

### Article 8

(1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.

(2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

### INTRODUCTION

1. Whereas article 7 addresses interpretation of and gap-filling for the Convention itself, article 8 (which according to one arbitral tribunal states rules that correspond to principles generally accepted in international commerce<sup>1</sup>) is concerned with the interpretation of statements and other conduct of *the parties*—provided (as expressly pointed out by the Supreme Court of one Contracting State) that the statements or conduct relate to a matter governed by the Convention.<sup>2</sup> Therefore, whenever a party's statement or conduct relates to a matter governed by the Convention, the interpretative criteria set forth in article 8 are to be used, whether the statements or conduct relate to matters governed by Part II (on formation of the contract) or Part III (on the rights and obligations of the parties). This view, supported by legislative history,<sup>3</sup> has been adopted in decisions:<sup>4</sup> courts have resorted to the criteria set forth in article 8 to interpret statements and conduct relating to the process of formation of contract,<sup>5</sup> the performance of the contract,<sup>6</sup> and its avoidance.<sup>7</sup>

2. Where article 8 applies, it precludes application of domestic interpretative rules because article 8 exhaustively addresses the issue of interpretation.<sup>8</sup>

3. According to both legislative history<sup>9</sup> and case law,<sup>10</sup> article 8 governs not only the interpretation of unilateral acts of each party but is also “equally applicable to the interpretation of ‘the contract’, when the document is embodied in a single document”.<sup>11</sup>

4. According to one court, it is possible to derive a general duty from article 8 (in conjunction with article 7), pursuant to which, in performing one's own obligation, one has to take into account the interests of opposing party.<sup>12</sup>

5. It is worth pointing out, however, that one court stated that “the will of the parties (article 8 CISG) . . . only has to be taken into account is so far as the contract . . . has no clear provision since the contract precedes the CISG in the hierarchy of rules.”<sup>13</sup>

### SUBJECTIVE INTENT OF THE PARTY (ARTICLE 8, PARAGRAPH 1)

6. Paragraphs 1 and 2 of article 8 set forth two sets of criteria and a hierarchy for those criteria: the ones set forth in article 8 (1) have to be resorted to primarily,<sup>14</sup> before resorting to those contained in article 8 (2). According to some courts, article 8 (1) permits a substantial inquiry into the parties' “subjective”<sup>15</sup> and “real”<sup>16</sup> intent, “even if the parties did not engage in any objectively ascertainable means of registering this intent”.<sup>17</sup> Article 8 (1) “instructs courts to interpret the ‘statements ... and other conduct of a party ... according to his intent’ as long as the other party ‘knew or could not have been unaware’ of that intent. The plain language of the Convention, therefore, requires an inquiry into a party's subjective intent as long as the other party to the contract was aware of that intent”<sup>18</sup> or could not have been unaware of it.<sup>19</sup> According to one court, “article 8 (1) of the CISG, in recognizing subjective criteria for interpretation, invites an inquiry as to the true intent of the parties, but excludes the use of in-depth psychological investigations. Therefore, if the terms of the contract are clear, they are to be given their literal meaning, so parties cannot later claim that their undeclared intentions should prevail.”<sup>20</sup>

7. A party who asserts that article 8 (1) applies—i.e., that the other party knew or could not have been unaware of the former party's intent—must prove that assertion.<sup>21</sup>

8. The subjective intent of a party is irrelevant unless it is manifested in some fashion;<sup>22</sup> this is the rationale behind one court's statement that “the intent that one party secretly had, is irrelevant”.<sup>23</sup> A different court stated that, due to the need that the intent be manifested in some fashion, the “Convention is indeed governed by the principle of reliance that is common to numerous legislations: it is applied to expressed declarations and to communications, but also to the persuasive conduct exhibited before or after the conclusion of a contract.”<sup>24</sup>

9. One court stated that where a common intent of the parties can be discerned, that common intent is to be taken into account, even if the objective meaning attributable to the statements of the parties differs.<sup>25</sup>

10. Under article 8, courts must first attempt to establish the meaning of a party's statement or conduct by looking to the intent of that party, as an arbitral tribunal has emphasized;<sup>26</sup> however, "most cases will not present a situation in which both parties to the contract acknowledge a subjective intent . . . In most cases, therefore, article 8 (2) of the [Convention] will apply, and objective evidence will provide the basis for the court's decision."<sup>27</sup> According to one arbitral tribunal, application of article 8 (1) requires either that the parties have a close relationship and know each other well, or that the import of the statements or conduct was clear and easily understood by the other party.<sup>28</sup>

### OBJECTIVE INTERPRETATION

11. Where it is not possible to use the subjective intent standard in article 8 (1) to interpret a party's statements or conduct,<sup>29</sup> one must resort to "a more objective analysis"<sup>30</sup> as provided for by article 8 (2),<sup>31</sup> which should allow the courts to determine "a presumptive"<sup>32</sup> or "normative"<sup>33</sup> intent. Under this provision, statements and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.<sup>34</sup> Several courts have characterized the result of an interpretation based on this criterion as a "reasonable interpretation".<sup>35</sup>

12. Article 8 (2) has been applied in a variety of decisions. In one case, a court inferred a buyer's intention to be bound to a contract, as well as the quantity of goods that the buyer intended to acquire under that contract, by interpreting the buyer's statements and conduct according to the understanding that a reasonable person of the same kind as the seller would have had in the same circumstances.<sup>36</sup> The court found that, absent any relevant circumstance or practice between the parties at the time the contract was concluded (which must always be taken into account), the buyer's intention to be bound, as well as a definite quantity of goods to be sold under the contract, could be deduced from the buyer's request to the seller to issue an invoice for goods that had already been delivered.

