No. 26121

MULTILATERAL

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

Authentic texts: Chinese, English, French, Russian and Spanish.*

[* The authentic Arabic text was adopted on 9 November 1992. For the text, see United Nations, *Treaty Series*, vol. 1695.]

Registered ex officio *on 1 August 1988.*

MULTILATÉRAL

Convention sur la prescription en matière de vente internationale de marchandises, modifiée par le Protocole modifiant la Convention sur la prescription en matière de vente internationale de marchandises

Textes authentiques : chinois, anglais, français, russe et espagnol.*

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Enregistrée d'office le 1er août 1988.

CONVENTION[1, 2] ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS, AS AMENDED BY THE PROTOCOL[3] AMENDING THE CONVENTION[4] 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;

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[1] Came into force on 1 August 1988, the date of the entry into force of the Protocol amending the Convention on the Limitation Period in the International Sale of Goods, concluded at Vienna on 11 April 1980, in respect of the following States which became at that date Parties to the Protocol, in accordance with article IX (1) of the latter:

Argentina
Egypt
Hungary
Mexico
Zambia

[2] The text of the 1974 Limitation Convention, as amended by the 1980 Protocol, has been prepared by the Secretary-General, in accordance with paragraph 2 of article XIV of the 1980 Protocol. The relevant amendments to the articles of the 1974 Limitation Convention have been included as provided for in the 1980 Protocol. The present text incorporates the substantive provisions (final clauses) of the 1980 Protocol, as required, including editorial additions. The relevant provisions of the 1980 Protocol, which have been incorporated in the present text of the Convention as amended, have, for clarity, been assigned *bis* numbers with the indication in parentheses of the corresponding number of the article of the 1980 Protocol.

[3] See p. 77 of this volume.

[4] See p. 3 of this volume.

(*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 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. 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. 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 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. 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 [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. 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 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. 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 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. 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 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. 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.

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. 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. A declaration made under this article shall be in writing and be formally notified to the depositary.

Article 37. 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.

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 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 of 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) of article XIII of the 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.

* Refers to the 1974 Limitation 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.