

UNITED NATIONS

GENERAL
ASSEMBLY



Distr.
GENERAL

A/CN.9/16/Add.2
4 March 1969

ORIGINAL: ENGLISH/FRENCH



UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW
Second session
Geneva, 3 March 1969
Item 4(c) of the agenda

Dual distribution

TIME LIMITS AND LIMITATIONS (PRESCRIPTION)
IN THE FIELD OF INTERNATIONAL SALE OF GOODS

Note by the Secretary-General

Addendum

CONTENTS

	<u>Page</u>
INTRODUCTION	2
STUDY SUBMITTED BY THE GOVERNMENT OF BELGIUM	2

INTRODUCTION

In his notes A/CN.9/16 and Add.1 the Secretary-General reproduced the studies received from the Governments of Czechoslovakia, Norway and the United Kingdom on "time-limits and limitations (prescription) in the field of international sale of goods." The present addendum reproduces the study on that item submitted by the Government of Belgium.

STUDY SUBMITTED BY THE GOVERNMENT OF BELGIUM

Study of limitations (prescription), including the results of a survey by the Ministry of Justice.

This study is divided into two parts: There is a brief analysis of Belgian law, which is followed by a summary of the views of certain interested circles on this question, and in particular on the preliminary draft convention prepared by Professor Trammer.

I. Belgian law

(a) Domestic law

The limitation (prescription) period relating to an action for avoidance of a sales contract is the same as that of an action for the avoidance of any synallagmatic contract namely, ten years (article 1304 of the Civil Code).

The limitation period for an action to obtain the performance of a contract is the thirty-year limitation of the ordinary law (article 2262 of the Civil Code).

However, these time-limits are affected by various specific laws relating to sales, including the following.

Article 2272 of the Civil Code reduces to one year the time-limit for bringing an action for payment of goods sold to a person who is not a dealer.

- The time-limit for bringing an action in connexion with a concealed defect is "promptly", the interpretation of the term being left to usage and the discretion of the court (article 1648 of the Civil Code). In certain cases, the period implied by "promptly" is defined in special legislation (seeds, agricultural produce, animals).
- As to time-limits within which a purchaser may raise a claim: in the case of goods sold to the consumer, the claim must be made within one month of delivery.

International law

a. Contract law

I. With reference to international sales of movable goods:

- (a) Belgium has ratified the Hague Convention of 15 June 1955 on the law applicable to international sales of goods. This law, applicable under the Convention, naturally contains provisions relating to time-limits and limitations;

- (b) Belgium has ratified (subject to the reservation for which provision is made in article V) the Hague Convention on the unification of law governing the international sale of goods. Parliamentary procedure for approval of this Convention has been initiated with a view to possible withdrawal of the reservation.

This uniform law does not contain any general provisions relating to limitations.

However, article 49, paragraph 1 specifies that the buyer must exercise his rights against the seller within one year of giving notice of lack of conformity.

Moreover, various articles of the uniform law mention periods referred to as "promptly" (defined in article 11) or described as "reasonable" (not defined but used in various provisions such as articles 22, 26 and 27).

- (c) Belgium, along with its Benelux partners, has prepared a treaty concerning uniform legislation in the matter of private international law, which has just been approved by the Benelux Consultative Inter-parliamentary Council and whose signature is pending.

It includes an article 13, which defines the law applicable to contracts, a law governed by the principle of the free determination of the parties, and an article 15, whose paragraph 1 states:

"The law which governs an obligation also determines the manner in which that obligation shall be discharged, the consequences of failure to discharge it and the conditions under which it is extinguished."

- (d) Belgium has also taken part in the work of the sub-committee on basic juridical concepts, formed under the auspices of the Council of Europe, which studied the question of time-limits and drew the following conclusions:

Time limits

A committee of experts should be set up in which all member States are represented in order to draft a convention to unify certain rules of the countries members of the Council relating to time-limits. Complete unification appears to be neither possible nor desirable, but in its report the sub-committee lists the points on which it considers such unification feasible.

They are:

public-policy aspect of time-limits - derogation possible if the law so provides;
computation of time-limit: non-inclusion of the dies a quo, but inclusion of dies a quem, limitation of the use of free periods - Sundays and public holidays included in the calculation of time-limits - but extension of the time-limit if the dies a quem is a holiday.

Study of the question of Saturday and court recesses.

Acquisitive prescription

Harmonization of the rules on this subject is less important than in the case of extinctive prescription. Harmonization is, however, possible for:

the definition;
the automatic operation of acquisitive prescription;
its retroactive effect;
accumulation of periods of possession (fonction des possessions).

