

Senate Foreign Relations Committee
Hearing, October 26, 1993
Convention on the Limitation Period
in the International Sale of Goods, with Protocol
(Treaty Doc. 103-10)

STATEMENT OF HAROLD S. BURMAN
DEPARTMENT OF STATE
OFFICE OF THE LEGAL ADVISER

Mr. Chairman and members of the Committee, we welcome this opportunity to speak in favor of the granting by the Senate of advice and consent to United States accession to the United Nations Convention on the Limitation Period in the International Sale of Goods, with an amending Protocol (Senate Treaty Document 103-10).

My name is Harold S. Burman, and I am the Executive Director of the Secretary of State's Advisory Committee on Private International Law. The Advisory Committee provides advice and recommendations to the Department on matters concerning private international law. Within the Department of State, the Office of the Legal Adviser is responsible in turn for representation of United States interests in international organizations specializing in the preparation of conventions or other international legal texts in that field.

Our efforts in the field of commerce and trade are intended to accomplish the following purposes -- enhance the flow of international trade, by reducing impediments created by differences in national commercial laws; encourage growth of modern market-based commercial law in the many countries who participate in such trade; and generally act in support of the concerns of American business and the bar.

One of the specialized international organizations in this field is the United Nations Commission on International Trade Law (UNCITRAL). The United Nations General Assembly has endorsed two multilateral conventions unifying international sales law prepared by UNCITRAL, with active participation by the United States.

The United States ratified in 1987 one of the two companion Conventions -- the UN Convention on Contracts for the International Sale of Goods -- which entered into force on January 1, 1988 and harmonizes many basic substantive rules of contract and sales law related to the international sale of goods. This Committee now has before it the second of the two Conventions, which would harmonize law dealing with many problems related to statutes of limitation for the initiation of legal actions related to international sales.

International and domestic commerce are both enhanced by increasing the predictability as to what legal rules will govern the parties to a commercial transaction. These same considerations were at issue when domestic commercial law in the United States, and the related statutes of limitation, were harmonized by enactment by the States of the Uniform Commercial Code (UCC). The UCC has been adopted, with some amendments, in all State jurisdictions of the United States, and this has led to an essentially unified American law of sales. While this has not resulted in full uniformity, the significant degree of harmonization provided by the Uniform Commercial Code has greatly enhanced predictability since the 1960's for domestic U.S. sales transactions.

The United Nations through the work of UNCITRAL has attempted to accomplish the same results at the international trade level. The first of these Conventions, the U.N. Sales Convention, has been adopted by more than thirty countries representing all regions of the world, different legal systems and all stages of economic development, and which has facilitated the flow of commerce. It is hoped that the UN Limitation Convention, which is aligned with the UN Sales Convention, can have the same effect on a world-wide basis.

United States ratification of the UN Sales Convention has been a factor in the broad acceptance of that Convention, since the United States occupies an important position as a major commercial state and one with a well-known modern domestic commercial law. We believe that United States ratification of the Limitation Convention will encourage more countries to adopt this Convention. This would include countries in Eastern Europe and the former Soviet Union that are in the process of reformulating their legal systems. We believe that ratification by the United States will help to convince those and other States of the advantages of joining a harmonized international legal system on sales transactions. This would also be consistent with efforts by the United States to assist those countries to use modern commercial legal models as the basis for development of their domestic law.

Many states have chosen, as did the United States, to adopt the UN Sales Convention first before considering the companion Limitation Convention. We are not aware of specific terms of the Convention which may have so far inhibited wider adoption of the Limitation Convention. The Convention however does adopt what are for many countries new and short statutes of limitation, including the general four-year rule and a cap of ten years after which no extensions of the limitation period would be possible. By limiting the duration of exposure to liability for commercial transactions, these statutory periods are supportive of modern international commerce; they may at the same time represent sufficient change so that wider adoption may take longer than for the UN Sales Convention.

Mr. Chairman, in its section-by-section analysis of the Limitations Convention, which is contained in Senate Treaty Doc. 103-10, and supplementary information that we have provided to this Committee, the Department has summarized the purpose and effect of the provisions of the Convention. One feature that we think should be noted is that the Convention preserves freedom of choice for individual parties to a contract, both in their ability to vary most provisions of the Convention by agreement, and in their ability to exclude the Convention altogether from applying to their sales transactions. At the same time, the Convention creates a base line on the law on limitations for international transactions that is generally consistent with modern commercial law -- which is a forward step and one fully supportive of our commercial and trade interests.

The American Bar Association has endorsed this Convention for accession by the United States. The ABA has proposed that a Declaration be made which is authorized by the treaty, and which would have the effect of narrowing the Convention's scope of application but achieving at the same time greater commercial certainty as to when the Convention applies. The Administration agrees with and supports the recommendation of the ABA and we recommend that the Committee include that Declaration if it recommends that advice and consent be granted by the Senate.

Mr. Chairman, this concludes our formal statement. We would be pleased to respond to any questions the Committee may have.