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Explanatory note and text of a preliminary draft of uniform law on extinctive prescription in international sale of goods by Professor Gervasio R. Colombres, representative of Argentina to UNCITRAL

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EXPLANATORY NOTE ON THE PRELIMINARY DRAFT

I

At the informal meeting of the UNCITRAL Working Group on Prescription held in New York on 29 April 1970, I was given the task of preparing a preliminary draft of uniform law to be used, together with the texts which other members of the Group were asked to produce, at the second session opening at Geneva on 10 August 1970.

In view of the fact that consideration by the Commission of this very complex subject is in its early stages, it is no doubt premature to attempt to draw up a widely acceptable text. Both the Working Group and UNCITRAL have discussed only a few aspects of the topic, and this means that I undertake the task of formulating a draft uniform law without having the requisite guidance concerning the solutions to be embodied in it.

Nevertheless, being convinced that the availability of a preliminary draft - even if only a tentative one - would be of practical value in furthering the work of the Group, I embarked on the task with these five self-imposed guidelines:

1. To leave aside both the terminology and the strict conceptual approach which the legislation and literature of the civil-code countries employ in dealing with this institution. Accordingly, I have disregarded the subtle though apt distinctions between the concepts of time-limits and limitations (prescripción and caducidad) which are made by the codes and writers of the Continental European and Latin American tradition. I do not doubt that use of that terminology and that conceptual approach would facilitate the systematic regulation of a subject which has many nuances and ramifications, because of the ways in which the rights and obligations of the parties vary under contracts of sale of goods. The provisions contained in the Continental European codes illustrate this point;

like article 455 of the Argentine Commercial Code, they prescribe extremely short time-limits, which have particular effects, for the exercise of some of the buyer's rights.[1/] What is involved in such cases is not the performance or non-performance of an obligation of the buyer, but the time available to him within which to exercise an option. This is bound up with a traditional distinction between an obligation and a responsibility (carga). Performance can be demanded in the first case (an obligation) but not in the second (a responsibility), because its nature (in this instance, inspection within the time-limit) implies an action that is required of the party on whom it is conferred for his own benefit. It is a question bound up with certain terms of the contract, rather than one of legal procedures and actions.

2. A practical approach, which resolves through the passing of time the main problems arising out of the non-performance of obligations, will be acceptable to most of the interests and systems of the international trading community.

3. To incorporate in the preliminary draft the agreed approaches and the majority views which are apparent from the decisions of the Commission and of the Working Group on Prescription.

4. To maintain a judicious balance between the parties to the contract, taking special care to carry out the intention, expressed in General Assembly resolution 2205 (XXI), of bearing in mind "the interests of all peoples, and particularly those of developing countries, in the extensive development of international trade" (section II, para. 9).

5. To provide for a general prescriptive period, disregarding special situations (redhibitory or hidden vices, defects in quality, etc.) which, because of their complexity or the differing treatment accorded to them in national systems and under national laws, would make for less extensive acceptance than is desirable.

1/ Argentine Commercial Code, article 455: "In all purchases sight unseen of goods which cannot be classified in terms of a specific quality known on the commercial market, it is presumed that the buyer reserves the right to inspect the goods and the option to rescind the contract if he finds them unacceptable. He shall have the same option if the right to sample the goods has been reserved under a specific clause. If in either case the buyer delays the inspection or sampling for more than three days after notice (interpelación) is given by the seller, the inspection or sampling shall be deemed to be without effect."

II

In preparing the preliminary draft which I attach hereto, I have taken into account the following documents and legal texts or drafts:

A

DOCUMENTS

1. Working paper prepared by Professor John Honnold (A/CN.9/WG.1/CRD.1).

2. Report of the Working Group on its session held at Geneva from 18 to 22 August 1969 (A/CN.9/30).

3. Note by the Secretariat on alternative approaches for consideration of the report of the Working Group (A/CN.9/R.1).

4. Note by the Secretary-General containing the studies submitted by the Governments of Czechoslovakia, Norway and the United Kingdom (A/CN.9/16).

5. Note by the Secretary-General containing comments submitted by the International Institute for the Unification of Private Law (UNIDROIT) (A/CN.9/16/Add.4).

