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UNCITRAL Digest of case law on the United Nations Convention on the International Sale of Goods*

Article 1

1. This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

(a) When the States are Contracting States; or

(b) When the rules of private international law lead to the application of the law of a Contracting State.

2. The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

3. Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

* The present digest was prepared using the full text of the decisions cited in the Case Law on UNCITRAL Texts (CLOUT) abstracts and other citations listed in the footnotes. The abstracts are intended to serve only as summaries of the underlying decisions and may not reflect all the points made in the digest. Readers are advised to consult the full texts of the listed court and arbitral decisions rather than relying solely on the CLOUT abstracts.



1. This article provides some of the rules for determining whether the Convention applies. Article 1 has to be read in connection with articles 2 and 3, which respectively narrow down and extend the substantive sphere of application of the Convention.

Convention prevails over recourse to private international law

2. The first issue to be decided before examining the Convention's substantive, international and territorial sphere of application is that of its relationship to the private international law rules of the forum. This is necessary, as both the Convention and the private international law rules deal with international contracts. According to case law, before resorting to the private international law rules of the forum, courts of Contracting States have to look into whether the Convention applies;¹ in other words, recourse to the Convention prevails over recourse to the forum's private international law;² since as a substantive law convention³ the CISG's rules are more specific and lead directly to a substantive solution whereas the private international law approach requires a two-step approach (identification of the applicable law and application thereof).⁴

Contracts governed by the Convention

3. The Convention applies to contracts for the sale of goods. Although the Convention does not provide any definition of this type of contract,⁵ a definition can be derived from articles 30 and 53.⁶ Thus, the contract for the sale of goods covered by the Convention can be defined as a contract "pursuant to which one party (the seller) is bound to deliver the goods and transfer the property in the goods sold and the other party (the buyer) is obliged to pay the price and accept the goods".⁷ Thus,

¹ CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (see full text of the decision).

² For this interpretation, see CLOUT case No. 380 [Tribunale di Pavia, Italy, 29 December 1999]; Landgericht Zwickau, Germany, 19 March 1999, available on the Internet at <<http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/519.htm>>; CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998]; CLOUT case No. 345 [Landgericht Heilbronn, Germany, 15 September 1997]; CLOUT case No. 84 [Oberlandesgericht Frankfurt am Main, Germany, 20 April 1994] (see full text of the decision).

³ Oberster Gerichtshof, Austria, 9 March 2000, available on the Internet at <http://www.cisg.at/6_31199z.htm>; Tribunale d'appello, Lugano, Switzerland, 8 June 1999, available on the Internet at <<http://www.unilex.info/case.cfm?pid=1&do=case&id=483&step=FullText>>.

⁴ For this approach, see CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (see full text of the decision); Trib. Rimini, Italy, 26 November 2002, *Giurisprudenza Italiana*, 2003, 896 ff.

⁵ This has been pointed out for instance by CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994] (see full text of the decision).

⁶ See Rechtbank Rotterdam, Netherlands, 1 November 2001, *Nederlands Internationaal Privaatrecht*, 2002, No. 114; available on the Internet at Kantonsgericht Wallis, Switzerland, 11 March 1996, Unilex; Trib. Rimini, Italy, 26 November 2002, *Giurisprudenza Italiana*, 2003, 896 ff.

⁷ See CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994] (see full text of the decision); for a reference to the buyer's obligation mentioned in the definition referred to in the text, see also Rechtbank Koophandel, Hasselt, Belgium, 2 May 1995, available on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/1995-05-02.htm>>.

as one court put it, the essence of the contract lies in goods being exchanged for money.⁸

4. The Convention also covers other types of contracts, such as contracts for the delivery of goods by instalments,⁹ as can be derived from article 73 of the Convention, and contracts providing for the delivery of the goods sold directly from the supplier to the seller's customer.¹⁰ Pursuant to article 29, contracts modifying a sales contract also fall within the substantive sphere of application of the Convention.¹¹

5. Article 3 contains a special rule which extends—within certain limits—the Convention's substantive sphere of application to contracts for the sale of goods to be manufactured or produced as well as to contracts pursuant to which the seller is also bound to deliver labour or services.

6. Most courts considering the issue have concluded that the Convention does not apply to distribution agreements,¹² as these agreements aim more at the "organization of the distribution" than at the transfer of the ownership.¹³ The various contracts for the sale of goods concluded in execution of the distribution agreement, can, however, be governed by the Convention,¹⁴ even where the

⁸ CLOUT case No. 328 [Kantonsgericht des Kantons Zug, Switzerland, 21 October 1999] (see full text of the decision).

⁹ See Schiedsgericht der Hamburger freundlichen Arbitrage, Germany, 29 December 1998, *Internationales Handelsrecht*, 2001, 337; CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998]; CLOUT case No. 238 [Oberster Gerichtshof, Austria, 12 February 1998]; CLOUT case No. 166 [Arbitration—Schiedsgericht der Handelskammer Hamburg, Germany, 21 March, 21 June 1996] (see full text of the decision); Landgericht Ellwangen, Germany, 21 August 1995, unpublished; CLOUT case No. 154 [Cour d'appel Grenoble, France, 22 February 1995].

¹⁰ See CLOUT case No. 269 [Bundesgerichtshof Germany, 12 February, 1998] (see full text of the decision); CLOUT case No. 261 [Berzirksgericht der Sanne, Switzerland, 20 February 1997].

¹¹ See CLOUT case No. 297 [Oberlandesgericht München, Germany, 21 January 1998]; CLOUT case No. 133 [Oberlandesgericht München, Germany, 8 February 1995]; ICC Court of Arbitration, award No. 7331, *Journal du droit international*, 1995, 1001ff.; CLOUT case No. 5 [Landgericht Hamburg, Germany, 26 September 1990].

¹² See CLOUT case No. 297 [Oberlandesgericht München, Germany, 21 January 1998] (see full text of the decision); CLOUT case No. 295 [Oberlandesgericht Hamm, Germany, 5 November 1997]; CLOUT case No. 273 [Oberlandesgericht München, Germany, 9 July 1997] (see full text of the decision); CLOUT case No. 169 [Oberlandesgericht Düsseldorf, Germany, 11 July 1996]; CLOUT case No. 126 [Fovárosi Biróság, Hungary, 19 March 1996]; CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993] (see full text of the decision); Hof Amsterdam, Netherlands, 16 July 1992, *Nederlands Internationaal Privaatrecht* 1992, Nr. 420; CLOUT case No. 420 [Federal District Court, Eastern District of Pennsylvania, 29 August 2000]; Hof Arnhem, Netherlands, 27 April 1999, *Nederlands Internationaal Privaatrecht* 1999, Nr. 245, available on Unilex; Rechtsbank Gravenhage, Netherlands, 2 July 1997, *Nederlands Internationaal Privaatrecht* 1999, n. 68, 78-80, available on Unilex. One court has applied the CISG to a distributorship agreement. See CLOUT case No. 379 [Corte di Cassazione, Italy, 14 December 1999]. For a case in which the issue was raised but not resolved, see CLOUT case No. 187 [Federal District Court, Southern District of New York, United States, 23 July 1997].

¹³ CLOUT case No. 192 [Obergericht des Kantons Luzern, Switzerland, 8 January 1997] (see full text of the decision).

