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REPORT ON RECOURSE ACTIONS AND THE EXPRESSION  
"OTHERWISE EXERCISED" IN ARTICLE 1  
(2) OF THE PRELIMINARY DRAFT

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## I. RECOURSE ACTIONS

The present wording of the preliminary draft leaves a wide margin of uncertainty regarding:

1. Contracts with joint debtors or warranties;
2. The effects of time-limits and limitations in successive sales (recourse actions). With regard to the first point, there are three options:
  - (a) To retain the text as it is, leaving its interpretation to municipal law. I do not consider this prudent because it would lead to a lack of certainty for both creditors and debtors.
  - (b) To include in the preliminary draft paragraph 1 of formula A proposed by Mr. Rognlien (A/CN.9/WG.1/WP.10, page 4).
  - (c) To include in the preliminary draft a text incorporating the French solution. This appears to me to be the clearest and simplest solution. Otherwise, a great effort would be required of the creditor, who would have to file various claims, one against each joint debtor. This would in fact mean that he would have to make several requests for the fulfilment of the same obligation. It would be different if, contrary to the provisions of article 10 of the preliminary draft, an act of interruption could be effected more freely, by a cabled notice, for example.

Where there are accessory guarantees, the so-called French system also provides a solution which is simple and accordingly more in line with the nature of international trade.

Notwithstanding my definite support for the French solution, taking into account the different view expressed by Mr. Rognlien, in my consistent desire to reach a compromise I would propose the following compromise formula:

"Where the creditor has several joint debtors under a contract of international sale of goods as defined in this law, interruption of the limitation in respect of one of them shall have the same effect in relation to the remaining joint debtors, provided that the creditor informs them by formal notice of the institution of proceedings against the former. The same system shall apply where there is an accessory guarantee."

Furthermore, in order to solve the similar problem which arises from the effects of articles 14, 15, and 16 of the preliminary draft, and which is not considered in Mr. Rognlien's document, I would suggest that the following sentence should be added to the text which I have proposed;

/...

"The same criterion shall apply in cases of extension".

With regard to the second point - recourse actions - in view of the structure of the preliminary draft, it would be appropriate to insert a text similar to that contained in paragraph 2 of formula A of document A/CN.9/WG.1/WP.10.

When I say "in view of the structure of the preliminary draft", I am referring to the lack of a definition of the effects of the concept of interruption. For, as the commentary on article 10 rightly states (A/CN.9/50) "in some legal systems 'interruption' implies renewal of the period; in other systems the results are different." If the preliminary draft had defined the effect of interruption - whether it implied that the period would be renewed or that the entire period would run afresh - it would not be necessary to include the aforementioned proposal contained in paragraph 2 of Mr. Rognlien's formula A, provided, of course, that the French system or the compromise text which I have proposed were adopted.

## II. THE EXPRESSION "OTHERWISE EXERCISED"

The expression "otherwise exercised" in article 1 (2) and the possibility of reservations thereto complicate the article unnecessarily.

I suggest that paragraph 2 should merely state:

"In this law 'the limitation period' means the period within which the rights of the parties may be enforced".

If the remainder must be included, it should be inserted in the appropriate place, which in my view is not the one now chosen for it.

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