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UNITED NATIONS COMMISSION ON
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Working Group on time-limits and
limitations (prescription) in
the international sale of goods
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WORKING PAPER BY THE SECRETARIAT

INTRODUCTION

1. This working paper identifies the major issues raised in the various documents that have been submitted to the Working Group.[1/] In the interest of clarity, these issues are identified and arranged in the form of an outline; the basic structure of the outline is that of the preliminary draft of the uniform law on prescription prepared by the Working Group at its second session.

2. The Secretariat has also prepared a preliminary draft Convention to implement the uniform law. This draft is annexed to this working paper.

1/ These documents (A/CN.9/WG.1/WP.11-24) are listed in the provisional agenda (A/CN.9/WG.1/III/CRP.1). They are cited herein as WP.11, etc. After the provisional agenda was prepared, the United States of America submitted a study containing proposals snd observations on the preliminary draft (A/CN.9/WG.1/WP.26). References to this study are also included in this working paper. The commentary to the preliminary draft of the uniform law on prescription (A/CN.9/50, Annex II) is cited as Commentary.

I. SPHERE OF APPLICATION OF THE UNIFORM LAW

A. The required contact between transaction and contracting State (private international law): Art. 3 of preliminary draft.

1. Proposals before the Working Group fall in the following three categories:

   (a) Rules analogous to those proposed by the Working Group on Sales in the report on its second session (A/CN.9/52) para. 13 (1970 Sales Arts. 1 and 2) WP.12, Art. 4.

   (b) Application without regard to rules of private international law (Cf. ULIS Art. 2). WP.13, Art. 3; WP.21, Art. 00 (new)(2) (alternative (b)).

   (c) Application when either party had his place of business in a contracting State; otherwise reference may be made to rules of private international law. WP.21, Art. 00 (new)(2) (alternative (a)).

2. See also the provision on applicability of the law by agreement, in WP.12, Art. 4(1)(a) and accompanying commentary at III.

B. The international character of sales transaction required for applicability of the uniform law (article 4 of preliminary draft).

1. The three proposals on this subject (WP.12; WP.13; WP.21) follow the the substance of the provisions proposed by the Working Group on Sales (1970 Sales), subject to the following:

   (a) WP.13 and WP.21 omit art. 2(a) of 1970 Sales (lack of knowledge that other party in different State).

   (b) WP.21 omits art. 2(d) of 1970 Sales (civil or commercial character of parties not to be taken into consideration).

   (c) All three proposals omit article 2(e) of 1970 Sales (effect of reservation precluding application; article V of 1964 Sales Convention).

   (d) WP.13 does not include article 2(f) (declaration that States are not "different" States).

   (e) WP.12 (art. 3(1)) proposes a requirement for the international carriage of the goods. See Commentary in WP.12 under III.

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C. Guarantees incidental to sales contract: article 1(1) of preliminary draft.

1. The Analysis (WP.24) notes at paras. 43-44 the following comments directed to the provisions on guarantees.

   (a) Art. 1(1) may include only the rights of the seller and buyer against a guarantor, and not the rights of the guarantor against such parties. (Para. 43).

   (b) The limitation period for claims against the guarantor may not be coterminus with that for claims against the parties to the contract.

2. If it should prove difficult to deal with these questions, consideration might be given to whether the effect of prescription on property security is analogous to the effect of prescription on a personal guarantee. It will be noted that the law excludes claims based on a lien, mortgage or other security interest in property. Preliminary draft article 2(c). See the commentary to article 2 at para. 3 (last sentence). Can local law also be relied on to deal appropriately with a claim against a guarantor when the principal obligation is barred? If so, consideration might be given to simplifying the draft by omitting the references to guarantees in arts. 1(1) and 1(4)(c). It may be noted that WP.17, art. 1(1) does not refer to guarantees.

D. Applicability to the period within which rights may be "otherwise exercised": article 1(2) of preliminary draft.

1. Members have raised questions as to the meaning of this phrase. Commentary to article 1 at para. 16; Analysis, para. 45 and fn. 112. WP.16 at II and WP.17, article 1(2) suggest deletion of this phrase. WP.21 suggests a modification by inserting the phrase "if case be" before "otherwise exercised".