¹⁴ See CLOUT case No. 295 [Oberlandesgericht Hamm, Germany, 5 November 1997]; CLOUT case No. 273 [Oberlandesgericht München, Germany, 9 July 1997] (see full text of the decision); CLOUT case No. 169 [Oberlandesgericht Düsseldorf, Germany, 11 July 1996]; CLOUT case No. 204 [Cour d'appel Grenoble, France, 15 May 1996]; CLOUT case No. 281

distribution agreement was concluded before the entry into force of the Convention.¹⁵

7. Franchise agreements as well fall outside the Convention's sphere of application.¹⁶

Goods

8. The Convention does not define "goods". Nevertheless, pursuant to article 7 (1), the concept of "goods" should be interpreted autonomously,¹⁷ in light of the Convention's "international character" and "the need to promote uniformity in its application", rather than by referring to domestic law for a definition.

9. According to case law, "goods" in the sense of the Convention are goods that are, at the moment of delivery,¹⁸ "moveable and tangible",¹⁹ regardless of whether they are solid or not,²⁰ regardless of whether they are used or new goods,²¹ and regardless of whether they are alive or not.²² Given these decisions, it is arguably consistent that intangible goods, such as intellectual property rights, an interest in a limited liability company,²³ or the assignment of debt²⁴ are considered not to fall within the Convention's concept of "goods". The same is true for a market research study.²⁵ However, according to one court, the Convention appears to also apply to

[Oberlandesgericht Koblenz, Germany, 17 September 1993] (see full text of the decision); ICC Arbitral Award, Milan, Italy, December 1998, nr. 8908, in *ICC International Court of Arbitration Bulletin*, vol. 10, no. 2, pp. 83-87 (Fall 1999), available on Unilex; ICC Arbitral Award 1997, Paris, 23 January 1997, nr. 8611/HV/JK, unpublished, available on Unilex.

¹⁵ CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993] (see full text of the decision).

¹⁶ See CLOUT case No. 192 [Obergericht des Kantons Luzern, Switzerland, 8 January 1997].

¹⁷ See text under article 7.

¹⁸ See CLOUT case No. 152 [Cour d'appel Grenoble, France, 26 April 1995] (see full text of the decision); Trib. Rimini, Italy, 26 November 2002, *Giurisprudenza Italiana*, 2003, 896 ff.

¹⁹ See CLOUT case No. 328 [Kantonsgericht des Kantons Zug, Switzerland, 21 October 1999] (see full text of the decision); CLOUT case No. 380 [Tribunale di Pavia, Italy, 29 December 1999] (see full text of the decision); CLOUT case No. 168 [Oberlandesgericht Köln, Germany, 21 March 1996] (see full text of the decision); CLOUT case No. 122 [Oberlandesgericht Köln, Germany, 26 August 1994]; CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994] (see full text of the decision); Trib. Rimini, Italy, 26 November 2002, *Giurisprudenza Italiana*, 2003, 896 ff.

²⁰ See CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996], applying the Convention to the international sale of propane gas.

²¹ See CLOUT case No. 168 [Oberlandesgericht Köln, Germany, 21 March 1996] (used car); Landgericht Köln, Germany, 16 November 1995, unpublished.

²² See CLOUT case No. 100 [Rechtbank Arnhem, Netherlands, 30 December 1993] (live lambs); CLOUT case No. 280 [Oberlandesgericht Jena, Germany, 26 May 1998] (live fish); CLOUT case No. 312 [Cour d'appel Paris, France, 14 January 1998] (circus elephants). Compare CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994] (chinchilla pelts); CLOUT case No. 227 [Oberlandesgericht Hamm, Germany, 22 September 1992] (bacon). For a decision that considers animals as "goods" in the sense of the Convention, see Landgericht Flensburg, Germany, 19 January 2001, *Internationales Handelsrecht*, 2001, 67 et seq.

²³ See CLOUT case No. 161 [Arbitration—Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 20 December 1993].

²⁴ See CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (see full text of the decision).

²⁵ See CLOUT case No. 122 [Oberlandesgericht Köln, Germany, 26 August 1994].

goods that are not tangible, since the court states that the concept of “goods” is to be interpreted “extensively”.²⁶

10. Whereas the sale of computer hardware clearly falls within the sphere of application of the Convention,²⁷ the same cannot be said about software. Some courts consider only standard software to be “goods” under the Convention,²⁸ however, another court concluded that any kind of software is considered a “good”, even custom-made software.²⁹

Internationality and place of business

11. The Convention’s sphere of application is limited to contracts for the international sale of goods. According to article 1 (1), a contract for the sale of goods is international when the parties have—at the moment of the conclusion of the contract³⁰—their relevant place of business in different States.³¹

12. Although the concept of “place of business” is paramount to the determination of internationality, the Convention does not define it. It deals solely with the problem of which of the various places of business of a given person is to be taken into account to determine internationality (article 10).

13. According to one court, “place of business” can be defined as “the place from which a business activity is de facto carried out [...]”; this requires a certain duration and stability as well as a certain amount of autonomy”.³² Another court has concluded that a liaison office cannot be considered a “place of business” under the Convention.³³

14. The internationality requirement is not met where the parties have their relevant place of business in the same country. This is true even where they have different nationalities, as article 1 (3) states that “the nationality of the parties [...] is [not] to be taken into consideration in determining the application of this

²⁶ CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993] (see full text of the decision).

²⁷ See Landgericht München, Germany, 29 May 1995, *Neue Juristische Wochenschrift* 1996, 401 f.; Landgericht Heidelberg, Germany, 3 July 1992, *Unilex*.

²⁸ See CLOUT case No. 122 [Oberlandesgericht Köln, Germany, 26 August 1994] (see full text of the decision); CLOUT case No. 131 [Landgericht München, Germany, 8 February 1995].

²⁹ See CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993] (see full text of the decision).

³⁰ See Oberlandesgericht Dresden, Germany, 27 December 1999, available on the Internet at <<http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/511.htm>>.

³¹ See CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (see full text of the decision); CLOUT case No. 168 [Oberlandesgericht Köln, Germany, 21 March 1996] (see full text of the decision); CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994]; Trib. Rimini, Italy, 26 November 2002, *Giurisprudenza Italiana*, 2003, 896 ff.

³² Oberlandesgericht Stuttgart, Germany, 28 February 2000, *Internationales Handelsrecht*, 2001, 66; Trib. Rimini, Italy, 26 November 2002, *Giurisprudenza Italiana*, 2003, 896 ff.; for a similar definition see CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994] (see full text of the decision); for a court decision stating that the Convention’s definition of “place of business” requires the parties to “really” do business out of that place, see Amtsgericht Duisburg, Germany, 13 April 2000, available on the Internet at <<http://www.cisg.law.pace.edu/cisg/text/000413g1german.html>>.

³³ See CLOUT case No. 158 [Cour d’appel Paris, France, 22 April 1992].

