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RELATIONSHIP OF DRAFT CONVENTION ON CONTRACTS FOR THE
INTERNATIONAL SALE OF GOODS TO CONVENTION ON THE
LIMITATION PERIOD IN THE INTERNATIONAL
SALE OF GOODS

Report of the Secretary-General

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INTRODUCTION

1. The United Nations Commission on International Trade Law, at its eleventh session, considered the relationship between the Convention on the Limitation Period in the International Sale of Goods (hereafter referred to as the Prescription Convention) and the draft Convention on Contracts for the International Sale of Goods (hereafter referred to as the draft Contracts Convention).

2. The Commission noted that the Summary Records of the Conference of Plenipotentiaries which adopted the Prescription Convention indicated that the fact that the rules on scope of application in the Prescription Convention might differ from those in a future Convention dealing with the subject matters encompassed by the draft Contracts Convention was foreseen and that it was anticipated that some type of remedial action might be taken. Since a comparison of the Prescription Convention with the draft Contracts Convention showed that such differences existed, the Commission recommended to the General Assembly that the Conference of Plenipotentiaries to be convened to consider the draft Contracts Convention be authorized to consider the desirability of preparing a Protocol to the Prescription Convention which would harmonize its provisions in respect of sphere of application with those of the Contracts Convention as it may be adopted by the Conference.^{1/}

3. The General Assembly, acting on this recommendation of the Commission, decided, by resolution 33/93 of 16 December 1978, that the international Conference of Plenipotentiaries convened to consider the draft Contracts Convention should consider the desirability of preparing a Protocol to the Prescription Convention for the purpose of harmonizing its provisions with those of the Contracts Convention as it may be adopted by the Conference.

4. This report discusses the differences between the scope of application provisions of the Prescription Convention and those of the draft Contracts Convention to aid the Conference in its consideration of the desirability of preparing a Protocol to the Prescription Convention. The draft of a possible Protocol is presented in the Annex to this report.

^{1/} Official Records of the General Assembly, Thirty-third Session, Supplement No. 17 (A/33/17), para. 27, sub-para. 4 of the resolution contained therein.

ANALYSIS OF DIFFERENCES BETWEEN THE PRESCRIPTION CONVENTION AND
THE DRAFT CONTRACTS CONVENTION

5. The substantive content of the sphere of application provisions in articles 1 to 7 of the Prescription Convention is nearly identical to the substantive content of articles 1 to 6 and 9 of the draft Contracts Convention. This is the result of a deliberate policy of the drafters of the Prescription Convention who followed in large measure the revision of the sphere of application provisions in the then current text of the draft Contracts Convention. In comparing the Prescription Convention with the draft Contracts Convention the following differences appear.

Differences in presentation

6. The most striking difference between the two texts is the manner of presentation. Article 1 (1) of the Prescription Convention states the effect which the Convention is to achieve, i.e. to "determine when claims of a buyer and a seller against each other arising from a contract of international sale of goods or relating to its breach, termination or invalidity can no longer be exercised by reason of the expiration of a period of time." In order to achieve this purpose, article 1 (3) defines, inter alia, "buyer" and "seller", article 2 describes the conditions under which a contract of sale of goods is to be considered international, while articles 3 to 6 state certain restrictions on the application of the Convention.

7. On the other hand, article 1 (1) of the draft Contracts Convention states directly which contracts of sale of goods are subject to the Convention without defining either a "buyer", a "seller" or an "international contract of sale". Articles 2 to 4 state essentially the same exclusions from the scope of application as do articles 3 to 6 of the Prescription Convention.

8. Although the difference in presentation does not in itself cause a difference in the content of the scope of application provisions of the two Conventions, it leads to certain difficulties in making direct comparisons between the two, difficulties which could lead over time to differences in interpretation and application of the two Conventions.

9. It would be possible to eliminate this difference in presentation through the use of a protocol to the Prescription Convention which would replace, with appropriate modifications, articles 1 to 7 by articles 1 to 5 and 9, of the Contracts Convention. However, it does not seem that such a major act of revision is necessary.

Differences in substantive content

10. There are three differences in the substantive content of the scope of application provisions of the two Conventions which may be the subject of a Protocol to the Prescription Convention.

Private international law, Prescription Convention article 3

11. Article 3 of the Prescription Convention and article 1 (1) (b) of the draft Contracts Convention are in direct opposition as to the effect which the rules of private international law should have on the scope of application of the respective conventions. In the case of the draft Contracts Convention, the Convention applies to the transaction if the rules of private international law lead to the application of the law of a Contracting State. In the case of the Prescription Convention, the rules of private international law are not to be taken into account in determining whether the Convention applies.

