

RECENT DEVELOPMENTS

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The Convention on the Limitation Period in the International Sale of Goods: The United States Adopts UNCITRAL's Firstborn

United States' enterprises that conclude international sales contracts on or after December 1, 1994, may find that claims arising from these contracts are subject to the Convention on the Limitation Period in the International Sale of Goods.¹ If applicable, the Limitation Convention answers the following question: How long can the enterprise wait before it is barred from enforcing its claim in a legal proceeding? The Convention's answer is to provide a four-year period and to resolve common limitation issues by its uniform, detailed rules. The Convention

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1. Convention on the Limitation Period in the International Sale of Goods, June 14, 1974, U.N. Doc. A/CONF.63/15, *reprinted in* 13 I.L.M. 952 (1974), and Protocol Amending the Convention on the Limitation Period in the International Sale of Goods, Apr. 10, 1980, U.N. Doc. A/CONF.97/18, Annex II, *reprinted in* 19 I.L.M. 696 (1980). Pursuant to article XIV(2) of the 1980 Protocol, the Secretary-General of the United Nations has prepared a consolidated text. [1992] 23 Y.B. UNCITRAL 459, U.N. Doc. A/CN.9/SER.A/1992. This text is appended to the Message from the President transmitting the Limitation Convention to the Senate for its advice and consent. S. TREATY DOC. No. 10, 103d Cong., 1st Sess. (1993). Unless otherwise indicated, the following text and footnotes will cite the Convention and the Protocol together as the "Limitation Convention."

thus displaces the disparate time periods, concepts, and rules of national laws on prescription or limitations.

The Limitation Convention complements the United Nations Convention on Contracts for the International Sale of Goods,² which has been in force in the United States since January 1, 1988. Both texts were prepared within the U.N. Commission on International Trade Law and approved by diplomatic conferences. Although the original text of the Limitation Convention was adopted in 1974, the 1980 diplomatic conference that approved the Sales Convention also approved a protocol to the earlier Limitation Convention to ensure congruence between the two conventions' spheres of application.

As of December 1, 1994, both the original text of the Limitation Convention and the 1980 Protocol entered into force in the United States.³ It did so subject to the same declaration as to scope made at the time it became a party to the U.N. Sales Convention.⁴ The decision to accede was taken following Senate advice and consent,⁵ which was given on the advice, inter alia, of the American Bar Association.⁶ As a properly approved self-executing treaty, the Convention becomes the supreme law of the United States. Consequently, when the Convention is applicable, both federal and state courts will enforce its provisions.

I. A Brief History and Present Status of the Convention

The Limitation Convention is the "firstborn" of the U.N. Commission on International Trade Law (UNCITRAL).⁷ At its first session in 1968 the Commission decided to solicit studies of "time-limits and limitations (prescription)" from

2. United Nations Convention on Contracts for the International Sale of Goods, Apr. 10, 1980, U.N. Doc. A/CONF.97/18, Annex I, reprinted in 19 I.L.M. 668 (1980). The following text and footnotes will cite the Convention as the "U.N. Sales Convention."

3. The United States deposited its instrument of accession on May 5, 1994. The Convention therefore enters into force on December 1, 1994, "the first day of the month following the expiration of six months after the date of the deposit of its instrument of [accession]." Limitation Convention art. 44(2).

4. At the time of deposit the United States made the following declaration: "Pursuant to Article XII, the United States will not be bound by Article I of the Protocol." For analysis of this declaration, see *infra* note 20 and accompanying text; cf. U.N. Sales Convention, *supra* note 2, art. 95.

5. President Clinton transmitted the Limitation Convention to the Senate on August 6, 1993. S. TREATY DOC. NO. 10, 103d Cong., 1st Sess. (1993). The Senate Committee on Foreign Relations held hearings on October 26, 1993. The Committee agreed to report favorably on November 18, 1993. S. EXEC. REP. 103-16, 103d Cong., 1st Sess. (1993). The full Senate gave its consent on November 20, 1993. 139 CONG. REC. S16,213 (daily ed. Nov. 20, 1993).

