



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

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## **I. CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS AS AMENDED BY THE PROTOCOL AMENDING THE CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS**

### **INTRODUCTORY NOTE**

1. The Convention on the Limitation Period in the International Sale of Goods (hereinafter called the 1974 Limitation Convention) was concluded at New York on 14 June 1974. A Protocol to the 1974 Limitation Convention (hereinafter called the 1980 Protocol) was concluded at Vienna on 11 April 1980.
2. The 1974 Limitation Convention and the 1980 Protocol both entered into force on 1 August 1988, in accordance with articles 44/(1) of the 1974 Limitation Convention and IX (1) of the 1980 Protocol.
3. In accordance with paragraph 2 of article XIV of the 1980 Protocol, the text of the 1974 Limitation Convention as amended by the 1980 Protocol has been prepared by the Secretary-General and will be found hereinafter.
4. The present text includes the relevant amendments to the articles of the 1974 Limitation Convention, as provided for by the 1980 Protocol. For ease of reference, the text of the original provisions of the 1974 Limitation Convention which have been amended by the 1980 Protocol are reproduced in footnotes. The present text also incorporates substantive provisions (final clauses) of the 1980 Protocol as required, including editorial additions. The relevant articles of the 1980 Protocol which have been incorporated in the present text of the 1974 Limitation Convention as amended have, for clarity, been assigned *bis* numbers with the indication in parenthesis of the corresponding number of the 1980 Protocol.

## **CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS AS AMENDED BY THE PROTOCOL AMENDING THE 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

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 a 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

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 place 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 <sup>1</sup>

1. This Convention shall apply only

(a) 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; or

(b) if the rules of private international law make the law of a Contracting State applicable to the contract of sale.

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

## Article 4<sup>2</sup>

This Convention shall not apply to sales:

(a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such 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, hovercraft or aircraft;

(f) of electricity.

## Article 5

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 judgement 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

1. This Convention shall not apply to contracts in which the preponderant part of the obligations of the seller consists in the supply of labor 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

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

The limitation period shall be four years.

#### Article 9

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

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

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

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

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

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

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

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

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

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 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

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

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

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

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 proceeding 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

Notwithstanding the provisions of this Convention, a limitation period shall in any event expire not later than ten 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

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

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

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

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

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

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 articles 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

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

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.

<sup>3</sup>4. If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party to a contract is located in that State, this place of business shall, for the purposes of this Convention, be considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

#### Article 32

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

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<sup>4</sup>

1. Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention shall not apply to contracts of international sale of goods where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

2. A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention shall not apply to contracts of international sale of goods where the parties have their places of business in those States.

3. If a State which is the object of a declaration under paragraph (2) of this article subsequently becomes a Contracting State, the declaration made shall, as from the date on which this Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

### Article 35

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

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 36 bis (Article XII of the Protocol)

Any State may declare at the time of the deposit of its instrument of accession or its notification under article 43 bis that it will not be bound by the amendments to article 3 made by article I of the 1980 Protocol<sup>5</sup>. A declaration made under this article shall be in writing and be formally notified to the depositary.

### Article 37<sup>6</sup>

This Convention shall not prevail over any international agreement which has already been or may be entered into, and which contains provisions concerning the matters governed by this Convention, provided that the seller and buyer have their places of business in States parties to such agreement.

### Article 38

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 twelve 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 reservation other than those made in accordance with articles 34, 35, 36, 36 bis and 38 shall be permitted.

### Article 40

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.\* Reciprocal unilateral declarations under article 34 shall take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the Secretary-General of the United Nations.\*<sup>7</sup>

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<sup>8</sup> shall be open until 31 December 1975 for signature by all States at the Headquarters of the United Nations.

##### Article 42

This Convention<sup>8</sup> is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

##### Article 43

This Convention<sup>8</sup> shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

##### Article 43 bis (Article X of the Protocol)

If a State ratifies or accedes to the 1974 Limitation Convention after the entry into force of the 1980 Protocol, the ratification or accession shall also constitute a ratification or an accession to the Convention as amended by the 1980 Protocol if the State notifies the depositary accordingly.

##### Article 43 ter (Article VIII (2) of the Protocol)

Accession to the 1980 Protocol by any State which is not a Contracting Party to the 1974 Limitation Convention shall have the effect of accession to that Convention as amended by the Protocol, subject to the provisions of article 44 bis.

#### 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 44 bis (Article XI of the Protocol)

Any State which becomes a Contracting Party to the 1974 Limitation Convention, as amended by the 1980 Protocol, shall, unless it notifies the depositary to the contrary, be considered to be also a Contracting Party to the Convention, unamended, in relation to any Contracting Party to the Convention not yet a Contracting Party to the 1980 Protocol.

