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TIME-LIMITS AND LIMITATIONS (PRESCRIPTION) IN THE
INTERNATIONAL SALE OF GOODS

Consideration of the report of the Working Group on Time-limits and
Limitations (Prescription): Note by the Secretariat

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INTRODUCTION

1. The United Nations Commission on International Trade Law (UNCITRAL), at its third session, requested the Working Group on Time-limits and Limitations (Prescription) to hold a second meeting to prepare a tentative draft convention setting forth uniform rules on the subject for submission at its fourth session.^{1/} The Commission also decided that a questionnaire should be addressed to Governments and to interested international organizations, in order particularly to ascertain the views of those engaged in business in relation to the length of the period of limitation and any other relevant issue.^{2/}
2. The Working Group held its second session in Geneva from 10 to 21 August 1970. The report of the Working Group on this session appears in document A/CN.9/50 (herein cited Limitations Working Group, Report on second session (1970)).
3. The text of the Preliminary Draft of a Uniform Law on Prescription (Limitation) in International Sale of Goods (herein cited Preliminary Draft Uniform Law) appears in annex I to the above report. The report also sets forth (annex II) a Commentary on the Preliminary Draft Uniform Law (herein cited Commentary).
4. The questionnaire, addressed to Governments and to international organizations, is reproduced in annex III of the report (herein cited Questionnaire). The questions contained in part I of the questionnaire were primarily designed to obtain information on the existing national rules with respect to prescriptive limitations applicable to rights or claims arising from sales transactions. The questions in part II solicited opinions with respect to the uniform rules that would be most appropriate in the field of the international sale of goods: these included questions on the length of the limitation period, the power of the parties to modify the limitation period, and the commencement of the limitation period for claims relying on a lack of conformity of the goods. The questionnaire also inquired whether there were provisions of the Preliminary Draft Uniform Law which

^{1/} Report of the United Nations Commission on International Trade Law on the work of its third session (1970), Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17 (A/8017) (herein cited UNCITRAL, Report on Third Session (1970)) 97. In citing this and other reports, numbered references refer to paragraphs.

^{2/} Ibid., 89.

were not well adapted to the circumstances and needs applicable to international sales of goods or which would interfere with adoption of a convention implementing the draft. Fifteen replies to the questionnaire have been received; most of these replies have been received shortly before the preparation of this note, and it is anticipated that a significant number of additional replies will be received.

5. It is assumed that the Commission would not wish to draw conclusions about provisions of the Uniform Law (such as the length of the limitation period) on the basis of those replies that have been so far received. In addition, the content of the replies confirms the view, noted at the Commission's third session and at the second session of the Working Group, that various provisions of the Uniform Law are closely interrelated. For example, certain replies indicate alternative preferences (e.g., concerning the length of the limitation period) that are related to alternative approaches to other aspects of the Preliminary Draft Uniform Law. The replies will thus require careful evaluation in connexion with a composite judgement about several related provisions of the Preliminary Draft. It is assumed that the Commission would wish this evaluation performed in the first instance by the Working Group, and thus would wish to defer taking action on provisions of the Preliminary Draft that would be affected by the replies to the questionnaire.

6. In connexion with other provisions of this Preliminary Draft Uniform Law, attention is directed to the decision of the Commission at its third session in relation to the uniform law on sales:^{3/}

"Before the new text of a uniform law or the revised text of ULIS is completed, the Working Group should only submit questions of principle to the Commission for consideration."

Significant progress in drafting was achieved at the second session of the Working Group but the text of the Uniform Law on Prescription (Limitation) has not been completed. As has been noted (para. 5, supra), the length of the limitation period has yet to be determined following the receipt and evaluation of the replies to the questionnaire; related provisions need to be reconsidered in the light of the decision on the length of the limitation period. On other questions, the Working

^{3/} Ibid., 72 (f).

Group concluded that further study would be required before it could make a final recommendation.^{4/} "In addition, problems of drafting and style", as the Working Group's report noted (para. 8), "will, of course, receive attention in the preparation of succeeding versions" of the draft Uniform Law.