Convention”.³⁴ Also, the fact that the place of the conclusion of the contract is located in a different State from the State in which the performance takes place does not render the contract “international”.³⁵ For the purposes of the Convention’s applicability, the parties’ civil or commercial character is also irrelevant.³⁶

15. Where the contract for the sale of goods is concluded through an intermediary, it is necessary to establish who is party to the contract in order to be able to determine whether the contract is international. As the issue of who is party to a contract is not dealt with in the CISG,³⁷ recourse is to be had to the law applicable by virtue of the rules of private international law of the forum in order to determine who is party to the contract. It is that party’s place of business which has to be taken into account to decide whether the contract is international.³⁸

16. According to article 1 (2), internationality is irrelevant where “the fact that the parties have their places of business in different States [...] does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract”.³⁹ Thus, the Convention protects the parties’ reliance upon the domestic setting of the transaction. The party that asserts that the Convention is not applicable due to the internationality of the contract not being apparent has to prove its assertion.⁴⁰

³⁴ For references to the irrelevance of the parties’ nationality, see Bundesgerichtshof, Germany, 31 October 2001, *Internationales Handelsrecht*, 2002, 14 et seq.; Rechtbank Koophandel Veurne, Belgium, 25 April 2001, available on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/2001-04-25.htm>>; Court of Arbitration of the Bulgarian Chamber of Commerce and Industry, award No. 56/1995, available on the Internet at <<http://www.unilex.info/case.cfm?pid=1&do=case&id=421&step=FullText>>.

³⁵ See Oberlandesgericht Köln, Germany, 27 November 1991, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>.

³⁶ Bundesgerichtshof, Germany, 31 October 2001, *Internationales Handelsrecht*, 2002, 16.

³⁷ For court decisions stating that issues of agency law and related matters are not dealt with by the Convention, see CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (see full text of the decision); CLOUT case No. 189 [Oberster Gerichtshof, Austria, 20 March 1997] (see full text of the decision); Appellationsgericht Tessin, Switzerland, 12 February 1996, *Schweizerische Zeitschrift für europäisches und internationales Recht* 1996, 135 ff.; CLOUT case No. 334 [Obergericht des Kantons Thurgau, Switzerland, 19 December 1995]; Landgericht Kassel, Germany, 22 June 1995, unpublished; Amtsgericht Alsfeld, Germany, 12 May 1995, *Neue Juristische Wochenschrift Rechtsprechungs-Report* 1996, 120 f.; CLOUT case No. 80 [Kammergericht Berlin, Germany, 24 January 1994] (see full text of the decision); CLOUT case No. 95 [Zivilgericht Basel-Stadt, Switzerland, 21 December 1992] (see full text of the decision); CLOUT case No. 5 [Landgericht Hamburg, Germany, 26 September 1990].

³⁸ See Oberlandesgericht Köln, Germany, 13 November 2000, available on the Internet at <<http://www.cisg.law.pace.edu/cisg/text/001113g1german.html>>.

³⁹ For a reference to this provision in case law, see Oberster Gerichtshof, Austria, 21 March 2000, available on the Internet at <http://www.cisg.at/10_34499g.htm>; CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (see full text of the decision).

⁴⁰ See CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (see full text of the decision).

Autonomous applicability

17. The internationality of the contract for the sale of goods by itself is not sufficient to make the Convention applicable.⁴¹ Article 1 (1) lists two alternative criteria of applicability, one of which has to be met in order for the Convention to apply. According to the criterion set forth in article 1 (1)(a), the Convention is “directly”⁴² or “autonomously”⁴³ applicable, i.e. without the need to resort to the rules of private international law,⁴⁴ when the States in which the parties have their relevant place of business are Contracting States. As the list of Contracting States is growing, this criterion is leading more and more often to the applicability of the Convention.⁴⁵

⁴¹ See CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (see full text of the decision).

⁴² See Bundesgericht, Switzerland, 11 July 2000, available on the Internet at <http://www.cisg.law.pace.edu/cisg/text/000711slgerman.html>; CLOUT case No. 261 [Berzirksgericht der Sanne, Switzerland, 20 February 1997].

⁴³ See CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (see full text of the decision); CLOUT case No. 189 [Oberster Gerichtshof, Austria, 20 March 1997] (see full text of the decision).

⁴⁴ See CLOUT case No. 268 [Bundesgerichtshof, Germany, 11 December 1996] (see full text of the decision).

⁴⁵ For recent court decisions applying the Convention by virtue of art. 1 (1)(a), see Hof Beroep Gent, Belgium, 21 January 2002, available on the Internet at <http://www.law.kuleuven.ac.be/int/tradelaw/WK/2002-01-31.htm>; CLOUT case No. 398 [Cour d’appel Orléans, France, 29 March 2001] (see full text of the decision); Landgericht Trier, Germany, 7 December 2000, *Internationales Handelsrecht* 2001, 35; Oberlandesgericht Oldenburg, Germany, 5 December 2000, *Recht der internationalen Wirtschaft* 2001, 381 f.; Landgericht Stendal, Germany, 12 October 2000, *Internationales Handelsrecht* 2001, 30 ff.; Trib. Comm. Montargis, France, 6 October 2000, available on the Internet at <http://witz.jura.uni-sb.de/CISG/decisions/061000v.htm>; Oberster Gerichtshof, Austria, 7 September 2000, *Internationales Handelsrecht* 2001, 42 ff.; Oberlandesgericht Frankfurt am Main, Germany, 30 August 2000, *Recht der internationalen Wirtschaft* 2001, 383 f.; Sixth Civil Court of First Instance, City of Tijuana, State of Baja California, Mexico, 14 July 2000, *Internationales Handelsrecht* 2001, 38 f.; CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (see full text of the decision); Oberster Gerichtshof, Austria, 28 April 2000, *Zeitschrift für Rechtsvergleichung* 2000, 188 f.; Oberster Gerichtshof, Austria, 13 April 2000, *Zeitschrift für Rechtsvergleichung* 2000, 231; Audiencia Provincial de Navarra, Spain, 27 March 2000, *Revista General de Derecho* 2000, 12536 ff.; Oberster Gerichtshof, Austria, 21 March 2000, *Internationales Handelsrecht* 2001, 40 f.; Oberster Gerichtshof, Austria, 9 March 2000, *Internationales Handelsrecht* 2001, 39 f.; Oberlandesgericht Stuttgart, Germany, 28 February 2000, *Internationales Handelsrecht* 2001, 65 ff.; CLOUT case No. 395 [Tribunal Supremo, Spain, 28 January 2000] (see full text of the decision); Hanseatisches Oberlandesgericht Hamburg, Germany, 26 January 2000, *OLG-Report Hamburg* 2000, 464 f.; CLOUT case No. 416, [Minnesota [State] District Court, United States, 9 March 1999] (see full text of the decision); Oberlandesgericht München, Germany, 3 December 1999, *Internationales Handelsrecht* 2001, 25 f.; Oberlandesgericht Koblenz, 18 November 1999, *OLG-Report Koblenz* 2000, 281; Oberster Gerichtshof, Austria, 12 November 1999, *Zeitschrift für Rechtsvergleichung* 2000, 78; CLOUT case No. 319 [Bundesgerichtshof, Germany, 3 November 1999] (see full text of the decision); Cour d’appel Grenoble, France, 21 October 1999, available on the Internet at <http://witz.jura.uni-sb.de/CISG/decisions/211099.htm>; CLOUT case No. 328 [Kantonsgericht des Kantons Zug, Switzerland, 21 October 1999] (see full text of the decision); Amtsgericht Stendal, Germany, 12 October 1999, unpublished; OG Kanton Basel-Landschaft, Switzerland, 5 October 1999, *Schweizerische Zeitschrift für europäisches und internationales Recht* 2000, 115 f.; CLOUT case No. 341 [Ontario Superior Court of Justice, Canada, 31 August 1999] (see