#### 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 twelve months after receipt of the notification by the Secretary-General of the United Nations.

#### Article 45 bis (Article XIII (3) of the Protocol)

Any Contracting State in respect of which the 1980 Protocol ceases to have effect by the application of paragraphs (1) and (2)<sup>2</sup> of article XIII of 1980 Protocol shall remain a Contracting Party to the 1974 Limitation Convention, unamended, unless it denounces the unamended Convention in accordance with article 45 of that Convention.

#### 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.

**II. Explanatory Note by the UNCITRAL Secretariat on  
the Convention on the Limitation Period in the International Sale  
of Goods and the Protocol amending the Convention on the Limitation  
Period in the International Sale of Goods [10](#)**

INTRODUCTION

1. The Convention on the Limitation Period in the International Sale of Goods (New York, 1974) provides uniform international legal rules governing the period of time within which a party under a contract for the international sale of goods must commence legal proceedings against the other party to assert a claim arising from the contract or relating to its breach, termination or invalidity. This period is referred to in the Convention as the "limitation period". The basic aims of the limitation period are to prevent the institution of legal proceedings at such a late date that the evidence relating to the claim is likely to be unreliable or lost and to protect against the uncertainty and injustice that would result if a party were to remain exposed to unasserted claims for an extensive period of time.
2. The Limitation Convention grew out of the work of the United Nations Commission on International Trade Law (UNCITRAL) towards the harmonization and unification of international sales law, which also resulted in the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (hereinafter referred to as the "United Nations Sales Convention"). During that work it was observed that, while most legal systems limited or prescribed a claim from being asserted after the lapse of a specified period of time, numerous disparities existed among legal systems with respect to the conceptual basis for doing so. As a result there were disparities in the length of the period and in the rules governing the limitation or prescription of claims after that period. Those disparities created difficulties in the enforcement of claims arising from international sales transactions, and thus burdened international trade.
3. In view of those problems UNCITRAL decided to prepare uniform international legal rules on the limitation period in the international sale of goods. On the basis of a draft Convention prepared by UNCITRAL, a diplomatic conference convened in New York by the General Assembly adopted the Limitation Convention on 14 June 1974. The Limitation Convention was amended by a Protocol adopted in 1980 by the diplomatic conference that adopted the United Nations Sales Convention, in order to harmonize the Limitation Convention with the latter Convention.
4. The Limitation Convention entered into force on 1 August 1988. As of 31 January 1990, 11 States had ratified or acceded the Convention. Czechoslovakia, Dominican Republic, Ghana, Norway and Yugoslavia are parties to the unamended Convention. Argentina, Egypt, German Democratic Republic, Hungary, Mexico and Zambia are parties to the Convention as amended by the 1980 Protocol.

A. SCOPE OF APPLICATION

5. The Convention applies to contracts for the sale of goods between parties whose places of business are in different States if both of those States are Contracting States. Under the 1980 Protocol the Convention also applies if the rules of private international law make the law of a Contracting State applicable to the contract. However, in becoming a party to the Protocol a State may declare that it will not be bound by that provision. Each Contracting State must apply the Convention to contracts concluded on or after the date of the entry into force of the Convention.
6. The application of the Convention is excluded in certain situations. Firstly, the Convention will not apply if the parties to a sales contract expressly exclude its application. This provision gives effect to the basic principle of freedom of contract in the international sale of goods. Secondly, the Convention will not apply in certain cases where matters covered by the Convention are governed by other Conventions. Thirdly, Contracting States are permitted to deposit declarations or reservations excluding the application of the Convention in the following situations: two or more Contracting States may exclude the application of the Convention to contracts between parties having their places of business in those States when the States apply to those contracts the same or closely related legal rules. So far, one State has availed itself of that declaration. In addition, a State may exclude the application of the Convention to actions for annulment of the contract. No State has thus far availed itself of such a declaration.
7. Since the Convention applies only in respect of international sales contracts, it clarifies whether contracts involving certain services are covered. A contract for the supply of goods to be manufactured or produced is considered to be a sales contract unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for their manufacture or production. Furthermore, when the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labor or other services, the Convention does not apply.
8. The Convention contains a list of types of sales that are excluded from the Convention, either because of the purpose of the sale (goods bought for personal, family or household use (under the 1980 Protocol sales of those goods are covered by the Convention if the seller could not have known that they were bought for such use)), the nature of the sale (sales by auction, on execution or otherwise by law) or the nature of the goods (stocks, shares, investment securities, negotiable instruments, money, ships, vessels, aircraft or electricity (the 1980 Protocol adds hovercraft)).
9. The Convention makes it clear that it applies only to the usual type of commercial claims based on contract. It specifically excludes claims based on death or personal injury; nuclear damage; a lien, mortgage or other security interest; a judicial judgment or award; a document on which direct enforcement or execution can be obtained; and a bill of exchange, cheque or promissory note. The limitation periods for those claims are generally subject to particular rules and it would not necessarily be appropriate to apply in respect of those claims the rules applicable to ordinary commercial contractual claims.

