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# UNIFICATION OF LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS

*Kazuaki Sono\**

## EMERGENCE OF A UNITED NATIONS CONVENTION ON THE SUBJECT AND ITS OBJECTIVES

The United Nations Conference on Prescription (Limitation) in the International Sale of Goods successfully adopted the Convention on the Limitation Period in the International Sale of Goods on June 12, 1974 in New York. This Convention is now open for signature. It shall enter into force after the deposit of the tenth instrument of ratification or accession by States. This is the first legal instrument to emerge from the work of the United Nations Commission on International Trade Law (UNCITRAL).<sup>1</sup> This Convention will, when enforced, replace a welter of conflicting national laws concerning the limitation period of claims or the prescription of rights, which presently govern claims of the parties to the international sale of goods.

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1. Responding to the need for the United Nations to play a more active role in removing or reducing legal obstacles to the flow of international trade, the General Assembly established the Commission on December 17, 1966 by resolution 2205 (XXI). The object of the Commission is "the promotion of the progressive harmonization and unification of the law of international trade." The present priority items of the Commission's work include international sale of goods, international payments, international commercial arbitration and international legislation on shipping. It is expected that more conventions in these fields will emerge from the work of the Commission in the near future. To serve the purpose of making the work of the Commission more widely known and more readily available beyond the forum of the United Nations, the Commission issues annually its YEARBOOK. Besides reproducing UNCITRAL's annual report and actions taken with respect to the report, the Yearbook also includes various studies which provide the basis for the Commission's work to aid in the intensive examination and evaluation of the developing measures for the unification and harmonization of international trade law. As to the more concrete nature of the work of the Commission, see Farnsworth, *UNCITRAL, Why? What? How? When?*, 20 AM. J. COMP. L. 314 (1972).

The purpose of this Convention is to provide a concrete set of rules governing the period of time within which the parties to an international sale of goods must institute legal proceedings before a tribunal for the exercise of their claims under the contract. This problem is known as the question of *limitation period* (or a statute of limitation) in the common law countries and as a question of *prescription* in the civil law countries. This difference in terminology is more than a matter of nomenclatures. It reflects significant differences in substance in approaching the subject matter.

To illustrate some of the problems inherent in the difference of approaches, let us assume for a moment a situation where a legal proceeding is instituted in an English court, based on a breach of an international sales contract. The English limitation period is six years under its statute of limitation. The expiration of this period of six years is classified under the English law as a *procedural* bar against bringing legal proceedings thereafter. The period is considered to be a part of *procedural* rules of the English courts. Now suppose the law applicable to the contract is that of France. Under the law of France, the limitation period is 30 years and the question is regarded as a matter of substantive law. The English court will hold the claim to be barred after six years because the passage of six years constitutes a procedural bar for bringing legal proceedings in English courts. The fact that the law applicable to the contract provides a 30 year prescription period is irrelevant once the rule concerning the procedure precluded the pursuit of the legal proceeding. Now let us change the situation and suppose that the law applicable to the contract was that of Greece, where the question of limitation period is also considered to be a matter of substantive law but the length of the period is five years. Where the "prescription" period is shorter than the period under the statute of limitation of the forum, the English court will have regard to the applicable law of the contract and hold the claim to be barred after five years and not six. This is because the English court honors the law applicable to the contract (*i.e.*, Greek law) which incorporates in itself prescription rules as a matter of substance affecting the rights arising from the contract. Thus, where the law applicable to the contract is that of State X which treats the limitation period as a procedural matter, the English court will not have regard to the limitation period of State X and will apply its own six year rule even if the length of the limitation

period under the law of State *X* is also five years as in Greece. This is on the theory that the English court is not bound by the procedural rule of foreign courts but by its own procedural rules.

The English approach to the limitation problem, to draw the line on the basis of the distinction between procedure and substance, however, cannot be followed in a State of civil law tradition where the limitation question is treated as a matter of substance. The absurdity in result, if the English approach be adopted in a civil law State, is clear if we think of the following situation. Suppose, in a legal proceeding in a civil law State, the law applicable to a contract in question is found to be that of a State *X* which treats the limitation as a matter of procedure. The court can apply neither the rule of prescription of that State because the law applicable to the contract is that of State *X*, nor the rule of limitation of State *X* because the court is not to be bound by the procedural rule of the foreign forum; the claim consequently would never be barred. Of course, few courts in civil law States will rigorously approach the problem in the English fashion. Perhaps the question would be solved within the sphere of the characterization process for the purpose of private international law apart from the domestic distinction on the nature of a rule. Even in a State with a common law background, there is some evidence that the approach of regarding limitation as "procedural" does not necessarily prevail.<sup>2</sup>

When parties enter into a contract of sale, they usually contemplate performance and not the limitation or prescription of their claims. While they may need to know, at the time of contracting, which law defines their mutual obligations concerning performance, there is a little practical interest at this time in knowing which limitation rules would apply to their legal actions in case of breach or other non-performance. Moreover, even if a cautious party did consider the problem of limitation, it is often difficult to foresee where legal proceedings would have to be instituted in case of actual dispute. Even if he knows the forum, he will encounter serious uncertainty in finding which national law applies to the international sales transaction.

