

Article 6

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

INTRODUCTION

1. According to article 6 of the Convention, the parties may exclude the Convention's application (totally or partially) or derogate from its provisions. Thus, even if the Convention would otherwise be applicable, courts must determine that the parties have not excluded the Convention nor derogated from its provisions,¹ thus elevating the lack of an exclusion to an applicability requirement of the Convention. It has been held that the Convention may be so excluded or its provisions derogated from even where it has been incorporated into, and has thus become part of, the domestic law of a Contracting State which governs the contract in question by virtue of the applicable private international law rules.²

2. According to several courts, opting-out requires a clear,³ unequivocal⁴ and affirmative⁵ agreement of the parties.⁶ According to one court, however, for the Convention not to apply it suffices that the "contract contains a choice-of-law provision."⁷ Given that the invocation of article 1 (1) (a) does not depend on both parties agreeing upon the application of the Convention, the Convention cannot be excluded simply because one party makes an objection to its application.⁸

3. By allowing the parties to exclude the Convention or derogate from its provisions, the drafters affirmed the principle that the primary source of rules for international sales contracts is party autonomy.⁹ Thus the drafters clearly acknowledged the Convention's non-mandatory nature¹⁰ and the central role that party autonomy plays in international commerce—specifically, in international sales.¹¹

DEROGATION

4. Article 6 distinguishes between excluding application of the Convention entirely and derogating from some of its provisions.¹² The former is not subject to any express limitations in the Convention, but the latter is. Where one party to a contract governed by the Convention has its place of business in a State that has made a reservation under article 96,¹³ the parties may not derogate from or vary the effect of article 12.¹⁴ In such cases, therefore, any provision "that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply" (article 12). Otherwise, the Convention does not expressly limit the parties' right to derogate from any provision of the Convention.

5. Although the Convention does not expressly so state, the parties cannot derogate from the public international law provisions of the Convention (i.e. articles 89-101) because those provisions address issues relevant to Contracting States rather than private parties.¹⁵ One court also stated that article 28 of the Convention cannot be derogated from.¹⁶

6. One court acknowledged, for instance, that parties can derogate from the "reasonable time" period for notice set forth in article 39 (1) by stating, for example, that notice must be given "within five working days from the delivery."¹⁷ One arbitral tribunal stated that the parties can derogate from the two-year cut-off period provided in article 39 (2).¹⁸ A different tribunal stated that the parties are allowed to derogate from the concept of "delivery" as found in the Convention.¹⁹ Yet another court affirmed that article 55, relating to open-price contracts, is only applicable where the parties have not agreed to the contrary.²⁰ The Austrian Supreme Court²¹ concluded that article 57 also can be derogated from. An arbitral tribunal stated that article 6 of the Convention allows parties to derogate from the Convention's rules on liability.²²

EXPRESS EXCLUSION

7. The parties can expressly exclude application of the Convention²³ through, *inter alia*, the incorporation of standard contract terms containing a clause expressly excluding the Convention.²⁴ Express exclusions come in two varieties: exclusion with and exclusion without indication by the parties of the law applicable to their contract. Where the parties expressly exclude the Convention and specify the applicable law, which in some countries can occur in the course of legal proceedings,²⁵ the law applicable will be that designated by the rules of private international law of the forum,²⁶ resulting (in most countries)²⁷ in application of the law chosen by the parties.²⁸ Where the parties expressly exclude the Convention but do not designate the applicable law, the governing law is to be identified by means of the private international law rules of the forum.

8. One court stated that the Convention was applicable, despite the express exclusion in the applicable standard contract terms, of the Convention's antecedents—namely, the Uniform Law on the Formation of Contracts for the International Sale of Goods and the Convention relating to a Uniform Law on the International Sale of Goods.²⁹

IMPLICIT EXCLUSION

9. A number of decisions have considered whether application of the Convention can be excluded implicitly. Many tribunals expressly admit the possibility of an implicit exclusion,³⁰ as long as the parties' intent to exclude the Convention is clear³¹ and real.³² Although there is no express support for this view in the language of the Convention, a majority of delegations were opposed to a proposal advanced during the diplomatic conference which would have permitted total or partial exclusion of the Convention only if done "expressly".³³ An express reference to the possibility of an implicit exclusion was eliminated from the text of the Convention merely "lest the special reference to 'implied' exclusion might encourage courts to conclude, on insufficient grounds, that the Convention had been wholly excluded".³⁴ According to some court decisions³⁵ and an arbitral award,³⁶ however, the Convention cannot be excluded implicitly, based on the fact that the Convention does not expressly provide for that possibility.

10. Although the Convention's exclusion is to be evaluated on a case-by-case basis,³⁷ a variety of ways in which the parties can implicitly exclude the Convention—for example, by choosing the law³⁸ of a non-Contracting State as the law applicable to their contract³⁹—have been recognized.

11. More difficult problems are posed if the parties choose the law of a Contracting State to govern their contract. Some arbitral awards⁴⁰ and several court decisions⁴¹ suggest that such a choice amounts to an implicit exclusion of the Convention, at least when the parties refer to the "exclusive" applicability of the law of a Contracting State.⁴² Most court decisions⁴³ and arbitral awards,⁴⁴ however, take a different view. They mainly reason that the Convention is part of the law of the Contracting State whose law the parties chose;⁴⁵ and that the parties' choice remains meaningful because it identifies the national law to be used for filling gaps in the Convention.⁴⁶ According to this line of decisions, the choice of the law of a Contracting State, if made without particular reference to the domestic law of that State, does not exclude the Convention's applicability,⁴⁷ not even where the law chosen is that of a State within a Federal State,⁴⁸ at least not according to some courts.⁴⁹ Of course, if the parties clearly chose the domestic law of a Contracting State, the Convention must be deemed excluded.⁵⁰ According to one court, for the Convention to be considered implicitly excluded, it suffices that the Contract contains a clause making "Australian law applicable under exclusion of UNCITRAL law".⁵¹