E. At the fourth session of the Commission it was noted that special proceedings to invalidate (or avoid?) a contract might be governed by the law's general prescriptive period; it was suggested that such special proceedings should be excluded. Analysis, para. 49. This comment seems to be based on the view that article 1(1) is sufficiently broad to include such proceedings, and that article 1(3) does not clearly exclude them. If this view is accepted, consideration might be given to a clarifying amendment in article 1(3). For

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example, in article 1(3), after "particular time-limit" one might consider inserting "/or other period/ applicable only to certain remedies (such as the declaration of the invalidity or avoidance of the contract) or". See also WP.23, under part F, infra.

F. Retention or deletion of the words in brackets in article 1(3) ("or upon the occurrence of an event"). See the Commentary to article I at para. 15 and foot-note 5 thereto. WP.23 proposes revision of the bracketed language; the discussion in WP.23 indicated that the proposed revision was designed, at least in part, to deal with termination of contracts in the case of breach. Attention might be directed to the opening provision of article 1(3), which might seem to exclude periods for termination by notice from the uniform law; periods for termination by judicial action could be more clearly excluded from the uniform law by the language suggested in I, E, supra.

G. Injury to the person or property of persons other than the buyer.

1. It has been suggested that, in addition to the exclusion specified in article 2(a), the law should also exclude claims by the buyer based on injuries to the person or property of third persons. See WP.22; Cf. WP.21 Art. 3(2)(a): ("or any other person"); A/CN.9/50, appendix A to annex II (page 54). It has been suggested that if such claims are not excluded, the time for commencement of the buyer's period of limitation should be postponed. See WP.22; A/CN.9/50, appendix A to annex II. Also see WP.26, paras. 4-11.

H. Other suggestions, including general comments as to drafting, appear in Analysis, paras. 46 and 47, and are incorporated in the drafts proposed in WP.12, WP.13, WP.17 and WP.21.

II. LENGTH OF THE LIMITATION PERIOD: ARTICLE 6 OF THE PRELIMINARY DRAFT

The result of the replies to the questionnaire by Government and comments made at the UNCITRAL's fourth session concerning the preferred length of the period appears in Analysis (WP.24), paras. 6-8.[2/]

2/ Table A erroneously listed Sweden among the States preferring a period of five years. The reply to the questionnaire reported that business circles preferred five years; the preference of the Government was for three years. The reply indicated that the preference of three years assumed that liberal rules on extension and modification of the period would be included in the uniform law.

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III. COMMENCEMENT OF THE LIMITATION PERIOD

A. Basic rule: articles 7(1) and 9 of the preliminary draft.

1. For the limitation period in respect of any right or claim arising out of a breach of the contract, article 7(1) of the preliminary draft uses "breach of contract" as a starting point; for rights or claims not arising from a breach of contract, article 8 of the preliminary draft provides that the limitation period shall commence on the date "on which the right could first be exercised".

2. The Analysis (WP.24) notes at paras. 9-14 divergent tests for the commencement of the limitation period adopted under domestic laws of the States which replied to the questionnaire. It also notes at paras. 22 and 23 the comment by States on the structure of the preliminary draft concerning the commencement of the period.

3. Two studies propose consolidation of articles 7(1) and 9 of the preliminary draft by providing a rule which covers rights or claims arising from a breach of contract as well as those not arising from a breach of contract.

   (a) WP.17, article 7(1) proposes that the single test should be "the date when performance of the obligation is due";

   (b) WP.18, article 7(1) proposes that the test should be "the date on which the right could otherwise have been exercised".

   (c) Also see Analysis (WP.24), para. 22 for other proposals.

4. WP.21, article 7(1) proposes the consolidation of articles 7(1) and 9 of the preliminary draft but retains separate tests for claims based on breach of contract and other claims.

B. Special rules for rights or claims based on lack of conformity of the goods: article 7(3)(4) of the preliminary draft.

1. The Analysis (WP.24) at paras. 15 and 16 reports on the rules of national law concerning the commencement of the limitation period with respect to rights or claims by buyers based on non-conformity of the goods.

2. The Analysis (WP.24) at paras. 17-19 contains the analysis of Governments' attitude toward article 7(3)(4) and notes, inter alia. the following comments directed to article 7(3)(4) of the preliminary draft.

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(a) Article 7(3)(4) should make an exception for damage claims arising from defects due to the seller's fault or gross negligence (para. 17). Also see WP.26, para. 17.

