



General Assembly

Distr.: General
8 June 2004

Original: English

**United Nations Commission
on International Trade Law**

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

Article 10

For the purposes of this Convention:

(a) If a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

(b) If a party does not have a place of business, reference is to be made to his habitual residence.

* 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. Article 10 provides two rules: the rule laid down in article 10 (a) is to be used to identify which place of business, out of several, is to be taken into account to determine whether the Convention is applicable; article 10 (b), on the other hand, states that where a party does not have a place of business, that party's habitual residence is to be taken into account.¹ This rule is helpful, as the determination of the relevant place of business is necessary for various purposes, ranging from the determination of the internationality of the contract to the applicability of the Convention by virtue of article 1, paragraph 1 (a), as well as other purposes.²

2. As for article 10 (a), although it may have been referred to on various occasions,³ it was relevant for the purposes of determining the relevant place of business only in a few cases. In one case, for instance, it was resorted to in order to decide whether a contract concluded between a party with a place of business in France and a party with a place of business both in the United States of America and in Belgium was governed by the Convention.⁴ The court stated that since the invoice was sent to the Belgian place of business and since it was in Dutch, a language known only at the buyer's Belgian place of business, the place of business most closely connected to the contract and its performance was the Belgian one and, therefore, the Convention applied. The court also noted that since the Convention had entered into force also in the United States of America, the Convention would apply even if the buyer were considered to have its relevant place of business in that country.

3. In another case,⁵ a court had recourse to article 10 (a) to determine whether the sales contract was international under the Convention; the issue arose since the purchase order was sent by a buyer that had its place of business in France, to the representative of the seller that had its place of business in that same country. In deciding the issue, the court stated that "[t]he evidence produced by the parties does not allow one to decide whether this person—of whom we ignore moreover under which form it exercises its activity—can be considered as the defendant seller's French place of business. It is, however, established that the order confirmations emanating from the seller, the invoices, and the deliveries of the goods were made from the seat of the seller in Germany. Thus, even supposing that [the representative] was responsible for managing in France one of the seller's places of business, the place of business 'which has the closest relationship to the contract

¹ 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, 19.

² For provisions referring to the "place of business", see articles 1, paragraph 1, 12, 20, paragraph 2, 24, 31 (c), 42, paragraph 1 (b), 57, paragraphs 1 (a) and 2, 69, paragraph 2, 90, 93, paragraph 3, 94, paragraphs 1 and 2, 96.

³ See [Federal] Northern District Court of California, 27 July 2001, *Federal Supplement (2nd Series)* 1142 (*Asante Technologies v. PMC-Sierra*), simply quoting the text of article 10 (a); Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Arbitration, award No. 2/1995, published on the Internet at <<http://cisgw3.law.pace.edu/cases/970511r1.html>>, referring to article 10 (a) when deciding that one company's place of business was located in Switzerland rather than in England, without, however, specifying any reason for its decision.

⁴ Rechtbank Koophandel Hasselt, Belgium, 2 June 1999, published on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/1999-06-02.htm>>.

⁵ CLOUT case No. 400 [Cour d'appel Colmar, France, 24 October 2000] (see full text of the decision).

and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract' and which must for this reason be taken 'into consideration' is indeed the place of business whose seat is in [Germany]. The international character of the disputed contract is as a consequence established."

4. In yet another case,⁶ a different court had to decide whether the Convention applied to the claim of a German manufacturer of floor covering, the plaintiff, who demanded that the Spanish buyer pay for several deliveries of floor coverings. The buyer objected, claiming that it had always contracted only with an independent company governed by Spanish law, which, as was known to the Spanish defendant, had links with the German plaintiff, as the Spanish company's board members were partially identical with those of the German plaintiff. The court held that the contract was an international one subject to the Convention. The court left open whether the Spanish company was a trade representative or a place of business of the German plaintiff. It stated that the Spanish company might have acted as though it were a "place of business", but legally it was not as it did not possess power to bind the German manufacturer. Moreover, even if one were to assume that the Spanish company in fact was a place of business of the German plaintiff, the German place of business had the closest relationship to the contract and its performance, and, thus, was the only one to be taken into account pursuant to article 10 (a).

5. Article 10 (a) was referred to in another decision as well.⁷ In that decision, the court held that where a party has multiple places of business it is not always the principal one that is to be taken into account to determine whether a contract is international or whether the Convention applies.

6. Article 10 (b) has been referred to only once; in that case, the court merely recalled the text of the provision.⁸

⁶ Oberlandesgericht Stuttgart, Germany, 28 February 2001, published on the Internet at <<http://www.cisg.law.pace.edu/cisg/text/000228g1german.html>>.

⁷ CLOUT case No. 261 [Berzirksgericht der Sanne, Switzerland, 20 February 1997].

⁸ CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994] (see full text of the decision).