12. According to some courts, the Convention is implicitly excluded by the parties' choice of "the law of a contracting state insofar as it differs from the law of the national law of another Contracting State."⁵²

13. The choice of a forum may also lead to the implicit exclusion of the Convention's applicability.⁵³ However, an exclusion of the application of the Convention cannot be inferred solely from the fact that the standard terms provided for the jurisdiction of the courts of a "Contracting State."⁵⁴ or that an arbitration clause in the contract permitted the arbitrators to apply the domestic law of a non-Contracting State.⁵⁵

14. The question has arisen whether the Convention's application is excluded if the parties litigate a dispute solely on the basis of domestic law, despite the fact that all requirements for applying the Convention are satisfied. Pursuant to various decisions, the mere fact that the parties based their arguments on domestic law does not by itself lead to the exclusion of the Convention.⁵⁶ According to different courts, if the parties are not aware of the Convention's applicability and argue on the basis of a domestic law merely because they wrongly believe that law applies, judges should apply the Convention.⁵⁷ According to yet other courts, the Convention is excluded where the parties argued their case solely under the domestic law of the forum.⁵⁸ Similarly, some arbitral tribunals disregarded the Convention where the parties had based their pleadings solely on domestic law.⁵⁹ Where the parties each base their pleadings on their respective domestic law, the Convention cannot be considered to have been excluded by the parties.⁶⁰

15. According to some courts, the fact that the parties incorporated an Incoterm into their agreement does not constitute an implicit exclusion of the Convention.⁶¹ According to a different court, the Convention can be excluded if the parties agree on terms that are incompatible with the Convention.⁶²

16. One arbitral tribunal expressly stated that "[w]hen a contractual clause governing a particular matter is in contradiction with the Convention, the presumption is that the parties intended to derogate from the Convention on that particular question. It does not affect the applicability of the Convention in general. The parties' specific agreement to reduce, to 12 months, the two-year time limit provided for in article 39 [of the Convention] does not lead the Arbitral Tribunal to another finding."⁶³

17. The party alleging exclusion of the Convention bears the burden of proof regarding the existence of an agreement on the exclusion of the Convention.⁶⁴

OPTING-IN

18. Although the Convention expressly empowers the parties to exclude its application in whole or in part, it does not declare whether the parties may designate the Convention as the law governing their contract when it would not otherwise apply. This issue was expressly addressed in the 1964 Hague Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, which contained a provision, article 4, that gave the parties the power to "opt in". The fact that the Convention contains no comparable provision does not necessarily mean that the parties are prohibited from "opting in". A proposal by the former German Democratic Republic during the diplomatic conference⁶⁵ that the Convention should apply even where the preconditions for its application were not met, provided the parties wanted it to be applicable, was rejected; it was noted during the discussion, however, that the proposed text was unnecessary in that the principle of party autonomy was sufficient to allow the parties to "opt in" to the Convention.