(b) Since the date when the goods were placed "at the disposition of the buyer" might be difficult to ascertain, the passing of the risk of loss might be used as a test for commencement of the period (para. 17). Cf. ULIS, art. 35.

(c) The limitation period should commence to run from the date on which defects or lack of conformity were discovered or could reasonably have been discovered (para. 18). Cf. ULIS, arts. 38 and 41.

(d) There is need for clarification on this question: Does the uniform law supplant rules of national law like ULIS article 39(1), which requires that notice to the other party be given "promptly" but in no event later than "a period of two years from the date on which the goods were handed over" (para. 19). Also see WP.17, fn. 2, WP.23, and Analysis, para. 32 and fn. 112.

3. WP.17 and WP.18 propose certain drafting changes in article 7(3)(4).

C. Cancellation ("termination") with respect to future performance: anticipatory breach; instalment contracts. Article 7(5)(6) of the preliminary draft.

1. WP.21, in its new article 8 proposes that the rules contained in art. 7(5) and (6) of the preliminary draft should apply not only to cases where an anticipatory breach took place but also to cases where the applicable law entitles one party to elect to treat the contract as terminated based on other circumstances occuring before performance is due. See also A/CN.9/50, appendix B to annex II.

2. For other suggestions as to drafting of article 7(5)(6) of the preliminary draft, see Analysis, para. 21A, WP.17, and WP.18.

D. Express undertaking for a period of time: article 9 of the preliminary draft.

1. The Analysis (WP.24) at para. 20 notes, inter alia, the following comments directed to article 9 of the preliminary draft.

(a) The time when the seller's undertaking expired should be treated as the starting point since the day when "the buyer first informed the

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seller of /his/ right" would often be difficult to ascertain because of difficulty in distinguishing a mere communication of facts by the buyer from a communication notifying that the buyer invokes a right based on the seller's undertaking.

(b) The requirement in article 9 that the undertaking must be contained in the contract should be deleted because the seller, after delivering the goods, might adjust certain components of the goods and in this connexion might expressly extend the period applicable to those parts.

2. Other suggestions for drafting changes appear in the Analysis, para. 21, WP.26, para. 16 and are incorporated in the drafts proposed in WP.17 and WP.21.

IV. INTERRUPTION OF THE LIMITATION PERIOD

A. Interruption ("period ceases to run"): articles 10-12 of the preliminary draft

1. Under WP.17, (proposed article 10A), when a document expressing a demand by the creditor is served on the debtor, a new limitation period commences to run. Cf. Commentary to article 10 at para. 6. (WP.17 omits article 14 which allows extension during negotiation (see V, A 3, infra) and in articles 10(1), 11(1) and 12 also provides that the new limitation period start to run afresh when legal proceedings are instituted.)

2. Other suggestions, including drafting proposals and a proposal to simplify the provisions of articles 10-12, appear in Analysis para. 53, WP.17, articles 10(1), 12, WP.18, art. 11, WP.20, WP.21, articles 10-12 and WP.26, para. 20

B. Counterclaim and set-off: articles 10(2) and 20(2) of the preliminary draft

1. In the Analysis, para. 53, and in WP.20, para. 5, are suggestions concerning the relation-back of counterclaims.

2. Closely related to counterclaims are suggestions concerning the use of barred claims by set-off (art. 20(2) of the preliminary draft). See Analysis, para. 63 and WP.21, art. 20(2)(a). Also see WP.26, para. 38.

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C. Acknowledgement of the obligation: part performance: article 13 of the preliminary draft

1. Acknowledgement and novation

(a) WP.11 comments on the relationship between acknowledgement and novation - i.e., a creation of a new obligation independent from the previous debt. This study, inter alia, discusses the following issues:

(i) Should the question whether and under what circumstances an acknowledgement of a debt entails a novation be left outside the scope of the uniform law?

(ii) If so, should it be clearly provided that the rules contained in art. 13(1)(2) have no impact on the national rules concerning the new obligation created by virtue of such a novation?

(b) WP.11 suggests (i) that the first two paragraphs of article 13 of the preliminary draft be merged to form a single text making an exception by way of reservation to cases where the acknowledgement of debt entails novation (at para. 14) and (ii) that any attempt to revise the preliminary draft to cover the question concerning what act constitutes novation should be avoided because the question lies outside the scope of the uniform law (at para. 17).

(c) WP.18 proposes deletion of article 13(2) of the preliminary draft.