## B. DURATION AND COMMENCEMENT OF LIMITATION PERIOD

10. The duration of the limitation period under the Convention is four years. The period cannot be modified by agreement of the parties, but it can be extended by a written declaration of the debtor during the running of the period. Also, the contract of sale may stipulate a shorter period for the commencement of arbitral proceedings, if the stipulation is valid under the law applicable to the contract. Rules are provided as to how the period should be calculated.

11. A limitation period of four years' duration was thought to accomplish the aims of the limitation period and yet to provide an adequate period of time to enable a party to an international sales contract to assert his claim against the other party. Circumstances where an extension or recommencement of the limitation period would be justified are dealt with in particular provisions of the Convention.

12. With respect to the time when the limitation period commences to run, basic rule is that it commences on the date on which the claim accrues. The Convention establishes when claims for breach of contract, for defects in the goods or other lack of conformity and for fraud are deemed to accrue. Special rules are provided for the commencement of the limitation period in two particular cases: where the seller has given the buyer an express undertaking (such as a warranty or guarantee) relating to the goods which is stated to have effect for a certain period of time, and where a party terminates the contract before the time for performance is due. Rules are also provided in respect of claims arising from the breach of an instalment contract and claims based on circumstances giving rise to a termination of such a contract.

### C. CESSATION AND EXTENSION OF LIMITATION PERIOD

13. Having established the time of commencement and the length of the limitation period, the Convention sets forth rules concerning the cessation of the period. The period ceases to run when the claimant commences judicial or arbitral proceedings against the debtor, or when he asserts his claim in existing proceedings. A counterclaim is deemed to have been asserted on the same date as the date when the proceedings in which the counterclaim is asserted were commenced, if the counterclaim and the claim against which it is raised relate to the same contract or to several contracts concluded in the course of the same transaction.

14. Judicial or arbitral proceedings commenced by a claimant within the limitation period might terminate without a binding decision on the merits of the claim, for example, because the court or arbitral tribunal lacks jurisdiction or because of a procedural defect. The creditor would normally be able to pursue his claim by commencing new proceedings. Thus, the Convention provides that if the original proceedings end without a binding decision on the merits the limitation period will be deemed to have continued to run. However, by the time the original proceedings have ended, the limitation period might have expired, or there might remain insufficient time for the claimant to commence new proceedings. To protect the claimant in those cases the Convention grants him an additional period of one year to commence new proceedings.

15. The Convention contains rules to resolve in a uniform manner questions concerning the running of

the limitation period in two particular cases. Firstly, it provides that where legal proceedings have been commenced against one party to the sales contract, the limitation period ceases to run against a person jointly and severally liable with him if the claimant informs that person in writing within the limitation period that the proceedings have been commenced. Secondly, it provides that where proceedings have been commenced against a buyer by a party who purchased the goods from him, the limitation period ceases to run in respect of the buyer's recourse claim against the seller if the buyer informs the seller in writing within the limitation period that the proceedings against the buyer have been commenced. Where the proceedings in either of those two cases have ended, the limitation period in respect of the claim against the jointly and severally liable person or against the seller will be deemed to have continued to run without interruption, but there will be an additional year to commence new proceedings if at that time the limitation period has expired or has less than a year to run.

16. One effect of the provision mentioned above relating to the buyer is to enable him to await the outcome of the claim against him before commencing an action against his seller. This enables the buyer to avoid the trouble and expense of instituting proceedings against the seller and the disruption of their good business relationship if it turns out that the claim against the buyer was not successful.

17. Under the Convention the limitation period recommences in two cases: if the creditor performs in the debtor's State an act that, under the law of that State, has the effect of recommencing a limitation period, or if the debtor acknowledges in writing his obligation to the creditor or pays interest or partially performs the obligation from which his acknowledgement can be inferred.

18. The Convention protects a creditor who was prevented from taking the necessary acts to stop the running of the limitation period in extreme cases. It provides that when the creditor could not take those acts as a result of a circumstance beyond his control and which he could neither avoid nor overcome, the limitation period will be extended so as to expire one year after the date when the circumstance ceased to exist.