The length of the limitation period under national laws varies widely, ranging from six months to thirty years. Some

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2. See, e.g., *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945).

periods such as six months or one year are short in relation to the practical requirements of international transactions in view of the time that may be required for negotiations and for the institution of legal proceedings in a foreign and possibly distant country. Other periods such as twenty or thirty years are longer than are appropriate for transactions involving the international sale of goods, and fail to provide the essential protection that should be afforded by limitation rules. This includes protection from the loss of evidence necessary for the fair adjudication of claims, and protection from the uncertainty and possible threat to solvency and to business stability from delayed settlement of disputed claims.

National rules not only differ, but in many instances are difficult to apply to specific problems involved in an international sales transaction. One difficulty arises from the fact that some national laws apply a single rule of limitations to a wide variety of transactions and relationships. As a result, the rules are expressed in general and sometimes vague terms that are difficult to apply to the specific problems of an international sale. The difficulty in ascertaining the foreign rules applicable to a given situation is further increased for international transactions, since merchants and lawyers are often unfamiliar with the implication of the general concepts peculiar to limitation or prescription and with the techniques of interpretation used in a foreign legal system. The result is an area of grave doubt in international legal relationships. The confusion involves more than the choice of the manner of approaching and describing a legal relationship. An unexpected or severe application of a rule of limitation may prevent any redress for a just claim; a lax rule of limitation may fail to provide adequate protection against stale claims that may be false or unfounded. In view of the widely varying concepts and approaches prevailing under national laws with respect to the limitation of claims and the prescription of rights, it has been considered advisable to provide uniform rules in a convention that are as concrete and complete as possible.

This Convention confines its coverage to one type of transaction—the purchase and sale of goods—and stipulates uniform rules for this type of transaction with a degree of concreteness and specificity that is not feasible in statutes that deal with many different types of transactions and claims. A brief and general uniform law such as a law merely specifying the length of the limitation period would do little in actual practice to achieve unification, since the divergent

rules of national law would then be brought into play in "interpreting" such a brief and general provision. Of course, in any convention of this nature, the loss of uniformity through the use of divergent rules and concepts of national law cannot be wholly avoided, but the Convention seeks to minimize this danger by facing the problems that are inherent in this field as specifically as feasible within the scope of a convention of manageable length.<sup>3</sup>

The text of the Convention appears in the appendix to this paper. Captions in brackets are not a part of the Convention; they are added for ease of reference. The examination of those captions alone may demonstrate divergent issues which a uniform law of this nature had to tackle in order to attain uniformity in result, in addition to providing a uniform limitation period of four years.<sup>4</sup> Without going into technical detail of each of its provisions, a few of the unique problems for which this Convention had to provide answers will be discussed below.<sup>5</sup>

#### OPERATION OF RULES WITH REGARD TO THE RUNNING AND EXPIRY OF THE LIMITATION PERIOD

As was noted earlier, this Convention is essentially concerned with the time within which the parties to an international sale of goods may bring legal proceedings<sup>6</sup> to exercise claims. Article 8 states the length of the limitation period to

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3. As to the background with respect to the preparation of the draft of the Convention by UNCITRAL, see Report of the United Nations Commission on the International Trade Law on the work of its fifth session (1972), *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17 (A/8717)*, paras. 13-14. This report is reproduced in *Yearbook of the United Nations Commission on the International Trade Law*, vol. III: 1972 (United Nations Publication, Sales No.: E.73.V.6), part one, II. See also *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods: Documents of the Conference and Summary Records of the Plenary Meetings and of the Main Committees (A/CONF. 63/16)* (to be published soon).

4. After preparation of this paper, the writer received from Professor Hans Smit of Columbia Law School a reprint of his article, *The Convention on the Limitation Period in the International Sale of Goods: UNCITRAL's First-Born*, in 23 AM. J. COMP. L. 337 (1975), which readers will find instructive for the general structure of the Convention.

5. It is expected that the United Nations Secretariat will soon publish a commentary (A/CONF. 63/17) on this Convention, the draft of which the writer has prepared at their request.

6. For the purposes of this Convention, "legal proceedings" include judicial, arbitral and administrative proceedings (art. 1(3)(e)).

be four years. Articles 9 to 12 govern the starting point in time for the running of the limitation period. Articles 24 to 27 state the consequences of the expiration of the period; these include the rule (art. 25(1)) that no claim for which the limitation period has expired "shall be recognized or enforced in any legal proceedings." Articles 13 to 21 provide when the limitation period "ceases to run" or when the period is extended. The net effect of these rules is substantially the same as providing that a proceeding for enforcement may only be brought before the limitation period has expired.