full text of the decision); Oberster Gerichtshof, Austria, 27 August 1999, *Zeitschrift für Rechtsvergleichung* 2000, 31 f.; Oberster Gerichtshof, Austria, 29 June 1999, *Transportrecht-Internationales Handelsrecht* 1999, 48 ff.; CLOUT case No. 333 [Handelsgericht des Kantons Aargau, Switzerland, 11 June 1999] (see full text of the decision); Appellationsgericht Kanton Tessin, Switzerland, 8 June 1999, *Schweizerische Zeitschrift für europäisches und internationales Recht* 2000, 120; CLOUT case No. 315 [Cour de Cassation, France, 26 May 1999] (see full text of the decision); CLOUT case No. 265 [Arbitration—Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 25 May 1999]; CLOUT case No. 314 [Cour d’appel Paris, France, 21 May 1999]; Oberster Gerichtshof, Austria, 19 March 1999, *Zeitschrift für Rechtsvergleichung* 2000, 33; CLOUT case No. 418 [Federal District Court, Eastern District of Louisiana, United States, 17 May 1999] (see full text of the decision); Oberlandesgericht Naumburg, Germany, 27 April 1999, *Transportrecht-Internationales Handelsrecht* 2000, 22 f.; CLOUT case No. 325 [Handelsgericht des Kantons Zürich, Switzerland, 8 April 1999] (see full text of the decision); CLOUT case No. 271 [Bundesgerichtshof, Germany, 24 March 1999]; Landgericht Zwickau, Germany, 19 March 1999, unpublished; CLOUT case No. 306 [Oberster Gerichtshof, Austria, 11 March 1999]; CLOUT case No. 327 [Kantonsgericht des Kantons Zug, Switzerland, 25 February 1999] (see full text of the decision); CLOUT case No. 331 [Handelsgericht des Kantons Zürich, Switzerland, 10 February 1999] (see full text of the decision); CLOUT case No. 243 [Cour d’appel Grenoble, France, 4 February 1999] (see full text of the decision); CLOUT case No. 293 [Arbitration—Schiedsgericht der Hamburger freundschaftlichen Arbitrage, 29 December 1998]; CLOUT case No. 339 [Landgericht Regensburg, Germany, 24 September 1998] (see full text of the decision); Corte di Appello, Milano, Italy, 11 December 1998, *Rivista di Diritto Internazionale Privato e Processuale* 1999, 112 ff.; Comisión para la protección del comercio exterior de Mexico, Mexico, 30 November 1998, unpublished; CLOUT case No. 346 [Landgericht Mainz, Germany, 26 November 1998]; CLOUT case No. 270 [Bundesgerichtshof, Germany, 25 November 1998]; CLOUT case No. 248 [Schweizerisches Bundesgericht, Switzerland, 28 October 1998] (see full text of the decision); CLOUT case No. 419 [Federal District Court, Northern District of Illinois, United States, 27 October 1998] (see full text of the decision); CLOUT case No. 244 [Cour d’appel Paris, France, 4 March 1998] (see full text of the decision); CLOUT case No. 240 [Oberster Gerichtshof, Austria, 15 October 1998]; Oberlandesgericht Oldenburg, Germany, 22 September 1998, *Transportrecht-Internationales Handelsrecht* 2000, 23 ff.; CLOUT case No. 252 [Handelsgericht des Kantons Zürich, Switzerland, 21 September 1998] (see full text of the decision); CLOUT case No. 263 [Bezirksgericht Unterrheintal, Switzerland, 16 September 1998] (see full text of the decision); CLOUT case No. 285 [Oberlandesgericht Koblenz, Germany, 11 September 1998] (see full text of the decision); CLOUT case No. 318 [Oberlandesgericht Celle, Germany, 2 September 1998] (see full text of the decision); Oberlandesgericht Bamberg, Germany, 19 August 1998, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Corte di Cassazione, Italy, 7 August 1998, *Unilex*; CLOUT case No. 344 [Landgericht Erfurt, Germany, 29 July 1998] (see full text of the decision); CLOUT case No. 242 [Cour de Cassation, France, 16 July 1998] (see full text of the decision); CLOUT case No. 305 [Oberster Gerichtshof, Austria, 30 June 1998] (see full text of the decision); CLOUT case No. 255 [Tribunal Cantonal du Valais, Switzerland, 30 June 1998] (see full text of the decision); CLOUT case No. 222 [Federal Court of Appeals for the Eleventh Circuit, United States, 29 June 1998] (see full text of the decision); CLOUT case No. 256 [Tribunal Cantonal du Valais, Switzerland, 29 June 1998] (see full text of the decision); Oberster Gerichtshof, Austria, 25 June 1998, *Zeitschrift für Rechtsvergleichung* 1999, 248 f.; CLOUT case No. 338 [Oberlandesgericht Hamm, Germany, 23 June 1998] (see full text of the decision); CLOUT case No. 237 [Arbitration—Arbitration Institute of the Stockholm Chamber of Commerce, 5 June 1998] (see full text of the decision); CLOUT case No. 290 [Oberlandesgericht Saarbrücken, Germany, 3 June 1998] (see full text of the decision); CLOUT case No. 280 [Oberlandesgericht Jena, Germany, 26 May 1998] (see full text of the decision); Landgericht Aurich, Germany, 8 May 1998, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Corte di Cassazione, Italy, 8 May 1998, *Rivista di Diritto Internazionale Privato e Processuale* 1999, 290 ff.; CLOUT case No. 413 [Federal District Court, Southern District of New York, United States, 6 April 1998] (see full text of the decision); CLOUT case