7. In the light of these facts, the Commission may conclude that the approach chosen for intermediate stages of the Uniform Law on Sales (quoted in para. 6, *supra*) should also be applied to the Preliminary Draft of the Uniform Law on Prescription (Limitation). This note will indicate aspects of the Preliminary Draft where, under this approach, it may not be premature to provide general guidance to the Working Group. Where guidance is provided, the Commission may wish to allow the Working Group sufficient flexibility so that it can improve the present preliminary draft on the basis of a review and integration of the structure of the draft as a whole. Where the Commission concludes that aspects of the present draft are not ripe for the Commission's consideration or decision, members of the Commission could assist with the further deliberations of the Working Group by communicating their views to the Working Group.^{5/}

I. SPHERE OF APPLICATION OF THE UNIFORM LAW

8. Articles 1 through 4 of the Preliminary Draft contain general definitions and provisions on the scope of application of the law. Article 1, for the most part, contains definitions that relate to the substantive provisions of other articles of the law, some of which may be expected to be revised by the Working Group. Therefore, the Commission may wish to defer its consideration of article 1.^{6/}

^{4/} For issues and draft provisions which in the opinion of the Working Group require further examination, see Limitations Working Group, Report on second session (1970), paragraph 8, foot-note 5.

^{5/} Views of members of the Commission could be communicated in the form of a response to the questionnaire (which in part II, para. 4 includes a request for general comments) or by a special communication addressed to the Secretariat for transmission to the Working Group.

^{6/} At the third session, the Commission approved the recommendation of the Working Group that the Uniform Law should apply only to the rights of the seller and the buyer (their successors and assigns, and persons who guarantee their performance) arising from a contract for the international sale of goods. UNCITRAL, Report on Third Session (1970), 79. Article 1 (1), combined with definitional provisions contained in paragraph 4 of article 1, expresses this central idea.

There are, however, general issues of policy presented by this group of articles that the Commission may wish to consider at this time. These are considered in the following paragraphs.

A. International character of the sale required for applicability of the Law

9. The Working Group did not formulate provisions on this question in view of the Commission's decision that the rules on scope of application should, if possible, be the same as the comparable rules of the Uniform Law on Sales. See the Commentary (comment following article 4). The Working Group at its second session reaffirmed its earlier recommendation that the Working Group on Sales and the Commission should give priority to the issue.

10. The Working Group on Sales, at the meeting in December 1970, gave attention to this question and prepared a proposed revision of ULIS articles 1 and 2 (Sales Working Group, Report on second session (1970) (A/CN.9/52) 13; also see the proposed revision of ULIS, articles 5 and 6, *ibid.*, 51 and 62.)

11. The provisional agenda suggests that the Commission consider the report of the Working Group on Sales before reaching the present agenda item. If the Commission follows this order of work, it may have decided whether to accept in principle the approach to this question proposed by the Working Group on Sales.

12. Therefore, the Commission may wish to consider in the light of that decision whether it is desirable to reconfirm its previous view that the Uniform Law on Prescription should have the same scope as the Uniform Law on International Sales. Should the Commission so decide, it may wish to request the Working Group on Prescription to formulate concrete provisions on the basis of the Commission's decision, taking into consideration any peculiar problems inherent to limitation (prescription).

B. Conflict of laws

13. No draft provision was proposed by the Working Group on the problem of the contact between an international sale of goods and a contracting State that is required for the applicability of the Uniform Law (conflict of laws). For reasons explained in the comment following article 3 in the Commentary, the Working Group decided to give this question further consideration. The Commission may wish to defer action on this issue until after the Working Group has made its recommendations.

C. Types of transactions and claims: exclusions

14. Article 2 of the Preliminary Draft Uniform Law excludes certain types of rights from the applicability of the uniform law. The August 1970 session of the Limitations Working Group preceded the session of the Sales Working Group which prepared a proposed revision of ULIS article 5 excluding certain transactions from the scope of the Uniform Law on Sales.^{7/} For the same reason, the Limitation Working Group has not yet had an opportunity to examine the proposed revisions of ULIS articles 1 and 2 concerning the basic scope of the Uniform Law on Sales. See paragraphs 9 to 13 of this note, supra. Therefore, the Commission might wish to defer action on article 2 of the Preliminary Draft Uniform Law until after the Working Group has had the opportunity to reconsider this article in the light of these relevant factors.