Notes

¹For this approach see, for example, *Gerechtshof Arnhem*, the Netherlands, 9 March 2010 (docket No. 104.002.936, unpublished); *Kantonsgericht St. Gallen*, Switzerland, 15 January 2010, available on the Internet at www.globalsaleslaw.org; *Oberlandesgericht Hamm*, Germany, 2 April 2009, available on the Internet at www.cisg-online.ch; *Tribunale di Forlì*, Italy, 16 February 2009, English translation available on the Internet at www.cisg.law.pace.edu; *CLOUT* case No. 1203 [*Rechtbank Breda*, the Netherlands, 16 January 2009], English translation available on the Internet at www.cisg.law.pace.edu; *Polymeles Protodikio Athinon*, Greece, 2009 (docket No. 2282/2009), English translation available on the Internet at www.cisg.law.pace.edu; *Polimeles Protodikio Athinon*, Greece, 2009 (docket No. 4505/2009), English translation available on the Internet at www.cisg.law.pace.edu; *CLOUT* case No. 867 [*Tribunale di Forlì*, Italy, 11 December 2008], English translation available on the Internet at www.cisg.law.pace.edu; *Kantonsgericht Zug*, Switzerland, 27 November 2008, English translation available on the Internet at www.cisg.law.pace.edu; *Hof van Beroep Ghent*, Belgium, 14 November 2008, English translation available on the Internet at www.cisg.law.pace.edu; U.S. District Court, New Jersey, United States, 7 October 2008, available on the Internet at www.cisg.law.pace.edu; U.S. District Court, Southern District of Florida, United States, 19 May 2008, available on the Internet at www.cisg.law.pace.edu; *Oberlandesgericht Innsbruck*, Austria, 18 December 2007, English translation available on the Internet at www.cisg.law.pace.edu; *Oberlandesgericht Linz*, Austria, 24 September 2007, English translation available on the Internet at www.cisg.law.pace.edu; *Handelsgericht Kanton Aargau*, Switzerland, 20 September 2007, available on the Internet at www.cisg-online.ch; *CLOUT* case No. 1552 [*Audiencia Provincial de Valencia*, sección 8ª, Spain, 13 March 2007], English translation available on the Internet at www.cisg.law.pace.edu; *CLOUT* case No. 933 [*Bundesgericht*, Switzerland, 20 December 2006]; *CLOUT* case No. 824 [*Oberlandesgericht Köln*, Germany, 24 May 2006]; *Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry*, Russian Federation, 13 April 2006, English translation available on the Internet at www.cisg.law.pace.edu; *Oberlandesgericht Köln*, Germany, 3 April 2006, English translation available on the Internet at www.cisg.law.pace.edu; *CLOUT* case No. 749 [*Oberster Gerichtshof*, Austria, 21 June 2005]; *CLOUT* case No. 748 [*Oberster Gerichtshof*, Austria, 24 May 2005]; *CLOUT* case No. 905 [*Tribunal cantonal du Valais*, Switzerland, 21 February 2005]; *CLOUT* case No. 651 [*Tribunale di Padova*, Italy, 11 January 2005]; *Oberster Gerichtshof*, Austria, 21 April 2004, English translation available on the Internet at www.cisg.law.pace.edu; *Tribunale di Padova*, Italy, 25 February 2004, English translation available on the Internet at www.cisg.law.pace.edu; *Bundesgericht*, Switzerland, 19 February 2004, available on the Internet at www.cisg-online.ch; *CLOUT* case No. 596 [*Oberlandesgericht Zweibrücken*, Germany, 2 February 2004] (see full text of the decision); *CLOUT* case No. 534 [*Oberster Gerichtshof*, Austria, 17 December 2003] (see full text of the decision); *CLOUT* case No. 1136 [*China International Economic and Trade Arbitration Commission*, People's Republic of China, 10 December 2003], English translation available on the Internet at www.cisg.law.pace.edu; *CLOUT* case No. 889 [*Handelsgericht Zürich*, Switzerland, 24 October 2003]; *Obergericht Thurgau*, Switzerland, 11 September 2003, available on the Internet at www.cisg-online.ch; *Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry*, Russian Federation, 15 August 2003, English translation available on the Internet at www.cisg.law.pace.edu; *Landgericht Köln*, Germany, 25 March 2003, English translation available on the Internet at www.cisg.law.pace.edu; *Kantonsgericht Schaffhausen*, Switzerland, 23 April 2002, English translation available on the Internet at www.cisg.law.pace.edu; *CLOUT* case No. 880 [*Tribunal cantonal du Vaud*, Switzerland, 11 April 2002] (see the full text of the decision); *Rechtbank van Koophandel Veurne*, Belgium, 25 April 2001, English translation available on the Internet at www.cisg.law.pace.edu; *CLOUT* case No. 998 [*Højesteret*, Denmark, 15 February 2001], English translation available on the Internet at www.cisg.law.pace.edu; *CLOUT* case No. 378 [*Tribunale di Vigevano*, Italy, 12 July 2000]; *CLOUT* case No. 338 [*Oberlandesgericht Hamm*, Germany, 23 June 1998]; *CLOUT* case No. 223 [*Cour d'appel de Paris*, France, 15 October 1997] (see full text of the decision); *CLOUT* case No. 230 [*Oberlandesgericht Karlsruhe*, Germany, 25 June 1997] (see full text of the decision); *CLOUT* case No. 190 [*Oberster Gerichtshof*, Austria, 11 February 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. 211 [*Tribunal cantonal de Vaud*, Switzerland, 11 March 1996] (*Aluminum granules*) (see full text of the decision); *CLOUT* case No. 170 [*Landgericht Trier*, Germany, 12 October 1995] (see full text of the decision); *CLOUT* case No. 106 [*Oberster Gerichtshof*, Austria, 10 November 1994] (see full text of the decision); *CLOUT* case No. 199 [*Tribunal cantonal du Valais*, Switzerland, 29 June 1994] (see full text of the decision); *CLOUT* case No. 317 [*Oberlandesgericht Karlsruhe*, Germany, 20 November 1992] (see full text of the decision).

²See, for example, *CLOUT* case No. 956 [*Federal Court of Australia*, Australia, 20 May 2009 (*Olivaylle Pty Ltd v. Flottweg AG* formerly *Flottweg GmbH & Co. KGAA*)], [2009] FCA 522, (2009) 255 ALR 632, available on the Internet at www.cisg.law.pace.edu.

³*CLOUT* case No. 1025 [*Cour de cassation*, France, 3 November 2009], English translation available on the Internet at www.cisg.law.pace.edu; *Oberlandesgericht Linz*, Austria, 23 January 2006, English translation available on the Internet at www.cisg.law.pace.edu; *CLOUT* case No. 904 [*Tribunal cantonal du Jura*, Switzerland, 3 November 2004]; *CLOUT* case No. 575 [*U.S. Court of Appeals (5th Circuit)*, United States, 11 June 2003, corrected on 7 July 2003] (see full text of the decision); *CLOUT* case No. 433 [*U.S. District Court, Northern District of California*, United States, 27 July 2001], *Federal Supplement (2nd Series)* vol. 164, p. 1142 (*Asante Technologies v. PMC-Sierra*), also available on the Internet at www.cisg.law.pace.edu; *Tribunal de Commerce Namur*, Belgium, 15 January 2002, available on the Internet at www.law.kuleuven.be.

⁴U.S. District Court, Southern District of New York, United States, 11 January 2011, unpublished; *Oberster Gerichtshof*, Austria, 4 July 2007, English translation available on the Internet at www.cisg.law.pace.edu; *Oberlandesgericht Linz*, Austria, 23 January 2006, English translation available on the Internet at www.cisg.law.pace.edu.

⁵U.S. District Court, Middle District of Pennsylvania, United States, 16 August 2005, available on the Internet at www.cisg.law.pace.edu.

⁶*Guangzhou Intermediate People's Court*, People's Republic of China, 20 October 2014, (*WS Inventin Trade GmbH v. Guangzhou Glomarket Trading Co. Ltd*), (2013) *Hui Zhong Fa Min Si Zhong Zi* No. 91 Civil Judgment, available on the Internet at www.court.gov.cn; *CLOUT* case No. 828 [*Hof 's-Hertogenbosch*, the Netherlands, 2 January 2007].

⁷U.S. District Court, Eastern District of California, United States, 21 January 2010, available on the Internet at www.cisg.law.pace.edu.