Legal proceedings may, however, end without a decision on the merits of the claim, for various reasons. A proceeding may be dismissed because it is brought in a tribunal without jurisdiction or venue over the case, or because of procedural defects preventing adjudication on the merits; a higher authority within the same jurisdiction may declare that the lower court lacked competence to handle the case; arbitration may be stayed or set aside by judicial authority within the same jurisdiction; moreover, a proceeding may not result in a decision binding on the merits of the claim where the creditor discontinues the proceeding or withdraws his claim.

The approach of this Convention, in stating that the limitation period shall "cease to run" when the proceeding is instituted (*e.g.*, arts. 13, 14(1), 15), provides a technical basis for dealing with problems that arise when the proceeding fails to result in a decision on the merits or is otherwise abortive. Under articles 13, 14(1), and 15, when a creditor asserts his claim in legal proceedings before the expiration of the limitation period, the limitation period shall "cease to run"; the limitation period would never expire once a legal proceeding was formally instituted. Supplementary rules are consequently required when such a proceeding does not lead to an adjudication on the merits of the claim. Article 17 covers these instances wherever "such legal proceedings have ended without a decision binding on the merits of the claim." The rule is that "the limitation period shall be deemed to have continued to run"; cessation of the period under articles 13, 14, 15 or 16 will be rendered inapplicable.

Article 17, however, takes account of the possibility that, a substantial period of time after the creditor asserted his claim in a legal proceeding, the proceeding may be brought to an end without a decision on the merits. If this occurs after the expiration of the limitation period, the creditor may have

no opportunity thereafter to institute a new legal proceeding; if this occurs shortly before the expiration of the period the creditor may have insufficient time to institute a new legal proceeding.<sup>7</sup> To meet these problems, article 17(2) provides: "If, at the time such legal proceedings ended, the limitation period has expired or has less than one year to run, the creditor shall be entitled to a period of one year from the date on which the legal proceedings ended."<sup>8</sup>

#### INTERNATIONAL EFFECT

Does the Convention merely serve to unify existing limitation laws of Contracting States? The Convention not only achieves replacement, by a "uniform law," of divergent domestic limitation laws which have heretofore regulated claims arising from international sale of goods, but also accomplishes the solution of difficult questions concerning the effects of bringing a legal proceeding in one jurisdiction or another.

For example, in international transactions, the possibility of dismissal of a legal proceeding without adjudication on the merits of the claim increases because of difficulty in ascertaining, in advance, whether a chosen forum would entertain the proceeding. In addition to the instances indicated above in connection with article 17, *forum non conveniens* may be invoked by a tribunal to dismiss the action in some jurisdictions. Whether a court will entertain a prorogation clause or a forum-selection clause, which is often inserted in international contracts, is not always clear.<sup>9</sup>

Where it becomes known that a legal proceeding cannot be pursued for settlement of claims in a jurisdiction, can a

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7. The question whether a second proceeding on the same claim is permissible procedure is, of course, left to the procedural law of the forum.

8. A similar approach has been used in article 18(3) to cope with the problem created by article 18(1) and (2), which provides that institution of legal proceedings against one or more jointly and severally liable debtors or by a subpurchaser against a buyer shall also cease the running of the limitation period in regard to the other debtor or the seller, if proper notice is given in writing.

9. For example, American courts usually disregarded prorogation clauses on the public policy ground. There is a distinct tendency to give effect to such clauses unless it is unfair or unreasonable to do so (RESTATEMENT, SECOND, CONFLICT OF LAWS § 80; MODEL CHOICE OF FORUM ACT § 3); however, whether a recent U.S. Supreme Court decision, *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972), which honored a prorogation clause, applies to non-admiralty cases is still unclear.



party institute another legal proceeding in a foreign court even though the limitation period has otherwise already expired in that foreign jurisdiction? This is a kind of question dealt with by the Convention in article 30 under the heading of "international effect."

Article 30 refers to the effect which *Contracting* States must give to "acts or circumstances" referred to in articles 13 through 19. Most of these articles deal with the situation where institution of various types of legal proceedings stop the running of the limitation period (arts. 13, 14, 15 and 16). Thus, article 30 is primarily concerned with the international effect of the institution of legal proceedings. The purpose of article 30 is to give the same effect, in other Contracting States, of the cessation of the running of the period or the extension thereof which has taken place in a Contracting State.

To illustrate a group of problems to which article 30 is addressed, let us assume the following: Buyer has a claim against Seller arising from an international sale of goods. The claim arose in 1975. In 1978 Buyer instituted a legal proceeding against Seller in a Contracting State X.