2. The Analysis, at paras. 55-56, notes opposing views concerning the rule of article 13(5) on the effect of acknowledgement after the expiration of the limitation period. WP.17 proposes deletion of article 13(5).

3. The Analysis, at para. 54, notes a suggestion for improvement of article 13(3) concerning acknowledgement by partial performance.

D. International effect of interruption by legal proceedings instituted in a foreign State

1. WP.18 (based on a document submitted at the fourth session in A/CN.9(IV)CRP.2) makes certain specific proposals with respect to the effect of interruption of the limitation period by legal proceedings in a foreign State. Under this proposal, articles 10(3) and 12(3) would

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provide that the forum of a contracting State should give effect to legal proceedings in a second State that interrupt the limitation period there (i) if the decision in the second State is enforceable in the contracting State or (ii) if the defendant has one of certain specified jurisdictional contacts with the second State.

2. WP.14 opposes the above proposal, and supports the view that the uniform law should not give effect to acts /by legal proceedings/ interrupting the limitation period in a second State.

3. WP.15 supports the view that the uniform law should give effect to interruption by a foreign summons, judgement or judicial act which is in due form and of which the debtor is given appropriate notice.

4. The above discussion has been in the context of interruption by legal proceedings. Under article 13 the limitation period may also be interrupted by a written acknowledgement and by partial performance from which an acknowledgement may be inferred. Although the question has not been explicitly raised, it probably is assumed that the forum of a contracting State should not deny effect to such acts of acknowledgement on the ground that they were performed in a second State. Compare article 18 on modification of the period by agreement.

E. Effect of prescription of a claim against one joint debtor with respect the claim against the other; effect of prescription of a principal debt on a claim against the guarantor

1. WP.16 proposes that interruption of the limitation period in respect of one joint-debtor should have the same effect in relation to another joint debtor, if a formal notice of the institution of legal proceedings has been given to the other joint debtor. This study also proposes that this approach be applied to accessory guarantees and to extensions of the period of limitation. Cf. Analysis, para. 44.

2. WP.21 proposes rules in article 11A (see especially subparagraph (2)) that are similar to the proposals but which differ (inter alia) as to the form required for the notice and the over-all limit on the total period for bringing an action against the remaining joint debtors.

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F. Recourse actions between joint debtors (co-debtors): WP.21, article 11 A(3) provides that if a debtor notifies a co-debtor of a pending legal proceedings (litis denuntiatio), the limitation period ceases to run with respect to claims against such a co-debtor. Also see WP.21, article 16 A (mutual recourse actions) and part V, C of this working paper infra. It may be noted that WP.21, article 16 A applies both to the relations between successive sellers and buyers and to the relations between parties being co-debtors in regard of the same obligation; WP.21, article 11 A applies only to the relationship between joint debtors (co-debtors). Cf. Commentary para. 7 to article 10.

V. EXTENSION OF THE LIMITATION PERIOD: ARTICLES 14, 15, 16 AND 17 OF THE PRELIMINARY DRAFT

A. Extension during negotiations: article 14

1. Comments on article 14 in replies to the questionnaire are summarized in Analysis (WP.24) at para. 33.
2. Views expressed at the fourth session of the Commission appear in the Analysis (WP.24) at para. 34.
3. WP.17 proposes deletion of article 14.
4. WP.18 proposes deletion of the words in brackets.

B. Extension where institution of legal proceedings prevent misstatement or concealment by debtor: articles 15 and 16

1. Comments in replies to the questionnaire are summarized in Analysis (WP.24) at paras. 57-59. Also see WP.26, para. 29. The views expressed at the fourth session of the Commission appear in the Analysis (WP.24) at para. 60
2. Proposals
   (i) WP.17: proposes a new formulation for art. 15 (suspension of the period during which the creditor is prevented from taking appropriate action provided that the remainder of the limitation period is not less than a certain period of time).
   (ii) WP.17 also proposes a new article (new article 14) to deal with personal circumstances preventing a creditor from taking action.

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(iii) WP.17 also proposes a new formulation for article 16 (as article 12 bis). (The period should commence to run only from the time the creditor discovers or could have discovered the fraud, misstatement or concealment.)

(iv) WP.18 proposes deletion of article 16.

(v) WP.21 proposes addition of an over-all limit to the extensions under articles 15 and 16 (ten years from the time the period would have otherwise expired).

