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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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AMENDMENTS PROPOSED BY NORWAY TO THE TEXT OF
A PRELIMINARY DRAFT OF A UNIFORM LAW ON
PRESCRIPTION (LIMITATION) IN INTERNATIONAL
SALE OF GOODS (AUGUST 1970)*

ARTICLE 00 (Incorporation clause) /new/

(1) Each Contracting State shall make its national law conform with the provisions of this Convention /not later than the date of the entry into force of 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) Alternative (a): The provisions of this Convention, or the equivalent provisions of national law, shall be applied /by the tribunal or other authority seized with the case/ in the territories of the Contracting States. Such application may, however, by national law be made subject to rules of private international law in cases where neither of the parties to the contract of sale had, at the time /of the conclusion of the contract/ /when action is brought/, a /pertinent/ /relevant/ place of business or, if appropriate under Article 2 of this Convention, his habitual residence, in any Contracting State.

* Interlines show deletion from the preliminary draft and underlines show addition to it.

Alternative (b): /In the territories of the Contracting States, the provisions of this Convention, or the equivalent provisions of national law, shall be applied by the tribunal or other authority seized with the case, irrespective of any rule of private international law.

ARTICLE 1

(1) This Law shall apply to the limitation of legal proceedings and to the prescription of the rights of the buyer and seller (claims) arising from a contract of international sale of goods as defined in ~~article-4~~ article 2 of this Law or from a guarantee incidental to such a contract, or arising by reason of the breach, termination or invalidity of such a contract or guarantee.

(2) In this Law "the limitation period" means the period within which the rights of the parties may be enforced in legal proceedings or, if case be, otherwise exercised.

(3) This Law shall not affect a rule of the applicable law or a contractual clause providing a particular time-limit by reason of which the acquisition or continuance of a right is dependent upon one party giving notice to the other party or upon the occurrence of an event or upon the performance of an act other than the exercising of this right within a certain period of time.

(4) In this Law:

(a) "Buyer" and "seller" mean persons who buy or sell, or agree to buy or sell, goods, and the successors to and assigns of their rights ~~or~~ and(?) duties under the contract of sale;

(b) to (h) (Unchanged)

ARTICLE 2 (International sale) /new/

(1) For the purposes of this Law it is deemed to be an international sale when the contract of sale is entered into by parties whose places of business, at the time of the conclusion of the contract, are in different States.

(2) Where a party has places of business in more than one State, his place of business shall be his principal place of business, unless another place of business has a closer relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at the time of the conclusion of the contract;

(3) Where a party does not have a place of business, reference shall be made to his habitual residence;

(4) Any two or more States shall not be considered to be different States if a declaration to that effect made under article / / of /the/ /this/ Convention is in force in respect of them.

ARTICLE 2 3 (Exceptions) /para. 1 is new/

(1) This Law shall not apply to claims arising out of sales:

(a) Of goods of a kind and in a quantity ordinarily brought by an individual for personal, family, household or similar use, unless the seller /at the time of the conclusion of the contract/ knew that the goods were bought for a different use;

(b) By auction;

(c) On execution or otherwise by authority of law;

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

(e) Of a /ny/ ship, vessel or aircraft /which is registered or is required to be registered/.

(2) ~~This Law shall not~~ Neither shall this Law apply to ~~rights~~ claims based upon:

(a) Liability for the death of, or injury to the person of, the buyer or any other person;

(b) Liability for nuclear damage caused by the goods sold;

(c) Alien, mortgage or other security interest in property;

(d) ~~A judgement or award made in legal proceedings;~~^{1/}

(e) A document on which immediate enforcement or execution can be obtained in accordance with the law of the jurisdiction where such enforcement or execution is sought;

(f) A bill of exchange, cheque, or promissory note;

(g) A documentary letter of credit.

ARTICLE 7

~~(1) Subject to the provisions of paragraphs 3 to 6 of this article and to the provisions of article 9, the limitation period in respect of any right~~

1/ See proposed new article 12A.

~~arising out of a breach of the contract of sale shall commence on the date on which such breach of contract occurred.~~

The limitation period shall commence on the date on which the claim could /objectively/ first be exercised. However, in respect of any claim arising out of a breach of the contract /of sale/, the period shall commence on the date on which such breach /of contract/ occurred. This paragraph shall be subject to the provisions of paragraphs /new 2 to 5/ of this Article and to the provisions of Article /new 8/.

(2) Where one party is required as a condition for the acquisition continuance or exercise, or enforcement of such a right to give notice to the other party, the commencement of the limitation period shall not be postponed by reason of such requirement of notice.^{2/}

(3) Subject to the provisions of paragraph 4 of this article, the limitation period in respect of a right arising from defects in, or other lack of conformity of, the goods shall commence on the date on which the goods are placed at the disposition of the buyer by the seller according to the contract of sale, irrespective of the date on which such defects or other lack of conformity are discovered or damage therefrom ensues.^{3/}

(4) (Unchanged)

(5) /transferred from the original art. 9/

Where the contract of sale contains an express undertaking on the part of the seller relating to the goods and such undertaking is stated to have effect for a period of time, whether expressed in terms of a specific period of time or otherwise, the limitation period in respect of a right relating to any matter covered by the undertaking shall commence on the date on which the buyer first informed the seller of such right; provided that the limitation period shall in any event expire /three/ /five/ years after the expiration of the period of the undertaking.

