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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

PRELIMINARY DRAFT UNIFORM RULES ON CERTAIN ASPECTS OF INTERNATIONAL
FACTORING AS APPROVED BY THE UNIDROIT STUDY GROUP FOR THE PREPARATION
OF UNIFORM RULES ON THE FACTORING CONTRACT

(Proposals to amend the draft submitted by Dr. Heinrich Sommer)

Rome, April 1983

1. Following the third session of the Study Group on the factoring contract at which the Group approved the text of the preliminary draft uniform rules on certain aspects of international factoring, one of its members, Dr. Sommer, proposed two changes to the English version which are intended to be no more than drafting improvements.

2. The first of these involves the replacement of the term "receivables" by "accounts receivable" and the second the amendment of Article 8, paragraph 1, which Dr. Sommer saw as being difficult to read and understand for those whose mother tongue is not English.

3. The present text of Article 8, paragraph 1 which reads as follows:

"Except as provided in Article 4, in a claim by the factor against the debtor for payment of a receivable arising under a contract of sale the debtor may set up against the factor all defences of which the debtor could have availed himself under that contract if such claim had been made by the supplier", would thus be replaced by the following: "Against a claim by the factor for payment of an account receivable the debtor may set up all defences of which he could have availed himself against the supplier under the contract of sale to which the claim relates, except as provided in Article 4".(1)

4. The Secretariat believes that if an amendment of this kind to the English text were to be accepted, it would be appropriate to simplify the language of the French text also and that independently of the choice to be made in the English version between Dr. Sommer's proposal and the amendment suggested by the Secretariat, the French version might be worded as follows:

"Le débiteur peut invoquer à l'encontre d'une demande du factor en paiement d'une créance, tous les moyens de défense que le débiteur aurait pu faire valoir lui-même contre le fournisseur en vertu du contrat de vente auquel la demande se rapporte, sous réserve des dispositions de l'article 4."

5. The Governing Council is invited to consider these proposals when examining the draft submitted to it by the Study Group.

(1) The Secretariat wonders whether the language might not be still further improved as follows: "The debtor may set up against a claim by the factor for payment of an account receivable, all defences of which the debtor could have availed himself against the supplier under the contract of sale to which the claim relates, except as provided in Article 4."