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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 78*

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

#### **Prerequisites for entitlement to interest**

1. This provision deals with the right to interest on “the price or any other sum that is in arrears”, with the exception of the instance where the seller has to refund the purchase price after the contract has been avoided, in which case article 84 of the Convention applies as *lex specialis*.
2. Article 78 entitles to interest on “the price and any other sum that is in arrears”; according to case law, this includes damages.<sup>1</sup>

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<sup>1</sup> CLOUT case No. 328 [Kantonsgericht des Kantons Zug, Switzerland, 21 October 1999] (see full text of the decision); CLOUT case No. 214 [Handelsgericht des Kantons Zürich, Switzerland, 5 February 1997] (see full text of the decision).

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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.

3. Entitlement to interest only<sup>2</sup> presupposes that the sum is due<sup>3</sup> and that the debtor failed to comply with its obligation to pay the price or any other sum by the time specified in the contract<sup>4</sup> or, absent such specification, by the Convention.<sup>5</sup> According to several courts, the entitlement to interest does not, unlike under some domestic legal regimes, depend on any formal notice to be given to the debtor.<sup>6</sup> As a consequence, interest starts to accrue as soon as the debtor is in arrears. As far as damages are concerned, a court stated that interest accrues from the time damages are due.<sup>7</sup>

4. It must be noted, however, that both an arbitral tribunal<sup>8</sup> and a state court<sup>9</sup> stated that interest does not accrue unless the creditor sent a formal notice requiring payment to the debtor in default.

<sup>2</sup> See CLOUT case No. 252 [Handelsgericht des Kantons Zürich, Switzerland, 21 September 1998] (see full text of the decision); Bezirksgericht Arbon, Switzerland, 9 December 1994, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=172&step=FullText>.

<sup>3</sup> CLOUT case No. 217 [Handelsgericht des Kantons Aargau, Switzerland, 26 September 1997] (see full text of the decision); Amtsgericht Nordhorn, Germany, 14 June 1996, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/259.htm>.

<sup>4</sup> CLOUT case No. 254 [Handelsgericht des Kantons Aargau, Switzerland, 19 December 1997] (see full text of the decision).

<sup>5</sup> For cases where the courts had to resort to the rules of the Convention, namely, article 58, to determine when the payment was due, since the parties had not agreed upon a specific time of performance, see Landgericht Stendal, Germany, 10 December 2000, *Internationales Handelsrecht*, 2001, 30 ff.; CLOUT case No. 79 [Oberlandesgericht Frankfurt a.M., Germany, 18 January 1994] (see full text of the decision); CLOUT case No. 1 [Oberlandesgericht Frankfurt a.M., Germany, 13 June 1991] (see full text of the decision).

<sup>6</sup> For this statement in case law, see Tribunal commercial Namur, Belgium, 15 January 2002, published on the Internet at <http://www.law.kuleuven.ac.be/int/tradelaw/WK/2002-01-15.htm>; Rechtbank van koophandel Kortrijk, Belgium, 3 October 2001, published on the Internet at <http://www.law.kuleuven.ac.be/int/tradelaw/WK/2001-10-03.htm>; Rechtbank van koophandel Kortrijk, Belgium, 4 April 2001, published on the Internet at <http://www.law.kuleuven.ac.be/int/tradelaw/WK/2001-04-05.htm>; Landgericht Stendal, 10 December 2000, *Internationales Handelsrecht*, 2001, 30 ff.; CLOUT case No. 217 [Handelsgericht des Kantons Aargau, Switzerland, 26 September 1997] (see full text of the decision); Kantonsgericht Waadt, Switzerland, 11 March 1996, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=320&step=FullText>; Landgericht Aachen, Germany, 20 July 1995, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/169.htm>; ICC Court of Arbitration, France, award No. 7585, *Journal du droit international*, 1995, 1015 ff.; CLOUT case No. 166 [Arbitration—Schiedsgericht der Handelskammer Hamburg, 21 March, 21 June 1996]; CLOUT case No. 152 [Cour d'appel, Grenoble, France, 26 April 1995]; CLOUT case No. 303 [Arbitration—International Chamber of Commerce No. 7331 1994] (see full text of the decision); Amtsgericht Nordhorn, Germany, 14 June 1994, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/Convention/>; CLOUT case No. 55 [Canton del Ticino, Pretore di Locarno Campagna, Switzerland, 15 December 1991].