6. At its August 1989 annual meeting the ABA House of Delegates adopted a resolution recommending that the United States accede to the Limitation Convention. The Section Report on which this recommendation was based is reprinted in *The International Lawyer. Section Recommendations and Reports: Convention on the Limitation Period in the International Sale of Goods*, 24 INT'L LAW. 583 (1990) [hereinafter Section Report]. An ad hoc task force of the Business Law Section also prepared a report recommending accession. This report has not been published.

7. Hans Smit, *The Convention on the Limitation Period in the International Sale of Goods: UNCITRAL's First-Born*, 23 AM. J. COMP. L. 337 (1975) (analysis by U.S. delegate who participated in the birthing).

interested member states.⁸ These studies and the subsequent debate persuaded the Commission to appoint a Working Group in 1969. The Commission charged the Working Group to study the topic “with a view to the preparation of a preliminary draft of an international convention.”⁹ The Working Group reported in 1971,¹⁰ and the Commission adopted a draft text at its 1972 session.¹¹ On the Commission’s recommendation, the U.N. General Assembly convoked a diplomatic conference in New York in May 1974. This conference adopted a draft convention on June 12, 1974.¹² In 1980, as noted above, the diplomatic conference that adopted the U.N. Sales Convention amended the 1974 text by a Protocol.

Both the 1974 text and the 1980 Protocol entered into force on August 1, 1988.¹³ As directed by article XIV(2) of the 1980 Protocol, the Secretary-General of the United Nations has subsequently prepared a consolidated text in the six official U.N. languages (Arabic, Chinese, English, French, Russian, and Spanish).¹⁴

As of May 1994, seventeen states were parties to the 1974 text¹⁵ and eleven of these states had also adopted the 1980 protocol.¹⁶ In addition, eight other states

8. *Report of the United Nations Commission on International Trade Law on the work of its first session*, U.N. GAOR, 23d Sess., Supp. No. 16, U.N. Doc. A/7216 (1968), reprinted in [1968-1970] 1 Y.B. UNCITRAL 71, 79(para. 18), U.N. Doc. A/CN.9/SER.A/1970.

9. *Report of the United Nations Commission on International Trade Law on the work of its second session*, U.N. GAOR, 24th Sess., Supp. No. 18, U.N. Doc. A/7618 (1969), reprinted in [1968-1970] 1 Y.B. UNCITRAL 94, 100(para. 46), U.N. Doc. A/CN.9/SER.A/1970.

10. *Report of the Working Group on Time-limits and Limitations (Prescription) in the International Sale of Goods on its third session, held in New York from 30 August to 10 September 1971*, U.N. Doc. A/CN.9/70 (1972), reprinted in [1972] 3 Y.B. UNCITRAL 109, U.N. Doc. A/CN.9/SER.A/1972.

11. *Report of the United Nations Commission on International Trade Law on the work of its fifth session*, U.N. GAOR, 27th Sess., Supp. No. 17, U.N. Doc. A/8717 (1972), reprinted in [1972] 3 Y.B. UNCITRAL 9, 11-16, U.N. Doc. A/CN.9/SER.A/1972; see also *Draft convention on prescription (limitation) in the international sale of goods: records of discussion at the fifth session*, [1972] 3 Y.B. UNCITRAL Supp., U.N. Doc. A/CN.9/SER.A/1972/Add.1.

12. *United Nations Conference on Prescription (Limitation) in the International Sale of Goods, New York, 20 May-14 June 1974, Official Records*, U.N. Doc. A/CONF.63/16, U.N. Sales No. E.74.V.8 (1975).

13. The following information about the status of the Convention is taken from a May 1994 report by the UNCITRAL Secretariat. *Note by the Secretariat: Status of Conventions* 2-3, U.N. Doc. A/CN.9/401 (1994). Current information about the status of the Convention may be obtained from the Treaty Section of the Office of Legal Affairs, United Nations, New York.

