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

#### *Article 27*

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

#### **Meaning and purpose of the provision**

1. Article 27 states that in general the dispatch principle applies to all kinds of communications provided for in Part III of the Convention (articles 25–89). Under this principle the declaring party has only to dispatch its communication by using an appropriate means of communication; the addressee then bears the risk of correct and complete transmission of the communication.<sup>1</sup>.

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<sup>1</sup> CLOUT case No. 305 [Oberster Gerichtshof, Austria, 30 June 1998].

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\* 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.

## The dispatch principle

2. The dispatch principle is the general principle of the Convention concerning communications after the parties have concluded their contract. According to the principle a notice, request or other communication becomes effective as soon as the declaring party releases it from its own sphere by an appropriate means of communication. This rule applies to the notice of non-conformity or of third-party claims (articles 39, 43), to requests of specific performance (article 46), price reduction (article 50), damages (article 45 (1) (b)) or interest (article 78), to the declaration of avoidance (articles 49, 64, 72, 73), to the fixing of an additional period for performance (articles 47, 63) and other notices as in articles 32 (1), 67 (2) or 88. As a general principle for Part III of the Convention, the dispatch principle applies as well to any other communication the parties may have provided for in their contract unless they have agreed that the communication has to be received to be effective.<sup>2</sup>

3. Some provisions of Part III of the Convention, however, expressly prescribe that the respective communication becomes only effective when the addressee “receives” it (see articles 47 (2), 48 (4), 63 (2), 65, 79 (4). Article 24 applies to these communications.

## Appropriate means of communication

4. The declaring party must use appropriate means for its communication. In one case a court stated that giving notice to a self-employed broker that did not act as a commercial agent for the seller was not appropriate. In order for that notice to be considered as having been given by means appropriate in the circumstances the buyer had to assure itself about the reliability of the self-employed broker. The buyer had to indicate to the broker its function as a messenger and the importance of the notice and had to control the performance of the commission.<sup>3</sup>

5. Article 27 does not explicitly deal with the language of the communication. But in order to be effective the communication must be either in the language the parties have explicitly chosen or used among them before or in a language the receiving party does understand or has communicated to understand.<sup>4</sup>

6. It has been held that article 27 does not refer to oral communications.<sup>5</sup> As far as those communications are concerned, one court stated that they are effective if

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<sup>2</sup> Landgericht Stuttgart, Germany, 13 August 1991, Unilex (according to the contract the notice of non-conformity had to be by registered letter. The court held that that meant that the notice had to be received by the other party. Moreover, the declaring party had also to prove that the notice had been received by the other party). See also CLOUT case No. 305 [Oberster Gerichtshof, Austria, 30 June 1998].

<sup>3</sup> CLOUT case No. 409 [Landgericht Kassel, Germany, 15 February 1996].

<sup>4</sup> CLOUT case No. 132 [Oberlandesgericht Hamm, Germany, 8 February 1995]; Amtsgericht Kehl, Germany, 6 October 1995, Unilex; CLOUT case No. 409 [Landgericht Kassel, Germany, 15 February 1996] (see full text of the decision).

<sup>5</sup> CLOUT case No. 305 [Oberster Gerichtshof, Austria, 30 June 1998] (see full text of the decision).

the other party can hear them and—as far as the language is concerned—can understand them.<sup>6</sup>

### **Effect of appropriate and inappropriate communications**

7. Where the declaring party uses an inappropriate way of transmission the communication is generally considered as not being effective. Therefore, e.g., the buyer loses its remedies for non-conformity of the delivered goods when the buyer transmits the notice of non-conformity to the wrong person.<sup>7</sup>

### **Burden of proof**

8. It has been held that the declaring party must prove actual dispatch of the communication as well as the time and method of dispatch.<sup>8</sup> If the parties have agreed on a specific form of communication the declaring party must also prove that it used the agreed form.<sup>9</sup> However the declaring party does not need to prove that the communication reached the addressee.<sup>10</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> See CLOUT case No. 409 [Landgericht Kassel, Germany, 15 February 1996] (see full text of the decision).

<sup>8</sup> CLOUT case No. 305 [Oberster Gerichtshof, Austria, 30 June 1998]; Landgericht Stuttgart, Germany, 13 August 1991, Unilex; CLOUT case No. 362 [Oberlandesgericht Naumburg, Germany, 27 April 1999] (see full text of the decision).

<sup>9</sup> Landgericht Stuttgart, Germany, 13 August 1991, Unilex.

<sup>10</sup> CLOUT case No. 362 [Oberlandesgericht Naumburg, Germany, 27 April 1999] (see full text of the decision).