

### Article 92

(1) A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be bound by Part III of this Convention.

(2) A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

### OVERVIEW

1. Article 92 (1) of the Convention permits a State to make a declaration at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II (formation of the contract) or Part III (obligations under the contract) of the Convention.

2. Sweden made an article 92 declaration providing that, “[w]ith reference to article 92, Sweden will not be bound by Part II of the Convention (Formation of the Contract).” (15 December 1987).<sup>1</sup> In October 2009, the Ministry of Justice of Sweden announced it would adopt Part II by withdrawing this article 92 declaration.<sup>2</sup>

3. Norway made an article 92 declaration providing that, “[i]n accordance with article 92, paragraph (1) Norway will not be bound by Part II of this Convention (Formation of the Contract).” (20 July 1988).<sup>3</sup> At the time this is written, Norway is considering withdrawing its article 92 declaration.<sup>4</sup>

4. Finland made an article 92 declaration providing that, “Finland will not be bound by Part II of the Convention.” (15 December 1987).<sup>5</sup> In October 2009 the Ministry of Justice of Finland announced that Finland would adopt Part II by withdrawing its article 92 declaration.<sup>6</sup>

5. Denmark made an article 92 declaration providing that, “Denmark will not be bound by Part II of the Convention.” (14 February 1989).<sup>7</sup> In October 2009 the Ministry of Justice of Denmark announced that Denmark would adopt Part II and withdraw its article 92 declaration.<sup>8</sup>

6. See article 97 regarding the withdrawal of declarations of reservations, and the effective date of such withdrawals.

7. Article 92 (2) modifies the notion of what constitutes a Contracting State by providing that a State that has made a declaration under article 92 (1) is not a Contracting State as regards the Part which it has excluded by its declaration. Accordingly, as regards the excluded Part the Convention is not applicable via article 1 (1) (a) since both parties are not from Contracting States with regard to the excluded Part.<sup>9</sup> Rather, whether the Part of the Convention

subject to the declaration applies can be determined by article 1 (1) (b)—i.e., by applying the rules of private international law of the forum (assuming that the forum State has not made an article 95 declaration).<sup>10</sup> It is generally held that if the rules of private international law lead to the law of the Contracting State that has not made an article 92 declaration, the Part of the Convention subject to the other State’s declaration is applicable by virtue of article 1 (1) (b).<sup>11</sup> However, the possible application of article 1 (1) (b) has sometimes been overlooked.

8. In one case, in which one party was from a State that had made an article 92 declaration excluding the applicability of Part II of the Convention (and the other party came from a Contracting State without such a declaration), a Court applied the domestic law of the forum because the parties did not raise the Convention’s possible applicability.<sup>12</sup>

9. One case held that even if a party is from a Contracting State that has taken a declaration not to be bound by Part II, a contract may still be concluded if mutual consensus is reached by other means, even if it not “geared to the applicable domestic law.”<sup>13</sup> In other words, “[a] contract may thus be validly concluded, provided that the conduct by the parties sufficiently demonstrates a consensus and thus the intention to enter into a binding contract and that the content of their agreement is similar to contracts concluded under article 14 *et seq.* CISG.”<sup>14</sup> Thus the court relied on the Convention’s articles in Part I to determine whether a contract was concluded.

10. In one case, the Court faced the issue of whether the United States parol evidence rule was applicable when domestic law (the law of the state of Illinois) governed contract formation issues, and the Convention was otherwise applicable (one party was from a Contracting State that excluded Part II of the Convention via article 92; the other party was from a Contracting State that had not made an article 92 declaration).<sup>15</sup> The Court held that issues of parol evidence are addressed by article 8 of the Convention and not by the contract formation provisions in Part II. As neither Contracting State had declared they were not bound by Part I, the Court held that the Convention—and not domestic law—governed the parol evidence issue in the case.

## Notes

<sup>1</sup> United Nations Convention on Contracts for the International Sale of Goods, 11 April, 1980, 1489 U.N.T.S. 3, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=X-10&chapter=10&clang=\\_en#19](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&clang=_en#19). See also CLOUT case No. 121 [Appellate Court, Frankfurt, 4 March 1994], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (overlooking the article 92 declaration made by Sweden and applying the Convention to contract formation issues).

<sup>2</sup> Sweden, in CISG: Table of Contracting States, available on the Internet at [www.cisg.law.pace.edu/cisg/countries/cntries-Sweden.html](http://www.cisg.law.pace.edu/cisg/countries/cntries-Sweden.html).

<sup>3</sup> United Nations Convention on Contracts for the International Sale of Goods, 11 April, 1980, 1489 U.N.T.S. 3, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=X-10&chapter=10&clang=\\_en#19](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&clang=_en#19).