14. [1992] 23 Y.B. UNCITRAL 459, U.N. Doc. A/CN.9/SER.A/1992. The 1974 text was concluded in all U.N. languages other than Arabic. At the request of UNCITRAL, the Secretary-General prepared and circulated an official Arabic text in 1992. No objections having been raised, the United Nations deems this Arabic-language text to be equally authentic with the other five language versions as of November 9, 1992. *Note by the Secretariat, supra* note 13, at 2 n.+. The 1980 Protocol was originally concluded in all six official languages.

15. Argentina, Bosnia and Herzegovina, Czech Republic, Dominican Republic, Egypt, Ghana, Guinea, Hungary, Mexico, Norway, Romania, Slovak Republic, Uganda, Ukraine, United States of America, Yugoslavia, and Zambia. The 1994 Convention and the Protocol entered into force on March 1, 1990, for the German Democratic Republic. The Federal Republic of Germany is not a

signed the 1974 text before December 31, 1975, but have not yet ratified their signatures.¹⁷ The Convention will come into force for a state that decides to become a party 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]."¹⁸

Only a few states have announced reservations to the Convention at the time of ratification or accession.¹⁹ The United States and Czechoslovakia have declared that they will not be bound by article I of the 1980 Protocol.²⁰ By making the reservation, the United States and the successor states to Czechoslovakia will apply the Convention only when the seller and buyer have their places of business in states party to the Convention. In the absence of this reservation, the Convention would also apply "if the rules of private international law make the law of a Contracting State applicable to the contract of sale." By contrast, Norway's reservation has a more limited impact. At the time of ratification, Norway declared that the Convention would not govern where the seller and the buyer each has its place of business within the territories of the Nordic States (i.e., Norway, Denmark, Finland, Iceland, and Sweden).²¹

II. The Rationale for the Convention

The Limitation Convention's preamble asserts that "the adoption of uniform rules governing the limitation period in the international sale of goods would facilitate the development of world trade." Implicit in this assertion is the judgment that the nonuniformity of existing national laws creates legal barriers to the free flow of transnational trade. This judgment was quickly reached by the U.N. Commission, which took up the subject "immediately" because studies "revealed numerous disparities between the rules of law of domestic legal systems

party to the Convention and, following unification with the G.D.R., has made no attempt to become a party. The United Nations no longer lists the G.D.R. as a Contracting State. *Note by the Secretariat, supra* note 13, at 2-3.

16. Argentina, Czech Republic, Egypt, Guinea, Hungary, Mexico, Romania, Slovak Republic, Uganda, United States of America, and Zambia. As for the German Democratic Republic, see note 15 *supra*.

17. Brazil, Bulgaria, Belarus, Costa Rica, Mongolia, Nicaragua, Poland, and Russian Federation.

18. Limitation Convention art. 44(2).

19. The Convention authorizes reservations only to articles 34, 35, 36 *bis*, and 38. Limitation Convention art. 39. For an analysis of these articles, see Department of State, *Section-by-Section Analysis*, in S. TREATY DOC. NO. 10, 103d Cong., 1st Sess. (1993) [hereinafter *Section-by-Section Analysis*].

20. *Note by the Secretariat, supra* note 13, at 3; see Limitation Convention art. 36 *bis* (incorporating art. I of Protocol in consolidated text).

21. *Note by the Secretariat, supra* note 13, at 3; see Limitation Convention art. 34 (authorizing Norwegian declaration). Article IV of the 1980 Protocol amends article 34, but Norway is not yet a party to the 1980 Protocol.

and a fundamental difference of approach in the civil law and common law systems.”²²

Details of these disparities are found both in the official Commentary to the Limitation Convention²³ and in earlier reports by the U.N. Secretary-General.²⁴ For example, the commentary on the Convention’s preamble states:

2. Differences in national laws governing the limitation of claims or the prescription of rights create serious practical difficulties. The prescription or limitation periods under national laws vary widely. Some periods seem too short (e.g. six months, one year) to meet the practical requirements of international sales transactions, in view of the time that may be needed for negotiations and then for the institution of legal proceedings in a foreign and, often, distant country. Other limitation periods (in some cases up to 30 years) are inappropriately long for transactions involving the international sale of goods and fail to provide the basic protection that limitation rules were intended to accord, such as protection from the uncertainty and threat to business stability posed by the delayed presentation of claims and from the loss or staleness of evidence pertaining to claims presented with undue delay.