13. Article 14 (1) of the Convention provides that a proposal for concluding a contract must be sufficiently definite in order to constitute an offer, and that it is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price. Several courts have stated that, in determining whether a proposal satisfies this standard, it is sufficient if the required content would be perceived in the proposal by "a reasonable person of the same kind" as the other party (offeree) . . . 'in the same circumstances'.<sup>37</sup>

14. In determining the quality of the goods required by the parties' agreement, one Supreme Court has stated that, since the parties had a different understanding of the meaning of the contract, the contract language should be interpreted under article 8 (2)—i.e., "according to the understanding

that a reasonable person of the same kind as the other party would have had in the same circumstances". The court noted that the buyer was an expert and knew that it had not been offered a new machine, but instead one built fourteen years prior to the conclusion of the contract. Although the goods did not conform to the latest technical standards, the Supreme Court reasoned that, under the standard of article 8 (2), the buyer concluded the contract with full knowledge of the technical limitations of the machinery and its accessories. For these reasons, the Supreme Court found that the machine tendered to the buyer conformed to the contract.<sup>38</sup>

15. Another court applied article 8 (2) to determine whether a contract permitted the buyer to satisfy its obligation for the price of goods by offering, after the payment period specified in the contract had expired, to ship its own goods to the seller. Looking first to the language of the contract and then to the interpretation suggested by the parties' interests in the contract, the court found that the buyer was required to satisfy its obligations by the end of the contractual payment period: "the [buyer] could not have been unaware that it would have been commercially unreasonable for the [seller] to grant a respite in payment beyond the agreed period" merely because the buyer offered to ship goods to satisfy its payment obligations.<sup>39</sup>

16. Article 8 (2) has also been used to determine whether a seller had implicitly waived, through its behaviour, its right to argue that the buyer's notice of lack of conformity in the goods was not timely (see article 39).<sup>40</sup> The fact that the seller negotiated with the buyer over the lack of conformity after receiving the notice, the court stated, did not necessarily waive the late-notice argument, but should instead be evaluated in conjunction with the other circumstances of the case. In the case at hand, however, the seller "negotiated over the amount and manner of a settlement of damages for practically 15 months— . . . without expressly or at least discernibly reserving the objection to the delay" and even "offered through legal counsel to pay compensatory damages that amount to practically seven times the value of the goods".<sup>41</sup> In such circumstances, the court stated, "the [buyer] could only reasonably understand that the [seller] was seeking a settlement of the affair and would not later refer to the allegedly passed deadline as a defence to the [buyer's] reimbursement claim". Thus under article 8 (2) and article 8 (3), the court held, the seller had waived its right to rely on the untimeliness of the notice. Another court has stated that a waiver of the seller's right to argue that the buyer's notice of non-conformity was untimely cannot be assumed merely because the seller remained willing to inspect the goods at the buyer's request.<sup>42</sup> This follows, the court suggested, both from the need for certainty in commercial transactions and from the principle of good faith, which also applies when interpreting the parties' statements or other conduct.

17. One court employed article 8 (2) to interpret a "franco domicile" provision in a contract, finding that the clause addressed not only the cost of transport but also the passing of risk. The court interpreted the provision in line with the understanding that a reasonable person would have had in the same circumstances as those of the parties. In the court's view, a buyer entitled to delivery of goods "franco domicile"

would not be concerned with transporting the goods or with insurance on them during carriage. The fact that the seller obtained transport insurance, the court argued, also indicated that the seller was prepared to take the risk during carriage, as did the fact that it had used its own means of transport in previous transactions with the buyer. The court therefore concluded that the parties intended to provide for the passage of risk at the buyer's place of business, and accordingly to deviate from article 31 (a) CISG.<sup>43</sup>

18. Another court invoked article 8 (2) to determine whether the conduct of a party established that an agreement as to the purchase price had been reached.<sup>44</sup> The buyer took delivery of the goods without contesting the price specified by the seller. The court, applying article 8 (2), interpreted this conduct as acceptance of the seller's price.

19. The interpretive standard in article 8 (2) has also been applied in determining whether a loss suffered by the aggrieved party should be considered foreseeable under article 74 of the Convention.<sup>45</sup>

20. According to some courts, article 8 (2) is based upon the *contra proferentem* rule, pursuant to which standard contract terms have to be interpreted in favour of the party against whom they are employed.<sup>46</sup>

#### CONSIDERATIONS RELEVANT IN INTERPRETING STATEMENTS OR OTHER CONDUCT OF A PARTY

21. According to article 8 (3), in determining a party's intent or the understanding a reasonable person would have had, due consideration is to be given to all relevant—objective<sup>47</sup>—circumstances of the case. Such circumstances specifically include<sup>48</sup> the negotiations,<sup>49</sup> any practices which the parties have established between themselves,<sup>50</sup> usages, and any subsequent conduct of the parties.<sup>51</sup> Several decisions<sup>52</sup> have noted that these criteria should be taken into account when interpreting a statement or other conduct under the standards of either article 8 (1)<sup>53</sup> or article 8 (2).<sup>54</sup>

22. In respect of the circumstances to be taken into account in determining the intent of the parties pursuant to article 8 (1), one court stated that “the exact wording chosen by the parties as well as the systematic context are of particular relevance.”<sup>55</sup> That court also stated that “any previous negotiations and subsequent conduct of the parties may indicate how they have actually understood their respective declarations of intent. Additionally, the actual intent can be construed on the basis of the parties' interests, the purpose of the contract and the objective circumstances at the time of the conclusion of the contract.”<sup>56</sup>

23. In respect of the criteria to be taken into account when resorting to an article 8 (2) interpretation, that same court stated that “the declarations of the parties must be interpreted according to their reasonable meaning in the light of wording, context and the principle of good faith . . . Such an interpretation according to the principle of good faith seeks to determine the normative consensus, while the crucial factor will be an interpretation from the perspective of the recipient . . . . In accordance with article 8 (3) CISG,

all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties must be considered as well as the interests of either party and the purpose and systematic context of the contract.”<sup>57</sup>

24. According to a different court, “examples of the conduct [referred to in article 8 (3)] might be: Acceptance of the goods, payment of the purchase price, sending of an invoice or its signing by the buyer.”<sup>58</sup> Similarly, one court stated that “[w]hen determining whether statements or other conduct count as an acceptance, [the conduct referred to in article 8 (3)], implies the performance of the contract, or that prepares the performance, i.e., payment, acceptance of the goods without protest (possibly followed by processing) by the buyer, the start of production, or the sending of (part of) the goods by the seller.”<sup>59</sup>