(a) *Institution of a Legal Proceeding After a Proceeding in Another State Dismissed Without a Final Decision*

If the legal proceeding in State X, in the above hypothetical, ended on February 1, 1980 without a decision on the merits of the claim, the limitation period "shall be deemed to have continued to run" and the period is extended to February 1, 1981 under article 17. Under article 30, these events in State X must be given "international" effect in a Contracting State Y and a legal proceeding brought in State Y until February 1, 1981 will not be barred by limitation. Complicated techniques used by American courts, when the forum is "inconvenient," to refuse exercising jurisdiction on condition that the defendant consent to jurisdiction of a "convenient" foreign court and that he would not plead the statute of limitation in that court,<sup>10</sup> would thus become no longer necessary if this Convention is adopted.

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10. See, e.g., *Wendel v. Hoffman*, 259 App. Div. 732, 18 N.Y.S. 2d 96 (1940); *Aetna Ins. Co. v. Creole Petroleum Corp.*, 23 N.Y. 2d 717, 244 N.E. 2d 56 (1968).

(b) *Institution of a Legal Proceeding Where Recognition of Foreign Judgment Refused*

Where the creditor has obtained a final decision on the merits of his claim in one State, difficult problems arise in international disputes because of the limited recognition and enforcement which the decision in one State is given in other States. Suppose, in our hypothetical situation, that in 1981 the proceeding led to a decision on the merits of the claim and in 1982 Buyer sought its execution in a Contracting State Y and that the recognition of the decision has been refused.

Since Buyer's claim accrued more than four years prior to 1981, Buyer's claim would be barred even if he wished to institute a new legal proceeding in State Y to contest the merits of his claim *unless* the limitation period could be regarded to have "ceased to run" also in State Y by virtue of the institution of the legal proceeding in State X in 1978. Under article 30, stopping of the running of the period by the institution of a legal proceeding in State X has been given the same effect in State Y and Buyer can institute a new legal proceeding in State Y subject to the over-all limitation for bringing legal proceedings under article 23.

(c) *Institution of a Legal Proceeding Afresh After a Final Decision in Another State*

When the refusal of recognition or execution of the decision in one State is expected in another State, the creditor will have to bring a legal proceeding in that State based on the original claim. The creditor may also find it easier to sue again on the original claim in lieu of involving himself in a complicated process of proving the validity of the first decision. The creditor who was rendered an unfavorable decision on the merits of his claim may also consider having his claim tried again in another State if he is not precluded from asserting his original claim afresh in legal proceedings in that State.

Legal rules variously termed such as *res judicata*, "merger" of the claim in the judgment, or the like, may prevent the assertion of the original claim after the decision on the merits even if rendered in another State. This is a question to be answered according to the procedural rules of the forum and such legal rules are usually clear within a single jurisdiction. But their operation is unclear on the interna-

tional level. Many States might entertain such a fresh legal proceeding, at least in the absence of a situation which justified application of principles similar to collateral estoppel.<sup>11</sup>

Thus, in our hypothetical case, suppose that in 1981 the proceeding led to a decision on the merits of the claim in favor of Buyer. Seller's assets are in a Contracting State Y. State Y will recognize the decision of State X but the law of State Y does not preclude Buyer from asserting his original claim afresh in legal proceedings in that State provided that the limitation period with regard to the original claim had not expired. Buyer, finding it easier to sue again on the original claim in lieu of involving himself in a complicated process of proving the validity of the first decision for its enforcement in State Y, decides to institute a new legal proceeding in State Y to contest the merits of his claim. Under article 30, stopping of the running of the period by the institution of the first legal proceeding in State X has been given the same effect in State Y and Buyer can institute a new legal proceeding in State Y subject to the overall limitation for bringing legal proceedings under article 23.

(d) *Institution of a Legal Proceeding While One is Pending in Another State: Double Proceedings*

Whether a legal proceeding can be instituted on the basis of the same claim while another legal proceeding is pending in another State is, of course, the question to be answered under the procedural rules of the forum. The answer may sometimes depend on whether a decision which eventually comes out of the foreign State would be susceptible of execution in the forum wherein another proceeding is to be instituted. But even the question of recognition or execution of a foreign decision may often be unascertainable until after the foreign decision has been rendered, especially in the case of a foreign decision arising out of *judicial* proceedings.<sup>12</sup>

Suppose, in our hypothetical situation, Buyer wants to institute another legal proceeding in a Contracting State Y in 1980 based on the same claim while the proceeding in State X

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11. As to the positive attitude of American courts, see Smit, *International Res Judicata and Collateral Estoppel*, 9 U.C.L.A. L. REV. 44 (1962).

12. For example, no friendship and commerce treaty concluded by the United States with foreign States contains a provision which guarantees mutual recognition of judicial decisions rendered by the other State; arbitration awards are commonly honored.

is still pending. Buyer may want to do so because of various reasons. The proceeding in State X may take more time than he had initially expected. Seller's assets may now be in State Y. But, since Buyer's claim arose more than four years prior to the institution of the proceeding in State Y, that proceeding would be barred unless the limitation period "ceased to run" when the legal proceeding was commenced in State X. Article 30 takes care of this situation: Buyer's legal proceeding in State Y is not time-barred because the international effect must be given to the cessation of the running of the period which has taken place by the institution of the legal proceeding in State X.

