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   the international sale of goods
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LIMITATION AND ARBITRATION, REPORT SUBMITTED BY
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Correspondence on arbitration by Mr. Paul Jenard,
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I fully share your view that there should be a uniform rule determing the
date on which the limitation period is interrupted by arbitration.   I should
hesitate, however, to enter into too many details, as is done in paragraphs 2, 3
and 4 of draft article 9.   Indeed, paragraph 2 is open to the criticism that
it is difficult to cover all the possible methods of appointing arbitrators.

For example, our draft law to amend the present law on arbitration, which
is largely in conformity with the Strasburg Convention containing uniform rules
of arbitration, provides that the parties may, either in the arbitration agreement
or later, appoint the sole arbitrator or arbitrators or appoint a third party for
that purpose.   The court has certain powers: for example, if a party invited to
do so has not appointed its arbitrator, or if the third party neglects to appoint
the arbitrator, or if the parties fail to agree on the appointment of the single
arbitrator.   Similarly, when the arbitrators appointed by the parties are equal
in number and fail to agree on the appointment of an additional arbitrator
(there must be an uneven number of arbitrators), this additional arbitrator will
be appointed by the judge of the court.

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I do not think that the appointment of arbitrators is an essential factor in the interruption of the limitation period. It seems better to consider the service of the request for arbitration made by one party on the other party (see in this connexion the 1961 European Convention on International Commercial Arbitration - article IV 2).

With regard to paragraph 3, the French translation mixes the two terms "significat and "notification". For instance, it is not possible to say that a "notification" shall be "signifiée". Furthermore, it seems to me unnecessary to say that the requ for arbitration shall be in writing. If provision is made, as in rule 4, that the notice shall be sent by post, it quite clearly must be in writing.

For this reason I would suggest the following text to cover paragraphs 1 to 4:

"1. If the parties agree to submit their dispute to an arbitration tribunal, the limitation period shall be interrupted from the date of service of the request for arbitration at the defendant's residence or seat.

2. Unless the parties otherwise provide, notice shall be deemed to be given by posti the request."

I admit that I have had some difficulty in grasping the meaning of your commentar on paragraph 5 of your proposal. I suppose it relates to the "special case" procedure in English law, which leaves ample room for the intervention of the Courts in arbitrat since any point of law arising during an arbitration may be submitted to the Court eit by the arbitrator or by the parties.

That is why I wonder whether paragraph 5 ought not to be more explicit. Is ther not in fact an idea additional to the one you are developing: that if during the arbitration procedure an ordinary Court is seized of a matter relating to the dispute, the commencement of the arbitration procedure must nevertheless be deemed to have interrupted the limitation period.

I suggest, therefore, the following wording:

"The provisions of the preceding paragraphs shall apply even if the arbitration agreement provides that no legal proceedings may be brought before an arbitral award has been given, or even if during the arbitration the Court is seized of all or part of the dispute".

These are obviously only a few ideas which I venture to suggest to you; I leave to you to make any use of them when the Working Party meets that you may think most helpful.

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