25. The express reference in article 8 (3) to the parties' negotiations as an element to be taken into account in interpreting their statements or other conduct did not prevent one court from indicating that the “parol evidence rule” applies in transactions governed by the Convention.<sup>60</sup> This rule, which despite its name applies to both parol and written evidence, seeks to give legal effect to the contracting parties' intentions if they have adopted a written agreement as the final (a “partial integration”), or even final and complete (a “complete integration”), expression of their agreement.<sup>61</sup> If the written agreement is determined to be a complete integration, the parol evidence rule prohibits a party from introducing evidence of prior agreements or negotiations that would contradict, or even would add consistent additional terms to, the writing. Decisions by other courts in the same State take a contrary position.<sup>62</sup> One of those courts<sup>63</sup> stated that “the parol evidence rule is not viable in CISG cases in light of article 8 of the Convention”<sup>64</sup> because “article 8 (3) expressly directs courts to give ‘due consideration . . . to all relevant circumstances of the case including the negotiations’ to determine the intent of the parties. Given article 8 (1)'s directive to use the intent of the parties to interpret their statements and conduct, article 8 (3) is a clear instruction to admit and consider parol evidence regarding the negotiations to the extent they reveal the parties' subjective intent.” According to another court, article 8 (3) “essentially rejects . . . the parol evidence rule.”<sup>65</sup> Yet another court stated that “contracts governed by the CISG are freed from the limits of the parol evidence rule and there is a wider spectrum of admissible evidence to consider in construing the terms of the parties' agreement.”<sup>66</sup> In one case the court, in determining the intention of the party, relied on oral evidence and took into account the business relations existing between the parties.<sup>67</sup>

26. After pointing out the problems that may arise under the Convention with respect to parol evidence, a court has stated that the parties can avoid such problems by including in their written agreement a merger clause that extinguishes prior agreements and understandings not expressed in the writing.<sup>68</sup> According to a different court, however, “extrinsic evidence should not be excluded, unless the parties actually intend the merger clause to have this effect.”<sup>69</sup> According to that same court, “article 8 requires an examination of all relevant facts and circumstances when

deciding whether the Merger Clause represents the parties' intent . . . . That is, to be effective, a merger clause must reflect 'the *parties*' intent.' This suggests that if either party had a contrary intent, the merger clause between them would have no effect.<sup>70</sup>

27. As several courts have pointed out,<sup>71</sup> subsequent conduct by the parties may show what a statement was intended to mean when it was made. In one case,<sup>72</sup> a court referred to a buyer's subsequent conduct to infer an intention to be bound to a contract, as well as to determine the quantity of goods covered by that contract, under the interpretive approach in article 8 (2) (i.e., the understanding that a reasonable person of the same kind as the seller would have had in the same circumstances). The court held that, absent any relevant contrary circumstance or practice between the parties, a party's intention to be bound could be shown by its conduct after the conclusion of the contract. In particular, it held that the buyer's request to the seller to issue an invoice for textiles the seller had delivered to a third party (as contemplated by the parties' arrangement) was sufficient evidence of the buyer's intention to be bound. The fact that the buyer delayed two months before complaining about the quantity of goods delivered to the third party, furthermore, gave the court good grounds to conclude that the contract covered that quantity.

28. According to one court, reference to the circumstances listed in article 8 (3) may lead to the conclusion that a party's silence amounted to acceptance of an offer.<sup>73</sup>

29. In addition to the elements expressly catalogued in article 8 (3), the good faith principle referred to in article 7 (1) (where it is mentioned as pertinent to the interpretation of the Convention itself) must also, according to one court, be taken into account in interpreting statements or other conduct of the parties.<sup>74</sup>

30. Finally, in respect of article 8 (3), one court stated that "[t]he wording of this provision can also be understood in a way that contradictory conduct by a party bars that party from relying on a different meaning of its former conduct".<sup>75</sup>

#### STANDARD CONTRACT TERMS AND THE LANGUAGE OF STATEMENTS

31. Article 8 has also been invoked in addressing the question whether standard contract terms employed by one party became part of a contract.<sup>76</sup> In various cases<sup>77</sup> it was held that that the question was governed by the Convention's rules on interpretation rather than by domestic law. Citing article 8 of the Convention, several courts stated that whether a party's standard contract terms are part of its offer must be determined by reference to how a "reasonable person of the same kind as the other party" would have understood the offer; under this criterion, the courts asserted, standard terms become part of an offer only if the offeree is able "to become aware of them in a reasonable manner,"<sup>78</sup> and if the intention to incorporate such terms is apparent to the recipient of the offer.<sup>79</sup> Where such intention is ambiguous, the terms do not become part of the contract,<sup>80</sup> nor do they become part of the contract if they "differ from the expectation of the contractual partner to such an extent that the

latter cannot reasonably be expected to have anticipated that such a clause might be included".<sup>81</sup> In addition, according to some courts, the Convention requires the user of general terms and conditions to transmit the text or make it available to the other party.<sup>82</sup>

32. In reaching similar conclusions regarding the incorporation of standard terms under the Convention, some courts also addressed the issue of the language in which the standard terms are expressed.<sup>83</sup> The courts stated that incorporation of standard terms must be determined by interpreting the contract in light of article 8. To be effective, the courts averred, a reference by one party to its standard terms must be sufficient to put a reasonable person of the same kind as the other party in a position to understand the reference and to gain knowledge of the standard terms. According to the courts, one relevant circumstance is the language in which the standard terms are written.<sup>84</sup> In one of the cases, the seller's standard contract terms were not in the language of the contract, and one of the courts asserted that the seller should have given the buyer a translation. Because the seller had not done so, its standard contract terms did not become part of the contract. A similar approach was adopted by another court, which stated that standard contract terms written in a language different from that of the contract do not bind the other party.<sup>85</sup>

33. The language issue was also dealt with in another decision<sup>86</sup> in which the court held that a case-by-case approach must be employed in determining the effectiveness of a notice written in a language other than the language in which the contract was made or the language of the addressee. Under article 8 (2) and article 8 (3), the court asserted, the question must be evaluated from the perspective of a reasonable person, giving due consideration to usages and practices observed in international trade. The mere fact that a notice was in a language that was neither that of the contract nor that of the addressee did not necessarily prevent the notice from being effective: the notice language might be one normally used in the pertinent trade sector, and thus potentially binding on the parties under article 9; or, as in the case before the court, the recipient might reasonably have been expected to request from the sender explanations or a translation.