3. National rules not only differ, but in many instances they are also difficult to apply to international sales transactions. One difficulty arises from the fact that some national laws apply a single rule of prescription or limitation 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. This difficulty is magnified for international transactions, since merchants and their lawyers will often be unfamiliar with the import of these general terms and with the techniques of interpretation used in a foreign legal system.

4. Perhaps even more serious is the uncertainty as to which national law will be applicable to an international sales transaction. Apart from the problems of choice of law that customarily arise in an international transaction, problems of prescription or limitation present a special difficulty of characterization or qualification: some legal systems consider these rules as “substantive” and therefore must decide which national law is applicable; other systems consider them as part of the “procedural” rules of the forum; still other legal systems follow a combination of the above approaches.²⁵

The Limitation Convention responds to these problems by setting out uniform, detailed rules that provide both predictable outcomes and commercially reason-

22. *Report of the United Nations Commission on International Trade Law on the work of its second session*, U.N. GAOR, 24th Sess., Supp. No. 18, U.N. Doc. A/7618 (1969), reprinted in [1968-1970] 1 Y.B. UNCITRAL 94, 100 (para. 44), U.N. Doc. A/CN.9/SER.A/1970.

23. *Commentary on the Convention on the Limitation Period in the International Sale of Goods, Done at New York, 14 June 1974*, U.N. Doc. A/CONF.63/17, reprinted in [1979] 10 Y.B. UNCITRAL 145, U.N. Doc. A/CN.9/SER.A/1979. The Commentary was prepared by Kazuaki Sono at the request of the 1974 diplomatic conference.

24. *Report of the Secretary-General, Analysis of replies to the questionnaire, and comments made at the fourth session of the Commission by Governments, on the length of the prescriptive period and related matters*, U.N. Doc. A/CN.9/70/Add.2, section 14 (1972), reprinted in [1972] 3 Y.B. UNCITRAL 96, U.N. Doc. A/CN.9/SER.A/1972.

25. *Commentary on the Convention on the Limitation Period in the International Sale of Goods, Done at New York, 14 June 1974*, U.N. Doc. A/CONF.63/17, Introduction: Objective of the Convention, paras. 2-4, reprinted in [1979] 10 Y.B. UNCITRAL 145, 146-47, U.N. Doc. A/CN.9/SER.A/1979.

able limitation periods. Neither uniform choice-of-law rules nor a brief, general uniform law were thought adequate. Choice-of-law rules would leave the divergent national limitation periods in place. This, it was thought, could lead to unexpected or severe results.²⁶ It was also feared that these national rules might play a significant role when domestic courts sought to fill perceived gaps in brief, general rules.²⁷ Recognizing, however, that individual sellers and buyers might nevertheless prefer application of domestic law, the Convention also permits parties to opt out by agreeing to exclude it.²⁸

Proponents of U.S. accession to the Limitation Convention stressed that it is an accessible law with predictable outcomes, that it provides commercially reasonable limitation periods consistent with U.S. law, and that it permits parties to exclude the Convention if they so wish. Professor Hans Smit, who represented the United States at the 1974 diplomatic conference, writes that "[a]lthough the significance of prescription problems in international sales should not be overrated, the Convention does offer the international businessman the advantages of reasonable and uniform rules that can easily be found."²⁹ Professor Anita F. Hill concludes that "[i]n most cases, the very existence of uniform rules should facilitate the routine administration of international sales contracts."³⁰ She also comments that "[m]uch of the Convention will seem familiar to practitioners in the United States because of its similarity to the Uniform Commercial Code," although she does go on to say that differences should not be overlooked.³¹ Somewhat more discursively, the American Bar Association Report notes that the Convention decreases legal transaction costs and that its rules are compatible with the time limits of the Uniform Commercial Code.³²

Testimony before the Senate Committee on Foreign Relations echoed these themes.³³ Professor John Honnold states them most succinctly: widely divergent limitation periods "present serious problems of justice and predictabil-

26. *Id.* para. 5.

27. *Id.* para. 6.

