission on International Trade Law, *Report of the Working Group on Transport Law on the Work of its Ninth Session* (15–26 Apr 2002) at para 150. In formulating the duty of shippers and carriers to provide information to the other, the Working Group considered that this already "existed as a principle … dictated by the mutual duty of the contract parties to cooperate in good faith".
[43] United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (2008) UN Doc A/RES/63/122 ("**Rotterdam Rules**").

> The carrier and the shipper shall respond to requests from each other to provide information and instructions required for the proper handling and carriage of the goods if the information is in the requested party's possession or the instructions are within the requested party's reasonable ability to provide and they are not otherwise reasonably available to the requesting party.

This is reinforced by Article 29 of the Rotterdam Rules, which places a further obligation specifically on the shipper to provide information on the goods that are "not otherwise reasonably available to the carrier, and that are reasonably necessary".[44]

In *Albacora v Wescott,*[45] a cargo of wet salted fish was carried on an unrefrigerated ship and consequently found to be damaged upon arrival.[46] The shipper sued the carrier for failure to properly and carefully discharge its duties of handling the cargo.[47] However, as the markings on the goods only instructed the carrier to stow them "away from engines and boilers", there was no way for the carrier to have known of and made special arrangements for the delicate cargo.[48] The House of Lords thus held that the carrier was not liable for the damage to goods.[49] While the duty to cooperate did not expressly feature in this case, this appears to be the sort of situation contemplated by Articles 28 and 29 of the Rotterdam Rules. Since the information as to the nature of the cargo and their propensity to be damaged unless refrigerated was solely in the shipper's possession, it ought to be incumbent on the shipper to provide such information.[50] As noted in a commentary to the Rotterdam Rules, there is "a mutual duty of cooperation between the carrier and the shipper, in the interest of speed, proper handling of the cargo and safety of the adventure".[51]

The obligation to inform the carrier of the nature of the goods applies *a fortiori* where the goods are of a dangerous nature. Both the 1978 Hamburg Rules[52] and the Rotterdam Rules expressly provide that the shipper is under a duty to inform the carrier in timely manner of the dangerous

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[44] Rotterdam Rules, *supra* n 43, Art 29.
[45] *Albacora SRL v Wescott & Laurance Line Ltd* [1966] 2 Lloyd's Rep 53 ("*Albacora*").
[46] *Ibid*.
[47] *Ibid*.
[48] *Id* at 57, 61.
[49] *Id* at 59, 61–67.
[50] See, *eg*, *Albacora* at 60–61, per Lord Guest: "In absence of any notice … of the propensity of the goods to be damaged unless kept in a refrigerated hold, no obligation was imposed on the [carrier] to provide refrigeration."
[51] Yvonne Baatz *et al*, *The Rotterdam Rules: A Practical Annotation* (Informa Law, 2009) p 83.
[52] United Nations Convention on the Carriage of Goods by Sea (1978) 1695 UNTS 3 (entered into force 1 November 1992) ("**Hamburg Rules**").

nature of goods.[53] While the 1968 Hague-Visby Rules[54] do not clearly provide for such a duty, Art 4(6) states that the shipper is liable for causing the carrier to ship dangerous goods without the latter's prior knowledge and consent.[55] The duty of the shipper to cooperate in such circumstances is obvious, since the shipper is typically in a better position than the carrier to know the nature and character of the goods it ships.[56]

The converse is also true: where the shipper requires information about the vessel that is particularly within the shipowner's knowledge, the latter has a general duty to cooperate in providing such information.[57] Thus, in a time charter where the shipper is obligated to provide and pay for fuel, the master has a duty to give correct information regarding the necessary quantity of fuel needed.[58] The duty to cooperate in these situations is important in correcting information asymmetry between parties that could hinder the successful performance of the contract.