34. In a different case, the court stated that for the standard contract terms to become part of the contract, they have to be drafted "either in the language of the contract, or in that of the opposing party or a language that the opposing party knows".<sup>87</sup> In a different case, a court stated that standard contract terms "are only incorporated if . . . the other contracting party is given sufficient opportunity to take note of them, either in the language of negotiations or in its native language."<sup>88</sup>

35. Another court<sup>89</sup> has held that, if a party accepts statements relating to the contract in a language different from the one used for the contract, the party is bound by the contents of such statements; it is the party's responsibility to acquaint itself with those contents.

36. In yet another decision, one court stated that for the standard contract terms to become part of the offer it is sufficient that they be drafted in a common language.<sup>90</sup>

## Notes

<sup>1</sup>CLOUT case No. 303 [Court of Arbitration of the International Chamber of Commerce, 1994 (Arbitral award no. 7331)] (see full text of the decision).

<sup>2</sup>See CLOUT case No. 605 [Oberster Gerichtshof, Austria, 22 October 2001]; Oberster Gerichtshof, Austria, 24 April 1997, available on the Internet at [www.cisg.at](http://www.cisg.at).

<sup>3</sup>United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 18, stating that “Article [8] on interpretation furnishes the rules to be followed in interpreting the meaning of any statement or other conduct of a party which falls within the scope of application of this Convention. Interpretation of the statements or conduct of a party may be necessary to determine whether a contract has been concluded, the meaning of the contract, or the significance of a notice given or other act of a party in the performance of the contract or in respect of its termination.”

<sup>4</sup>See also CLOUT case No. 932 [Obergericht des Kantons Thurgau, Switzerland, 12 December 2006] (see full text of the decision), stating that article 8 “applies to all declarations, actions and omissions of the parties that may have an effect on the conclusion or execution of the contract.”

<sup>5</sup>See CLOUT case No. 429 [Oberlandesgericht Frankfurt, Germany, 30 August 2000], also available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 424 [Oberster Gerichtshof, Austria, 9 March 2000], also available on the Internet at [www.cisg.at](http://www.cisg.at); Landgericht Zwickau, Germany, 19 March 1999, available on the Internet at <http://cisg-online.ch>; CLOUT case No. 189 [Oberster Gerichtshof, Austria, 20 March 1997]; CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996]; CLOUT case No. 334 [Obergericht des Kantons Thurgau, Switzerland, 19 December 1995]; CLOUT case No. 330 [Handelsgericht des Kantons St. Gallen, Switzerland, 5 December 1995] (see full text of the decision); CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994].

<sup>6</sup>CLOUT case No. 270 [Bundesgerichtshof, Germany, 25 November 1998] (dealing with the issue of whether the offer to pay damages on the seller’s part constitutes a waiver of the seller’s right to rely on articles 38 and 39).

<sup>7</sup>CLOUT case No. 282 [Oberlandesgericht Koblenz, Germany, 31 January 1997] (dealing with the issue of whether a certain conduct amounted to avoidance of the contract) (see full text of the decision).

<sup>8</sup>CLOUT case No. 932 [Obergericht des Kantons Thurgau, Switzerland, 12 December 2006] (see full text of the decision); Appellate Court Helsinki, Finland, 31 May 2004, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 5 [Landgericht Hamburg, Germany, 26 September 1990] (see full text of the decision).

<sup>9</sup>United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 18.

<sup>10</sup>CLOUT case No. 303 [Court of Arbitration of the International Chamber of Commerce, 1994 (Arbitral award no. 7331)] (see full text of the decision).

<sup>11</sup>United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 18; in case law see Appellate Court Helsinki, Finland, 31 May 2004, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 877 [Bundesgericht, Switzerland, 22 December 2000], also available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>12</sup>Oberlandesgericht Köln, Germany, 2 July 2007, available on the Internet at [www.cisg-online.ch](http://www.cisg-online.ch).

<sup>13</sup>Hof van Beroep Antwerpen, Belgium, 24 April 2006, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>14</sup>CLOUT case No. 1136 [Court of Appeal, New South Wales, Australia, 16 December 2009] (Franklins Pty Ltd v. Metcash Trading Ltd) (2009) 76 NSWLR 603 at 614, [2009] NSWCA 407 at [7]–[8], per Allsop P (article 8(1) of CISG “gives a primary role to the ascertainment of the actual common intention of the parties” and is hence distinct from the common law objective approach to the construction and interpretation of contract); Handelsgericht Aargau, Switzerland, 26 November 2008, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Appellationsgericht Basel-Stadt, Switzerland, 26 September 2008, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Zivilgericht Basel-Stadt, Switzerland, 8 November 2006, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>15</sup>U.S. District Court, Southern District of New York, United States, 18 January 2011, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Handelsgericht Aargau, Switzerland, 26 November 2008, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 844 [U.S. District Court, Kansas, United States, 28 September 2007] (see full text of the decision); CLOUT case No. 932 [Obergericht des Kantons Thurgau, Switzerland, 12 December 2006] (see full text of the decision); U.S. District Court, Southern District of New York, United States, 23 August 2006, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 911 [Cour de justice de Genève, Switzerland, 12 May 2006] (see full text of the decision); Oberlandesgericht Linz, Austria, 23 January 2006, English translation available on the Internet at [www.cisg.law.pace.edu](http://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](http://www.cisg.law.pace.edu); CLOUT case No. 222 [U.S. Court of Appeals (11th Circuit), United States, 29 June 1998] (see full text of the decision).

<sup>16</sup>Handelsgericht Aargau, Switzerland, 5 February 2008, available on the Internet at [www.cisg-online.ch](http://www.cisg-online.ch); Audiencia Provincial de Navarra, sección 3ª, Spain, 27 December 2007, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht Stuttgart, Germany, 15 May 2006, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 931 [Bundesgericht, Switzerland, 5 April 2005] (see full text of the decision); CLOUT case No. 578 [U.S. District Court, Western District of Michigan, United States, 17 December 2001] (see full text of the decision); CLOUT case No. 607 [Oberlandesgericht Köln, Germany, 16 July 2001]; CLOUT case No. 617 [U.S. District Court, Northern District of California, United States, 30 January 2001].