28. Limitation Convention art. 3(2). If a Contracting State declares—as the United States has—that it will not be bound by article 3 as amended by the 1980 Protocol, then the proper citation is to article 3(3) of the 1974 text. Limitation Convention art. 36 *bis* (art. XII of the 1980 Protocol).

29. Smit, *supra* note 7, at 338.

30. Anita F. Hill, *A Comparative Study of the United Nations Convention on the Limitation Period in the International Sale of Goods and Section 2-725 of the Uniform Commercial Code*, 25 TEX. INT'L L.J. 1, 22 (1990).

31. *Id.*

32. Section Report, *supra* note 6, at 597-98.

33. At the time this article was written, the Senate Committee hearings of October 26, 1993, had not been published. The written statements submitted to the Committee include: Statement of Harold S. Burman, Department of State, Office of Legal Adviser; Statement on Behalf of the American Bar Association Private International Law Coordinating Committee (Don Wallace, Chair) by John O. Honnold, William A. Schnader Professor of Commercial Law, Emeritus, University of Pennsylvania (Oct. 20, 1993); Letter from Houston Putnam Lowry, Brown & Welsh P.C., Meriden, CT, to

ity''; the Convention addresses these problems by its uniform limitation period of four years.³⁴ Another commentator spells out these points in greater detail:

—The Limitation Convention will provide U.S. traders more certain legal rules on when claims can no longer be made. It is a truism in the commercial world that more certain legal rules allow entrepreneurs to determine risk allocation more definitely and to plan accordingly.

—Application of the Convention will usually reach similar results to those that would result if U.S. law were applicable.

—The basic four-year period provided by the Convention is a reasonable period to require commercial record keeping. This period is the same as that provided by the U.S. Uniform Commercial Code (U.C.C. § 2-725).

—The Convention's uniform rules should decrease the incentive to shop for a forum that will hear the case. The costs of "forum shopping" are well known.

—When the Convention is applicable, costs of legal research will decrease over time. Unnecessary legal costs are, of course, an impediment to the growth of trade.

—Sellers and buyers are free to agree that the Convention will not govern their sales contracts. They may do so, e.g., when they can predict what limitation period will apply. Like most rules of sales law, the Convention provides "supplementary" rules for parties who leave gaps in their agreement.³⁵

The Committee Report to the full Senate itself stresses the removal of "artificial impediments" to the flow of commerce and support of party autonomy.³⁶

III. Overview of the Limitation Convention's Substantive Rules³⁷

The Limitation Convention provides for a uniform limitation period of four years from the time a claim accrues (article 8). Detailed rules establish when a claim accrues and how to calculate the period (articles 9–12, 28–29). The consequences of starting legal proceedings³⁸ before and after the limitation period

Senator Claiborne Pell (Oct. 26, 1993); Letter from Peter Winship to Senator Claiborne Pell (Oct. 20, 1993). (Statements and letters on file with the author.) Mr. Burman also made the only oral statement at the Committee hearing.

34. Statement of John O. Honnold, *supra* note 33.

35. Letter from Peter Winship, *supra* note 33.

36. S. EXEC. REP. 103-16, 103d Cong., 1st Sess. (1993).

37. For more detailed commentary in English, see Section Report, *supra* note 6; *Commentary*, *supra* note 23; *Section-by-Section Analysis*, *supra* note 19; FRITZ ENDERLEIN & DIETRICH MASKOW, *INTERNATIONAL SALES LAW* 393-454 (1992); Harold S. Burman, *Harmonization of International Commercial Law: U.S. Accession to the United Nations Limitation Convention*, 1994 *COMMERCIAL LAW ANNUAL* (forthcoming); Hill, *supra* note 23; John O. Honnold, *Uniform Statute of Limitations for International Sales Claims*, 3 *REV. INT'L BUS. L.* 227 (1989); Thea Krapp, *The Limitation Convention for the International Sale of Goods*, 19 *J. WORLD TRADE L.* 343 (1985); Smit, *supra* note 7; Kazuaki Sono, *Unification of Limitation Period in the International Sale of Goods*, 35 *LA. L. REV.* 1127 (1975); Victor R. Sumulong, *International Trade Law and the United Nations Convention on the Limitation Period in the International Sale of Goods*, 50 *PHILIPPINE L.J.* 318 (1975). See also *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*, [1992] 23 *Y.B. UNCITRAL* 466, U.N. Doc. A/CN.9/SER.A/1992.