C. Cooperation in obtaining insurance

Finally, the role of cooperation may be discussed in the context of the conclusion of marine insurance contracts. Insurance is necessary in international sales contracts to insure the parties against damage to the goods that could occur during the long voyage.[59] The party seeking to insure the goods presents all information relating to the cargo, voyage and desired insurance cover.[60] On the basis of this information, the insurer decides the scope of insured risks he is willing to undertake and calculates the corresponding premium to be paid by the assured.[61] However, it is clear from this relationship that the insurer relies heavily on the information provided by the assured. As noted in the seminal English decision of *Carter v Boehm*, the facts upon which the risk is calculated "lie most commonly in the knowledge of the insured only; the underwriter trusts his representation and proceeds upon confidence that he does not keep

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[53] Hamburg Rules, *id*, Art 13; Rotterdam Rules, *supra* n 43, Art 32.
[54] International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (1924) 120 LNTS 187 (entered into force 2 June 1931), read with the Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (1968) 1412 UNTS 127 (entered into force 23 June 1977) (collectively, "**Hague-Visby Rules**").
[55] Hague-Visby Rules, *id*, Art 4(6).
[56] *Senator Linie v. Sunway Line*, 291 F.3d 145 at 169 (2d Cir, 2002); Justin DuClos, "Liability for losses caused by inherently dangerous goods shipped by sea" (2007–2008) 20(1) USF Maritime Law Journal 62 at 67.
[57] Terence Coghlin, *Time Charters* (Lloyd's of London Press, 1995) at para 12.5.
[58] *The Captain Diamantis* [1977] 1 Lloyd's Rep 362.
[59] United Nations Conference on Trade and Development (UNCTAD), *Report by the UNCTAD Secretariat: Legal and documentary aspects of the marine insurance contract* (1982) UN Publication TD/B/C.4/ISL/27/Rev.1 ("**UNCTAD Report**"), 7; Indira Carr, *supra* n 28, at p 402.
[60] Howard Bennett, "The role of the slip in marine insurance law" [1994] LMCLQ 94 at p 94.
[61] UNCTAD Report, *supra* n 59, at p 8.

back any circumstances in his knowledge".[62] Thus, insurance contracts are a special category of contracts where the assured owes a duty of utmost good faith to the insurer.[63] Cooperation in this context is unique because it requires *pre-contractual* disclosure of all relevant information; non-disclosure of any known material fact may allow the other party to void the contract upon discovery.[64]

D. General observations on cooperation in international commercial contracts

From the above examples, a few observations may be drawn about the duty to cooperate in international contracts. First, cooperation – whether expressed as a legal duty or otherwise – is often factually necessary for the performance of international contracts. This is best illustrated by the *Propane Case* explained above where one party's failure to do an act prevented the other party's performance.[65] Another example in the carriage of goods context is the shipper's duty to nominate a safe port of destination; without such information, the carrier cannot be liable for failing to transport the goods.[66]

Secondly, recognizing a *legal* duty to cooperate is also desirable to impose minimum standards of fairness in commerce. The *Steel Channels Case*,[67] as well as the obligation of shippers to inform carriers of the nature of the goods being transported,[68] essentially reflect the notion that it would be unfair to allow one party to rely on the counterparty's breach where that breach could have been avoided through the former's cooperation.

The weight of authority and of logic thus indicates that the duty to cooperate is fundamental in international commercial contracts. Regardless, it is worth briefly examining the conceptual and practical objections that have been articulated against the imposition of this duty in law.

IV. Problems associated with a duty to cooperate

Insofar as a duty to cooperate is intrinsically linked to the duty of good faith, common law systems based on the English view of commercial law have often viewed the concept of good faith as being too inherently uncertain to be enforced.[69] As "a vague concept coming from both

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[62] (1766) 3 Burr 1905.
[63] *Ibid*.
[64] *Ibid*; Herman Cousy, "The Principles of European Insurance Contract Law" (2008) 9 ERA Forum 119 at p 121.
[65] *Propane Case*, *supra* n 32.
[66] *Kodros Shipping Corp v Empresa Cubana de Fletes (The Evia) (No 2)* [1982] 2 Lloyd's Rep 307 at 319–320.
[67] *Steel Channels Case*, *supra* n 36.
[68] Refer to Part III(B) of this essay.
[69] Ter, *supra* n 14, at 121–122; *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd* [1989] 1 QB 433 at 439

intuition and morality",[70] the concern is that introducing good faith and related duties without prior clarification on the scope of its application would undermine the certainty prized by contract law.[71]

Furthermore, it may be questioned whether cooperation in good faith is contrary to the basic notion of commerce as a self-interested exchange.[72] Legal systems that embrace an ethos of individualism allow parties to choose their actions motivated by considerations of economic self-interest first.[73] Imposing a duty to cooperate based on notions of good faith could subvert this classical model of contract law based on principles of the free market.