⁸See *Supreme People's Court*, People's Republic of China, 30 June 2014, (*ThyssenKrupp Metallurgical Products GmbH v. Sinochem International (Overseas) Pte Ltd*), (2013) *Min Si Zhong Zi* No. 35 Civil Judgment, available on the Internet at www.court.gov.cn; *Supreme People's Court*, People's Republic of China, 30 April 2014, (*C & J Sheet Metal Co. Ltd v. Wenzhou Chenxing Machinery Co. Ltd*), (2014) *Min Shen Zi* No. 266 Civil Ruling, available on the Internet at www.court.gov.cn; *Supreme People's Court*, People's Republic of China, 24 December 2012, (*Egypt Elborsh Co. v. Geng Qunying et al.*), (2012) *Min Shen Zi* No. 1402 Civil Ruling, available on the Internet at www.court.gov.cn, reversing *Hebei High People's Court*, (2010) *Ji Min San Zhong Zi* No. 59; *High People's Court of Zhejiang Province*,

People's Republic of China, 20 August 2014, (Grand Resources Group Co. Ltd v. STX Corp.) (2014) *Zhe Shang Wai Zhong Zi* No. 48 Civil Judgment, available on the Internet at www.ccmt.org.cn; High People's Court of Beijing Municipality, People's Republic of China, 18 March 2005, (Beijing Chengguang Huilong Electronic Technology Co. Ltd v Thales Communications (France) Co. Ltd), (2004) *Gao Min Zhong Zi* No. 576 Civil Judgment. Cf High People's Court of Shanghai Municipality, available on the Internet at www.ccmt.org.cn, People's Republic of China, 17 May 2007, (H2O Recreation Inc. v Donghui Plastic (Shanghai) Co. Ltd) (2007) *Hu Gao Min Si (Shang) Zhong Zi* No. 6 Civil Judgment, available on the Internet at www.ccmt.org.cn, English translation available on the Internet at www.cisg.law.pace.edu.

⁹For a reference to this principle, see CLOUT case No. 229 [Bundesgerichtshof, Germany, 4 December 1996] (see full text of the decision).

¹⁰For an express reference to the Convention's non-mandatory nature, see Obergericht Kanton Bern, Switzerland, 19 May 2008, available on the Internet at www.cisg-online.ch; CLOUT case No. 1401 [Tribunal cantonal de Vaud, Switzerland, 24 November 2004]; CLOUT case No. 904 [Tribunal cantonal du Jura, Switzerland, 3 November 2004]; CLOUT case No. 880 [Tribunal cantonal du Vaud, Switzerland, 11 April 2002] (see the text of the decision); CLOUT case No. 647 [Cassazione civile, Italy, 19 June 2000], also in *Giurisprudenza italiana*, 2001, 236; see CLOUT case No. 425 [Oberster Gerichtshof, Austria, 21 March 2000], also in *Internationales Handelsrecht*, 2001, 41; CLOUT case No. 240 [Oberster Gerichtshof, Austria, 15 October 1998] (see full text of the decision); Handelsgericht Wien, Austria, 4 March 1997, unpublished; CLOUT case No. 199 [Kantonsgericht Wallis, Switzerland, 29 June 1994], also in *Zeitschrift für Walliser Rechtsprechung*, 1994, 126.

¹¹CLOUT case No. 432 [Landgericht Stendal, Germany, 12 October 2000], also in *Internationales Handelsrecht*, 2001, 32.

¹²For decisions referring to the fact that parties may exclude the application of the Convention or derogate from or vary the effect of most of its provisions, see Zivilgericht Basel-Stadt, Switzerland, 8 November 2006, English translation available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 30 June 2006, English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Linz, Austria, 23 January 2006, English translation available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 16 March 2005, English translation available on the Internet at www.cisg.law.pace.edu; Handelsgericht St. Gallen, Switzerland, 11 February 2003, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 574 [U.S. District Court, Northern District of Illinois, United States, 29 January 2003]; CLOUT case No. 880 [Tribunal cantonal du Vaud, Switzerland, 11 April 2002] (see the full text of the decision).

¹³See article 96: "A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State."

¹⁴For an express reference in case law to the fact that the parties are not allowed to exclude article 12, see Oberlandesgericht Linz, Austria, 23 January 2006, English translation available on the Internet at www.cisg.law.pace.edu.

¹⁵CLOUT case No. 651 [Tribunale di Padova, Italy, 11 January 2005].

¹⁶*Ibid.*

¹⁷Rechtbank Arnhem, the Netherlands, 11 February 2009, English translation available on the Internet at www.cisg.law.pace.edu; see also Landgericht Gießen, Germany, 5 July 1994, *Neue Juristische Wochenschrift Rechtsprechungs-Report*, 1995, 438.

¹⁸Court of Arbitration of the International Chamber of Commerce, France, 2002 (Arbitral award No. 11333), available on the Internet at www.cisg.law.pace.edu.

¹⁹Zivilgericht Basel-Stadt, Switzerland, 8 November 2006, English translation available on the Internet at www.cisg.law.pace.edu.

²⁰CLOUT case No. 151 [Cour d'appel de Grenoble, France, 26 April 1995].

²¹CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994].

²²Tribunal of International Commercial Arbitration at the Ukraine Chamber of Commerce and Trade, Ukraine, 2005 (Arbitral award No. 48), English translation available on the Internet at www.cisg.law.pace.edu.

²³For cases in which the Convention was expressly excluded, see Foreign Trade Court of Arbitration attached to the Serbian Chamber of Commerce, Serbia, 17 August 2009, English translation available on the Internet at www.cisg.law.pace.edu; Rechtbank Utrecht, the Netherlands, 15 April 2009, English translation available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 5 November 2004, English translation available on the Internet at www.cisg.law.pace.edu. For cases in which reference was made to the parties' undisputed possibility of excluding the Convention expressly, see, for example, CLOUT case No. 1057 [Oberster Gerichtshof, Austria, 2 April 2009], English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Hamm, Germany, 2 April 2009, available on the Internet at www.cisg-online.ch; CLOUT case No. 867 [Tribunale di Forlì, Italy, 11 December 2008], English translation available on the Internet at www.cisg.law.pace.edu.