C. Extension for recourse actions

1. WP.21 proposes addition of a new article (16 A) to cover "recourse actions". Also see WP.10, alternatives A and B. WP.16 supports WP.10, alternative A(2). Cf. parts IV, E 1, and F supra, of this working paper.

D. Effect of discontinuance or dismissal of proceedings: article 17.

1. Governments' replies to the questionnaire appear in Analysis (WP.24), paras. 35-38. The views expressed at the fourth session of the Commission are stated in Analysis (WP.24), para. 35-38. The views expressed at the fourth session of the Commission are stated in Analysis (WP.24), para. 39.

2. Proposals

(i) WP.17: proposes a new formulation that is concerned primarily with questions of drafting.

(ii) WP.26: proposes at para. 33 a formulation similar to the Uniform Commercial Code (USA) sec. 2-725(3).

(iii) WP.18: proposes to delete the phrase "but it has been ordered that the arbitration shall cease to have effect or that the award shall be set aside..." from article 17(3) and to insert instead the phrase "and the arbitral award has been set aside".

E. Extension of article 17(2) where a foreign judgement was not recognized.

1. See Commentary, paras. 8-9 to article 17. See also the short note in WP.19.

2. WP.21 proposes a new provision (article 12A(2)) to deal with this problem.

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VI. MODIFICATION OF THE LIMITATION PERIOD: ARTICLE 18 OF THE PRELIMINARY DRAFT

A. Modification rules under national laws: Governments' replies are summarized in Analysis (WP.24), para. 25.

B. Acceptability of article 18 of the preliminary draft.

1. Extension of the limitation period: article 18(2)

   (i) A summary of Governments' replies appears in the Analysis (WP.24) at para. 28. The views expressed at the fourth session of the Commission are stated in the Analysis (WP.24) at para. 29.

   (ii) The proposed amendment in WP.18 permits shortening of the period but not extension.

   (iii) WP.17 proposes a revision of article 18(2) that permits the debtor to extend the period for a limited period by a declaration but omits the provision of article 18(2) giving effect to a declaration by the debtor that he will not invoke the defence of limitation.

2. The time when the parties may agree on the extension, i.e. before or after the commencement of the period (the phrase between brackets in article 18(2)).

   (i) The replies to the questionnaire are summarized in the Analysis (WP.24) at para. 27. For the views expressed at the fourth session, see the text accompanying foot-notes 99 and 100 in the Analysis.

   (ii) The proposals in WP.17 and WP.18 exclude the bracketed language in article 18(2) of the preliminary draft.

3. Maximum length of the extension period.

   See the text accompanying foot-note 94 in the Analysis (1 year).

   See also the text accompanying foot-note 101 in the Analysis (2 years).

4. Successive extensions.

   The proposal in WP.21 permits successive extensions. One reply to the questionnaire advocates the same (text accompanying foot-note 97 in the Analysis).

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5. The required formality: article 18(3) requires that the declaration be evidenced in writing. WP.18 proposes deletion of article 18(3).

6. Shortening of the period. A summary of the replies to the questionnaire appear in the Analysis (WP.24) at para. 30. As was noted above (B 1(ii)), WP.18 would permit shortening only.

7. Modification by agreement of the period for instituting arbitration proceedings: WP.21, fn. 10 suggests limiting the provision in article 18(4) to cases where the arbitration agreement does not exclude eventual resort to judicial proceedings. The views expressed at the fourth session of the Commission on article 18(4) appear in Analysis at para. 32.

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ANNEX

PRELIMINARY DRAFT OF A CONVENTION RELATING TO A UNIFORM LAW ON PRESCRIPTION (LIMITATION) IN THE INTERNATIONAL SALE OF GOODS

The States Parties to the present Convention,

Desiring to establish a uniform law on prescription (limitation) in the international sale of goods,

Have resolved to conclude a convention to this effect and have agreed as follows:

ARTICLE I

/Implementation/

Alternative A[1/]

(1) Each Contracting State undertakes to incorporate into its own legislation, in accordance with its constitutional procedure, not later than the date of the entry into force of the present Convention in respect of that State, the Uniform Law on Prescription (Limitation) in the International Sale of Goods (hereinafter referred to as "the Uniform Law") forming the Annex to the present Convention.

(2) Each Contracting State may incorporate the Uniform Law into its own legislation either in one of the authentic texts or in a translation into its own language or languages.