Neither of these objections, however, should be regarded as fatal to a duty to cooperate. Unlike a general duty of good faith, a duty to cooperate in the narrow sense of requiring cooperation to secure performance of the main objects of the contract[74] would not be plagued with as much uncertainty. While the precise acts required will turn on the circumstances of every contract, the common categories of such cooperation have been canvassed above – namely, cooperation to enable or assist the other party to perform, and cooperation in the form of conveying all relevant information to the other party. These categories are relatively well-accepted,[75] and are also consistent with cooperation in the CISG and the UNIDROIT Principles.[76] Faced with an international commercial contract, guidance can be sought from these sources to supply the duty to cooperate.

The conceptual objection to legal duties of cooperation and good faith, moreover, should be treated cautiously in modern times. In reconciling the standards and objectives between parties to an international transaction, it has been said that there must be greater emphasis on the protection of trust and concern about the interests of the other party.[77] The English common law itself has seen a creeping recognition of good faith in certain categories of commercial

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[70] Guy Robin, "The principles of good faith in international contracts" (2005) 6 IBLJ 695 at 696. See also *Esso Australia Resources Pty Ltd v Southern Pacific Petroleum NL* [2005] VSC 228 at [3].
[71] *Ng Giap Hon v Westcomb Securities Pte Ltd* [2009] 3 SLR(R) 518 at [47]; Michael Bridge, "Does Anglo-American Law Need a Doctrine of Good Faith?" (1984) 9 CBLJ 385; *Yam Seng*, *supra* n 2, at [123].
[72] See, *eg*, *Walford v Miles*, *supra* n 4.
[73] Ter, *supra* n 14, at pp 123–124; *Yam Seng*, *supra* n 2, at [123].
[74] John McCamus, "Abuse of Discretion, Failure to Cooperate and Evasion of Duty: Unpacking the Common Law Duty of Good Faith Contractual Performance" (2004) 29 Advoc Q 72.
[75] *Mackay v Dick* (1881) 6 App Cas 251; Bénédicte Fauvarque-Cosson and Denis Mazeaud (eds), *European Contract Law* (Sellier European Law Publishers, 2008) pp 549–551.
[76] See, *eg*, UNIDROIT Principles, Art 5.1.3, Illustration 2.
[77] Lorena Carvajal-Arenas and A Maniruzzaman, "Cooperation as Philosophical Foundation of Good Faith in International Business-Contracting – A View Through the Prism of Transnational Law" (2012) Oxford U Comparative L Forum 1; R Zimmermann, *Roman Law, Contemporary Law, European Law: The Civilian Tradition Today* (OUP, Oxford 2001) p 174.

contracts.[78] The old emphasis on commerce as "a kind of Darwinian struggle" may ultimately correspond less and less to the commercial reality of international trade today.[79]

V. Conclusion

As has been demonstrated in the preceding sections, cooperation is essential for parties to realise their hopes for any successful international transaction. The duty to cooperate is thus *inherently* fundamental to the workings of international trade, though it has not always been recognised explicitly as the legal principle underlying particular rules and decisions. However, this may change in future given the increasing willingness of courts and tribunals to find ways to uphold minimum standards of cooperation between commercial parties.[80] As noted recently by Justice Leggatt, speaking extra-judicially:[81]

> [I]t is a mistake to see contracting as an essentially adversarial activity. *It is not what economists call a 'zero sum game' in which one party's profit is automatically the other party's loss. The essence of trade and commerce is reciprocity which benefits both parties and makes each party better off.* To achieve such mutual gain, the parties agree to cooperate with each other in various ways. Contract law facilitates such cooperation by giving it legal backing.
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> [emphasis added]

In the final analysis, the law would do well to recognise a duty to cooperate in international commercial contracts. Apart from sanctioning parties who fail to cooperate, this would perform the signalling function of *encouraging* parties to cooperate – overall improving the prospects of international trade in our day and age.

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[78] *Yam Seng*, *supra* n 2, at [142].
[79] Sir George Leggatt, Lecture to the Commercial Bar Association on 18 October 2016: "Contractual duties of good faith", available at <https://www.judiciary.gov.uk/wp-content/uploads/2016/10/mr-justice-leggatt-lecture-contractual-duties-of-faith.pdf> [accessed 9 November 2017] at para 25.
[80] *Yam Seng*, *supra* n 2, at [124]–[130].
[81] Sir George Leggatt, *supra* n 79, at para 26.