²⁴Supreme Court of New South Wales, Australia, 24 August 2012 (*Venter v. Ilona MY Ltd*), [2012] NSWSC 1029 at [28] (exclusive jurisdiction clause); Oberlandesgericht Oldenburg, Germany, 20 December 2007, English translation available on the Internet at www.cisg.law.pace.edu; Oberster Gerichtshof, Austria, 4 July 2007, English translation available on the Internet at www.cisg.law.pace.edu. For a simple reference to the possibility of excluding the Convention expressly by resorting to standard contract terms, see CLOUT case No. 904 [Tribunal cantonal du Jura, Switzerland, 3 November 2004].

²⁵This is true for instance in Germany, as pointed out in case law; see, for example, CLOUT case No. 122 [Oberlandesgericht Köln, Germany, 26 August 1994]; CLOUT case No. 292 [Oberlandesgericht Saarbrücken, Germany, 13 January 1993] (see full text of the decision); this is also true in Switzerland, see CLOUT case No. 331 [Handelsgericht Kanton Zürich, Switzerland, 10 February 1999], also in *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 2000, 111.

²⁶See CLOUT case No. 231 [Bundesgerichtshof, Germany, 23 July 1997] (see full text of the decision); Oberlandesgericht Frankfurt, Germany, 15 March 1996, available on the Internet at www.cisg-online.ch.

²⁷Where the rules of private international law of the forum are those laid down either in the 1955 Hague Convention on the Law Applicable to International Sales of Goods Convention, 510 U.N.T.S. 149, in the 1980 Rome Convention on the Law Applicable to Contractual Obligations (United Nations, *Treaty Series*, vol. 1605, No. 28023), in the Rome I Regulation, or in the 1994 Inter-American Convention on the

Law Applicable to Contractual Obligations (Organization of American States Fifth Inter-American Specialized Conference on Private International Law: Inter-American Convention on the Law Applicable to International Contracts, March 17, 1994, OEA/Ser.K/XXI.5, CIDIP-V/doc.34/94 rev. 3 corr. 2, March 17, 1994, available on the Internet at www.oas.org), the law chosen by the parties will govern.

²⁸Foreign Trade Court of Arbitration attached to the Serbian Chamber of Commerce, Serbia, 17 August 2009, English translation available on the Internet at www.cisg.law.pace.edu.

²⁹CLOUT case No. 826 [Oberlandesgericht München, Germany, 19 October 2006].

³⁰See Cour d'appel de Rouen, France, 26 September 2013, available in French on the Internet at www.cisg-france.org; CLOUT case No. 1057 [Oberster Gerichtshof, Austria, 2 April 2009], English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Hamm, Germany, 2 April 2009, available on the Internet at www.cisg-online.ch; Obergericht des Kantons Aargau, Switzerland, 3 March 2009, at www.cisg-online.ch; Tribunale di Forlì, Italy, 16 February 2009, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 1020 [Foreign Trade Court of Arbitration attached to the Serbian Chamber of Commerce, Serbia, 28 January 2009], English translation available on the Internet at www.cisg.law.pace.edu; *Polimeles Protodikio Athinon*, Greece, 2009 (docket No. 4505/2009), English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 867 [Tribunale di Forlì, Italy, 11 December 2008], English translation available on the Internet at www.cisg.law.pace.edu; Obergericht Kanton Bern, Switzerland, 19 May 2008, available on the Internet at www.cisg-online.ch; Oberster Gerichtshof, Austria, 4 July 2007, English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Linz, Austria, 23 January 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 651 [Tribunale di Padova, Italy, 11 January 2005]; Tribunale di Padova, Italy, 25 February 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 534 [Oberster Gerichtshof, Austria, 17 December 2003] (see full text of the decision); CLOUT case No. 886 [Handelsgericht St. Gallen, Switzerland, 3 December 2002] (Sizing machine case), *Schweizerische Zeitschrift für internationales und europäisches Recht*, 2003, 104, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 880 [Tribunal cantonal du Vaud, Switzerland, 11 April 2002] (see the text of the decision); Court of Arbitration of the International Chamber of Commerce, France, 2002 ((Arbitral award No. 11333), available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 605 [Oberster Gerichtshof, Austria, 22 October 2001], also available on the Internet at www.cisg.at; Cour de cassation, France, 26 June 2001, Unilex; CLOUT case No. 483 [Rechtbank van Koophandel Kortrijk, Belgium, 19 April 2001], available on the Internet at www.law.kuleuven.be; CLOUT case No. 483 [Audiencia Provincial de Alicante, Spain, 16 November 2000]; CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000]; Oberlandesgericht Dresden, Germany, 27 December 1999, Unilex; CLOUT case No. 273 [Oberlandesgericht München, Germany, 9 July 1997] (see full text of the decision); Landgericht München, Germany, 29 May 1995, *Neue Juristische Wochenschrift*, 1996, 401 f.; CLOUT case No. 136 [Oberlandesgericht Celle, Germany, 24 May 1995] (see full text of the decision). See also the decisions cited in the following notes.

³¹Oberlandesgericht Linz, Austria, 23 January 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 904 [Tribunal cantonal du Jura, Switzerland, 3 November 2004]; CLOUT case No. 575 [U.S. Court of Appeals (5th Circuit), United States, 11 June 2003, corrected on 7 July 2003] (see full text of the decision); CLOUT case No. 605 [Oberster Gerichtshof, Austria, 22 October 2001], also available on the Internet at www.cisg.at.