6. Note by the Secretary-General containing the study submitted by the Government of Belgium (A/CN.9/16/Add.2).

7. Note by the Secretary-General containing comments submitted by the Government of Nigeria (A/CN.9/16/Add.3).

8. Draft report adopted by UNCITRAL at its third session (UNCITRAL/III/CRP.16/Add.12).

9. Replies made by Governments of member States to the Questionnaire on "Time-limits". (European Committee on Legal Co-operation, Council of Europe, 1968).

10. Report of the Working Group on the International Sale of Goods on its session held at New York from 5 to 16 January 1970 (A/CN.9/35).

B

STATUTORY TEXTS AND DRAFTS

1. The Czechoslovak International Trade Code (chapter II, part VI, sections 76-94), 1963.

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2. General Conditions for the Delivery of Goods between Foreign Trade Organizations of Participating Countries of the Council for Mutual Economic Assistance (CMEA), 1968, chapter XVI, articles 92-100.

3. The Council of Europe's draft, Strasbourg, 1969.

4. Limitation of actions (Report of the Law Reform Commission, Parliament of New South Wales), 1967.

5. Professor H. Trammer's draft.

6. The CMEA draft.

III

The preliminary draft comprises twenty-eight articles and is divided into ten chapters:

Chapter I: Sphere of application of the law.

Chapter II: The period of prescription.

Chapter III: Commencement of the period.

Chapter IV: Modification of the period by agreement.

Chapter V: Interruption of the period.

Chapter VI: Suspension of the period.

Chapter VII: Performance of an obligation after prescription.

Chapter VIII: Set-off of obligations.

Chapter IX: Application of the period of prescription.

Chapter X: Calculation of the period.

Chapter I

Sphere of application of the Law

1. I decided to include a chapter on "sphere of application of the Law" in the preliminary draft in order to make it structurally complete. In doing so, I followed the text of chapter I of ULIS almost word for word, on the strength of the recommendation to that effect made by the Working Group (A/CN.9/30, para. 11) and approved by the Commission (UNCITRAL/III/CRP.16/Add.12, para. 6).

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2. Nevertheless, there are some minor variations in the text now submitted, as compared with chapter I of ULIS:

(a) The order of some articles has been changed to make the régime which is laid down more coherent. Thus, article 6 of ULIS appears as article 2; article 5 as article 3; article 7 as article 4.

(b) Some provisions of ULIS, such as article 5, paragraph 2, and the second part of article 8, are omitted because they go beyond what should be included in a uniform law on prescription.

(c) Article 2 of ULIS is replaced by the formulation proposed by Working Party I which met during the April 1970 session in New York (UNCITRAL/III/CRP.16/Add.1, paras. 10 and 11).

(d) The first part of article 8 of ULIS has been modified along the lines of the recommendation which was approved in principle by the Commission (UNCITRAL/III/CRP.16/Add.12, paras. 7 and 8), and this appears in the preliminary draft as article 5.

Chapter II

The period of prescription

This chapter comprises two articles. The first (article 7) establishes the period of prescription. It refers to the "obligations" of the parties, because this term seems to me broader and therefore more suitable than the expression "rights of the creditor". In keeping with the self-imposed intention which I explained in section I (1) of this explanatory note on the preliminary draft, I have left aside any idea of including a provision of the kind contained in section 76 of the Czechoslovak International Trade Code, which states that prescription does not extinguish a right. That would mean taking a position on the distinction between limitations and time-limits, which would render the Law more difficult for the common-law countries to accept. One of the fundamental distinctions which Continental European and Latin American legal theory makes between limitations and time-limits is that limitations do not extinguish a right whereas time-limits do.

The second article in the chapter (article 8) follows up a recommendation made by the Working Group and approved in principle by the Commission (UNCITRAL/III/CRP.16/Add.12, paras. 7 and 8).

Chapter III

Commencement of the period

1. The preliminary draft (article 9) sets the date on which the breach of contract occurred as the date of commencement of the period of prescription (alternative A in the report of the Working Group (A/CN.9/30, p. 11)).