<sup>17</sup>CLOUT case No. 222 [U.S. Court of Appeals (11th Circuit), United States, 29 June 1998] (see full text of the decision).

<sup>18</sup>CLOUT case No. 222 [U.S. Court of Appeals (11th Circuit), United States, 29 June 1998] (internal citation in quoted material omitted) (see full text of the decision); for other cases in which the part of article 8 (1) referred to in the text was cited, see U.S. District Court, Southern District of New York, United States, 18 January 2011, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Court of Arbitration

of the International Chamber of Commerce, Switzerland, 2000 (Arbitral award No. 10329), English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 313 [Cour d'appel Grenoble, France, 21 October 1999] (see full text of the decision); CLOUT case No. 268 [Bundesgerichtshof, Germany, 11 December 1996].

<sup>19</sup>For references to this part of article 8 (1), see U.S. District Court, Maryland, United States, 8 February 2011, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 1034 [Audiencia Provincial de Cáceres, Spain, 14 July 2010], text available on the Internet at <http://www.cisgspanish.com>; CLOUT case No. 851 [Audiencia Provincial de Madrid, sección 14ª, Spain, 20 February 2007]; CLOUT case No. 932 [Obergericht des Kantons Thurgau, Switzerland, 12 December 2006] (see full text of the decision); Zivilgericht Basel-Stadt, Switzerland, 8 November 2006, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 777 [U.S. Court of Appeals (11th Circuit), United States, 12 September 2006]; U.S. District Court, Southern District of New York, United States, 23 August 2006, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 911 [Cour de justice de Genève, Switzerland, 12 May 2006] (see full text of the decision); 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](http://www.cisg.law.pace.edu); CLOUT case No. 1118 [China International Economic and Trade Arbitration Commission, People's Republic of China, 7 December 2005], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Obergericht des Kantons Zug, Switzerland, 5 July 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 931 [Bundesgericht, Switzerland, 5 April 2005] (see full text of the decision); Netherlands Arbitration Institute, the Netherlands, 10 February 2005, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Kantonsgericht Freiburg, Switzerland, 11 October 2004, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 890 [Tribunale d'appello Lugano, Switzerland, 29 October 2003] (see full text of the decision); Bundesgericht, Switzerland, 4 August 2003, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Rechtbank van Koophandel Hasselt, Belgium, 26 May 2003, available on the Internet at [www.law.kuleuven.be](http://www.law.kuleuven.be); CLOUT case No. 537 [Oberlandesgericht Graz, Austria, 7 March 2002]; CLOUT case No. 702 [Court of Appeal Wellington, New Zealand, 27 November 2000] [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 215 [Bezirksgericht St. Gallen, Switzerland, 3 July 1997] (see full text of the decision).

<sup>20</sup>Audiencia Provincial de Navarra, sección 3ª, Spain, 27 December 2007, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>21</sup>CLOUT case No. 215 [Bezirksgericht St. Gallen, Switzerland, 3 July 1997] (see full text of the decision).

<sup>22</sup>Zivilgericht Basel-Stadt, Switzerland, 8 November 2006, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 911 [Cour de justice de Genève, Switzerland, 12 May 2006] (see full text of the decision).

<sup>23</sup>CLOUT case No. 5 [Landgericht Hamburg, Germany, 26 September 1990] (see full text of the decision).

<sup>24</sup>CLOUT case No. 911 [Cour de justice de Genève, Switzerland, 12 May 2006] (see full text of the decision).

<sup>25</sup>Oberlandesgericht Hamm, Germany, 12 November 2001, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>26</sup>Court of Arbitration of the International Chamber of Commerce, 1995 (Arbitral award No. 8324), Unilex.

<sup>27</sup>CLOUT case No. 222 [U.S. Court of Appeals (11th Circuit), United States, 29 June 1998] (see full text of the decision); for similar statements, see also CLOUT case No. 932 [Obergericht des Kantons Thurgau, Switzerland, 12 December 2006] (see full text of the decision).

<sup>28</sup>Court of Arbitration of the International Chamber of Commerce, 1995 (Arbitral award No. 8324), Unilex.

<sup>29</sup>For a case stating that resort to article 8 (2) was to be had since subjective intent could not be proven, see U.S. District Court, Southern District of New York, United States, 18 January 2011, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>30</sup>Court of Arbitration of the International Chamber of Commerce, 1995 (Arbitral award No. 8324), Unilex; for other cases that refer expressly to interpretation under article 8 (2) as being more "objective," see U.S. District Court, Southern District of New York, United States, 18 January 2011, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); U.S. District Court, Colorado, United States, 6 July 2010, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Appellationsgericht Basel-Stadt, Switzerland, 26 September 2008, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 1399 [Oberlandesgericht Hamburg, Germany, 25 January 2008], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 844 [U.S. District Court, Kansas, United States, 28 September 2007] (see full text of the decision); CLOUT case No. 911 [Cour de justice de Genève, Switzerland, 12 May 2006] (see full text of the decision); Oberlandesgericht Linz, Austria, 23 January 2006, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht Linz, Austria, 23 March 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002]; CLOUT case No. 607 [Oberlandesgericht Köln, Germany, 16 July 2001]; CLOUT case No. 877 [Bundesgericht, Switzerland, 22 December 2000], also available on the Internet at [www.cisg.law.pace.edu](http://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](http://www.cisg.law.pace.edu); CLOUT case No. 222 [U.S. Court of Appeals (11th Circuit), United States, 29 June 1998] (see full text of the decision); Hoge Raad, Netherlands, 7 November 1997, Unilex; CLOUT case No. 409 [Landgericht Kassel, Germany, 15 February 1996], also Unilex.

<sup>31</sup>It may well be that neither article 8 (1) nor article 8 (2) leads to an interpretation wanted by a party: see Hoge Raad, Netherlands, 7 November 1997, Unilex.