<sup>7</sup> CLOUT case No. 328 [Kantonsgericht des Kantons Zug, Switzerland, 21 October 1999] (see full text of the decision); CLOUT case No. 214 [Handelsgericht des Kantons Zürich, Switzerland, 5 February 1997] (see full text of the decision).

<sup>8</sup> Arbitral Tribunal at the Bulgarian Chamber of Commerce and Industry, award No. 11/1996, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=420&step=FullText>.

<sup>9</sup> See Landgericht Zwickau, Germany, 19 March 1999, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/519.htm>.

5. The entitlement to interest also does not depend on the creditor being able to prove to have suffered any loss. Therefore, interest can be claimed pursuant to article 78 independently from the damage caused by the payment in arrears.<sup>10</sup>

6. As stated in article 78, the entitlement to interest on sums in arrears is without prejudice to any claim by the creditor for damages recoverable under article 74,<sup>11</sup> such as a claim for the expenses triggered by the need to have to resort to a bank loan<sup>12</sup> or a claim based upon the creditor not being able to invest the sum profitably.<sup>13</sup> This led one arbitral tribunal to state that the purpose of article 78 is to introduce the distinction between interest and damages.<sup>14</sup> It must be noted, that in order for a claim for damages—in addition to a claim for interest on sums in arrears—to be successful, all requirements set forth in article 74 must be met<sup>15</sup> and proved by the creditor,<sup>16</sup> i.e. the damaged party.

<sup>10</sup> See CLOUT case No. 79 [Oberlandesgericht Frankfurt a.M., Germany, 18 January 1994] (see full text of the decision); CLOUT case No. 5 [Landgericht Hamburg, Germany, 26 September 1990] (see full text of the decision); CLOUT case No. 7 [Amtsgericht Oldenburg in Holstein, Germany, 24 April 1990] (see full text of the decision).

<sup>11</sup> This has often been emphasized in case law; see, e.g., *Rechtbank van koophandel Hasselt*, Belgium, 17 June 1998, published on the Internet at <http://www.law.kuleuven.ac.be/int/tradelaw/WK/1998-06-17.htm>; CLOUT case No. 248 [Schweizerisches Bundesgericht, Switzerland, 28 October 1998] (see full text of the decision); ICC Court of Arbitration, award No. 8962, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=464&step=FullText>; CLOUT case No. 195 [Handelsgericht des Kantons Zürich, Switzerland, 21 September 1995]; CLOUT case No. 79 [Oberlandesgericht Frankfurt a.M., Germany, 18 January 1994] (see full text of the decision); CLOUT case No. 130 [Oberlandesgericht Düsseldorf, Germany, 14 January 1994] (see full text of the decision); CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993] (see full text of the decision); CLOUT case No. 104 [Arbitration—International Chamber of Commerce No. 7197 1993]; CLOUT case No. 7 [Amtsgericht Oldenburg in Holstein, Germany, 24 April 1990] (see full text of the decision).

<sup>12</sup> See CLOUT case No. 248 [Schweizerisches Bundesgericht, Switzerland, 28 October 1998] (see full text of the decision); Amtsgericht Koblenz, 12 November 1996, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/400.htm>; CLOUT case No. 195 [Handelsgericht des Kantons Zürich, Switzerland, 21 September 1995]; Landgericht Kassel, Germany, 14 July 1994, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/194.htm>; CLOUT case No. 79 [Oberlandesgericht Frankfurt a.M., Germany, 18 January 1994] (see full text of the decision).

<sup>13</sup> CLOUT case No. 7 [Amtsgericht Oldenburg in Holstein, Germany, 24 April 1990] (see full text of the decision).

<sup>14</sup> CLOUT case No. 301 [Arbitration—International Chamber of Commerce No. 7585 1992] (see full text of the decision).

<sup>15</sup> See CLOUT case No. 327 [Kantonsgericht des Kantons Zug, Switzerland, 25 February 1999]; Landgericht Oldenburg, Germany, 9 November 1994, *Recht der internationalen Wirtschaft*, 1996, 65 f., where the creditor's claim for damages caused by the failure to pay was dismissed on the grounds that the creditor did not prove that it had suffered any additional loss.