ARTICLE 8

~~(5) /of the original art. 7/ (1) Where, as a result of a breach by one party of contract or another circumstance occurring before performance is due /or would~~

1/ See proposed new article 12A;

2/ This paragraphs may be subject to the provisions of para. 5 and article 9.

3/ This paragraph will be subject as well to all subsequent paras. of article 7 as to article 9. But is it necessary to spell it out in the text. /...

~~otherwise be due~~ the other one party thereby becomes entitled to and does elect to treat the contract as terminated, or due the limitation period in respect of any right ~~existing-out-of-such-breach~~ based on such circumstance shall commence on the date on which, ~~such-breach-of-contract~~ the circumstance occurred, ~~irrespective-of-any-subsequent-failure-by-the-party-in-default-to-perform-on~~ the date when performance is due; --- otherwise If not relied upon, such circumstance shall be disregarded, and the limitation period shall commence on the date when ~~performance-is-due-~~ the claim otherwise could first be exercised.

(6) ~~[of the original art. 7]~~ (2) ~~Where, as a result of a breach by one party~~ If in case of a contract for the delivery of or payment for goods by instalments, ~~the other one~~ one party thereby becomes entitled to and does elect to treat the contract as terminated, or due as a result of a breach of a contract or circumstance in relation to an instalment, the limitation period in respect of any ~~right-arising out-of-such-breach~~ claim based on such circumstance shall commence on the date on which ~~such-breach-of-contract~~ the circumstance occurred, ~~irrespective-of-any-other breach-of-the-contract-in-relation-to-prior~~ even in respect of any previous or subsequent instalments; covered by the contract. otherwise. If not relied upon, such circumstance shall be disregarded, and the limitation period in respect of each separate instalment shall commence on the date on which the particular breach or breaches complained of occurred, or, otherwise, When the claim could first be exercised.

ARTICLE-8 [replaced by new Art. 7(1)]

ARTICLE-9 [transferred to new Art. 7 (5)]

INTERRUPTION OF THE LIMITATION PERIOD: LEGAL
PROCEEDINGS; ACKNOWLEDGEMENT 4/

ARTICLE 10

(1) The limitation period shall cease to run when the creditor before the expiration of the limitation period performs any act recognized under the law of the jurisdiction where such act is performed:

4/ In both articles (and in articles 12-13) the question arises whether the act shall be deemed to have been performed already when the letter etc. has been dispatched or mailed by the creditor or first when it has been received by the pertinent authority etc. This question should be left respectively to the law of the jurisdiction where the proceedings take place, where the request shall be delivered or notified or where the act of acknowledgement is performed. This should be made clear in the Commentary.

/...

- (i) as instituting judicial proceedings against the debtor for the purpose of obtaining satisfaction or recognition of his right; or
 - (ii) if judicial proceedings have already been commenced by the creditor against the debtor in relation to another right, as invoking his right in the course of those proceedings for the purpose of obtaining satisfaction or recognition of that claim.
- (2) (Unchanged)

ARTICLE 11

- (1) Where the parties have agreed to submit to arbitration, the limitation period shall cease to run when either party before the expiration of the limitation period commences arbitration proceedings by requesting that the right in dispute be referred to arbitration in the manner provided for in the arbitration agreement or by the law applicable to that agreement.
- (2) to (3) (Unchanged)

ARTICLE 11 A (Litis denunciatio) new 5/

- (1) The provisions of this Article shall apply where there are more than one debtor (codebtors) to one and the same obligation, arising from a contract or a guarantee as defined in paragraph (1) of Article 1, and judicial or arbitration proceedings / legal proceedings pursuant to Articles 10-12 have been instituted against one of the codebtors before the expiration of the limitation period. The provisions shall apply by analogy in cases where it may in fact or in law be uncertain who is the real debtor to the obligation in particular in cases of agency.
- (2) The limitation period in respect of such obligation of any other codebtor shall cease to run when the creditor, before the expiration of the limitation period, notifies such debtor of such proceedings, in accordance with the law of a jurisdiction in which judicial or arbitration proceedings for enforcing the claim could have been instituted against that debtor.

5/ See note in document A/CN.9/WG.1/WP.10.

(3) The debtor sued according to paragraph (1) or notified according to paragraph (2) may likewise, by notifying a codebtor in accordance with paragraph (2) of this Article, cause the limitation period to cease to run in respect of any claim which he may have against such a codebtor by reason of the same obligation. Such codebtor may avail himself of the same remedy against another codebtor when he has been notified according to this paragraph.^{6/}

(4) The limitation period shall nevertheless be deemed to have continued to run if the claim against the notified debtor has not been interrupted pursuant to Articles 10, 11, 12 or 13 of this Law before the expiration of one year from the date on which the notified proceedings have been ended.

