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**United Nations Commission  
on International Trade Law****UNCITRAL Digest of case law on the United Nations  
Convention on the International Sale of Goods\****Article 12*

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 a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

**General issues and requirements**

1. Article 12 recognizes that some States consider that it is important that contracts or their modifications or termination by agreement be in writing. Therefore, article 12 enables a Contracting State to make a declaration under article 96 to prevent the application of any provision of article 11, article 29 or Part II of the Convention which 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 where any party has his place of

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\* The present digest was prepared using the full text of the decisions cited in the Case Law on UNCITRAL Texts (CLOUT) abstracts and other citations listed in the footnotes. The abstracts are intended to serve only as summaries of the underlying decisions and may not reflect all the points made in the digest. Readers are advised to consult the full texts of the listed court and arbitral decisions rather than relying solely on the CLOUT abstracts.

business in that Contracting State<sup>1</sup>. It must be pointed out, however, that according to article 96 of the Convention only those Contracting States are allowed to declare an article 96 reservation whose legislation requires contracts of sale to be concluded in or evidenced by writing.

2. As set forth both in the legislative history<sup>2</sup> and case law, article 12, unlike most provisions of the Convention, cannot be derogated from.<sup>3</sup>

### Sphere of application and effects

3. In light of the legislative history, it appears that, as the operation of article 12 is confined to articles 11 and 29 and to Part II of this Convention, it does not encompass all notices or indications of intention required under the Convention but only those which relate to the formation of the contract, its modifications and its termination by agreement.<sup>4</sup>

4. The effects of article 12 of the Convention lead to the principle of freedom from form requirements not being per se applicable where one party has its relevant place of business in a State that made an article 96 declaration.<sup>5</sup> Opposing views exist as to the effects of the article 96 reservation. According to one view, the sole fact that one party has its place of business in a State that made an article 96 reservation does not necessarily mean that the form requirements of that State apply.<sup>6</sup> Rather, it will depend on the rules of private international law of the forum whether any form requirements have to be met. Thus, where those rules lead to the law of a State that made an article 96 reservation, the form requirements of that State will have to be complied with; where, on the other hand, the law applicable is that of a contracting State that did not make an article 96 reservation, the principle

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<sup>1</sup> For this statement, albeit with reference to the draft provisions contained in the 1978 Draft Convention, see 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, 20.

<sup>2</sup> See 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, 20: “Since the requirement of writing in relation to the matters mentioned in article 11 [draft counterpart of the Convention’s article 12] is considered to be a question of public policy in some States, the general principle of party autonomy is not applicable to this article. Accordingly, article 11 [draft counterpart of the Convention’s article 12] cannot be varied or derogated from by the parties.”

<sup>3</sup> Cour d’appel, Paris, France, 6 November 2001, published on the Internet at <<http://witz.jura.uni-sb.de/CISG/decisions/061101v.htm>>; CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000], expressly stating that article 12—as well as the final provisions—cannot be derogated from (see full text of the decision).

<sup>4</sup> For the wording used in the text, see 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, 20.

<sup>5</sup> See Rechtbank van Koophandel, Belgium, 2 May 1995, published on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/1995-05-02.htm>>.

<sup>6</sup> Rechtbank Rotterdam, the Netherlands, 12 July 2001, *Nederlands Internationaal Privaatrecht*, 2001, No. 278.

of freedom from form requirements laid down in article 11 applies, as repeatedly pointed out in case law.<sup>7</sup> According to the opposing view, however, where one party has its relevant place of business in a State that made an article 96 reservation, the contract must be concluded or evidenced or modified in writing.<sup>8</sup>

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<sup>7</sup> Rechtbank Rotterdam, the Netherlands, 12 July 2001, *Nederlands Internationaal Privaatrecht*, 2001, No. 278; Hoge Raad, the Netherlands, 7 November 1997, published on the Internet at <<http://www.unilex.info/case.cfm?pid=1&do=case&id=333&step=FullText>>; CLOUT case No.52 [Fovárosi Biróság Hungary 24 March 1992].

<sup>8</sup> The High Arbitration Court of the Russian Federation, Arbitration, 16 February 1998, referred to on the Internet at <<http://cisg3w.law.pace.edu/cases/980216r1.html>>; Rechtbank van Koophandel Hasselt, Belgium, 2 May 1995, published on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/1995-05-02.htm>>.