<sup>16</sup> It has often been stated that the damages referred to in article 78 have to be proved by the damaged party; see CLOUT case No. 343 [Landgericht Darmstadt, Germany, 9 May 2000] (see full text of the decision); CLOUT case No. 275 [Oberlandesgericht Düsseldorf, Germany, 24 April 1997] (see full text of the decision); Amtsgericht Koblenz, 12 November 1996, published on the Internet <http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/400.htm>; Amtsgericht Bottrop, 25 June 1996, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/534.htm>; CLOUT case No. 132 [Oberlandesgericht Hamm, Germany, 8 February 1995]; Landgericht Kassel, 14 July 1994, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/194.htm>; CLOUT case No. 79

## Interest rate

7. Several courts pointed out that this provision merely sets forth a general entitlement to interest;<sup>17</sup> it does not specify the interest rate to be applied,<sup>18</sup> which is why one court considered the solution contained in article 78 a “compromise”.<sup>19</sup> According to one court<sup>20</sup> and an arbitral tribunal,<sup>21</sup> this is due to irreconcilable differences which emerged during the Vienna Diplomatic Conference.

8. The lack of a specific formula to calculate the rate of interest has led some courts to consider this matter as one governed by, albeit not expressly settled in, the Convention.<sup>22</sup> Other courts consider this matter one that is not governed at all by the Convention. This difference in qualifying this matter has led to diverging solutions as to the applicable interest rate, since under the Convention, the matters governed by, but not expressly settled in, the Convention have to be dealt with differently than those falling outside the Convention’s scope. According to article 7 (2) of the Convention, the former matters have to be settled in conformity with the general principles on which the Convention is based or, in the absence of those principles, in conformity with the law applicable by virtue of the rules of private international law. However, if a matter is considered to fall outside the Convention’s scope, it must be settled in conformity with the law applicable by virtue of the rules of private international law, without any recourse to the “general principles” of the Convention.

9. Several decisions have sought a solution on the basis of general principles on which the Convention is based. Some courts and arbitral tribunals<sup>23</sup> invoked

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[Oberlandesgericht Frankfurt a.M., Germany, 18 January 1994] (see full text of the decision).

<sup>17</sup> See CLOUT case No. 248 [Schweizerisches Bundesgericht, Switzerland, 28 October 1998] (see full text of the decision); ICC Court of Arbitration, France, award No. 7585, *Journal du droit international*, 1995, 1015 ff.; Landgericht Aachen, 20 July 1995, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=125&step=FullText>; CLOUT case No. 83 [Oberlandesgericht München, Germany, 2 March 1994] (see full text of the decision); CLOUT case No. 79 [Oberlandesgericht Frankfurt a.M., Germany, 18 January 1994] (see full text of the decision); CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993] (see full text of the decision); CLOUT case No. 1 [Oberlandesgericht Frankfurt a.M., Germany, 13 June 1991] (see full text of the decision).

<sup>18</sup> CLOUT case No. 380 [Tribunale di Pavia, Italy, 29 December 1999]; Arbitral Tribunal at the Bulgarian Chamber of Commerce and Industry, award No. 11/1996, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=420&step=FullText>.

<sup>19</sup> CLOUT case No. 55 [Canton del Ticino, Pretore di Locarno Campagna, Switzerland, 15 December 1991] (see full text of the decision).

<sup>20</sup> CLOUT case No. 97 [Handelsgericht des Kantons Zürich, Switzerland, 9 September 1993] (see full text of the decision).

<sup>21</sup> ICC Court of Arbitration, award No. 8128, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=207&step=FullText>.

<sup>22</sup> For a case listing various criteria used in case law to determine the rate of interest, see ICC Court of Arbitration, France, award No. 7585, *Journal du droit international*, 1995, 1015 ff.