Although I had proposed at the August 1969 session of the Working Group that the period should be reckoned "as from the day on which action could first have been taken" (page 13 of the report), I abandoned this approach when preparing the preliminary draft, not only in the interest of compromise but also because I felt:

(a) That the solution now proposed was possibly the one most widely acceptable to members of the Working Group;

(b) That there is little difference in practice between the tests commonly applied (section 78 of the Czechoslovak International Trade Code; Rule No. 2 of the Council of Europe; articles 2 and 3 of the Trammer draft; article 4 of the CMEA draft; article 94 of the CMEA General Conditions of Delivery; alternative A, B or C in the report of the Working Group).

2. Article 10 is taken from paragraph 4 of alternative A considered by the Working Group (A/CN.9/30, p. 12). It is in keeping with what was explained in section I (1) and (4) and in chapter II of this explanatory note on the preliminary draft, the intention being:

(a) To set a period of prescription that would be sufficiently definite and would not allow of any major variation;

(b) To avoid the effects of requirements resulting from acceptance of the concept of time-limits and the notices which have to be given if that concept is applied.

3. Article 11, which is also taken verbatim from alternative A (paragraph 3 of the Working Group's report, is intended to complete the proposed system by providing for cases of breach of contract before performance is due.

4. Although it is true that, as provided for in all the commercial codes of civil-code countries, a special period of prescription would be justified in cases of delivery of defective goods or goods of a different quality from that contracted for,

because of the particular procedures required in such cases, I have taken a contrary attitude in preparing the preliminary draft (article 12). This is in keeping with the objective of definiteness, referred to earlier, and with the decisions of the Working Group (A/CN.9/30, pp. 16-17) and of the Commission (UNCITRAL/III/CRP.16/Add.12, paras. 9-12). The text of article 12 combines that objective with the general agreement expressed in the Committee that the concept of delivery should be understood, not in its strict legal sense, but in the sense of "physical delivery" (para. 12).

5. I have included as the final article of this chapter (article 13) an original provision designed to cover cases of sales on instalment terms. It could be argued that this is unnecessary, in view of the provisions of article 9. Nevertheless, I feel that it is useful for the sake of definiteness, even though it may be considered unduly severe. Without it, it could be maintained that, in cases where the contract contains no express provision, there has been only a partial breach of contract and consequently article 9 does not apply.

Chapter IV

Modification of the period by agreement

The preliminary draft includes a special chapter regulating the power of the parties to modify the period of prescription that is laid down. This is dealt with in two articles relating to extension (article 14) and shortening (article 15) of the period by agreement.

The unified treatment of this subject and its position in the legal text will clearly enhance the definitiveness of the proposed system.

The preliminary draft adopts different solutions for the two cases, because the characteristics of modern trade make this necessary.

(a) Although prescription is an institution in which, for underlying reasons of public policy, mandatory provisions are the rule, the power of the parties to extend the prescriptive period laid down is one of the very few exceptions to that principle which can be accepted amicably without jeopardizing the interests involved. It should be added that, whereas the opposite case - shortening of the period - might become a customary practice at the dictation of the stronger party to the contract, the presence of a clause on extension by agreement does not hold out any such possibility.

Despite the fact that neither the Working Group nor the Commission took any decision on this point, I believe that most representatives are willing to accept extension of the period by agreement where, as provided in the preliminary draft, it derives from an "express provision of the contract". The only remaining question would be whether the period could be extended without limit, as the preliminary draft permits, or whether the period should be specified, as is done in article 4 of Professor Trammer's draft. I am inclined to favour the solution proposed here, for the reasons stated in the preceding paragraph and because of the desirability of simplifying the text of the uniform law to make it as uncomplicated as possible.

(b) The power to shorten the prescriptive period by agreement should be ruled out completely.

Modern trade procedures require this, especially in cases of what is called in legal theory "mass trade" ("Massenverkehr"), where one of the parties is a large enterprise that sells its products or machinery according to rules which it imposes on the other party through systematically drawn-up contracts, often made out on detailed forms, which the latter party can hardly dispute or even, in some cases, be aware of.

This view has been accepted repeatedly in judicial decisions relating to municipal law and has been embodied in recently enacted laws, including the Argentine Insurance Act (Act No. 17,418 of 1967, article 59) and the Soviet Civil Code of 1964.