38. "'Legal proceedings' include judicial, arbitral and administrative proceedings." Limitation Convention art. 1(3)(e).

expires are defined. A claim is barred, for example, if the claimant commences legal proceedings after the limitation period expires (article 25). Under some circumstances the limitation period may be extended beyond four years (articles 19–22) but in no case will the period run for more than ten years after a claim accrues (article 23).

When a claimant (known in the Convention as a “creditor”) asserts the claim in legal proceedings before the period expires, the limitation period “ceases to run” (articles 13–18). On this point the Convention differs from both the civil law, which usually suspends the running of the period or starts the running of a new period, and the common law, which usually treats the period as continuing during the legal proceedings. Nevertheless, in certain cases, such as when legal proceedings end without a final decision, the Convention deems that the limitation period continued to run. It might have been simpler, as one commentator has suggested,³⁹ to adopt the common law conceptual framework. But this was not done.

Claims “arising from a contract of international sale of goods or relating to its breach, termination or invalidity” are covered by the Limitation Convention.⁴⁰ Thus, claims for nondelivery, delayed delivery, and nonconformity of the goods are clearly covered. To avoid debate that a claim cannot “arise from” a contract if the contract has been terminated or the contract is later found to be unenforceable, the Convention opts to include claims relating to the termination or invalidity of the contract. Claims that are based on independent, noncontractual grounds are not covered, although there may be borderline cases.

Not all international sales and related claims will be governed by the Limitation Convention. Readers familiar with the U.N. Sales Convention will be comfortable with the Limitation Convention’s scope provisions.⁴¹ As a general rule, a business enterprise located in the United States that proposes to sell or to buy goods from an enterprise with its place of business in another Contracting State will find that the Convention governs unless they agree otherwise.⁴² Among the more important transactions and claims excluded are consumer contracts and products liability claims. In any event, the Convention covers only claims between the immediate seller and buyer.

Even if the Convention applies by its own terms, the seller and buyer may agree to exclude application of the Convention if they do so “expressly.”⁴³

39. Smit, *supra* note 7, at 343.

40. Limitation Convention art. 1(1).

41. As to those states party only to the 1974 text, the United States is deemed to have acceded to the unamended 1974 text. Limitation Convention art. 44 *bis* (art. XI of the Protocol). The United States is already bound by unamended article 3 of the 1974 text. *See supra* note 28. The other unamended provisions are of relatively minor significance.

42. Limitation Convention arts. 2, 3(1). On article 3, see note 28 *supra*.

43. Limitation Convention art. 3(2) (art. 3(3) of the unamended 1974 text). *See* note 28 *supra*; *cf.* U.N. Sales Convention, *supra* note 2, art. 6 (no requirement that exclusion be “express”; parties may derogate from individual provisions).

They may circumvent its provisions indirectly by agreeing that a party must give notice of nonconforming performance within a short period of time.⁴⁴ If they agree to arbitrate disputes, they may also effectively shorten the Convention's time period by agreeing to commence arbitration proceedings within a shorter period.⁴⁵ The parties may not otherwise agree, however, to shorten the four-year limitation period, and they may extend the period only under limited circumstances.⁴⁶

The Limitation Convention also does not affect provisions in international conventions and domestic laws that require a party to give notice of a claim within a short period of time as a condition to acquiring or exercising the claim.⁴⁷ Significantly, this means that the Limitation Convention does not affect article 39(2) of the U.N. Sales Convention. This article provides:

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.