<sup>23</sup> See Rechtbank van koophandel Ieper, 29 January 2001, published on the Internet at <http://www.law.kuleuven.ac.be/int/tradelaw/WK/2001-01-29.htm>; CLOUT case No. 103 [Arbitration—International Chamber of Commerce No. 6653 1993]; Juzgado Nacional de Primera Instancia en lo Comercial n. 10, Buenos Aires, Argentina, 6 October 1994, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=178&step=FullText>; Juzgado Nacional de Primera Instancia en lo Comercial n. 10, Buenos Aires, Argentina, 23 October 1991, published on the Internet at

article 9 of the Convention in order to solve the issue of the applicable rates of interest and determined the amount of interest payable according to the relevant trade usages. According to two arbitral awards<sup>24</sup> “the applicable interest rate is to be determined autonomously on the basis of the general principles underlying the Convention”, on the grounds that the recourse to domestic law would lead to results contrary to those promoted by the Convention. In these cases, the issue of the interest rate was solved by resorting to the general principle of full compensation, which led to the application of the law of the creditor, since it is the creditor who has to borrow money in order to be as liquid as it would be had the debtor paid the sum it owed in due time.<sup>25</sup> Other tribunals simply referred to a “commercially reasonable” rate,<sup>26</sup> such as the London Interbank Offered Rate (LIBOR).<sup>27</sup>

10. Most courts consider the issue at hand as one not governed at all by the Convention and therefore tend to apply domestic law.<sup>28</sup> In respect of this approach most courts applied the domestic law of a specific country by virtue of the rules of private international law of the forum<sup>29</sup> and others applied the domestic law of the

<http://www.Unilex.info/case.cfm?pid=1&do=case&id=184&step=FullText>.

<sup>24</sup> See CLOUT cases Nos. 93 [Arbitration—Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft—Wien, 15 June 1994] and 94 [Arbitration—Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft—Wien, 15 June 1994] (see full text of the decisions).

<sup>25</sup> For a similar solution, that is, for an arbitral award basing its decision on the argument that the interest rate of the country in which the damage occurred, (the country in which the creditor has its place of business) has to apply, see also CLOUT case no. 303 [Arbitration—International Chamber of Commerce No. 7331 1994].

<sup>26</sup> See ICC Court of Arbitration, award No. 8769, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=397&step=FullText>.

<sup>27</sup> See ICC Court of Arbitration, France, award No. 8908, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=401&step=FullText>; see also CLOUT case No. 103 [Arbitration—International Chamber of Commerce No. 6653 1993]; note that this arbitral award was later annulled on the grounds that international trade usages do not provide appropriate rules to determine the applicable interest rate; see Cour d’appel de Paris, France, 6 April 1995, *Journal du droit international*, 1995, 971 ff.

<sup>28</sup> Note that some courts did not decide which law was applicable; this was possible, since all the countries involved in the particular dispute provided for either the same rate of interest (see, for example, CLOUT case No. 84 [Oberlandesgericht Frankfurt a.M., Germany, 20 April 1994]; CLOUT case No. 56 [Canton del Ticino, Pretore di Locarno Campagna, Switzerland, 27 April 1992] (see full text of the decision)) or an interest rate higher than the one claimed by the plaintiff (see Oberlandesgericht Dresden, Germany, 27 December 1999, *Transportrecht-Internationales Handelsrecht*, 2000, 20 ff.).

<sup>29</sup> See Landgericht Stendal, Germany, 12 October 2000, *Internationales Handelsrecht*, 2001, 31; Oberlandesgericht Stuttgart, Germany, 28 February 2000, *OLG-Report Stuttgart*, 2000, 407 f.; CLOUT case No. 380 [Tribunale di Pavia, Italy, 29 December 1999]; ICC Court of Arbitration, Award No. 9187, published on the internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=466&step=FullText>; CLOUT case No. 328 [Kantonsgericht des Kantons Zug, Switzerland, 21 October 1999] (see full text of the decision); CLOUT case No. 327 [Kantonsgericht des Kantons Zug, Switzerland, 25 February 1999]; CLOUT case No. 377 [Landgericht Flensburg, Germany, 24 March 1999]; CLOUT case No. 248 [Schweizerisches Bundesgericht, Switzerland, 28 October 1998] (see full text of the decision); CLOUT case No. 282 [Oberlandesgericht Koblenz, Germany, 31 January 1997]; ICC International Court of Arbitration, France, award No. 8611, UNILEX (stating that the relevant interest rate is either that of the *lex contractus* or, in exceptional cases, that of the *lex monetæ*); CLOUT case No. 376 [Landgericht Bielefeld, Germany, 2 August 1996]; Tribunal de la Glane, Switzerland, 20 May 1996, *Schweizerische Zeitschrift für Internationales und Europäisches*

creditor without it being necessarily the law made applicable by the rules of private international law.<sup>30</sup> There also are a few cases in which the rate was determined by