<sup>32</sup>Handelsgericht Aargau, Switzerland, 26 November 2008, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>33</sup>Handelsgericht Aargau, Switzerland, 5 February 2008, available on the Internet at [www.cisg-online.ch](http://www.cisg-online.ch); CLOUT case No. 931 [Bundesgericht, Switzerland, 5 April 2005] (see full text of the decision); CLOUT case No. 877 [Bundesgericht, Switzerland, 22 December 2000] (see full text of the decision).

<sup>34</sup>Kantonsgericht St. Gallen, Switzerland, 15 June 2010, available on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org); Rechtbank Arnhem, the Netherlands, 7 October 2009, available on the Internet at [www.cisg-online.ch](http://www.cisg-online.ch); CLOUT case No. 1179 [Tribunal de Justiça do Rio Grande do Sul, Brazil, 20 May 2009], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Supreme Court, Slovakia, 30 April 2008, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Handelsgericht Aargau, Switzerland, 5 February 2008, available on the Internet at [www.cisg-online.ch](http://www.cisg-online.ch); CLOUT case No. 1234 [Bundesgerichtshof, Germany, 27 November 2007], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 844 [U.S. District Court, Kansas, United States, 28 September 2007]; CLOUT case No. 828 [Hof 's-Hertogenbosch, the Netherlands, 2 January 2007]; CLOUT case No. 932 [Obergericht des Kantons Thurgau, Switzerland, 12 December 2006] (see full text of the decision); CLOUT case No. 777 [U.S. Court of Appeals (11th Circuit), United States,

12 September 2006]; U.S. District Court, Southern District of New York, United States, 23 August 2006, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 911 [Cour de justice de Genève, Switzerland, 12 May 2006] (see full text of the decision); 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](http://www.cisg.law.pace.edu); CLOUT case No. 1118 [China International Economic and Trade Arbitration Commission, People's Republic of China, 7 December 2005], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Obergericht des Kantons Zug, Switzerland, 5 July 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 931 [Bundesgericht, Switzerland, 5 April 2005] (see full text of the decision); Netherlands Arbitration Institute, the Netherlands, 10 February 2005, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Kantonsgericht Freiburg, Switzerland, 11 October 2004, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 553 [Audiencia Provincial Barcelona, sección 16ª, Spain, 28 April 2004]; CLOUT case No. 885 [Bundesgericht, Switzerland, 13 November 2003]; CLOUT case No. 890 [Tribunale d'appello Lugano, Switzerland, 29 October 2003] (see full text of the decision); Bundesgericht, Switzerland, 4 August 2003, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Rechtbank van Koophandel Hasselt, Belgium, 26 May 2003, available on the Internet at [www.law.kuleuven.be](http://www.law.kuleuven.be); Oberlandesgericht Schleswig-Holstein, Germany, 29 October 2002, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Foreign Trade Arbitration Court attached to the Yugoslav Chamber of Commerce in Belgrade, Serbia, 25 May 2001, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 702 [Court of Appeal Wellington, New Zealand, 27 November 2000] [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Landgericht Zwickau, Germany, 19 March 1999, available on the Internet at [www.cisg-online.ch](http://www.cisg-online.ch); CLOUT case No. 189 [Oberster Gerichtshof, Austria, 20 March 1997]; Hoge Raad, Netherlands, 7 November 1997, Unilex; CLOUT case No. 215 [Bezirksgericht St. Gallen, Switzerland, 3 July 1997] (see full text of the decision); CLOUT case No. 166 [Schiedsgericht der Handelskammer Hamburg, 21 June 1996] (see full text of the decision); Arbitration Court of the Chamber of Commerce and Industry of Budapest, Hungary, 17 November 1995 (Arbitration award No. Vb 94124), Unilex; CLOUT case No. 308 [Federal Court of Australia 28 April 1995] (see full text of the decision); CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994].

<sup>35</sup>U.S. District Court, Colorado, United States, 6 July 2010, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 273 [Oberlandesgericht München, Germany, 9 July 1997]. For a reference to a "reasonable interpretation", albeit without express citation to article 8 (2), see Rechtbank Arnhem, the Netherlands, 11 February 2009, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>36</sup>CLOUT case No. 215 [Bezirksgericht St. Gallen, Switzerland, 3 July 1997] (see full text of the decision).

<sup>37</sup>Oberlandesgericht München, Germany, 14 January 2009, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994].

<sup>38</sup>CLOUT case No. 877 [Bundesgericht, Switzerland, 22 December 2000] (see full text of the decision).

<sup>39</sup>Oberlandesgericht Dresden, Germany, 27 December 1999, available on the Internet at [www.cisg-online.ch](http://www.cisg-online.ch) (internal citations to Convention omitted).

<sup>40</sup>CLOUT case No. 270 [Bundesgerichtshof, Germany, 25 November 1998].

<sup>41</sup>Ibid. (internal citations to Convention omitted) (see full text of the decision).

<sup>42</sup>CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998] (see full text of the decision).

<sup>43</sup>CLOUT case No. 317 [Oberlandesgericht Karlsruhe, Germany, 20 November 1992].

<sup>44</sup>CLOUT case No. 151 [Cour d'appel de Grenoble, France, 26 April 1995].

<sup>45</sup>CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002], also Unilex.

<sup>46</sup>Bundesgerichtshof, Germany, 28 May 2014, *Internationales Handelsrecht* 2014, 184 = CISG-online No. 2513 ("dispose of" does not only mean sale but also lease); CLOUT case No. 1232 [Oberlandesgericht Stuttgart, Germany, 31 March 2008], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>47</sup>For this qualification, see Handelsgericht Aargau, Switzerland, 26 November 2008, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>48</sup>According to the *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), 18, the list to be found in article 8, paragraph 3 is not an exhaustive list of elements to be taken into account in interpreting statements or other conduct by the parties.

<sup>49</sup>See Court of Appeal, United Kingdom, 17 February 2006, Unilex; Court of Arbitration of the International Chamber of Commerce, France, 2003 (Arbitral award in case No. 11849), available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>50</sup>For cases resorting to the practices established between the parties as an element used to determine intent, see U.S. District Court, Southern District of New York, United States, 18 January 2011, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Tribunal cantonal du Valais, Switzerland, 28 January 2009, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Handelsgericht Aargau, Switzerland, 5 February 2008, available on the Internet at [www.cisg-online.ch](http://www.cisg-online.ch); CLOUT case No. 750 [Oberster Gerichtshof, Austria, 31 August 2005] (see full text of the decision).