No. 272 [Oberlandesgericht Zweibrücken, Germany, 31 March 1998] (see full text of the decision); CLOUT case No. 245 [Cour d'appel Paris, France, 18 March 1998] (see full text of the decision); CLOUT case No. 232 [Oberlandesgericht München, Germany, 11 March 1998]; Oberster Gerichtshof, Austria, 10 March 1998, *Zeitschrift für Rechtsvergleichung* 1998, 161 f.; Hoge Raad, Netherlands, 20 February 1998, *Nederlands Juristenblad* 1998, 566 f.; CLOUT case No. 269 [Bundesgerichtshof, Germany, 12 February 1998] (see full text of the decision); Arbitration Court attached to the Bulgarian Chamber of Commerce and Industry, award No. 11/1996, unpublished; Landgericht Bückeburg, Germany, 3 February 1998, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; CLOUT case No. 288 [Oberlandesgericht München, Germany, 28 January 1998] (see full text of the decision); CLOUT case No. 259 [Kantonsgericht Freiburg, Switzerland, 23 January 1998] (see full text of the decision); CLOUT case No. 297 [Oberlandesgericht München, Germany, 21 January 1998] (see full text of the decision); Tribi. Comm. Besançon, France, 19 January 1998, available on the Internet at <http://witz.jura.uni-sb.de/CISG/decisions/190198v.htm>; CLOUT case No. 253 [Cantone del Ticino Tribunale d'appello, Switzerland, 15 January 1998] (see full text of the decision); CLOUT case No. 312 [Cour d'appel, France, 14 January 1998]; CLOUT case No. 257 [Tribunal Cantonal du Vaud, Switzerland, 24 December 1997] (see full text of the decision); CLOUT case No. 254 [Handelsgericht des Kantons Aargau, Switzerland, 19 December 1997] (see full text of the decision); Trib. Grande Instance Colmar, France, 18 December 1997, unpublished; Landgericht Bayreuth, Germany, 11 December 1997, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Schiedsgericht der Börse für landwirtschaftliche Produkte in Wien, award No. S 2/97, *Zeitschrift für Rechtsvergleichung* 1998, 211 ff.; CLOUT case No. 220 [Kantonsgericht Nidwalden, Switzerland, 3 December 1997] (see full text of the decision); CLOUT case No. 221 [Zivilgericht des Kantons Basel-Stadt, Switzerland, 3 December 1997] (see full text of the decision); CLOUT case No. 207 [Cour de Cassation, France, 2 December 1997] (see full text of the decision); CLOUT case No. 295 [Oberlandesgericht Hamm, Germany, 5 November 1997]; CLOUT case No. 246 [Audiencia Provincial de Barcelona, Spain, 3 November 1997] (see full text of the decision); CLOUT case No. 247 [Audiencia Provincial de Córdoba, Spain, 31 October 1997] (see full text of the decision); CLOUT case No. 219 [Tribunal Cantonal Valais, Switzerland, 28 October 1997] (see full text of the decision); Trib. Comm. Paris, France, 28 October 1997, <http://witz.jura.uni-sb.de/CISG/decisions/281097v.htm>; Landgericht Erfurt, Germany, 28 October 1997, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; CLOUT case No. 218 [Kantonsgericht Zug, Switzerland, 16 October 1997] (see full text of the decision); Landgericht Hagen, Germany, 15 October 1997, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; CLOUT case No. 248 [Schweizerisches Bundesgericht, Switzerland, 28 October 1998] (see full text of the decision); Hof s'Hertogenbosch, Netherlands, 2 October 1997, *Nederlands Internationaal Privaatrecht* 1998, No. 103; Hoge Raad, Netherlands, 26 September 1997, *Nederlands Juristenblad* 1997, 1726 f.; CLOUT case No. 217 [Handelsgericht des Kantons Aargau, Switzerland, 26 September 1997] (see full text of the decision); CLOUT case No. 345 [Landgericht Heilbronn, Germany, 15 September 1997]; CLOUT case No. 307 [Oberster Gerichtshof, Austria, 11 September 1997] (see full text of the decision); Oberster Gerichtshof, Austria, 8 September 1997, *Unilex*; CLOUT case No. 284 [Oberlandesgericht Köln, Germany, 21 August 1997] (see full text of the decision); CLOUT case No. 216 [Kantonsgericht St. Gallen, Switzerland, 12 August 1997] (see full text of the decision); Landgericht Göttingen, Germany, 31 July 1997, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Hof s'Hertogenbosch, Netherlands, 24 July 1997, *Nederlands Internationaal Privaatrecht* 1998, No. 125; CLOUT case No. 187 [Federal District Court, Southern District of New York, United States, 23 July 1997] (see full text of the decision); CLOUT case No. 236 [Bundesgerichtshof, Germany, 21 July 1997] (see full text of the decision); Landgericht Saarbrücken, Germany, 18 July 1997, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Rechtbank Arnhem, Netherlands, 17 July 1997, *Nederlands Internationaal Privaatrecht* 1998, No. 107; CLOUT case No. 273 [Oberlandesgericht München, Germany, 9 July 1997] (see full text of the decision); CLOUT case No. 287 [Oberlandesgericht München, Germany, 9 July 1997]; CLOUT case No. 215 [Bezirksgericht St. Gallen, Switzerland, 3 July 1997] (see full text of the decision); CLOUT

18. In order for the Convention to be applicable by virtue of article 1 (1)(a), the parties must have their relevant place of business in a Contracting State. “If the two States in which the parties have their places of business are Contracting States, the Convention applies even if the rules of private international law of the forum would

case No. 172 [Fovárosi Biróság, Hungary, 1 July 1997] (see full text of the decision); CLOUT case No. 235 [Bundesgerichtshof, Germany, 25 June 1997] (see full text of the decision); CLOUT case No. 230 [Oberlandesgericht Karlsruhe, Germany, 25 June 1997]; Landgericht München, Germany, 23 June 1997, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Landgericht Hamburg, Germany, 19 June 1997, *Recht der internationalen Wirtschaft* 1997, 873 f.; CLOUT case No. 239 [Oberster Gerichtshof, Austria, 18 June 1997]; CLOUT case No. 173 [Fovárosi Biróság, Hungary, 17 June 1997] (see full text of the decision); Hof Arnhem, 17 June 1997, *Nederlands Internationaal Privaatrecht* 1997, No. 341; Landgericht Paderborn, Germany, 10 June 1997, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; CLOUT case No. 174 [Arbitration—Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 8 May 1997]; Landgericht München, Germany, 6 May 1997, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; CLOUT case No. 275 [Oberlandesgericht Düsseldorf, Germany, 24 April 1997] (see full text of the decision); Landgericht Frankenthal, Germany, 17 April 1997, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; CLOUT case No. 189 [Oberster Gerichtshof, Austria, 20 March 1997] (see full text of the decision); Rechtbank Zwolle, Netherlands, 5 March 1997, *Nederlands Internationaal Privaatrecht* 1997, No. 230; CLOUT case No. 261 [Berzirksgericht der Sanne, Switzerland, 20 February 1997]; CLOUT case No. 396 [Audencia Provincial de Barcelona, Spain, 4 February 1997] (see full text of the decision); CLOUT case No. 282 [Oberlandesgericht Koblenz, Germany, 31 January 1997] (see full text of the decision); Pretura Torino, Italy, 30 January 1997, *Giurisprudenza Italiana* 1998, 982 ff.; CLOUT case No. 192 [Obergericht des Kantons Luzern, Switzerland, 8 January 1997] (see full text of the decision); CLOUT case No. 311 [Oberlandesgericht Köln, Germany, 8 January 1997] (see full text of the decision); CLOUT case No. 206 [Cour de Cassation, France, 17 December 1996] (see full text of the decision); Rechtbank Koophandel Kortrijk, Belgium, 16 December 1996, *Unilex*; CLOUT case No. 268 [Bundesgerichtshof, Germany, 11 December 1996]; Landgericht München, Germany, 9 December 1996, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; CLOUT case No. 229 [Bundesgerichtshof, Germany, 4 December 1996] (see full text of the decision); Rechtbank Rotterdam, Netherlands, 21 November 1996, *Nederlands Internationaal Privaatrecht* 1997, No. 223; Amtsgericht Koblenz, Germany, 12 November 1996, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Oberlandesgericht Wien, Austria, 7 November 1996, unpublished; Landgericht Heidelberg, Germany, 2 October 1996, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Oberlandesgericht Düsseldorf, Germany, 13 September 1996, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; CLOUT case No. 169 [Oberlandesgericht Düsseldorf, Germany, 11 July 1996] (see full text of the decision); CLOUT case No. 193 [Handelsgericht des Kantons Zürich, Switzerland, 10 July 1996] (see full text of the decision); Landgericht Paderborn, Germany, 25 June 1996, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Amtsgericht Bottrop, Germany, 25 June 1996, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Landgericht Hamburg, Germany, 17 June 1996, *Unilex*; CLOUT case No. 168 [Oberlandesgericht Köln, Germany, 21 March 1996] (see full text of the decision); CLOUT case No. 143 [Fovárosi Biróság, Hungary, 21 May 1996]; CLOUT case No. 204 [Cour d’appel Grenoble, France, 15 May 1996]; Arbitration Court attached to the Bulgarian Chamber of Commerce and Industry, award No. 56/1995, unpublished; Landgericht Aachen, Germany, 19 April 1996, *Unilex*; Landgericht Duisburg, Germany, 17 April 1996, *Recht der internationalen Wirtschaft* 1996, 774 ff.; CLOUT case No. 171 [Bundesgerichtshof, Germany, 3 April 1996] (see full text of the decision); CLOUT case No. 337 [Landgericht Saarbrücken, Germany, 26 March 1996]; Tribunale di Busto Arsizio, Italy, 31 December 2001, *Rivista di Diritto Internazionale Privato e Processuale* 2003, pp. 150-155 (UNILEX) (Ecuador and Italy); Corte d’Appello di Milano, Italy, 23 January 2001, *Rivista di Diritto Internazionale Privato e Processuale*, 2001, 1008 ff. (Finland and Italy, question not regarding part II of Convention).