#### D. OVERALL LIMIT OF LIMITATION PERIOD

19. Since the limitation period may, under the circumstances noted above, be extended or recommence, the Convention establishes an overall time period of 10 years, from the date on which the limitation period originally commenced to run, beyond which no legal proceedings to assert the claim may be commenced under any circumstances. The theory behind that provision is that enabling proceedings to be brought after that time would be inconsistent with the aims of the Convention in providing a definite limitation period.

#### E. CONSEQUENCES OF EXPIRATION OF LIMITATION PERIOD

20. The principal consequence of the expiration of the limitation period is that no claim will be recognized or enforced in legal proceedings commenced thereafter. The expiration of the limitation period will not be taken into consideration in legal proceedings unless it is invoked by a party to the

proceedings. However, in light of views expressed at the diplomatic conference that adopted the Convention that the limitation or prescription of actions was a matter of public policy and that a court should be able to take the expiration of the limitation period into account on its own initiative, a Contracting State is permitted to declare that it will not apply that provision. No State has thus far made such a declaration.

21. Even after the limitation period has expired a party can in certain situations raise his claim as a defense to or set-off against a claim asserted by the other party.

## F. OTHER PROVISIONS AND FINAL CLAUSES

22. Other provisions of the Convention deal with implementation of the Convention in States having two or more territorial units where different legal systems exist. A series of provisions deals with declarations and reservations permitted under the Convention and with procedures for making and withdrawing them. The permitted declarations and reservations have been mentioned above; no others may be made under the Convention.

23. The final clauses contain the usual provisions relating to the Secretary-General of the United Nations as depositary of the Convention. The Convention is subject to ratification by States that signed the Convention by 31 December 1975 and for accession by States that did not do so. The Chinese, English, French, Russian and Spanish texts of the Convention are equally authentic.

24. The Secretary-General of the United Nations is also the depositary of the 1980 Protocol amending the Convention, which is open for accession by all States. Since the Protocol has already received the necessary number of accessions, the Convention as amended by the Protocol will enter into force on the same date as the unamended Convention, i.e. on 1 August 1988.

25. A State that ratifies or accedes to the Convention after the Convention and Protocol come into force will become a party to the Convention as amended by the Protocol if it notifies the depositary accordingly. The Convention as amended will enter into force for that State on the first day of the month following the expiration of 6 months after the date of deposit of its instrument of ratification or accession. Accession to the Protocol by a State that is not a Contracting Party to the Convention constitutes accession to the Convention as amended by the Protocol.

Further information can be obtained from:

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## NOTES

<sup>1</sup> Text as amended in accordance with article I of the 1980/Protocol. States that make a declaration under article 36/bis (article XII of the 1980 Protocol) will be bound by article 3 as originally adopted in the Limitation Convention, 1974. Article/3 as originally adopted reads as follows:

### "Article 3

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."

<sup>2</sup> Text of paragraphs (a) and (e) as amended in accordance with article II of the 1980 Protocol. Paragraphs (a) and (e) of article 4 as originally adopted in the Limitation Convention, 1974, prior to its amendment under the 1980 Protocol, read as follows:

- (a) of goods bought for personal, family or household use;
- (e) of ships, vessels, or aircraft;

<sup>3</sup> New Paragraph 4, added in accordance with article III of the 1980 Protocol.

<sup>4</sup> Text as amended in accordance with article IV of the 1980 Protocol. Article 34 as originally adopted in the Limitation Convention, 1974, prior to its amendment under the 1980 Protocol, read as follows:

### "Article 34

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."

<sup>5</sup> Such a State will then be bound by article 3 of the unamended Convention. For its text, see footnote under article 3.

<sup>6</sup> Text as amended in accordance with article V of the Protocol. Article 37 as originally adopted in the Limitation Convention, 1974, prior to its amendment under the 1980 Protocol, read as follows:

"Article 37

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

<sup>7</sup> Last sentence of paragraph 1 of article 40 (between asterisks) added in accordance with article VI of the 1980 Protocol.

<sup>8</sup> Refers to the 1974 Limitation Convention

<sup>9</sup> Paragraphs (1) and (2) of article XIII of the Protocol read as follows:

"(1) A Contracting State may denounce this Protocol by notifying the depositary to that effect.  
(2) The denunciation shall take effect on the first day of the month following the expiration of twelve months after receipt of the notification by the depositary."

<sup>10</sup> This note has been prepared by the secretariat of the United Nations Commission on International Trade Law for informational purposes; it is not an official commentary on the Convention. A commentary on the unamended Convention prepared at the request of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods appears in A/CONF.63/17 (reprinted in Yearbook of The United Nations Commission on International Trade Law, vol. X:1979 (United Nations Publication, Sales No. E.81.V.2), part three, chap. I and in UNCITRAL: The United Nations Commission on International Trade Law (United Nations Publication, Sales No. E.86.V.8), Annex II.B).