Extinctive prescription

Harmonization is highly desirable for the following points:

the definition;
the rights liable to extinctive prescription;
time limits: the sub-committee drew up a list of legal actions with a possible international ingredient whose limitation periods might be made uniform, such as actions resulting from a contract of sale, engagement of workmen, a commission, a contract of transport, a contract of insurance, actions relating to the liability of hotel keepers, actions relating to traffic accidents;
commencement of the period of limitation: from the moment when the right could have been exercised,
limitation of an action founded on a civil offence;
the manner in which extinctive prescription operates - in principle, it must be invoked by the party concerned,
mandatory or variable character of extinctive prescription: a common rule should be sought;
renunciation: renunciation of prescription in advance is prohibited;
interruption,
suspension.

Loss of rights

The various ways in which a right is lost by the lapse of a predetermined period of time should be excluded from the convention.

- (e) Belgium is participating in the work of the committee of experts which was set up by the Committee of Ministers of the Council of Europe in accordance with the conclusions arrived at by the above-mentioned sub-committee and which is preparing an international convention on extinctive prescription.

B. Doctrine and judicial precedents

Limitation (prescription) in contractual matters is in general governed by the lex contractus in accordance with the principle of the free determination of the parties.

An order of the Court of Cassation of 14 July 1898 (Pasicrysie 1898 I 274) uses the following language:

"Whereas the plaintiff seeks the application of Belgian law on the sole ground that he has taken up residence in Belgium;

Considering that the performance of the obligation is governed by Netherlands law, and it is at Rotterdam that privity was established by the agreed will of the parties, and that, the place of payment having also been fixed at Rotterdam, it is the statute in force at that place, which must govern limitation (prescription), which, like payment, is a method of extinguishing an obligation;

Considering that contracts entered into in a legal manner are, under the provisions of article 1134 of the Civil Code, legally binding on the contracting parties, and one of the parties cannot by his own act alter the terms and guarantees for the performance of such contracts;

Considering that, although limitation is an institution of public policy, its terms and duration may, without prejudice to public policy, be governed by the law of the place of contract; ..."

In the case of civil offences, it is the lex loci delicti, the law governing substance, which also determines the time-limits within which an action must be brought and the period of limitation for such an action.

II. Consultation of interested circles with regard to
Professor Trammer's preliminary draft convention

In general, these circles feel that it would be distinctly useful to have a convention supplementing, in the field of limitations, the uniform laws on international sale annexed to the Hague Convention of 1964.

In reply to the question asked in the note by the Secretariat (page 5 of the French text), they consider that it would be desirable, should the problem of limitation be confined to international sales, to borrow, for the definition of this concept, the terms used in the Hague Convention relating to a Uniform Law on the formation of contracts for the International Sale of Goods.

In that connexion, it is the view of the circles consulted that the preliminary draft convention on uniform effects of limitation on international sales of tangible movables, prepared by Professor Trammer, constitutes an excellent working document.

Some following comments were made on the document:

Article 2 In general, the three-year time-limit provided for in article 2 of the draft convention for the initiation of an action arising out of a contract appears to be reasonable and is not regarded as inconsistent with international trade usages.

Some quarters, however, made the following observations:

1. While it may be accepted that "fraud by the second party" might prevent a limitation period from beginning to run, it is difficult to accept the idea that such fraud should prevent the observance of a limitation period which has begun to run.
2. Could not the parties agree on a limitation period exceeding that proposed in this article by half? It is, in fact, often important to be sure that the quality of goods persists.

Article 3 Opinions differ on the one-year period provided by this article. Some find it too short, others too long. Nevertheless, it seems acceptable in view of the option - in article 4 - of extending it within certain limits.

The question should, however, be examined in the light of article 49 of the Uniform Law annexed to the Hague Convention of 1964.

On the other hand, the additional period of thirty days within which to challenge lack of conformity seems too short.

Some of the circles consulted had reservations regarding the computation of the thirty-day period in article 3, paragraph 2.

The period in question is computed from the date of receipt of the goods. This is acceptable if it is to run from the moment when the buyer is physically in possession of the goods or equipment. But this method of counting may give rise to problems or even make verification and notification impossible where sales are made to overseas countries (FOB, CF, CIF, ex works, etc.), if the date of receipt of the goods is determined by the criterion of transfer of ownership or yet by some purely legal concept of goods made available to a buyer established overseas.

Under article 3, paragraph 2, it will no doubt be possible to spell out this matter in the contract, but the seller and the buyer would have to remember to do so and, above all, would have to reach agreement on it.

Article 4, paragraph 2

The question was raised whether a finding that the seller was a debtor would be sufficiently supported by letters in which the seller might have promised to make some improvement in equipment or referred to repairs.