*Recht*, 1997, 136; CLOUT case No. 166 [Arbitration—Schiedsgericht der Handelskammer Hamburg, 21 March, 21 June 1996] (see full text of the decision); CLOUT case No. 335 [Canton del Ticino Tribunale d'appello, Switzerland, 12 February 1996] (see full text of the decision); Amtsgericht Augsburg, Germany, 29 January 1996, UNILEX; CLOUT case No. 330 [Handelsgericht des Kantons St. Gallen, Switzerland, 5 December 1995] (see full text of the decision); Amtsgericht Kehl, Germany, 6 October 1995, *Recht der internationalen Wirtschaft*, 1996, 957 f.; CLOUT case No. 195 [Handelsgericht des Kantons Zürich, Switzerland, 21 September 1995]; CLOUT case No. 228 [Oberlandesgericht Rostock, Germany, 27 July 1995]; Landgericht Aachen, Germany, 20 July 1995, UNILEX; Landgericht Kassel, Germany, 22 June 1995, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/Convention/>; CLOUT case No. 136 [Oberlandesgericht Celle, Germany, 24 May 1995]; CLOUT case No. 410 [Landgericht Alsfeld, Germany, 12 May 1995]; Landgericht Landshut, Germany, 5 April 1995, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/Convention/>; Landgericht München, Germany, 20 March 1995, *Praxis des internationalen Privat- und Verfahrensrechts*, 1996, 31 ff.; Landgericht Oldenburg, Germany, 15 February 1995, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/Convention/>; CLOUT case No. 132 [Oberlandesgericht Hamm, Germany, 8 February 1995]; CLOUT case No. 300 [Arbitration—International Chamber of Commerce No. 7565 1994]; Kantonsgericht Zug, Switzerland, 15 December 1994, *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1997, 134; Landgericht Oldenburg, Germany, 9 November 1994, *Neue Juristische Wochenschrift Rechtsprechungs-Report*, 1995, 438; Kantonsgericht Zug, Switzerland, 1 September 1994, *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1997, 134 f.; Landgericht Düsseldorf, Germany, 25 August 1994, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/Convention/>; Landgericht Giessen, Germany, 5 July 1994, *Neue Juristische Wochenschrift Rechtsprechungs-Report*, 1995, 438 f.; Rechtbank Amsterdam, the Netherlands, 15 June 1994, *Nederlands Internationaal Privaatrecht*, 1995, 194 f.; Amtsgericht Nordhorn, Germany, 14 June 1994, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/Convention/>; CLOUT case No. 83 [Oberlandesgericht München, Germany, 2 March 1994]; CLOUT case No. 82 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994]; CLOUT case No. 81 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994]; CLOUT case No. 80 [Kammergericht Berlin, Germany, 24 January 1994] (see full text of the decision); CLOUT case No. 79 [Oberlandesgericht Frankfurt a.M., Germany, 18 January 1994]; CLOUT case No. 100 [Rechtbank Arnhem, the Netherlands, 30 December 1993]; Tribunal Cantonal Vaud, Switzerland, 6 December 1993, UNILEX; CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993]; CLOUT case No. 97 [Handelsgericht des Kantons Zürich, Switzerland, 9 September 1993]; Rechtbank Roermond, the Netherlands, 6 May 1993, UNILEX; Landgericht Verden, Germany, 8 February 1993, UNILEX; CLOUT case No. 95 [Zivilgericht Basel-Stadt, Switzerland, 21 December 1992]; Amtsgericht Zweibrücken, Germany, 14 October 1992, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/Convention/>; CLOUT case No. 227 [Oberlandesgericht Hamm, Germany, 22 September 1992] (see full text of the decision); Landgericht Heidelberg, Germany, 3 July 1992, UNILEX; CLOUT case No. 55 [Canton of Ticino, Pretore di Locarno Campagna, Switzerland, 15 December 1991]; CLOUT case No. 1 [Oberlandesgericht Frankfurt a.M., Germany, 13 June 1991]; CLOUT case No. 5 [Landgericht Hamburg, Germany, 26 September 1990]; CLOUT case No. 7 [Amtsgericht Oldenburg in Holstein, Germany, 24 April 1990].