³²CLOUT case No. 904 [Tribunal cantonal du Jura, Switzerland, 3 November 2004].

³³*Official Records of the United Nations Conference on Contracts for the International Sale of Goods*, Vienna, 10 March–11 April 1980 (United Nations publication, Sales No. E.81.IV.3), 85–86.

³⁴*Ibid.* article 17.

³⁵See U.S. District Court, New Jersey, United States, 7 October 2008, available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 845 [U.S. District Court, Eastern District Michigan, United States, 28 September 2007]; CLOUT case No. 847 [U.S. District Court, Minnesota, United States, 31 January 2007]; U.S. District Court, Southern District of New York, United States, 23 August 2006, available on the Internet at www.cisg.law.pace.edu; U.S. District Court, Middle District of Pennsylvania, United States, 16 August 2005, available on the Internet at www.cisg.law.pace.edu; U.S. District Court, New Jersey, United States, 15 June 2005, available on the Internet at www.cisg.law.pace.edu; Kantonsgericht Zug, Switzerland, 11 December 2003, available on the Internet at www.cisg-online.ch; Landgericht Landshut, Germany, 5 April 1995, Unilex; Court of International Trade, United States, 24 October 1989, 726 Fed. Supp. 1344 (*Orbisphere Corp. v. United States*), available on the Internet at www.cisg.law.pace.edu.

³⁶See CLOUT case No. 474 [Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 24 January 2000], also referred to on the Internet at www.cisg.law.pace.edu.

³⁷For this statement, see Oberlandesgericht Linz, Austria, 23 January 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 904 [Tribunal cantonal du Jura, Switzerland, 3 November 2004] (see full text of decision).

³⁸Whether such a choice is to be acknowledged at all depends on the rules of private international law of the forum.

³⁹See Oberlandesgericht Linz, Austria, 23 January 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 651 [Tribunale di Padova, Italy, 11 January 2005] (see full text of the decision); CLOUT case No. 904 [Tribunal cantonal du Jura, Switzerland, 3 November 2004] (see full text of decision); CLOUT case No. 574 [U.S. District Court, Northern District of Illinois, United States, 29 January 2003]; CLOUT case No. 49 [Oberlandesgericht Düsseldorf, Germany, 2 July 1993] (see full text of the decision); see also CLOUT case No. 483 [Audiencia Provincial de Alicante, Spain, 16 November 2000] (the parties implicitly excluded application of the Convention by providing that their contract should be interpreted in accordance with the law of a Non-contracting State and by submitting their petitions, statements of defense, and counterclaims in accordance with the domestic law of the forum (a Contracting State)).

⁴⁰See Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 16 March 2005, English translation available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 12 April 2004, English translation available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 11 October 2002, English translation available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 6 September 2002, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 92 [Ad Hoc Arbitration Tribunal, Italy, 19 April 1994].

⁴¹See Supreme People's Court, People's Republic of China, 20 July 1999 (Zheng Hong Li Ltd, Hong Kong v. Jill Bert Ltd), (1998) *Jing Zhong Zi* No. 208 Civil Judgment, English translation available on the Internet at www.cisg.law.pace.edu; Hof 's-Hertogenbosch, the Netherlands, 13 November 2007, unpublished; CLOUT case No. 904 [Tribunal cantonal du Jura, Switzerland, 3 November 2004] (see full text of decision); Cour d'appel de Colmar, France, 26 September 1995, Unilex; CLOUT case No. 326 [Kantonsgericht Zug, Switzerland, 16 March 1995]; CLOUT case No. 54 [Tribunale Civile de Monza, Italy, 14 January 1993].

⁴²Hof 's-Hertogenbosch, the Netherlands, 13 November 2007, unpublished.