Article 30 is not intended to forbid a Contracting State from giving comparable effect to acts occurring in non-Contracting States; but any such effect is not compelled by the Convention. An important requirement for international effect under article 30 is that the creditor take "all reasonable steps to ensure that the debtor is informed of the relevant act or circumstances as soon as possible." While in most cases commencement of a legal proceeding will require notification to the defendant-debtor, under some procedural systems this may not be assured. Hence, this requirement was considered necessary.

#### IMPORTANCE OF THE CONVENTION TO INTERNATIONAL BUSINESS CIRCLES

So far nine States<sup>13</sup> have signed this Convention. The Convention is subject to ratification (art. 42). It will enter into force "on the first day of the month following the expiration of six months after the date of the deposit of the tenth instrument of ratification or accession" (art. 44). Although no ratification has yet been deposited with the Secretary-General of the United Nations, the chance of implementation seems to the writer to be fairly good.<sup>14</sup>

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13. These states are Brazil, Byelorussia, Costa Rica, the German Democratic Republic, Hungary, Mongolia, Poland, U.S.S.R., and Ukraina.

14. Cf. Vienna Convention on the Law of Treaties (1969) arts. 12(1)(c), 14(1)(d), and commentaries on its draft articles 10 and 11 in 2 *Yearbook of the International Law Commission*, (1966). See also favorable view for the United States to ratify the Convention in Smit, *The Convention on the Limitation Period in the International Sale of Goods: UNCITRAL's First-Born*, 23 AM. J. COMP. L. 337, 355 (1975).

The objective of this Convention has already been stated at the outset of this paper. What impact does this Convention have to those who engage in international sales? Can a merchant ignore this Convention as long as his State had not ratified or acceded to it?

It must be emphasized in this connection that the nationality of a party has no relevancy for the purposes of the application of this Convention (art. 2(e)). A contract of sale of goods becomes "international" if, at the time of the conclusion of the contract, the buyer and the seller have their places of business in different States (art. 2(a)). And, the rules of this Convention shall be applied by a Contracting State where, at the time of the conclusion of the contract, the places of business of the parties to such a sales contract were located in Contracting States (art. 3(1)). Whether the place of incorporation or the head office of one party is in a Contracting or in a non-Contracting State is not relevant by itself in determining the applicability of this Convention as long as another place of business, which has "the closest relationship to the contract and its performance," is located in a Contracting State (art. 2(c)). Thus, it will appear that there is great chance for the Convention to be applied to a trading firm which conducts business through offices in Contracting States.

## APPENDIX

CONVENTION ON THE LIMITATION PERIOD IN THE  
INTERNATIONAL SALE OF GOODS*Preamble*

*The States Parties to the present Convention,  
Considering that international trade is an important factor in the promotion of friendly relations amongst States,*

*Believing that the adoption of uniform rules governing the limitation period in the international sale of goods would facilitate the development of world trade,*

*Have agreed as follows:*

## PART I. SUBSTANTIVE PROVISIONS

*Sphere of application**Article 1*

*[Introductory provisions; subject matter and definitions]*

1. This Convention shall determine when claims of a buyer and a seller against each other arising from a contract of international sale of goods or relating to its breach, termination or invalidity can no longer be exercised by reason of the expiration of a period of time. Such period of time is hereinafter referred to as "the limitation period."

2. This Convention shall not affect a particular time-limit within which one party is required, as a condition for the acquisition or exercise of his claim, to give notice to the other party or perform any act other than the institution of legal proceedings.

3. In this Convention:

(a) "buyer", "seller" and "party" mean persons who buy or sell, or agree to buy or sell, goods, and the successors to and assigns of their rights or obligations under the contract of sale;

(b) "creditor" means a party who asserts a claim, whether or not such a claim is for a sum of money;

(c) "debtor" means a party against whom a creditor asserts a claim;

(d) "breach of contract" means the failure of a party to perform the contract or any performance not in conformity with the contract;

(e) "legal proceedings" includes judicial, arbitral and administrative proceedings;

(f) "person" includes corporation, company, partnership, association or entity, whether private or public, which can sue or be sued;

(g) "writing" includes telegram and telex;

(h) "year" means a year according to the Gregorian calendar.

*Article 2*

*[Definition of a contract of international sale]*

For the purposes of this Convention:

(a) a contract of sale of goods shall be considered international if, at the time of the conclusion of the contract, the buyer and the seller have their places of business in different States;

(b) the fact that the parties have their places of business in different States shall be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract;

(c) where a party to a contract of sale of goods has places of business in more than one State, the place of business shall be that which has the closest 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;

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

(e) neither the nationality of the parties nor the civil or commercial character of the parties or of the contract shall be taken into consideration.