This solution also finds support in paragraph 9 of resolution 2205 (XXI) setting up UNCITRAL, which instructs us to bear in mind particularly the interests "of developing countries"; in the present context, however, as I have argued in the Commission on a number of occasions, this insufficiently precise concept should be understood to mean protection of the weaker party to the contract, whether his place of business is in a "developed" or a "developing" country.

I would also mention in support of this the reasons given in the first paragraph of (a) above and the argument for simplicity in the régime.

I am convinced that a contrary solution would cause serious, and perhaps insuperable, obstacles to general acceptance of the uniform law.

Chapter V

Interruption of the period

Article 16 regulates cases in which the prescriptive period is interrupted.

Because, as has been stated repeatedly, the intention underlying this preliminary draft is to provide simple and practical solutions, avoiding abstract or complex terms, the word "interruption" is not used in this article as it is in other laws and drafts; instead, I refer only to its effect, which is that the entire period of prescription commences to run afresh. I am also trying in this way to avoid the different - if only slightly different - theoretical concepts which the word might signify in various legal systems.

The cases of interruption I have chosen are the three that can be accepted in a scheme which combines and reconciles national systems of law in a coherent manner. Thus, in sub-paragraph (a), which requires that acknowledgement of the obligation should be in writing, I have disregarded the principles of German and Anglo-American law. Although this requirement may in some cases be too rigid, the indisputable act which the writing evidences will impart certainty to the prescriptive period. This is the same solution as in Professor Trammer's draft (article 4) and in the CMEA General Conditions (article 99). Sub-paragraph (b), which is closely linked to the one before, mitigates this rigidity, in keeping with the Anglo-American tradition.

Sub-paragraph (c) concerns legal action, this being the case that is accepted without any controversy. Here I have followed the wording of Rule No. 9 (b) of the Council of Europe's draft, which the Working Group found to be satisfactory (A/CN.9/30, p. 29), omitting the references to administrative authorities and arbitration proceedings. In the former case, this was because I felt that reference to the lex fori would be more likely to gain general acceptance as being more compatible with the various national systems of law. This is consistent, and results from a statement by one representative in the Working Group (A/CN.9/30, p. 29). In the latter case, (arbitration proceedings), the reason was that article 20 of the provisional draft supplies a solution which I considered preferable.

The last sentence of sub-paragraph (c) makes use of article 99, paragraph 3, of the CMEA General Conditions of Delivery (withdrawal of the claim) and extends it to cases in which proceedings are discontinued. It seemed to me that this

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should be covered, especially since the preliminary draft differs from the Czechoslovak International Trade Code (section 92), where suspension of the period during judicial proceedings is concerned.

Chapter VI

Suspension of the period

This chapter comprises four articles. The first (article 17) is taken from Rule No. 7 (1) of the Council of Europe's draft, which a number of members of the Working Group considered acceptable (A/CN.9/30, p. 24). The advantage of this text is that it does not refer to "force majeure" or "fortuitous events" but describes the situations covered by those terms, thereby avoiding any difficulties which might arise because the terms are unknown in some legal systems.

The second article (article 18) is also taken from the Council of Europe's draft (Rule No. 7 (2)) and was tentatively approved by the Working Group (A/CN.9/30, para. 70).

Article 19, which is based on the German Civil Code (article 202), fills a vacuum that occurs in other drafts and establishes rights with greater certainty than does Rule No. 7 (3) of the Council of Europe's draft. It should be noted that Rule No. 7 (3) was considered by the Working Group and was discarded because of the uncertainty it introduced (A/CN.9/30, para. 71).

The last article in the chapter (article 20) provides a twofold solution. First of all, it takes a position with regard to international arbitration by specifying that its effect will be suspension, and not interruption, of the period. Secondly, the period will be suspended where it has been agreed that the arbitration proceedings will take place in a State in which interruption of the prescriptive period is not brought about by the motion for arbitration. This solution combines and harmonizes with article 16 (c).

Chapter VII

Performance of an obligation after prescription

Article 21 concerns cases in which, despite the fact that the prescriptive period has run out, the debtor performs his obligation. It appears in a separate chapter because, technically, what is involved is neither an extension of the

period laid down (chapter VI) nor a modification of the period by agreement (chapter IV). What is involved is a waiver of the benefits of prescription that has taken effect.