normally designate the law of a third country”,⁴⁶ provided that the application of that country’s law is not due to a parties’ choice that is intended to exclude the Convention.⁴⁷

19. When a State becomes a Contracting State is determined by article 99. For the Convention to apply by virtue of article 1 (1)(a), one must also take into account whether the States in which the parties have their relevant place of business have declared either an article 92 or an article 93 reservation. Where one State has made an article 92 reservation, the Convention as a whole cannot be applicable by virtue of article 1 (1)(a). Rather, one must determine on the basis of article 1 (1)(b) whether the part to which the reservation relates is applicable.⁴⁸ The same is true *mutatis mutandis* in respect of a party that has its relevant place of business in a territory in relation to which the Contracting State to which the territory belongs has made an article 93 reservation.

Indirect applicability

20. In Contracting States, the Convention can also be applicable—by virtue of article 1 (1)(b)—where only one (or neither) party has its relevant place of business in Contracting States,⁴⁹ as long as the rules of private international law lead to the

⁴⁶ United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 15.

⁴⁷ For an analysis of the issue of exclusion of the Convention, see the comments to article 6.

⁴⁸ See CLOUT case No. 309 [Østre Landsret, Denmark, 23 April 1998]; CLOUT case No. 143 [Fovárosi Biróság, Hungary, 21 May 1996]; CLOUT case No. 228 [Oberlandesgericht Rostock, Germany, 27 July 1995]; ICC Court of Arbitration, award No. 7585/92; Unilex.

⁴⁹ United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 15.

law of a Contracting State.⁵⁰ Since the relevant rules of private international law are those of the forum,⁵¹ it will depend on the domestic rules of private international

⁵⁰ For cases referring to art. 1 (1)(b), see Supreme Court of Queensland, Australia, [2000] QSC 421 (17 November 2000) (Malaysian and Australian parties chose law applying in Brisbane); Cámara Nacional de Apelaciones en lo Comercial, Argentina, 24 April 2000, available on the Internet at <<http://www.cisg.law.pace.edu/cisg/wais/db/cases2/000424a1.html>>; CLOUT case No. 400 [Cour d'appel Colmar, France, 24 October 2000]; Trib. Pavia, Italy, 29 December 1999, *Corriere giuridico* 2000, 932 f.; CLOUT case No. 348 [Oberlandesgericht Hamburg, Germany, 26 November 1999] (see full text of the decision); CLOUT case No. 294 [Oberlandesgericht Bamberg, Germany, 13 January 1999] (see full text of the decision); CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998]; CLOUT case No. 274 [Oberlandesgericht Celle, Germany, 11 November 1998]; CLOUT case No. 309 [Østre Landsret, Denmark 23 April 1998]; Corte d'Appello Milano, Italy, 20 March 1998, *Rivista di Diritto Internazionale Privato* 1998, 170 ff.; CLOUT case No. 238 [Oberster Gerichtshof, Austria, 12 February 1998]; CLOUT case No. 224 [Cour de Cassation, France, 27 January 1998] (see full text of the decision); Hoge Raad, Netherlands, 7 November 1997, *Nederlands Internationaal Privaatrecht* 1998, No. 91; Rechtbank Koophandel, Kortrijk, Belgium, 6 October 1997, Unilex; CLOUT case No. 283 [Oberlandesgericht Köln, Germany, 9 July 1997]; Rechtbank Zutphen, Netherlands, 29 May 1997, *Nederlands Internationaal Privaatrecht* 1997, No. 110; CLOUT case No. 227 [Oberlandesgericht Hamm, Germany, 22 September 1992] (see full text of the decision); CLOUT case No. 214 [Handelsgericht des Kantons Zürich, Switzerland, 5 February 1997] (see full text of the decision); Rechtbank Koophandel, Kortrijk, Belgium, 6 January 1997, Unilex; Cour d'appel Grenoble, France, 23 October 1996, Unilex; Rechtbank Koophandel, Haaselt, Belgium, 9 October 1996, Unilex; Schiedsgericht der Handelskammer Hamburg, Germany, Arbitration, 21 June 1996, *Recht der internationalen Wirtschaft* 1996, 771 ff.; Hof Leeuwarden, Netherlands, 5 June 1996, *Nederlands Internationaal Privaatrecht* 1996, No. 404; Landgericht Oldenburg, Germany, 27 March 1996, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; CLOUT case No. 166 [Arbitration—Schiedsgericht der Handelskammer Hamburg, Germany, 21 March, 21 June 1996]; Landgericht Bad Kreuznach, Germany, 12 March 1996, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996] (see full text of the decision); Landgericht Siegen, Germany, 5 December 1995, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Rechtbank Koophandel, Hasselt, Belgium, 8 November 1995, Unilex; Landgericht Hamburg, Germany, 23 October 1995, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Rechtbank Koophandel, Hasselt, Belgium, 18 October 1995, *Rechtskundig Weekblad* 1995, 1378 f.; Trib. comm. Nivelles, Belgium, 19 September 1995, Unilex; Rechtbank Almelo, Netherlands, 9 August 1995, *Nederlands Internationaal Privaatrecht* 1995, No. 520; CLOUT case No. 276 [Oberlandesgericht Frankfurt am Main, Germany, 5 July 1995] (see full text of the decision); CLOUT case No. 262 [Kanton St. Gallen, Gerichtskommission Oberrheintal, Switzerland, 30 June 1995]; Landgericht Kassel, Germany, 22 June 1995, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; CLOUT case No. 152 [Cour d'appel Grenoble, France, 26 April 1995]; Amtsgericht Wangen, Germany, 8 March 1995, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Rechtbank Zwolle, Netherlands, 1 March 1995, *Nederlands Internationaal Privaatrecht* 1996, No. 95; Rechtbank Middelburg, Netherlands, 25 January 1995, *Nederlands Internationaal Privaatrecht* 1996, No. 127; CLOUT case No. 155 [Cour de Cassation, France, 4 January 1995] (see full text of the decision); Amtsgericht Mayen, Germany, 6 September 1994, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Landgericht Düsseldorf, Germany, 25 August 1994, Unilex; ICC Court of Arbitration, award No. 7660/JK, Unilex; CLOUT case No. 93 [Arbitration-Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft—Wien, 15 June 1994]; CLOUT case No. 94 [Arbitration-Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft—Wien, 15 June 1994]; CLOUT case No. 92 [Arbitration—Ad hoc tribunal, 19 April 1994]; CLOUT case No. 120 [Oberlandesgericht Köln, Germany, 22 February 1994] (see full text of the decision); CLOUT case No. 81 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994]; CLOUT case No. 80 [Kammergericht Berlin, Germany, 24 January 1994]; CLOUT case No. 100 [Rechtbank