II. INTERPRETATION TO PROMOTE UNIFORMITY

15. See article 5 of the Preliminary Draft Uniform Law and its accompanying Commentary. It will be noted that the Working Group on Sales has recommended the same provision with respect to the revision of ULIS.^{8/} If the Commission follows the order suggested in the provisional agenda, it will have acted on this issue before reaching the present agenda item. Thus, the Commission may wish to consider whether it takes also the same view with respect to the Uniform Law on Prescription.

III. COMMENCEMENT OF THE LIMITATION PERIOD

A. Claims based on defects that are discovered or damage that ensues subsequent to delivery of the goods

16. This issue was discussed at the third session of the Commission. In the light of the conflicting views expressed on this issue, it was agreed that further attention should be given to the problem after consideration had been given to the length of the limitation period.^{9/}

^{7/} See especially article 5 (1) (a) excluding sales to consumers.

^{8/} See Sales Working Group, Report on second session (1970), 126-137.

^{9/} UNCITRAL, Report on third session (1970), 81-83.

17. Article 7 (3) of the Preliminary Draft Uniform Law follows the basic approach that was contained in the recommendation of the Working Group to the last session of the Commission.^{10/} However, adjustments have been made in other sections of the law that are relevant to some of the objections to this provision. These include: (a) paragraph 4 of article 7 which reflects the basic policy to postpone the starting of the period until the end of the carriage contemplated by the contract;^{11/} (b) a revision of the provision on express guarantees to liberalize the period where a defect appears near the end of the guarantee period (see art. 9 and accompanying commentary at para. 2); (c) proposed additional exclusions from the scope of the law in article 2 (a) (see commentary to art. 7, para. 7).

18. As was noted at the Commission's third session, the approach to this question is also related to the length of the limitation period. The Commission therefore may wish to defer a final decision on this question until the length of the period has been determined. On the other hand, it might be helpful to the Working Group to receive any comments the members of the Commission may wish to make on whether the above adjustments meet the objections mentioned by some members at the third session.

B. Effect of express undertakings (guarantees) for a specified time

19. The rule contained in the proposed article 9 differs from the previous recommendation of the Working Group, which was accepted by the Commission at its third session.^{12/} The reason for the change is explained in the commentary to article 9. The Commission may wish to consider whether it approves this new approach.

^{10/} For the explanation of the rule, see commentary to article 7 at paragraphs 4 to 7. As to the recommendation of the Working Group to the third session of the Commission, see Limitations Working Group, Report on first session (1969) (A/CN.9/30) 32.

^{11/} See UNCITRAL Report on the third session (1970), 84; commentary to article 7, paragraph 8.

^{12/} See UNCITRAL, Report on third session (1970) 90-93.

IV. ACTION NECESSARY TO INTERRUPT THE LIMITATION PERIOD

A. The stage which legal proceedings must reach before the expiration of the limitation period

20. Under the Preliminary Draft Uniform Law, "legal proceedings" is defined to include judicial, administrative and arbitration proceedings (art. 1 (4) (f)). Articles 10 to 12 indicate the stage which legal proceedings must reach before the expiration of the limitation period in order to stop the running of the limitation period. Article 10 relates to judicial proceedings, article 11 to arbitration proceedings, and article 12 to other legal proceedings arising from death bankruptcy or the like. See commentaries accompanying these articles.^{13/}

21. The Commission may wish to consider whether it approves, in principle, these approaches.

22. The rule contained in article 10 (2) ("counterclaim") is closely related to the provisions of article 20 (2) ("defence for the purpose of set-off"). Thus, the Commission may find it convenient to defer consideration of article 10 (2) until its consideration of article 20 (2) (see para. 26 of this note, infra).

B. Acknowledgement by debtor

23. At the third session of the Commission, the Commission approved in principle the recommendation of the Working Group that, if the debtor acknowledges the debt, the limitation period would start to run afresh from the date of acknowledgement.^{14/} Article 13 of the Preliminary Draft Uniform Law incorporates this principle and implements it by detailed provisions (see commentary to article 13). The Commission may wish to consider whether it approves these rules in principle.