⁴³High People's Court of Tianjin Municipality, People's Republic of China, 25 November 2013, (Kemlon International v. Pang Languo), (2013) *Jin Gao Min Si Zhong Zi* No. 91, Civil Judgment, available on the Internet at www.ccm.org.cn; High People's Court of Zhejiang Province, People's Republic of China, 11 September 2013, (Zhejiang Cereals, Oils & Foodstuffs Import and Export Co. Ltd v. Heltiji Foodstuffs Ltd), (2013) *Zhe Shang Wai Zhong Zi* No. 83 Civil Judgment, available on the Internet at www.court.gov.cn; Bundesgerichtshof, Germany, 11 May 2010, available on the Internet at www.cisg-online.ch; CLOUT case No. 1057 [Oberster Gerichtshof, Austria, 2 April 2009], English translation available on the Internet at www.cisg.law.pace.edu; Obergericht des Kantons Aargau, Switzerland, 3 March 2009, at www.cisg-online.ch; *Polimeles Protodikio Athinon*, Greece, 2009 (docket No. 4505/2009), English translation available on the Internet at www.cisg.law.pace.edu; Rechtbank Rotterdam, the Netherlands, 5 November 2008, unpublished; CLOUT case No. 1232 [Oberlandesgericht Stuttgart, Germany, 31 March 2008], English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 845 [U.S. District Court, Eastern District Michigan, United States, 28 September 2007]; Hof van Beroep Antwerpen, Belgium, 24 April 2006, English translation available on the Internet at www.cisg.law.pace.edu; Rechtbank van Koophandel Hasselt, Belgium, 15 February 2006, English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Linz, Austria, 23 January 2006, English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Linz, Austria, 8 August 2005, English translation available on the Internet at www.cisg.law.pace.edu; Oberster Gerichtshof, Austria, 26 January 2005, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 651 [Tribunale di Padova, Italy, 11 January 2005] (see full text of the decision); CLOUT case No. 1401 [Tribunal cantonal de Vaud, Switzerland, 24 November 2004]; Hof van Beroep Ghent, Belgium, 20 October 2004, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Kiel, Germany, 27 July 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 534 [Oberster Gerichtshof, Austria, 17 December 2003] (see full text of the decision); CLOUT case No. 575 [U.S. Court of Appeals (5th Circuit), United States, 11 June 2003, corrected on 7 July 2003]; CLOUT case No. 574 [U.S. District Court, Northern District of Illinois, United States, 29 January 2003]; CLOUT case No. 886 [Handelsgericht St. Gallen, Switzerland, 3 December 2002] (Sizing machine case), *Schweizerische Zeitschrift für internationales und europäisches Recht*, 2003, 104, English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Zweibrücken, Germany, 26 July 2002, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 881 [Handelsgericht Zürich, Switzerland, 9 July 2002] (see full text of the decision); Hof van Beroep Ghent, 15 May 2002, available on the Internet at www.law.kuleuven.be; CLOUT case No. 447 [U.S. District Court, Southern District of New York, United States, 26 March 2002]; CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002] (see full text of the decision approving lower appeals court reasoning); CLOUT case No. 482 [Cour d'appel de Paris, France, 6 November 2001]; CLOUT case No. 605 [Oberster Gerichtshof, Austria, 22 October 2001], also available on the Internet at www.cisg.at; CLOUT case No. 631 [Supreme Court of Queensland, Australia, 17 November 2000]; CLOUT case No. 429 [Oberlandesgericht Frankfurt, Germany, 30 August 2000], also available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 630 [Court of Arbitration of the International Chamber of Commerce, Zurich, Switzerland, July 1999] (see full text of the decision); CLOUT case No. 270 [Bundesgerichtshof, Germany, 25 November 1998]; CLOUT case No. 297 [Oberlandesgericht München, Germany, 21 January 1998] (see full text of the decision); CLOUT case No. 220 [Kantonsgericht Nidwalden, Switzerland, 3 December 1997]; CLOUT case No. 236 [Bundesgerichtshof, Germany, 23 July 1997]; CLOUT case No. 287 [Oberlandesgericht München, Germany, 9 July 1997]; CLOUT case No. 230 [Oberlandesgericht Karlsruhe, Germany, 25 June 1997] (see full text of the decision); CLOUT case No. 214 [Handelsgericht des Kantons Zürich, Switzerland, 5 February 1997] (see full text of the decision); CLOUT case No. 206 [Cour de cassation, France, 17 December 1996] (see full text of the decision); CLOUT case No. 409 [Landgericht Kassel, Germany, 15 February 1996], also in *Neue Juristische Wochenschrift Rechtsprechungs-Report*, 1996, 1146 f.; CLOUT case No. 125 [Oberlandesgericht Hamm, Germany, 9 June 1995]; Rechtbank s'-Gravenhage, the Netherlands, 7 June 1995, *Nederlands Internationaal Privaatrecht*, 1995, No. 524; CLOUT case No. 167 [Oberlandesgericht München, Germany, 8 February 1995] (see full text of the decision); CLOUT case No. 120 [Oberlandesgericht Köln, Germany, 22 February 1994]; CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993]; CLOUT case No. 48 [Oberlandesgericht Düsseldorf, Germany, 8 January 1993].

⁴⁴See Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 22 October 2004, English translation available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 17 September 2003, English translation available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 25 June 2003, English translation available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 16 June 2003, English translation available on the Internet at www.cisg.law.pace.edu; Court of Arbitration of the International Chamber of Commerce, France, 2002 (Arbitral award No. 11333), available on the Internet at www.cisg.law.pace.edu; Court of Arbitration of the International Chamber of Commerce, 1999 (Arbitral award No. 9187), Unilex; CLOUT case No. 166 [Schiedsgericht der Handelskammer Hamburg, Germany, 21 March, 21 June 1996]; Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 17 November 1995, Unilex; Court of Arbitration of the International Chamber of Commerce, France, 1995 (Arbitral award No. 8324), *Journal du droit international*, 1996, 1019 ff.; Court of Arbitration of the International Chamber of Commerce, France, 1994 (Arbitral award No. 7844), Unilex; CLOUT case No. 302 [Court of Arbitration of the International Chamber of Commerce, France, 1994 (Arbitral award No. 7660)], Unilex; CLOUT case No. 300 [Court of Arbitration of the International Chamber of Commerce, France, 1994 (Arbitral award No. 7565)], *Journal du droit international*, 1995, 1015 ff.; CLOUT case No. 103 [Court of Arbitration of the International Chamber of Commerce, 1993 (Arbitral award No. 6653)]; CLOUT case No. 93 [Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft—Wien, Austria, 15 June 1994].

⁴⁵See, for example, CLOUT case No. 1513 [Cour de cassation, France, 13 September 2011]; CLOUT case No. 1057 [Oberster Gerichtshof, Austria, 2 April 2009], English translation available on the Internet at www.cisg.law.pace.edu; Oberster Gerichtshof, Austria, 26 January 2005, English translation available on the Internet at www.cisg.law.pace.edu; Oberster Gerichtshof, Austria, 21 April 2004, English translation available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 20 April 2004, English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Zweibrücken, Germany, 26 July 2002, English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Rostock, Germany, 10 October 2001, English translation available on the Internet at www.cisg.law.pace.edu.

⁴⁶CLOUT case No. 575 [U.S. Court of Appeals (5th Circuit), United States, 11 June 2003, corrected on 7 July 2003] (B.P. Petroleum International Ltd v. Empresa Estatal Petroleos de Ecuador (Petroecuador)), U.S. App. LEXIS 12013, June 11, 2003, available on the Internet at www.cisg.law.pace.edu. Note, however, that this line of reasoning was not explicitly relied upon in the Chinese court decisions cited above, and was inconsistent with Qingdao Intermediate People's Court, People's Republic of China, 24 August 2012, (Japon Elektronik Teknoloji Ticaret Limited Sirketi v. Qingdao Hisense Import and Export Co. Ltd), reported at the Gazette of the Supreme People's Court, Vol. 2013, at page 540 (CISG not applied to a Sino-Turkish contract for sale of goods where both parties chose during court proceedings the PRC law to govern the contract).