<sup>30</sup> Several court decisions referred to the domestic law of the creditor as the law applicable, independently of whether the rules of private international law made that law applicable; see Bezirksgericht Arbon, Switzerland, 9 December 1994, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=172&step=FullText>; CLOUT case No. 6 [Landgericht Frankfurt a.M., Germany, 16 September 1991] (see full text of the decision); CLOUT case No. 4 [Landgericht Stuttgart, Germany, 31 August 1989]; for a criticism of the latter decision by a court, see Landgericht Kassel, Germany, 22 June 1995, published on the

reference to the law of the country in whose legal tender the sum of money has to be paid was (*lex monetæ*);<sup>31</sup> in a few other cases, the courts applied the rate of the country in which the price had to be paid<sup>32</sup>, the rate applied in the debtor's country<sup>33</sup> or even the rate of the *lex fori*.<sup>34</sup>

11. A few courts resorted to the interest rate specified by the UNIDROIT Principles of International Commercial Contracts (article 7.4.9).<sup>35</sup>

12. Despite the variety of solutions mentioned above, there is a clear tendency to apply the rate provided for by the law applicable to the contract,<sup>36</sup> that is, the law that would be applicable to the sales contract if it were not subject to the Convention.<sup>37</sup>

13. Where, however, the parties agreed upon a specific interest rate, that rate is to be applied.<sup>38</sup>

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Internet <http://www.Unilex.info/case.cfm?pid=1&do=case&id=143&step=FullText>.

- <sup>31</sup> See Rechtbank van koophandel Ieper, 18 February 2002, published on the Internet at <http://www.law.kuleuven.ac.be/int/tradelaw/WK/2002-02-18.htm>; Rechtbank van koophandel Veurne, 25 April 2001, published on the Internet at <http://www.law.kuleuven.ac.be/int/tradelaw/WK/2001-04-25.htm>; CLOUT case No. 164 [Arbitration—Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 5 December 1995]; Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 17 November 1995, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=217&step=FullText>.
- <sup>32</sup> See CLOUT case No. 220 [Kantonsgericht Nidwalden, Switzerland, 3 December 1997]; Rechtbank Almelo, the Netherlands, 9 August 1995, *Nederlands Internationaal Privaatrecht*, 1995, 686; CLOUT case No. 26 [Arbitration—International Chamber of Commerce No. 7153 1992].
- <sup>33</sup> See Kantonsgericht Waadt, Switzerland, 11 March 1996, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=320&step=FullText>.
- <sup>34</sup> CLOUT case No. 85 [Federal District Court, Northern District of New York, United States, 9 September 1994].
- <sup>35</sup> See ICC Court of Arbitration, France, award No. 8769, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=397&step=FullText>; ICC Court of Arbitration, France, award No. 8128, *Journal du droit international*, 1996, 1024 ff.; CLOUT cases Nos. 93 [Arbitration—Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft—Wien, 15 June 1994] and 94 [Arbitration—Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft—Wien, 15 June 1994].
- <sup>36</sup> Some courts referred to this solution as a unanimous one; see CLOUT case No. 132 [Oberlandesgericht Hamm, Germany, 8 February 1995]; CLOUT case No. 97 [Handelsgericht des Kantons Zürich, Switzerland, 9 September 1993]. In the light of the remarks in the text, it is apparent that, although this solution is the prevailing one, it has not been unanimously accepted.
- <sup>37</sup> For case law stating the same, see Landgericht Aachen, Germany, 20 July 1995, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/169.htm>; Amtsgericht Riedlingen, Germany, 21 October 1994, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=116&step=FullText>; Amtsgericht Nordhorn, Germany, 14 June 1994, published on the Internet at <http://www.Unilex.info/case.cfm?pid=1&do=case&id=114&step=FullText>.
- <sup>38</sup> See Hof Antwerp, Belgium, 4 November 1998, published on the Internet at <http://www.law.kuleuven.ac.be/int/tradelaw/WK/1998-11-04.htm>; Landgericht Kassel, Germany, 22 June 1995, published on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/370.htm>.