^{13/} It will be noted that, under the Preliminary Draft Uniform Law, bringing legal proceedings does not commence the limitation period to run afresh but only stops the running of the period. Cf. article 13 (effect of acknowledgement), where the full length of the limitation period commences to run afresh from the date of acknowledgement. To appreciate the significance of these rules, attention should be given to article 17 on the effect of discontinuance or dismissal of proceedings.

^{14/} UNCITRAL, Report on third session (1970) 94. With respect to the recommendations of the Working Group to the UNCITRAL's third session concerning acknowledgement, see Limitations Working Group, Report on first session (1969) 74-81.

V. EXTENSION OF THE LIMITATION PERIOD

24. Articles 14 to 17 of the Preliminary Draft Uniform Law relates to extensions of the limitation period on the occurrence of various specified events. At the third session of the Commission, several representatives referred to the close relationship between the length of the limitation period and rules relating to extensions of the limitation period.^{15/} In the light of this, the Commission might wish to defer action on these provisions until the length of the limitation period has been determined.

VI. MODIFICATION OF THE LIMITATION PERIOD

25. Article 18 of the Preliminary Draft Uniform Law sets forth provisions concerning the power of the parties to modify the limitation period (see commentary to this article). At the third session of the Commission, several representatives referred to the close relationship between the length of the limitation period and the ability of the parties to extend the period to permit further negotiation.^{16/} This problem was also a subject of inquiries contained in the Questionnaire.^{17/} In the light of these facts, the Commission might wish to defer consideration of this problem until after the length of the limitation period has been determined and the Working Group has had the opportunity to evaluate the replies to the Questionnaire.

VII. OTHER PROBLEMS

26. There are other provisions of the Preliminary Draft Uniform Law, such as articles 19 to 24, which appear to be independent of the question of the length of the limitation period. However, some of these provisions are ancillary to other provisions of the law; other provisions seem to be of secondary importance. Unless the Commission concludes that certain of the provisions present serious problems of principle, it might conclude to defer consideration of this group of provisions until the Law has reached the stage for review as a whole.

^{15/} UNCITRAL, Report on third session (1970) 87. Also see comment following article 14 in the Commentary.

^{16/} UNCITRAL, Report on third session (1970) 87. Also see commentary to article 18 at paragraph 3.

^{17/} See Questionnaire, part II, paragraph 3.

VIII. PROGRAMME FOR COMPLETION OF THE WORK

27. The Commission may wish to request the Working Group to prepare a proposed final draft Uniform Law for submission to the Commission at its fifth session. The time for a third session of the Working Group may be decided after consultation among the members of the Working Group.

28. It is expected that members of the Working Group may wish to meet during the fourth session to formulate working plans for submission to the Commission. For this purpose the Working Group may wish to consider the following:

(a) Whether the Secretariat should prepare and submit, in advance of the third session of the Working Group, an analysis of the replies to the Questionnaire.

(b) Procedures for the preparation and circulation, in advance of the third session of the Working Group, of specific proposals for the refinement of the present preliminary draft.

(c) Procedures for the preparation of a draft convention to which the Uniform Law would be annexed.

(d) Measures for deciding on the most appropriate channel for the final consideration and adoption of the proposed convention.

29. According to the decision of the Commission at its second session,^{18/} the Working Group on Time-limits and Limitations (Prescription) has consisted of the following seven members: Argentina, Belgium, Czechoslovakia, Japan, Norway, the United Arab Republic and the United Kingdom of Great Britain and Northern Ireland. In view of the fact that Czechoslovakia's membership on the Commission expired as of 31 December 1970^{19/} the Commission may wish to consider what actions should be taken in this regard.

^{18/} Report of the United Nations Commission on International Trade Law on the work of its second session (1969): Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618), paragraph 46 (1).

^{19/} Report of the United Nations Commission on International Trade Law on the work of its first session (1968): Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216), paragraph 3. With respect to the election of the new members, see General Assembly, Twenty-fifth Session (1970), Verbatim record of the 1903rd meeting (A/PV.1903).