12. The rule in the Prescription Convention reflects the view that if the applicability of the Convention were linked to the rules of private international law, special difficulties could arise because of the unusually divergent approaches in different legal systems to the characterization of the subject matter.

13. The most efficient manner of harmonizing the Prescription Convention with the draft Contracts Convention on this point would be to delete paragraphs 1 and 2 of article and to add to article 2 (a) the text of subparagraphs (a) and (b) of paragraph (1) of article 1 of the draft Contracts Convention. The text of article 2 (a) of the Prescription Convention would then be as follows:

"(a) A contract of sale of goods shall be considered international if, at the time of the conclusion of the contract, the buyer and the seller have their places of business in different States:
- when the States are Contracting States; or
- when the rules of private international law lead to the application of the law of a Contracting State;"

Exclusion of sale of goods purchased for personal reasons, Prescription Convention article 4(a)

14. Article 2 (a) of the Sales Convention has the following words added to the end of the words used in article 4 (a) of the Prescription Convention:

"unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;"

Interpretation of the Convention, Prescription Convention article 7

15. Article 6 of the draft Contracts Convention differs from article 7 of the Prescription Convention in that it includes the words "and the observance of good faith in international trade."

ANNEX

PROTOCOL TO THE CONVENTION ON THE LIMITATION PERIOD IN THE
INTERNATIONAL SALE OF GOODS

PREAMBLE

The States Parties to this Protocol,

Considering that international trade is an important factor in the promotion of friendly relations amongst States,

Believing that the adoption of uniform rules governing the limitation period in the international sale of goods would facilitate the development of world trade,

Considering that amending the Convention on the Limitation Period in the International Sale of Goods to conform to the Convention on Contracts for the International Sale of Goods would promote the adoption of the uniform rules governing the limitation period contained in the Convention on the Limitation Period in the International Sale of Goods

Have agreed as follows:

Article 1

(1) Subparagraph (a) of article 2 is deleted and is replaced by the following provision:

"(a) A contract of sale of goods shall be considered international if, at the time of the conclusion of the contract, the buyer and the seller have their places of business in different States:

- when the States are Contracting States; or
- when the rules of private international law lead to the application of the law of a Contracting State;"

(2) Paragraph 1 and 2 of article 3 are deleted.

(3) Paragraph 3 of article 3 is amended by deleting the paragraph number.

Article 2

Subparagraph (a) of article 4 is deleted and is replaced by the following provision:

"(a) Of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;"

Article 3

Article 7 is deleted and is replaced by the following provision:

"In the interpretation and application of the provisions of this Convention, regard is to be had to its international character and to the need to promote uniformity and the observance of good faith in international trade."

Article 4

- (1) This Protocol is open for signature at the concluding meeting of the Conference on Contracts for the International Sale of Goods on _____ and shall remain open for signature at the Headquarters of the United Nations, New York, until _____.
- (2) This Protocol is subject to ratification, acceptance or approval by the signatory States.
- (3) This Protocol shall be open for accession by all States which are not signatory States.
- (4) Instruments of ratification, acceptance, approval and accession shall be deposited with the depositary.

Article 5

- (1) This Protocol shall enter into force on the first day of the _____ month following the deposit of the _____ instrument of ratification, acceptance, approval or accession with the depositary.
- (2) For each State ratifying, accepting, approving or acceding to this Protocol after the _____ instrument of ratification, acceptance, approval or accession has been deposited, this Protocol enters into force in respect of that State on the first day of the _____ month following the expiration of _____ months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article 6

Any State which becomes a Party to the Prescription Convention after the entry into force of this Protocol pursuant to article 5 shall, failing an expression of a different intention by that State:

- (a) be considered as a Party to the Prescription Convention as amended; and
- (b) be considered as a Party to the unamended Prescription Convention in relation to any Party to that Convention not bound by this Protocol.

Article 7

- (1) The depositary shall transmit certified true copies of this Protocol to all the Parties to the Prescription Convention.
- (2) When this Protocol enters into force in accordance with article 5, the depositary shall prepare a text of the Prescription Convention as amended by this Protocol and shall transmit certified true copies of it to all States Parties or entitled to become Parties to the Prescription Convention as amended by this Protocol.

DONE at, this day of
in a single original, of which the (Arabic), Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Protocol.