law whether the parties are allowed to choose the applicable law, whether one has to look into the rules of private international of the law designated by the rules of private international of the forum, etc.

21. Where the private international law rules of the forum are based upon the 1980 Rome Convention on the Law Applicable to Contractual Obligations,⁵² the parties' choice of the law of a Contracting State can lead to the applicability of the Convention by virtue of article 1 (1)(b),⁵³ since article 3 of the Rome Convention recognizes party autonomy.⁵⁴ This is also true where the rules of private

Arnhem, Netherlands, 30 December 1993]; CLOUT case No. 156 [Cour d'appel Paris, France, 10 November 1993] (see full text of the decision); CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993]; CLOUT case No. 49 [Oberlandesgericht Düsseldorf, Germany, 2 July 1993]; CLOUT case No. 25 [Cour d'appel Grenoble, France, 16 June 1993]; CLOUT case No. 201 [Richteramt Laufen des Kantons Berne, Switzerland, 7 May 1993]; CLOUT case No. 310 [Oberlandesgericht Düsseldorf, Germany, 12 March 1993]; CLOUT case No. 99 [Rechtbank Arnhem, Netherlands, 25 February 1993]; CLOUT case No. 292 [Oberlandesgericht Saarbrücken, Germany, 13 January 1993] (see full text of the decision); CLOUT case No. 48 [Oberlandesgericht Düsseldorf, Germany, 8 January 1993]; CLOUT case No. 95 [Zivilgericht Basel-Stadt, Switzerland, 21 December 1992] (see full text of the decision); CLOUT case No. 317 [Oberlandesgericht Karlsruhe, Germany, 20 November 1992]; CLOUT case No. 227 [Oberlandesgericht Hamm, Germany 22 September 1992] (see full text of the decision); CLOUT case No. 56 [Canton of Ticino Pretore di Locarno-Campagna, Switzerland, 27 April 1992] (see full text of the decision); CLOUT case No. 158 [Cour d'appel Paris, France, 22 April 1992]; CLOUT case No. 98 [Rechtbank Roermond, Netherlands, 19 December 1991]; CLOUT case No. 55 [Canton of Ticino Pretore di Locarno-Campagna, Switzerland, 15 December 1991]; CLOUT case No. 316 [Oberlandesgericht Koblenz, Germany, 27 September 1991]; CLOUT case No. 2 [Oberlandesgericht Frankfurt am Main, Germany, 17 September 1991] (see full text of the decision).

⁵¹ See CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (see full text of the decision).

⁵² For the text of this Convention, see *Official Journal* L 266, 9 October 1980, 1 et seq.

⁵³ See Hof Beroep, Gent, Belgium, 17 May 2002, available on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/2002-05-17.htm>>; CLOUT case No. 409 [Landgericht Kassel, Germany, 15 February 1996] (see full text of the decision); ICC Court Arbitration, award No. 8324/95, *Journal du droit international* 1996, 1019 ff.; Rechtbank s'Gravenhage, Netherlands, 7 June 1995, *Nederlands Internationaal Privaatrecht* 1995, Nr. 524; CLOUT case No. 48 [Oberlandesgericht Düsseldorf, Germany, 8 January 1993]; CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993].

⁵⁴ See article 3 of the Rome Convention:

“1. A contract shall be governed by the law chosen by the parties. The choice must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or a part only of the contract.

2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice under this article or of other provisions of this Convention. Any variation by the parties of the law to be applied made after the conclusion of the contract shall not prejudice its formal validity under article 9 or adversely affect the rights of third parties.

3. The fact that the parties have chosen a foreign law, whether or not accompanied by the choice of a foreign tribunal, shall not, where all the other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of rules of the law of that country which cannot be derogated from by contract, hereinafter called “mandatory rules”.

4. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 8, 9 and 11.”

international law of the forum are those laid down in the 1955 Hague Convention on the Law Applicable to International Sales,⁵⁵ as article 2⁵⁶ of this convention also obliges judges to acknowledge the choice of law made by the parties.⁵⁷

22. The Convention may be selected by the parties as the law applicable to the contract.⁵⁸ Where the parties did not make a choice of law or where the choice is not valid, one has to resort to the objective criteria set forth by the rules of private international law of the forum to determine whether the Convention can be applicable by virtue of article 1 (1)(b). Thus, under article 4 (1) of the 1980 Rome Convention, one has to apply the law “most closely connected” to the contract;⁵⁹ according to article 4 (2), it is presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has its habitual residence at the time of conclusion of the contract. For this reason, the Convention was often applied by courts in contracting States to the Rome Convention when the seller, i.e. the party that has to effect the characteristic performance,⁶⁰ had its place of business in a Contracting State to the Convention.⁶¹ Under the 1955 Hague Convention, absent choice of law,

⁵⁵ 1955 Hague Convention on the Law Applicable to International Sale of Goods, 510 U.N.T.S. 149, No. 7411 (1964).

⁵⁶ See article 2 of the Hague Convention:

“A sale shall be governed by the domestic law of the country designated by the Contracting Parties.

Such designation must be contained in an express clause, or unambiguously result from the provisions of the contract.

Conditions affecting the consent of the parties to the law declared applicable shall be determined by such law.”

⁵⁷ For cases applying the United Nations Sales Convention by virtue of a choice of law acknowledged by the judges on the grounds of article 2 of the 1955 Hague Convention, see Trib. Comm. Bruxelles, Belgium, 13 November 1992, Unilex.

⁵⁸ See, for example, Netherlands Arbitration Institute, Arbitral Award, 15 October 2002, available on Unilex.

⁵⁹ For cases referring to the “closest connection”, see CLOUT case No. 81 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994] (see full text of the decision); Landgericht Düsseldorf, Germany, 25 August 1994, available on the Internet at <<http://www.unilex.info/case.cfm?pid=1&do=case&id=150&step=FullText>>; Rechtbank Roermond, Netherlands, 6 May 1993, Unilex; CLOUT case No. 316 [Oberlandesgericht Koblenz, Germany, 27 September 1991] (see full text of the decision); CLOUT case No. 1 [Oberlandesgericht Frankfurt am Main, Germany, 13 June 1991] (see full text of the decision).