The article makes no distinction between a voluntary waiver and a de facto one due to ignorance of the benefits that have become effective. This avoids the difficulty of proving knowledge on the part of the debtor thus imparting greater certainty to obligations.

This also seems to be the view predominating in the Working Group (A/CN.9/30, p. 36), which considered two formulae, both providing the same solution. The formula used in the preliminary draft is the one in article 96 of the CMEA General Conditions, but if it were deemed preferable I should have no objection to its being replaced by the other formula that was considered, namely, Rule No. 13 (3) of the Council of Europe's draft, which reads: "A debtor who has performed an obligation after prescription has taken effect cannot invoke this prescription to justify an action for restitution."

Chapter VIII

Set-off of obligations

Set-off, in the general acceptation of the word, is the balance between two obligations which extinguish each other entirely (if both are of the same magnitude) or only to the extent of the small one (where they are of different magnitudes). The Spanish term "compensación" derives from the Latin word "compensatio", which in turn derives from "pensare cum", to weigh together, to balance one debt against another, and that is why the Roman jurist Modestinus said of it: "Compensatio est debiti et crediti inter se contributio" (Digest, book 16, title 2, law 1a).

The underlying reasons for set-off are that:

(a) It simplifies payments through the avoidance of unnecessary transfers of money and, in some cases, of unnecessary litigation between the parties. It is a means of payment; instead of there being reciprocal payments, the two obligations balance and extinguish each other as if one of the creditors had collected from the other and in turn had immediately handed over the amount of his own debt;

(b) It would not be just or equitable, where one person is both the debtor and the creditor of another, to force him to make payment before he could collect what was owing to him; the creditor might receive his money, spend it and even go bankrupt, causing obvious delay and injury to his former debtor who had made payment and who might never be able to collect what in turn was owing to him. From that standpoint, set-off acts as a guarantee.

The way in which it operates is based on two institutions of mercantile law, namely, the theory of the current account and the institution of clearing-houses.

Two possible cases should be identified:

(a) Once it had been established by judgement that one of the claims was barred by prescription, there could be no set-off of the obligation to which it related, because performance could no longer be claimed and could result only from a voluntary act on the part of the debtor.

(b) Where the prescriptive period has run out but prescription has not been established by judgement, the question arises whether "the creditor may invoke his right as a defence for the purpose of set-off or counter-claim". The negative approach prevailed in the old law (to cite only French law, Aubry and Rau IV, p. 228; Marcadé IV, No. 826). Modern law, on the other hand, takes the affirmative approach, which means that, until it has been established by judgement that one of the claims is barred by prescription, set-off must be available. This rests on the fact that the essential consideration is not when the right is invoked for the purpose of set-off or counter-claim, but when the two claims coexisted; if they coexisted, even though only for a day, before one of them became barred by prescription, it follows that, since set-off occurs automatically, the two claims will have been extinguished from then on.

The underlying reasons for set-off indicated above, and the views which predominated in the Working Group (A/CN.9/30, p. 35), account for the approach adopted in article 22 of the preliminary draft, which follows essentially the same lines as Rule No. 14 of the Council of Europe's draft Rules.

Chapter IX

Application of the period of prescription

Chapter IX comprises two articles on application of the period of prescription. Neither the Commission nor the Working Group reached any decision on this point.

Consequently, the approach taken in the preliminary draft had to be an original one. This approach identifies three situations:

(a) Where the case relates to transactions between parties who are in the territories of Contracting States, the court shall apply prescription suo officio - i.e., even when it is not invoked by the parties (article 6, para. 1 (a)).

(b) Where this is not the case, but "the rules of private international law indicate that the applicable law is that of /the/ Contracting State which has adopted the /Uniform/ Law" (article 6, para. 1 (b)), the court shall apply prescription only if it is invoked.

(c) In the case of arbitration proceedings, prescription shall, as in the case of (b) above, be applied only when invoked by a party. This solution is similar to the one adopted in article 95 of the CMEA General Conditions of Delivery.