⁴⁷Oberlandesgericht Rostock, Germany, 10 October 2001, English translation available on the Internet at www.cisg.law.pace.edu. One court stated that, even though the choice of the law of a Contracting State without any reference to its domestic law may not per se amount to an implicit exclusion of the Convention, it may be looked at as one factor from which to derive the parties' intention to exclude it, when the law chosen is that of a Contracting State different from those where the parties have their place of business; CLOUT case No. 1401 [Tribunal cantonal de Vaud, Switzerland, 24 November 2004].

⁴⁸CLOUT case No. 847 [U.S. District Court, Minnesota, United States, 31 January 2007]; U.S. District Court, Middle District of Pennsylvania, United States, 16 August 2005, available on the Internet at www.cisg.law.pace.edu; U.S. District Court, New Jersey, United States, 15 June 2005, available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 574 [U.S. District Court, Northern District of Illinois, United States, 29 January 2003].

⁴⁹*Contra* United States District Court, Rhode Island, United States, 30 January 2006, available on the Internet at www.cisg.law.pace.edu (the choice of the law of Rhode Island excludes the applicability of the Convention).

⁵⁰U.S. District Court, Southern District of New York, United States, 29 May 2009, available on the Internet at www.cisg.law.pace.edu; Obergericht des Kantons Aargau, Switzerland, 3 March 2009, at www.cisg-online.ch; Oberster Gerichtshof, Austria, 4 July 2007, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Kiel, Germany, 27 July 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 429 [Oberlandesgericht Frankfurt, Germany, 30 August 2000], also available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Frankfurt, Germany, 15 March 1996, available on the Internet at www.cisg-online.ch.

⁵¹CLOUT case No. 956 [Federal Court of Australia, Australia, 20 May 2009].

⁵²CLOUT case No. 1057 [Oberster Gerichtshof, Austria, 2 April 2009], English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Linz, Austria, 23 January 2006, English translation available on the Internet at www.cisg.law.pace.edu.

⁵³CLOUT case No. 1232 [Oberlandesgericht Stuttgart, Germany, 31 March 2008], English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Linz, Austria, 23 January 2006, English translation available on the Internet at www.cisg.law.pace.edu.

⁵⁴CLOUT case No. 1511 [Cour d'appel de Rennes, France, 9 May 2012]; Oberlandesgericht Stuttgart, Germany, 31 March 2008, English translation available on the Internet at www.cisg.law.pace.edu.

⁵⁵High People's Court of Zhejiang Province, People's Republic of China, 20 August 2014, (Grand Resources Group Co. Ltd v. STX Corp.) (2014) *Zhe Shang Wai Zhong Zi* No. 48 Civil Judgment, available on the Internet at www.ccmt.org.cn

⁵⁶See Landgericht Bamberg, Germany, 23 October 2006, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Saarbrücken, Germany, 2 July 2002, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000]; CLOUT case No. 125 [Oberlandesgericht Hamm, Germany, 9 June 1995]; Landgericht Landshut, Germany, 5 April 1995, Unilex.

⁵⁷See Oberlandesgericht Linz, Austria, 23 January 2006, English translation available on the Internet at www.cisg.law.pace.edu; Tribunale di Padova, Italy, 25 February 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 596 [Oberlandesgericht Zweibrücken, Germany, 2 February 2004] (see full text of the decision); CLOUT case No. 136 [Oberlandesgericht Celle, Germany, 24 May 1995] (see full text of the decision).

⁵⁸Corte Suprema, Chile, 22 September 2008, English summary available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 733 [Tribunal Supremo, Spain, 24 February 2006], English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 837 [Cour de cassation, France, 25 October 2005]; High Commercial Court, Serbia, 9 July 2004, English translation available on the Internet at www.cisg.law.pace.edu; Cour de cassation, France, 26 June 2001, Unilex; Oregon [State] Court of Appeals, United States, 12 April 1995, 133 Or. App. 633.

⁵⁹China International Economic and Trade Arbitration Commission, People's Republic of China, 2006 (Arbitral award No. CISG/2006/17), English translation available on the Internet at www.cisg.law.pace.edu; Court of Arbitration of the International Chamber of Commerce, October 1995 (Arbitral award No. 8453), *ICC Court of Arbitration Bulletin*, 2000, 55.

⁶⁰CLOUT case No. 590 [Landgericht Saarbrücken, Germany, 1 June 2004] (see full text of the decision).

⁶¹CLOUT case No. 605 [Oberster Gerichtshof, Austria, 22 October 2001], also available on the Internet at www.cisg.at; Rechtbank van Koophandel Kortrijk, Belgium, 19 April 2001, available on the Internet at www.law.kuleuven.be.

⁶²Obergericht Kanton Bern, Switzerland, 19 May 2008, available on the Internet at www.cisg-online.ch.

⁶³Court of Arbitration of the International Chamber of Commerce, France, 2002 (Arbitral award No. 11333), available on the Internet at www.cisg.law.pace.edu; see also CLOUT case No. 237 [Arbitration Institute of the Stockholm Chamber of Commerce, Sweden, 5 June 1998], also available on the Internet at www.cisg.law.pace.edu.

⁶⁴Oberlandesgericht Linz, Austria, 23 January 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 482 [Cour d'appel de Paris, France, 6 November 2001].

⁶⁵See *Official Records of the United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980* (United Nations publication, Sales No. E.81.IV.3), 86, 252–253.