⁶⁰ For cases expressly pointing out that the seller is the party that has to effect the characteristic performance, see Landgericht Berlin, Germany, 24 March 1998, available on the Internet at <<http://www.unilex.info/case.cfm?pid=1&do=case&id=440&step=FullText>>; Landgericht München, Germany, 6 May 1997, available on the Internet at <<http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/341.htm>>; Rechtbank Amsterdam, Netherlands, 5 October 1994, *Nederlands Internationaal Privaatrecht*, 1995, No. 231; CLOUT case No. 81 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994] (see full text of the decision); CLOUT case No. 317 [Oberlandesgericht Düsseldorf, Germany, 12 March 1993] (see full text of the decision); CLOUT case No. 6 [Landgericht Frankfurt am Main, Germany, 16 September 1991] (see full text of the decision); Landgericht Frankfurt am Main, Germany, 2 May 1990, available on the Internet at <<http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/183.htm>>.

⁶¹ For cases applying the Convention on the basis of the presumption referred to in the text, see, e.g. Cour d’appel Mons, Belgium, 8 March 2001, available on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/2001-03-08.htm>>; Landgericht Bad Kreuznach, Germany, 12 March 1996, available on the Internet at <<http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/517.htm>>; Landgericht Frankfurt am Main, Germany, 6 July

one has to apply the law of the seller,⁶² except in cases where the seller receives the order in the buyer's country, in which case the law of the buyer governs.⁶³

23. At the 1980 Diplomatic Conference, a delegate raised the issue that countries which had enacted special legislation regarding international transactions should be allowed not to apply article 1 (1)(b), so as to avoid "the effect which article 1 (1)(b) would have on the application of their special legislation on international trade".⁶⁴ As a consequence, article 95 was introduced, which gives Contracting States the possibility to choose not to be bound by article 1 (1)(b).⁶⁵ Thus, judges located in Contracting States that declared an article 95 reservation will not apply the Convention by virtue of article 1 (1)(b); this does not, however, affect the Convention's applicability in those Contracting States by virtue of article 1 (1)(a).⁶⁶

1994, available on the Internet at

<<http://www.unilex.info/case.cfm?pid=1&do=case&id=189&step=FullText>>; CLOUT case No. 50 [Landgericht Baden-Baden, Germany, 14 August 1991] (see full text of the decision).

⁶² See *Rechtbank Hasselt*, Belgium, 9 October 1996, Unilex; *Rechtbank Hasselt*, Belgium, 8 November 1995, Unilex; CLOUT case No. 152 [Cour d'appel Grenoble, France, 26 April 1995]; *Rechtbank Hasselt*, Belgium, 18 October 1996, *Rechtskundig Weekblad* 1995, 1378 f.; Trib. Comm. Bruxelles, Belgium, 5 October 1994, Unilex; KG Wallis, Switzerland, 6 December 1993, Unilex; CLOUT case No. 201 [Richteramt Laufen des Kantons Berne, Switzerland, 7 May 1993]; CLOUT case No. 56 [Canton of Ticino Pretore di Locarno-Campagna, Switzerland, 27 April 1992] (see full text of the decision).

⁶³ Cour de Cassation, France, 26 June 2001, available on the Internet at <<http://witz.jura.unib.de/CISG/decisions/2606011v.htm>>; Trib. Verona, Italy, 19 December 1997, *Rivista Veronese di Giurisprudenza Economica e dell'Impresa* 1998, 22 ff.

⁶⁴ United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 229.

⁶⁵ To date the following States have declared an article 95 reservation: Canada (for province of British Columbia only), China, Czech Republic, Saint Vincent and the Grenadines, Singapore, Slovakia, United States of America. Germany has stated a declaration that it will not apply article 1 (1)(b) in respect of any State that has made a declaration that it would not apply article 1 (1)(b).

⁶⁶ See CLOUT case No. 417 [Federal District Court, Northern District of Illinois, United States, 7 December 1999]; CLOUT case No. 416 [Minnesota [State] District Court, United States, 9 March 1999]; CLOUT case No. 419 [Federal District Court, Northern District of Illinois, United States, 27 October 1998]; CLOUT case No. 222 [Federal Court of Appeals for the Eleventh Circuit, United States, 29 June 1998]; CLOUT case No. 413 [Federal District Court, Southern District of New York, United States, 6 April 1998]; CLOUT case No. 187 [Federal District Court, Southern District of New York, United States, 23 July 1997]; CLOUT case No. 138 [Federal Court of Appeals for the Second Circuit, United States, 6 December 1995]; CLOUT case No. 86 [Federal District Court, Southern District of New York, United States 22 September 1994]; CLOUT case No. 85 [Federal District Court, Northern District of New York, United States, 9 September 1994]; CLOUT case No. 24 [Federal Court of Appeals for the Fifth Circuit, United States, 15 June 1993]; CLOUT case No. 23 [Federal District Court, Southern District of New York, United States, 14 April 1992].

24. Although the Convention does not bind non-Contracting-States, it has been applied in courts of non-Contracting States where the rules of private international law led to the law of a Contracting State.⁶⁷

⁶⁷ See Rechtbank Koophandel, Kortrijk, Belgium, 16 December 1996, Unilex; Rechtbank Koophandel, Hasselt, Belgium, 9 October 1996, Unilex; Rechtbank Koophandel, Hasselt, Belgium, 8 November 1995, Unilex; Rechtbank Koophandel, Hasselt, Belgium, 18 October 1995, *Rechtskundig Weekblad* 1995, 1378 f.; Trib. Comm. Nivelles, Belgium, 19 September 1995, Unilex; Trib. Comm. Bruxelles, Belgium, 5 October 1994, Unilex; Rechtbank Koophandel, Hasselt, Belgium, 16 March 1994, Unilex; Rechtbank Koophandel, Hasselt, Belgium, 23 February 1994, Unilex; Trib. Comm. Bruxelles, Belgium, 13 November 1992, Unilex; CLOUT case No. 98 [Rechtbank Roermond, Netherlands, 19 December 1991]; Amtsgericht Ludwigsburg, Germany, 21 December 1990, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; CLOUT case No. 5 [Landgericht Hamburg, Germany, 26 September 1990]; Rechtbank Dordrecht, Netherlands, 21 November 1990, *Nederlands Internationaal Privaatrecht* 1991, No. 159; Landgericht Hildesheim, Germany, 20 July 1990, published at the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; Landgericht Frankfurt am Main, Germany, 2 May 1990, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/>; CLOUT case No. 7 [Amtsgericht Oldenburg in Holstein, Germany, 24 April 1990]; CLOUT case No. 46 [Landgericht Aachen, Germany, 3 April 1990]; Oberlandesgericht Koblenz, Germany, 23 February 1990, *Recht der internationalen Wirtschaft* 1990, 316 ff.; Rechtbank Alkmaar, Netherlands, 8 February 1990, *Nederlands Internationaal Privaatrecht* 1990, No. 460; Rechtbank Alkmaar, Netherlands, 30 November 1989, *Nederlands Internationaal Privaatrecht* No. 289; CLOUT case No. 4 [Landgericht Stuttgart, Germany, 31 August 1989]; CLOUT case No. 3 [Landgericht München, Germany, 3 July 1989].