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in the international sale of goods  
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REPORT ON THE INTERNATIONAL EFFECT OF INTERRUPTION  
BY LEGAL PROCEEDINGS INSTITUTED IN A FOREIGN STATE;  
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The Austrian proposal

1. At the fourth session of UNCITRAL, the delegate of the Republic of Austria formulated certain proposals relating to the present draft uniform law which are contained in paper A/CN.9(IV)/CRP.2, dated 30 March 1971. This paper raises (inter alia) a problem which has not yet been determined by the Working Group, namely, the international effect of interruption by legal proceedings instituted in a foreign State.
2. The proposal of the Austrian delegate is as follows:
  - (a) To add an additional paragraph to article 10 of the draft law as follows:

"Acts performed abroad and interrupting the limitation period there, on the grounds set out in the preceding paragraph [article 10(1)], shall have the same effect in each contracting State:

    - (i) if the decision by the jurisdiction hearing the case is enforceable on its territory; or
    - (ii) if the defendant has, on the territory of the State of the jurisdiction hearing the case, a domicile, habitual residence [or] establishment [or real estate] [or property to a value sufficient to justify the institution of proceedings for distraint]."

(b) To add an additional paragraph to article 12 of the draft law as follows:

"Acts performed abroad and interrupting the limitation period there, on the ground set out in the preceding paragraphs [article 12(1), (2)], shall have the same effect in each contracting State where:

- (i) a decision by the jurisdiction hearing the case is enforceable on its territory; or
- (ii) the debtor has - or, in the case of proceedings arising from his decease, had - on the State of the territory of the jurisdiction hearing the case, a domicile, habitual residence [or] establishment [or real estate] [or property to a value sufficient to justify the institution of proceedings for distraint]."

It is to be noted that this proposal does not extend to the other causes of interruption prescribed by the draft law, i.e. arbitration proceedings, acknowledgment, or partial performance (articles 11, 13).

3. The Working Group may wish to consider, first, the general problem raised by the Austrian proposal. The problem is best explained by means of an example. Assume - for the purpose of exposition only - that the law applies where a contract of sale of goods is entered into by parties whose places of business are in different contracting States

States X and Y are both contracting States. A commences legal proceedings against B (article 10), or performs some other act (articles 11 and 12), in State X, which is sufficient to interrupt the limitation period in State X.

Does this also interrupt the limitation period in State Y?

It should be noted that A (the creditor) may have his place of business in State X, or in State Y, or in a third contracting State, State Z. Similarly (provided the initial criterion for application of the law is fulfilled), B (the debtor) may have his place of business in State X, or in State Y, or in a third contracting State, State Z.

4. In my view, the Working Group has so far proceeded on the assumption (although I do not recollect any considered discussion of this problem) that interruption of the limitation period in State X does not have the effect of interrupting the limitation period in State Y. This assumption is, in my submission, a sound one. The general purpose of the law is to inform a businessman or his legal adviser, where proceedings are contemplated in a foreign State: (i) what is the length of the limitation period, and (ii) what acts must he perform to interrupt the

limitation period in that foreign State. To this end, we have also had to formulate rules as to the commencement of the period, and to set out certain circumstances which extend the period or regulate its effect. It is, in my opinion, over-ambitious to try to establish a world-wide régime whereby interruption in State X will, in effect, have world-wide effect. Such a proposal, while no doubt admirable in theory, would imperil ratification of the law, because few States would accept that an interruption in some far-off country would effectively interrupt the limitation period in their own country. I doubt if many States would accept that the issuing of a writ out of the High Court of Justice in London (without service of the writ) should constitute an interruption of the limitation period in their own judicial proceedings, even though it is sufficient in England.

5. The Austrian proposal is, however, more modest. It seeks, broadly, to establish a régime of "the recognition of foreign interruption" in the same manner as (say) the recognition of foreign judgements. Two criteria for such recognition are set out for recognition of interruption in State X by State Y. First if the decision by the courts or administrative authority in State X is enforceable in State Y. Or secondly, if the defendant (debtor) has in State X a sufficient interest of a "domicile" or "residence" character or a sufficient property interest. This would benefit the creditor in that he need not necessarily commence proceedings in State Y, but could (if the criteria are fulfilled) commence proceedings in State X, which will most probably (but not invariably) be his own State.

6. Although this proposal is not without attraction, I do not believe that we should adopt it. So far as the first criterion is concerned, it might seem logical that, if State Y will enforce the judgement of a judicial or other tribunal in State X, it ought also to recognize the form of interruption recognized in State X. But the two situations are not analagous. The judgement is usually a formal order in solemn form which is produced to the judicial or administrative authorities of State Y, and which, if duly enrolled, can then be enforced. This is quite different from saying that a more informal procedure (e.g. commencement of legal proceedings in State X) should be ipso facto recognized in State Y. Also, some States will only enforce judgements of other States under certain conditions, e.g. if the judgement is not a "default" judgement, or if the defendant has submitted to the jurisdiction of State X. It will often not be possible to know, at the time legal proceedings are commenced, whether "the decision by the jurisdiction hearing the

case" is enforceable in State Y until the proceedings are under way, or even have been concluded.

7. So far as the second criterion is concerned, it is submitted that the notions of "domicile", "habitual residence" or "establishment" are often interpreted in different jurisdictions in different senses, and it would be most difficult for a plaintiff to know with any certainty whether his concept of the "domicile" of the defendant would necessarily be accepted by the courts of State Y. Further, the extension to cases where the defendant has property in State X would, in the case of international enterprises, lead to the result criticized in paragraph 4 of this working paper.

8. If, however, the Working Group decides to adopt the principle stated in the Austrian proposal, the language of the proposal will need to be looked at carefully since it contains certain ambiguities (in the English text). The Working Group will also have to consider the proposal in the light of the decision reached on the definition of an "international sale of goods" and of the scope of the law.

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