(3) Each Contracting State shall communicate to the Secretary-General of the United Nations the text which it has incorporated into its legislation to give effect to the present Convention.

Alternative B[2/]

(1) Each Contracting State shall make its national law conform with the provisions of this Convention /not later than the date of entry into force of

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1/ Based on article I of the 1964 Hague Convention relating to a Uniform Law on the International Sale of Goods, herein cited as the "Hague Sales Convention".

2/ Proposal by Norway in lieu of paragraphs (1) and (2) of alternative A. See the proposed article 00 (1) in A/CN.9/WG.1/WP.21.

the Convention in respect of that State/. This may be done either by giving the provisions the force of law or by including them in the national legislation in a form appropriate to that legislation.

(2) /See paragraph 3 of alternative A, with possible modification of the reference to texts which have been "incorporated"./

ARTICLE II

/Declarations limiting the application of the Uniform Law/[3]

(1) Two or more Contracting States may declare that they agree not to consider themselves as different States for the purpose of the requirements /as to.../ laid down in article 4 of the Uniform Law /because they apply the same or closely related legal rules to sales which in the absence of such a declaration would be governed by the Uniform Law/.*

(2) Any Contracting State may declare that it does not consider one or more /non-Contracting/ States as different States from itself for the purpose of the requirements of the Uniform Law, which are referred to in paragraph 1 of this Article, /because such States and the State making the declaration apply the same or closely related legal rules to sales which in the absence of such a declaration would be governed by the Uniform Law/.*

(3) If a State which is the object of a declaration made under paragraph 2 of this article subsequently ratifies or accedes to the present Convention, the declaration shall remain in effect unless the ratifying or acceding State declares that it cannot accept it.

(4) Declarations under paragraphs 1, 2 or 3 of this article may be made by the States concerned at the time of the deposit of their instruments of ratification of or accession to the present Convention or at any time thereafter and shall be addressed to the Secretary-General of the United Nations. They shall take effect /three months/ after the date of their receipt by the Secretary-General of the United Nations or, if at the end of this period the present Convention has

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3/ Based on article II of the Hague Sales Convention. See also A/CN.9/WG.1/WP.24, para. 65.

* The brackets are inserted to raise the question whether a standard limiting the power to make the declaration should be expressed. Would parties in litigation be entitled to assert that such a declaration was not made in conformity with the standard?

not yet entered into force in respect of the State concerned, at the date of such entry into force.

(5) Any State which has made a declaration under paragraphs 1 or 2 of this article may withdraw it at any time by a notification addressed to the Secretary-General of the United Nations. Such withdrawal shall take effect /three months/ after the date of the receip. of the notification by the Secretary-General of the United Nations and, in the case of a declaration made under paragraph 1 of article II, shall also render inoperative, as from the date when the withdrawal takes effect, any reciprocal declaration made by another State.[4/]

ARTICLE III

/Applicability as to prior contracts/

Alternative A

(1) Each Contracting State shall apply the provisions incorporated into /included in/ its legislation in pursuance of the present Convention to the rights or claims to which the Uniform Law applies provided that the contract which forms the basis of such rights or claims is concluded on or after the date of the entry into force of the Convention in respect of that State.[5/]

(2) /Nothing in the Uniform Law shall revive any right barred before that Law took effect /before the date of entry into force of the Convention/ in the jurisdiction where such right is relied on except in so far as a right may be revived by an acknowledgment or part performance made in accordance with the provisions of article 13 of the Uniform Law./[6/]

4/ Based on article VI of the Hague Sales Convention.

5/ Based on article XI of the Hague Sales Convention. Also see the reply of Trinidad and Tobago which preferred this approach. A/CN.9/WG.1/WP.24, para. 64.

6/ Based on article 25(2) of the preliminary draft uniform law (August 1970). See also fn. 7, infra. Note that as presently drafted, paragraphs (1) and (2) are incompatible. If paragraph (1) is adopted in its present form there is no occasion for paragraph (2). If the principle of paragraph (2) should be adopted, its language would need to be recast so as to state affirmatively that acknowledgements and part performance shall be given effect under this law even though the contract in question was made prior to the entry into force of the Convention.

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Alternative B

(1) No right asserted in any legal proceedings in any jurisdiction shall be held to have been barred by reason of the operation of the Uniform Law if the limitation /period/ prescribed in articles 6 to 9 thereof commenced to run before the commencement of the Uniform Law /before the date of entry into force of the Convention/ in that jurisdiction.[7]

(2) (Same as paragraph 2 of alternative A.)

