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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

QUESTIONNAIRE

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on the

CONTRACT OF FACTORING

prepared by the Secretariat

Rome, March 1976

From the report prepared by the Secretariat it would appear that there exists at present no true body of rules concerning factoring. The difficulties which arise in the different countries on account of this legislative lacuna are overcome by the application by analogy of the principles governing the assignment of debts. But if this situation is already prejudicial to the certainty of the law when factoring operations take place within a single country, it is all the more complex when the operations contain an international element, because of the differences in national law in relation to the assignment of debts.

In the light of the foregoing, the Secretariat would appreciate observations on the following points:

1. Is it necessary - or at least useful - to proceed to the preparation of uniform rules on factoring ?
2. Should such rules apply only to international factoring or also cover domestic factoring ?
3. Should any uniform rules governing factoring which might be prepared take the form of:
 - (a) a Convention accompanied by a uniform law;
 - (b) a model contract;
 - (c) a combination of the two instruments limiting the content of the first to those matters which do not fall within the scope of the autonomy of the parties ?
4. Which stage or stages of the factoring operation give rise to most problems in practice ? In particular, should the future rules:
 - (a) be limited to relations between the factor, the supplier and the buyer, or
 - (b) should they also deal with relations between the factor, the supplier and third parties other than the buyer ?
- 5.1 In connexion with international factoring operations, are the problems raised by it those referred to in the report, namely:
 - (a) the validity of the double transfer of the debt: from the supplier to the export factor and from the latter to the import factor;
 - (b) that of the validity of a retention of ownership clause - inserted in the initial factoring contract - vis-à-vis creditors of the importer, i. e. the buyer ?
- 5.2 How are these various problems resolved in your country ?