ARTICLE 12

(1) (Unchanged)

(2) The limitation period shall cease ~~be deemed to have ceased~~ to run when the creditor timely performs an act recognized under the law of the jurisdiction where such act is performed as the assertion of a right in those proceedings under that law for the purpose of obtaining satisfaction of his claim. Such act shall be deemed to have been timely /performed/ when it has been performed before the expiration of the limitation period or any additional period indicated in a notice to creditors in accordance with the law of the jurisdiction where the proceedings take place.

(3) (unchanged)

ARTICLE 12 A ^{new} 7/

(1) Where a judgement or an award on the merits of the claim has been made in legal proceedings pursuant to Articles 10-12, national law shall govern the limitation of any claim based on such judgement or award.

(2) Where the creditor has obtained a final judgement or award for his claim in judicial or arbitration proceedings instituted before the expiration of the limitation period, but such judgement or award is not recognized in another jurisdiction, the limitation period shall not expire in such jurisdiction earlier than at the expiration of one year from the date of such final judgement or award.

^{6/} The conditions for and effects of subrogation are outside the scope of this Law.

^{7/} Cf. the original art. 2 (d).

ARTICLE 15

Where, as a result of a circumstance which is not personal to the creditor and which he could neither avoid nor overcome, the creditor has been prevented from causing the limitation period to cease to run, and provided that he has taken all reasonable measures with a view to preserving his right, the limitation period shall be extended so as not to expire before the expiration of one year from the date on which the relevant circumstance ceased to exist but at the latest when ten years have passed from the date on which the period would otherwise have expired according to Articles ⁶ to ⁹.

ARTICLE 16

Where, by reason of the debtor's misstatement or concealment of his identity or address, the creditor is prevented from causing the limitation period to cease to run, the limitation period shall be extended so as not to expire before the expiration of one year from the date on which the creditor discovered the fact misstated or concealed, or could with reasonable diligence have discovered it but at the latest when ten years have passed from the date on which the period would otherwise have expired according to Articles ⁶ to ⁹.

ARTICLE 16 A (recourse actions) ^{8/}

(1) The provisions of this Article shall apply to mutual recourse actions between parties being codebtors in relation to one and the same obligation, arising from a contract or guarantee as defined in paragraph (1) of Article 1. The provisions shall apply by analogy in the relations between successive sellers and buyers, even if they are not ^{joint} codebtors under the applicable law, in so far as regards mutual recourse claims which they may have, by subrogation or otherwise, based on a contract as defined in paragraph (1) of Article 1.^{9/}

(2) When, before the expiration of the limitation period in relation to any party concerned,

^{8/} See A/CN.9/WG.1/WP.10.

^{9/} The conditions for and effects of subrogation are outside the scope of this law.

(a) the obligation has been wholly or partly discharged by one of the parties, or

(b) the period has been /caused to cease to run/ interrupted in relation to one of them, the limitation period in respect of a /ny/ recourse claim referred to in paragraph (1) of this Article shall be extended so as not to expire earlier than at the expiration of one year from the date of the discharge or interruption referred to.

/(3) The provisions of this Article shall be applied without prejudice to any right by subrogation under the applicable law./

ARTICLE 18

(1) (unchanged)

(2) The debtor may, at any time /after the commencement of the limitation period prescribed in articles 7 to 9/, by a declaration to the creditor extend the limitation period or declare that he will not invoke limitation as a defence in legal proceedings; but such declaration shall in no event have effect beyond the end of three years from the date on which the period would otherwise expire or have expired in accordance with articles 6 to 9. The debtor may, however, by new declarations extend the limitation period further for new periods of not more than three years at a time from the date /of such declaration/ /on which the period would otherwise expire/.

(3) (unchanged)

(4) The provisions of this article shall not affect the validity of a clause in the contract of sale whereby the acquisition or enforcement or continuance of a right is dependent upon the performance by one party of an act other than the institution of judicial proceedings within a certain period of time, provided that such clause is valid under the applicable law.^{10/}

^{10/} It should be reconsidered whether the provision could be limited to cases where the arbitration agreement does not exclude eventual resort to judicial proceedings after expiration of the period for commencing arbitration proceedings.

ARTICLE 20

(1) (unchanged)

(2) Notwithstanding the expiration of the limitation period, the creditor may rely on his right as a defence for the purpose of set-off against a right asserted by the other party:

(a) If such set-off has been agreed upon between the parties; or,

~~(a)~~(b) If both rights relate to the same contract; or,

~~(b)~~(c) In other cases, if the rights could have been set-off at any time before the date on which the limitation period expired.

ARTICLE 24

Where the last day of the limitation period falls on an official holiday or other dies non juridicus which /precludes/ /prevents/ the appropriate legal action in the jurisdiction where the creditor institutes judicial proceedings as envisaged in article 10 or asserts a right as envisaged in article 12, the limitation period shall be extended so as not to expire until the end of the first day following that official holiday or dies non juridicus on which such proceedings could be instituted or on which such a right could be asserted in that jurisdiction.