#### Article 3

*[Application of the Convention; exclusion of the rules of private international law]*

1. This Convention shall apply only if, at the time of the conclusion of the contract, the places of business of the parties to a contract of international sale of goods are in Contracting States.

2. Unless this Convention provides otherwise, it shall apply irrespective of the law which would otherwise be applicable by virtue of the rules of private international law.

3. This Convention shall not apply when the parties have expressly excluded its application.

#### Article 4

*[Exclusion of certain sales and types of goods]*

This Convention shall not apply to sales:

- (a) of goods bought for personal, family or household 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 ships, vessels or aircraft;
- (f) of electricity.

#### Article 5

*[Exclusion of certain claims]*

This Convention shall not apply to claims based upon:

- (a) death of, or personal injury to, any person;
- (b) nuclear damage caused by the goods sold;
- (c) a lien, mortgage or other security interest in property;
- (d) a judgment or award made in legal proceedings;
- (e) a document on which direct enforcement or execution can be obtained

in accordance with the law of the place where such enforcement or execution is sought;

- (f) a bill of exchange, cheque or promissory note.

*Article 6*

*[Mixed contracts]*

1. This Convention shall not apply to contracts in which the preponderant part of the obligations of the seller consists in the supply of labour or other services.

2. Contracts for the supply of goods to be manufactured or produced shall be considered to be sales, unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

*Article 7*

*[Interpretation to promote uniformity]*

In the interpretation and application of the provisions of this Convention, regard shall be had to its international character and to the need to promote uniformity.

*The duration and commencement of the limitation period*

*Article 8*

*[Length of the period]*

The limitation period shall be four years.

*Article 9*

*[Basic rule on commencement of the period]*

1. Subject to the provisions of articles 10, 11 and 12 the limitation period shall commence on the date on which the claim accrues.

2. The commencement of the limitation period shall not be postponed by:

- (a) a requirement that the party be given a notice as described in paragraph 2 of article 1, or  
(b) a provision in an arbitration agreement that no right shall arise until an arbitration award has been made.

*Article 10*

*[Special rules: breach, non-conformity of the good and fraud]*

1. A claim arising from a breach of contract shall accrue on the date on which such breach occurs.

2. A claim arising from a defect or other lack of conformity shall accrue on the date on which the goods are actually handed over to, or their tender is refused by, the buyer.

3. A claim based on fraud committed before or at the time of the conclusion of the contract or during its performance shall accrue on the date on which the fraud was or reasonably could have been discovered.



*Article 11**[Express undertaking]*

If the seller has given an express undertaking relating to the goods which is stated to have effect for a certain period of time, whether expressed in terms of a specific period of time or otherwise, the limitation period in respect of any claim arising from the undertaking shall commence on the date on which the buyer notifies the seller of the fact on which the claim is based, but not later than on the date of the expiration of the period of the undertaking.

*Article 12**[Termination before performance is due; instalment contracts]*

1. If, in circumstances provided for by the law applicable to the contract, one party is entitled to declare the contract terminated before the time for performance is due, and exercises this right, the limitation period in respect of a claim based on any such circumstances shall commence on the date on which the declaration is made to the other party. If the contract is not declared to be terminated before performance becomes due, the limitation period shall commence on the date on which performance is due.

2. The limitation period in respect of a claim arising out of a breach by one party of a contract for the delivery of or payment for goods by instalments shall, in relation to each separate instalment, commence on the date on which the particular breach occurs. If, under the law applicable to the contract, one party is entitled to declare the contract terminated by reason of such breach, and exercises this right, the limitation period in respect of all relevant instalments shall commence on the date on which the declaration is made to the other party.

*Cessation and extension of the limitation period**Article 13**[Judicial proceedings]*

The limitation period shall cease to run when the creditor performs any act which, under the law of the court where the proceedings are instituted, is recognized as commencing judicial proceedings against the debtor or as asserting his claim in such proceedings already instituted against the debtor, for the purpose of obtaining satisfaction or recognition of his claim.

*Article 14**[Arbitration]*

1. Where the parties have agreed to submit to arbitration, the limitation period shall cease to run when either party commences arbitral proceedings in the manner provided for in the arbitration agreement or by the law applicable to such proceedings.

2. In the absence of any such provision, arbitral proceedings shall be deemed to commence on the date on which a request that the claim in dispute be referred to arbitration is delivered at the habitual residence or place of business of the other party or, if he has no such residence or place of business, then at his last known residence or place of business.

*Article 15*

*[Legal proceedings arising from death, bankruptcy or the like]*

In any legal proceedings other than those mentioned in articles 13 and 14, including legal proceedings commenced upon the occurrence of:

- (a) the death or incapacity of the debtor,
- (b) the bankruptcy or any state of insolvency affecting the whole of the property of the debtor, or
- (c) the dissolution or liquidation of a corporation, company, partnership, association or entity when it is the debtor,

the limitation period shall cease to run when the creditor asserts his claim in such proceedings for the purpose of obtaining satisfaction or recognition of the claim, subject to the law governing the proceedings.