Chapter X

Calculation of the period

It seemed to me appropriate to include in the uniform law some provisions relating to calculation of the period, with a view to avoiding practical difficulties, and bearing in mind the conflicts between national systems of law.

For technical reasons and in the interest of clarity, I thought it better to group these provisions together in a special chapter instead of including them in chapter II, which deals with the period of prescription. The Council of Europe's draft Agreement (appendix II) lends support to this approach. In dealing with this matter, I have taken into account the views expressed in the Working Group (A/CN.9/30, pp. 22-23) and the Council of Europe's draft, while at the same time producing an innovatory and, in my view, practical scheme.

Accordingly, I identify the following situations:

(a) Where there has been no interruption or suspension of the period (article 25), it will expire at midnight on the day on which the breach of contract occurred; in other words, if the period was five years and the breach occurred on 9 February 1970, the period would terminate at midnight on 9 February 1975. Thus, in the words of the Working Group, "the day of the event instituting the prescriptive period shall not be counted" (A/CN.9/30, para. 56).

(b) Where there has been an interruption of the period (article 26), the same system as is indicated in (a) above will apply (article 25).

(c) Where there has been a suspension of the period, it would be impossible to proceed as in the two cases mentioned above, since the length of time for which the suspension must be counted is bounded by two dates and not, as in those cases, by one. There will therefore inevitably have to be a period expressed in days, and for the purpose of calculating the period referred to in article 7 the number of days that must elapse to satisfy the specified period of (three or five) years will have to be laid down.

In addition, unlike the two preceding cases, where in view of the solution adopted ((a) and (b)) there is no need to make any provision regarding holidays, case (c) requires a decision on this point. Following the guidelines laid down by the Working Group (A/CN.9/30, para. 58), which indicate that what is needed is not an extension of the period but precision as to its length, I have included holidays in the calculation where there has been a suspension of the period.

(d) With a view to the avoidance of practical difficulties, article 28 - the last article of the preliminary draft - extends the prescriptive period generally until midnight on the first working day, when the day on which it expires is a holiday. This is the same solution as is adopted in article 5 of the Council of Europe's draft in appendix II, except that the latter's reference to "Saturdays, Sundays and official holidays" is covered by the term "holiday", which it is felt is more generally applicable to all States.

PRELIMINARY DRAFT

UNIFORM LAW ON EXTINCTIVE PRESCRIPTION IN INTERNATIONAL SALE OF GOODS

CHAPTER I

SPHERE OF APPLICATION OF THE LAW

Article 1

1. The present Law shall apply to contracts of sale of goods entered into by parties whose places of business are in the territories of different States, in each of the following cases:

(a) Where the contract involves the sale of goods which are at the time of the conclusion of the contract in the course of carriage or will be carried from the territory of one State to the territory of another;

(b) Where the acts constituting the offer and the acceptance have been effected in the territories of different States;

(c) Where delivery of the goods is to be made in the territory of a State other than that within whose territory the acts constituting the offer and the acceptance have been effected.

2. Where a party to the contract does not have a place of business, reference shall be made to his habitual residence.

3. The application of the present Law shall not depend on the nationality of the parties.

4. In the case of contracts by correspondence, offer and acceptance shall be considered to have been effected in the territory of the same State only if the letters, telegrams or other documentary communications which contain them have been sent and received in the territory of that State.

5. For the purpose of determining whether the parties have their places of business or habitual residences in "different States", any two or more States shall not be considered to be "different States" if each of them has made a declaration to that effect at the time of or subsequent to ratification of the Uniform Law.

Article 2

Contracts for the supply of goods to be manufactured or produced shall be considered to be sales within the meaning of the present Law, unless the party who orders the goods undertakes to supply an essential and substantial part of the materials necessary for such manufacture or production.

Article 3

The present Law shall not apply to sales:

(a) Of stocks, shares, investment securities, negotiable instruments or money;

(b) Of any ship, vessel or aircraft which is or will be subject to registration;

(c) Of electricity;

(d) By authority of law or on execution or distress.

Article 4

The present Law shall apply to sales regardless of the commercial or civil character of the parties or of the contracts.