<sup>51</sup>For references to article 8 (3) in case law, see U.S. District Court, Eastern District of Pennsylvania, United States, 29 January 2010, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht München, Germany, 14 January 2009, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Handelsgericht Aargau, Switzerland, 5 February 2008, available on the Internet at [www.cisg-online.ch](http://www.cisg-online.ch); CLOUT case No. 802 [Tribunal Supremo, Spain, 17 January 2008] (see full text of the decision); Oberlandesgericht Köln, Germany, 2 July 2007, available on the Internet at [www.cisg-online.ch](http://www.cisg-online.ch); CLOUT case No. 828 [Hof 's-Hertogenbosch, the Netherlands, 2 January 2007]; CLOUT case No. 932 [Obergericht des Kantons Thurgau, Switzerland, 12 December 2006] (see full text of the decision); Zivilgericht Basel-Stadt, Switzerland, 8 November 2006, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); U.S. District Court, Southern District of New York, United States, 23 August 2006, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 1452 [Supreme Court, Czech Republic, 29 March 2006], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Obergericht des Kantons Zug, Switzerland, 5 July 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht Linz, Austria, 23 March 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Netherlands Arbitration Institute, the Netherlands, 10 February 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Kantonsgericht Zug, Switzerland, 2 December 2004, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Kantonsgericht Freiburg, Switzerland, 11 October 2004,

English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 890 [Tribunale d'appello Lugano, Switzerland, 29 October 2003] (see full text of the decision); Bundesgericht, Switzerland, 4 August 2003, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Rechtbank van Koophandel Hasselt, Belgium, 26 May 2003, available on the Internet at [www.law.kuleuven.be](http://www.law.kuleuven.be); CLOUT case No. 576 [U.S. Circuit Court of Appeals (9th Circuit), United States, 5 May 2003]; Federal Arbitration Court for the Volgo-Vyatsky Circuit, Russian Federation, 20 December 2002, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Hof van Beroep Antwerpen, Belgium, 16 December 2002, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); China International Economic and Trade Arbitration Commission, People's Republic of China, 8 November 2002, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 1257 [High Court, Auckland, New Zealand, 27 March 2002], also available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 702 [Court of Appeal Wellington, New Zealand, 27 November 2000] [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 215 [Bezirksgericht St. Gallen, Switzerland, 3 July 1997]; CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994].

<sup>52</sup>See House of Lords, United Kingdom, 1 July 2009, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Court of Arbitration of the International Chamber of Commerce, 1995 (Arbitral award No. 8324/1995), Unilex.

<sup>53</sup>CLOUT case No. 268 [Bundesgerichtshof, Germany, 11 December 1996], expressly stating that the elements referred to in article 8, paragraph 3 have to be taken into account when interpreting a statement or other conduct by a party in the light of article 8, paragraph 1 (see full text of the decision).

<sup>54</sup>CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994].

<sup>55</sup>Handelsgericht Aargau, Switzerland, 26 November 2008, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>56</sup>Ibid.; see also CLOUT case No. 932 [Obergericht des Kantons Thurgau, Switzerland, 12 December 2006] (see full text of the decision).

<sup>57</sup>Handelsgericht Aargau, Switzerland, 26 November 2008, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); see also Handelsgericht Aargau, Switzerland, 5 February 2008, available on the Internet at [www.cisg-online.ch](http://www.cisg-online.ch); Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 27 May 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>58</sup>Oberlandesgericht Linz, Austria, 23 March 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>59</sup>Rechtbank van Koophandel Tongeren, Belgium, 25 January 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>60</sup>CLOUT case No. 24 [U.S. Court of Appeals (5th Circuit), United States, 15 June 1993].

<sup>61</sup>For a definition of the parol evidence rule in a case governed by the Convention, see U.S. District Court, Eastern District of Pennsylvania, United States, 29 January 2010, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>62</sup>See U.S. District Court, Eastern District of Pennsylvania, United States, 29 January 2010, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 222 [U.S. Court of Appeals (11th Circuit), United States, 29 June 1998]; CLOUT case No. 578 [U.S. District Court, Western District of Michigan, United States of America, 17 December 2001] (see full text of the decision); CLOUT case No. 434 [U.S. District Court, Northern District of Illinois, United States, 28 August 2001] (see full text of the decision); CLOUT case No. 419 [U.S. District Court, Northern District of Illinois, United States, 27 October 1998].

<sup>63</sup>CLOUT case No. 222 [U.S. Court of Appeals (11th Circuit), United States, 29 June 1998].

<sup>64</sup>Ibid. (see full text of the decision).

<sup>65</sup>CLOUT case No. 23 [U.S. District Court, Southern District of New York, United States, 14 April 1992] (see full text of the decision).

<sup>66</sup>CLOUT case No. 413 [U.S. District Court, Southern District of New York, United States, 6 April 1998] (see full text of the decision).

<sup>67</sup>See Federal Arbitrazh Court of Far East District, No. FOS-7781/2010, 2 November 2010.

<sup>68</sup>CLOUT case No. 222 [U.S. Court of Appeals (11th Circuit), United States, 29 June 1998] (see full text of the decision).

<sup>69</sup>U.S. District Court, Southern District of New York, United States, 23 August 2006, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>70</sup>Ibid.

<sup>71</sup>U.S. District Court, Colorado, United States, 6 July 2010, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 215 [Bezirksgericht St. Gallen, Switzerland, 3 July 1997]; CLOUT case No. 5 [Landgericht Hamburg, Germany, 26 September 1990] (see full text of the decision).

<sup>72</sup>CLOUT case No. 215 [Bezirksgericht St. Gallen, Switzerland, 3 July 1997] (see full text of the decision).

<sup>73</sup>CLOUT case No. 23 [U.S. District Court, Southern District of New York, United States, 14 April 1992].