<sup>4</sup> Norway, in CISG: Table of Contracting States, available on the Internet at [www.cisg.law.pace.edu/cisg/countries/cntries-Norway.html](http://www.cisg.law.pace.edu/cisg/countries/cntries-Norway.html).

<sup>5</sup> United Nations Convention on Contracts for the International Sale of Goods, 11 April, 1980, 1489 U.N.T.S. 3, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=X-10&chapter=10&clang=\\_en#19](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&clang=_en#19).

<sup>6</sup> Finland, in CISG: Table of Contracting States, available on the Internet at [www.cisg.law.pace.edu/cisg/countries/cntries-Finland.html](http://www.cisg.law.pace.edu/cisg/countries/cntries-Finland.html).

<sup>7</sup> United Nations Convention on Contracts for the International Sale of Goods, 11 April, 1980, 1489 U.N.T.S. 3, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=X-10&chapter=10&clang=\\_en#19](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&clang=_en#19). See also CLOUT case No. 362 [Oberlandesgericht Naumburg, Germany, 27 April 1999] (overlooking the article 92 reservation made by Denmark and applying the Convention to contract formation issues).

<sup>8</sup> Denmark, in CISG: Table of Contracting States, available on the Internet at [www.cisg.law.pace.edu/cisg/countries/cntries-Denmark.html](http://www.cisg.law.pace.edu/cisg/countries/cntries-Denmark.html).

<sup>9</sup> Arbitration Court of the International Chamber of Commerce, 1999 (Arbitral award No. 10274), available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (“with regard to the issue of the formation of the alleged contracts (and only with regard to this issue), Danish law (without incorporation of the CISG applies); “The obligations under the alleged contracts and the contract remedies are generally governed by the CISG [as no Part III reservation was made by either Contracting State]”); CLOUT case No. 997 [Sø og Handelsretten, Denmark, 31 January 2002] (Dr. S. Sergueev Handelsagentur v. DAT-SCHAUB A/S), English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (“[Seller] stated that the question of which contract the parties had made was to be decided by the general rules of Danish law, as Denmark has made a declaration under Article 92 reserving out of the contract formation provisions of the CISG. Otherwise it is agreed that the CISG applies.”); Landgericht Flensburg, Germany, 19 January 2001, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (court held the Convention was the applicable law, as the dispute did not concern Part II of the Convention); Corte de Appello di Milano, Italy, 23 January 2002, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 201, [Richteramt Laufen des Kantons Berne, Switzerland, 7 May 1993], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); U.S. District Court, New Jersey, United States, 15 June 2005 (Valero Marketing v. Greeni Oy), available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (“[t]he CISG doesn’t govern in this matter with respect to contract formation and thus with respect to the effect to be given to [Buyer’s] confirmation designating New York law”; “[B]ecause Finland is not a signatory to Part II of the CISG, the CISG does not govern the effect of the choice of law provision contained in [Buyer’s] written confirmation.”); Landgericht Bielefeld, Germany, 12 December 2003, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>10</sup> CLOUT case No.228 [Oberlandesgericht Rostock, Germany, 27 July 1995], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (“...Denmark had made a reservation under article 92(2) CISG such that it was not bound by Part II (Formation) of the CISG. Therefore, under the German rules of private international law, the formation of the parties’ contract was governed by Danish law...”); CLOUT case no. 143 [Fovarosi Birozag Budapest, Hungary, 21 May 1996], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>11</sup> CLOUT case No. 301, [Arbitration Court of the International Chamber of Commerce, 1992], available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (“Finland has made a reservation upon ratification, declaring that it would not be bound by Part II of the Convention. The conflict of laws rules expressed in the 1955 Hague Convention on the Law Applicable to Contracts for the International Sale of Goods (which both States are signatories) led to the application of Italian law, i.e., the Convention, including Part II”); CLOUT case No 309 [Østre Landsret, Denmark, 23 April 1998 (Elinette Konfektion Trading ApS v. Elodie S.A.)], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>12</sup> CLOUT case No. 612, [U.S. Court of Appeals (3rd Circuit), United States, 20 June 2003 (Standard Bent Glass Corp v. Glassrobots Oy)], available on the Internet at <http://cisgw3.law.pace.edu> (“Because the parties have not raised the CISG’s applicability to this dispute, we decline to address it here” (footnote 7)).

<sup>13</sup> CLOUT case No. 134 [Oberlandesgericht Munchen, Germany, 8 March 1995], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>14</sup> Ibid.

<sup>15</sup> CLOUT case No. 419 [U.S. District Court, Northern District of Illinois, United States, 27 October 1998 (Mitchell Aircraft Spares v. European Aircraft Service)], available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).