ARTICLE IV

/Reservations/

No reservation /other than those made in accordance with article II of this Convention/ shall be permitted.[8]

ARTICLE V

/Signature/[9]

The present Convention shall be open until / / for signature by / /.

ARTICLE VI

/Ratification/[10]

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

7/ Based on article 25(1) of the preliminary draft uniform law (August 1970). This provision bears a close relationship to article VII /Entry into force/. In addition, the significance of this provision will diminish with the passage of time. These considerations support the inclusion of this provision in the convention rather than the uniform law. The Working Group may also wish to note that this provision does not indicate which law, the uniform law or the domestic law of the forum, determines the commencement of the limitation period. It should also be noted that whichever of the two laws was chosen for the determination of the commencement of the limitation period, the situation might not be free from difficulties, e.g. problems of retroactivity or disappointment of reasonable expectations of one of the parties.

8/ The words in brackets are inserted to exclude from the purview of this provision the declarations made under article II in case the Working Group wishes to consider these declarations as amounting to reservations.

9/ Based on article 81 of the Vienna Convention on the Law of Treaties.

10/ Based on article 82 of the Vienna Convention on the Law of Treaties. /...

ARTICLE VII
/Accession/[11]

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article V. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE VIII

/Entry into force/[12]

(1) The present Convention shall enter into force /six months/ after the date of the deposite of the / / instrument of ratification or accession.

(2) For each State ratifying or acceding to the present Convention after the deposit of the / / instrument of ratification or accession, the Convention shall enter into force /six months/ after the date of the depcsit of its instrument of ratification or accession.

ARTICLE IX

/Denunciation/[13]

(1) Any Contracting State may denounce the present Convention by notifying the Secretary-General of the United Nations to that effect.

(2) The denunciation shall take effect /twelve months/ after receipt of the notification by the Secretary-General of the United Nations.

ARTICLE X

/Declaration on territorial application/

Alternative A[14]

/(1) Any State may, at the time of the deposit of its instrument of ratification or accession or at any time thereafter, declare, by means of a

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11/ Based on article 83 of the Vienna Convention on the Law of Treaties.

12/ Based on article 84 of the Vienna Convention on the Law of Treaties.

13/ Based on article XII of the Hague Sales Convention.

14/ Based on article XIII of the Hague Sales Convention.

notification addressed to the Secretary-General of the United Nations, that the present Convention shall be applicable to all or any of the territories for whose international relations it is responsible. Such a declaration shall take effect /six months/ after the date of receipt of the notification by the Secretary-General of the United Nations, or, if at the end of that period the Convention has not yet come into force, from the date of its entry into force.

(2) Any Contracting State which has made a declaration pursuant to paragraph 1 of this article may, in accordance with article IX denounce the Convention in respect of all or any of the territories concerned./

Alternative B[15/]

The present Convention shall apply to all non-metropolitan territories for the international relations of which any Party is responsible except where the previous consent of such a territory is required by the Constitution of the Party or of the territory concerned, or required by custom. In such a case the Party shall endeavour to secure the needed consent of the territory within the shortest period possible, and when the consent is obtained the Party shall notify the Secretary-General. The Convention shall apply to the territory or territories named in such a notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies.

15/ Based on article 27 of the Convention on Psychotropic Substances, 1971.

ARTICLE XI

/Notifications/[16]

/The Secretary-General of the United Nations shall notify the Signatory and Acceding States of:

(a) the communications received in accordance with paragraph 3 of article I;

(b) the declarations and notifications made in accordance with article II;

(c) the ratifications and accessions deposited in accordance with articles VI and VII;

(d) the dates on which the present Convention will come into force in accordance with article VIII;

(e) the denunciations received in accordance with article IX;

/(f) the notifications received in accordance with article X./

ARTICLE XII

/Deposit of the original/

The original of the present Convention shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention in the Chinese, English, French, Russian and Spanish texts, all of which are equally authentic.

DONE at /place/, /date/.

16/ Based on article XV of the Hague Sales Convention. Consideration may be given to deletion of this article which may be appropriate only where the depositary is a national government. Under this Convention the Secretary-General is the depositary and as such he would make all of the above notifications without being so required by the Convention.