<sup>74</sup>CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998] (see full text of the decision); CLOUT case No. 166 [Schiedsgericht der Handelskammer Hamburg, 21 June 1996], also Unilex.

<sup>75</sup>Oberlandesgericht Linz, Austria, 23 March 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>76</sup>*Contra*, see Rechtbank Arnhem, the Netherlands, 17 March 2004, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu), stating that "[b]ecause the application of general conditions is not expressly dealt with in the mentioned provisions of the CISG, the question has to be answered with the further applicable substantive law."

<sup>77</sup>U.S. District Court, Maryland, United States, 8 February 2011, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht Celle, Germany, 24 July 2009, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 1202 [Rechtbank Utrecht, the Netherlands, 21 January 2009], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht München, Germany, 14 January 2009, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Landgericht Landshut, Germany, 12 June 2008, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 1189 [Tribunale di Rovereto, Italy, 21 November 2007]; CLOUT case No. 827 [Hof 's-Hertogenbosch, the Netherlands, 29 May 2007]; CLOUT case No. 828 [Hof 's-Hertogenbosch, the Netherlands, 2 January 2007]; Landgericht Coburg, Germany, 12 December 2006, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Tribunale di Rovereto, Italy, 24 August 2006, Unilex; CLOUT case No. 750 [Oberster Gerichtshof, Austria,



31 August 2005] (see full text of the decision); Oberlandesgericht Linz, Austria, 8 August 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht Linz, Austria, 23 March 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 831 [Hoge Raad, the Netherlands, 28 January 2005]; CLOUT case No. 821 [Oberlandesgericht Karlsruhe, Germany, 20 July 2004]; Oberlandesgericht Düsseldorf, Germany, 21 April 2004, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 592 [Oberlandesgericht Düsseldorf, Germany, 30 January 2004]; CLOUT case No. 819 [Landgericht Trier, Germany, 8 January 2004]; CLOUT case No. 534 [Oberster Gerichtshof, Austria, 17 December 2003]; Oberlandesgericht Düsseldorf, Germany, 25 July 2003, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case 445 [Bundesgerichtshof, Germany, 31 October 2001].

<sup>78</sup>U.S. District Court, Western District of Pennsylvania, United States, 10 September 2013 (Roser Technologies, Inc. v. Carl Schreiber Inc. GmbH d/b/a CSN Metals), available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case 445 [Bundesgerichtshof, Germany, 31 October 2001] (see full text of the decision); see also Oberlandesgericht Celle, Germany, 24 July 2009, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 1202 [Rechtbank Utrecht, the Netherlands, 21 January 2009], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht München, Germany, 14 January 2009, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Landgericht Landshut, Germany, 12 June 2008, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Tribunale di Rovereto, Italy, 24 August 2006, Unilex; Oberlandesgericht Linz, Austria, 8 August 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 592 [Oberlandesgericht Düsseldorf, Germany, 30 January 2004]; CLOUT case No. 534 [Oberster Gerichtshof, Austria, 17 December 2003].

<sup>79</sup>Rechtbank Utrecht, the Netherlands, 21 January 2009, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht München, Germany, 14 January 2009, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 1189 [Tribunale di Rovereto, Italy, 21 November 2007];] Oberlandesgericht Linz, Austria, 23 March 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht Innsbruck, Austria, 1 February 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 592 [Oberlandesgericht Düsseldorf, Germany, 30 January 2004]; Oberlandesgericht Düsseldorf, Germany, 25 July 2003, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case 445 [Bundesgerichtshof, Germany, 31 October 2001].

<sup>80</sup>U.S. District Court, Maryland, United States, 8 February 2011, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); see also Oberlandesgericht Linz, Austria, 8 August 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu), stating that “a party which desires to contract only according to its own standard terms and conditions requires an unambiguous declaration of that intent.” See also Oberster Gerichtshof, Austria, 26 January 2005, Unilex.

<sup>81</sup>Landgericht Landshut, Germany, 12 June 2008, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>82</sup>OLG Naumburg, Germany, 13 February 2013, *Internationales Handelsrecht* 2013, 158 = CISG-online No. 2455; Landgericht Stuttgart, Germany, 15 October 2009, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht Celle, Germany, 24 July 2009, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 1202 [Rechtbank Utrecht, the Netherlands, 21 January 2009], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht München, Germany, 14 January 2009, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Landgericht Landshut, Germany, 12 June 2008, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 1189 [Tribunale di Rovereto, Italy, 21 November 2007];] CLOUT case 445 [Bundesgerichtshof, Germany, 31 October 2001] (see full text of the decision).

<sup>83</sup>See CLOUT case No. 1189 [Tribunale di Rovereto, Italy, 21 November 2007];] Oberlandesgericht Linz, Austria, 8 August 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht Innsbruck, Austria, 1 February 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht Düsseldorf, Germany, 21 April 2004, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 534 [Oberster Gerichtshof, Austria, 17 December 2003]; Oberlandesgericht Düsseldorf, Germany, 25 July 2003, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 345 [Landgericht Heilbronn, Germany, 15 September 1997].

<sup>84</sup>CLOUT case No. 1189 [Tribunale di Rovereto, Italy, 21 November 2007];] Oberlandesgericht Düsseldorf, Germany, 21 April 2004, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>85</sup>Rechtbank Koophandel Hasselt, Belgium, 2 June 1999, available on the Internet at [www.law.kuleuven.be](http://www.law.kuleuven.be).

<sup>86</sup>CLOUT case No. 132 [Oberlandesgericht Hamm, Germany, 8 February 1995].

<sup>87</sup>CLOUT case No. 1189 [Tribunale di Rovereto, Italy, 21 November 2007].]

<sup>88</sup>Landgericht Memmingen, Germany, 13 September 2000, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>89</sup>CLOUT case No. 409 [Landgericht Kassel, Germany, 15 February 1996], also Unilex.

<sup>90</sup>Oberlandesgericht Innsbruck, Austria, 1 February 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 534 [Oberster Gerichtshof, Austria, 17 December 2003]. For a case referring to the language issue without, however, conclusively deciding the issue, see Oberlandesgericht Düsseldorf, Germany, 21 April 2004, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).