Article 39(2) and the Limitation Convention address different acts: the former requires a buyer to give notice, while the latter requires the buyer to start legal proceedings. When both conventions are applicable, however, their effect is that a seller will have notice within two years whether a buyer has a potential contractual claim. If a buyer has given timely notice, the buyer will not be required to start legal proceedings for several more years. If the buyer does not give timely notice, the Limitation Convention may not bar the buyer from asserting the claim in legal proceedings although in these proceedings the seller may defend by showing that the claim is barred by article 39(2). Understanding this relationship between the two conventions is important because, with two exceptions, the states party to these conventions are the same.⁴⁸

44. Limitation Convention art. 1(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.").

45. Limitation Convention art. 22(3) (the rule in art. 22(1) that prohibits parties from modifying the limitation period "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.").

46. Limitation Convention art. 22(1), (2):

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.

Cf. U.C.C. § 2-725(1) (1990) ("By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.").

47. Limitation Convention art. 1(2); *see supra* note 44.

48. Only the Dominican Republic and Ghana are not also parties to the U.N. Sales Convention. All states party to both the 1974 text and the 1980 Protocol are also parties to the U.N. Sales Convention. *See supra* notes 15 & 16.

IV. Illustrations

Assume that on March 1, 1995, a Texas corporation executes an agreement to sell manufacturing equipment to an enterprise in State A. The Texas corporation does not expressly warrant the equipment's future performance. The Texas corporation hands over the equipment to the buyer on April 1, 1995. Six years after the equipment is handed over to the buyer the equipment breaks down. The buyer claims that the breakdown is a result of alleged defects in the quality of the equipment. The Texas corporation asks if the complaint is too late.

If the Limitation Convention has entered into force in both the United States and State A, then on these facts the claim is too late—and this will be true whether the claim is brought before a forum in the United States or in State A. The buyer's claim arises from an alleged breach of the seller's obligation under an international sales contract. The claim accrued on the date on which the equipment was actually handed over to the buyer.⁴⁹ The buyer has not commenced legal proceedings before the four-year limitation period expired, and therefore the claim may not be recognized or enforced.⁵⁰ To avoid this result, the buyer will have to show that it was unable to act because of force majeure.⁵¹

Assume, alternatively, that the buyer discovers the defect eighteen months after it took over the equipment, notifies the seller one month later, and commences a legal proceeding on its claim six months later. The claim would be timely under the Limitation Convention and the limitation period stops running. However, the Convention does not affect legal rules that require prompt notice following discovery of a nonconformity. These other legal rules may bar the claim if, for example, the buyer does not give the seller prompt notice following discovery of the defect.⁵² Under such a rule the one-month delay from discovery to notice may not be sufficiently prompt. In any event, notice was given within two years so that article 39(2) of the Sales Convention was satisfied if that text is also applicable.

49. Limitation Convention art. 10(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.") Professor Hill suggests that article 10(2) is limited to implied warranties, apparently reading article 11 as applying to all express warranties. Hill, *supra* note 30, at 15-17. Article 11, however, covers only express warranties "stated to have effect for a certain period of time." Most express warranties will therefore be governed by the more general provision of Article 10(2).

50. Limitation Convention arts. 8, 25(1).

51. *Id.* art. 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.").

52. See, e.g., U.N. Sales Convention, *supra* note 2, art. 39(1) ("The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it."); cf. U.C.C. § 2-607(3)(a) (1990) ("Where a tender has been accepted (a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy.").

If, after the buyer has asserted its claim in legal proceedings, the proceedings end three years later without a final judgment (i.e. five years and one month after the goods are handed over), the buyer has one year to commence another proceeding. Although the limitation period stopped running when the buyer asserted the claim, under these circumstances the Convention deems that the limitation period continued to run.⁵³ Although the four-year limitation period will therefore have run, the Convention provides the buyer with a one-year grace period under these circumstances.⁵⁴

V. Conclusion

The Convention on the Limitation Period in the International Sale of Goods entered into force in the United States on December 1, 1994. When the Convention applies, its uniform rules on limitation periods replace divergent national rules. These uniform rules are predictable and fair. U.S. enterprises should find that the Convention usually yields results similar to those that would result from application of domestic U.S. law. While not a major treaty, the Convention does remove yet another legal barrier to the free flow of trade.

53. Limitation Convention art. 17(1).

54. *Id.* art. 17(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."); *cf.* U.C.C. § 2-725(3) (1990) ("Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.").