Article 5

The present Law shall apply only to the rights of the seller and the buyer and of successors and guarantors. It shall not apply to personal injury or physical damage caused by the goods sold.

Article 6

1. The present Law is applicable (a) irrespective of any rules of private international law when the place of business of each of the parties to the contract is in the territory of a Contracting State which has adopted the present Law; (b) when the rules of private international law indicate that the applicable law is the law of a Contracting State which has adopted the present Law.

CHAPTER III

COMMENCEMENT OF THE PERIOD

Article 9

The period of prescription shall run from the date on which the breach of contract occurred.

Article 10

No account shall be taken of any period within which a notice of default may be required to be given by one party to the other.

Article 11

Where, as a result of a breach by one party before performance is due, the other party exercises his right to treat the contract as discharged, the period shall run from the date of the first breach from which such right arises.

Article 12

Where defective goods or goods of a different quality from that contracted for are delivered, the period shall run from the date of their physical delivery without regard to the date on which the defect is discovered.

Article 13

In the case of sales on instalment terms, the period of prescription shall run from the date of the breach of the obligation to pay an instalment.

CHAPTER IV

MODIFICATION OF THE PERIOD BY AGREEMENT

Article 14

The period of prescription may be extended by express provision of the contract.

Article 15

The prescriptive period may not be shortened at the will of the parties.

CHAPTER V

INTERRUPTION OF THE PERIOD

Article 16

The entire period of prescription shall commence to run afresh in the following cases, from the date on which the event occurs:

(a) Acknowledgement in writing of the obligation;

(b) Performance stated as part performance of a larger obligation;

(c) Where the creditor pleads his right or invokes it as a defence before a judicial authority, for the purpose of obtaining satisfaction of the right. The same shall apply where the creditor performs any action recognized, under the law of the jurisdiction where such performance takes place, as instituting legal proceedings for the purpose of obtaining satisfaction of the right. If the claimant has withdrawn his claim or discontinued the proceedings, the running of the period of prescription shall not be deemed to be interrupted.

CHAPTER VI

SUSPENSION OF THE PERIOD

Article 17

Where, owing to circumstances which he could neither take into account nor avoid or overcome, the creditor has been unable to interrupt prescription, and provided that he has taken all appropriate measures with a view to preserving his right, prescription shall not take effect before the expiration of a period of one year from the date on which the relevant circumstances ceased to exist.

Article 18

Where one party has been prevented from exercising his rights by the other party's intentional misrepresentation or concealment of his identity, capacity or address, prescription shall not in any case take effect earlier than one year after the first-mentioned party knew or reasonably should have known the concealed fact.

Article 19

The period of prescription shall not run during any period for which a moratorium is granted.

Article 20

The period of prescription shall not run during arbitration proceedings, where such proceedings take place in a State other than those in which the parties have their places of business or where, in accordance with the law of the jurisdiction, interruption of the period is not brought about by the motion for arbitration.

CHAPTER VII

PERFORMANCE OF AN OBLIGATION AFTER PRESCRIPTION

Article 21

If the debtor performs his obligation after prescription has taken effect, he shall not be entitled to claim restitution, even if he did not know at the time of performance that prescription had already taken effect.

CHAPTER VIII

SET-OFF OF OBLIGATIONS

Article 22

Set-off of obligations shall be available only on condition that the right invoked arises out of the same legal relationship and has not become barred by prescription at the time when it is exercised.

CHAPTER IX

Article 23

The period of prescription shall be applied by the court, irrespective of whether it has been invoked by the debtor, in the case referred to in article 6, paragraph 1 (a).

Article 24

In arbitration proceedings, the referees shall take account of prescription if it is invoked by the debtor.

CHAPTER X

CALCULATION OF THE PERIOD

Article 25

Where there has been no interruption or suspension of the period, it shall expire at midnight on the day corresponding to the date of the breach of contract.

Article 26

Where there has been an interruption of the period, it shall expire at midnight on the day corresponding to the date of interruption.

Article 27

Where there has been a suspension of the period, it shall be calculated in days and the year shall be deemed to comprise 365 days. In the calculation of the period, holidays shall be taken into account.

Article 28

The period shall be extended until midnight on the first working day, when the day on which it expires is a holiday.