*Article 16*

*[Counterclaims]*

For the purposes of articles 13, 14 and 15, any act performed by way of counterclaim shall be deemed to have been performed on the same date as the act performed in relation to the claim against which the counterclaim is raised, provided that both the claim and the counterclaim relate to the same contract or to several contracts concluded in the course of the same transaction.

*Article 17*

*[Proceedings not resulting in a decision on the merits of the claim]*

1. Where a claim has been asserted in legal proceedings within the limitation period in accordance with article 13, 14, 15 or 16, but such legal proceedings have ended without a decision binding on the merits of the claim, the limitation period shall be deemed to have continued to run.

2. If, at the time such legal proceedings ended, the limitation period has expired or has less than one year to run, the creditor shall be entitled to a period of one year from the date on which the legal proceedings ended.

*Article 18*

*[Joint debtors; recourse actions]*

1. Where legal proceedings have been commenced against one debtor, the limitation period prescribed in this Convention shall cease to run against any other party jointly and severally liable with the debtor, provided that the creditor informs such party in writing within that period that the proceedings have been commenced.

2. Where legal proceedings have been commenced by a subpurchaser against the buyer, the limitation period prescribed in this Convention shall cease to run in relation to the buyer's claim over against the seller, if the buyer informs the seller in writing within that period that the proceedings have been commenced.

3. Where the legal proceedings referred to in paragraphs 1 and 2 of this article have ended, the limitation period in respect of the claim of the creditor or the buyer against the party jointly and severally liable or against

the seller shall be deemed not to have ceased running by virtue of paragraphs 1 and 2 of this article, but the creditor or the buyer shall be entitled to an additional year from the date on which the legal proceedings ended, if at that time the limitation period had expired or had less than one year to run.

*Article 19*

*[Recommencement of the period by service of notice]*

Where the creditor performs, in the State in which the debtor has his place of business and before the expiration of the limitation period, any act, other than the acts described in articles 13, 14, 15 and 16, which under the law of that State has the effect of recommencing a limitation period, a new limitation period of four years shall commence on the date prescribed by that law.

*Article 20*

*[Acknowledgement by debtor]*

1. Where the debtor, before the expiration of the limitation period, acknowledges in writing his obligation to the creditor, a new limitation period of four years shall commence to run from the date of such acknowledgement.

2. Payment of interest or partial performance of an obligation by the debtor shall have the same effect as an acknowledgement under paragraph (1) of this article if it can reasonably be inferred from such payment or performance that the debtor acknowledges that obligation.

*Article 21*

*[Extension where institution of legal proceedings prevented]*

Where, as a result of a circumstance which is beyond the control of the creditor and which he could neither avoid nor overcome, the creditor has been 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 relevant circumstance ceased to exist.

*Modification of the limitation period by the parties*

*Article 22*

*[Modification by the parties]*

1. The limitation period cannot be modified or affected by any declaration or agreement between the parties, except in the cases provided for in paragraph (2) of this article.

2. The debtor may at any time during the running of the limitation period extend the period by a declaration in writing to the creditor. This declaration may be renewed.

3. The provisions of this article shall not affect the validity of a clause in the contract of sale which stipulates that arbitral proceedings shall be commenced within a shorter period of limitation than that prescribed by this

Convention, provided that such clause is valid under the law applicable to the contract of sale.

*General limit of the limitation period*

*Article 23*

*[Over-all limitation for bringing legal proceedings]*

Notwithstanding the provisions of this Convention, a limitation period shall in any event expire not later than 10 years from the date on which it commenced to run under articles 9, 10, 11 and 12 of this Convention.

*Consequences of the expiration of the limitation period*

*Article 24*

*[Who can invoke limitation]*

Expiration of the limitation period shall be taken into consideration in any legal proceedings only if invoked by a party to such proceedings.

*Article 25*

*[Effect of expiration of the period; set-off]*

1. Subject to the provisions of paragraph (2) of this article and of article 24, no claim shall be recognized or enforced in any legal proceedings commenced after the expiration of the limitation period.

2. Notwithstanding the expiration of the limitation period, one party may rely on his claim as a defence or for the purpose of set-off against a claim asserted by the other party, provided that in the latter case this may only be done:

(a) if both claims relate to the same contract or to several contracts concluded in the course of the same transaction; or

(b) if the claims could have been set-off at any time before the expiration of the limitation period.

*Article 26*

*[Restitution of performance after the expiration of the period]*

Where the debtor performs his obligation after the expiration of the limitation period, he shall not on that ground be entitled in any way to claim restitution even if he did not know at the time when he performed his obligation that the limitation period had expired.

