

Commentary

1. Article 7 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.

2. Article 7 states the rules to be applied in terms of interpreting the unilateral acts of each party, i.e. communications in respect of the proposed contract, the offer, the acceptance, notices, etc. Nevertheless, article 7 is equally applicable to the interpretation of "the contract" when the contract is embodied in a single document. Analytically, this Convention treats such an integrated contract as the manifestation of an offer and an acceptance. Therefore, for the purpose of determining whether a contract has been concluded as well as for the purpose of interpreting the contract, the contract is considered to be the product of two unilateral acts.

Content of the rules of interpretation

3. Since article 7 states rules for interpreting the unilateral acts of each party, it does not rely upon the common intent of the parties as a means of interpreting those unilateral acts. However, article 7 (1) recognizes that the other party often knows or could not be unaware of the intent of the party who made the statement or engaged in the conduct in question. Where this is the case, that intent is to be ascribed to the statement or conduct.

4. Article 7 (1) cannot be applied if the party who made the statement or engaged in the conduct had no intention on the point in question or if the other party did not know and had no reason to know what that intent was. In such a case, article 7 (2) provides that the statements made by and conduct of a party are to be interpreted according to the understanding that a reasonable person would have had in the same circumstances.

5. In determining the intent of a party or the intent a reasonable person would have had in the same circumstances, it is necessary to look first to the words actually used or the conduct engaged in. However, the investigation is not to be limited to those words or conduct even if they appear to give a clear answer to the question. It is common experience that a person may dissimulate or make an error and the process of interpretation set forth in this article is to be used to determine the true content of the communication. If, for example, a party offers to sell a quantity of goods for Swiss francs 50,000 and it is obvious that the offeror intended Swiss francs 500,000 and the offeree knew or could not have been unaware of it, the price term in the offer is to be interpreted as Swiss francs 500,000.

6. In order to go beyond the apparent meaning of the words or the conduct by the parties, article 7 (3) states that "due consideration is to be given to all relevant circumstances of the case." It then goes on to enumerate some, but not necessarily all, circumstances of the case which are to be taken into account. These include the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

*Article 7***[Interpretation of conduct of a party]**

(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 would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had in the same circumstances, 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.

PRIOR UNIFORM LAW

ULIS, article 9 (3).

ULF, articles 4 (2), 5 (3), 12 and 13 (2).

UNIDROIT Draft of a Law for the Unification of Certain Rules relating to Validity of Contracts of International Sale of Goods, articles 3, 4 and 5.