*Article 27*

*[Interest]*

The expiration of the limitation period with respect to a principal debt shall have the same effect with respect to an obligation to pay interest on that debt.

*Calculation of the period*

*Article 28**[Basic rule]*

1. The limitation period shall be calculated in such a way that it shall expire at the end of the day which corresponds to the date on which the period commenced to run. If there is no such corresponding date, the period shall expire at the end of the last day of the last month of the limitation period.

2. The limitation period shall be calculated by reference to the date of the place where the legal proceedings are instituted.

*Article 29**[Effect of holiday]*

Where the last day of the limitation period falls on an official holiday or other *dies non juridicus* precluding the appropriate legal action in the jurisdiction where the creditor institutes legal proceedings or asserts a claim as envisaged in article 13, 14 or 15, 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 claim could be asserted in that jurisdiction.

*International effect**Article 30**[Acts or circumstances to be given international effect]*

The acts and circumstances referred to in articles 13 through 19 which have taken place in one Contracting State shall have effect for the purposes of this Convention in another Contracting State, provided that the creditor has taken all reasonable steps to ensure that the debtor is informed of the relevant act or circumstances as soon as possible.

## PART II. IMPLEMENTATION

*Article 31**[Federal State; non-unitary State]*

1. If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations shall be notified to the Secretary-General of the United Nations and shall state expressly the territorial units to which the Convention applies.

3. If a Contracting State described in paragraph (1) of this article makes no declaration at the time of signature, ratification or accession, the Convention shall have effect within all territorial units of that State.

*Article 32*

*[Determination of the proper law when federal or a non-unitary State involved]*

Where in this Convention reference is made to the law of a State in which different systems of law apply, such reference shall be construed to mean the law of the particular legal system concerned.

*Article 33*

*[Non-applicability as to prior contracts]*

Each Contracting State shall apply the provisions of this Convention to contracts concluded on or after the date of the entry into force of this Convention.

## PART III. DECLARATIONS AND RESERVATIONS

*Article 34*

*[Declarations limiting the application of the Convention]*

Two or more Contracting States may at any time declare that contracts of sale between a seller having a place of business in one of these States and a buyer having a place of business in another of these States shall not be governed by this Convention, because they apply to the matters governed by this Convention the same or closely related legal rules.

*Article 35*

*[Reservation with respect to actions for annulment of the contract]*

A Contracting State may declare, at the time of the deposit of its instrument of ratification or accession, that it will not apply the provisions of this Convention to actions for annulment of the contract.

*Article 36*

*[Reservation with respect to who can invoke limitation]*

Any State may declare, at the time of the deposit of its instrument of ratification or accession, that it shall not be compelled to apply the provisions of article 24 of this Convention.

*Article 37*

*[Relationship with conventions containing limitation provisions in respect of international sale of goods]*

This Convention shall not prevail over conventions already entered into or which may be entered into, and which contain provisions concerning the matters covered by this Convention, provided that the seller and buyer have their places of business in States parties to such a convention.

*Article 38**[Reservations with respect to the definition of a contract of international sale]*

1. A Contracting State which is a party to an existing convention relating to the international sale of goods may declare, at the time of the deposit of its instrument of ratification or accession, that it will apply this Convention exclusively to contracts of international sale of goods as defined in such existing convention.

2. Such declaration shall cease to be effective on the first day of the month following the expiration of 12 months after a new convention on the international sale of goods, concluded under the auspices of the United Nations, shall have entered into force.

*Article 39**[No other reservations permitted]*

No reservation other than those made in accordance with articles 34, 35, 36 and 38 shall be permitted.

*Article 40**[When declarations and reservations take effect; withdrawal]*

1. Declarations made under this Convention shall be addressed to the Secretary-General of the United Nations and shall take effect simultaneously with the entry of this Convention into force in respect of the State concerned, except declarations made thereafter. The latter declarations shall take effect on the first day of the month following the expiration of six months after the date of their receipt by the Secretary-General of the United Nations.

2. Any State which has made a declaration under this Convention may withdraw it at any time by a notification addressed to the Secretary-General of the United Nations. Such withdrawal shall take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the Secretary-General of the United Nations. In the case of a declaration made under article 34 of this Convention, such withdrawal shall also render inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

## PART IV. FINAL CLAUSES

*Article 41*

This Convention shall be open until 31 December 1975 for signature by all States at the Headquarters of the United Nations.

*Article 42*

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

*Article 43*

This Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article 44*

1. This Convention shall enter into force on the first day of the month following the expiration of six months after the date of the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the tenth instrument of ratification or accession, this Convention shall enter into force on the first day of the month following the expiration of six months after the date of the deposit of its instrument of ratification or accession.

*Article 45*

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

2. The denunciation shall take effect on the first day of the month following the expiration of 12 months after receipt of the notification by the Secretary-General of the United Nations.

*Article 46*

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.



